



COUNTY OF SANTA CRUZ

OFFICE OF THE COUNTY COUNSEL

701 OCEAN STREET, SUITE 505, SANTA CRUZ, CA 95060-4068 (831) 454-2040 FAX: (831) 454-2115

DANA McRAE, COUNTY COUNSEL

Chief Deputy **Rahn Garcia**

Assistants

Marie Costa
Jane M. Scott
Tamyra Rice

Shannon M. Sullivan
Miriam L. Stompler
Jason M. Heath
Christopher R. Cheleden

Betsy L. Allen
David Brick
Jessica C. Espinoza
Sharon Carey-Stronck

Special Counsel

Dwight Herr
Deborah Steen
Samuel Torres, Jr.

GOVERNMENT TORT CLAIM

RECOMMENDED ACTION

Agenda: 9/9/08

To: Santa Cruz County Board of Supervisors

Re: Elan & Reverend Oracle, Claim No. 809-005

Original document and associated materials are on file at the Clerk of the Board of Supervisors.

In regard to the above-referenced claim, this is to recommend that the Board take the following action:

1. Reject the claim of Elan & Reverend Oracle and refer to County Counsel.
2. Deny the application to file a late claim on behalf of _____ and refer to County Counsel.
3. Grant the application to file a late claim on behalf of _____ and refer to County Counsel.
4. Approve the claim of _____ in the amount of _____ and reject the balance, if any, and refer to County Counsel
5. Reject the claim of _____ as insufficiently filed and refer to County Counsel.

RISK MANAGEMENT

By: Janet McKinley
Janet McKinley
Acting Risk Manager

DANA McRAE, COUNTY COUNSEL

By: Jason M. Heath
Jason M. Heath
Assistant County Counsel

cc: Tom Burns, Planning Department

CLAIM AGAINST THE COUNT OF SANTA CRUZ
(Pursuant to Section 910 et Seq., Govt. Code)

Attachment A

Claimants Elan and Reverend Oracle (hereinafter “Claimants”) have been the owners of and residents of the house and surrounding real property located in Aptos, California, Assessors Parcel Number 037-161-27 (hereinafter “the Subject Property”).

The Santa Cruz County Planning Department, (hereinafter “the Planning Dept.”) has zoning and planning jurisdiction over the Subject Property because it lies within an unincorporated portion of Santa Cruz County. The Planning Dept. has jurisdiction over both code compliance matters and the issuance of permits pursuant to the Santa Cruz County Code. Toni Burns (“Burns”) at all relevant times has been the director of the Santa Cruz County Planning Department and has direct authority over all County activities that are the subject of this claim. (The Planning Dept. and Burns are collectively referred to herein as “Respondents”.)

Claimants purchased the Subject Property on or about March 5, 2001. The perimeter of the property facing the road features pittasporum hedges for privacy, which by 2005 had grown naturally to a height of eight to ten feet.

In 2005, Claimants decided to install new driveway gates and fences for security and aesthetics. The Subject Property is zoned RA, or, Residential Agricultural, under the Santa Cruz County zoning ordinances and General Plan. On December 6, 2005, Claimants filed an application for permit \ # 05-0780 with the Planning Department for a driveway gate and chain link fence to keep out local wild animals that had been intruding into and damaging the Subject Property. Respondents should have approved this permit application no later than January 6, 2006. Instead, Respondents arbitrarily, capriciously and without justification delayed the process for over two years and forced Claimants to incur substantial additional costs accommodating Respondents’ conflicting and unlawful demands.

On December 22, 2005, county planner David Keyon requested that Claimants reduce the extent of the proposed chain link fence. On January 17, 2006, in accordance with Keyon's request, Claimants provided a revised site plan. Keyon failed to inform Claimants that they did not need to apply for a permit for the chain link fence.

On May 3, 2006, Claimants initial permit application, No. 05-0780 was approved by the Planning Dept. However, the permit approval included Conditions of Approval requiring hedges to be maintained at no more than three feet in height for a length of eighty-six feet along the road. No official reference or fixed standard was supplied in support of this condition.

On May 12, 2006, Aaron Landry, an inspector for the Code compliance division visited the Subject Property. He informed Petitioner Elan, "I see no violation existing here." On August 8, 2006, code Compliance inspector Kevin Fitzpatrick wrote in the Code Enforcement Investigation Comments file that the neighbor's complaint was "not valid. ..there is no line of sight hazard. No action will be taken at this time."

Despite this history, on November 15, 2006, Keyon of the Planning Dept. wrote to Claimants stating that they were in violation of the Conditions for Approval of their permit and further noting that the permit had not been signed. On December 29, 2006, Claimants notified Keyon by letter that they were canceling permit application, No. 05-0780, because Keyon continued to falsely claim that the hedges presented visibility problems.

On January 2, 2007, Keyon notified Claimants by email that their fencehedge had to be removed by January 15, 2007 or lie would refer the matter back to Code Compliance, although, as alleged above, Code Compliance had already determined after two site inspections that there was no hazard or violation.

On February 2, 2007, Code Compliance investigator, Kevin Fitzpatrick, who had previously found there was no violation, posted a "Notice of Santa Cruz County Code

Violation and Intention to Record Notice of Violation” at the Subject Property. The sole code violation cited therein was “fence and vegetation (hedge) over three feet in height in front yard setback and abutting a road.” The sole Code Section cited was Santa Cruz County Code § 13.10.525 (c) (2).

On March 5, 2007, Claimants wrote to Fitzpatrick to protest the Notice of Violation. Fitzpatrick responded with a letter stating, “in order for the violation to be corrected, all vegetation along the road would have to be cut back to no more than three feet in height. This also includes any fencing in that area. Alternatively, you may apply for an over-height fence permit that in your case would apply to vegetation.”

On June 4, 2007, Claimants met with Respondents to obtain instructions for preparing a new site plan, submitting a new permit application and to obtain pre-approval for the same.

Claimants subsequently received notice that their appeal meeting was continued until June 14, 2007. Prior to that meeting, Claimants and their consultant, Dave Laughlin, a former employee of the Code Compliance Dept. of Respondents met with County planning representatives Keyon and Deming. At the meeting, Deming and Keyon agreed that a hedge of six feet in height would be acceptable so long as there was sufficient setback. Keyon emailed Dave Laughlin noting that they had “decided that setting the fencehedge back about five feet from the edge of the paved road would work on both curves, and that the fence/hedge south of the curve at the road could remain where it is now...the hedge along the road before the first driveway can remain if it is cut down to six feet in height...all fences and hedges within the front yard setback must not exceed six feet in height, so the fences and hedges allowed to remain will have to be cut down to this height...” In a subsequent email of June 18, 2007, Keyon again stated with respect to the hedges to “bring them down to six feet and this is a ministerial permit.”

Based on these einails, Claimants cut their hedge/fence to six feet in height for the entire length of their property and moved the fence/hedge back five feet where requested.

On June 28, 2007, Claimants filed a second application, through Dave Laughlin, for an Over-Height Fence or Retaining Wall Application, No. 07-0327, which included driveway gates for a circular driveway.

On August 13, 2007, Keyon signed a staff report indicating approval of Application No. 07-0327. However, contrary to his oral and written assurances to Claimants, the County required once again that the fence/hedge be cut to three feet.

On August 29, 2007, the County formally recorded the Notice of Code Violation again alleging “fence vegetation (hedge) over three feet in height in front yard setbacks and abutting a road.” This action was unlawful because no statute authorizes recording such an instrument and because the Subject Property is within a RA zoning district in which a six-foot fence or hedge is permissible in all yards abutting a road.

Claimants appealed the conditions the County appended to Permit No. 07-0327, Their appeal was granted on October 4, 2007 by Don Bussey, a County Planner who was the designee of Tom Burns, Planning Director. Bussey, burdened with a conflict of interest as the person who imposed the original conditions, remanded the project back to staff, directing “modification of the area...with the limitation on the height.”

The Planning Dept. quickly telegraphed its position that it had no intention of reconsidering its prior position. On December 7, 2007, Burns emailed Claimants’ representative Laughlin. Burns, who never sat down and talked to Claimants, wrote that he “had a chance to sit down with the folks here involved in this application. Quite frankly, I am a bit concerned about why we are entertaining this application at all.” Burns wrote, “I see no basis at all for permitting such a feature. Quite frankly, it appears the original permit, which the applicant refused to sign, was quite generous.”

This directive from the top was echoed in a December 26, 2007 email to Laughlin from Alice Daly, the Planning Dept. Project Planner who was nominally assigned to the remanded application.

On January 9, 2008, Claimants wrote directly to Burns complaining that Daly had already made up her mind without hearing the appeal or reviewing new information. They pointed out that a report from their Traffic Engineer, Ron Marquez, showed that there was no sight line or safety hazard and requested that the County remove the restrictions on their permit and remove the red tag.

On February 8, 2008, Fitzpatrick emailed Ms. Daly, as follows, "Alice, this violation has been recorded on title and Code Compliance will not be taking any other action. Can you just deny their application and let them appeal your decision, All this crap is not worth your time."

Fitzpatrick continued to express his personal and religiously based animus towards Claimants in an email exchange on March 5, 2008. Claimants had mentioned that Oracle is a licensed minister in support of her credibility. Fitzpatrick responded in an official email by asking, "would they be minister licenses of Babylon the Great?" Claimants are informed and believe that this insult was intended as a reference to the biblical Book of Revelations which refers to "Babylon the Great, the mother of harlots and of the abominations of the earth."

On March 31, 2008, Claimants counsel wrote to Tom Burns informing him because the Subject Property was in an agricultural zone, the three-foot height limit of the fence and abutting roadways was not applicable.

On April 3, 2008, Respondents mailed their Amended Staff Report and Development Permit with respect to Permit Application No. 07-0327. This report required Petitioner to cut the existing hedges to three feet despite the zoning clearly allowing a six-foot height and the Planning Dept.'s previous advice to Claimants that if

they cut the hedges to a six-foot height the issuance of a permit would be “ministerial.” In fact, this report imposed conditions far more onerous than those imposed on Claimants’ first application. Instead of requiring Claimants to cut the hedges abutting the curved portion of the road, this report required Petitioner to cut all hedges abutting the road at any point.

In light of Respondents’ system of charging applicants for all hourly work done on applications, the clear indication from Tom Burns and others that the decision had been made and approved at the highest levels of the Planning Dept., the unsatisfactory results of their prior appeal on similar issues, and the ongoing cloud on title created by recording the Notice of Code Violation against the Subject Property, further appeals within Respondents’ would have been futile. Accordingly, Claimants are seeking an award of damages.

As a result of Respondents’ actions, which culminated with the March 30, 2008 Amended Staff Report, Claimants have suffered severe physical and emotional distress, including, but not limited to: stress, anxiety, depression and insomnia requiring medication.

Claimants have also incurred substantial costs accommodating Respondents’ conflicting and unlawful demands, including attorneys’ fees, fees for consultants, and fees for apparently unnecessary filings with the County.

Moreover, Respondents have caused an approximately \$2.6 million reduction in the value of Claimants’ home and effectively prevented them from moving. In the past six months, Claimants showed the home to numerous people. Because of Respondents’ refusal to remove the fraudulent red tag, Claimants could not find a purchaser. On April 3, 2008, Claimants were forced to take their property off the market.