



MARIN COUNTY COMMUNITY DEVELOPMENT AGENCY

BRIAN C. CRAWFORD, DIRECTOR

April 13, 2010

Board of Supervisors
County of Marin
3501 Civic Center Drive
San Rafael, California 94903

SUBJECT: Dwaileebe Appeal of Dwaileebe Coastal Permit (CP 10-11)
210 Elm Road, Bolinas
Assessor's Parcel 191-031-33

Dear Board Members:

Recommendation:

On March 8, 2010, the Planning Commission voted 6-0 to deny the Dwaileebe Coastal Permit application proposing to construct a new single-family residence and garage on the basis that the domestic water system serving the project does not meet all required development standards. Specifically, the three existing, permitted non-domestic wells do not meet the 100-foot setback to property lines required by the Local Coastal Program Unit 1 and the Marin County Interim Zoning Ordinance. On behalf of the Planning Commission, staff recommends that your Board adopt the attached resolution denying the appeal and Coastal Permit.

Summary:

Project Description and Background

The applicant and owner, Marc Dwaileebe, is requesting approval for the following: 1) the construction of a new 24.5-foot high, 1,997 square foot single-family residence and a 14-foot high, 540 square foot detached garage; 2) the installation of a new septic system to serve the residence; and 3) the construction of a domestic water supply system utilizing three previously-permitted non-domestic water wells to serve the new residence. Also proposed are water storage tanks for domestic use and fire suppression purposes, a pump house, and a propane tank. The proposed development meets all of the development standards of the C-RA:B2 (Coastal, Agriculture Residential, 10,000 square foot minimum lot area) zoning district including height, setbacks, and floor area ratio.

The Planning Commission was unable to find that the use of the wells for domestic purposes would not result in development constraints on adjacent properties, and consequently denied the application based on inconsistencies with requirements contained in Local Coastal Program (LCP) Unit I Policy 3 and Interim Zoning Ordinance Section 22.56.130I.A.1.a regarding provision of domestic water.

Analysis of Appeal:

Mr. Dwaileebe is requesting that the Board of Supervisors overturn the Planning Commission's decision and approve the proposed project. The bases of appeal included: (1) LCP Unit I, Policy 3 should not be applied to the project since the applicant is not proposing to construct a new well; and (2) since the wells

exist on Mr. Dwaileebe's property, changing their use does not create new development constraints on the neighboring properties (Please refer to Attachment 2).

The following provides a summary and analysis of the bases that were set forth in the appeal.

1. The appellant asserts that LCP Unit I, Policy 3 does not apply to the project as it applies to the drilling of domestic wells only.

LCP Unit I, Policy 3 applies to the utilization of domestic water wells to serve new construction. Resolution 83-253 was adopted as an amendment to the LCP to change the policy to apply to the use of a well rather than just construction. As the project intends to serve the new residence with a new domestic water system utilizing the three existing wells, LCP Unit I, Policy 3 applies. This policy allows the use of domestic water wells to serve new construction provided they maintain a 100-foot setback to property lines or that a finding be made that no development constraints are placed on neighboring properties. Therefore the appellant's assertion that LCP Unit I, Policy 3 does not apply is incorrect.

2. The appellant asserts that as the wells currently exist and are permitted for non-domestic use, changing the use from non-domestic to domestic use does not create new development constraints on the neighboring properties.

The project is for the construction of a new residence and new domestic water system (utilizing three existing non-domestic wells) to serve the residence, which requires a Coastal Permit. The three wells were permitted for non-domestic use in 2006 and did not require a Coastal Permit, therefore the requirement to maintain a 100-foot setback to property lines was not triggered nor imposed on the wells at that time. As a Coastal Permit is currently being processed, the project must be analyzed for compliance with LCP Unit I, Policy 3 which states:

"Within the service area of a community or mutual system, the use of individual domestic water wells to serve new construction shall be permitted provided: a) the community or mutual system is unable or unwilling to provide service, or b) the distribution system improvements are physically and/or economically unfeasible to construct to the site. Additionally, wells or water sources shall be at least 100 feet from property lines or, a finding shall be made that no development constraints are placed on neighboring properties."

Regardless of whether or not the wells exist currently, they must at this time meet the requirements stated in LCP Unit I, Policy 3. Policy 3 states specifically that the wells shall be located at least 100 feet from property lines or a finding shall be made that no development constraints are placed on neighboring properties. The policy is referring to the location of the wells creating the development constraints, not the change in use. Since the wells are located less than 100 feet from property lines, the project could meet the LCP and zoning regulations if it can be found that it would not result in development constraints on neighboring properties.

As a result of the location of the wells, the potential exists for the wells to limit development potential on neighboring properties. Future septic systems and other potential sources of contamination on those properties would be required to be located at least 100 feet away from these wells. The 100-foot setback encroaches onto several neighboring properties. The applicant has not submitted evidence that the owners of the affected properties have given acknowledgement or consent to the imposition of constraints on future use of portion(s) of their properties. Therefore, the inclusion of the wells in the proposed project to provide domestic water would constrain future development of these properties. The appellant asserts that the change in use does not create development constraints, that the constraints were created in 2006, and that the proposed residential development does not impose additional development constraints. Different regulations were in place at the time the wells were drilled in 2006 and as the applicant is currently requesting a Coastal Permit to construct a new

residence, the wells must meet current standards and be analyzed on their own merits and as an integral component of this new project. The three wells do place development constraints on neighboring properties and the fact that the wells were constructed in 2006 does not eliminate the presence of those constraints.

In conclusion, the proposed project is inconsistent with LCP Unit I, Policy 3 and Interim Zoning Ordinance Section 22.56.130I.A.1.a. Accordingly, staff recommends that your Board deny the Dwaileebe Appeal and Coastal Permit.

RECOMMENDED ACTION

Staff recommends that the Board take the following actions:

1. Review the administrative record;
2. Conduct a public hearing; and
3. Adopt the attached resolution denying the Dwaileebe Appeal and Coastal Permit.

REVIEWED BY:	<input type="checkbox"/>	Auditor-Controller	<input checked="" type="checkbox"/>	N/A
	<input checked="" type="checkbox"/>	County Counsel	<input type="checkbox"/>	N/A
	<input type="checkbox"/>	Human Resources	<input checked="" type="checkbox"/>	N/A

Respectfully submitted,

Reviewed by,

Kristina Tierney
Planner

Thomas Lai
Deputy Director

Attachments:

1. Board of Supervisors Resolution Denying the Dwaileebe Appeal and Coastal Permit
2. Petition for Appeal, March 15, 2010
3. Project Plans
4. Planning Commission Minutes and Draft Resolution, March 8, 2010
5. Julie Mc Clure, email of March 9, 2010

In the interest of conserving resource, the following attachment was provided to the Board of Supervisors only. A copy is available upon request and may be reviewed in the Community Development Agency, Planning Division office during regular business hours, Monday through Friday from 8:00 A.M. to 4:00 P.M.

6. Planning Commission Staff Report, March 8, 2010

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