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7 **Administrative Hearing Officer**

8 **BEFORE THE ADMINISTRATIVE HEARING OFFICER**
9 **FOR THE COUNTY OF EL DORADO**

10 **EL DORADO COUNTY CODE**
11 **ENFORCEMENT DIVISION,**

Case No.: CE20-0198
APN No. : 071-051-56-100

12 **Petitioner,**

ADMINISTRATIVE ORDER

13 **vs.**

14 **ALL ABOUT EQUINE, INC.,**

15 **Respondent.**

16 **INTRODUCTION**

17 The above matter came on for hearing before the Administrative Hearing Officer under
18 Chapter 9.02 of the El Dorado County Code on March 10, 2021. The hearing was
19 conducted in a video conference format with all parties connecting via zoom. Thomas
20 Swett, attorney for the owner of the property, All About Equine Inc., was present.
21 Wendy Digiorno, the CEO of All About Equine was present. Roger Runkle with the El
22 Dorado County Counsel's Office appeared representing the Code Enforcement Division
23 of the County Planning Department. Rob Peters, Deputy Director of Planning in the
24 Planning and Building Department of the County and Jeff Weiler, Code Enforcement
25 Supervisor, were present on behalf of the Department. Alexander Brooks served as the
26 clerk for the proceeding.

1
2 The clerk read a statement about the zoom hearing and noted that the hearing was being
3 recorded. The Hearing Officer briefly described the nature of the hearing and noted that
4 the documents previously submitted in email correspondence would not be considered
5 as evidence in the hearing unless formally submitted at the hearing.
6

7
8 Mr. Swett and Mr. Runkle previously discussed this matter and recommended the
9 parties each submit a brief since the issue is largely a matter of construing the County
10 Code. Exhibits 1-10 submitted by the Department (“Petitioner” herein) were admitted
11 without objection with the original Exhibit 7 submitted in Petitioner’s Exhibit Binder
12 being replaced with a complete copy of Section 130.30.090 of the County Code. The
13 brief dated March 10, 2021 with Exhibits A-F submitted by All About Equine Inc.
14 (“Respondent” herein) was admitted without objection. Exhibit F, the Site Map which
15 was not attached to the original brief, was added without objection. The parties
16 established a briefing schedule and the matter was continued off calendar pending
17 receipt of the briefs. Petitioner submitted its brief on March 26, 2021 and Respondent
18 submitted its brief on April 2, 2021. Both parties subsequently agreed via email to
19 consider the matter submitted upon the above evidence and argument.
20

21
22 **FINDINGS OF FACT**

23
24 The facts in this matter are largely undisputed. As noted in Respondent’s Brief dated
25 March 10, 2021, Respondent is a nonprofit organization that rescues and raises horses
26 and engages in the grazing of livestock including horses and cattle. Respondent is the
27 owner of a 62 acre parcel in Pilot Hill, El Dorado County. The parcel was created by
28 the parcel map recorded on October 31, 2011 in Book 50 of Parcel Maps at Page 128
29 (the “Parcel Map”), as shown on Exhibit A. The Parcel Map created three additional
30 parcels of approximately 58, 125, and 202 acres each. The Parcel Map created an access
31 easement across Respondent’s property for the benefit of the parcels in the map. The

1 easement is designated on the Parcel Map as a “50.00’ WIDE ROAD & PUBLIC
2 UTILITIES EASEMENT” and the parties have accepted this description of the
3 easement and have not submitted any additional information or evidence describing the
4 easement.¹ In its current state, the Road is an unimproved dirt road as depicted in the
5 photographs contained in Exhibit 6.
6

7
8 In early 2020 Respondent completed perimeter fencing of its parcel, including the
9 installation of gates across the Road. There was also a preexisting gate at the southerly
10 end of the Road installed at some time prior to the creation of the Parcel Map.
11

12 On May 1, 2020, the Code Enforcement Unit of the County Planning and Building
13 Department issued a Notice to Correct to Respondent ordering Respondent to remove
14 the gates as set forth in Exhibit 4. Respondent filed a timely appeal requesting an
15 administrative hearing and requesting a Certificate of Compliance as noted in Exhibits 5
16 and 8. On May 20, 2020 Code Enforcement sent out a notice stating that due to
17 unavoidable circumstances, hearings on the matter have been postponed as noted in
18 Exhibit 9.
19

20
21 **STATEMENT OF ISSUE**
22

23 The issue framed by the parties is whether Section 130.30.090 of the El Dorado County
24 Code requires Respondent to obtain an administrative permit in order to install or
25 maintain gates along the Road.² There was no assertion by either party that Section
26 130.30.090 is invalid or preempted by or in conflict with any State law.
27

28 **DISCUSSION**
29

30 ¹ This easement shall be referred to as “the Road” herein.

31 ² It is appropriate to note that this decision does not involve the rights of neighboring property owners or the
easement rights of the dominant tenements. This Administrative Order only addresses the limited issue addressed
by the parties, which is whether or not Section 130.30.090 of the Code requires the owner to obtain an
administrative permit prior to the installation of the gates on the subject road easement.

1
2 Section 130.30.090 of the County Code, provides in part as follows:
3

4 Sec. 130.30.090 - Gates. The placement of gates across county-maintained rights-of-
5 way shall be prohibited. The following regulations establish a supplemental review and
6 approval procedure for placing gates across non-county maintained roads or private
7 driveways entering residential and nonresidential development. The regulations in this
8 section do not apply to gates serving agricultural uses.

9 A. Single- and Multi-unit Residential Development. Single- and multi-unit
10 residential dwellings located on one lot are allowed to construct gates across driveways
11 providing the gates are located a minimum of 20 feet from the edge of pavement, will
12 not swing into a county right-of-way or non-county maintained road or alley, are
13 constructed consistent with applicable fire and building codes, and are in compliance
14 with Subsections D.2 to D.5 (Design Standards for Gated Developments), inclusive, and
15 D.9 ("Anti-directional" devices...) below in this Section.

16 B. Nonresidential Development. An Administrative Permit is required, in
17 compliance with Section 130.52.010 (Administrative Permit, Relief, or Waiver) in
18 Article 5 (Planning Permit Processing) of this Title, to establish gates at nonresidential
19 driveway entrances that will prohibit free access/egress to and from the site by either
20 remaining closed during business hours, such as with manned or automatic toll booths,
21 or when being used to prevent public access after close of business. In addition to
22 requirements under Section 130.52.010 (Administrative Permit, Relief, or Waiver), the
23 permit shall be in compliance with Subsections D.1 to D.5 (Design Standards for Gates
24 Developments), inclusive, and D.9 ("Anti-directional" devices at gated entrances...) below
25 in this Section.

26 C. Residential Subdivisions. An Administrative Permit shall be required to establish
27 gates across non-county maintained road(s) within a residential subdivision consisting
28 of two or more lots, including condominium developments. An Administrative Permit
29 to establish gates shall not be approved unless the Director finds all of the following:

- 30 1. The gate will not impede public access to a public resource, such as a public park,
31 or interfere with existing or planned traffic circulation patterns; and
2. The project conforms to the standards of Subsection D (Design Standards for
Gates Developments) below in this Section. (Emphasis added.)

Respondent initially argues that the Road is not a public road covered under Section
130.30.090. While it is clear that the Road is not a county-maintained right of way, the
ordinance also broadly covers non-county maintained roads and driveways. The
ordinance does not require the road or easement to be dedicated for a public use. The

1 ordinance regulates non-county maintained roads and private driveways entering
2 residential and nonresidential development. The Road falls within the definition of a
3 road included in the glossary of definitions in the El Dorado County Zoning Code, as
4 noted in Title 130, Article 8 as follows:

5
6 Roads. As used in this Title, roads shall be categorized as follows:

7 Easement. A grant by the property owner of the use of his/her property to another person,
8 the general public, or an entity such as a homeowner's association for transit, access, or
9 egress purposes where legal title to the underlying land is retained by the property owner
10 for all other purposes.

11 Right-of-Way. A strip of land acquired by fee title or easement that is occupied or
12 intended to be occupied by certain transportation and/or public use facilities, such as
13 roadways, walkways, trails, railroads, and/or utility lines, whether or not the entire area is
14 actually used for such purpose(s).

15 Subsection C of Section 130.30.090 states that "... [A]n Administrative Permit shall be
16 required to establish gates across non-county maintained road(s) within a residential
17 subdivision consisting of two or more lots, including condominium developments." Subsection
18 C of Section 130.30.090 essentially equates the term 'residential development' used in the
19 beginning of the ordinance to the term 'residential subdivision'. The Road enters into a
20 residential subdivision of two or more lots since the parcel map created four lots, as
21 noted above. The parcel map qualifies as a subdivision under Government Code
22 Section 66424. Residential uses are authorized on the parcels created under the Parcel
23 Map. As such, we conclude that the Road qualifies as a 'non-county maintained road or
24 private driveway entering residential or nonresidential development under Section
25 130.30.090. The question then becomes whether the provision in Section 130.30.090
26 that "[T]he regulations in this section do not apply to gates serving agricultural uses"
27 exempts the subject parcel from the regulations in the ordinance.

28
29 No evidence was submitted as to any legislative history or other evidence to help
30 construe Section 130.30.090. While it is clear that the agricultural exemption would
31 exclude gates serving solely agricultural uses from the permitting process, the question

1 is whether the agricultural exemption applies when the road is used to access a
2 residential subdivision if an owner along the road is engaged in agricultural pursuits. Is
3 an owner of property burdened with a non-county maintained road used to access a
4 residential subdivision exempt from applying for a permit to install a gate on the road if
5 the owner's property is used for agricultural purposes? A review of the permitting
6 requirements and the apparent purpose of the requirements is helpful in answering this
7 question.
8

9
10 Subsection C of the ordinance restricts the issuance of administrative permits for a gate
11 across the Road if the gate will interfere with public access to a public resource or
12 interfere with established traffic patterns. It also requires compliance with certain safety
13 requirements, design and width standards as well as the installation of an emergency
14 lock system on the gate that allows access by fire and emergency vehicles as set forth in
15 Subsection D.³
16

17 Although the ordinance is subject to multiple interpretations, the Hearing Officer
18 concludes that the agricultural exemption cannot be construed in a manner that ignores
19 the purpose of the ordinance of protecting the health and safety of County residents
20 through requirements imposed under the permitting process for gates leading to
21 residential lots and subdivisions. A contrary ruling could result in multiple gates being
22 installed by multiple owners along a single road leading to multiple residential
23 subdivisions without the health and safety gate design standards sought to be imposed
24 by the County if the owners claim the gates are necessary for their agricultural pursuits.
25 A single goat herder could install a gate on a road that would restrict or delay fire and
26 emergency vehicle access into multiple subdivisions. There is no indication that
27 agricultural uses cannot still be pursued by Respondent without the gates, although
28 some additional fencing might be required to keep the animals from entering the Road.
29 Agricultural gates can be installed without obtaining permits in the different pasture
30
31

³See Exhibit 7 for a full recitation of the ordinance, including Subsection D.

1 areas to control access in and out of the pastures on either side of the Road by
2 Respondents. However, Respondents cannot install gates over the Road that leads to
3 other subdivided parcels without complying with the permitting requirements under
4 Subsection C of the ordinance. On balance, it seems reasonable to conclude that in
5 crafting the ordinance the County did not intend to subordinate the health and safety
6 gate design permitting requirements for roads leading to residential subdivisions to the
7 agricultural exemption.
8

9
10 The Respondent raises the additional defense in its reply brief that the installation of the
11 southerly gate on the property predates the creation of the easement and is an existing
12 nonconforming use that should be allowed to remain. However, the use for this
13 property was altered when it was subdivided into four parcels and the Road was created
14 on the Parcel Map to serve the other lots in the subdivision. Thus, it is questionable
15 whether the nonconforming use doctrine would apply to this situation. This issue was
16 not identified as an issue when the briefing schedule was set and it is not entirely clear
17 whether this gate is even included as one of the two gates described in the Notice to
18 Correct. Therefore although the hearing officer declines to find that the gate is an
19 existing nonconforming use, the Hearing Officer acknowledges that under the code this
20 is an issue that should first be determined by the County and that there may be facts not
21 raised herein that establish this as a nonconforming use under the Code. Accordingly,
22 the Hearing Officer declines to address this issue at this time. Either party may request
23 a review hearing under Section 9.02.440 (F) of the County Code if necessary to further
24 address this issue.
25

26 27 **SUMMARY AND CONCLUSION**

28
29 The Petitioner has the burden of proof in this matter. The Hearing Officer finds that the
30 Petitioner met its burden of proof in this matter and established by a preponderance of
31 the evidence that a permit is required under Section 130.30.030 in order to install or

1 maintain a gate on the Road created under the above mentioned Parcel Map. The
2 Hearing Officer is mindful that additional fencing may be required in order to provide a
3 safe environment upon removal of the gates to insure that the animals do not wonder
4 onto the road or Highway 49 from the property. Accordingly, instead of imposing a
5 deadline for compliance as suggested under Section 9.02.440(C), the Hearing Officer
6 directs the owner and the County to reach a mutually agreed upon time frame for
7 compliance. Either party may request a review hearing under Section 9.02.440 (F) of
8 the County Code if necessary to further address this issue.
9

10
11 The Petitioner is directed and ordered to provide service of this order to the appropriate
12 parties as required under Section 9.02.120 of the Code.

13
14 **REVIEW OF DECISION**
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16 Sec. 9.02.470 of the County Code provides the following procedures for the appeal and
17 review of this decision:
18

19 Section 9.02.470 - Administrative and judicial review.

20 A. Within 30 calendar days from service of an administrative order or other decision
21 by the Hearing Officer, any party may appeal the determination of the Hearing Officer
22 to the Board in accordance with the provisions under Chapter 2.09 et seq. The Board
23 shall thereafter set the matter for hearing at the next regular meeting of the Board.
24 Except as otherwise provided by specific Code provisions, the Board shall apply the
25 provisions of this chapter. The Board may consider any other non-cumulative and
26 relevant evidence at the hearing.
27

28 B. Within 20 calendar days from service of an order or other decision of the Board,
29 any party may appeal to the superior court.
30
31

1 C. Any party failing to timely file an appeal to the Board or the superior court shall be
2 deemed to have waived any and all objections to the administrative Hearing Officers or
3 the Board's decision. Any review of the matter conducted in court shall be de novo.
4

5
6 DATED: April 9, 2021

Wm. M. Wright

WILLIAM M. WRIGHT

HEARING OFFICER