

IN THE BOARD OF SUPERVISORS
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

_____ day _____, 20__

PRESENT: Supervisors

ABSENT:

RESOLUTION NO. _____

RESOLUTION DENYING THE APPEAL BY CORR FAMILY PROPERTIES AND UPHOLDING THE DECISION OF THE DIRECTOR OF PLANNING AND BUILDING DENYING THE ISSUANCE OF TWO UNCONDITIONAL CERTIFICATES OF COMPLIANCE IN THE APPLICATION FOR CERTIFICATE OF COMPLIANCE C09-0096 [SUB2008-00071]

The following resolution is now offered and read:

WHEREAS, Corr Family Properties filed an application with the Department of Planning and Building for the issuance of two unconditional certificates of compliance recognizing two parcels, APN 074-229-004 and APN 074-229-005, as separate legal parcels in its application for Certificate of Compliance C09-0096 [SUB2008-00071]; and

WHEREAS, on February 15, 2011, the Director of Planning and Building of the County of San Luis Obispo (hereinafter referred to as the "Planning Director") duly considered and determined that neither of the above two parcels were legally created either by recordation of a map or by deed conveyance separating the property from surrounding lands and were, therefore, not entitled to the issuance of two unconditional certificates of compliance recognizing them as separate legal parcels; and

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WHEREAS, Corr [Family] Properties, by and through its managing partner, Janice Sansom, has appealed the Planning Director's determination to the Board of Supervisors of the County of San Luis Obispo (hereinafter referred to as the "Board of Supervisors") pursuant to the applicable provisions of Title 21 of the San Luis Obispo County Code; and

WHEREAS, a public hearing was duly noticed and conducted by the Board of Supervisors on April 16, 2013, and determination and decision was made on April 16, 2013; and

WHEREAS, at said hearing, the Board of Supervisors heard and received all oral and written protests, objections, and evidence, which were made, presented, or filed, and all persons present were given the opportunity to hear and be heard in respect to any matter relating to said appeal; and

WHEREAS, the Board of Supervisors has duly considered the appeal and finds that the appeal should be denied and the decision of the Planning Director should be upheld and that the application for two unconditional certificates of compliance should be denied based on the findings and determinations set forth below.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of San Luis Obispo, State of California, as follows:

1. That the recitals set forth hereinabove are true, correct and valid.
2. That the Board of Supervisors makes all of the findings of fact and determinations set forth in Exhibit A attached hereto and incorporated by reference herein as though set forth in full.
3. That the appeal filed by Corr [Family] Properties is hereby denied and the

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decision of the Director of Planning and Building is upheld and that the application for two unconditional certificates of compliance for Certificates of Compliance C09-0096 [SUB2008-00071] is denied based upon the findings and determinations set forth in Exhibit A attached hereto and incorporated by reference herein as though set forth in full.

Upon motion of Supervisor _____, seconded by Supervisor _____, and on the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

the foregoing resolution is hereby adopted.

Chairperson of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

[SEAL]

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APPROVED AS TO FORM AND LEGAL EFFECT:

County Counsel

By: 
Deputy County Counsel

Dated: March 8, 2013

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STATE OF CALIFORNIA,)
) ss.
County of San Luis Obispo,)

I, _____, County Clerk and ex-officio Clerk of the Board of Supervisors, in and for the County of San Luis Obispo, State of California, do hereby certify the foregoing to be a full, true and correct copy of an order made by the Board of Supervisors, as the same appears spread upon their minute book.

WITNESS my hand and the seal of said Board of Supervisors, affixed this _____ day of _____, 20____

County Clerk and Ex-Officio Clerk of the Board
of Supervisors

(SEAL)

By _____
Deputy Clerk.

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EXHIBIT A

FINDINGS FOR DENYING THE APPEAL AND UPHOLDING THE DECISION OF THE DIRECTOR OF PLANNING AND BUILDING DENYING THE APPLICATION OF CORR FAMILY PROPERTIES C09-0096 / SUB2008-00071

- A. Corr Family Properties, a California general partnership, (the “Appellant”) is the owner of certain real property located adjacent to and south of the intersection of Ramona Avenue and Fourth Street, in the community of Los Osos, California, known as San Luis Obispo County Assessor’s Parcel Numbers 074-229-005 and 074-229-004 (the “Property”).
- B. Pursuant to Government Code section 66499.35, the County must, upon request of a property owner, determine whether real property complies with the provisions of the Subdivision Map Act and local ordinances adopted pursuant thereto. If the County determines that the real property complies with the Subdivision Map Act and local ordinances, that is, that the parcel was legally created for purposes of the Subdivision Map Act and not subsequently extinguished by merger, resubdivision, partial conveyance, operation of law or otherwise, the County will issue a certificate of compliance to be recorded in the office of the County Recorder. The issuance of the certificate of compliance is ministerial, and thereafter, the parcel may be sold, leased or financed without additional subdivision processing.
- C. If the County determines that the real property does not comply with the Subdivision Map Act and local ordinances, that is, that the parcel was not legally created for purposes of the Subdivision Map Act, or that it was lawfully created, but subsequently extinguished by merger, resubdivision, partial conveyance, operation of law or otherwise, the County may deny the application or require the property owner to amend its application to request the issuance of a conditional certificate of compliance with conditions as specified in Government Code section 66499.35.
- D. The two (2) unconditional certificates of compliance requested by Corr Family Properties in its application for Certificate of Compliance C09-0096 are for legal parcel recognition and the issuance of one (1) unconditional certificate of compliance for Lots 38 and 39 and a portion of Lot 1 of the Town of Sunshine Beach, a map which was recorded on April 5, 1893 in Book A, Page 93 of Maps (APN: 074-229-005), and for legal parcel recognition and the issuance of one (1) unconditional certificate of compliance for a portion of Lot B of a plat of part of Lot 79 of the Rancho Canada de Los Osos, according to map subdivided by H.C. Ward in June 1880 and filed for record June 9, 1880 in Book B, Page 72 of Maps (APN: 074-229-004).

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- E. After full review of the history of the Property including an evaluation of the map information, deed history, and chain of title submitted along with the application and consideration of relevant court case determinations, planning staff concluded that the map information and deed history did not support the existence of two (2) underlying legal parcels as requested by the Appellant. Therefore, the Department of Planning and Building informed the Appellant in writing that the request for the issuance of two (2) unconditional certificates of compliance was denied because the proposed two (2) parcels were not validly created as separate legal parcels based on the deed history.
- F. Within the time and in the manner prescribed by law, Appellant appealed the Director of Planning and Building's denial of the two (2) requested unconditional certificates of compliance.
- G. The Subdivision Map Act is the key regulatory control governing the subdivision of real property in California. The Act vests local agencies with both the authority and the responsibility for regulating and overseeing the design and improvement of subdivisions within their jurisdictions. The Act establishes procedures for comprehensive local agency review of all proposed subdivisions, procedures that are critical to ensure consistency with local general and specific plans, the property's suitability for development, the adequacy of water, sewer, roads, drainage and public services, and the preservation of natural resources.
- H. Through local review and approval of all proposed subdivisions, the Subdivision Map Act aims to "control the design of subdivisions for the benefit of adjacent landowners, prospective purchasers and the public in general," (*Hayes v. Vanek* (1989) 217 Cal.App.3d 271, 289) and more specifically, "to encourage and facilitate orderly community development, coordinate planning with the community pattern established by local authorities, and assure proper improvements are made, so that the area does not become an undue burden on the taxpayer." (*Gomes v. County of Mendocino* (1995) 37 Cal.App.4th 977, 985.) Through local review and approval of proposed subdivisions, the Subdivision Map Act serves as a central tool for rational land use planning.
- I. The Subdivision Map Act contains two "grandfather" provisions, Government Code sections 66499.30(d) and 66412.7, which provide a limited exception to the Act's extensive review requirements. These grandfather provisions are narrowly drawn to protect the reasonable expectations of developers who have sought and obtained local approvals under an earlier state of the law. Section 66499.30(d) exempts from the Act's current review requirements:

. . . any parcel or parcels of a subdivision offered for sale or lease, contracted for sale or lease, or sold or leased in *compliance with or exempt from any law . . . regulating the design and improvement of subdivisions in effect at the time the subdivision was established.*

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Section 66412.7, in turn, defines when a subdivision is deemed “established” for purposes of this grandfather clause: (1) upon the recordation of a final map or parcel map, (2) upon recordation of a map filed for approval and subsequently approved by the local agency, or (3) upon recordation of a certificate of exception issued by the local agency under local ordinance.

- J. After evaluation of the map information submitted along with the application and relevant court case determinations, the filing for recordation of the Map of The Town of Sunshine Beach on April 5, 1893, did not create separate legal lots shown on the map that are recognized under today’s Subdivision Map Act. In *Gardner v. County of Sonoma* (2003) 29 Cal.4th 990, the California Supreme Court confirmed that, under the grandfather provisions of the Subdivision Map Act in Government Code sections 66499.30(d) and 66412.7, a subdivision map will be deemed to create parcels recognized by certificate of compliance only if the map was recorded pursuant to state law or local ordinance after local agency review and approval as to the design and improvement of the subdivision. In reviewing this application here, there was no state law or local ordinance requiring nor was there County review and approval of the design and improvement of the Map of The Town of Sunshine Beach. Consequently, its recordation on April 5, 1893, did not create separate legal parcels recognized under today’s Subdivision Map Act.
- K. As for creation of parcels by conveyance in San Luis Obispo County, only properties that were transferred by deed and separated from surrounding lands at a time when deeds could transfer property of the size conveyed, can be recognized as legal parcels. The deeds could provide evidence of separate legal parcels if the deeds were dated prior to October 12, 1960, for four (4) or fewer parcels that are less than three (3) acres in size, and prior to February 16, 1966, for four (4) or fewer parcels that are more than three (3) acres but less than forty (40) acres in size. Proof of individual deeds separating each lot from surrounding lands is required to effectuate their creation. The Appellant has not submitted evidence of separate conveyances for each of the two (2) proposed parcels (APN: 074-229-005 and APN: 074-229-004) separating them from surrounding lands to effectuate their creation prior to 1960 or 1966 as requested.
- L. After evaluation of the deed history submitted along with the application, and consideration of relevant court case determinations, the Board finds that Lots 38 and 39 of the Map of The Town of Sunshine Beach (which are a portion of APN: 074-229-005) are both separate legal parcels, based upon deed conveyances, for which an unconditional certificate of compliance can be approved and issued, one for each parcel. However, the Appellant has instead requested one unconditional certificate of compliance for the entire APN: 074-229-005, which is not a separate legal parcel.

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- M. On June 17, 1957, the Board of Supervisors of the County of San Luis Obispo accepted, by resolution, a Grant Deed dated April 9, 1957 from Lydia Mickle for certain pieces or parcels of real property for the construction and maintenance of a public road: *“a right of way and incidents thereto for a public highway over, across and upon that certain real property”* (Ramona Avenue) which is on the boundary of APN: 074-229-004 and APN: 074-229-009. The resolution was recorded in Book 896 of Official Records, Pages 504-506, and the Grant Deed was recorded in Book 896 of Official Records, Pages 507-508. In short, the Board finds that in 1957 the County accepted the conveyance of a right-of-way easement for the construction and maintenance thereon of a public highway, not a fee interest cutting the property into two pieces as asserted by Appellant. The Board finds that the grant and acceptance of a right-of-way easement does not divide property and does not create separate legal parcels.
- N. In addition, the Board finds that the road right-of-way does not isolate and separate the land located north of Ramona Avenue (APN: 074-229-009) and south of Ramona Avenue (APN: 074-229-004). The Ramona Avenue right-of-way is easily traversed between the areas north and south of the right-of-way and Fourth Street provides road access to both of those areas. As a result, the reasoning in Attorney General’s Opinion at 86 Ops.Atty.Gen. 70 (May 15, 2003) does not apply in this case because in the AG Opinion, the condemned land for the reservoir separated the properties by 700 feet of water cutting off access, and there was no road access around the reservoir between the two parcels.
- O. After evaluation of the deed history submitted along with the application, and consideration of relevant court case determinations, the Board finds that the portion of Lot 1 of the Map of The Town of Sunshine Beach (which is the remaining portion of APN: 074-229-005) is not a separate legal parcel because all of Lot 1 was a legal parcel per a 1957 conveyance recorded in Book 882 of Official Records, Page 565. Based upon a parcel size less than three (3) acres, a pre-1960 deed would be needed to establish the legality of the parcel if it had been conveyed by deed separating it from surrounding lands prior to October 12, 1960. However, conveyance of a portion of Lot 1 in 1974 (Book 1765 of Official Records, Page 18 (recorded February 13, 1974)) illegally subdivided Lot 1 because a parcel map or final (tract) map was required to be approved to create parcels in 1974 (brought about by amendments to the Subdivision Map Act on March 4, 1972). As a result, the remaining portion of Lot 1 was not legally created.
- P. After evaluation of the deed history submitted along with the application, and consideration of relevant court case determinations, the Board finds that the portion of Lot B of a plat of part of Lot 79 of the Rancho Canada de Los Osos, in the County of San Luis Obispo, State of California, according to map subdivided by H.C. Ward in June 1880 and filed for record June 9, 1880 in Book B, Page 72 of Maps (APN: 074-220-004) is not a separate legal parcel. Based upon a parcel

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size of approximately 8 acres, a pre-1966 deed would be needed to establish the legality of the parcel if the parcel had been conveyed by deed separating it from surrounding lands prior to February 17, 1966. The Board finds that there is not a pre-1966 deed for this specific parcel which separated it from surrounding lands. The first time that the parcel was deeded out separately was on January 27, 1998 (Doc. No. 1998-034265), when a parcel or final (tract) map was required to be recorded to create parcels.

- Q. The Board finds that the conclusive presumptions created by Government Code section 66412.6 do not apply in this matter. At the outset, the presumptions created by section 66412.6 apply only to parcels “created” prior to March 4, 1972. The very question at issue here is whether the lots (APN: 072-229-005 and 004) were, in fact, ever “created.” Since no deed has been submitted separating the properties from surrounding lands, the parcels have never been created and the presumption of section 66412.6(a) would not apply. In addition, the presumption of section 66412.6(b) would not apply because it expressly states that it “shall not be operative” for purposes of determining an application for certificates of compliance.
- R. The Appellant has failed to submit a revised application for conditional certificates of compliance/coastal development permit along with the required environmental description form so that the matter can be processed and scheduled for public hearing before the Subdivision Review Board. As a result thereof, the Board finds that it has no authority and would be premature to consider the issuance of conditional certificates of compliance for the Property.