

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
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Santa Barbara, CA 93101
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Agenda Number:
Prepared on: February 9, 2006
Department Name: Planning & Development
Department No.: 053
Agenda Date: February 21, 2006
Placement: Departmental
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00032\BoardLetter2-21-06.doc

TO: Board of Supervisors

FROM: Dianne Meester, Assistant Director
Planning & Development

STAFF CONTACT: Steve Chase, Deputy Director (568-2520)

SUBJECT: Hearing to consider the appeal by Jack Maxwell of the Montecito Planning Commission's Approval of the following Maxwell/Campano Conditional Certificates of Compliance and related Coastal Development Permits: 04COC-00000-00007 & 04CDP-00000-00090, 04COC-00000-00008 & 04CDP-00000-00091 and 04COC-00000-00010 & 04CDP-00000-00092 [Appeal Case No. 05APL-00000-00032].

Recommendation(s):

That the Board of Supervisors deny the appeal by Jack Maxwell and uphold the Montecito Planning Commission's October 19, 2005 approval of the Maxwell/Campano Conditional Certificates of Compliance.

The Board of Supervisors' action should include the following:

1. Adopt the required findings, including CEQA findings, for the three Conditional Certificates of Compliance specified in the Montecito Planning Commission Action Letters dated October 28, 2005, included as Attachment B of this Board Agenda Letter, and
2. Approve the Mitigated Negative Declaration (Attachment B of the Staff Report to the Montecito Planning Commission, August 17, 2005 Hearing) and adopt the mitigation monitoring program contained in the conditions of approval for each Conditional Certificate of Compliance (set forth in revised Attachment C of the Montecito Planning Commission Action Letters dated October 28, 2005), and
3. Deny the appeal and uphold the decision of the Montecito Planning Commission to approve the Maxwell/Campano Conditional Certificates of Compliance, subject to the conditions of approval set forth in the Montecito Planning Commission Action Letters dated October 28, 2005, and

4. Approve the recordation of the three Conditional Certificates of Compliance subject to the conditions of approval set forth in revised Attachment C of the Montecito Planning Commission Action Letters dated October 28, 2005, and
5. Approve the Coastal Development Permits for each Conditional Certificate of Compliance with conditions of approval set forth in revised Attachment C of the Montecito Planning Commission Action Letters dated October 28, 2005.

Refer to staff if the Board of Supervisors takes other than the recommended action for appropriate findings and conditions.

Alignment with Board Strategic Plan:

The recommendations are primarily aligned with actions required by law or by routine business necessity.

Executive Summary and Discussion:

A. *Issue Summary and Background*

On October 19, 2005, the Montecito Planning Commission approved three Conditional Certificates of Compliance (COCs) and associated Coastal Development Permits to recognize the past illegal creation of six parcels. In granting the Conditional COCs the Montecito Planning Commission imposed conditions to ensure that any future development would be consistent with the Montecito Community Plan and the Article II zoning ordinance (Attachment B, Montecito Planning Commission Action Letters). In particular, a condition was placed on each Conditional COC that, prior to any new development, the parcels must comply with the minimum lot size of the applicable zone district (which is currently two acres). Conditions were also imposed to ensure that any potential impacts to historic resources would be mitigated to less than significant levels.

On October 20, 2005, Jack Maxwell, agent for the three property owners and applicants (Pauline Maxwell, Kari Campano, and himself), appealed the decision of the Montecito Planning Commission, raising objections to specific conditions of approval (Attachment A). The specific conditions being appealed are the conditions requiring the parcels comply with the minimum lot size of the applicable zone district and the requirement that certain historic garden features be retained on site.

1. *Project Description Summary*

The applications for the Conditional Certificates of Compliance were filed on March 29, 2004 (for case numbers 04COC-00000-00007 and 04COC-00000-00008) and April 27, 2004 (for case number 04COC-00000-00010). The applicants requested that Conditional COC be approved for six illegally created lots. The applicants also requested as part of the project description that, upon recordation of these lots and prior to any future development, two lots would be merged to create one vacant lot, two lots would be merged to create another vacant lot, and the remaining two lots would be merged into an adjacent lot that is already developed (Table 1 and Figure 1). Each of the two resulting vacant lots would then be allowed single family residential development pursuant to the future approval of Coastal Development Permits. No site

development was proposed as a part of the Conditional COC projects. Coastal Development Permits are required and being processed concurrently because the imposition of conditions on a Conditional COC is “development” as defined by the Coastal Act and the County’s Local Coastal Program.

Table 1. Applicants’ Proposed Project Description Summary			
	Case Numbers		
	04COC-00000-00007 04CDP-00000-00090	04COC-00000-00008 04CDP-00000-00091	04COC-00000-00010 04CDP-00000-00092
Assessor Parcel Numbers ¹	009-162-010 009-162-022	009-162-032 009-162-033	009-162-011 009-162-028
Location	High Road	High Road	Summit Road
Applicant Proposal	Merge the two parcels to form one lot	Merge the two parcels to form one lot	Merge the two parcels to adjacent lot (APN 009-162-021)
Parcel Size (after subsequent merger)	0.54 acres	0.41 acres	0.91 acres
Development Status (after subsequent merger)	Vacant with future development potential	Vacant with future development potential	Developed with pre-existing residence

2. *Parcel History*

The County Surveyor is responsible to determine if parcels were legally created when lots were not created by a subdivision. If legally created, the Surveyor issues Certificates of Compliance (unconditional). If not, the applicant is directed to apply for Conditional Certificates of Compliance (COCs). Conditional COCs are discretionary projects. Section 21-6.(a)(5) of the Santa Barbara County Code, Chapter 21, Subdivision Regulations, states that the Zoning Administrator shall be the decision-maker for Conditional Certificates of Compliance. Within the unincorporated community of Montecito, the Montecito Planning Commission acts as the Zoning Administrator for all such projects (Santa Barbara County Code Chapter 2-29).

The owners originally applied for several separate unconditional certificates of compliance based on, among other things, the position that the parcels were reflected on the antiquated Montecito Land Company Map. In response, the County Surveyor determined that APN 009-162-021 was created legally and issued an unconditional COC (the lot is already developed with a residence). The Surveyor determined that the remaining six parcels were created illegally (see Attachment F of the Staff Reports prepared for the August 17, 2005, Montecito Planning Commission hearing for Surveyor’s letters and Attachment D, County Counsel Memo dated October 13, 2005).

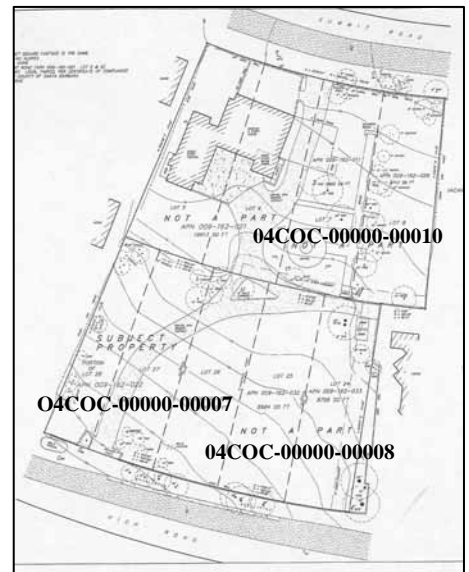


Figure 1. Applicants’ Proposed Lot Configuration

¹ References to parcels are to Assessor Parcel Numbers rather than the lot numbers depicted on the antiquated Montecito Land Company map.

04COC-00000-00007 & 04CDP-00000-00090: These two project parcels were created in their current configurations by a deed (Official Records, Book 1774, Page 169) recorded on August 25, 1960 that separated APN 009-162-010 from APN 009-162-022. At that time, Ordinance 999 was in effect and required lot split approval by the County in order to legally create a parcel. No such approval was ever granted.

04COC-00000-00008 & 04CDP-00000-00091: These two project parcels were created in their current configurations by a deed (Instrument No. 1984-0044273) recorded on August 14, 1984 that separated APN 009-162-033 from APN 009-162-032. At that time, Chapter 21 of the Santa Barbara County Code (Subdivision Regulations) was in effect and required lot split approval by the County in order to legally create a parcel. No such approval was ever granted.

04COC-00000-00010 & 04CDP-00000-00092: These two project parcels were created in their current configurations by a deed (Official Records, Book 1762, Page 494) recorded on July 15, 1960 that separated APN 009-162-011 from APN 009-162-028. At that time, Ordinance 999 was in effect and required lot split approval by the County in order to legally create a parcel. No such approval was ever granted.

3. *Summary of California State Law Governing Conditional Certificates of Compliance*

The Subdivision Map Act requires a local agency to determine, upon the request of any person owning real property or a vendee of that person pursuant to a contract of sale, whether the real property complies with the provisions of the Subdivision Map Act and of local ordinances enacted pursuant thereto. In response to such a request, a city or county must issue either an unconditional certificate of compliance that the property was legally divided or a conditional certificate of compliance, if the local agency determines that the real property does not comply with the Subdivision Map Act and local ordinances.

Government Code section 66499.35(b) distinguishes the type of conditions that may be imposed on a conditional certificate of compliance based on whether the applicant for the certificate was the record owner at the time of the violation. Where an applicant is not the record owner at the time of the violation, the local agency may impose only those conditions that would have applied to a division of property at the time the applicant acquired his or her interest in the property.

“If a local agency determines that the real property does not comply with the provisions of this division or of local ordinances enacted pursuant to this division, it shall issue a conditional certificate of compliance. A local agency **may**, as a condition to granting a conditional certificate of compliance, impose any conditions that would have been applicable to the division of the property at the time the applicant acquired his or her interest therein, and that had been established at that time by this division or local ordinance enacted pursuant to this division . . .” (§66499.35(b).)

The deed conveyances that occurred between 1960 and 1984 creating the illegal subdivisions at issue here did not involve the applicants, who initially acquired the property in 2002 and subsequently transferred the lots to their current configuration in 2003. Thus, the County may impose conditions applicable to the division of property in 2003, when these applicants acquired their current interest in the subject properties. The applicable regulations governing the division of land in 2003 include the policies and development standards of the Montecito Community Plan and the Article II Coastal Zoning Ordinance then in effect.

Once approved, the conditional certificate of compliance is required to be recorded and serve as notice to the applicant or any subsequent transferee that the fulfillment and implementation of imposed conditions shall be required before the subsequent issuance of a permit or other grant of approval for development of the property.

4. *Montecito Planning Commission Hearing Summary*

At the projects’ first hearing before the Montecito Planning Commission (October 20, 2004), the issue of historic resources was raised and it was subsequently determined to have enough merit to require investigation in a Phase I/II Historic Resources Report. The report was prepared and submitted by the applicant and peer reviewed by a consultant acceptable to the applicants, at which point a draft Mitigated Negative Declaration (ND) was prepared and circulated for public review and comment. The Final ND, as approved by the Montecito Planning Commission, is included as an attachment to the August 17, 2005 staff report (Attachment E).

After completing the environmental review and taking additional public testimony, the Montecito Planning Commission deliberated at length regarding the most appropriate conditions for the property and the community. To that end, the Montecito Planning Commission requested additional information from staff regarding the existing development of the surrounding neighborhood, including a discussion of the size of existing parcels and houses, floor to lot area ratios and current zoning. They also requested that staff provide an analysis of a variety of lot configuration options that would result in different development scenarios and house sizes (based on floor area ratios), including two alternative three-lot configurations, a two-lot configuration and the no development option without meeting the minimum lot size. This information, which set forth the options for the Commission, is presented in Table 2 below and on page four of the staff memo presented to the Montecito Planning Commission for its final hearing on the project on October 19, 2005 (Attachment C).

	Applicant’s Original Proposal 3 lots		Alternative 1 3 lots		Alternative 2 3 lots		Alternative 3 2 lots		Alternative 4 1 Lot or No New Dwellings		
Description	1 lot on Summit 2 lots of similar size on High		1 lot on Summit 2 lots on High – smaller west lot		1 lot on Summit 2 lots on High – smaller east lot		1 lot on Summit 1 lot on High		No development unless lot meets minimum lot size		
Lot Size (acres)	Summit	0.91	Summit	0.91	Summit	0.91	Summit	0.91			
	West High	0.54	West High	0.34	West High	0.75				High	0.95
	East High	0.41	East High	0.61	East High	0.20					
Recommended Floor Area (sq. ft.)*	Summit	4,075	Summit	4,075	Summit	4,075	Summit	4,075	Not Applicable		
	West High	3,150	West High	2,650	West High	3,675				High	4,175
	East High	2,825	East High	3,325	East High	2,300					

* Note: Resulting Summit Road lot would already be developed with a 5,044 sq. ft. residence. Recommended floor area does not include garages or accessory structures.

At the final hearing, the applicants also presented a set of additional conditions that would restrict house size, limit the larger of the two houses to one story and reduce the potential second story area on the other house, and increase front and side yard setbacks (presented below in Table 3 and on page five of the staff memo for October 19, 2005 (Attachment C)). However, the applicants did not propose revising the projects from the original proposed three-lot configuration.

Table 3. Applicants' Proposed Additional Conditions				
		House Size	# of Stories	Setbacks² (per Article II 50 ft. from centerline, 20 ft. from ROW*)
Applicants' Proposal	High Road West Lot (0.54 acres)	Comply with recommended floor area (3,150 sq. ft.) to maximum extent but with some flexibility (relies on MBAR review)	One	Front-50 ft. from ROW Side-60 ft. total with 20 ft. min. on each side
	High Road East Lot (0.41 acres)	2,500 sq. ft. (Recommended floor area is 2,825 sq. ft.)	Two with no more than 1/3 of area on 2 nd floor	Front-50 ft. from ROW Side-40 ft. total with 15 ft. min on each side

* ROW means road right-of-way.

After much deliberation, the Montecito Planning Commission voted 3-1 (with one abstention) to approve the Conditional Certificates of Compliance with a condition to require that the lots meet the minimum lot size of the applicable zone district before allowing any new development. The Montecito Planning Commission also included the condition to retain certain identified historic resources on site, which was specifically derived from the mitigation measures identified in the Mitigated ND to reduce potential impacts to historic resources to less than significant levels.

B. Appellant Issues and Staff Response

- The owners appealed a portion of the condition requiring that “each lot must comply with the minimum lot size requirement of the applicable zoning district,” stating that the “conditions of approval [are] inaccurately based upon the existing zone district as described in the 1992 Montecito Community Plan.”**

The Maxwell/Campano parcels, along with many other parcels in the neighborhood, were given a land use designation of Semi-Rural Residential – 0.5 (0.5 units per acre) when the Montecito Community Plan was adopted in 1992. In the same year, the land was rezoned to the 2-E-1 zone district to be consistent with the land use designation. Property with this land use designation and zone district must meet a minimum lot size of two acres in order to subdivide. Prior to adoption of the Montecito Community Plan, the land was zoned 1-E-1 with a minimum lot size of one acre. The 1-E-1 zoning had been in place on this land since the Montecito Zoning Ordinance (Ordinance 453) was first adopted in 1930. The Article II Coastal Zoning Ordinance, however, makes possible a dwelling on a smaller lot than the minimum lot size of the zone

² A walking survey of the neighborhood conducted by the project planner (Julie Harris) indicates that a number of homes would not comply with current zoning ordinance setbacks if constructed today.

district if the lot is "...a legal lot, either on a recorded subdivision or parcel map or is a legal lot as evidenced by a recorded certificate of compliance..." (Section 35-71.6.2)

The six Maxwell/Campano parcels range in size from 0.20 acres to 0.34 acres, much smaller than the minimum lot size. Each of the two Conditional COC applications included a stipulation, requested by the applicants, that upon recordation of the COCs and prior to any future development, the two parcels would be merged into one. For the third Conditional COC application, the applicant also requested that, upon recordation of the COC, the two parcels be merged with an adjacent lot already developed with a single family dwelling. The net result of the proposals would have been two undeveloped lots of 0.54 acres and 0.41 acres that could have been developed at some time in the future with new dwellings and one developed lot of 0.91 acres (Table 2). These lots would not meet the minimum lot size of the zone district. Therefore, the conditions are consistent with the zone district and land use designation in place since adoption of the 1992 Montecito Community Plan.

The Montecito Planning Commission determined that in order to best uphold the goals and the integrity of the Montecito Community Plan it needed to impose conditions that the minimum lot size requirements of the applicable zone district be met before allowing any new development on the parcels. These goals are aimed at maintaining and preserving the low intensity, semi-rural character and quality of life of Montecito. Included in the deliberations was discussion about the history of the community planning effort, the intent of the land use and zone district designations adopted in the Montecito Community Plan (which included the downzoning of many lots in the community) and the Montecito Planning Commission's role as the stewards of the Plan.

The law allows the County to use its discretion when determining which conditions to place on a Conditional Certificate of Compliance. The applicants acquired the lots in their current configuration in November, 2003. Ultimately, the Montecito Planning Commission exercised the discretion allowed under the Subdivision Map Act and applied conditions requiring that the lots meet the minimum lot size of the applicable zone district – a condition that would have been applicable to a division of property at the time the owners acquired their interest (see Attachment B, Action Letters with attached findings for approval).

- 2. The owners appealed the condition (and the mitigation measure of the Mitigated Negative Declaration) that stated "the pergola, garden bench, battered piers and ball finials shall be retained on site." The owners claim that, while described as historic, they are "in such a state of disrepair that it would be uneconomical to retain and refurbish them."**

The Mitigated Negative Declaration (ND) and the conditions of approval, derived from the ND, require that the pergola, garden bench, and battered piers with ball finials be retained on site and in place; there was no requirement that they be refurbished. Adoption of this mitigation measure and condition (condition #2 for each Conditional COC, see Attachment B) ensures that the impacts to Historic Resources are Class II (less than significant with mitigation) rather than Class I (significant and unmitigable). The following discussion summarizes how this condition was developed.

As a part of the environmental review of the project, an Historic Resources Phase I/II Report was prepared by Post/Hazeltine Associates and peer reviewed for P&D by Preservation Planning Associates. The report

concluded and the peer reviewer concurred that there are historic resources on the site and that the proposed project could impact those resources unless appropriate mitigation measures are implemented. The findings of the report and peer review were incorporated into a Mitigated Negative Declaration (ND) for the project. The complete Mitigated ND, the Phase I/II Historic Resources Report and the peer review are attached to the staff report prepared for the August 17, 2005 Montecito Planning Commission hearing (Attachment E). The Mitigated ND was possible because the applicants' agreed to the mitigation measure prior to release of the draft Mitigated ND. They also did not raise any objections to the mitigation being applied as conditions of approval during the hearings before the Montecito Planning Commission.

The Phase I/II report analyzed the historic resources of all six parcels in the Conditional COC applications and the adjacent developed lot, APN 009-162-021. Although this lot is not a part of the COC applications, it, together with the six project parcels, was part of a larger estate. APN 009-162-021 was included in the study for three reasons: it contains a large house with attached garage and water tower built in 1911, numerous landscape and hardscape features on the six subject parcels are related to the house, and upon issuance of the COCs and prior to any new development, two of the six parcels (APNs 009-162-011 and 009-162-028) would be merged with this lot.

The house, originally built in 1911 as the servants' quarters/garage/water tower for the larger Bartlett estate, is eligible for listing as a County Place of Historic Merit and is, therefore, an historic resource under CEQA. The house is considered a significant resource because of its architectural style and integrity and because it was designed by noted architect, Frederick Louis Roehrig. The garden/landscape, which is located on all of the parcels studied in the historic reports, is important for its association with noted landscape architect Stephen Child. The reports conclude that certain hardscape elements contribute to the overall integrity of the house and of this informal part of the garden: the pergola, the entrance gate and walls with wrought iron fence on Summit Road, the garden bench, the battered piers with ball finials, the entrance gate on High Road and the low walls that delineate the property boundary along High Road.

CEQA defines a potential adverse effect to an historic resource as one that would cause a substantial change in the significance of a resource. Such a substantial change means demolition, destruction, relocation, or alteration of the physical characteristics of the resource or its immediate surroundings that convey its historical significance and justify its eligibility for or inclusion in the California Register of Historic Resources or its inclusion in a local register of historic resources. (*CEQA Guidelines* §15064.5(b)(1) and (2).) The Mitigated ND concluded that future development could result in significant impacts to the historic hardscape elements if such development removed or destroyed the identified elements. Thus, the mitigation measure and corresponding condition to retain the pergola, the garden bench and the battered piers with ball finials (along with other elements) were developed to ensure less than significant impacts.

Mandates and Service Levels:

Section 21-71.4 of Chapter 21 of the Santa Barbara County Code (Subdivision Regulations) provides that the decisions of the Planning Commission may be appealed to the Board of Supervisors.

Pursuant to Government Code Sections 65455 and 65096, a notice shall be published in at least one newspaper of general circulation at least ten (10) days prior to the hearing.

Pursuant to Government Code Section 65091, required mailed notice to property owners within 300 feet of the project's property boundaries, including the real property owners, and residents within 100 feet of the property, project applicants and local agencies expected to provide essential services, shall be done at least ten (10) days prior to the hearing.

Fiscal and Facilities Impacts:

Costs to process this appeal are partially offset by the \$2,000 appeal fee paid by the appellant per the Planning & Development Department fee schedule in effect on the date that the appeal was filed (Resolution 04-060 adopted by the Board of Supervisors on March 15, 2004). Costs beyond that fee are absorbed by Planning and Development. These funds are budgeted in the Permitting and Compliance program of the Development Review South Division as shown on page D-294 of the adopted 05/06 fiscal year budget. There are no facilities impacts.

Special Instructions:

Clerk of the Board shall complete noticing in the Santa Barbara News-Press and shall complete the mailed noticing for the project at least ten (10) days prior to the February 21st hearing (mailing labels were attached to the January 24, 2006 Set Hearing Board Letter).

Clerk of the Board shall forward a copy of the Minute Order to Planning & Development, Hearing Support Section, Attention: Cintia Mendoza.

Concurrence:

N/A

Prepared by: Julie Harris.

Attachments:

- A. Appeal to the Board of Supervisors dated October 20, 2005
- B. Montecito Planning Commission Action Letters, dated October 28, 2005, for:
 - a. Maxwell Conditional Certificate of Compliance 04COC-00000-00007 & 04CDP-00000-00090 (APN 009-162-010 and 009-162-022) including Findings, Coastal Development Permit and Conditions of Approval, and
 - b. Maxwell/Campano Conditional Certificate of Compliance 04COC-00000-00008 & 04CDP-00000-00091 (APN 009-162-032 and 009-162-033) including Findings, Coastal Development Permit and Conditions of Approval, and
 - c. Maxwell Conditional Certificate of Compliance 04COC-00000-00010 & 04CDP-00000-00092 (APN 009-162-011 and 009-162-028) including Findings, Coastal Development Permit and Conditions of Approval
- C. Staff Memo to Montecito Planning Commission October 19, 2005 Hearing
- D. County Counsel Memo to Montecito Planning Commission dated October 13, 2005
- E. Staff Report to Montecito Planning Commission August 17, 2005 Hearing (04COC-00000-00007, includes Mitigated Negative Declaration)
- F. Additional Staff Reports and Memos to Montecito Planning Commission for all Previous Hearings (August 17, 2005 for 4COC-00000-00008 and 04COC-00000-00010, June 15, 2005, March 16, 2005, February 16, 2005, January 19, 2005, November 17, 2004 and October 20, 2004)
- G. Public Comment Letters to Montecito Planning Commission
- H. COC Applications
- I. Site Plan Showing Applicants' Proposed Lot Configuration