

MINUTES OF THE SOLANO COUNTY PLANNING COMMISSION

Meeting of July 2, 2015

The regular meeting of the Solano County Planning Commission was called to order at 7:00 p.m. in the Board of Supervisors' Chambers, Fairfield, California.

PRESENT: Commissioners Cayler, Walker, Hollingsworth and Chairperson Rhoads-Poston

EXCUSED: None

STAFF PRESENT: Mike Yankovich, Planning Program Manager; Nedzlene Ferrario, Senior Planner; Jim Mangini, County Surveyor; Jim Laughlin, Deputy County Counsel; and Kristine Letterman, Planning Commission Clerk

Items from the floor:

There was no one from the public wishing to speak.

The Minutes of the regular meeting of June 4, 2015 were approved as prepared

1. **PUBLIC HEARING** to consider an appeal of the Zoning Administrator's conditional approval of Minor Subdivision Application No. MS-14-03 of **Brian West (Pippo Ranch)** to subdivide a 22 acre parcel into three lots of 2.5 acres and one lot of 14 acres located at the corner of English Hills Road and Cantelow Road, Vacaville, in an "RR-2.5" Rural Residential Zoning District, APN: 0105-110-590. The Planning Commission will also be considering adoption of a Mitigated Negative Declaration of Environmental Impact as recommended by the Solano County Department of Resource Management. (Project Planner: Nedzlene Ferrario)

Nedzlene Ferrario briefly reviewed staff's written report. The subject property, identified as Lot 4, was part of a subdivision approved in 2002 by the Board of Supervisors subdividing 148 acres into two 5-acre parcels, and five 21.5+ acre parcels. Donald Pippo was the subdivider and Brian West was the engineer for the subdivision. The decision before the commission is to determine whether or not Mr. Pippo is a co-subdivider on the current subdivision application. If the commission decides that Mr. Pippo is a co-subdivider on this application, then adjacent properties previously subdivided by Mr. Pippo should be included in the subdivision lot counts and a major subdivision is the appropriate application procedure. The applicant must refile the application, pay additional fees, recirculate the environmental document and the project shall be noticed for action by the Planning Commission and Board of Supervisors. Alternatively, if the commission determines that a minor subdivision is appropriate then the Zoning Administrator's decision is upheld.

Jim Laughlin provided the commission some background information on the law applicable to this project. He explained the term 4 X 4ing as the idea of doing serial subdivisions, 4 lots at a time, and it grows exponentially. The definition of Subdivider is anyone creating 5 or more lots within a 12 month period. Mr. Laughlin noted that with enough preparation in disguising what is really happening it is possible for a subdivider to avoid state and local regulation. Mr. Laughlin commented that over time state law has been tighten up and noted that the 12 month guideline has since been eliminated. He said that currently the time period is defined as "lifetime" which means that anyone involved in subdividing the same property into 5 or more lots over their lifetime makes them a subdivider. It does not matter the amount of time that passes before extending beyond that 4 lot limit. Mr. Laughlin noted that the subdivider does not need to be the sole subdivider on the project but can also be in a partnership or a corporation. He noted that the one exception would be for consultants and employees of a subdivider.

Mr. Laughlin stated that in 1972 the Subdivision Map Act was amended to make all subdivisions subject to that Act. Parcel maps and subdivision maps are now the requirements so a subdivider is still subject to some regulation, although parcel maps are generally subject to less regulation than subdivision maps. Mr. Laughlin said that in this case, as far as the county is concerned, it does not make much difference which way the map is processed since there are no additional requirements or conditions that will be required of the subdivider.

Mr. Laughlin explained that the accusation is that Mr. Pippo is a co-subdivider in this project. It is clear he is a seller and also a lender. The question is Mr. Pippo just those two entities or is the way he structured the transaction make him a co-subdivider so that due to his prior involvement in the subdivision of the adjacent land puts this into the realm where it should be processed as a major subdivision. Mr. Laughlin said that the commission should also turn their attention to the sales price of the property and if it is a fair market value price or if it reflects an intended profit. He noted that the terms of the loan should also be examined.

Commissioner Hollingsworth asked counsel if he was saying in his legal opinion that Mr. Pippo is a beneficiary of this application and therefore legally becomes the subdivider

Mr. Laughlin said that there is some conflicting evidence presented in this case, but he believed there is enough evidence on each side of the issue to support either decision the commission might want to make.

Commissioner Hollingsworth asked if this would be a good time to move forward with subdividing the fourth parcel as well and subdivide the entire 21 acres due to the fact that the property is already being marketed.

Mr. Laughlin stated that it is easier for Mr. West, if this is appropriate to process as a minor subdivision, to go ahead and do it this way and then decide what to do with the remainder parcel at a later date. However if the commission decides that this should be processed as a major subdivision then it might make sense for Mr. West to include all the lots, but that would have to be a business decision made by Mr. West.

Chairperson Rhoads-Poston spoke to the written concerns expressed by the appellant which were distributed to the commission. She noted that the concerns related to the number of homes, number of proposed driveways, the existing home on Parcel E being built against an easement, and the marketing of future home sites. She inquired if the real estate agency has the right to market the property and if it is contingent upon the approval of the subdivision.

Mr. Yankovich stated that this application was processed as a 4 lot subdivision and under the residential zoning a main and secondary dwelling unit is allowed, that is why the number 8 was referenced. He depicted on the map the two roads that would access the top 2 acres plus the 14 acre parcel. With regard to the home being built close to the easement, there was a variance that was granted that allowed an encroachment into the front yard setback due to the lack of depth in the setback. There are some issues with regard to the marketing of the property but he believed what the appellants are concerned with is since the property is being marketed that the intent is to subdivide the 14 acres and that acreage should be included as part of a major subdivision.

Mr. Laughlin said that it is his understanding of where the line is drawn is that it is ok to advertise to enter into a contract for sale but the sale cannot be completed and escrow cannot be closed until after the map is finalized.

Since there were no further questions or comments, Chairperson Rhoads-Poston opened the public hearing.

The appellant, Michael Smith, 4108 Pippo Lane, Vacaville, commented that in the project description the main and secondary unit is not clarified as two separate units. He referred to the application where it states that there will be three driveways in three different locations north of Cantelow Road yet the map shows 2 driveways. He referred to Parcel E in terms of a variance stating that this was never disclosed to him when he purchased his home nor did county staff reveal this to him when he discussed it with them a couple of years ago. Mr. Smith said that these easements were put into the county's general plan to deal with major developments in that area.

Mr. Yankovich addressed the issue of the main and secondary units by stating that a secondary unit is only allowed if a main unit exists on the property. With regard to the driveways, he noted that in the application request it is indicated that there will be three driveways in certain feet north of Cantelow Road, but as shown on the map there will be two public roads that will be providing access to the 4 lots. It appears that that was written up as a proposal but when staff reviewed the tentative map staff wanted to make sure that all the driveways to the home sites would be off the private driveways as opposed to off English Hills or Cantelow Road. He pointed out that Condition No. 6 addresses this issue.

Bryant Stocking, 3269 Rice Lane, Vacaville, spoke on behalf of Linda and Alan Held, who are adjacent property owners. He said that there has been a long standing issue with the residents in the area about Parcel E and Pippo Lane and in examining the maps there are duplicate easements. He spoke to a previous map that contained the entire seven lot Pippo project and said Parcel E is wide and there are two 60 foot easements that intrude on

resident's homes. Mr. Stocking said that those issues are a result of some mistakes that were made as the properties developed and now what the residents are looking forward to is when the future subdivision of the seven parcels occur, it would be a major subdivision and the existing issues could be addressed. He referred to another issue as the unpermitted Pippo Park which is located on the 14 acre parcel. He said that this was probably overlooked because of the minor review process. He said that it is a large parcel and currently located on the property is Pippo Park amusement event center that operates regularly without use permits. He noted that there have been complaints about the event center and there could be more with additional residents added to the area. Mr. Stocking noted that he was not complaining about the park, stating that he felt it is a benefit to the community but these are the kind of things that would be reviewed if this were to go through the major review process.

Mr. Stocking provided to the commission a document that was recorded after the approval of the tentative map from a previous development with Mr. West as a partner on a project referred to as Dove Creek, showing a \$150,000 loan recorded after tentative map approval. Mr. Stocking noted that there is a subordination agreement also recorded with the document from Mr. Pippo, and that to him is a demonstration of the involvement in the development project.

Commissioner Walker questioned the environmental review process with regard to the minor vs. major permitting process. Mr. Yankovich stated that any type of environmental review would have to examine the impacts and typically a major subdivision would have more impacts that would need assessment. He said much of what was covered under the minor subdivision environmental review would be the same assessment that would take place with a major review.

The applicant, Brian West, stated that he believed this to be a legitimate minor subdivision proposal. He explained that in October of last year he approached Mr. Pippo with a proposal to purchase Lot 4 at which time they negotiated an equitable sale price and entered into a contract. Mr. West noted that the purchase price for the property was \$550,000. He originally was going to obtain financing from a financial institution to purchase the property but in some discussions with Mr. Pippo, Mr. Pippo offered to carry some of the financing. Mr. West said that he offered to pay Mr. Pippo the avoided cost that he would have had to pay for the development loan. The advantage, Mr. West commented, was that it was a much quicker process and was convenient. He said that there is question that if Mr. Pippo has a first deed of trust on the property he is a co-applicant. Mr. West emphasized that once they closed escrow on the sale Mr. Pippo had no further involvement in the project; he was a passive holder of a first deed of trust and was in no different position than a financial institution would have been if he had financed through them. Mr. West pointed out that this is not an uncommon transaction and it is very common for a property owner to carry some short term financing on a development project.

Mr. West stated that when he submitted his application for this minor subdivision, part of the application package was to submit a Title Report. He stated that the title report clearly showed that Mr. Pippo had a first deed of trust on the property and there was no mistaking that Mr. Pippo was the previous subdivider. Mr. West stated that there was no intent or

attempt to conceal any of the facts regarding the first deed of trust that Mr. Pippo was carrying on that parcel, and the planning division accepted, processed, and approved the application as a minor subdivision.

Mr. West noted that there was no information that was submitted to the planning division during the public comment period, nor was there anyone who appeared at the approval hearing to contest the application. Mr. West said that he believed this application meets all the state and local requirements for a minor subdivision; the seller did not participate in the process of the subdivision in any way; and the seller's remuneration out of this deal was set when escrow closed. Mr. Pippo had no risk of losing money or making more money depending upon how profitable this project was, he was simply a seller of the property who took back a short term deed of trust while the development process was taking place. Mr. West said that he believed the facts show the seller was not a co-applicant.

Since there were no further speakers, Chairperson Rhoads-Poston closed the public hearing.

Mr. Yankovich explained that the difference between a minor and major subdivision comes down to the issue of roads. A private road would change with regard to the condition of the materials that would be required for the construction of the road.

Jim Mangini, county surveyor, stated that the main difference would be the road on the northern side of the project would most likely be accepted as a public roadway, where right now it is being offered as a private easement. What is required for a private road is a 20 foot wide roadway with a double chipped seal coat at 8 inches of asphalt base. He said this is approximately 30% less costly than what public road requirements would be. The main difference is that the county would require a minimum of 3 inches of asphalt paving over the surface rather than the chip seal. Mr. Mangini said this was the extent in the difference in what they saw in improvements for the roadway for a minor vs. a major subdivision.

In response to Commissioner Walker's calculations with regard to transfer taxes, Mr. West explained that the purchase price included approximately \$150,000 in back taxes and assessments that he assumed when he took title to the property and that is where the additional monies came from in the sale price.

Commissioner Walker said that he can see why both parties could be correct in their beliefs. It makes it somewhat convoluted and confusing in order to determine which way to vote because as was indicated in counsel's memo, everyone is correct. Mr. Walker noted that a seller carryback is not uncommon, but it is less common now than it used to be. He said that in his experience in the real estate business he has always discouraged his sellers from this because of potential tax implications. Commissioner Walker said that the general plan designation envisions this area being populated with custom homes on 2½ acre lots, so certainly one could suppose that is exactly what is going to happen. Mr. Walker said that the procedure which is what the commission is here to discuss, is not necessarily a gain to be realized by the seller/lender because when these parcels are sold he is only made whole with the note that has been signed and the deed of trust that secures that note.

Chairperson Rhoads-Poston stated that the applicant assumed the tax and therefore had to pay out of pocket which gives one more benefit to the seller. There was some further discussion amongst Commissioners Walker and Rhoads-Poston with regard to taxes and the marketing of property.

A motion was made by Chairperson Rhoads-Poston and seconded by Commissioner Hollingsworth to uphold the appeal of the West subdivision and consider the project a Major Subdivision consisting of all of the parcels including Lot 4. The motion passed 3-1 with Commissioner Walker dissenting. (Resolution No. 4622)

2. ANNOUNCEMENTS and REPORTS

There were no announcements and reports.

3. Since there was no further business, the meeting was **adjourned**.