

Attachment I

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NOTICE OF APPEAL

Monterey County Code
Title 19 (Subdivisions)
Title 20 (Zoning)
Title 21 (Zoning)

RECEIVED
MONTEREY COUNTY
2020 SEP -2 AM 10: 37
CLERK OF THE BOARD

Julian Lorenzana
DEPUTY
JULIAN LORENZANA

No appeal will be accepted until written notice of the decision has been given. If you wish to file an appeal, you must do so on or before Sept. 3, 2020 (10 days after written notice of the decision has been mailed to the applicant).

Date of decision: July 29, 2020 (Resolution No. 20-028, mailed Aug. 24, 2020)

1. Appellant Name: Rebecca Tweten, c/o Christine Kemp, Esq.

Address: Noland, Hamerly, Etienne & Hoss, P.O. Box 2510, Salinas, CA 93902

Telephone: 831-424-1414 email: ckemp@nheh.com

2. Indicate your interest in the decision by placing a check mark below:

Applicant _____

Neighbor X

Other (please state) _____

3. If you are not the applicant, please give the applicant's name:

Eric and Greta A. Miller, Trustees

4. Fill in the file number of the application that is the subject of this appeal below:

	Type of Application	Area
a)	Planning Commission: PC- <u>PLN180289 (Res.No. 20-028)</u>	<u>Greater Monterey Peninsula</u>
b)	Zoning Administrator: ZA- _____	_____
c)	Administrative Permit: AP- _____	_____

Notice of Appeal

5. What is the nature of your appeal?

a) Are you appealing the approval or denial of an application? Approval

b) If you are appealing one or more conditions of approval, list the condition number and state the condition(s) you are appealing. (Attach extra sheet if necessary)
Entire approval.

6. Place a check mark beside the reason(s) for your appeal:

There was a lack of fair or impartial hearing _____
The findings or decision or conditions are not supported by the evidence X
The decision was contrary to law X

7. Give a brief and specific statement in support of each of the reasons for your appeal checked above. The Board of Supervisors will not accept an application for an appeal that is stated in generalities, legal or otherwise. If you are appealing specific conditions, you must list the number of each condition and the basis for your appeal. (Attach extra sheets if necessary)

See Attachment A

8. As part of the application approval or denial process, findings were made by the decision-making body (Planning Commission, Zoning Administrator, or Chief of Planning). In order to file a valid appeal, you must give specific reasons why you disagree with the findings made. (Attach extra sheets if necessary)

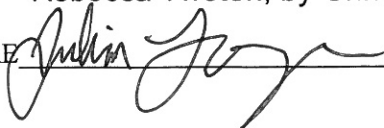
See Attachment A

9. You must pay the required filing fee of \$3,540.00 (make check payable to "County of Monterey") at the time you file your appeal. (Please note that appeals of projects in the Coastal Zone are not subject to the filing fee.)

10. Your appeal is accepted when the Clerk to the Board accepts the appeal as complete and receives the required filing fee. Once the appeal has been accepted, the Clerk to the Board will set a date for the public hearing on the appeal before the Board of Supervisors.

The appeal and applicable filing fee must be delivered to the Clerk to the Board or mailed and postmarked by the filing deadline to PO Box 1728, Salinas CA 93902. A facsimile copy of the appeal will be accepted only if the hard copy of the appeal and applicable filing fee are mailed and postmarked by the deadline.

APPELLANT SIGNATURE Christine Kemp, Attorney Date: Sept. 2, 2020
Rebecca Tweten, by Christine Kemp, Attorney

RECEIVED SIGNATURE  Date: _____

Attachment A
Appeal to Board of Supervisors
Planning Commission Resolution No. 20-028
Miller – PLN 180289

Filed on behalf of Rebecca Tweten

Ms. Tweten owns the property at 24279 Via Malpaso, in the Monterra subdivision, immediately south of the proposed Miller project at 24275 Via Malpaso. The Tweten property is improved with a single family home built in or about 2003. The Miller property is vacant.

Ms. Tweten files this appeal based on the following grounds.

A. No project should be approved for this site until the litigation is resolved.

There is on-going litigation between Ms. Tweten and the Millers concerning the correct boundary line between the Miller and Tweten lots and the overall configuration of the Miller parcel (Monterey County Superior Court, Case No. 19CV000715).

There are three County approved and recorded Lot-Line Adjustment (LLA) maps that apply to these parcels, all of which had final County Approval and all Conditions of Approval satisfied.

1. Record of Survey Lot-Line Adjustment Map recorded in 1998 at Vol. 21 at Pg. 126;
2. Record of Survey Lot-line Adjustment Map recorded in 2000 at Vol. 23 at Pg. 62;
3. Record of Survey Lot-Line Adjustment Map recorded in 2003 at Vol. 26 at Pg. 69.

This is not a simple issue. Only a court can decide which boundary lines apply to these parcels.

The County should not be make determinations on the parcel configurations or lot legality of these parcels until the Court renders a final decision, particularly since the County approved all three Lot-Line Adjustments, all Conditions of Approval of the Lot-Line Adjustments were satisfied, and the recorded maps are reflected in numerous recorded documents, including the Monterra CC&Rs and Monterra amended Scenic Easements.

Of particular interest in this case is that the 2000 and 2003 Lot-Line Adjustments were done by the Monterra developer to address the very issues of slope and topography on the Miller site which are arising with the Miller Project. Moreover, the 2003 map was implemented on the ground, with the construction of the Tweten home, one of the first homes to be constructed in Monterra, by one of the parties (Silverie) to the 2003 LLA.

As discussed below, the Millers propose a much larger Project should they prevail in the lawsuit, involving a turnaround area that takes out Ms. Tweten's landscaping and driveway pavers, a 1200 sq. ft. Accessory Dwelling Unit across the access easement, a swimming pool and pool house.

Conversely, should Ms. Tweten prevail, the Miller parcel will result in a better topographical configuration, consistent with the intent of the 2000 and 2003 approved and recorded Lot-Line Adjustment Maps allowing for a revised Project with less impacts.

The Court needs to decide the complicated issue of the boundary line location, the outcome of which has a direct bearing on the Miller Project. No project should be approved for this site until the litigation is resolved.

B. The entirety of the Miller Project should be reviewed, as a whole, not piecemealed, once the litigation is resolved.

The Miller Project approved by the Planning Commission is only part of a larger project the Millers intend to build on the site should they prevail in the lawsuit.

The entire project, which the Millers initially submitted to the County, involves a turnaround area in the area of Ms. Tweten's driveway pavers and landscaping, a large patio area, swimming pool, pool house, and a 1200 sq. ft. Accessory Dwelling Unit down a steep slope nearly 20 feet below the proposed home on the other side of the Tweten access easement, all of which involve additional tree removal, significant grading, additional building on slopes over 25%, and potential impacts to environmentally sensitive habitats.

In an effort to piecemeal the Project before the litigation is over, the Millers removed Project elements including the driveway turnaround area, Accessory Dwelling Unit, enlarged patio, swimming pool and pool house.

If the Millers prevail in the lawsuit, it is anticipated they will file separate, piecemeal, applications for these omitted items, thereby thwarting a review of entire Project, as a whole, by the County. This is particularly problematic because these omitted elements exasperate the Project's impacts to aesthetics, slopes, trees, grading, and environmentally sensitive habitat.

Conversely should Ms. Tweten prevail in the lawsuit, the Miller lot configuration will allow a project to be built on the site that better conforms to the steep site topography, which, in fact, was the intent of the Monterra developer when they sought and obtained County approval for the 2000 and 2003 Lot-Line Adjustments for these lots.

The approved Lot-Line Adjustments resulted in the configuration of the Miller parcel running parallel with, and between, Via Malpaso and the access easement, with the boundary extended further to the north where there is a greater amount of flat area on which to build and access the site without the steep slope issues associated with the current Project.

On October 11, 2018 I submitted a letter to County RMA, on behalf of Ms. Tweten, outlining the environmental issues with the entire Project. The Project site is highly constrained with steep slopes, trees, an access easement, as well as, sensitive habitat areas, and a blue-line stream.

The impacts from the entire Project must be reviewed, as a whole, not piecemealed.

The Project, is not Categorical Exempt from CEQA, as the Project falls within the Exemption exceptions set forth in CEQA Guideline section 15300.5 (Exceptions) including but limited to:

1. The Project is located in a sensitive environmental area and has the potential to significantly impact environmental sensitive habitat areas which have been mapped by the County and other resource agencies.
2. There is a fair argument that the Project will have a significant impact on the environment due to proposed building on steep slopes and the proximity of the environmentally sensitive habitat and drainage open space areas.

At a minimum CEQA review and an Initial Study are required for the Project, as a whole, which Initial Study may result in either a Negative Declaration or an Environmental Impact Report being required for the Project.

The entirety of the Miller Project must be reviewed, as a whole, not piecemealed, once the litigation is resolved. Approving only a portion of the Project now, thwarts a review of the entire Project and full extent of the impacts associated with what is intended to be built overall.

C. No Justification for Building on 25% and 30% Slope

The Miller Project, even as partially presented, involves building on a significant amount of slope over 25 and 30%. **This is by design**, not necessity. Accordingly the required findings for building on slopes in excess of 25% and 30% slopes cannot be made.

As designed, the Project driveway access is up a steep slope off the access easement. In addition, the Project proposes two full 2-car garages, and a full auto-court entry area with additional parking, which are also designed to be built on slopes in excess of 25% and 30% slope.

Moreover, the partial Project approval does not address, or even consider, the significant impact to slopes that will also occur with the proposed 1200 sq. ft. Accessory Dwelling Unit proposed across the access easement and down a steep slope nearly 20 feet below, which ADU can only be accessed by stairs down the steep slope.

Monterey County Code Title 21.64.230.E requires the following findings be made to support approval of development on slopes of 30% or more, and if the findings cannot be made, which is the case here, that the project be redesigned.

- a. There is no feasible alternative which would allow development to occur on slopes of less than thirty (30) percent; or
- b. That the proposed development better achieves the goals, policies and objectives of the Monterey County General Plan and applicable area plan than other development alternatives.

In addition, pursuant to Monterey County General Plan, Open Space Policy OS-3.5, development on slopes greater than 25% slope is prohibited, unless, pursuant to a discretionary use permit, (1) there is no feasible alternative which would allow development to occur on slopes of less than 25% slope; and/or (2) the proposed development on these slopes better achieves the policies of the General Plan or area plan.

There are potential alternatives, as the approved 2000 and 2003 Lot-Line Adjustments were completed by the Monterra developer to address this very situation of the steep slopes by conforming the lot configurations to the site topography and providing for access in the more level area. With the revised lot configuration, the driveway access would be to the north over a more level area, eliminating the current proposed steep driveway access. In addition, even with the current Project, the design with the two large 2-car garages and motor court in the slope areas is by design and discretionary, not infeasible.

D. The Miller Project is too large and domineering for this constrained site.

The proposed Miller Project, even in its partial application, at nearly 6500 sq. ft., is far too large and tall for this highly constrained steep parcel, looming over 30 feet high above natural ground level and, even higher when seen from the access road several feet below.

In addition, when viewed in its entirety, the Project, not only looms over the access easement, but also crosses over the access easement and down a steep slope with the 1200 sq. ft. Accessory Dwelling Unit nearly 20 feet below.

Owners purchased their properties in Monterra to have large lots and distance between neighbors. The Project, as designed looms over the Tweten's access easement and is inconsistent with the look and feel of the sprawling rural Monterra development.

E. Conclusion

For the reasons set forth herein, Ms. Tweten asks that your Board grant this appeal and deny the Project. No approval should be granted pending completion of the lot-line litigation, confirmation of the lot-line locations, and review of the full scope of the entire Project as initially presented to the County for review.

Christine Kemp, Attorney for Rebecca Tweten
NOLAND HAMERLY ETIENNE & HOSS