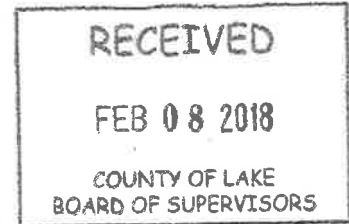




COUNTY OF LAKE
COMMUNITY DEVELOPMENT DEPARTMENT
Planning Division
Courthouse - 255 N. Forbes Street
Lakeport, California 95453
Telephone 707/263-2221 FAX 707/263-2225



APPEAL TO BOARD OF SUPERVISORS

Date: 2-8-18

Project Name (if applicable): DV-01 / PM 15-03

Appellant's Name: PATRICK SMYTHE

Appellant's Mailing Address: 19697 EAST ROAD

LOWA LAKE CA 95457 Phone #: 707-837-6662

Appellant's Representative PATRICK SMYTHE / ENLY CARISTON

DPF-LAW Phone #: 707-524-7000

Location of Project: 19697 AND 19658 EAST ROAD

Assessor's Parcel Number: 012-049-10 / 012-049-07

Previous Action Taken: PLANNING COMMISSION MEETING

ON 1-25-18 Date: 1-25-18

Reason for Appeal: (Attach extra sheets if necessary)

SEE ATTACHED LETTER


Signature of Appellant/s

FOR OFFICE USE ONLY

Appeal Number: _____

Related File#: _____

Fee: _____

Receipt #: _____

Date Received: _____

Received By: _____

Appeal to the Board of Supervisors of Lake County for the Planning Commission's ruling on the applicants request for deviation DV-01 on parcel map 15-03

Brief History:

On May 12, 2016 the planning commission heard the applicant's motion for a Division of Lands (parcel map) for the two slightly less than 40 acres parcels that he owned. At that hearing the commission approved the tentative parcel map. The county surveyor requested that the existing easement road, East Road, be made public. The commission debated the request and denied the county's request.

The parcel map was approved without any requirement to make East Road a public road. The conditions of approval required the applicant to make the existing East Road conform to a minor road standard (<400ADT). The applicant found that he could not meet this requirement due to the fact that he has an easement through two adjoining parcels that he does not own or control. The existing easement states that once the road and its boundaries are set that is the limits of the easement. The current road through the adjoining parcels is 12' wide with a drainage ditch on one side. The total width of the easement road is 20' fence line to fence line. The road through the adjoining properties is approximately 800' and has just been resurfaced.

The applicant filed for a deviation from the minor road standard for all of East Road. In clearing the portion of East Road that is owned by the applicant it was discovered that the portion of East Road that runs through the property owned by the applicant was already constructed to the minor road standard. The entire length of East Road on the applicants property was cleared to the 20' road width and shoulder requirements as outlined in the <400 ADT standards.

After a 16 month wait, the deviation motion was finally heard before the Planning Commission on December 14, 2017. Prior to the hearing the applicant removed the request to deviate from the minor road standard for East Road that was on his property, showing pictures of the existing conditions, and only requesting the deviation for the 800' of road that traveled through his neighbors parcels to Spruce Grove Road.

The Planning Commission listened to staff's recommendations that the deviation be granted. The county took this opportunity to insist that East Road be made public even though no formal request was ever presented. The applicant reminded the Commission that this request was heard and denied (specific language from the Planning Commission hearing minutes will be presented below). The county surveyor, Gordon Haggitt, confirmed that they brought the requirement into the original meeting at "the 11th hour" and that the request to make East Road public was denied. The county asserted that they wanted access for fire, police, ambulance and other public safety personnel. The applicant openly stated that this was not a problem, but there was absolutely no need to make the road public and that there was no language in the subdivision ordinance that stated that it must be made a public road. After

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some two hours of debating this subject the Planning Commission continued the hearing to January 25, 2018 with the instructions to see if the applicant and the county could come up with some language that satisfied both parties.

The applicant drafted a letter pointing out the specific requirements for a parcel map road and a sample of language that could be adopted to insure access to public safety personnel without making the road public. The applicant suggested that they meet after the holidays to see if they could resolve the issue. The county refused to meet the applicant! County personnel have never inspected the site or have met him on site.

At the January 25th hearing the county introduced a new set of conditions to the parcel map that had previously been approved. After another hour of debate the Commission asked the county if a compromise could be reached. They stated that there could be no compromise. The applicant reminded the Commission that this request had already be asked and denied. The commission, I believe feeling trapped and not given proper information, voted to adopt the county's new conditions. The Commission did not directly address the applicant's deviation request, either denying or accepting it.

The applicant feels that the Commission did not receive or understand the requirements of the parcel map road requirements from the county and that the county over stepped its authority to impose the requirement for a public road on private property. The additional requirements brought forth from the county were not part of the original deviation request and should not have been presented or heard without a formal request being made to the commission.

We will state our objections to the Planning Commission's rulings and the applicant's requests as follows:

Conditions D.4, D.5 and D.6 be removed from the parcel map conditions.

The Planning Commission has already ruled on this issue. Any requirement for public access has been addressed and denied. Gordon Haggitt, Lake County Surveyor, stated at the original hearing that ***"But this is not an absolute requirement for this minor land division, but is something, if the Commission finds it necessary to provide public access to the adjoining parcel(s) to the East..."*** (County minutes from that meeting). The Commission debated this issue and found to reason to declare or require East Road to be made public. There is no requirement in the Division of Lands (parcel map) section that requires an easement road to be made public. The county has adopted this requirement on their own. At the Parcel Map hearing the principal planner, Ms. Knight noted ***"that the conditions provided in the staff report, do not at this time reflect the recommendation by the county surveyor."*** The Planning Commission was well aware of the request by the county and the conditions of the Parcel Map approval. As previously stated they approved the map WITHOUT the requirement for public access! This issue should have never been raised by the county and needs to be removed.

Section 17-21.3 (1) states the requirements for a road in a Division of Lands.

"Section Division of land under this Section shall provide a fifty (50) foot minimum width right-of-way easement together with an irrevocable offer of dedication for access over properties outside the land covered by the Parcel Map or waiver, to the nearest public road."

The applicant currently has an existing 60' wide easement in place established in 1967 and believes that we have already met this requirement. The applicant sees no reason to change the current easement.

Condition D.1

There are three parts to this condition that need to be addressed.

- (1) East Road from Spruce Grove Road to The Western boundary of Parcel #3 on the parcel map runs through two adjoining parcels that the applicant does not own or control. This was the bases for the original deviation request. The road is 12' wide, has a clear line of site from end to end and has just recently been resurfaced. The applicant believes that there is language in the subdivision act that grants deviation from road standards due to title restrictions. The applicant does not own the land and therefore has no legal right to widen or change the road. The owners of the road do not want any changes made to the road.

The applicant arranged for Cal-fire to inspect the road and evaluate the conditions of the property access from their perspective. Cal-fire reported that there were NO ISSUES with access for firefighting equipment or personnel. They also quoted section that states that ***"Exception to the Standards, allows for the implementation of alternative modifications to the standards, provided a mechanism is in place to meet the same practical effect."*** (Title 14 of the California Code of Regulations, Division 1.5, Chapter7, Subchapter2 Article 1, Section 1270.07.)

East Road has existed for over 50 years in its current configuration. No reported incidents have ever happened with regards to access for emergency vehicles or personnel. East Rad from the western edge of parcel #3 only currently serves one property owner on a daily bases, our neighbor to the East. East Road from Spruce Grove Road currently serves 5 parcels in total. With our parcel map approval that number will rise to 6. The applicant believes that this will be the limit of future development as the parcel owned by our neighbor is less than 40 acers and cannot be split under current zoning restrictions. The applicant believes that county is misstating the need for a public road for future development.

- (2) As the applicant has stated the portion of East Road that run through his property is already built to a minor road standard. Section 17-21.3 (3) of the sub division act states"

Should the project have access to an existing improved road, the existing road shall be required to be improved to a minor road standard (<400ADT), unless the improvements already meet or exceed the minor road standard (<400ADT), in which case no additional improvements other than repair of deteriorated portions of the existing road shall be required. It is the applicants contention that this portion of East Road meets this requirement and that no additional work or conditions should be required

- (3) The original parcel map shows and requires a cul-de-sac at the junction of East Road and the driveway leading to the residence on parcel #1, The County has requested that a turnaround be placed at the Easterly boundary of East road at parcel # 12-049-11 and at the boundary of parcel #1 and #3. The cul-de-sac at the driveway location would be removed. The applicant spoke to the county surveyor and offered to install "hammer head" turn arounds at these two locations. The applicant request that this agreement be reflected in the new conditions.

Condition C.4 and C.5

The applicant requests that these conditions be removed. In 2015 the applicant received a minor use permit for a winery and a building permit for a 3000 square foot winery building. There is a 50' set back from the existing vernal pool high water mark. The winery was built at the 50' set back mark. In 2004 a new manufactured home has placed on the property. In both of these cases NO requirement for this study was made. WHY NOW? There is an existing set back that insures that no damage will happen to the vernal pool. The applicant finds that this requirement serves no real purpose, it is overly costly and there are adequate safe guards in place to protect the vernal pool. The applicant would not be opposed to a condition that a study be made ONLY in the area of any new construction within 100' of the vernal pool and ONLY at the time that a building permit is applied for. This condition would not have to be meet for final map acceptance only as a condition for a new building permit being issued.

The applicant appreciates that the county has removed some of the other minor conditions that had been previously required and that we requested to be removed. The applicant also believes that the county staff has acted in good faith but has just misinterpreted the requirements of the subdivision ordinance.

The applicant has retained consul to help represent them at this hearing. This is at no small cost! The applicant believes that if staff was whiling to meet with him that these issues might have been able to be worked out. The whole process seems to have been more adversarial than collaborative after the county was refused there request for public access. Our consul has already reached out to staff in an effort to see if some of these issues, if not all, can be worked out before this hearing. The applicant hopes that this will be the case.

It is our hope that the county staff gains some insight as part of these proceeding to help them in their interpretation of the subdivision act as it applies to easement roads and small land divisions.

To summarize, the applicant is seeking the following ruling from the Board;

Removal of conditions D.4, D.5 and D.6 in total. No requirement for a public road required.

Removal of all conditions in D.1 with the exception of the turnarounds agreed upon with the county and a finding that the existing portion of this road on the applicant's property meets the minor road standards as constructed.

A variance be granted for the section of East Road that travels through the adjoining properties from the western edge of parcel #3 to Spruce Grove Road due to title restrictions and as authorized by Title 14 of the California Code of Regulations, Division 1.5, Chapter7, Subchapter2 Article 1, Section 1270.07.

A finding that the current easement meets the requirements of section 17-21.3(1) with no modifications to the existing easement.

Removal of conditions C.4 and C.5 in totality.

Any other condition(s) for final parcel map approval that would work against the above stated requests.

The applicant looks forward to presenting our case to the Board and are hoping for a resolution to what we feel are unjustified conditions placed on our parcel map approval.

Pat Smythe

Co-property owner

Attachments: Cal –Fire letter dated February 5, 2018