

RESOLUTION NO. 2010-____

**A RESOLUTION OF THE MARIN COUNTY BOARD OF SUPERVISORS
DENYING THE DWAILEEBE APPEAL AND COASTAL PERMIT
210 ELM ROAD, BOLINAS
ASSESSOR'S PARCEL 191-031-33**

SECTION I: FINDINGS

- I. WHEREAS Marc Dwaileebe is requesting a Coastal Permit to: 1) construct a new 24.5-foot high, 1,997 square foot single-family residence and a 14-foot high, 540 square foot detached garage; 2) install a new septic system to serve the residence; and 3) construct a domestic water supply system (the health permit to be issued by Environmental Health Services Division), utilizing three previously permitted 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 subject property is located at 210 Elm Road, Bolinas, and is further identified as Assessor's Parcel 191-031-33.**
- II. WHEREAS the Marin County Planning Commission held a duly-noticed public hearing on March 8, 2010 and voted 6 to 0 to deny the proposed project on the basis that the project was not consistent with the Local Coastal Program, Unit 1 and the Marin County Interim Zoning Ordinance.
- III. WHEREAS on March 15, 2010, Marc Dwaileebe filed a timely appeal of the Coastal Permit denial to the Marin County Board of Supervisors.

- a. 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.

- b. The applicant 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 development constraints on future use of portions 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.

- IV. WHEREAS the Marin County Board of Supervisors held a duly-noticed public hearing April 13, 2010, to consider the merits of the project and hear testimony in favor of and in opposition to the project.
- V. WHEREAS the Marin County Board of Supervisors finds that the proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act, per Section 15303, Class 3 of the CEQA Guidelines because it entails the construction of a single-family residence and would not result in potentially significant impacts to the environment.

VI. WHEREAS the Marin County Board of Supervisors finds that the proposed project is not consistent with the Local Coastal Program, Unit 1 and the Marin County Interim Zoning Ordinance for the following reasons:

- a. The project is not consistent with LCP Unit 1 Policy 3 and Section 22.56.130I of the Interim Zoning Ordinance regarding well setbacks to property lines as the project would utilize for domestic purposes three wells that are located less than 100 feet from all property lines. The applicant has not demonstrated that deed restrictions have been recorded or can likely be obtained from adjoining properties acknowledging the constraints that are placed on those lots as a result of the wells. As a result, the project would impose development constraints on neighboring properties and is therefore not approvable.

VII. WHEREAS the Marin County Board of Supervisors finds that the proposed project is not consistent with all the mandatory findings to approve the Coastal Permit application (Section 22.56.130I of the Marin County Code) as specified below.

A. Water Supply

The proposed residence would be served by three existing non-domestic wells (permitted and drilled in 2006) and a new domestic water system; however, the wells do not meet the 100-foot setback to property lines required for domestic water wells by LCP Unit I Policy 3 and Section 22.56.130I of the Interim Zoning Ordinance. Eight (8) lots are within the 100-foot setback area associated with domestic use of the three wells and therefore the project imposes development constraints on those properties. As a result, the project would not be able to be served by a permanent domestic water supply and is not approvable.

B. Septic System Standards

The residence would be served by a new onsite septic system, which has been permitted by the Marin County Environmental Health Services Division as deemed appropriate to serve the project.

C. Grading and Excavation

Grading and excavation would be limited to the amount necessary for installing the new septic system and construction of the residence. The property is very flat and therefore minimal grading and excavation is required. The Department of Public Works, Land Use and Water Resources Division, has reviewed and approved the project as consistent with Marin County grading requirements.

D. Archaeological Resources

A review of the Marin County Archaeological Sites Inventory Maps on file in the Planning Division indicates that the subject property is located in an area of high archaeological sensitivity. However, conditions of project approval would require that if archeological resources are discovered during site preparation or construction, the applicants would have to follow archeological preservation protocol, including cessation of work and evaluation by a qualified archeologist to determine if any

modification to the project would be required. Additionally, there are no mapped archeological resources located near the project site.

E. Coastal Access

The subject property is not located between the sea and the first public road, or adjacent to a coastal area identified by the Local Coastal Program Unit I, where public access is desirable or feasible. The site is not located near any tidelands or submerged lands subject to the public trust doctrine.

F. Housing

The proposed project would add to the housing stock of the Bolinas community.

G. Stream and Wetland Resource Protection

The proposed project is not situated in an area subject to the County streamside conservation policies as identified on the Natural Resources Map for Unit I of the Local Coastal Program or near any ephemeral or intermittent stream indentified on the Bolinas Quadrangle of the U.S. geological Survey Maps.

H. Dune Protection

The proposed project is not located in a dune protection area as indentified by the Natural Resources Map for Unit I of the Local Coastal Program.

I. Wildlife Habitat

The Natural Resources Map for Unit I of the Local Coastal Program and the California Natural Diversity Database indicate that the subject property is located in an area potentially containing the following rare wildlife species: Ricksecker's water scavenger beetle (*Hydrochara rickseckeri*) and the Monarch butterfly (*Danaus plexippus*). The project site does not contain suitable habitat for either species, per letters from biologist Daniel Edelstein dated October 6, 2009 and March 23, 2009, therefore construction of the project would not affect either species.

J. Protection of Native Plant Communities

The Natural Resources Map for Unit I of the Local Coastal Program and the California Natural Diversity Database indicates that the subject property is located in an area containing the Coast yellow Leptosipon (*Leptosiphon croceus*); however, the project site does not contain suitable habitat for either species, per letters from biologist Daniel Edelstein dated October 6, 2009 and March 23, 2009 therefore construction of the project would not affect either species.

K. Shoreline Protection

The proposed project is not located adjacent to the shoreline or within the Bluff Erosion Zone established by the Bolinas Gridded Mesa Plan.

L. Geologic Hazards

Review of the Alquist-Priolo Special Studies Zone maps indicates that the subject property lies outside the delineated boundaries of the San Andreas Fault zone. Therefore the project poses no safety threats relative to geologic hazards.

M. Public Works Projects

The proposed project will not affect any existing or proposed public works project in the area.

N. Land Division Standards

No land division is proposed as part of this project.

O. Visual Resources

The project entails the construction of a single-family residence and detached garage. While the project would be visible to neighbors, it would not impact any neighbors or visual resources in the area as the development would be very modest in size, in keeping with the surrounding residential neighborhood, and would not block the views of any neighbor.

P. Recreation/Visitor Facilities

The proposed project would not provide commercial or recreational facilities, and the project site is not governed by VCR (Village Commercial Residential) zoning regulations which require a mixture of residential and commercial uses have any impact upon recreation or visitor facilities.

Q. Historic Resource Preservation

The subject property is not located within any designated historic preservation boundaries of the Bolinas community as identified in the Marin County Historic Study for the Local Coastal Program, and the proposed project does not entail alterations to a structure that was constructed prior to 1931.

SECTION II: ACTION

NOW, THEREFORE BE IT RESOLVED that the Marin County Board of Supervisors hereby denies the Dwaileebe Coastal Permit application based on the inability to make all the required affirmative findings that the project is consistent with the goals and policies of the Local Coastal Program Unit I and the Interim Zoning Ordinance.

SECTION III: VOTE

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin, State of California, on the 13th day of April, 2010.

AYES:

NOES:

ABSTAIN:

ABSENT:

JUDY ARNOLD, PRESIDENT
MARIN COUNTY BOARD OF SUPERVISORS

Attest:

Matthew H. Hymel
Clerk of the Board of Supervisors

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