

**Discussion of Administrative Order Dated December 15, 2009- Case # 191441
By David Holtry**

There are several reasons why I believe the Board should overturn the Administrative Order. 1) The ruling is not in harmony with County practice of allowing trellises in the setback. 2) The ruling should have found that the County failed to prove its case. 3) The ruling is faulty because it contains opinions and statements at odds with County policy. And 4) the ruling makes County practice inconsistent by allowing some structures in setbacks and not others.

Point 1) The Administrative Order is not in harmony with County practice. County practice has been that trellises and arbors can be located in the setback. The County only prohibits structures with roofs from the setback based on County Ordinance 17.06.050. This is confirmed in a County letter to me dated February 19, 2010 wherein it states: *"Trellis is not considered a structure that needs to meet setbacks, because it does not normally meet the full definition of a Building: it does not have a roof and it clearly is not intended for the sheltering of people, animals, or chattel. Trellises are intended and used for support of vegetation."* The letter concludes by saying: *"All structures with roofs need to meet the five-foot minimum side yard setback..."*

Also, a County inspector came out and reported in the file C10: *"4/15/08 Inspection this date finds that there is no structure built. There is a trellis built in the setback area but there is no permit required for this. OK to close"*. The case was closed by the code enforcement officer which implies he also understood that trellises can be in the setback.

Furthermore, Planning Services has drafted a proposed code change that states that trellises would have the same height limitations as fences. That is they can be 7 feet high and even higher with a neighbor's sign off. So in effect the new code change would maintain the County practice of allowing trellises and arbors in the setback up to anywhere from 7 to 10 feet high depending on the neighbor.

Point 2) At the hearing, on November 12th 2010, the County's presentation consisted of only a brief summary of the case but no testimony supporting its position that my trellis has a roof and therefore in violation of the code. Nor did the County present any testimony refuting my claim that my trellis is not in violation of any code. The El Dorado County Code covering the administrative hearing (see Section 9.02.410 Standard of Proof) states: *The County bears the burden of proof at an administrative hearing to establish the existence of a violation of the Code. The standard of proof is by a preponderance of the evidence."* No evidence was submitted let alone a preponderance of evidence. Therefore the Administrative Order should have found that the County failed to prove its case.

Point 3) The Administrative Order is not based on the testimony presented by the County but was based on the misapplication of two code sections. The Administrative Order also seems to be contradictive because it states that a structure as high as 10 feet can be in the setback whereas in another place it says nothing can be in the setback unless the Ordinance allows it.

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EL DORADO COUNTY

2011 JAN 20 AM 9:29

The Administrative Order states: *“Although ‘fence’ and ‘wall’ are not defined in County Code Section 17.06.050, a fence or wall may reasonably be considered a vertical barrier or enclosure, even if it is also called a trellis. It is not uncommon to use a decorative trellis as a fence or a wall. Because a court would likely construe the vertical portion of the existing trellis/arbor as a fence, the Hearing Officer finds that it is a fence and may remain within the setback area, subject to El Dorado County Code Section 17.14.155.”*

Here the Administrative Order miss applies this code by creating its own definition for a fence which includes an opinion that my trellis is a fence which is contrary to what the County has said. Staff at the Development Service Department (see letter to Toothaker 12/3/10) said: *“... a fence divides a property or is built to confine something”*. A fence can be made from any material including lattice material but just because lattice is used for something else doesn't make that “something else” a fence. It doesn't make sense to call a trellis a fence when a fence already exists. The Operations Supervisor at Development Service Department also stated that my trellis is not a fence and the same was told to Mr. Wassner of Code Enforcement, over a year ago by the then Building Official, Larry Lohman, when the fence issue first came up. The Administrative Order ignores this fact and is at odds with the Building Official who determines this kind of issue, which is whether or not a trellis is a fence. Also, the Administrative Order is attempting to implement a proposed rule change that has not yet been adopted by the Board. According to my attorney, Bob Laurie, the fact that the county is proposing a code change indicates that the county's case is weak.

Another problem with the Administrative Order is that it declares that my trellis is not only a fence, but is also an uncovered patio and thus subject to Code section 17.14.050 and therefore states that the trellis can only extend into the setback by 50%. This is a misapplication of the code. The County has never considered the use of Section 17.14.050 to show that my trellis is in violation of this code. Section 17.14.050 applies to Buildings and structures that are attached to Buildings. My trellis is not a Building nor is it attached to a Building. This Section includes various structures attached to Buildings such as patio covers and uncovered patios but trellises are not listed. What is an uncovered patio anyway? It is not defined in the code. It certainly is ambiguous and could be considered a slab of concrete outside of ones back door with no overhead covering.

My trellis is not an uncovered patio and the County confirms this in a document dated July 23, 2009 discussing this Code Section with my trellis in mind which states that, *“An arbor or patio cover, whether solid or made of open construction, clearly does not fall within the context of an uncovered or unenclosed patio or terrace...”* So here the County is saying that an arbor such as my trellis/arbor is not an uncovered patio and that may be why the County did not use Section 17.14.050 to prove that my trellis is in violation at the hearing. But the Administrative Order ignores this fact and goes against what the County stated by including an opinion that my trellis is an uncovered patio and thus subject to Section 17.14.050.

Point 4) Much of what I have discussed shows an inconsistency not only in the Administrative Order but if upheld would make County practice inconsistent. For example

a property at 8005 Fallview Way, El Dorado Hills has a patio cover in the setback that was permitted on May 31, 2006 by the County. So it doesn't seem right that my small trellis would have to be removed which is not big enough to require a permit yet a nearby patio cover, three times the size of mine, large enough to receive a permit is allowed to remain in the setback. The Administrative Order needs to be overturned to prevent this inconsistency.

It should also be noted that the Hearing Officer said that my arguments were reasonable but he didn't like the idea of trellises in the setback. However, this is at odds with County practice which allows trellises and arbors in the setback and the proposed code change would continue this practice. So again the Administrative Order is not consistent with County practice.

In summary, the Board should overturn the Administrative Order for any one of the several reasons given above. By doing so the County can continue its current practice of enforcing the setback limitation according to Code Section 17.06.050. This would be in harmony with the first inspector's report that said he didn't see a structure just a trellis which was ok. When the proposed code change is adopted by the Board then the County can start implementing that provision. But if the Administrative Order is upheld then the County in all fairness would have to require all trellises and small arbors in setback areas to be removed throughout the County.



Holtry's Trellis



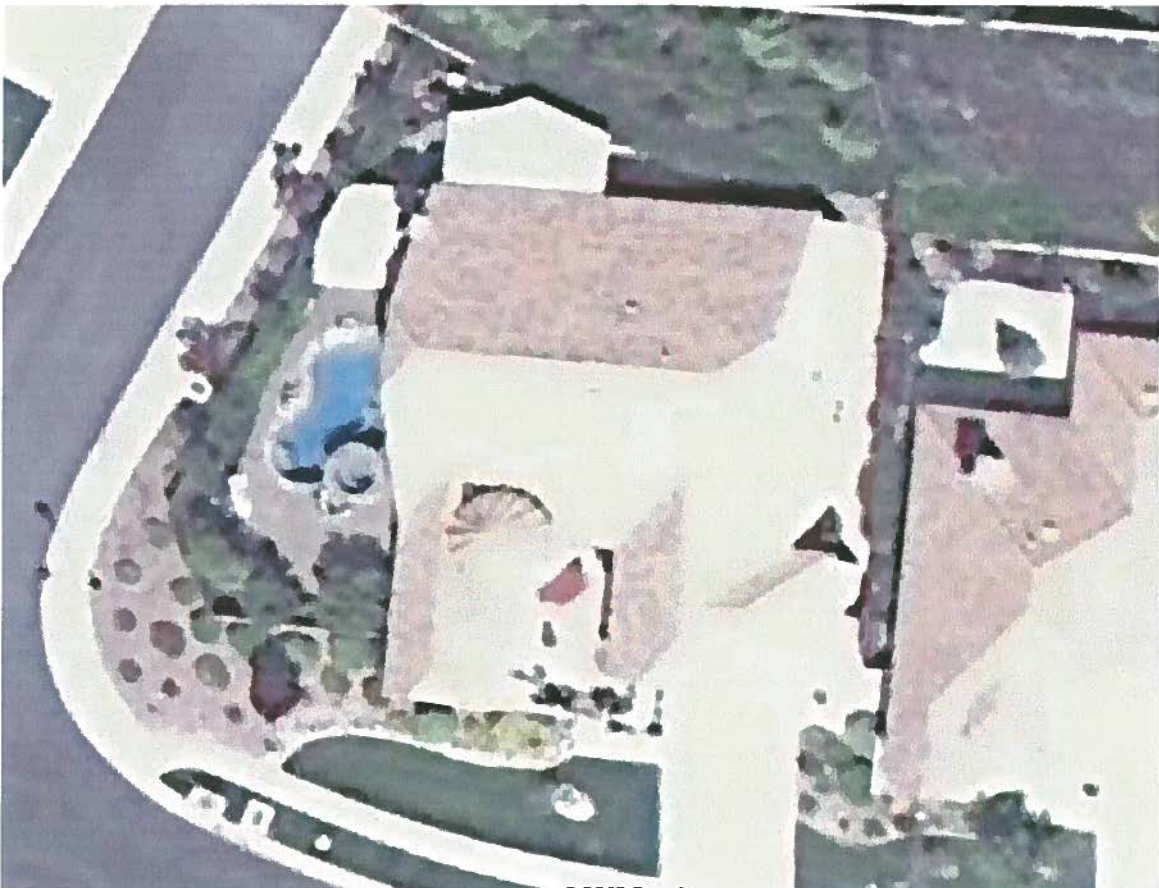
Trellis looking North



Complainant, John Marchant's back yard

Nearby Patio cover in setback and permitted by the County

The property at 8005 Fallview Way, El Dorado Hills (APN 117-360-35-100) has a side yard patio in the setback area and was permitted on May 31, 2006 by the County. The setback is 12 ½ feet and the patio post is 5 ½ feet from the property line so it is about 8 ½ feet (7 feet plus 18 inch overhang) into the setback.



(More information)

Notices to Correct were faulty and thus invalid as follows:

March 3, 2009

Structure greater than 30 inches high built in side and rear setback area in violation of Zoning Ordinance.

There is no such ordinance for side yard or rear yard setbacks. The above applies to the front yard setback (17.14.050 B).

August 10, 2009 (the date on notice kept the March 3 date)

Structure greater than 120 square feet in side setback area without required permit.

The trellis is much smaller than 120 square feet and therefore does not need a permit.

March 8, 2010

Carson Creek Specific Plan 4.4 (2). A structure ("patio cover" over the portable BBQ) is inside the required 5 foot side yard setback area.

The CCSP does not state the above. It only gives the setback dimension of 5 feet.

Case File update

The following documents were not in the case file given to the Hearing Officer before the hearing and so he did not know certain information. I noted this fact at the hearing and provided him with copies.

February 19, 2010, a letter from the County to me.

March 8, 2010, a letter from me to Jim Wassner

March 9, 2010, a letter from me to Jim Wassner

June 1, 2010, a letter from me to Roger Trout

September 23, 2010, a letter from the County to me. This letter has an invalid statement that the County included by mistake. It should be stricken out. Mr. Wassner agreed.

August 10, 2009 Notice to Correct is not in the case file. I didn't notice this until after the hearing.

Neighbor's Complaint

I made application to the Four Seasons Home Owners Association to build a trellis up to 8 feet high and, even though it was not required, I obtained a sign off from my neighbor. The Association approved the project but then I decided to modify the trellis but with no change in visual impact on the neighbor and received another approval from the Association. However, by that time the neighbor become disgruntled because I planned to paint it so that the wood would not weather and turn black. The neighbor wanted it to remain unpainted because he didn't want to look at a cream colored trellis and so he petitioned the Association to have the trellis removed because it had changed from the original design. The Association did not comply with his request and so he submitted a complaint to the County that the structure should not be in the setback.

COY F. BAUGH, CPA
3941 PARK DRIVE, STE 20-113
EL DORADO HILLS, CA 95762-4549
coy@coybaughcpa.com
916 677 7689

January 13, 2011

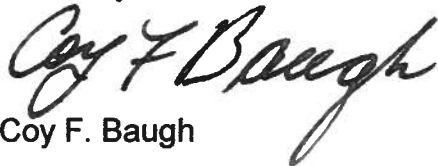
Ms. Suzanne Allen De Sanchez
Clerk of the Board of Supervisors
330 Fairlane Court
Placerville, CA 95667

Subject: Board Agenda Item-Trellis case, January 25th 2:00 pm

I was President of the El Dorado Hills Four Seasons Homeowners Association Board of Directors in 2008 and, along with other Board members, reviewed and approved the Holtry project. At the time there were two homeowners and two K. Hovnanian executives on the Board of Directors. The Board was of the opinion that the Holtry project did not violate the Association's CC&Rs and that it was aesthetically consistent with the neighborhood.

I believe it will be disruptive to our community if the Board of Supervisors disallows the Holtry project. Our lots are relatively small. While observing county building codes we still need to make use of the land available to us. There seems to be sufficient ambiguity in the County's Codes to allow a ruling in favor of Holtry. If the Board of Supervisors disallows this project it may, by inference, mean that other projects in our community are in violation of County Codes. This could fuel more disputes between neighbors.

Sincerely,



Coy F. Baugh

C. David Holtry

Merrill M. Hales

122 Slate Ridge Court
El Dorado Hills, CA 95762
January 14, 2011

Suzanne Allen de Sanchez
Clerk of the Board of Supervisors
330 Fairlane Court
Placerville, CA 95667

Re: Board Agenda Item-Trellis case, January 25th 2:00 pm

Dear Board of Supervisors:

I have been asked to write to you in relation to the case before you regarding the trellis in Mr. David Holtry's back yard.

The issue was brought before the Board of Directors of Four Seasons at El Dorado Hills in early 2008. At the time I was serving on the Board as Vice President, along with Mr. Coy Baugh, President, and two executives of K. Hovanian Homes, the developer of Four Seasons. As part of the decision making process I had visited the site of the trellis, reviewed the plans in relation to the construction of the trellis and studied the relevant CC&Rs governing our association.

After a thorough investigation and discussion of the issue before us, the Board ruled unanimously in favor of Mr. Holtry. We found no violation of the CC&Rs and could determine no harm from the trellis to Mr. Holtry's neighbor, Mr. John Marchant. Mr. Holtry appeared to have followed all of the procedures necessary for approval of the construction of the trellis. We also drew on the expertise of the developer executives on the Board of their involvement with the county codes and with other developments similar to ours. We found nothing to be in violation of the construction of the trellis.

It is my continued opinion that the trellis currently in Mr. Holtry's yard is in compliance with his rights as a member of our association and a citizen of this county. I believe that if the Board of Supervisors were to rule against Mr. Holtry, it would be detrimental to the Four Seasons community and to the county as many other projects would then need to be addressed in a similar manner.

Sincerely,



Merrill M. Hales

C. David Holtry

January 7, 2011

William M. Wright
Attorney at Law
3461 Robin Lane, Suite 3
Cameron Park, CA 95682

SUBJECT: Administrative Order, Trellis Case # 191441

Dear Mr. Wright,

Thank you for sending me a copy of your Administrative Order concerning the subject case above. I have a question concerning its conclusion.

County practice, based on the code, has been that trellises and arbors can be located in the setback. The County only prohibits structures with roofs from the setback according to the code and as explained to me in the County letter dated February 19, 2010. Prior to the hearing the County tried to show that my trellis has a roof, but it doesn't because the Building Code defines roof as a solid structure.

Even though three Notices to Correct were issued to me they were all faulty and thus invalid and the reason the County did not follow-up with enforcement action. Therefore, the County hoped that it would have a better chance of proving its case by going to an administrative hearing. The case file you received from the County doesn't contain valid evidence that my trellis is in violation let alone a preponderance of evidence. The only thing the County did at the hearing was review a brief history of the case. The County had the opportunity to give testimony to support its case but did not provide any testimony or give any testimony refuting my claim that my trellis is not in violation.

You said that the County bore the burden of proof and the standard of proof was by a preponderance of evidence. No evidence was produced let alone a preponderance of evidence. So my question is, would it have been appropriate for the Administrative Order to have found that the County failed to prove its case? At least that is what I thought would happen. Is there something that I do not understand concerning the hearing process?

Thank you for your response.

Sincerely,



David Holtry
1031 Autumn Sky Way
El Dorado Hills, CA 95762

DEVELOPMENT SERVICES DEPARTMENT

COUNTY OF EL DORADO

<http://www.co.el-dorado.ca.us/devservices>

PLANNING SERVICES



PLACERVILLE OFFICE:

2850 FAIRLANE COURT PLACERVILLE, CA 95667
BUILDING (530) 621-5315 / (530) 622-1708 FAX
bldgdept@co.el-dorado.ca.us
PLANNING (530) 621-5355 / (530) 642-0508 FAX
planning@co.el-dorado.ca.us
Counter Hours: 8:00 AM to 4:00 PM

LAKE TAHOE OFFICE:

3368 LAKE TAHOE BLVD. SUITE 302
SOUTH LAKE TAHOE, CA 96150
(530) 573-3330
(530) 542-9082 FAX
tahoebuild@co.el-dorado.ca.us
Counter Hours: 8:00 AM to 4:00 PM

February 19, 2010

Mr. David Holtry
1031 Autumn Sky Way
El Dorado Hills, CA 95762

**Re: Interpretation of County Code Regarding Arbors and Trellises
Code Enforcement Case # 191441, APN 117-410-03**

Dear Mr. Holtry:

During the past several months we have exchanged correspondence regarding your trellises and arbors and whether they comply with County Zoning Ordinance requirements regarding setbacks. Your parcel is also subject to zoning requirements of Carson Creek Specific Plan, Single Family, 6,000 Square Feet Minimum or CC6K zone. The purpose of this letter is to clarify the interpretation.

The Zoning Ordinance requires setbacks between buildings and property lines (17.06.050 Definitions: "K" (Building), "V" (Front Yard), "MM" (Rear Yard), "RR" (Side Yard), "WW" (Yard).) Buildings are defined as "structures having a roof supported by columns or by walls, and designed for the shelter or housing of any person, animal or chattel." Arbors are considered structures because they have a roof and are designed for shelter of persons or property. ✓

Section 17.14.050.A (Encroachments Into Required Yards) permits encroachments of up to 50 percent into the required yards for "uncovered and unenclosed patios or terraces, cornices, canopies, eaves, bay windows (which do not qualify as habitable area under the Uniform Building Code), attached heating and air conditioning equipment or similar architectural features."

When considering whether covers over decks, patios and terraces qualify for the 50 percent setback reduction, the Zoning provision states that such features must be "uncovered." This conflicts with the intent of the provision to permit a roof eave to encroach 50 percent into a setback. A roof eave clearly covers something, whether it is the ground, a porch, landing, or a patio.

11-0052.K.10

Mr. David Holtry
February 19, 2010
Page Two

A roof eave, including the eave to a covered patio, would qualify for the 50 percent setback reduction. However, the wall holding up the roof and eave needs to meet the zone district setbacks.

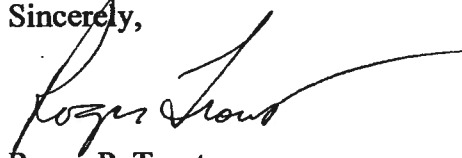
Therefore, an arbor's roof may "overhang" 2.5 feet into a five-foot setback under this interpretation.

A trellis is not normally considered a structure that needs to meet setbacks, because it does not meet the full definition of a Building: it does not have a roof and it clearly is not intended for the sheltering of people, animals, or chattel. Trellises are intended and used for support of vegetation.

In conclusion, all structures (with roofs) need to meet the five-foot minimum side yard setback for the CC6K zone. The setback is measured from the property line to the walls or columns that support the roof. Eaves from a roof may encroach into the setback by 50 percent.

Please contact Jim Wassner (Code Enforcement: 621-5999) to arrange a site inspection to verify compliance with zoning setbacks and close the case file.

Sincerely,



Roger P. Trout
Development Services Director

cc: Supervisor Ray Nutting
Jim Wassner

RT/bs

December 3, 2010

Virgil Toothaker, Operations Supervisor
Development Services Department
El Dorado County
2850 Fairlane Court
Placerville, CA 95667

SUBJECT: Trellis in Four Seasons

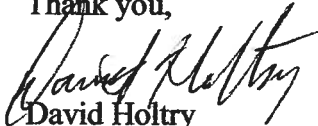
Mr. Toothaker,

Thank you for spending some time with me today concerning my trellis. I first talked to Jeanette and Mary Nipar, plan checkers in your office and showed them a picture (file # C7) of my trellis consisting of two trellises with short boards on top and a connecting arbor/trellis, the total structure being less than 100 square feet. I asked them if any part of it could be considered a fence. They said no because a fence is solid and divides a property or is built to confine something. Jeanette also said even that part of the structure you can walk under is a trellis and trellises are designed to have plants grow on them. They were certain that no part of my trellis could be considered a fence but wanted you to also talk to me.

You reviewed the photo in file C7 and agreed that my trellis/arbor is not a fence and you also agreed with the previous Building Official, Larry Lohman, who indicated on the photo that a building permit is not required. You said that if he thought I had a fence he would not have said a permit is not required because a fence as high as my trellis would require a permit. You also said that the arbor does not have a roof and that you are more concerned with large roof structures because of snow load issues.

If I have misrepresented any thing that you said please let me know.

Thank you,



David Holtry
1031 Autumn Sky Way
El Dorado Hills, CA 95762
(916) 933-5130

From: virgil.toothaker@edcgov.us (virgil.toothaker@edcgov.us)
To: davidholtry@yahoo.com;
Date: Fri, December 3, 2010 2:45:09 PM
Cc:
Subject: Re: Trellis

David
Not further comments needed.

Virgil Toothaker

Placerville Office
El Dorado County Development Services Department
530-621-5769

David Holtry <davidholtry@yahoo.com>

12/03/2010 12:24 PM

To virgil.toothaker@edcgov.us

cc

Subject Trellis

Mr. Toothaker,
I have attached a letter concerning my visit to your office today. If there is anything in the letter that you want changed please let me know.
Thank you
David

CONFIDENTIALITY NOTICE: This electronic communication with its contents may contain confidential and/or privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use, or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, or authorized to receive for the intended recipient, please contact the sender and destroy all copies of the communication. Thank you for your consideration.

The El Dorado County Board of Supervisors will be meeting on January 25th at 2:00 pm to decide whether or not to uphold a ruling that would require my trellis at 1031 Autumn Sky way, El Dorado Hills to be removed. If you have not been to my place and seen the trellis there is a picture attached. If the ruling is upheld it could mean that all existing small trellises and arbors in the County located within setback areas would be illegal whereas now they are not according to the rules administered by the County. If you agree that my trellis is not objectionable and favor the County to continue its practice of allowing such please sign below. Thank you. David Holtry

Name	Address	City	Date
Kimberly Rudnicki	6013 Ventura Way EDH CA ⁹⁵⁷⁰²	EDH	1/16/11
Arvon Lichfield	7005 Orofino Dr.	EDH	1/16/11
Tamara Lichfield	7005 Orofino Drive	EDH	1/16/11
Shirley Davis	4849 Monte Mar Dr	EDH	1/16/11
Edith Takenaka	6108 Creekberry Way	EDH	1-16-11
Haver Tchen	6118 CREEKBERRY WY	EDH	1-16-11
Janel Wagner	4375 Dunwood Dr	EDH	1/16/11
John Wagner	4375 Dunwood Dr.	EDH	1/16/11
Elke Taxera	3207 Four Seasons Dr	EDH	1/16/11
Step Taxera	3207 Four Seasons Dr	EDH	1/16/11
John	2013 Bailey Cir.	EDH	1/16/11
Al Sage	3860 Arrowhead Dr.	EDH	1/16/11
Joe	3265 Knollridge Dr.	EDH	1/16/11
Russ Mcclure	7410 Grassy Creek Wy	EDH	1/19/11
Russ Mcclure	7410 Grassy Creek Wy	EDH	1/19/11
Judith Robinson	2110 Ranch Bluff Way	EDH	1/19/11
Wann Smith	4002 Treeline Way	EDH	1/19/11
Robert Bob	8504 Wyndrush Way	EDH	1/19/11
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Name	Address	City	Date
<i>Bill Cammichia</i>	4813 MONTE MAR DR	EDH	1/9/11
<i>Diane Cammichia</i>	4813 Monte Mar Dr	EDH	1/9/11
<i>Bruce Jones</i>	6041 Creekberry Way	EDH	1/9/11
<i>W. Williams</i>	302 NATURE WALK CT.	EDH	1/9/11
<i>Roddy Sholens</i>	302 Nature Walk Ct	EDH	1/9/11
<i>Carole & Helen</i>	122 Slate Ridge Ct	EDH	1/9/11
<i>Marilyn Hicks</i>	122 Slate Ridge Ct	EDH	1/9/11
<i>Carol & James</i>	6041 Creekberry Way	EDH	1/8/11
<i>Max</i>	694 Montbridge Wy	EDH	1-9-11
<i>Jeffrey Shuman</i>	830 Haddington Rd.	EDH	1-9-11
<i>Joe Siler</i>	1034 CASTLE GRASS CT	EDH	1-9-11
<i>AVAN ELLIS</i>	4556 Dunnwood Dr.	EDH	1-9-11
<i>Dan Peterson</i>	4582 Dunnwood Dr.	EDH	1-9-11
<i>Carl Gump</i>	4769 CONCORDIA DR.	EDH	1-9-11
<i>Robert</i>	3646 Rosecrest Cir	EDH	1-9-11
<i>James</i>	3646 Rosecrest Cir	EDH	1-9-11
<i>David</i>	4769 Concordia Dr.	EDH	1-9-11
<i>John Kasler</i>	3124 FOURSEASONS DR	EDH	1-14-11

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Name	Address	City	Date
Tom Antonelli	1037 Autumn Sky	EL Dorado	1/19/11
Ethel Martley	1000 Autumn Sky Way	El Dorado Hills	1/19/2011
Jerome H. Martley	1000 Autumn Sky Way	" "	1/19/11
Car K Nasal	1026 Autumn Sky	" "	1/19/2011
Gene	1026 Autumn Sky	" "	1/19/2011
Jon Francone	1037 Autumn Sky	" "	1/19/2011
Linda Maltby	9566 Sun Poppy Way	" "	1/19/11
Marge Olson	8524 Wyndhurst Way	El Dorado Hills	1-19-11
Mc Walker	811 Chasta Cir	" "	1/19-11
Rhonda Edger	" " "	" "	1/19/11
Those that were not home on Autumn Sky Way I contacted by email concerning this issue and no one expressed opposition to my trellis.			