



Agenda Date: 8/28/2007  
Agenda Placement: 8B  
Set Time: 9:15 AM PUBLIC HEARING  
Estimated Report Time: 30 Minutes

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** Michael Stoltz for Robert Peterson - Director  
Public Works  
**REPORT BY:** Larry Bogner, Civil Engineer, 253-4351  
**SUBJECT:** Mueller Appeal (Hurt) Lot Line Adjustment

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### **RECOMMENDATION**

Consideration of an appeal filed by the Trustees of Albert Jessee McDowell Trust to a decision by the Director of Public Works to approve a Lot Line Adjustment filed by Allan F. and Nancy L. Mueller for the property located on Glos Lane at State Highway 29 in St. Helena. (Assessor's Parcel Nos. 030-190-013 and 030-190-014)

**ENVIRONMENTAL DETERMINATION:** The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

### **EXECUTIVE SUMMARY**

Allan and Nancy Mueller applied for a lot line adjustment of their properties on Glos Lane in the St. Helena area. The application conformed to the aspects of the Napa County Code regarding lot line adjustments. Accordingly, the Director of Public Works approved the lot line adjustment. The Trustees of Albert Jessee McDowell Trust, neighboring property owners, have appealed the approval. Public Works and County Counsel have reviewed the reasons for their appeal and have found no grounds for the appeal to be granted.

### **FISCAL IMPACT**

Is there a Fiscal Impact?                      No

### **ENVIRONMENTAL IMPACT**

The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA guidelines) and therefore CEQA is not applicable.

## **BACKGROUND AND DISCUSSION**

### History of the lot line adjustment (LLA)

The application was submitted to the Public Works Department (PW) on April 6, 2007.

Public Works referred the application to Conservation, Development and Planning Department (CDPD) and Environmental Management (EM), as per County Code. Both responded in the positive as to the sections of the County Code administered by the respective Departments (Zoning aspects of Chapter 17 in the case of CDPD and public health/sewage disposal/water systems of Chapter 13 in the case of EM).

Public Works (PW) reviewed and found the application to be in conformance with County Code regarding LLAs. The Assistant Director of Public Works approved the adjustment. (A copy of the approval letter dated June 8, 2007 is attached). PW then completed the newspaper notification and notification to adjoining property owners in accordance with County Code.

### The Appeal filed by the Trustees of Albert Jessee McDowell Trust

The Trustees of Albert Jessee McDowell Trust, neighbors of the Mueller property, have appealed Public Works' approval of this LLA. The following are the trustees reasons for the appeal, followed by Public Works response:

#### **1. Buildability determination:**

Appellant: "It is our understanding that to qualify for a lot line adjustment both parcels must qualify as a legal lot for purposes of construction of a residence. It is our opinion that the 030-190-014 parcel consisting of 0.35 Ac does not."

Response: Parcel 030-190-014 was created by a deed executed in June, 1953. In 1953 State and County subdivision codes allowed lots to be created by deed. Therefore, this parcel's creation was in conformance with State and County laws in effect at the time. For purposes of a lot line adjustment the parcel is a "legal" parcel.

Appellant: "Figures 2 and 3 in the permit application do not show the top of bank of the adjacent river. This is required per section 17.46.030 of the Napa Code which states the application shall show the approximate location of all watercourses and existing drainage structures, including the location of any floodway and the top of the bank, if discernible, shall be noted. Section 18 of the Napa Code stipulates setbacks for construction adjacent to a stream. Section 18.104.110 further stipulates a minimum buildable area after taking into account the restriction imposed by this title. None of these restrictions are present on the permit application. The bottom of the triangular parcel 014 with a dimension of 127 feet is located in the approximate center of the river channel. The permit application does not show any relationship of a building site on parcel 030-190-014 to the west facing property line, the proposed right-of-way, of the west facing property line of parcel 030-190-013. Section 18.104.110 of the code is quite specific in these areas and also stipulates in (F.) that side lot lines shall be at approximately right angles to radial or street centerlines. This requirement is incompatible with a triangular lot. Additionally, the smaller of the two existing homes on the Mueller property is extremely close to the top of bank and the depiction of the aggregate property totaling 1.14 Ac without consideration of the top of river bank is misleading. The river banks in this area are near vertical."

Response: Paragraph 3 section 17.46.040 C of the Napa County Code states "The director of public works shall deny the lot line adjustment...if it fails to comply with the following standards...A nonbuildable parcel will not be made buildable by the lot line adjustment. For purposes of this standard, determining whether a parcel is nonbuildable shall include those considerations of size, shape, geographic features, and legal restrictions imposed upon the original parcel by deed, county general plan, or building or zoning regulations, including those floodplain management regulations set forth in Chapter 16.04, where such deeds or regulations preclude issuance of a building permit for construction on the parcel of a dwelling unit or, if dwelling units are not permitted

within that zoning district, construction of another primary structure otherwise permitted within that zoning district." The review of every lot line adjustment application by CDPD includes an analysis for conformance to this section of the Code. CDPD can request that additional information not shown on the LLA application maps shall be shown if it is necessary to make determinations about the proposed parcels conformance with the code. If the CDPD finds the information sufficient to conduct their review based on the information available at the time, the application may be processed as presented. Regarding parcel design standards required by Section 18.104.110 of the Code, the existing lots nonconformity with those standards would not preclude a lot line adjustment, especially if the lot line adjustment would produce reconfigured parcels that are more conforming to the Code than the original lots. Regarding lot buildability, CDPD needs to find that the lot is currently buildable in its existing configuration, so as not to create an additional buildable parcel. CDPD took into account the dimensions of the 0.35 acre parcel during their review. To meet the buildability standard, CDPD relies on the Universal Building Code (UBC) definition of a residential structure. The UBC requires that minimum size of structure needed to build a residence is 120 square feet with a kitchen. According to the Napa County GIS maps available to the CDPD staff, the entire parcel is located outside of the steep slopes that define the banks of the Napa River. The Contours 02 Layer of the Napa County GIS indicate that the edge of the parcel closest to the Top of Bank (TOB) of the Napa River is approximately 25 feet away. Beyond the TOB of the river, the entire area of the parcel is located on slopes of less than 5%, according to the Slopes Layer of the Napa County GIS. Therefore the setback required by the Napa County Conservation Regulations (Chapter 18.108 of the County Code) would not be more than 45 feet if measured from the top of the sloped banks which define the Napa River channel. Since floodplain management regulations apply to the construction of new structures in this area, CDPD consulted with PW to review floodplain construction requirements. PW Floodway maps were viewed and it was found that the floodway line intersected the parcel at approximately its midpoint. PW was further consulted to establish what standards would need to be met if the potential building site within the subject parcel were within the bounds of the officially designated floodway. According to consultation with PW, a HEC-2 hydrological analysis would need to be conducted and the building permit applicant would have to show that construction of a proposed structure would not alter the base flood elevation. Given the distance to the Napa River and the parcels location at the outside of the outermost boundary of the floodway as shown on PW maps, it is reasonable to conclude that a small residential structure of 120 square feet could be constructed using the Best Management Practices and floodplain construction engineering solutions in a manner that could be shown through a HEC-2 study to not change the base flood elevation of the Napa River as documented by FEMA so that a building permit clearance could then be issued by the PW. For comparison, the existing guest cottage on the larger parcel is located closer to the Napa River than the area within the 0.35 acre parcel. The applicant's representative provided documentation that the appropriate federal permits had been acquired for the new large (approximately 3200 square feet) structure with similar proximity to the Napa River located on the other parcel involved in the lot line adjustment. The resulting parcel lines would require the existing guest cottage to be redesignated the main dwelling unit. For any future construction, the owners are reminded that pursuant to Section 16.04.070 of the County Code, "in the interpretation and application of this chapter (Chapter 16.04 Floodplain Management), all provisions shall be considered as constituting minimum requirements which may be increased as is determined to be necessary by the county through its engineer. (Ord. 1095 § 1 (part), 1995)."

Appellant: "Section 13.12.340 Location--Distance from other facilities, specifies minimum distances for water wells from property lines, roadways, septic fields, and streams. None of this information is present in the application. The permit does not present any evidence of ability to construct a leach field on parcel 030-190-014 compatible with spacing requirements to potable water well."

Response: The only requirement of the applicant regarding wells and septic systems is that the applicant show the distance from existing wells, septic tanks and leach fields to the existing and proposed property lines. This requirement is found at 17.46.030 (B)(3)(e). The maps submitted by the applicant show these locations and therefore satisfies this application requirement. Section 13.12.340 of the County Code contains construction specifications for wells. The Section is not relevant to the ministerial approval of lot line adjustments.

Appellant: "Parcel 014 was deeded to the Glos family in 1958 when Albert McDowell purchased his property to provide a roadway to the rear of the Glos property (parcel 013). We understand the code requirement of right-of-way with a minimum width of ten feet. When Muellers purchased the property from Glos, no legal right-of-way existed in our deed. We provided a 16 foot roadway on a 24 foot easement consistent with the roadway extending approximately 1/2 mile to Highway 29. We question why Mueller's permit application does not extend the existing right-of-way dimensions through the proposed lot line adjustment to the proposed rear property segment."

Response: Any off-site easements serving the subject properties are noted on the preliminary title report issued for the lot line adjustment. The depiction on the lot line adjustment map of these easements is not necessary for processing the lot line adjustment. The Mueller's permit application does show an extension of a right-of-way over the front property, in favor of the rear property. The map entitled PROPOSED PARCEL LINES includes a box with the following caption "CENTER LINE FOR FUTURE 12' ROADWAY IN FAVOR OF APN: 030-190-013 TO BE RESERVED BY SEPARATE INSTRUMENT".

## **2. Flood Plain Considerations:**

Appellant: "Our concern regarding the lot line adjustment application is that if the property is sold as two parcels one could then build additional structures on the two parcels and further exacerbate flooding on our property. It is our opinion...that much of the flood waters entering the Mueller parcel 013 from the north flowed back into the river by running behind the small guest house. This exit path is essentially now blocked by the elevated driveway."

Response: The construction of additional structures in the future is a factor in the issuance of development permits at that time. The speculation as to the future development of two parcels involved in a lot line adjustment is a consideration not provided for in the Subdivision Map Act. Building permits are regulated by the County's Zoning and Building Codes. CDPD regulation allowances per legal lot would result in the newly configured parcels thus being "built-out" with regard to single-family dwelling units as a result of the proposed configuration, and the only remaining residential structures that could be allowed would be dependant guest cottages (no more than 1000 square feet total with no kitchen).

## **3. Recreational Use of Property:**

Appellant: "...the Muellers have formed some relationship for short term rental of their large house with a vacation luxury rental business. We have presented evidence of weekly rental offers we observed to the zoning department for enforcement action.....When one considers that a vacation rental property needs maids, lawn and garden maintenance, swimming pool maintenance, overall property management supervision etc, one begins to see that this is a lot of traffic. If the lot line application is approved one could imagine the potential for two additional dwellings on the two separate parcels and more traffic. Our roadway has been posted at 10 MPH for over 40 years and we routinely see cars driving done (sic) the lane at near highway speeds."

Response: The construction of additional dwellings, and their use, are not factors in approval of LLAs. These topics would be addressed by zoning enforcement and as part of the issuance of development permits. Traffic concerns on private roads are not topics for review by the County as a part of a lot line adjustment. This traffic situation is a matter for the various easement holders and land owners over whose lands the road exists to discuss and settle privately.

## **4. Land Use:**

Appellant: "We recognize that you are bound to review applications such as Muellers in consideration of legal terms. What is confusing to us is how we as a society can allow land in an agriculture preserve to be systematically converted to an irreversible non-agriculture use. The Muellers currently have parcels 013 ad 014 listed on several web sites for sale. These web sites state that there are two parcels available. This would appear

to be contrary to Napa Code 18.04.010 (18) which states it is the intent to discourage to the maximum extent possible further parcelization of agricultural resources and agriculture, watershed and open space areas due to the adverse effect on agriculture such parcelizations generally pose."

Response: The two parcels involved in the LLA are currently separate and legal parcels. The LLA does not change this status. The lot line adjustment process does not create additional parcels-it only reconfigures previously created legal parcels.

#### **5. Guest Cottages:**

Appellant: "We have been advised by planning and zoning that guest cottages cannot be larger than (sic) 1,000 sq. ft. have kitchens or be rented out. We then question how Muellers were able to rebuild the original house on parcel 030-190-013, rent this out, and build a second house. The large house is listed for sale on several web sites and all include a description of a guest house. We don't know the size of this house but suspect it exceeds 1,000 sq. ft. and it clearly has a kitchen.

Response: How the owners were able to rebuild an original house and add a guest cottage is a factor not related to the process of approving LLAs. Land use is regulated by County Zoning codes and Use Permits/Building Permits.

#### Summary

The lot line adjustment process is a ministerial action by the Director of Public Works. All advisory agencies reviewed the application and deemed it in compliance with the sections of the County Code enforced by the respective departments. Therefore, the application satisfied all conditions in the County Code related to an LLA, which obligated the Director of Public Works to approve the adjustment.

The various advisory agencies have reviewed the claims of the appellants. Those agencies have found no validity with regards to the appellant's claims of Napa County Code sections regulating LLAs. Therefore, the Director of Public Works recommends that the Board of Supervisors deny the appeal and uphold the approval of the LLA.

#### **SUPPORTING DOCUMENTS**

- A . MuellerLLAMap
- B . McDowellAppealPkt
- C . Approval
- D . McDowell Trust Letter received August 9

CEO Recommendation: Approve

Reviewed By: Helene Franchi