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File Number: DR 04-0019-X

Receipt No.: 27672

Date Received: 2-15-2012

Amount: \$200.00

APPEAL FORM

(For more information, see Section 17.22.220 of the Zoning Ordinance)

Appeals must be submitted to the Planning Department with appropriate appeal fee. Please see fee schedule or contact the Planning Department for appeal fee information.

APPELLANT Charles and Patricia Sutton

ADDRESS 4240 Monte Verde Drive, El Dorado Hills, CA 95762

DAYTIME TELEPHONE _____

A letter from the Appellant authorizing the Agent to act in his/her behalf must be submitted with this appeal.

AGENT Richard Floch

ADDRESS 512 Finders Way, El Dorado Hills, CA 95762

DAYTIME TELEPHONE 916-765-7502

APPEAL BEING MADE TO: Board of Supervisors Planning Commission

ACTION BEING APPEALED (Please specify the action being appealed, i.e., approval of an application, denial of an application, conditions of approval, etc., and specific reasons for appeal. If appealing conditions of approval, please attach copy of conditions and specify appeal.)

Approval of DR 04-0019 R-2 and adoption of Negative Declaration. See attached letters.

PLANNING DEPARTMENT
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DATE OF ACTION BEING APPEALED February 6, 2012

Signature ROO Flh

Date FEB 14, 2012

RECEIVED
PLANNING DEPARTMENT

February 15, 2012

El Dorado County Planning Commission
2850 Fairlane Court
Placerville, CA 95667

Re: Appeal of Approval of DR 04-0019 R-2 (Montano de El Dorado) and Negative Declaration

Chairman Pratt and Members of the Planning Commission:

This appeal of the above staff approval of DR 04-0019 R-2 (Montano de El Dorado) and adoption of Negative Declaration is filed on behalf of Charles and Patricia Sutton 4240 Monte Verde Drive, El Dorado Hills, California 95762 relative to their property and the adjacent development project of Montano de El Dorado. The Sutton agency authorization is attached.

On February 2, 2012 the undersigned raised objections to the proposed Negative Declaration and pending approval of the above project in a letter to the Planning Director (attached) citing a number of errors and violations of County Code and the California Environmental Quality Act related to this application. Despite the facts cited in the letter, the Planning Staff without comment or response, approved the application and adopted the proposed Negative Declaration unmodified, which approval is hereby appealed in accordance with §17.74.115C of the El Dorado County Code.

This approval is the third phase of staff approval of a project which taken as whole includes the development of the entire commercial site at Montano de El Dorado. The County files indicate a further expansion is to be filed in the near future for a Marriott Hotel.¹ The current expansion of the project involves a major expansion of the Montano de El Dorado commercial center to the east and proposes a structural wall in excess of 20 feet in height retaining a large fill immediately adjacent to the rear property lines of 7 or more residences on Monte Verde Drive, and a bank with drive-thru lane, a parking lot "expansion" which includes filling of a pre-existing drainage detention basin with a large underground detention vault², trash enclosure, lighting and other appurtenant facilities—all of which are proposed immediately adjacent to the residences on the top of the elevated fill which towers over the rear lots and residences. As cited in my letter of February 2, 2012, the staff has failed to follow the requirements of Chapter 17.74 (Design Review) and of the CEQA Guidelines by failing to process the project in a comprehensive fashion, allowing the retaining wall to be constructed and fill to be placed

¹ In fact, the County has already approved signalization of an entrance intersection because it is required for the hotel construction per the submittals of Mr. Vinal Perkins, the agent for the developer Arrowest Properties, Inc.

² In correspondence from Mr. Perkins, he has indicated that the cost of the engineered underground detention vault cost more than \$350,000 and is substantial structure in itself.

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without benefit of this (or any) Design Review approval and failing to prepare a proper environmental document.

Discussion:

Although a full site plan, landscape plan and elevations were filed together with an application for a grading permit (Permit 202670, issued September 9, 2011), the staff failed to enforce §17.74.040 which requires Design Review for all structures within a community design district. Although staff later justified this by saying that a 20' high retaining wall with engineered footings is not a structure³, this is incorrect. The zoning ordinance contains no definition of a "structure" but the California Building Code, adopted by the County, defines a structure as anything man-made or constructed. Certainly by any reasonable definition, a wall as high as a two story building with fill over twenty feet deep containing a large underground drainage detention vault are significant structures.

Less than a month after Permit 202670 was issued and before the wall and fill was constructed, the current application for Design Review was filed with the County. For the second time, the staff failed to deal comprehensively with the application, in violation of County Code and CEQA, by allowing construction to proceed on one aspect of the project—the one having the greatest potential for environmental impact.

On February 6, 2012 the staff adopted a Negative Declaration and approved DR 04-0019 R-2 despite evidence submitted in my letter of February 2 based upon personal observation of the site and a detailed review of the County planning/building files that the Initial Study was flawed and potential environmental impacts existed which required preparation of an EIR under CEQA. Furthermore, it had photographs and other evidence in its files that the construction of the retaining wall and fill which had already occurred⁴ was not even consistent with the exhibits which were being approved in the Design Review application in regard to the location of the retaining wall and elimination of the landscape planter shown at the easterly property line at the base of the wall.

In the entire record of DR 04-0019 from the approval of the initial phase of construction in 2006 to the present, the project has occurred without any comprehensive and cumulative environmental analysis or the meaningful opportunity of public hearings in which the public could be informed of the project and its impacts upon the neighborhood. The site planning that has occurred has been without regard for its effect upon the adjacent neighborhood, the impact which this massed development causes, and without any real attempt at mitigation or

³ Personal communication with Roger Trout, Planning Director on Feb 9, 2012.

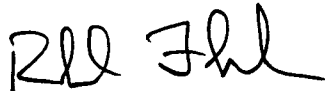
⁴ The actual wall constructed differs from the wall which was originally proposed described in this Design Review application. Its design, and material have been changed and the of the 10 foot landscaping planter which was cited in the Initial Study as a mitigation measure intended to buffer the wall from the residences has been eliminated.

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consideration of alternatives. Contrary with the intent of the County Ordinance to deal with Design Review in a comprehensive fashion and contrary to the statutory requirements of CEQA, the project has been allowed in a piecemeal fashion involving a series of procedural and judgmental errors by staff. This has effectively frustrated the public's ability to knowledgeably participate in the planning process as required by both state and local law.

It is requested that the Planning Commission set aside the staff approval of DR 04-0019 R-2 and require the preparation of an EIR. It is further requested that the staff make available the files for DR 04-0019, DR 04-0019 R-2 and Grading Permit 202670 for the appeal hearing.

Respectfully Submitted,



Richard Floch
Richard Floch & Associates

Cc: Mr. William Neasham, Law Offices of Neasham & Kramer, LLP
Mr. and Mrs. Charles and Patricia Sutton

Attachment: Letter of February 2, 2012 to Roger Trout objecting to the approval of DR 04-0019 R-2 and adoption of a Negative Declaration

FILED 15 FEB 1:07

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PLANNING DEPARTMENT

February 2, 2012

Mr. Roger Trout, Development Services Director
El Dorado County Planning Department
2850 Fairlane Court
Placerville, CA 95667

Re: DR 04-0019 R-2 (Montano de El Dorado), Proposed Negative Declaration

Dear Mr. Trout,

This comment letter has been prepared by the undersigned who has been retained to provide analysis and land development opinions on behalf of Charles and Patricia Sutton, 4240 Monte Verde Drive, El Dorado Hills, California 95762 relative to their property and the adjacent development project of Montano de El Dorado Hills. On behalf of Mr. And Mrs. Sutton, the following comments and objections are submitted in response to your circulation of the Initial Study and Proposed Negative Declaration for the above project and notice of Intent to adopt a Negative Declaration dated January 6, 2012.

The above revision to DR 04-0019 involves a proposed bank building as a new building "E" in the Montano commercial center, located at the easterly side of APN 118-010-012 immediately adjacent to a number of existing single family residences in the Cresleigh Subdivision. It involves the construction of a proposed bank, drive-through service, parking and circulation improvements, drainage and appurtenant facilities all constructed on a large fill exceeding 20 feet in height, retained by a large, steep retaining wall at the easterly property line adjacent to the rear lots of the abutting homes. This fill and retaining wall was permitted under Building Permit 202670, issued by the County of El Dorado on September 9, 2011 and signed off by the Planning Department on September 8, 2011. The wall, as originally proposed, was to be constructed of a material identified as "Versalok" which would create a solid, nearly vertical retaining wall of up to 20 feet in height. A landscape plan was included among the exhibits that showed a 10 foot planter at the toe of the wall to be landscaped with fern pine, creeping fig and prostrate Rosemary. This landscape plan was subsequently submitted as an application exhibit to DR 04-0019 R-2.

The Building Permit clearance by the Planning Department included a full site plan, elevations, and landscape plans for the ultimate development of the bank and related facilities which are identical to the subsequently filed exhibits filed as DR 04-0019 R-2 and the subject of this pending environmental determination. However each sheet of the Permit bears individual stamps of approval by the Planning Department dated September 8, 2011 with the initials "TRD" and a hand-written note reading "**Final Planning Inspection Required. The applicant shall be responsible for the timely scheduling of this*

*inspection.**” It is unclear what such inspection might consist of since the improvements proposed required approval of the site plan, elevations, landscape plan and other exhibits under the County’s Design Review process which had not been performed.

Having full knowledge of the ultimate purpose for the major fill and grading proposed, as evidenced by the building permit plans themselves, Building Permit 202670 was issued in violation of the fact that the zoning ordinance required a major modification of DR 04-0019 and environmental documentation under CEQA. It is evidenced by the plans themselves that the totality of the project proposed under Building Permit 202670 constituted a Project under CEQA despite the fact that the building permit request might otherwise be considered ministerial. The issuance of Building Permit 202670 on September 9, 2011 was in violation of Section 15268 (4) (d) of the CEQA Guidelines, which clearly states:

(d) Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the requirements of CEQA.

Subsequent to the issuance of Permit 202670, the applicant filed a building permit plan change that was approved on September 21, 2011 by the Building Department, substituting a different wall material called “Criblock” which forms an open interlocking block wall slightly less vertical than the original material. As a result of this change, the 10 foot planter was eliminated and the toe of the wall is shown at the property line next to the adjacent residences without any landscaping whatsoever.

On October 4, 2011 the applicant, Arrowest Properties, Inc. filed an application for a major modification to DR 04-0019 as required by the County Ordinance. At this point, the County compounded its error in issuing Building Permit 202670 by not suspending site work under that permit that required approval and environmental compliance under the pending Design Review application, even though such work had not been initiated until after the Design Review application had been filed.¹ Work on the retaining wall, grading and fill was allowed to proceed using the “Criblock” material during the subsequent months leading up to the circulation of the proposed Negative Declaration and continues at present in complete disregard of the fact that potentially significant impacts from the retaining wall are expressly discussed in the County’s Initial Study and proposed environmental document for which comments are now requested². Work proceeds to this day without benefit of an approved Design Review. This frustrates the

¹ Significant work on the retaining wall and placement of fill was not undertaken until approximately October 26, 2011. A Building Department Inspection Note in the file for Permit 202670 bearing that date reads: “Retaining walls started without required footing inspections.”

² See discussion of Potentially Significant Impacts below.

ability of the public to effectively participate in the environmental process as required by CEQA.

Initial Study and Proposed Negative Declaration

As discussed below, the Initial Study circulated for DR 04-0019 R-2 is flawed and the proposed Negative Declaration is not based upon substantial evidence that the project has no potentially significant adverse environmental effects as required by CEQA. Instead, an EIR should be prepared analyzing the following potential impacts, proposing mitigation and with alternatives discussed.

Aesthetic Impacts:

On page 7 of the Initial Study (IS) the staff discusses the visual character of the project and setting, and erroneously concludes that "The approximately 17 foot concrete block wall will resultant of that grading would be buffered with planting of vines inside the hollow portions of the blocks, and trees planted at the base of the wall would provide additional buffering of the wall from views from the existing residences." Clearly the Planning staff considers the wall to be a part of the project and subject to the Design Review and environmental analysis yet it has sections as high as 20 feet and as constructed has no landscape planter area at its base. Using this flawed analysis and without examining other potential visual impacts, the IS concludes that impacts are less than significant.

The wall itself is as high or higher than the roofs of the adjacent two story residences creating a narrow, dark corridor of the residential rear yards. The westerly view from those residences is obliterated by the dominant presence of this wall which is completely out of scale with the surrounding residential community and whose massing casts the rear yards and west face of the homes in shadow. Solar access to the west face of residences and the yards is severely impacted preventing passive solar heating and denying cooling prevailing breezes in the summer. Outdoor residential spaces and yards will be subject to micro-climate changes affecting the variety and viability of landscape plants and gardens. Solar access, natural cooling and gardening are all aspects of sustainable design which bear on energy conservation and the reduction of greenhouse gas emissions under CEQA.

The analysis of Aesthetic Impacts also discusses Light and Glare from the project in a flawed and insufficient manner by stating that "...the project would allow new lighting. These impacts would not be expected to be any more than typical commercial facility lighting... Use of pole lighting, security lighting and spot lighting for buildings would be required to meet the County lighting ordinance and must be shielded to avoid potential glare affecting day or nighttime views for those that live or travel though the area." In fact, the project proposes parking, commercial parking lot lighting, and the Drive-through for the bank at the top of the wall. Due to the elevated location of building pads with respect to the residential community, the project design is anything but typical and down-

shielding will be entirely ineffective at preventing light and glare from occurring at both ground floor rooms and second floor bedrooms of the residences as well as rear yards.

In terms of community scale, structural massing, restricted solar access, microclimate changes, light and glare, loss of privacy and impaired views, the project will have significant adverse environmental effects that require preparation of an EIR.

Air Quality:

Page 8 of the IS provides a discussion of AQMD rules in effect for construction related air quality effects and a generalized discussion of cumulative effects but makes no effort to consider localized air quality effects of the project as proposed. The project includes a drive-through lane circulating around the proposed bank at to top of the wall. Idling vehicles stacked in this lane for bank services may occur creating talipipe emissions directly above the abutting residences. In addition, a commercial trash enclosure serving the bank and other businesses is sited immediately adjacent to the top of the wall in the parking lot. This could provide a potentially significant source of odors perceptible to adjacent residences.

In terms of potential localized adverse air quality effects and odors, the IS has no factual basis to conclude that the project will have no potentially significant adverse environmental effects.

Land Use:

On page 19, the IS states "As proposed and conditioned, the project would be as compatible with the surrounding commercial residential (*sic*) land uses as expected for a parcel designated by the General Plan for commercial uses." In fact, the entire Montano site is unique in that it is developed on an elevated and highly graded site dominating its surroundings. Rather than exporting material and developing the site at a similar grade to its surroundings, the developer has chosen to reduce costs of grading and enhance the visibility of his commercial project by building on commercial pads 20 feet above adjacent grades. DR 04-0019 (R-2) proposes to bring this massed development right to the edge of the adjacent residential community to the detriment of that community. The IS provides no analysis of the impact of this design upon neighborhood scale and no basis for concluding that the project is compatible with surrounding land uses and has no potentially significant effect upon those uses.

Noise:

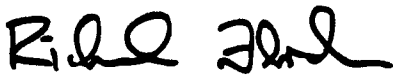
Page 20 et seq. provides a generalized discussion of county noise standards and short-term construction based noise. It makes no attempt to identify actual potential noise sources present in the proposed uses and design. In fact, at least two exist that have potentially adverse effects upon adjacent residences.

One is the bank drive-through window which will undoubtedly include a loudspeaker communication system for customers in vehicles. The other is the location of the

commercial trash enclosure which is sited immediately adjacent to the residential properties at the top of the wall. Placing trash in dumpsters and periodic collection trucks will create noise. In both cases these potential noise sources are in an elevated location closest to the most sensitive residential areas, the second story bedroom windows of the adjacent homes. The IS makes no attempt to consider these potentially significant impacts nor propose mitigation.

In summary, the Initial Study and proposed Negative Declaration fails to adequately consider potentially significant adverse effects of the project and should not be adopted. The County should require that an EIR be prepared as required under CEQA that analyses the above potential impacts and others that may be raised. Mitigation and alternatives to be considered should include designs that remove the retaining wall and large fill that was improperly permitted under Building Permit 202670 and that are clearly a part of the proposed project subject to approval of a major modification of DR 04-0019 and proper environmental analysis under CEQA.

Respectfully Submitted,



Richard Floch
Richard Floch & Associates

The matters discussed and the opinions expressed herein are those of Richard Floch, Richard Floch & Associates, based upon personal review of the site in question and the El Dorado County Planning and Building files for the project and his background and experience as a professional planner in the State of California since 1975. Mr. Floch's experience includes Community Development Director, El Dorado County from 1984 to 1987, Community Services Director for Yuba County from 1982 to 1984, consultant for the preparation of the Valley View Specific Plan in El Dorado Hills, and consultant to a number of private property owners in El Dorado County and surrounding counties within the Sacramento Metropolitan Area and northern California from 1989 to the present.

Cc: Mr. Tom Dougherty, Associate Planner
Mr. John R. Knight, Chairman of the El Dorado County Board of Supervisors
Mr. Ray Nutting, Member of the El Dorado County Board of Supervisors
Mr. Jack Sweeney, Member of the El Dorado County Board of Supervisors
Mr. Ron Briggs, Member of the El Dorado County Board of Supervisors
Ms. Norma Santiago, Member of the El Dorado County Board of Supervisors
Mr. William Neasham, Law Offices of Neasham & Kramer, LLP
Mr. and Mrs. Charles and Patricia Sutton