Sheila de la Guerra Public Comment

LATE DIST #1

From: Jacquelyne Alexander
Sent: Friday, May 3, 2024 7:15 AM
To: sbcob
Cc: CEO Clerk of the Board
Subject: FW: Glen Annie Property
Attachments: Letter to BOS re Glen Annie.pdf

This was sent to BoardLetters, so forwarding to sbcob for late distribution today. Thanks!

Jacquelyne Alexander
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From: Plowman, Lisa
Sent: Thursday, May 2, 2024 5:57 PM
To: Board Letters <boardletters@countyofsb.org>; Jacquelyne Alexander <jralexander@countyofsb.org>
Cc: Bell, Allen <abell@countyofsb.org>; Tuttle, Alex <Atuttle@countyofsb.org>
Subject: FW: Glen Annie Property

FYI

Lisa Plowman
Director
Planning & Development
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From: Lyons, Graham M. <gml@MullenLaw.com>
Sent: Thursday, May 2, 2024 5:08 PM
To: Plowman, Lisa <lplowman@countyofsb.org>
Subject: Glen Annie Property

Ms. Plowman,
Please see the attached letter regarding the above-referenced matter.
Thank you.
Graham

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May 2, 2024

VIA EMAIL AND MAIL

Lisa Plowman
Director of Planning & Development
County of Santa Barbara
123 E. Anapamu Street
Santa Barbara, CA 93101

Re: Rezoning of Glen Annie Property

Dear Director Plowman:

We write on behalf of our client JTGV LLC ("JTGV"), regarding the County's proposal to rezone the subject property on Glen Annie Road; and, more specifically, in response to the April 26, 2024 letter from R. Mark Carney on behalf of his client Seaward International Company dba Glen Annie Organics ("Seaward").[1] Seaward opposes the proposed rezoning based on specious arguments that we refute herein.

I. Background

While the background should be well known, we emphasize certain salient facts to provide context for our comments. JTGV owns and operates the Glen Annie Golf Course ("Golf Course") located at 405 Glen Annie Road, including on the property described as Parcel 3 on Parcel Map 14,257 (hereinafter, "Parcel 3"). Additionally, JTGV holds an irrevocable easement and a right to take fee title to certain defined portions of two adjacent properties, including Parcel 4 and Parcel 2 as shown on Parcel Map 14,257.

A. Parcel 4

Parcel 4 is shown on Parcel Map 14,257 (APNs 077-530-031 and 077-530-032) and referred to herein as Parcel 4. Parcel 4 was granted to Mark and Caroline Abate under a Grant Deed and Easement Agreement recorded as Instrument 2001-0016574 in the Official Records of the County of Santa Barbara on March 9, 2001. The Grant Deed and Easement Agreement gives JTGV the right to apply to split off APN 077-530-031 -- over which JTGV currently has an easement, referred to as the "Easement Area" -- into a new legal lot ("New Lot") consisting of approximately

[1] Glen Annie Organics and Glen Annie Ranch are fictitious business names (FBN2023-0002756) held by Seaward International Company, a Nevada corporation.

40.07 acres and then to take fee simple title to the New Lot. The rest of what currently is Parcel 4 (APN 077-530-032) comprising approximately 1.01 acres and containing a single-family residence, will become a new legal lot ("Remainder Lot").

JTGV's right to split Parcel 4 and take title to the New Lot derives from Paragraph 5(b)(i) of the Grant Deed and Easement Agreement, stating as follows:

> "Lot Split. **At the option of either Grantee [Parcel 4 owner] or Glen Annie [JTGV as successor-in-interest], an application may be processed to divide the property [Abate Parcel] so that the Grantee Area [APN 077-530-032] and the Easement Area [the New Lot] are separate lots,** so long as (i) such actions do not adversely affect that certain Santa Barbara County Conditional Use Permit (incorporating Settlement Provisions) Case No. 91-CP-091, recorded by Penfield and Smith Engineers, Inc. on July 24, 1996 as Document No. 96-044642 (the "CUP"), and (ii) in the event Glen Annie [JTGV] requests the division, such division does not unreasonably restrict Grantee's right to use the Grantee Area for purposes permitted by the County of Santa Barbara in a single-family residence zone (i.e., the development of a guest house or additional dwelling unit) as shown by Grantee by providing Glen Annie with reasonable evidence thereof. **The parties shall cooperate with each other in doing so and shall sign all applications or related documents required by the County of Santa Barbara in connection with an application to so divide the property. In the event that the parties split the property so that the Grantee Area is a separate legal parcel, Grantee shall convey the Easement Area [New Lot] to Glen Annie or its successor or assigns [JTGV] at no cost to Glen Annie [JTGV].** If such a conveyance is made, this Agreement shall be terminated concurrently with such conveyance." [Referred to hereinafter as the "Lot Split Covenant"; bold emphasis added.]

In 2023, JTGV initiated discussions with Mr. and Mrs. Abate, stating its intent to exercise its rights under the Lot Split Covenant. Those discussions continued up until early April 2024, with JTGV even offering to purchase Parcel 4 from Mr. and Mrs. Abate at a premium above fair market value. Mr. and Mrs. Abate, however, apparently determined instead to sell Parcel 4 to Seaward, so informing JTGV on April 13, 2024.

B. Mr. and Mrs. Abate Breach their Obligations

On April 14, 2024, JTGV demanded that Mr. and Mrs. Abate comply with the Lot Split Covenant and execute appropriate Santa Barbara County forms permitting JTGV to make its application to the County to split off the New Lot from Parcel 4. After Mr. and Mrs. Abate failed to comply and stopped communicating with JTGV, breaching their express written obligations under the Grant

Deed and Easement Agreement as well as their covenant of good faith and fair dealing, JTGV was forced to sue them in federal court in Los Angeles.

C. JTGV Files Suit in Federal Court

On April 17, 2024, JTGV filed its Complaint for Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, Unjust Enrichment, Breach of Restrictive Covenant, Interference with Easement, Quiet Title, and Declaratory Judgment in the action styled *JTGV, LLC v. Mark Abate and Caroline Abate*, United States District Court for the Central District of California, Case No. 2:24-cv-03165-JLS (MARx) (the "Federal Action").

JTGV recorded a notice of pendency of action (*lis pendens*) against Parcel 4, giving actual notice in the public record to any buyer of the Federal Action. The Federal Action is pending against Mr. and Mrs. Abate and JTGV will seek all applicable relief against them including monetary damages, injunctive relief, and recovery of its legal expenses.

D. Abate Sells Parcel 4 to Seaward

In the evening of April 26, 2024, JTGV was first informed that Mr. and Mrs. Abate had closed escrow and transferred title to Parcel 4 to Seaward by virtue of a Grant Deed recorded on April 26, 2024, as Instrument No. 2024-001284. Accordingly, Seaward is now obligated to cooperate with JTGV and perform under the Lot Split Covenant set forth in the Grant Deed and Easement Agreement. Paragraph 3(a) of the Grant Deed and Easement Agreement stipulates that "the provisions hereof shall be covenants running with the land which burden [Parcel 4] and benefit [Parcel 3]."

Furthermore, as a matter of law, having taken title to Parcel 4 with actual and constructive notice of the Federal Action, Seaward is bound by the results of any judgment, order or other award obtained by JTGV against Mr. and Mrs. Abate in the Federal Action.

E. Seaward is Obligated to Cooperate with JTGV

JTGV is preparing its written request to Seaward to execute the authorization forms required by the County for JTGV to prosecute its lot split application. If Seaward fails to comply, JTGV will initiate legal action against Seaward to enforce all of its legal rights, obtain all applicable court relief including a court order requiring Seaward to execute the documents necessary for JTGV to prosecute its lot split application, and an award of all legal expenses incurred in doing so.

F. Parcel 2

We note that JTGV has the same easement and right to take title with respect to the adjacent property shown as Parcel 2 on Parcel Map 14,257 (APNs 077-530-027, 077-530-028, 077-530-

029, and 077-530-030) (hereinafter, the "Linden Parcel").[2] JTGV's easement and right to take fee title affects approximately 24.34 acres of the Linden Parcel (APNs 077-530-028 and 077-530-030). The rest of the Linden Parcel (APNs 077-530-027 and 077-530-029) is not affected by the easement and right to take title and consists of approximately 16.22 acres of unimproved land.

II. Rebuttal Arguments to Carney Objection Letter.

Mr. Carney's objection letter asserts three red-herring arguments, none of which have merit. We refute them below in the same order they were raised by Mr. Carney.

A. The Golf Course is Not Required to be Operated in Perpetuity.

Mr. Carney's first argument distorts the language of the Grant Deed and Easement Agreement in a self-serving manner. Recital D of the Grant Deed and Easement Agreement describes the easement benefitting JTGV as "an irrevocable and perpetual easement to use the Easement Area to maintain, use and operate the Glen Annie Golf Course." But that recital is separate from the Lot Split Covenant and does not require that the owner of Parcel 3 continue to forever use Parcel 3 as the Glen Annie Golf Course. Moreover, the issue of rezoning Parcel 3 does not implicate the continued use of Parcels 2, 3 and 4 as the Glen Annie Golf Course. After the subject properties are rezoned, JTGV has the right to continue to operate the Glen Annie Golf Course as has been done for decades. The act of rezoning Parcel 3 does not prevent JTGV from operating the Glen Annie Golf Course.

Separately, to the extent information outside the four corners of the Grant Deed and Easement Agreement is to be considered, the actions of Mr. and Mrs. Abate, as reflected in the public record, show they knew and intended that the use of the property may well be changed from Glen Annie Golf Course.

In 2001, Mr. and Mrs. Abate and Glen Annie Golf Club, LLC, (JTGV's predecessor in interest) executed the Grant Deed and Easement Agreement, which granted the Abates Parcel 4 and reserved for Glen Annie Golf Club, LLC an irrevocable easement and the right to take fee title to the New Lot. By 2005, Glen Annie Golf Course was failing financially and Glen Annie Golf Club, LLC sought to eliminate the Golf Course and convert the property, including the Parcel 4, to a mixed-use development. In May 2006, Glen Annie Golf Club, LLC presented to the County of Santa Barbara the "Glen Annie Golf Course Alternative Use Study" ("Housing Proposal"). The Housing Proposal was part of a Pre-Application (06PRE-00008) for redevelopment of the Glen Annie Golf Course ("Pre-Application"). The Pre-Application included all of the Glen Annie Golf Course parcels, including the Parcel 4. The Pre-Application eliminated all golf course uses and replaced them with market-rate and workforce/affordable housing, a community-based farm, a

[2] Glen Annie Golf Club, LLC entered into a nearly identical agreement with the Lees for what is now the Linden Parcel. While this letter focuses on Parcel 4, the same analysis applies to the Linden Parcel.

10,000-15,000 SF retail component, a community center, and a network of public trails. The Pre-Application shows the New Lot as a mix of housing, open space, and public trails and the Remainder Lot as a separate lot for a single-family residence.

The Pre-Application did not result in a formal application to redevelop Glen Annie Golf Course because the County suggested the City of Goleta was a better venue for seeking approvals. Based on the County's advice, Glen Annie Golf Club, LLC and Mark Abate submitted an application to the City of Goleta to convert the Glen Annie Golf Course to a mixed-use residential project. While it is unclear whether Mark Abate was a formal applicant to the Pre-Application, he was a co-applicant with Glen Annie Golf Club, LLC to the City.

On June 16, 2009, the City Council for the City of Goleta held a hearing to discuss *Case No.: 08-142-GPA: Initiation of Glen Annie Fields Project- General Plan Amendment, Annexation and Permit Processing* ("Glen Annie/Abate Application"). The Glen Annie/Abate Application proposed to convert the Glen Annie Golf Course to a mixed-use residential project comprised of 185 new residential units, a community center, a significantly reduced executive golf course, four lighted community soccer fields, and public park open space with public trails ("Glen Annie/Abate Project"). The Glen Annie/Abate Project sited a variety of uses on the New Lot, including several residences, public open space, trails and the community center. No portion of the reduced executive golf course was sited on the New Lot and the Remainder Lot was proposed as a separate legal lot with a single-family zone designation.

The Abates were active participants in the Glen Annie/Abate Application and sought to remove the Glen Annie Golf Course from the Parcel 4. When asked at the City Council hearing by Council Member Easton whether the Abates had shown interest in developing their property, Mr. Dewey, the Glen Annie/Abate Project's representative stated: "**they [the Abate family] are actually an applicant with us, so they are fully supportive of our proposed project**."

While the City of Goleta ultimately rejected the Glen Annie/Abate Project, it is clear that Glen Annie Golf Club, LLC and the Abates, as the original parties to the Grant Deed and Easement Agreement, both wanted to eliminate the Glen Annie Golf Course and convert the property, including Parcel 4, to a residential community with public amenities. Neither party intended the Glen Annie Golf Course to be maintained in perpetuity. To the contrary, less than five years after executing the Grant Deed and Easement Agreement, both parties actively sought to eliminate the Golf Course. Mr. Carney's claims are not supported by the acts of the parties and are in direct contradiction to what Glen Annie Golf Club, LLC and Abate championed for the Parcel 4 and the Glen Annie Golf Course.

There is simply no evidence that the parties to the Grant Deed intended the Golf Course to operate in perpetuity. Even if they had so intended, the plain language of the Grant Deed and Easement

Agreement makes that consideration irrelevant. The Grant Deed and Easement Agreement permits the lot split subject only to conditions discussed below, which do not apply in the case at hand.

B. Neither Rezoning the Parcels, nor Prosecuting a Lot Split of Parcel 4, Will Not Adversely Affect the Existing CUP.

Mr. Carney argues in vain that granting a lot split is prohibited because necessarily it will adversely affect the existing CUP permitting JTGV to operate the Glen Annie Golf Course. Not so. As mentioned above, the mere act of prosecuting a lot split of Parcel 4 and creating the New Lot does not affect JTGV's operation of the Glen Annie Golf Course either now or in the future. Whether at some point in the indefinite future the area might be redeveloped as Mr. Carney suggests is purely speculative and not something that is before the Supervisors in connection with the instant hearing scheduled on the limited question of rezoning Parcel 3.

According to the plain language of the Grant Deed and Easement Area, "an application may be processed to divide the property so that the Grantee Area and the Easement Area are separate lots *so long as ... such actions* [i.e., filing the application] do not adversely affect" the CUP. (See Page 3, paragraph b.i. of the Grant Deed.) Just as rezoning Parcel 3 will not adversely affect the CUP, nor will any aspect of the lot split application itself adversely affect the CUP.

Moreover, there is nothing in the language of the CUP remotely suggesting that prosecuting a lot split application would be a violation. Section III of the CUP sets forth the circumstances under which the CUP can be revoked or terminated. None of these circumstances are triggered by the prosecution of a lot split application or the creation of two new parcels.

In another erroneous assertion, Mr. Carney states that Seaward would not agree to vacate the CUP even if the New Lot were created and conveyed to JTGV, which is precisely what is required under the Grant Deed and Easement Agreement. But the CUP does not affect the properties that would continue to be owned by Seaward after the New Lot is created and hence Seaward's consent to vacate the CUP is entirely irrelevant.

C. Lot Size Restrictions Do Not Affect the Rezoning of the Parcel 3.

Last, Mr. Carney argues that JTGV's intended lot split is prohibited under Section 35-69.5 of the County Code because it would create parcels smaller than the minimum lot size in an AG-II 40 zone, which is 40 acres. This, too, is a red herring. At the time Glen Annie Golf Club, LLC and Mr. and Mrs. Abate signed the Grant Deed and Easement Agreement, Parcel 4 was zoned AG-II-40, like it is today. Parcel 4 is approximately 41.09 acres and therefore could not be divided into two parcels when the parties signed the Grant Deed and Easement Agreement. The plain language of the Grant Deed and Easement Agreement contemplates the parties would need to do more than simply execute a lot split application to create the New Lot. The Grant Deed and Easement Agreement requires the parties to cooperate with each other and sign "all applications or related

documents" required by the County of Santa Barbara in connection with an application to create the New Lot.

The County Code provides a clear process to change the zoning of Parcel 4 to create the New Lot and the Remainder Lot. As part of the lot split application, JTGV will pursue an amendment to the General Plan and Zoning Ordinance to rezone Parcel 4 to a REC zone designation for the New Lot and a 1-E-1 (Single-Family Residential) zone designation for the Remainder Lot. Under Section 35 of the County Code, the minimum lot size for both the REC zone and the 1-E-1 zone is one acre. This way the lot split can proceed in compliance with the County's zoning ordinance.

The original parties to the Grant Deed and Easement Agreement followed a similar entitlement path for Parcel 4 in their joint application to the County in 2006 and to the City of Goleta in 2009. In both instances, the parties proposed zoning the New Lot for a use unrelated to the Golf Course and zoning the Remainder Lot for a single-family use—as required by the Grant Deed and Easement Agreement. We fail to see how Seaward would object to the same process its predecessor-in-interest and original parties to the Grant Deed and Easement Agreement both agreed to in writing and actively pursued with the County and the City of Goleta.

III. Conclusion

Mr. Carney's letter contains nothing more than unsupported arguments that cannot be sustained. There is nothing in the Grant Deed and Easement Agreement or the existing CUP that prevents Parcel3 from being rezoned as proposed. Moreover, the extremely imprudent and dismissive actions of Mr. and Mrs. Abate in seeking to avoid their obligations to cooperate are the subject of a pending action in the United States District Court, as will any action by Seaward that violates its obligations under the Grant Deed and Easement Agreement.

We greatly appreciate your attention to this matter.

Very truly yours,

Graham M. Lyons of
Mullen & Henzell L.L.P.