

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
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Agenda Number:
Prepared on: March 9, 2006
Department Name: Planning & Development
Department No.: 053
Agenda Date: March 21, 2006
Placement: Departmental
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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].

At the hearing of February 21, 2006, the Board of Supervisors denied the appeal by Jack Maxwell and upheld the Montecito Planning Commission's October 19, 2005 approval of the Maxwell Campano Conditional Certificates of Compliance. The Board continued its final *de novo* action on the Conditional Certificates of Compliance in order to consider revised findings.

Recommendation(s):

That the Board of Supervisors:

1. Adopt the required findings, including CEQA findings, as revised, for the three Conditional Certificates of Compliance, included as Attachment A 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 (Attachment B of this Board Letter), 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 Attachment B of this Board Letter, and

4. Approve the recordation of the three Conditional Certificates of Compliance subject to the conditions of approval set forth in Attachment B of this Board Letter, and
5. Approve the Coastal Development Permits for each Conditional Certificate of Compliance with conditions of approval set forth in Attachment B of this Board Letter.

Alignment with Board Strategic Plan:

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

Executive Summary and Discussion:

At the hearing of February 21, 2006, the Board of Supervisors denied the appeal by Jack Maxwell and upheld the Montecito Planning Commission's October 19, 2005 approval of the Maxwell/Campano Conditional Certificates of Compliance. The Board continued the item to consider revised findings that address issues raised on appeal. In particular, as discussed below, the revised findings address and reject the claim raised by the applicant at the February 21, 2006, hearing that the condition requiring the parcels meet the minimum lot size of the zoning district prior to future residential development constitutes spot zoning.

Montecito became the first community zoned by the County when, in 1930, the County adopted Ordinance No. 453, a districting plan that regulated the uses of land. In that very first County zoning ordinance, High Road was identified as the appropriate dividing line between two districts, identifying areas to be more densely developed to the south and less densely developed to the north. Property to the south of High Road was zoned "A2", a residence district requiring a building site area "not less than twenty thousand (20,000) square feet." Property to the north of High Road was zoned "A1," a residence district requiring a building site area of "not less than one (1) acre." This dividing line has been maintained since 1930 (Attachment C).

The Montecito Community Plan, adopted in 1992, retained the 20,000 square foot lot size requirement for the district south of High Road by zoning that area 20-R-1. Larger lot sizes were retained north of High Road as most of that area was rezoned to 2-E-1 (0.5 units per acre, or a two-acre minimum lot size).

The County has the authority to decide where to locate appropriate zone district boundary lines to retain community character by requiring minimum lot size for development. The subject property has been zoned the same as properties north of High Road since 1930 because High Road is a boundary line between more densely developed and less densely developed land. Maintaining that line preserves the semi-rural character of Montecito consistent with the goals of, and findings for adoption and statement of overriding considerations for, the Montecito Community Plan. Thus, the boundary line is rational and not arbitrary.

"Usually spot zoning involves a small parcel of land, the larger the property the more difficult it is to sustain an allegation of spot zoning. Likewise, where the 'spot' is not an island but is connected on some sides to a like zone the allegation of spot zoning is more difficult to establish since lines must be drawn at some point." (*Kawaoka, supra* at 1236, fn.9.)

The subject property is not an island, but is connected on three sides to the same 2-E-1 zone district. The immediate contiguous 2-E-1 zone, identified by extending the 2-E-1 zone to adjacent properties until a different zone district is encountered includes 59 lots greater than one acre in size that are similarly situated in a surrounding neighborhood of 183 parcels (32%) (Attachment D). If this area is extended further north to the first major arteries, i.e., Camino Viejo Rd., East Valley Rd. and Hot Springs Rd., the number of lots larger than one acre in that contiguous 2-E-1 zoned area equals 121 out of 277 lots, or 44% (Attachment E).

This case is different from *Hamer* and *Ross*, upon which the applicant has relied. In *Hamer*, only three other one-acre lots were present in the surrounding community. Similarly, in *Ross*, only three other lots equaled or exceeded one acre on the northern half of the subject block, which consisted of 53 lots, and in the area immediately north, which consisted of 32 lots. In both cases, the courts found the subject parcels were virtually surrounded by parcels of lesser size. Here, in contrast, at least one-third of the parcels in the same zone district and surrounding the subject property on three sides are larger than one acre.

Moreover, the applicant's reliance on the "immediate" and "larger" community studied by the Montecito Planning Commission to assert a spot zoning claim is not appropriate. First, the issue of spot zoning was not raised by the applicant before the Montecito Planning Commission. Second, these areas were discussed by the Montecito Planning Commission solely for the purpose of considering house size and floor area limitations in response to the applicant's statement of willingness to consider such restrictions as part of the applicant's project. (The "immediate" and "larger" neighborhoods studied by the Montecito Planning Commission are delineated on Attachments D and E with the dashed and heavy solid lines, respectively.)

Finally, the applicant's definition of the "immediate" neighborhood for the purpose of asserting a spot zoning claim is too restrictive and does not accurately reflect the community. It is limited to only three blocks, and does not respect the long-established boundary line between lower and higher density development at High Road because it includes one block that is south of High Road and zoned 20-R-1 for higher density development. The "larger" area does not reflect the community because it also ignores zone district boundary lines and includes an even larger area of parcels zoned 20-R-1 to the south and west.

Special Instructions:

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

Concurrence:

N/A

Prepared by: Julie Harris.

Attachments:

- A. Revised findings for each Conditional Certificate of Compliance for:
 - a. Maxwell Conditional Certificate of Compliance 04COC-00000-00007 & 04CDP-00000-00090 (APN 009-162-010 and 009-162-022), and
 - b. Maxwell/Campano Conditional Certificate of Compliance 04COC-00000-00008 & 04CDP-00000-00091 (APN 009-162-032 and 009-162-033), and
 - c. Maxwell Conditional Certificate of Compliance 04COC-00000-00010 & 04CDP-00000-00092 (APN 009-162-011 and 009-162-028)
- B. Coastal Development Permits and Conditions of Approval for:
 - a. Maxwell Conditional Certificate of Compliance 04COC-00000-00007 & 04CDP-00000-00090 (APN 009-162-010 and 009-162-022), and
 - b. Maxwell/Campano Conditional Certificate of Compliance 04COC-00000-00008 & 04CDP-00000-00091 (APN 009-162-032 and 009-162-033), and
 - c. Maxwell Conditional Certificate of Compliance 04COC-00000-00010 & 04CDP-00000-00092 (APN 009-162-011 and 009-162-028)
- C. Excerpts from Ordinance Number 453, adopted February 17, 1930
- D. Map and Tables showing “Immediate” and “Larger” Neighborhoods reviewed by Montecito Planning Commission and Contiguous 2-E-1 Zone District
- E. Expanded Contiguous 2-E-1 Zone District