



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: Planning &
Development
Department No.: 053
For Agenda Of: August 18, 2009
Placement: Set Hearing
"Estimated Time:": 1.5 hrs on September 8,
2009
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Dianne Black, Interim Director, (805) 568-2086
Director:
Contact Info: Doug Anthony, Deputy Director, (805) 568-2046
SUBJECT: El Encinal Appeal of the County Planning Commission's Denial of Land Use Permit
(08LUP-00000-00024)

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

As to form: No

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

That the Board of Supervisors:

Set a hearing for September 8, 2009 to consider the El Encinal Appeal (Case No. 09APL-00000-00009 filed by the applicant) of the County Planning Commission's April 8, 2009 decision granting the appeal (Case No. 08APL-00000-00010) and denying the Land Use Permit (Case No. 08LUP-00000-00024) overturning the Planning and Development's approval of the El Encinal Pole Barn (Case No. 08LUP-00000-00024) identified as Assessor Parcel Number 099-030-040, located at approximately 1 ¼ miles southwest of the intersection of Highway 135 and Santa Rita Road, in the Los Alamos area, Fourth Supervisorial District.

At the September 8, 2009 hearing, the Board of Supervisor's action should include the following:

- a) Adopt the required findings for denial of the project specified in the Planning Commission action letter dated April 10, 2009 (Attachment A);
- b) Accept the exemption pursuant to CEQA Guidelines Section 15270;
- c) Deny the appeal, case no. 09APL-00000-00009, thereby upholding the Planning Commission's denial of 08LUP-00000-00024; and

d) Deny the project, *de novo* case no. 08LUP-00000-00024.

A. Proposed Project

The proposed project is an appeal to grant the approval of a land use permit to legalize an existing 1,944 square foot, 2-sided pole/hay barn constructed in 1988. The pole barn was constructed over the foundation of a prior barn. Per the Land Use and Development Code, there are no required setbacks for the side and rear property boundaries on parcels zoned AG-II. The subject 107.17 acre parcel was created by TPM 13,549 in 1984.

B. Background

An application for a Land Use Permit was submitted on January 10, 2008 to legalize a pole/hay barn constructed in 1988 within the same footprint area as a previously existing barn. Planning and Development approved the permit on February 27, 2008 based on the project's conformance with the provisions of the Land Use and Development Code and the Comprehensive Plan. On March 10, 2008, an adjoining neighbor, Mr. Scheller filed an appeal objecting to the location of the structure which is located within the recorded 75 foot wide easement. The appellant identified a total of 13 issues that form the basis of his appeal.

The Planning Commission heard the appeal on November 12, 2008. The majority of the discussion involved easements. Both P&D staff and County Counsel explained that the County does not protect private easements. Staff also stated that the approval of the pole barn would not block the access for which the easement was required. County Counsel advised the Commission that the existing easement is a non-exclusive easement and does not preclude other uses. Approval of the barn in this location would still allow the 20' wide access easement required by the Fire Department per TPM 13,549. The Planning Commission interpreted the map conditions as requiring a 75' wide easement. Commissioner Valencia expressed concern with finding #1.1.3 that states that the project would be in compliance with the originally approved map (TPM 13,549) and directed staff to revise this finding to reflect inconsistency with the easement. The Commission also requested that the property owners try to resolve this issue outside of the County's jurisdiction. However, mediation between the parties did not resolve the issues. The finding was revised according to the direction of the Planning Commission.

At the January 28, 2009 Planning Commission hearing, the agent for El Encinal asked for a continuance to April 8, 2009 to allow for mediation between the two parties. On March 23, 2009 the attorneys for both parties notified Planning and Development that despite attempts at mediation the issues were not resolved regarding the easement.

On April 8, 2009, the Commission overturned P&D's approval of the land use permit (thereby by denying the barn permit) by a vote of 3 to 2.

Appeal Issues:

On April 14, 2009, the appellants and applicants, El Encinal Ranch submitted a letter (included as Attachment B) along with an application appealing the April 8, 2009 County Planning Commission's denial. The following items were identified as the basis for this appeal:

1. Appeal Issue: The appellants disagree with the Planning Commission's interpretation of the conditions imposed on the original lot split map. The condition reads as follows: All access roads and driveways serving this project shall conform to Department of Public Works Road Division Standards. Roads to be a minimum of 20' in width, all weather surface capable of serving a 16 ton fire apparatus.

Staff Response: Staff concurs that placement of the barn in its current location does not conflict with the provisions of a 20 foot wide access road across the property. The existing hay/pole barn has been located in this same footprint since 1988 and replaced an existing barn destroyed in a storm and completely dismantled in 1983. With the barn in this location, the existing access road continues to have a width of a minimum of 20 feet. As a condition of approval an access easement which did not define a width, was required to be provided for Parcel A (Scheller) shown across Parcel B (El Encinal). The proposed access easement was required to be a minimum of 20 feet wide as indicated in the staff report and as a condition from the Fire Department. However, Mr. Scheller is correct in pointing out that the barn is located within the 75' wide easement. The 75' wide easement was recorded on TPM 13,549. This easement provides for ingress and egress, public utility and private waterline purposes.

2. Appeal Issue: The new Finding 1.1.3 adopted by the Planning Commission to justify overriding the staff's support of the pole/hay barn concludes that the potential future creek erosion could result in the driveway not meeting minimum Flood Control standards. The evidence in the record reflects that for over 20 years the creek has not eroded in a manner that endangers the existing roadway. Evidence also reveals that, even if the creek were to narrow the roadway, the eucalyptus trees that existed prior to the parcel map approval and the Scheller's acquisition of this property provide greater narrowing than the hay barn so there is nothing to be gained by denying the hay barn Land Use Permit.

Staff Response: At the Planning Commission hearing on November 12, 2008, Commissioner Valencia stated that he could not support the staff report findings, in particular finding #1.1.3 and asked that staff revise the finding to reflect inconsistency with the approved map. On January 28, 2009 the project was heard by the Planning Commission with the revised finding as follows:

Finding 1.1.3: That the subject property is in compliance with all laws, rules and regulations pertaining to zoning uses, subdivision, setbacks and any other applicable divisions of this Article, and such zoning violation enforcement fees as established from time to time by the Board of Supervisors has been paid. This subsection shall not be interpreted to impose new requirements on non-conforming uses and structures under Section 35.101.020 et seq.

Although the subject property would be in compliance with all laws, rules, and regulations pertaining to zoning uses, setbacks and other applicable divisions of the Land Use and Development Code, the Planning Commission concluded that issuing a permit to legalize the pole barn would not be consistent with subdivision requirements due to the encroachment of the pole barn into the easement approved as a part of the originally approved map, TPM 13,549. The Commission was also concerned about erosion further reducing the available roadway width. Although the access road in its current configuration has a minimum width of 26 feet adjacent to the pole barn, further erosion from the creek east of the access road could result in a driveway that does not meet minimum standards of 20 feet.

A survey completed by Berk Blake, Blake Land Surveys shows that under current conditions the closest point of the pole barn is 26 feet from the top of bank. In addition to the survey completed by Blake Surveys, a survey by MNS Engineers was also submitted indicating that the distance is 21 feet from the top of bank. The Flood Control Department submitted a letter dated April 30, 2008 stating that the setback ordinance specifically applies only to the creeks identified in the Flood Insurance Rate Maps (FIRM). The watercourse identified on the El Encinal/Scheller parcels adjacent to the pole barn is not identified on the FIRM and therefore is not subject to this regulation.

The appellants, El Encinal do not concur with the Planning Commission's decision on noncompliance with TPM 13,549 and the easement approved with the map, and point out that approval of the barn permit would continue to provide for the 20 foot wide road access required pursuant to that map.

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

The cost to process this appeal is partially offset by the \$443 appeal fee paid by the appellant per the Planning & Development Department fee schedule in effect on the date that the appeals were filed (Resolution 08-022 adopted by the Board of Supervisors on May 4, 2009). The fee was collected from the appellant, El Encinal. The remaining cost of processing the appeal is budgeted in the Permitting and Compliance Program of the Development Review Division – North on page D-312 of the adopted budget for Fiscal Year 2009/2010. There are no facilities impacts. Estimated staff time to process the appeal and prepare for and attend the hearing before the Board of Supervisors is approximately 30 hours for an estimated cost of \$4,600.00.

Special Instructions:

Clerk of the Board shall publish a legal notice in the Santa Maria Times and shall complete the mailed noticing requirements for the project at least ten (10) days prior to the September 8, 2009 hearing (mailing labels attached).

Clerk of the Board shall forward a copy of the Minute Order and copies of the legal notice and proof of publication to Planning & Development, Hearing Support Section, Attention: David Villalobos.

Attachments:

- A. Planning Commission Action Letter dated April 10, 2009
- B. Appeal Application dated April 14, 2009
- C. Staff Report dated October 27, 2008
- D. PC Memo dated January 15, 2009
- E. PC Memo dated March 27, 2009
- F. Fire Department letter dated April 24, 2008
- G. Flood Control letter dated April 30, 2008
- H. Site Plan
- I. Close-up Site Plan

Authored by:

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cc:

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File