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Please add this to 9/28/2021, item 29 Appeal File

1 message

Ruth Michelson <ruthmichelson@sbcglobal.net>

Wed, Sep 29, 2021 at 10:45 AM

To: BOS Clerk EDC <edc.cob@edcgov.us>

Cc: John Hidahl <bosone@edcgov.us>, George Turnboo <bostwo@edcgov.us>, Wendy Thomas <bosthree@edcgov.us>, Lori Parlin <bosfour@edcgov.us>, Sue Novasel <bosfive@edcgov.us>

Dear Clerk of the Board, Kim-

Attached below is the script I read from in yesterday's appeal, Serrano Village A14. Please attach it to the file. Thank you.

Dear Supervisors-

While your decision yesterday was disappointing, it was not surprising.

In my opinion, Parker Development has been in charge for a long time in this County. I was hoping that you doing what I consider he "right thing", even with this last village, might happen.

Thank you Supervisors Turnboo and Parlin for voting in favor of this appeal. Your words you spoke during the appeal hearing were also appreciated.

I was confused by what you said, Supervisor Hidahl. At the end, during the vote, yours being the potential swing vote, you said you'd like to send this project back to the Planning Commission, but without a full commission, you couldn't, and it wouldn't make sense. Yesterday the Board approved Andy Nevis for District 4 Planning Commissioner, so now there are four commissioners. Following your logic, all Planning Commission work will cease until you have once again filled the District 2 Planning Commission seat, and have a full compliment of 5 commissioners. I will be watching to see if that occurs.

As always, thank you ALL for the work you do. We may not always agree, but I still respect the great efforts you make on behalf of our county. Not an easy job, by any measure.

Sincerely,

Ruth Michelson
District 4**September 28 2021 Appeal to BOS, Serrano Village A14.rtf**

28K

September 28th, 2021 -prepared by Ruth Michelson

Board of Supervisor's Meeting

Item 29: Appeal of Serrano Village A14, filed by Ruth Michelson and Save our County

As an overview for our presentation today as appellants, there will be 3 main topics---

- 1) Content; the technical flaws in the decision itself, to grant Serano Village A14 to Parker Development
- 2) Ex parte communication
- 3) Process; where Brown Act violations occurred

I will mostly address CONTENT; the apparent technical flaws in the decision itself, and will make a few minor comments of what the League of California Cities has to say about ex parte communications. (The League is listed on the Board's website as a source for Brown Act Training.)

The co-appellant, Save our County, will address ex parte communication further and the Brown Act violations.

I'll start with something basic that should be clear to all of us, as it's been stated many times in many ways in the materials submitted for this appeal.

There are 4 conditions that MUST BE MET to grant a design waiver. Not one, two, or three of these conditions, but ALL 4 must be met. As a refresher, here are the 4, summarized....

1. Special condition or circumstances peculiar to the property .. which would justify the waiver
2. Strict application of the ... requirements.. would cause extraordinary and unnecessary hardship in developing the property
3. The waiver would NOT be injurious to adjacent properties or detrimental to the health, safety , convenience and welfare of the public
4. The waiver would not nullify the objectives of this subpart or any other law or ordinance applicable

We could really STOP this hearing at this point. These waivers have not been met, and the design standards cannot be granted.

The information provided by the applicant, Parker Development, does NOT adequately show how these 4 conditions are met. What are the special condition or circumstances peculiar to the property? What is the extraordinary and unnecessary hardship in developing the property? Regarding detriment to the health, safety, convenience and welfare of the public; It is quite possible that YES, these closely spaced houses with their short driveways would be detrimental. When cars potentially hang over the sidewalk, how do people in wheelchairs or walkers use the sidewalk? How do children stay safe and not leave the sidewalk and go into the street to get around the cars? How do paramedics and firetrucks have ample access? How do fires like we just experienced in Grizzly Flats, the Tubbs Fire, or the Paradise fire not spread easily? We don't even need to go further on to the 4th condition, since the first 3 are problematic.

In reading over the staff report of August 6th, and then later the one written on September 20th for this appeal today, I am puzzled when comparing the two. They should both be in your appeal packet.

The August 6th staff report was authored after the July 22nd Planning Commission meeting, which denied this project 3-2. This staff report served as a formalization of what had been said by Planning Commissioners in that meeting, and was completed at the urging of Counsel present that day. Counsel recommended that the Planning Commissioners not formalize their action on July 22nd, because it was not advised to write up the findings of denial on the fly. Counsel said, and I heard because I listened to all 3 meetings on this matter, that this should be continued until the findings were written by staff and formalized. It sounded like a "done deal", just waiting to put the verbal comments into writing. The Planning Commission Chair even mentioned during the July 22nd meeting that "they (the findings) would be brought back in the minutes."

Further in the August 6th report, authored by Planning staff, Item 2, clearly states.... To approve a design waiver the Planning Commission or Board on appeal must find each of the following conditions exist (the 4 outline above.)

The report goes on to specify how the requested Design Waivers 1-3 (road improvements, reduction of centerline curve, and standard road encroachment) are NOT supported by design waiver conditions, and therefore CANNOT be waived. Remember, this was written by Planning Department Staff.

Then, there's another category the discussion of the MODIFIED MINIMUM STANDARDS of setbacks, lot widths, and lot size in this project. If the Planning Commission denies the design waivers, "then these modified standards may be rendered inapplicable and ineffective." It's a domino effect, apparently. If one set falls, the next set may fail, too.

In conclusion, the staff report states "Consequently, a new tentative map for the development that retains compliance with existing residential development standards or proposed new modified standards would need to be filed. " That seems VERY CLEAR. And, this comes from Planning Department staff. The final sentence says "Based on the above Findings of Inconsistency, the Planning Commission hereby denies the Serrano Village a-14 Tentative Map.'

It doesn't say "we'll think about it some more." It doesn't say "one of us will meet privately with the developer, get some information, come back, and have another vote, and potentially change our mind." It doesn't say we're opening the hearing up again. It says, "The Planning Commission hereby denies the Serrano Village A-14 Tentative Map." That's it. And, that's what the public was left to believe was happening. Even the Mountain Democrat reported this issue as such.

Now, skip forward to the staff report written September 20, 2021, in response to this appeal filed.

The staff report states, in the summary of the August 12th meeting, the applicant got an opportunity to make edits to Design Standards. This must be written in error. How does this happen and what does it even mean? The Design Standards are written by the county. The Planning Department must have meant to say "Development Standards" The applicant was given the opportunity to switch things up, and resubmit different specifications for their project. This project had been denied. It's like turning in a term paper, getting a failing grade, getting the paper back, re-writing the criteria for the paper, making edits to the paper, and getting another chance when no one else in the class gets that opportunity.

It was publicly known through social media and other sources that this project had been denied on July 22nd. Although the decision on August 12th was to have an open hearing on August 26th, many people had moved on, thinking that this was a denied project. This is evidenced by minimal input at the August 26th hearing.

Going further into the Sept 20th staff report, in broad terms, it is said that the public safety concerns posed by the appellant have been sufficiently analyzed and addressed as documented by evidence in the record. Where? In what record? On August 6th those waiver conditions "do not exist or are not sufficiently corroborated as submitted, and therefore, cannot support Design

Waiver 1,2,3 for Serrano Village a-14 Tentative Map." What happened in the ensuing 6 weeks to change all of that? How can staff make a 180 turn around? Why has so much what was summarized in the August 6th Staff report vanished, and somehow become acceptable in the August 20th report when it wasn't on September 6th? It's not that those issues went away or have been adequately addressed. This project still does NOT meet the requirements of the waivers that were granted.

This project needs to be denied. The applicant needs to start the process once again, and pay heed to the design standards in place. Simply because these gross deviations have been granted previously, is no reason to continue to ignore the design standards that were put in place for good reason and the safety of our community.

Regarding EX PARTE communication... just a few words on this....

The League of California Cities is clear in their paper published on this subject October 6, 2016. The basis of restricting ex parte (from one party) communications "rests upon fundamental fairness concerns flowing from the Magna Carta of 1215.... and the Fifth and Fourteenth Amendment to our Constitution...." The precepts underlie ex parte (are) fairness and due process considerations. Because ex parte communications are not recorded, they cannot be rebutted by the non-present party or given adequate appellate review.

Case law must be synthesized to determine whether, when, and how to address ex parte communications.

A pertinent case from 1997 (Mathew Zahari Corp v Newmoor Vehicle Board) stated...

"While the proceeding is pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and opportunity for ALL PARTIES to participate in the communication."

Finding number 5 in this paper, page 10, states, ".. there must be no ex parte communications during the interstitial period between closure of a hearing and a final decision. This arises most often when a city decisionmaker closes a quasi-judicial hearing and directs the preparation of written finds by staff "lobbying" by parties to the matter or other persons must be rejected." How much more clearly could this be stated?

In conclusion, as declared in the appeal that was filed for today's hearing.. the approval (of this

project) should be denied based on the findings as... approved by the Planning Commission that the design waivers did not meet at least 3 of the 4 requirements to be allowed. The actions that (have been) taken make the county ripe for litigation which can be avoided by returning to the process that was required after the motion (of July 22nd) and reverting back to the decision for denial that had been approved at (that) hearing.

Thank you for your time and consideration.