

ADDITIONAL INFORMATION:
COUNTY FILE #DP08-3051

NOVEMBER 10, 2009

- APPELLANT'S REQUEST FOR A CONTINUANCE
- NOTICING CONCERN EXPRESSED BY THE APPELLANT'S ATTORNEY
- BLACKHAWK HOA RESPONSE
- RECENTLY RECEIVED SAVE MT. DIABLO COMMENTS REGARDING SINGH APPEAL, DATED NOVEMBER 9, 2009
- CLERK OF THE BOARD SIGNED AFFIDAVIT OF NOTICING

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Daniel Muller
<DAM@msrlegal.com>
11/09/2009 02:04 PM

To "Catherine Kutsuris (Catherine.Kutsuris@dcd.cccounty.us)"
<Catherine.Kutsuris@dcd.cccounty.us>,
"francisco.avila@dcd.cccounty.us"
cc "sweil@berding-weil.com" <sweil@berding-weil.com>,
"Richard L. Beckman (rbeckman@bmdllp.com)"
<rbeckman@bmdllp.com>, "Mary N. Piepho"
bcc

Subject FW: Contra Costa County Board of Supervisors Tuesday,
November 10, 2009 Meeting

Mr. Avila and Ms. Kutsuris:

I wanted to correct a factual mistake in the attached letter I sent earlier today, regarding the Board hearing tomorrow on the Singhs' appeal. Specifically, my statement regarding when the Singhs received the County's Staff Report is incorrect. Instead of receiving it "two or three weeks ago...", they first saw it only two or three days ago - i.e., last Friday, November 6th. The County apparently sent it to an attorney (Mr. Richard Beckman) who had previously helped the Singhs' in this matter. Mr. Beckman received it last Thursday, but was court most of that day. He forwarded it to the Singhs at his earliest opportunity last Friday morning, after which they initiated contact with me. Thus, the Singhs have only had one or two business days to review and try to react to the Staff Report. Under these short timelines, it seems that asking for a continuance is the only plausible thing for the Singhs to do, as it's virtually impossible to seek to analyze and address the merits of these issues.

Thank you,
Dan

Daniel A. Muller | Miller Starr Regalia

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From: Michelle Johnson
Sent: Monday, November 09, 2009 11:46 AM
To: 'Sandy Singh (sandy@tekforcecorp.com)'; 'catherine.kutsuris@dcd.cccounty.us';
'sweil@berding-weil.com'
Cc: Daniel Muller
Subject: Contra Costa County Board of Supervisors Tuesday, November 10, 2009 Meeting

Dear All:

Please see the attached correspondence from Mr. Muller with respect to the above-referenced matter.

Please feel free to contact me should you require any additional assistance or information. Thank you.

Michelle L. Johnson | Miller Starr Regalia

Legal Assistant to George B. Speir, Ethan K. Friedman and Daniel A. Muller
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November 9, 2009

VIA FACSIMILE

Mr. Francisco Avila
Contra Costa County Department of Conservation & Development
651 Pine Street
4th Floor, North Wing
Martinez, CA 94553

**Re: Contra Costa County Board of Supervisors Meeting of
Tuesday, November 10, 2009
Agenda Item D.1 - Hearing on an Appeal Filed by Mr. and Mrs. Singh of
the SRVRPC's Denial of a Blackhawk FDP Modification Request for a
Deck at 101 Wild Oak Court (County File #DP08-3051)**

Dear Mr. Avila:

This letter is a follow-up to Mr. Singh's recent communications requesting a short continuance of the above-referenced Board hearing. The Singhs recently contacted our office for assistance in this matter. While we do not yet represent them - and I cannot attend the Board hearing tomorrow afternoon due to a conflicting deposition in Oakland - we remain hopeful that we may be able to assist them in this matter after reviewing the voluminous Staff Report dated October 21st, which we only received last Friday.

I have only briefly discussed this matter with the Singhs and have only been able to skim portions of the Staff Report. However, it strikes me that a short continuance is warranted under the circumstances as I understand them.

First, while this matter has been wending its way through the process somewhat slowly and I have heard the Blackhawk HOA (and perhaps the County) wants this matter resolved now, it is admittedly difficult for lay people to fully understand the complex issues and jargon sometimes contained in staff reports involving land use matters. Here, the Singhs received the fairly lengthy Staff Report only two or three weeks ago, do not currently have land use counsel, and have had insufficient time to review the Staff Report and retain counsel. The complex issues seem to warrant thoughtful review, which cannot be conducted prior to tomorrow's Board meeting. I tend to believe the involvement of land use counsel on behalf of the Singhs could facilitate resolution of this unfortunate matter, which involves several concerned parties besides the County. My preliminary sense is that the Singhs appreciate the gravity of this situation - both for them and the other parties - and are reasonably motivated to discuss ways to resolve this matter as amicably as possible.

Second, although the "intent" of the landowners is but one factor, I strongly sense the events leading up to the Singhs' construction of the deck were fairly unusual, and moreover that the Singhs were not intending to do anything illegal or impermissible. I think at time of purchase, the pre-existing wrought iron fence around the backyard enclosed the entire area where the deck was built. I think the Singhs reasonably believed everything enclosed by the fence was part of their own residential lot, owned in fee title. It is unclear if they were given sufficient information (or were misinformed) about the existence of the easement or open space limitations.

Third, it appears the deck construction was done pursuant to a County-issued permit and the HOA's approval. While the Staff Report suggests the deck was not built in conformity with the application materials - or there were other "irregularities" contaminating the permitting - the facts on such points warrant further analysis and clarification, which only can be conducted under a continuance of the hearing.

In sum, the facts I've briefly reviewed demonstrate this was not one of the more troubling situations where a landowner purposefully decided to "game the system" by "asking forgiveness, rather than permission". The Singhs sought to obtain the requisite permission in advance, and did not know the HOA or County would later contend the deck was not allowed. They also sought to rectify things in a responsible manner as soon as problems surfaced.

Finally, while the deck is not insubstantial, it does not necessarily follow that the best solution is its destruction and removal. Building it cost many tens of thousands of dollars, and my understanding is that - in other cases where improvements were built into the adjoining open spaces - the encroached-upon areas have been purchased by the adjacent owner and incorporated into the lot by recording "boundary adjustments" or "lot line adjustments". While I suspect the HOA and County may not want to set a precedent of allowing such intrusions into open spaces, it seems some intrusions have been handled without requiring a Blackhawk FDP modification. Whether such a modification is truly necessary - as compared to what's been done in the past - warrants further analysis and discussion between the parties. This is true especially given that the Singhs bought the property with a fence enclosing the space in question, and were not trying to "sneak one by" anyone in building the deck within their fence.

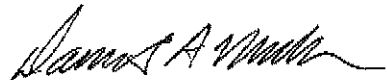
In conclusion, the above merely offers various initial thoughts providing support for a continuance, and is intended to respectfully reiterate the Singhs' prior requests to allow them (and their anticipated counsel) reasonable time to analyze the issues and afford the parties a short period to work toward resolution. From my preliminary review, it seems at least some of the "equities" weigh in favor of granting a short postponement prior to any final County decision.

Francisco Avila
November 9, 2009
Page 3

Thank you for your anticipated courtesy, and please feel free to contact me with any questions or comments regarding the above.

Very truly yours,

MILLER STARR REGALIA



Daniel Muller

cc: Mr. and Mrs. Singh
Mary Piepho (County Supervisor, District III)
Catherine Kutsuris (Director, Department of Conservation & Development)
Steve Weil (Berding & Weil)

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"Richard L. Beckman"
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11/09/2009 04:42 PM

To <dist3@bos.cccounty.us>, <DAM@msrlegal.com>, <francisco.avila@dcd.cccounty.us>, <Catherine.Kutsuris@dcd.cccounty.us>
cc "Steve Weil" <sweil@berding-weil.com>
bcc

Subject Re: CCC Board of Supervisors Tuesday, Nov. 10, 2009 Meeting

TO Ms. Kutsuris and Mr. Avila:

Because of time and staff constraints, I may not have time to prepare a 'formal' application for the continuance request submitted by the Singh's anticipated new counsel Mr. Muller. However, I wanted to provide you both with a brief statement of the background of the Singhs' request that the hearing be continued from tomorrow to a date approximately 4-6 weeks in the future.

I received the Notice of Hearing Thursday, November 5. However, I was in court most of the day, and unable to forward the material or notice of heading to the Sighs until early Friday morning. According to Mr. Muller, the Singhs contacted him promptly upon learning of the new hearing, and Mr. Muller notified the DCD earlier today of that contact and his inability to appear at the hearing even to seek the continuance that he needs in order to evaluate the issues and the Singhs' prospects of a successful appeal.

It should be noted that, as Mr.Weil points out, this matter has been pending for many months after the Singhs filed their appeal of the Planning Commission's decision. They have been waiting to hear from the Board as to a hearing date, and anticipated they would receive sufficient advance notice that they would be able to prepare for the hearing. It is often counter-productive to prepare for a hearing when the date of the hearing is unknown, as that initial preparation often has to be repeated closer to the time of the hearing.

I have advised the Singhs that my areas of expertise include planned unit development issues (such as the one involving the homeowners' association's approval of the Singh deck application only to be followed by a subsequent about-face by the HOA) but do not include advancing an applicant's claim through the permit appeal process, as is the focus of this hearing. That is apparently Mr. Muller's expertise. Considering the consequences to the Signhs of an order to remove the deck, it seems reasonable to allow them the opportunity to present their best case, with counsel best suited for that effort.

Finally, the notice of hearing was mailed Nov. 4 for a November 10 hearing. According to County Code Title 1, Section 14-4.006

"The clerk of the board shall then promptly set the matter for hearing at an early regular board meeting, and shall give the appellant at least five days' written notice thereof." Assuming Code of Civil Procedure Section 1013 applies, the notice period is extended by five days when notice is mailed, leaving the hearing scheduled for tomorrow premature even without the appellant's request for continuance.

For all the above reasons, the Singhs request that the Board be asked to continue this matter to allow for new counsel to prepare a proper presentation of the appeal.

Thank you very much for your consideration of this matter.

Rich Beckman

Richard Beckman
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----- Original Message -----

From: Darcy R. Russell

To: Catherine.Kutsuris@dcd.cccounty.us ; francisco.avila@dcd.cccounty.us ; DAM@msrlegal.com ; rbeckman@bmdllp.com ; dist3@bos.cccounty.us

Cc: Steve Weil

Sent: Monday, November 09, 2009 3:29 PM

Subject: CCC Board of Supervisors Tuesday, Nov. 10, 2009 Meeting

Please see the attached from Steven Weil.

Darcy Russell

Secretary

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November 9, 2009

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Via Electronic Mail

Francisco Avila
Contra Costa County Department of Conservation & Development
651 Pine Street
4th Floor, North Wing
Martinez, CA 94553

Re: Board of Supervisors Meeting - November 10, 2009
Agenda Item D.1 (Singh Appeal)
Objection to request for continuance

Our Client: Blackhawk Homeowners Association

Dear Mr. Avila:

The Blackhawk Homeowners Association ("Association") just received notice of the request by Mr. and Mrs. Singh, to continue the hearing on their appeal now scheduled to be heard tomorrow, November 10, 2009. For the reasons below, the Association opposes the request and urges instead that this long-pending matter be finally resolved.

Brief Background

On October 22, 2008 and again on December 3, 2008, the San Ramon Valley Regional Planning Commission ("SRVRPC") heard the applicants' request to permit them to retain a large deck constructed outside their boundary lines and on designated open space within the Blackhawk subdivision. The SRVRPC denied the permit and refused to waive the scenic easement type limitations on land use contained in the applicable Final Development Plan and 1998 amendment to that plan. Applicants filed a timely appeal.

Basis for Continuance and Opposition

1. The complex issues and jargon in the staff report and lack of land use counsel

Applicants' (as yet un-retained) attorney contends the report is complex, was just received and that the Singhs "do not currently have land use counsel" and so need additional time to prepare.

Response: The staff report contains no new information; the issues raised in the staff report were raised last October and December. The report confirms that "the appeal points are similar to the ones presented to the San Ramon Valley Regional Planning Commission and offer little new information" (Page 7). The staff report recommendations are based on the same considerations as was the original staff report submitted to the SRVPC (attached as #1) and upon which it rejected the permit (by Resolution 20-2009, enclosed with the staff report). Despite the passage of almost eleven months, there has been no new information for consideration by the applicants with respect to this appeal.

The applicants have been represented by experienced counsel Richard Beckman at least since March 21, 2008 when Mr. Beckman first contacted Association. Mr. Beckman is a name partner in his law firm whose practice emphasis real estate law, including land use type issues. A copy of the first page of the firm's website illustrating its practice is attached as #2.

2. Land use counsel could facilitate resolution

Applicants' attorney says the Singhs "appreciate the gravity of the situation" and are motivated to discuss ways to resolve the matter amicably and with a new land use attorney could do so.

Response: The "gravity of the situation" became obvious last December when the SRVPC rejected the Singhs' permit; in response, they did not seek a new permit to reduce the size and location of their deck. On the contrary, in January 2009 they submitted to Association two applications for the deck which were denied because they failed to comply with set back standard and the ban on construction of improvements in the easement areas (areas subject to County control) (attached as #3). The Singhs have been amply motivated to comply with County (and Association) standards but failed to do so.

3. No knowledge of easement/common area limitations

It is claimed the Singhs' were unaware of the existence of construction limitations on the easement or open space areas.

Response: The Singhs claim a lack of knowledge about boundaries, construction and permitting requirements and the actions undertaken on their behalf by their contractor (re the permit process). This lack of knowledge constitutes no basis for a continuance and in any event property owners should be held to know about limitation on the use of their property. The "ignorance of the requirements" argument was raised previously and is not new.

4. The deck was approved by the County

It is claimed that more investigation, further analysis and clarification is required to determine whether or not the County's approval of the permit was flawed.

Response: What further investigation might be needed, or how long it might take, is not stated. Further, the issue was fleshed out previously as evident in information submitted by the Singhs to the SRVPC after its first but before its second hearings (attached as #4). Their contractor testified at the second hearing as to his dealings with the County staff and issuance of the permits.

5. The deck was approved by the Association

The Singhs claim the deck was approved by the Association as part of its normal architectural control process.

Response: The deck that was installed was **not** approved. Association approved construction on a small rectangular deck based on a drawing that appeared to show that the deck was on the owners' property and which gave no indication that it was to be built on the easement or open space. In fact, as built, the deck was much larger than depicted, was a different shape (semi-circular) and was located outside boundary lines. Had the Singhs submitted an accurate application, it would have been denied (as were their applications submitted in January, 2008).

6. The Singhs' good faith

It is contended that the Singhs were not trying to "game the system" and then seek forgiveness and that solutions to resolution may exist that in more than 18 months, have not been identified and removal of the deck will be expensive.

Response: Applications submitted by the Singhs to the County and to the Association were both wrong in material ways. Some or all of the mistakes may have been intentional or simply careless. The deck exists and fails to conform to any applicable standard. The Singhs claim that in some ways they relied on their contractor to build the deck and perhaps he will bear the cost of removal or modification of the deck. In any event, this issue has been addressed in the staff materials and is no basis for a continuance.

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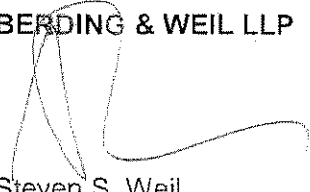
The Singhs could have addressed all these issues at anytime since the filing of their appeal. Staff has been looking into this for more than a year. No new basis for further delays have been provided. Additional delays are prejudicial to Association which has already waited months and spent thousands of dollars dealing with the owners' unauthorized construction.

The Association and the County are partners when it comes to regulation of common area open space and easements in the Blackhawk community. For many years now, the Association has refused to allow the exact type of incursions at issue here. Its efforts have been

compromised or at least rendered suspect by the continued presence of the deck.¹ Blackhawk opposes the appeal and the request for a continuance.

Very truly yours,

BERDING & WEIL LLP



Steven S. Weil
sweil@berding-weil.com

SSW:drr
Enclosures
cc: Client w/ enclosures

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¹ Save Mount Diablo's letter to you of November 6, 2009 (attached as #5) says in numbered paragraph 5 that "Apparently the Homeowners Association isn't policing its own land..." as one of the reasons the Board should reject the Singhs' appeal. In fact, the Association does "police" common area but the mistake is understandable given how long this deck has remained in place.

SAN RAMON VAL LEY REGIONAL PLANNING COMMISSION
WEDNESDAY, DECEMBER 3, 2008

I. SURINDER & VINITA SINGH (Applicant / Owners), COUNTY FILE #DP08-3051 - The applicant is requesting a Final Development Plan Modification approval to permit the construction of an 11ft. tall, 300 sq.ft. existing deck built within designated open space. The subject property is located at 101 Wild Oak Ct., in the Danville area of Contra Costa County. (Zoning, P-1) (General Plan, SL & PR) (Census Tract 3551.04) (APN #'s, 203-722-014 & 203-740-012).

II. RECOMMENDATION

Staff recommends that the San Ramon Valley Regional Planning Commission deny County File #DP08-3051, based on the fact the project does not meet the intent and purpose of the P-1, Zoning District, and General Plan designation of PR, Parks and Recreation.

III. OCTOBER 22, 2008, SRVRPC MEETING

- This project was originally heard at the Oct. 22, 2008 Public Hearing.
- The Commission took testimony from the following people:
 - Mr. Richard Beckman, Applicant's Representing Attorney,
 - Mr. Surinder Singh, Applicant,
 - Mrs. Cathy Wilson, who is a neighbor of the Singh's and opposed the deck. Mrs. Wilson's primary concerns were the size, lack of vegetative screening and the legality of building within areas designated as "open space".
 - Mrs. Andrea O'Toole, Representing Attorney for the Blackhawk Homeowners Association (Opposed the project). To supplement Mrs. O'Toole's testimony, the Blackhawk Homeowners Association has submitted a written statement dated November 17, 2008. The letter outlines the HOA's historical and current position regarding their granting of easements and Lot Line Adjustments within the Blackhawk Country Club. In short, the letter indicates "Since 2003, the Blackhawk Homeowners Association has received many requests for Lot Line Adjustments. None have been granted and doing so would be a major change of policy" (See Exhibit A1). To reaffirm staff's response, which was made during the public hearing, neither the County nor the Blackhawk Homeowners Association is supporting approval of these types of applications.

- At the request of the applicant, the Commission continued the Public Hearing to allow Mr. Matt Anderson & Mrs. Mindy Garrison (the applicant's contractors) an opportunity to testify. Mr. Anderson and Mrs. Garrison were present at the Public Hearing; however, both individuals had to leave to address a family related medical emergency.

IV. GRANT DEED OF DEVELOPMENT RIGHTS TO PARCEL 'C' OF SUBDIVISION 5443 – "OPEN SPACE"

During the Hearing, the Commission members discussed the current status of Development Rights to the subject Open Space area (Parcel C of Subdivision 5443). As staff mentioned during the Public Hearing, the Development Rights to this portion of Parcel C have been Grant Deeded to Contra Costa County by the Developer and was recorded on February 17, 1981 (See Exhibit B1). The Grant Deed relinquishes development rights to the County and defines "Development Rights" as: *"the right to approve or disapprove any proposed construction, development or improvement which would substantially and materially change the nature of the "current proposed use" of said real property"*. The Grant Deed goes on to provide examples of developments the County would have authority to approve or disapprove; which in part include, trails, landscaped areas, fencing, and walls.

IV. CONCLUSION

Staff recommends that the San Ramon Valley Regional Planning Commission deny County File #DP08-3051, as the project does not meet the intent and purpose of either the P-1 Zoning District or PR/SL General Plan designations in which it is located.



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2

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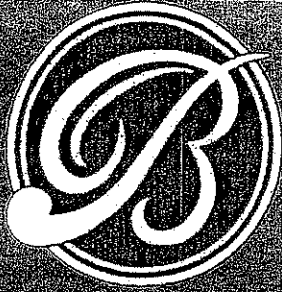
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Blackhawk Homeowners Association

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Community Services Director

February 18, 2009

Mr. and Mrs. Singh
101 Wild Oak Court
Danville, Ca. 94506

Dear Mr. and Mrs. Singh:

On January 9, 2009, you submitted an application to modify a deck which existed in the backyard of your property. Staff conducted a preliminary review of the application and the two drawings accompanying it and advised you that the drawings showed different shaped decks; that the deck location failed to meet the minimum 10 foot side set back and 15 foot back set back requirements; lacked details on the materials and dimensions of railings; failed to include clearly defined elevation of, or the size of the deck after the proposed modifications were completed; failed to include plans for lighting, landscaping and irrigation to buffer the deck from the views of others. You were advised by letter, that plans concerning railing, lighting, landscaping and irrigation could be deferred (to save expense) until after approval of your plan to modify the deck.

On January 27, 2009, you submitted a second application and depictions of the deck size and location to modify your deck.

On February 2, 2009, the Committee considered that application and based on Article X of the CC&Rs and the Architectural Standards and Guidelines of the Association, the application was denied.

Article X, Section 10.8 says that the Architectural Review Committee shall grant the requested approval only if:

- (a) "The owner shall have complied with the provisions of Section 10.1 and 10.6 below:"

Section 10.1 says:

"Submission of Plans and Specifications. No building, fence, wall, obstruction, balcony, screen, patio cover, tent, awning, carport cover, improvement or other structure of any kind or any landscaping shall be installed, commenced, erected, painted, or maintained within the Development, and no addition, change, or alteration of any exterior feature shall be made, until the plans and specifications showing the nature, kind, shape, color, height, size, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Review Committee as to quality of workmanship and design, harmony of external design and location in

#3

relation to surrounding structures, topography, and finished grade elevation. The foregoing shall not apply to improvements made or construction by or on behalf of the Association.”

The application did not comply with Section 10.1 in the following ways:

The application failed to show that the deck, as modified, would be within the required 10foot/15foot set backs required. The proposed materials, combination of glass and trex railings, are not consistent with materials used in surrounding structures. While trex is on occasion permitted, glass is not permitted because of its reflective quality. The location of the proposed deck, being exposed and capable of being viewed from a wide expanse, negatively enhances the reflective properties of the material proposed.

Section 10.6 says:

“Application. Any owner proposing to perform any work of any kind whatever, which requires prior approval pursuant to this Article X, shall apply for approval by notifying the association, in writing, of the nature of the proposed work and furnishing such information and documentation as the Committee or Board may require.”

The application did not comply with Section 10.6 in the following ways:

The application failed to specify what work was proposed and failed to provide the information requested by staff after submission of the first application and drawings, but prior to submission of the (second) application.

(b) “The Committee shall find that the plans and specification conform to this Declaration and to the Architectural Rules in effect at the time such plans were submitted to the Committee:”

The plans and specifications did not conform to the Architectural Rules and the CC&Rs for reasons in (a) above.

(c) “The Committee shall determine that the proposed improvements would be consistent with the standards of the Development and the purposes of this Declaration as to design and materials, as to harmony of the exterior design with existing structures, and as to location with respect to topography and finished grade elevations:”

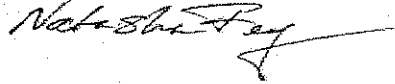
The Committee did not determine that the proposed improvements would be consistent with the standards of the Development or as to the design, materials, harmony and location as required by (c) for the following reasons:

The application failed to show that the deck would be consistent with set back standards applied in the community and as required by the governing documents; failed to show that materials would be consistent and harmonious with materials approved and installed in the community; and that as constructed, the deck is too large for its location in relation to the surrounding community. Further, the types of improvements requested to be installed in the easement area are not consistent with

improvements authorized to be installed in other easement areas throughout the community, especially given the project location and visibility to surrounding areas.

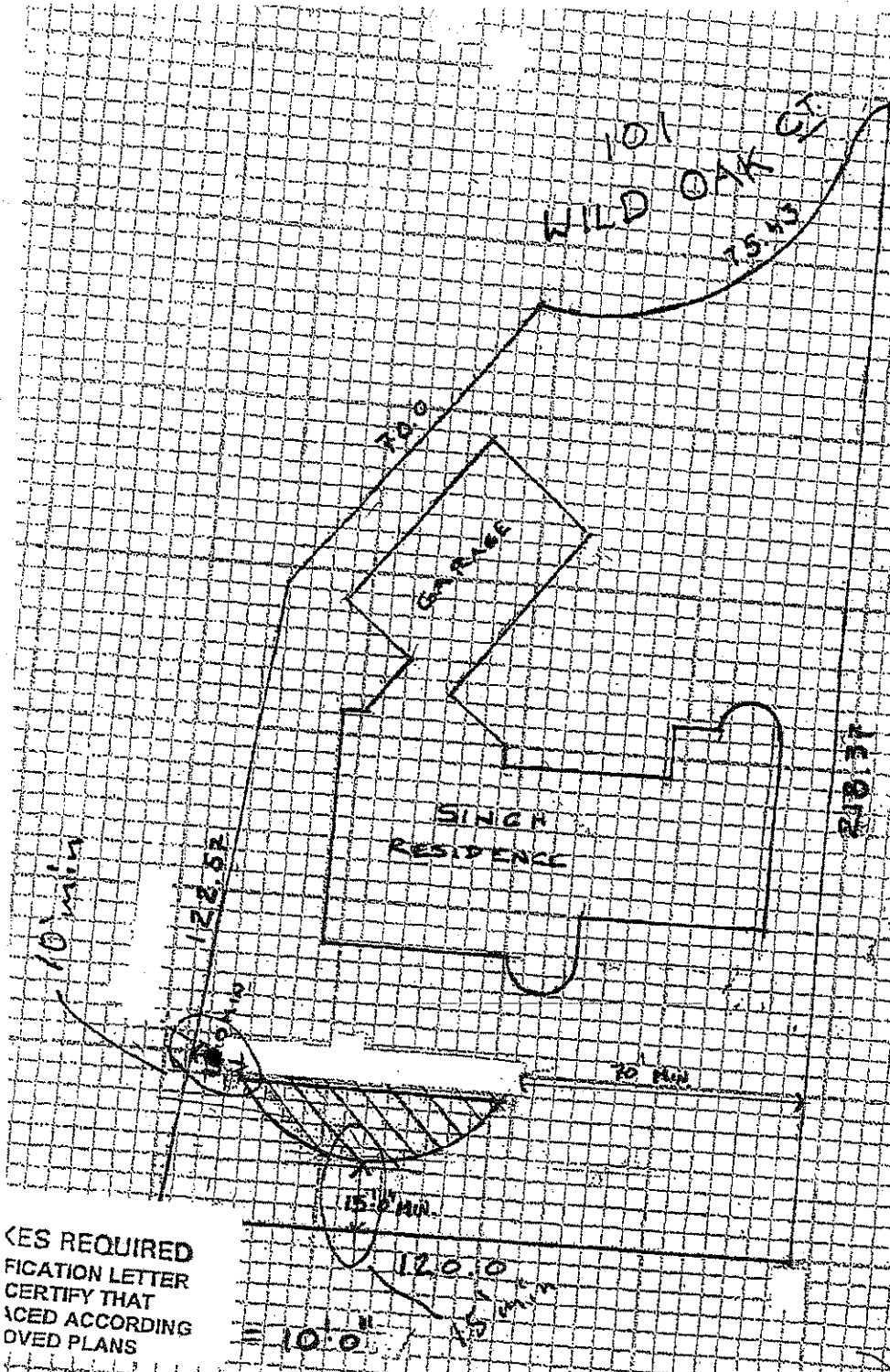
For the reasons set forth above, the architectural application was unanimously denied. Please advise us should you wish to appeal this decision before the Board.

Best regards,



Natasha Feigenson, CCAM®
Assistant Community Manager
On Behalf of
The Architectural Review Committee

Cc: Architectural Review Committee
Board of Directors

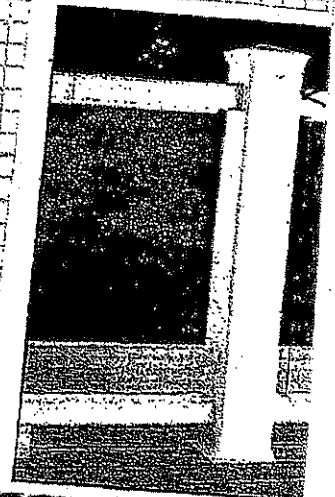


PERMITS REQUIRED
 CERTIFICATION LETTER
 CERTIFY THAT
 ALL WORK IS ACCORDING
 TO APPROVED PLANS

SITE / PLOT PLAN

Submitted
 11/10/17
 Permit

101 WILD OAK CT



TREX ARTISAN
 Product Information
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Setting a New Standard for Quality Performance. The clean look of Trex is one of the hottest trends in decking. Choose traditional balusters or glass paneling to create a deck with beauty and performance. Unlike...

HOMEOWNERS' SUPPLEMENTAL RESPONSE to Conservation and Development Staff Report and Recommendation Regarding County File DP08-3-51 (Surainder and Vinita Singh, 101 Wild Oak Ct, Danville area of Contra Costa County, Blackhawk Development)

RECEIVED

12-3-08

I BACKGROUND

SRVRPC

AGENDA ITEM #

3

This permit application matter first came before the Commission at its regular Wednesday hearing of October 22, 2008. However, other matters on the Calendar ran long, causing this matter to last beyond the 11:00 p.m. hour. Also one of the applicant's witnesses - the deck contractor - was not able to stay for the entire hearing. The Commission agreed to continue the hearing to the next scheduled Wednesday, or November 19. However, at the subsequent request of the Blackhawk HOA, the matter was continued to December 3, 2008.

The Commission was provided various written materials at the first hearing from both the Staff of the Community Development Department (Francisco Avila) and from the Applicant, Surainder (Sandy) and Vinita (Vinnie) Singh. Subsequently, the Department provided a supplemental report, consisting of a summary of the prior hearing, a submission from the Blackhawk HOA attorney outlining the history of lot line adjustments and easements in the Blackhawk development, and evidence of the deed history and status of the subject open space. The Singhs would like to submit this brief Supplemental Statement for the Commission's consideration. The Singhs would also incorporate their prior materials, and will not repeat that material here.

II ADDITIONAL INFORMATION

1. Landscaping of the Deck and Neighbor Opposition

At the initial hearing, the Commission heard from a Blackhawk co-owner, Mrs. Cathy Wilson, who stated her opposition to the Singhs' deck, referring to it (somewhat humorously) as "Deckzilla". Part of her concern (and that of some of her neighbors) was based on the visual impact of the deck from her (and her neighbors') lower-level lots, which looked up at the Singhs' deck. She was disappointed that despite the passage of many months since the deck was constructed, it remained completely visible to her, and had not gotten any landscaping in place to 'hide' the foundation area of the deck (the part visible to her).

The Singhs stated at the hearing that they were as anxious as the neighbors to install appropriate vegetation and landscaping, and stood ready to do so, but were waiting until the permit issue was resolved. The Singhs remain committed to immediately installing landscaping that will 'hide' the deck, and offer for the Commission's consideration a photo mock-up of what one version of landscaping would look like. Please see Exhibit 8, attached.

The photo reflects proposed landscaping the Singhs will commit to installing as soon as the deck is finally approved. The Singhs will also agree to install any other landscaping reasonably necessary to satisfy the visual concerns of the neighbor or the HOA or the Commission.

It should also be noted that the neighbors on either side of the Singhs have no objection to the deck, as shown in the attached exhibits 9A and 9B.

2. Commission's Discretion to Approve or Deny the Permit Application

The Commission wanted to know who or which person or agency had authority to decide on the Singh application, considering its location in the private community of Blackhawk. As set out in Mr. Avila's supplemental report, at Exhibit B1, development rights to the open space on which the Singh deck sits have been deeded to the County. As the deed itself states, those rights include the "right to approve or disapprove any proposed construction, development or improvement which would substantially and materially change the nature of the current proposed use of said real property".

As set forth in Code Section 84-66.1804 (Final Development Plan Changes), the zoning administrator (or planning commission) may impose reasonable conditions and limitations to carry out the purpose of the P-1 district when approving any modification. The purpose and intent of the P-1 district "is to allow diversification in the relationship of various uses, buildings, structures, lot sizes and open spaces while insuring substantial compliance with the general plan and the intent of the county code in requiring adequate standards necessary to satisfy the requirements of the public health, safety and general welfare." Code Section 84-66.204. This statement of intent and purpose is broad enough to provide the Commission the discretion to approve the Singh deck as consistent with that intent and purpose,

Thus, it is within this Commission's power to approve the Singh deck application, based on all the various factors before the Commission, including the simple concept of equity - in other words, who will be most negatively affected by the Commission's decision to approve, or deny, the deck permit.

3. TimeLine of Events

Attached hereto as Exhibit 10 is a timeline of events prepared by the Singhs which shows each event pertinent to the deck construction. It is believed that the following sequence of events is not disputed:

a. *Singhs Desire to Build a Deck*

As the Singhs previously testified, both in person and through their attorney, they wanted to add a deck to their house. Pursuing this goal, they inquired with their 'governing body' - the HOA - as to any restrictions on such a plan. They were told they needed to submit a written proposal to the HOA's architectural review committee, which would either approve it, deny it, or ask them to resubmit with more information or revised plans.

b. *Singhs Submit their Deck Plan to the HOA*

The Singhs submitted their deck proposal on the HOA-mandated form, complete with the Singhs' hand-drawn plan of the deck. The plan as submitted shows the deck the Singhs intended to build, and where they intended to build it. (They did not highlight that the deck was to be built on an easement, rather than deeded land, because they had no idea that their 'back yard', bounded by a wrought-iron fence and covered in landscaping, was an easement. And it is likely that even if they had understood that the land beneath their proposed deck was 'easement,' it would not have occurred to them to include that fact in their proposal. They did not understand until this matter got deeply involved the significance of an easement versus deeded land.)

c. *HOA approves the Deck Application*

The ARC members did not ask for more detailed plans, though they certainly could have. In hindsight, one has to wonder what exactly the ARC reviewed for approval. One might have anticipated that neighbors would be potentially impacted, and required a public comment period before approval. According to the HOA attorney's letter to the commission, the issue of easements and lot line adjustments and use of the public spaces for owners' use had become a more heated issue in the 2000s, leading one to anticipate heightened scrutiny by the ARC for proposed decks that visually exceeded the owner's contiguous lot. However, the ARC 'rubber-stamped' (apparently) the application, reasonably leading the Singhs to believe they were ready to build their deck, subject to any other necessary approval, such as permit approval by the local building department.

d. *Singhs Hire Decks Plus*

As Mr. Anderson of Decks Plus will testify, he's a professional at deck construction in Contra Costa County. He will provide the Commission with the details of the permit application, interface with the building and permit departments, and the timeline of construction up to final approval by Tim Griffiths of the building inspection department.

e. *County Building Inspection Department Approves Deck Permit*

Again, as Mr. Anderson will testify, he worked with Konrad Fromme and Tim Griffiths on the permit application, including providing them with the requested survey in February, and confirming with Mr. Griffiths before the deck was completed that the permit was approved. At no time, did Decks Plus "proceed at its own risk", as Mr. Avila stated Mr. Griffiths said.

4. HOA Position Should Not Determine this Commission's Decision

The HOA, by its letters from its attorney, have made clear that the HOA opposes the Singhs' application. Ostensibly, the HOA's opposition is based on the argument that the deck as built does not conform to the deck as proposed, in size, configuration or materials. However, it is not hard to conclude that the HOA is simply hoping the Commission will spare the HOA, and its ARC, the task of explaining to one or more complaining homeowners how the HOA approved the Singh application in the first place. But that is an issue for another forum, namely the HOA-Homeowners dispute resolution forum that is available to resolve such disputes. The HOA would like nothing more than to be able to avoid that forum altogether, which it can if the Commission denies the Singh application. However, the Singh application should be considered without regard for the HOA's *current* position, as it was the HOA's cavalier review process that allowed the Singhs to start down this now very stressful and expensive road.

5. The Balance of Factors Considered by the Commission Weigh in Favor of Approving the Deck

As has been stated repeatedly, the Singhs undertook their deck project in good faith, with reasonable reliance on their HOA, Decks Plus and the county building inspection department, in beginning, and completing, their deck. They did not try to move under cover of dark, or by false pretenses, or in any other fashion that should cause them to suffer the consequences of a denial of this application. They did exactly what they were advised to do, and continue to offer any effort they can to reassure the Committee that approving this application is appropriate.

On the other hand, who will be negatively impacted by this deck? The HOA? No (see above). The neighbors? Appropriate landscaping will address their visual concerns. The 'public'? If the public were allowed on Blackhawk property, the public might be harmed by this small

incursion into the public open space. But since access to the open space is limited to Blackhawk members and guests, it is undeniable that the public will not be harmed by this deck.

CONCLUSION

For all the reasons set forth above, and in particular because the balance of equitable factors weighs so heavily in favor of approval, the Singhs respectfully request that the Commission approve their deck permit application.

Respectfully submitted.

Date: _____

Richard Beckman,
Beckman Marquez & Dowling LLP
For Surinder and Vinita Singh

EXHIBITS

Omitted

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"Sandy"
<sandy@tekforcecorp.com>
11/06/2009 04:57 PM

To <favil@cd.cccounty.us>
cc
bcc

Subject Fw: Re:Notice of Board of Supervisor's Appeal hearing

Francisco,

I recieved this notice of hearing package from my previous attorney richard last week on friday. I have been trying to engage a land use attorney who can adequately represent me in the hearing since there is lot on stake here. A couple of them have look at this package that you have send and have told me there is no way they can go thru a 78 page documents and in a few days and adequately represent me. I would like to ask for a continuance so that I can have a right attorney represent me.

Thank you for your understanding

Sandy Singh

(925)866-8200 X 240

----- Original Message -----

From: Richard L. Beckman

To: Sandy

Sent: Friday, November 06, 2009 5:52 AM

Subject: Re:Notice of Board of Supervisor's Appeal hearing

Sandy:

We received the attached notice of appeal hearing yesterday, but I was in court most of the day and unable to send it to you. I only briefly looked at it on my way to court, but thought I saw that it set a hearing for Monday November 10, which would be very short notice, obviously. I don't know how you want to proceed at this point, but I will be in my office around 9:15 this morning if you want to discuss it.

Rich

*Richard Beckman
Beckman Marquez & Dowling LLP
703 Market Street, Suite 1610
San Francisco, CA 94103
tel. 415-495-8500; fax. 415-495-8590
www.BMDLLP.com*

IMPORTANT: This e-mail transmission is intended only for the addressee. It contains information from Beckman Marquez & Dowling LLP which may be privileged, confidential, and exempt from disclosure under applicable law. Dissemination, distribution, or copying of this transmission to anyone other than the addressee or the addressee's agent is strictly prohibited. If this transmission is received in error, please notify Beckman Marquez & Dowling LLP immediately at the telephone number indicated below and delete the message immediately.



Appeal Hearing - 11.5.09.pdf



S A V E M O U N T D I A B L O

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Allan Prager
David Sargent

David Trotter
Directors

November 6, 2009

Francisco Avila, Project Planner
Contra Costa County Community Development Dept.
County Administration Building
651 Pine St., 4th Floor, North Wing
Martinez, CA 94553

Re: File # SP08-3051
Tax parcel # 203-722-014
Applicant: Surainder and Vanita Singh
Location: 101 Wild Oak Court, Blackhawk

Dear Mr. Avila,

Save Mount Diablo appreciates the opportunity to make comments on the above mentioned project.

We support the staff's recommendation to uphold the decision of the San Ramon Valley Planning Commission and deny the applicant's appeal.

The applicant has built a deck in Blackhawk Homeowner Open Space, outside of their own property boundary. These actions conflict with long, careful and controversial planning that resulted in agreed upon open space. Allowing private homeowners to "annex" portions of the open space to increase their own property values will lead to significant bad precedents, and result in cumulative and growth-inducing impacts. Should the County choose to consider allowing this encroachment, environmental analysis should be conducted and other similar encroachments should be identified and mitigations required.

Save Mount Diablo was involved in the original Blackhawk development project, successfully lobbying for the dedication of open space to offset the impacts of development and to provide buffers to the sensitive resources of Mount Diablo State Park.

The Blackhawk development was one of the most controversial and hotly contested projects in the history of Contra Costa County. A proposal to develop 4800 homes in the early 1970s set off an intense debate between developers, the county and the community including Save Mount Diablo. The "Blackhawk Wars" were finally settled with approval and development of 2400 homes and the dedication of over 2000 acres of preserved land to Mount Diablo State Park with additional open space and recreation lands distributed throughout the development.

Staff

Ronald Brown
Executive Director

Seth Adams
Director, Land Programs

Julie Seelen
Development Director

Monica E. Oei
Finance & Admin. Manager

Mailing Address

1901 Olympic Blvd., # 220
Walnut Creek, CA 94596
Tel: (925) 947-3535
Fax: (925) 947-0642

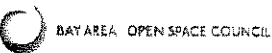
Website

www.savemountdiablo.org

Founders

Arthur Bonwell
Mary L. Bowerman

Proud member of



Presently, Blackhawk is known for its luxury homes and high quality of life standards – in part a result of the development's character as defined by these open spaces. Allowing the applicant to encroach into the open space sets a dangerous precedent and negates the hard work of the community over the last four decades.

We oppose the proposal for the following reasons:

1. The original Blackhawk development project was carefully planned by the developer, the county, the community, and Save Mount Diablo to ensure balanced development and minimize negative impacts.

Specific consideration was given to open space dedication during the planning process to ensure proper buffers between development and public lands and trails.

Open Space provides a public benefit to the community to mitigate for the negative impacts of development. Why should the applicants be allowed the benefit by encroaching on the open space at the expense of the community?

2. Allowing the applicant to expand into the open space would set a bad precedent and have potential cumulative and growth inducing impacts. If the applicant is allowed to continue encroachment into open space, what is to keep other property owners in the area from doing the same and undermining the careful consideration given to the planning process in the Blackhawk development? The staff report recognizes this threat and identifies the County's previous attempts to address such a trend.
3. According to the staff report, the applicant failed to adhere to the building permit they received from the County, and constructed portions of their 1000 sq ft deck outside of the boundaries of their own parcel and in Homeowner Open Space.

We assume the applicant has filed the application in an attempt to get their improvements permitted after the fact, and to save money. This is not a good enough reason to allow encroachment into the open space. Again, the applicant should not be rewarded and be allowed to benefit for failing to follow their approved permit while impacting the community open space.

4. The deck is quite visible since it is 30-50 feet higher in elevation than nearby roads, etc.
5. A quick look shows that residents are encroaching on the Homeowner open space in many locations, especially with landscaping, but also structures of various sorts. With a quick look we also found some examples of encroachment on Mt. Diablo State Park.

Apparently the Homeowner Association isn't policing its own land--something which is relatively easy to do given that the boundary lines are both online and that Blackhawk Development probably built fences on the lot lines when the houses were originally built.

Cumulatively, the impacts are significant. The precedents are also significant. The County shouldn't permit these encroachments after the fact.

The deck at 101 Wild Oak Court is more significant, but for example, the adjacent property, 111 Wild Oak Court has landscaping that encroaches into the open space as well.

In conclusion, the County should not allow this encroachment, especially after the fact. If the County does allow this encroachment, CEQA should be required and the cumulative and growth-inducing impacts of such encroachments should be evaluated.

Thank you for your consideration

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Bristol', written in a cursive style.

Troy Bristol
Land Conservation Associate

Cc Steve Beinke, President, Blackhawk Development
Mark Goldberg, Community Manager, Blackhawk HOA

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BOARD OF SUPERVISORS, CONTRA COSTA COUNTY, CALIFORNIA

AFFIDAVIT OF MAILING

IN THE MATTER OF

A development application pertaining to a parcel located at #101 Wild Oak Court in the Blackhawk area, that involves a deck built across the property line in an area designated Open Space, County File #DP08-3051. More specifically, the hearing is to consider:

(1) An appeal that has been filed of the San Ramon Valley Regional Planning Commission decision to deny the proposed amendment to the Blackhawk Final Development Plan for this site, to allow the construction of an existing 11-foot tall, approximately 1,000 square foot deck built beyond the property boundaries within an area designated as Open Space. County File #DP08-3051

- The appeal was filed by the applicants, Surinder & Vinita Singh.

The subject site is located at 101 Wild Oak Court in the Blackhawk area. (Zoning: Planned Unit District, P-1) (Assessor Parcel Number: 203-722-014 & 203-740-012).

Notice of hearing for **Tuesday, November 10, 2009 at 1:00 p.m.**, was mailed this day, Wednesday, October 28, 2009.

I declare under penalty of perjury that I am now, and at all times herein mentioned have been, a citizen of the United States, over age 18; and that today I deposited mail with General Services for mailing by the United States Postal Service in Martinez, California, first class postage fully prepaid, a copy of the hearing notice, on the above entitled matter to the following:

PLEASE SEE ATTACHED LIST

I declare under penalty of perjury that the foregoing is true and correct, at Martinez, California.

Dated: October 28, 2009


June McHuen, Deputy Clerk

**NOTICE OF A PUBLIC HEARING BEFORE THE
CONTRA COSTA COUNTY BOARD OF SUPERVISORS
ON PLANNING MATTERS**

BLACKHAWK AREA

NOTICE is hereby given that on **November 10, 2009, at 1:00 pm**, in the County Administration Building, 651 Pine Street, (Corner of Pine and Escobar Streets), Martinez, California, the Contra Costa County Board of Supervisors will hold a public hearing to consider the following planning matter:

This hearing concerns a development application pertaining to a parcel located at #101 Wild Oak Court in the Blackhawk area, that involves a deck built across the property line in an area designated Open Space, County File #DP08-3051. More specifically, the hearing is to consider:

- (1) An appeal that has been filed of the San Ramon Valley Regional Planning Commission decision to deny the proposed amendment to the Blackhawk Final Development Plan for this site, to allow the construction of an existing 11-foot tall, approximately 1,000 square foot deck built beyond the property boundaries within an area designated as Open Space. County File #DP08-3051

- The appeal was filed by the applicants, Surainder & Vinita Singh.

The subject site is located at 101 Wild Oak Court in the Blackhawk area. (Zoning: Planned Unit District, P-1) (Assessor Parcel Number: 203-722-014 & 203-740-012).

The location of the subject property is within the unincorporated territory of the County of Contra Costa, State of California, generally identified below (a more precise description may be examined in the Office of the Director of Conservation and Development, County Administration Building, Martinez, California):

The subject site is located at #101 Wild Oak Court in the Blackhawk area (Assessor Parcel No. 203-722-014 & 203-740-012)

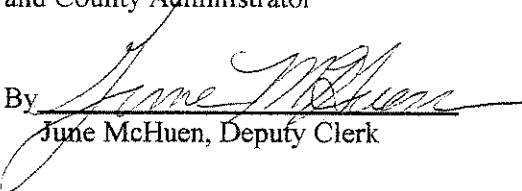
In accordance with the review requirements of the California Environmental Quality Act, the project is categorically exempt - Class 3 – New Construction of a small structure (*CEQA Guidelines §15303[e]*).

If you challenge this matter in Court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the County at, or prior to, the public hearing.

Prior to the hearing, the Department of Conservation and Development staff will be available on Tuesday, November 10, 2009 at 12:00 p.m., in Room 108, Administration Building, 651 Pine Street, Martinez, to meet with any interested parties in order to (1) answer questions; (2) review the hearing procedures used by the Board; (3) clarify the issues being considered by the Board; and (4) provide an opportunity to identify, resolve, or narrow any differences, which remain in dispute. If you wish to attend this meeting with staff, please call Francisco Avila at 925-335-1266, Department of Conservation and Development, Community Development Division, by 3:00 p.m. on Monday, November 9, 2009 to confirm your participation.

Date: October 28, 2009

David Twa, Clerk of the Board of Supervisors
and County Administrator

By 
June McHuen, Deputy Clerk



"CCT Legals"
<cctlegals@bayareanewsgro
up.com>
10/28/2009 09:19 AM

To "June McHuen" <JMChu@cob.cccounty.us>
cc
bcc
Subject RE: Legal Publication Ref #2278 (Wild Oak Court)

ad#3302272

Aris Garcia
Legal Advertising Coordinator
Bay Area News Group
925-943-8019
925-943-8359-Fax

From: June McHuen [mailto:JMChu@cob.cccounty.us]
Sent: Wednesday, October 28, 2009 9:17 AM
To: CCT Legals
Subject: Legal Publication Ref #2278 (Wild Oak Court)

Please publish the attached notice one time, in the Contra Costa Times, on October 31, 2009.

Account #2004197

(See attached file: 111009 Ntc Hrg Singh Appeal 101 Wild Oak Court.doc)

June McHuen, Deputy Clerk
Clerk of the Board of Supervisors
Contra Costa County
925.335.1905

203710022 AARDAL DANNY C & SHARON L 5146 BLACKHAWK DR DANVILLE CA 94506	203760002 ADAMS DALE C & KATHY B 907 EAGLE RIDGE DR DANVILLE CA 94506	203722001 AITON ROBERT W & KERRY L 90 WILD OAK CT DANVILLE CA 94506
203722002 ANDEREGG BARTLING P 257 SANTA BARBARA CIR PALM DESERT CA 92260	203722005 BIZZACK JAMES M & MARIA B 106 WILD OAK CT DANVILLE CA 94506	203731018 BLACKHAWK COUNTRY CLUB 599 BLACKHAWK CLUB DR DANVILLE CA 94506
203760027 BLACKHAWK IMP ASSN INC 4125 BLACKHAWK PLAZA CIR #230 DANVILLE CA 94506	203731032 COUNTRY CLUB AT BLACKHAWK IMP 3820 BLACKHAWK RD DANVILLE CA 94506	203710012,203740012 COUNTRY CLUB AT BLACKHAWK IMP PO BOX 608 DANVILLE CA 94526
203731002 YUN SONG CHAE 20 CHESTNUT PL DANVILLE CA 94506	203722011 WU DIANA CHI-TUAN 5163 BLACKHAWK DR DANVILLE CA 94506	203731013 DAVIS DWIGHT W & GLEE ANN 33 CHESTNUT PL DANVILLE CA 94506
203722003 DIXON AIMEE 98 WILD OAK CT DANVILLE CA 94506	203721001 DONDERO LAWRENCE 5150 BLACKHAWK DR DANVILLE CA 94506	203731025 GEORGENS THOMAS & KATHLEEN 36 CHESTNUT PL DANVILLE CA 94506
203731015 HENSHAW GUY R 25 CHESTNUT PL DANVILLE CA 94506	203721003 HOLMES LAWRENCE W & BRONIA L 5158 BLACKHAWK DR DANVILLE CA 94506	203731001 HUERTA RAYMOND & LINDA JO 5151 BLACKHAWK DR DANVILLE CA 94506
203722004 JUDGE MANJEET S & BARINDER 102 WILD OAK CT DANVILLE CA 94506	203722006 KHALIL MIAN S & ROEEDA 6123 WOODLAND DR DALLAS TX 75225	203731003 KUNDRED CURTIS A & JULIA M 26 CHESTNUT PL DANVILLE CA 94506
203721002 LANZONE ROBERT J & BARBARA 5154 BLACKHAWK DR DANVILLE CA 94506	203760003 MARCHI MICHAEL A 911 EAGLE RIDGE DR DANVILLE CA 94506	203722009 MCAVOY BARRY W 97 WILD OAK CT DANVILLE CA 94506
203722010 ONGMAN DAVID M & PATTI H 91 WILD OAK CT DANVILLE CA 94506	203721012 PETERSON DARREN & R GWEN 51 WILD OAK PL DANVILLE CA 94506	203731031 RICHARDS PETER J & ANN 37 CHESTNUT PL DANVILLE CA 94506
203731004 SHEPHERD MARK C & JILL P 28 CHESTNUT PL DANVILLE CA 94506	203722007 SINGH SANJIV PAUL & VIMALJIT 111 WILD OAK CT DANVILLE CA 94506	203722014 SINGH SURINDER & VINITA a/o 101 WILD OAK CT DANVILLE CA 94506

203731014
SUDEORA ANUJ & SHELLY
29 CHESTNUT PL
DANVILLE CA 94506

203722012
TAN LINDA T
5159 BLACKHAWK DR
DANVILLE CA 94506

203760001
THEKKEK ANTHONY P & PREMA P
901 EAGLE RIDGE DR
DANVILLE CA 94506

203731005
WILLIAMS DEAN R & SARAH B
32 CHESTNUT PL
DANVILLE CA 94506

203722013
WOLFSON MICHAEL S & CONSTANCE
5155 BLACKHAWK DR
DANVILLE CA 94506

BUILDING/GRADING INSPECTION

SAN RAMON VALLEY FIRE
PROTECTION DISTRICT
1500 BOLLINGER CANYON ROAD
SAN RAMON, CA 94583

CENTRAL CC SANITARY DISTRICT
5019 IMHOFF PLACE
MARTINEZ, CA 94553

EBMUD
375 11TH STREET, MS701
OAKLAND CA 94607

MARK GOLDBERG, COMMUNITY MGR.
BLACKHAWK HOMEOWNERS ASSOC.
4125 BLACKHAWK PLAZA CIR., #230
DANVILLE CA 94506

RICHARD BECKMAN
BECKMAN MARQUEZ & DOWLING LLP
703 MARKET STREET, #1610
SAN FRANCISCO, CA 94103

TIM GRIFFITH
BUILDING INSPECTION

CONRAD FROMME
BUILDING INSPECTION

TELMA MOREIRA
COMMUNITY DEVELOPMENT DIV.

ARUNA BHAT, DEPUTY DIRECTOR
COMMUNITY DEVELOPMENT DIV.

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