

October 22, 2009

Mr. Jose C. Henriquez  
Executive Director  
El Dorado LAFCO  
550 Main Street, Suite E  
Placerville, CA 95667

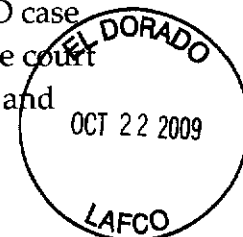
VIA Hand Delivery

Re: Request for Reconsideration  
Summerbrook Annexation Project  
Project No. 06-013-001

Dear Mr. Henriquez:

Our office represents the owners of the Summerbrook subdivision which was considered by the Commission on September 23, 2009, for annexation into the El Dorado Irrigation District. As you know, the Commission voted in a tie, which has been deemed a denial of the request for annexation. This letter is a request for a reconsideration of this matter in accordance with Government Code Section 56895 for the reasons set forth below.

A review of the record of the proceedings reveals that the Commission failed to articulate in any manner the justification for a denial of the application. Although actions by the Commission are deemed to be legislative in nature and therefore not requiring specific written findings justifying its actions, it is required to at least state the reason for its action. This is required in order that the applicant, the public and, if necessary, the courts can determine whether the Commission has considered all the relevant factors and demonstrated a rational connection between those factors and the decision made by the Commission [*McBail & Company et al. v. Solano County Local Agency Formation Commission* 62 Cal App. 4th 1223 (1998)]. Our review of the written comments to the Commission and listening to the tape of the hearing provide absolutely no evidence of the reasoning of the Commission which could lead to a denial of the project. Although it is often said that findings are not necessary for the denial of a project, this is not the case. The *McBail* case is very instructive as it is a LAFCO case and the legal challenge of the denial of a project. Notwithstanding the denial the court indicated that the record must contain enough information to inform the public and

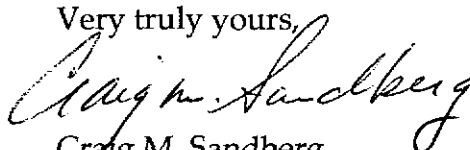


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Page 2

court of the basis for the decision. A lack of supporting evidence or findings indicating any reasonable basis or substantial evidence in support of the "decision" justifies the reconsideration of the project.

We understand that this lack of relevant discussion is, at least in part, a result of the unusual circumstance of a tie vote, which gives rise to the second basis for the request for reconsideration. At the hearing Ms. Olga Sciorelli represented the project as its civil engineer. She was unaware during the course of the hearing that there was not a full Commission available for a vote on the matter. It is common in public hearings that an applicant be advised that a full panel is not available and provided an opportunity to request a continuance. This process assures that the applicant's due process rights are fully protected, particularly when a project may be controversial. As a practical matter it also helps prevent the possibility of a tie vote, which, of course, is exactly what happened in this case. Had Ms. Sciorelli known that she did not have a full voting panel, she would have asked for a continuance prior to the beginning of the hearing. Although we understand that there is no assurance that the continuance request would have been granted, it has been our experience in numerous instances in El Dorado County and other jurisdictions that such continuances are routinely granted for the reasons stated.

Based on the foregoing we respectfully request that this matter be brought back to the Commission for reconsideration. If you have any questions, or wish to discuss this further, please contact the undersigned.

Very truly yours,  
  
Craig M. Sandberg

CMS/ms

cc: Client  
Olga Sciorelli  
Brian Holloway

