

BECKER RUNKLE & LAURIE
ATTORNEYS AT LAW

263 MAIN STREET, LEVEL 2
PLACERVILLE, CALIFORNIA 95667
(530)295-6400

2007 NOV 16 PM 12:25

RECEIVED
BOARD OF SUPERVISORS
EL DORADO COUNTY

FAX (530) 295-6408

ROBERT A. LAURIE

November 13, 2007

Board of Supervisors
County of El Dorado
360 Fair Lane
Placerville, CA 95667

Re: **Appeal of Majors SUP Application/TPZ Lands**

Dear Board Members:

This office represents Mr. George Majors. Mr. Majors and his family seek a Special Use Permit ("SUP") to construct a residence on their 118 acres in the area of Silver Lake. The property is zoned TPZ. This matter is brought to you on appeal from a decision of denial by the Zoning Administrator (ZA).

1. **Basis of Appeal.** This appeal is based upon two errors made by the Zoning Administrator: a) The findings adopted by the Zoning Administrator justifying the denial are not supported by the evidence in the record and b) The presumption of conflict between residential and timber harvesting as reflected by both the Agricultural Commission ("the Commission") and the Zoning Administrator is inconsistent with state law.

2. **Agricultural Commission Findings.** The Agricultural Commission first heard this request on August 10, 2005. Although Agricultural Commission staff expressed reservations about the need for a caretakers residence, the Commission, on motion by Mr. Delfino and seconded by Mr. Winner, recommended approval of the application. The vote of the Commission in favor of the motion was unanimous. Accordingly, Planning staff made a positive recommendation for approval in their report to the Zoning Administrator.

COPY SENT TO BOARD MEMBERS
FOR THEIR INFORMATION

DATE 11-16-07

*Dist's. 1-5
file*

Prior to the ZA hearing and ruling on the matter, the Commission, at the request of Commissioner Winner to rescind the previous action, determined to rehear the matter, which the Commission did on October 12, 2005. The memo from the Commission to the Planning Department reflects the following:

a. Mr. Winner requested the rescission because TPZ land and housing are not compatible and that a Special Use Permit should only be granted when absolutely necessary.

b. It was further stated that because the majority of the land is Class V (poor conditions) and because Christmas trees had not as yet been planted, the need for a caretakers unit had not been established.

The motion to rescind the previous recommendation was adopted by the Commission.

3. Action by the Zoning Administrator.

The Findings relied upon by the ZA to deny the SUP are as follows:

a). The ZA found that a caretaker' s residence was not warranted at this time as there was no evidence of recent harvesting or planting.

Response: The record is completely to the contrary. The Commission made no such finding although the matter was discussed at the two Commission hearings. The only evidence submitted on this matter at the ZA hearing was testimony by the applicant' s Registered Forester Consultant, Mark Stewart, who testified as to both plantings and harvesting. Such evidence will again be provided to your Board through additional testimony.

b). The ZA found that the Commission did not find that the timber plan constituted an intensive management operation.

Response: The record of the Commission reflects that the Commission made no such finding.

c). The Caretaker' s residence cannot be justified since the proposed Christmas tree farm has not been established and verified by the Commission.

Response: The record reflects through the testimony of Mr. Stewart that Christmas tree plantings have been established. There is no evidence in the record of findings to the contrary. In addition, such evidence need not be established to support the requisite criteria for the necessity of a caretaker's or owner's residence under either local or state law.

d). The location of the residence prohibits use of the best soils on site by building the residence where Christmas trees should be planted.

Response: There is literally no evidence in the record to support this finding. In addition, such a finding is not related to the criteria referenced in state law or local ordinance.

e). Residential use of timberland is in general inconsistent with growing and harvesting of timber. The October 13, 2005 Memorandum from Greg Boeger to Gina Hunter does state as follows, "Commission Member Winner requested to rescind the August 10, 2005, action because TPZ land and housing are not compatible and they were never intended to be. Mr. Winner stated that he had originally agreed with the August 10, 2005, action because although it was not the intent to have TPZ land with houses, there were such occurrences in the county and he didn't want to create a double-standard...Mr. Winner felt that a Special Use Permit for a caretaker's residence should only be granted when it is an absolute necessity..."

Response: The ZA's finding and Mr. Winner's comments as part of the record generally mirror the language of the County Ordinance Section 17.44.050, "*Criteria for residential use*", which states, "A. Residential use of timberland is in general inconsistent with growing and harvesting of timber...". That section then goes on to describe the "certain situations" in which owner or caretaker dwellings would be permitted. It must be respectfully submitted however that the express language of the County ordinance as above-referenced as well as Mr. Winner's comments are specifically inconsistent with both state law and the County's General Plan.

The applicable enabling state law is found in the California Timberland Productivity Act of 1982 (Government Code Sections 51100 et. seq.). Section 51104(h) addresses the question of the compatibility of residential uses and timberlands by defining "Compatible use" as "...any use which does not significantly detract from the use of the property for, or inhibit, growing and harvesting timber, and shall include, but not be limited to, any of the following, unless in a specific instance such a use would be contrary to the preceding definition of compatible use:...(6) A residence or other structure necessary for the management of land zoned as timberland production..."

Thus, under state law, once it is determined that a residence is necessary for the management of land zoned for timberland production, such a residential use would be deemed compatible unless, in a specific instance, such residential use is found to “significantly detract from the use of the property for, or inhibit, growing and harvesting of timber...”. Accordingly, the County regulations are legally incorrect when such express the presumption that, “Residential use of timberland is in general inconsistent with growing and harvesting of timber”. Further, once an owner produces substantial evidence that a residence is necessary for the management of the timberland through “intensive management”, the presumption of compatibility would apply. In this case, the evidence in the record and before your Board clearly establishes such “intensive management” as defined by County ordinance. There is no evidence in the record that such residential use would detract from the timberland production.

Specifically, the record reflects that the criteria for determining “intensive management” includes the following (See County Ord. 17.44.050):

1. Timber inventory (C)(1)-A timber inventory was completed in 1995. A timber cruise of volume to be harvested was completed in 2002.
2. Commercial harvesting operations (C)(2)-A Timber Harvest Plan, tree marking and Archeological Survey was prepared and conducted in 2002. A green timber harvest was conducted in 2003.
3. Legal and physical access (C)(3)-Existing roads are in place from Highway 88. The road system was extended further into the property for timber management activities in 2003. A permanent skid trail/seasonal management road was constructed in 2003.
4. Reasonable effort to locate boundaries (C)(4)-Property corners were found and flagged in 2001. Property lines in timber management area were flagged in 2002. “No trespassing” signs have been posted.
5. Conducted disease or insect control work (C)(5)-A salvage timber harvest was conducted in 2007 to remove dead and dying pines.
6. Performed thinnings, slash disposal and appropriate silvicultural work (C)(6)-Slash disposal was conducted in 2003 and 2005.
7. Developed fire protection system (C)(7)-A Forest Management Plan was prepared in 2001. The Plan includes a fire Protection Plan.

8. Provision for erosion control on roads (C)(8)-Erosion control was installed at the end of the timber harvest in 2003 and maintained through 2004 by the Registered Forester. Skid trails were reconstructed in 2004. Inspection in 2007 by Registered Forester determined roads to be in good condition.

9. Plantings portions of understocked areas (C)(9)-There are no understocked areas of the property which require restocking. However 2000 Red Fir seedlings have been planted on the property.

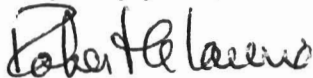
Accordingly, there is substantial evidence in the record that supports the criteria that aids in the determination of "intensive management". The requisites of Section 17.44.050 have been met.

Additionally, it is noted that the subject property has a General Plan designation of Natural Resource (NR). The NR designation is specifically designed to, "...identify areas that contain economically viable natural resources and to protect the economic viability of those resources...". The General Plan goes on to state that compatible uses on such lands include, "agriculture, rangeland, forestry, wildlife management..and support single-family dwellings". Thus, under the provisions of the General Plan, the proposed residential use is permissible.

4. **Conclusion.** It is respectfully submitted that Section 17.44.050 is contradictory of state law in that it reverses the presumptions relative to residential and timberland compatibility. Nevertheless, it is further submitted that the criteria established by the County to determine "intensive management" has been met and is reflected in the record. Accordingly, the applicants request that the Board find that the subject residence is necessary for the management of their timberland and that such residence does not significantly inhibit their timberland production and as a result, the SUP should be approved.

Thank you for your consideration.

Very truly yours,



ROBERT A. LAURIE
BECKER RUNKLE & LAURIE