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GRAND JURY

AUG 26 2007

RECEIVED

August 15, 2007

Jerry Bagger, Foreperson
Sonoma County Grand Jury
Hall of Justice
P. O. Box 5109
Santa Rosa, CA 95402

Re: Response to 2006-2007 Sonoma County Grand Jury Report

This letter is in response to the recommendations contained in the 2006-2007 Sonoma County Grand Jury Final Report. Windsor's Town Manager was asked to respond the following reports and recommendations:

- Access and Recreation in Open Space District Properties – R6
- Signs of the Times – R6
- Wastewater: Money Down the Drain? – R1, R5 and R6

Access and Recreation in Open Space District Properties

Recommendation R6 – City Councils should establish policies and practices to meet with the Open Space District to review planning on a comprehensive and long-term basis.

Response: In the next twelve months, the Town's Planning staff is planning to present to the Town Council recommended policies and practices to meet with the Open Space District to review planning on a comprehensive and long-term basis.

SIGNS OF THE TIMES

Summary

For decades all types of signs and billboards proliferated along our highways with no control over number, size or appearance, making the driving experience increasingly unsightly, distracting, and sometimes dangerous. However, in 1965 the Federal Highway Beautification Act was passed which was designed to regulate highway advertising for the first time. The Act prohibited the construction of new billboards on scenic and rural federal-aid highways and required the removal of illegal billboards erected without proper permits. It set standards that were to be observed by all states. As a result of the Act the ugly billboard situation improved in Sonoma County.

Unfortunately, over time, the original intent of the bill has been ignored largely due to pressure from the advertising industry, and lack of congressional interest. Federal funds that assisted in the removal of billboards, dried up and any further buyouts are at local expense. On average new billboards are twice as big as they were in 1965 and there are nearly fifty percent more than there were 30 years ago. Nationally there are 450,000 billboards on federal-aid highways, compared to the 330,000 that first inspired the Act.

So what has happened in Sonoma County during this time? How many of these 330,000 do we have? How many should we have? Where are they? Are they in compliance with all aesthetic, permit, financial and tax regulations?

The problem is that grand jury doesn't know for sure. It has been almost impossible for the grand jury to find any city or county agency that has a clear idea of the number or status of billboards within its jurisdiction. Some billboards may be illegal and should be removed. Other billboards may escape the attention of the tax assessor resulting in a loss of tax money for the county.

Reason for Investigation

The grand jury began its investigation as the result of a citizen's complaint and a recent report of a Federal Grand Jury investigation of alleged RICO Act violations concerning billboards in the Bay Area.

Background

"I think that I shall never see a billboard lovely as a tree. Perhaps unless the billboards fall, I'll never see a tree at all" – Ogden Nash.

As a result of protests and safety concerns, the Highway Beautification Act was passed in 1965. The aim of this federal law, and subsequent laws was to preserve the enjoyment of public travel and preserve scenic beauty. But in order to get the legislation passed, liberal concessions were granted for existing billboards. These laws, state, federal and local established standards applicable to outdoor advertising along our highways. In the 1970's, the Sonoma County General Plan eliminated the construction of new billboards. While the law does not allow for the installation of new billboards, existing billboards may be repaired.

Essentially, the law does not allow the construction of new billboards unless it will be used to advertise the business conducted on the property where the billboard is located. The difficulty begins with the Highway Beautification Act itself. It has been called the only act that pays the polluter to stop polluting. To remove a billboard, the owner must be compensated and given an

adequate time to remove the billboard. The distinction between a new billboard (illegal) and a “legal nonconforming” billboard is complex. Legal nonconforming refers to a billboard in existence prior to the passing of the Highway Beautification Act. For example, physically the billboard consists of the base which is attached to the land. A display panel holding the ad is supported by this base. Assume that the property is sold and the existing leaseholder loses the lease. When the leaseholder leaves, the display panel is removed. The new owner puts up a new display panel. Is this a new billboard and in violation of the use permit? Or is it still a legal, nonconforming billboard because the base was in place prior to the change in the law? If the new owner of the billboard also owns the property and is advertising his own business, is it now an on-site sign even though the business itself is not there?

How effective is the process for preventing or locating violations? Sonoma County Zoning Regulations, Article 84, Sign Regulations outline the applicable code provisions. Prior to 1995 permit applications were manual, and hard copies were retained. Since 1995 they have been electronic. Since the General Plan eliminated new billboards in the 1970s, electronic records would be few. The grand jury was unable to locate even one of the paper permits for those billboards constructed prior to 1995.

In the past three years Santa Rosa has increased efforts to find and cite for code violations. Their focus, however, is still on those violations that are dangerous and create an immediate threat to public safety. The County of Sonoma, Permit and Resource Management Department (PRMD) has stated that it’s practice is to investigate, fine, and take legal action only in the event of a complaint, not seek out infractions. A request for a new use permit or, more typically, a complaint would generate referral to code enforcement.

The laws regarding the number, placement and legality of billboards are extremely complex. They involve federal, state and local laws and sometimes multiple municipalities. It is difficult to demonstrate that a violation has occurred. Jurisdictional questions complicate the issue. If a city limit changes, so does jurisdiction over the billboards in the affected areas. The interpretation of one city may not be consistent with that of the county.

Billboards constitute a big business. The advertising cost for the average Sonoma County billboard ranges from \$3500-\$6000 per display face per month. This means an income stream of \$84,000-\$144,000 per year for the typical two sided billboard. At least one of the billboards along Highway 12 is generating \$14,000 a month, making them very attractive income producing assets

Billboards may not be something people like to look at, but, as stated, they are extremely attractive as an income producing asset. For each billboard, the value to the owner is the physical structure, the income stream, and the value of the use permit that determines who is in control. Individual contracts apply to each billboard, with terms completely negotiable. That use permit, as part of the asset value of the billboard is transferable. Negotiations are between the billboard companies (usually the permit owners) and the local government entity, regarding the terms of the lease, the permits and the fees.

To get an idea how many billboards there are in the county, the grand jury conducted a tour along the Highway 101 from the Marin border to the Mendocino border and found approximately forty single or multi-faced billboards – not a precise number because the purpose of some signs is not clear from simple observation. Most signs are located in the Petaluma-Santa Rosa corridor. Available digitized mapping assisted in finding the exact locations of signs in Petaluma and Santa Rosa, complete with parcel numbers and address locations. Almost all billboards are

owned by billboard companies with a leasehold interest in the site. Of the billboards along this corridor one billboard company holds seventy four percent of them.

Are the billboards also big business for the cities and the county? All property tax assessments on billboards located in Sonoma County are handled by the county tax collector. The California Assessors Association defines them as fixtures annexed to realty with intent to remain indefinitely. The Consumer Price Index is applied to original cost. For property tax purposes, the appraisal unit of property bought and sold is:

- The billboard improvement (sign and foundations)
- The use permit that allows construction and operation
- The leasehold interest in the land

The property owner's value in the site is taxed separately.

Tax assessments in Sonoma County are based on the cost approach. This includes billboard improvements and the value of the leasehold interest. Sonoma County does not allow depreciation. The estimated cost, when new, should reflect full economic cost of creating a substitute billboard including its improvements. Actual land value to both the property owner and the billboard owner is taxed to the property owner. Thus, Proposition 13 provisions apply. And because virtually all legal nonconforming signs were originally built prior to the proposition, they can't be used to reassess the land until and unless it is sold. In addition to the fact that the property cannot be reassessed, the income stream cannot be taxed. Income tax for the billboard company is the appropriate vehicle for that taxation. The billboard can be reassessed if the billboard changes hands. There are only a few ways the tax assessor can become aware that the property can be reappraised. Form 571 L, Business Property Statement, must be submitted each year showing the value of billboards. It shows value only and it does not contain an itemized list of billboards. Audits of the properties are currently run every four years, so inventories can be very out of date. Because no list of billboards is required and because of combined billing there is no way a citizen can obtain information about the billboards. This information is subject to the Public Information Act. Unfortunately, combined billing results in the individual billboard showing on the billboard owner's appraisal form, not the property owner's. Therefore follow up on billboard transactions is almost impossible.

Investigative Procedures

Interviews

County of Sonoma, Permit and Resource Management Department
Sonoma County Tax Assessor
Outdoor advertising companies

Tours

Hwy 101 Billboards

Document Review

Highway Beautification Act of 1965
Caltrans Outdoor Advertising Act and Regulations
Billboards along the 101 corridor and map of 101
Code violations encountered by PRMD staff
Selected Active Permits Caltrans Schedule

Article 84 and related county permit criteria
Sonoma County ordinance 4618
Sonoma County Tax Assessor property documents
County budget
County procedure regarding code violations

Findings

- F1 Audit and inventories are conducted only once every four years.
- F2 Form 571 L or a change in ownership resulting in a request for a new permit are the only ways the tax assessor has to learn there is an opportunity for reappraisal.
- F3 In 2004 the California Assessors Association recommended that when valuing a billboard, the current Caltrans method should be used.
- F4 Although billboard ownership is a matter of public record, there is no realistic way for the public to access those records.
- F5 There is no easily accessed way to learn of changes in ownership
- F6 There is little or no exchange of information between government entities regarding billboards.
- F7 No official agency monitors the content or safety of each billboard.
- F8 No agency is determining whether each billboard is legally situated in conformance with zoning regulations.
- F9 No official entity is determining whether each sign conforms to the standards of the Home Builders Association.

Conclusions

Billboards generate taxes for the county and for that purpose the county should know exactly where they are located and the responsible party.

Illegal billboards should be removed.

Building permits, assessors parcel numbers and use permits should be easily available so that permit infractions can be readily dealt with.

The county is losing revenues as a result of incomplete, inaccurate and unaudited systems and processes.

Commendations

The grand jury commends the administration of the Town of Windsor for the accuracy of their records regarding billboards and their cooperation in presenting the information.

Recommendations

- R1 The county tax assessor should complete billboard inventories annually.
- R2 The county tax assessor should require the inclusion of a mandatory itemized listing of the billboards on form 571 L.
- R3 All information regarding billboards in the county should be available in a central location: assessors parcel number and address, property owner, location on property, billboard owner, advertising agency, permits.

- R4 County tax assessor should compare current cost value method with the Caltrans process recommended by the California Assessors Association to see which is the most beneficial to the county.
- R5 The tax assessor should be the central repository for information regarding billboards.
- R6 The legality of all billboards in the county should be examined and any illegal billboards should be removed.

Required responses to Recommendations

Sonoma County Tax Assessor: R1, R2, R3, R4, R5

County of Sonoma, Permit and Resource Management Department: R6

Permit departments of the cities of Cloverdale, Cotati, Healdsburg, Petaluma, Rohnert Park, Santa Rosa, Sebastopol, Sonoma and the town of Windsor: R6