

Grand Jury Report Case Number GJ-13-11

Golden Center Plaza Approved

Overview: *The Grand Jury made findings that the El Dorado County Planning Department and Planning Commission failed to properly review the project plans based on County ordinances and standards. However, this finding is predicated on the Grand Jury's misinterpretation of the County Zoning Ordinance and its implementation. These interpretations are addressed in more detail below.*

FINDINGS

1. **Both the Planning Department and Commission failed to properly review the Golden Center Golden Center Plaza design based on County Zoning Ordinances and accepted standards.**

General comment: *The project had two public hearings, May 12, 2005 with the Planning Commission and June 7, 2005 with the Board of Supervisors. Both made findings of consistency with the County Zoning Ordinance after reviewing the staff report, site plan, and receiving public comments. The County has authority under section 17.18.040.D and 17.18.080.D to adjust the requirements in the Parking Ordinance. There is no violation of the Zoning Ordinance.*

- a) **The shopping center has significantly fewer parking spaces provided than are required by the Zoning Ordinance.**

The Parking Ordinance for Neighborhood Shopping Centers (NSC) (17.18.060.20.a) requires 1 parking space per 200 square feet of gross floor area and does not require recreational vehicle spaces. It is a separate and distinct parking standard designed for multi-building and multi-tenant facilities that are called "shopping centers"; it is not appropriate to add the parking standards for individual building uses to determine a total. It appears that the Grand Jury may have misapplied the parking standards for individual uses rather than using the NSC standard; however, the NSC standard supersedes the individual standards. Note that Condition 6 of the permit (PD03-0006) required a minimum of 191 parking stalls. Staff counted 189 spaces during a review of this location, which is not significantly fewer.

- b) **There is no loading zone on site as required by Zoning Code 17.18.080.**

Loading zones are often omitted from these types of shopping centers as allowed by Section 17.18.040.D (Increases and Decreases in Requirements) and Section 17.18.080.D (Modification of Loading Zone Requirements) of the County Code. Loading zones are often omitted for shopping centers where there is a mix of small shops and tenants where there is no logical location for a single or central loading zone. It would be illogical to require a large loading zone for each and every building. For these types of shopping centers and their types of businesses, typical deliveries are by smaller vehicles and trucks and occur during off-peak hours.

- c) **There are no recreational vehicle spaces as required by Zoning Code 17.18.060.**

The Parking Ordinance for NSC (17.18.060.20.a) does not require recreational vehicle parking spaces; therefore it is acceptable not to have them at this location.

- d) **No internal operations analysis was performed resulting in a highly congested shopping center which does not function well for pedestrians, vehicular traffic or tenants.**

There isn't a requirement in the Zoning Ordinances for an "operations analysis", therefore no such analysis occurred or would be appropriate for staff to require.

2. **The lack of professional review by the Planning Department and Planning Commission along with failure to require proper parking, loading zones and recreational vehicle parking resulted in material benefits to the developer in terms of increased building coverage.**

The Grand Jury appears to be drawing conclusions from incorrect interpretations of the Zoning Code, as outlined above. Planning staff and the Planning Commission provided proper review and oversight of the development.

3. **The action of (now) former Board of Supervisors member Jack Sweeney, interceding with the Director of Transportation to have a loading zone approved on Golden Center Drive, a public right of way, for the benefit of a private development, was inappropriate.**

The property was purchased in March 2007 and a request for a loading zone was filed with the Department of Transportation Traffic Safety Committee in April 2007 (the owner stated that he was aware of the lack of a loading zone since October 2006, well before the purchase occurred). The Committee recommended approval of the new loading zone on Golden Center Drive and the Board of Supervisors approved it on September 25, 2007. Supervisor Sweeney did visit the site with staff and a determination was made that a loading zone could safely be located within the public right-of-way. The loading zone as configured does not represent a safety issue.

4. **When deficiencies in the project became apparent no action was taken to require the developer to fix the deficiencies and bring the project into compliance with mandatory legal requirements.**

Staff interpreted the Zoning Code correctly and there are not deficiencies in the project; therefore no action was required.

Grand Jury Report Case Number GJ-13/14-15

Grading of Boulder Bump Road

Overview: *This matter resulted when one property owner graded a private road that is used for access to his property. The grading included roadway that was on other owner's property. Additionally, two culverts were installed where previously water flowed over the road. One of the adjacent property owners complained about the grading to the County so Development Services staff investigated. Maintenance of a private road does not require a grading permit under the County Grading, Erosion, and Sediment Control Ordinance (Grading Ordinance); however, the addition of two culverts does require a permit. Development Services decided to permit the entire activity. Based on available information, including grading plans submitted by a registered professional civil engineer, Development Services staff issued a grading permit, and subsequently inspected and finalized the permit.*

The owner of an adjacent property feels that some of the grading occurred improperly on his property. Property disputes regarding easements are a civil matter between property owners.

The final finding that the "County Grading Ordinance may put undue burden on simple maintenance of rural roads when strict adherence to the Ordinance is practiced" is puzzling. Maintenance to keep roads in their original condition is specifically exempted from permit requirements in the Grading Ordinance.

- 1. Non-paved private roads are notoriously deficient in meeting any standard. Situations like described here are opportunities to bring them to present day standards through a permitting process that embraces those standards.**

"Non-paved private roads" by definition do not meet any County road standards. The County does not have the authority to require private roads to be improved to County standards. Therefore, while staff understands the Grand Jury's desire to use this permitting process to improve these roads, staff is not allowed to impose such requirements nor would it be appropriate under the circumstances.

Roads are typically improved as required through the subdivision process authorized by the State Subdivision Map Act, County Ordinance Title 16, and the County Subdivision Design Improvement Standards Manual. In this particular situation, the parcels are 40 acres and larger and were not required to improve road at the time of the parcel creation. Title 16 Section 16.44.120.E states that creation of 40 acre parcels are not required to improve roads to County standards. The parcels along Boulder Bump Road are 40 acre parcels.

- 2. The lack of information and plans by both the permit applicant and the Planning department make it impossible to validate the complainant's claim. However, the Grand Jury does find that the Planning and Building Departments were deficient in their analysis of the scope of work for the project, acquisition and inspection of documents germane to the permit and subsequent inspections.**

A grading permit (203375) was issued after most construction had occurred and an inspector had visited the construction site in response to a citizen complaint. There was no lack of analysis for this permit:

- *Plans were reviewed and meetings held between the applicant and County staff to address permit requirements.*
- *The grading plans were prepared and stamped by a registered professional civil engineer and approved by the County's civil engineer.*
- *Other documents, as mentioned in #3 below, were also reviewed.*
- *The County engineer required hydrology calculations for sizing the culverts.*
- *A Senior Planner familiar with the property because of the processing of a tentative parcel map in 2007 also approved the permit, specifically reviewing potential impacts to Native American resources and determined the grading would not impact those resources.*

- 3. There was no evidence that the Development Services Department verified the existence of the easement and the permit applicant's legal right to grade it at all, in any manner. Coupled with the improper parcel numbers referenced above the permit should not have been issued.**

The County uses all available documents to verify accuracy of grading plans, including Records of Survey, Parcel Maps, and recorded Deeds. Record of Survey No. 12-34 was reviewed in this case, which indicated there was an easement of some type over the roadway. The County issues permits based on consideration of that information and the information provided on the grading plans prepared by a registered professional civil engineer. Based on available information, the permit was properly issued.

- 4. The permit was for roadway repairs and culvert installation, yet there was no inspection of culverts, but merely an inspection of rough grading, erosion control and a final inspection. Inspections occurred on September 9, 2011 and October 11 2011.**

Final inspection included review of all improvements shown on the plans, including road improvements, two culverts, and erosion control measures.

Further, the Grand Jury finds that Development Services did not properly administer the County Grading, Erosion and Sediment Control Ordinance, and should have neither issued the permit nor inspected the work.

It is uncertain why the Grand Jury believes that Development Services did not properly administer the County Grading Ordinance. A permit is not required for maintenance of private non-paved roads. However, the addition of two culverts requires a grading permit; the permit requires inspection of said culverts. Based on available information, issuance of a permit is appropriate under the Grading Ordinance.

- 5. The El Dorado County Grading, Erosion, and Sediment Control Ordinance is Chapter 15.14 of the County Code. It is the law of El Dorado County. Public officials failed to follow the provisions of the Grading Ordinance; they failed to follow the law.**

The finding does not specify what portion of the law was not followed; Development Services staff asserts that provisions of the ordinance were followed. Grading permit 203375 was applied for, reviewed, approved, inspected, and finalized as noted in the County files:

- *Development Services received an application and collected fees on September 2, 2011, reviewed the application and plans (including culverts).*
- *A permit was issued on September 7, 2011, including the Air Quality Management District (a screen shot of the approvals from AQMD, Planning, and Building staff was provided in the previous Grand Jury response of August 12, 2014).*
- *Inspections occurred on September 9, 2011 and October 11 2011. Final inspection included review of all improvements shown on the plans, including road improvements, two culverts, and erosion control measures.*
- *Permit was finalized on October 11, 2011.*

6. There was insufficient communication and interaction between the Development Services and Air Quality Management departments.

Grading permit 203375 was applied for, reviewed, approved, inspected and finalized. This included AQMD review on September 6, 2011, one day before the grading permit was issued and four days after the permit was submitted.

7. DOT was unable to recover the cost of cleaning up the washout. It did not have any record that it was actually done.

Agreed.

8. All County permit fees paid were later refunded by Board of Supervisors agenda item 11-1161 without explanation.

Agreed.

9. The El Dorado County Grading Ordinance may put undue burden on simple maintenance of rural roads when strict adherence to the Ordinance is practiced.

The Grading Ordinance allows maintenance of roads without a permit, and as such does not constitute an undue burden. Section 15.14.140.J of the Grading Ordinance exempts from the Grading Permit process: "Maintenance of existing firebreaks and roads to keep the firebreak or road substantially in its original condition." A permit was required in the Boulder Bump Road area because the building inspector visited the site determined that the road was being improved and not simply being maintained "substantially in its original condition." In addition, two culverts were being added to the road, which is not exempt from the Grading Ordinance.

Grand Jury Report Case Number GJ-13 –17

County Actions Create Flooding, County No Help with Repair

Overview: *Property owners in the Granada Heights subdivision have reported instances of flooding, which they state is because of property alterations caused by neighboring property owners. In one case, a retaining wall permit (168046) was issued on September 19, 2005 and finalized in August 2007. Previously a home was built under permit 103403 (issued in 1998, finalized in 1999). Sometime after those permits, one or more property owners filled in a drainage ditch, without a permit, and Transportation sent a letter to a property owner on February 12, 2007. Records indicate the portion of the ditch adjacent to the retaining wall was filled with a concrete walkway prior to construction of the retaining wall and it was not permitted. Transportation Division sent a letter to a law firm representing the property owner stating that Transportation will not remove a Notice of Noncompliance regarding the filling of a ditch shown on the “As-Built” drawings of the subdivision. The Grand Jury reports that there was apparently some litigation between the residents, but we have no evidence other than that reported by the Grand Jury.*

The extent and severity to which flooding occurs is unknown. “Flooding” is a somewhat subjective term. Under the National Flood Insurance Program, homes are constructed at or above the 100-year flood elevation, which is the elevation that flooding will theoretically reach once every 100 years. Streets are typically designed to flood in a relatively small rain event (a 10-year event is a common standard). They are designed to fill with water, or “flood”, during a more intense rain event. Front and backyards may be designed to “flood”, or pond with water in more frequent events (provided the house itself is protected from the 100-year flood). County staff is not aware that any structures have been flooded as a result of property alterations, but there appears to be yard flooding in some events.

In any event, County actions did not create flooding; private alterations subsequent to the creation of the subdivision and construction of improvements did. Typically in drainage law, when one private property owner alters minor drainage features and causes another property to be impacted, it creates a civil matter between the owners. The type and severity of flooding is a factor; however, it is not the responsibility of the local government to remedy the problem; it is a dispute to be resolved by the property owners.

In terms of enforcement, the County has authority to protect the public health and safety but has prosecutorial discretion when implementing code enforcement actions. These authorities were created to abate significant hazards to public health and safety. They were not and are not intended to require the County to abate any and all situations where the actions of one property owner impact another property. The County simply does not have the funding or staff to engage in the types of minor drainage issues that are discussed here. In this instance, it was determined to be primarily a civil matter that should be resolved by other means.

FINDINGS

- 1. The complainants’ properties are flooded from runoff when there is substantial rain; causing erosion on their properties.**

Community Development Agency staff is aware of reports of flooding at the complainants’ properties.

- 2. The internal and external drainage analysis of the Granada Heights revised subdivision was flawed. The County should not have approved this revised subdivision.**

The flooding issue described by the complainants' has resulted from property alterations (speed bump constructed in roadway, blocked drainage swales) that have occurred after the initial construction of the development. As such, they do not represent flawed internal or external drainage analysis of the subdivision improvements, but problems that were created later. The subdivision improvements that were constructed as approved adequately conveyed drainage.

- 3. Deficiencies in County record keeping prevented County staff from locating the drainage plan for Granada Heights. Staff relied on an as built subdivision plan showing a drainage swale that, in fact, did not exist, leading to a claim against the wrong property owner. That property owner was forced to hire an attorney to defend against the mistaken claim.**

The County relies on the subdivision as-built plans as the only true evidence of the subdivision original construction. The original drainage plan would have been incorporated into the subdivision construction, inspected, and reflected into the as-built drawings. It is not uncommon for private property owners to make alterations to their property (such as filling/moving drainage swales). Such actions are not normally known by County staff.

- 4. The County illegally permitted the installation of a retaining wall and alteration of a drainage swale without requiring the analysis and plans required by its own regulations.**

The installation of a retaining wall was completed under proper building permit (168046) including supporting documentation from registered professional engineer Ronald S. Illium, AEI Engineering, Folsom, consistent with the Building Code and Grading Ordinance. Alteration of the drainage swale was not permitted.

- 5. The County has admitted that the velocity of the water in the altered drainage swale and improper sizing of a pipe in an EID easement have contributed to the drainage, flooding, and erosion problems.**

The previous County response for this finding stated that the finding is not supported by any documentation in the Grand Jury report or in the County files, which is technically accurate. While this is true, one staff member stated that he told the Grand Jury that the velocity would increase (since concrete swales will have faster velocity than rock-lined swales with the same slope). It also seems likely that the downstream pipe is not sized adequately to pass the flow from the upstream swale. However, the County doesn't have adequate information to definitively determine the impact of either the swale or the pipe.

- 6. The County has the authority to remediate the harm done to the complainants and others similarly affected. The El Dorado County FINAL Revised Grading Ordinance, 2-5-07, Section 15.14.410, Corrective work, subsection A., Abatement of unlawfully created conditions allows the director to**

...order County workers or contractors to immediately enter private property to conduct work necessary to abate hazards to public health and safety such as: a. The alteration of drainage

patterns that has caused, or has the potential to cause, flooding of or siltation upon any downstream property...

It further states

- 2 Cost recovery:** Whenever the County expends any funds or takes any action, the County shall bill the landowner, lessee or licensee for the costs indicated herein. Pursuant to the requirements of Government Code Section 54988, the costs shall become a lien on the property, or shall be recoverable from the property owner by other legal means.

The County has authority to protect the public health and safety but has prosecutorial discretion when implementing code enforcement actions. These authorities were created to abate significant hazards to public health and safety. They were not and are not intended to require the County to abate any and all situations where the actions of one property owner impact another property. The County simply does not have the funding or staff to engage in the types of minor drainage issues that are discussed here. In this instance, it was determined to be primarily a civil matter that should be resolved by other means.

Grand Jury Report Case Number GJ-13/14-18

El Dorado County Enforcement of Grading, Erosion and Sediment Control Ordinance

Overview: *The Grand Jury draws the conclusion that El Dorado County does not enforce its Grading Ordinance. This conclusion is based on a few isolated instances where the Grand Jury believes that the County did not take adequate actions to enforce the ordinance. Staff believes that the Grading Ordinance was properly enforced by the County in these cases, though in hindsight on Case Number GJ-13-16, harsher enforcement actions might have been warranted. The Grand Jury apparently believes that the County should intervene in all grading issues, including disputes between neighbors. This is neither practical nor appropriate. The County enforces the ordinance 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...” various plans and ordinances. It is not the intent of the Grading Ordinance to be used to resolve private property disputes between neighbors. When disputes arise between neighbors regarding grading issues, the County should insure that appropriate permits have been obtained and inspected; however, prosecutorial discretion is allowed in enforcing these issues. The County simply does not have the staff or resources to pursue every minor issue and must therefore prioritize enforcement to the more significant issues, particularly when other avenues are available to resolve the disputes.*

FINDINGS

- 1. When grading work is done in El Dorado County and no permit is obtained and no permit fee paid, and the county is made aware of the work being done before the work is complete, the county will issue a stop work order.**

Agreed, although a stop work order is not always issued. In some cases a letter is issued stating the need for a permit. In other cases the County can issue a citation, send a Notice to Correct, and/or record a Notice of Violation. The County Code Enforcement regulations are contained in Section 9.02 of the County Code.

- 2. When work improperly continues after issuance of a stop work order or if work is completed before a stop work order is issued, no enforcement action is taken.**

Enforcement can be engaged through a range of options other than the stop work order, depending on circumstances, such as public health and safety. Section 9.02.05 of the County Code allows options for code enforcement: “Nothing in this chapter shall be interpreted to preclude an enforcement authority from informally encouraging citizens to comply with the El Dorado County Code or other applicable laws. Informal oral or written requests to encourage compliance are encouraged, as are attempts to informally negotiate or mediate issues relating to compliance.”

- 3. Only payment of a permit fee triggers inspection of grading work performed.**

Payment of permit fees is the primary trigger for permit review, issuance, inspection, and finalizing. However, complaints generated by the public on potential unpermitted grading can also trigger an inspection.

4. Grading work performed where no permit fee is paid is not inspected.

In general this is true. However, complaints generated by the public will trigger an inspection.

5. El Dorado County does not enforce its Grading, Erosion and Sediment Control Ordinance.

The Grand Jury report findings were based on “three specific complaints” dating from 2011. To generalize that the County does not enforce its Grading Ordinance because of three instances ignores all the enforcement that occurs on a regular basis. In two of the three instances cited by the Grand Jury, staff correctly enforced the Grading Ordinance. In Case Number GJ-13-16, “Toxic Pollution Spread by Illegal Grading on Diamond Dorado”, enforcement action did occur; in hindsight, the County could have escalated enforcement using authorities that had previously not be utilized. This was a judgment call.

The Grand Jury apparently believes that County government should mitigate every minor grading issue that comes to its attention. That view just isn’t practical, nor is it the intent of the Grading Ordinance. Some grading issues should be resolved as civil matters, not by imposing County staff in the situation to resolve them. Where true public safety issues or significant public nuisances are created, the Grading Ordinance enforcement procedures are utilized.

6. The County’s failure to enforce its Grading, Erosion and Sediment Control Ordinance encourages illegal grading to the detriment of other property owners and residents.

This not substantiated by the report or findings. There is a significant number of grading permits issued by the County every year. There is little evidence the County does not enforce the Grading Ordinance, that there is a causal relationship to unpermitted grading, or of significant detrimental impacts to property owners or residents. The County Code Enforcement procedures (outlined in Section 9.02 of the County Code) include a response to all complaints of unpermitted grading and building activity. Enforcement of identified unpermitted activity is prioritized based on health and safety issues and other considerations. The Department Director has prosecutorial discretion to determine the appropriate response to Ordinance Code violations based on factors such as fairness, staffing levels, history of violations, public health and safety, and the seriousness of the violation.

Grand Jury Report Case Number GJ-13-16

Toxic Pollution Spread by Illegal Grading on Diamond Dorado

Overview: *The Grand Jury finds that the County did not enforce the Grading Ordinance and that the law was not enforced. While staff disagree with this assessment, it is true that other avenues were available to address the issue that were not utilized, and perhaps given the significance of the issue they should have been. In this case, the California Department of Fish and Wildlife (CDFW) were initially notified of the issue and took the lead in enforcement. El Dorado County partnered in this effort but CDFW is a higher level government agency and County staff relied on their expertise and authorities in this instance. Both CDFW and the County Transportation Division issued stop work orders on the property. However, the property owner performed grading despite not obtaining a grading permit, and he ignored the stop work orders. CDFW filed a violation case with the El Dorado District Attorney. The Transportation Division relied on the District Attorney's enforcement; ultimately the District Attorney chose not to pursue the case.*

In retrospect, the County had other options available to it. The County could have either performed remedial work itself or hired a contractor to perform it. This option is rarely used as it requires considerable staff resources.

Staff has recently determined that another option is available: the imposition of administrative penalties. This option had not been used by El Dorado County at the time and therefore wasn't considered. However, the current Community Development Agency director has experience utilizing administrative penalties for code enforcement actions in another County and believes it could have helped in this case. Administrative penalties should only be used for egregious problems where property owners refuse to follow County ordinances. These penalties are effective in obtaining compliance, but should be used with discretion. County Code Enforcement has recently begun using this option in certain enforcement cases and will, when appropriate, use administrative penalties in the future.

FINDINGS

- 1. The unpermitted grading spread toxic limestone waste over the site causing dangerously high levels of pH in surrounding tributaries.**

Agreed.

- 2. Toxic limestone waste continues to flow into adjacent waterways. Nobody is doing anything to stop it. Not the owner, not the County and not the State.**

Staff cannot say that toxic limestone waste does or does not continue to flow into adjacent waterways. Staff does not have direct evidence that it is occurring; however, this may be due to the lack of significant rainfall the past few years. The Division has issued a Stop Work Notice which is in effect until such time as the property owner obtains a grading permit and completes the approved work.

3. **The property along with several adjacent parcels have become the site of two important County projects: Diamond Dorado parkway and Diamond Dorado Retail Center.**

The Diamond Springs Parkway is a County project; the Diamond Dorado Retail Center is a private project.

4. **El Dorado County has executed and recorded two CONSENT TO MAKING OF IRREVOCABLE OFFER OF DEDICATION, where it appears the owner have offered part of the property to the County without charge for rights-of-way for a portion of the Parkway. The offer can be accepted by the County until 5/25/2025.**

Agreed.

5. **The County did not enforce the Grading Ordinance, Title 15.14 of the County Code. It is the law. The law was not enforced.**

The Transportation Division followed the actions prescribed in the Grading Ordinance and forwarded the complaint to the appropriate agency for follow up and enforcement. In retrospect, more aggressive actions could have been taken by the County. Refer to the Overview section for more detailed information.

6. **It would be completely irresponsible of the County to allow the Diamond Dorado Parkway project to proceed without ensuring that all environmental issues and mitigations have been resolved.**

Agreed.

7. **Section 15.14.410 of the Grading Ordinance is an extremely valuable tool to enforce proper grading of property. It should be used.**

Agreed.

8. **It is somewhat disquieting that enforcement compliance can be predicated by payment of fines and fees by the offending party, particularly when environmental concerns are paramount.**

Agreed. Staff intends to more aggressively utilize the tools available to them in the future when appropriate. The level of enforcement remains a judgment call based on the specific facts associated with each incident.