



County of Santa Cruz

PLANNING DEPARTMENT

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ALVIN D. JAMES, DIRECTOR

Agenda: March 21, 2000

March 9, 2000

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

SUBJECT: PUBLIC HEARING TO CONSIDER AN APPEAL OF THE PLANNING COMMISSION'S APPROVAL OF APPLICATION NO. 99-0288, A PROPOSAL TO DIVIDE AN EXISTING PARCEL INTO FOUR PARCELS AND A REMAINDER (BIOTIC RESERVE). REQUIRES A MINOR LAND DIVISION AND A RESIDENTIAL DEVELOPMENT PERMIT TO ALLOW PARCEL AVERAGING. PROPERTY LOCATED ON THE SOUTHWEST CORNER OF FAIRWAY DRIVE AND COYOTE CANYON; SOQUEL PLANNING AREA; APN 040-012-12; APPLICANT: MICHAEL ZELVER; OWNER: ALAN L. GOLDSTEIN APPELLANT: WILLIAM PARKIN

Members of the Board:

BACKGROUND

On December 8, 1999, at a noticed public hearing, the Planning Commission considered Application No. 99-0288, a request to divide an existing parcel of 13.32 acres into four, single-family residential parcels, each a minimum of one acre, and a remainder parcel of approximately 8.21 acres (a biotic reserve). After receiving testimony and discussing relevant issues affecting the project, including biotic resource preservation, septic suitability, neighborhood compatibility, project density, secondary access, and parcel averaging, the Planning Commission continued the hearing to January 26, 2000, with a request for additional information.

On January 26, 2000, the Planning Commission considered the contents of the continuation letter, received additional testimony, had further discussion, and approved the Minor Land Division with revised Conditions of Approval.

The revised Conditions are included as Attachment "1," the minutes from the December 8, 1999 Planning Commission meeting as Attachment "2," and the minutes from January 26, 2000 Planning Commission meeting as Attachment "3." A copy of the staff report to the Planning Commission is included as Attachment "4" and the continuation letter is included as Attachment "5."

The Planning Commission's decision was subsequently appealed by Mr. William Parkin, Wittwer & Par-kin, LLP, on behalf of Mr. James Gerard, on February 7, 2000, pursuant to the provisions of County Code Sections 14.01.3 13 and 18.10.340. A copy of the appeal letter is included as Attachment "6." This matter is now before your Board for your consideration,

ISSUES OF THE APPEAL AND STAFF RESPONSES

In a letter dated February 7, 2000, appealing the decision of the Planning Commission, Mr. Parkin states that "... the project violates a number of provisions of the County Code and State law, which include, but are not limited to six specifically stated issues."

1. *Approval of the subdivision as a minor land division, instead of a subdivision of five parcels.*

The project proposes to create four, single-family residential parcels and one remainder parcel (a biotic reserve). County Code Section 14.01.107.6 and State Map Act Section 66424.6 support the classification of the biotic reserve as a "remainder parcel".

County Code Section 14.01.107.6(a) provides that "the subdivider may designate as a remainder that portion which is not intended for the purpose of sale, lease, or financing," and that "the designated remainder or omitted parcel shall not be counted as a parcel for the purpose of determining whether a parcel or final map is required." This distinction is important because a minor land division can create no more than four parcels and requires a Parcel Map, whereas the creation of five or more lots is considered a subdivision and requires a Final Map. Additionally, the rural density matrix determination for the project allows for a maximum of four parcels. Condition of Approval III.C requires that "the remainder parcel be protected and managed for the benefit of the native plants in perpetuity," and sets forth specific procedures for ensuring the protection and preservation of the habitat. The remainder parcel is not intended for the purpose of sale, lease, or financing, and therefore qualifies as a remainder parcel. County Code Section 14.01.107.6(a) is consistent with the language of State Map Act Section 66424.6.

This same question was raised by the Planning Commission during the December 8, 1999 hearing, and was addressed in the January 14, 2000 continuation letter as Item No. 4 (reference Attachment "5"). Copies of the referenced County Code and State Map Act sections are attached to the continuation letter as Exhibits "J" and "K." Planning staff also consulted with County Counsel on this matter.

2. *Violation of the California Environmental Quality Act by failing to perform adequate review pertaining to, but not limited to, an adequate evaluation of biotic impacts and adequacy of analysis concerning septic suitability.*

The proposed minor land division was originally submitted under Application No. 97-0267 on December 30, 1997. That application proposed to divide the 13.32 acre parcel into four, single-family residential parcels of roughly equal size each with building envelopes based on the minimum setbacks established by the zone district set squarely within each parcel. Because listed plant species were found to be present on a nearby site (the southeast corner of Fairway Drive and Coyote

Canyon), a biotic report was required for this proposal. Although no listed species were documented on the subject parcel, the report identified the site as coastal terrace prairie habitat and revealed that the configuration of lots and building envelopes in the manner proposed would highly disturb and fragment the habitat. Given that the probability of survival of this native grassland habitat would be increased by “clustering” the building envelopes outside of the native grasses to the maximum extent possible, Planning staff recommended that the applicant withdraw the application and reapply with a design which would minimize impact to the habitat. Environmental Planning staff also recommended that portions of the parcel slated for biotic preservation be held under title separate from the residential lots as, in their experience, protection of habitat is generally more successful when a separate biotic “reserve” is created, rather than individual biotic “easements” overlaid on each lot. Thus, the application was withdrawn on December 14, 1998.

Application No. 99-0288 was submitted on May 5, 1999. The revised project proposal creates four, single-family parcels clustered along the northern property line with each parcel containing a minimum of one acre as required by the “RA” zone district. The design utilizes a biotic resource map which ranked the resources present according to level of significance. The remaining 8.3 acres was designated as a biotic reserve and classified as a remainder parcel. Parcel averaging was used to comply with the maximum allowed density of 2.5 acres per dwelling unit as determined by the rural density matrix.

An Initial Study was prepared for the project and is included as Attachment “4” (December 8, 1999 Staff Report to the Planning Commission, Exhibit “E”). In accordance with the California Environmental Quality Act and the County Environmental Review Guidelines, the project was considered by the Environmental Coordinator on August 9, 1999. A Mitigated Negative Declaration was issued on September 16, 1999. The subjects of the Negative Declaration Mitigations include the following requirements: protection and preservation of the remainder parcel (biotic reserve); designation of two septic disturbance areas within the remainder parcel and re-establishment of the vegetation disturbed within the remainder parcel (biotic reserve); and field verification by the project biologist that installation of drainage pipes do not disturb coastal terrace prairie.

- 3. Failure to properly evaluate and score the site according to the Rural Density Matrix and improper density averaging, and therefore, allowing a land division in excess of what is permissible.*

County Code Section 13.14, Rural Density Matrix, sets forth the procedures by which to calculate the development potential of rural land based upon the availability of services, environmental and site specific constraints, and resource protection mandates. The matrix considers nine site components: type of access, groundwater quality, water resources protection, timber resources protection, biotic resource protection, erosion potential, seismic character, landslide potential, and fire hazard rating. The analysis also includes consideration of Overriding Acreage Maximum Density Policies as outlined in County Code Section 13.14.070.

Several components of the matrix were brought into question, including: access, water resources protection (specifically septic suitability), and biotic resources protection. Overriding Policy 5.1.5(a), Land Divisions & Density Requirements in Sensitive Habitats/Grasslands, was also

discussed.

The issue raised regarding the access score dealt with confirming the ability to acquire secondary access to Soquel Avenue via Coyote Canyon/Victory Lane, a private road, as required due to the dead end condition of Fairway Drive. The applicant submitted proof of title to the required secondary access route from Santa Cruz Title Company. The documents submitted were reviewed and approved by the County Surveyor. These documents are included in the January 14, 2000 Planning Commission continuation letter.

The Water Resources Protection score was challenged because Planning staff utilized the "characteristics of sanitation" category: "septic system in areas without known problems". Neighboring property owners took exception to the classification as many have experienced septic system problems in this area. Environmental Health Services Staff testimony confirmed that system problems do exist in the area, but upslope of the proposed project leach field locations. This is due to the prevalence of upslope clay soils which do not percolate well. The soil character in the location of the proposed leach field locations is more alluvial in nature. Regardless, County Code Section 13.14.080, Resource and Constraint Data, directs staff determinations to be based on existing data base (in this case, the Measure J Septic System Problem Areas Map) and parcel specific inspection. The subject parcel is not within a mapped septic problem area. Furthermore, the results of the applicant's percolation tests were reviewed and accepted by Environmental Health Services which meets the specific test required by County Code Section 13.14.080 for a more detailed staff evaluation (reference Attachment "5", Continuation letter, Item No. 2).

Project opponents also disputed the granting of the maximum score on the Biotic Resource Matrix which requires that development activities be located outside *designated* important wildlife habitats. This rating was granted because the identified habitat classification, coastal terrace prairie located *outside the coastal zone* with no listed plant or animal species present, is not classified as an environmentally sensitive habitat by either County Code Chapter 16.32, Sensitive Habitat Protection, or General Plan Policy 5.1.5, Land Divisions & Density Requirements in Sensitive Habitats/Grasslands, which recognizes only grassland *within the coastal zone*. The Environmental Planning staff relied on a provision of CEQA to require the biotic reserve to mitigate the impact of the proposed land division rather than on policies contained within the County Code of the County's General Plan. The Planning Commission agreed with staffs matrix calculation which bases the density determination on the provisions and definitions contained within the County Code and the County's General Plan.

With respect to density averaging, the proposed project meets the minimum one acre parcel size required by the "RA" (Residential Agriculture) zone district and the minimum 2.5 acre parcel size required by the rural density matrix determination, as required by County Code Section 13.10.030(a), Allowable Average Density. Parcel averaging is also provided for by General Plan policy 2.3.3 to reduce overall site disturbance and minimize grading and impervious surfaces.

4. *Failure to conduct an adequate Design Review pursuant to Chapter 13.11.*

County Code Chapter 13.11, Site, Architectural and Landscape Design Review, defines the

procedure for design review of specific project types. County Code Section 13.11.040, Projects Requiring Design Review, specifically defines the types of project which are subject to this review.

Section 13.11.040(c) requires design review for “all minor land divisions occurring within the Urban Services Line or Rural Services Line.” This minor land division is located outside the Urban Services Line and the Rural Services Line. Therefore, Chapter 13.11 does not apply to this project.

Current market conditions indicate that the proposed residential parcels would be developed with custom homes, as evidenced from the development which has occurred on the recently subdivided land at the southeast corner of Fairway Drive and Coyote Canyon. Although submittal of specific architecture is not a requirement of this project and has not been submitted, many aspects of the County’s design review policies *have* been incorporated into both the project design and Conditions of Approval:

- a. County Code Section 13.11.072(a)(1), Compatible Site Design:
 Fairway Drive has a unique pattern of development. The north side of the street is developed with small single-family residentially zoned parcels, while the south side is zoned residential agriculture with acreage parcels. County Code Section 13.11.072(a)(iii) directs applicants to analyze surrounding patterns of development by including one block on each side of the proposed site. In the case of the subject property, the northern adjacency is smaller, single-family parcels, the southern a riparian corridor, the western acreage parcels, and the eastern acreage parcels. Creation of four, one acre minimum, single-family residential parcels along the northern boundary of the subject property with a biotic reserve along the balance of the southern portion of the parcel is therefore not out of character with surrounding development.

 Neighboring property owners expressed their fears that “monster homes” would be built on the proposed residential parcels. Many communities have experienced a trend towards the construction of new homes which are out of scale with existing development. Conditions of Approval II.D.4, II.D.6, II.D.7, II.E.5, and II.E.6 reduce the maximum allowable building envelope sizes, increase minimum front yard setbacks, restrict areas which may be included in calculation of net developable area, and restrict the square footage and height of future residences.
- b. County Code Section 13.11.072(b)(2), Views:
 In order to maintain the *private* viewshed along Fairway Drive of the grassland and evergreen forest, the Planning Commission added Condition of Approval II.F.3.f to restrict the height of the landscaping allowed between a large proposed opening between the developable portions of Lots 1 and 2.
- c. County Code Section 13.11.072(i)(1), Cluster Design:
 Cluster site design has been utilized to protect the native grassland and riparian corridor.

- d. County Code Section 13.11.075, Landscaping:
Condition of Approval II.F.3.e restricts the allow-able landscaping to only species compatible with the preservation of the adjacent native grasslands. Prohibiting non-native species, invasive species, and landscaping which may require incompatible irrigation methods, increases the probability of the successful preservation and management of the proposed, adjacent biotic reserve.

5. *Failure to comply with minimum site frontage and width requirements pursuant to the County Code.*

County Code Section 13.10.323, Development Standards for Residential Zone Districts, requires a minimum site frontage of 60 feet and a minimum site width of 100 feet in the “RA” zone district. Lots 1, 2 and 4 have site frontages which exceed 60 feet. Lot 3 is a corridor access lot (or “flag lot”), consistent with County Code Section 13.10.520(c), Site Frontage/Corridor Access Lots:

A corridor access lot shall be permitted in any zone district. The corridor shall have a frontage and width of not less than 20 feet, and a length not to exceed 150 feet; the area of the access corridor shall not be included in the determination of site area.

Lots 1 through 4 all have site widths which exceed 100 feet. Pursuant to County Code Section 13.10.700, site width is defined as:

The horizontal distance between the side property lines of a site measured on an alignment parallel to the frontproperty line along the rear line of the requiredfront yard

Additionally the septic corridor access ways for Lots 1 and 2 have been designed to the minimum 20 foot right-of-way standard to accommodate construction vehicles to install the proposed leach fields. The areas of the septic corridors are not included in the net area calculation pursuant to County Code Section 13.10.700 (definition of “site area” and “site area, net”). Reference Condition of Approval II.D.7 (Attachment “1”).

6. *Failure to comply with all provisions of the General Plan and the County Code.*

No subsequent, specific citations of concern have been submitted by the appellant. Planning staff is available to address any additional concerns of the appellant during the hearing.

SUMMARY

Minor Land Division No. 99-0288 conforms with County Code Section 13.10.320, Residential Districts; County Code Section 13.10.520(c), Site Frontage/Corridor Access Lots; County Code Section 13.14, Rural Density Matrix; County Code Section 14.01.107.6, Designated Remainder and Omitted Parcels; State Map Act Section 66424.6 (remainder lot); and complies with the Environmental Review Guidelines required by CEQA for creation of a four lot minor land division with a remainder parcel (biotic reserve) by means of parcel averaging. Additionally, although not

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subject to the provisions of County Code 13.11, Site, Architectural and Landscape Design Review, the project design and conditions comply with the policies applicable to proposed project, including: compatible site design and landscaping, protection of private views where feasible, and a cluster design to protect biotic resources.

RECOMMENDATION

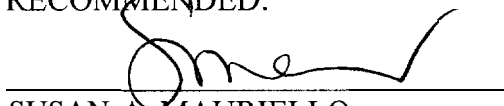
It is, therefore, RECOMMENDED that your Board deny the appeal and uphold the Planning Commission's approval of Application No. 99-0288.

Sincerely,



Alvin D. James
 Planning Director

RECOMMENDED:



SUSAN A. MAURIELLO
 County Administrator Officer

Attachments:

1. Conditions of Approval as approved by the Planning Commission on January 26, 2000.
2. Summary Planning Commission minutes of December 8, 1999.
3. Summary Planning Commission minutes of January 26, 2000.
4. Staff Report to the Planning Commission dated December 8, 1999.
5. Continuation letter to the Planning Commission dated January 14, 2000.
6. Appeal letter of William Parkin, Wittwer & Parkin, LLP, on behalf of James Gerard, dated February 7, 2000.
7. Tentative Map for Application 99-0288 (on file with the Clerk of the Board).

cc: William Parkin, Wittwer & Parkin, LLP, 147 South River Street, Suite 221, Santa Cruz, CA, 95060
 Michael Zelter, 26 1 Fourth Avenue, Santa Cruz, CA 95062
 Alan L. Goldstein, Trustee ETAL TC, c/o Pacific Sun Properties, 734 Chestnut Street, Santa Cruz, CA 95060

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