

November 21, 2019

Via FedEx and Electronic Mail

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Steve Monowitz
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**Re: Appeal of Grading Permits, and Related Building Permits; Numbers
BLD2016-00160 and BLD2016-00158, and Improper Staff Approvals of
Modifications to the Chamberlain Highlands Project**

Dear Ms. Lujan and Mr. Monowitz:

This office represents concerned neighbors in the Highlands area who are concerned that the San Mateo County Planning and Building Department (“Department”) issued grading permits and related building permit numbers BLD2016-00160 and BLD2016-00158, (collectively, “Permits”), for Lots 9 and 10, respectively, of the Chamberlain Highlands Project (“Project”). Those Permits were issued as of November 14, 2019, according to an email sent by Camille Leung to Kristen Outten and Jessica Henderson-McBean on November 14, 2019, and according to an email from John D. Nibbelin, Chief Deputy County Counsel, to the undersigned that was sent on November 20, 2019.

On behalf of concerned neighbors of the Project that this office represents, and pursuant to Chapter 30 of the San Mateo County Zoning Regulations, and other provisions of the San Mateo County Municipal Code. The undersigned hereby appeals the Department’s issuance of the Permits for Lots 9 and 10 on the grounds that: (1) the building sizes allowed under such Permits are substantially and materially larger than what is allowed under the Project approval by the Board of Supervisors in April 2010, including but not limited to, certification of the Final Environmental Impact Report (“EIR”) pursuant to the California Environmental Quality Act, Cal. Pub. Res. Code § 21000 et seq. (“CEQA”); (2) such change in the building sizes constitutes a major modification of the Project approval; and (3) the Planning Commission never approved such major modification to the building or grading of for Lots 9 and 10 of the Project. The County should immediately schedule a hearing on this appeal, should grant this appeal, and should withdraw the Permits.

I. Only the Planning Commission is Authorized to Make Decisions Interpreting Project Conditions of Approval That Could In Any Way Modify “Parcel Size and Configuration, Home Sizes, Home Locations, Architectural Design, Style And Color, Materials, Height And Foundation Design.”

Condition of Approval No. 1 for the Project was approved by the Board of Supervisors on April 27, 2010, and reads as follows:

This approval applies only to the proposal, documents and plans described in this report and submitted to and approved by the Board of Supervisors on April 27, 2010. Minor revisions or modifications to these projects *in compliance with Condition No. 5* may be made subject to the review and approval of the Community Development Director. Revisions or modifications *not in compliance with Condition No. 5* shall be deemed a major modification and shall be subject to review and approval by the Planning Commission at a public hearing. [Emphasis and underline added.]

The plain language of this condition specifically states that only the Planning Commission may authorize any modifications to the Project when they would result in the Project being noncompliant with Condition No. 5. Thus, “compliance with Condition No. 5” is the operative term as to whether review of a modification is “minor” or “major.”

As stated in Condition No. 1, Condition No. 5 establishes several key Project elements that can only be modified with Planning Commission approval. Condition No. 5 provides:

This project will be implemented as proposed, mitigated, conditioned, and approved by the Board of Supervisors, regarding parcel size and configuration, *home sizes*, home locations, architectural design, style and color, materials, height and foundation design. Prior to the issuance of a Certificate of Occupancy for any residence, the applicant shall provide photographs to the Current Planning Section staff to demonstrate utilization of the approved colors and materials. Materials and colors shall not be highly reflective. [Emphasis and underline added.]

This condition specifically states that for each of the listed Project characteristics, the Project “will” be built as analyzed under CEQA in the EIR approved by the Board of Supervisors on April 27, 2010. Thus, the Project can only be in compliance with Condition No. 5 when the home sizes or architectural design, for example, are as expressly approved by the Board in 2010.

Any decision or interpretation that would result in a modification of one of these listed Project characteristics would, therefore, cause the Project to run afoul of Condition No. 5. Consequently, such decisions must be made by the Planning Commission, pursuant to Condition No. 1.

Furthermore, the practical reason for the inclusion of the language in Condition No. 1 was to specifically address the concerns of community groups that wanted to make sure that the Project was built as agreed to (at least with respect to the project characteristics listed in Condition No. 5), or they would have a chance to challenge the proposed modification at a public hearing before the Planning Commission. When determinations or interpretations that impact these expressly identified Project characteristics are made by staff, the process fails to provide for the public accountability agreed to by the developer when they received their Project approval. The County's decision to continually flout the agreed upon process instead of at least going through the motions inevitably undermines community support for local planning efforts and is harmful to the public interest that the County has a responsibility to guard.

II. The Permits Improperly Authorize an Increase in the "Home Sizes" for Lots 9 and 10.

The Permits that were issued by the Department on November 14, 2019, including total floor areas for Lots 9 and 10 that exceed what is analyzed in the EIR and allowed under the approvals by the Board in April 2010. The total enclosed interior area that is allowed in the Permits for Lots 9 and 10, as that is defined in section 6102.34.5 of the San Mateo County Zoning Regulations and other applicable zoning provisions, exceeds the total floor area that was approved for Lots 9 and 10 by the Board of Supervisors in April 2010. The record reflects that the Project architect undercalculated the floor area by omitting square footage for components of the structures, including but not limited to, garages, stairs, and storage areas. Therefore, the structures being built are larger than what was analyzed in the EIR and cannot now be modified unilaterally by staff. The grading allowed similarly is unlawful as it has been unilaterally allowed by staff for home sizes that do not comport with the EIR analysis. For these reasons, the changes to Lots 9 and 10 that are included in the Permits first required approval of a major modification by the Planning Commission pursuant to Condition No. 1. But that approval by the Planning Commission has never happened.

Accordingly, the Permits issued on November 14, 2019, are not in compliance with the San Mateo County Zoning Regulations and the CEQA EIR and approvals by the Board of Supervisors in April 2010. Such Permits should therefore be immediately withdrawn.

III. Conclusion.

The undisclosed floor area mistakes of the architect which are part of the framework for the grading and building permits for Lots 9 and 10 all result in new significant impacts not analyzed in the EIR and changes to listed Project characteristics in Condition No. 5 and, thus,

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require Planning Commission approval. That never happened before the Permits were issued for Lots 9 and 10 on November 14, 2019. Therefore, we appeal the issuance of such Permits.

We also request that the County schedule an immediate hearing on this appeal. At that hearing, we reserve the right to submit additional law, analyses, testimony, and any other relevant evidence for the record prior to the close of any such hearing.

Furthermore, we respectfully request that the County grant this appeal, and withdraw the Permits forthwith.

If you have any questions, you may reach me at (916) 456-9595.

Very truly yours,

A handwritten signature in black ink that reads "Diane Kindermann" with a stylized flourish at the end.

Diane Kindermann

DKH/wj

Cc: Clients
John Nibbelin
Clerk of the Board
Supervisor Carole Groom
Supervisor David Canepa
Supervisor Warren Slocum
Supervisor Don Horsley
Supervisor Dave Pine
Amy Ow