

March 29, 2018

VIA ELECTRONIC MAIL

Roger Trout, Director of Planning and Building
County of El Dorado
Planning and Building Department
2850 Fairlane Court
Placerville, CA 95667

Re: Appeal of Beland Grading Permit #263768

Dear Mr. Trout:

Pursuant to your March 21, 2018 email acknowledging the County's acceptance of the above referenced Appeal, we write to confirm our clients' objections to Grading Permit #263768.

As you also note in your March 21, 2018 email, we further acknowledge that the County has determined that the present appeal will be heard pursuant to the Board's general planning authority under Title 130 of the County Zoning Code, as well as Title 110 of the County's Grading Ordinance.

To that end, we reiterate our clients' objections to the following matters:

First, we object to the County's determination that Grading Permit #263768 is in compliance with County Code sections 130.30.050.C.1 and 130.30.050.C.2 related to the construction of retaining walls within side and rear yards of the proposed project.

Second, we object to the County's determination that Grading Permit #263768 is in compliance with County Code section 130.30.050.E and Figure 130.30.50.C. related to the calculation of retaining wall heights within the side and rear yards of the proposed project.

Third, we object to the County's compliance with the California Environmental Quality Act and the Air Quality, Transportation, and Geotechnical impacts related to Grading Permit #263768's proposed importation of approximately 12,000 cubic yards of fill material in approximately the approximately 1,300 total truck trips on public and private roads to the project site.

Attachment A

Finally, we attach hereto and incorporate herein by reference our letters dated January 9, January 18, and March 20, 2018 with respect to the our clients objections to Grading Permit #263768.

In closing we again reiterate our clients reservation of rights to further supplemental their appeal and that the present appeal is without prejudice to the pursuit of other claims and/or other available remedies at law or in equity.

Best Regards,
HARRISON, TEMBLADOR,
HUNGERFORD & JOHNSON LLP

By: 

David P. Temblador, Esq.

DPT/kc

cc: Michael J. Ciccozzi, Esq., County of El Dorado
Tom Burnette, County of El Dorado
Roland and Penny Brecek

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

January 18, 2018

VIA ELECTRONIC MAIL

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

Re: Beland Grading Permit #263768 (Revised 01/09/2018)

Dear Mr. Mount:

As you know, this office represents Roland and Penny Brecek with respect to the above referenced matter. We are in receipt of your January 9, 2018 Planning Commission Memorandum addressing the permitting status of the proposed Beland Residential Project located at 75 Guadalupe Drive.

Included as an attachment to your memorandum is a Revised Grading Plan for the Beland Project dated January 9, 2018, which your memorandum states was reviewed by the County Planning and Building Department and determined to be in compliance with Zoning Ordinance Section 130.30.050(C).

Our initial review of the Revised Grading Plan does not support this statement. Close inspection of the Revised Grading Plan identifies multiple retaining walls within the property's rear and side yard setbacks in excess of seven (7) feet and, in some cases, in excess of ten (10) feet when slope areas are incorporated as required by Zoning Ordinance Section 130.30.500(E).

As you are aware, Zoning Ordinance Section 130.30.050(C) prohibits retaining walls in excess of seven (7) feet in the absence of notarized written consent of all adjacent property owners and retaining walls in excess of ten (10) feet are expressly prohibited in all circumstances.

My clients, as adjacent property owners, have not provided the requisite consent and strenuously object to the Revised Grading Plan. Moreover, we are advised and believe that the balance of the adjacent property owners have withheld their consent as well.

In light of the above, we respectfully disagree with the characterization of the Beland's January 9, 2018 Revised Grading Plan as being in compliance with Zoning Ordinance Section 130.30.050(C) and request that it be rejected until such time as it can be made complaint with all application legal requirements.

We thank you, in advance, for your consideration and ask that you notify us immediately if you disagree with the forgoing or if subsequent revisions are made to the proposed project.

Best Regards,
HARRISON, TEMBLADOR,
HUNGERFORD & JOHNSON LLP

By: 

David P. Temblador, Esq.

DPT/kc

cc: Roger Trout, County of El Dorado
Roland and Penny Brecek

March 20, 2018

VIA ELECTRONIC MAIL

Roger Trout, Director of Planning and Building
County of El Dorado
Planning and Building Department
2850 Fairlane Court
Placerville, CA 95667

Re: *Beland Grading Permit #263768*

Dear Mr. Trout:

As you know, this office represents Roland and Penny Brecek with respect to the above referenced permit. As you also know, the Brecek's have been activity engaged in the County's review of this permit and have repeatedly expressed concerns regarding the permits' compliance with applicable County Codes.

Consistent with these efforts and pursuant to our meeting on March 15, 2018, I write to address the March 6, 2018 appeal of the Permit #263768, as well as the Brecek's ongoing objections to Planning and Building Departments determinations regarding the projects compliance with the El Dorado County Code.

To that end, we provide the following summary of the undisputed facts that bear on this matter:

- First, El Dorado County Code Title 130 was adopted in December 2015 and has been in effect since January 2016.
- Second, the County processed and approved Administrative Permit ADM 17-0077 on November 14, 2017 pursuant to El Dorado County Code Title 130 subject to the following determination:

It has been determined by the Director of Planning and Building Department that the requirements to allow retaining walls more than seven feet above natural grade within the south and rear yards has been met. Specifically signed and notarized statements from adjacent property owners to the west and south where retaining walls will exceed seven feet have been received. Therefore, the request is consistent with Zoning Ordinance

Sections 130.30.050.C.1 and 130.30.050.C.2 for retaining walls within side and rear yards.

(Letter from Aaron Mount to Mikol Maitland, dated November 14, 2017)

- Third, the County accepted Roland and Penny Brecek's timely appeal of ADM 17-0077 and scheduled the appeal hearing for January 11, 2018. The Brecek's appeal related to compliance with Sections 130.30.050.C related to retaining walls in excess of seven feet.
- Fourth, ADM 77-0077 was withdrawn by the applicant on January 9, 2018 and, as a result, the January 11, 2018 appeal hearing was taken off calendar.
- Fifth, immediately thereafter on January 9, 2018 the County made the following determination:

The application [ADM17-0077] was withdrawn based on Planning and Building department's review of revised grading plans (Permit #263768) showing a re-design consistent with Zoning Ordinance Section 130.30.050.C.

(Memorandum from Aaron Mount to Planning Commission, Dated January 9, 2018.)

- Sixth, on January 18, 2018 Roland and Penny Brecek provided written objections to the revised grading permits' continued inclusion of retaining walls in excess of seven feet and requested a meeting with Planning Staff to review the revised grading permit prior to its approval.
- Seventh, Aaron Mount responded on January 22, January 26, and January 31, 2018 that Planning Staff was unavailable for a meeting.
- Eighth, Aaron Mount stamped Permit #263768 as approved by the Planning Department on February 22, 2018. On February 23, 2018 the County issued Permit #263768. County staff did not meet with the Breceks prior to approval the Permit.
- Ninth, on March 6, 2018 Roland and Penny Brecek filed a timely appeal of Permit #263768 pursuant to El Dorado County Code Section 110.14.270.
- Tenth, on March 15, 2018 County Planning and Building staff met with our office and the Breceks and we presented our objections to the County's approval of Permit #263768 with retaining walls in excess of seven feet. In response, you advised that both the County's November 14, 2017 approval of ADM 77-0077, as well as its January 9, 2018 approval of the revised grading permit were based on an erroneous interpretation of El Dorado Zoning Code Section 130.30.050.C. You further advised that our March 6, 2018 appeal of Permit #263768 had forced you to re-read the Code wherein you determined that Section 130.30.050.C. only applies to "cut retaining

walls” in excess of seven feet and not fill retaining walls in excess of seven feet as proposed by the project applicants. The Brecek’s objected to this interpretation of the Section 130.30.050.C.

In light of the above, please be advised that Roland and Penny Brecek hereby reserve all rights to protect their legal interests in this matter. Therefore, the present appeal of Permit #263768 is without prejudice to the pursuit of other claims and/or other available remedies at law or in equity. We also respectfully advise the County to retain all electronic files and communications related to this matter and to not abridge or erase any storage device(s) which may contain any such electronic records.

Finally, given the urgency of this matter and the potential prejudice to both the Breceks and the project applicants, we request that you please provide your written confirmation of the Board of Supervisors appeal hearing on this matter by no later than close of business on Wednesday, March 21, 2018.

Best Regards,
HARRISON, TEMBLADOR,
HUNGERFORD & JOHNSON LLP

By: 

David P. Temblador, Esq.

DPT/kc

cc: Honorable John Hidahl, El Dorado County Board of Supervisors
Michael J. Ciccozzi, Esq., County of El Dorado
Tom Burnette, County of El Dorado
Roland and Penny Brecek