Rebuttal to the Denial of Appeal of NOV issued by the Ojai Valley Sanitary District (OVSD) to the Property Owners of 30 La Cumbra St, in Oak View, CA

Excerpts from Transcript of March 28th Appeal before the Board of Directors:

Transcription can be accessed here: **https://otter.ai/u/0k4_b-9Qnn0uERn_d9gHvl3b9wU**

Jeff Palmer: 8:46 minutes

"So an exempt ADU is an interior ADU. That's located within an existing registered building. Or it's created by converting an existing accessory structure."

Jeff Palmer: 1:32:55 minutes

"You know, we're, we're talking a lot about state code, talking about 65852.2 (F) and all the paragraphs that go with (F). The ruling that staff made. And ***the ruling that I made, as it relates to this case is based on our code****. And that's based on 301-4 on page 139. And it lists exempt ADUs and non exempt ADUs.*

And if it's exempt, it's free. If it's if it's not exempt, then we charge it proportionally. So the appeal is based on our ruling appeal is not based on our interpretation of a state code. If the board wants to have a discussion, make some sort of ruling about ***whether or not our code complies with state law.*** *That's different than the action that's before you tonight, before you tonight is really an action based on our interpretation of our code as it relates to this specific property.*

And we've spent a lot of time from the applicant's perspective, basically saying our interpretation of state law is wrong. And so from a from a process standpoint, those are two different actions here before the board. One is an appeal based on our actions on 301-4 and a different the applicant is presenting a case that saying our interpretation of state law is wrong, and that's Ordinance 82. That was done in April of 2021. So, I pointed out when I did my opening statement about sections four and sections five of state law, just to show you how we got from what was written in state law and how that translated into what we described in Ordinance 82 as a realized as it relates to specifics for OVSD.

So, section four doesn't apply to us in state law, because that's only talking about existing ADUs, so anything related to that paragraph four doesn't apply. Paragraph five is all about new. Paragraph five says there's going to be a connection from the ADU to the sewer. And we may or may not require it to be a direct connection. But in either case, the connection is subject to capacity charges. That is state law. That is how we've written our code. That is how we made our decision both at the staff level and on my review of the of staffs' opinion.

Or this case, now there was a question about a will-serve letter. And I want to just sort of talk a moment about will-serve letters. ADUs do not require a will-serve letter from the local agency, the city or the county, the county of Ventura has consistently still required ADUs, at least to come get a will serve letter from us, just so that there's some line of communication between the county and OVSD about something going on. They can't mandatorily make it happen. And there's no charge for it to happen. In this case, we did we did issue a will-serve. In February of 2021. Applicant came to us and said I needed a will-serve. He'd like to take it to the county, we issued what we call a conditional will-serve. In our review of the case, we knew it was a new ADU. And so, we wrote a will-serve letter that says, here's your will-serve will provide you sewer service. But there are going to be some fees due but we don't know what those fees are due. Because we haven't seen plans yet. And we haven't seen the final plan so we can do our final calculations on the on the final fees. So it's a piece of paper that allows the applicant to get through the county process through to a building permit through to building permit.

We actually got plans in May of 2021. So, after our ordinance 82 had been passed, we actually got plans, we then made accommodations with the property owner to then inspect the property when the unit was actually built. And that's how the process we went from will-serve to plans to an inspection to a calculation of proportional fees.

And all of that was in compliance with 301-4, which is our rules. And 301-4 we believe is consistent with paragraph five for inscribing new units under the state law. So if there's if there's questions on the board and you want to revisit our ordinance as it relates to the code, we need to kind of set that in motion as a separate process to amend an ordinance. ***But what's before you today is really just application of that existing ordinance Ordinance 82."***

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The defined purpose of the California's ADU laws are to alleviate the critical shortage of the State's housing shortage. To accomplish this, among other things, it set forth provisions to reduce the financial and bureaucracy-based barriers to their construction.

Government Code 65852.150: Legislative Intent

> *(b) It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.*

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Taking their Basis for Ruling one at a time:

1. Affirms the General Manager's November 29, 2021 ruling that the subject NOV was justified on the basis of applicable OVSD Code of Regulation section (§301.4), the facts presented and received, and the applicable state law (Gov. Code §65852.2).

Yes, the ruling on the Notice of Violation (NOV) is justified on the basis of OVSD Code of Regulations section 301.4, but not by applicable state law which supersedes their code.

Documented here:

ORDINANCE NO. OVSD-82 and OVSD-83

> **301.1.4** The Capacity Charges imposed by the District are non-discriminatory as applied to all users of the District's sewer system and are established upon a rational basis.

and

Capacity Charge: A one-time Charge for a new connection to the District Sewer System or expansion of use to the sewer system to cover a Parcel's proportionate cost of: (1) the existing District Sewer System benefit conveyed to the Parcel being charged; and (2) ar

and

Connection: A physical connection between any type of piping (or any other sewage conveyance system) not owned by the District to another type of piping which is directly or indirectly connected to the District's Sewage System.

and

301.4 Application of Capacity Charges

a. Except as provided in paragraphs (b) and (c) of this Section, the District imposes one-time, non-discriminatory Capacity Charges on Parcel Owners as a condition of the District permitting those Parcel Owners to establish a new sewer connection or to expand the use of an existing sewer connection.

b. Exempt ADUs. An ADU is exempt from the District's Capacity Charges if the ADU is any of the following ADUs described in 301.4(b)(1), (2), or (3) below *and* meets the requirements of 301.4(b)(4):

1. An interior ADU that is located within an existing residential dwelling
2. An ADU created by converting an existing accessory structure located on the property where the conversion does not require an expansion of the existing accessory structure of more than 150 square feet; or
3. A junior ADU, as defined in Section 101.10 of this Code and in Government Code § 65852.22(h)(1); and
4. The ADU has exterior access and adequate setbacks sufficient for fire and safety as set forth in Government Code §65852.2(e)(1)(A).

and

WHEREAS, the District takes this action regarding ADUs to amend its Code of Regulations with the knowledge that certain provisions within Government Code §§65852 2 and 6585222 impose an unfunded state mandate upon the District that may be in conflict with California Constitution Articles XIIIC and XIIID; and

and

100.11 Conflict with State Codes

Any provision of this Code in conflict with any provision of the governing codes of the State of California due to revisions made in such governing codes shall be automatically superseded by said revisions.

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EXCERPT FROM SECTION 65852.2 OF THE GOVERNMENT CODE:

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family home.

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure is detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection **directly** between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

The Districts code states there is such a thing as a direct connection and an indirect connection to their sewage system, and both of them will allow the Ojai Valley Sanitary District to charge 'Capacity Fees', whereas the Government code only allows these fees to be levied against **mandated direct** connections. The OVSD did not require my ADU to have a direct connection, and it is not connected this way.

This was re-iterated to them in an official letter from the CaHCD with copy to the State Attorney General's office which reads in part:

practices appear to exceed the limitations on the latter. These fees are prohibited in some cases and limited in others.

ADUs for which no separate "connection" may be required and no connection fee or capacity charge may be imposed

ADUs constructed entirely within an existing single family home or other accessory structure that satisfies the requirements of Government Code section 65852.2,

Note that this paragraph is one sentence, and in bold font for emphasis. Also note the wording "separate 'connection'".

The OVSD might try to argue that making a connection to one's own lateral is making a 'separate connection'. This doesn't hold up. The have admitted that there are such things as 'direct' and 'indirect' connections in their ordinance, one of which it not included in State Law. I'm pretty sure that an indirect connection example might be something like a homeowner installing a small sink, or wet bar in their home and making a connection to their existing lateral. I highly doubt that would have caused a 'capacity fee' charge of $16,000.

Their own ordinance 100.11 mandates them to adhere to the State code for governance when there is conflict between there code, but they appear not to follow this ordinance.

As stated by the General Manager, Jeff Palmer, on record, in the appeal hearing, to defend his prior ruling, he says that he effectively made the decision based solely on OVSD-82, and did not consider the state law.

So, since Mr. Palmer was only applying the District's own OVSD-82 code, in which indirect connections to their system is allowed as a basis to make an ADU 'non-exempt', and therefore in jeopardy of being charged 'capacity fees', it's easy to understand why the appeal to the Notice of Violation was denied, and since he is directing the Executive Board to do the same in this hearing, the conclusion is forgone.

2. Does not find the Appellant's arguments or grounds for appeal valid or controlling because they are based on an illogical reading and interpretation of Government Code §65852.2(f)(5) that made no sense in light of the entire code section on ADUs and the corresponding provisions in the OVSD Code of Regulations, namely §301.4.

Not withstanding OVSD-82 and 83, the entire code section of California ADU laws were created with the intent to reduce the housing shortage in the state. This includes removing financial and bureaucracy barriers to

creating more housing in the State. Our arguments are clearly logical to this point. As stated, the OVSD is only concerned with their own code §301.4, which allows them to charge 'capacity fees' to direct or indirect connections to their utility, whether or not they required the property owner to make that type of connection. The fact that they admit 'indirect' connections exist is a red flag of their defiance.

3. Finds that Appellant's arguments against the assessment of OVSD sewer system connection fees on his free-standing ADU lack factual and legal merit.

Disagree as noted.

4. Affirms the accuracy of the drainage fixture count on the Appellant's ADU for purposes of proportionality in sanitary sewer system fees charged.

The drainage fixture count might be accurate, but it is irrelevant since it is only used in the calculation of 'capacity fees' which should not be charged.

5. Finds that the Appellant's ADU places a new and additional burden on the OVSD sanitary sewer collection and treatment system while at the same time receiving the benefit of such sanitary sewer services.

The OVSD admits in its' opening statement that an overwhelming majority of the ADU permits in their catchment area were 'exempt', and not subject to paying 'capacity fees'.

> Jeff Palmer: 8:46
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> Just sort of a side note on this, we've processed since 2017. We've processed nearly 138. ADU permits. The vast majority of them have been some variation of a conversion, a garage conversion or existing structure conversion, something, there's approximately 10 that were actually new buildings, new dwelling units from the ground up. And all of those have been counted as plumbing fixtures and done a proportional count. All of the existing conversions where fees were waived in accordance with regulations promulgated by the state.

These 'exempt' ADU's are also adding additional effluent into the sewage system. Therefore, this is not grounds for charging me said fees and not other ADU's. State law determines when these fees can be assessed, and since the subject ADU does not have a direct connection to the utility, it is also 'exempt'. Like all properties that connect to the sewer system, my ADU will be paying the monthly sewer service fee every year. It's not as if I will not be paying for the benefit of the service.

During the hearing, it was mentioned more than once, that the District could have arbitrarily mandated that I make a direct connection to the utility which is approximately 100 feet away from my ADU out in the middle of a cul-de-sac, instead of me making a short 10 foot connection from the corner of my ADU to my existing lateral. They commented that this could have easily cost over $10 thousand dollars, and I should be glad that they didn't do that. I have to assume that the District itself would have some expenses associated with such a project. (Engineering?) If the District's Ordinance OVSD-82 were to be applied as written, without adhering to State law, this scenario, where I have a detached, non-replacement of structure ADU, with a direct connection to the sewer main, I would be responsible to pay the Ojai Valley Sanitary District, **1**. their permit fees, (**$475.00**) **2**. their excessive 'capacity fees' (**$12,178.08**), **3**. their continuing annual sewage fees (**$719.04**), and **4**. for the considerable connection costs of connecting my ADU to the main line out in the street (easily in excess of **$10,000**). This would be a huge financial barrier to creating more housing in the state of California. Therefore, I believe, State ADU law specified that only direct connection scenarios allowed to water or sewer districts be allowed to charge reasonable fees. I agree to pay the permit fees, and the annual sewage fees. Since my ADU has no direct connection to the District's sewer main and this was not mandated, the fees associated with **#2** and **#4** are not allowed to be required of me as per state law.

Essentially, my ADU would be considered 'exempt' from paying 'capacity fees' by the District if it replaced an existing structure. Since my ADU did not replace an existing structure, or part of an existing structure, it is not described in subparagraph (A) of paragraph (1) of subdivision (e) of the State code. Theoretically, I could have put up a very temporary structure where my ADU was to be placed just prior to its' installation, and I could claim that, YES it replaced a storage shed, or a party tent, or temporary garage. This would obviate the possibility of the excessive Districts' fee. This is not to say that I would do this, that is not in my character, just as I would hope that the OVSD would not require a direct connection to their utility without good sound reasoning as they mentioned, it's only to show the absurdity of their interpretation, and application of the State law. (Incidentally, the State code does not define a structure to have the requirement of being 'registered' as Mr. Palmer states.)

> (iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure is detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

> (2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

Taking this a bit further, in the unlikely event that my ADU, replaced an existing structure, so it would fall under the OVSD 'exempt' category, and, it was mandated to make a direct connection to their main, due perhaps due to it being far away from the lateral, but close to the District's main, of course I would have to pay the considerable expense of making that connection, but in effect, it would be exempt from their additional 'capacity fee' charge.

Speaking a bit to how they do their fee calculations of 'capacity fees'. I don't believe there is anything in State law to prevent how they calculate them in this manner, but I just want to point out that using their application the baseline of 25 DFU's for calculating these fees, they could cause the property owner of a small ADU, with a DFU count over 25 to pay more in 'capacity fees' than a brand new 10,000 square foot, non-ADU, mansion with 50 DFUs. It's just a side note, and not applicable to my situation, but it goes to the District's state of mind in their decision on how to calculate collection of fees.

Matthew Gelfand, Counsel, California for Homes.org (Letter 12/17/2020 to OVSD)

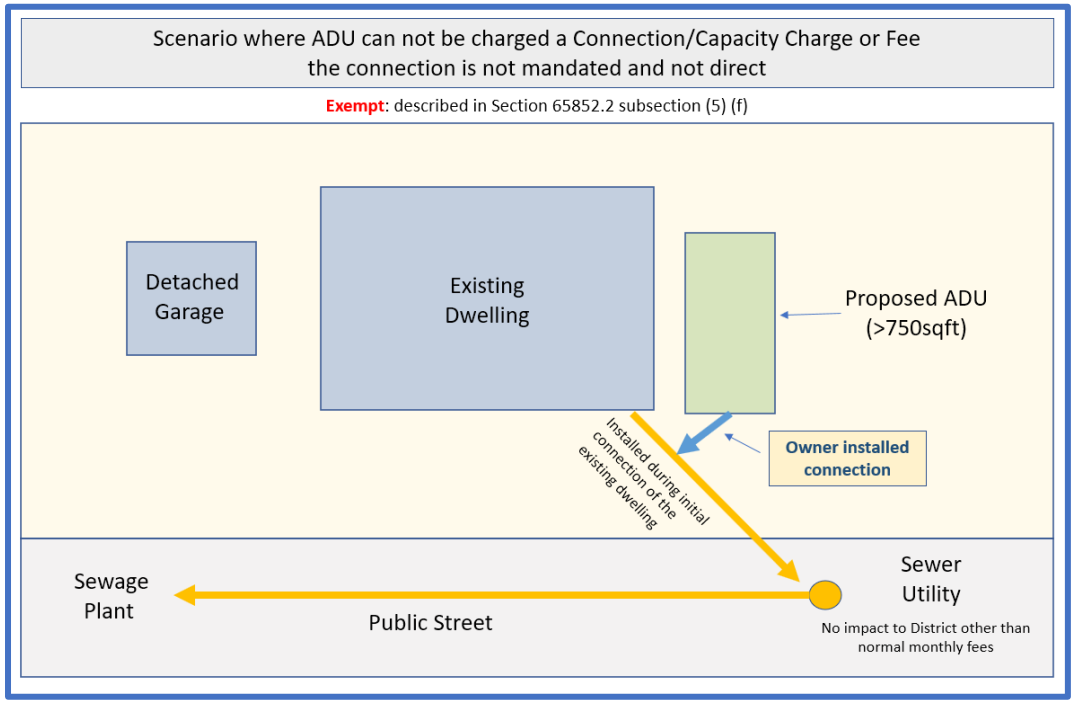
> If the District's capacity charges are insufficient to account for the fact that homeowners can now build ADUs alongside their primary dwellings, the District should adjust the capacity charges for each new primary residential connection, not attempt to charge for primary connections a second time in violation of state law. And, of course, the District remains free to charge monthly or annual usage fees to account for the cost of an ADU's actual use of the District's system.

Note: charging for "primary connections a second time is in violation of state law."

6. Finds that Appellant's free-standing ADU is not eligible for the exemption from OVSD sewer system connection fees as set forth in OVSD Code of Regulations section 301.4(b) and Government Code section 65852.2(f).

It's true that my ADU would not be eligible for a 'capacity fee' exemption based on the Ojai Valley Sanitary District Code, OVSD-82 and 301.4(b), **but it is**, based on California Government Code section 65852.2(f)(5), and even restated by a rare letter from the CaHCD to the OVSD.

OVSD's own ordinance from 2019, 100.11, affirms that revisions the State of California's governing codes shall *automatically* supersede their code. (This hasn't happened. The General Manager has suggested to the Board that they could "*revisit our ordinance as it relates to the code*", but as of yet, I don't believe that this has been initiated.)


Scenario where ADU can not be charged a Connection/Capacity Charge or Fee
the connection is not mandated and not direct
Exempt: described in Section 65852.2 subsection (5) (f)
Detached Garage
Existing Dwelling
Proposed ADU (>750sqft)
Installed during initial connection of the existing dwelling
Owner installed connection
Sewage Plant
Public Street
Sewer Utility
No impact to District other than normal monthly fees