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7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

10  
11 ELAN AND REVEREND ORACLE,  
12 Plaintiffs and Petitioners  
13 vs.  
14 SANTA CRUZ COUNTY PLANNING  
15 DEPARTMENT, et al.  
16 Defendants and Respondents

Case No. C09-00373 JF  
**PLAINTIFFS' REPLY  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR  
RECONSIDERATION OF ORDER  
GRANTING IN PART AND  
DENYING IN PART  
DEFENDANTS' MOTION FOR  
SUMMARY ADJUDICATION**

**Date:** None Set  
**Time:** None Set  
**Courtroom:** 5  
  
**(Hon. Jeremy Fogel)**

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21  
22 **I. INTRODUCTION**

23 Even at this late date defendants still have no meaningful response to the objective  
24 physical evidence and verifiable engineering standards which show the safety of the curves at  
25 plaintiffs' property. The property met those standards. Defendants' argument that they were  
26 thinking about safety when they did what they did is insufficient to show as a matter of law that  
27 their actions were not arbitrary and capricious.

1 With respect to the intentionality of the deprivation of due process, defendants do not  
2 come to grips with the fact that the red tag was recorded by a County official pursuant to County  
3 policies and was in no sense an accidental act. They fail to distinguish the case law holding that  
4 such intentional deprivations create liability under § 1983 even if the lack of a hearing was  
5 inadvertent.

6 **II. THERE IS A TRIABLE ISSUE OF FACT AS TO WHETHER DEFENDANTS'**  
7 **ACTIONS WERE ARBITRARY AND CAPRICIOUS**

8 Defendant's argument seems to be that as long as the relevant County officials say that  
9 they were thinking about safety in some fashion, then their actions can never be determined to be  
10 arbitrary and capricious. This cannot be, and is not, the law. The "fairly debatable" rule, which  
11 has its origins in the venerable Supreme Court decisions in *United States v. Carolene Products*  
12 *Company* 304 U.S. 144, 154 (1938) and *Village of Euclid v. Ambler Realty Co.* 272 U.S. 365,  
13 388 (1926) generally refers to broad legislative classification schemes such as the citywide  
14 zoning code at issue in *Village of Euclid* or the consumer protection laws at issue in *Carolene*  
15 *Products*. But some issues are not "fairly debatable" particularly when they relate to specific  
16 physical facts. As noted in McQuillin, *The Law of Municipal Corporations*, Vol. 8A, § 25.281,  
17 "Where the relationship of zoning to the public health,  
18 safety, morals, welfare or other object of police power is  
19 fairly debatable, ordinarily the courts will not interfere with  
20 the zoning matter. ... However, the dispute, under the  
21 "fairly debatable" rule, must concern not mere words or  
22 expressions of opinion but basic physical facts pertinent to  
23 issues arising under zoning laws or applications of the laws;  
24 a mere difference of opinion does not require a finding that  
25 the reasonableness of a restriction is debatable."

26 The authorities cited by the McQuillin text include *Renick v. City of Maryland Heights*  
27 *767 S.W.2d 339 (Mo.App. 1989)* in which the court held that a zoning decision was invalid in  
28 light of the testimony of an acoustical engineer and other land use experts. In *Central Motors*  
*Corp. v. City of Pepper Pike*, 409 N.E.2d 258 (Ohio App. 1979) the court noted that:

"the validity of a zoning ordinance is fairly debatable if  
reasonable minds may differ. A mere difference of opinion  
is not sufficient to make the issue of validity of a zoning  
ordinance fairly debatable because it is relatively easy for a

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1 property owner and a municipality to obtain the services of  
2 expert witnesses who are of differing opinions as to the  
3 validity of a zoning ordinance. The fairly debatable rule  
4 must concern itself not with mere words or expressions of  
5 opinion, but basic physical facts pertinent to the issue of the  
6 validity of the zoning ordinance... a mere difference of  
7 opinion or a conflict in testimony does not require a finding  
8 that the reasonableness of a zoning ordinance is fairly  
9 debatable.”

10 Similarly in *Clary v. Oklahoma City* 532 P.2<sup>nd</sup> 1383 (Okl. 1975) the court held that “in actions of  
11 this kind we look beyond the findings and conclusions of the trial court and consider the basic  
12 physical facts appearing in the record to ascertain whether the reasonableness of the ordinance is  
13 “fairly debatable.” In *Hartung v. Village of Skokie* 22 Ill.2d 485 (Ill. 1961) the court held that a  
14 difference of opinion does not require a finding that the reasonableness of an ordinance is  
15 debatable. *Id.* at 493. See also *City of Tulsa v. Mobley* 454 P.2<sup>nd</sup> 901 (Okl. 1969) holding, at  
16 904, that where basic physical facts are inconsistent with zoning decision by a city commission  
17 the court may hold that it acted arbitrarily and capriciously; *King's Highway Associates v.*  
18 *Planning and Zoning Comm'n of Town of North Haven* (Conn.App.2009) 969 A2d.841 (issue  
19 not fairly debatable when landowner’s experts opinion is unrebutted).

20 Defendants cite no authority for their assertion that having officials say they thought  
21 about safety is conclusive evidence that they did not act arbitrarily and capriciously. More  
22 importantly defendants do not cite declarations or testimony supporting their argument.

23 Defendants do not dispute that under the County Public Works standard the curve at  
24 plaintiffs’ property had sufficient visibility. Exhibit A to the Elan declaration, which illustrates  
25 this, is attached to this brief. Defendants argue that the Public Works standard is designed for  
26 urban intersections. At best, this suggests that perhaps plaintiffs’ property should not have been  
27 held to the high standard for urban intersections, because there is less need for concern over  
28 curves on rural roads where the traffic volumes are negligible and there are no crosswalks or

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1 cross-traffic to create a hazard. In any event it was defendants who said they were using this  
2 standard.<sup>1</sup>

3 Defendants are free to argue at trial that the jury should ignore the testimony of Mr.  
4 Keyon and to try to explain why a staff report produced by Keyon and Deming varied so  
5 dramatically from the Public Works standard they said they were applying. But for purposes of  
6 summary judgment the evidence of the actual sight lines is sufficient to create a triable issue of  
7 fact.

8 The County has the same problem with respect to what happened after Oracle and Elan's  
9 successful appeal of the conditions on the original permit. The defendants now want to back off  
10 of Alice Daly's repeated admissions, in the staff report itself and numerous times during her  
11 deposition, that she followed with the methodology used by Ron Marquez, plaintiffs' expert.  
12 However, the County's showing is woefully deficient of evidence - no probative evidence from  
13 Alice Daly's declaration or deposition is cited by the County either in its original motion for  
14 summary adjudication or in its opposition to this motion for reconsideration. Daly's declaration  
15 (which is only nine lines long and essentially content free) is devoid of any discussion of how she  
16 arrived at her result. Defendants' assertion that Daly never suggested that she agreed with  
17 Marquez' conclusions, only that she was attempting to use his data in connection with her own  
18 analysis is false. Daly testified that "We used his conclusions in terms of sight lines and sight  
19

20  
21 <sup>1</sup> The Keyon deposition (Ex. G to the Decl. of Andrew F. Pierce in Opposition to Defendants' Motion for  
22 Summary Adjudication) reads as follows, "Q. But it's your understanding as you sit here today that whatever the  
23 applicable standard was in 2006 for Public Works for visibility of corners, that was the one you were relying on in  
24 imposing these conditions; is that correct? A. Yes. ... (Id. at 52:6-11)... Q. I understand you were trying to  
25 determine the distance from the edge of the paved surface, but what was your standard in determining how long that  
26 distance should be? A. Based on the Public Works standards and a reduction in the Public Works standards, but  
27 based on the Public Works standards for vehicle sight distance, and reductions as we applied based on our  
28 experience from our site visits. Q. And that standard is the standard for intersections in urban areas? A.  
Intersections. Id. at 110:9-20.

25 Mr. Keyon testified it was he, not Mr. Deming who came up with the conditions imposed in the County staff  
26 report of August 10, 2007: "Q. ... The actual drafting task of putting lines on this map, you did that; correct? A. Yes.  
27 ... Q. Ok. Well how did you decide how much the increase should be in the set-back for the hedges in order to  
28 confirm your vision of traffic safety? A. I based it on Public Works' design guidelines. Id. at 111; 15:112:5. Mr.  
Keyon went on to confirm that exhibit 103, the same document shown superimposed on the existing hedge in exhibit  
A to the Elan declaration, was the standard he was using. Id. at 113:10. When directly asked if the Department of  
Public Works Standard could be met with the five foot set-back at the two curves, as Mr. Keyon and Mr. Deming  
had originally recommended, Mr. Keyon said "I am unsure." Id. at 114:12-16.

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distances.” See Decl. of Andrew F. Pierce, supra, Ex. B at 135:17-19. (See Opposition to Plaintiffs’ Motion for Reconsideration at 8-9) The staff report that Daly authorized stated that there was “no deficiency” in Marquez’ work. Deming Decl. Ex. W, p.4.

The defendants also argue that Daly’s work was not arbitrary and capricious because “Daly communicated extensively with plaintiffs.” In fact, the un-rebutted evidence is that Daly never met with Oracle and Elan in the many months she was reviewing their application despite their many requests and the fact that it was customary Planning Department practice to do so. Oracle Decl. ¶ 32 and Ex. M; Decl. of Tom Burns, p. 153:20-154:15.<sup>2</sup>

Defendants’ counsel has a difficult job to do in defending the indefensible. However, the very fact that the County has had to misrepresent the record in this fashion illustrates the absence of any debatable points to be made in connection with the actions of Daly, Deming and Keyon.

None of the County officials involved in this matter had any background in traffic engineering. The County officials claim they were relying on objective verifiable standards, i.e. the County’s Public Works standard for corners and the more conservative safety standards developed by Ron Marquez, a career governmental traffic consultant who has played a prominent role in the development of Santa Cruz County. Yet their conclusions were inconsistent with the standards they claim to be applying, as plaintiffs have submitted uncontroverted evidence that there is a clear, sufficient line of sight under both standards. It is certainly a permissible inference from the disjunction between what the County said they were doing and what they actually did, that they were simply reacting to unjustified neighbor complaints in an arbitrary and capricious manner rather than the objective engineering facts on the ground.

The County claims that its reversal of position on posting the red tag was justified by the fact that the hedge exceeded the required height limit. But this is not a defense to the equal protection claim made by plaintiffs. It is undisputed that other hedges in the area also exceeded three feet, as the court acknowledged in its opinion and as the County acknowledged both of its staff reports. The County has a policy of not enforcing the hedge height rules, its inspectors on

<sup>2</sup> This excerpt is attached to this brief.

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1 two separate occasions followed that policy and then, based on an anonymous directive from  
 2 above changed their position in this one case. The finder of fact is entitled to draw an inference  
 3 that plaintiffs were being singled out, without any rational basis.

4 With respect to the County's reversals during the permitting process, in which Keyon and  
 5 Deming initially represented to plaintiffs that they could keep their hedge in its existing location  
 6 at six feet, defendants make the curious argument that the basis for this reversal "came from  
 7 comparing what he (Deming) saw at the site visits to what he discovered upon close inspection of  
 8 the actual submitted plans." In other words, at the site visit Keyon and Deming agreed with  
 9 Marquez and the County's code inspectors, all of whom found that there was no safety hazard  
 10 with the hedge in its current configuration. Deming then purportedly reviewed the drawing that  
 11 was submitted and decided that the hedge was unsafe and required set-backs that would require  
 12 destroying the entire existing hedge. This cannot be anything other than an arbitrary and  
 13 capricious act – the defendants cannot justify blessing an existing hedge fence configuration in  
 14 the real world, which indisputably complied with the County Public Works standard and then  
 15 going back to their office and performing some magic with the proposal that requires the hedge  
 16 to be completely removed. Notably, there is no factual declaration from Mr. Deming and no  
 17 submitted deposition testimony that explains how he could have done this, or what engineering  
 18 standards he used, if any. The defendants do not provide any other explanation of the method by  
 19 which this irrational result occurred. Alice Daly's reversal of position in which she claims she  
 20 adopted Marquez' conclusions and methodology and then comes to a completely inconsistent  
 21 result, is of a similar, arbitrary character, as discussed above.

22 **III. THE DEFENDANTS ACTION IN INITIALLY RECORDING THE RED TAG**  
 23 **WAS NOT RANDOM, UNAUTHORIZED OR UTTERLY UNPREDICTABLE**

24 In *Daniel v. Williams* 474 U.S. 327 (1986) a correctional officer negligently left a pillow  
 25 on the stairs. In *Parratt v. Taylor* 451 U.S. 527 (1981) prison officials accidentally lost some  
 26 materials that were mailed to a prisoner. In *Davidson v. O'Lone* 752 F.2<sup>nd</sup> 817 (3rd Cir. 1984) a  
 27 prisoner was physically injured by a third party. In each of these cases there is a strong element  
 28 of fortuity, i.e. the deprivation that occurred was not the inevitable result of any governmental

1 action but simply the result an accident of the type that tort law, not constitutional law addresses.  
 2 In plaintiffs' opposition to defendants' original motion and in their motion for reconsideration  
 3 they pointed out that such situations are distinguishable from situations where the defendants  
 4 undertake affirmative governmental actions that clearly deprive someone of property or another  
 5 constitutionally protected interest. In such cases according to Justice Renquist's dictum in  
 6 *Daniels* supra; the Supreme Court's holding in *Logan v. Zimmerman Brush Co.* 455 U.S. 422,  
 7 436; and the circuit decisions in *Bretz v. Kelman* 773 F.2d 1026, 1031-1032 (9<sup>th</sup> Cir. 1985)  
 8 *Sourbeer v. Robinson* 791 F.2d 1094 (3<sup>rd</sup> Cir. 1986), *Franklin v. Aycock* 795 F.2<sup>nd</sup> 1253 (6<sup>th</sup> Cir.  
 9 1986) and *Howard v. Grinage* 82 F.3d 1343 (6<sup>th</sup> Cir. 1996) even if the failure to provide a  
 10 hearing was inadvertent or accidental<sup>3</sup> the deprivation of property itself was an intentional  
 11 governmental act, which is all that is required for liability under 42 U.S.C. § 1983.

12 Defendants do not disagree with the validity of this legal distinction, they simply ask the  
 13 court to misapply it. Defendants would have the court believe that the Planning Department's  
 14 recordation of the red tag was "utterly unpredictable" and "random and unauthorized" but the  
 15 fact is that recordation of the red tag by Laura Madrigal was entirely predictable and entirely  
 16 authorized.<sup>4</sup> It was something that was governmental in nature, part of the ordinary business of  
 17 the Planning Department. That is a key factor distinguishing this case from *Daniels*. The  
 18 "injuries that attend living together in society" referred to in *Daniels*, (at 332) are accidents such  
 19 as slips and falls that are the traditional subject of tort law, not constitutional law. The  
 20 distinction that Justice Rehnquist drew between such accidental injuries and direct governmental  
 21 action establishes liability in this case. Having the government record a cloud on title, when it  
 22 should not be doing so, is not one of the injuries that attend living together in society – rather it is  
 23 the type of governmental sanction that the due process clause was intended to address. Of course  
 24

25 <sup>3</sup> The *Daniels* court indicated that there could be liability even if there was "hypothetically negligent" failure to  
 26 observe due process, so long as the decision to deprive the inmate of good time credit was deliberate. *Id.* at 333-334.  
 27 In *Logan v. Zimmerman* the deprivation occurred through "inadvertence" (455 U.S. at 426). In *Sourbeer* the  
 28 defendants were guilty of "gross negligence" in the conduct of periodic reviews. 791 F.2d at 1104. In *Franklin v.*  
*Aycock* the defendant negligently failed to render a written statement. 795 F.2d at 1262. In all of these cases a  
 deliberate, affirmative exercise of governmental power was found to be sufficient for a § 1983 claim even if the due  
 process violation had an element of negligence or inadvertence to it.

<sup>4</sup> Defendants argue that Hart did not intend to record. But it is the recordation by Madrigal that cause the harm.

1 it is undisputed that plaintiffs were not given any notice or any opportunity to be heard before the  
2 County's promise not to record was violated, so the due process violation itself is clear.

3 Defendants also failed to articulate a reasonable rejoinder to defendant's contention that  
4 there was deliberate indifference in Hart's actions. They do not deny that Hart knew the normal  
5 procedure would be for the County to eventually record if he did nothing. They have not  
6 submitted any declaration from him explaining his inactivity. The jury could surely draw the  
7 inference that he was deliberately indifferent from these facts. *CF. Norton v. Town of Islip*, 209  
8 WL 804702 at 25 (E.D.N.Y. 2009) (failure to prevent subordinate from inappropriately pursuing  
9 zoning violations can be deliberate indifference) rev'd on other grounds 2010 WL 2070550 (2d.  
10 Cir. 2010).

11 Plaintiff need only present a triable issue that Hart acted with deliberate indifference to a  
12 known or obvious danger. *Grubbs* 92 F.3d 894 (9<sup>th</sup> Cir. 1996). Stated alternatively, a defendant  
13 acts with deliberate indifference if he knows that plaintiff faces "a substantial risk of serious  
14 harm and disregards that risk by failing to take reasonable measures to abate it." *Farmer v.*  
15 *Brennan*, 511 U.S. 825, 847 (1994). "[I]t is enough that the official acted or failed to act despite  
16 his knowledge of a substantial risk of serious harm." *Id.* at 842. If the risk was obvious, the trier  
17 of fact may infer that a defendant knew of the risk. *Id.* at 840-42.

18 Here, it is undisputed that Hart promised the red tag would not be recorded while Plaintiff  
19 pursued the permit process. It is undisputed that thereafter Hart took no affirmative steps to  
20 prevent the recording. A jury could reasonably find that Hart knew, or it was obvious that, if he  
21 took no affirmative steps to prevent recording, the red tag would be recorded by his personnel as  
22 a matter of course. While defendants argue that the Court should find as a matter of law that it  
23 was all an accident and Hart did not make a conscious or deliberate decision to do nothing,  
24 Defendants did not even submit a declaration from Hart saying it was an accident as opposed to a  
25 conscious decision.

26 Moreover, as the nonmoving parties, Plaintiffs are entitled to all reasonable inferences in  
27 their favor.  
28

1 For purposes of summary judgment, a triable issue of deliberate indifference exists if the  
2 official knew about the danger and did nothing to prevent it. Such evidence establishes a  
3 reasonable inference that the official's failure to act was deliberate. *See, e.g., Blair v. City of*  
4 *Pomona* (9<sup>th</sup> Cir. 2000) 223 F.3d 1074, 1079-80 (triable issue of deliberate indifference when  
5 supervisors knew about subordinate's retaliatory conduct and did little to stop it); *Kennedy v.*  
6 *City of Ridgefield* (9<sup>th</sup> Cir. 2006) 439 F.3d 1055, 1064 (officer knew about potential harm to  
7 citizen but did not do enough to stop it). Here, Hart knew about the promise not to record, knew  
8 the red tag would be recorded if he did nothing, and that he in fact did nothing. Therefore, a  
9 triable issue exists.

10 **IV. CONCLUSION**

11 The court should modify its Order Granting in Part and Denying in Part Defendants'  
12 Motion for Summary Adjudication by reinstating plaintiffs' claims for violation of equal  
13 protection and substantive due process. Plaintiffs have shown a triable issue of fact as to whether  
14 defendants' actions were arbitrary and capricious. The court should also reinstate plaintiffs'  
15 claim that the initial recording of the red tag, as well as the failure to remove it for the following  
16 sixteen months, creates a triable procedural due process claim.

17  
18 PIERCE & SHEARER LLP

19  
20 Dated: September 15, 2010

By Andrew F. Pierce  
Andrew F. Pierce

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153

(1) A It would have gone to me and could have been  
 (2) referred to Don, but if you recall, in one of the e-mails,  
 (3) I said to them in that case I would have probably  
 (4) considered the appeal myself.  
 (5) Q And is there any reason to think you would have  
 (6) come to a different conclusion from Alice?  
 (7) **MR. HEATH: Calls for speculation. Lacks**  
 (8) **foundation.**  
 (9) **Go ahead.**  
 (10) **THE WITNESS: I have no idea. I would try to**  
 (11) **independently review the facts of at that point, and which,**  
 (12) **honestly, the details of this I had never dug into, so I**  
 (13) **would have looked and refreshed my mind at that point.**  
 (14) **BY MR. PIERCE:**  
 (15) Q Well, you would have consulted Mr. Deming,  
 (16) wouldn't you have?  
 (17) A I would have, but I also would have seen my role  
 (18) a little different at that point in conducting an appeal  
 (19) hearing and looking more independently at the facts.  
 (20) Q Were you aware that Alice Daly never scheduled a  
 (21) meeting with Elan and Oracle?  
 (22) A No.  
 (23) Q Are you aware that Alice Daly did not speak to  
 (24) Elan and Oracle by phone?  
 (25) A I have never heard that. I don't know if that's

154

(1) true. I don't know if either one of those are true, but I  
 (2) have never heard either one of those.  
 (3) Q Do you know that when Oracle came to the fourth  
 (4) floor and asked to meet with Alice Daly, she wouldn't come  
 (5) to the front desk?  
 (6) A Never heard that story before.  
 (7) Q All right. You would acknowledge that Oracle and  
 (8) Elan had the right to meet in some fashion with Alice Daly  
 (9) during the period she was considering their remanded permit  
 (10) application, right?  
 (11) A Absolutely. That doesn't mean showing up  
 (12) unannounced at the front counter, drop everything, come  
 (13) meet with me. But a planner, it would be unusual for a  
 (14) planner to not meet with the applicant if they desired to  
 (15) meet.  
 (16) Q Okay. Well, I'm a little confused about the role  
 (17) of Mr. Deming in all of this. What role, if any, did he  
 (18) have, since -- and this is probably just because you keep  
 (19) mentioning his name as opposed to Alice Daly or David Keyon  
 (20) as the people who have handled this. So what is your  
 (21) understanding of the role Mr. Deming had in Oracle and  
 (22) Elan's permit applications?  
 (23) A Let me explain this. There's two assistant  
 (24) directors in the planning department. Mr. Deming's primary  
 (25) role is overseeing the permit functions of the department,

155

(1) so he is sort of the first line of dealing with clients who  
 (2) have concerns or problems with their permits, and most  
 (3) issues that happen in that arena he addresses and works  
 (4) with the planners directly to solve. So that's what he was  
 (5) doing, was basically stepping in on my behalf and trying to  
 (6) solve what looked like a problem.  
 (7) Q Okay. And then is there some reason that Oracle  
 (8) and Elan were not told that he was the one handling their  
 (9) permits?  
 (10) **MR. HEATH: Well, that assumes facts not in**  
 (11) **evidence. Lacks foundation. Misstates evidence.**  
 (12) **THE WITNESS: He wasn't the one handling their**  
 (13) **permits. Alice Daly was their planner, and because of all**  
 (14) **the issues and concerns and history, Mark was involved in**  
 (15) **trying to work with her to kind of oversee what was going**  
 (16) **on. There were, again, lots of communications happening,**  
 (17) **and Mark's role was to make sure that we landed in the**  
 (18) **right place. But Alice was the planner.**  
 (19) **BY MR. PIERCE:**  
 (20) Q All right. I'm still -- so I take it if Alice  
 (21) Daly and Mr. Deming disagreed, Mr. Deming would -- his  
 (22) decision would be the one that would be implemented,  
 (23) though, correct?  
 (24) A Most likely.  
 (25) Q All right. Did Mr. -- your other assistant

156

(1) director, Mr. Lee, have any role in the Oracle and Elan  
 (2) matter, to your knowledge?  
 (3) A Not that I'm aware of.  
 (4) **MR. HEATH: Boy, what a huge bullet he dodged.**  
 (5) **MR. PIERCE: A lot of people seem to be -- a lot**  
 (6) **of people are dodging. A lot of people are dodging. They**  
 (7) **are just not all succeeding.**  
 (8) **BY MR. PIERCE:**  
 (9) Q Which assistant planning director was responsible  
 (10) for code compliance in 2007?  
 (11) A David Lee.  
 (12) Q Have you had any communications with Ellen Pirie  
 (13) regarding the Oracle and Elan property?  
 (14) **MR. HEATH: Asked and answered.**  
 (15) **Go ahead.**  
 (16) **THE WITNESS: Yeah. We talked about this**  
 (17) **earlier, and I think you had asked whether she had raised**  
 (18) **concerns, and I think at one point along the way she asked**  
 (19) **about it just because she might have been getting letters**  
 (20) **from Oracle and Elan or might have been getting letters**  
 (21) **from neighbors. I don't recall there being anything more**  
 (22) **than that.**  
 (23) **BY MR. PIERCE:**  
 (24) Q Okay. When you say "asked," are you saying she  
 (25) made an inquiry about what was happening?

**Responses and Replies**

5:09-cv-00373-JF Elan and Reverend Oracle v. Santa Cruz County Planning Department et al  
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**Case Name:** Elan and Reverend Oracle v. Santa Cruz County Planning Department et al  
**Case Number:** 5:09-cv-00373-JF  
**Filer:** Elan and Reverend Oracle  
**Document Number:** 75

**Docket Text:**

**Reply Memorandum re [59] MOTION for Leave to File *Motion for Reconsideration Plaintiff's Reply Memorandum Of Points And Authorities in Support Of Motion For Reconsideration Of Order Granting In Part And Denying In Part Defendants' Motion For Summary Adjudication* filed by Elan and Reverend Oracle. (Pierce, Andrew) (Filed on 9/15/2010)**

**5:09-cv-00373-JF Notice has been electronically mailed to:**

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