



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 11/02/2021

ITEM NO: 12

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**DATE:** October 27, 2021  
**TO:** Town Council  
**FROM:** Joel Paulson, Community Development Director  
**SUBJECT:** Consider an Appeal of a Planning Commission Decision Approving a Lot Line Adjustment Between Three Adjacent Lots on Properties Zoned R-1:20. Located at 17200 Los Robles Way. Subdivision Application M-20-012. APNS 532-36-075, -076, -077. Property Owners: Daran Goodsell, Trustree and Mark Von Kaenel. Applicant: Tony Jeans. Appellant: Alison and David Steer. Project Planner: Ryan Safty.

**RECOMMENDATION:**

Deny an appeal of a Planning Commission decision approving a Lot Line Adjustment application (M-20-012) between three adjacent lots on properties zoned R-1:20, located at 17200 Los Robles Way.

**BACKGROUND:**

The subject parcels are located at the terminus of Los Robles Way and Worcester Lane (Exhibit 1 of Attachment 1). The application proposes to take three adjacent parcels and reconfigure the lot lines. The existing configuration has several non-conformities, most of which would be remedied with this proposed Lot Line Adjustment application. There is an existing residence on Parcel 1 (APN 532-36-076) that would remain, and the other two parcels are vacant. No construction is proposed with this application.

On May 25, 2021, the Development Review Committee (DRC) approved two Certificate of Compliance applications, verifying the legality of vacant Parcels 2 and 3. Following verification of the legality of Parcels 2 and 3, the applicant proceeded with the Lot Line Adjustment application for the three parcels.

**PREPARED BY:** Ryan Safty  
Associate Planner

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Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Community Development Director

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BACKGROUND (continued):

On July 13, 2021, the DRC found that the Lot Line Adjustment application was complete and in compliance with the Town Code and Subdivision Map Act (SMA) and approved the Lot Line Adjustment application (Exhibit 10 of Attachment 1).

On July 22, 2021, the decision of the DRC was appealed to the Planning Commission due to concerns regarding the legality of the parcels, legal access of the parcels, buildability of the parcels, and future construction activities. The appeal form was signed by five neighbors near the subject property, located at 304 Harding Avenue, 308 Harding Avenue, 111 Worcester Lane, 112 Worcester Lane, and 110 Worcester Loop (Exhibit 11 of Attachment 1).

On September 8, 2021, the Planning Commission denied the appeal and approved the Lot Line Adjustment application with a 5-0-1 vote with one Commissioner abstaining and one absent (Attachment 2). On September 20, 2021, the decision of the Planning Commission was appealed to the Town Council by interested persons, Alison and David Steer, who reside at 304 Harding Avenue (Attachment 3).

Pursuant to the Town Code, any interested person as defined by Section 29.10.020 may appeal to the Council any decision of the Planning Commission. For residential projects an interested person is defined as "a person or entity who owns property or resides within 1,000 feet of a property for which a decision has been rendered and can demonstrate that their property will be injured by the decision." The appellants meet the requirements.

Pursuant to Town Code Section 29.20.280, the appeal must be heard within 56 days of the Planning Commission hearing and in this case, by November 15, 2021. The Council must at least open the public hearing for the item and may continue the matter to a date certain if the Council does not complete its deliberations on the item.

Pursuant to Town Code Section 29.20.295, in the appeal, and based on the record, the appellant bears the burden to prove that there was an error or abuse of discretion by the Planning Commission as required by Section 29.20.275. If neither is proved, the appeal should be denied. If the appellant meets the burden, the Town Council shall grant the appeal and may modify, in whole or in part, the determination from which the appeal was taken or, at its discretion, return the matter to Planning Commission. If the basis for granting the appeal is, in whole or in part, information not presented to or considered by the Planning Commission, the matter shall be returned to the Planning Commission for review.

DISCUSSION:

A. Project Summary

The application is proposing to reconfigure the lot lines of three adjacent parcels. There is an existing residence on Parcel 1, which would remain. Parcels 2 and 3 are vacant. Parcels 1 and 3 take access off Los Robles Way (Exhibit 13 of Attachment 1). Parcel 2 is land-locked, as the previous 10-foot ingress and egress easement running along the east property line, as noted on the project plans, was quitclaimed as stated in the DRC appeal package (Exhibit 11 of Attachment 1).

The existing configuration consists of four nonconformities: the existing residence on Parcel 1 does not meet the required 15-foot side yard setback; Parcel 1 does not meet the minimum frontage requirement of 100 feet for lots not fronting on a cul-de-sac bulb; Parcel 2 does not meet the minimum lot size of 20,000 square feet; and Parcel 2 does not meet the minimum frontage requirement of 100 feet for lots not fronting on a cul-de-sac bulb.

The proposed lot line adjustment would reconfigure the lot lines so that Parcel 1 abuts and continues to take access off Los Robles Way, while Parcels 2 and 3 take access off a future proposed cul-de-sac bulb at the terminus of Worcester Lane. The Town has reviewed the conceptual configuration with access provided via a future cul-de-sac bulb at the terminus of Worcester Lane. Worcester Lane is a public right-of-way and can be used to provide access.

All existing nonconformities would be resolved, except that the Parcel 1 frontage on Los Robles Way will continue to be nonconforming. The proposed lot configurations would comply with the minimum lot size, lot depth, and setback requirements for the R-1:20 zone. No construction is proposed at this time. Future construction activities associated with the conceptual cul-de-sac, driveways, grading, and residences shown on the plans will require discretionary applications with separate environmental review.

B. Planning Commission

On September 8, 2021, the Planning Commission received the staff report (Attachment 1), opened the public hearing, and considered testimony from the appellant, applicant, and the public. The appellant was present and spoke in opposition to the proposed project. After asking questions of the applicant, the Planning Commission closed the public hearing and discussed the project. The Commission approved the application with a 5-0-1 vote with one Commissioner abstaining and one absent. Attachment 2 contains the verbatim minutes.

DISCUSSION (continued):

C. Appeal to Town Council

The decision of the Planning Commission was appealed on September 20, 2021, prior to the 5:00 p.m. deadline, by interested persons, Alison and David Steer (Attachment 3).

The appeal states that the Planning Commission's decision is not supported by substantial evidence in the record. A summary of the specific reasons listed in the appeal form are provided below as verbatim excerpts followed by the applicant's verbatim responses in *italic* font. The Town Attorney's Office has provided a response to the legal questions related to the Town Code and the SMA below the appeal discussion. This analysis, along with the Project Summary and Environmental Review sections of this report, constitutes staff's analysis of these issues.

For more detail, the full 169-page appeal packet with case studies is included as Attachment 3. The appellant also submitted an additional 54-page packet to accompany the appeal packet, related to the California Environmental Quality Act (CEQA), included as Attachment 5. The applicant's response letters are included as Attachment 4 and Exhibit 12 of Attachment 1.

1. Appellant: Town Ordinance §29.10.070 states that, "Any parcel under the same or substantially the same ownership that do not meet the criteria listed above shall be considered merged. In addition, no parcel shall be modified through a lot line adjustment procedure in order to meet the criteria listed above." SMA §66451.11 specifies that, "a local agency may, by ordinance which conforms to and implements the procedures prescribed by this article, provide for the merger of a parcel or unit with a contiguous parcel or unit held by the same owner if any one of the contiguous parcels or units held by the same owner does not conform to standards." Why, when the town ordinance states "shall" and the SMA states "may" is the Town not following its own ordinance for Lot Merger? Previously submitted quit claim deeds along with exhibits prove incontestably that APN 532-36-077 has no legal access which is adequate for vehicular and safety equipment access and maneuverability.

DISCUSSION (continued):

*Applicant: The Appellant has gone to great lengths to attempt to hijack this appeal hearing and turn it into a Request for Merger hearing. As a pre-cursor to the LLA application, the Town required the Owner to address the legality of the Parcels in question. Town has essentially made "Determination of Non-Merger" by providing, after exhaustive research and consultant reviews, a recorded Certificate of Compliance document for the Parcel 536-32-077 in which it explicitly states, "This certificate relates only to the issues of compliance or noncompliance with the Subdivision Map Act of the State of California and the Town of Los Gatos Subdivision Ordinance enacted pursuant hereto. The parcels described herein may be sold, leased, or financed without further compliance with the Subdivision Map Act or any local ordinance enacted pursuant thereto. Development of the parcels may require issuance of a permit or permits, or other grant or grants of approval."*

2. Appellant: Town Ordinance §29.10.070 states that the lot line adjustment procedure cannot be used for parcels that lack legal access or parcels that do not meet slope stability standards. APN 532-36-077 is landlocked due to quit claim deeds signed in 1978 for Harding right-of-way. Parcel non-conforming to current zoning requirements, is land-locked, and non-buildable with regard to Least Restrictive Development Area and slopes exceeding 30 percent. Town of Los Gatos Lot Line Procedure requires that lot frontage remain conforming (APN 532-36-077 has no frontage) and that, "the existing buildings meet the requirement of the Uniform Building Code for fire separation or fire wall construction." Existing building on APN 532-36-076 is derelict.

*Applicant: The legal creation of Lot 077 was considered by the Town Consultant Surveyor, when the Certification of Compliance was applied for and approved. An access corridor to Harding Lane was reserved in the creation of this lot. This has since been quitclaimed (in 1980 per appellant, to allow a neighbor to build a home on Harding Ave), but the legal access at Los Robles Way can provide frontage at any time the applicant (Von Kaenel) chooses to develop the parcel.*

*The vacating of the access by the Town reduces the street (Los Robles Way) from public to private – but it is still legal – for access to 075 (Thompson Trust) and 076/077 (Von Kaenel) via the defined easement. The right-of-way width is 20 feet – also legal.*

*Potential Geologic and Geotechnical concerns are addressed at the time of a Building Application through a comprehensive process involving Town Engineering and consultant peer reviews. Slopes in excess of 30 percent can be avoided on the present site.*

DISCUSSION (continued):

3. Appellant: If the Town believes the broad language in SMA 66412(d) preempts the Town Ordinance Section 29.10.070, how is it that other town and counties will not allow a non-buildable parcel to be made buildable? It's because SMA §66451.11 exists. Why does the Town not follow the guidance provided by SMA §66541.10 and §66541.11, along with §66541.13 and §66541.14? If the Town allows the developer to skirt the lot merger ordinance, they are setting a precedent for illegal use of the Lot Line Adjustment procedure to establish a buildable parcel where none existed, and increase density without formal review of the development.

*Applicant: The appellant also uses sections of the SMA that are inapplicable to this LLA. The Subdivision Map Act Section 66412 explicitly singles out LLAs of this nature by excluding other provisions of the Act, which the appellant is attempting to use to disqualify it: "This division (SMA) shall be inapplicable to any of the following: (d) A lot line adjustment between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created, if the lot line adjustment is approved by the local agency, or advisory agency." A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances.*

4. Appellant: We also request that the remaining two buildable parcels, APN 532-36-075 and merged APN 532-36-076/77, maintain access from Los Robles Way to avoid unnecessary scarring and destabilization of the hillside through grading and removal of trees, and to preserve the natural scenic character of the Town. In addition, this would assure the buildable parcels share a driveway to minimize impervious surface. The hillside causes flooding issues to residents on Worcester Lane and visible landslide concerns to 246 Harding.

*Applicant: The Appellant has gone to great lengths to attempt to hijack this appeal hearing and turn it into a Request for Merger hearing. As a pre-cursor to the LLA application, the Town required the Owner to address the legality of the Parcels in question. Town has essentially made "Determination of Non-Merger" by providing, after exhaustive research and consultant reviews, a recorded Certificate of Compliance document for the Parcel 536-32-077.*

*Potential Geologic and Geotechnical concerns are addressed at the time of a Building Application through a comprehensive process involving Town Engineering and consultant peer reviews. Slopes in excess of 30 percent can be avoided on the present site.*

DISCUSSION (continued):

*It was clearly the intention of the Town that Worcester Lane would eventually continue past the fence. If they had wanted to preclude access from Worcester Lane to the property in question, they would have terminated it with a cul-de-sac originally.*

5. Appellant: We would also like to appeal the required findings made by the DRC. Required findings state that the project is not subject to CEQA. 17200 Los Robles Way Lot Line Adjustment application is not categorically exempt from CEQA. CEQA Class 5, "Minor Alterations in Land use Limitations," exemption excludes slopes greater than 20 percent and lot line adjustments that result in changes to land use density. 17200 Los Robles Way has a 26 percent average slope. We would request compliance to CEQA should a lot line adjustment on 17200 Los Robles Way be approved. Findings by DRC in conflict, "no development proposed," yet DRC/Planning Commission makes the affirmative findings that the site is physically suitable for proposed density of development and the type of development, and proposed improvement not likely to cause substantial environmental damage nor injure wildlife or their habitat. A coyote den exists on the property and deer and wildlife frequent the property. Planning Commission did not visit the land, nor did they review any plans for the development as the developer has not shared the development plans with the Town. How can the Town approve the suitability of the development without knowing what will be built, or whether it is in conformance to the surrounding established neighborhood? We are appealing the decision of the DRC to approve suitability of development before they have reviewed the proposed development and parcel maps.

*Applicant: The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15061(b)(3): A project is exempt from CEQA when the activity is covered by the common sense exemption that CEQA only applies to Projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question will have a significant effect on the environment, the activity is not subject to CEQA. The project simply proposes to modify lot lines between three legal, adjacent parcels. No development is proposed at this time. So there can be no Environmental Impact with the LLA.*

*The appeal packet requires that interested parties may appeal residential projects if they are: "a person or persons or entity or entities who own property or reside within 1,000 feet of a property for which a decision has been rendered, and can demonstrate that their property will be injured by this decision". So I really have to question the grounds for an appeal at all. This is a second appeal and 'loss of privacy' is not an injury.*

DISCUSSION (continued):

D. Town Attorney's Analysis

Part (b) of Town Code Section 29.10.070, requiring involuntary lot mergers, was adopted in 1976 and amended in 1988. However, this provision of the Town Code is unenforceable as it is inconsistent with the SMA. The SMA has contained express merger provisions since 1976 and the current SMA merger provisions were enacted in 1986. Government Code Section 66451.10 states that, "two or more contiguous parcels or units of land which have been created under the provisions of this division [...] shall not be deemed merged by virtue of the fact that contiguous parcels or units are held by the same owner."

The SMA's current merger provisions reflect two overall concerns. First, they provide landowners with elaborate procedural safeguards of notice and opportunity to be heard before their lots can be involuntarily merged (*Morehart v. County of Santa Barbara*). Second, they reveal, "a state concern over local regulation of parcel merger for purposes of development," as well as for purposes of sale, lease, or financing. In addition, California Civil Code Section 1093 requires an, "express written statement of the grantor," of their intent to alter or affect the separate and distinct nature of the parcels described therein. Therefore, the legal merger of two parcels occurs only through the express written statement of the grantor (*ibid.*) or through a local agency's compliance with the merger procedures contained in Sections 66451.10 and 66451.11 of the SMA, including the due process requirements contained therein (See *Morehart v. County of Santa Barbara*, *supra*, 7 Cal. 4<sup>th</sup> at p. 761 [SMA preempts the field for parcel mergers]).

Additionally, part (b) of Town Code Section 29.10.070, disallowing a, "parcel to be modified through a lot line adjustment procedure in order to meet the criteria listed above," is also unenforceable as it is inconsistent with the SMA. The SMA states that for a lot line adjustment, "a local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances." Therefore, the Town cannot impose as conditions to a lot line adjustment that the current configuration of the lots meet certain criteria. Instead, the Town must confine its approval of a lot line adjustment on its conformance to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances resulting from the lot line adjustment.

PUBLIC COMMENTS:

Written notice of the Town Council hearing was sent to property owners and tenants within 300 feet of the subject property. Public comments received following the Planning Commission hearing and prior to publication of this report are included as Attachment 9. The applicant's response to these comments is included as Attachment 10.



COORDINATION:

The Community Development Department coordinated with the Town Attorney Office in the review of the appeal.

ENVIRONMENTAL REVIEW:

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15061(b)(3): "A project is exempt from CEQA if: The activity is covered by the common sense exemption that CEQA only applies to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question will have a significant effect on the environment, the activity is not subject to CEQA." The project proposes to modify lot lines between three legal, adjacent parcels. No development is proposed at this time. Future construction activities associated with the conceptual cul-de-sac, driveways, grading, and residences shown on the plans will require discretionary applications with separate environmental review. The appellant has submitted additional information (Attachment 5) contesting this CEQA determination.

CONCLUSION:

A. Recommendation

For the reasons stated in this report, it is recommended that the Town Council uphold the decision of the Planning Commission and adopt a resolution (Attachment 6) denying the appeal and approving the application with the required findings (Attachment 6, Exhibit A), conditions of approval (Attachment 6, Exhibit B), and development plans (Attachment 1, Exhibit 13).

B. Alternatives

Alternatively, the Town Council could:

1. Adopt a resolution (Attachment 7) to grant the appeal and remand the application back to the Planning Commission with specific direction;
2. Adopt a resolution granting the appeal and denying the application (Attachment 8); or
3. Continue the application to a date certain with specific direction.

**PAGE 10 OF 10**

**SUBJECT: 17200 Los Robles Way/M-20-012**

**DATE: October 27, 2021**

**Attachments:**

1. September 8, 2021 Planning Commission Staff Report, with Exhibits 1-14
2. September 8, 2021 Planning Commission Verbatim Minutes
3. Appeal of the Planning Commission Decision, received September 20, 2021
4. Applicant's Response to Appeal, received October 8, 2021
5. Additional Information from the Appellant, received October 21, 2021
6. Draft Resolution to Deny Appeal and Approve Project, with Exhibits A and B
7. Draft Resolution to Grant Appeal and Remand Project to Planning Commission
8. Draft Resolution to Grant Appeal and Deny Project
9. Public Comments received between 11:01 a.m., September 8, 2021 and 11:00 a.m., October 28, 2021
10. Applicant's Response to Public Comments received between 11:01 a.m., September 8, 2021 and 11:00 a.m., October 28, 2021