

EXHIBIT NO. 2

Schubert, Bob J. x5183

From: Brian Clark [brian@surfloan.com]
Sent: Friday, March 30, 2012 8:52 AM
To: Schubert, Bob J. x5183
Subject: FW: Clark - Density Bonus Concessions Carmel Rio Rd. LLC - Val Verde Drive
Bob -

Well was completed a few weeks ago.
I will send you all well data under separate email.

Thx mucho...

Brian

From: Brian Clark [mailto:brian@surfloan.com]
Sent: Thursday, March 29, 2012 6:40 PM
To: 'novom@co.monterey.ca.us'
Cc: Mcleodbuiding@aol.com; Pam Silkwood; 'Brian Clark'
Subject: Clark - Density Bonus Concessions Carmel Rio Rd. LLC - Val Verde Drive

3/29/12

Dear Mr. Novo:

Pursuant to Government Code § 65915 we are requesting a meeting to review a request for two concessions. Since there has not been a final decision on the matter - i.e., staff has not drafted a resolution, there is still an opportunity for the County to reevaluate the project based on the our request for concessions which are:

Concession #1: zoning density waiver
Concession #2: units per acre waiver (Title 21)

We did not ask for a concession at an earlier date because, as noted, in the year long consistency analysis process (four generations of analysis) leading up to the Planning Commission meetings it was never stated we were out of compliance with the zoning density in GPU5 and CVMP. In case you missed it both Planning Commission agendas/staff reports made no mention that we were out of compliance on our zoning, density ratio's, or units per acre.

As related in the Supervisors meeting our ratio of affordable units to market rate homes (31 market rate homes and 11 inclusionary units) was done in tandem with Planning starting in 2006 and then included by Planning in your sub-division application requirements provided to us in the first quarter of 2007. Our goal at the time, as it is today, in concert with our Planner was to come up with project ratio's with affordable and market rate homes that met the existing zoning standards.

WE DID not ask to do affordable housing when we came to Planning to review options. We came in to do a standard subdivision. Planning instructed us that without an affordable housing component

04/02/2012

of at least 25% and preferably 35% our project would never get approved.

We were very clear we did not want to pursue a variance or General Plan amendment process and we worked out the numbers with Planning and 31 market rate homes with 11 inclusionary units was deemed to be the strongest ratio in compliance with zoning providing more than the required 25% affordable percentage.

The first time density ratio's or units per acre "none compliance" status determination appeared on the "radar" was at the Board of Supervisors meeting on March 27th.

We also did a "key word" search of GPU5 and review of the density bonus regulations at the State level and the word "stacking" is not in the GPU5 document or State affordable housing regulations for density bonuses. The State regulations also require the General Plan to be in compliance with State density bonuses and regulations. Another review of GPU5 revealed there is no mention of affordable housing incentives or concessions as required by State regulations.

Other: While our application has been 42 gross units (31 market rate homes and 11 inclusionary units) the County did propose to us 42 gross units (34 market rate homes and 8 inclusionary units) in 2010 and 2011. Since the County proposal was done with GPU5 in place we assume your interpretations are the most current and accurate. We are amenable to 34 and 8 since the current feedback now is less affordable for this area is more desirable. Regardless - we are agreeable to either ratio but it appears your 34 and 8 is the most accurate and defensible since it has already been reviewed by various RMA departments and was drafted when GPU5 was in place.

Reference was made that since GPU5 there may be some new interpretation of CV 1.10 and density bonus on Val Verde Drive from the previous General Plan - if you could let us know what those changes are so we can more accurately derive affordable to market rate homes ratio's going forward it would be appreciated. The "new" calculations also do not make note of the "first" house of record waiver. We have an existing home on one of the lots.

Also - we discovered errors in the Staff Report to the Supervisors that we'd like corrected before the scheduled item is on the consent agenda in April - if you could please correct these items and submit them to the Board as corrected/corrections.

Corrections:

Page 2 - paragraph 1 states:

"The applicant proposes to use Val Verde Drive, a non-exclusive, privately held easement, for access to the project."

Suggested correction: The 60' wide easement in the deeds for the properties specifically read: "None-exclusive right-of-way for all purposes of a road."

Page 2 - paragraph 2 states:

"In accordance with this ordinance, staff prepared a consistency analysis of the application and determined that the project is inconsistent with the General Plan. On November 9, 2011, the Planning Commission agreed

with
 staff's General Plan consistency determination and afforded the applicant 60 days to request a General Plan Amendment
 or revise the application to attain consistency. The applicant did not revise the application...."

Correction: The applicant did revise the application - after the first Planning Commission hearing and before the second
 PC hearing the applicant became compliant on these two items:

CV-5.3 Water Reclamation and Conservation (signed off as being in compliance - removed from the 2nd
 Planning agenda)

CV-5.4 Limit Development to Vacant Lots of Record (signed off as being in compliance - removed from the 2nd
 Planning agenda)

Exhibit 1 page 3 of 6:

Item #2: Proof of Long Term Sustainable Water Supply

The replacement well (2nd back up well) drilling had been completed and on March 12th proof
 of completion was provided Environmental Health and MPWMD. Production: over
 500 gallons per minute

State Health Department water regulations provide for water pumping and testing waivers when
 a newly drilled replacement well is co-located with wells that have been previously tested (same
 geographic area in the same aquifer). That is the case here and we are moving forward with State
 waivers and local water quality tests where applicable. We are and will be compliant with all water
 reg's now that the new well has been drilled.

In closing, as a Planner you may be highly motivated to support this project given we
 meet the environmental goals of SB 375 as well as SB 226.

As you know SB 226 sets forth a streamlined CEQA review of infill projects.
 Specifically using infill development as a tool to combat climate change.

As an infill development with all infrastructure in place (sewer, drainage, power, utilities) co-located next to
 two major shopping centers with all public supporting liesure and professional services adajacent to our project
 in place we advance the environmental and performance standards which SB 375 requires and SB 226 is
 designed to benefit.

Given our location we meet SB 226 goals and environmental policies including:

- Reducing vehicle miles traveled (VMT);
- Prioritizing infill development;
- Reducing greenhouse gas emissions;
- Reducing per capita water use;
- Promoting transit supportive communities;
- Improving energy efficiency, including transportation energy; and
- Protecting public health.

(Pub. Resources Code, § 21094.5.5(b).)

http://opr.ca.gov/docs/Narrative_Explanation_%20of_Guidelines_and_Performance%20Standards.pdf

In 10 seconds to 2 minutes you can walk from our project site to the Post Office, bank, dentist, doctor, CPA, grocery stores, restaurants, stock brokerage, and any number of community services (Cross Roads & Barnyard co-located next to project site). All of these services are WEST of our project and do not require driving a car. Bus service is two blocks from our project.

Continued best of luck and we look forward to your continued help and support...

Brian Clark
Carmel Rio Rd., LLC
831-899-6666

Enclosures - letters:

Marti Noel Dec. 17, 2010
Bob Schubert Dec. 30, 2011
Brian Clark Jan. 21, 2011 Monterey Consistency Checklist
Bob Schubert Jan. 26th, 2011
March 12th, 2012 Replacement Well Exhibits - 2

GOVERNMENT CODE
SECTION 65915-65918

65915. (a) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this section.

All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b) A city, county, or city and county shall grant a density bonus and incentives or concessions described in subdivision (d) when the applicant for the housing development seeks and agrees to construct at least any one of the following:

(1) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(2) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(3) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the Civil Code.

(d) (1) An applicant may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county.

The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of either of the following:

(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a condominium or planned development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a condominium or planned development.

(3) *The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit.*








Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.






(g) (1) For the purposes of this chapter, except as provided in paragraph (2), *"density bonus" means a density increase of at least 20 percent, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county.*

The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b). For each 1 percent increase above 10 percent in the percentage of units affordable to lower income households, the density bonus shall be increased by 1.5 percent up to a maximum of 35 percent. For each 1 percent increase above 5 percent in the percentage of units affordable to very low income households, the density bonus shall be increased by 2.5 percent up to a maximum of 35 percent. All density calculations resulting in fractional units shall be rounded up to the next whole number. *The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.* The density bonus shall not be included when determining the number of housing units that is equal to 5 or 10 percent of the total. *The density bonus shall apply to housing developments consisting of five or more dwelling units.*

Schubert, Bob J. x5183

From: Brian Clark [brian@surfloan.com]
Sent: Friday, March 30, 2012 9:55 AM
To: Schubert, Bob J. x5183; Novo, Mike x5192
Cc: 'Brian Clark'; Mcleodbuilding@aol.com
Subject: FW: Val Verde Dr. - Completed Replacement well data w/updated site plan reflecting same...

      
Travers Well Zone Of Influence... Travers Well Zone Of Influence... Travers_Geophysic alLog.pdf (39... WELL -EXHIBIT.pdf (322 C-4.pdf (687 KB) Distance-Dd and Radius Of Infl... Ex Well Desc.pdf (475 KB)

    
LEGAL RIPTION EXHIBIT... Replacement Well Desc.pdf (48... Response#4_to_M CRMA.pdf (61 KB... RofI rmittent_CalcsBindeplacement Well.pdf

3/30/12

TO: Mr. Schubert & Mr. Novo
FR: Brian Clark

Start your engines... Just when you thought it was safe to open your email!

NOT that it will make any difference but the tone and tenor of the staff reports suggests "applicant" has been given all these "warnings" and "opportunities" to become compliant but chose to do nothing... The ONE remaining item we were denied on was "access" and we were given two options to become compliant - agreement with ALL easement holders on Val Verde (herding cats - that would never happen on any road in CV) or court interpretation. So we initiated the judicial action. We have over 50% support of the easement holders on Val Verde to use the road for the project BUT there is NO ordinance that says if you have over 50% approval of easement holders that suffices - so there you go.

For the record - we were also told if we provided proof of access from the title company - Old Republic Title in this case - proving access that would suffice. We paid OR legal department \$3,000.00 to review the deeds easements and give us their legal opinion. OR said the deeds language (none exclusive right-of-way for all purposes of a road) and our proposed use/project was supported by the deeds language and size of the easement (60'). The legal title experts opinion was summarily disregarded. That was another \$3,000 out the window.

Obviously there is a huge difference between being "none compliant" and working towards "becoming compliant". Since the passage of GPU5 you will find the record is absent ANY proposal from Planning telling us our density/zoning was not in compliance NOR did Planning provide us with the option to exercise any of the zoning density's as presented by RMA at the Supervisors meeting.

Gents - I played it EVERYWAY I was instructed including using 3rd party title report experts and Planning did not use what you said was the supporting documentation that would clear this condition...

Gentlemen - nowwww do you think that is a fair "snap shot" of our support of the process?

The replacement well (2nd back up well) drilling had been completed and on March 12th proof of completion was provided Environmental Health and MPWMD. Production: over 500 gallons per minute

Please "correct" the agenda with the items we became compliant with during the two Planning Commission meetings and before the Supervisors meeting -

specifically:

- we cleared replacement well (drilled new well) and the other reg's such as water quality is an on-going process with our hydrologist and testing labs
- CV 3.20 (admin permit) determined (see Mr. Holm) was NOT applicable and replacement well permit issued and well drilled
- CV- 5.3 Water Reclamation and Conservation (signed off as being in compliance - removed from the 2nd Planning agenda)
- CV-5.4 Limit Development to Vacant Lots of Record (signed off as being in compliance - removed from the 2nd Planning agenda)

I hope this information helps and the issue for us is we "allow" what are honest mistakes stand and then second and third generations of new documents refer to information in prior documents when the information is not correct is generation one, two, or three... So "misinformation" becomes "vetted" over several generations of reports when it may not have been correct in generation 1.

Now that we have been given the "death blow" we want to insure the record is as correct as possible as we head into the litigation phase.

Do the enclosed documents and items cleared since the first Planning Commission meeting indicate we have been "slow rolling the process" or "non-compliant" to the options Planning has said need addressing? Today I am cutting checks for \$51,500.00 for consulting services needed since the first Planning Commission meeting or basically monies spent to "become compliant" over a 90 day period.

Thx for your anticipated help and understanding.

Brian Clark
831 899 6666

Your message is ready to be sent with the following file or link attachments:

Travers Well Zone Of Influence Map
Travers Well Zone Of Influence Map_#2
Travers_GeophysicalLog
WELL LOT-EXHIBIT
C-4
Distance-Dd and Radius Of Influence
Ex Well Desc
LEGAL DESCRIPTION EXHIBIT
Replacement Well Desc
Response#4_to_MCRMA
RofI Intermittent_CalcsBinder
Travers Replacement Well

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

Schubert, Bob J. x5183

From: Brian Clark [brian@surfloan.com]
Sent: Friday, March 30, 2012 11:30 AM
To: Schubert, Bob J. x5183; Novo, Mike x5192
Cc: 'Brian Clark'
Subject: Biological - Updated BA - Val Verde

Gentlemen -

The updated biological report was completed March 23rd or before the Supervisors meeting. The original bio report from 2007 did not identify any EIR/CEQA areas of concern but given the report was from '07 it was suggested on that basis alone the work product would be challenged.

Planning recommended for the EIR we redo/update the report.

However - its been confirmed - we have rats... One living in a tree so there u go - given Carmel not just any 'ol rats - we have upscale rats!

Done - new report says current data same as 2007. Cost to redo/update biological \$2,000.00.

Another paperweight...

Enjoy -

Brian Clark