

LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

March 4, 2016

Mr. Packie Villa
County of Santa Barbara
Department of Public Works
Road Division Permit Office
4417 Cathedral Oaks Road
Santa Barbara, CA 93110

By email to PVilla@cosbpw.net

RE: County Storm Pipe Extension at 851 Cheltenham Road, APN #023-164-004

Dear Mr. Villa,

This office represents Lara Urbany, owner and resident of 851 Cheltenham Road. Ms. Urbany received your letter dated January 7, 2016, alleging a violation of County Ordinance 1491 based on the contentions that “a 12” culvert pipe extension has been illegally placed within Santa Barbara County’s Road Right-of-Way”, that the extension “redirects the historical flow onto the neighboring property at 849 Cheltenham Road” and that the extension “constricts the original water flow”. Based on the evidence we are aware of, each of these contentions is unfounded, and we respectfully ask that the letter be rescinded immediately.

As you may not be aware, the culvert at issue has been the subject of a dispute between the Urbanys and the former owners of 849 Cheltenham Road, which culminated in a lawsuit by the former 849 Cheltenham owners that was subsequently dismissed. The evidence concerning the County culvert and historical drainage across 851 and 849 Cheltenham Road has been exhaustively reviewed, and overwhelmingly supports the conclusion that the current configuration of the culvert drain and channel has existed for at least 64 years, pre-dating construction of the residence at 851 Cheltenham in 1952, and pre-dating adoption of Ordinance 1941 in 1963.

The County has reviewed the evidence regarding historical drainage across the properties on numerous occasions, in response to various zoning complaints and inquiries. In each instance, the County determined there was no evidence that the Urbanys had illegally diverted the outflow from the County’s culvert pipe or altered what has been the historic drainage for decades. For example:

- An October 11, 2006 letter from Jeff Thomas, County Supervising Building & Grading Inspector, stating that to the extent maps accurately depict the drainage pipe at the time it was installed as exiting at the residence at 851 Cheltenham Road, “it would have been moved at the time the home was built. Since the home was built about 50 years ago, the change in drainage at that time would be considered historic today, as there were no drainage laws at the time the residence was built.” (Exhibit A)
- An August 10, 2006 letter from Mike Zimmer, County Building Official, stating “the County does not have any physical evidence that shows where or how the drainage culvert at

Cheltenham Road used to drain. The culvert is very old and the County does not have any records with respect to its drainage course. . . . without definitive evidence showing a violation of County Codes, we do not have the authority to impose any requirements on an individual or property.” (Exhibit B)

Moreover, an October 17, 2008 report from civil engineer Glenn C. Hawks (Exhibit C) provides:

My field visit and review [of documents pertaining to grading and drainage at the site] confirmed my conclusions that the Urbany’s have done nothing to change grading and drainage of any significance on their property, or adjacent properties.

Additionally, an August 20, 2013 declaration (under penalty of perjury) of neighbor Charles Saenger who has lived at 856 Cheltenham Road since 1975 (Exhibit D) states:

On many occasions I have witnessed storm water from Cheltenham Road cross over the property at 851 Cheltenham Road and onto the property at 849 Cheltenham Road through a culvert and channel located near the north end of the property line between 851 Cheltenham Road and 849 Cheltenham Road. In fact, over the years of my residency at 856 Cheltenham Road I have helped the previous owners, Charles and Marguerite Ferrari, clear this watercourse of debris. The location and direction of this watercourse has not changed since 1975 . . .

We are unaware of any “new” evidence that could establish that the extension was placed subsequent to 1952. The County Road Log which describes the culvert at issue as an “18” C.M.P. x 40 ft., concrete headwall at intake” is dated July 1947, before the residence at 851 Cheltenham was built. A City map dated 1984 showing an 18” C.M.P extending across Cheltenham Road and directed at the residence at 851 Cheltenham Road is inconsistent with Mr. Saenger’s sworn declaration that the location and direction of the culvert has not changed since 1975 (Exhibit D), inconsistent with historical photographs which show the northern portion of the property in the same configuration as exists today (*see* Exhibit E), and inconsistent with the placement of the driveway and residence directly in line with the culvert outflow. The evidence, including but not limited to the above, strongly suggests that the current configuration of the culvert and drain has existed at least since 1952 when the house at 851 Cheltenham was built. As Mr. Thomas’ letter provides, any such change from that era would be “considered historic today, as there were no drainage laws at the time the residence was built.” (Exhibit A). Indeed, any alteration was clearly meant to be permanent and has been relied on by the community of landowners for at least 64 years. Case law establishes that under these circumstances the alternation is considered natural and “subject to as much protection as if the condition were natural” (*see Clement v. State Reclamation Bd.* (1950) 35 Cal.2d 628, 638-638).

The contention in your January 7, 2016 letter that the “extension constricts the original water flow” is also unsupported by the evidence. Immediately after receiving your letter on January 12, 2016, Ms. Urbany had a plumbing company scope the drain from each end using a video camera. The January

Mr. Villa ~ 851 Cheltenham Storm Pipe Extension
March 4, 2016
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13, 2016 video shows that the drain is clear and that water can flow unobstructed from the 18" diameter pipe to the 12" diameter pipe and through (See Exhibit F). We are not aware of a single report of this culvert ever having backed up in the past, including during very heavy storm events.

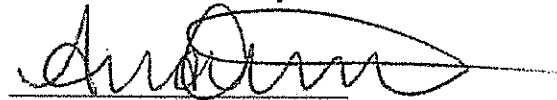
In your letter, you demand that Ms. Urbany "remove the entire length of the 12" diameter pipe." Removal of the 12" diameter extension now would result in an 18" diameter culvert pipe draining stormwater directly onto the driveway immediately above and thus into the house at 851 Cheltenham. As would be evident from a site visit, removing the 12" diameter pipe as requested in your January 7, 2016 letter would create an immediate health and safety risk to occupants and jeopardize the structural stability of the house from storm water flowing into and through the interior of the structure. The County lacks the authority to require removal under these circumstances (see *Clement*, 35 Cal.2d at 638 ("It does not follow, however, that the state may without liability tear out a protection that has existed for 62 years to the lands of plaintiff upon which substantial sums have been expended in reliance upon the continuance of the protection")).

More significantly, Ms. Urbany became one of the owners of 851 Cheltenham in 2003, accepting the culvert in the condition that it was in and making no changes to it since that time. The evidence strongly corroborates that the 12" pipe constitutes the historical path of storm water flow for over 50 years, and Ms. Urbany has not altered that path of flow, and as such cannot be held responsible for the conditions that were established a half-century ago, and before Ordinance No. 1491 was adopted. Further, the video evidence and historical performance of the culvert in question demonstrate that the culvert provides clear passage of storm water under the County's roadway.

In light of the above, we respectfully request that you determine no violation has occurred with respect to the culvert in question, and withdraw your demand letter dated January 7, 2016 in writing. To the extent evidence in your possession supports a finding of violation, we respectfully request the ability to review that evidence¹ and respond to it, before you make a final determination regarding the existence of a violation.

Sincerely,

Law Office of Marc Chytilo



Marc Chytilo
Ana Citrin

¹ If necessary this request may be regarded as a request for public records pursuant to the Public Records Act, California Government Code § 6250, et seq.

Exhibit List

- A. October 11, 2006 letter from Jeff Thomas, County Supervising Building & Grading Inspector
- B. August 10, 2006 letter from Mike Zimmer, County Building Official
- C. October 17, 2008 report from civil engineer Glenn C. Hawks
- D. August 20, 2013 declaration of neighbor Charles Saenger
- E. Historical photograph showing 851 and 849 Cheltenham Road
- F. January 13, 2016 videos showing that the drain is clear (transmitted separately)

October 11, 2006

Gerald & Kim Castillo
3061 Samarkand Dr.
Santa Barbara, CA 93105

Subject: Your letter dated October 4, 2006

Dear Mr. & Mrs. Castillo,

In regards to your letter dated October 4, 2006, please refer to my letter dated August 30, 2006. Although I have addressed the questions from your August 30, 2006 letter, I am including the following to further clarify a couple of questions in your October 4, 2006 letter.

1. The drainage map you refer to is a hand drawn map, by Public Works. The location of the culvert in question appears to have been labeled incorrectly, as it shows the pipe exiting in a location that would be underneath the existing house at 851 Cheltenham. If this was an accurate depiction of the drainage pipe at the time it was installed, it would have been moved at the time the home was built. Since the home was built about 50 years ago, the change in drainage at that time would be considered historic today, as there were no drainage laws at the time the residence was built.
2. The retaining wall at 851 Cheltenham. The County did review the wall and did make a determination. The wall and grading are exempt. The County utilized the same concessions and benefit of doubt for 851 Cheltenham as we did for your retaining wall and grading.
3. If the owners of 851 Cheltenham regraded the area around the culvert to cause the water to be directed onto your property, the County has not received any information that would indicate they have. Therefore, the County stands by its conclusions as stated in my August 30, 2006 letter.

If you have any questions please feel free to contact me at (805) 934-6513 or (805) 686-5027

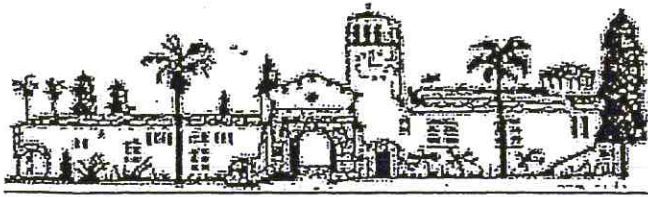
Sincerely,

Jeff Thomas
Supervising Building & Grading Inspector
Building & Safety Division
Santa Barbara County

CC:

Salud Carbajal, 1st District Supervisor, County of Santa Barbara, sent via email
John Baker, Director, Planning and Development, Santa Barbara County, sent via email
Dianne Meester, Assistant Director, Planning and Development, Santa Barbara County, sent via email
Mike Zimmer, Building Official, Planning and Development, Santa Barbara County, sent via email
Mary Pat Barry, County Counsel, Santa Barbara County, sent via email

EXHIBIT A



County of Santa Barbara Planning and Development

John Baker, Director
Dianne Meester, Assistant Director

August 10, 2006

Kyle & Janelle Ashby
2840 Foothill Rd.
Santa Barbara, CA 93105

Mr. Donald Pinkham
2848 Foothill Rd.
Santa Barbara, CA 93105

Mr. Dale Gage
2860 Foothill Rd.
Santa Barbara, CA 93105

William & Lara Urbany
851 Cheltenham Rd.
Santa Barbara, CA 93105

Mr. Michael R. Hoffman
2866 Foothill Rd.
Santa Barbara, CA 93105

Ms. Kim Vandyk
2834 Foothill Rd.
Santa Barbara, CA 93105

Re: Drainage concerns near 847 and 851 Cheltenham Road

Dear Mr. & Mrs. Ashby, Mr. Gage, Mr. Hoffman, Mr. Pinkham, Mr. & Mrs. Urbany, and Ms. Vandyk:

Thank you for your letter dated August 6, 2006 (copy enclosed). Supervisor Salud Carbajal has asked me to respond to the issues that you have brought to our attention. I understand your concerns and can assure you that each one will be addressed and dealt with according to current codes and regulations. It is our intent to handle each complaint investigation as a neutral party according to laws set forth by the Santa Barbara County Board of Supervisors.

Our inspectors are well qualified for their assigned job duties. In cases such as this, the inspectors are directed to seek the advice of their supervisor. In responding to your letter of July 17, 2006, inspectors Tony Bohnett and Darrin Yant called their supervisor, Jeff Thomas, to review the site and assist with their determinations.

Mr. Thomas performed a site visit on the vacant lot between 847 and 851 Cheltenham Road. He noted that two retaining walls had been constructed on site. One retaining wall is located along the eastern property line between the vacant lot and 847 Cheltenham Road. The other retaining wall is located along the southern property line between the vacant lot and Mr. Pinkham's property at 2848 Foothill Road. Both retaining walls range from 0 to 3 feet in height. Both retaining walls have been backfilled with a level backfill to within approximately 6" of the top of the walls along with minor grading. Mr. Thomas also noted the culvert that traverses under Cheltenham Road and outlets on the lot at 851 Cheltenham Road.

The retaining walls at the site constitute work exempt from the permit requirement under both Section 106.2(5) of the California Building Code and Chapter 10 of the Santa Barbara County Code (Building Regulations). Both of these codes allow for the construction of retaining walls up to 4 feet in height, with

Building and Safety Division
123 East Anapamu Street - Santa Barbara, CA 93101-2058
Phone: (805) 568-3030 Fax: (805) 568-3103

EXHIBIT B

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a level backfill, without the need for a building permit. Therefore, in the case of the two walls in question, no County permits are required for their construction. I would like to add that Mr. Thomas found no evidence that the retaining walls were constructed in an unsafe manner.

Mr. Thomas noted some grading on the vacant lot, specifically the backfill of the two retaining walls. Without the assistance of pictures or a survey of the site prior to the grading, Mr. Thomas estimated the areas of disturbance by looking at surrounding undisturbed grades and changes in grades with respect to those existing undisturbed areas. Based on the evidence available at the time of the visit, it was determined that the amount of earth movement on the vacant lot was approximately 40-45 cubic yards of cut and approximately 40-45 cubic yards of fill. No additional information concerning the grading has come forward to date. Chapter 14, section 14-6(a), of the Santa Barbara County Code (Grading, Erosion and Sediment Control) allows up to 50 cubic yards of cut and 50 cubic yards of fill to be transported without the issuance of a grading permit. Therefore, no grading permit is required for the earthwork on the vacant lot.

The drainage issue from the culvert under Cheltenham Road does raise concerns for the County. Our review of aerial photographs does not show any definitive drainage features on the vacant lot. Aerial photographs do appear to show drainage features on 851 Cheltenham Road, but the information is inconclusive. The County has requested information from the owners of both 847 and 851 Cheltenham Road to help aid in a determination of this matter. Unfortunately, the County does not have any physical evidence that shows where or how the drainage from the culvert at Cheltenham Road used to drain. The culvert is very old and the County does not have any records with respect to its drainage course. The County has been continuing to research the area in hopes of locating any information or photographs that will depict the historic drainage pattern through the area. However, without definitive evidence showing a violation of County Codes, we do not have the authority to impose any requirements on an individual or property.

In response to your question about the cancellation of the site visit scheduled on July 27th, I want to assure you that we do our best to keep our site visit appointments. However, due to circumstances in this case, I agree with Mr. Thomas's decision to have his inspectors cancel the site visit. Although the site visit cancellation was unfortunate, Mr. Thomas directed his staff to advise any interested individuals with questions to contact him directly. To date, he has not received any phone calls from any of the interested parties.

In closing, the County will continue to investigate your complaint regarding drainage at the site until we are satisfied with the outcome. We welcome any information from individuals with direct knowledge of the site, as the review of all such information will insure that we make the appropriate decision. Please do not hesitate to call Jeff Thomas with any information or questions you may have in regards to the drainage issue or regarding permit requirements for additional work that might be performed in the area.

Sincerely,

Mike Zimmer
Building Official
Building & Safety Division
Santa Barbara County

Oct. 17. 2008 3:45PM

ATTN: JEFF THOMAS
Supervising Building & Grading Inspector



Hawks & Associates
Planning

Engineering

Surveying

October 17, 2008

John C. Lauritsen Law Office
800 Garden Street, Suite L
Santa Barbara, CA 93101

RECEIVED

OCT 29 2008

SANTA BARBARA COUNTY
REGISTERED PROFESSIONAL ENGINEER

RE: 851 Cheltenham Road, Santa Barbara

Dear Mr. Lauritsen:

This letter will report the results of my field visit on Thursday, Oct. 9, 2008 to 849 and 851 Cheltenham Road, Santa Barbara. I also reviewed a number of documents that pertain to grading and drainage at the site, including notes from a visit to the site in 2007.

My field visit and review confirmed my conclusions that the Urbany's have done nothing to change grading and drainage of any significance on their property, or adjacent properties.

Historic topographic maps clearly show that the natural drainage at 851 is to the south and east as is also the case with the vacant lot at 849. (See Exhibits 1 and 1A)

The historic flow path from the culvert under Cheltenham Road is uncertain and the time of change from an 18" CMP culvert to a 12" RCP as shown on the field survey map is an unknown factor. However my hydrology analysis indicated the flow is probably less than 1 cubic foot per second and should not create unusual erosion problems. However, in my field visit I noticed that the southeasterly natural drainage flow direction at the common property line between 851 and 849 has been blocked and should be restored as shown on the survey map Exhibit 2.

It is also apparent from topographic maps that some minor grading has taken place at 849 to re-grade the natural south east slope to a more due south slope as depicted on Exhibit 2.

My conclusion is generally consistent with that of the Santa Barbara County Planning and Development Department as set forth in discussion item 3 of their letter of August 30, 2006 (attached).

I am a qualified grading and drainage expert in the Santa Barbara Superior Court System, having testified several times, and am prepared to testify to the above conclusions if necessary.

Please call if you have any questions.

Sincerely,

Hawks & Associates

Glenn C. Hawks
Glenn C. Hawks



- Attachments:
- County of Santa Barbara Letter August 30, 2006
 - Exhibit 1 - Topographic Map Pre 1984
 - Exhibit 1A - Topographic Map Date Unknown
 - Exhibit 2 - Topographic Survey Map Dec. '07 with flow path
 - Exhibit 3 - South coast watershed map

cc: Bill and Lara Urbany

EXHIBIT C

DECLARATION


State of California,)
)
County of Santa Barbara)

I, Charles Saenger of Santa Barbara, California, declare:

I have lived at 856 Cheltenham Road, Santa Barbara, California, since 1975. On many occasions I have witnessed storm water from Cheltenham Road cross over the property at 851 Cheltenham Road and onto the property at 849 Cheltenham Road through a culvert and channel located near the north end of the property line between 851 Cheltenham Road and 849 Cheltenham Road. In fact, over the years of my residency at 856 Cheltenham Road I have helped the previous owners, Charles and Marguerite Ferrari, clear this watercourse of debris. The location and direction of this watercourse has not changed since 1975, except that it has recently been blocked at the point where it crosses the property line between 851 and 849 Cheltenham Road.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated: 8/20/13

 Charles Saenger
Charles Saenger

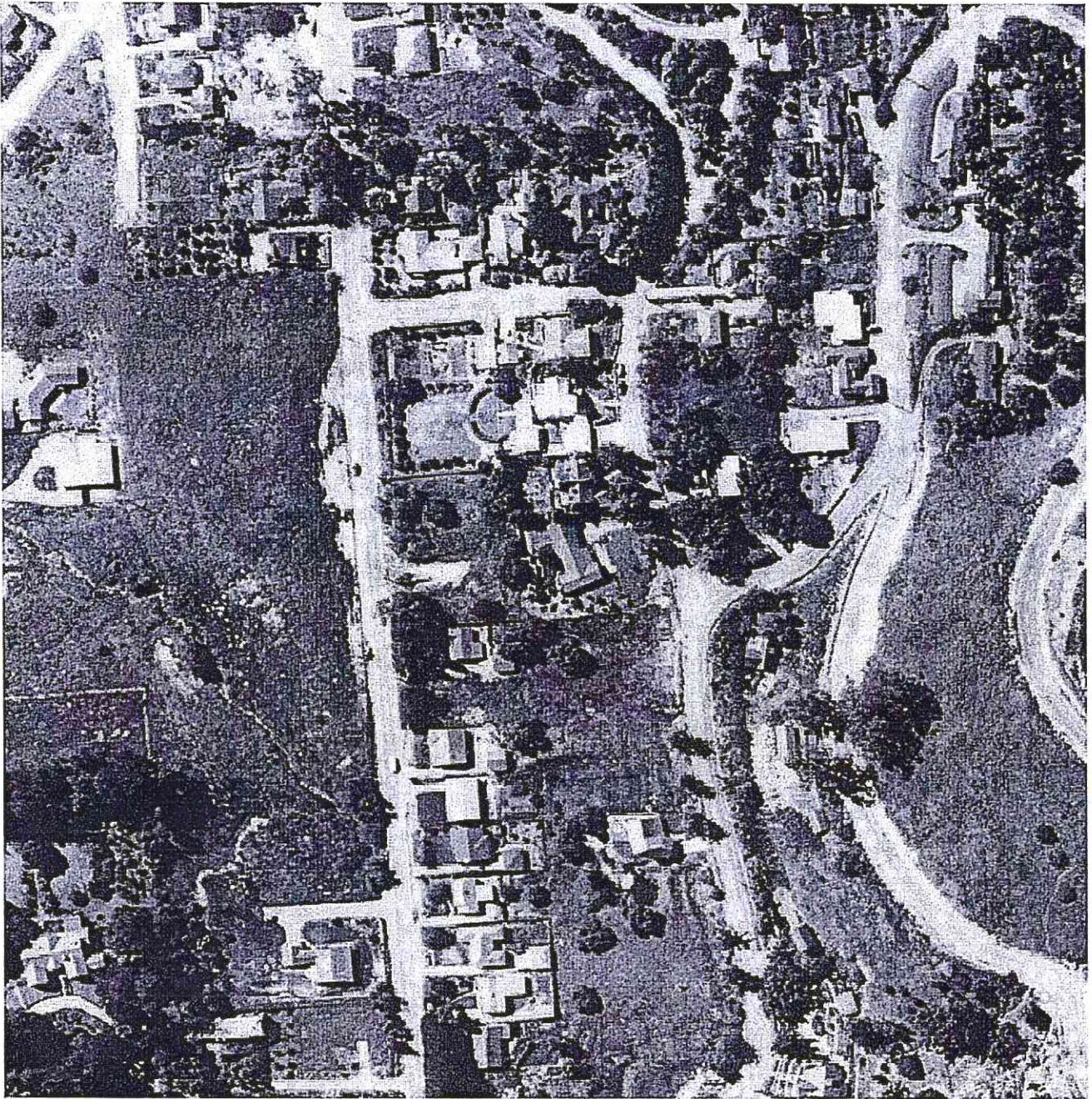


EXHIBIT E