

D. A. & M. S. ISABELLE

April 25, 2014

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APR 25 2014
PUBLIC WORKS DEPARTMENT

Ms. Sharen A. Walsh, P.E.
Deputy Director & Building Official
Development Services Division
Municipality of Anchorage
P.O. Box 196650
Anchorage, AK 99519-6650

RE: Seaview Heights Subdivision, Lot 7B, Block 2
Permits #01-0076 and #00-6083
Transmittal of Requested Documents letter dated 1/23/2014

Dear Ms. Walsh:

We have reviewed your letter dated January 23, 2014 and the accompanying documentation that was provided. After receiving your letter, we met briefly on February 28, 2014 with you and MOA attorney Sam Severin as you requested. We were hopeful that your office was working to resolve the stop work orders that the MOA has issued in connection with the construction of our home at the above-referenced property. More than a calendar year has now passed since our first meeting with you to address this matter and yet the matter remains unresolved.

We had hoped to have received some form of follow up communication to our February meeting proposing some sort of path forward. Your letter indicated that the MOA had a goal of bringing a resolution to this matter prior to the start of the 2014 construction season. Despite this, we have yet to receive further communication on this matter from either you or Mr. Severin. In light of the lack of priority that your office is apparently affording this matter, it seemed appropriate to provide a written response to your January 23rd letter:

"Request 1. Status of and documentation pertaining to Stop Work Order dated 2/04/2010." At the meeting of May 10, 2013, you and Jerry Weaver (and the other MOA personnel present) stated that you were unaware of a Stop Work Order being in place on our project. You requested a copy of the Stop Work Order we had with us at the meeting. The February 4, 2010 Stop Work Order ("2/4/2010 Order") that we shared with you states, *"Illegal dumping of fill. Cease and desist immediately."* The 2/4/2010 Order does not reference any code violation and does not indicate what action needs to be taken to lift the order. We raised these issues to you at the May 10th meeting and received no response back from you until October 25, 2013, when you called because of a new complaint from our neighbor, Bob Crockett.

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Your January 23rd letter indicates that the 2/4/2010 Order has not been lifted "*due to unresolved issues regarding your intentions...*" Again, the MOA refused to cite the code violation that forms the basis for the 2/4/2010 Order and has provided no further direction as to what steps it believes need to be taken to have the order lifted. Accordingly, we consider the 2/4/2010 Order to be in violation of applicable law and an illegal impediment to our right to develop our private property.

Your January 23rd letter also states that an additional Stop Work Order was issued on October 25, 2013 ("10/25/2013 Order"). As we previously advised you, we have never received a copy of the 10/25/2013 Order and have not been advised as to the code violation the MOA believes form the basis for such order or the steps that would need to be taken to have that order lifted.

You requested and scheduled a meeting with us on October 28, 2013. It was our understanding that you were going to provide us with copies of the materials that we had requested in the May 10th meeting. We even provided you with copies of our notes from the May 10th meeting to ensure that there would be no miscommunications concerning the nature of the documents we were requesting. Despite those efforts, you did not provide any of the requested documents until January 23, 2014, and then it was only because we renewed our previous request and advised that we were not prepared to participate in a meeting with Mr. Severin until we had the benefit of reviewing the requested documents.

"Request 2. Topography survey performed by Dowl Engineers on Isabelle's property in Sept/Oct 2010." - You provided the data file of the copy of the corrected topo only. Our request was for (1) the supporting grade shots, and (2) the associated report prepared by Dowl. We have discussed this with you several times. When we gave the MOA and Dowl permission to come onto our property to perform the survey, we advised that our permission required the receipt of the complete survey and supporting documentation. Dowl stated in 2010 that a full report was provided to you and they could send it to us electronically, but they could not release it to us without your permission. We still have not received the requested documentation nor has your office advised as to the basis for withholding it from us.

"Request 3. Copy of Summary report by MOA Plan Review Engineer, Ron Wilde from 2010." - The report that was finally produced with your January 23rd letter was dated May 5, 2010. MOA stated no reason for its delay in producing this document, despite having received repeated requests over the course of the previous 4 years in order that it could be furnished to the engineer that the MOA compelled us to retain in order to proceed with the project. We will respond to the gross misstatements and faulty conclusions contained in the Ron Wilde report separately because of the enormity of the response. You are already aware of our position with regard to the report and, based on our meeting of February 28, 2014, it seemed apparent that you shared some of our same concerns. To the extent any decisions by MOA concerning our project are based upon the conclusions reflected in the Ron Wilde report, we reserve all rights to pursue the appropriate legal remedies.

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Your letter makes reference to the fact that the MOA needs to discern our "intentions" with regard to the project before this matter can be resolved. Our "intentions" have been clearly and repeatedly communicated to the MOA over the course of the past 10 years and can be summarized as follows:

1. We cannot complete construction of the Municipal Right-of-Way "Lori Drive" because the MOA has not assisted in getting the electrical power pole out of the middle of the right-of-way. It is not a mystery that the road and driveway is not in conformity with our submitted and approved "plan." The fill/grade permit is unfinished and incomplete. We cannot achieve final grade without imported fill for the right-of-way and driveway. The MOA has offered no further information as to what, if any, action it intends to take to have the pole removed, other than to provide repeated assurances that it would happen.
2. We have not placed any fill on the neighboring properties in violation of applicable law. As was pointed out to you at our February 28, 2014 meeting, there is a dedicated slope easement in place that would allow placement of fill on Mr. Crockett's property. To the extent there is any fill on Mr. Crockett's property, it is allowed pursuant to the plat dedication. The MOA has ignored the plat dedication and repeatedly directed us to modify our approved development plan in order to accommodate Mr. Crockett. Such directives were contrary to applicable law and resulted in a substantial delay and expense to our project.
3. We have created no drainage impact to any surrounding properties. Drainage has been contained on our own property, including the neighbors' drainage, and has not crossed the property lines. The photos we shared with you at our February 28th meeting prove this. If the MOA believes otherwise, as the Ron Wilde report suggests, such a conclusion can only be the result of the MOA not knowing the actual locations of the property boundaries. The MOA has now had more than 10 years to observe the drainage and confirm the property lines. We dispute any allegation that the development of our property has resulted in drainage running onto the neighbors' properties.
4. In order to move forward on the house construction permit, imported fill has to be brought in for the foundation backfill and septic system area. Because we were stopped, years ago, we cannot get final grade and therefore the septic tank cannot be set. According to MOA personnel, our permits have not all been re-instated since the first stop work orders issued in 2003. These are gross impacts that the MOA refuses to address in spite of our continual requests. The entire project was designed around the approved permits that the MOA issued to us. We reasonably relied upon those permits and incurred substantial development and construction expense as a result. To the extent the MOA is now seeking to revoke our permits and require that we apply for new permits in order to proceed with our project, we will be requesting reimbursement for all of the expense incurred in reliance on the permits that were initially approved.

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We have been waiting an unreasonable amount of time for the MOA to allow us to proceed with the approved permits issued. The ongoing stop work orders have been imposed without justification and the MOA has not acted in good faith. It is our intent to proceed with performing the work on the original permits as permitted and approved. To the extent the MOA is not willing to remove the stop work orders and allow us to complete our project as intended, we request that you provide us written notice of that decision, identifying the factual and legal basis therefore, without further delay in order that we may pursue our available remedies.

Sincerely,


Del and Sue Isabelle
Property Owners/Permittees

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