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Agenda Date: 10/21/2009
Agenda Placement: 9D

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission
FROM: John McDowell for Hillary Gitelman - Director
Conservation, Development & Planning
REPORT BY: John McDowell, Deputy Director - 299-1354
SUBJECT: 2009 Lot Line Adjustment Ordinance Update

RECOMMENDATION

2009 LOT LINE ADJUSTMENT ORDINANCE UPDATE - ZONING CODE TEXT AMENDMENT P09-00440-ORD

CEQA Status: Categorical Exemption Class 5: It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. The project will not impact an environmental resource of hazardous or critical concern, has no cumulative impact, there is no reasonable possibility that the activity may have a significant effect on the environment due to unusual circumstances, will not result in damage to scenic resources, is not located on a list of hazardous waste sites, cause substantial adverse change in the significance of a historical resource or extract groundwater in excess of the Phase 1 groundwater extraction standards as set by the Department of Public Works. [See Class 5 ("Minor Alterations in Land Use Limitations") which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15305; see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B.]

Request: County-sponsored ordinance to: 1.) add a new chapter pertaining to voluntary mergers of parcels without reverting to acreage; 2.) update and revise approval standards and processing requirements for lot line adjustments; and 3.) clarify requirements and procedures for processing sequential lot line adjustments.

Ordinance Title: *AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NAPA, STATE OF CALIFORNIA, ADDING A NEW SECTION 17.02.225, AMENDING SECTIONS 17.02.360, AND 18.104.110, AMENDING CHAPTER 17.46, AND ADDING A NEW CHAPTER 17.51 OF THE NAPA COUNTY CODE PERTAINING TO LOT LINE ADJUSTMENTS AND VOLUNTARY MERGER OF PARCELS WITHOUT REVERTING TO ACREAGE.*

Staff Recommendation: That the Planning Commission conduct a public hearing and forward a recommendation of approval to the Board of Supervisors.

Staff Contact: John McDowell, 299-1354, jmcdowel@co.napa.ca.us, or Hillary Gitelman, 253-4805, hgitelman@co.napa.ca.us

EXECUTIVE SUMMARY**Proposed Action:**

1. That the Planning Commission recommends the Board of Supervisors find that the project qualifies as a Class 5, Section 15305 Categorical Exemption under the provisions of the California Environmental Quality Act.
2. That the Planning Commission finds the proposed Ordinance consistent with the Napa County General Plan and zoning regulations as set forth in the proposed Ordinance.
3. That the Planning Commission recommends Board of Supervisors adoption of the proposed Ordinance.

Discussion:

The sections of the Napa County Code pertaining to lot line adjustments were last amended in 2002 to coincide with significant changes in the state legislation that established the lot line adjustment process. In 2002, the State amended Government Code section 66412(d) which now provides that lot line adjustments between four or fewer adjoining parcels are exempt from the Subdivision Map Act. Although the County amended its Code to reflect this change, questions have recently arisen regarding the degree to which the processing of sequential lot line adjustments of four or fewer parcels should be permitted and whether all lot line adjustments should continue to be ministerial. Those questions have resulted in the need to consider further revisions to those portions of the Napa County Code relating to lot line adjustments.

In May of this year, Staff brought forward a draft ordinance to the Board of Supervisors which would have changed the way many lot line adjustments are processed. This proposal resulted in considerable public debate. Consequently, at the conclusion of the hearing, the Board directed Staff to develop a draft ordinance in concert with a stakeholders group made up various interested parties. The attached ordinance is the product of those stakeholder meetings that occurred over the summer, and most of the stakeholders supported most of the proposed changes to the ordinance. (See Background for more detail.) The currently proposed ordinance does not restrict successive lot line adjustments and clarifies that all lot line adjustment are ministerial acts and exempt from CEQA, except in the case of lot line adjustments that are processed concurrent with other approvals that are discretionary in nature (e.g. use permits, rezonings, etc.).

This item is before the Planning Commission for two reasons. First, the ordinance includes a proposed change to the zoning code (Title 18) to more clearly state the zoning districts in which certain minimum lot size requirements apply when conducting a lot line adjustment. Amendment of the zoning code requires a Planning Commission recommendation before the Board can act. Second, the Board expressed a desire to receive Planning Commission feedback on the changes to subdivision code (Title 17) given how the sequential lot line adjustment issue relates to land use decisions.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Categorical Exemption Class 5: It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. The project will not impact an environmental resource of hazardous or critical concern, has no cumulative impact, there is no reasonable possibility that the activity may have a significant effect on the environment due to unusual circumstances, will not result in damage to scenic resources, is not located on a list of hazardous waste sites, cause substantial adverse change in the significance of a historical resource or extract groundwater in excess of the Phase 1 groundwater extraction standards as set by the Department of Public Works. [See Class 5 ("Minor Alterations in Land Use Limitations") which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15305; see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B.]

BACKGROUND AND DISCUSSION

California Government Code Section 66412(d) provides that lot line adjustments between four or fewer parcels are exempt from provisions of the Subdivision Map Act, but does not explicitly condone or prohibit successive or sequential lot line adjustment applications. As a result, lot line adjustment applicants have been known to apply for one set of lot line adjustments (affecting between 2 and 4 lots), and then apply for a second set (affecting between 2 and 4 lots). In all cases, the number of legal lots at the end of the process is equal to the number at the beginning, and in that sense, no subdivision has occurred. However, in some cases, more than four lots have been adjusted via a series of successive changes.

History & Stakeholder Process

In December of 2007, the Directors of Public Works and Conservation, Development and Planning sought direction from the Board of Supervisors regarding whether sequential or successive lot line adjustments should be permitted and, if permitted, to what degree. Staff presented the Board with examples from other counties, demonstrating that some counties prohibit them outright, whereas some allow them, either with or without a "waiting period" between successive applications. At the conclusion of the December 18, 2007 meeting, the Board directed staff to prepare an ordinance which would clarify the Board's position that applications for sequential lot line adjustments would be permitted, but sequential lot line adjustments would only be accepted and processed by Public Works once the deeds from a previous lot line adjustment application were recorded.

In July 2008, the County Counsel's office and staff from Public Works provided the Board with an explanation of the Certificate of Compliance process and how the issuance of those Certificates relate to the lot line adjustment process. At this meeting, the Board directed staff to prepare an alternative to the current "buildability" approval standard for lot line adjustments.

In the intervening months, Public Works received various applications for lot line adjustments. Some of those applications raised the question of whether the approval of certain lot line adjustment applications were truly ministerial determinations. In at least one case the tentative approval by the director of Public Works was appealed by neighboring property owners. As a result of such applications and appeal(s) the Board asked staff to prepare a future agenda item that would enable the Board to reconsider its position on sequential lot line adjustments specifically and the lot line adjustment approval process generally.

Staff from Public Works, Planning, and County Counsel's office held several meetings to develop a detailed approach to the approval of lot line adjustments as well as to review whether any technical changes to the lot line adjustment code provisions were needed. In May 2009, Staff brought forward a proposed ordinance that would have established a more in-depth review process for lot line adjustment applications which were defined "major" lot line adjustments. These include applications which meet the proposed definition for sequential adjustments,

applications which propose to enlarge parcels to more than 10 acres, applications where a variance is required, and applications which entirely relocate an existing parcel. This proposal was met with considerable public objection and debate. The Board concluded its May hearing by directing Staff to work with various stakeholders and to return with a revised ordinance based on feedback from those stakeholders.

Project stakeholders consisted of wine and vineyard industry representatives, local land use attorneys, planners and engineers, local surveyors, and private interest group representatives. A series of stakeholder meetings progressed over the summer. At the first meetings, Staff presented the group with sections of the existing lot line adjustment code and solicited comments. At subsequent meetings, Staff returned with possible changes to the code that reflected the majority opinions raised at the meetings. In the end, most of the resulting changes were minor and intended to remove ambiguity about the ministerial nature of the lot line adjustment process.

The majority of stakeholders agreed that sequential lot line adjustments should be allowed, and that only lot line adjustments that are processed concurrent with another application that is itself discretionary should be subject to CEQA. (Examples where the lot line adjustments would thus be subject to CEQA include the Luciana golf course project, the Angwin Ecovillage project, and any winery use permit that relies on a lot line adjustment to achieve required access or parcel size.) Among the stakeholder concerns and comments that were not addressed by the proposed ordinance are the following:

- | a request from at least one stakeholder that the ordinance allow legal lots to be split by public roads (this would be a change from the existing ordinance);
- | a request from at least one stakeholder that lot line adjustments allow property owners to make slivers and other "unbuildable" parcels "buildable" (this would be a change from the existing ordinance);
- | a request from at least one stakeholder that only surveyors be allowed to prepare lot line adjustment applications (this would be a change from the existing ordinance); and
- | a concern from at least one stakeholder that making lot line adjustments subject to CEQA only when processed concurrent with a separate discretionary application (e.g. use permit) was not a sufficient safeguard against multiple and inappropriate adjustments.

In each of these instances, the stakeholder group discussed various reasons for crafting the ordinance as currently proposed, and staff agreed to provide County policy makers with a summary of the issues where divergent views were expressed.

Attached Draft Ordinance

The proposed amendments are primarily technical changes to various sections of the code relating to the lot line adjustment and may be summarized as follows (see attached draft ordinance for the full text):

Section 1 of the Ordinance clarifies the definition of "Director of Environmental Management" as it appears in the Lot Line Adjustment section of Napa County Code.

Section 2 of the Ordinance clarifies Section 17.02.360 of Napa County Code to more clearly define "lot line adjustment" and to explicitly provide for sequential lot line adjustments.

Section 3 of the Ordinance makes all of the following changes to the Lot Line Adjustment section of Napa County Code:

- | Section 17.46.010 has been repealed and moved to a new Chapter 17.51. Chapter 17.51 of the Napa County Code continues to permit voluntary merger of parcels and establishes a process landowners can utilize to voluntarily merge their parcels without first reverting the parcels to acreage. Several application

requirements have been added to aid staff in processing the applications.

- | Section 17.46.020 has been amended to identify the ministerial nature of lot line adjustment decisions, except in situations where the lot line adjustment(s) require a variance, or are being processed concurrent with a discretionary application (e.g. for a use permit).
- | Section 17.46.030 identifies what must be included in an application for a minor lot line adjustment and has been amended to remove the requirement that an expedited certificate of compliance must accompany the lot line adjustment application. This section already requires the applicant to provide proof of the legal creation of the parcel and staff believes the expedited process is not a beneficial use of the applicant's time. Also, the requirement for a title report listing contiguous properties has been removed since these minor lot line adjustments will no longer be appealable to the Board and therefore notice of the ministerial decision to approve or deny the application need not be given.
- | Section 17.46.040 addresses the approval standards for the minor lot line adjustments. This section modifies the "buildability" standard that presently exists. This standard has become increasingly cumbersome over the years and staff is recommending a more direct definition which will be easier for applicants to understand and for staff to oversee. Section 17.46.040 (C)(7) is also revised slightly. Section 17.46.040 (C)(7) requires applicants to show legal access on their application maps. In situations where a single owner is adjusting two or more of their own parcels, the proposed change clarifies that deeded access need not occur since taking such action is not legally possible (i.e. one cannot legally create an easement for a parcel whose adjoining servient parcel is under the same ownership). Instead, staff will confirm in the field that access exists to the parcels.
- | Section 17.46.060 has been amended to allow applicants more time to provide deeds demonstrating compliance with all approval standards.
- | Section 17.46.080 has been amended to limit the grounds upon which an appeal to the Board of Supervisors can be filed.

Section 4 of the ordinance contains provisions relocated from 17.46.010 (see above).

Section 5 of the ordinance amends Section 18.104.11 of the zoning ordinance to provide greater clarity regarding "parcel design" requirements referred to in the Lot Line Adjustment section of Napa County Code.

Next Steps

After the Planning Commission hearing and recommendation, the draft ordinance will be scheduled for consideration by the Board of Supervisors.

SUPPORTING DOCUMENTS

- A . Tracked Ordinance
- B . Stakeholder Comments

Napa County Planning Commission: Approve

Reviewed By: John McDowell