

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S:

Los Gatos Planning Commissioners:	Jeffrey Barnett, Chair Steve Raspe, Vice Chair Susan Burnett Melanie Hanssen Kathryn Janoff
Town Manager:	Laurel Prevetti
Community Development Director:	Joel Paulson
Town Attorney:	Gabrielle Whelan
Transcribed by:	Vicki L. Blandin (619) 541-3405

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S:

CHAIR BARNETT: We'll now move on to Public Hearings, and we have Item 2 tonight where we are asked to Consider an Appeal of the Development Review Committee's Decision to Approve a Lot Line Adjustment Application in accordance with California Government Code Section 66412(d) for three adjoining lots on property zoned R-1:20; located at 17200 Los Robles Way; APNs 532-36-075, -076, -077; and Lot Line Adjustment Application M-23-001.

Per the Town's Attorney, the DRC decision is statutorily exempt from CEQA as a ministerial approval in accordance with CEQA Guidelines 15268, and the application is only for ministerial approval for a lot line adjustment pursuant to Section 66412(d) of the Subdivision Map Act, and we'll have some discussion about that.

The property owners are Daran Goodell, Trustee, and Mark Von Kaenel. The Applicant is Tony Jeans, and the Appellant is Alison Steer.

May I have a show of hands from Commissioners who have visited the property? Thank you. Are there any disclosures? I don't see any.

Mr. Safty, I understand you'll be giving a report from the Staff tonight.

1 RYAN SAFTY: Yes, thank you, and good evening,
2 Commissioners. Before you is an appeal of a DRC decision to
3 approve a lot line adjustment for three adjoining lots at
4 17200 Los Robles Way.

5 The application, as mentioned previously, is
6 statutorily exempt from CEQA as outlined in the Staff
7 Report. The application is only for ministerial approval of
8 a lot line adjustment pursuant to Section 66412(d) of the
9 Subdivision Map Act.

10
11 There is an extensive history associated with
12 this application and property, which is outlined in the
13 report. The current application is proposed to be
14 considered in accordance with California Government Code
15 Section 66412(d). The application proposes to take three
16 adjacent parcels and reconfigure their lot lines. The
17 existing lot configuration has several nonconformities, all
18 of which would be remedied with this application.

19 It is important to note that no construction is
20 proposed for this application.

21 Pursuant to Government Code Section 66412(d),
22 "Required determinations for approval of a lot line
23 adjustment application are: that the lot line adjustment is
24 between four or fewer existing adjoining lots where the
25 land taken from one parcel is added to an adjoining parcel

1 and where a greater number of parcels than originally
2 existed is not thereby created," and that, "a local agency
3 shall limit its review and approval to a determination of
4 whether or not the parcels resulting from that lot line
5 adjustment will conform to the local General Plan, an
6 applicable Specific Plan, any applicable Coastal Plan,"
7 which we don't have, "and zoning and building ordinances."

8 Exhibits 2 and 4 contained in the Staff Report
9 packet contain a very detailed explanation as to how each
10 of these determinations is made in this case.

11 The DRC approved this application on August 15th,
12 which was then appealed by an adjacent neighbor on August
13 22nd. The appeal, as provided in Exhibit 8, references
14 several reasons to why the appeal should be granted,
15 including CEQA review, General Plan compliance, cul-de-sac
16 review, as well as lot merger.

17 The Applicant has provided response letters to
18 the appeal, which are included in the report as Exhibit 9
19 and in the addendum report from yesterday as Exhibit 10.
20 The Staff Report includes each of these appeal sections,
21 followed by the Applicant's responses, and then Staff's
22 analysis.

23 Based on the reasons outlined in the report Staff
24 does recommend that the Planning Commission make a motion
25

1 to find that the approval of the lot line adjustment
2 application is a ministerial project approval under CEQA,
3 find that the required determinations in Exhibit 2
4 regarding compliance with California Government Code
5 Section 66412(d) are hereby adopted and confirmed, and deny
6 the appeal, uphold the decision of the DRC, and approve
7 Application M-23-001 superseding the Town's approval of the
8 previous lot line adjustment application with modified
9 Conditions of Approval in Exhibit 3, the diagram showing
10 the existing and proposed parcel configurations in Exhibit
11 7, and all other related application materials and
12 attachments.
13

14 This concludes Staff's presentation and we, along
15 with the Town Attorney, are happy to answer any questions.

16 CHAIR BARNETT: Thank you. Are there questions
17 from Commissioners? Commissioner Hanssen.

18 COMMISSIONER HANSSEN: First of all I'd like to
19 thank Staff for the very detailed Staff Report; it was an
20 excellent Staff Report that went through all of the issues
21 and outlined what we need to consider.

22 After reading through everything, since the Staff
23 and the Town Attorney have determined that this is a
24 ministerial application, if that is in fact the case and it
25 is confirmed by the evidence in the Staff Report, is it

1 even proper for us to be hearing this at the Planning
2 Commission, because we shouldn't be holding the Applicant
3 to a standard that's above a ministerial?

4 ATTORNEY WHELAN: Thank you, I can address that.
5 The Town Code provides that the Town's Development Review
6 Committee is responsible for approving applications for lot
7 line adjustments, and what that approval consists of is
8 making sure that all the elements of 66412(d) have been
9 satisfied.

10 The Town Code also provides that interested
11 parties can appeal those decisions to the Planning
12 Commission, and so the decision is properly before the
13 Planning Commission and the Planning Commission is being
14 asked to determine whether the elements of 66412(d) have
15 been satisfied. That's the primary consideration for the
16 Planning Commission: was the lot line adjustment properly
17 granted?

18 Then an ancillary subject is whether or not the
19 Town should have done CEQA analysis in conjunction with
20 that lot line adjustment? Staff's position is that the lot
21 line adjustment is a ministerial approval in that there are
22 no discretionary decisions to be made. The task before the
23 decision makers is to confirm that each of the required
24
25

1 elements of Government Code Section 66412(d) has been
2 satisfied.

3 COMMISSIONER HANSSEN: Okay, that's clear. Thank
4 you.

5 CHAIR BARNETT: Other questions by Commissioners
6 at this time? There is going to be a later opportunity.
7 We'll now open the public portion of the public hearing and
8 give the Appellant, and following that the Applicant, an
9 opportunity to address the Commission for up to five
10 minutes. I don't have a card from the Appellant, but that's
11 Alison Steer?
12

13 JENNIFER ARMER: We also do have the Appellant's
14 attorney on Zoom raising their hand.

15 CHAIR BARNETT: Excellent. Thank you very much.
16 Ms. Steer, who do you want to proceed first with? Is that
17 loud enough to get on the record?

18 JENNIFER ARMER: That's fine. She stated that
19 she'd like her attorney speaking on her behalf.

20 CHAIR BARNETT: Then if you'd please give us your
21 name and present your thoughts, and you have up to five
22 minutes. Thank you.

23 BABAK NAFICY: Good evening. I guess the video
24 portion is being blocked. It doesn't really matter.
25

1 My name is Babak Naficy and I represent Ms. Steer
2 in this appeal, as well as the ongoing case between the
3 parties.

4 As has been said, the lot line adjustment before
5 you has been the subject of litigation, but let's be very
6 clear that the only purpose for this lot line adjustment is
7 to turn a currently substandard and unbuildable lot into
8 one that can accommodate a residence.

9 Staff and the Applicant insist that the project
10 is not subject to CEQA review because it's a ministerial
11 approval, and also because the project doesn't include any
12 plans for a building. As I will explain, your decision in
13 taking evidence and making findings will have substantial
14 impact on how these lots will be developed, is subject to
15 CEQA, and it's not ministerial in the sense that it
16 requires exercise of judgment, and it will potentially
17 impact the environment. A few preliminary points.

18 Staff previously on this same project concluded
19 that the same lot line adjustment was discretionary but
20 subject to a specific CEQA exemption, but now staff says
21 the opposite is true but has made no effort to explain why
22 the same project that a year ago was considered
23 discretionary has now somehow magically turned into
24 ministerial.
25

1 Staff, the Applicant, and the Town Attorney cite
2 a case, Sierra Club vs. County of Napa, and claim that this
3 case conclusively proves that all lot line adjustments
4 under 66412(d) are per se ministerial, but this isn't
5 really true; that wasn't the issue before the court. The
6 court was really looking at the particular regulation for
7 Napa. But even there you have to ask: this case is from
8 2012, is known to the Town and to Staff, so why was it so
9 interpreted before?
10

11 One of the findings that the Staff is putting
12 before you today is a finding that the proposed lot line
13 adjustment is consistent...that the intensity of the new
14 development is consistent with the surrounding development
15 and with the Town at large. Now, clearly this isn't a
16 check box. You have to actually look at the intensity of
17 this project, look at the surrounding neighborhood, and
18 make a decision, and that decision requires exercise of
19 judgment, which makes it not discretionary.
20

21 The main argument, the main point I have to make
22 in the limited time I have left, is one of the requirements
23 to ensure that the project is consistent with all
24 applicable regulation is to change the access point to give
25 Lots 2 and 3 frontage, because right now there is no
frontage. Staff says this would be through an offer of

1 dedication of an easement for a future cul-de-sac, and the
2 cul-de-sac would provide access and therefore be able to
3 provide frontage for Lots 2 and 3, 40 feet for Lot 2 and
4 then 60 feet for Lot 3.

5 But make no mistake about it, for the cul-de-sac
6 to be able to serve as frontage for these lots it has to be
7 a street. For it to be a street, it has to provide primary
8 access to these lots. Therefore by accepting the line
9 drawn on the map for the cul-de-sac you are essentially
10 approving a new street. This street will require cutting
11 down trees and it will require substantial grading, which
12 you're not being told anything about.

14 It's not just a line on the map, it will require
15 it to be built; otherwise you can make a finding that the
16 lot line adjustment does comply with the frontage
17 requirements. Even if in some abstract sense you buy the
18 argument that the lot line adjustment approval is itself
19 exempt, approving this entrance, this street that is a cul-
20 de-sac that clearly has potential impacts is clearly not
21 exempt, because it is capable of significant environmental
22 impacts.

23 CHAIR BARNETT: Excuse me, your time is up, but
24 Commissioners may have questions for you. Staff has
25

1 informed me that you drafted a letter that was received
2 late this afternoon, is that correct?

3 BABAK NAFICY: Correct.

4 CHAIR BARNETT: And are there copies available
5 for the Commissioners at this time?

6 BABAK NAFICY: It was emailed to Commissioners,
7 but I'm not present to hand it out to you, unfortunately.

8 CHAIR BARNETT: Well, I understand that.

9 BABAK NAFICY: It was emailed to the clerk of the
10 Commission and individual Commissioners.

11 CHAIR BARNETT: Are you saying that email was
12 sent directly to the Commissioners?

13 BABAK NAFICY: I believe so. Not by me
14 personally, but I directed my assistant to do that.

15 JENNIFER ARMER: Through the Chair, if I may.
16 This was an email that was sent to Staff at 4:00pm this
17 afternoon, which is after the deadline for submittal of
18 materials for the Desk Item. It will be retained as part of
19 the record for the application, but without having copies
20 of it here tonight it's not something we can provide to the
21 Planning Commission at this time.

22 CHAIR BARNETT: Okay, thank you for that. Are
23 there questions for the attorney from members of the
24 Commission? I don't see any.
25

1 We'll now move on to the Applicant's presentation
2 for up to five minutes, if you wish to do so, and I think
3 we're going to hear from Mr. Jeans, who submitted a card.

4 JENNIFER ARMER: And we also have Shannon Jones
5 on Zoom, depending on which of you would like to speak.

6 TONY JEANS: I'll start, if that's okay.

7 CHAIR BARNETT: Please do.

8 TONY JEANS: So why are we here? Interesting, I
9 was wondering that myself this morning.

10 DRC approved this once a year or so ago. You as
11 the Commission denied the appeal. The Council then denied
12 the second appeal. Council's denial was litigated. During
13 the litigation it was determined that the incorrect
14 approval process had been used, so we went back to DRC
15 using 66412(d) of the Subdivision Map Act, which is how all
16 lot line adjustments are meant to be addressed. DRC
17 approved this a second time a month or so ago and it's now
18 been appealed to you, and eventually we hope to get to the
19 end of this.

20 By 66412(d) this is a ministerial process, and we
21 have a few things to show you. When we designed the three-
22 lot layout we had to make sure that we abided by all of the
23 rules of 66412(d).

1 So one, we had to show that the lot line
2 adjustment is less than four lots. Well, I think we've done
3 that. There's no increase in parcels. It starts out as
4 three lots and it ends up as three lots.

5 They're legal lots, and the reason they're legal
6 lots is they were ratified by a Certificate of Compliance
7 by the Town before the lot line adjustment started. This
8 process was not appealed by the Appellant, so they are
9 three legal lots whether the Appellant likes that or not,
10 and it will remain as three legal lots after the lot line
11 adjustment.
12

13 Secondly, is the proposed use consistent with the
14 General Plan? Yes, it's low-density residential and will
15 remain so with no new construction proposed as this
16 project.

17 Is the proposal consistent with the district
18 zoning? Yes, it is, and if you read Staff analysis, which
19 is about 15 pages long, you'll see that it meets all of the
20 requirements for an R-1:20 zoning lot, and each of the lots
21 reflects that.

22 We chose to offer the dedication in order to make
23 our lots work. We looked at the width, we looked at the
24 depth, and we looked at everything else on the various lots
25 and said we have to make this work. Obviously, when you

1 look at the end of Worcester Lane you can see that it
2 wasn't intended to end like that, so we just put a cul-de-
3 sac bulb there as an offer. If you approve this we will be
4 asked to make that dedication formal so that it will
5 ultimately become a cul-de-sac for the access to Lots 2 and
6 3.

7 My only conversations with the Appellant about
8 this project have revolved around the resulting view from
9 their back yard and what they will be able to see if houses
10 were built there, or a house on Lot 2. They like the park-
11 like setting; they would like to keep it like that. I don't
12 think that's a reason for appealing this lot line
13 adjustment; I think it's very unfair on Mr. Von Kaenel and
14 the other owner.
15

16 We ask you to deny the appeal yet again and allow
17 the project to proceed. I think it's reasonably
18 straightforward in that we have met all the rules for the
19 lot line adjustment. Thank you.

20 CHAIR BARNETT: Thank you very much, and I'll ask
21 my fellow commissioners if they have any questions for you?
22 I don't see any. Thank you for your presentation.

23 TONY JEANS: Thank you.

24 CHAIR BARNETT: We'll now invite comments from
25 members of the public as part of this public portion of the

1 meeting, and if you haven't already turned in a card,
2 please do so. Meanwhile, do we have anyone on Zoom, Mr.
3 Paulson?

4 JOEL PAULSON: Thank you, Chair. Anyone who would
5 like to speak on this item, please use the raised hand
6 feature in Zoom.

7 JENNIFER ARMER: I see that we do have somebody
8 who is joining by telephone. If you are participating by
9 calling in you can press #2 on your telephone keypad to
10 raise your hand.

11 JOEL PAULSON: I don't see any raised hands,
12 Chair.

13 CHAIR BARNETT: So we'll proceed, and under our
14 rules of procedure the Applicant, somewhat counter
15 intuitively, will give the next presentation up to three
16 minutes, should you wish to.

17 JENNIFER ARMER: And we do have Shannon Jones.

18 TONY JEANS: Shannon will take these three
19 minutes. Thank you.

20 SHANNON JONES: Good evening, Commissioners. It's
21 a pleasure to be here with you tonight. My name is Shannon
22 Jones and I represent the Applicant. A few things that I
23 would like to point out and I would appreciate you
24 considering.

1 First, the Appellant is trying to frame this
2 application or this project as a development project, not
3 as a lot line adjustment, and they are vastly different as
4 your Staff and your counsel have pointed out. By trying to
5 call it a development project they are trying to wedge it
6 into CEQA, and that is legally inaccurate, as Staff has
7 pointed out, as well as your own counsel.

8 My office has provided a letter with case law
9 supporting the position of the Town. This is not a
10 development project at this stage; it is a lot line
11 adjustment.
12

13 I found it very interesting that when I listened
14 to the Appellant's attorney speak the first comment that he
15 made was the only purpose of this project was for the
16 construction of a substandard residence. Residence is not
17 before you today, development is not in front of you today,
18 and in fact to my count he made at least five to six
19 references to a development and a development application.
20 This is not in front of you as a development application,
21 it is in front of you as a lot line adjustment and as such
22 most, if not all, of the Appellant's comments are
23 inapplicable. Virtually every single one of them doesn't
24 apply, because what is not being applied for is a
25

1 development, as they want to make it. It's a lot line
2 adjustment. It is very simple, very straightforward.

3 There are three existing lots. They are asking to
4 move the lot lines, move the boundaries of those, which is
5 exactly what Government Code Section 66412(d) is designed
6 for. CEQA legally doesn't apply, and I would suggest to you
7 that nothing else that has been raised is applicable
8 either.

9 Now, let me make one comment about the Staff
10 Report. The Appellant wants to say that the Staff Report
11 changed. That's not true when it comes to the access point;
12 that is inaccurate. In the first report they noted the
13 access point and wanted to change it. In the second one
14 they recognized that there was an access point, so it was
15 not a change in position as the Appellant wants to argue,
16 it was a further review and clarification.

17 CHAIR BARNETT: I'm sorry, but you're out of time.
18 I'll ask if Commissioners have any questions for you, Ms.
19 Jones. I'm not seeing any. Thank you for being online and
20 your presentation.

21 Now we'll give the Appellant another three
22 minutes to add any comments that you or your attorney
23 wishes to make.
24
25

1 BABAK NAFICY: Good evening, again. Thank you for
2 the opportunity to address you.

3 To be very clear, I have not suggested that
4 before you is a development project, or that you are being
5 asked to approve a house or three. What I am suggesting,
6 however, is that you are being asked, as a condition of
7 this lot line adjustment and in order to ensure that it
8 complies with your own regulation as it applies to
9 frontage, to approve the cul-de-sac, which the Applicant
10 was very clear that that's going to be the access point to
11 these lots, and were it not to be the access point to these
12 lots it couldn't be used to satisfy the frontage
13 requirement.
14

15 So, there is a line. You know precisely where
16 that access point is going to be, and by approving this lot
17 line adjustment, including the condition of the dedication
18 of that easement, you are essentially fixing a new entrance
19 that doesn't exist now to both of these Lots 2 and 3, and
20 any future development proposed for these two lots will
21 assume and will include the access point as its entry point
22 to the two lots, so that's going to be fixed.
23

24 Your staff has not told you how many trees will
25 have to be cut, what the slope is going to be, how that's
going to affect the drainage in this area, or any of that.

1 All of that is being deferred to when the Applicant will
2 come back with plans for these houses, except that you've
3 already decided to allow the easement, to allow the access
4 point.

5 If you take away nothing else from this
6 presentation, just please consider that by approving the
7 easement, by approving a new cul-de-sac which is going to
8 be forever the access point for these two lots, you have
9 made a discretionary decision that is capable of affecting
10 the environment and as such will require environmental
11 review under CEQA, and as you saw, the Applicant's attorney
12 nor her staff had any explanation to give you as to why the
13 Town has changed its legal analysis and conclusions even
14 though the project hasn't changed. That's a classic abuse
15 of discretion. Thank you.

17 CHAIR BARNETT: Are there questions by
18 Commissioners for you? Doesn't look like it. Thank you very
19 much for your rebuttal statement.

20 We'll now close the public portion of the public
21 hearing and ask if Commissioners have questions for Staff,
22 wish to comment on the appeal, or introduce a motion for
23 consideration? Commissioner Janoff.

24 COMMISSIONER JANOFF: Thank you. Question for
25 Staff. The Appellant's attorney just now said the easement

1 for the cul-de-sac is before the Planning Commission
2 tonight. Would you please clarify whether that is or is not
3 the case?

4 ATTORNEY WHELAN: What's before the Commission
5 tonight is whether or not the lots would have adequate
6 street frontage, and the Applicant's application
7 demonstrates that there will be adequate street frontage to
8 serve the lots.

9 COMMISSIONER JANOFF: Just to follow up, the
10 Applicant is demonstrating adequate frontage with a certain
11 configuration provided, however, that is not necessarily
12 the final configuration of the cul-de-sac or the access
13 points for the frontage, is that correct?

14 RYAN SAFTY: I can jump in on this. There are no
15 improvements proposed with this application.

16 COMMISSIONER JANOFF: Thank you.

17 CHAIR BARNETT: Commissioner Hanssen.

18 COMMISSIONER HANSSEN: I had the same question,
19 but I have a follow up question on that same issue. Who has
20 to agree to the easement, because it is a Condition of
21 Approval upon which the zoning would depend?
22

23 ATTORNEY WHELAN: It's being offered as part of
24 the project application, and the Town would need to accept
25 the easement.

1 COMMISSIONER HANSSEN: So there isn't a third
2 party in the neighborhood that would be involved, it's from
3 the Applicant to the Town?

4 ATTORNEY WHELAN: That's correct.

5 CHAIR BARNETT: Other questions of Staff?
6 Commissioner Hanssen.

7 COMMISSIONER HANSSEN: I was wondering if Staff
8 could comment again on the cul-de-sac aspect of the
9 Condition of Approval offering an easement, whether that
10 would be subject to CEQA or not?
11

12 ATTORNEY WHELAN: My opinion is that it's not,
13 because the cul-de-sac is being offered to demonstrate that
14 the application meets the Town's building and zoning
15 standards, and that's one of the criteria that need to be
16 determined in order to approve or deny a lot line
17 adjustment. The Town needs to make the determination that
18 the Town's building and zoning ordinances have been
19 satisfied.

20 COMMISSIONER HANSSEN: Understood, and then I
21 believe Commissioner Janoff already asked the question that
22 if an actual application were to come in it would be at
23 that time that there would be a review of how that is
24 architected and laid out and so on?
25

RYAN SAFTY: That is correct.

1 ATTORNEY WHELAN: If it would be helpful to the
2 Commission, I could address the question about why the Town
3 relied on a different statute the first time around.

4 CHAIR BARNETT: Please do.

5 ATTORNEY WHELAN: When the application was first
6 submitted the Town used Government Code Section 66474 to
7 review the application, and that government code section
8 relates to applications for parcel maps and tentative maps.
9 As we were reviewing the record of this matter it became
10 clear that the Town should have instead used the statute
11 for lot line adjustments, since that was what was being
12 sought.
13

14 Under Code Section 66474, approval of a tentative
15 or parcel map is in fact a discretionary action that is
16 subject to CEQA; however, the lot line adjustment is not a
17 discretionary action subject to CEQA.

18 CHAIR BARNETT: I have some questions, and then
19 we'll see if Commissioners have others. Is there statutory
20 or case law specifically providing that in the event of a
21 conflict between CEQA and the Subdivision Map Act that the
22 Map Act controls?

23 ATTORNEY WHELAN: I'm not aware of any cases
24 holding that specifically, but I will say that the
25 Appellants have cited CEQA Guideline Section 15305, which

1 is a CEQA exemption, and the CEQA exemptions kick in once a
2 determination has been made that a project is subject to
3 CEQA in the first instance, and here Public Resources Code
4 Section 21080 provides that ministerial decisions are not
5 subject to CEQA, and in turn Government Code Section 66412
6 describes a ministerial approval process in which the Town
7 is reviewing an application against a set of prescribed
8 standards.

9
10 CHAIR BARNETT: Thank you. I have a further
11 question. The Town Code specifies that certain actions are
12 ministerial, but it doesn't refer to lot line adjustments
13 in that statute. Do you have a comment about that?

14 ATTORNEY WHELAN: I would say it would be a best
15 practice to have the Town Code identify a lot line
16 adjustment as a ministerial action, but in the absence of
17 that there is case law standing for the proposition that
18 lot line adjustment applications are ministerial decisions.

19 CHAIR BARNETT: Okay, thank you. One last
20 question, which may be obvious, but I'll ask it anyway. The
21 Commissioners in their deliberations may consider the legal
22 analysis of the Applicant's attorney, Shannon Jones, in her
23 deliberations today?

24 ATTORNEY WHELAN: The Commission has to consider
25 any evidence that's been placed before them, and there was

1 reference made to a letter that was submitted by the
2 Appellant's attorney at 4:00 o'clock today. If it would be
3 helpful to the Commission in these deliberations, I could
4 go through the arguments of those letters and provide you
5 with the Town's analysis.

6 CHAIR BARNETT: That would be very helpful. If
7 you would proceed, I'd appreciate it.

8 ATTORNEY WHELAN: The first argument is that a
9 lot line adjustment is not a ministerial action and it
10 discusses how the Town exercises considerable judgment to
11 shape the lot line adjustment. My reaction to that is that
12 in fact the Town is assessing the application for a lot
13 line adjustment against the standards that are set forth in
14 Government Code Section 66412, and so the Town is using
15 fixed standards and objective measurements, and as a result
16 the decision is ministerial and not subject to CEQA.

17
18 The second point raised in the letter was also
19 raised in the testimony, and it was asking about how the
20 Town had relied on a common sense exemption when the lot
21 line adjustment was submitted several years ago, and as we
22 discussed that's because the original application was
23 processed under a statute dealing with parcel and tentative
24 maps and this time it's being processed pursuant to the lot
25 line adjustment statute.

1 The third point raised in the letter is that CEQA
2 Guidelines Section 15305, which exempts only certain lot
3 line adjustments from CEQA, governs the Town. My analysis
4 of that is that the CEQA exemptions, which CEQA Guideline
5 15303 is a CEQA exemption, come into play when a project
6 has been determined to be subject to CEQA in the first
7 instance. Here, the lot line adjustment decision is
8 ministerial, and there are other CEQA guidelines that stand
9 for the proposition that ministerial decisions are not
10 subject to CEQA in the first instance.
11

12 Then the fourth point raised in the letter is
13 that the Town's decision to approve the lot line adjustment
14 with conditions constitutes an exercise of judgment. The
15 Town's analysis of that is that the Applicant submitted an
16 application that shows dedication of an easement to provide
17 the requisite street frontage, and so the Town is imposing
18 that condition to hold the Applicant to that offer and to
19 ensure that the application will in fact conform with the
20 Town's building and zoning standards.
21

22 CHAIR BARNETT: Thank you very much for that
23 explanation. Commissioner Burnett.

24 COMMISSIONER BURNETT: When we're approving lot
25 line adjustments do all the new lots have to have adequate

1 frontage and access, and is that why we're talking about
2 the cul-de-sac here?

3 RYAN SAFTY: Yes, in accordance with Government
4 Code Section 66412(d), all provisions of the Town's Zoning
5 Code need to be complied with, and street frontage is one
6 of the provisions of the Town Zoning Code.

7 COMMISSIONER BURNETT: Thank you.

8 CHAIR BARNETT: I think we're ready to move on to
9 Commissioner comments on the appeal. Commissioner Janoff.

10 COMMISSIONER JANOFF: I'll just start by saying
11 it seems clear to me from the evidence that we have tonight
12 from the Staff Report that the request is a fairly
13 straightforward lot line adjustment request. It's clear
14 that it's ministerial, it's clear that CEQA doesn't apply,
15 and it's clear that the lot line adjustment does, to me,
16 meet the requirements under Section 66412(d). I don't see a
17 conflict with what the Applicant is asking for, and so I
18 would be inclined to deny the appeal at this time.

19 CHAIR BARNETT: Thank you for the comments.
20 Commissioner Raspe.

21 VICE CHAIR RASPE: Thank you, Chair. I would join
22 in Commissioner Janoff's interpretation and understanding
23 of the application. I would also join her in denying the
24 appeal.
25

1 I would further like to thank Staff and Council
2 specifically. This is an extraordinarily detailed and
3 complex matter dealing with some minutia, and I think
4 you've done an exemplary job in explaining it to this
5 Commission, so thank you again for your efforts, and again,
6 I would join Commissioner Janoff in that denial.

7 CHAIR BARNETT: Thank you. Other Commissioners
8 wish to comment? Commissioner Hanssen.

9 COMMISSIONER HANSSEN: I concur with the comments
10 of Commissioner Janoff and our Vice Chair, and I would also
11 say that one of the really important points that was made
12 by the Applicant, Mr. Jeans, is that these are, and will
13 continue to be, legal lots. They were determined to be
14 legal lots via a Certificate of Compliance, and if you go
15 through the details of the Staff Report, as was the case
16 when we saw this last time and as is the case now, this lot
17 line adjustment is rectifying some things that will make
18 the lots more in conformance with our Town Code and General
19 Plan.
20

21 I do want to say to the Appellant and the other
22 people that are objecting to this that it certainly is a
23 scary thought that there might be development, but this is
24 only an application for a lot line adjustment. Should there
25 be any application going forward, as was mentioned in the

1 Staff Report, there will be a very detailed Architecture
2 and Site Application and all kinds of review that will come
3 with that, but that's not what's in front of us and we
4 can't put other things on the table that aren't on the
5 table in front of us, we can only take the application as
6 is and the evidence that was presented to us.

7 I concur with my fellow commissioners that there
8 is plenty of evidence in the Staff Report and in the
9 hearing tonight to deny the appeal and approve the lot line
10 adjustment.

11
12 CHAIR BARNETT: Thank you. Further comments?
13 Commissioner Burnett.

14 COMMISSIONER BURNETT: I will not be supporting
15 this. I don't feel this is a clear lot line adjustment
16 situation, mainly because we're talking about a cul-de-sac
17 that is not normally in a clearly defined lot line project.
18 Thank you.

19 CHAIR BARNETT: Thank you. Ms. Armer, I believe
20 you had a comment about the possible form of the motion,
21 should the Commission wish to deny the appeal.

22 JENNIFER ARMER: Thank you for that question. I
23 think you can turn to the Staff Report recommendation
24 section near the end right before the attachments. It does
25 lay out the recommendation and the findings, but

1 specifically recommending based on what I've heard so far,
2 it sounds like the motion would likely be to deny the
3 appeal and uphold the decision of the Development Review
4 Committee, but specifically we would like you to reference
5 Attachments...

6 RYAN SAFTY: Exhibits 2 for all the required
7 determinations, Exhibit 3 for the Conditions of Approval,
8 and Exhibits 6 and 7 for the application materials.

9 CHAIR BARNETT: Thank you. Commissioner Burnett.

10 COMMISSIONER BURNETT: Mr. Chair, can I clarify,
11 did I state that correctly? I would support the appeal.

12 CHAIR BARNETT: You would support the appeal?

13 ATTORNEY WHELAN: It sounds like there may be a
14 motion forthcoming and then a second, and then we'll ask
15 for the votes of all the Commission members and your vote
16 will be recorded.

17 COMMISSIONER BURNETT: Well, I think I have it
18 backwards. I am not supporting what's before us.

19 ATTORNEY WHELAN: Based on your comments it
20 sounded like you would not be supporting a motion to deny
21 the appeal.

22 JENNIFER ARMER: You are in support of the appeal
23 and therefore not in support of the lot line adjustment.

1 COMMISSIONER BURNETT: I'm not in support of the
2 lot line adjustment.

3 JENNIFER ARMER: No, that is understood.

4 COMMISSIONER BURNETT: It was confusing for me.

5 JENNIFER ARMER: It is.

6 CHAIR BARNETT: Commissioner Janoff.

7 COMMISSIONER JANOFF: I'm prepared to make a
8 motion.

9 CHAIR BARNETT: Thank you very much. Please
10 proceed.

11 COMMISSIONER JANOFF: Thank you. I move to deny
12 the appeal, uphold the decision of the DRC, and approve Lot
13 Line Adjustment Application M-23-001 for consideration
14 under Section 66412(d) of the Subdivision Map Act.

15 I find that the approval of the lot line
16 adjustment is ministerial. Under CEQA, Exhibit 2, I can
17 find the required determinations regarding compliance with
18 Section 66412(d) of the Subdivision Map Act and are hereby
19 adopted and confirmed, Exhibit 2, and approve Lot Line
20 Adjustment Application M-23-001 superseding the Town's
21 approval of the previous Lot Line Adjustment Application M-
22 20-012 with the modified Draft Conditions of Approval
23 contained in Exhibit 3, the diagram showing existing and
24 proposed parcel configurations in Exhibit 7, and all other
25

1 related materials and attachments. Didn't mention Exhibit
2 6, but I can include that if you need it.

3 RYAN SAFTY: You're covered with all other
4 relevant application materials. Thank you for that.

5 COMMISSIONER JANOFF: Thank you.

6 CHAIR BARNETT: We have a motion. Is there a
7 second? Commissioner Hanssen.

8 COMMISSIONER HANSSEN: I second the motion.
9 Discussion by the Commission? I don't see any, so we'll go
10 ahead and take a roll call on the motion, and I'm going to
11 start with Commissioner Janoff.

12 COMMISSIONER JANOFF: Yes.

13 CHAIR BARNETT: Commissioner Burnett.

14 COMMISSIONER BURNETT: No.

15 CHAIR BARNETT: Commissioner Hanssen.

16 COMMISSIONER HANSSEN: Yes.

17 CHAIR BARNETT: Vice Chair Raspe.

18 VICE CHAIR RASPE: Yes.

19 CHAIR BARNETT: And I vote in favor of the
20 motion, so it passes 4-1, and I believe there are appeal
21 rights on this, but please confirm.

22 JENNIFER ARMER: That is correct. The decision of
23 the Commission can be appealed to Town Council by any
24 interested person as defined by Town Code Section 29.10.020
25

1 within ten days on forms available online and fees paid.

2 The final deadline is 4:00pm on the tenth day.

3 CHAIR BARNETT: Thank you very much.

4 (End)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25