



**MARIN COUNTY
COMMUNITY DEVELOPMENT AGENCY**

ALEX HINDS, DIRECTOR

November 12, 2004

Planning Commission
County of Marin
3501 Civic Center Drive
San Rafael, California 94903

SUBJECT: Antonioli Lot Line Adjustment and Precise Development Plan
235 Crest Road, Novato
Assessor's Parcels 143-370-02, -03, -06, -07, -38 and 143-183-01

Dear Commission Members:

Your commission continued the hearing on the Antonioli project on August 9, 2004, and requested additional information and project modifications that would address several issues of concern, including the possibility of establishing a homeowner's association for the development, the disposition of existing Lot 7, modified conditions limiting fences, requirements for colors and materials, and the maximum elevation allowed for future development on the two Lots nearest to Crest Road.

Subsequent to the previous hearing on the project, the applicant submitted a request to modify the proposed project through conditions of project approval to address your commission's concerns, submitted two Single Holding Form applications including a Single Holding Form for Lot 7, and has erected story poles on the subject property to demonstrate the potential mass and bulk of the future development with the revised conditions. Staff recommends approval of the proposed project, as revised subsequent to the hearing on August 9, 2004, and has attached the two Single Holding Form analyses and revised Resolutions approving the project. The issues raised at the previous hearing are further discussed below. Please note that story poles have been erected on the site for your Commission's review. The poles indicate the maximum height of 18 feet above the adjacent road or driveway grade at the front corners of the building envelopes for adjusted Lots 4 and 7. An additional story pole is located at the back of Lot 4 to show the maximum height of 30 feet above grade at that location.

Homeowner's Association

Staff does not recommend requiring that the applicant be required to create a Homeowner's Association to vest the proposed project. The State Department of Real Estate typically requires the creation of Homeowner's Associations for large-scale subdivisions for the purpose of maintaining common areas. Further, the County has not required the creation of Homeowner's Associations except for large subdivisions that would result in common interest developments, such as condominiums with common areas. The proposed project is not a large scale subdivision with any common maintenance areas, and the proposed conservation areas would be not be shared among the adjacent property owners or require maintenance. Several measures have been incorporated into the conditions of approval to protect the conservation areas. The owner's of the involved properties would be prohibited from developing in these areas or disturbing the natural vegetation. Enforcement of these conditions would be supported by deed restrictions recorded against the titles of the individual properties, and stakes required to be placed along the edges of the conservation area protecting the watercourse to inform property owners' of the protected areas'

boundaries. The objective of protecting the conservation areas would be met by the conditions of project approval prohibiting future development within their boundaries and there are no Countywide Plan policies that encourage the creation of codes, covenants and restrictions governing adjacent properties. Therefore, staff does not recommend requiring the applicant to create a Homeowner's Association.

Disposition of Lots

On August 9, 2004, the Planning Commission requested additional information on the history and legal status of the Lot 7. Subsequent to the hearing, a Single Holding Form that was completed by California Land Title Company of Marin was submitted indicating that the subject property was originally established in its current size and shape by conveyance on August 9, 1965.

Determining the legal status of a lot requires two components: (1) a determination regarding whether the unit of land is a legal lot of record; and (2) a determination regarding whether the unit of land is considered a legal building site. The determination of whether a unit of land is a legal lot of record is governed by the Subdivision Map Act (Map Act) and the local ordinances pertaining to dividing land that were in effect at the time the unit of land was originally established. Map Act sections 66499.34 and 66499.35 mandate the issuance of a Certificate of Compliance or Conditional Certificate of Compliance for units of land that were conveyed, even when the conveyance, and hence the lot, was illegal. Pursuant to Map Act section 66499.35(b), if the current owner is the same person who was involved in an illegal conveyance the local agency has the right to impose any condition that would be applicable to a current division of property. In contrast, if the current owner is not the same person involved in the illegal division, then an agency may only impose those conditions set forth in the Map Act at the time the present owner acquired his interest in the property. Further, pursuant to section 66428(a)(2), the Map Act expressly exempts public utilities from parcel map requirements, unless there is a showing, based on substantial evidence, that public policy necessitates a parcel map.

Recognition of the legality of a lot does not necessarily mean it is considered a legal building site. The ability to use and develop land is determined by the local jurisdiction's land use policies and regulations, as well as the mandates of the constitution. The Map Act does not require that a legal lot of record be considered a developable parcel, however, it establishes the Conditional Certificate of Compliance as the mechanism for local agencies to use to inform land owners that were not responsible for an illegal conveyance of what is required to meet the current development standards established by the zoning ordinance for that unit of land.

Parcel 7 was created by conveyance by a public utility, which did not require Parcel Map approval, and conformed with the minimum access and lot size requirements set forth by the Map Act and the Marin County Zoning and Subdivision Ordinances at that time. Therefore, parcel 7 is a legal lot of record that could be developed in conformance with the Marin County Zoning Code in the absence of the private deed restrictions that run with the land. The County does not have regulatory authority over these private deed restrictions.

The applicant also submitted a Single Holding Form for parcel 3, which is a portion of a larger legal lot of record that also includes parcel 4, which is on the other side of Sunset Trail. There were no further subdivisions of this lot, and therefore parcel three is not a legal lot of record. Further, the notation on the Parcel Map affecting the land prohibited development on parcel three. Therefore, parcel 3 cannot be considered a legal building site in the absence of the approval of a Land Division amendment for the entire Lot.

Modified Conditions

Your commission raised concerns about the colors and materials for the future development on the subject property, the height permitted for the residences on Lots 4 and 7, and the construction of fences on the lots. A condition of project approval has been added to the revised Resolution, which requires that future development use dark earthtone materials (condition 16).

In response to your Commission's concern regarding height of the future residences near Crest Road, the applicant has suggested adding a condition of approval that would place a height restriction of 18 feet above the elevation of the adjacent road or driveway for the future residences on Lots 4 and 7 (conditions 17 and 18). The applicant has

erected story poles to demonstrate the visual affect of this height restriction on these lots. Further, the applicant has noted that the protection of the conservation areas would create visual corridors from Crest road down the two small watersheds on the subject property, and no fencing would be allowed within the conservation areas. The reduced height limit of the future residences combined with the protection of the conservation areas would maintain the visual character of the local community.

In response to your Commission's concern regarding the fencing on the reconfigured lots, the applicant has suggested restricting any fencing constructed outside of the development envelopes to open wire mesh with wooden posts and rails, which would be consistent with the rural character of the area and would not result in the visual impediments created by solid fencing. Further, fences outside the building envelopes would not exceed the height of the adjacent driveway or road grade. The applicant has noted that the protection of the conservation areas would create visual corridors from Crest road down the two small watersheds on the subject property.

The revised recommended Resolution contains conditions of approval which require that the future development use earthtone colors, that the new residences on the lots near Crest road comply with a maximum height limit 18 feet above the adjacent road or driveway, and any fencing on the reconfigured lots that are outside of the development envelopes shall not exceed the height of the adjacent road or driveway grade and must be open wire mesh with wooden posts and rails (condition 20). Staff recommends that these revisions be adopted because the resulting development would be consistent with the rural character of the area, and the existing development on Lockton Lane. These changes would not affect the findings or mitigation measures required for the Mitigated Negative Declaration.

Corrections

The Lot Line Adjustment Findings used in the previous Resolution have been corrected. Pursuant to Marin County Interim Subdivision Code section 20.56.080, the correct Findings to rely upon for Lot Line Adjustment approval are the same as the Findings necessary for Tentative Map approval, with minor modifications to reflect the project type. These Findings, provided in section 20.56.120, are supported in the attached revised recommended Resolution and minor modifications have been made elsewhere in the Resolution to reflect the corrected Findings.

The plans for the proposed project indicate that an access easement, which leads from Crest Road through the existing residence on the property, would be abandoned. The notation shall be corrected to identify this access easement as previously abandoned. The easement was abandoned legally with the agreement of all the affected property owner's on September 9, 1966.

The applicant has requested an account of the costs of the project and fees paid. The applicant initially submitted \$11,670 in fees. The required fees were later revised to \$11,320, which included the Fish and Game fee, the fee for the Precise Development Plan based upon the estimate of the cost of the work submitted by the applicant, the Lot Line Adjustment fee, and the retainer for the Initial Study. In calculating the fee, staff does not have available the hours spent on the Initial Study between the dates of March 19, 2003, and January 1, 2004. Although there were a considerable number of hours spent during this period, they have not been incorporated into the fee calculation. The cost of time spent on the Initial Study between January 1, 2004, and the distribution of the Mitigated Negative Declaration was \$3,420, which exceeded the fee originally paid by the applicant. Further, the retainer required for the Single Holding Form analysis cost a total of \$2,327.50, which has not been submitted by the applicant. By subtracting the \$350 overcharge originally submitted from the total fee required, and waiving any fee for the undocumented hours spent on the Initial Study, it has been determined that the applicant owes the County a total of \$3,317.5 in additional fees for the project. The requirement to correct the amount in fees submitted has been included as a condition of project approval.

Finally, as a point of clarification, the edge of the building envelope for adjusted Lot 7 would be 20 feet from the proposed property line and the required length for a head-in parking stall is 18 feet. Minor corrections have been made to the Resolution to correct typographical errors.

Respectfully submitted,

Jeremy Tejirian
Planner

Attachments:

1. Revised Resolution
2. Single Holding Form analysis for parcel 7
3. Single Holding Form analysis for parcel 4
4. Applicant letter

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