



**MARIN COUNTY
COMMUNITY DEVELOPMENT AGENCY**

ALEX HINDS, DIRECTOR

**STAFF REPORT TO THE PLANNING COMMISSION
KIDSON APPEAL OF THE KIDSON CERTIFICATE OF COMPLIANCE**

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|--------------------------|-----------------------------------------------|---------------------------|----------------------------------------------------------------|
| Item No: | 8. | Application No: | CC 98-02 |
| Appellant: | Hanson Bridgett on behalf of Jeremy Kidson | Owner: | Jeremy Kidson |
| Property Address: | Ocean Parkway, Bolinas | Assessor's Parcel: | 191-300-01, 192-233-01, 192-243-01, 192-253-01 & 192-263-01 |
| Hearing Date: | October 10, 2005 | Planner: | Christine Gimmler |

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|------------------------------|----------------------------------------------|
| RECOMMENDATION: | Deny appeal and uphold Director's approval |
| APPEAL PERIOD: | Ten working days to the Board of Supervisors |
| LAST DATE FOR ACTION: | October 10, 2005 |

SUMMARY RECOMMENDATION:

Staff is recommending that the Planning Commission deny the Kidson appeal and uphold the Director's administrative approval of the Kidson Certificate of Compliance, which determined that the subject property was legally created in its present size and configuration as a remainder "Park" parcel by the Map of Bolinas Beach, recorded in 1927.

The appeal submitted by Hanson Bridgett, attorneys for Jeremy Kidson, asserts that: (1) the determination that the subject property was created "as a remainder 'Park' parcel" is factually and legally incorrect; and (2) the determination that the zoning governing this property is Coastal, Open Area, is factually incorrect and legally impermissible.

GENERAL INFORMATION:

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|-------------------------------|----------------------------------------------------------------------|
| Countywide Plan: | Coastal, Open Space (C-OS) |
| Zoning: | Coastal, Open Area (C-OA) |
| Lot size: | Approximately 47.5 acres |
| Adjacent Land Uses: | Single-Family Residential |
| Vegetation: | Coastal bluff vegetation |
| Topography and Slope: | Moderate to steep downslope from Ocean Parkway to shoreline |
| Environmental Hazards: | Within designated bluff erosion zone, proximity to San Andreas Fault |

ENVIRONMENTAL REVIEW:

The California Environmental Quality Act (CEQA) does not apply to projects that are ministerial in nature pursuant to Section 21080(b)(1) of CEQA.

PUBLIC NOTICE:

The Community Development Agency has provided public notice identifying the applicant, describing the appeal, the location of the property, and its location, and giving the scheduled date of the public hearing in accordance with California Government Code requirements. This notice has been mailed to all property owners within 600 feet of the subject property.

BACKGROUND:

Property Location

The 47.5-acre subject property is comprised of five Assessor's Parcels which form the southernmost edge of the Bolinas Mesa (see Attachments 5 and 6a to 6e). The property extends approximately a mile in length from Overlook Drive to Rosewood Road on the seaward side of Ocean Parkway and consists primarily of beach area and coastal bluffs. The property is located entirely within the bluff erosion zone for the Bolinas area as designated in the Bolinas Gridded Mesa Plan and is governed by Coastal, Open Area (C-OA) zoning. It should be noted that the applicant/appellant is asserting that the C-OA zoning was adopted in error and that the correct zoning for the property should be C-R-1:B-D (Coastal, Single Family Residential, one acre minimum lot size). However, the issue of zoning does not alter staff's determination regarding the legal status of the property (see Analysis of Appeal Section below).

Property History

As noted previously, staff has determined that the subject property was created by the historic 1927 Bolinas Beach Subdivision. A brief summary of this history of this subdivision is provided below.

In 1927, Arthur and Ruth Smadbeck purchased an approximately 300-acre tract of land on a bluff overlooking Bolinas Bay and the Pacific Ocean near the town of Bolinas. The same year, the Smadbecks prepared and recorded a subdivision map identified as the "Map of Bolinas Beach", which was recorded in Book 5 of Recorded Maps, Page 44 (R.M. 5-44). The recordation of this map created what is now known as the "Gridded Mesa" area of Bolinas, including over five thousand 20-foot by 100-foot lots served by a number of roadways, drives and parkways. The recorded map also included several areas which are labeled as "Park" on the map, including a portion of the interior block bounded by Alder, Laurel, Elm and Nymph Roads (which also shows a "clubhouse" structure), as well as the coastal bluffs along the shoreline between Ocean Parkway and the Pacific Ocean (see Attachments 7a to 7c). It is the property within this oceanfront "Park" area which is the subject of the current Certificate of Compliance application. Unlike the numbered residential lots, those areas within the subdivision identified as "Park" were not given lot numbers.

In January of the following year, the Smadbecks deeded all of the park areas within the subdivision (including both the interior park associated with the clubhouse as well as the shoreline park area) to an individual named F. Shaw Baker, subject to conditions that Baker would convey the land to the Bolinas Beach Property Owner's Association for the benefit and use of the residents of the subdivision and the general public (Deed 142 O.R. 62, see Attachment 10). The precise language contained in the deed from the Smadbecks to Baker describing the area being conveyed is as follows (emphasis added):

*All that territory bounded northerly by Laurel Road, easterly by Elm Road, southerly by Nymph Road, and westerly by Alder Drive, together with the Club House erected there on, excepting from the above described premised lots 3739 to 3750 and 3911 to 3924 all inclusive as designated and delineated on a map entitled "Map of Bolinas Beach, in the County of Marin and State of California and recorded in the Marin County recorder's office on the 4th day of May 1927. **And also all that territory indicated as "Park" on said map.***

In addition, the deed contains the following conditions regarding conveyance of the park areas (emphasis added).

*This conveyance is made by the grantors unto the grantee, upon the express covenant and condition to which the grantee by the acceptance of this deed agrees, that he, the said grantee will convey the real property herein mentioned unto the Bolinas Beach Property Owner's Association, Inc., a California Corporation, upon a covenant and condition which shall run with the land that the said association will at all times pay all taxes and assessments which may hereafter be assessed, levied, or imposed upon the lands and buildings in this deed mentioned, as and when same shall become due and payable. And that said Association will at all times properly keep and maintain the said Club House for the benefit and use of the members of said association as a club house or social center or for general recreation purposes. **And that it will at all times keep and maintain and improve the parks above mentioned for the benefit and use of the residents and inhabitants of Bolinas Beach and for the benefit of the general public.***

Finally, the deed indicates what should happen to the park areas if Bolinas was incorporated (emphasis added).

*As and when the said Bolinas Beach shall become a municipal corporation under the laws of the State of California, said association will, upon the agreement of said municipal corporation to keep and maintain the said club house, and the said parks for the benefit of the general public, transfer and convey unto said municipal corporation, without any cost or charge to said Municipal corporation the legal and equitable title to the real property above mentioned. The said association will not otherwise sell, transfer or dispose of the said real property or any part thereof, nor will it mortgage, pledge or otherwise encumber the same or any part thereof. **The conditions above stated shall be covenants running with the land** with the right of re-entry to the said Arthur Smadbeck, or his heirs for the breach of any or all of said covenants, provided however, that said right of re-entry shall not be available against said Municipal corporation.*

Consistent with the requirements of this deed, Baker subsequently transferred the park properties to the Bolinas Beach Property Owner's Association via a deed dated January 31, 1928 (Deed 140 O.R. 303, see Attachment 11). The language in this deed is essentially identical with that noted above (excepting the requirement that the property be conveyed to the Property Owner's Association, which was no longer relevant). According to the appellant, the Bolinas Beach Property Owner's Association eventually failed and was dissolved in the 1950's. However, this has not been confirmed by staff.

It should be noted that Bolinas Community Public Utility District (BCPUD) staff have provided a 1944 deed (Deed 471 O.R. 422) which indicates that the above-referenced "park" areas granted to the Bolinas Beach Property Owner's Association were acquired by the State as a result of nonpayment of taxes and subsequently granted to the Bolinas Beach Public Utility District, a predecessor agency to BCPUD. Therefore, BCPUD has indicated that they may be the rightful owner of the subject property (see Attachments 17 and 18). However, the resolution of disputes concerning property ownership is not the proper subject of a Certificate of Compliance, and therefore is not pertinent to this appeal.

Certificate of Compliance Application

On June 7, 2005, a Certificate of Compliance application was submitted by the current owner of the subject property, Jeremy Kidson, who purchased the property in 2004. A Certificate of Compliance (COC) is a document which states that the real property identified on the certificate was created in compliance with the State Subdivision Map Act and the Marin County Code. The Single Holding Form submitted by the applicant on June 28, 2005, in conjunction with the COC application stated that the subject property had been created by recordation of the Map of Bolinas Beach in 1927, consistent with the discussion above.

On August 3, 2005, based on review of County records and the submitted information, the Community Development Director, issued a determination that the subject property had been legally created in its present size and configuration as a remainder "Park" parcel on the 1927 Map of Bolinas Beach (R.M. Book 5, Page 44), and that a Certificate of Compliance would be recorded for the property to that effect (see Attachment 3). In other words, the County determined that the subject property had been legally created through the recordation of a subdivision map, but that it is a "remainder" parcel which would not be considered a building site given its designation for park purposes both on the map itself and in the subsequent deeds discussed above.

ANALYSIS OF APPEAL:

On August 15, 2005, attorneys for the property owner filed a timely appeal of the Certificate of Compliance approval Community Development Director's determination. The submitted appeal asserts that: (1) the determination that the subject property was created "as a remainder 'Park' parcel" is factually and legally incorrect; and (2) the determination that the zoning governing this property is Coastal, Open Area, is factually incorrect and legally impermissible (see Attachment 2). Staff's response to these issues is provided below.

1. *The determination that the subject property was created "as a remainder 'Park' parcel" is factually and legally incorrect.*

The submitted Petition for Appeal does not include supporting evidence for this statement. However, in previous correspondence to Community Development Agency and County Counsel staff, the appellant's attorneys have argued that the deed language above demonstrates that the original subdividers, the Smadbecks, intended those areas identified as "Park" to be maintained and used as such *if and only if* the Bolinas Beach Property Owner's Association or some other responsible public agency would agree to accept and perform the specified conditions and covenants (i.e., pay taxes and assessments, maintain the clubhouse, etc). In the event that this did **not** occur, the subdividers reserved a "right of re-entry", which, the appellant is arguing, allowed the original owners to take back possession of the property free of any development constraints related to use of these lands as parks (see page 6 of Attachment 15).

County Counsel and CDA staff do not concur with the appellant's position. It is clear from both the design of the subdivision map as well as the language of the subsequent deeds that the intent of these documents was to provide park areas within the subdivision for the benefit of individuals purchasing lots within the subdivision as well as the general public. This would have been particularly important to those individual purchasing lots along Ocean Parkway with the expectation that the land area between their "oceanfront" parcels and the shoreline would remain undeveloped park area in perpetuity. If the owners had intended to preserve the residential development potential of these areas, they could have given them a number or letter designation, as required by provisions of the State Subdivision Map Act in effect at that time. The original subdividers may have anticipated or preferred that ownership and maintenance of the park areas would be taken over by another organization or public agency. However, the fact that Bolinas did not become an incorporated city and the Bolinas Beach Property Owner's Association was eventually disbanded does not alter the land use designations on the recorded map. The "right of re-entry" reserved by the original owners allowed them to take back possession of the "Park" areas when the Bolinas Beach Property Owner's Association failed, but does not grant additional development rights above and beyond those specified in the original map. Regardless of underlying ownership, those areas designated on the recorded subdivision map as "Park" may not be used for other types of development (residential or otherwise) without map amendment approval as required by Subdivision Map Act provisions in effect at the time and subsequent to recordation of the Bolinas Beach Subdivision.

The appellant's attorneys have also argued that the Smadbecks and their heirs have been paying property taxes on the property throughout the years, which the County assessed based on their potential use for single-family residential development. Therefore, the development rights of the subject property should be considered to be the same as any other lots within the subdivision. However, at the time the property was purchased by Jeremy Kidson in 2004, the combined assessed value of all five parcels totaling 47.5 acres was \$19,126 (or approximately \$400.00 per acre), which resulted in a maximum yearly tax bill on all five Assessor's parcels of less than \$625.00 per year (or \$13.14 per acre). Regardless of what assumptions were used by the County Assessor when the property was originally assessed, it should be noted that these figures represent a tax burden far below other undeveloped residentially zoned property within the Bolinas Beach Subdivision. Furthermore, the Assessor's primary role is tax collection, not the determination of land use development potential.

2. *The determination that the zoning governing this property is Coastal, Open Area, is factually incorrect and legally impermissible.*

As noted above, the subject property is currently governed by Coastal, Open Area (C-OA) zoning, which is intended primarily for open space uses such as parks, playgrounds and recreation areas. The OA designation was applied to the property in 1964 with the approval of Ordinance 1380, which adopted the "Districts Map of the Zoning Plan for the Bolinas – Stinson Beach area" (see Attachment 9). In 1981, the zoning was amended to reflect adoption of the Local Coastal Plan, Unit I, by adding the Coastal District ("C-") designation to the present zoning, resulting in the current "C-OA" designation.

In previous correspondence (see Attachment 12), the appellant has argued that this zoning was adopted in error because, pursuant to Marin County Code Section 22.60.010, the OA district is intended to apply to publicly owned land or *privately-owned lands with the consent of the owner*; however, there is no clear record of the owner consenting to this designation at the time of adoption in 1964. Further, the appellant notes that there is reference in the minutes of the Board of Supervisor's meeting at the time Ordinance 1380 was adopted indicating that any privately-owned land determined to exist in what was thought to be public lands should be eliminated from the OA classification.

Although the Certificate of Compliance decision notes the current zoning, the determination that the subject property is a remainder "Park" parcel is based on the recorded map which created the property, and in no way relies upon the current zoning designation. Regardless of whether or not the current C-OA zoning is determined to have been adopted in error, the subject property will remain a remainder "Park" parcel which may not be used for residential development without map amendment approval as required by the Subdivision Map Act.

CONCLUSION

Based on the foregoing analysis, staff finds that the property for which a Certificate of Compliance has been requested was legally created in its present size and configuration as a remainder "Park" parcel by the Map of Bolinas Beach, recorded in 1927. Further, staff finds that the Kidson appeal does not have a sufficient basis to overturn the Director's approval of the Kidson Certificate of Compliance application.

RECOMMENDATION

Staff recommends that the Planning Commission review the administrative record, conduct a public hearing; and move to deny the Kidson Appeal and sustain the Community Development Director's administrative approval of the Kidson Certificate of Compliance application.

- Attachments:
1. Resolution denying the Kidson appeal and upholding the Kidson Certificate of Compliance approval
 2. Petition for Appeal, submitted August 15, 2005
 3. Notice of Decision, Kidson Certificate of Compliance approval, August 3, 2005
 4. Location Map
 5. Assessor's Parcel Map Index Pages (Book 191 and 192)
 6. Assessor's Parcel Map
 - a. APN 191-300-01
 - b. APN 192-233-01
 - c. APN 192-243-01
 - d. APN 192-253-01
 - e. APN 192-263-01
 7. Bolinas Beach Subdivision Map (R.M. 5-44)
 - a. Sheet One – Complete site plan
 - b. Sheet Two - Eastern portion of subdivision
 - c. Sheet Three - Western Portion of subdivision
 8. Aerial Photo – Bolinas Gridded Mesa Area
 9. Districts Map of the Zoning Plan for the Bolinas-Stinson Beach Area
 10. 1927 Deed from Smadbeck to Baker (142 O.R. 62)
 11. 1927 Deed from Baker to Bolinas Beach Property Owner's Association (140 O.R. 303)
 12. Hanson Bridgett letter to Brian Crawford, dated November 20, 2003
 13. David Zaltsman letter to Hanson Bridgett, dated February 3, 2005
 14. David Zaltsman letter to Hanson Bridgett, dated March 4, 2005
 15. Hanson Bridgett letter to David Zaltsman, dated April 22, 2005
 16. David Zaltman letter to Hanson Bridgett, dated May 2, 2005
 17. Bolinas Community Public Utility District letter, dated December 27, 2004
 18. 1944 Deed from State of California to Bolinas Beach Utility District (471 O.R. 422)
 19. Bolinas Community Public Utility District letter, dated November 19, 2004

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. _____

A RESOLUTION DENYING THE KIDSON APPEAL OF THE KIDSON CERTIFICATE OF COMPLIANCE APPROVAL

ASSESSOR'S PARCEL NUMBERS 191-300-01, 192-233-01, 192-243-01, 192-253-01, and 192-263-01

OCEAN PARKWAY, BOLINAS

SECTION I: FINDINGS

- I. WHEREAS on June 7, 2005, Jeremy Kidson submitted a Certificate of Compliance application for the property identified as Assessor's Parcel Numbers 191-300-01, 192-233-01, 192-243-01, 192-253-01, and 192-263-01 located along Ocean Parkway in Bolinas.
- II. WHEREAS on August 3, 2005, based on recorded documents and information submitted by the applicant, the Community Development Director issued a determination that the subject property had been legally created in its present size and configuration as a remainder "Park" parcel on the Map of Bolinas Beach, recorded in 1927 (R.M. Book 5, Page 44), and that a Certificate of Compliance would be recorded for the property to that effect.
- III. WHEREAS on August 15, 2005, a timely appeal of the Community Development Director's Certificate of Compliance approval was filed by the Hanson Bridgett law firm, on behalf of the property owner, Jeremy Kidson. The submitted appeal asserts that: (1) the determination that the subject property was created "as a remainder 'Park' parcel" is factually and legally incorrect; and (2) the determination that the zoning governing this property is Coastal, Open Area, is factually incorrect and legally impermissible.
- IV. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on October 10, 2005, to consider the merits of the appeal, and hear testimony in favor of, and in opposition to, the project.
- V. WHEREAS the Marin County Planning Commission finds that the proposed project is not subject to the requirements of the California Environmental Quality Act (CEQA) because CEQA does not apply to projects that are ministerial in nature pursuant to Section 21080(b)(1) of CEQA.
- VI. WHEREAS the Marin County Planning Commission finds that the appeal lacks sufficient basis to overturn the Director's determination regarding the Martha Company Certificate of Compliance application because the record shows that the property for which a Certificate of Compliance has been requested was created as a remainder "Park" parcel by the Map of Bolinas Beach, recorded in 1927 and the appellant has not demonstrated that any subsequently recorded documents have modified that status. Furthermore, the determination that the subject property is a remainder "Park" parcel is based on the recorded map which created the property and in no way relies upon the current zoning designation.

SECTION II: APPEAL RIGHTS

NOW, THEREFORE BE IT RESOLVED that the Marin County Planning Commission hereby denies the Kidson appeal and upholds the Director's determination regarding the Kidson Certificate of Compliance approval based upon the information contained in the administrative record for this proceeding; and

NOW, THEREFORE BE IT FURTHER RESOLVED that this decision is final unless appealed to the Marin County Board of Supervisors. To appeal the this decision, a Petition for Appeal and a \$700.00 filing fee must be

submitted in the Community Development Agency, Planning Division, Rm. 308, Civic Center, San Rafael, no later than 4:00 p.m. on October 20, 2005.

SECTION III: VOTE

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 10th day of October 2005, by the following vote to wit:

AYES:

NOES:

ABSENT:

STEVE C. THOMPSON, CHAIRPERSON
MARIN COUNTY PLANNING COMMISSION

Attest:

Kim Shine
Planning Commission Secretary