

File Number: TM-A21-0001  
Date Received: 9/3/2021

Receipt No.: R34058  
Amount: \$239.<sup>00</sup>

**APPEAL FORM**

(For more information, see Section 130.52.090 of the Zoning Ordinance)

Appeals must be submitted to the Planning Department with appropriate appeal fee. Please see fee schedule or contact the Planning Department for appeal fee information.

APPELLANT Save Our County & Ruth Michelson  
ADDRESS 3651 Indian Creek Court, Placerville, CA 95666  
DAYTIME TELEPHONE 930 401 2365

A letter from the Appellant authorizing the Agent to act in his/her behalf must be submitted with this appeal.

AGENT \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
DAYTIME TELEPHONE \_\_\_\_\_

APPEAL BEING MADE TO: Board of Supervisors Planning Commission

ACTION BEING APPEALED (Please specify the action being appealed, i.e., approval of an application, denial of an application, conditions of approval, etc., and specific reasons for appeal. If appealing conditions of approval, please attach copy of conditions and specify appeal.)

We are appealing, to the Board of Supervisors, the approval of the Serrao Village A14 project Planned Development PD08-0004/Tentative Subdivision Map TM08-1464 project with staff's recommended actions which include modifications as provided in Staff Memo dated August 20, 2021. Also see attached appeal supplemental, and cure and correct letter sent to the Planning Commission.

DATE OF ACTION BEING APPEALED August 26, 2021

Signature Ruth Michelson

Date Sept 3 '21

Sec. 130.52.090 - Appeals.

Any decision by the review authority of original jurisdiction may be appealed by the applicant or any other affected party, as follows:

- A. An appeal must be filed within 10 working days from the decision by the review authority by completing the appeal form and submitting said form together with the applicable fee, as established by resolution of the Board, to the Department. The appellant shall clearly identify on the appeal form the specific reasons for the appeal and the relief requested.
- B. The hearing body for the appeal shall consider all issues raised by the appellant and may consider other relevant issues related to the project being appealed. The hearing body for the appeal shall be as follows:
  1. All decisions of the Director are appealable to the Commission and then to the Board.
  2. All decisions of the Zoning Administrator and the Commission are appealable to the Board.
  3. All decisions of the Board are final.
- C. The hearing on an appeal shall be set no more than 30 days from receipt of a completed appeal form and fee. If the Board meeting is canceled for any reason on the date on which the appeal would normally be heard, the appeal shall be heard on the first available regularly-scheduled meeting following the canceled meeting date. The 30-day time limitation may be extended by mutual consent of the appellant(s), the applicant, if different from the appellant, and the appeals body. Once the date and time for the hearing is established the hearing may be continued only by such mutual consent.
- D. In any appeal action brought in compliance with this Section, the appellant(s) may withdraw the appeal, with prejudice, at any time prior to the commencement of the public hearing. For the purposes of this Section, the public hearing shall be deemed commenced upon the taking of any evidence, including reports from staff.
- E. Upon the filing of an appeal, the Commission or the Board shall render its decision on the appeal within 60 days.
- F. No person shall seek judicial review of a County decision on a planning permit or other matter in compliance with this Title until all appeals to the Commission and Board have been first exhausted in compliance with this Section.



# Cash Register Receipt

County of El Dorado

**Receipt Number**  
**R34058**

DESCRIPTION	ACCOUNT	QTY	PAID
ProjectTRAK			\$239.00
TM-A21-0001 Address: 0 APN: 122590003			\$239.00
APPEALS FEES			\$239.00
ALL APPEALS	3720200 0240	0	\$239.00
<b>TOTAL FEES PAID BY RECEIPT:R34058</b>			<b>\$239.00</b>

2021 SEP -3 PM 2:52  
 RECEIVED  
 PLANNING DEPARTMENT

Date Paid: Friday, September 03, 2021  
 Paid By: Save Our County and Ruth Michelson  
 Cashier: MAA2  
 Pay Method: CHK-PLACERVILLE 3494

RECEIVED  
 PLANNING DEPARTMENT

You can check the status of your case/permit/project using our online portal [etrakit](https://edc-trk.aspgov.com/etrakit/) <https://edc-trk.aspgov.com/etrakit/>

Your local Fire District may have its' own series of inspection requirements for your case/permit/project. Please contact them for further information. Fire District inspections (where required) must be approved prior to calling for a frame and final inspection through the building department.

**9-2-2021**

**AGENDA ITEM #2 on the August 26, 2021 Planning Commission meeting**

**Legistar # 21-1161.**

We (Save Our County and Ruth Michelson) are appealing the approval of the requests for Serrano Village A14 project (Planned Development PD08-0004/Tentative Subdivision Map TM08-1464)\*\* as stated in the 8/26/21 Planning Commission Agenda and the actions that were taken:

**Agenda Item:**

Hearing to consider the Serrano Village A14 project (Planned Development PD08-0004/Tentative Subdivision Map TM08-1464)\*\* to request: A) Development Plan for the Serrano Village A-14 residential subdivision including modifications to the development standards for the Single-Unit (R1) Residential Zone District including minimum lot size, minimum lot dimensions and building setbacks; B) A Phased Tentative Subdivision Map of a 35.78-acre parcel creating 51 single-unit residential lots ranging from 3,760 to 10,362 square feet in size, five landscape lots, one open space lot, three remainder lots and one 20.25-acre lot (for the approved Serrano Village C Phase 2 Tentative Map); and C) Design Waiver of the following El Dorado County Design and Improvement Standards Manual (DISM) road improvement standards: 1) Modification of Standard Plan 101B standards for roadway rights-of-way and improvement widths (including sidewalks and curbs) as shown on the Tentative Subdivision Map; 2) Reduction of a 100-foot centerline curve radii on B Street at Lots 3 and 43; 3) Modification of the standard road encroachment under Standard Plan 110 to allow for an entry gate and landscaping median at Russi Ranch Drive and future Country Club Drive; and 4) Reduction of standard lot frontage width of 60 feet to 47 feet or as otherwise dimensioned on the tentative map; on property identified by Assessor's Parcel Number 122-590-003, consisting of 35.78 acres, in the El Dorado Hills area, submitted by Serrano Associates LLC; and staff recommending the Planning Commission take the following actions: 1) Find the project to be Statutorily Exempt pursuant to Section 15182 of the CEQA Guidelines; 2) Approve Planned Development PD08-0004 and Tentative Subdivision Map TM08-1464 subject to the Findings and Conditions of Approval as presented; and 3) Approve the modified Design Waivers and Conditions of Approval as outlined in Staff Memo dated August 20, 2021. (Supervisory District 2) (Cont. 08/12/2021, Item 2)

**Minutes:**

Chair Vegna opened the hearing and upon conclusion of public comment and staff input, closed the hearing.

A motion was made by Commissioner Bly-Chester, seconded by Commissioner Ross, to Deny Serrano Village A14 project based on the Findings for Denial as provided from Staff Memo dated August 6, 2021 and amended to include: the

Design Standards have not been met with this proposed development. No vote was taken.

A second motion was made by Commissioner Vegna, seconded by Commissioner Williams, to Approve Serrano Village A14 project with staff's recommended actions which include modifications as provided in Staff Memo dated August, 20, 2021. Votes were by roll call. Yes: 3 - Commissioner Williams, Commissioner Clerici and Commissioner Vegna Noes: 1 - Commissioner Ross Abstained: 1 - Commissioner Bly-Chester.

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First of all, the hearing for the above request had been closed on July 22, 2021 after the Planning Commission had denied the project. Commissioner Bly-Chester made the motion to deny and gave staff the findings. That motion was approved with a 3 to 2 vote. Therefore, this agenda item should not have come to the August 26, 2021 Agenda let alone be redeliberated.

Save Our County has submitted a Cure and Correct letter to the Planning Commission and to the Board of Supervisors demanding that this agenda item be corrected as a denial and then the applicant can go through the correct procedures for appeal if the applicant so chooses.

We are appealing this decision for design waivers because we believe that the county design standards were put in place for a purpose. Allowing shorter setbacks and lot sizes increases the fire danger by placing homes closer together with less defensible space between structures, which increases the likelihood in a fire situation that embers will jump from one house to the next and the entire community will burn down. This is the situation that was observed in the Tubbs Fire in 2017 in Santa Rosa. The Caldor Fire has made us all very aware of the fire safety dangers in El Dorado County and we should not be allowing new developments to have design waivers from our county standards that will increase the fire hazard in our community. Additionally, the waiver to allow shorter driveways may result in emergency or recreational vehicles blocking the sidewalk preventing access that is complainant with the Americans with Disabilities (ADA) Act. During the meeting on July 22, 2021 the El Dorado County Fire Department representative indicated that with these shorter driveway distances their vehicles may block the sidewalk when they pull into a driveway. These waivers from the county standards being requested by the developer decrease the safety of our community, decrease the access to the community by those with disabilities, and should not be allowed regardless of what might have been done historically for previous Serrano developments when the planning commission and public may have been less acutely aware of the safety hazards associated with granting waivers to the county design standards. The planning commission rightly denied these design waivers during the July 22, 2021 meeting and found that the waivers did not meet 3 of the 4 criteria to grant a design wavier.

Here are the findings that were brought forth for approval as directed by the Planning Commission on August 12<sup>th</sup> after the project had been denied on July 22<sup>nd</sup>:

"2. To approve a design waiver the Planning Commission or Board on appeal must find that each of the following conditions exist:

- a. There are special conditions or circumstances peculiar to the property proposed to be subdivided which would justify the waiver;
- b. Strict application of the design or improvement requirements of this subpart would cause extraordinary and unnecessary hardship in developing the property; 21-1161 2A 1 of 4 PD08-0004/TM08-1464/Serrano Village A-14 Planning Commission/August 12, 2021 Findings for Denial Page 2 of 4
- c. The waiver would not be injurious to adjacent properties or detrimental to the health, safety, convenience and welfare of the public;
- d. The waiver would not have the effect of nullifying the objectives of this subpart or any other law or ordinance applicable to the subdivision.

The requested Design Waivers for Serrano Village A-14 and corresponding Planning Commission findings are shown below:

Design Waiver 1: Modification of road improvements under Standard Plan 101 B including the reduction of right-of-way width from 50 feet to 46 for Russi Ranch Drive and from 50 feet to 42 feet for A Street and B Street, reduction and construction of road pavement width from 36 feet to 31 feet; construction of 4-foot wide sidewalks along one side of Russi Ranch Drive and on both sides of A and B Streets, and construction of modified rolled curb and gutter;

*Planning Commission Finding for Design Waiver 1: The Planning Commission finds that conditions under subsections 128.08.020.a through c, as noted above, do not exist or are not sufficiently corroborated as submitted, and therefore, cannot support Design Waiver 1 for the Serrano Village A-14 Tentative Map.*

Design Waiver 2: Reduction of minimum 100-foot centerline curve radius length to reduced lengths identified on the map;

*Planning Commission Finding for Design Waiver 2: The Planning Commission finds that conditions under subsections 128.08.020.a through c, as noted above, do not exist or are not sufficiently corroborated as submitted, and therefore, cannot support Design Waiver 2 for the Serrano Village A-14 Tentative Map.*

Design Waiver 3: Modification of standard road encroachment under Standard Plan 110 with Serrano encroachment design.

*Planning Commission Finding for Design Waiver 3: The Planning Commission finds that conditions under subsections 128.08.020.a through c, as noted above, do not exist or are not sufficiently corroborated as submitted, and therefore, cannot support Design Waiver 3 for the Serrano Village A-14 Tentative Map. Based on the*

*above Findings for the Design Waivers, the Planning Commission hereby denies the requested Design Waivers 1, 2, and 3 for the Serrano Village A-14 Tentative Map.*

The motion for denial of the requested waivers was approved by the planning commission in a 3-2 vote.”

The approval should also be denied based on the findings as was approved by the Planning Commission that the design waivers did not meet at least 3 of the 4 requirements to allow a design waiver.

We are appealing based on the grounds that the project approval violated the Brown Act which has not been corrected, that the project violates California Environmental Quality Act (CEQA), the project violates the applicable General Plan policies and zoning laws, that the project may violate voter approved Measure E, and the comments voiced and submitted to the Planning Commission contained accurate statements of significant legal violations that were not addressed by the Planning Commission at the hearing.

Also, there were ex-parte discussions after the hearing had closed between the applicant and many of the commissioners that should have been addressed and thrown out by County Counsel. These actions and others make the County ripe for litigation in which can be avoided by returning to the process that was required after the motion and reverting back to the decision for denial that had been approved at the July 22<sup>nd</sup> hearing.

August 28, 2021

El Dorado County Planning Commission  
2850 Fairlane Court  
Placerville, CA 95667

Dear Planning Commissioners:

I have watched many Planning Commission hearings over this last year and witnessed the lack of correct instruction given to the Commission from County Counsel during the proceedings in which the Planning Commission is heavily relying on.

After the last hearing of August 26, 2021, there is an urgency in which this needs to be corrected. Therefore, I am demanding the Planning Commission to cure and correct the violations of the Ralph M. Brown Act open meeting laws government code 54953(b)(1) that occurred during the zoom meeting hearings, on July 22, 2021, August 12, 2021 and August 26, 2021, to consider the Serrano Village A14 project, Planned Development PD08-0004/Tentative Subdivision Map TM08-1464, here forward referred to as "the Project". The Commission must go back and listen to the original motion made by Commissioner Cheryl Bly-Chester and then adhere to that motion to deny the project. The Commission must also create findings as requested by the motion that was approved by the Planning Commission.

On 7-22-21 the public hearing was closed at 3:46:43 for the project, then the Planning Commission deliberated. Vice-Chair Clerici made the motion to approve staff recommendations and Chair Vegna made the second. Then a discussion ensued and conditions were asked to be tightened up, which was added to the motion. The motion failed 2 to 3. Chair Vegna said motion failed and that the decision could be appealed to the Board of Supervisors. The Planning Clerk stated that, no, there needed to be another motion. The Clerk let them know that they could make an approval or if they decided they wanted to do a denial staff would need to talk to Counsel as to whether or not they would have to come back for findings or not. **Commissioner Bly-Chester offered findings that the design waivers did not meet at least 3 of the 4 requirements to allow a design waiver.** County Counsel then intervened that it was not a good idea to make findings on the fly and that they should come back to approve findings.

**At 4:10:20 Ms. Bly-Chester made the motion, "I would like to make a motion for denial based on the findings as we outlined for the staff to fill out the actual language of it for the future."**

There was a discussion that ensued regarding how to proceed. Commissioner Williams asked if they needed to give staff time to prepare findings. Commissioner Bly-Chester said no. She stated that we make the findings and staff crafts the language and bring it back. Vegna stated they would be brought back in the minutes.

Tiffany Schmid, the Director of Planning and Building Services, showed up for the meeting at 4:12:50. Some statements were made and then Ms. Schmid asked for a break to confer with County Counsel at 4:15:58. Upon return she made clarifications regarding the findings and

then advised for the Planning Commission to "conceptually" deny the project and return date certain with staff findings. The Chair asked for a second to the motion. Commissioner Williams asked for the motion to be repeated. The staff referred to Commissioner Bly-Chester to repeat her motion.

**At 4:33:11, a repeated motion was made by Commissioner Cheryl Bly-Chester as stated:**

*"Deny the conceptual design based on the design waiver not meeting at least three of the four required findings that we need to make and that we continue the hearing returning on date certain to the August 12, 2021 meeting."*

She made it very clear that her motion was to deny the project and that staff come back with the findings as referred to in the motion. She did not think that the project could even meet the 3 conditions required to allow for the design waivers. The Commission voted 3 to 2 to approve the denial and continue to the August 12<sup>th</sup> meeting to approve the findings. Both the Director and the Counsel used the language to conceptually deny and suggested that Commissioner Bly-Chester include that in her motion.

**The staff recorded the motion on the minutes as – which is what staff and counsel were recommending, but not what was actually stated:**

*"A motion was made by Commissioner Bly-Chester, seconded by Commissioner Williams, to conceptually deny the project and direct staff to return to the August 12, 2021 Planning Commission meeting with Findings for Denial as outlined by the Commission. Votes were by roll call."*

*Yes: 3 - Commissioner Williams, Commissioner Ross and Commissioner Bly-Chester*

*Noes: 2 - Commissioner Clerici and Commissioner Vegna  
The motion carried 3-2 and the hearing was continued.*

A vote of denial had been approved and all that was needed was to bring the findings onto the 8-12-21 minutes for approval as is a standard.

Instead, on 8-12-21 the item was returned to the agenda as "Returning at the Commission's direction for final action of the Serrano Village A14 project (Planned Development PD08-0004/Tentative Subdivision Map TM08-1464)\*\* consisting of requests for:... then the request for the modification were again listed as an item.

The options by staff at the end of the posted item reiterated "conceptual" denial as if the motion and vote for denial had never occurred: *...and staff recommending the Commission take the following actions consistent with the Commission's conceptual action and direction to staff: 1) Deny Serrano Village A14 project (Planned Development PD08-0004/Tentative*

*Subdivision Map TM08-1464) based on the Findings of Denial as presented. (Supervisory District 2) (Cont. 07/22/2021, Item 2)*

Then at the staff directed "so call returned and continued" item 2 on August 12, 2021, Commissioner Bly-Chester addressed the agenda item during approval of the agenda and the clerk of the commission at 4:09 stated that "the motion made was to "conceptually" deny the project and direct staff to return to the August 12<sup>th</sup> Planning commission meeting with findings for denial as outlined", the minutes were reviewed and adopted despite the closed hearing not being finalized and despite the language of the motion not being accurately reflected in the draft minutes.

With the discussion of Item 2 of the 8-12-21 meeting, staff mislead the commission to believe that the last hearing had been a conceptual action. Then Chair Vegna started out at this already **closed hearing**, stating that he wanted to start off with the applicant and stated, "Kirk is there anything you would like to say before we start getting into the findings for denial." This was improper to allow the applicant to speak at this point.

The next shocking thing we hear is that Kirk Bone stating that there was much conversation with various commissioners since the July 22<sup>nd</sup> meeting and he felt that they had made headway with the development standards. The chair then offered Kirk to share a brief outline since the other commissioners did not know what was coming. Kirk led in with, "The comment was that there was quite a bit of conversation about the design standards and we reviewed those with Commissioner Williams, if I may use that, and I think we've come to an agreement on what would be acceptable to us to move this project forward, to make a long story short, we would implement the development standards that we utilized at a project that was previously approved call J7." Then the Chair had Commissioner Williams speak to the discussion. From his conversation it appeared that the developer and Williams had make concessions that Williams appreciated and since the Board of Supervisors did not have the will to adhere to county standards, Williams did not see the benefit in moving forward with a denial.

Kirk Bone then told the Chair that he wanted to "thank James for his efforts on this" and went on to say that they had tried to create a different set of setbacks to enhance the project and that they again thanked the commissioner for working with them and that they concurred with the changes and they could accept the changes to the development standards.

This is what is called ex parte communications with the applicant which is not allowed after a hearing has closed but before the hearing is finalized. The result of this brought forward negotiated new conditions for the project which were discussed outside of the open meeting, after the hearing had closed, without the involvement of the full commission, and out of the view of the public. Again this type of communication is not allowed after a hearing has closed.

To Commissioner James Williams defense you will hear numerous times by advisors to the Commission when someone questions a procedure, "This was done this way in the past", or they are threatened if they don't give what they are asking for they can do something worse by right. An example currently being used, as was handed to the developers by our county counsel, "we could just use State Bill 35 for high density by right".

To her credit, Commissioner Bly-Chester was outraged at this breach of the Brown Act and appealed to the County Counsel to explain and provide direction to the Commission. County Counsel instead approved the Brown Act and due process violation, thus giving incorrect direction which many of the Commissioners relied on. Due to this misguided and incorrect process the meeting continued with contention and confusion among the Commissioners.

Citing the Ralph M. Brown Act government code § 54954.3. and § 54954.2(a)(2), within Chapter 9 as referenced in § 54953 (b)(1) , The League of California Cities explains the breach of public trust and denial of due process that ex parte communications foster. In this case the violation is reportedly especially egregious and must be rejected when it occurs after the hearing has closed and before the action is finalized, as stated below:

*"Ex Parte Communications After a Quasi-Judicial Hearing Must Be Prohibited If the Decision is Not Final. A corollary to the due process protection provided by pre-hearing disclosure of ex parte communications is that there must be no ex parte communications during the interstitial period between closure of a hearing and a final decision. This arises most often when a city decisionmaker closes a quasi-judicial hearing and directs the preparation of written findings by staff. "Lobbying" by parties to the matter or other persons must be rejected."*

(League of California Cities, Let's Ex Parte! The Limits and Disclosure Requirements of Ex Parte Contacts in the Public Hearing Context.

[https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2016/Annual-2016/10-2016-Annual\\_Calonne\\_Lets-Ex-Parte!-The-Limits-a.aspx](https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2016/Annual-2016/10-2016-Annual_Calonne_Lets-Ex-Parte!-The-Limits-a.aspx))

Critical discussion is heard on August 12<sup>th</sup>, time stamped 11:28-41:26 regarding the violations of the process and the Brown act. These violations of the public trust appear to have been driven by County Counsel mis-stating and manipulating the actual language and clear intent of the Planning Commission to deny the project and by County Counsel's active approval and even encouragement of ex-parte communication while the hearing is active but not in public session.

The original and final motion from July 22, 2021 was clearly to deny the project and return with findings for denial. The efforts that were put out by Staff, the Chair, County Counsel to work against the will of the Commission, in favor of this developer when the Commissioner that had made the motion made it very clear they had denied the project and would return to a date certain to approve findings for denial, were reprehensible.

Therefore, I demand that the Planning Commission rescind their decisions of August 12, 2021 and August 26, 2021, then return to the hearing to approve language of the findings for denial as was stated in the deliberations and motion from July 22, 2021. The stated findings agreed to by the Commission did not include the low-income housing element, but design standards in which the Commission is under no obligation to allow county standard concessions to an applicant. After this has taken place, the applicant has the opportunity to adjust the project or appeal the decision to the Board of Supervisors. I further demand that the entire Planning Commission and the entire compliment of County Counsel's Office attend an 8-hour Brown Act Open Meeting Law course taught by outside counsel.

I request that this letter be circulated to the entire Planning Commission and that the Planning Commission deliberate about it in open session for the benefit of the Public at large. As this is a clear indictment of the competence of the County Counsel's Office, I demand that outside counsel be secured for the deliberation regarding this Cure and Correct Demand.

Sincerely,

s/Sue Taylor  
and  
Save Our County

For reference:

(El Dorado County Planning Commission Video for July 22, 2021)

[http://eldorado.granicus.com/player/clip/1525?view\\_id=2&redirect=true](http://eldorado.granicus.com/player/clip/1525?view_id=2&redirect=true)

El Dorado County Planning Commission Agenda/Video for August 12, 2021

[http://eldorado.granicus.com/player/clip/1532?view\\_id=2&redirect=true](http://eldorado.granicus.com/player/clip/1532?view_id=2&redirect=true)

El Dorado County Planning Commission Agenda/Video for August 26, 2021

[http://eldorado.granicus.com/player/clip/1536?view\\_id=2&redirect=true](http://eldorado.granicus.com/player/clip/1536?view_id=2&redirect=true)