



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 and Development
Department No.: 053
For Agenda Of:
Placement: 10/11/11
Estimated Tme: 10 minutes
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Glenn Russell, PhD., 568-2085
Director Planning and Development
Contact Info: Doug Anthony, Deputy Director, 568-2046
Development Review Division – North County
SUBJECT: Nelson Appeal of the Zoning Administrator Approval of the JET Conditional Certificate of Compliance

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence:

As to form: N/A

Recommended Actions:

Hearing to consider the Nelson Appeal of the Zoning Administrator's approval of 09COC-00000-00007 (11APL-00000-00015); Assessor Parcel Nos. 131-090-081 (portion of) and -082, located approximately ½ mile southeast of the intersection of Tepusquet Road and an existing unnamed jeep road, in the Tepusquet area, Fifth Supervisorial District.

1. Make the required findings for the project, including CEQA findings;
2. Determine the project is exempt pursuant to Section 15061(b)(3) of CEQA , included in Attachment C;
3. Deny the appeal, case no. 11APL-00000-00015, thereby upholding the Zoning Administrator's approval of 09COC-00000-00007; and
4. Grant *de novo* approval of 09COC-00000-00007, subject to the conditions specified in the Zoning Administrator's action letter and attachments dated June 9, 2011.

Summary Text:

The applicant applied for six Conditional Certificates of Compliance, which were approved by the Zoning Administrator on June 6, 2011. The applicant is appealing the conditions of approval imposed on the certificates that require the merger of the six lots prior to any future development. Alternatively, the appellant may seek to subdivide the original parcel through the subdivision process.

A Conditional Certificate of Compliance is issued in accordance with Government Code Section 66499.35 in cases where the subdivision of a property is not in compliance with the California Subdivision Map Act. With a Conditional Certificate, the County may take any action, including denial, that might have been imposed on the original subdivision.

The Zoning Administrator determined that approval of the proposed subdivision of the original 862-acre site into six arbitrary illegal parcels submitted by Mr. Toomey to be inappropriate via the Certificate of Compliance Process. The complexity of the proposed subdivision issues created a situation that required a complete environmental review and subdivision map process; these issues include access, water, sanitation and other utilities, environmental impacts, developability, terrain, and the previous illegal boundaries. Instead, the Zoning Administrator approved all six Conditional Certificates with a condition that requires either merger of the entire parcel to its original outside boundaries, or subdivision within the legal process imposed by the Subdivision Map Act.

The California Environmental Quality Act (CEQA) exemption cited in this matter is an exemption available only because the Zoning Administrator took an action which, although an approval by issuance of the Conditional Certificates, essentially denied the creation of the illegal lots. Any approval of the appeal could not be taken without further environmental review of the impacts of the creation of the subdivision.

Background:

Mr. Toomey originally purchased the 862-acre parcel in the 1970's. In 1974, the County recognized that the parcel was illegally subdivided, and the owner was officially notified by way of four formal Notices of Violation from the County Public Works Department, Surveyor's Office (Attachment H). No action has ever been taken in the nearly forty years since by Mr. Toomey or his subsequent trust to correct the original illegal subdivision in response to the Notices of Violations.

On December 4, 1985, a grant deed was recorded, transferring the property from Mr. Toomey to his JET Investment Trust. Since Mr. Joseph Toomey is a principal and beneficiary of JET Investment Trust, Subdivision Map Act 66499.35(b) provides for application of current regulations to the property. The conditions of approval would ensure the application of current subdivision and zoning standards to ensure protection of public health, safety, and welfare and to ensure that any future development would be consistent with the Land Use and Development Code.

Under the Subdivision Map Act, real property may not be subdivided and conveyed, leased or financed except in compliance with the California Subdivision Map Act. It is illegal to convey a parcel that has been divided in violation of the Subdivision Map Act (§66499.30). Any sale or conveyance of such land is voidable under §66499.32 and may subject the parties involved to civil and criminal penalties. Any pending contract to sell a parcel in violation of the Act is void.

Appeal

On June 15, 2011, the applicants, Glen Nelson, Co-Trustee, for JET Investments submitted a letter (included as Attachment B) along with an application appealing the June 6, 2011 County Zoning Administrator's approval. The following items were identified as the basis for this appeal, followed by the staff analysis of the appeal issue:

Appeal Issue 1: General

In summary, the appellant disagrees with the Zoning Administrator's approval of Condition 2, which states that:

“Prior to any future development on the proposed project site, the applicant shall complete a voluntary merger for lawful subdivision of the entire property of Assessor Parcel Number 131-090-076 and a portion of -078, with Assessor Parcel Numbers: 131-090-078, -080, -081, -082, and -083 approved under this Conditional Certificate of Compliance dated June 6, 2011. Recorded documentation shall be submitted verifying completion of the voluntary merger for lawful subdivision of the entire property.”

The appellant has also indicated per Government Code §66451.10(a) that the County does not have the ability to require the merger of parcels due to the fact that they are contiguous.

Staff Response: The entirety of the Appellant's property was illegally subdivided; as such, the Appellant has no legal right to any particular configuration of parcels within the outer boundaries of the original, undivided parcel. As noted above, JET Investments (then Toomey) purchased the property in the early 1970's from Mr. Jess Rice. At that time, the original 862-acre parcel had been created illegally, and was also officially deemed illegal by the County. Four formal Notices of Violation (per Government Code § 66499.36) have been issued by the County of Santa Barbara documenting the illegal division of real property, which may include all or part of the subject parcels (Attachment H). These Notices of Violation were recorded against the properties on January 17, 1974 as Instruments number 1783, 1784, 1785 and 1786 in Book 2497 pages 561-4 of the Official Records of Santa Barbara County. In the 1980's, Mr. Toomey proceeded to further subdivide the parcel into the six parcels reviewed under the subject Conditional Certificates of Compliance. At the time of this illegal subdivision, the filing and approval of a map would have been the proper process to legally subdivide the parcels.

On October 26, 2010, a letter was sent to Justin Height, Penfield and Smith, indicating that a requirement to merge the present ownership boundaries of JET Investments would be necessary because the original conveyances to Toomey in the early 1970's were officially deemed illegal, and the entire property was later further subdivided by Toomey into six additional parcels without legal approval (Attachment E). There is, therefore, no parcel configuration of anything smaller than the outside boundary that can be deemed an appropriate configuration. In addition, Mr. Toomey, the equitable owner of the property, has been under legal notice of the original illegal divisions of land for thirty-seven years and it is reasonable to require correction of those first illegal divisions, by re-merger, prior to allowing further subdivisions. California Government Code Section 66499.34 prohibits the County from granting any approval that leads to development of land illegally divided. As noted above, the appellant had no right to any of the illegal configurations that he created in violation of the law.

In addition, any future subdivision of the 862-acre parcel would be accomplished within the Subdivision Map Act process. Based on the parcel location, some of the prerequisites and considerations that should be addressed at submittal would be access, utilities, topography, environmental impact, survey discrepancies, improvements, and building envelopes. The multiple tiers of illegal divisions on top of one another, without any pretext of proper subdivision law considerations, preclude the use of those division boundaries as useful boundaries of proposed subdivisions.

Appeal Issue 2: Demand for Merger

The appellant's agent makes an argument opposing the condition of merger in the approved Certificates of Compliance and an argument regarding the Morehart case (*Morehart v County of Santa Barbara* (1994) 7 Cal 4th 725).

Staff Response: This appeal issue characterizes the law inaccurately and it is not applicable to the case at hand. The appellant quotes California Government Code Section 66451.19(a), but excludes the words "... units of land which have been created under the provisions of this division." Only legal parcels, approved in accordance with law, are covered by the cited merger laws. An illegal subdivision is not protected by merger laws from a requirement that the illegality be cured by undoing the illegal act, which can be accomplished by either a merger or re-subdivision. The six Conditional Certificates of Compliance were correctly approved with the condition that the local merger ordinance be used to correct the illegal division. Further, this merger condition utilizes a County merger ordinance authorized by Statute (Government Code 66499.20^{3/4}) which is, thus, wholly unrelated to the issues argued by appellant regarding the Morehart case.

Appeal Issue 3: Scope of County's Authority to Condition or Deny

Appellant makes the argument that the only option for the County is to provide conditions for each of the illegally created lots and issue the certificates so as to allow individual sale and development of the divided properties.

Staff Response: The County is not required to give the appellant the subdivided parcels it created without following the legal approval through the process defined by the Subdivision Map Act. Under Government Code 66499.35, the County may condition and approve the subdivided parcels in any manner the County could have at the time of the illegal subdivision. The courts have held that a local agency need not issue a Certificate of Compliance at all when the result of the issuance would be to subdivide the property without compliance with the Act (*Abernathy Valley, Inc. v. County of Solano*, (2009) 173 Cal. App. 4th 42).

In the current case, the Zoning Administrator could have denied the Certificate outright, but instead conditioned the Certificate of Compliance to merge the existing lots back to the 862-acre parcel or apply for a subdivision. By issuance of the Conditional Certificate of Compliance, the County gives the Appellant the benefit of having the Certificates in place, allowing sale of the properties (as a whole), but requiring compliance with the law, by requiring the merger or applying proper resubdivision of the illegal parcels.

Fiscal and Facilities Impacts:

Budgeted: Yes

The costs for processing appeals are partially offset through payment of a fixed appeal fee of \$643 (\$500 of which covers P&D costs). The total estimated cost to process this appeal is approximately \$4,613.25 (25 staff hours). These funds are budgeted in the Permitting and Compliance Program of the Development Review North Division, as shown on page D-316 of the adopted 2011/2012 fiscal year budget.

Special Instructions:

A minute order of the hearing and copy of the notice and proof of publication shall be returned to Planning and Development, attention David Villalobos.

Attachments:

- A. Zoning Administrator's Action Letter dated June 9, 2011
- B. Appeal Application dated June 15, 2011
- C. Staff Report dated May 20, 2011
- D. County Counsel's Letter dated September 14, 2010
- E. Planning and Development's Letter dated October 26, 2010
- F. Original Parcel Boundary
- G. Site Plan
- H. 1974 Notices of Violation

Authored by:

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cc:

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File