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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 IN AND FOR THE COUNTY OF EL DORADO
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10 EL DORADO COUNTY CODE
ENFORCEMENT DIVISION

11 Petitioner,

12 v.

13 ALL ABOUT EQUINE, INC.,

14 Respondent.
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Case No. CE20-0198

**PETITIONER'S RESPONSE TO
RESPONDENT'S BRIEF**

Date: March 10, 2021

Time: 11:00 a.m.

ALJ: Hon. William M. Wright

17 El Dorado County hereby submits the following brief and argument pursuant to the
18 agreement of the parties at hearing on March 10, 2021.

19 **INTRODUCTION AND FACTS:**

20 El Dorado County Code Enforcement received a citizen complaint regarding the
21 Respondent's property and subsequently investigated the allegation that Respondent had erected a
22 fence and gate across the roadway at both boundaries of the property effectively blocking off the
23 public roadway.

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1 Respondent is the owner of the property in question that was created by virtue of a parcel
2 map recorded with the County on October 31, 2011. It is undisputed that the Parcel Map further
3 created three (3) additional parcels and that there was simultaneously also created a non-exclusive
4 road and public utilities easement through Respondent's property. Exhibit 1 of the County's
5 exhibit binder admitted into evidence via stipulation at the hearing on March 10, 2021, shows the
6 Grant Deed by which Respondent acquired title and contains the language creating the roadway
7 and public utilities easement.

8 On April 30, 2020, Code Enforcement officer Todd Young conducted an "on-site"
9 inspection of the property to investigate the complaint. Mr. Young observed at the inspection that
10 two (2) gates had been placed across the road on the east and west sides of the property (County
11 Exhibit #3). As a part of that April 30, 2020 inspection, Mr. Young also took pictures of the gates
12 and roadway. Those nine (9) photos were submitted into evidence as part of the County's trial
13 binder and are marked for identification as County Exhibit #6. Respondent apparently does not
14 dispute that they are responsible for placement of the gates across the roadway.

15 After conducting the on-site inspection, the County issued a Notice to Correct dated and
16 mailed on May 1, 2020 (Exhibit #4 in County binder). The Notice required abatement of the
17 violation by June 4, 2020, or the County would issue an administrative citation. Respondent filed
18 a timely appeal of the Notice to Correct on May 13, 2020, which brings this matter to the within
19 hearing.

20 **ARGUMENT:**

21 Respondent characterizes this matter as a simple statutory construction case and that is not
22 too far from the reality. The parties agree on the basic facts involved as indicated at the initial
23 scheduled hearing of March 10, 2021. Respondents agree they are the owners of the parcel in
24 question, and they have erected fencing, and including gates, across the roadway. The roadway
25 was created by virtue of the above-referenced Parcel Maps and Deeds. The roadway serves other
26 parcels created at the same time as this parcel and serves as a non-county maintained public right-
27 of-way. There is agreement that the resolution of this issue involves the interpretation of the El
28 Dorado County Code.

1 The real issue at hand involves how to interpret the El Dorado County Code as it addresses
2 the erection of a gate across a public right-of-way. El Dorado County maintains that the language
3 creating the non-exclusive road and public utilities easement in the Parcel Map and Deed in this
4 matter created a non-county maintained public road. As such, the County is obligated to, and has
5 the right to act in order to keep the road open for public use.

6 El Dorado County Code section 130.30.090 states, “The placement of gates across county-
7 maintained rights-of-way shall be prohibited. The following regulations establish a supplemental
8 procedure for placing gates across non-county maintained roads or private driveways entering
9 residential and non-residential development. The regulations in this section do not apply to gates
10 serving agricultural uses.”

11 It is, of course, the last sentence of that section that lead to this disagreement. Clearly, if
12 this were a county maintained right-of-way then a gate would not be permissible under any
13 circumstances. Likewise, for a non-county maintained road or private driveway, the default of the
14 code is that there must be satisfaction of the outlined regulations in 130.30.090. It is the last
15 sentence of 130.03.090 which must be evaluated in this matter.

16 County Code Enforcement acknowledges that section 130.30.090 is not the most artfully
17 drafted provision and can create confusion. However, Code Enforcement takes the position that
18 the provision was never intended to be used as Respondent asserts herein. County Code
19 Enforcement asserts that the last sentence of 130.30.090 was only intended to apply to parcels
20 (and their subservient parcels) that were wholly dedicated to agricultural purposes. Thus, if the
21 parcels in question and the parcels served by the public right-of-way were all dedicated to
22 agricultural use then the exception contained within that last sentence would apply. Code
23 Enforcement believes the intent of the provision is the same as if the last sentence read, “The
24 regulations in this section do not apply to gates serving exclusively agricultural purposes.”

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1 Any result other than reading the language as Code Enforcement has done makes no
2 logical sense. The parcel in question is zoned RE-10 and intended primarily for residential
3 purposes albeit with the allowance for agricultural use because of its size. The agricultural use of
4 this parcel, although permitted, is a secondary use of the zoning. Allowing any and all properties
5 zoned as RE-10 to pasture a horse, cow, or goat as an ancillary, but permitted use, of the property
6 to unilaterally block off a public right-of-way by erecting a gate without county oversight is an
7 invitation to chaos. All RE-10 zoned properties could then (by simply pasturing a horse) erect
8 gates across the non-county maintained roads running over and around such property without
9 scrutiny. The result would be a network of rural roads that were blocked by individual property
10 owners without any cohesive plan. Erecting a gate, even an unlocked gate, across a roadway is
11 effectively a block of that right-of-way. The average traveler assumes that a gate designates a
12 private road that should not be traversed and does not get out of their car to open a closed gate.

13 For the foregoing reasons, the County requests the Notice to Correct be upheld.

14 Dated: March 26, 2021

DAVID A. LIVINGSTON
COUNTY COUNSEL

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17 By:



Roger A. Runkle
Deputy County Counsel

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PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the County of El Dorado. I am over the age of eighteen (18) years and not a party to the within action. My business address is 330 Fair Lane, Placerville, California.

On March 26, 2021, I served the within:

PETITIONER'S RESPONSE TO RESPONDENT'S BRIEF

in said action, by placing a true copy thereof enclosed in a sealed envelope at Placerville, California, addressed as follows:

Burton & Swett
Thomas M. Swett, Esq
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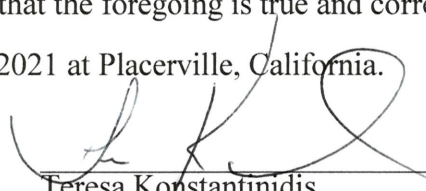
 X **(By U. S. Mail)** I placed each such envelope(s) for collection and mailing VIA First Class Mail, following ordinary business practices. I am readily familiar with El Dorado County's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U. S. Postal service on that same day with postage thereon fully prepaid at Placerville, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.

 X **(By Electronic Mail)** I caused such document(s) to be transmitted by Electronic Mail to the Email address indicated after the address(es) noted above.

 (By Facsimile) I caused such document(s) to be transmitted by Facsimile machine to the number indicated after the address(es) noted above.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of March, 2021 at Placerville, California.



Teresa Konstantinidis
Legal Secretary