

MidCoast Community Council
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ATTACHMENT M

November 25, 2001

4 Pages

To: Ms. Lily Toy
San Mateo County Planning and Building Division
Mail Drop PLN122, 455 County Center, Redwood City, CA 94063
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re: PLN 1999-00082: COSC Use Permit and Coastal Development Permit for a new 3,324 sq. ft. single-story single family residence, Certificate of Compliance (COC) type B, and a Coastal Development Permit to allow 3 test wells and 1 domestic well for the residence on the south side of Avenue Alhambra at Coronado (between Avenue Alhambra and Highway 1). APN 047-251-100.

Lily:

At our regular meeting of 11/14/01, the MidCoast Community Council reviewed the above referenced application. For its review, the Council was supplied with copies of the current applications for the well and Certificate of Compliance permits, the original Planning Commission Staff Report, the 11/14/01 memo from County Counsel and letter from the applicant's lawyer, LCP Parcel Legalization policies & Relevant California Government Code Sections, and the zoning regulations for the COSC District, Use Permits and Coastal Development Permits. The applicant chose not to attend the meeting.

After a presentation of recommendations developed and issues defined by the Planning & Zoning Committee, and the hearing of public testimony and comment, the Council passed the following motion, which is explained in detail below:

The MidCoast Community Council recommends that the San Mateo County Planning Commission

- 1) deny the applications for the Use Permit and the Coastal Development Permit for the proposed residence, based on the finding that the proposal is not the best or most conforming use of the parcel in relation to its zoning and does not qualify for findings of approval in terms of protection of coastal resources with the discretionary use of residential development,
- 2) deny the application for the three test wells and one residential well because of inadequate documentation of lack of service from established utilities and the need for the completion of groundwater studies addressing known concerns for wells in this area, and
- 3) deny the application for the Certificate of Compliance for inadequate legal review, lack of reasonable explanation for basis of decision from County Counsel, the need for outside independent legal review of this decision, and for nonconformance with LCP Policy 1.29d.

PLN1999-00082 Toy 11/25/01

Residential Proposal:

At the recommendation of the Planning & Zoning Committee, the Council continues its original stand that the residence as proposed is not in conformance with the COSC district permitted uses, and expresses its support of the Planning Commission decision. The Council encourages the regular permitted uses within the COSC district that allow uses of the property which preserve coastal resources and do not require an issuance of a discretionary Use Permit for residential use. It is our opinion that residential development of this parcel does not satisfy the required findings and conditions for a Coastal Development Permit. This proposal represents a loss of the valued and scarce commodity of Open Space within the Urban Area in exchange for extended residential development, a commodity we are not particularly lacking in. This is not a case of need by the applicant for personal residence that could not be satisfied in some other manner, but a speculative and optional use resulting in the loss of Community Open Space.

The previous Planning Commission decision is very "lean" in its description of the finding for denial, considering the breadth of findings and conditions that were addressed in the process. The Council would like to request that in any subsequent staff report, the findings for denial be as detailed in their explanation as possible.

Use Permits & Coastal Development Permits in the COSC:

The property was designated as Open Space or Park & Recreation land in the Land Use Plan & the Montara/Moss Beach/El Granada Community Plan in the 1970's. Also, the EIR done for the M/MB/EG Community Plan found this to be Class II Ag Prime Soils. The Use Permit and the Coastal Development Permit require findings for issuance that it meets all Resource Protection requirements of the LCP.

A 1981 letter from County Planning to the Coastal Commission on the need for allowing residential use in the COSC cites a needed economic activity that could be justified by the fact that the required density of 1 dwelling per 2 acres would be adequate for coastal resource protection. This would indicate that the finding for required resource protection could not be made for the 0.83 acre parcel currently under consideration in this proposal.

Areas designated Open Space are in need of protection for needed outdoor recreation activities, a statement repeated often in all of our planning documents. Even the State of California Constitutional Resource Code encourages the protection of Community Open Space. It was noted in the Local Coastal Program reports that precious little Open Space land is available in the urban area of the MidCoast for needed outdoor recreation. With plenty of residential lots still available for development, which are assumedly easier and less restrictive to build on, the argument for a needed economic activity is hard to make, and a community recreational use could provide long-term jobs for the area as well, a needed asset considering our excessive housing-jobs imbalance.

We would also point to the project's visual impacts: as proposed, there is a 70% loss of the view from El Granada towards the ocean across the lot. There will be a distinct impact on the visual resources which the COSC zoning seeks to preserve.

LCP policy 1.29d addresses undeveloped parcels created before Prop 20, stating that a CDP shall be required for any development, and that these are subject to all applicable LCP requirements, including the provision that approval may be granted only if there is no adverse affect on coastal resources. The loss of Open Space and recreation lands, visual impacts, development on Ag soils, etc., make it hard to justify the findings necessary for the CDP issuance.

Certificate of Compliance/Lot Legalization/County Counsel Opinion:

Members of the Council were uncomfortable with the lack of time given to review the memo from County Counsel, and the accompanying letter from the Applicant's legal counsel. We considered the memo a very cursory explanation of why this parcel qualifies for legalization through a Certificate of Compliance, while not addressing the issues raised in LCP policy 1.29d, specifically that "*... a coastal permit shall be issued to legalize the parcel if the parcel configuration will not have any substantial adverse impacts on coastal resources, in conformance with the standards of review of the Coastal Development District regulations. Permits to legalize this type of parcel shall be conditioned to maximize consistency with Local Coastal Program resource protection policies.*"

We were also puzzled by the amount of time involved in coming to a decision on this case – we understand about the original 1999 referral to Counsel getting "lost" at first, but the year's duration from Mr. Byers' letter of 11/8/00 to now is unexplained. We would like to know the date of Counsel's actual decision, and why it has taken this long for the case to be submitted for review again by the Planning Commission.

The Council also requests further information on the basis and reasoning of County Counsel's decision. It would appear from the materials supplied that this decision is based only on the arguments presented in Mr. Byers' letter. We request that this issue be submitted to independent legal review for further opinion and documentation of the basis of the decision.

Much of our concern rests with the singular reference of a San Mateo County Superior Court case. Although we have no direct legal counsel to guide us in this matter, we do not believe that this is a published or citable decision, and certainly not precedent setting. That this case involved the County Counsel's office and the law firm of the applicant's legal counsel also lends to its impression of a limited and possibly irrelevant example.

We are also concerned with other issues raised in Mr. Byers' letter that go beyond the legal status of the parcel in question, which we feel is an individual's opinionated

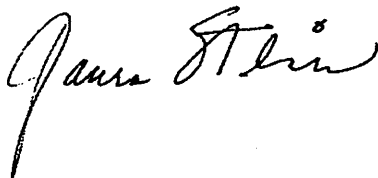
argument on the merits of other Zoning Regulations. We would like clarification that the decision and position of County Counsel relate only to the issue of the parcel's history and compliance with the requirements for legalizations, and not the legality or relevance of other zoning regulations mentioned in the letter. Although it seems that no logical analysis could exist to support that possibility, nonetheless, we would like clarification that there is not any (possibly unintentional) implied acceptance of the arguments against the constitutionality of zoning regulations.

Wells:

Regarding the well permit, the Council requests that this application be reviewed in the light of issues that are raised in the Kleinfelder El Granada Ground Water Investigation Report of April, 1988. Specifically, concerns were raised about the location of the well, which would seem to be on the lower edge of the El Granada Terrace aquifer. The report indicates could occur in years of low recharge, this area could be at risk of falling into the aquifer's 10-15% "nonproduction zone." This could make the well subject to a significant and possibly dangerous decrease in water quality and be at risk of the danger of saltwater intrusion.

The Council would also like to know why a connection from CCWD is not being used in an area where urban-level services are provided. We were not provided with any information on what, if any, policies CCWD has for residential use in this zoning.

Thank you for your help with our review of his project and for your consideration of these comments. It is our understanding that this project may be returned to the Planning Commission for hearing as early as December 12th of this year. Please keep us informed of any further developments, redesigns, hearings, approvals or appeals concerning this application.



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