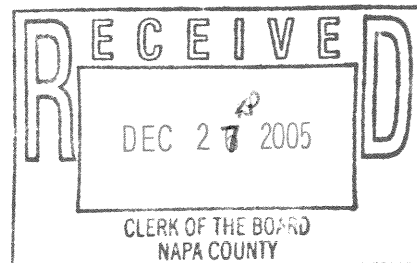


December 23, 2005

Pamela A. Miller  
Clerk of the Board/Administrative Manager  
Napa County Board of Supervisors  
1195 Third Street, Suite 310  
Napa, CA 94559



12/21/05 cc: R. Westmeyer  
M. Woodbury  
P. Lyrell  
N. Galambos  
L. Bogner

Re: Appeal to the Board of Supervisors regarding the Administrative rejection of the appeal of Lot Line Adjustment for the Lands of John and Andrea Robertson, and Patrick and Julie Garvey Trust.  
Assessor's Parcels No. 027-460-032 and 027-460-031

Dear Ms. Miller:

Our firm represents Bruce Krell, a landowner in Napa County. Mr. Krell owns land adjacent to the above referenced property (the "property"). We are writing to appeal to the Board of Supervisors the administrative decision of the Clerk of the Board of Supervisors (the "Clerk") to reject Mr. Krell's appeal to the Board of Supervisors submitted on December 6, 2005. Mr. Krell was notified of the rejection of his appeal with the attached letter dated December 13, 2005.

Mr. Krell's appeal concerned the administrative approval of a lot line adjustment for the property, which our record indicates that the County conferred on November 18, 2005 in an attached letter to John and Andrea Robinson. Handwritten on the letter is "PW 175-85."

We make this appeal on the grounds that the Clerk of the Board of Supervisors made the incorrect decision by rejecting Mr. Krell's appeal as incomplete. The Clerk rejected Mr. Krell's appeal was rejected *solely on the grounds* that the appeal did not contain (i) a title insurance report that certifies the names of property owners located within 300 feet of the subject property, and (ii) a copy of the assessor's map book pages of the subject property. The Clerk failed to acknowledge, however, that Mr. Krell did not submit these documents for three important reasons.



Pamela A. Miller  
December 23, 2005  
Page 2

First, both documents were already on file with the County. Indeed, both these documents were used by the County *less than three weeks earlier* to provide notification to adjacent landowners of the administrative approval for the lot line adjustment that Mr. Krell seeks to appeal. Because Mr. Krell owns land adjacent to the property subject to the lot line adjustment, he personally received the notification based on these two documents.

Second, Mr. Krell's belief that the appeal could be filed without these documents was based in part on discussions with County staff. He spoke to Sherry Vattuone in the week before the filing deadline for the appeal, and asked whether the County could take notice of both the title insurance company report and the assessor's maps *already in the County's possession*. He also asked Ms. Vattuone whether, if the County could not take such notice, the Board of Supervisors would allow him to provide these documents after timely filing all other portions of the appeal. Ms. Vattuone indicated that she did not know the answer to either question, but that she would respond to Mr. Krell. Mr. Krell did not subsequently receive a substantive response to these questions.

Ms. Vattuone has indicated that she attempted to reach Mr. Krell on two occasions after the appeal was delivered on the afternoon of December 6, 2005 to inform Mr. Krell that the appeal lacked the title company report and assessor's map. However, Mr. Krell did not receive either of these messages. Moreover, because the deadline for the appeal was December 6, 2005, it is unclear how Mr. Krell could have responded in an effective manner to these telephone calls. Surely Mr. Krell could not have provided either document during the late afternoon hours of the deadline date.

Third, the reason why Mr. Krell filed the appeal so close to the deadline was because of representations made to him by a member of the Department of Public Works staff regarding the consequences of approving the lot line adjustment. After receiving notification of the approval of the lot line adjustment, Mr. Krell contacted the Department of Public Works to inquire whether, pursuant to Code section §18.104.010, the project applicant qualified for the setback requirements pertaining to *the residential single zoning district* because the size of the property had been reduced to less than two acres. The staff of the Department of Public Works informed Mr. Krell that the lot line adjustment would not effect the applicant's setback requirements of twenty feet.

Shortly before the filing deadline of December 6<sup>th</sup>, Mr. Krell was told by a neighbor that in fact the lot line adjustment might reduce the sideyard setback requirement. When Mr. Krell was not able to quickly confirm this with the County, he felt he had to quickly file his appeal at the last minute in case his neighbor was correct. Mr. Krell believed that obtaining both the title insurance report and assessor's parcel map would be impossible to obtain on such short notice.



Pamela A. Miller  
December 23, 2005  
Page 3

Indeed, it was more than a week after he filed his appeal before Mr. Krell was able to find out from a member of the Planning Department staff *that the lot line adjustment would alter the setback requirements for the parcel*. Because Mr. Krell has no other interest in the lot line adjustment other than insuring that the setback requirements for the property are not altered, he was surprised by this conclusion of the Planning Department staff and angered that the Department of Public Works had informed him otherwise.

Thus, as Mr. Krell explained to the Board of Supervisors staff before filing the appeal, he hoped that the County would either (i) take notice of these documents or (ii) toll the deadline for the appeal was because he believed it would be impossible to obtain either document before the appeal deadline. Although he expressed these concerns to the Board of Supervisor's staff, he failed to receive a response until Ms. Vattoune's phone calls *on the afternoon of the deadline date*.

In all, Mr. Krell made a good faith effort to file his appeal in accordance with the provisions of the Code, and consulted with County staff during this process. The Clerk's decision to reject his appeal without recognition of the facts surrounding his decision not to file the title insurance company report and assessor's map was not proper.

Substantively, we reiterate the objections to the administrative approval of the lot line adjustment as expressed by Mr. Krell in his appeal. We object to the County's approval of the lot line adjustment because this adjustment *results in the effective rezoning of the property* and creating a new non conformity to base zoning that had not existed before the lot line adjustment. By reducing the size of the property to less than two acres, the project applicant now qualifies for the setback requirements pertaining to *the residential single zoning district*. Napa County Code §18.104.010. Code sections 18.136.040 and 18.136.060 make clear that rezoning must be subject to hearings by the Planning Commission and, in most cases, the Board of Supervisors.

Mr. Krell would not object to the lot line adjustment if the County attached a condition of approval to the lot line adjustment which mandates that the setback for the property remain at the distance required under its previous size. However, without such a condition, the lot line adjustment results in altering the zoning applicable to the property, and should be subject to Commission approval.

We have attached a signed appeal form, which states the grounds of the appeal and the names and addresses of the permittee and appellant. We were instructed by Deputy County Counsel Margaret Woodbury on December 23, 2005 that neither a title insurance company report



Pamela A. Miller  
December 23, 2005  
Page 4

nor an assessor's map is required for this appeal, because the appeal does not concern real property. However, we note that both of these documents were hand delivered to the Clerk of the Board of Supervisors earlier today, December 23, 2005. Finally, we provided to you today via courier a blank check for the applicable filing fee.

We appreciate the opportunity to express our concerns and look forward to the Board's hearing on this matter.

Sincerely,

Howard M. Wexler

HMW:cf

cc: Bruce Krell  
Margaret Woodbury, Deputy County Counsel

Enclosures



NAPA COUNTY  
CLERK OF THE BOARD'S OFFICE

1195 Third Street, Room 310, Napa, California, 94559 • (707) 253-4580

**APPEALS**

(Chapter 2.88 of Napa County Code)

**TO BE COMPLETED BY APPELLANT\***

(Please type or print legibly)

Appellant's Name: Howard Wexler, attorney for Bruce Krell

Telephone #: (415) 954-4455

Fax #: (415) 954-4480

E-Mail: wexler@fbm.com

Mailing Address: 235 Montgomery Street Farella Braun + Martel

San Francisco  
City

CA  
State

94104  
Zip

Status of Appellant's Interest in Property: N/A

project applicant, adjacent property owner, other (describe)

Action Being Appealed: Rejection of appeal by the Clerk of the Board of Supervisors

Permittee Name: Bruce Krell

Permittee Address: 187 San Marcos Avenue

San Francisco  
City

CA  
State

94116  
Zip

Permit Number: N/A (decision rendered by letter from Clerk of the Board of Supervisors)

Date of Decision: 12/13/2005

Nature of Permit or Decision: Rejection of appeal of administrative approval of lot line adjustment by Clerk of the Board of Supervisors

**Reason for Appeal** (Be Specific - If the basis of the appeal will be, in whole or in part, that there was a prejudicial abuse of discretion on the part of the approving authority, that there was a lack of a fair and impartial hearing, or that no facts were presented to the approving authority that support the decision, **factual or legal basis for such grounds of appeal must be expressly stated or they are waived.** (attach additional sheet if necessary):

Clerk of the Board of Supervisors incorrectly rejected appeal to the Board of Supervisors on the grounds that the appeal did not contain

two documents already in the County's possession: (i) a title insurance company report and (ii) an assessor's map book page. Both documents

were used to provide notification of the administrative approval Mr. Krell seeks to appeal, and he did not include them (continued below)

If the basis of the appeal will be, in whole or in part, that the environmental determination under the California for each insignificant or less than significant impact identified in the initial study that the appellant contends maybe significant, a detailed legal and factual statement indicating why the project is not exempt, and a detailed statement supported by substantial evidence describing why the Negative/Mitigated Negative Declaration or EIR is inadequate.) (attach additional sheet if necessary)

because of representations made by County staff regarding (i) the necessity of including these documents in the appeal

and (ii) the land use consequences of the lot line modification. Please also see attached letter.

Project Site Address/Location: N/A

Street

City

State

Zip

Assessor's Parcel No.:

Signature of Appellant

12/23/2005  
Date

Howard M. Wexler  
TYPE OR PRINT NAME

**TO BE COMPLETED BY CLERK OF THE BOARD**

Total Fee: \$ Receipt Nos.: Received by: Date:

\* The following information, in addition to the information required by this form also needs to be provided as attachments hereto pursuant to County Code Section 2.88.050 (F-I): Title Insurance Report, Assessor's Map Book Pages, and Appeals Fee.



PAMELA A. MILLER  
Clerk of the Board

## COUNTY of NAPA

BOARD OF SUPERVISORS

1195 Third Street, Suite 310, Napa, CA 94559  
Office (707) 253-4386 FAX (707) 253-4176

December 13, 2005

Mr. Bruce Krell  
187 San Marcos Ave.  
San Francisco, CA 94116

RE: Appeal pertaining to decision of Lot Line Adjustment Application of the lands of John and Andrea Robinson and Patrick and Julie Garvey Trust

Dear Mr. Krell:

The office of the Clerk of the Board received the appeal filed by you on December 6, 2005, to the decision of the Public Works Department regarding the Lot Line Adjustment of the lands of John and Andrea Robinson and Patrick and Julie Garvey Trust (APNs 027-460-031 and 027-460-032). Also received was a blank, signed check, number 5040.

At the time the appeal was delivered, Dolly Marques was informed by a member of my staff (Sherry Vattuone) that the packet was incomplete as it did not contain the information noted below. Furthermore, subsequent to that conversation, you were informed by Ms. Vattuone via telephone that the appeal, as received was incomplete and the deadline to file the completed appeal was that same day, December 6, 2005 (pursuant to Section 2.88.040 of the Napa County Code). Upon review of the packet submitted by the end of the work day on December 6, 2005, it has been determined a complete appeal was not submitted by that time. The appeal must therefore be rejected.

Pursuant to Section 2.88.050 of the Napa County Code, a notice of appeal is required to contain the following pieces of information, both of which were missing from your appeal:

1. A title insurance report issued no earlier than six months prior to the date of the decision being appealed that certifies, by name, address and assessor's parcel number, the owners of all real property located within three hundred feet of any real property which is the subject of the appeal; and
2. A copy of the assessor's map book pages current as of the date of the decision being appealed that shows all real property which is the subject of the appeal and all properties in the property owners list as described above.

BRAD WAGENKNECHT  
DISTRICT 1

MARK LUCE  
DISTRICT 2

DIANE DILLON  
DISTRICT 3

BILL DODD  
DISTRICT 4

HAROLD MOSKOWITZ  
DISTRICT 5

Dec 21 '05 12:51 P.09

Fax: 415-431-4526

KRELL@WERTHIMER

Mr. Bruce Krell  
December 12, 2005  
Page 2

A copy of the above noted Code is enclosed for your information. Since the appeal has been rejected, I am returning the original appeal documents and the check submitted with the packet.

Please do not hesitate to contact me if should you have any questions. I may be reached at (707) 253-4196.

Sincerely,



Pamela A. Miller  
Clerk of the Board/Administrative Manager

Cc: R. Peterson, Director of Public Works  
D. Ridenhour, Assistant Director of Public Works  
P. Tyrrell, Deputy County Counsel  
L. Bogner, Engineer  
A. Carey, Management Analyst II

H:\Clerk of the Board\Appeals\2005\Lot Line Adjustments\Krell - Rejection as incomplete.doc



## COUNTY of NAPA

ROBERT J. PETERSON, P.E.  
Director of Public Works  
County Surveyor-County-Engineer  
Road Commissioner

DONALD G. RIDENHOUR, P.E.  
Assistant Director of Public Works

November 18, 2005

John and Andrea Robinson  
P.O. Box 90  
Rutherford, CA 94573

**Re: Garvey/Robinson Lot Line Adjustment**

This Department has reviewed your application to accomplish a lot line adjustment. Decisions regarding lot line adjustment applications are ministerial in the County of Napa. In accordance with Section 407 of the Napa County CEQA guidelines, this lot line adjustment is exempt from CEQA. The application is in conformance with the conditions set forth in Section 17.46.040(B) of the Napa County Code. Therefore, your application is hereby deemed to be approved. This approval is granted with this understanding. The following is the process to complete the adjustment:

1. This Department will provide written notification to all owners of parcels contiguous to those involved in this adjustment. Also, this Department will publish a legal notice in a local newspaper to the effect that a lot line adjustment is being executed. Interested parties will be given ten (10) days from the date of publication to file for appeal.

**Publication: Napa Valley Register, November 18, 2005**  
**Appeal Expiration Date: December 6, 2005**

2. Submit two (2) copies of each proposed deed to us for review. The Metes and Bounds description of the draft deeds shall describe the exterior boundary of the "new" parcels as shown on the approved lot line adjustment map along with all applicable easements. Each resulting parcel must have legal access to a public road either by frontage on that road or by way of a right-of-way with a minimum width of ten feet. Existing easement/right-of-way widths may not be reduced. The proposed deeds being granted to the property owner must have the following "Expressed Written Statement of the Grantor" on them immediately following the Metes and Bounds description:

"The purpose of this conveyance and the conveyances recorded concurrently herewith is to create a Lot Line Adjustment pursuant to the California Government Code Section 66412(d) and the Napa County Ordinances.

NAPA COUNTY DEPARTMENT OF PUBLIC WORKS  
1195 Third Street • Suite 201 • Napa, CA 94559 • (707) 253-4351  
www.co.napa.ca.us FAX (707) 253-4627



NAPA COUNTY DEPARTMENT OF PUBLIC WORKS  
NOTICE OF APPROVAL  
LOT LINE ADJUSTMENT APPLICATION  
OF THE LANDS OF JOHN & ANDREA ROBINSON AND  
PATRICK AND JULIE GARVEY TRUST  
ASSESSOR PARCEL NOS. 027-460-031 AND 032

Notice is hereby given by the Director of the Napa County Department of Public Works that an application for a Lot Line Adjustment between the above stated adjacent existing parcels has been reviewed pursuant to Section 17.46.040 of the Napa County Subdivision Ordinance and found to comply with the requirements stated therein.

This Lot line Adjustment application is hereby deemed **Approved** as of the date of this publication.

Copies of all documents which relate to the above described project may be examined at the office of the Director of Public Works at 1195 Third St., Room 201, Napa, CA 94559.

Interested parties have ten (10) working days from the date of this publication to appeal this decision by filing a Notice of Appeal with the Clerk of the Board of Supervisors at 1195 Third St., Room 305, Napa, CA. You can access further information regarding appeals by visiting the County's website at [www.co.napa.ca.us](http://www.co.napa.ca.us). Napa County Code Section 2.88 is available at this site. Appeal packet information is located under Our Government – Departments & Special Districts – Clerk of the Board – Forms.

DATED: November 7, 2005

ATTEST: Gail Forward  
Gail Forward  
Engineering Services

PUBLISH: Napa Register, November 18, 2005

BILL TO: NAPA COUNTY DEPT. OF PUBLIC WORKS

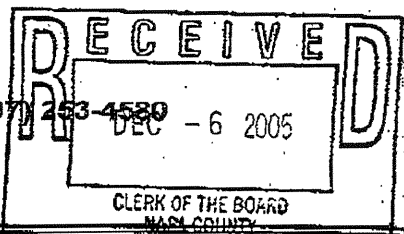
CC: file

fn: Lot Line Adjustment - Notice.Doc

Inv #  
PW 175-85



NAPA COUNTY  
CLERK OF THE BOARD'S OFFICE  
1195 Third Street, Room 310, Napa, California, 94559 • (707) 253-4520



**APPEALS**  
(Chapter 2.88 of Napa County Code)

TO BE COMPLETED BY APPELLANT\*  
(Please type or print legibly)

Appellant's Name: BRUCE KRELL  
Telephone #: 415-661-2523 or 415-861-4414 Fax #: 415-431-4526 E-Mail: grovelaw@mindspring.com  
Mailing Address: 187 San Marcos Avenue, San Francisco, CA 94116  
No. Street City State Zip  
Status of Appellant's Interest in Property: Adjacent property owner  
project applicant, adjacent property owner, other (describe)  
Action Being Appealed: LOT LINE ADJUSTMENT  
Permittee Name: John & Andrea Robinson  
Permittee Address: 1457 S. Whitehall Lane, St. Helena, CA 94574  
No. Street City State Zip  
Permit Number: \_\_\_\_\_ Date of Decision: \_\_\_\_\_  
Nature of Permit or Decision: \_\_\_\_\_

Reason for Appeal (Be Specific - If the basis of the appeal will be, in whole or in part, that there was a prejudicial abuse of discretion on the part of the approving authority, that there was a lack of a fair and impartial hearing, or that no facts were presented to the approving authority that support the decision, **factual or legal basis for such grounds of appeal must be expressly stated or they are waived.** (attach additional sheet if necessary):  
I oppose and object to the approval of lot line adjustment to 1457 S. Whitehall Ln. as it tries to subvert and get around the standard setback requirement and substitute a 6 foot setback in place.

If the basis of the appeal will be, in whole or in part, that the environmental determination under the California for each insignificant or less than significant impact identified in the initial study that the appellant contends maybe significant, a detailed legal and factual statement indicating why the project is not exempt, and a detailed statement supported by substantial evidence describing why the Negative/Mitigated Negative Declaration or EIR is inadequate.) (attach additional sheet if necessary)

Project Site Address/Location: 1457 So. Whitehall Lane St. Helena, CA 94574  
Street City State Zip  
Assessor's Parcel No.: APN 027 460 032

Signature of Appellant: [Signature] 10/6/2005 BRUCE KRELL  
Date TYPE OR PRINT NAME

TO BE COMPLETED BY CLERK OF THE BOARD

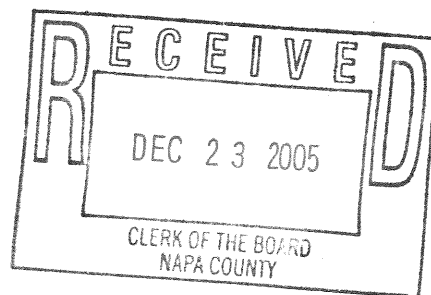
Total Fee: \$ \_\_\_\_\_ Receipt Nos.: \_\_\_\_\_ Received by: \_\_\_\_\_ Date: \_\_\_\_\_

\* The following information, in addition to the information required by this form also needs to be provided as attachments hereto pursuant to County Code Section 2.88.050 (F-I): Title Insurance Report, Assessor's Map Book Pages, and Appeals Fee.

**FARELLA BRAUN + MARTEL LLP**  
Attorneys At Law

Russ Building / 235 Montgomery Street  
San Francisco / CA 94104

T 415.954.4400 / F 415.954.4480  
www.fbm.com



**FACSIMILE TRANSMITTAL** No. of Pages (incl. this page): **2** Date: **December 23, 2005**

To: **Pamela A. Miller** F: (707) 253-4176 T: (707) 253-4386  
Clerk of the Board of Supervisors

From: **Howard M. Wexler** D: 415.954.4455  
Matter: **Bruce Krell** Matter No:

Please call 415.954.4455 if this transmission is incomplete.

Message:

Pamela,

Attached is the form for our appeal. Please use the blank check we submitted today for payment. In addition, we will be sending via overnight delivery (for arrival early next week) supplementary documents and the original signed copy of this appeal form.

Howard

**CONFIDENTIAL COMMUNICATION**

THIS FACSIMILE TRANSMISSION IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE NAMED ABOVE AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED AND CONFIDENTIAL. PLEASE FORWARD IT DIRECTLY TO THE ADDRESSEE IN A SEALED CONFIDENTIAL ENVELOPE. IF YOU ARE NOT THE INTENDED RECIPIENT, ANY DISSEMINATION, DISTRIBUTION OR COPYING IS STRICTLY PROHIBITED. IF YOU RECEIVED THIS FACSIMILE IN ERROR, PLEASE IMMEDIATELY NOTIFY THE SENDER BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO FARELLA BRAUN + MARTEL LLP VIA THE U.S. POSTAL SERVICE AT OUR EXPENSE. THANK YOU.



**NAPA COUNTY  
CLERK OF THE BOARD'S OFFICE**

1195 Third Street, Room 310, Napa, California, 94559 • (707) 253-4580

## APPEALS

(Chapter 2.88 of Napa County Code)

**TO BE COMPLETED BY APPELLANT\***  
(Please type or print legibly)

**Appellant's Name:** Howard Wexler, attorney for Bruce Krell

**Telephone #:** (415) 954-4455

**Fax #:** (415) 954-4460

**E-Mail: [wexler@fbm.com](mailto:wexler@fbm.com)**

**Mailing Address:** 235 Montgomery Street Farella Braun + Martel San Francisco CA 94104  
No. Street City State Zip

**Status of Appellant's Interest in Property:** N/A

project applicant, adjacent property owner, other (describe)

**Action Being Appealed:** Rejection of appeal by the Clerk of the Board of Supervisors

**Permittee Name:** Bruce Krell

|                    |        |                       |               |       |       |
|--------------------|--------|-----------------------|---------------|-------|-------|
| Permittee Address: |        | 187 San Marcos Avenue | San Francisco | CA    | 94116 |
| No.                | Street |                       | City          | State | Zip   |

Permit Number: N/A (decision rendered by letter from Clerk of the Board of Supervisors) Date of Decision: 12/13/2005

**Nature of Permit or Decision:** Rejection of appeal of administrative approval of lot line adjustment by Clerk of the Board of Supervisors

**Reason for Appeal** (Be Specific - If the basis of the appeal will be, in whole or in part, that there was a prejudicial abuse of discretion on the part of the approving authority, that there was a lack of a fair and impartial hearing, or that no facts were presented to the approving authority that support the decision, **factual or legal basis for such grounds of appeal must be expressly stated or they are waived.** (attach additional sheet if necessary):

expressly stated or they are waived. (attach additional sheet if necessary):  
Clerk of the Board of Supervisors incorrectly rejected appeal to the Board of Supervisors on the grounds that the appeal did not contain

two documents already in the County's possession: (i) a title insurance company report and (ii) an assessor's map book page. Both documents

two documents already in the custody of the FBI. The documents were used to provide notification of the administrative approval Mr. Krell seeks to appeal, and he did not include them (continued below)

If the basis of the appeal will be, in whole or in part, that the environmental determination under the California for each insignificant or less than significant impact identified in the initial study that the appellant contends maybe significant, a detailed legal and factual statement indicating why the project is not exempt, and a detailed statement supported by substantial evidence describing why the Negative/Mitigated Negative Declaration or EIR is inadequate.) (attach additional sheet if necessary)

because of representations made by County staff regarding (i) the necessity of including these documents in the appeal

and (ii) the land use consequences of the lot line modification. Please also see attached letter.

Project Site Address/Location: N/A \_\_\_\_\_ Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Assessor's Parcel No.:

Signature of Appellant

12/23/2005  
Date

Howard M. Wexler  
TYPE OR PRINT NAME

**TO BE COMPLETED BY CLERK OF THE BOARD**

Total Fee: \$ \_\_\_\_\_ Receipt Nos.: \_\_\_\_\_ Received by: \_\_\_\_\_ Date: \_\_\_\_\_

\* The following information, in addition to the information required by this form also needs to be provided as attachments hereto pursuant to County Code Section 2.88.050 (F-I): Title Insurance Report, Assessor's Map Book Pages, and Appeals Fee.