

**Before the Board of Supervisors in and for the
County of Monterey, State of California**

Resolution No: 10 – 239

Continued from June 8, 2010 to consider:)

- a. Appeal by Michael Moeller from the January 26, 2010 Planning Commission denial of an application (PLN060251/Moeller) for a Lot Line Adjustment and new single family home;)
- b. Application for a Combined Development Permit consisting of: (1) Coastal Development Permit for a Lot Line Adjustment consisting of an equal exchange of land between two legal lots of record resulting in no change of area: Lot 5 (APN: 243-181-005-000/192 San Remo Road) has 0.61 acres and Lot 6 (APN: 243-181-006-000/194 San Remo Road) has 0.85 acres; (2) Coastal Administrative Permit and Design Approval to allow the construction of a three-story 3,994 square foot single family dwelling with a 643 square foot three-car garage, 858 square feet of deck area, and grading (approximately 523 cubic yards of cut and 89 cubic yards of fill); (3) Coastal Development Permit for development on slopes in excess of 30%; (4) Coastal Development Permit for the removal of nine Monterey pine trees and eight coastal live oak trees;)
- c. Denial of a Fee Waiver request.)
(PLN060251/Moeller, 192 and 194 San Remo Drive, Carmel Area Land Use Plan,)
Coastal Zone))

The Moeller application (PLN060251) came on for a de novo hearing before the Monterey County Board of Supervisors on April 6, May 11, June 8, and July 27, 2010. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Board of Supervisors finds and decides as follows:

FINDINGS

- 1. FINDING:** **CONSISTENCY** – The Project is not consistent with the applicable plans and policies which designate this area as appropriate for development.
- EVIDENCE:** a) An application (PLN060251/Moeller) was submitted by Michael Moeller (“applicant”) requesting a Coastal Development Permit for a Lot Line Adjustment (“LLA”) between Lots 5 and 6. Subsequently, an application (PLN070629/Moeller) was submitted for a Coastal Administrative Permit and Design Approval for a single family residence (“SFR”) and 3-car garage on a newly configured Lot 5 (APN: 243-181-005-000/192 San Remo Road). Monterey County consolidated the two applications (the “project”) and prepared one CEQA document for the whole action under one Combined Development Permit (PLN060251). A Mitigated Negative Declaration was prepared and circulated; however, denial of an application is statutorily exempt from

CEQA pursuant to Section 15270 of the CEQA Guidelines. (See Finding 5.)

- b) The project site is located at 192 and 194 San Remo Drive, Carmel Area Land Use Plan. The parcel is zoned "LDR/1-D (CZ)" Low Density Residential, acre per unit with Design Control (Coastal Zone), which allows development of one single family residence (SFR) on a legal lot.
- c) Applications (PLN060251) for a LLA between Lots 5 and 6 plus development of one SFR on Lot 5 were filed by the applicant following action by the California Coastal Commission (CCC) on a prior application (PLN040050). In that prior action, the Board of Supervisors had approved a LLA between Lots 5 and 6 and development of one new SFR on Lot 6 and one new SFR on Lot 5. On appeal to the CCC, the CCC approved the SFR on Lot 6, but conditioned the project such that the LLA was subject to further review of access impacts and LCP consistency. Approval by the CCC also included a condition limiting the home on Lot 5 to three bedrooms due to septic limitations. As part of approving the development on Lot 6, the CCC granted a variance for the rear setback measured from the common parcel line of Lot 5.
- d) The project planner conducted site inspections. Lot 6 is under construction with a new SFR (PLN040050), but Lot 5 is undeveloped with a separate application to develop a new SFR (PLN060251).
- e) During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in:
 - Monterey County General Plan and Local Coastal Plan (LCP)
 - Carmel Area Land Use Plan
 - Monterey County Zoning Ordinance (Title 20)
 - Chapter 20.12 of the Monterey County Zoning Ordinance regulations for development in the Low Density Residential zone
 - Chapter 20.70 of the Monterey County Zoning Ordinance regulations for Coastal Development Permits
 - Monterey County Coastal Subdivision Ordinance (Title 19)
- f) The Carmel Area Land Use Advisory Committee heard the prior application (PLN040050) on Monday, April 5, 2004, and voted to recommend denial of the proposed house design but approval of the proposed lot line adjustment as well as the waiver to allow development on slopes of 30% or greater (4-0 vote). (See LUAC meeting minutes dated April 5, 2004.)

The current project consisting of a house and LLA was referred to the Carmel Highlands Land Use Advisory Committee (LUAC) for review on June 4, 2007. The LUAC voted to deny the project as presented (4-0) based on Design (modern v rural) and access concerns, and recommended that the applicant reduce deck area to retain some trees and avoid 30% slope.

The applicant addressed the LUAC concerns. In light of the neighbor issues regarding the access, staff referred the LLA (PLN060251) back to the LUAC on April 21, 2008. The LUAC continued the item to address

septic conditions, but the item was not referred back to the LUAC because that matter was addressed by the Regional Water Quality Control Board (RWQCB). *See Finding 3*

- g) The Board determined that the project is not consistent with the Local Coastal Program visual resource policy to be subordinate to and blend into the environment (Policy 2.2.3.6 Carmel LUP). As proposed, the project is inconsistent with the size and massing for this area. Based on Assessor Parcel Maps for this area, the average lot size in the general vicinity is about 1.10 acres. The subject parcel, Lot 5, is 0.61 acres. Based on County records for development, the average size of structural improvements is approximately 2,260 square feet with a range of 1,920 to 4,770. The proposed project includes a 3,994 home with a 643 square foot garage (4,637 sf total) plus 858 square feet of deck area. The LLA and SFR as proposed would result in two homes in excess of the average size in close proximity to each other, leading to a congested appearance. The existing lot configuration of Lot 5 could reasonably accommodate a single family dwelling and may allow greater separation vertically and horizontally from other homes in the area that are either existing or under construction. While alternatives exist, they have not been presented in a manner to be fully evaluated. This decision on the project does not preclude the applicant from submitting an alternative development proposal that would be evaluated and heard in the normal course in accordance with County procedures.
- h) The applicant's right of vehicular access to the proposed Lot 5 is in dispute. Access to the subject site would be provided by private road easements, but the other easement holders dispute the applicant's rights to use the easements for the project as proposed. A neighbor to the north, Mary de la Roza, argues that the historical right to access Easement #3 had been abandoned (Letter from William B. Daniels, dated April 5, 2010). Applicant argues that he has legally preserved the easement and has access to Lot 5 over the property of Ms. de la Roza. The neighbors to the east (Leland and Judy Lewis) argue that the project does not have emergency access from Mentone Road via Easement #2 (Testimony at April 6, 2010 hearing). The Lewis's state that they own a 10-foot strip of land that separates the emergency access easement on the Lewis property from Mentone Road, and that they have not granted an emergency access easement over the 10 foot strip. The neighbor to the west (Misaka Olson), however, testified at the April 6, 2010 hearing that applicant's proposed use of Easement #1 for vehicular and emergency access to the proposed project would overburden the easement. These disputes over private easements are matters to be resolved among the parties, but until such resolution, the Board cannot find with certainty that Lot 5 as proposed to be configured through the LLA would have adequate access.
- i) The Moeller application (PLN060251) came on for public hearing before the Monterey County Planning Commission on December 9,

2009 and January 27, 2010. A noticed public hearing was held before the Monterey County Planning Commission on December 9, 2009. The Commission expressed concern with density and access and adopted a Resolution of Intent to deny the project and continued the hearing on the project to January 27, 2010. On January 27, 2010, the Planning Commission adopted a resolution denying the project application.

- j) Pursuant to Monterey County Code Section 20.86.030.A, the applicant filed an appeal of the January 27, 2010, discretionary decision of the Planning Commission to deny the Project.
- k) Said appeal was filed with the Clerk to the Board of Supervisors on February 8, 2010, within the 10-day time prescribed by Monterey County Code Section 20.86.030.C. Complete copies of the appeals are on file with the Clerk to the Board and in the Planning Department Project File PLN060251.
- l) Said appeal was timely brought to a duly noticed public hearing before the Monterey County Board of Supervisors within 60 days from receipt of the appeal (April 6, 2010). The Board of Supervisors adopted a Resolution of Intent to deny the project and directed staff to return with appropriate findings. On May 11, the Board directed staff to June 8, the Board directed staff to review new evidence relative to wastewater capabilities of Lot 5 and continued the matter to July 27, 2010 (see *Finding 2e*).
- m) The application, project plans, and related support materials for the proposed development are found in Project File PLN060251 and PLN070629.

2. **FINDING:** **SITE SUITABILITY** – The site is not physically suitable for the use proposed.

EVIDENCE: a) The project has been reviewed for site suitability by the following departments and agencies: RMA - Planning Department, Carmel Highlands Fire Protection District, Public Works, Environmental Health Division, Water Resources Agency, California Coastal Commission, and Regional Water Quality Control Board.

- b) The following technical reports by outside consultants were prepared to assess potential impacts to Biological Resources, Archaeological Resources, and Soil/Slope Stability.
 - Geotechnical report prepared by Pacific Crest Engineering Inc. Watsonville, California. (dated April 2003).
 - Slope Stability Evaluation prepared by Pacific Crest Engineering Inc. Watsonville, California. (dated September 2008).
 - Soil Analysis, prepared by BioSphere Consulting, dated April 23, 2008.
 - Additional Percolation Tests and Addendum to Geotechnical and Percolation Investigation Report prepared by Soils Surveys, Inc. dated November 2, 2001.
 - Preliminary Archaeological Reconnaissance prepared by Mary

- Doane, B.A., and Trudy Haversat, SOPA, of Archaeological Consulting, dated December 2, 2002.
- Biological Survey prepared by Verne Yadon, dated March 14, 2003.
 - Forest Management Plan, 194 San Remo Road, prepared by Forest City Consulting, Matt Horowitz and Glenn C. Flamik. Dated September 14, 2006.
 - Forest Management Plan, 194 San Remo Road, prepared by Forest City Consulting, Matt Horowitz. Dated March 20, 2007.
- c) Testimony received at the public hearings indicate there is a dispute among easement holders as to access to the lots as proposed to be reconfigured (*Finding 1h*).
- d) Staff conducted site inspections to assess suitability of the site for this use. While the existing lot configuration would allow reasonable development of a SFR, the proposed configuration would require improvements to private easements (*Finding 1h*), and there is dispute as to the legal right to make those improvements. As such the proposed configuration is not suitable for the existing access conditions, and the site is thus not physically suitable for the proposed use.
- e) Applicant submitted a letter on June 7, 2010 in which Applicant contends that denial of the lot line adjustment is a regulatory taking because, applicants argue, they cannot develop on the currently configured Lot 5 and it would be futile to apply again for a lot line adjustment. These contentions are not supported by the evidence. Multiple avenues for development on applicant's property exist which the applicant has not yet pursued, including proposing development on currently configured Lot 5 with an alternative waste treatment system, a lot line adjustment with a different building site, or a different design for the house either with or without a lot line adjustment. The Board's decision on the current application, which is for both a lot line adjustment and a single family dwelling, does not preclude the County from approving alternative proposals; however, the applicant has not presented a detailed application for these alternatives, and the County therefore has not had the opportunity to evaluate them or process them through the normal review and hearing process. Each of the applicant's reasons for "futility" are without basis:
- 1) In regard to the easement dispute, resolution of the easement dispute is within the applicant's control. The applicant can obtain resolution of the easement dispute either through agreement with the easement holders or through court order. Following that resolution, the County would have the necessary definitive information concerning available access.
 - 2) the Board's determination that the 3994 square foot house as proposed is inconsistent with the Local Coastal Program does not

preclude the Board finding that a different house proposal - for example, one different in size, design, or location -- would be consistent with the LCP.

- 3) In regard to sewage treatment, the applicant has not presented a proposal for an alternative wastewater treatment system. The Biosphere Consulting letter does not rule out the possibility of an alternative treatment system. Until the applicant applies for an alternative treatment system and provides sufficient information to enable the County to evaluate it, it is premature to conclude that Lot 5 is undevelopable. (See June 29, 2010 memo from County of Monterey Health Department to Carl Holm)

For all of these reasons, it is clear that the applicant has not exhausted all possible applications for development nor demonstrated that the denial of this particular application is indicative of County action on alternate applications for development on Lot 5.

- f) The application, project plans, and related supportive materials for the proposed development are found in Project Files PLN040050, PLN060251 and PLN070629.

3. FINDING:

HEALTH AND SAFETY - The establishment, maintenance, or operation of the project applied for will under the circumstances of this particular case be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

- EVIDENCE:**
- a) The project was reviewed by RMA - Planning Department, Carmel Highlands Fire Protection District, Public Works, Environmental Health Division, Water Resources Agency, California Coastal Commission, and Regional Water Quality Control Board.
 - b) On December 5, 2008, the RWQCB approved a Waiver of Waste Discharge Requirements for Alternative Onsite Wastewater Disposal Systems (RWQCB Waiver Resolution No. R3-2008-0060). This permit is based on the proposed design and is valid for five years through December 2013. The applicant does not have approval for an alternate wastewater treatment system on Lot 5 based on the existing Lot configuration.
 - c) Neighbors' testimony as to the safety, drainage, and other impacts of the project due to the slope of the properties and constrained access.
 - d) Preceding findings and supporting evidence for PLN060251.

4. FINDING:

NO CODE VIOLATIONS - The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County's zoning ordinance. No

- code violations exist on the property.
- EVIDENCE:**
- a) Staff reviewed Monterey County RMA - Planning Department and Building Services Department records and is not aware of any Monterey County Code violations existing on subject property.
 - b) Staff conducted multiple site inspections and researched County records to assess if any violation exists on the subject property.
 - c) There are no known violations on the subject parcel.
 - d) The application, plans and supporting materials for the proposed development are found in Project File PLN060251.
5. **FINDING:** **CEQA (Exempt)** - The project is statutorily exempt from environmental review.
- EVIDENCE:**
- a) The California Environmental Quality Act (CEQA) (Public Resources Code section 21080(b)(5) and CEQA Guidelines Section 15270) statutorily exempt projects that a public agency rejects or disapproves. An Initial Study/proposed Mitigated Negative Declaration (MND) was prepared and circulated from October 5, 2009 through November 6, 2009 (SCH# 2009101016); however, the Board is not adopting the MND.
 - b) The County is rejecting the appeal and disapproving the project.
6. **FINDING:** **LOT LINE ADJUSTMENT** –The parcels resulting from the lot line adjustment do not conform to County’s general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances.
- EVIDENCE:**
- a) The parcel is zoned “LDR/1-D (CZ)” Low Density Residential, acre per unit with Design Control (Coastal Zone). Lot 5 (APN: 243-181-005-000/192 San Remo Road) has 0.61 acres and Lot 6 (APN: 243-181-006-000/194 San Remo Road) has 0.85 acres meaning both lots have less area than the one acre minimum.
 - b) There are two legal lots that can each develop one SFR. The project area has a total of 1.46 acres [0.61 acres (Lot 5) and 0.85 acres (Lot 6)]. Proposed amendments include exchanging an equal amount of land so that Lot 5 (APN: 243-181-005-000) remains with 0.61 acres and Lot 6 (APN: 243-181-006-000) remains with 0.85 acres.
 - c) Pursuant to Government Code Section 66412(d) (Subdivision Map Act) and Monterey County Subdivision Ordinance (Section 19.09.005) the lot line adjustment is among four or fewer existing adjoining parcels, and a greater number of parcels than originally existed will not be created as a result of the lot line adjustment. (*see Findings 7 & 8*)
 - d) Wastewater systems must be designed within the property that they serve. The applicant does not have approval for an alternate wastewater treatment system on Lot 5 within the existing configuration of Lot 5 (*Finding 3b*).
 - e) San Remo Road and Mentone Road provide the primary access to this area, and are private roads. The applicant has not adequately proven a

right to access (*Finding 1h*).

- f) The project is not consistent with County policy and regulations (*Finding 1*).
- g) The application, plans and supporting materials for the proposed development are found in Project File PLN060251.

7. **FINDING:** **LOT LINE ADJUSTMENT** – The lot line adjustment is between two or more existing adjacent parcels.

- EVIDENCE:**
- a) The lot line adjustment is between more than one and less than four existing adjacent parcels. There are two contiguous separate legal parcels of record. The application proposed a LLA to change Lot 5 and Lot 6 from a north/south orientation to an east/west orientation (longest dimension).
 - b) Although the project meets this criteria for a Lot Line Adjustment, it does not conform to County's general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances (*Finding 6*); and therefore, the LLA cannot be approved.
 - c) The application, plans and supporting materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project File PLN060251.

8. **FINDING:** **LOT LINE ADJUSTMENT** – A greater number of parcels than originally existed will not be created as a result of the lot line adjustment.

- EVIDENCE:**
- a) The application involves two contiguous separate legal parcels of record. No new parcels would be created with the proposed LLA. Therefore, the lot line adjustment would not create a greater number of parcels than originally existed.
 - b) Although the project meets this criteria for a Lot Line Adjustment, it does not conform to County's general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances (*Finding 6*); and therefore, the LLA cannot be approved.
 - c) The application, plans and supporting materials for the proposed development are found in Project File PLN060251.

9. **FINDING:** **FEE WAIVER** – The Board of Supervisors considered the request for fee waiver pursuant to Resolution 2000-342.

- EVIDENCE**
- a) The applicant paid the processing fees, but requested that the County consider a fee waiver as part of the application.
 - b) Some changes have been made to the project as a result of the process (fire access, waste water, etc) and the CCC direction. The fees do not exceed the cost of the staff time spent processing this project application. Therefore, a fee waiver is not granted.

