

McDowell - CDPD - H. Gitelman - CDPD
McCollister - CDPD



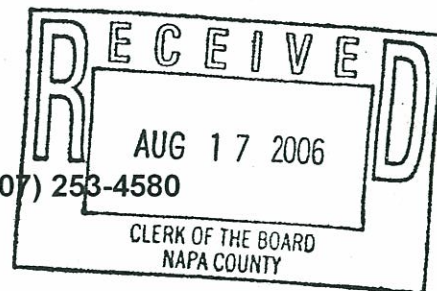
Pat Tynell - 606
Andrew Carey - CEO

**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: Katherine Philippakis, attorney for Tom Gamble

Telephone #: (707) 967-4000

Fax #: (707) 967-4009

E-Mail: kp@fbm.com

Mailing Address: 899 Adams Street, Suite G, St. Helena, California 94574

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: Z.A. approval of a tentative map revision

Permittee Name: Michael Rice, Miller-Sorg Group, Inc.

Permittee Address: 710 Kellogg Street, Suisun, California 94585

No.

Street

City

State

Zip

Permit Number: 95071-SUB

Date of Decision: 8/3/2006

Nature of Permit or Decision: Tentative Map Revision #P06-01097-TMREV

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):

See attached letter

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: North side of Pope Canyon Rd., 1500 feet West of intersection w/Berryessa - Knoxville Road

Street

City

State

Zip

Assessor's Parcel No.: 019-080-003

Katherine Philippakis
Signature of Appellant

8/16/2006

Date 8.16.06

Katherine Philippakis

TYPE OR PRINT NAME

TO BE COMPLETED BY CLERK OF THE BOARD

Total Fee: \$ 625.80 Receipt Nos. 845312 Received by: *Sherry Valtierra* Date: 8/17/06

* 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.



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August 16, 2006

Pamela Miller, Clerk
Napa County Board of Supervisors
1195 Third Street, Suite 310
Napa, CA 94559

Re: Villa Berryessa Tentative Map Revision (minor change) #P06-01097-TMREV to approved Tentative Map (95071-SUB) (Assessor Parcel No. 019-080-009)

Dear Ms. Miller:

This firm represents Tom Gamble, who owns land neighboring the proposed Villa Berryessa Subdivision project. We are writing to appeal the Zoning Administrator's approval on August 3, 2006, of modifications to the project's tentative map.

As set forth below, we believe that the tentative map expired many months ago, and therefore the Zoning Administrator lacked authority to modify its provisions. No facts presented at the hearing support the Zoning Administrator's decision. Further, even if the tentative map had not expired, the Zoning Administrator's revisions were not "minor," and were therefore beyond his authority to approve.

I. The Tentative Map Expired on June 24, 2004.

The California Government Code §66410 *et seq.* (the "Map Act") and the Napa County Code, Title 17 (the "Code") allow tentative maps a maximum life span of seven years (*see* Code §17.18.010 & 17.18.020). The county approved the project's tentative map on June 24, 1997, and subsequently granted five years of extensions. The tentative map therefore expired seven years later on June 24, 2004.

The project sponsor submitted a final map application on the deadline of June 24, 2004. The county has the authority to issue this final map, or to reject it, but the project sponsor cannot submit a new final map application now that the tentative map has expired (*see* Map Act §66452(d)).

The Zoning Administrator's decision to allow modifications of an expired tentative map relied upon the incorrect legal assumption that the project sponsor's submittal of a Joint Aquatic Resources Permit Application, or "JARPA," on May 24, 2004, put into effect a "development moratorium" under the Map Act (*see* §66452.6(b)(1)). A development moratorium is defined as:



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“a water or sewer moratorium, as well as other actions of public agencies which regulate land use, development or the provision of services to the land, including the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits, or delays the approval of a final or parcel map.” (Map Act §66452.6(f)).

It is an open legal question whether, after submitting applications for permits required for a final map to issue, the delay by any agencies in granting such permits is an “action” that “prevents, prohibits or delays the approval” of the a final map. On this legal question, an authoritative guide on the Subdivision Map Act states that the:

“statute is unclear as to whether agencies authorized to issue permits concerning environmental matters... ‘regulate land use’ and whether their failure to act after an application has been filed with them requesting a permit constitutes an ‘action.’ In the authors’ opinion, such a failure to act within a reasonable time would constitute a development moratorium.” (Curtin, Daniel J. and Merritt, Robert E., *California Subdivision Map Act and the Development Process* (Dec. 2005) (emphasis added)).

The project sponsor submitted the JARPA on May 24, 2004 – one month before the tentative map expired. Under the JARPA, the project requested a permit from the U.S. Army Corps of Engineers, the California Department of Fish & Game, and the S.F. Regional Water Quality Control Board. Allowing merely one month for the these three agencies to issue their respective permits is not reasonable, and therefore no development moratorium went into effect to extend the life of the project’s tentative map. We know of no evidence in the record that three such permits have ever been issued in just one month’s time.

Assuming that a delay in issuing permits could create a development moratorium, such a moratorium can only be said to begin once a reasonable amount of time has elapsed after the permit applications were filed, such as three to six months. The project’s tentative map expired prior to any such reasonable amount of time elapsing.

II. Even if a Development Moratorium Commenced on May 24, 2004, the Moratorium has Expired without the Project Sponsor Submitting a New Final Map.

On May 24, 2004, under the JARPA, the project sponsor submitted applications for three separate permits. Even if the mere submittal of these permit applications, without the elapse of any reasonable amount of time for the agencies to respond, is deemed a development moratorium, that moratorium has expired.

A moratorium can last only as long as the agencies fail to take action on the permit applications that triggered the moratorium. Once the three permits issued or were sent back to the project sponsor for additional action by the project sponsor, the moratorium terminated (and



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according to §66452.6(b)(3) of the Map Act, the project sponsor had 120 days to submit a new final map application). Any permit applications submitted by the project sponsor after June 24, 2004, the expiration date of the original tentative map, are irrelevant because permit applications submitted after the original expiration date of the tentative map cannot logically be the cause of any delay in the approval of the final map within the original time period.

With respect to the three permit applications submitted on May 24, 2004, two have been issued. On November 17, 2005, the California Department of Fish and Game issued the Section 1603 permit, and on November 21, 2005, the U.S. Army Corps of Engineers issued the Section 404 permit.

In addition, on September 7, 2005, the RWQCB issued an Order for Technically Conditioned Certification of the Section 401 permit. The issuance of this technically conditioned certification also terminated the development moratorium. The ball, so to speak, was put back in the project sponsor's court, and the RWQCB could not be said to be delaying issuance of the Section 401 permit because there were outstanding items that the project sponsor, not the RWQCB, had to complete for the permit to issue. If the technically conditioned certification required still yet another permit of some kind in order for the RWQCB to issue the Section 401 permit, we are not aware that the project sponsor submitted any such permit application within the time period required (or otherwise completed the items required by the technically conditioned certification with the time period required).

Accordingly, the development moratorium terminated 120 days after the issuance of the last of the three permits, or on March 21, 2006. The project sponsor has not applied for a new final map. The county must either issue the final map for which the project sponsor applied on June 24, 2004, or deny that map. Contrary to the Zoning Administrator's actions, the county does not have the authority to modify the tentative map now that it has expired.

III. The Zoning Administrator Approved Modifications to the Tentative Map that were not Minor.

Finally, even if the tentative map had not expired, the Zoning Administrator exceeded his authority by approving modifications to the tentative map that meet neither the statutory nor the common sense definition of "minor." The Code allows the Zoning Administrator to approve only "minor changes" to a tentative map (§17.26.0440).

The Code defines a "minor" change as "a modification to the tentative map that involves a change of lot lines, lot shape, lot dimensions, street alignment, width or grade, grading proposals, or other elements that do not change the basic design or improvements required in the tentative map and the conditions thereof" (Code §17.02.380) (emphasis added). In addition, the Code states that a "proposal that will significantly alter the configuration of the proposed lots is not a minor change" (*Id.*).



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Here, the modifications change the lot lines of all 100 parcels of the project. Such a modification could hardly be seen as anything but a significant alteration. Changing the lot lines of all 100 parcels "significantly alter(s) the configuration of the proposed lots..." (Code §17.02.380) in direct violation of the Code.

Moreover, by modifying the conditions of approval of the tentative map to require compliance by the project sponsor with revisions to the project's use permit, the Zoning Administrator changed the "basic design" of the project. His decision will now allow stick built homes rather than a mobile or modular homes. The "basic design" of stick built homes is very different than modular homes. Modular homes improve a lot with a concrete pad. Stick built homes attach improvements to the land beyond a mere concrete pad.

The modification of a map to alter all of its lots and to provide an entirely different residential land use represents more than a minor change.

We appreciate the opportunity to express our concerns and look forward to the Board's hearing on this matter. Included with this request is the Napa County Appeal form providing the information required by Section 2.88.050 of the Code and a copy of the title company insurance report. Additional information is provided on Attachment 1 to this letter. An original copy of this letter, the title company report, and the applicable filing fee will follow within five days.

Sincerely,

Katherine Philippakis

KP:hsw



Attachment 1

Permittee:

Michael Rice, Miller-Sorg Group, on behalf of property owner Nick Petsas
710 Kellogg Street
Suisun City, CA 94585-2851

Nick Petsas
1000 Dezerai Court
Napa, CA 94558-5435

Appellant:

Kay Philippakis, Farella Braun + Martel, on behalf of Tom Gamble
899 Adams Street, Suite G
St. Helena, CA 94574

Tom Gamble
P.O. Box 670
St. Helena, CA 94574

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George & Patricia Harunk Tr
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Torrance, CA 90505-3984

APN 019 080 001 000
Ronald Naines
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Guarantee No: H 838841

File No.: LU02391 -

EXHIBIT "A" - continued

APN 019 020 023 000
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GUARANTEE



First American Title Insurance Company

First American Title Insurance Company

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND THE
CONDITIONS AND STIPULATIONS OF THIS GUARANTEE,

First American Title Insurance Company

a corporation, herein called the Company

GUARANTEES

The Assured named in Schedule A against actual monetary loss or damage not exceeding the liability amount
stated in Schedule A which the Assured shall sustain by reason of any incorrectness in the assurances set forth in
Schedule A.

First American Title Insurance Company

By: 
Authorized Signatory

Guarantee No: H 838841
File No.: LU02391 -

PROPERTY OWNERS NOTICE GUARANTEE

SCHEDULE A

LIABILITY: \$1,000.00

FEE: \$250.00

Name of Assured: **COUNTY OF NAPA**

Date of Guarantee: August 7, 2006 at 7:30 A.M.

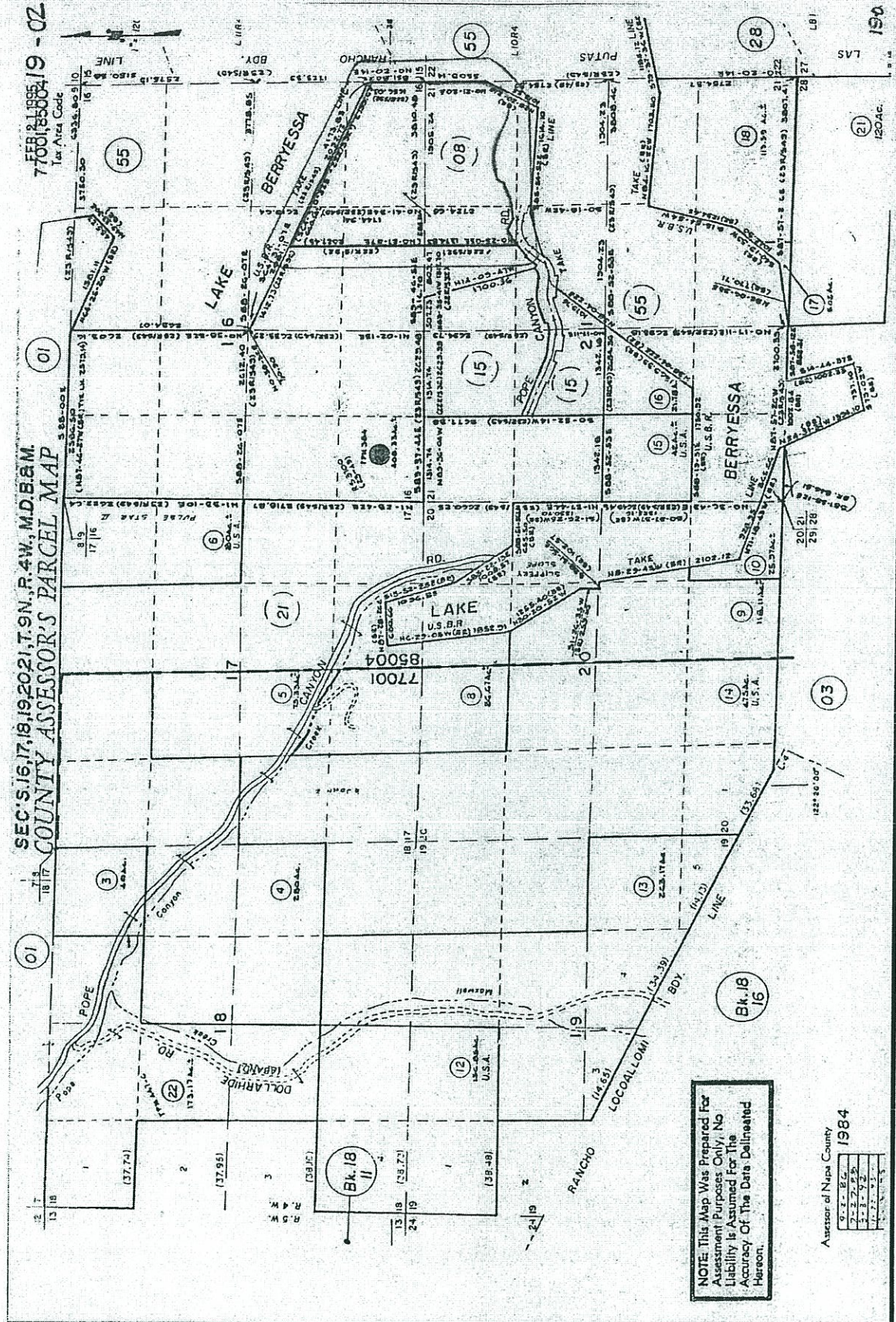
The assurances referred to on the face page are:

That, according to the Napa Extended Assessment Roll for the fiscal year 2006-2007 on the Megabyte Property Tax System computer available in the office of the Napa County Tax Collector as of the Date of Guarantee (the "Assessment Roll"):

- A. The persons listed on Exhibit "A" attached hereto as "Current Owner" are shown on the Assessment Roll as owning real property within 300 feet of the property identified as Assessor's Parcel Number(s):

019-080-003-000.

- B. The Assessor's Parcel Number (APN) and any addresses shown on Exhibit "A" attached hereto are as shown on the Assessment Roll.



WARNING: The Map attached hereto may or may not be a survey of the land depicted thereon. You should not rely upon it for any purpose other than orientation to the general location of the parcel or parcels depicted. First American expressly disclaims any liability for alleged loss or damage which may result from reliance upon such map.

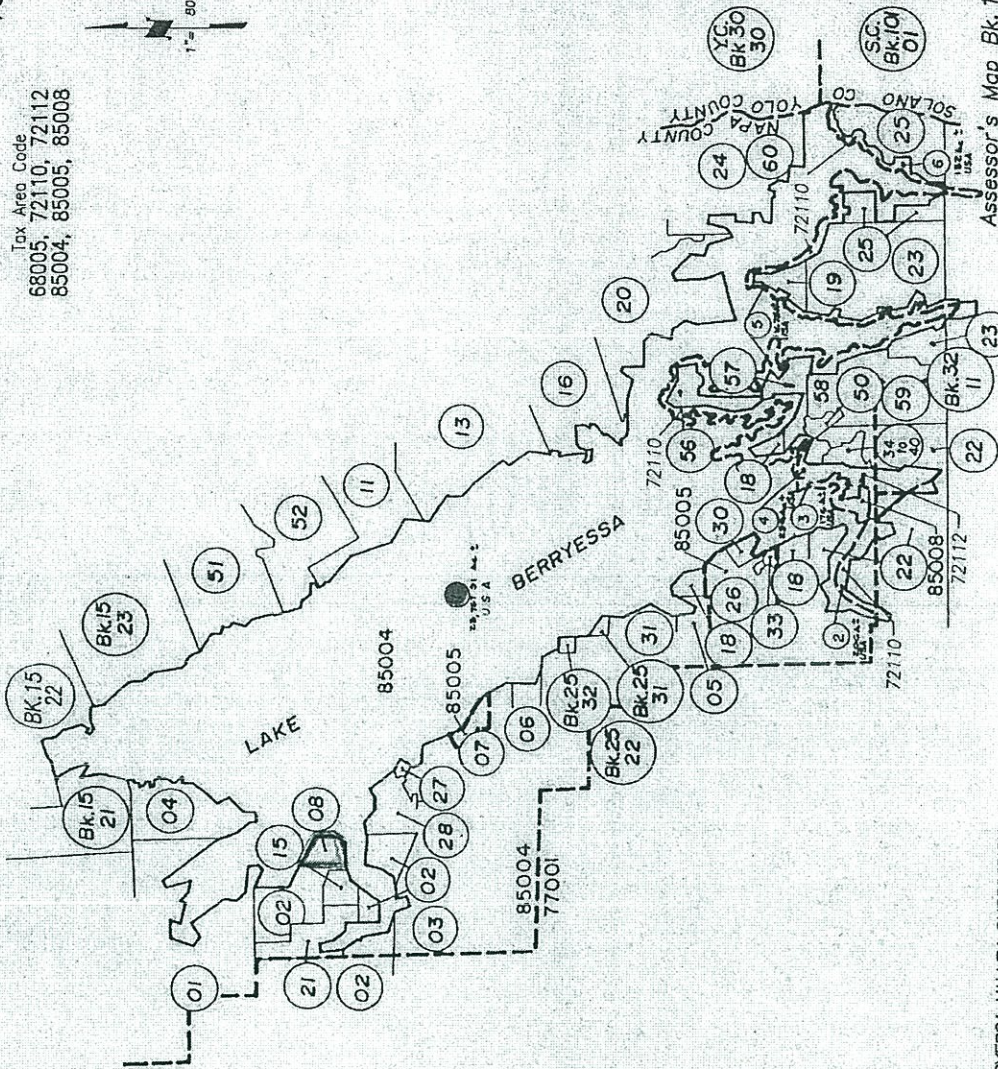
Order No. LU02391-

19-55

Tax Area Code
68005, 72110, 72112
85004, 85005, 85008



PTN. LAS PUTAS RANCHO



Assessor's Map Bk. 19 Pg. 55
County of Napa, Calif.

PTN. BERRYESSA VALLEY SUBDIVISION

1973

Assessor of Napa County	
TRA CHANGE	12-15-91 17-31-99
REVISION	
DATE	

NOTE: This Map Was Prepared For
Assessment Purposes Only. No
Liability Is Assumed For The
Accuracy Of The Data Delimited
Hereon.