

LAKE COUNTY PLANNING COMMISSION

MINUTES

REGULAR MEETING

January 25, 2018

Commission Members

P John Hess, District I
P Bob Malley, District II
A Eddie Crandall, District III
P Matt Levesque, District IV
P Daniel Suenram, District V

Staff Members

P Robert Massarelli, CDD Director
P Michalyn DelValle, Principal Planner
A Byron Turner, Principal Planner
P Shanda Harry, Deputy County Counsel
P Danae Bowen, Office Assistant III

9:00 a.m. CALL TO ORDER

Pledge of Allegiance John Hess.

Comm. Malley Moved, 2nd by Comm. Lévesque to approve the minutes from November 9, 2017

9:01 a.m. CITIZEN'S INPUT - None

9:05 a.m. Public Hearing on consideration of a Deviation (DV 16-01) for Tentative Parcel Map (PM 15-02) based on Initial Study (IS 15-12). The project applicant is PATRICK SMYTHE proposing a deviation from specific requirements of the County of Lake's subdivision Ordinance and modification of conditions for Tentative Parcel Map (PM 15-02). The project is located at 19658 and 19697 East Road, Lower Lake and further described as APNs 012-049-07 and 012-049-10. Environmental Evaluation: Subsequent Mitigated Negative Declaration. (Continued from December 14, 2017). (Keith Gronendyke)

Keith Gronendyke, Associate Planner, provided background information and a power point presentation of the project application. He reviewed the amended permit conditions D1, D4, D5 and D6. He said the staff recommendation is to Approve DV 16-01 for Parcel Map 15-03 as modified by staff with the following findings:

- This deviation will not result in the grant of a special privilege inconsistent with the limitation on other properties in the vicinity.
- There are no traffic safety impacts associated with the deviation request.
- This project will not result in any significant adverse environmental impacts.

Mr. Gronendyke noted that Gordon Haggitt, Lake County Surveyor and Todd Mansell, Lake County, Special Projects Engineer were present.

Gordon Haggitt, Lake County Surveyor, said that the Planning Commission needed clarity on some of the dedication. He noted the turnaround at the end of the road by the intersection of the driveway down to Parcel One and East Road. He said depending upon where the gate ends up, a provision should be made to move the cul-de-sac to allow for a turnaround at the gate. He said a provision will be needed for a turnaround at the intersection to Parcel One and wherever there is going to be a gate, there needs to be a provision for a turnaround.

Comm. Malley asked how the Commission could impose any changes to the parcel that is not part of this hearing. He said the negotiation would have to be with owner of the parcel at the main road.

Comm. Hess asked if this was new information to the applicant.

Patrick Smythe, the applicant, said it was new information. He said Spruce Grove Road and East Road there is basically is a turnaround and the road splits in both directions and trucks can be turned around there if needed.

Comm. Hess asks Shanda Harry, Deputy County Counsel if these provisions can be added to the conversation, and if these most recent comments were part of the conversation with the applicant in the meantime.

Shanda Harry, Deputy County Counsel, said yes, and that was the intent of the last meeting was to find a solution for the problems.

Mr. Haggitt said the turnaround at the north line of Parcel One was not part of the conversation. He said at the end of the public road if it ever does go from a private access road to a public road, there is a provision there, if a gate goes up, so that the public can turn around.

Comm. Sueneram said it was something that needed to be added if it were to become a public road and a condition needs to be written that it will be allowed at a certain point.

Mr. Haggitt said it should be added in right now.

Comm. Levesque said the language that is in there right now has the turnaround in the wrong spot.

Mr. Haggitt said typically a gate would go at the edge of the property and that was considered at the time and that would cause the need for a turnaround.

Comm. Hess asked if any meetings with the applicant have been held since this item was continued.

Mr. Gronendyke said that Mr. Smythe came to the office for the additional information, but that was all that was talked about.

Comm. Hess said he was trying to understand what progress at the staff and applicant level might have been made since this project was continued.

Mr. Gronendyke said just the new revised conditions is all that has been accomplished.

Comm. Levesque said as he sees the map and where the gate is going to be and it starts the gated community, which is essentially a "T" of the existing road. He asked staff why would there need to be a turnaround there when the only reason you would be turning in would be because you have access, so otherwise you would continue on the road, it seems unusual to put a turnaround of a "T" intersection that is private access.

Mr. Haggitt said that does make sense, but it depends how far the gate is going to go off the road. He said people will be stopped there while the gate opens and what you do not want is people pulling in there and decide they cannot get through then they would have to back up to get back on the County road.

Mr. Gronendyke noted that revised condition D1 does offer that: *"The cul-de-sac or other approved turnaround shall also be provided near the intersection of the driveway to the existing residence on Parcel One and at the end of East Road."* He said they would only have to add one at the property line on the west.

Michalyn DelValle, Principal Planner, noted that there are two cul-de-sacs there at present and Mr. Haggitt is requesting a third.

Comm. Hess asked when a meeting is continued, he thought there was some hope that there would be some interaction between staff and the applicant to clarify issues before

the next meeting. He asked if there was any interaction at all since this was continued, or are we still at our previous positions where everyone seemed pretty dug in.

Mr. Gronendyke said that the conditions were revised and the applicant did receive them.

Todd Mansell, Lake County Special Projects Engineer, said at staff level we do not have the authority to say no you do not have to follow the code, so we are stuck with the County Code and Ordinance and at staff level there is not any flexibility.

Mr. Haggitt said what has been done from the last meeting to this meeting is to allow for the gated access provision, which takes away the public road part of it, which was their main concern. He said they have allowed for the gated access until the road is open for public use for a 30 or 60 day period at which time East Road becomes a public right-of-way. He said that staff has given Mr. Smythe that option to go with the gated access easement, which requires an offer of dedication to be made and the Board of Supervisors rejects the public road part of that and the Board of Supervisors acknowledges it is a private road, until such time as they take the gate down. He said that is what we have done and we have given them an option and they still have to make the offer of dedication, but it removes the public road access from the mix.

9:24 a.m. Opened Public Hearing

Patrick Smythe, the applicant said he was dissatisfied with the County and that they did not resolve the issues. He said he drafted a letter on December 19, 2017 and delivered it to the Planning Commission, outlining what he thought were the provisions of a Parcel Map and discussion of why he did not think it should be a public road and solutions for their access problems. He did not receive any comments or feedback and to his knowledge no one from the County has been out to review the site. He felt it could have been worked out collaboratively, but seems like everyone wants to be adversarial to him and he rejects anything that says public access except for public services. He said what he is asking for in this deviation is that he does not have to improve the road to minor road standards, because he does not legally own the land. He said he agrees that turnarounds are needed and noted in the existing conditions there is no mention of a public road.

Comm. Hess asked staff if what the applicant is asking would create a unique situation that does not apply to any other similar property owner in the County and would it be an exceptional decision that they would be making. He said he was curious if a precedent was being set or would this only be applied to this particular application.

Mr. Mansell said in his opinion it would be setting a precedent. He said he did not know of any parcel map that has been done, that there was not a public road access.

Mr. Haggitt said there was one parcel map that was owned by family members and it was his understanding that each one did not want to give the off-tract dedication to get back to the back parcel and the Planning Commission allowed it without any dedication. He said when they went to sell one of the parcels, the Realtor and Title Company said they cannot ensure access to this parcel, because it did not have public right-of-way and it did

Comm. Hess asked Mr. Smythe if there is an entitlement here for the way he would like to have things, or that this would be precedent setting.

Mr. Smythe disagreed with the County's assessment on that and an easement is an irrevocable right to trespass over someone's property to get to another parcel. He said it already exists and is a dedicated recorded easement. He said it does not need to be public and it is a private road for the owners of those parcels to travel over.

Mr. Haggitt said what they have right now is a sixty-foot easement general in nature along the existing road to various parcels shown on the map and the neighbors parcel being where the road ends. He said there is also a provision that says that these roads are to benefit forty-acre parcels, which are being diced up. He said there are a lot of reasons where private easements come under question when it comes to further development. He said in this case it may not be an issue, because there is just a few of them out there, but

in some cases where subdivisions are proposed, you have off-tract neighbors, they do not want the extra traffic along there and that is the reason for the public dedication is to erase any issues that come with private easements.

Comm. Suenram said if this is offered up for public dedication and rejected under the condition that it is private until the gate goes down for thirty to sixty days, then it would now become a public road, and the two properties on either side of the main easement and if those corner parcels are not on board with it becoming a public easement, could that create an issue with those owners on the west side.

Mr. Mansell said the other parcels would be making the offer of dedication as well.

Comm. Levesque said it seems somewhat of an unreasonable burden for the applicant that it has to be part of this offering and he did not understand that it has to be the applicant's responsibility to get the other landowner to agree to the deviation requestion.

Ms. DelValle said it was because Mr. Smythe is the one applying for the parcel map and it is a standard with parcel maps.

Mr. Mansell said if the applicant could not get the dedication he then could not divide the property.

Mr. Gronendyke said that Mr. Smythe's access is through that East Road portion.

Mr. Mansell said Mr. Smythe is referring to that sixty-foot easement as being just as good as a public right-of-way and why do the dedication, but on the other hand he is saying it is not his property and he cannot make the improvements to it. He said if it was a public right-of-way it would be a public road and improvements can be made.

Mr. Smythe said he has a sixty-foot dedicated easement, which allows him to use his neighbors road, which already exists and there is no controversy there about him traveling that road. He said he meets the requirements of the parcel map and his only problem is that he cannot improve the road that goes through his neighbor's property to meet the minor road standards.

Comm. Hess asked if Mr. Smythe has discussed this with his neighbors.

Mr. Smythe said he has extensively discussed this with his neighbors and they are admittedly opposed to anything that says public. He said there is no reason the public needs to travel on these roads.

Comm. Hess said the Planning Commission has obligations to anticipate and protect future uses. He asked if there was a procedure in place for at some point it becomes commercial.

Comm. Suenram asked what kind of permit would be required for someone down the road to use one of these parcels for commercial use.

Ms. DelValle said it would depend on what type of use. She said there have been projects where they were not part of parcel maps and the lots were legally created by a deed and staff requested conditions that the road be dedicated as part of the use permit process.

9:46 a.m. Closed Public Input

Comm. Malley said he thought Mr. Smythe is correct to a point, and understands his way of thinking of opening this up to public right-of-way may be overkill. He said at this point with the caveat as long as the gate stays up and closed that it is not ever going to be a public road, he did not know if it matters what it says on the parcel map until such time as those gates come down. He said he did not see that anything has to be changed and he has a dedicated easement, and the road is currently being used by the three parcels anyway and we do not know what the plan for the parcel is beyond the applicant and if

anyone is planning to do anything with that piece out there. He said he thought that the way it is written, even though there is some wording that Mr. Smythe does not like, and the condition in there about it not being public access as long as the gate is up, takes care of that problem. He did not know what actual problem is with that wording other than the fact that the word public is in there. He did not see that anything physically has to be done other than put some gravel down on the existing roadway. He said what we are asking Mr. Smythe to do and in order for things to go a little easier in the future, if the parcel beyond decides that they want to put in a full blown commercial enterprise, the information is already in there and that person will have to deal with all of the parcel owners in-between in order to bring the road up to a certain standard. He said if something happens and the lower left parcel with the buildings and winery, if that changes hands and becomes a more commercial operation where they are looking to open a tasting room and they will have more visitors, then at that point, something will have to be done to improve those roadways. He said what they are being asked to do is what they should be considering and he did not see that it is onerous at this time on the property owner and without any input from the parcel closer to the main road, this is about all they can do at this time.

Comm. Levesque asked staff if this is split into two, then he does not have to do this, but if it is split into three, then he is required to make these changes.

Mr. Gronendyke said it is two parcels and he is trying to create three and he also has an approved Lot Line Adjustment application, which does not require road improvements or dedications.

Comm. Hess asked if that was considered an alternative.

Mr. Gronendyke said Mr. Smythe has an approved lot line adjustment application. He said Mr. Smythe said he just has to record the document and he has asked for an extension of that time limit to record the document.

Comm. Hess asked staff if we were operating on two completely separate, but parallel tracks at this time.

Mr. Gronendyke said pretty much and the Lot Line Adjustment does not need to go to the Planning Commission, it is a staff level approval at this time. He said if Mr. Smythe does not like the answers from the Planning Commission this morning he may move forward with the Lot Line Adjustment, however he is not sure what way Mr. Smythe wants to go.

Mr. Smythe said he wants to build another house on parcel two for his personal residence. He understands the issues, but the word public bothers him. He said if he has to record an easement document, which says if it ever becomes open to the public it will be a public road, he does not really like it, but to move this along he would be ok with doing that. He said he is not opposed to putting in turnarounds at the end of East Road or at the intersection of Parcel Three to Parcel One.

Comm. Hess said there is a third turnaround that has been proposed.

Mr. Smythe said it is in the front and it is basically already there and said it is far enough off the road to be able to pull a horse trailer in there and not block the road.

Mr. Haggitt said that we need to be clear on the difference between the dedicated easement and a private easement. He said the dedicated easement is dedicated to the County for public use and does not come by virtue of an easement by two separate parties. He said Mr. Smythe does not want to do the language for the gated community, and that is what is being thrown out there right now for the off-track guy, but he does not want to do that.

Mr. Smythe said right now his neighbors control the front parcels and they are the ones who wanted to put the gate at that location and at some point someone says I do not want the gate there, then we are right back here arguing. He said this whole thing revolves around him not controlling access all the way to Spruce Grove Road.

Comm. Hess said it feels very little has been resolved since the last hearing in December 2017. He questioned the value of continuing this item again.

Mr. Haggitt said he did not think they would be any further along than they are right now even if they had met privately with Mr. Smythe. He said it is the same issues; the off tract dedication versus not getting the off tract dedication, which is the issue here.

Comm. Levesque said the parcels closer to the Spruce Grove Road intersection is not represented and even if we were to approve what staff has recommended, it would still be contingent upon agreement with the owner of the first parcel, which he would not be in agreement with and if the Planning Commission grants some sort of deviation, a precedent has been set for other land owners. He said we are in the same spot as we were in December, except now we have language that we did not have previously for that public dedication.

Comm. Hess said there are certain County precedents that have to be defended and protected and he shares Comm. Lévesque's concerns about opening a door here and the County has adequate reasons for having them kept closed. He said the choice before the Commission is a tough one.

Comm. Malley said he did not think a continuation would solve anything and the Planning Commission are the ultimate deciders, if this should move forward in a way that the applicant wants.

Comm. Levesque commented that in order for this Parcel Map to move forward would be to grant approval of the new deviation language and getting the owner of the parcel closest to Spruce Grove Road to agree.

Comm. Malley said in order for it to be recorded he needs something in writing from the owner allowing access through there and he has already told us that he cannot get that.

Mr. Smythe said he is meeting the requirements of what it says to have a parcel map and there is nothing in that section that says anything about the public dedication. He said the only requirement he cannot meet is the minor road standard and he said the Planning Commission has the power based on title restrictions to grant that deviation. He said he is willing to meet every requirement put forth by the original conditions and has met most of them. He said there is nothing in the original conditions, that says it has to be made public.

Mr. Haggitt said he is right, it got omitted and it was an oversight and was brought in on the eleventh hour on a green sheet and that is how it got into the mix.

Mr. Gronendyke said the previous Principal Planner, Audrey Knight said whenever a subdivision of land occurs, local jurisdictions want to make sure there is public access for all property owners so they can access their properties without having a deeded easement in place the idea behind it is essentially sound to make sure that all parcels can be equally accessed when they are subdivided. It is common for rural counties to operate through private easements rather than public right-of-ways, but it relies on good neighbor relationships.

Comm. Suenram asked staff if Mr. Smythe already has a deeded access.

Mr. Gronendyke said that he does have a 60 foot wide easement recorded in 1967 that has not been dedicated.

Comm. Suenram said that he is for moving forward for what has been assembled in this proposal.

Comm. Hess asked if Comm. Suenram was ready to entertain a motion.

Comm. Suenram said yes.

Comm. Malley moved, 2nd by Comm. Suenram that the Negative Declaration which was previously prepared for Parcel Map PM 15-03 does not meet the requirements of Section 15162(a) of the CEQA Guidelines, and that no additional environmental review need be prepared with the findings listed in the staff report dated November 5, 2017.

SUBSEQUENT NEGATIVE DECLARATION DENIAL 4 Ayes 0 Noes 1 Absent (Comm. Crandell)

Comm. Malley moved, 2nd by Comm. Levesque that the deviation applied for by Patrick Smythe, and as modified, on property located at 19697 and 19658 East Road, Lower Lake does meet the requirements of Section 17-31 of the Lake County Subdivision Ordinance and therefore the deviation is approved as modified by staff subject to the conditions in Attachment 8 and with the findings listed in the staff report dated November 5, 2017.

DEVIATION APPROVAL 4 Ayes 0 Noes 1 Absent (Comm. Crandell)

Comm. Hess noted that there is a fifteen (15) calendar day appeal period provided by the Lake County Subdivision ordinance.

10:13 a.m. Public Hearing on consideration of a Minor Use Permit (MUP 16-29) based on Initial Study (IS 17-13). The project applicant is PAUL BERNACCHIO proposing a commercial wholesale nursery with the ability to produce starter plants and the installation of an accessory building/greenhouse approximately 40'x 60' (2,400 square feet), the installation of a new power pole with a 400 amp transformer and the conversion of an existing granny unit into a germination room. The project is located at 9959 Diener Road, Kelseyville and further described as APN 115-003-039. Environmental Evaluation: Mitigated Negative Declaration. (Mark Roberts)

Mark Roberts, Associate Planner, provided background information and a power point presentation of the project application. He noted comments from Gordon Haggitt, Lake County Surveyor dated April 12, 2017, that: *"Due to the nature of the activity proposed a public dedication of right-of-way to the parcel will be required from a County road."* He said there are concerns since this is a proposed commercial operation, that there will be an increase of traffic. He said staff recommends the following condition of approval: *"Prior to obtaining the necessary permits and/or approvals for any phase, a public dedication of right-of-way to the parcel shall be required from the edge of Diener Drive to the northern boundary line of the subject parcel. The width of said dedication shall be 50 feet, the applicant shall coordinate with all necessary parties including the County of Lake, Public Works Department for the recordation of the public dedication of the right-of-way."* He said Public Services is back to the security system and there are some concerns from the Sheriff's Department noting: *"That anyone providing security, whether it be consultants or working there, need to be licensed through the California Department of Consumers Affairs Bureau of Investigation Services."* He said he created that as a condition of approval.

Mr. Roberts said there are conditions that need to be slightly modified and referenced Section H., Hydrology & Water Quality, Condition #4, and he said that staff was proposing that the applicant have the well monitored, and the applicant brought up a good point on how do you distinguish monitoring residential use to commercial use. He said that staff is proposing this condition be amended to read: *"The applicant shall monitor the onsite wells with meters for the commercial use and submit annual reports to Community Development within sixty days of the new calendar year."* He said for Section K., Transportation & Traffic Condition #3, the applicant is proposing seven (7) graveled parking spaces instead of ten (10) graveled parking spaces and one (1) ADA compliant parking space. He said those numbers need to be modified as needed. He said in the same section, Condition #6, the applicant is requesting that instead of twenty onsite deliveries per month, he would like it to be increased to thirty onsite deliveries, so that he has a safety buffer.