

BECKER RUNKLE & LAURIE

ATTORNEYS AT LAW

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

2008 FEB 12 AM 10:13

COPY SENT TO BOARD MEMBERS  
FOR THEIR INFORMATION

DATE

2-12-08

*file planning Dept.*  
FAX (530) 295-6408

ROBERT A. LAURIE

February 10, 2008

Mr. Louis B. Green  
County Counsel  
County of El Dorado  
360 Fair Lane  
Placerville, CA 95667

Re: S07-0011/PD 95-0016R (Kniesel); Request for Rehearing; Request for Findings

Dear Mr. Green:

On January 29, 2008, the Board of Supervisors heard the appeal on the above-referenced project. The action of the Board was to grant the appeal and deny the application. On behalf of my clients, Richard Kniesel and the Kniesel Family, I hereby request that findings be adopted by the Board and that a rehearing be ordered.

**Findings.** During the course of the hearing on the project, the Board specifically stated that findings were not necessary since this was a legislative action. Accordingly, the Board did not make findings. It is respectfully submitted that the action taken by the Board without the adoption of findings was in error and accordingly, the Board did not proceed in a manner required by law (See Neighborhood Action Group for the Fifth District v. County of Calaveras (2004) 156 CA3d 1176,1186, citing Essick v. City of Los Angeles (1950) 34 Cal.2d 614, 623). It is understood that findings need not necessarily be presented in a formalized form however they must be sufficient to expose the decision-maker's analysis and evidence and to "...facilitate orderly analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusions" (Topanga Ass'n for a Scenic Community v. County of Los Angeles (1974) 11 Cal 3d 506,516). The County Ordinances recognize the obligation to make findings in instances such as that which is under discussion. Section 2.09.110 requires the County decision

to set forth, " The findings of fact with sufficient particularity to make possible an intelligent review by the court and to apprise the parties of the basis for the action taken". I do not believe we need await the preparation of the transcript of the hearing to agree that the Board made no such findings nor were Board Member comments made during the course of the hearing sufficient to provide the analysis required by law. Once findings are made, of course the next phase of analysis will need to consider whether such findings are supported by the evidence.

**Rehearing.** It is respectfully submitted that my clients were denied a fair hearing before the Board of Supervisors and a rehearing is not only justified but required by state law and local ordinances.

County Ordinance Section 2.09.070 states,

" All hearings shall be full and fair in a substantial sense, so that all necessary parties shall be afforded ample opportunity to make a showing fairly adequate to establish the propriety or impropriety, from a standard of justice and law, of the action proposed to be taken, giving the parties an opportunity to present in a deliberate, regular and orderly manner issues of law and fact".

According to the standard set forth above, it is respectfully alleged that the hearing held by the Board of Supervisors fails the fairness test. The Kniesel application for a Special Use Permit and revision to the existing Planned Development was heard by the Planning Commission over a course of two days. After the first day of hearings, the Commission directed that revisions to the site plan be made to respond to questions which had been raised relating to the storage of vehicles behind enclosures. The site plan was revised and was then approved following a second hearing at which the Commission adopted conditions for the project and made legally requisite findings. The record of the proceedings of the Commission was forwarded to the Board. It is not clear whether the Board incorporated the Commission proceedings into the Board record or even considered the action of the Commission.

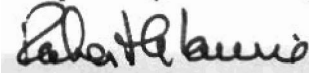
The hearing before the Board is to be "de novo" which simply means to start anew. Thus, the matter should have been presented as a fresh application. Instead, Planning staff took five minutes to present the project and the Planning Commission action, the appellant then took ten minutes to explain the basis for the appeal and the applicants were likewise given ten minutes, by Board direction, to respond to the appellant's comments, much of which time was taken up by staff responding to questions from the Board. Thus, although the Commission spent roughly four hours hearing evidence on this matter, the

Board, in a "de novo" hearing, took twenty minutes. It was very clear from the questions being asked by the Board, the answers to which lay in the record, that more deliberative time was required for the Board to consider the record and to seek clarification from the parties. In addition, it became clear during the hearing that certain written evidence was submitted to the Board by the appellant which the applicants have never seen and thus have never had the opportunity to respond to. The Board was required to receive the evidence and mark such as evidence. To my knowledge, this was not done. The Board's failure to properly treat new evidence and to allow sufficient opportunity to argue the case violated the Board's own procedures (Ordinance Sections 2.09.070(C)(1) and 2.09.080(F)).

Importantly, it must be additionally noted that on matters of appeal to the Board, it is the appellant that has the burden of proof (See County Ordinance Section 2.09.080). This means, simply stated, that the appellant must do more than just match the evidence submitted by the applicant, he must overcome it. The Kniesel application and accompanying documentation is complete; it is solid, it was sufficient to provide good, adequate findings by the Planning Commission. The appellant not only failed to overcome the evidence in the record offered by the applicant, the appellant never provided any evidence to refute such. The Board's decision would not withstand a challenge based upon the current record.

**Conclusion.** In light of the above, it is respectfully requested that the Board grant a rehearing for the above-referenced project and that legally requisite findings be made in regards thereto.

Respectfully submitted,



ROBERT A. LAURIE

cc: Board of Supervisors