

March 19, 2014

Susan F. Petrovich
Attorney at Law
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RECEIVED

VIA HAND DELIVERY

Ms. Anne Almy
County of Santa Barbara
Planning & Development
123 East Anapamu Street
Santa Barbara, CA 93101

MAR 19 2014
S.B. COUNTY
PLANNING & DEVELOPMENT

RE: Philippides Lotline Adjustment Application, 740 Arcady Road, Montecito

Dear Ms. Almy:

Brownstein Hyatt Farber Schreck represents Athena Philippides and Craig Hawker, owners of 740 Arcady Road and 1340 Eucalyptus Hill Road. I am directing this letter to you because the planner originally assigned to this case is on maternity leave.

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 materials that demonstrate that the parcels are, indeed, separate. Apparently, he requires more. We enclose a package of materials for your information and will explain their relevance in this cover letter.

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 the information within and the attachments, you will have sufficient grounds to conclude that the two parcels that are the subject of the lotline adjustment application are separate legal parcels and will process the lotline adjustment as requested.

If you are unable or unwilling to process the lotline adjustment application to conclusion, we request that you provide us with a letter stating your denial of the lotline adjustment and advising the grounds for refusing to further process the Philippides/Hawker lotline adjustment application.

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.

Earlier this month, the Building & Safety staff member 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."

For the reasons detailed below, we do not concur with this "consensus" and request that you review the enclosed information with County Counsel and advise us that you **are** able to process the lotline adjustment. Upon receipt of such a letter, we will return to the Building Department for negotiation of a new abatement schedule that will include conclusion of the lotline adjustment process. If you cannot issue such a letter, please provide us with a clear and unambiguous statement that the lotline adjustment application will not be processed.

Factual Basis for Acknowledging the Legal Validity of Two Separate Legal 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. See the attached Pueblos Map No. 42 for the Cold Springs School District, compiled by the County Surveyor's Office.

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 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, once by Paulson to Cox in 1965, in which the 740 Arcady lot (Parcel B) and the original Paulson lot are described as distinctly separate parcels from one another. In 2012, when Cox conveyed to Hawker/Philippides, the grant again describes the two parcels as being separate and distinct.

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.

The 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. Whatever the County Subdivision Committee may or may not have intended, it could not 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 consolidate 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 sole basis for the County's questions about the validity of these two parcels is a handwritten note in the corner of an unrecorded Parcel Map, "Note: Parcel B to become part of the lot to the north and not a separate building site." The unrecorded Parcel Map is the only place in the County files that we were able to find any indication of the Subdivision Committee's intent and that is ambiguous – the Subdivision Committee and County Counsel knew in 1957 that a lotline adjustment would be necessary to legally combine Parcel B with an unrelated property to the north. This notation on the map is a nullity. Merger across ownership lines has never been permitted under the County's ordinances.

The County Assessor records better reflect the legal impact of the Subdivision Committee's approval – the enclosed two pages from the Assessor's 1957 record book shows three (3) separate Assessor's Parcels: -083 for Paulson's original landholding, -106 for Parcel B, and -107 for Parcel A, which remained Solomon's.

The County's official notice of the lot split approval came to Solomon (Paulson was not an addressee) via a letter signed by the County Planning Director, stating "This notice is authority to proceed with the division as shown on the approved plat." The letter includes no statement that the note on the Parcel Map was a condition of approval. There is absolutely no recorded notice that such a condition was appended to the approval.

Most relevant is the fact that the County later allowed a residence to be constructed on 740 Arcady without any County processing of a lot merger, reversion to acreage, or lotline adjustment between Parcel B and the original Paulson parcel.

In any event, Paulson was not a party to the lot split proceeding; he and his successors are not bound by anything said or noted during the proceeding. The words "become part of the lot to the north" are ambiguous – they may simply have reflected Solomon's intent to sell the lot to Paulson following County approval of the lot split. Solomon did convey the property to Paulson a short time after the lot split approval. The note includes no promise signed by Paulson to later complete a merger, lotline adjustment, or reversion to acreage and there is no record that Paulson applied for or completed any such process.

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.). The Subdivision Committee and the County Counsel must have been aware of this new ordinance when Solomon came forward with his lot split proposal. 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 on an

unrecorded map failed to meet 1957 State and County requirements, and it doesn't meet today's requirements, for merger or reversion to acreage.

Paulson's Land Use Rider to construct a residence on his landholding didn't depict the lot line between his two legal parcels. He was not required to do so under any ordinance in force at the time. Although the house depicted on the Land Use Rider straddles the lot line, the as-built residence is largely on Parcel B, although a portion of it lies north of the shared lot line. This permit afforded the County an opportunity to announce any intention that the two parcels comprised only one legal building site, but there is no such note on the Land Use Rider. The failure to accurately site a building did not then and does not now accomplish a merger or reversion to acreage.

The conclusion must be that these are two separate legal parcels. Paulson acquired these parcels in two completely different conveyances two years apart (10/21/1955 and 5/7/1957, respectively).

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. The lot line between Parcel B and the Paulson's original landholding remains in place. 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 the County may have attempted to impose a legally unsupportable and unrecorded condition upon Solomon without Paulson being a part of the 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

On behalf of Mr. Hawker and Ms. Philippides, I can assure you that they would like to resolve this issue with the County amicably. This can be accomplished with a simple lotline adjustment that will then allow the County to issue a building permit for the garage.

Because timing is important in regard to the Notice of Violation, we also request that the time to abate the violation be further extended. The property owners believe that they have two legal parcels and are pursuing their legal right to a lotline adjustment, but perhaps they and the County can resolve the NOV issue by pulling a permit to modify the former garage so that it can be used as a garage while reserving their right to contend that the permit in no way compromises the legal status of the lots that comprise the property.

Please respond to the following questions:

Ms. Anne Almy
March 19, 2014
Page 7

Will the County process a permit to restore the garage door pending resolution of the parcel validity issue, agreeing that the restoration in no way compromises the Hawkers' position?

Will the County state an appealable decision as to whether it contends that Parcel B is not a legal buildable parcel, separate and apart from the property known as 1340 Eucalyptus Hill Road?

Sincerely,

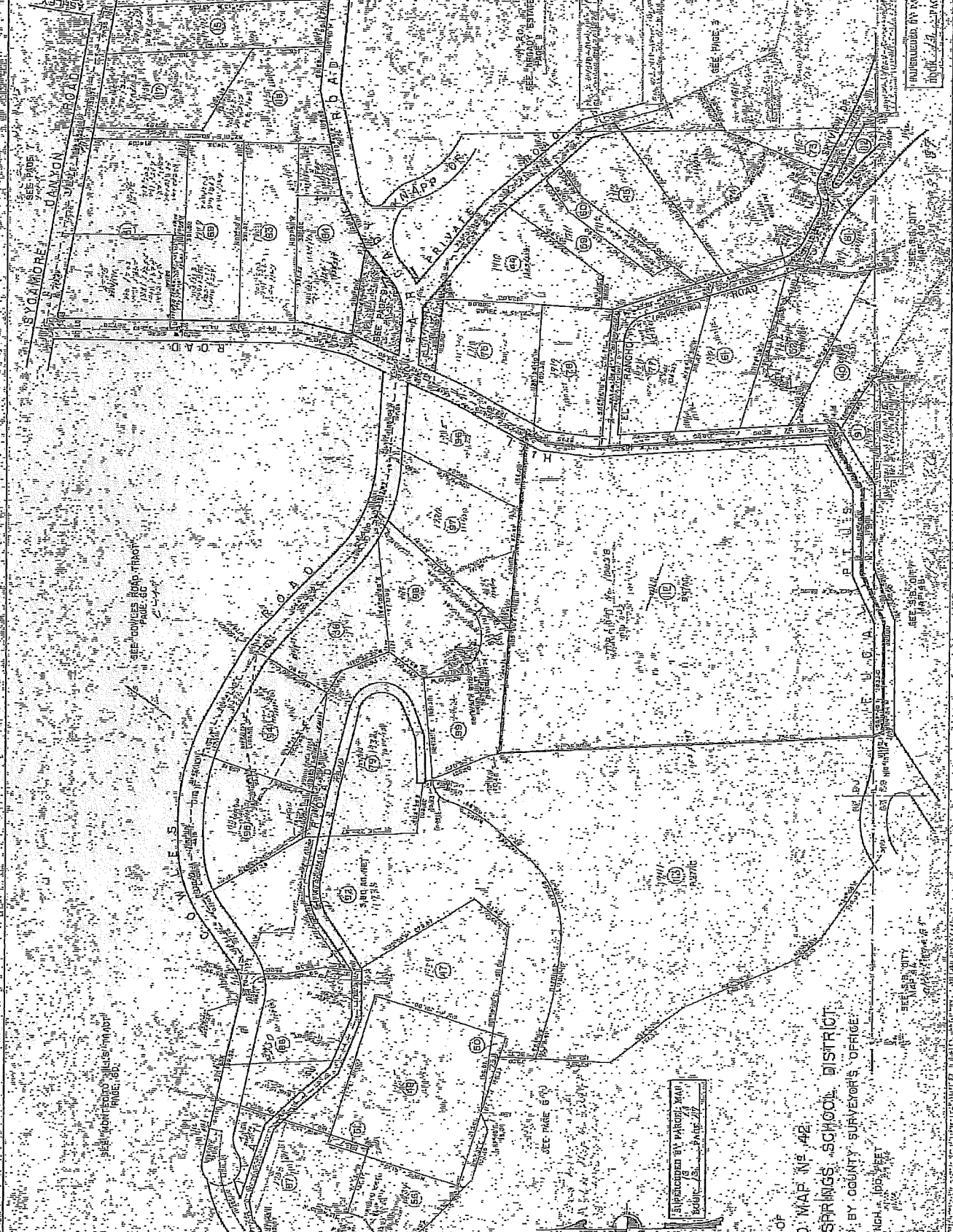


Susan F. Petrovich

Attachments

Cc: Eric Snyder, Building Dept. Enforcement, w/out attachments

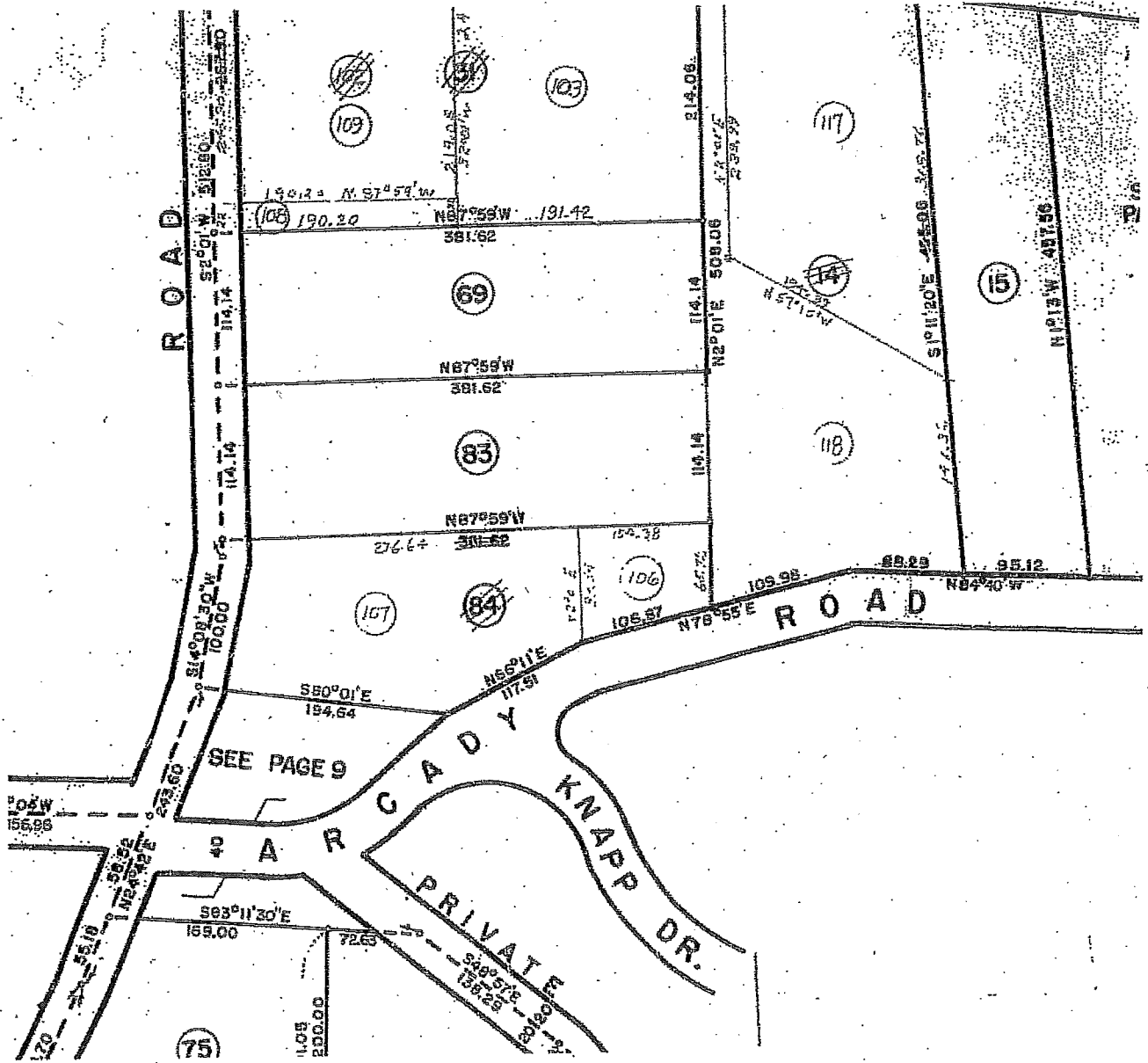
Cc: Glenn S. Russell Ph. D., Planning & Development Director, w/attachments



PORTION OF
 PUEBLO, MAP NO. 42,
 COLD SPRINGS SCHOOL DISTRICT,
 COMPILED BY COUNTY SURVEYOR'S OFFICE.
 SCALE 1 INCH = 100 FEET
 SURVEYED BY PATRICK MAP
 ENGINEERS, INC.
 PUEBLO, CO.
 1998

ASSESSORS MAP

1957



1957

5-13-54 #7029	Lillian Patton			
5-12-54 #7900	Pavi A Jones et ux			
9-10-54 #15547	William Bruning et ux	4/21/57	5696	
5-30-54 #10910	Rex Jameson et ux			
10/15/54 #102-3-4	Donald J. Fowler et ux			
3-16-55 #1909	Dennis G. Kozig et ux	1/15/58	27325	4/21/59
7-21-55 #13374	Robert E. O'Connor	1/15/58	10660	Mary M. Sh
12-29-54 #22561	Genevieve Jones	8/22/57	16809	
3-22-56 #5401	Ernest T. Smith	8/5/58	11358	
4-27-56 #4249	June C Hunter			
8-16-56 #16090	Ray Trust et ux	1/15/57	6745	6/17/59
9-29-55 #17547	Hilmer O Koefod et ux			19608
10-11-55 #18308	Hawthorne D Austin			4/17/59
7-15-55 #12709	Maynard V Kennett			Lawrence T.
10-21-55 #19044	Louis T Paulson et ux			
6-7-54 #9403	Frank B Solomon et ux			
10-5-56 #19545	Allen W Schmidt et ux			
4-17-57 #13228	Lorenzo Dall'Armi Jr	5/14/57	9299-300	
12-6-55 #21713	Louis Lancaster	1/18/57	1560	
4-8-54 #6001	City of Santa Barbara			
5-6-53 #7438	Harriet C Graham			
4-13-56 #7093	William E Rocky et ux			

Vannie Redgis Klug

Eugene Atwater et ux

Ralph G Dalton et ux

Sarah Rosenthal

W.S. Grifford et ux

Harold Sprin

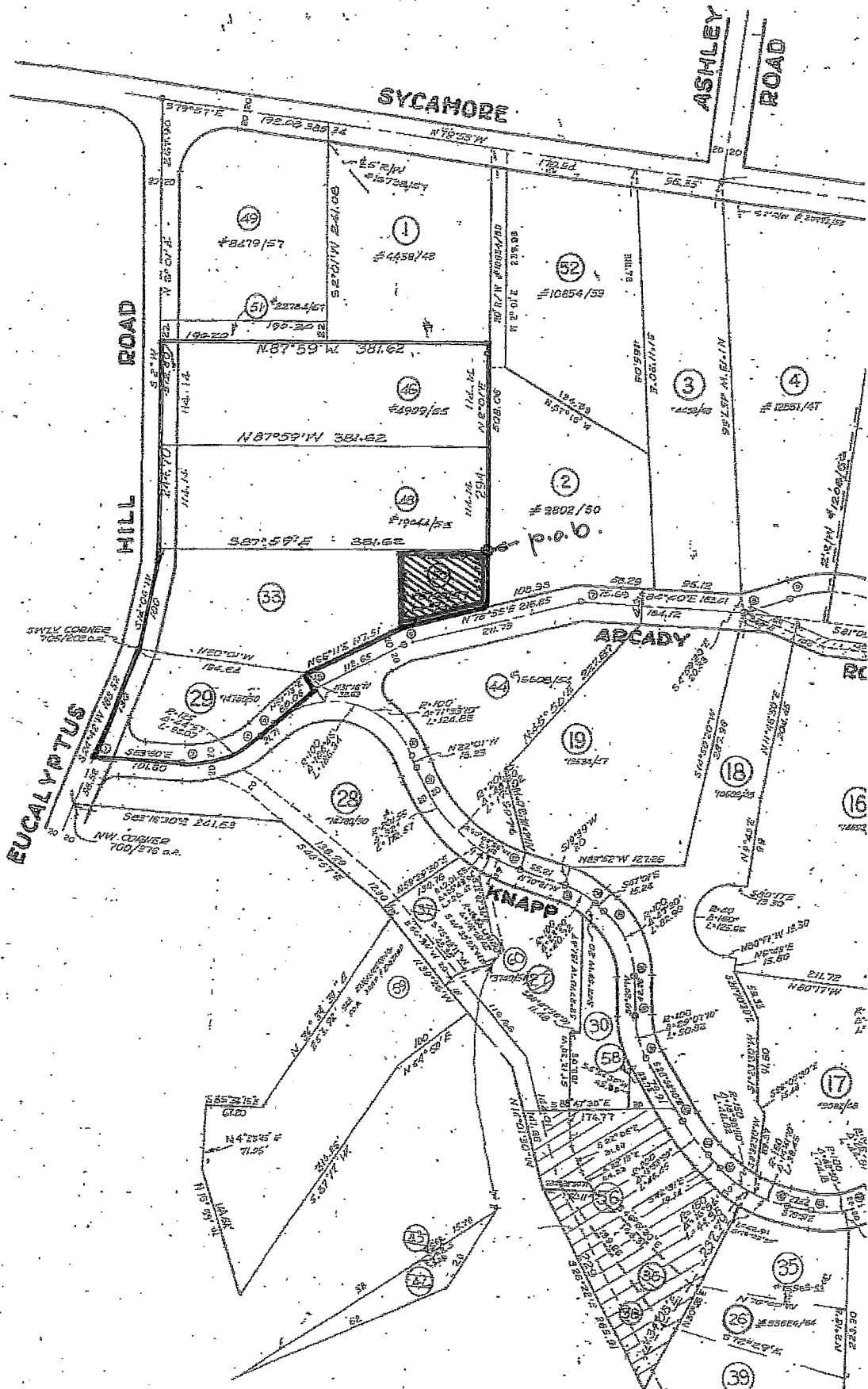
Per to cit, (51)

Novin lots 106 & 107

DVA-Lorenzo Dall'Armi Trcthy

Betty R. Atwater

Frank Soloman et.ux. to Paulson et.ux.
O.R. Bk. 1444 pg. 435 - rec. May 7, 1957
ARB parcel 50



1-7-88

(SPACE BELOW FOR FILING STAMP ONLY)

LAW OFFICES
HATCH AND PARENT
A PROFESSIONAL CORPORATION
21 EAST CARRILLO STREET
SANTA BARBARA, CALIFORNIA 93101
TELEPHONE 963-9231

FILED
SUPERIOR COURT
SANTA BARBARA

FILE
1/7/88

MAR 23 1990

Kenneth A. Pettit,
County Clerk-Recorder

By MARA MURPHY
Deputy Clerk

Attorneys for

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

NO AM
P. 12

EMMET J. HAWKES and SALLY HAWKES)	CASE NO. 169598
Petitioners and Plaintiffs,)	
v.)	
THE COUNTY OF SANTA BARBARA and its BOARD OF SUPERVISORS)	JUDGMENT
Respondents and Defendants,)	[CCP § 1094]
LELAND M. CRAWFORD, JR., FRANCESCA J. CRAWFORD; SALLIE G. KAYER; ERNEST R. KIRSHTNER; MARY V. KIRSHTNER; MARSHALL A. ROSE; DAVID W. VAN HORNE and POLLY H. VAN HORNE,)	
Real Parties in Interest.)	

This cause came on regularly for trial on December 19 and 20, 1989, in Department 1 of the above-entitled court, the Honorable Ronald C. Stevens, judge, presiding, sitting without a jury.

Petitioners appeared by their attorneys, Hatch and Parent and Stanley M. Roden. Respondent appeared by Deputy County Counsel Stephen Shane Stark. Real parties in interest appeared by David W. Van Horne of Price, Postel & Parma and Leland M. Crawford, Jr.

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1 This case was consolidated for trial by order of this
2 court dated June 12, 1989, with Santa Barbara Superior Court
3 #167375. Petitioners moved the court for a judgment and
4 peremptory writ pursuant to section 1094 of the Code of Civil
5 Procedure. The court having read the proffered administrative
6 record, weighed the evidence presented to the court and having
7 thoroughly considered the briefs filed by all parties hereby
8 ORDERS, ADJUDGES AND DECREES as follows:

9 1. Judgment pursuant to Code of Civil Procedure section
10 1094 is granted in favor of petitioner.

11 2. County shall by April 6, 1990, issue a land use
12 permit and a building permit for the residence and workshop on the
13 land commonly referred to as APN 11-190-06 upon the architectural
14 renderings, drawings, plans and water well Health Department
15 permit as they existed and were on file with County of Santa
16 Barbara, and at costs and fees not to exceed that which County
17 customarily charged as of ^{June 10,} ~~October 12,~~ 198⁶. SM SSS

18 3. This judgment shall be binding upon and inure to the
19 benefit of petitioners and all successor owners of APN 11-190-06,
20 whose legal description is as follows:

21

22 Parcel 1:

23 That portion of the Outside Pueblo Lands of the City of Santa
24 Barbara, in the County of Santa Barbara, State of California,
described as follows:

25 Beginning at the Northwest corner of the tract of land described
26 in the deed to Lloyd Aspinwall, et ux., recorded December 12, 1930
27 in Book 225, at Page 498 of Official Records; thence South 4°35'
East along the Westerly line of said last mentioned tract of land
171.81 feet to the Southwest corner thereof and a point in the

28

1 Northerly line of the tract of land described in the deed to Julia
2 Watson Horne recorded March 9, 1923, in Book 221, Page 65 of
3 deeds, records of said county; thence South 79°07' West along the
4 last mentioned line 15 feet; thence North 4°35' West 35 feet;
5 thence South 79°07'; (sic) ^{1/} 27.00 feet thence South 4°35' East
6 35 feet to a point on said Northerly line of said Horne Tract,
7 thence South 79°07' West along said Northerly line 94.88 feet;
8 thence North 4°35' West 185.96 feet to a point in the Southerly
9 line of the first parcel of land described in the deed to John W.
10 Barnes, recorded January 4, 1927 in Book 108, at Page 314 of
11 Official Records; thence North 85°03' East along said last
12 mentioned line, 136.05 feet to the point of beginning.

13 4. Petitioners shall recover costs in this proceeding
14 incurred to date in the amount of \$ 1381⁴⁰/₁₀₀

15 5. Based upon stipulation presented to and filed with
16 the court, the court finds that respondents and real parties in
17 interest, and each of them, have waived their rights to appeal.

18 Dated: MAR 23 1990

Ronald C. Stevens
19 Ronald C. Stevens
20 Judge of the Superior Court

21 APPROVED AS TO FORM

22 PRICE, POSTEL & PARMA

David W. Van Horne
23 David W. Van Horne

Leland M. Crawford, Jr.
24 Leland M. Crawford, Jr.

25 COUNTY OF SANTA BARBARA

Stephen Shane Stark
26 Stephen Shane Stark

27 ^{1/} The legal description contained in the grant deed
28 recorded July 19, 1985, included the above typographical error.
The phrase "thence South 79°07'; 27.00 feet" should read "thence
South 79°07' west 27.00 feet;"

NAME, ADDRESS, AND TELEPHONE NUMBER
OF ATTORNEY(S)

HATCH AND PARENT
21 E Carrillo Street
Santa Barbara, CA 93101
805-963-9231

ATTORNEY(S) FOR EMMET J & SALLY HAWKES
Plaintiffs

FILED
SUPERIOR COURT
SANTA BARBARA

MAR 27 1990

MENNEETH A. PETTIE, County Clerk-Recorder

By: *Kathy Richmond*
KATHY RICHMOND, Deputy Clerk Recorder

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

EMMET J. HAWKES and SALLY HAWKES,

PLAINTIFF(S)

CASE NUMBER

169598

VS

THE COUNTY OF SANTA BARBARA and its
BOARD OF SUPERVISORS,

DEFENDANT(S)

NOTICE OF ENTRY OF JUDGMENT/ORDER

To the above named parties and to their attorneys of record:

You are hereby notified that judgment/~~order~~ in the above entitled matter was entered on: Date March 23, 1990

PROOF OF SERVICE BY MAIL

I hereby certify that I am over the age of 18, and not a party to the within action. I further certify that I am a resident of or employed in the county where the mailing occurred, or I am an active member of the State Bar of California, and that my residence or business address is: 21 E Carrillo Street, Santa Barbara, CA 93101

I further certify that on March 27, 1990, I served notice of entry of judgment/~~order~~ on the parties in the within action by depositing true copies thereof, enclosed in sealed envelopes with postage thereon fully prepaid in the United States Post Office mail box at Santa Barbara, California and addressed as follows:

David Van Horne Leland Crawford, Jr. Stephen Shane Stark
Price, Postel & Parma La Arcada Bldg #200 County Counsel's Office
200 E Carrillo St 1114 State St 105 E Anapamu
Santa Barbara, CA 93101 Santa Barbara, CA 93101 Santa Barbara, CA 93101

For additional parties, please attach a separate sheet.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 27, 1990 at Santa Barbara, CA

Signed: _____
Active Member of California State Bar

Signed: *Betty Gerig*

(type/print name)

Betty Gerig

(type/print name)

21 E Carrillo St
Santa Barbara, CA 93101

(business address)

(business/residence address)

NOTICE OF ENTRY OF JUDGMENT/ORDER

ORIGINAL

FILED
SUPERIOR COURT
Space Below Santa Barbara Only

Name, Address and Telephone No. of Attorney(s)

HATCH AND PARENT
21 E Carrillo Street
Santa Barbara, CA 93101

805-963-9231

FEB 19 1991

KENNETH A. PETTIT, County Clerk-Recorder

By: Maria L. Gil
MARIA L. GIL, Deputy Clerk-Recorder

Attorney(s) for .. Plaintiff HAWKES

..... SUPERIOR .. COURT OF CALIFORNIA, COUNTY OF .. SANTA BARBARA
(SUPERIOR, MUNICIPAL, or JUSTICE)

(Name of Municipal or Justice Court District or of branch court, if any)

Plaintiff(s):

EMMET J. HAWKES and SALLY HAWKES

Defendant(s):

(Abbreviated Title)

CASE NUMBER 169598

REQUEST FOR DISMISSAL
TYPE OF ACTION

- Personal Injury, Property Damage and Wrongful Death
 - Motor Vehicle
 - Other
- Domestic Relations
- Eminent Domain
- Other: (Specify) Inverse Condemnation

F _____
 K _____
 V _____
 CC _____
 CA _____
 AG _____
 J _____
 SR _____
 AP _____
 ST _____

TO THE CLERK: Please dismiss this action as follows: (Check applicable boxes.)

- 1. With prejudice Without prejudice
- 2. Entire action Complaint only
- Other: (Specify)* Petition only Cross-complaint only

Fourth cause of action only

Dated: March 27, 1990

*If dismissal requested is of specified parties only, of specified causes of action only or of specified cross-complaints only, so state and identify the parties, causes of action or cross-complaints to be dismissed.

Stanley M. Roden
 Attorney(s) for .. Plaintiff HAWKES

Stanley M. Roden
(Type or print attorney(s) name(s))

TO THE CLERK: Consent to the above dismissal is hereby given.**

Dated:
**When a cross-complaint (or Response (Marriage) seeking affirmative relief) is on file, the attorney(s) for the cross-complainant (respondent) must sign this consent when required by CCP 581(1), (2) or (5).

Attorney(s) for ..
(Type or print attorney(s) name(s))

(To be completed by clerk)

- Dismissal entered as requested on
- Dismissal entered on FEB 19 1991 as to only as above
- Dismissal not entered as requested for the following reason(s), and attorney(s) not filed on

KENNETH A. PETTIT, Clerk

By: Maria L. Gil, Deputy

Dated:

Form Adopted by Rule 982 of
The Judicial Council of California
Revised Effective July 1, 1972

REQUEST FOR DISMISSAL

CCP 581, etc.;
Cal. Rules of Court,
MCSB-113 Rule 1233

FILED JAN 4 1990

KENNETH PETTIT, County Clerk-Recorder

By *[Signature]*
Deputy Clerk-Recorder
MARRA MURPHY

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J
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

EMETT J. HAWKES and SALLY HAWKES,
Petitioners and Plaintiffs,
vs.

THE COUNTY OF SANTA BARBARA and
its BOARD OF SUPERVISORS,
Respondents and Defendants,

LELAND M. CRAWFORD, JR., FRANCESCA J.
CRAWFORD, SALLIE G. KAYSER, ERNEST R.
KIRSHNER, MARY V. KIRSHNER, MARSHALL
A. ROSE, HEIDI P. ROSE, DAVID W. VAN
HORNE and POLLY H. VAN HORNE,
Real Parties in Interest.

CASE NO. 169598
Consolidated with
TENTATIVE DECISION

LELAND M. CRAWFORD, JR.; FRANCESCA J.
CRAWFORD; SALLIE G. KAYSER; DAVID
W. VAN HORNE; and POLLY H. VAN HORNE,
Petitioners and Plaintiffs,

vs.
THE COUNTY OF SANTA BARBARA and
its BOARD OF SUPERVISORS,
Respondents,

EMMET J. HAWKES and SALLY HAWKES,
Real parties in Interest

CASE NO. 167375

1 Trial of these consolidated matters was held on December
2 19 and 20 1989. Emmet J. Hawkes and Sally Hawkes were repre-
3 sented by their attorney Stanley Roden. The Crawford, Kayser,
4 and Van Horne parties were represented by their attorneys Leland
5 M. Crawford, Jr. and David W. Van Horne. The County of Santa
6 Barbara was represented by its attorneys Shane Stark and Robert
7 Pike. Evidence was presented. The Court considered oral
8 argument of counsel and the matter was submitted for decision.

9 The Court has now reviewed the entire administrative
10 record in this matter. We have also considered both the oral
11 and written arguments of counsel.

12 CASE NO. 167375

13 The Petition was filed following the issuance of a certifi-
14 cate of compliance by the county pursuant to the provisions of
15 Government Code section 66499.35. It is petitioner's
16 contention that the parcel of real property was created in viola-
17 tion of the subdivision map act as a result of a deed that was
18 recorded in May of 1979. It is the petitioner's position that the
19 lot in question was merged or combined with other property in
20 January of 1958. If there was a merger, the conveyance in 1979
21 had to comply with the provisions of the subdivision map act.

22 The Court cannot conclude from the record before us that
23 any merger or combination of properties occurred as a result of
24 the actions of the planning commission of 1958. There is no
25 violation of the subdivision map act. The actions of the
26 respondent county were proper in all respects. The certificate
27 of compliance was properly issued. The Petition for Writ of
28 Mandate in Case No. 167375 will be denied.

1 CASE NO. 169598

2 Emmet and Sally Hawkes applied for a building permit to
3 enable them to construct a residence on the lot in question.
4 The owners obtained a certificate of compliance from the County
5 surveyor and the Department of Resource Management issued a
6 land use/building permit. Neighbors appealed the decision of
7 the Department of Resource management to issue a building permit.
8 A hearing was held before the planning commission and the
9 staff decision to issue the permit was reversed. The property
10 owners then appealed to the Board of Supervisors. The decision
11 of the planning commission was sustained and the application for
12 a building permit was denied. The board adopted findings of fact
13 in support of its decision. The property owners now seek a Writ
14 of Mandate. It is their contention that the Board of Supervisors
15 abused its discretion when the application for building permit
16 was denied.

17 We have carefully reviewed the entire administrative record
18 and the additional evidence that was presented at the hearing.
19 We have also carefully considered the various legal arguments
20 that have been made by the opposing sides.

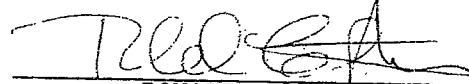
21 We find no substantial evidence and no legal justification
22 for finding of Facts No. 5, 10, 11 and 12 adopted by the
23 Board of Supervisors. The decision is not supported by the
24 substantial evidence or by the law.

25 A Writ of Mandamus shall issue directing respondent to
26 issue the land use/building permit as originally specified by the
27 Department of Resource Management.

28 / / /

1 Counsel for petitioners shall prepare and submit an appro-
2 priate order.

3 Dated: JAN 4 1990



4 RONALD C. STEVENS
5 Judge of the Superior Court
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County of Santa Barbara

RESOURCE MANAGEMENT DEPARTMENT

Dianne Guzman, AICP, Director

October 22, 1987

Emmet J. Hawkes and Sally Hawkes
213 W. Figueroa St.
Santa Barbara, CA 93101

Re: Case No. 87-M-42, Appeal from Planning Commission action on July 15, 1987, to not issue the Land Use Permit for a residence and workshop; APN 11-190-06

Dear Mr. and Mrs. Hawkes:

At the Board of Supervisors' meeting on October 12, 1987, the Board denied your appeal based upon findings adopted in Board of Supervisors Resolution 87-518 per attached.

The time within which judicial review of this decision must be sought is governed by § 1094.6 of the California Code of Civil Procedure. You are advised to consult an attorney immediately if you intend to seek judicial review of this decision.

Sincerely,

Albert J. McCurdy by C.K.
Albert J. McCurdy, Deputy Director
Development Review Division 568-2082

cc: Case File: 87-M-42
Permanent File
Clerk of B/S (File #87-13,304)
Deputy County Counsel, Jana Zimmer
Attorney: Rosanne J. Coit, 800 Presidio Avenue, Santa Barbara, CA 93101
Fire Department
Flood Control
Environmental Health Services
Parks Department
Public Works
Montecito Association, P.O. Box 5278 Montecito, CA 93108

RESOLUTION NO. 87-518

BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA BARBARA

IN RE THE APPEAL OF EMMET J. HAWKES)
ET UX, FROM THE PLANNING COMMISSION) BOARD ACTION NO.
DENIAL OF A LAND USE PERMIT (APPEAL) 87-13,304
OF 87-M-42) STATEMENT OF FINDINGS

The Board of Supervisors of the County of Santa Barbara does hereby adopt the following Findings in support of its decision expressed September 14, 1987 to uphold the decision of the Planning Commission in the appeal of Case No. 87-M-42 regarding Santa Barbara County Assessor's Parcel No. 11-190-06, ("the Property") located at 1382 East Valley Road, Montecito Area, First District, refusing to issue a Land Use Permit for the following reasons:

1. On March 13, 1987, on the recommendation of County Counsel, the County Surveyor issued a Notice of Determination and Intent to Record a Certificate of Compliance for Santa Barbara County Assessor's Parcel No. 11-190-06 ("the Property"), to establish compliance with California Subdivision Map Act, California Government Code Section 66410, et Seq, and local ordinances adopted pursuant to the Map Act.
2. Such determination was timely appealed to this Board of Supervisors, and the appeal was heard on April 27, 1987. After hearing, this Board of Supervisors denied the

EXHIBIT 7

appeal and ordered that a Certificate of Compliance be issued and recorded.

3. The Certificate of Compliance for the Property was recorded on May 22, 1987.

4. The Findings for that action recited that dwellings may be located on a lot smaller than the minimum size for the district if a Certificate of Compliance is recorded (finding No. 5) and that the current zoning would allow for development of the Property (Finding No. 9).

5. As findings made in the context of a Subdivision Map Act matter, those Findings were statements of general application and did not take into account the background of special zoning interpretations applicable to the Property, nor did they incorporate the determinations regarding consistency with the zoning and Comprehensive Plan which are required in a particular application for the development of property under the zone district requirements.

6. On May 29, 1987, the staff of the Resource Management Department of the County issued a Land Use Permit for the construction of a single family residence and workshop on the Property.

7. The issuance of the Land Use Permit was timely appealed to the Planning Commission of the County by David and Polly Van Horne and other adversely affected neighbors of the Property. After proper hearing, the Planning Commission, on July 15, 1987, granted the appeal and ordered that the Land Use Permit not be issued.

8. The action taken by the Planning Commission was timely appealed to this Board of Supervisors by Emmet J. Hawkes, an owner of the Property. The appeal was heard on September 14, 1987. After hearing, this Board of Supervisors determined to deny the appeal and upheld the decision of the Planning Commission.

9. Section 35-411 of the County Code of the County of Santa Barbara (the County Zoning Ordinance) incorporates the policies of the Comprehensive Plan into the provisions of the zoning ordinance for the purposes of applying the development standards of a zoning district.

10. The Property has been the subject of two previous zoning interpretations and particular applications of zoning designations in the past, 58 V 12 and 70 V 41, which have established limitations on the use of the Property pursuant to previous Zoning Ordinance No. 453.

11. These restrictions identified for the property are a part of the existing Zoning Ordinance provisions, which incorporate with the zone district text provisions applicable to a particular property under Section 35-405 of the County Zoning Ordinance, and remain as limitations on the use or development of the property.

12. The restrictions are available for review by research of the files maintained by the County Resource Management Department by anyone familiar with the history of the Property or able to trace its ownership through existing public records.

13. The restrictions developed as a result of the past applications, 58 V 12 and 70 V 41, are of particular application to the Property and restrict its development as a matter of application of the current provisions of the County Zoning Ordinance.

NOW THEREFORE, BE IT AND IT IS RESOLVED, that the Property is not suitable for the development proposed under the zoning applicable to the area, and,

RESOLVED FURTHER, that the appeal of Emmet J. Hawkes from the Planning Commission approval of the appeal of David Van Horne, et al., of the issuance of the Land Use Permit (87-M-42) is denied, and the Resource Management Department of the County is directed to not issue such Land Use Permit.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this 12th day of October 1987, by the following vote:

AYES: David M. Yager, Tom Rogers, William B. Wallace
NOES: DeWayne Holmdahl, Toru Miyoshi
ABSTAIN: None
ABSENT: None

BOARD OF SUPERVISORS OF THE
COUNTY OF SANTA BARBARA

By William B. Wallace
William B. Wallace, Chair

ATTEST:
KENNETH A. PETTIT
COUNTY CLERK-RECORDER

By Angela A. Anderson
Deputy

Approved as to form:
Kenneth L. Nelson,
County Counsel,

By Kenneth L. Nelson

4610B 10/13/87

(SPACE BELOW FOR FILING STAMP ONLY)

LAW OFFICES
HATCH AND PARENT
A PROFESSIONAL CORPORATION
21 EAST CARRILLO STREET
SANTA BARBARA, CALIFORNIA 93101
TELEPHONE 963-9231

FILED
SUPERIOR COURT
SANTA BARBARA

JAN 07 1968

KENNETH A. PERRY
By: *Kathy Richmond*
KATHY RICHMOND

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SUMMONS ISSUED

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Attorneys for Petitioners

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

EMMET J. HAWKES and SALLY HAWKES,)
)
) Petitioners and)
) Plaintiffs,)
)
) v.)
)
) THE COUNTY OF SANTA BARBARA and)
) its BOARD OF SUPERVISORS,)
)
) Respondents and)
) Defendants,)
)
) LELAND M. CRAWFORD, JR., FRANCISCA)
) J. CRAWFORD, SALLIE G. KAYSER,)
) ERNEST R. KIRSHTNER, MARY V.)
) KIRSHTNER, MARSHALL A. ROSE,)
) HEIDI F. ROSE, DAVID W. VAN HORNE,)
) and POLLY H. VAN HORNE,)
)
) Real Parties in Interest.)

Case No.

169598

106.00 TL

PETITION FOR
ADMINISTRATIVE MANDATE
[CCP § 1094.5] or
MANDATE [CCP § 1085]
and
COMPLAINT FOR
DECLARATION OF RIGHTS
[CCP § 1060] and
INVERSE CONDEMNATION

GENERAL ALLEGATIONS IN SUPPORT OF ALL CAUSES OF ACTION

1. Petitioners are residents of Montecito, County of Santa Barbara and sole owners in fee simple of two parcels of land located in the Montecito area of the unincorporated portion of Santa Barbara County described in Exhibit "1." 1/

1/ Reference to an exhibit includes its attachment and incorporation therein as if more particularly set forth.

Consolidated w/ 167375 Salomon vs. Mellen

1 2. On information and belief, petitioners allege with
2 reference to said two parcels the following:

3 a. The first parcel is an improved, approximately
4 one-half acre lot with a residential structure thereon, bearing a
5 street address 1380 East Valley Road (APN 11-190-11).

6 b. The second parcel is the subject of this
7 action. It is an unimproved, approximately one-half acre lot
8 bearing the street address 1382 East Valley Road (APN 11-190-06)
9 (hereinafter "parcel 6").

10 c. Both parcels were acquired simultaneously by
11 petitioners in July 1985 by purchase from Santa Barbara Bank and
12 Trust.

13 d. The two parcels have historically been treated
14 by respondent as separate parcels.

15 e. The parcels were conveyed to petitioners'
16 predecessors in interest by separate grants from different
17 grantors.

18 f. The parcels have been treated as separate
19 parcels for financing purposes with independent deeds of trust to
20 secure indebtedness. On the date petitioners acquired parcels 6
21 and 11 there were three separate deeds of trust, on parcel 11 a
22 first to Great Western, a second to petitioners and a third to
23 Santa Barbara Bank and Trust; on parcel 6 there was a first to
24 Santa Barbara Bank and Trust.

25 3. By virtue of their fee ownership of parcel 6,
26 petitioners are the parties beneficially interested in and the
27 parties directly aggrieved by the action of respondent in denying
28

1 them a land use/building permit for a residence to be constructed
2 on parcel 6 ("the land use/building permit").

3 4. Respondent County of Santa Barbara is a duly
4 recognized local governmental agency and a political subdivision
5 of the State of California who, at all times herein mentioned, was
6 governed by and acted through its elected five-member Santa
7 Barbara County Board of Supervisors ("board of supervisors").

8 5. On information and belief, the parties named herein
9 as real parties in interest, to wit, LELAND M. CRAWFORD, JR.,
10 FRANCESCA J. CRAWFORD, SALLIE G. KAYSER, ERNEST R. KIRSHTNER,
11 MARY V. KIRSHTNER, MARSHALL A. ROSE, HEIDI P. ROSE, DAVID W. VAN
12 HORNE and POLLY H. VAN HORNE, ("the neighbors"), are persons who
13 live and/or own property somewhere in the vicinity of parcel 6 and
14 are the individuals who successfully appealed to the Santa Barbara
15 County Planning Commission ("planning commission") the issuance of
16 a land use/building permit by the Santa Barbara County Department
17 of Resource Management ("DRM").

18 6. Respondent has the duty and is empowered by law to
19 regulate and make ministerial and/or discretionary decisions
20 affecting land use and development and to hear and finally
21 determine appeals brought from discretionary and/or ministerial
22 decisions made by its officers, employees and planning commission.

23 7. The administrative history regarding ultimate denial
24 of a land use/building permit for parcel 6 is as follows:

25 a. On or about September 1985, petitioners began
26 the process to obtain by proper filings and payment of fees the
27 issuance by respondent of the land use/building permit.
28

1 b. On or about June 9, 1986, DRM concluded, after
2 review of documents filed by the neighbors, that the existence of
3 parcel 6 as a "legal lot" was questionable. DRM required
4 petitioners as a pre-condition to issuance of the land
5 use/building permit to first obtain a certificate of compliance
6 under the California Subdivision Map Act.

7 c. On or about August 19, 1986, petitioners made
8 application for an unconditional certificate of compliance.

9 d. On or about March 13, 1987, the county surveyor
10 issued a "Notice of Determination and Intent to Record a
11 Certificate of Compliance" ("notice of intent").

12 e. On or about March 20, 1987, the neighbors
13 appealed the notice of intent. The neighbors' principal points of
14 content'ion were as follows:

15 i. A prior decision of planning commission in
16 1958, reinforced in 1970, eliminated the status of parcel 6 as a
17 separate and legal parcel in order to enforce one acre zoning.

18 (1) The first prior determination was
19 made on January 22, 1958 when planning commission granted Fred C.
20 Acres a permit to build a single family residence on parcel 5
21 stating that it "approved the combining of lots 142 (parcel 6) and
22 45 (parcel 5) as above on assessor's map 6-E-18 as one building
23 site..." (Exhibit "2");

24 (2) The second prior determination was
25 made on August 24, 1970 when Fred C. Acres applied for revocation
26 of planning commission's 1958 decision regarding combining of
27 parcels 5 and 6 and later withdrew his request when he applied for
28

1 and was granted a lot split for three half-acre parcels in the
2 immediate vicinity (parcels 15, 16 and 17).

3 ii. Although the combination of parcels 5 and
4 6 was never carried out, parcel 6 remains restricted as an
5 unbuildable lot; and

6 iii. The surveyor's intention to issue a
7 certificate of compliance frustrated the efforts to preserve
8 one-acre zoning in Montecito.

9 f. On or about April 27, 1987, the board of
10 supervisors heard the appeal of the neighbors and denied it.
11 Findings were adopted in support of its decision to issue a
12 certificate of compliance (Exhibit "3"), as follows:

13
14 "1. The separate parcel of real property was
15 created by the effect of two deeds, recorded
16 prior to July 27, 1955....

17 "2. On January 22, 1958, a variance was
18 granted, under the applicable County Zoning
19 Ordinance, requiring Assessor's Parcel No.
20 11-190-05 and 11-190-06 to be combined into one
21 parcel to create a single building site.

22 "3. Subsequent to that variance, a building was
23 constructed on Parcel No. 11-190-05, the
24 construction for which the variance was
25 requested.

26 "4. A review of the records reveals no action
27 by the owner of parcel No. 11-190-06 to combine
28 said parcel with 11-190-05, by deed,
conveyance, map or other document filed for
record.

"5. The present zoning for the parcel
provides, in pertinent part as to minimum lot
size, that a dwelling may be located on a
smaller lot than the minimum size for the
district if a Certificate of Compliance is
recorded for the lot.

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"6. There appears to have been no action by the County taken pursuant to any ordinance adopted under the provisions of Government Code Section 66451.10 et seq. and no notice regarding such merger appears to have been recorded.

"7. The action taken in January, 1958 was an interpretation of and enforcement of the provisions of the Zoning Ordinance in effect at the the time and was not an approval of a subdivision or merger.

"8. The condition requiring a merger of the parcels was never completed to satisfy the variance.

"9. The current zoning will allow the development of the parcel.

"10. The creation of the parcel dates to June 19, 1952 the date of recording of the second of two deeds separating the parcel.

"11. The issuance of a Certificate of Compliance for parcel 11-190-06 is appropriate."

g. Subsequently on or about May 22, 1987, Charles F. Wagner, acting in his capacity as county surveyor, issued an unconditional certificate of compliance for parcel 6, stating that, "The division creating said real property complies with the applicable provisions of the State Subdivision Map Act and county ordinances enacted pursuant thereto." (Exhibit "4.")

h. Shortly thereafter, petitioners reactivated their request to DRM for the issuance of the : use/building permit.

i. On or about May 29, 1987, DRM granted petitioners the land use/building permit. DRM later filed with the planning commission a detailed written report justifying its action (Exhibit "5"), as follows:

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i. The proposed development conforms to the applicable policies and provisions of the Santa Barbara County zoning ordinance and the comprehensive zoning plan;

ii. The proposed development is located on a legally created lot; and

iii. The subject property is in compliance with all laws, rules and regulations pertaining to zoning uses, subdivisions, setbacks and any other applicable provisions of the Santa Barbara County zoning ordinance.

j. On or about June 8, 1987, the neighbors appealed DRM's decision to issue the land use/building permit to planning commission.

k. On or about July 15, 1987, planning commission granted the neighbors' appeal thereby overturning DRM's decision to issue the land use/building permit.

l. On or about July 15, 1987, petitioners appealed the decision of planning commission of July 15, 1987 to board of supervisors.

m. On or about September 14, 1987, petitioners' appeal was heard by board of supervisors and after evidence and arguments were presented by both sides, board of supervisors voted 3 - 1 in favor of denying petitioners' appeal.

n. On or about October 12, 1987, respondent adopted final findings adverse to petitioners by a vote of 3 - 2.

o. Board of supervisors' denial of petitioners' appeal was a final decision which, in effect, determined that the land use/building permit issued to petitioners by DRM on May 29,

1 1987, should be rescinded. Respondent's letter to petitioners
2 dated October 1987 so states. (Exhibit "6.")

3 8. Findings in support of respondent's action denying
4 the land use/building permit state, in effect, that parcel 6 is
5 bound under current zoning law by restrictions or limitations on
6 use or development of parcel 6 created by respondent's actions in
7 1958 and 1970. (Exhibit "7.") The findings are as follows:

8 "1. On March 13, 1987, on the recommendation of
9 County Counsel, the County Surveyor issued a Notice
10 of Determination and Intent to Record a Certificate
11 of Compliance for Santa Barbara County Assessor's
Parcel No. 11-190-06...to establish compliance with
the California Subdivision Map Act, California
Government Code Section 66410, et seq, and local
ordinances adopted pursuant to the Map Act.

12 "2. Such determination was timely appealed to this
13 Board of Supervisors.... After hearing, this Board
14 of Supervisors denied the appeal and ordered that a
Certificate of Compliance be issued and recorded.

15 "3. The Certificate of Compliance for the Property
was recorded on May 22, 1987.

16 "4. The Findings for that action recited that
17 dwellings may be located on a lot smaller than the
18 minimum size for the district if a Certificate of
Compliance is reorded (Finding No. 5) and that the
current zoning would allow for development of the
Property (Finding No. 9).

19 "5. As findings made in the context of a
20 Subdivision Map Act matter, those Findings were
21 statements of general application and did not take
22 into account the background of special zoning
23 interpretations applicable to the Property, nor did
they incorporate the determinations regarding
24 consistency with the zoning and Comprehensive Plan
which are required in a particular application for
the development of property under the zone district
requirements.

25 "6. On May 29, 1987, the staff of the Resource
26 Management Department of the County issued a Land
27 Use Permit for the construction of a single family
28 residence and workshop on the Property.

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"7. The issuance of the Land Use Permit was timely appealed to the Planning Commission.... After proper hearing, the Planning Commission, on July 15, 1987, granted the appeal and ordered that the Land Use Permit not be issued.

8. The action taken by the Planning Commission was timely appealed to ... (the) Board of Supervisors.... After hearing, this Board of Supervisors determined to deny the appeal and upheld the decision of the Planning Commission.

"9. Section 35-411 of the County Code of the County of Santa Barbara (the County Zoning Ordinance) incorporates the policies of the Comprehensive Plan into the provisions of the zoning ordinance for the purposes of applying the development standards of a zoning district.

"10. The Property has been the subject of two previous zoning interpretations and particular applications of zoning designations in the past, 58 V 12 and 70 V 41, which have established limitations on the use of the Property pursuant to previous Zoning Ordinance No. 453.

"11. These restrictions identified for the property are a part of the existing Zoning Ordinance provisions, which incorporate with the zone district text provisions applicable to a particular property under Section 35-405 of the County Zoning Ordinance, and remain as limitations on the use or development of the property.

"12. The restrictions are available for review by research of the files maintained by the County Resource Management Department by anyone familiar with the history of the Property or able to trace its ownership through existing public records.

"13. The restrictions developed as a result of the past applications, 58 V 12 and 70 V 41, are of particular application to the Property and restrict its development as a matter of application of the current provisions of the County Zoning Ordinance."

9. The current county zoning ordinance incorporates the county comprehensive plan regarding development standards. Section 35-411 provides that the county's development policies are as follows:

1 i. Densities in land use plan are maximums
2 which may be reduced;

3 ii. Urban development is not permitted beyond
4 "boundaries of land designated for urban use";

5 iii. County shall make sure there are
6 "sufficient public or private services and resources (i.e. water,
7 sewer, roads, etc.) available to serve the proposed development";
8 and

9 iv. The development shall be served by public
10 sewer and/or water companies if available in urban areas.

11 10. The current zoning ordinance, section 35-405 states:

12 "All sections of zoning ordinances previously
13 adopted which added development plans and zone
14 district text provisions applicable to particular
15 property by amendments to Sec. 3.1. of Ordinance
16 No. 453 of the County of Santa Barbara and
17 Development Plan and Precise Plans previously
18 adopted pursuant to Ordinance No. 453 are hereby
19 incorporated by reference into this section and
20 shall have the same force and effect as if the
21 provisions of said sections were specifically and
22 fully set out in this Section."

23 11. The two prior zoning determinations referred to in
24 the board's findings are set forth in paragraph 7, supra.

25 12. Petitioners have exhausted all available
26 administrative remedies. There are no further appeals from the
27 action of respondent on October 12, 1987 which was a final
28 determination that petitioners are not entitled to the land use/
building permit.

13. Petitioners' counsel has conferred with respondent's
attorneys and intends to jointly present the administrative record
("joint administrative record") for use by the parties to these

1 proceedings. Petitioners' counsel will confer with attorney(s)
2 for real parties in interest regarding modifications, if any, to
3 the joint administrative record.

4 14. Petitioners do not have any plain, speedy or
5 adequate remedy at law other than by the causes of action stated
6 herein for administrative mandate, mandate and declaratory
7 relief. Parcel 6 is a unique parcel of land and the award of
8 monetary damages alone will not adequately compensate petitioners
9 for their loss of right to use and develop parcel 6 in the manner
10 previously approved by DRM.

11 15. Petitioners have incurred substantial attorneys'
12 fees and other legal costs, which fees and costs will continue to
13 accrue in an amount not yet presently ascertained. Petitioners
14 will ask leave of court to amend these pleadings when the same
15 becomes known or upon proof at trial.

16
17 FIRST CAUSE OF ACTION FOR WRIT OF ADMINISTRATIVE MANDATE

18 [Code of Civil Procedure section 1094.5]

19 16. Petitioners refer to and herein incorporate by
20 reference general allegations 1 through 15.

21 17. Respondent's determination denying petitioners the
22 land use/building permit previously issued by DRM was in excess of
23 its jurisdiction and in violation of the Constitutions of
24 California and the United States as it has denied petitioners the
25 right of equal protection of the laws and/or due process of laws,
26 as follows:

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a. When respondent issued the certificate of compliance for parcel 6, it made the express findings that the current zoning would allow development, that a dwelling may be located on a smaller lot than the minimum size for the district if the certificate of compliance is recorded, that the prior decisions of respondent in 1958 and 1970 affecting parcel 6 did not legally combine parcels 5 and 6, that notice of respondent's intention to combine the lots was never recorded by conveyance, deed, map or other document, and that petitioners had neither constructive nor actual notice of the prior decisions and were therefore innocent purchasers for value.

b. Absent findings that the issuance of a land use permit for parcel 6 would be inconsistent with similarly situated and sized parcels in the area or would adversely affect the health and safety of the neighborhood, respondent lacked discretion and jurisdiction to deny petitioners the land use/building permit approved by DRM. No such findings were made.

c. Respondent's initial decision in 1958 to require combining of parcels 5 and 6 as a condition of issuing a land use rider to parcel 5 was invalid and unconstitutional in that respondent's ordinances and historical policies allow building permits on nonconforming lots if there is no adverse effect to health and safety.

d. Alternatively, respondent's decision in 1970 to create three one-half acre parcels (parcels 15, 16 and 17) with knowledge that most developed lots in the area were one-half acre or less and then in 1987 to deny petitioners the right to build on

1 parcel 6 in order to enforce respondent's one-acre zoning
2 requirements is, as to petitioners, a violation of the equal
3 protection of laws and due process of laws guaranteed by the
4 Constitutions of California and the United States.

5 18. Respondent's action in denying the land use/building
6 permit to petitioners constituted a prejudicial and
7 unconstitutional abuse of discretion in that respondent did not
8 act in a manner required by law, alternatively as follows:

9 a. Issuance of the land use/building permit after
10 issuance of a certificate of compliance, with the express and
11 implied findings made thereon, was a constitutionally required
12 ministerial, non-discretionary act; or

13 b. The appeal provisions allow for discretionary
14 review by planning commission and ultimately board of supervisors
15 to determine whether the issuance of the permit is consistent with
16 similarly situated and sized parcels in the area and whether
17 development of the property would adversely affect the health and
18 safety of the neighborhood, and no such adverse findings were
19 made; thus issuance of the land use/building permit is required
20 when prior actions of a governmental agency attempting to restrict
21 use or development of property made years before are not made part
22 of the public record by deed, conveyance, map or other document
23 giving reasonable notice to an innocent purchaser for value acting
24 in good faith; or

25 c. Issuance of the land use/building permit is
26 required as it is unconstitutional under the Constitutions of
27 California and the United States to impose a restriction of use or
28

1 development on property based upon decisions previously made that
2 are not part of the public record and not likely to give
3 reasonable notice to an innocent purchaser for value acting in
4 good faith, for respondent's determination that ordinance section
5 35-405 requires a prospective purchaser to engage in an indefinite
6 and ambiguous search of the respondent DRM files to determine
7 which zoning determinations may negatively and fortuitously affect
8 a particular parcel is an unconstitutional deprivation of due
9 process as a requirement so vague and uncertain that reasonable
10 persons must guess at its meaning.

11 19. Respondent's decision in denying the permit
12 constituted prejudicial abuse of discretion in that respondent's
13 decision is not supported by the findings. Findings 5 and 9 - 13
14 are not sufficient reasons to deny petitioners the land
15 use/building permit. The previous two planning commission
16 expressions of intention were not made part of the public record
17 by deed, conveyance, map or other document and are not binding or
18 effective against a subsequent innocent purchaser for value who
19 did not and could not be reasonably expected to know of the prior
20 unrecorded and unenforced determinations.

21 20. Respondent's action in denying petitioners the land
22 use/building permit constituted a prejudicial abuse of discretion
23 in that respondent's findings are not supported by the evidence,
24 as follows:

25 a. Finding 5 is incorrect as board of supervisors
26 considered the background and history of parcel 6 and the
27 consistency of the comprehensive and zoning plan when on April 27,
28

1 1987 it ruled that the county surveyor should issue a certificate
2 of compliance for parcel 6 and that the current zoning would allow
3 development of the parcel;

4 b. Finding 10 is incorrect as the actions of
5 planning commission in 1958 and 1970 did not legally or factually
6 establish limitations on the use of parcel 6;

7 c. Finding 11 is incorrect as the actions of
8 planning commission in 1958 and 1970 are not legally part of the
9 existing zoning ordinance under section 35-405, or otherwise, and
10 there remains no limitations on the use or development of parcel 6;

11 d. Finding 12 is incorrect as the actions of
12 planning commission in 1958 and 1970 are not available for review
13 by research of the files maintained by DRM regarding parcel 6. It
14 was uncontradicted that petitioner Emmet J. Hawkes is an
15 experienced real estate broker who made a good faith effort to
16 determine if any restrictions on use or development were
17 applicable to parcel 6 and that he did not discover any such
18 restrictions after obtaining a title report, looking at the
19 available county files and discussing the matter with county
20 staff. It was likewise uncontradicted that petitioners' attorney,
21 Ms. Rosanne Coit, researched the files pertaining to parcel 6 and
22 likewise did not determine that there were restrictions on
23 development or use regarding parcel 6.

24
25 SECOND CAUSE OF ACTION FOR MANDATE

26 [Code of Civil Procedure section 1095]

27 21. Petitioners refer to and herein incorporate by
28 reference paragraphs 1 through 20.

1 22. Respondent has a clear, present and ministerial duty
2 to issue the land use/building permit for parcel 6 by reason of
3 the prior issuance of a certificate of compliance under the
4 circumstances and findings made thereon and in the absence of
5 findings that the development of parcel 6 would adversely affect
6 the health and safety of the neighborhood.

7 23. Respondent acted with impropriety by overturning the
8 issuance of the land use/building permit under the facts and
9 circumstances set forth herein and a writ of mandate lies to order
10 respondent to compel the County Department of Resource Management
11 and Zoning Administrator to issue a land use/building permit under
12 the terms and conditions as stated by the department in its May
13 29, 1987 determination.

14
15 THIRD CAUSE OF ACTION FOR DECLARATORY RELIEF

16 [Code of Civil Procedure section 1060]

17 24. Petitioners refer to and herein incorporate by
18 reference paragraphs 1 through 23.

19 25. An actual controversy has arisen and now exists
20 between petitioners and respondent concerning their respective
21 rights and duties, as follows:

22 a. Petitioners contend alternatively that:

23 i. Respondent's unconstitutional, unrecorded,
24 undisclosed, and unenforced intentions to restrict use and
25 development of parcel 6 in 1958 and arguably in 1970 were not made
26 part of the public record and were not discoverable through the
27 exercise of reasonable and good faith effort, are not binding upon
28

1 innocent purchasers for value such as petitioners and to the
2 extent that ordinance 35-405 is construed to allow for such a
3 result, it is unconstitutional on its face and in its application.

4 ii. County's interpretation and application of
5 ordinance 35-405 in a manner that would require an unlimited and
6 ambiguous inquiry into an unrecorded and unfiled DRM decision to
7 determine the existence of prior zoning decisions which may affect
8 the development of the parcel is a requirement so vague and
9 uncertain as to force reasonable persons to guess at its meaning
10 and therefore violative of the due process requirements of the
11 Constitutions of California and the United States.

12 iii. Respondent's unconstitutional,
13 undisclosed, unrecorded and unenforced actions in 1958 and
14 arguably in 1970 under superseded zoning ordinances and not
15 recorded by deed, map, conveyance or other document, which facts
16 were not known and could not have reasonably been known to an
17 innocent purchaser for value are not, ipse dixit, made part of the
18 current zoning ordinance and thus binding on innocent purchasers
19 for value such as petitioners.

20 iv. Respondent's failure for twenty-eight
21 years to enforce the 1958 parcel combination statement of
22 intention, with notice that the restriction was being violated and
23 that other development permits on one-half acre lots were granted,
24 operates as an estoppel against enforcing the determination
25 against an innocent purchaser for value, by requiring a
26 combination of the lots at this late date.

27
28

1 v. The prior zoning determination affected
2 two parcels held under common ownership, which have since been
3 conveyed to separate owners and respondent's remedy, if any, lies
4 against the parties who have conveyed the parcel in violation of
5 the county's purported restriction, not against an innocent
6 purchaser for value such as petitioners.

7 vi. Respondent's requirement in 1958 that
8 parcels 5 and 6 be combined in order for the owners to build on
9 parcel 5 was invalid and unconstitutional.

10 vii. Respondent's decision in 1970 allowing
11 creation of parcels 15, 16 and 17 with full knowledge of the
12 existing one-half acre developed parcels in the area and denial in
13 1987 of petitioners' request for the land use/building permit for
14 parcel 6 constitutes a violation of equal protection of the laws
15 and due process guaranteed by the constitutions of California and
16 the United States.

17 b. Respondent takes contrary positions to those
18 asserted by petitioners.

19 26. Petitioners desire a judicial determination of their
20 rights and duties and a declaration that each of petitioners'
21 contentions in paragraph 25a is a correct statement of the facts
22 and the law.

23 27. A judicial declaration is necessary and appropriate
24 at this time under the circumstances in order that petitioners may
25 ascertain their property use and development rights as to
26 parcel 6. The uncertainty of not being able to use and develop
27 parcel 6 in the same manner and style as other similarly located
28

1 and sized parcels in the area has caused and will continue to
2 cause petitioners great financial hardship and monetary damages as
3 set forth herein.

4 28. As a direct and proximate cause of respondent's acts
5 alleged herein, petitioners have suffered actual and consequential
6 damages, as follows.

7 a. The value of parcel 6 without the ability to use
8 and develop it consistent with the land use/building permit is
9 substantially less than if the permit issues, and

10 b. The costs of labor, materials and other items
11 relating to construction have increased, and

12 c. Due to the long delays in issuing the permit,
13 petitioners have been deprived of the rents and/or profits that
14 they would have enjoyed if the land use permit prayed for and
15 issued by DRM had been issued within a reasonable time.

16 The amount of these damages are not presently known
17 or ascertained. Petitioners reserve the right to amend this
18 petition to state their damages when they become known or
19 ascertained or to present their proof on this issue at time of
20 trial.

21 FOURTH CAUSE OF ACTION FOR INVERSE CONDEMNATION

22 29. Petitioners refer to and herein incorporate by
23 reference paragraphs 1 through 28.

24 30. Respondent's determination that the land
25 use/building permit will not be issued prohibits development of
26 parcel 6.
27

28

1 31. Respondent's action is justified only by its general
2 police power and zoning regulatory authority and leaves
3 petitioners with no reasonable economically viable use for the
4 property.

5 32. Respondent's issuance of the land use/building
6 permit to petitioners would not result in any adverse effects to
7 the health and safety of the community.

8 33. Respondent has failed and refused to bring an action
9 in eminent domain or any other action to acquire petitioners'
10 property.

11 34. Petitioners have exhausted all administrative
12 remedies.

13 35. As a result of the alleged acts petitioners have
14 been damaged in an amount in excess of \$25,000 subject to proof.

15
16 WHEREFORE, petitioners pray that:

17 ON FIRST AND SECOND CAUSES OF ACTION

18 (1) An alternative writ of mandamus issue, ex parte,
19 directing respondent to set aside its order of October 12, 1987,
20 denying petitioners the land use/building permit and to reinstate
21 the decision of DRM to issue to petitioners the land use/building
22 permit on the same terms and conditions as originally issued, or
23 in the alternative, to show cause why a peremptory writ of mandate
24 to the same effect should not be issued;

25 (2) A peremptory writ of mandamus issue compelling
26 respondent DRM and the county zoning administrator to issue the
27 land use/building permit under the same terms and conditions
28

1 originally specified, or in the alternative, to show cause why a
2 peremptory writ of mandate should not be issued;

3 ON THIRD CAUSE OF ACTION

4 (3) For a declaration that each of petitioners'
5 contentions in paragraph 25a is a correct statement of the facts
6 and law and that petitioners are entitled to a judgment requiring
7 respondent DRM and the county zoning administrator to issue the
8 land use/building permit under the same terms and conditions
9 originally specified;

10 ON THIRD AND FOURTH CAUSES OF ACTION

11 (4) For damages in the nature of diminution of value of
12 land in accordance with proof at trial;

13 (5) For damages for increased construction costs and
14 loss of rents and profits due to unreasonable delays in processing
15 petitioners' application for the land use/building permit in an
16 amount to be proven at trial;

17 (6) For reasonable attorneys' fees in addition to any
18 other relief granted or costs awarded in an amount to be proven at
19 trial;

20 (7) For costs of suit herein incurred;

21 (8) For reasonable litigation expenses; and

22 (9) For such other and further relief as the court may
23 deem proper.

24 DATED: January 7, 1988

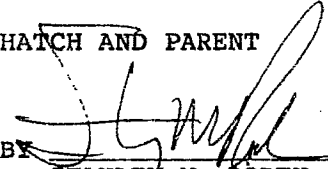
25

26

27

28

HATCH AND PARENT

BY 
STANLEY M. RODEN
Attorney for Petitioners

1782R

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

I have read the foregoing PETITION FOR ADMINISTRATIVE MANDATE or MANDATE and COMPLAINT FOR DECLARATION OF RIGHTS and INVERSE CONDEMNATION and know its contents.

CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on January 7th 19 88 at Santa Barbara California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Emmet J. Hawkes Type or Print Name

Signature

ACKNOWLEDGMENT OF RECEIPT OF DOCUMENT (other than summons and complaint)

Received copy of document described as on 19

Type or Print Name

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF I am employed in the county of State of California.

I am over the age of 18 and not a party to the within action; my business address is:

On 19 I served the foregoing document described as

in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

(BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at California.

(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee. Executed on 19 at California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

27818*

EXHIBIT A

Parcel 1:

11-190-05

That portion of the Outside Pueblo Lands of the City of Santa Barbara, in the County of Santa Barbara, State of California, described as follows:

Beginning at the Northwest corner of the tract of land described in the deed to Lloyd Aspindall, et ux., recorded December 12, 1930 in Book 225 at Page 408 of Official Records; thence South 4°35' East along the Westerly line of said last mentioned tract of land 171.81 feet to the Southwest corner thereof and a point in the Northerly line of the tract of land described in the deed to Julia Watson Horne recorded March 9, 1923, in Book 221, Page 65 of deeds, records of said county; thence South 79°07' West along the last mentioned line 15 feet; thence North 4°35' West 35 feet; thence South 79°07'; 27.00 feet thence South 4°35' East 15 feet to a point on said Northerly line of said Horne Tract, thence South 79°07' West along said Northerly line 94.88 feet; thence North 4°35' West 185.96 feet to a point in the Southerly line of the first parcel of land described in the deed to John W. Barnes, recorded January 4, 1927 in Book 108, at Page 314 of Official Records; thence North 85°03' East along said last mentioned line, 136.05 feet to the point of beginning.

Parcel 2:

11-190-11

That portion of the Outside Pueblo Lands of the City of Santa Barbara, in the County of Santa Barbara, State of California, described as follows:

Beginning at a 2 inch pipe survey monument set on the Northwesterly side of East Valley Road from which a 2 inch pipe survey monument set on the most Southwesterly corner of the Lyde V. Conrad Tract bears North 79°07' East 295.65 feet, as shown on "map of survey made by F. F. Flournoy of the Lyde V. Conrad property, being a portion of the Catholic Church property, in Montecito, Santa Barbara County, California, February 1921" and filed in Book 11, Page 53 of maps and surveys, in the Santa Barbara County Recorder's Office; thence first, North 79°07' East along the Northwesterly line of said East Valley Road, 70.73 feet; thence second, North 10°28' West 198.70 feet to the Northerly line of the Julia Watson Horne Tract, thence third, South 79°07' West 124.17 feet to a 2 inch pipe survey monument set on the most Northwesterly corner of the Julia Watson Horne Tract said 2 inch pipe being in a small ravine; thence fourth, South 17°53' East following the center course of said ravine 107.40 feet to a 2 inch pipe survey monument; thence fifth, South 51°53' East following a general course of said ravine 99.91 feet to the point of beginning.

Parcel 3:

That portion of Parcel Two described in the deed to Ralph H. Coluthwaite, et ux., dated May 6, 1947 recorded in Book 721, Page 399 of Official Records, lying Southerly of the Easterly extension of the Fifth (5th) course of said Parcel Two and having a bearing of South 79°07' West.

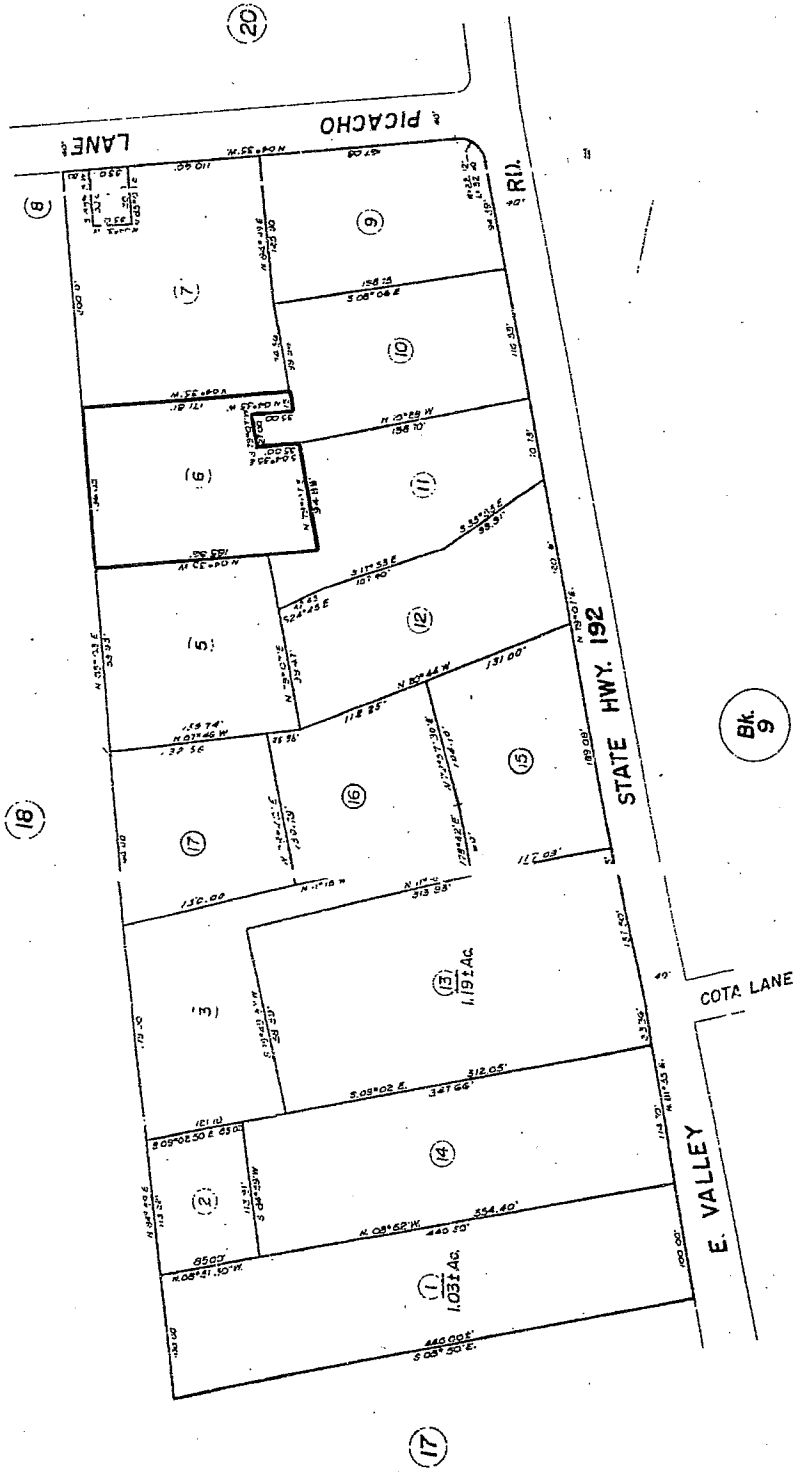
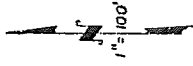
SAFECO TITLE
INSURANCE COMPANY

EXHIBIT

1

PUEILO LANDS

11-19



Assessor's Map Bk. 11 - Pg. 19
County of Santa Barbara, Calif.

NOTE - Assessor's Block Numbers Shown in Ellipses.
Accession, Parcel Numbers Shown in Circles

Bk. 9

2

11/71

January 22, 1958

Request of ~~Amalia Arce~~ for determination of ~~permitted~~ building site on Lot 43, N.E. Section Public Map No. 34, Municipal School District known as 1370 East Valley Road.

Approval of construction of Lots 142 and 43 on Assessor's Map 6-7-18 as one building site and issuance of a permit for a building thereon and approval of the splitting of Lot 63 by an east-west line dividing the lot into approximately equal parts.

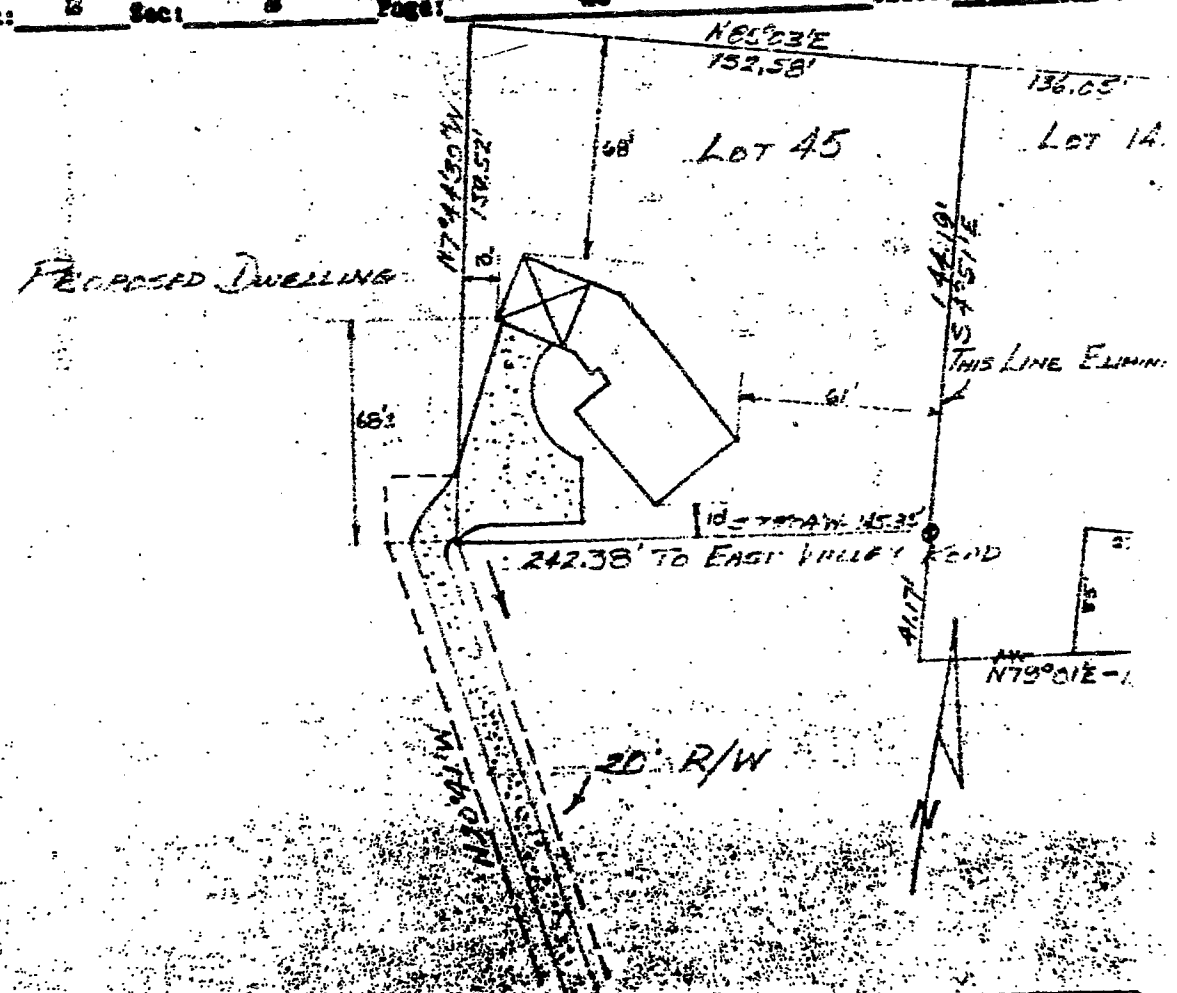
Motion of confirmation.

RESOLUTION

THE BOARD OF COMMISSIONERS

No. 1234 Date 1/24/58 Page 2567
 Requirements to be made a part of Application & Permit
 Division of Building & Safety, County of Santa Barbara.

Lot: 6 45 & 142 Block: Front: Val: 6250
 Description: North part Partion Public Map # 34 Value: 18,100
 School District: Montecito Union Proposed Use: Single Family
 Bk: B Sec: 3 Page: 40 Sheet: 6-T-18



Zoning approval subject to compliance with provisions of existing ordinances and restrictions applicable to area.
 Zoning Approval: W. W. [Signature] Date: 1-29-58
 Architectural Approval: [Signature] Date: 1-29-58
 Plot Map
 This is not an official building site.

FINDINGS AND CONCLUSIONS IN SUPPORT OF
DETERMINATION TO RECORD A CERTIFICATE OF COMPLIANCE

(Assessor's Parcel No. 11-190-06)

The County Surveyor of the County of Santa Barbara does hereby issue the following Findings and Conclusions in connection with the determination to approve a Certificate of Compliance in the matter of the application of Emmett J. Hawkes and Sally Hawkes applicable to Assessor's Parcel 11-190-06:

1. The separate parcel of real property was created by the effect of two deeds, recorded prior to July 27, 1955: a deed recorded at Book 681, page 479, in the Official Records of the County of Santa Barbara on May 23, 1946; and a deed recorded at Book 1076, page 69 of Official Records of said County on June 19, 1952.
2. On January 22, 1958, a variance was granted, under the applicable County Zoning Ordinance, requiring Assessor's Parcel No. 11-190-05 and 11-190-06 to be combined into one parcel to create a single building site.
3. Subsequent to that variance, a building was constructed on Parcel No. 11-190-05, the construction for which the variance was requested.
4. A review of the records reveals no action by the owner of parcel No. 11-190-06 to combine said parcel with 11-190-05, by deed, conveyance, map or other document filed for record.
5. The present zoning for the parcel provides, in pertinent part as to minimum lot size, that a dwelling may be located on a smaller lot than the minimum size for the district if a Certificate of Compliance is recorded for the lot.
6. There appears to have been no action by the County taken pursuant to any ordinance adopted under the provisions of Government Code Section 66451.10 et seq. and no notice regarding such merger appears to have been recorded.
7. The action taken in January, 1958 was in interpretation of and enforcement of the provisions of the Zoning Ordinance in effect at the time and was not an approval of a subdivision or merger.
8. The condition requiring a merger of the parcels was never completed to satisfy the variance.
9. The current zoning will allow the development of the parcel.
10. The creation of the parcel dates to June 19, 1952, the date of recording of the second of two deeds separating the parcel.
11. The issuance of a Certificate of Compliance for parcel 11-190-06 is appropriate.

KENNETH A. PETTIT
CLERK-RECORDER
1987-038622

SANTA BARBARA CO. CA
1987 MAY 22 PM 1:38

After Recording Return to
County Surveyor's Office

CONFORMED COPY: HAS NOT BEEN
COMPARED WITH ORIGINAL
KENNETH A. PETTIT
SANTA BARBARA COUNTY CLERK-RECORDER

COUNTY OF SANTA BARBARA
CERTIFICATE OF COMPLIANCE ON
ASSESSOR'S PARCEL NO. 11-190-06

Notice is hereby filed, as a public record, that Peggie C. Havighurst granted to Fred Acres and Amelia Acres real property described as Parcel One in Instrument No. 8895, recorded June 19, 1952 in Book 1076, Page 69 of Official Records of the County of Santa Barbara, which is incorporated herein by this reference, and that said real property and the division creating said real property comply with the applicable provisions of the State Subdivision Map Act and County Ordinances enacted pursuant thereto.

Owners: Emmet J. Hawkes and Sally Hawkes - Parcel 1 of Corporation Grant Deed recorded July 19, 1985 in Reel No. 1985-037226 of Official Records of the County of Santa Barbara.

Charles F. Wagner
County Surveyor

Vernon Bugh
for Vernon Bugh
Assistant County Surveyor

MAY 22, 1987
Date

87-CC-10
ECM:rq
2978P

EXHIBIT 4

FILE COPY

SANTA BARBARA COUNTY PLANNING COMMISSION
STAFF REPORT AND RECOMMENDATIONS

PC DATE: July 15, 1987
AREA: Montecito
SUP. DIST.: First
STAFF: D. Meester

87-M-42 Appeal of Hawkes Residence Land Use Permit

APPELLANTS:

Leland & Francesca Crawford
1386 E. Valley Road
Santa Barbara, CA 93108

Salli Kayser
545 Picacho Lane
Santa Barbara, CA 93108

Ernest & Mary Kirshner
572 Stone Meadow Ln.
Santa Barbara, CA 93108

Marshall & Heidi Rose
540 Picacho Ln.
Santa Barbara, CA 93108

David & Polly Van Horne
525 Picacho Ln.
Santa Barbara, CA 93108

APPLICANT REQUEST:

A public hearing to consider the appeal of David Van Horne, representative for the appellants, of Resource Management's issuance of a Land Use Permit for a residence and workshop.

APN/LOCATION.

APN 11-190-06, located 200 feet north of East Valley Road, approximately 200 feet west of its intersection with Picacho Lane, known as 1382 East Valley Road, Montecito Area, First Supervisorial District.

ENVIRONMENTAL REVIEW:

Exempt.

GENERAL INFORMATION:

1. Zoning: Article IV; 1-E-1, Residential, 1 acre minimum parcel size.
2. Comprehensive Plan: Residential, 1 acre or more per residence.
3. Site size: Approximately 0.5 acres.
4. Present use: Vacant
5. Access: Proposed easement from East Valley Road through APN 11-190-11.
6. Water: Private well.
7. Sewer: Montecito Sanitary District.
8. Surrounding Zoning/Uses:

North: 1-E-1, Residential
South: 1-E-1, Residential

East: 1-E-1, Residential
West: 1-E-1, Residential

Background:

The events leading to the issuance of a Land Use Permit for 1382 East Valley Road are lengthy. However, in order for the Planning Commission to understand why the Resource Management Department issued a Land Use Permit for the parcel, it is necessary to review the major points:

On May 16, 1986, the Resource Management Department received a letter from David Van Horne regarding the parcel. Based upon records in the Resource Management Department, he had concluded that the subject parcel is not a legal building site. The two following cases, which were heard by the Planning Commission, led him to this conclusion.

1. 58-V-12. In this case, Amelia Acres, the property owner at the time, applied for a determination on whether an adjacent lot, 1370 East Valley Road, was a permitted building site. Because that parcel and the subject parcel were approximately 1/2 acres each and were located in a one-acre zoned residential area, the Planning Commission required that the two parcels be combined into a one-acre parcel as a condition of approval for a building site. A residence was subsequently constructed on the adjacent lot. The Land Use Rider for the residence contained a note that "Lots 45 and 142 have been combined to create one (1) building site" and a note stating "This line eliminated," meaning the line between the two parcels was eliminated. (See Exhibit A for parcels involved).
2. 70-V-41. In 1970, the Acres requested revocation of 58-V-12 as a part of an application to divide other parcels owned by the Acres. (See Exhibit B). On July 22, 1970, the Planning Commission granted a variance to allow the creation of three sub-standard parcels. The applicant withdrew their request for revocation of the combination condition required under 58-V-12.
3. The two parcels have remained in combined ownership until 1979, when the subject parcel was sold to the Parks. Mr. Van Horne believes that when the property was transferred in 1979, it was illegally divided from the adjacent property to which the Planning Commission required it be combined.

On June 9, 1986, after reviewing the information presented in Mr. Van Horne's letter, the Resource Management Department notified the owner of record of the parcel that the legality of the lot was questionable and requested that the owner apply for a Certificate of Compliance to establish the validity of the lot. At that time, staff believed that the owner would be required to apply for a Conditional Certificate of Compliance, based upon the separate sale of the property in 1979. A Conditional Certificate of Compliance is required when a parcel is created in violation of the Subdivision Map Act and allows conditions to be applied which were in effect at the time the current owner obtained title to the property. A potential condition would have been a requirement that the lot size be increased to one acre or more.

On August 19, 1986, Emmet Hawkes, the current owner of the property, filed an application for an Unconditional Certificate of Compliance. The issuance of an Unconditional Certificate of Compliance, rather than a Conditional Certificate of Compliance was based upon several points:

1. Mr. Hawkes' attorney, Rosanne Coit, contended that the parcel was created by deed prior to adoption of the first lot split ordinance, Ordinance 791, adopted on July 27, 1955. The subject parcel was created by two deeds, recorded May 23, 1946 and June 19, 1952. At that time, Ordinance 453, the Montecito Zoning Ordinance, was in effect and required a one-acre minimum parcel size.
2. 58-V-12. Ms. Coit states in the application for a Certificate that the combination condition required by 58-V-12 was never met by Amelia Acres or any other owner of the property. Rather, the Land Use Rider for the residence constructed on the adjacent parcel was issued in error, since no deed, map or other document was recorded to implement the combination condition.

On March 13, 1987, the County Surveyor issued a "Notice of Determination and Intent to Record a Certificate of Compliance." County Counsel's Office prepared findings and conclusions in support of the determination to record a Certificate of Compliance (Exhibit C). These findings state that the subject parcel was created prior to 1955, when the first lot split regulations were adopted, that a variance was granted to allow construction on an adjacent parcel with the condition that the parcels be combined, and that no action was taken by the owner to combine the two parcels. The findings also note that the zoning of the parcel under Article IV allows for construction of a dwelling on parcels smaller than the minimum lot size if a Certificate of Compliance is recorded for the lot.

On March 20, 1987, Mr. Van Horne filed an appeal of the County Surveyor's Determination and Intent to Record a Certificate of Compliance. He states in the appeal that the subject property was combined with the adjacent property in 1958, and that the subsequent division of the combined parcel was not accomplished in accordance with the Subdivision Map Act and local ordinances.

On April 27, 1987, the Board of Supervisors heard the appeal of the issuance of the Certificate of Compliance. The Board denied the appeal and adopted the findings prepared in support of the determination to issue the Certificate of Compliance. When the Board of Supervisors denied the appeal, they were aware of the ordinance provision which allows for residential development of parcels under the minimum parcel size if a Certificate of Compliance has been recorded for the parcel.

On May 22, 1987, the County Surveyor recorded the Certificate of Compliance for the parcel, and on May 29, 1987, the Resource Management Department issued a Land Use Permit for a residence and workshop on the parcel. On June 8, 1987, David Van Horne filed an appeal of the issuance of the Land Use Permit with your Commission.

Analysis of the Appeal:

The appeal of the issuance of the Land Use Permit is based upon three points: 1) That the construction of a residence on the property violates the condition of 58-V-12 which required the two parcels be combined with one resultant building site; 2) That the finding of adequate services relating to private access was not made; and, 3) That the structure designated as a workshop is an artist studio and requires a Minor Conditional Use Permit. Staff will analyze each of these points:

1. The first point made in the appeal is that construction of a residence would violate the condition of 58-V-12 which required the two parcels be combined. Under Ordinance 453, the zoning ordinance which was in effect in Montecito at the time the variances were heard, the only relief available to the lot size requirement was the variance procedure. However, under Article IV, Section 35-419.6 provides: "A dwelling may be located upon a smaller lot if such lot is shown as a legal lot, either on a recorded subdivision or parcel map or is a legal lot as evidenced by a recorded Certificate of Compliance." Since a Certificate of Compliance has been issued on the parcel, issuance of a Land Use Permit is consistent with the provisions of Article IV.

A case can also be made that under 58-V-12, the Planning Commission did not in fact grant a variance to the Acres to construct a residence, but rather required that they comply with the provisions of minimum lot size under Ordinance 453 by combining the two parcels to create a one acre parcel. A variance would have been granted had the Planning Commission allowed the Acres to construct a residence on a parcel under one acre in size, but the Planning Commission instead required that the Acres comply with the minimum lot size requirement. It appears that if any violation has occurred, it was construction of the residence on the adjacent parcel without approval of a variance or acquiring property to meet the one acre minimum parcel size requirement.

2. The second point made in the appeal is that the finding of adequate services, especially as it relates to access, was not made. Specifically, in a letter dated April 14, 1987 to Albert J. McCurdy (attached), Mr. Van Horne states that access to the parcel would have to be taken through APN 11-190-11, located to the south of the subject property and also owned by Mr. Hawkes. He states that

APN 11-190-11 is a long, narrow and substandard parcel, and that development of an access road to the subject parcel would devote a substantial portion of the lot, approximately 6,600 square feet, for access to the subject parcel, reducing the usable area of the lot to .35 acres. However, APN 11-190-11 is already developed with a single family residence, and the access road for the subject parcel is substantially developed (as the driveway for the parcel). Staff does not consider that the access road would create an adverse condition and supports making the finding that adequate access is available.

3. The third and final point made in support of the appeal is that the workshop requires approval of a Minor Conditional Use Permit. However, the area designated as a workshop on the approved plan is attached to the main residence in accordance with the definition of Section 35-410: "A building having at least five lineal feet of wall serving as a common wall with a building to which it is attached, or connected thereto by a continuous roof of at least 8 feet wide." The workshop is attached by definition by a continuous roof 8 feet in width. Because the structure is attached to the main residence, it is considered a part of the living quarters and does not require a Minor Conditional Use Permit.

Conclusion:

Given the provision in the ordinance allowing construction of a residence on a substandard lot in a Certificate of Compliance has been recorded, and given the fact that the Board of Supervisors upheld the issuance of a Certificate on the parcel, staff finds it is appropriate to issue a Land Use Permit for the parcel. The following findings required to issue a Land Use Permit further support this conclusion:

Findings: Pursuant to Section 35-482.5 of Article IV

1. That the proposed development conforms to the applicable policies and provisions of Article IV and the Comprehensive Plan.

The development conforms to the requirements of Article IV and the Comprehensive Plan. Specifically, the proposal is consistent with Land Use Development Policy #4, particularly as it related to access, as discussed in this staff report.

2. That the proposed development is located on a legally created lot as determined by the County Surveyor.

A Certificate of Compliance was recorded for the parcel on May 22, 1987, after confirmation from the Board of Supervisors, indicating the parcel is a legally created lot.

Santa Barbara County Planning Commission Staff Report
Case No. 87-M-42
Page 6

3. That the subject property is in compliance with all laws, rules and regulations pertaining to zoning uses, subdivisions, setbacks and any other applicable provisions of Article IV, and such zoning violation processing fees as established from time to time by the Board of Supervisors have been paid.

The project site does not contain any zoning violations.

Recommendation:

Staff recommends that the Planning Commission uphold the Resource Management Department's decision to issue a Land Use Permit for APN 11-190-06 based upon the facts presented in this staff report.

DLM:nlr:1907M

PUEBLO LANDS

EXHIBIT A

-E-

58-V-12

(18)

(8)

LANE

SUBJECT PROPERTY

(7)

(5)

(7)

(6)

(12)

(11)

(13)

(10)

(15)

PICACHO

EAST VALLEY

RD.

STATE HWY. 192

Ek. 9

Assessed as Ek. 11

...

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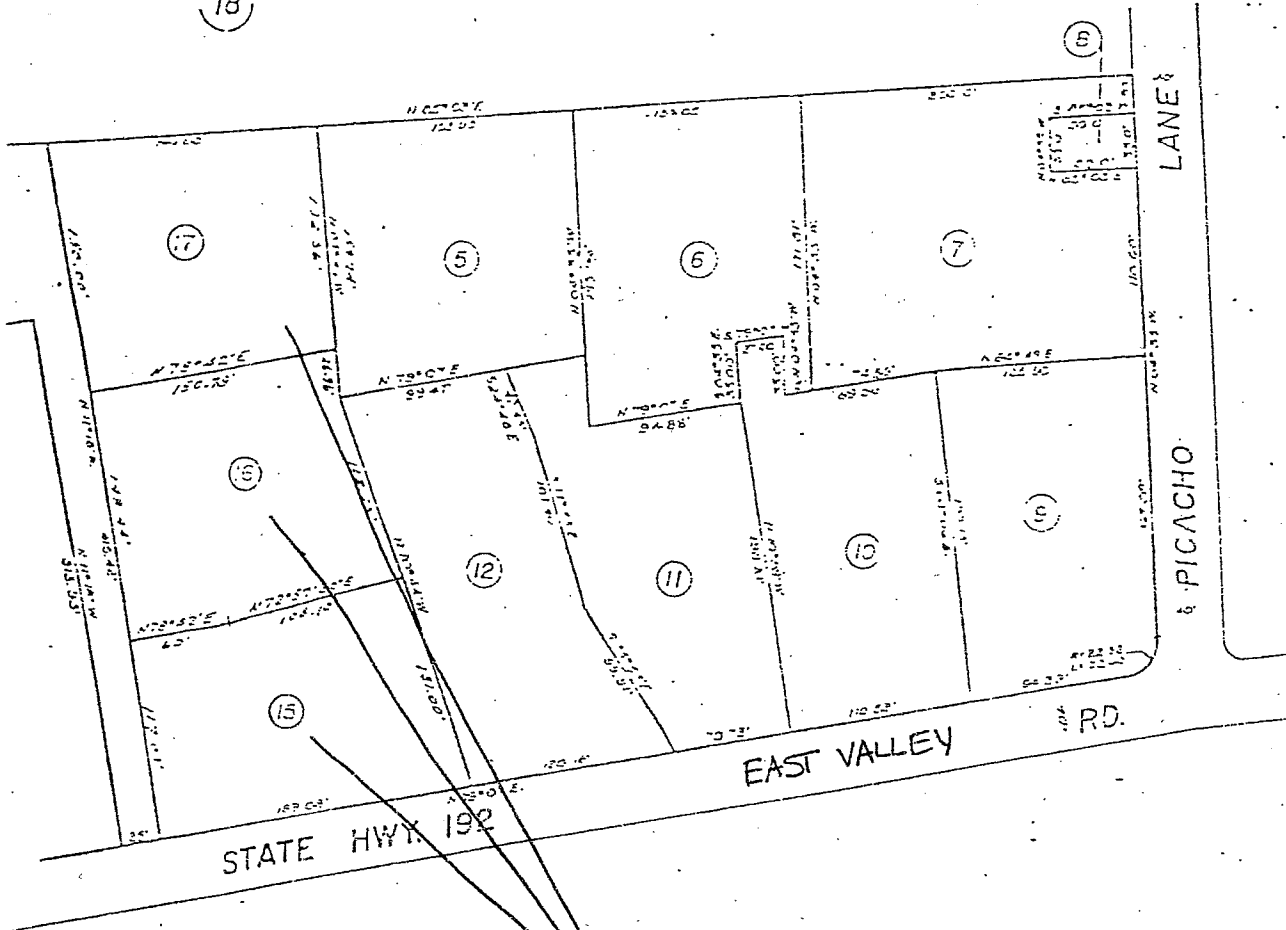
PUEBLO LANDS

EXHIBIT B

1-7-1

18

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Bk. 9

Parcels created by 70-V-41

Assessor's map Bk. 11 - Pr

NOTE - Assessor's map

(SPACE BELOW FOR FILING STAMP ONLY)

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SANTA BARBARA

NOV 17 1989

KENNETH A. PETRI, Clerk Recorder

By: *Gracie Smith*
Deputy Clerk Recorder

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Petitioners/Plaintiffs

Attorneys for

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

EMMET J. HAWKES and SALLY HAWKES,
Petitioners and Plaintiffs,

vs.

THE COUNTY OF SANTA BARBARA and
its BOARD OF SUPERVISORS,

Defendants.

CASE NO. 169598

(Consolidated with
case no. 167375)

TRIAL BRIEF

Date: 12/19/89
Time: 9:00 a.m.
Dept: 1

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12
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14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

PAGES

SUMMARY..... 1

 Backdrop..... 1

 Certificate of Compliance Mandatory..... 2

 Building Permit Should Be Issued..... 3

STATEMENT OF FACTS..... 3

ARGUMENT..... 13

 I. EVIDENCE APART FROM THE ADMINISTRATIVE RECORD
 IS PERMITTED ON ALL CAUSES OF ACTION EXCEPT
 CODE OF CIVIL PROCEDURE SECTION 1094.6..... 13

 II. CERTIFICATE OF COMPLIANCE CASE: MANDATE
 IS INAPPROPRIATE AS THE BOARD'S DECISION
 WAS CORRECT..... 15

 A. Hawkes Was Entitled to an Unconditional
 Certificate of Compliance..... 15

 B. The Planning Commission Action in 1958
 Was a Nullity for Purposes of the
 Subdivision Map Act..... 18

 C. The County May Not Enforce a Subdivision
 Map Act Violation Against Petitioners If
 Enforcement Would Result in the Denial of
 a Building Permit to BFP's..... 22

 1. Subdivision Map Act Violations Do
 Not Warrant Refusal to Issue a Building
 Permit to a BFP in the Absence of a
 Impairment of Public Health or Safety 22

 2. Petitioners Qualify as a Bona Fide
 Purchasers..... 22

 3. The County Identified No Health
 and Safety Concern That Would Be
 Impaired By The Issuance Of A
 Building Permit To Petitioners..... 26

 III. THE LAND USE PERMIT/BUILDING PERMIT CASE:
 TRADITIONAL MANDATE, DECLARATORY RELIEF AND
 ADMINISTRATIVE MANDATE ARE APPROPRIATE..... 27

 A. Introduction..... 27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PAGES

B. Hawkes is Entitled to Construct a Residence on a Legal Lot Under County Zoning Ordinance Article IV..... 27

1. Petitioners Are Entitled to the Issuance of a Building Permit For a Legal Parcel Within an E-1 Zone... 27

2. The Alleged Variance Does Not Run With the Land to Bind an Innocent Purchaser for Value..... 31

3. An Unrecorded Variance Cannot Be Enforced Against Petitioners Who Are BFP's..... 32

C. The Application of Prior Unrecorded Zoning Determination is Void for Vagueness and Violates Petitioner's Rights to Due Process..... 35

D. The County is Estopped From Enforcing the Provisions of the 1958 Combination Condition Against Hawkes..... 36

E. The County is Barred From Enforcing the Combination Restriction Against a BFP by Laches..... 41

F. The County's Findings are Not Supported By the Evidence..... 42

G. The County's Decision is Not Supported By the Findings..... 44

CONCLUSION..... 45

//
//
//

TABLE OF CITATIONS

	<u>PAGES</u>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

<u>Acker v. Baldwin</u> (1941) 18 Cal.2d 341, 346, 115 P.2d 455....	41
<u>Anderson v. City of La Mesa</u> (1981) 118 Cal.App.3d 557, 173 Cal.Rptr. 572.....	40
<u>Avco Developers v. South Coast Regional Commission</u> (1976) 17 Cal. 3d 785, 553 P.2d 546, 132 Cal.Rptr. 386, 394.....	28
<u>Baird v. City of Fresno</u> (1950) 97 Cal.App.2d 336, 217 P.2d 681.....	38
<u>Bright v. Board of Supervisors of San Diego</u> (1977) 66 Cal.App.3d 191, 135 Cal.Rptr. 758.....	16
<u>Broucher v. Board of Public Works</u> , (1928) 205 Cal. 426, 271 P. 487.....	27,28
<u>Bruce v. Gregory</u> (1967) 65 Cal.2d 666, 56 Cal.Rptr. 265, 268.....	13
<u>City and County of San Francisco v. Pacello</u> (1978) 85 Cal.App.3d 537, 149 Cal.Rptr. 705.....	41
<u>City of Imperial v. Algert</u> (1962) 200 Cal.App.2d 48, 19 Cal.Rptr. 144.....	38
<u>City of Long Beach v. Mansell</u> (1970) 3 Cal. 3d 462, 476 P.2d 423, 91 Cal.Rptr. 23, 42.....	37,39
<u>Cohn v. County Board of Supervisors of the County of Los Angeles</u> (1955) 135 Cal.App.2d 180, 286 P.2d 836.....	32
<u>County of Imperial v. McDougal</u> (1977) 19 Cal.3d 550, 564 P.2d 14, 138 Cal.Rptr. 472.....	31,32
<u>Drummev v. State Board of Funeral Directors and Embalmers</u> (1939) 13 Cal. 2d 75, 87 P.2d 848.....	29
<u>Ellis v. City Council</u> (1963) 222 Cal.App.2d 490, 35 Cal.Rptr. 317.....	28,29
<u>Hamer v. Town of Ross</u> (1963) 59 Cal. 2d 776, 31 Cal.Rptr. 335.....	40
<u>Intoximeters, Inc. v. Younger</u> (1975) 53 Cal.App.3d 262, 125 Cal.Rptr. 864.....	13
<u>John Taft Corporation v. Advisory Agency for the County of Ventura</u> (1985) 161 Cal.App.3d 749, 207 Cal.Rptr. 840.....	19
<u>Keizer v. Adams</u> (1972) 2 Cal. 3d 976, 88 Cal.Rptr. 183.....	22,23, 26,33,34

	<u>PAGES</u>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
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21	
22	
23	
24	
25	
26	
27	
28	

<u>Lassen v. Alameda</u> (1957) 150 Cal.App.2d 44, 309 P.2d 520, 522.....	13
<u>Metropolitan Water District v. Marquardt</u> (1963) 59 Cal.2d 159, 28 Cal.Rptr. 724.....	29
<u>Morgan v. County of San Diego</u> (1971) 19 Cal.App.3d 636, 97 Cal.Rptr. 180.....	38
<u>Munns v. Stenman</u> (1957) 152 Cal.App.2d 543, 314 P.2d 67.....	28,34
<u>No Oil, Inc. v. City of Los Angeles</u> (1974) 13 Cal. 3d 68, 79 118 Cal.Rptr. 34	13,14
<u>Orinda Homeowners v. Board of Supervisors</u> (1970) 11 Cal.App.3d 768, 90 Cal.Rptr. 88.....	32
<u>Palmer v. Fox</u> (1953) 118 Cal.App.2d 453, 258 P.2d 30.....	28
<u>People v. Binzley</u> (1956) 146 Cal.App.2d Supp. 899, 303 P.2d 903.....	35
<u>People v. Department of Housing & Community Development</u> (1975) 45 Cal.App.3d 185, 119 Cal.Rptr. 266.....	42
<u>People v. Synanon</u> (1979) 88 Cal.App.3d 374, 151 Cal.Rptr. 757.....	35
<u>Rabbit v. Atkinson</u> (1941) 44 Cal.App.2d 752, 113 P.2d 14.....	24
<u>Santa Clara County Contractors and Homebuilders Assoc. v. City of Santa Clara</u> (1965) 232 Cal.App.2d 564, 43 Cal.Rptr. 86.....	16
<u>Saso v. Fertado</u> (1951) 104 Cal.App.2d 759, 764, 234 P.2d 583.....	17
<u>Scheas v. Robertson</u> (1951) 83 Cal. 2d 119, 238 P.2d 982.....	24
<u>Scrogings v. Kovatch</u> (1976) 64 Cal.App.3d 54, 134 Cal.Rptr. 217.....	26,32,33
<u>Sechrist v. Municipal Court</u> (1976) 64 Cal.App.3d 737, 134 Cal.Rptr. 733.....	35
<u>Sunset View Cemetery v. Krintz</u> (1961) 196 Cal.App.2d 115, 116 Cal.Rptr. 317.....	28
<u>United States v. Certain Parcels of Land</u> (1949 D.C. Cal.) 85 F.Supp. 986, 999-1000.....	24
<u>United States v. Security Industrial Bank</u> (1982) 459 U.S. 70, 103 S.Ct. 407, 412, 74 L.Ed. 235.....	17

1	<u>STATUTES AND CODES</u>	
2		<u>PAGES</u>
3	Business and Professions Code	
4	§ 11537(b).....	20
5	§ 11538.1.....	33
6	§ 11700.....	20
7	Civil Code	
8	§ 1460.....	31
9	§§ 1462-1470.....	31
10	Code of Civil Procedure	
11	§ 1085.....	13, 28
12	§ 1094.5.....	13, 14
13	§ 1094.6.....	13
14	§ 1109.....	14
15	Evidence Code	
16	§ 120.....	14
17	§ 300.....	14
18	Government Code	
19	§ 66410.....	16
20	§ 66412.6.....	18
21	§ 66412.6(a).....	16, 17
22	§ 66412.6(b).....	16, 18
23	§ 66451.30.....	22
24	§ 66499.34.....	26, 33
25	§ 66499.35.....	15, 16
26	§ 66499.35(a).....	16, 17, 18
27	§ 66499.35(b).....	16
28	<u>SECONDARY SOURCES</u>	
29	Miller & Starr, 3 California Real Estate Recording and Priorities, § 8.31 at p. 1959.....	24
30	//	
31	//	
32	//	
33		
34		
35		
36		
37	4403R	
38		