

FROM THE PLANNING COMMISSION MINUTES OF DECEMBER 10, 2009

10. REZONE/PARCEL MAP

Z09-0005/P09-0007/Lakeview Villas submitted by GREG GULARTE (Agent: Lebeck Young Engineering, Inc.) to rezone from Estate Residential Ten-Acre (RE-10) to Estate Residential Five-Acre (RE-5); create two parcels ranging in size from 8.62 to 5.6 acres; and a Design Waiver request to allow the following: (a) To allow La Sierra Drive and Shoreview Drive to remain at their current road widths. The property, identified by Assessor's Parcel Number 110-590-54, consisting of 14.22 acres, is located on the north side of La Sierra Drive, approximately 75 feet east of the intersection with Shoreview Drive, in the El Dorado Hills area, Supervisorial District I. [*Project Planner: Jonathan Fong*] (Negative declaration prepared)*

Jonathan Fong presented the item to the Commission with a recommendation of approval to the Board of Supervisors. He indicated that a comment letter was received during the 30 day public review period of the environmental document and it was determined that none of the issues raised elevated any of the potential impacts that were addressed by staff and no addendum was prepared.

Commissioner Heflin inquired who has the authority to determine code violations since the Staff Report only identified "Building Services staff" in the Background section on page 2. County Counsel Paula Frantz explained the various stages in the processing of code violation complaints.

Craig Sandberg/applicant's agent acknowledged that there is a dispute over the CC&Rs and requested the Commission be neutral on the CC&R issue and to allow the disputing parties to resolve the issue themselves.

Commissioner Tolhurst voiced concern over the complaint that illegal grading was conducted in order to make it a buildable lot. Mr. Sandberg responded that the allegations of a code violation had been brought up by a neighbor and when County staff visited the site it was determined that the activities that had occurred were appropriate under the permit and the case was closed. He stated that brush removal was not the same as grading.

Kirk Giberson/Southpointe Owners Association's (SOA) representative formally stated their objection to the applicant's request for a rezone as it is a violation of the CC&Rs, as identified in their submitted letter.

Commissioner Tolhurst commented on the November 2009 timing of the SOA amendment requiring a two-thirds vote for sub-dividing and inquired if something similar had been in place prior to the amendment.

Doug Roeca/Alan Hines' representative stated that this was a tortured project that should be denied due to the following reasons: (1) Applicant has ignored the CC&Rs and the General Plan; (2) Does not have the required two-thirds vote from the SOA; (3) The CC&Rs trump any action taken by the County; (4) In 2005, applicant applied to the SOA for two access points and

possible parcel split so he was aware of the required authorization from the SOA at that time; (5) Environmental assessment is inadequate as the air quality aspects are ignored; (6) Findings 2.2, 2.3, and 2.5 cannot be found; and (7) Disagrees that there are two buildable lots on parcel and referenced documents submitted by Alan Hines to the Commission which discussed the soil disturbance issue. Mr. Roeca provided a letter from Carlton Engineering certifying the accuracy of their maps for this project.

Scott Lee/resident said that the CC&Rs state one lot/one house and the recent vote by the SOA made it clear that they want to know about lot splits. He stated that the rules should be followed.

Chuck Clupper/resident stated that prior to purchasing his property he had read the entire CC&Rs to ensure he knew the rules and followed them. He also said that he is a past SOA Boardmember and during his nine-year tenure, the adjacent parcel to the applicant had asbestos and was required to truck it out. In addition, Mr. Clupper said that he has routinely walked the neighborhood for five years and has noticed how the lot has visibly changed.

In Mr. Sandberg's rebuttal, he stated the following: (1) Agreed that the CC&Rs cannot be ignored, but that the County normally does not weigh in on them; (2) Applicant did not ignore the CC&Rs but the rules have been changed since he purchased the property; (3) Staff confirmed that there was a grading permit that was used appropriately and determined that there were no violations; (4) Application has been in place for two years, but the possible CC&R violations have just come into view; and (5) Requested the Commission allow the parties to resolve the CC&R issue among themselves and approve the project as they are compliant and this application has been in process for some time.

County Counsel Frantz made the following comments on the CC&R issue:

- The County does not enforce CC&Rs and the only time the County becomes involved in weighing in on them is when:
 - The County requires it as part of the Conditions of Approval as an on-going enforceability of one of the County's conditions; or
 - Reviewing CC&Rs as evidence of whether something is in the best interest of the health, safety, and welfare of the neighborhood.
- County generally does not look at whether or not something is allowed under the CC&Rs as a determining factor for the County to allow it.
- Staff reviewed the County's rules when making the determination for their recommendation.

Tom Burnette/Building Services explained that the code violation complaint was very typical of the types of complaints received as it is primarily a dispute among neighbors and he had advised both parties that it was a civil matter. Mr. Burnette informed the Commission that the grading done on the parcel was compliant to the rules at that time and the rules have since changed.

Chair Mathews stated that this was a classic battle between a new neighbor and the CC&Rs and he suggested that only the project's merits be looked at.

Commissioner Tolhurst said that based on the CC&Rs, the neighbors feel that this is injurious to the neighborhood and this is one of the findings the Commission needs to make. Therefore, based on what he has heard from the neighbors, he can't make the finding that it is not injurious to the neighborhood. Commissioner Heflin agreed with Commissioner Tolhurst's comments.

Commissioner Pratt disagreed by stating that based on the aerial map, it was apparent that one side of the hill had been developed and parcelized and the other side had not. When there are acreage-sized parcels on one side and quarter-acre parcels on the other side, it appears the intent was for future development considerations. In regards to the one lot/one house statement, he felt it was disingenuous for someone on a quarter-acre parcel telling someone with 10 acres they can only have one house since the property was probably purchased with the intent of developing since it is located next to developed land. Commissioner Pratt said he understood the rules and that the CC&R conversation is a separate battle and he is looking at the project strictly from the County ordinance perspective. Also, due to the delicacy of the asbestos issue, he cautioned the neighbor's comments regarding asbestos in the area as there are probably a couple of undeveloped lots in the subdivision and these comments are doing a disservice to the neighborhood and the future development of that particular area and borders on reckless in his opinion.

Commissioner Rain acknowledged that this will go to civil court based on statements received by the SOA and recommendations from the El Dorado Hills APAC. He also felt that this project is inconsistent with the General Plan for that area and he is not in support of the rezone.

Chair Mathews said he did not want to get in the middle of fight when it comes to CC&Rs, but he did not see a problem with this project as it fits in the design/pattern of the neighborhood, is allowable based on land use, allowable based on Planning staff, trusts Mr. Burnette's comment that there was no violation, and the attorneys' arguments revolve only around the CC&Rs.

No further discussion was presented.

Motion #1:

Commissioner Pratt moved, seconded by Commissioner Mathews, and FAILED (2-3), to recommend the Board of Supervisors take the following actions: 1. Adopt the Negative Declaration based on the Initial Study prepared by staff; 2. Approve Rezone Z09-0005 based on the findings proposed by staff; 3. Approve Tentative Parcel Map P09-0007, based on the findings proposed by staff, subject to the conditions as presented; and 4. Approve the following design waiver since appropriate findings have been made: (a) To allow La Sierra Court and Shoreview Drive to remain at their current road widths.

AYES: Pratt, Mathews
NOES: Rain, Heflin, Tolhurst

Motion #2:

Commissioner Tolhurst moved, seconded by Commissioner Rain, and carried (3-2), to recommend the Board of Supervisors deny the project as the finding cannot be made that the project would be consistent with applicable General Plan policies based on slope, site was previously disturbed as pointed out in Finding 2.5, and cannot find that there was a building site on each parcel consistent with the General Plan.

AYES: Heflin, Rain, Tolhurst

NOES: Pratt, Mathews