

Attachment No. 5
Exhibit G
Applicant's engineers Rebuttal to
Comments Received on Initial Study

Gordon J. Steuck
PLN080454

Board of Supervisors
February 7, 2012

EXHIBIT G

**LETTER FROM APPLICANT'S ENGINEER
REBUTTAL TO COMMENTS RECEIVED
ON INITIAL STUDY**

r. wayne johnson, architect / civil engineer 20577-B cachagua rd. carmel valley, ca. 93924
831-659-3459 (ph & fax) 831-224-0053 (cell) rwj.arch.egr@sbcglobal.net

10/31/11

CERTIFIED DELIVERY

Ramon Montano, assistant planner; Taven M. Kinison Brown, planning services manager
Members of the Monterey County Minor / Standard Subdivision Committee

Monterey County Planning & Building, 168 W. Alisal St., Salinas, Ca. 93901

Re : Lot Line Adjustment; Gordon & Sandra Steuck Residence, 570 Aguajito Rd., Monterey, Ca.,
APN : 103 - 061 - 015 - 000 / PLN-080454

Sirs:

With respect to the subject property, I have conducted a review of the claims by the legal firm of Lombardo & Gilles of unresolved grading violations, the related engineering reports produced pursuant to these grading operations -- reports which should be part of the county permit records -- and produced herein my commentary on the validity of the statements by Mr. Lombardo. Below, I have first identified the pertinent statements by Mr. Lombardo which are contained in his letters to county officials, then the related information contained within the reports of the engineering firms, and finally, my analysis of the validity of the issues raised by Mr. Lombardo.

Claims by Lombardo & Gilles of unresolved grading violations :

Letter of June 03, 2009 (to Ms. Philomene Smith, Chair and Members of the Greater Monterey Peninsula Land Use Advisory Committee) :

Page 3: " There is a long and significant history of grading violations on the Steuck property that continue to be unresolved. "

" Part of the application materials included a geotechnical engineering report prepared by Earth Systems Pacific. That report identified the large areas of undocumented fill. That report made recommendations for further exploration to identify the full extent of the undocumented fill and that undocumented fill material to be removed from the property. The scope of work for that permit was to " clear CE08413: remove the existing fill and restore site back to original grade. "..... However, the work that was ultimately approved by the County was not removal of the undocumented fill but instead approval of engineered fills. "

Letter of June 09, 2009 (to Mr. Tim McCormick) :

Page 1: " Also in the county records is a geotechnical engineering report prepared in May 2008 by Earth Systems Pacific..... That report identified areas of undocumented fill and made specific recommendations that further investigation be done to identify the full extent of the undocumented fill. The report made additional recommendations to correct those conditions. "

Page 2: " The undocumented fill was not removed. There is no evidence that any testing was done to determine the full extent of the undocumented fill on the property. As described in the CTI letter of March 17, 2009, the grading work which was to be for the removal of all of the undocumented fill became grading work for an engineered fill on the property and created a building pad where one did not exist prior to the illegal fill being placed on the property..... "

organic architecture / civil and structural engineering

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Evidentiary Record supporting grading permit closeout :

Governing Soils Investigation (Earth Systems Pacific Report, May 20, 2008) :

Page 3: " The fill should be entirely removed to expose firm native material and replaced as properly engineered fill, as discussed below. "

Page 4: " The previously placed undocumented fill should be entirely removed and replaced as properly engineered and compacted fill..... The depth and extent of the fill should be identified by the geotechnical engineer at the time of grading..... the previously removed undocumented fill can be re-used as fill provided that is cleared of excessive quantities of potentially deleterious materials. "

Page 5: " The actual depth of and lateral extent of the fill removal should be identified by the geotechnical engineer based on conditions observed at the time of grading. The site preparation, fill removal, and over excavation operations should be observed by the geotechnical engineer prior to continuing grading. "

Site Inspection Report (CTI Construction Testing & Inspection Services, March 17, 2009) :

Page 1: " Our representative was involved in a preconstruction meeting prior to the commencement of the grading restoration of previously filled areas of the site. "

" The initial grading operations were performed as detailed in the recommendation letter and consisted of removing the previously placed fill soils to firm native Monterey Shale Large pieces of concrete and miscellaneous building rubble were removed from the fill and stockpiled to be hauled from the site. "

" During the excavation of the loose material it was noted that the amount of uncontrolled fill was significantly larger than was detailed by H.D. Peters Co., Inc or Earth Systems, Inc. "

Page 2: " The loose fill soils at the northerly location were stripped to firm original grade. The debris was removed from the fill and exported from the project site. "

The project site was shaped to blend with the surrounding environment, as the finish grade as detailed in the restoration plan would have appeared to have been a building pad or parking area,

" It is our opinion that the stripping and excavation of loose fill soils, moisture conditioning and compaction of the newly placed fill soils were completed in general accordance with the project plans and specifications. "

Report attachments:

- 1) density testing log, with sketch, indicating depth of fill & excavation.
- 2) field reports which substantiate final report.

Site Inspection Report (H. D. Peters Co., Inc. and Associates, April 15, 2010) :

" I inspected the grading restoration on the natural slope of 30% or steeper on April 9, 2010, and in my opinion, all of the fill has now been removed from that steeper slope per our Grading Permit Plan. The remaining rubble taken off the slope was hauled off the property,

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Conclusions :

1) Mr. Lombardo repeatedly references the governing geotechnical report by Earth Systems Pacific, but ignores and / or attempts to distort the recommendations. Specifically, the report identifies that the best method of determining the extent of the undocumented fill is to have a civil / geotechnical engineer on site at the time of grading " *The actual depth of and lateral extent of the fill removal should be identified by the geotechnical engineer based on conditions observed at the time of grading.* "

Soil borings are very abbreviated snapshots of subsurface conditions, and all soils reports are conditioned on having a licensed engineer verify the assumed conditions (from borings) at the site during earthwork operations. By far, having an engineer onsite during earthwork operations is the best method of determining the extent of subsurface conditions, including unwanted earth materials.

Mr. Lombardo repeatedly states that " *There is no evidence that any testing was done to determine the full extent of the undocumented fill on the property.* " **That is a false and misleading statement.**

2) The governing geotechnical report by Earth Systems Pacific, repeatedly states that the native soil materials which are mixed with the demolition materials (mostly concrete rubble) should be separated from the rubble and reused as engineered fill. It would be foolish to expend the energy to remove from the site hundreds of cubic yards of acceptable native soils only to have to import hundreds of cubic yards of offsite material to be placed as engineered fill in order to restore the land to natural contours.

Mr. Lombardo repeatedly states that " *the work that was ultimately approved by the County was not removal of the undocumented fill but instead approval of engineered fills.* " **That is a false and misleading statement.**

3) The engineering firms retained in order to verify that the work was conducted in accordance the permit documents repeatedly verified this, including statements that the extent of the work was larger than estimated in the earlier reports:

" During the excavation of the loose material it was noted that the amount of uncontrolled fill was significantly larger that was detailed by H.D. Peters Co., Inc or Earth Systems, Inc. "

" The loose fill soils at the northerly location were stripped to firm original grade. The debris was removed from the fill and exported from the project site. "

" It is our opinion that the stripping and excavation of loose fill soils, moisture conditioning and compaction of the newly placed fill soils were completed in general accordance with the project plans and specifications. "

The statement by Mr. Lombardo " *The undocumented fill was not removed.* " is a **false and misleading statement.**

4) The reference in the CTI report, page 2 " *as the finish grade as detailed in the restoration plan would have appeared to have been a building pad or parking area* " is referring to the knoll of the hill, which indeed was historically used as a building pad for a residence long ago demolished. No new building pad was created or was there an attempt to create one.

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The following photographs, taken by myself many years earlier, clearly identify this area, which today remains as it existed before grading operations commenced.



The statement by Mr. Lombardo " ...the grading work which was to be for the removal of all of the undocumented fill became grading work for an engineered fill on the property and created a building pad where one did not exist prior to the illegal fill being placed on the property. " is **yet another false and misleading statement.**

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5) At the last meeting of this committee, Mr. Lombardo produced an old, hand drawn contour plan with superimposed contours of a recently produced computer generated plan, implying that they must match in order for the land to be considered restored.

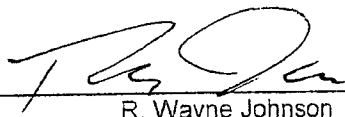
As I discussed during this meeting, contour maps are drawn based on three dimensional data points taken in the field by surveying instruments, based on bench marks which vary from time to time as a result of shifting surface soils. Different surveyors often use different benchmarks. Surface soils continually change and readjust based on environmental conditions such as rainfall, earthquakes, landslides, etc.

Older plans, such as the one Mr. Lombardo produced, are rough approximations, drawn entirely off site, in offices, based on data points recorded by hand in the field. Newer methods utilize computer programs which generate the contours based on data points collected in the field and stored internally in the computer program. No two contour maps, even ones drawn by computer programs, precisely match. Since my involvement is this property, I have seen many contour maps authorized by Dr. Steuck, most drawn by computer programs, and none precisely match the others. The assertion by Mr. Lombardo that a hand drawn contour plan, produced decades earlier, does not match one recently drawn by computer program, is yet another legal parlor trick.

A disinterested party to this discussion could easily come to the conclusion that statements such as those by Mr. Lombardo would have been preceded by at least a rudimentary investigation of these matters, including a few telephone calls to the participating engineering firms involved in order to verify preliminary assumptions. This engineer has indeed investigated this question and spoken directly to the engineers involved in the report production, field reviews and testing. None of these professional engineers has heard from Mr. Lombardo in any manner.

Furthermore, Mr. Lombardo has produced no statements by licensed professional engineers who support his position, and for good reason - his statements in the letters in question are, in my professional opinion, dishonest fabrications of legal parlor tricks, whose transparent purpose is to delay and obstruct Dr. Steuck's lawful use of his property.

In conclusion, the statements by Mr. Lombardo in his letters of June 03, 2009 and June 09, 2009 are overwhelming false and misleading. The facts of the process of permit closeout, signed by licensed professional engineers, approved by county grading inspectors, and retained in the county files, unequivocally refute the statements of Mr. Lombardo.



Sincerely,

R. Wayne Johnson

architect C-20317
civil engineer C-46677

enclosures: Earth Systems Pacific report # SH-10917-SA, pg. 3, 4, 5, 05/20/2008
Construction Testing & Inspection Services, final report, 8 pages, including plan sketch & field reports, 03/17/2009
H. D. Peters Co. Inc. and Associates, Final Report, 04/15/2010

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Exhibit H
Applicant's Attorney Rebuttal to
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Gordon J. Steuck
PLN080454

Board of Supervisors
February 7, 2012

EXHIBIT H

LETTER FROM APPLICANT'S ATTORNEY
REBUTTAL TO COMMENTS RECEIVED
ON INITIAL STUDY

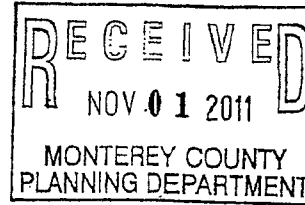
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November 1, 2011

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KOREN R. MCWILLIAMS
DANIEL E. GRIFFEE
J. KENNETH GORMAN
KARLI R. JUNGWIRTH



File No. 2251.000

VIA FACSIMILE & EMAIL

Mike Novo
County of Monterey RMA
Planning Department
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901

Re: Steuck (PLN 080454)

Dear Mike:

I am in receipt of Mr. Lombardo's letter dated October 28, 2011, wherein he asks you to rewrite and re-circulate the Initial Study based on several claims that simply have no merit.

This is to request that we proceed with the November 10 hearing date before the Minor Subdivision Committee and approve the lot line adjustment as proposed. This letter is also to respond to comments made by Mr. Lombardo.

The purpose of this Initial Study is to analyze the potential impact of a lot line adjustment of two legal lots of record, nothing more.

Mr. Lombardo repeats (wrongfully) that you have been asked to piecemeal several approvals. In effect, you are being invited by him to speculate on the type and scope of development that simply is not there. You are then invited, without the benefit of such a proposal, to express an opinion on the validity and proper conditions and resulting exactions. On what? There is no further proposal, nor is one contemplated at this time.

For the same reason our Courts must deny claims that fail for "ripeness", our County's administrative and political decision-makers should not be drawn into disputes which depend for their immediacy (projects that require conditions) on speculative future events. (*Selby Realty Co. v. City of San Buenaventura*) A Project by definition is "the whole of a project" and conditions, exactions and environmental review are limited to the proposal at hand. The whole of the Project here is the lot line adjustment. Anything else is speculative and we are not required to provide the County with plans that do not exist.



In response to Mr. Lombardo's comment letter, I will address each issue as they arise in his letter:

**General Comments
(Page 1 of Lombardo letter)**

The approval of this lot line adjustment application does not grant other entitlements or rights to build on the property, nor does it circumvent the requirement that future development will be subject to public review. It simply modifies the lines between two legal lots of record.

Plans submitted to the County years ago are not the subject of this lot line adjustment and were withdrawn at the request of Dr. Steuck. Additionally, many projects that were potentially feasible 4 years ago are absolutely not feasible now given the change in the economy and many other factors. Alternative uses are being proposed in some areas while others lay fallow with no development contemplated. To say a certain project will happen here based on plans submitted, and withdrawn, years ago is pure speculation.

If and when Dr. Steuck applies to build on either legal lot, it will contain an element that avoids speculation: scope and definition of development that will assist in determining if impacts occur and whether conditions must be imposed. In the event future development is required, it will require a public hearing, wherein the County, people of Monterey County and Mr. Del Piero will have the opportunity to analyze biological, visual and water conditions, if necessary – the items Mr. Lombardo ironically complains about in his letter.

Reliance on Certificates of Compliance (Page 2 of Lombardo letter): Mr. Lombardo and Dale Ellis, on behalf of Lombardo & Gilles, have claimed that the Unconditional Certificates of Compliance were issued in error. Ironically, it was Dale Ellis who reviewed and approved those certificates while he worked for the County of Monterey, before working for Mr. Lombardo. The properties here were given Unconditional Certificates of Compliance and were never merged. Mr. Lombardo's claim that Mr. Ellis wrongfully issued the Certificates is not timely, not related to this lot line adjustment, nor is it a requirement to revisit the authenticity of such Certificates when approving a lot line adjustment.

History of Development on the Property (Page 2 of Lombardo letter): Mr. Lombardo once again invites you go beyond the scope of review of a lot line adjustment. A lot line adjustment application cannot proceed if an open code enforcement case exists. The standard of review for whether a lot line adjustment can be approved in light of code enforcement violations is: Do any violations exist today? There are no open code enforcement cases here.

It is beyond the scope of a lot line adjustment to document two property owners' contentious history just as it is to speculate about future development on existing lots of record.



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It is beyond the scope of a lot line adjustment to document two property owners' contentious history just as it is to speculate about future development on existing lots of record.



SPECIFIC COMMENTS

Page 4 of the Initial Study (Page 2 of Lombardo letter): The project was deemed complete on May 15, 2009, before the 2010 General Plan Update. Nonetheless, we are not asking to be rezoned or to have specific uses that would remotely impact the City of Monterey or Carmel (which is the action that would typically precede the need to "review and recommend" in an "Urban Reserve Overlay"). I'm not aware of any lot line adjustment that has required such a review by cities.

Page 4 of the Initial Study (Page 3 of Lombardo letter): There is ample evidence in the record and by the admission of Mr. Lombardo that an adequate water supply and connections exist to serve the two legal lots of record that Dr. Steuck owns.

Page 5 of the Initial Study (Page 3 of Lombardo letter): The Department of Environmental Health has issued proper permits for septic and water. Mr. Lombardo's claims do not appear to reflect the current permitting requirements nor are they relevant to the approval of a lot line adjustment.

Page 6 of the Initial Study (Page 3 of Lombardo letter): This is an application for a lot line adjustment. Dr. Steuck is not proposing to build homes on his site, nor is he required to. Mr. Lombardo's tone is that development is a certainty. That is flatly not the case. The public's ability to analyze particular impacts of a proposed project in the event one does occur is not hindered by the approval of this lot line adjustment.

Page 7 of the Initial Study (Page 4 of Lombardo letter): See response to Page 5 of Initial Study (Page 3 of Lombardo letter), above.

Page 8 of the Initial Study (Page 4 of Lombardo letter): Again, Mr. Lombardo skews the record with allegations that are not part of this lot line adjustment application. This application does not propose to introduce hazardous materials into the environment. It is to move lot lines on two legal lots of record. The building department has visited the site on numerous occasions to verify the accuracy of these allegations. They have cleared the property of any code violations resulting from using recycled concrete as fill as Dr. Steuck worked diligently to remedy all concerns the County requested.

Page 9 of the Initial Study (Page 4 of Lombardo letter): The map filed for this lot line adjustment adequately addresses water drainage. There are no code violations that exist today. Grading is not proposed as a part of this lot line adjustment application.

Page 10 of the Initial Study (Page 5 of Lombardo letter): The project was deemed complete before the 2010 General Plan took effect. Nonetheless, the lot line adjustment application has no impact on the legal right of Dr. Steuck to access his two parcels.

Mike Novo
County of Monterey RMA
November 1, 2011
Page 4



Page 11 of the Initial Study (Page 5 of Lombardo letter): No development is proposed at this time. See comments above regarding making an informed decision on speculation.

Page 13 of the Initial Study (Page 5 of Lombardo letter): No development is proposed at this time. See comments above regarding making an informed decision on speculation.

Page 16 of the Initial Study (Page 5 of Lombardo letter): Visual impacts will certainly be addressed when and if development is proposed. We acknowledge the sensitivity and beauty of the property in question, and the public's ability to review and respond to a proposal to build on this site remain intact. This issue is addressed by staking a particular project that is actually proposed, not on speculation. Again, no development is proposed at this time. See comments above regarding making an informed decision on speculation.

Page 19 of the Initial Study (Page 5 of Lombardo letter): See response to Page 5 of Initial Study (Page 3 of Lombardo letter), above. This is not a hearing on past violations, it is on a lot line adjustment on a property that has been cleared of all violations. The Initial Study properly analyzes the environmental impacts of adjusting lines on two legal lots of record.

Page 23 of the Initial Study (Page 6 of Lombardo letter): This project is consistent with the General Plan in effect at the time the application was deemed complete. See above for comments to reiterate arguments here.

Page 24 of the Initial Study (Page 6 of Lombardo letter): See above.

To conclude, Mr. Del Piero and his representatives continue the long-standing battle between adjacent property owners, the resolution of which will likely be left to a civil court. Many of the issues they raise erroneously point to piecemealing approvals. However, the County's duty is to analyze the "whole of the project", which is a lot line adjustment and nothing more. The public remains protected in the event development were to occur in the future and the allegations regarding the history of this project and speculation of further development are simply red herrings that must be disregarded.

Very truly yours,

Johnson, Moncrief & Hart, PC

A handwritten signature in black ink, appearing to read "Aaron P. Johnson", is written over a horizontal line.

Aaron P. Johnson

APJ/lt

Mike Novo
County of Monterey RMA
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Page 5



cc: Supervisor Dave Potter
Les Girard, Esq.
Dr. Lew Bauman
Taven Kinison Brown
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