

MARIPOSA COUNTY
BOARD OF SUPERVISORS

AGENDA
ACTION FORM

DATE: October 27, 1992
AGENDA ITEM NO. CAB

DEPT.: COUNTY COUNSEL

BY: JEFFREY G. GREEN

PHONE: 966-3625

RECOMMENDED ACTION AND JUSTIFICATION:

(Policy Item: Yes ___ No x)

Pass and adopt this Resolution authorizing the Chairperson to sign an order of the Board to reject Claim No. C92-18 which was filed with this Board on September 30, 1992 for an undetermined amount. Claimants contend that as a result of the County's failure to approve the subdivision map for Monte Vista Estates, phases two and three, claimants have incurred damages and losses which include loss of profits, costs of investment for land acquisition, road construction, etc. Counsel does not believe there is any basis in law for this claim.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board usually follows Counsel's recommendation in matters of this nature.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Claim would automatically be denied if no action was taken.

COST: (X) Not Applicable

- A. Budgeted current FY \$ _____
- B. Total anticipated costs \$ _____
- C. Required add'l funding \$ _____
- D. Internal Transfers \$ _____

SPECIAL INSTRUCTIONS:

List the attachments and number the pages consecutively:

Claim No. C92-18

SOURCE: () 4/5ths Vote Required

- A. Unanticipated revenues \$ _____
- C. Reserve for cntngncies \$ _____
- D. Source Description: _____

Balance in Reserve for Contingencies, if approved: \$ _____

CLERK'S USE ONLY:

Res. No.: 82-560 Ord. No.: _____
 Vote: Ayes: 5 Noes: _____
 Absent: _____ Abstained: _____
 () Approved () Denied
 () Minute Order Attached
 () No Action Necessary

ADMINISTRATIVE OFFICER'S

RECOMMENDATION:

This item on agenda as:

- Recommended
- Not Recommended
- For Policy Determination
- Submitted with Comment
- Returned for Further Action

The foregoing instrument is a correct copy of the original on file in this office.

DATE: _____

ATTEST: MARGIE WILLIAMS
Clerk of the Board of Supervisors
County of Mariposa, State of Calif.

By: _____
Deputy

Comment: _____

A.O. Initials: JG

1 JEFFREY G. GREEN
2 County Counsel
3 P. O. Box 189
4 5160 Bullion St.
5 Mariposa, CA 95338

6 BEFORE THE BOARD OF SUPERVISORS

7 OF

8 MARIPOSA COUNTY, STATE OF CALIFORNIA

9 In the Matter of:)
10 CLAIM FOR DAMAGES)
11 PURSUANT TO GOVERNMENT CODE)
12 SECTION 911.6)

13 Elwood Anderson, Kermit Anderson, and Myron Johnson
14 c/o Murray B. Petersen
15 Attorney at Law
16 436 14th St., Suite 411
17 Oakland, CA 94612


18 having filed with this Board on September 30, 1992 a claim for
19 damages in the amount of \$ Undetermined
20 amount;

21 NOW, THEREFORE, it is ordered by the Board of Supervisors
22 that the claim is hereby REJECTED.

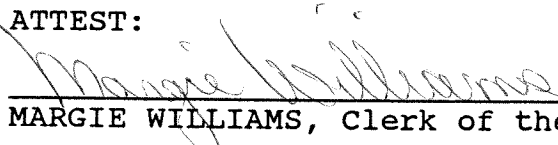
23 The foregoing order was passed by the following vote of
24 the Board:

25 AYES: BAGGETT, PUNTE, ERICKSON, RADANOVICH, TABER
26 NOES: NONE
27 ABSENT: NONE
28 ABSTAINED: NONE

Dated this 27th day of October, 1992.

29 
30 SALLY S. PUNTE, Chairperson
31 Board of Supervisors

32 ATTEST:

33 
34 MARGIE WILLIAMS, Clerk of the Board

Elwood Anderson, Kermit Anderson, and Myron Johnson
c/o Murray B. Petersen

TO: Attorney at Law
436 14th St., Suite 411
Oakland, CA 94612

RE: CLAIM FOR DAMAGES AMOUNT OF CLAIM \$ UNDETERMINED
NOTICE OF REJECTION

NOTICE IS HEREBY GIVEN that the claim which you presented to the Board of Supervisors of Mariposa County on September 30, 1992 was rejected by action of the Board on October 27, 1992.

WARNING

"Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim." (See Government Code Section 945.6)

"You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately."

JEFFREY G. GREEN
Mariposa County Counsel

PROOF OF SERVICE BY MAIL (1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA, COUNTY OF MARIPOSA

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is: Mariposa County Counsel, 5160 Bullion St. (P. O. Box 189), Mariposa, CA 95338
On November 4, 1992, I served the within Notice of Rejection of Claim No. C92-18 on the attorney for claimant in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Mariposa, California addressed as follows:

Elwood Anderson, Kermit Anderson, and Myron Johnson
c/o Murray B. Petersen
Attorney at Law
436 14th St., Suite 411
Oakland, CA 94612

I declare under penalty of perjury, that the foregoing is true and correct.

Executed on November 4, 1992, at Mariposa California.


Sandra V. Adams

MURRAY B. PETERSEN
ATTORNEY AT LAW
CENTRAL BUILDING, SUITE 411 • 436 - 14th STREET
OAKLAND, CALIFORNIA 94612
Telephone (510) 835-8676

22 September 1992

Clerk, Board of Supervisors
Mariposa County
P.O.Box 784
Mariposa, CA 95338

CERTIFIED MAIL-
RETURN RECEIPT REQUESTED

re: Notice of claim re Monte Vista Estates, Phases 2 and 3,
under the Provisions of Government Code § 910

Gentlemen:

My office represents Elwood Anderson, Kermit Anderson and Myron Johnson, partner-principals in the above-referenced proposed subdivision in Mariposa County (hereinafter "claimants").

(a) Names and addresses of the claimants are as follows:

ELWOOD ANDERSON, 16536 Toledo St, San Leandro, CA 94578

KERMIT ANDERSON, 16536 Toledo St, San Leandro, CA 94578

MYRON JOHNSON, 1725 East Monte Vista, Denair, CA 95316

(b) All notices and correspondence with respect to this claim should be sent to Murray B. Petersen, Attorney at Law, 436 - 14th St, Suite 411, Oakland, CA 94612-2703.

(c) Date, place, and circumstances giving rise to this claim:

On or about April 6, 1992, the County of Mariposa, its Public Works Director, Lawrence Pollard, in a form approved by its County Counsel Jeffrey G. Green, and other persons unknown to claimants, did, on or about April 6, 1992, enter into an agreement with the claimants, by the terms of which the claimants would receive final approval of their subdivision map and authorization to record the said map upon their posting a performance deposit of \$ 42,784.83 in Mariposa County's favor, and accomplishing the road improvements specified in said agreement within 120 days or suffer loss of said deposit to the County which would then accomplish the road improvements.

The claimants, named hereinabove, performed each and every condition precedent to the approval of the final map as specified in the agreement, including the payment of the deposit with the County of estimated costs of road improvement, being the sum of \$ 42,784.83, and did so within the agreed time limits, leaving only the road improvements to be completed by claimants or Mariposa County which were estimated to take up to the 120 days as specified in the agreement. There remained only the completion of the road improvements, which could be done by either the claimants or the County and for which the County had already been paid.

Thereupon, the County Board of Supervisors calendared the final approval of the subdivision map and authorization to record for the Board Meeting on April 21, 1992. The hearing was to be strictly ministerial and administrative in nature, since all public debate on the project had been terminated prior thereto, and the County Board of Supervisors were under a duty to approve the final map. See the Planning Commissioner's book, Governor's Office of Planning and Research, page 13, "C", Subdivisions, para. 2. See also Youngblood v. Board of Supervisors (1978) 22 C.3d 644.

Representatives of claimants attended the Board Meeting on April 21, 1992, in order to witness the vote on the final approval and authorization to record the subdivision map. However, the Board, without notice to the claimants or apparent procedural authorization, converted the hearing from routine approval to one of re-opened public debate, and allowed persons to speak who opposed the recording of the subdivision map. Representatives of the claimants, although not anticipating this departure from established procedure, requested the opportunity to reply, but were not allowed to do so. Instead of approving the map, the Board denied approval and also denied authorization to record.

On or about June 26, 1992, and July 16, 1992, claimants requested a rehearing of the matter, believing that the County, after having entered into the agreement for final approval and recordation, would honor this agreement, knowing that the claimant partnership had invested many hundreds of thousands of dollars in reliance on said agreement and their prior compliances. Notwithstanding this repeated request, the County has failed to reschedule the hearing for final approval of the subdivision map, to claimants' detriment.

(d) General description of the indebtedness, obligation, injury, damage, etc.

As a result of the foregoing, claimants, and each of them, were deprived of property and its use without due process and deprived of procedural due process in violation of their rights under the U.S. Constitution and the 5th and 14th Amendments thereto, and were caused great financial loss by virtue of the contract breach and the duplicity and misrepresentations of Mariposa County, its employees and agents, and have been defamed and have lost credibility and suffered damage to their joint and several reputations in their home and business communities.

Damages and losses resulting from the foregoing include, but are not limited to, loss of profits and the costs of investment for land acquisition, road construction, surveys, maps, compliance with environmental reports and all other procedures involved in the preparation for recordation of the subject subdivision map.

In addition, claimants have been denied the opportunity of selling or building on the lots as they appear on the subdivision preliminary map, as approved, and have lost a reasonable profit

on these sales and also increased costs of building. As a further result of the foregoing, claimants have been denied the ability to sell or build on these lots until next year at the earliest, because of the oncoming inclement weather.

Claimants contend they have been deprived of all use of their property by the conduct of the Board, which is a regulatory taking of property in violation of the 5th Amendment.

All of the above Constitutional claims violate analogous provisions of the California Constitution, for which a claim is also made.

- (e) The names of employees or officials instrumental in causing the injury and damages include the members of the Board of Supervisors: Eric Erickson, Gert Tabor, Sally Punte, George Radanovich, Arthur A. Baggett, County Counsel Jeffrey Green, Public Works Director, Lawrence Pollard, and other persons whose names are presently unknown to claimants, each of whom, by virtue of the foregoing, may have lost their qualified immunity from suit.
- (f) Amount claimed and jurisdiction:

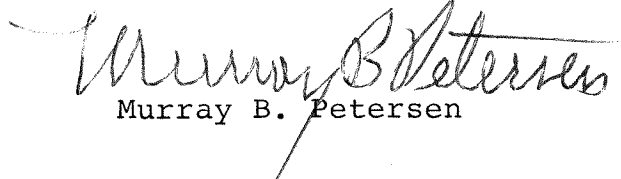
The loss of reasonable profit on sales, loss of interest on claimants' investment, the cost of the preliminary work of surveyors, architects and engineers, road building, compliance with environmental reports, filing of documents, legal and other costs, have all amounted to a loss to claimants of a sum within the jurisdiction of the Superior Court, or in the alternative, within the jurisdiction of the Federal District Court.

It is the intention of claimants, and each of them, to exhaust all of their administrative remedies, including making such alternative or conditional use of their land as may be appropriate or permissible under the circumstances. Please advise the undersigned of any procedures, applications or petitions which may yet be prepared and filed in furtherance of these objectives.

Please acknowledge receipt of this claim and direct future correspondence to the undersigned.

Thank you for your kind cooperation with respect to the foregoing.

Very truly yours,


Murray B. Petersen

MBP:ph
cc: County Counsel