

FROM THE PLANNING COMMISSION MINUTES OF NOVEMBER 12, 2009

8. PARCEL MAP

P08-0030/Harris submitted by MARY H. NUGENT to create two parcels of 25 acres and 125 acres. The property, identified by Assessor's Parcel Number 101-030-13, consisting of 150 acres, is located at the intersection of Blair Road and Badger Hill Road, in the Pollock Pines area, Supervisorial District II. [*Project Planner: Jason Hade*] (Negative declaration prepared)*
[continued from 7/23/09, 9/10/09 & 10/08/09 meetings]

Commissioner Heflin recused himself from the item and left his seat on the Commission. County Counsel Paula Frantz informed the Commission that since Mr. Heflin is a property owner, he will have the right to speak on the item if so desired.

Jason Hade informed the Commission that staff had met with County Counsel, DOT, and the applicant and the result of that meeting was the Staff Memo dated November 9, 2009 recommending modifications to the findings and conditions. However, this morning staff received a letter from the applicant's counsel addressing issues with the conditions. Mr. Hade stated that staff was still recommending the Commission move forward with the amendments listed in the Staff Memo.

Commissioner Pratt had concerns with Low Density Residential and the TPZ zoning being compatible with Community Region. To address these concerns, Pierre Rivas referred to Table 2-4 and read into the record General Plan Policy 2.2.1.2. In addition, County Counsel Frantz explained that the General Plan is a broad-based plan and she addressed the uniqueness of this situation.

County Counsel Frantz informed the Commission that today they needed to determine the conditions to facilitate the lot split directed by the Court Order. She indicated that the Staff Memo dated November 9, 2009 had been reviewed by Counsel and the applicant and that the applicant's issues, per the letter received today, surrounds DOT's conditions required at the time of filing the map.

David Combellack/representative for Pam Harris stated the following:

- Applicants want to resolve differences and continue managing the property together under a joint Timber Management Plan;
- Reiterated many of the issues addressed in letter dated November 10, 2009;
- Since there will be no change in use with the property, strongly disagreed with Conditions #14 and #15;
- Concerns with Conditions #13 and #16 because if the County rezones the property, then the applicant would be required to make road improvements;
- Recommended the Commission utilize restricted CC&Rs instead of certain conditions and have the map conditions reference the restricted covenants;
- Suggested providing an easement for existing road with ancillary access for maintenance; and

- 60 foot right-of-way is significant and is unacceptable.

John Olsen/representative for Mary Nugent stated the following:

- If unable to resolve issues, parcel will have to be sold;
- If DOT conditions are required, this project will most likely not move forward;
- Supports the restricted CC&Rs;
- Suggests meeting with County Counsel to identify which conditions need to be met now and which ones can be deferred; and
- Disagrees with requirement that no matter who initiates a rezone, the applicant would be required to do the road improvements.

County Counsel Frantz responded to the various comments made by the representatives, as follows:

- Action being taken today has impact on the future because one parcel will now become two parcels, which could be rezoned in the future;
- The day this map is not in TPZ, it would cause growth development;
- In response to road improvements being required only for applicant-initiated rezones: County's definition of a rezone is a change in use, no matter who initiates it, and can be done with or without the owner's permission as it is ultimately the Board's decision;
- County is not in the CC&R business and, therefore, utilizes map conditions instead;
- Difficult to condition a rezone because there is no way to revoke it if the conditions are not met; and
- Staff proposed conditions that protect the County's interests and the applicant's current proposal does not do that.

Eileen Crawford/DOT spoke on the Subdivision Act. She stated that Badger Hill Road, a private roadway, will have the Offer of Dedication rejected. However, since Blair Road is a County-maintained road, DOT staff is following General Plan Policy TC-1R which states they are to acquire roads that the County is already maintaining. She stated that Parcel Map applications are used as the vehicle for this since ministerial permits (i.e., building permits) are not reviewed by DOT. In addition, currently, there is no ability to track a project that gets rezoned in order to flag it for DOT review.

Significant discussion ensued between County Counsel Frantz and the Commission on options of deferring road improvements or other options available to resolve the issue.

Chair Mathews clarified that what he is hearing from the representatives is that the deal will fall apart if the IOD is accepted.

Mr. Rivas stated that staff is responding to the Parcel Map application and not analyzing if there is an issue between the applicant(s). This is unique in that parcel map conditions are not usually deferred like what is occurring in this application and staff is trying very hard to facilitate this.

Ms. Crawford commented that an easement would be better than the current situation and that the standard is 60 feet to assist in left-turn pockets. The options before the Commission are: (1) Approve DOT's recommendations as presented; (2) Reduce it to 50 feet; or (3) Easement.

Mary Nugent/applicant stated they are trying to preserve the family legacy. This situation has lasted for six years and has cost a significant amount of money with more costs to be incurred and inquired as to when this would finally end.

Sue Taylor inquired if the Community Region designation was appropriate for that area. She also reminded the Commission that the design standards for roads are currently being worked on.

Chair Mathews stated he wanted to see an end to this so that both parties could move on. He would like to see easement language.

Commissioner Pratt indicated that he was in favor of as small an easement width as possible. Significant discussion ensued between County Counsel Frantz and Commissioner Pratt on easement width, potential for growth-development and what DOT would be allowed to do on the easement.

County Counsel Frantz suggested conceptual action be taken today and direct staff to come back with revised conditions. She clarified that the Commission's direction is to modify Conditions #14 and #15 so the applicant would currently grant an "unspecified foot easement" for right-of-way on Blair Road and nothing done currently on Badger Hill Road. Prior to any rezone or building permits, the applicant would irrevocably offer to dedicate in fee Blair Road and prior to any rezone or building permits, the applicant would irrevocably offer to dedicate in fee Badger Hill Road. She also clarified with the Commission that they are interested in having language state that the easement is for the maintenance of the existing paved road. Ms. Crawford stated she would contact DOT's Maintenance Division to determine the minimum width requirement for an easement.

County Counsel Frantz suggested the representatives be asked if "in concept" were willing to agree to the new conditions. Mr. Olsen agreed and Mr. Combellack stated he only had authority to agree to an easement for the existing road with ancillary access for maintenance.

Commissioner Pratt reminded the Commission that there was a portion of the parcel in a Williamson Act Contract which is zoned AE. As a result, he felt that it was important to use ag-zoning language instead of just TPZ, in order to protect any "triggers" that are placed in the conditions.

Condition #18 was also addressed as it was identified as a concern in the applicant's letter. Mr. Rivas indicated that staff could make the language clearer in regards to future structures.

Commissioner Pratt inquired if a date-specific continuance should be done or if an off-calendar continuance would be more appropriate. Mr. Rivas stated that staff would recommend off-calendar and would bring it back as quickly as possible.

No further discussion was presented.

Motion: Commissioner Pratt moved, seconded by Commissioner Rain, and carried (3-0), to continue the item to the December 10, 2009, meeting and direct staff to modify conditions as indicated.

AYES: Rain, Pratt, Mathews

NOES: None

ABSENT: Tolhurst

RECUSED: Heflin