



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 09/08/2021

ITEM NO: 2

DATE: September 3, 2021
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Consider an Appeal of a Development Review Committee Decision Approving a Lot Line Adjustment Between Three Adjacent Lots on Properties Zoned R-1:20. Located at 17200 Los Robles Way. APNs 532-36-075, -076, and -077. Lot Line Adjustment Application M-20-012. Property Owners: Daran Goodsell, Trustee and Mark Von Kaenel. Applicant: Tony Jeans. Appellants: Alison and David Steer, Terry and Bob Rinehart, Nancy and Jim Neipp, Gary and Michelle Gysin, and Gianfranco and Eileen De Feo. Project Planner: Ryan Safty.

RECOMMENDATION:

Deny the appeal of a Development Review Committee decision approving a lot line adjustment between three adjacent lots on properties zoned R-1:20, located at 17200 Los Robles Way.

PROJECT DATA:

General Plan Designation: Low Density Residential
 Zoning Designation: R-1:20
 Applicable Plans & Standards: General Plan
 Existing Parcel Sizes: Parcel 1: 74,832 square feet, Parcel 2: 11,226 square feet, and Parcel 3: 50,239 square feet

Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Residential	Low Density Residential	R-1:8
South	Residential, Open Space	Low Density Residential, Open Space	R-1:10
East	Residential	Low Density Residential	R-1:8, R-1:10
West	Residential	Low Density Residential	R-1:8, R-1:20

PREPARED BY: RYAN SAFTY
Associate Planner

Reviewed by: Planning Manager and Community Development Director

CEQA:

The project is Categorical 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 proposes to modify lot lines between three legal, adjacent parcels. No development is proposed at this time.

FINDINGS:

- The project is Categorical Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15061(b)(3).
- As required by Section 66474 of the Subdivision Map Act.

ACTION:

The decision of the Planning Commission is final unless appealed within ten days.

BACKGROUND:

The subject parcels are located at the terminus of Los Robles Way and Worcester Lane (Exhibit 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 November 11, 2020, the applicant submitted a Lot Line Adjustment application for the three parcels. After the initial review, the applicant was informed that they must verify the legality of Parcel 2 (APN 532-36-077) and Parcel 3 (APN 532-36-075).

On February 23, 2021, the applicant submitted Certificate of Compliance applications to verify the legality of Parcels 2 and 3. The Town's Consulting Surveyor reviewed the applications and determined that the parcels were legally created (Exhibit 7).

On May 25, 2021, the Development Review Committee (DRC) approved the Certificate of Compliance applications (Exhibit 8). Following verification of Parcels 2 and 3, the applicant continued with the Lot Line Adjustment application for the three parcels.

BACKGROUND (continued):

On July 13, 2021, the DRC approved the Lot Line Adjustment application (Exhibit 10).

On July 22, 2021, the decision of the DRC was appealed to the Planning Commission by adjacent neighbors (Exhibit 11).

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

The subject parcels are located at the terminus of Los Robles Way and Worcester Lane (Exhibit 1). The surrounding properties are low density single-family residences and open space at Worcester Park.

B. Project Summary

The applicant is proposing to reconfigure the lot lines between three legal, adjacent parcels at 17200 Los Robles Way. All existing non-conformities would be resolved, except that Parcel 1 frontage on Los Robles Way will remain non-conforming.

C. Zoning Compliance

The proposed lot configurations would comply with the minimum lot size, lot depth, and setback requirements for the R-1:20 zone. There are four existing non-conformities associated with the three parcels. The proposal would remedy three out of the four, with one non-conformity remaining.

DISCUSSION:

A. Lot Line Adjustment Analysis

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). 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 appeal package (Exhibit 11).

DISCUSSION (continued):

The existing configuration consists of four nonconformities: the existing residence on Parcel 1 does not meet the required 15-foot side yard setbacks, 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, and Parcels 2 and 3 will take access off a future proposed cul-de-sac bulb at the terminus of Worcester Lane. All existing non-conformities would be resolved, except that Parcel 1 frontage on Los Robles Way will continue to be non-conforming.

No construction is proposed at this time. All driveway, cul-de-sac, and "future residence" footprints shown on the plans would require separate Architecture and Site applications.

B. Development Review Committee

The DRC considered the Certificate of Compliance applications for Parcels 2 and 3 on May 25, 2021. Written public hearing notices were sent to surrounding property owners and occupants within 300 feet of the subject property.

At the May 25, 2021 DRC hearing, three neighbors were present to speak in opposition to the Certificate of Compliance applications. The neighbors asked that the applications be denied due to the history of the area being used as a single parcel and stated that it should remain one parcel. The neighbors were also concerned with the potential impacts of the future construction of these vacant parcels (Exhibit 8).

Based on the determinations made by the Town's Consulting Surveyor (Exhibit 7), the DRC approved the Certificate of Compliance applications. No appeal on the DRC action was received, and the Certificate of Compliance applications were deemed approved.

The DRC considered the Lot Line Adjustment application on July 13, 2021. Written public hearing notices were sent to surrounding property owners and occupants within 300 feet of the subject property.

Prior to the hearing, several neighbors submitted comments in opposition to the proposed project. The comments were generally related to the proposed lot configurations and location of future construction activities. The comment letters, and responses from the applicant, are included in Exhibit 9.

DISCUSSION (continued):

At the July 13, 2021 DRC hearing, four neighbors were present and opposed the proposed Lot Line Adjustment application. The neighbors were concerned with the legality of the three parcels, as well as construction associated with the future residences and driveways (Exhibit 10).

The DRC found that the Lot Line Adjustment application was complete and in compliance with the Town Code and Subdivision Map Act (SMA). Based on the findings, the DRC approved the proposed project, subject to the recommended conditions of approval.

C. Appeal

On July 22, 2021, the decision of the DRC to approve the Lot Line Adjustment application was appealed to the Planning Commission by five neighbors to the east of the subject property, located at 304 Harding Avenue, 308 Harding Avenue, 111 Worcester Lane, 112 Worcester Lane, and 110 Worcester Loop.

A summary of the specific reasons for the appeal are provided below (verbatim), followed by the applicant's responses in *italic* font (verbatim). For more detail, the full 90-page appeal packet (Exhibit 11) and applicant's response letter (Exhibit 12) are attached to this report.

- Certificate of Compliance does not confer building rights or other privileges. No proof of buildability has been provided for parcel 532-36-077.

We agree that Certificate of Compliance does not confer building rights. There are now three legal lots.

- This parcel (-077) lacks legal and no access for emergency services, parcel not consistent with the general plan, does not meet current standards for domestic water supply (no will serve letter). Has not proven meets slope stability standards, site safety/geologic hazards.

In the slides following the appeal form, the appellants state that "buildability" consists of six criteria: parcel legality, legal access, access to water, sanitation, emergency access, and site safety/geologic hazards.

The issue of "Buildability" has been raised, but it should be noted that the owners are not requesting to build – so it is not relevant for this this hearing – that will come later. But I will address why I do think that these 3 lots are "Buildable Parcels", generally – using the Appellants' 6-point criteria.

DISCUSSION (continued):

1. *Parcel Legality: The Certificate of Compliance has recognized the legality of the 3 lots.*
 2. *Legal Access: 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.*
 3. *Access to Water: San Jose Water presently provides water to the site along Los Robles Way. San Jose Water is also available in the public right-of-way at Worcester Lane.*
 4. *Sanitation: The current home is on septic, but it is proposed that any new construction would tie into West Valley Sanitation District sewer. There is a sewer main on the property.*
 5. *Emergency Access: Emergency vehicles absolutely can turn around at the Los Robles Way terminus on the parcel – and serve 075 and 076. APN-077 could also take access from Los Robles Way. The proposed configuration with the Lot Line Adjustment would make emergency access simpler to all 3 parcels and is supported by the Santa Clara County Fire Department for this application.*
 6. *Site Safety/Geologic Hazards: 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. A JCP report is an advisory document only, produced without the benefit of any site visit, to alert the owner or any potential buyer of the property of potential hazards to investigate at the site.*
- While Parcel 1 and 3 now owned by separate owners (still unrecorded with the SCC clerk recorder office), structure is built over common property line and ROW access to parcel 1 was abandoned. Section 29.10.070 of Town's code of ordinances (copied below) states that no parcel shall be modified through a lot line adjustment procedure to meet criteria listed in the ordinance. Town would be setting precedent to allow developer to bypass formal subdivision application process. Buildability of existing site needs to be proven.

Sec. 29.10.070. - Lot merger.

- (a) A parcel of land does lawfully exist separately from other land and is a lot when the parcel meets each of the following criteria:
- 1) Comprises at least five thousand (5,000) square feet in area.
 - 2) Was created in compliance with applicable laws and ordinances in effect at the time of its creation.
 - 3) Meets current standards for sewage disposal and domestic water supply.

DISCUSSION (continued):

- 4) Meets slope stability standards.
 - 5) Has legal access which is adequate for vehicular and safety equipment access and maneuverability.
 - 6) Development of the parcel would create no health or safety hazards.
 - 7) The parcel would be consistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.
 - 8) No structures are built over a common property line which is shared with another parcel under the same or substantially the same ownership.
- (b) Any parcels 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.

Appellant is suggesting that some of the properties should be considered "merged" if any of the following 8 criteria are not met – but they are all met.

1. *Parcels are all over 5,000 square feet (74,832, 11,226 and 50,239 sf);*
2. *Parcels were legal when created and a Certificate of Compliance issued by the Town was recorded;*
3. *Sewage Disposal (West Valley Sanitation District sewer on site);*
4. *Slope Stability (Building Permit Determination);*
5. *Legal Emergency Vehicle Access (20-foot right-of-way at Los Robles Way);*
6. *Health or Safety (Architecture and Site application hearing determination);*
7. *Consistent with General Plan and Zoning – except for size (conforms); and*
8. *No building built across property line (house is completely on 076).*

The Subdivision Map Act would require the Town to allow development of these parcels to be considered if a formal application were submitted.

[...]

In summary, this is a simple application that takes 3 non-conforming legal parcels that are not optimal for development and adjusts the lot lines to address the requirements of the Town General Plan and R-1:20 Zoning Laws. The owners have every right to propose reasonable improvements to their property and the Town has an obligation to apply the objective criteria in the approval of this Lot Line Adjustment per Town Code and the Subdivision Map Act.

DISCUSSION (continued):

D. Town Attorney's Office

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. 4th 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.

DISCUSSION (continued):

E. Environmental Review

The project is Categorical 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.

PUBLIC COMMENTS:

Written notice of the DRC public hearing was sent to neighboring property owners and occupants. Following the appeal, written notice of the Planning Commission hearing was sent to neighboring property owners and occupants. At the time of preparation of this report, no additional public comment (outside of Exhibits 9 and 11) was received.

CONCLUSION:

A. Summary

The applicant is requesting approval of a Lot Line Adjustment application to reconfigure the lot lines between three adjacent, legal parcels at 17200 Los Robles Way. All existing non-conformities would be resolved, except that Parcel 1 frontage on Los Robles Way will continue to be non-conforming. No construction is proposed with this application. None of the findings from Section 66474 of the SMA could be made to deny the application (Exhibit 2).

B. Recommendation

Staff recommends that the Planning Commission take the following actions to deny the appeal, uphold the decision of the DRC, and approve the Lot Line Adjustment application:

1. Make the finding that the proposed 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 (Exhibit 2);

CONCLUSION (continued):

2. Make the required findings as required by Section 66474 of the Subdivision Map Act (Exhibit 2); and
3. Approve Lot Line Adjustment application M-20-012 with the conditions contained in Exhibit 3 and the development plans in Exhibit 13.

C. Alternatives

Alternatively, the Commission can:

1. Continue the matter to a date certain with specific direction;
2. Deny the appeal and approve the application with additional and/or modified conditions;
3. Grant the appeal and remand the application to the DRC with direction for revisions; or
4. Grant the appeal and deny the Lot Line Adjustment application.

EXHIBITS:

1. Location Map
2. Required Findings
3. Recommended Conditions of Approval
4. Pictures of subject properties, received January 8, 2021
5. Project Description and Letter of Justification, received February 19, 2021
6. Summary of neighborhood outreach, received March 31, 2021
7. Certificate of Compliance Consulting Surveyor Reviews, received April 14, 2021 and May 17, 2021
8. May 25, 2021 Development Review Committee meeting minutes
9. Public Comments and Applicant Responses received prior to 10:00 a.m., Tuesday, July 13, 2021
10. July 13, 2021 Development Review Committee meeting minutes
11. Appeal of Development Review Committee, received July 22, 2021
12. Applicant's response to appeal, received July 27, 2021
13. Development Plans approved by Development Review Committee on July 13, 2021