TOWN OF LOS GATOS

COUNCIL AGENDA REPORT

MEETING DATE: 12/19/2023

ITEM NO: 17

DATE: December 14, 2023

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Consider an Appeal of a Planning Commission 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, and -077. Lot Line Adjustment Application M-23-001. Statutorily Exempt from CEQA as a Ministerial Approval in Accordance with Public Resources Code Section 21080(b)(1) (CEQA Statute) and CEQA Guidelines Section 15268. Application is Only for Ministerial Approval of a Lot Line Adjustment Pursuant to Section 66412(d) of the Subdivision Map Act. Property Owners: Daran Goodsell, Trustee and Mark Von Kaenel. Applicant: Tony Jeans. Appellant: Alison Steer. Project Planner: Ryan Safty.

RECOMMENDATION:

Deny an appeal of a Planning Commission 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.

BACKGROUND:

The subject parcels are located at the terminus of Los Robles Way and Worcester Lane (Attachment 1, Exhibit 1). The lot line adjustment proposes to take three adjacent parcels and reconfigure their lot lines. The existing lot configuration has several non-conformities, all of which would be remedied with the proposed lot line adjustment. A legal, non-conforming front setback on Parcel 1 is allowed under current Town Code, as discussed in the Required Determinations document (Attachment 1, Exhibit 2) and in the applicant's Letter of Justification (Attachment 1, Exhibit 6). There is an existing residence on Parcel 1 (APN 532-36-076) that

PREPARED BY: Ryan Safty
Associate Planner

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

BACKGROUND (continued):

would remain, and the other two parcels are vacant. No new construction is proposed with the application.

The current Lot Line Adjustment Application (M-23-001) seeks to cure the absence of certain factual information and the presence of certain procedural flaws in the Town's original approval of Lot Line Adjustment Application M-20-012. A detailed history of Application M-20-012 is provided in Attachment 1, Exhibit 4, and a summary of the action items and dates are provided below:

- On November 11, 2020, the applicant submitted their previous Lot Line Adjustment Application (M-20-012) for the three parcels;
- On February 23, 2021, the applicant submitted Certificate of Compliance applications to verify the legality of Parcels 2 and 3;
- On May 25, 2021, the Development Review Committee (DRC) approved the Certification of Compliance applications, which verified the legality of Parcels 2 and 3;
- On July 13, 2021, the DRC approved Application M-20-012;
- On July 22, 2021, the decision of the DRC was appealed to the Planning Commission by adjacent neighbors;
- On September 8, 2021, the Planning Commission denied the appeal and approved Application M-20-012;
- On September 20, 2021, the decision of the Planning Commission was appealed to the Town Council by adjacent neighbors;
- On December 7, 2021, the Town Council made a motion to uphold the decision of the Planning Commission and adopted a resolution to deny the appeal and approve Application M-20-012; and
- On March 1, 2022, a resident challenged the Town's approval of Application M-20-012 by seeking a writ of administrative mandate to overturn the Town's approval.

In the course of the litigation, it became apparent that the Town had relied on the Subdivision Map Act's (SMA) requirements regarding the approval of a tentative map instead of the SMA's requirements regarding a lot line adjustment [Government Code Section 66412(d)]. At the same time, the applicant for Application M-20-012 submitted a new application (Application M-23-001) for review in accordance with Government Code section 66412(d) (Attachment 1, Exhibits 6 and 7).

In light of all of this, the Town requested a stay from the court to allow the Town to process Application M-23-001 in accordance with the Subdivision Map Act's requirements regarding lot line adjustments as set forth in Government Code Section 66412(d). The stay was granted.

BACKGROUND (continued):

A detailed staff report for Application M-23-001 (Attachment 1, Exhibit 4) was prepared in advance of the DRC hearing which: summarizes the application request; provides a detailed background of the application beginning in 2020; specifies how the project is ministerial under the California Environmental Quality Act (CEQA) and therefore, compliant with CEQA; and analyzes how each of the required considerations for approval of Application M-23-001 are met in accordance with Subdivision Map Act requirements as set forth in Government Code Section 66412(d).

On August 15, 2023, the DRC opened the public hearing, took public testimony, and approved Lot Line Adjustment Application M-23-001 based on the information provided in the Report to the DRC, the draft conditions of approval, and in accordance with the required determinations provided in California Government Code Section 66412(d) (Attachment 1, Exhibit 4).

On August 22, 2023, the decision of the DRC was appealed to the Planning Commission by an adjacent neighbor (Attachment 1, Exhibit 8).

On October 25, 2023, the Planning Commission received the staff report and addendum (Attachments 1 and 2), opened the public hearing, and considered testimony from the applicant and appellant (Attachment 3). After asking questions of the applicant and appellant, the Planning Commission closed the public hearing and discussed the project. The Commission voted four to one to deny the appeal and uphold the DRC approval of this project. The Planning Commission Action Letter is provided as Attachment 4.

On November 3, 2023, the decision of the Planning Commission was appealed to the Town Council by the same adjacent neighbor (Attachment 6).

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 appellant meets 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 December 20, 2023. 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, or the Planning Commission decision was not supported by substantial evidence in the record as required by Section 29.20.275. If neither is proved, the appeal should

BACKGROUND (continued):

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 proposed project is described in the first paragraph of the Background section of this report.

B. Lot Line Adjustment Review Process

Applications for lot line adjustments are ministerial in nature, and are required by Town Code Section 29.20.745(9) to go before DRC for approval.

The required determinations for approval of a lot line adjustment application pursuant to Government Code Section 66412(d) are: the new lot line adjustment is 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; and that the parcels resulting from the lot line adjustment will conform to the local General Plan, any Specific Plans, any applicable Coastal Plan, and Zoning and Building Ordinances (Attachment 1, Exhibit 2).

C. Planning Commission

On October 25, 2023, the Planning Commission received the staff report and addendum (Attachments 1 and 2), opened the public hearing, and considered testimony from the applicant and appellant (Attachment 3). In addition to the documentation provided in the staff report and addendum, the appellant submitted a rebuttal to the staff report and the Applicant's Response to Appeal letter (Attachment 1, Exhibit 9) following the 11:00 a.m. deadline for Desk Items (Attachment 5). Although the letter was not provided to the Commissioners as a Desk Item, it was referenced by the appellant during public comment, and addressed by the Town Attorney during the hearing (Attachment 3). After asking questions of the applicant and appellant, the Planning Commission closed the public hearing and discussed the project. The Commission voted four to one to deny the appeal and uphold the DRC approval of this project. The Planning Commission Action Letter is provided as Attachment 4.

DISCUSSION (continued):

D. Appeal to Town Council

The decision of the Planning Commission was appealed on November 3, 2023, by an interested person, Alison Steer (Attachment 6). The specific reasons listed in the appeal packet are provided below verbatim, followed by the applicant's response in *italic* font and staff's analysis. The applicant's full response letter to the appeal is included as Attachment 7.

1. Appellant: Insufficient understanding of CEQA law (Section 15305) or application of Government Code 66412(d).

   Applicant: Pursuant to Government Code Section 66412(d), a Lot Line Adjustment (LLA) "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" is exempt from the Subdivision Map Act and review under CEQA. This is an inescapable fact that the Appellant is trying to ignore in favor of consideration of other issues that are irrelevant. Approval of such an LLA is ministerial in nature as a matter of law.

   Staff analysis: As noted in the DRC report (Attachment 1, Exhibit 4), the CEQA Determinations Section on pages four through 13 explain staff's limitations in reviews of lot line adjustments in accordance with the required provisions and considerations of California Government Code Section 66412(d). The Town is relying on Public Resources Code Section 21080(b)(1) (CEQA statute) and CEQA Guidelines Section 15268, both of which provide that ministerial projects are exempt from the requirements of CEQA. The courts have determined that lot line adjustments pursuant to Government Code Section 66412(d) are ministerial approvals.

2. Appellant: Town shows culpability in rewriting original findings ("Exhibit B" of appeal) and blocking request from residents for lot merger by hiding behind semantics on how Town's lot merger ordinance was written, which prior Town Attorney eventually admitted to Town Council meeting (back in 2021) could be applied by following Government Code 66451.11 ("Exhibit E" of appeal).

   Applicant: This application was made as a correction to the previous LLA application M-20-012 at this address, asking the Town to modify its prior approval of the LLA and to solely consider the LLA application under Government Code Section 66412, subsection (d). It was submitted and reviewed by staff and DRC for compliance. During this process we made all corrections requested by the Town and the plans on file reflect the final LLA configuration and details.

DISCUSSION (continued):

[…] Consideration of the LLA application is mandatory under controlling law, whereas the Town's consideration of merger is permissive. For instance, Municipal Code Section 24.10.080, which addresses parcel mergers, specifies the Town "may" initiate a merger. There is no requirement that the Town initiate such a merger. Moreover, there is no showing that the three (3) parcels would meet the requirements of a merger under Section 24.10.080.

Staff analysis: As noted in the Planning Commission staff report in Attachment 1, the Town's previous approval of Application M-20-012 was challenged in court. During the course of litigation, it became apparent that the Town had relied on the SMA's requirements regarding the approval of a tentative or parcel map instead of the SMA's requirements regarding a lot line adjustment [Government Code Section 66412(d)]. At the same time, the applicant for the previous approval (Application M-20-012) submitted a new application (Application M-23-001) for review in accordance with Government Code Section 66412(d). The Town requested a stay from the court to allow the processing of Application M-23-001 in accordance with the SMA's requirements regarding lot line adjustments as set forth in Government Code Section 66412(d), and the stay was granted.

Additionally, on February 21, 2023, the Town Council adopted Ordinance 2337 to amend Town Code regarding Town-initiated parcel mergers. The previous Town Code required that, "parcels under the same or substantially the same ownership that do not meet the [Town's] criteria … shall be considered merged." However, it was determined that the previous Town Code conflicted with the State law and the SMA; and therefore, that section was amended. An excerpt from the November 2, 2021 Town Council report outlining the conflict is provided below:

> 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 Subdivision Map Act (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

DISCUSSION (continued):

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]).

3. Appellant: "Exhibit A" of appeal: Town of Woodside ruling that CEQA applies to LLAs with average slopes > 20%.

   Applicant: Appellant's further suggestion that slope should be taken into account at this stage is spurious, as Government Code Section 66412(d) does not permit this as a legal reason to deny an LLA.

   Staff analysis: A staff report from the Town of Woodside for an Architectural and Site Review Board in 2019 was submitted as "Exhibit A" within the appeal. The project was for major redesign and reconstruction of an existing single-family residence, variance to setbacks, new swimming pool, site improvements, and a lot line adjustment between the parcels. The appellant highlighted the following section of the staff report:

   > "Staff met with the applicant and property owner to discuss the difference between processing the current proposed LLA and Lot Merger. A Lot Merger is simpler as a Merger is exempt from the California Environmental Quality Act (CEQA). The proposed LLA does require CEQA review, as LLAs for properties that have an average slope greater than 20% are not exempt from CEQA. In the previous submittal, the project civil engineer determined the gross lot average slope to be 36.7%, therefore any LLA between the three Parcels will be subject to CEQA review."

   Quoting an excerpt of a different jurisdiction's opinion on a somewhat similar (but different) application is not case law and does not dictate how all lot line adjustment applications are to be processed. Woodside simply quoted the CEQA exemptions handbook and made a determination that since the project did not fall within the specific parameters of CEQA Exemption Section 15305 – Minor Alterations to Land – as the average slope of the properties exceeded 20 percent, that the project was not exempt.

   However, Section 15305 is simply stating that minor lot line adjustments on lands under 20 percent slope are not subject to CEQA. Section 15305 also lists other types of projects that are not subject to CEQA. The fact that CEQA Guideline Section 15305

DISCUSSION (continued):

provides an exemption for certain minor alterations in land use limitations does not provide contrary or controlling evidence that the CEQA Statute and Guidelines do not apply to "ministerial projects." See page five of the Planning Commission staff report in Attachment 1 for more information.

4. Appellant: "Exhibit B" of appeal: Original appeal to Town Council showing Section 15305 only applicable for Minor Lot Line Adjustment, and for land with average slopes less than 20%. This is major adjustment where one parcel is increasing more than 100% in size, and has average slopes > 20%. It has potential for significant environmental impact which has not been carefully analyzed through this ministerial review process.

   Applicant: Appellant's further suggestion that slope should be taken into account at this stage is spurious, as Government Code Section 66412(d) does not permit this as a legal reason to deny an LLA.

   Staff analysis: As noted above in the staff analysis to Section 3 of the appeal, just because one of the CEQA Exemptions does not apply to a project, does not mean that that project is automatically subject to CEQA. The fact that CEQA Guideline Section 15305 provides an exemption for certain minor alterations in land use limitations does not provide contrary or controlling evidence that the CEQA statute and Guidelines do not apply to "ministerial projects."

   As noted in the Required Determinations document (Attachment 1, Exhibit 2), the CEQA Determinations Section on pages one and two explains staff's limitations in reviews of lot line adjustments in accordance with the required provisions and considerations of California Government Code Section 66412(d). In summary, the Town is relying on Public Resources Code Section 21080(b)(1) (CEQA statute) and CEQA Guidelines Section 15268, both of which provide that ministerial projects are exempt from the requirements of CEQA. The courts have determined that lot line adjustments pursuant to Government Code Section 66412(d) are ministerial approvals.

   Additionally, CEQA Guideline Section 15268 provides that the determination of what is "ministerial" can most appropriately be made by the public agency involved and that this determination can be made on a case-by-case basis, and the California courts have determined that the Subdivision Map Act statute exempts from discretionary reviews, exactions, and conditions those lot line adjustments that fit the specifications of Government Code Section 66412(d). The Town's review is expressly limited to determining whether the resulting lots will conform to the local general plan, any applicable specific or coastal plan, and building and zoning ordinances, which is a

DISCUSSION (continued):

prototypical ministerial approval process, and, in this case because no other land use approvals are being sought by the applicant, involves only a ministerial action. Here, the lot line adjustment is simply: moving the existing lot lines between three existing, legal lots; is not creating any new additional lots; is removing existing non-conformities; and is not proposing any other land use approvals. No construction is proposed. On that basis, the lot line adjustment action by the Town is ministerial in nature.

The California Public Resources Code statute setting forth CEQA and dictating that ministerial projects are not subject to CEQA "trumps" any CEQA Guideline providing to the contrary. The California Government Code statute setting forth the SMA and its provisions regarding lot line adjustments, and the California Appellate courts determining those lot line adjustments to be ministerial in character "trumps" any CEQA Guidelines providing to the contrary. The fact that CEQA Guideline Section 15305 provides an exemption for certain minor alterations in land use limitations does not provide contrary or controlling evidence that the CEQA statute and Guidelines do not apply to "ministerial projects." CEQA Guideline Section 15305 does not provide contrary or controlling evidence that the Government Code provisions containing the SMA and its lot line adjustment requirements [Government Code Section 66412(d)] do not describe a wholly ministerial process. As noted in Attachment 1, Exhibit 4, Government Code Section 66412(d) and previous case law provides that this lot line adjustment application is ministerial and not subject to CEQA.

5. Appellant: "Exhibit C" of appeal: Email from prior Town Attorney for reason why CoC never appealed to PC. The original 17200 Los Robles Way subdivision map was drawn with just 2 buildable parcels in 1927. Only because a small sliver of land above a ravine was carved out from a separate lot also owned by Tom Haire in 1947, before the subdivision map act applied, was a certificate of compliance able to be granted for the steep, unbuildable and landlocked Parcel 2. This parcel was never created to form a new buildable site on the Los Robles property, merely it made sense to own the land above the ravine not accessible to the parcel below.

   Applicant: It should also be noted that there are three (3) original existing legal parcels and there will remain three (3) parcels. The certificate of compliance for these parcels was approved by the Town prior to requesting the LLA and not challenged. […]

   Staff analysis: The assumption of why the parcel was created is not relevant. As noted by the previous Town Attorney within "Exhibit C" of the appeal packet, the Town was obligated to issue the certificate of compliance approval for Parcel 3 (APN 532-36-075) because the parcel was created and approved as part of the Los Robles Subdivision in 1927. The Town was obligated to issue the certificate of compliance approval for Parcel 2 (APN 532-36-077) because the SMA contains a conclusive presumption that the

DISCUSSION (continued):

subject property was lawfully created; "In particular, any parcel created before March 4, 1972 is conclusively presumed to have been lawfully created if the parcel resulted from a division of land in which fewer than five parcels were created and if, at the time of the parcel's creation, no local ordinance was in effect regulating the division of land creating fewer than five parcels [See Gov. Code, Section 66412.6(a)]. It is undisputed that APN 532-36-077 was created in 1947 by Haire and conveyed to Thompson in 1953." See "Exhibit C" of the appeal packet in Attachment 6 for more information.

The previous Town Attorney also noted in "Exhibit C" of the appeal that, "a request for a certificate of compliance cannot be denied based on theories of merger." Lastly, the Certificate of Compliance Application (M-21-001) for the two parcels was approved on May 25, 2021. The appeal period has ended for the certificate of compliance approval.

6. Appellant: "Exhibit D" of appeal: Original DRC and Planning Commission findings. While the prior Town Attorney repeatedly referenced 66412(d) to block applicant from a fair appeal with both the Planning Commission and Town Council such that they were not allowed to review the application relative to our prior lot merger Ordinance 29.10.070, this Government Code was not referenced in any of the findings. Only after a legal challenge were the findings rewritten.

   Applicant: This application was made as a correction to the previous LLA application M-20-012 at this address, asking the Town to modify its prior approval of the LLA and to solely consider the LLA application under Government Code Section 66412, subsection (d). It was submitted and reviewed by staff and DRC for compliance. During this process we made all corrections requested by the Town and the plans on file reflect the final LLA configuration and details.

   Staff analysis: After the previous appeal was denied by the Town Council and Application M-20-012 was approved, a resident challenged the Town's approval to the courts by seeking a writ of administrative mandate to overturn the Town's approval on March 1, 2022. In the course of the litigation, it became apparent that the Town had relied on the SMA's requirements regarding the approval of a tentative or parcel map instead of the SMA's requirements regarding a lot line adjustment [Government Code Section 66412(d)]. At the same time, the applicant for Application M-20-012 submitted a new application (Application M-23-001) for review in accordance with Government Code section 66412(d) (Attachment 1, Exhibits 6 and 7).

   In light of all of this, the Town requested a stay from the court to allow the Town to process Application M-23-001 in accordance with the SMA's requirements regarding lot line adjustments as set forth in Government Code Section 66412(d). The stay was granted.

DISCUSSION (continued):

As required by law, staff has prepared new findings referencing Government Code Section 66412(d).

7. Appellant: "Exhibit E" of appeal: State of California Government Code 66451.11.

   Applicant: […] Consideration of the LLA application is mandatory under controlling law, whereas the Town's consideration of merger is permissive. For instance, Municipal Code Section 24.10.080, which addresses parcel mergers, specifies the Town "may" initiate a merger. There is no requirement that the Town initiate such a merger. Moreover, there is no showing that the three (3) parcels would meet the requirements of a merger under Section 24.10.080.

   Staff analysis: Staff is unclear as to why this was submitted. The appellant also references "Exhibit E" of the appeal within Section 2 above, which has been addressed above.

8. Appellant: "Exhibit F" of appeal: Deed of Trust showing land transferred into Property Management firm.

   Applicant: While it is unclear why Appellant has included "Exhibit F" with her appeal, she nonetheless misrepresents the nature of "Exhibit F" by describing it as a "Deed of Trust showing land transferred into Property Management Firm." This is incorrect. Rather, Exhibit F simply shows that the owner's (Mark von Kaenel) 'Lender' is a Property Management Company. The Property Management Company is a beneficiary of the Deed of Trust, not the owner. The two owners of the property are: (1) the original family, who have owned the property for several decades; and (2) Mark Von Kaenel, a long-time Los Gatos Resident for whom I have designed a personal residence in the past in Los Gatos.

   Staff analysis: Staff is unclear as to why this was submitted. As noted above, the Town is not required to initiate a lot merger on two properties under the same or similar ownership.

9. Appellant: "Exhibit G" of appeal: City of Mammoth Lakes findings for exempting a lot line adjustment with consideration to CEQA Guidelines Section 15305.

   Applicant: Pursuant to Government Code Section 66412(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" is exempt from the Subdivision Map Act and review under CEQA. This is an inescapable fact that the Appellant is trying to ignore in favor of

DISCUSSION (continued):

consideration of other issues that are irrelevant. Approval of such an LLA is ministerial in nature as a matter of law.

Appellant's further suggestion that slope should be taken into account as this stage is spurious, as Government Code Section 66412(d) does not permit this as a legal reason to deny an LLA.

Staff analysis: As noted above, just because one of the CEQA Exemptions does not apply to a project, does not mean that that project is automatically subject to CEQA. The fact that CEQA Guideline Section 15305 provides an exemption for certain minor alterations in land use limitations does not provide contrary or controlling evidence that the CEQA statute and Guidelines do not apply to "ministerial projects." See Page 5 of Attachment 1 for more information.

10. Appellant: The Town's approval of this LLA is not a ministerial act.

Approving the LLA challenged by Ms. Steer's appeal is not a ministerial act. This is evidenced in part by the fact that the Town and Planning Staff both previously concluded that an essentially identical LLA was a discretionary decision, but subject to a specific CEQA exemption. Without any explanation, the Planning Commission has now reached the opposite conclusion based on the same facts. What changed?

As explained in Ms. Steer's October 25, 2023 rebuttal to the Planning Commission, reaching a different conclusion based on the same facts is arbitrary and capricious.

Staff claims the case of *Sierra Club v. Napa County Board of Supervisors* (2012) 205 Cal.App.4th 162 ("*Sierra Club v. Napa*") stands for the proposition that all minor (between less than adjoining parcels) lot line adjustments pursuant to Government Code section 66412, subdivision (d) are per se ministerial. This is not a new case; it is from 2012. It was already established law and known to the Staff and the Town Attorney when the prior LLA was deemed to be discretionary, so why did the Town's interpretation of the same case change? Furthermore, *Sierra Club v. Napa* only looked at Napa County's regulation for approving lot line adjustments. The court was not asked to rule on Government Code section 66412 or decide whether CEQA Guideline section 15305 is no longer valid.

Applicant: Pursuant to Government Code Section 66412(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" is exempt from the Subdivision Map Act and review under CEQA. This is an inescapable fact that the Appellant is trying to ignore in favor of

DISCUSSION (continued):

consideration of other issues that are irrelevant. Approval of such an LLA is ministerial in nature as a matter of law.

This application was made as a correction to the previous LLA application M 20-012 at this address, asking the Town to modify its prior approval of the LLA and to solely consider the LLA application under Government Code Section 66412, subsection (d). It was submitted and reviewed by staff and DRC for compliance. During this process we made all corrections requested by the Town and the plans on file reflect the final LLA configuration and details.

Staff analysis: After the previous appeal was denied by the Town Council and the application was approved, a resident challenged the Town's approval to the courts by seeking a write of administrative mandate to overturn the Town's approval of March 1, 2022. In the course of the litigation, it became apparent that the Town had relied on the SMA's requirements regarding the approval of a tentative map instead of the SMA's requirements regarding a lot line adjustment [Government Code Section 66412(d)]. At the same time, the applicant for Application M-20-012 submitted a new application (Application M-23-001) for review in accordance with Government Code section 66412(d) (Attachment 1, Exhibits 6 and 7).

In light of all of this, the Town requested a stay from the court to allow the Town to process Application M-23-001 in accordance with the SMA's requirements regarding lot line adjustments as set forth in Government Code Section 66412(d). The stay was granted.

As noted in the DRC report (Attachment 1, Exhibit 4), the CEQA Determinations Section on pages four and five explains staff's limitations in reviews of lot line adjustments in accordance with the required provisions and considerations of California Government Code Section 66412(d). The Town is relying on Public Resources Code Section 21080(b)(1) (CEQA statute) and CEQA Guidelines Section 15268, both of which provide that ministerial projects are exempt from the requirements of CEQA. The courts have determined that lot line adjustments pursuant to Government Code Section 66412(d) are ministerial approvals. See Attachment 1, Exhibit 4 for additional details and case law.

The appellant has asked why the former lot line adjustment application was described as a discretionary action. Based on the administrative record, the Town previously referenced the Government Code Section 66474 findings, which apply to parcel and tentative maps. The approval of a parcel or tentative map is a discretionary action.

DISCUSSION (continued):

Both the original planning application and the request for a modification of the planning approval seek a lot line adjustment, which is governed by Government Code Section 66412(d) and is a "ministerial" decision. The term "ministerial" refers to public agency decisions involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the laws to the facts as presented but uses no special judgment or discretion in reaching a decision. While the *Napa* decision involved a challenge to a local ordinance that stated a lot line adjustment decision was "ministerial," the case also stands for the general proposition that lot line adjustments are "ministerial" decisions and that a determination as to what constitutes a "ministerial" decision is best made by the public agency.

With this application for a lot line adjustment, the Town is being asked to apply the requirements of Government Code Section 66412(d) to the facts. Because this is a ministerial decision, it is not subject to CEQA.

11. Appellant: The approval of the LLA is not ministerial because it required the exercise of judgment and imposition of conditions.

    For example, one of the proposed findings requires the Town to decide if the project conforms with the policy of "limiting the intensity of new development to a level that is consistent with surrounding development and with the town at large." This requires the exercise of discretion; it is not just a matter of checking a box.

    In addition to exercising judgment regarding findings, implementing the Town's lot line regulation allows the Town to impose conditions or mitigations to ensure the LLA complies with all applicable General Plan policies and other regulations. Here, the Planning Commission, on recommendation of the Staff, approved a condition that requires an offer of dedication for a cul de sac to ensure the resulting lots comply with the minimum frontage requirement.

    Applicant: Appellant has argued, "The Township can exercise considerable judgment to shape the LLA," which Appellant argues renders the approval of the LLA not ministerial because such approval "requires the exercise of judgment and imposition of conditions." However, the LLA was designed by the Applicant, the owner and their Civil Engineer—not by the Town. The Town's role in this process is simply to determine whether the LLA plans presented are consistent with State rules for LLAs, the General Plan and applicable zoning rules, which determination requires objective consideration only.

    In these plans, we have limited the details to the proposed lot configurations requested for the LLA, while providing sufficient information to analyze the adjusted parcels for compliance with applicable Town and state law.

DISCUSSION (continued):

The access at Worcester Lane has always been available to the property and this will not change with this LLA. The owners are offering to dedicate to the Town an appropriate easement for a cul-de-sac area at the terminus of Worcester Lane to satisfy ingress/egress to parcels 2 and 3 from this location and meet the Town's frontage requirements. This area has been identified on the plans based on a town standard hillside cul-de-sac. According to the Town's staff reports submitted to the DRC and, subsequently, to the Planning Commission, Town Code Section 29.40.400 does not mandate that the cul-de-sac street frontage be along a paved roadway. This application does not request approval of plans to develop the cul-de-sac easement area. Thus, the Town need not analyze potential impacts associated with the cul-de-sac area.

Staff analysis: As noted in the DRC Report (Attachment 1, Exhibit 4), the CEQA Determinations Section on pages four and five explains staff's limitations in reviews of lot line adjustments in accordance with the required provisions and considerations of California Government Code Section 66412(d). The Town is relying on Public Resources Code Section 21080(b)(1) (CEQA statute) and CEQA Guidelines Section 15268, both of which provide that ministerial projects are exempt from the requirements of CEQA. The courts have determined that lot line adjustments pursuant to Government Code Section 66412(d) are ministerial approvals.

One of the required determinations listed in California Government Code Section 66412(d) is compliance with the General Plan. As noted in Attachment 1, Exhibit 2, the proposed lot line adjustment is in conformance with the General Plan. Specifically, the proposed lot line adjustment complies with the density allowance for properties with a Low Density Residential General Plan Land Use Designation and General Plan Community Design Goal CD-2. General Plan Community Design Goal CD-2 states, "To limit the intensity of new development to a level that is consistent with surrounding development and with the Town at large." The determination made for compliance with CD-2 is, in summary, "if in the future each vacant Adjusted Parcel were developed with one single-family residence, each such parcel would be consistent with the intensity of surrounding development." No discretion is used in looking at existing zoning and proposed parcel sizes compared to the surrounding neighborhood.

Regarding the cul-de-sac, as noted in Condition of Approval #2 in Attachment 1, Exhibit 3, the property owners have proposed to make irrevocable offers of dedication of easement to the Town to satisfy Town Zoning Code provisions regarding frontage. This was a part of the application and offered by the applicant (Attachment 1, Exhibit 6). The provisions from Government Code Section 66412(d) regarding lot line adjustments authorizes the Town to impose conditions of approval to ensure Zoning Code compliance and consistency. However, construction of the cul-de-sac is not proposed or required, and Condition of Approval #5 makes clear that any and all disruption, development, construction, including future construction of the cul-de-sac, would

DISCUSSION (continued):

require a discretionary Architecture and Site Application with environmental review to determine appropriate CEQA compliance, and review for General Plan, Specific Plan, Zoning, and Building Ordinance compliance. Again, no construction of any kind is proposed with this lot line adjustment application, and the cul-de-sac dedication was offered by the applicant in order to comply with Town Code. As the appellant quoted in Section 12 below, "[t]he applicant has suggested a future cul-de-sac at the terminus of Worcester Lane for parcels 2 and 3. To accomplish this, the applicant is proposing a dedication-of land as an easement for cul-de-sac right-of-way purposes."

12. Appellant: The Planning Commission's conditions of approval for the LLA implicitly created a new street without adequate environmental review as required by law.

    The Town code requires lot frontage on "the property line of a lot abutting on a street, which affords access to a lot other than the side line of a comer lot." In other words, frontage must be abutting a street. "Street" is defined by the Town's municipal code section 29.10.020 as "any thoroughfare for the motor vehicle travel which affords the principal means of access to abutting property, including public and private rights-of-way and easements."

    Therefore, a compliant lot must abut and have frontage on a street that provides the principle means of access to that lot. Here, the proposed finding is as follows: "[t]he applicant has suggested a future cul-de-sac at the terminus of Worcester Lane for parcels 2 and 3. To accomplish this, the applicant is proposing a dedication-of land as an easement for cul-de-sac right-of-way purposes."

    According to Staff, "once this condition of approval is complied with and the Town accepts dedication of this area for the future cul-de-sac at the terminus of Worcester Lane, ... Parcel 2 would have approximately 40 feet of frontage on a cul-de-sac bulb easement at the terminus of Worcester Lane where 30 feet is required; and parcel 3 would have approximately 60 feet of frontage on a cul-de-sac bulb easement at the terminus of Worcester lane where 30 feet is required."

    In other words, to make a finding that resulting lots 2 and 3 comply with the frontage requirements, the Planning Commission implicitly found that the cul de sac, as depicted on the maps, is a "street" that will provide the primary access to lots 2 and 3. This means that in order to ensure the LLA is consistent with Town regulation regarding frontage, the Town essentially approved a new street without any environmental regulation or review.

DISCUSSION (continued):

Town's approval of the cul de sac violates CEQA because the Town has made no effort to analyze the environmental impacts associated with the cul de sac, including for example, how many trees would have to be cut to make room for the cul de sac, or how much grading, or how the new street would impact the site's hydrology, storm drainage, traffic, etc.

Applicant: The access at Worcester Lane has always been available to the property and this will not change with this LLA. The owners are offering to dedicate to the Town an appropriate easement for a cul-de-sac area at the terminus of Worcester Lane to satisfy ingress/egress to parcels 2 and 3 from this location and meet the Town's frontage requirements. This area has been identified on the plans based on a town standard hillside cul-de-sac. According to the Town's staff reports submitted to the DRC and, subsequently, to the Planning Commission, Town Code Section 29.40.400 does not mandate that the cul-de-sac street frontage be along a paved roadway. This application does not request approval of plans to develop the cul-de-sac easement area. Thus, the Town need not analyze potential impacts associated with the cul-de-sac area.

This application does not request the approval of any new homes nor development of the three (3) parcels. As such, it is premature to consider issues relating to development of the parcels. However, as the Appellant's attorney has focused on this point in some detail, I would like to point out that if an A&S application were to be made to develop either parcel 2 or 3, staff and SCCFD would consider whether a cul-de-sac, a hammerhead turnaround or individual driveways would be appropriate for access to the properties. At that time, safety, removal of trees and other tangible concerns would be considered in greater detail. Such considerations are not relevant nor properly considered in connection with the LLA application.

Staff analysis: Meeting "street frontage" requirements from the Town Code versus building, grading, and paving a street are two very different things. Street frontage is required in order to be a conforming lot, in that the property must have a certain amount of the property abut an area that can provide access. Specifically, "street" is defined by Town Code Section 29.10.020 as, "any thoroughfare for the motor vehicle travel which affords the principal means of access to abutting property, including public and private rights-of-way and easements."

The appellant states that a new "street" was created. That is true, as an easement meets the Town's definition of a street in terms of complying with "street frontage."

The appellant states that the Planning Commission implicitly found that the cul-de-sac, as depicted on the maps, is a street. Again, this is true. The future easement, conditioned to be dedicated following approval, meet's the Town's definition of a "street" and thus the lots comply with "street frontage."

DISCUSSION (continued):

The appellant states that the Town essentially approved a new street without any environmental regulation or review. Again, if referring to the Town's definition of "street" in terms of meeting "street frontage," this is true. A line on the map will be added, showing dedication of a cul-de-sac to the Town, showing that each lot meets the minimum street frontage. However, Town Code does not require that property or street frontage be met only on fully developed roadways.

Again, no construction is proposed. No tree removals are proposed. No grading is proposed. This is a lot line adjustment application that simply shows how the properties will be accessed if and when development is proposed in the future.

On December 11, 2023, the appellant submitted additional comment to the record, which is included as Attachment 8.

PUBLIC COMMENTS:

Written notice was sent to property owners and tenants within 300 feet of the subject property. At the time of preparation of this report, no public comment has been received.

ENVIRONMENTAL ASSESSMENT:

The lot line adjustment approval is Statutorily Exempt from CEQA as a ministerial approval in accordance with Public Resources Code section 21080(b)(1) (CEQA statute) and CEQA Guidelines Section 15268, both of which provide that ministerial projects are exempt from the requirements of CEQA, and Government Code Section 66412(d) regarding lot line adjustments, which Government Code Section 66412(d) has been determined to describe a ministerial approval. The application is only for ministerial approval of a lot line adjustment pursuant to Section 66412(d) of the Subdivision Map Act. Refer to Attachment 1, Exhibit 2.

CONCLUSION:

A. Recommendation

For the reasons stated in this report, it is recommended that the Town Council deny the appeal, upholding the Planning Commission's decision to approve the proposed project (Attachment 9).

CONCLUSION (continued):

B. Alternatives

Alternatively, the Town Council could provide staff with detailed reasoning to:

1. Adopt a resolution 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;
3. Adopt a resolution granting the appeal and approving the application with modifications; or
4. Continue the application to a date certain with specific direction.

ATTACHMENTS:

1. October 25, 2023, Planning Commission Staff Report, with Exhibits 1 through 9
2. October 25, 2023, Planning Commission Addendum Report, with Exhibit 10
3. October 25, 2023, Planning Commission Verbatim Minutes
4. October 25, 2023, Planning Commission Action Letter
5. Appellant's Rebuttal of Applicant Response Letter, received following 11:00 a.m., October 25, 2023
6. Appeal of the Planning Commission decision, received November 3, 2023
7. Applicant Response Letter to Appeal, received December 8, 2023
8. Additional Comment from Appellant, received December 11, 2023
9. Draft Resolution to Deny the Appeal and Uphold the Planning Commission Decision

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