

Applicant

# 43

## Codes Relating to Grading Permit Issuance Appeal

The permit in question is a grading permit governed by the grading Ordinance, it is not a zoning Permit.

Looking at the Grading Ordinance:

### ***Sec. 110.14.270. - Appeals.***

*Final decisions made by the Director, or by any applicable County commission, appeals board or decision maker, pursuant to this chapter may be appealed to the Board of Supervisors within ten working days of the date of such decision. The appeal to the Board shall be made in writing and shall list the specific grounds for the appeal.*

The emailed appeal did not state SPECIFIC grounds for the appeal; it stated a blanket statement about not following the County Zoning and Grading Codes.

### ***Sec. 110.14.110. - Purpose and scope.***

- A. *The ordinance from which this chapter is derived is enacted for the purpose of regulating grading within the unincorporated area of the County to safeguard life, limb, health, property and public welfare; to avoid pollution of watercourses; and to ensure that the intended use of a graded site is consistent with the County general plan, any specific plans adopted thereto, the adopted storm water management plan, State fire safe standards and applicable County ordinances including the zoning regulations set forth in Title 130 and the California Building Code.*

The purpose of the grading ordinance is: "...to ensure that the intended USE of a graded site is consistent with County ordinances including the zoning regulations set forth in Title 130..." Roger Trout believes that this statement gives the County the right to use the Zoning Ordinance to govern a Grading Permit appeal. Yet, this statement only talks about the INTENDED USE of a graded site, the USE is what is being focused on here, not the height of retaining walls, but the use as a single family residential structure being built. This code does not give the County the right to use the zoning ordinance in title 130 to accept an appeal for a grading permit that's appeal focuses on something other than the USE of the site.

I argue the Zoning ordinance was never intended to be used to regulate a grading permit.

### ***Sec. 110.14.210. - Permit processing procedures.***

*Applications for a grading permit shall be reviewed in accordance with the procedures outlined in Section E of the Grading, Erosion and Sediment Control Chapter of the Design and Improvement Standards Manual as currently adopted by the County Board of Supervisors.*

***See Section E of the Grading, Erosion and Sediment Control Chapter of the Design and Improvement Standards Manual***

<https://www.edcgov.us/Government/building/documents/GradingDesignManual3-13-07.pdf>

NOWHERE in this Manual does it give a neighbor permission to appeal a grading permit, nor does this manual say anything about "staying" a grading permit pending an appeal. This is only in the Zoning code for a reason, because the zoning code deals with special permit requests above and beyond what the code allows. My grading permit fits within all code guidelines and is not governed by the zoning ordinance. It is governed by this manual, as stated in the grading code, and this manual again does not say anything about "staying" a permit issuance.

The Zoning ordinance does deal with the following:

***Title 130 Article 5: Planning Permit Processing***

*130.52.010 Administrative Permit, Relief, or Waiver*

*130.52.020 Minor Use Permits*

*130.52.021 Conditional Use Permits*

*130.52.030 Design Review Permit*

*130.52.040 Development Plan Permit*

*130.52.050 Temporary Mobile Home Permit*

*130.52.060 Temporary Use Permit*

*130.52.070 Variance*

*130.52.080 Requests for Reasonable Accommodation*

As you can see above, grading permits are not listed in the zoning ordinance, what IS listed in the zoning ordinance is special permits for items that request special violation of the codes, something I am NOT asking for.

My grading permit was fully issued and effective on February 22, 2018.

On March 23, 2018 Roger Trout Stayed the Issuance of said grading permit citing the below code.

***Zoning Code:***

***130.54.020***

***Effective Date of Permit Approvals***

*Except in the case of a Specific Plan (Chapter 130.56 – Specific Plan ) or Development Agreement (Chapter 130.58 – Development Agreements), final action on any permit or authorization approval of the Zoning Administrator or Commission shall become effective 11 working days from the decision by the review authority where no appeal of the approval has been filed in compliance with Section 130.52.090 (Appeals). A decision by the Board is final and effective on the date of the action, unless otherwise required by state law. A properly filed appeal shall stay the issuance of any such permit or authorization until the appeal is decided*

My grading permit was not issued from the Zoning Administrator or Commission; it was issued by the building department. I did not apply to the zoning department for my grading permit. So this ordinance should not govern the procedures for an appeal with my GRADING permit.

Even if this code was to govern my Grading Permit issuance, the requirements are still not met.

This code also states that “A PROPERLY filed appeal shall stay the ISSUANCE of any such permit... until the appeal is decided.” This appeal that was received via email only on March 6, 2018 was not a PROPERLY FILED appeal because it was not actually filed, did not state the specific grounds for the appeal, and no appeal filing fee was paid. On top of that the ISSUANCE of my permit cannot be stayed because my grading permit was actually already issued and fully functional for an entire month!

Zoning appeal procedures are outlined in the below code.

***Zoning Code:***

***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...*
- C. The hearing on an appeal shall be set no more than 30 days from receipt of a completed appeal form and fee.*

Again you can see that if an appeal is to be accepted in the zoning ordinance it should “CLEARLY identify on the appeal form the specific reasons for the appeal and the RELIEF requested.”

Fact: A Grading permit is effective on the date of issuance, February 22, 2018, therefore staying the issuance would be impossible.

**Grading Ordinance Codes:**

***Board Of Appeals:***

***Sec. 110.12.080. - Method of appeals.***

- A. Appeals shall be made and conducted as provided under State law.*
- B. Appeals from decisions of the Building Official shall be in writing on forms provided by the Building Division.*

C. *Each separate appeal shall be accompanied by a fee of \$50.00 which shall be deposited into the general fund.*

D. *The Board of Appeals shall hear the appeal within ten working days after application has been filed with the Building Official and shall render its findings to the appellant in writing within five days after the hearing.*

**Sec. 110.14.400. - Suspension and revocation of permit.**

*The Director may suspend or revoke a permit for good cause, subject to appeal to the Board of Supervisors. Except for erosion control facility installation and maintenance, no work shall be performed pending an appeal except as authorized by the Director.*

If the County is going to use the Zoning code to govern my grading permit, it should not be able to pick and choose what parts of what code it will use. The below code from the Zoning ordinance states:

**130.54.090**

**Revocation or County Mandated Modification of a Permit**

*Any permit authorized under this Article may be revoked or modified by the county when it is found that conditions required for the approval of the permit have been violated, have lacked substantial compliance, or when the use is determined to be a public nuisance.*

- A. *The following procedures shall be used for revocation or mandated modification of previously approved permits or authorizations:*
- 1. The review authority of original jurisdiction shall hold a public hearing to revoke or modify a permit or authorization granted in compliance with the provisions of this Article. Where the review authority was the Director, the hearing shall be referred to the Zoning Administrator for determination...*
  - 5. As an alternative to revocation, the county may mandate modification of a permit or authorization including the duration of the permit or authorization, any operational aspect of the project, or any other aspect or condition determined to be reasonable and necessary to ensure that the project is operated in a manner consistent with the original findings for approval.*

**Title 14. California Code of Regulations: Chapter 3. Guidelines for Implementation of the California Environmental Quality Act**

**Article 19. Categorical Exemptions**

**15300. Categorical Exemptions**

Section 21084 of the Public Resources Code requires these Guidelines to include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA.

In response to that mandate, the Secretary for Resources has found that the following classes of projects listed in this article do not have a significant effect on the environment, and they are declared to be categorically exempt from the requirement for the preparation of environmental documents.

**Note:** Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

### **15303. New Construction or Conversion of Small Structures**

Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include, but are not limited to:

(a) One single-family residence, or a second dwelling unit in a residential zone. In urbanized areas, up to three single-family residences may be constructed or converted under this exemption.