

Attachment A

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DISCUSSION

SETTING AND BACKGROUND:

On November 10, 2015, a Lot line Adjustment application was submitted by Stephan Beals, representing Alan and Sandra Cordan, proposing an adjustment between two legal lots of record of approximately 0.63 acres (Assessor's Parcel Number 015-522-010-000, owned by Kennard Freidman) and 0.66 acres (Assessor's Parcel Number 015-522-011-000, owned by the Cordans) resulting in an equal exchange of 421 square feet. The properties are located at 24960 and 24950 Outlook Drive, in the Carmel Valley Master Plan area of the County. The Friedman property, located at 24960 Outlook Drive, is vacant. The Cordans currently have code violations on their property (13CE00306) which include portion of a deck, garden wall and patio, extending onto the Friedman's property. Through a private settlement agreement, the owners agreed to a lot line adjustment of equal exchange to address the issue. The Lot Line Adjustment was scheduled and noticed for approval by the Director of RMA-Planning on November 18, 2015.

On November 17, 2015, a public hearing was requested by Christine Kemp representing Sandra Kahn, neighbor adjacent to Mr. Friedman's property, located at 24970 Outlook Drive (APN: 015-522-009-000). The letter raised concerns regarding future development potentially being located along Mrs. Kahn's property due to the proposed lot line adjustment (**Attachment F**). Ms. Kemp contended that the survey map submitted by the applicants (Cordan and Friedman) does not show the site topography of the Friedman property and therefore, does not show site constraints that currently limit development on the property. The Friedman's vacant property is forested and contains slopes over 25% on a relatively small parcel. The irregular property line may further limit future development to be located closer to Mrs. Kahn's property. On January 5, 2016, an additional letter was received from Christine Kemp addressing code violations on the Cordans' property, including structures that encroach onto the Friedman property, and requested the lot line adjustment be denied and structures removed (**Attachment F**). The project was duly noticed and heard by the Planning Commission on January 13 and 27, 2016.

Upon site inspection of the vacant Friedman property, staff identified that the property contains cross-slopes with slopes over 25% except a relatively small area where the slopes converge where slopes are less than 25% (**see Figure 1**). More than half the property contains Monterey pine trees (**see Figure 2**).

On January 13, 2016, at a duly noticed hearing, the Lot Line Adjustment application was heard by the Planning Commission with a recommendation of approval by staff. After considering information from staff, the applicant's representative and appellants, the Planning Commission directed staff to return on January 27, 2016 with a resolution to deny the lot line adjustment due to the proposed adjustment being inconsistent with the 2010 Monterey County General Plan and Monterey County Zoning Ordinance (Title 21). Based on review of all information provided, the Planning Commission agreed with Ms Kemp (neighbors attorney) that the vacant Friedman property is constrained by existing trees and slopes to the extent that the proposed adjustment would further constrain the vacant parcel and place future development solely on slopes over 25% and within Monterey pine trees. The Planning Commission was made aware, pursuant to Section 21.64.260 of the Zoning Ordinance and policies within the Carmel Valley Master Plan, Monterey pines are not a protected in the Carmel Valley area.

Figure 1



(Pink area identifies slopes over 25%)

Figure 2



(Yellow area identifies location of existing trees)

On January 27, 2016, as requested by the Planning Commission, staff presented a resolution to deny the Lot Line Adjustment application; the Planning Commission adopted the resolution by a 10-0 vote. Section 66412 of the California Government Code (Subdivision Map Act) and Title 19 (Subdivision Ordinance) of the Monterey County Code allow for lot line adjustments, without need of a subdivision map, when:

1. The lot line adjustment is between four or fewer existing adjoining parcels;
2. A greater number of parcels than originally existed will not be created as a result of the lot line adjustment;
3. The parcels resulting from the lot line adjustment conform to the County's general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances.

The resolution makes the required finding that the parcels resulting from the lot line adjustment do not conform to the County's General Plan and Zoning Ordinance and therefore, cannot be approved. Policy OS-3.5 of the General Plan and Chapter 21.64.230 of the Zoning Ordinance prohibit development on slopes over 25% unless there is no feasible alternative and/or the development better meets all General Plan policies. A small portion of the Friedman property, in the location of the proposed lot line adjustment, is the only location where slopes are less than 25%, and this area is the prime building area on the property for future development. The result of the lot line adjustment would be to remove a significant portion of the prime building area and transfer that area to the Cordan property. Therefore, the adjustment removes a feasible location where future development may be sited which would minimize slope impacts.

CEQA

Projects which are not approved are statutorily exempt from CEQA under Public Resources Code section 21080(b)(5) and by CEQA Guidelines Section 15270 which exempt projects which a public agency rejects or disapproves. If the Board of Supervisors wishes to approve this application, staff would recommend additional environmental review under CEQA to determine if the application comes under the categorical exemption for Lot Line Adjustments (CEQA Guidelines Section 15305).

APPEAL:

On February 12, 2016, a Notice of Appeal and appeal fees were submitted to the Clerk of the Board by Stephen Beals, representing Alan and Sandra Cordan, to appeal the Planning Commission's denial of a Lot Line Adjustment application (**Attachment D**). The Notice of Appeal alleges that there was a lack of fair or impartial hearing, the findings and decision are not supported by the evidence, and the decision is contrary to law. The following is a summary of the contentions made by the appellant followed by staff's response to each contention:

Contention No. 1: Lack of a fair or impartial hearing.

Due to the appellant's allegations regarding violations on the Cordan property, the applicant was portrayed as a "blatant code violator" which misled the Planning Commission, making them biased toward the Cordans, and resulting in the decision to deny the Lot Line Adjustment application, despite staff recommendation for approval including the required findings necessary to approve a lot line adjustment.

RESPONSE:

The Planning Commission conducted a duly noticed and full and fair hearing at which all persons had an opportunity to be heard. The applicant (appellant here) presented testimony and utilized the opportunity to rebut and respond to any comments made during public testimony prior to deliberation of the Planning Commission. The reasons for the Planning Commission determination are set forth in the Planning Commission's resolution (**Attachment E**). It is the Planning Commission's resolution, not comments made by individual commissioners, that represents the decision of the Commission.

Contention No. 2: Findings and Decision are not supported by the evidence.

The evidence provided to make a finding to deny the project is contrary to staff's uninfluenced initial findings and evidence, and based on inconsistent information presented to the Planning Commission. A map was provided during the January 27, 2016 Planning Commission hearing with the proposed adjustment and different buildable locations on the lot demonstrating the vacant site is buildable with the adjustments and County regulated setbacks; and therefore, the property is not impacted by the proposed adjustment. The trees that the Planning Commission

were concerned about were deemed dead or dying by a certified arborist, and are not protected by ordinance.

RESPONSE:

The Planning Commission has authority to act on or reject a recommendation by staff. The fact that staff initially recommended approval is not controlling. On January 13, 2016, the Planning Commission considered the information presented by staff, the applicant and the concerned neighbors. Staff recommended approval of the application, and the staff report contained a draft resolution for approval, but based on the information presented during the public hearing, the Planning Commission did not agree with the staff recommendation. The Planning Commission found that the Lot Line Adjustment was not consistent with the General Plan and Zoning Ordinance because the lot line adjustment would take developable area away from the Friedman property which is constrained by slopes in excess of 25%. Development on slopes in excess of 25% is discouraged by the General Plan and the Zoning Ordinance, and thus the Planning Commission determined that the lot line adjustment, which would push development from areas without slopes onto slopes, is inconsistent with the General Plan and Zoning Ordinance. The Planning Commission continued the hearing to January 27, 2016 to allow staff to capture the Commission's reasoning and evidence in a resolution denying the application. On January 27, the Planning Commission allowed the applicant and members of the public to testify prior to adopting the resolution. It is completely within the role of the Planning Commission as the decision-maker to determine, based on the evidence, whether a given application is or is not consistent with the General Plan and zoning, and the Planning Commission may within its discretion disagree with staff based upon the facts and evidence submitted at a public hearing.

At the January 27, 2016 meeting, the applicant's representative presented an overlay showing how a house could be constructed on the parcel. The exhibit referenced by the appellant did not include the correct slope map and therefore did not demonstrate that the lot line adjustment would not force future development out onto slopes in excess of 25%. Nothing in the record would refute that the Lot Line Adjustment will have the result of encouraging development onto slopes in excess of 25%.

Contention No. 3: The decision is contrary to law.

The findings to approve or deny a lot line adjustment are limited to the findings required in California Government Code Subsection 66412; and therefore, review of code violations, environmental sensitivity (slopes and trees), and future development of the vacant Friedman lot are beyond the scope of the approving authority regarding lot line adjustments. (The appeal quotes the case of San Dieguito Partn. v. City of San Diego stating that the approving agency is strictly circumscribed by the Legislature in a lot line adjustment, with very little authority as compared to the agency's function and authority in connection with a subdivision).

RESPONSE:

Section 66412(d) of the California Government Code (Subdivision Map Act) states: "*A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the Lot Line Adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances.*"

The Planning Commission's decision reviewed the application using the correct standard under Government Code section 66412(d). The Planning Commission denied the Lot Line Adjustment application on the basis of inconsistency with the General Plan and zoning. (See Finding 2 of Planning Commission Resolution No. 16-005.) As explained more fully in Finding 4 above, Policy OS-3.5 of the General Plan prohibits development on slopes over 25% unless there is no feasible alternative and/or the development better meets all General Plan policies. Section 21.64.230 of the

Monterey County Zoning Ordinance, in compliance with Policy OS-3.5 of the Monterey County General Plan, prohibits development on slopes over 25% unless there is no feasible alternative and/or the development better meets all General Plan policies. The adjustment would result in removing a feasible location where future development may be sited which would minimize slope impacts.

The action of the Planning Commission focused on General Plan and Zoning Ordinance Standards, as does this decision of the Board, and is thus in compliance with section 66412(d) of the Subdivision Map Act. The case referenced by appellant (*San Dieguito Partnership v. City of San Diego*, 7 Cal. App. 4th 748 (1992)) does not compel a different result because, as required by the court in that case, the County correctly reviewed the application under the standards set forth in Government Code section 66412(d).

RECOMMENDATION:

Staff recommends denial of the Cordan appeal and denial of the Lot Line Adjustment application (PLN141011) because the adjustment will remove a critical portion of the developable area on the Friedman property that is not on slope over 25%, resulting in greater likelihood of more development on slopes over 25%, in contravention of General Plan policy to avoid development on slopes over 25% if feasible.

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