APPEAL TO THE BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA

Submit to: Clerk of the Board
County Administration Building
105 E. Anapamu Sreet, Suite 407
Santa Barbara, CA 93101

2014 DEC 18 PM 3:46

COUNTY OF SANTA BARBARA
CLERK OF THE
BOARD OF SUPERVISORS

RE: Project Title Philippides Certificate of Compliance

Case Number 14-CC-29, 30

Tract/ APN Number 013-191-012

Date of action taken by Planning Commission, Zoning Administrator, or Surveyor December 11, 2014

I hereby appeal the denial of the County Surveyor
(approval/ approval with conditions/ or denial) (Planning Commission/ Zoning Administrator/ or County Surveyor)

Please state specifically wherein the decision of the Planning Commission, Zoning Administrator, or Surveyor is not in accord with the purposes of the appropriate zoning ordinance (one of either Articles I, II, III, or IV), or wherein it is claimed that there was an error or an abuse of discretion by the Planning Commission, Zoning Administrator, or Surveyor. {*References:* Article I, 21-71.4; Article II 35-182.3, 2; Article III 25-327.2, 2; Article IV 35-475.3, 2}

Attach additional documentation, or state below the reason(s) for this appeal.
See attached letter

Specific conditions being appealed are:

Name of Appellant (please print): DR. ATHENA PHILIPPIDES

Address: 1420 GREENWORTH PLACE
(Street, Apt #)
SANTA BARBARA CA 93108
(City/ State/ Zip Code) (Telephone)

Appellant is (check one): X Applicant ____Agent for Applicant ____Third Party ____Agent for Third Party

Fee $ 2,000 {Fees are set annually by the Board of Supervisors. For current fees or breakdown, contact Planning & Development or Clerk of the Board. Check should be made payable "County of Santa Barbara".}

Signature: A Philippides Date: 12/17/14

FOR OFFICE USE ONLY

Hearing set for: _____ Date Received: _____ By: _____ File No. _____

Brownstein Hyatt
Farber Schreck

December 18, 2014

Susan F. Petrovich
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SPetrovich@bhfs.com

VIA HAND DELIVERY

Board of Supervisors
County of Santa Barbara
Planning & Development
105 East Anapamu Street
Santa Barbara, CA 93101

RE: Appeal from Denial of Philippides Certificates of Compliance
Case No 14-CC-29, -30

Dear Honorable Supervisors:

Brownstein Hyatt Farber Schreck represents Athena Philippides and Craig Hawker, owners of 740 Arcady Road and 1340 Eucalyptus Hill Road. This letter provides a brief explanation of the basis for this appeal. Additional information will be submitted to your Board when an appeal hearing date has been docketed.

Introduction

Ms. Philippides and Mr. Hawker have applied for a lotline adjustment between two existing legal parcels. In response to questions raised by the County Surveyor as to the separate nature of these two parcels, we provided extensive materials that demonstrate that the parcels are, indeed, separate. Those materials are too numerous to attach to this appeal, but specific documents will be provided for the record as part of the appeal hearing. We also enclose a chart, entitled "740 ARCADY ROAD/1340 EUCALYPTUS HILL ROAD," which sets forth all dates relevant to these two parcels and their history.

We believe that, after reviewing all of the relevant information in this case, you will have substantial evidence to determine that the two parcels in question are separate legal parcels. That determination will allow completion of the lotline adjustment that our clients seek.

Procedural History

The lotline adjustment application resulted from a Notice of Violation (NOV), dated December 5, 2012, requiring that the existing garage be demolished because it allegedly was built without a permit prior to the Hawkers acquiring the property. The Hawkers did not participate in creating the violation and are relatively new owners of the property.

Syndi Souter, on behalf of the Hawkers, investigated and determined that the house encroached over the shared property line so a lotline adjustment would be required before the Hawkers could apply for a permit to legalize the garage. She requested a time extension to process the lotline adjustment application to allow for time to cure the NOV. She submitted an abatement schedule that seemed reasonable at the time because she had submitted the lotline adjustment application on April 29, 2013. The response from staff monitoring the NOV advised Ms. Souter that no further extensions would be granted because "the consensus is that only one lot exists on the parcel."

The Hawkers subsequently submitted applications for two certificates of compliance to resolve the issue regarding the two legal parcels. By letter dated December 11, 2014, the County Surveyor denied the applications. This appeal is from that denial.

Factual Basis for Acknowledging the Legal Validity of Two Separate Legal Parcels

When the Hawkers purchased this property, it comprised two lots. Their title report and title policy describe the two separate fee simple parcels. These two parcels have always been deeded in a manner that identifies them as separate parcels. They each arose out of entirely separate assessor's parcels that were under separate ownership at the time of the lot split that created 740 Arcady.

Landowner Frank Solomon (who did NOT own the adjacent property), applied to the County to create the 740 Arcady parcel by a lot split map, approved by the County of Santa Barbara's Subdivision Committee on April 4, 1957 under Ordinance No. 791. The Subdivision Committee was the County body then authorized to approve land divisions of less than 5 parcels.

On May 1, 1957, Solomon deeded Parcel B of the lot split map to his neighbor Louis Paulson, thereby complying with the Ordinance No. 791 requirement that the lot split be finalized by recordation of a map or deed. Louis Paulson was never a party to the lot split application and his land was not involved in the lot split.

There is no County record of Parcel B having been legally merged with the 1340 Eucalyptus Hill parcel.

Since Solomon deeded Parcel B to Paulson, the two Paulson lots have been conveyed twice. The first grant deed was from Paulson to Cox in 1965. That deed described the

740 Arcady lot (Parcel B) and the original Paulson lot as distinctly separate parcels from one another. In 2012, when Cox conveyed to Hawker/Philippides, the grant deed again described the two parcels as being separate and distinct from one another.

Deed history is an indication of intent and it is clear that Paulson, who was not the subdivider in 1957, but who acquired Parcel B from the subdivider, regarded these lots as two separate and distinct legal parcels. His successor did the same.

Even if the parcels had not been so conveyed, Civil Code section 1093 states that a legal description in a deed or other instrument of conveyance or security instrument, that consolidates the descriptions of separate and distinct parcels, does not change their nature or merge the parcels. Adopted in 1985, this section states that it is a declaration of existing law. It is retroactive in effect as a result of that declaration as it applied to all conveyances before and after its adoption.

A County Surveyor's memo, dated May 16, 2013, makes several statements that deserve further analysis.

First, he states that "It is clear that the intent of the Subdivision Map Act approval issued on April 4, 1957 was to create a single legal parcel." That is far from clear, given the state of County ordinances and State law at the time. The County Subdivision Committee had no authority to implement any action other than a straight lot split with only one affected property owner – Solomon – being a party to the application. Paulson was not a co-applicant so his land could not be merged with a portion of Solomon's without a separate lotline adjustment process

Second, he states that "by deeding the two properties together subsequent to subdivision approval," the owner merged the two parcels. This interpretation is completely inconsistent with the facts as set forth above (the only two post-subdivision deeds have described the two parcels separately) and the law. Civil Code section 1093 states that a merger doesn't occur through consolidation of separate and distinct legal descriptions into one deed, absent an express written statement of the grantor of an intent to merge the parcels. The two grant deeds for these lots have no such express statement of intent to merge the parcels.

Third, he states that the "owner merged the two parcels into one parcel that was approved pursuant to the Subdivision Map Act." No such merger has ever occurred. The Subdivision Map Act and County ordinances have clear procedures and requirements for a voluntary merger and the Subdivision Map Act precludes involuntary mergers without compliance with certain statutory provisions. The County of Santa Barbara did not implement those merger requirements and the time has passed to do so.

The County Surveyor's December 11, 2014 letter echoes these views.

The sole basis for the County's questions about the validity of these two parcels is a handwritten note in the corner of an unrecorded lot split application, "Note: Parcel B to become part of the lot to the north and not a separate building site." There is no evidence as to when that notation was placed on this document. The only official document in the County's file, the notice of the County's approval of the lot split, makes no mention whatsoever of any condition adopted as part of the approval. The Subdivision Committee and County Counsel knew in 1957, when the Subdivision Committee approved the lot split application, that a lotline adjustment would be necessary to legally combine Parcel B with a property to the north, particularly because that parcel was under completely different ownership and the owner was not an applicant or in any way a party to the lot split. Merger across ownership lines was been permitted under the applicable County's ordinances. That required a lotline adjustment process.

If the County Subdivision Committee had intended that two lots be merged, it had a vehicle for requiring that as a condition of the lot split. Just two years earlier, the County had adopted a process for accomplishing a reversion to acreage, as described in Ordinance No. 786. That process required that a map to be filed, "designated on the title sheet by an appropriate note containing the words, "MAP OF VACATION" followed by REVERSION TO ACREAGE." (Part II. Section 4.a.). Of course, that would have required that the property owner to the north be an applicant. There is no record in the County files that the property owner to the north participated in the lot split. The Subdivision Committee and the County Counsel must have been aware of this new ordinance when the lot split application came before the Committee for approval. A complete failure to comply with all applicable law and ordinances indicates that the Subdivision Committee did not intend a merger of Parcel B with the property to the north. A notation of unknown origin, placed on an old unrecorded map application at an unknown time, failed to meet 1957 State and County requirements, and it doesn't meet today's requirements, for merger or reversion to acreage.

If the County intended to impose a condition on the lot split, it failed to follow **any** legal process to accomplish that intent and, in later years, failed to enforce or give notice of the condition. Although the County Assessor has designated the entire property as a single Assessor's Parcel, Assessor's Parcels do not equate to legal parcels.

Legal Basis for Acknowledging the Legal Validity of Two Separate Legal Parcels

The County has been involved in two comparable cases and has lost legal challenges in both:

Hawkes v. County of Santa Barbara, Santa Barbara Superior Court Case No. 169598 (1990) – judgment entered in Hawkes' favor on 3/23/1990. This decision pre-dated the Morehart decision discussed below. The court concluded that a lot legally created but

later saddled with an unrecorded County condition that it was not buildable was a separate lot and legal building site.

Morehart v. County of Santa Barbara (1994) 7 Cal.4th 725 – USSC reversed Court of Appeal and determined that the County cannot, by land use regulation, impose lot merger upon private property. Cal. Govt. Code sections 66451.10 through 66451.21 "constitute the sole and exclusive authority for local agency initiated merger of contiguous parcels." Parcels "may be merged by local agencies only in accordance with the authority and procedures prescribed in [those sections]." The County had argued that the rule that the Subdivision Map Act occupied the field for mergers does not include zoning ordinances "that require merger of parcels for issuance of a development permit" because it is not a "local agency initiated merger" and it is the action of the owner in applying for a development permit that effectuated the merger, not the County. The Supreme Court rejected that argument in its entirety.

The Supreme Court also pointed to Sections 66451.10(a) that provides that "two or more contiguous parcels or units of land . . . shall not be deemed merged by virtue of the fact that the contiguous parcels or units are held by the same owner, and no further proceeding under [the Subdivision Map Act] or a local ordinance enacted pursuant thereto shall be required for the purpose of sale, lease or financing of the contiguous parcels or units, or any of them."

The Supreme Court also referenced Section 66451.11 as prescribing the specific conditions under which the local parcel merger ordinance may make parcels eligible or ineligible for merger. Santa Barbara County never adopted a merger ordinance so the "merger is permitted only if one of the parcels comprises less than 5,000 square feet, or was not created in compliance with applicable law," or fails to meet current health and safety requirements. Inconsistency with the general plan simply because of lot size or density standards doesn't constitute grounds for the exemption. "The statute does not, however, authorize imposition of merger simply because a parcel is undersized by local zoning standards unless one of the parcels to be merged is less than 5,000 square feet."

While considering these two local cases, we ask that the County consider its position if it fails to acknowledge what the public record reveals: (1) that the County approved the creation of two separate legal lots through a lot split that complied with local ordinances in force at the time became effective as required by ordinance; and, (2) that, if the County Surveyor's conclusion were to be adopted, one would have to conclude that the County attempted to impose a legally unsupportable and unrecorded condition upon the applicant AND a property owner who was not a party to the lot split process; and, (3) that the County failed to follow State law or its own ordinances applicable to combining two parcels under separate ownership; and, (4) that the County made no attempt to enforce this condition against the subdivider; and, (5) that the County did not require recordation of the alleged condition.

Conclusion

Mr. Hawker and Ms. Philippides request that their appeal be upheld and that the two certificates of compliance be issued without further delay.

Sincerely,

Susan F. Petrovich

Attachment

Conclusion

Mr. Hawker and Ms. Philippides request that their appeal be upheld and that the two certificates of compliance be issued without further delay.

Sincerely,

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Attachment

740 ARCADY ROAD/1340 EUCALYPTUS HILL ROAD

DATE	***EVENT***	***RELEVANCE***
6/8/1955	County Subdivision Ord. 786 becomes effective	Provides a vehicle for reversion of existing lots to acreage through filing a map. Sub.Com. fails to use this vehicle in regard to Solomon property.
4/4/1957	Sub. Com. approves Solomon Lot Split (Paulson not a party)	Ord. 791 applied to lot splits and provided that the Subdivision Committee approved plats with no further County action required. "The Subdivision Committee shall approve the plat whenever all of the following conditions obtain: (a) The division conforms to all applicable zoning and subdivision regulations of the county of Santa Barbara pertaining to size of lots, shape and dimension of lots,. . ."
5/1/1957	Solomon grant deed to Paulson of Parcel B	Ord. 791 required recordation of a deed or map to complete land division. Grant deed finalizes the lot split and gives no notice of intent to merge, stating simply that it is subject only to conditions of record.
7/3/1962	Solomon grant deed to Innes	Solomon's Parcel A sold off.
9/24/1965	Paulson grant deed to Cox	Deed calls out two parcels – Paulson's original parcel and Parcel B. No conditions stated in deed.
7/1/1967	Ch. 21 of County Code, regulating all land divisions, defines "building site" as "A validly created lot or parcel of land containing not less than the prescribed minimum area required by any applicable subdivision and zoning ordinance and regulations existing at the time of creation of the lot or parcel and occupied or which can legally be occupied by buildings or structures."	Acknowledges that pre-existing legally created parcels are valid building sites.
1/1/1985	Civil Code § 1093 added, as a	Clarifies that merger doesn't occur

	declaration of existing law.	through consolidation of separate and distinct legal descriptions into one deed or other instrument of conveyance, absent express written statement of grantor of intent to merge.
3/23/1990	Judgment entered in ***Hawkes v. County of Santa Barbara***, Case No. 169598, ordering County to issue LUP for development of "unbuildable lot."	Comparable factual situation and pre-Morehart. Judgment for property owner.
5/26/1994	Final USSC decision in ***Morehart v. County of Santa Barbara*** *(1994)* 7 Cal.4th 725	No merger of lots without compliance with Subdivision Map Act merger provisions or with consent of landowner. Certain conditions must apply for County to merge lots without landowner consent.
11/14/2012	Cox grant deed to Hawker/Philippides	Deed calls out two parcels – Paulson's original parcel and Parcel B. No conditions stated in deed.
6/25/2013	Final USSC decision in *Koontz v. St. Johns River Water Management District*	Temporary taking is still a compensable taking.