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October 22, 2018

HAND DELIVERY

Monterey County Board of Supervisors
168 West Alisal St., 1st Floor
Salinas CA 93901

Re: Appeal of ZA Resolution No. 18-046, In Re Greer (PLN170624)

Members of the Board:

On behalf of Tim and Constance Glass, I respectfully request that you deny the appeal and ratify the Zoning Administrator's Decision approving the conversion of a test well to a permanent, single connection well. Resolution No. 18-046 accurately states the relevant facts, law and regulations and makes appropriate and sound findings based on the facts to support the Decision.

Mr. and Mrs. Glass bought the property at 124 Fern Canyon Road (the "Property") from prior owners that included the Greer Trust. The property contains a single well (the "Well") that was constructed pursuant to a permit for a test well obtained in 2004 by an owner prior to the Greer Trust group. (Resolution No. 04-307 for PLN030642). Well Permit No. 03-05460 was issued by Monterey County Health Department on November 1, 2004 for a domestic single connection.

The Appeal incorrectly faults the Zoning Administrator for failing to make findings under Monterey County Code section 15.04.040 as a primary basis for the appeal. However, as set forth in Section 15.04.010, Section 15.04.040 applies to an application for a water system permit for a domestic water system serving two or more connections. The Zoning Administrator's Decision correctly finds that the application is for a single connection.

The Appeal says that the applicant does not have the legal right to use water from the well. This assertion may refer to a 2008 Water Agreement between Greer et al. and the Appellant. The 2008 Agreement provides a process for developing a water system using the Well to serve the Property and the Appellant's adjacent parcel. On May 26, 2017, the Appellant sent the following email to one of the then owners of the Property:

"From: **Andres Czerwiak** <andresczerwiak@gmail.com>
Date: Fri, May 26, 2017 at 10:05 AM
Subject: Re: 124 Fern Cyn
To: George Riley <georgetriley@gmail.com>

Hello George,

Thank you for your email. I understand that you think my calculation of value diminution was excessive (even though I voluntarily discounted it in an attempt to be abundantly reasonable). I remain, however, interested to know what you think a reasonable amount for diminution would be so that we might settle the matter. When we first entered into the water agreement you represented the permits that would be required for the water system would be simple and straight forward, much like a building permit. I have since learned from you (via your consultant, whose opinion has been affirmed by peer review) that the required permits are exceedingly complex and, in all likelihood, unobtainable. **I therefore no longer require or desire service from the water system and will instead rely on my Cal Am service connection.** Of course, if you desire service from the water system you can certainly pursue the permits (although your consultant suggests that would be a futile exercise).

Sincerely,

Andres" (Emphasis added).

The Appellant in fact renounced rights to water from the Well and invited the application that is the subject of this appeal. The Appellant asked for money. If he now has a claim under the 2008 Agreement, it is a civil claim for money. The use of the planning process to pursue this claim is a misuse of the planning process. The 2008 Agreement contemplates residential use on both parcels. It does not contemplate using the Agreement to prevent the construction of a residence at 124 Fern Canyon Rd.

The 2008 Agreement also does not prohibit sequential permitting. If the Appellant does, in fact, want to use water from the Well, appropriate permitting may be pursued later. The Zoning Administrator properly determined that conversion of this existing facility is categorically exempt from the California Environmental Quality Act under Section 15301(b) of the CEQA Guidelines (14 CCR §15301(b)). The Zoning Administrator properly exercised discretion to determine that the application could proceed prior to processing a use permit for a septic system and single family dwelling. The Decision conditions the Coastal Administrative Permit and Design Approval on approval of additional permits before any use or construction other than that specified by the permit. (Condition PD001 – Specific Uses Only).

The Appellant argues that the Zoning Administrator should have required the application to be processed with a full Coastal Development Permit. However, MCC §20.70.120 exempts such a project from the requirements for a Coastal Development Permit unless it is for the expansion or construction of a water well or septic system. (§20.70.120A.3). This application was not for the expansion or construction of a water well or septic system.

The Zoning Administrator properly exercised discretion under applicable law in issuing the Decision. The Decision should be affirmed. The appeal should be rejected.

Sincerely,

NOLAND, HAMERLY, ETIENNE & HOSS
A Professional Corporation

Lloyd W. Lowrey, Jr.

LWL:ll

cc: Tim and Constance Glass; Nancy Isakson; Wendy Strimling, Esq.; John Bridges, Esq.; Alex Lorca, Esq.; R. Craig Smith, Monterey County RMA

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