

D. Getz Open Forum BOS 9/20/2023

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DANIEL V. KOHLS

February 23, 2023

Via Email
Jefferson.billingsley@edcgov.us

Jefferson Billingsley
El Dorado County
330 Fair Lane
Placerville, CA 95667

Re: *Communication from Mr. Getz*

Dear Mr. Billingsley,

This communication is in response to yours of December 7, 2022, wherein you set forth the County's position as follows: "The County's understanding is that CC&Rs cannot control the County's land use authority under the police power." As we understand the state of affairs, the developer proposes to have the County rezone what the developer refers to today as Serrano Village D-1, Lots C and D, which are inarguably a part of the County-required HOA's annexed "Initial Property" under the approved El Dorado Hills Specific Plan (EDHSP Parcel 5 & 6) to Open Space, thereby relocating 135 residential units from the EDHSP area to the Serrano Westside planning area. Mr. Getz's position is that, having required the creation of Covenants, Conditions and Restrictions as a condition precedent to approval of the El Dorado Hills Specific Plan, and having explicitly approved these Initial Property Parcels as being subject to the CC&Rs in 1995, the County may not thereafter unilaterally "re-zone" the land to Open Space because to do so would be to interfere with the CC&Rs which it required and approved. The County is not permitted to engage in such interference.

Specifically, Title 130 of the El Dorado County Code, the El Dorado County Zoning Ordinance, Section 130.10.040.E., limits the police power of the County with respect to interfering with CC&Rs. That section states, in pertinent part, "The Zoning Ordinance is not intended to interfere with . . . any . . . Covenant, Conditions, and Restrictions (CC&Rs) . . ." By re-zoning the property to "Open Space" the County would necessarily be "interfering" with the CC&Rs – the very CC&Rs the County required and approved. (The police power is not saved by the next sentence which applies to conflicts between the Zoning Ordinance and private

agreements, as there is no such conflict unless the County first interferes with the CC&Rs, which is expressly prohibited.)

The law in this area has long been settled: "A valid restriction on the use of realty is neither nullified nor superseded by the adoption of a zoning ordinance, nor is the validity of the restrictions thereby affected. [Citation.] And, of course, the enforceability of restrictions is not necessarily affected by a zoning ordinance." (*Hirsch v. Hancock* (1959) 173 Cal.App.2d 745, 756.)

In anticipation of the County's potential to proceed with re-zoning despite the foregoing, and to perhaps rely on a "no harm, no foul" argument (i.e., that the zoning ordinance would not matter or be enforceable anyway), Mr. Getz fails to see the wisdom of spending taxpayer money and staff time to process the re-zoning application in the first instance. The County Board of Supervisors has more than enough to do without frittering away its time and money on illusory actions.

Should you have any additional questions or concerns, please do not hesitate to contact me.

Very truly yours,

HANSEN, KOHLS, SOMMER & JACOB, LLP



DANIEL V. KOHLS

DVK/ss

Kim Dawson

From: melody.lane@reagan.com
Sent: Tuesday, September 26, 2023 7:05 PM
To: BOS-Clerk of the Board; Kim Dawson; Lori Parlin; Wendy Thomas; Brooke Laine; George Turnboo; John Hidahl; David A Livingston; Tiffany Schmid; BOS-District V; BOS-District IV; BOS-District I; BOS-District III; BOS-District II
Cc: Richard Esposito; Krysten Kellum; Eric Jaramishian; Noel Stack; Joe Patterson; Harrison Zea
Subject: 9/26/23 BOS Open Forum Public Comments
Attachments: Brown Act Rights of the Public.docx

Please ensure the entirety of this correspondence is entered into the public record. Below you will find my prepared Open Forum public comments. I am a strong proponent for the First Amendment rights of every citizen to express themselves. However, nothing could have prepared me for the shocking barrage of **hate speech, antisemitism, f-bombs, "Heil Hitler", and other extremely offensive and inappropriate remarks** made by numerous antagonizers during Open Forum today.

Apparently the orchestrated extremist distraction was generated from John Hidahl's recent Proclamation recognizing Christian Heritage Month. One of the speakers used an AI-generated female voice to express a hate-filled message. Another made a threat of violence. Instead of showing their faces in person, their true identity was hidden behind Zoom. I'm confident most, if not all, of those cowards didn't even use their real names out of fear of repercussions.

After the end of my brief comments below, I made an impromptu request of the Board and County Counsel to address the problem of hate speech versus free speech "sooner rather than later." Unless this situation is addressed immediately, you know darn well such attacks are bound to continue until it erupts into something much more sinister. After brief deliberation Lori Parlin and John Hidahl expressed their reticence to deal with the disturbing situation in an open and transparent manner. Ultimately David Livingston directed the BOS to express their concerns with him *privately and out of the public eye* which totally contradicts the preamble to the Brown Act. (See below plus attachment)

In the interest of government transparency, the Mountain Democrat should run with this newsworthy topic and give it the attention it deserves.

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Every American should be upset and concerned about the lengths to which government officials are willing to violate the rights and liberties they've taken oaths to uphold. Government censorship is driven by a politically correct need to control "we the people" by twisting, perverting, and exploitation of laws to increase their own power and trample on citizens' rights. Unfortunately, most people don't know their rights, much less how to defend those rights by demanding transparency and accountability of elected and unelected government bureaucrats. Justice Louis Brandeis was right when he warned, "*A silent, inert citizenry is the greatest menace to freedom.*"

I'm particularly addressing this morning's arrogant remarks made by David Livingston during Consent when he said he didn't think it was "appropriate" to respond at that time regarding the process and legality of the number of items either swept under the Consent carpet or diverted to Department Matters which can be heard at "any

time during the day.” Not everybody has the luxury of waiting all day long to put in their three minutes before they are very abruptly cut off. Such inappropriate censorship circumvents the 1st amendment rights of the people to address their concerns.

Never forget who is at the top of the chain of command and pays all your salaries. Mr. Livingston does **not** have the last word on this matter, nor is he in alignment with Good Governance. The preamble of the Brown Act very explicitly says. ***“The people, in delegating authority, do **not** give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people do **not** yield their sovereignty to the bodies that serve them The people insist on remaining informed to **retain control over the legislative bodies they have created.**”***

As long as unelected bureaucrats, like Mr. Livingston, are allowed to create regulations with the force of law and interpret and enforce them without the express consent of the people, then government of the people, by the people and for the people no longer exists. You’ve just rolled out the Welcome mat for the Great Reset and the New World Order.

Melody Lane

Compass2Truth

“Our forefathers in faith did not retreat from involvement in society and politics. They did not turn civil government, the making, enforcement, and adjudication of laws, over to Satan and those who serve him. They did not surrender the ministry of civil government to those who are in rebellion against God.” ~ Benjamin F. Morris ~

CALIFORNIA BROWN ACT

PREAMBLE:

"The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people do not yield their sovereignty to the bodies that serve them. The people insist on remaining informed to retain control over the legislative bodies they have created."

CHAPTER V.

RIGHTS OF THE PUBLIC

§54954.3 Public's right to testify at meetings. (c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law. Care must be given to avoid violating the speech rights of speakers by suppressing opinions relevant to the business of the body. As such, members of the public have broad constitutional rights to comment on any subject relating to the business of the governmental body.

Any attempt to restrict the content of such speech must be narrowly tailored to effectuate a compelling state interest. Specifically, the courts found that policies that prohibited members of the public from criticizing school district employees were unconstitutional. (*Leventhal v. Vista Unified School Dist.* (1997) 973 F. Supp. 951; *Baca v. Moreno Valley Unified School Dist.* (1996) 936 F. Supp. 719.) These decisions found that prohibiting critical comments was a form of viewpoint discrimination and that such a prohibition promoted discussion artificially geared toward praising (and maintaining) the status quo, thereby foreclosing meaningful public dialog.

54954.2 E (3) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3.

Where a member of the public raises an issue which has not yet come before the legislative body, the item may be briefly discussed but no action may be taken at that meeting. The purpose of the discussion is to permit a member of the public to raise an issue or problem with the legislative body or to permit the legislative body to provide information to the public, provide direction to its staff, or schedule the matter for a future meeting. (§ 54954.2(a).)