



Serena Carter <serena.carter@edcgov.us>

Fwd: Appeal of ADM17-0077

1 message

Char Tim <charlene.tim@edcgov.us>

Tue, Jan 9, 2018 at 11:30 AM

To: Serena Carter <serena.carter@edcgov.us>

Cc: Aaron Mount <aaron.mount@edcgov.us>, Rommel Pabalinas <rommel.pabalinas@edcgov.us>, Roger Trout <roger.trout@edcgov.us>, David Livingston <david.livingston@edcgov.us>

Serena,

Please upload this document (Appellant's Letter 01-09-18) for the January 11, 2018, agenda item #3, following our standard procedures. Thank you.

----- Forwarded message -----

From: **David Temblador** <dtemplador@hthjlaw.com>

Date: Tue, Jan 9, 2018 at 11:05 AM

Subject: Appeal of ADM17-0077

To: Aaron Mount <aaron.mount@edcgov.us>

Cc: "rbreck@aol.com" <rbreck@aol.com>, Charlene Tim <charlene.tim@edcgov.us>

Aaron,

Please find the attached letter regarding the above appeal. We ask that you please circulate it to the Planning Commissioners prior to Thursday's hearing.

Regards,

David

Please Note Our New Address**DAVID P. TEMBLADOR, ESQ.**

HARRISON TEMBLADOR HUNGERFORD & JOHNSON

MINING LAND USE NATURAL RESOURCES

2801 T Street

SACRAMENTO, CA 95816

OFFICE: 916.706.2639 • CELL: 916.396.2100 • FAX: 916.382.4380

DTEMPLADOR@HTHJLAW.COM • WWW.HTHJLAW.COM

CONFIDENTIALITY NOTICE: This e-mail transmission, and any documents, files or previous e-mail messages attached to it may contain confidential information that is legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. If you have received this transmission in error, please immediately notify us by reply e-mail, by forwarding this e-mail back to the sender or by telephone at 916.706.2639 and destroy the original transmission and its attachments without reading or saving in any manner. As required by U.S. Treasury Regulations, we advise you that any tax advice contained in this communication (including any attachments) is not intended to be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

--

Char Tim
Clerk of the Planning Commission

County of El Dorado
Planning and Building Department
2850 Fairlane Court
Placerville, CA 95667
(530) 621-5351 / FAX (530) 642-0508
charlene.tim@edcgov.us



01-09-2018 Letter to Aaron Mount re. Appeal (00391635xC24FB).pdf
1539K

January 9, 2018

VIA ELECTRONIC MAIL

Aaron Mount, Associate Planner
County of El Dorado
Planning and Building Department
2850 Fairlane Court
Placerville, CA 95667

***Re: Appeal of Administrative Permit No. ADM17-0077
Roland and Penny Brecek***

Dear Mr. Mount:

This office represents Roland and Penny Brecek with respect to the above referenced appeal. We write to address a legal flaw in the County's approval of ADM17-0077. More specifically, we write to advise you that the Project Proponents did not have the consent required by Section 130.30.050(c) and, as such, the Administrative Permit approval granted by the County is invalid.

The balance of this letter addresses the applicable legal standard and its application to the present case.

LEGAL STANDARD

Section 130.30050 of the County Code provides that retaining walls greater than (7) feet may not be approved unless the project proponent provides a signed letter of consent, with reference to the specific plans being consented to, from adjacent property owners. In relevant part, the Code provides that:

“Where the height of the fence or fence and wall is more than seven feet above the natural or finished grade of the adjacent property, a signed and notarized statement from the adjacent property owners that the proposed fence or wall, as described or shown in an attached exhibit, will not impact their view nor will it restrict light or movement of air and, therefore, they have no objection to the construction of the fence or wall[.]”

(El Dorado County Code §130.30.050(c) [Emphasis added].)

In its simplest terms, this section requires a project proponent to submit a notarized letter from their consenting neighbor specifically referencing the plans that are being proposed for approval.

With the above legal standard in mind, we now turn to the present case.

DISCUSSION

Project Proponents failed to satisfy the above legal requirement by failing to submit consent letters for the plans that they actually included in their application and, as such, the County's approval of Administrative Permit ASM17-0077 is invalid.

Although the Project Proponents purported to submit letters from adjacent property owners consenting to their proposed plans, the letters submitted were for an earlier version of their Project that was not subsequently submitted to the County for review and approval.

The original plans presented to the four adjacent property owners were dated April 2017 and were consented to by two of owners in June 2017. The Project Proponents, however, revised their Project in August 2017, prior to submittal to the County, but did not secure new consents from their adjacent owners or, even, present them to the adjacent owners for consideration. (See attached, Letter from Richard and Sandra Nelson to El Dorado County Planning Commission, dated January 7, 2018.)

Instead, the Project Proponents submitted the revised plans with their Administrative Permit Application (ADM17-0077) and included the outdated consent letters falsely claiming that they constituted the consent required by County Code. On November 14, 2017, unaware of this discrepancy, the County approved the ADM17-007 on the erroneous belief that two of the adjacent owners had consented to the submitted plans.

Notwithstanding the representations in their application, the Project Proponents did not have valid consents for the grading plans, architectural plans and massing models actually submitted to and acted upon by the County.


Therefore, in the absence of valid consents as required by section 130.30.050(c), the County could not legally approve Administrative Permit ADM17-0077 and the present approval is void.

CONCLUSION

In light of the above, we respectfully request that the County rescind its approval of ADM17-0077 and grant the present appeal.

Should you have any questions concerning the matters discussed herein, please do not hesitate to contact me by telephone at (916) 706-2639, or by e-mail at dtemplador@hthjlaw.com.

Best Regards,
HARRISON, TEMBLADOR,
HUNGERFORD & JOHNSON LLP

By: 
David P. Temblador, Esq.

DPT/kc

Enclosure

cc: Roland and Penny Brecek
El Dorado County Planning Commission

ATTACHMENT

Dear members of the El Dorado County Planning Commission,

January 7, 2018

Due to travel plans, my wife and I are unable to attend the upcoming meeting on January 11 to discuss the appeal of Administrative Permit No. 17-077 regarding the Beland property.

We are the property owners immediately south and "adjacent" to the Beland property and we would like to weigh in on the appeal.

On June 15, 2017, we were strongly encouraged by Brian and Denae Beland to consent to their April 15, 2017 architectural and grading plans. At that time, we were verbally informed by Denae that our signatures on the variance would have "absolutely no relevance or power" unless the other adjacent neighbors approved and signed off as well. In the spirit of being accommodating to our new neighbors, we signed and had notarized the document put before us by the Belands at our home next door.

We have since learned that what we were told, prior to signing the document, was not true. Furthermore, we were told that our neighbors across the street (Rick & Cheree Dunbar) were in favor of the proposed variance and were prepared to sign it. This also was not true, but had influence.

Now we understand that, because of our signatures, the Belands were able to resubmit revised architectural and grading plans as well as massing models (that our other neighbors were not in favor of) on August 9, 2017, which it turns out were subsequently re-submitted to the county and approved by the Planning Director. We were not informed of or had the opportunity to review the revised August 9, 2017 plans and would not have consented to the revisions or anything the other neighbors were not in favor of.

It is hard not to feel betrayed for having been told things that were not true. Now, having reviewed the revised grading and architectural plans and massing models, and better understanding the layout and effect of these plans to the neighborhood, we wish we had not signed that variance, which indeed did have power, regardless of what we were (incorrectly) told about all the neighbors having to agree, for it to be effective.

We originally believed the request for higher than code retaining walls had to do with our next-door neighbors personal privacy. Now to hear that these multiple retaining walls will allow the foundation of their house to be elevated as high as 40 feet in the air, where there are currently tree tops, is not at all what we originally understood.


We were also told by the Belands that their plans would not really affect our site lines or views of the water on the North side. As much as we respect their right to build what they would like to build, within code, (regardless of how it affects our view) what they told us (with their house possibly being elevated above the tree tops) was not true.

Above all: We are not in favor of anything that our surrounding neighbors would find disagreeable. We have already caused hard feelings with neighbors for having recently built our home (with-in code, and affecting the views of others), and we now sadly find it impossible not to disappoint another, if not two, sets of neighbors depending on our position on this appeal.

Regardless, reserving our rights to provide additional information, we, therefore, request that the planning commission approve the appeal and deny Administrative Permit No. 17-077 for failure to obtain the written consent of an adjacent property owner as required by section 130.30.050 of the County Code.

As much as we hate conflict and disappointing anyone... We are regretfully disturbed to have to be a part of this matter, but hope that we are doing the right thing for the majority of neighbors and for the neighborhood.

Sincerely,



Richard R. Nelson January 7, 2018



Sandra L. Nelson January 7, 2018
