



**BOARD OF SUPERVISORS
AGENDA LETTER**

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Public Works
Department No.: 054
For Agenda Of: March 16, 2010
Placement: Administrative
Estimated Tme: 30 minutes
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Director: Scott D. McGolpin, Director, Public Works, 568-3010
Contact Info: Michael B. Emmons, Deputy Director/County Surveyor 568-3034

SUBJECT: **Appeal of denial of issuing a Certificate of Compliance by the County Surveyor on APN 133-070-035 (09CC100 – Foxen Oaks), 5th Supervisorial District**

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: No

Recommended Actions:

That the Board of Supervisors:

- A. Uphold the decision by the County Surveyor and deny issuing a Certificate of Compliance on APN 133-070-035; OR
- B. Direct the County Surveyor to issue a Certificate of Compliance on APN 133-070-035.

Summary Text:

This matter is an appeal to your Board of the denial by the County Surveyor of the issuance of a Certificate of Compliance that would have recognized the legality of a small 4 +/- acre corner of a stated 390.75 acre ranch parcel noted as Tract D by Record of Survey in the Rancho Tinaquaic/Foxen Canyon area. The County Surveyor denied the issuance of the Certificate of Compliance based upon advice of County Counsel. The appellant objects to this denial as a “reversal of County Policy” that formerly recognized the legal theory upon which they assert their parcel’s existence.

Background: Fraction Lots

This appeal revolves around the issue of “fraction lots,” which are fractional portions of larger deeded parcels that are supposedly created by the overlaying of successive deed boundaries with the underlying, older boundaries. Supposedly, the “fraction lot” survives the later deeded boundaries and exists as a separate parcel. Santa Barbara County has a history of dealing with the issue of fraction lots, beginning with the Montecito Avocado Ranch litigation in the early 1990’s. The County accepted a settlement in

that litigation and subsequently acknowledged the premise of underlying fraction lots. Subsequently, the County recognized certain fraction lots based upon a now superseded interpretation of Civil Code 1093, as discussed below. In attempting to deal with the planning and zoning issues brought about by the assertion by owners of the existence of these unplanned, wholly unintentional and, usually, substandard-sized parcels, the County adopted various ordinance provisions and policies requiring special treatment and sometimes merger of the fraction lots that did not meet minimum parcel size or zoning requirements. However, a 2007 appellate court decision in People v Tehama County Board of Supervisors, 149 Cal App 4th 422 (2007) clearly set forth the law in California regarding overlapping historical deed boundaries. The Tehama Case both mandated a restrictive interpretation of Civil Code Section 1093 and ruled against the existence of fraction lots in most cases. The County Surveyor followed the law laid out in the Tehama Case in his denial.

The Tehama Case

The situation and operative facts in the Tehama Case are nearly identical to those in the present appeal. In that case, the California Attorney General sued the Tehama County Board of Supervisors to prevent the issuance of Certificates of Compliance for numerous fraction lots. The State's interest in filing that case was that the small fraction lots would have undermined the effectiveness of the Williamson Act. Just as in the present case, the Board of Supervisors had been asked to recognize old deed cut lines from an intersection of boundaries from homesteading land divisions and deeds from the early 1900's and issue Certificates accordingly. The Court of Appeal in the Tehama Case made several rulings that are applicable to the present case:

- Civil Code Section 1093 serves to prevent the merger of previously existing parcels only in the case where a subsequent deed conveys the entirety of two or more previously described and deeded parcels in a single new legal description. Thus, if a new deed further divides earlier parcels, Section 1093 does not apply.
- Intention of the parties is controlling in construction of boundaries. The court must put itself in the position and the understanding of the parties at the time of the transaction. Thus, since parcels were easily created by a simple deed prior to the modern Subdivision Map Act, one should not assume, absent a clear showing, that the parties intended to preserve underlying boundaries or create fraction parcels by new deeds.
- Extrinsic evidence is always admissible to explain the intentions of the parties and give effect to a deed. The position and circumstances of the parties and their transaction can be used to interpret the words in the deed.
- The use of the plural is not controlling in a description of parcels of land to be conveyed, "absent anything in the deed or any extrinsic evidence suggesting [the owner] intended to maintain the parcel boundary that previously separated the two fractional parcels... ." The plural language quoted by the Court from the deed in the Tehama Case, "all those certain lots and parcels of land" is identical to the language used in the present case in the 1918 deed, discussed below.

Staff believes that a reviewing court would conclude that the decision of the Court of Appeal in the Tehama Case controls the issues in this case. The court decision is uncontroverted and has been

followed in subsequent cases. Staff believes that the County Surveyor had no choice but to follow the law set forth therein, as the issuance of a Certificate of Compliance is not a discretionary act.

Evidence in this Case

While the administrative record in the present appeal includes a voluminous chain of title (Attachment F hereto), the operative facts in this case are simple:

- The original 1840's land grant of Rancho Tinaquaic by the Mexican governor of California which was later recognized by the US Government in a patent established the western boundary of Rancho Tinaquaic. It is this boundary that runs along most of the western border of the subject parcel and which allegedly separates the larger rectangular portion of the subject parcel from the small triangular portion. It is this 1840's era deed line which the Appellant wishes to preserve and have recognized as a boundary between the fraction lots. The patented parcels which conveyed the underlying land using the rancho boundary are depicted on a graphic in Attachment B.
- In 1918, the Wickenden family divided the holdings of the family's corporation between various Wickenden children and conveyed to the individual family members the subject parcel with a deed recorded at Book 172 Deeds 211. The deed conveys the land by means of a single metes and bounds description of the outside boundaries and then further describes the parcel conveyed as "being Tract D of that certain map entitled Map and Survey made by F.F. Flournoy showing division of the Wickendon Rancho, a portion of Rancho Tinaquaic and a small portion of Sec. 33 T. 9 R. 32 W... ." (Attachment C hereto).
- The Record of Survey used in the deed was recorded at Book 11 Page 176 of Maps and Surveys (Attachment D hereto). The survey shows the subject parcel as a single 390.75 acre parcel with a solid boundary line around the entirety of the parcel in question and a dotted line depicting the course of the old Mexican Rancho boundary where it crosses the newly described ranchland.
- A letter to the appellant certifying that the County Surveyor provided a true and correct copy of field notes from Book 235A Page 70 and the Record of Survey from Book 11 Page 176 of Maps and Surveys (Attachment D) to the appellant is reflected in Attachments E1 and E2. The field notes were not used by the County Surveyor in this determination but were requested to be made part of the administrative record by the appellant.

Conclusion

The County Surveyor's position in denying the issuance of the Certificate of Compliance applied the Tehama Case doctrine to the operative facts and extrinsic evidence in this case resulting in the following conclusions:

- The December 1918 deed sliced a small triangular portion of the westerly patent and merged it with a diagonal rectangular portion carved out from the Rancho Tinaquaic property to the east. Neither the triangle nor the rectangle had ever been deeded as separate parcels before. Neither portion has ever been subsequently conveyed separately and in the past ninety years, the entire 390.75 acre parcel has always been conveyed and described together. Thus, Civil Code Section 1093 does not apply in this case since the portions conveyed have never been the subject of separate and distinct legal descriptions.
- There is nothing in the 1918 deed to indicate an intent to preserve the two portions as separate parcels. The use of the plural in the introduction to the legal description in the 1918 deed is precisely the same language disregarded by the Tehama Case court. As explained by the Tehama Case court, in 1918 if they had wished to create the small triangle as a separate parcel, they could easily have separately deeded it without resort to any complications of applying the Subdivision Map Act so we cannot presuppose any intent to preserve something that was of no value or importance to them. Nowhere in the deed is there any language indicating any intent to preserve the underlying fraction parcels. On the contrary, by use of the legal description that the described property consists of "Tract D" shows the clear intent to create a single tract of land as laid out in the survey map.
- Aside from the reference to Tract D in the deed, the December 1918 Record of Survey serves as clear extrinsic evidence of the intent of the parties to the deed to create a single parcel. The Record of Survey was prepared for the Wickenden Family for purposes of dividing and describing their land. It was recorded by them contemporaneously with the deed. The survey map shows a single 390.75 acre parcel. It does not give separate acreages for either fraction lot, it shows the acreage of the entire new parcel. It shows the earlier rancho boundary as a dotted mark for surveying reference, not as a solid new parcel boundary. Lastly, in order to make parcels divided amongst the family members equal in size, the survey map shows that the northern/southern boundaries of the subject parcel and the similar rectangle to the east (Tract E) are different in length so that both parcels have the same acreage when the small triangle is added to the western rectangle in one acreage shown as Tract D. The 1918 Record of Survey is, thus, the extrinsic evidence the Tehama Case court told us to look for to determine the intent of the parties.

Staff believes that the County Surveyor correctly applied the controlling California case law to the denial of the Certificate of Compliance. Prior County policy of recognizing fraction lots was changed by the decision of the California Court of Appeal in the Tehama Case, not by the County Surveyor. Following the law in the Tehama Case, the County Surveyor found that the intent of the parties to the

1918 deed was to create a single parcel. The Appellant's application for a separate Certificate of Compliance for the small 4+ acre triangle is not supported by the facts or the law.

Proposed findings in support of the County Surveyor's decision are shown in Attachment A.

Fiscal and Facilities Impacts:

Budgeted: No

Fiscal Analysis:

Staffing Impacts:

Legal Positions:

FTEs:

N/A

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Special Instructions:

Please provide a copy of the minute order to the County Surveyor for the file.

Attachments: Attachment "A" – Findings

Attachment "B" – Graphic overview

Attachment "C" – Book 172 Page 211 of Deeds (Creation Deed)

Attachment "D" – Book 11 Page 176 of Maps and Surveys

Attachment "E" – Certification letter to appellant

Attachment "F" – Chain of title

Authored by: Michael B. Emmons, Deputy Director/County Surveyor

cc: Kevin Ready, Senior Deputy County Counsel