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ADMINISTRATIVE HEARING
C #202530
ASSESSORS PARCEL #093-200-05

ADMINISTRATIVE ORDER

Owner: Linda J. Olmstead
813 Harbor Boulevard #208
West Sacramento, California 95691

Hearing Date: December 9, 2011

The hearing in this matter was scheduled for December 9, 2011 at 9 a.m. at the El Dorado County Planning Commission meeting room. The hearing began at 9:10. The property owner, Linda Olmstead ("Owner"), was present. Jim Wassner of El Dorado County Code Enforcement ("Code Enforcement") was present on behalf of the County. Witnesses Leedy D'Agostini and Ginger Murphy testified on behalf of the Owner.

After considering the testimony from the Owner and Code Enforcement and the other witnesses and accepting into evidence the County's Exhibits, the Hearing Officer issued a verbal tentative ruling upholding the Owner's appeal and gave the parties five days to submit supplemental briefs concerning the issues.

This is to advise the parties that the Hearing Officer has upheld the Owner's appeal and has issued this Administrative Order and made findings and determinations as follows.

Exhibits

The County offered into evidence its Exhibit 1, comprised of the documentary history of this case, a copy of El Dorado County Code § 17.14.060, and several Zoning Ordinance Interpretations issued by the El Dorado County Planning Department ("Planning") dealing with keeping domestic fowl in residential zone districts, rights to construct a stable and keep horses and other animals in various zoning districts, use of a stable in a residential zone, and the boarding of horses. County's Exhibit 2 was a December 7, 2011 complaint letter from Michael T. Nalewaja. All Exhibits were entered into evidence without objection. The Owner offered no exhibits.

Testimony

Jim Wassner stated the background of the case. On July 13, 2011, Code Enforcement received a complaint about chickens being kept on a .62 acre parcel of property located at 2040 Old Outingdale Road, Somerset. A follow-up letter dated December 7, 2011 from the complaining neighbor, Michael Nalewaja, detailed his objections to the chickens. His letter stated that Ms. Olmstead kept so many chickens that the smell in the neighborhood was overwhelming and the crowing of the roosters at all hours kept him awake at night. He expressed concern about the decrease in his property's value in proximity to the noise and smell, and he was worried about possible health risks due to overcrowding of the chickens, which he estimated to number more than sixty-five. He also pointed out that the chickens were a commercial venture and he included a photo of an egg carton labeled "Olmstead Homestead Eggs" with a local telephone number.

On July 13, 2011, Code Enforcement issued a Courtesy Notice to the Owner notifying her of the complaint and asking to schedule a site visit. On August 4, 2011 an inspection was made by Code Enforcement in the presence of the Owner. The Owner had not received the preliminary Courtesy Notice due to an incorrect mailing address having been used by the County. The Owner stated to Code Enforcement that she kept about fifty pet chickens on the property. On August 8, 2011, Code Enforcement sent the Owner a Notice to Correct for the zoning violation of keeping poultry on a parcel smaller than one acre.

On November 1, 2011 Code Enforcement made another site visit, seeing numerous roosters, hens, ducks and a goose on the property. Code Enforcement issued an Administrative Citation, posted a copy at the gate to the property and mailed a copy to the Owner on November 2. On November 28, having received no response to the Administrative Citation, Code Enforcement sent a notice to the Owner for a hearing scheduled for December 9. The Owner is appealing the Administrative Citation.

As evidence supporting the zoning violation, Code Enforcement offered El Dorado County Ordinance 17.14.060 regulating stables and horses on real property and several Zoning Ordinance Interpretations issued by Planning, which interpret the prohibition against keeping horses on property of less than one acre, to apply to all farm animals.

The Owner testified that she bought her property in May 2011 with the express purpose of having property where she could keep her flock of pet chickens. Her offer to buy the property was contingent upon there being no restrictions against chickens.

Real estate agent Ginger Murphy and broker Leedy D'Agostini, of World-Keller & D'Agostini, Inc., both testified on behalf of the Owner. They were aware of the Owner's requirement that chickens be allowed on the property. They researched the question, reviewing the El Dorado County Code, contacting various County agencies and

checking surrounding uses. They noted that the property was zoned RE-5, which allows farms animals by right and they testified that other neighbors in the area also raised chickens. Nowhere in the public record did they find any restriction on poultry on this property.

The Owner objected to Code Enforcement's allegation that the stable/horse zoning ordinance applied to her, since she was keeping chickens rather than a horse. She asserted her right to keep the chickens on her property zoned RE-5.

Findings and Determinations

There was no factual dispute in this matter. The Owner admitted that she keeps approximately fifty chickens on the property, as well as some ducks and a goose. Code Enforcement alleged that such use violates Ordinance 17.14.060 regulating the location of stables and horses, as well as the El Dorado County Planning Department's several interpretations of that ordinance and other policies regulating the keeping of animals and, in particular, poultry, in various zoning districts.

Ordinance 17.14.060 provides as follows:

Stables. Stables shall be located at least thirty feet from any building used for residential purposes on the same or adjoining building site, in any district, and at least twenty-five feet from any property line. No horse shall be kept on a building site of less than one acre in any district.

The Hearing Officer finds that the unambiguous intent of Ordinance 17.14.060 is to regulate horses and stables. The Hearing Officer acknowledges Planning's interpretations of this ordinance as applying to all farm animals. However, although El Dorado County could have regulated all farm animals under this section, it limited this section to horses. Standard rules of statutory interpretation, including the doctrine of "*Expressio unius est exclusion alteriu*" (the express mention of one thing excludes all others) preclude interpreting the ordinance in such a way that the word "horse" means all farm animals, particularly since the term "farm animals" is used throughout the code. Since the term "farm animals" is used elsewhere in the code, it could have easily been used in Ordinance 17.14.060 as well, if that was the true intent.

The public, including the two real estate professionals who testified at the hearing, have the right to rely upon the plain wording of El Dorado County's published zoning ordinances.

Accordingly, the Hearing Officer finds that the Owner's use of the property does not violate Ordinance 17.14.060, which regulates the location of a stable on a parcel of property in El Dorado County and the keeping of a horse on a parcel of less than one acre in any zoning district. Although the subject property is a parcel approximately .62

acres in size, which precludes the keeping of a horse on the property, the Owner in this case is keeping chickens.

The subject property is zoned by the County as RE-5, Estate Residential Five-Acre. Although this zoning district is for five-acre parcels, the County allowed the property to be subdivided sometime in the past, creating the present parcel of less than one acre. Such a subdivision in and of itself does not change the underlying zoning. The Hearing Officer finds that, although the parcel is less than one acre, its legal zoning designation remains RE-5, as evidenced by the Planning Department Property Information on Assessor's Parcel Number 093-200-05, included in Exhibit 1 herein.

Certain uses are permitted by right in particular zoning districts within El Dorado County. Ordinance 17.28.190 regulating the RE-5 zone district provides as follows:

The following uses are allowed by right, without special use permit or variance:

E. Raising and grazing of domestic farm animals and the cultivation of tree and field crops and the sale of such goods when produced on the premises and when in conformity with Chapters 17.14, 17.16 and 17.18.

On a parcel that is zoned RE-5, the raising of poultry, which may be categorized as a domestic farm animal, is allowed by right, as is the sale of their eggs.

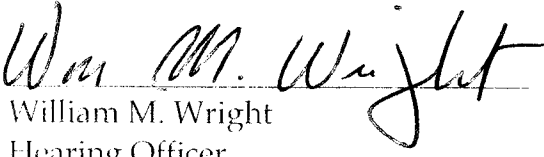
Pursuant to the above findings, the Hearing Officer determines that the Owner's raising of poultry upon the subject property is consistent with the zoning designation RE-5.

It is beyond the purview of the Hearing Officer at this hearing to make a determination on whether the Owner's activities constitute a nuisance, a health hazard or a violation of any other El Dorado County ordinances or licensing regulations. Because the Citation was issued for a violation of zoning and this hearing was held solely to determine if the Owner's activities violated the zoning ordinance, no detailed testimony was offered or taken relating to the issue of a nuisance or other possible violations. However, at the close of the hearing, the Hearing Officer advised the Owner that, had a citation been issued for the existence of a nuisance, her keeping of more than fifty fowl, including roosters, on a parcel less than one acre in size might well be found to constitute a nuisance and she would be well advised to reduce the number of poultry on her property in order to avoid such a charge in the future.

Administrative Orders

Under the authority of El Dorado County Ordinance Section 9.02.440(b), the Hearing Officer imposes the following administrative orders in this matter.

1. The Hearing Officer hereby rescinds the Administrative Citation issued on November 1, 2011.
2. The refundable \$200 hearing fee and the \$100 administrative citation fee shall be refunded to Owner, as required by El Dorado County Code Section 9.02.380(b).
3. The County shall be responsible for serving a copy of this order on the Owner in accordance with the Code.
4. **NOTICE OF THE RIGHT TO APPEAL:** An appeal of the decision of the Hearing Officer may be brought before the El Dorado County Board of Supervisors as provided by Ordinance 9.02.470, which is set forth below.


William M. Wright
Hearing Officer

December 15, 2011

**SEE BELOW FOR ADDITIONAL COUNTY ORDINANCES REGARDING
ADMINISTRATIVE ORDERS**

9.02.470 Administrative and judicial review.

- (a) Within 30 calendar days from service of an administrative order or other decision by the hearing officer, any party may appeal the determination of the hearing officer to the Board. The Board shall there after set the matter for hearing at the next regular meeting of the Board. Except as otherwise provided by specific Code provisions the Board shall apply the provisions of this Chapter. The Board may consider any other non-cumulative and relevant evidence at the hearing.
- (b) Within 30 calendar days from service of an order or other decision of the Board any party may appeal to the Superior Court.
- (c) Any party failing to timely file an appeal to the Board or the Superior Court shall be deemed to have waived any and all objections to the administrative hearing officers or the Board's decision. Any review of the matter conducted in court shall be de novo. (Ord. 4706, 10-24-2006)

09.02.440 Administrative order; compliance with administrative order.

- (a) The decision of the hearing officer shall be entitled "administrative order."
- (b) Once all evidence and testimony are completed, the hearing officer shall issue an administrative order, which affirms, modifies or rejects the enforcement official's action. The administrative order may affirm, modify or reject the daily rate or duration of the administrative fines depending upon review of the evidence and may increase or decrease the total amount of administrative fines assessed.
- (c) The hearing officer may issue an administrative order that requires the responsible person to cease violating the Code and to make necessary corrections, repairs, or to complete any other reasonable act requested by the enforcement official, which may be modified by the hearing officer, to bring the property into compliance with the Code. The hearing officer shall include a specific time frame to complete the requested act.
- (d) As part of the administrative order, the hearing officer may establish specific deadlines for the payment of administrative fines, fees and costs and may condition the total or partial assessment of administrative fines on the responsible person's ability to complete compliance by specific deadlines.
- (e) The hearing officer may issue an administrative order which imposes additional administrative fines as set forth in this Chapter that will continue to be assessed for each day the violation continues until the responsible person complies with the hearing officer's decision and corrects the violation.
- (f) The hearing officer may schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the administrative order.
- (g) The administrative order shall become final on the date of service of the order.

(h) The administrative order shall be served on all parties by any one of the methods listed in this Chapter.

9.02.090 Recovery of administrative fees; purpose.

The Board finds there is a need to recover the cost of abatement incurred by the County in its code enforcement efforts. Administrative fees include time spent by County personnel in the investigation, inspection, recording of notices, title search, and any other processing costs associated with the violation(s) specified on the administrative citation.

9.02.100 Notification of assessment of administrative fees.

- (a) Where the assessment of an administrative fee is authorized under this chapter, the enforcement official shall provide the responsible person with a written notice assessing the fee. The written assessment shall be served in accordance with section 09.02.120 of this ordinance and shall contain the following information:
- (1) The amount of fee charged;
 - (2) The case number;
 - (3) A deadline by which the administrative fee must be paid
- (b) An administrative fee may be assessed as part of any administrative enforcement action as provided for in this chapter and is in addition to any fine imposed.
- (c) An administrative fee collected pursuant to this chapter shall not be duplicated in any other action to recover these identical fees.
- (d) The failure of any responsible person to receive notice of the administrative fees shall not affect the validity of any fees imposed under this chapter.

9.02.110 Collection of administrative fines or fees.

Fines or fees incurred in connection with code enforcement activities may be recovered through the billing process. Those fees billed shall be paid within 30 days after the date of billing. Any fees not paid within such 30 day period shall be subject to a late fee in the amount of ten percent (10%) of the established fee. The total fee plus late fee as described herein shall accrue interest at the rate of one percent (1%) per month for each month the fees remain unpaid. Any fee which remains unpaid 90 days after the due date shall be referred to the El Dorado County Treasurer for collection purposes and will be subject to additional fees to cover the cost of collection.