

# Andresen Appeal of Encroachment Permit Violation September 22, 2020

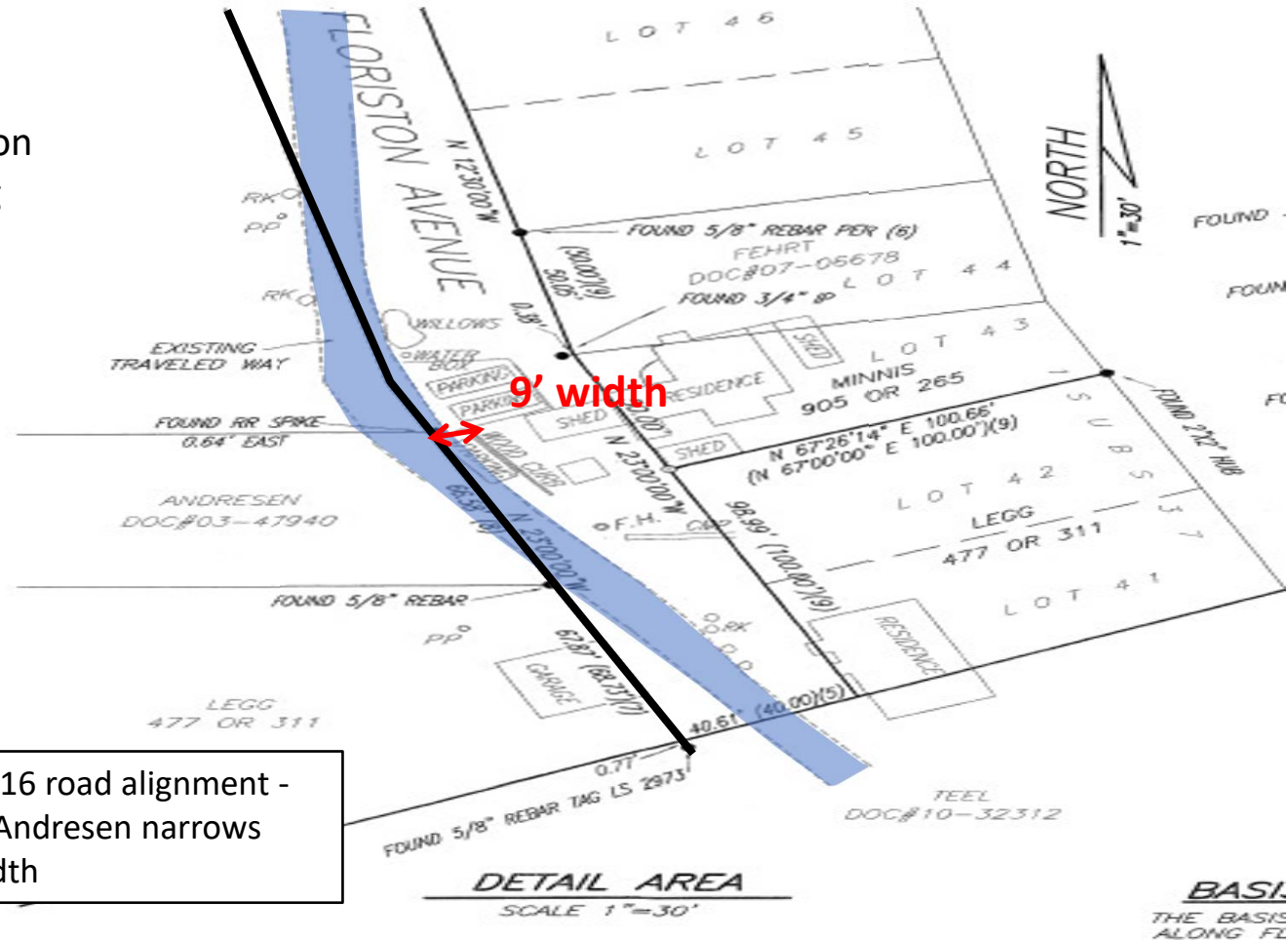
- Decision of: Community Development Agency,  
Department of Public Works
- Decision made: December 20, 2019
- Appeal from: Larry and Cheryl Andresen
- Appeal filed: January 17, 2020
  
- Hearing Date: September 22, 2020

# Background

- 2015 to current: Applicant has expressed desire to modify Floriston Avenue including via a previous encroachment permit that was denied in 2016, numerous meetings, discussions, etc.

Per 2/2015 Survey:

- Road width 15' to 18' wide
- Private improvements inside existing County road right-of-way



Post September 2016 road alignment - Fence built by Mr. Andresen narrows travel way to 9' width

**BASI.**  
THE BASIS  
ALONG FL

# Background cont'd

- 9/9/19: Applicant submitted an encroachment permit to remove a bush and planter in the road right of way of Floriston Avenue
  - As part of the application, applicant indicated property owner of bush and planter was in agreement
- 9/20/19: Applicant met with staff and Supervisor to discuss desire to remove bush and planter fronting a neighbor's property at 10941 Floriston Avenue
- 9/23/19 Staff emailed applicant w/ plan comments
- 10/1/19 Staff emailed applicant stating that revised plans were received but neighbors were not in agreement with the removal of their bush/planter. Applicant acknowledged receipt of email.



**Image of landscape island in front of 10941 Floriston Avenue**

# Background cont'd

- 11/26/19: Staff were notified by neighbors and Sheriff's Department that applicant had completed the following without a permit:

1) Removed bush and planter

2) Removed landscape railroad ties

3) Relocated permitted personal property

4) Damaged water meter box/line



# Background cont'd

- 12/3/19: Staff notified applicant to cease and desist all unpermitted work in County right of way
- 12/20/19: Staff provided a follow up letter clarifying the violation of Nevada County General Code Section G-IV 4.A Regulating Roadway Encroachments and required:
  - 1) Restoration of the roadway per Section G-IV 4.A.29 Restoring Highway
  - 2) Relocation of the damaged water facilities per Section G-IV 4.A.32 Relocation of Facilities
  - 3) Mandatory fine of \$100 per Section G-IV 4.A.39 Violations/infractions
  - 4) Cost of enforcement per Section G-IV 4.A.43 Cost of Enforcement
- In addition, per the California Streets and Highways Code, Division 2. County Highways:
  - 1)Section 1460, any person who does work in the county highway without a permit is guilty of a misdemeanor and is liable to the agency for expenses and damages caused.
  - 2) Section 1495, any person who destroys a tree on a county highway is liable to a penalty of \$100



# 3 Specific Provisions Being Appealed

- 1) The County's determination that applicant violated Nevada County General Code Section G-IV 4.A

Staff response: several eye-witnesses and pictures show the applicant working in the county road right of way without a permit.



# 3 Specific Provisions Being Appealed

- 2) Imposition of enforcement fines totaling \$1,070.02 and imposition of restoration, relocation, replacement and repair work
  - Staff response: The fine of \$100 is mandatory per County General Code Section G-IV 4.A Regulating Roadway Encroachments Section G-IV 4.A.39 Violations/Infractions and the \$970.02 is the cost of enforcement per Section G-IV 4.A.43 Cost of Enforcement
  - In addition, per the California Streets and Highways Code, Division 2. County Highways:
    - 1)Section 1460, any person who does work in the county highway without a permit is guilty of a misdemeanor and is liable to the agency for expenses and damages caused.
    - 2) Section 1495, any person who destroys a tree on a county highway is liable to a penalty of \$100

Date	Description	Quantity	Unit	Charges
12/3/2019	Engineering Tech III	45 min	70.21	\$52.66
12/12/2019	Engineering Tech III	3 hours	70.21	\$210.63
12/16/2019	Director of Public Works	2 hours	192.8	\$385.60
12/20/2019	Admin Fee - 15%			\$321.13
12/20/2019	Mandatory Fine per G-IV 4.A.39			\$100.00
PAYMENT DUE WITHIN 30 DAYS				\$1,070.02

# 3 Specific Provisions Being Appealed

- 3) The attachment to new conditions on the applicant's pending application, which is equivalent to the imposition of a fine, and which will cost in excess of \$14,900 to complete.
- Staff response: No conditions were developed as part of the application as the permit was not and has not been issued. Without a permit, Mr. Andresen's actions removed permitted encroachments, caused damage to property and damaged a water utility. The County road right of way must be restored per Section G-IV 4.A.29 Restoring Highway and the water utilities relocated as a result of the applicant's unpermitted work per Section G-IV 4.A.32 Relocation of Facilities of the County General Code.



# Public Hearing

- Staff presentation and statements from those directly impacted:
  - Fehrts
  - Minnis
  - Truckee Donner Public Utility District
- Hear from Appellants, Andresen's (15 minutes plus 15 minutes for proponent)
- Hold a public hearing (3 minutes per person for comments)
- Appellant Summation (10 minutes plus 10 minutes for proponent)
- Public Rebuttal (2 minutes per person)
- BOS Questions
- Staff Summation

# Recommendation – BOS Decision

## Staff Recommendation

Based on statements and public hearing, make a finding to:

- Adopt Resolution making findings and denying the appeal filed by Larry and Cheryl Andresen regarding an Encroachment Permit Violation on Floriston Avenue, District V