RECOMMENDED ACTION AND JUSTIFICATION:

Adopt a resolution denying Appeal No. 2009-160 with findings, upholding the Planning Commission’s action.

Justification is provided in the Staff Report to Board of Supervisors from Mariposa Planning.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

None

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Grant the appeal and reverse the Planning Commission’s denial of Lot Line Adjustment No. 2009-090. Staff would process an approval for Lot Line Adjustment No. 2009-090 and make the required findings.

Financial Impact? ( ) Yes [X] No Current FY Cost: $ Annual Recurring Cost: $
Budgeted in Current FY? ( ) Yes ( ) No ( ) Partially Funded

Amount in Budget: $  
Additional Funding Needed: $  
Source: 
Internal Transfer  
Unanticipated Revenue  4/5’s vote  
Transfer Between Funds  4/5’s vote  
Contingency  4/5’s vote  
( ) General  ( ) Other

Staff Report to the Board with Attachments (Attachments as listed on page 10 of Staff Report)

CLERK'S USE ONLY:
Res. No.:  Ord. No.  
Vote - Ayes:  Noes:  
Absent:  
( ) Approved  
Minute Order Attached  ( ) No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.
Date:  
Attest:  MARGIE WILLIAMS, Clerk of the Board  
County of Mariposa, State of California
By:  Deputy

COUNTY ADMINISTRATIVE OFFICER:
[ ] Requested Action Recommended  
[ ] No Opinion  
Comments:  

CAO:  

[Signature]
TO: KRIS SCHENK, Planning Director
FROM: MARGIE WILLIAMS, Clerk of the Board

SUBJECT: PUBLIC HEARING to Consider Appeal No. 2009-160, an Appeal of the Planning Commission’s Denial of Lot Line Adjustment No. 2009-090; Applicants and Appellants – James Craig and Robin Dormer and Irwin and Jessica Iida (Project Site Includes APNs 015-052-018 and 015-052-019, Located at the Corner of Meadow Lane and Triangle Road)

Res. 10-62

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on February 2, 2010

ACTION AND VOTE:

18

Planning
PUBLIC HEARING to Consider Appeal No. 2009-160, an Appeal of the Planning Commission’s Denial of Lot Line Adjustment No. 2009-090; Applicants and Appellants – James Craig and Robin Dormer and Irwin and Jessica Iida (Project Site Includes APNs 015-052-018 and 015-052-019, Located at the Corner of Meadow Lane and Triangle Road)

BOARD ACTION: Kris Schenk introduced the appeal; and Alvaro Arias, Associate Planner, presented the staff report. He advised of a correction on circle page 7 to “see the above discussion for No. 2” versus “No. 3.” He advised that proposed findings to support approval of the appeal were received this morning on behalf of the appellant. Staff responded to questions from the Board as to whether there are setback standards for future well or septic installation around the drainage area; whether any of the area on Parcel B that is proposed to be moved to Parcel A is buildable; being able to justify improvement to Parcels A and B with a lot line adjustment; relative to existing improvements on each of the parcels (A, B and C), and the possibility of a variance; relative to the option of equal area exchange and taking into consideration the location of the drainage; relative to the Planning Commission misunderstanding the size of the acreage and the minimum size required by zoning; and relative to the flow of the creek through the drainage and whether the area could be developed.

The public portion of the hearing was opened and input was provided by the following:

Appellant:
Anita Starchman Bryant, Starchman and Bryant Attorneys at Law, advised that she is representing the Dormers. She asked staff to project the photographs that she emailed to them this morning showing where the current boundary cuts through the house and where the proposed boundary with the lot line adjustment would be. She asked which Board members have visited the site. Supervisors Aborn and Bibby indicated that they have not. Attorney Bryant advised that there is not enough space to develop between the drainage area and the fence. She distributed a copy of a portion of Code Section 17.108.040 which she feels allows for the modification of boundaries of parcels where one or more do not meet the minimum parcel size of the applicable zone provided such modifications will result in the improvement of the circumstances and/or design of both parcels. She referred to the confusion on the .5-acre parcel size by the Planning Commission members and advised that both parcels (A and B) are currently non-conforming and do not meet the minimum parcel size of 5-acres. She advised that the existing easement does not solve the problem with the locations of the well and septic. The lot line adjustment will remove the encroachments and the negative affect on the title. She referred to the Planning Commission’s reasons for denying the lot line adjustment; and she noted that the owners of parcels A and B and C are present to answer questions. She noted that the lot line adjustment does not reduce the developability of parcel B. She could find no legal basis to require an equal exchange of land; and she addressed the impacts of such a requirement, including survey costs and relocation of the fence. She referred to the issue of setting precedents and the conservative interpretation of the codes by the Planning Director and the Commission; and she advised of a similar situation with Lot Line Adjustment Application No. 502 that was approved in 1996. She referred to the suggestion to merge parcels B and C and advised that parcel C should not be considered for discussion with this application. She requested that the Board uphold the appeal and direct staff to process the application. She advised that Rick Lobaugh from Inter County Title Company is present to testify relative to the title issues; and that Attorney Don Starchman is present to testify relative to interpretation of the Code. She responded to questions from the Board as to whether the fence was a joint project with the two property owners; and relative to the date of construction of the septic on parcel B and its location.

Irwin Iida responded to a question from the Board relative to the location of the well that serves parcel B and the septic systems. He advised that there is piping from the existing well on parcel C to serve parcel B. He advised that the septic system for parcel B is on parcel C.

Rick Lobaugh responded to questions from the Board as to whether the encroachment is done through an easement for the well and septic to benefit parcel B. He advised that the Iidas own parcels B and C and they do not need an easement at this time. If they sell a parcel, an easement would need to be created; and he provided input on the title issues.

Don Starchman, Starchman and Bryant Law Offices, advised that he served as Chair of the subcommittee that drafted the Ordinance (for Section 17.108.040) and the text for lot line adjustments between non-conforming parcels was not originally a part of Title 17. He advised that Barry Brouillette came before the subcommittee and cited an example of where it would be beneficial to do a lot line adjustment for substandard parcels as long as there is an advantage to both parcels. He further noted that this Code section has been interpreted that way until five and one-half years ago. He stated he does not feel that financing could be obtained if there is an encroachment on the title of both parcels and he feels the problem needs to be addressed.

**Opponent:** none

**Persons Speaking in Opposition:**

Rita Kidd urged the Board to support the Planning Commission and Planning Director’s decision in this case. She provided input on the matter and
noted that funds were expended for the fence before the lot line adjustment application was submitted. She feels this request is in conflict with the 2006 General Plan which requires findings be made. She feels that the applicant should discuss the matter with staff before submitting an application. She asked why the Board is trying to fix a problem for a buyer that took on this problem, and she feels the existing easement solves the matter. She referred to Implementation Measure 5-9a(2) of the General Plan, and she stated she feels it would be a different circumstance if parcels C and B were owned by two different property owners. She feels the lot line adjustment will make parcel B undevelopable, and she referred to the General Plan procedures relative to allowing shared wells. She noted that we have not had an opportunity to update the ordinances and feels the General Plan should prevail where there is any conflict. She feels that if this is approved, we could be headed down a "slippery slope." She urged the Board to not approve the appeal.

**Rebuttal:**

Anita Starchman Bryant stated she does not know what good it would have done for the applicant to meet with staff before submitting the application as she feels that they would have been given the same information. She does not feel that the application makes parcel B undevelopable. She referred to the shared well issue and advised that the testimony during the General Plan update process referred to the creation of new parcels. She does not feel that this is a "slippery slope" as each case is reviewed on its own merits. She referred to the testimony that the ordinances need to be reviewed if they are in conflict with the General Plan, and she advised that there is no conflict with the language that was referred to; and she asked that the appeal be upheld. She responded to questions from the Board relative to being able to develop parcel B without having an encroachment or easement to parcel C; whether parcel B could be developed if parcel C belonged to someone else; and she advised that the lot line adjustment between parcels A and B would not affect the developability of parcel B. She advised that there is a benefit to parcel B to remove the portion of the house and the well that encroaches on it. Supervisor Bibby commented on the need for all Board members to have the benefit of receiving the same information for an appeal, and she thanked Attorney Bryant for presenting the photographs of the area that Planning staff showed. Attorney Bryant advised that the Board members that visited the site were on their own, she did not go with them.

The public portion of the hearing was closed. Supervisor Cann thanked Alvaro Arias for finding the Grant Deed for him that describes the easement. Rick Benson, County Administrative Officer, asked for clarification of whether the easement goes away with the lot line adjustment application. Steve Dahlm, County Counsel, advised that the Grant Deed document should be introduced and made a part of the record, and it was. Staff responded to questions from the Board relative to review of the proposed findings that were submitted on behalf of the appellant this morning – staff advised that a CEQA determination would need to be incorporated in the findings if the Board takes action to approve the appeal. The Board commenced with deliberations. Supervisor Turpin commented on the neighbors being able to reach agreement. Supervisor Allen commented on the impact of aesthetics for a "jogged" fence for the equal area exchange option. Discussion was held relative to consideration of the creek/drainage location.

(M)Turpin, (S)Allen, Res. 10-62 was adopted upholding Appeal No. 2009-160 with the findings as presented on behalf of the appellant, and with the inclusion of a CEQA determination. County Counsel deferred to staff as to whether they would like to have a recess to have an opportunity to bring back specific findings relative to the CEQA part of the motion. Discussion was held. County Counsel responded to a question from the Board relative to the option of sending the matter back to the Planning Commission for review of all of the information that has been presented, including the misunderstanding relative to the size of the parcels and the zoning;
and he advised that sending the matter back to the Commission would be an option; however, the Board is considering this matter on its own merits. Kris Schenk advised that two options are available: 1) consider and adopt the findings at this time; or 2) refer this back to County Counsel and staff for the findings to be brought back, including CEQA findings and General Plan findings raised during the public input portion of the hearing. County Counsel responded to a question from the Board relative to options for action – tentatively upholding the appeal with direction to staff to bring back a resolution with findings and with direction to staff as to the general content of those findings. He responded to a question from the Board as to the status of the hearing if this option is pursued, and advised that if the Board tentatively approves and upholds the appeal on Lot Line Adjustment No. 2009-090 and directs staff to bring back the appropriate findings that would support the findings presented by the appellant and include the appropriate CEQA finding, that the hearing should be continued to a specific date and time. Supervisor Turpin restated his motion, agreeable with Supervisor Allen as the second, to adopt Res. 10-62 upholding Appeal No. 2009-160 for Lot Line Adjustment No. 2009-090 and directing staff to bring back the appropriate findings that would support the findings presented by the appellant and include the appropriate CEQA finding, and with further direction for the hearing to be continued to a specific date and time. Supervisor Bibby asked for clarification of whether this concludes the Board’s deliberations; and was advised that the public comment portion is closed unless action is taken to reopen it. Supervisor Bibby expressed concern about the record and the testimony by the County Administrative Officer and asked County Counsel to review this. Supervisor Aborn expressed concern with a tentative vote before receiving the formal findings. Supervisor Bibby stated she feels this is a site specific case and that it is not precedent setting. Ayes: Turpin, Bibby, Cann, Allen; Noes: Aborn. Chair Cann continued the deliberation phase of the hearing to February 16, 2010 at 2:00 p.m.

Attorney Starchman Bryant noted that with the closure of the public portion of the hearing, that there should not be any public contact with Board member(s) at this point. County Counsel concurred.

Cc: Steve Dahlem, County Counsel
File
Board of Supervisors Meeting  
Of February 2, 2010

SUMMARY AND RECOMMENDATIONS

Case: APPEAL NO. 2009·160

Case Name: Appeal of Planning Commission’s determination regarding Lot Line Adjustment No. 2009·090 between APN 015·052·019 (Dormer) and APN 015·052·018 (Iida).

Location: The site is located at the corner of Triangle Road and Meadow Lane

Appellants: James Craig Dormer and Robin Dormer

Recommendation: Staff recommends the Board of Supervisors adopt a resolution with findings, denying the appeal and upholding the Planning Commission’s determination and findings.

Prepared by,

Alvaro Arias
Associate Planner
Appeal Description Summary

On June 10, 2009, an application for a lot line adjustment between APN 015-052-019 (Parcel A, Dormer) and APN 015-052-018 (Parcel B, Iida) was received from James Craig and Robin Dormer and Irwin and Jessica Iida. The application was set up as Lot Line Adjustment No. 2009-090. The project was a lot line adjustment between APN 015-052-019 of 0.461 acres and APN 015-052-018 of 0.556 acres. The purpose of the lot line adjustment was to correct the encroachment of a house and well for Parcel A onto Parcel B.

On August 24, 2009, the applicants were sent a letter (Attachment D) explaining the required findings that the Planning Director could not make, and therefore could not recommend approval. The same letter detailed several processing options that could be taken in the processing of the lot line adjustment application. The applicants chose to have the project as submitted, taken to the Planning Commission for review and action, during which the Planning Commission would consider the project and the applicant’s justification, together with the Planning Director’s recommendation for denial.

On November 6, 2009, Lot Line Adjustment No. 2009-090 was considered by the Planning Commission, including the Staff Report (Attachment B), and the applicant’s and their agent’s comments. The Planning Commission denied Lot Line Adjustment No. 2009-090 with findings as included in the Resolution No. 2009-028 (Attachment C).

The appellants appealed this determination to the Board of Supervisors.

Main Issues of Appeal

In order to understand the appellant’s Grounds for Appeal, one must understand the Planning Director’s and Planning Commission’s determination.

In order to understand the Planning Director’s and Planning Commission’s determination, one must have a fundamental understanding of non-conforming parcels and the findings required to approve a lot line adjustment.

Non-conforming Parcels

Non-conforming parcels are simply parcels that do not meet the current requirements. They could have been created prior to there being minimum parcel sizes, or prior to the establishment of the zoning ordinance. For example, in the case of the lot line adjustment, both parcels are non-conforming in size, since the minimum parcel size in the Rural Residential zoning designation is 5 acres, when on-site well and sewage disposal is provided and Parcel A is only 0.461 acres and Parcel B is only 0.556 acres.
Findings Required to Approve a Lot Line Adjustment

Section 17.108.040.B of the Mariposa County Zoning Ordinance states that “In a proposal to modify the boundaries of one or more parcels or lots where one or more of these parcels or lots do not meet minimum parcel or lot size standards of the applicable zone, the planning commission may approve such boundary modifications provided such modifications will result in the improvement of the circumstances and/or design of both parcels or lots.”

Implementation Measure 5-9a(2) of the General Plan reads: “In a proposal to modify the boundaries of one or more parcels or lots where one or more of the parcels or lots do not meet minimum parcel size or density of the applicable land use, the County may approve such boundary modifications provided such modifications will result in the improvement of the circumstances and/or design of both parcels or lots and in achieving the goals and policies of the General Plan and the purpose of the applicable land use classification.”

Both of these require that the circumstances and/or design of both parcels or lots be improved in order to be able to approve boundary modifications (lot line adjustments). Non-conforming parcel size is one of the circumstances that the Planning Director reviewed as part of a lot line adjustment and on which the Planning Commission’s decision was based.

Staff reviews lot line adjustments involving non-conforming parcels to ensure that there is adequate space to develop the parcel. Minimum parcel sizes in residential zones were established to ensure that newly created parcels have adequate area for the development of a home and its appurtenant structures. The LLA findings involving non-conforming findings are related to these requirements for residential development. There has to be adequate area to be able to locate a residence, a well, a septic system, two parking spaces, a driveway and an encroachment onto a road, all the while being able to meet the required setbacks especially between a septic system and a well. Parcel B in this case is undeveloped and non-conforming. The project proposes for Parcel B to go from 0.556 acres to 0.493 acres, making it even more non-conforming. Staff does not find that evidence has been submitted to support a finding that making Parcel B more non-conforming by making it smaller and thus more non-conforming is an improvement in the circumstances and design of the parcel.

Planning Department Action – 8/2009

The Planning Director reviewed Lot Line Adjustment No. 2009-090 and considered the information in the application submittal and in a later e-mail, which included:

1. The two property owners reached an agreement to eliminate the existing 20 foot wide easement before the application was made.
2. A new fence, which cost $2000, was constructed along the proposed property line before the lot line adjustment application was made.
3. The two parcels, following the Lot Line Adjustment, are almost the same size as the existing parcel sizes, but in reverse.
4. To accomplish an equal area Lot Line Adjustment would require a series of short jagged lines around the encroachment which would be unpleasant in appearance and which would devalue the property. This would also make large portions of the lots unusable and expensive to fence and maintain.
5. The new fence as constructed harmonizes with the location of the creek.
6. The new fence as constructed is a nice improvement to both properties.

The Planning Director did not support the findings as required by County Code and the General Plan, and therefore could not approve the project. The applicants were given several processing choices and they chose to take the project as submitted to the Planning Commission for consideration.


The Planning Commission considered all of the information provided and adopted Resolution No. 2009-028 denying Lot Line Adjustment No. 2009-090.

Grounds for Appeal and Appeal Procedures

Submittal and processing of appeals is governed by Mariposa County Resolution No. 92-525, as amended, dated 2/14/95.

The focal point of the appeal is the “Statement of Grounds” (also referred to as “grounds for appeal”), which is the appellant’s statement of the reasons why the decision or determination is being appealed. The statement of grounds must include information or documentation which supports their position. Staff analyzes the statement of grounds in the appeal staff reports.

Other processing provisions contained within this resolution include:

1. An appeal shall be limited to those issues clearly raised by any interested party through the public review and/or hearing process for the finding or decision being appealed, or to new information which was not and could not have been available at the time the finding or decision was made.
2. Evidence considered at the hearing on the appeal shall be limited to the issues clearly identified in the Notice of Appeal, with amendments or supplements as permitted.
Staff notes that the applicant requested the right to submit additional reasons for appeal and amendments or supplements to the appeal. This information must be submitted no later than twenty-five (25) days prior to the hearing date. Additional information was submitted January 5, 2010, more than twenty-five (25) days prior to the hearing date, which was scheduled for February 2, 2010.

The remainder of this staff report reviews the appellant’s ground for appeal, and provides the basis for staff’s recommended action on the appeal. It also reviews the additional supporting evidence that was submitted to the Board of Supervisors January 5, 2010.

**Discussion of Grounds for Appeal Issues**

**Appeal Issues and Staff Discussion and Response** – In the Statement of Grounds of Appeal, the appellants states those shown in *italics* (the entire Notice of Appeal is included as an Attachment to this report) (Attachment F) while staff discussion and response to appeal issues is shown below each one in non-italic bold font:

1. **Pursuant to Mariposa County Code Section 17.108.040.B and Mariposa County General Plan Implementation Measure 5-9a(2), the proposed lot line adjustment does result in the improvement of the circumstances and design of both parcels as the lot line adjustment removes a cloud on the title for both Parcel A and Parcel B by fully locating on APN 015-052-019 (Parcel A) a well and house that both encroach over the property line between two parcels. The proposed lot line adjustment also removes the need for the existing easement over Parcel B, thus increasing the usability of Parcel B. The encroachment of the house and well onto the neighboring parcel has already made a non-conforming parcel (Parcel B) a smaller lot.**

One of the circumstances that is looked at during the review of a lot line adjustment is parcel size, especially for non-conforming parcels. In this case both parcels are currently non-conforming relative to size. With the proposed adjustment, Parcel B, an undeveloped parcel, goes from 0.556 acres to 0.493 acres making it further non-conforming. The Planning Director could not make the findings that Parcel B is improved and neither did the Planning Commission. The findings state that the circumstances and/or design of both parcels be improved. With the proposed adjustment, only Parcel A is improved relative to parcel size as it becomes more conforming.

Staff reviews lot line adjustments involving non-conforming parcels to ensure that there is adequate space to develop the parcel. Minimum parcel sizes in residential zones were established to ensure that newly created parcels have adequate area for the development of a home and its appurtenant structures. The LLA findings involving non-conforming findings are related to these requirements for residential development. There has to be adequate area to be able to locate a residence, a well, a septic system, two parking spaces, a driveway and an encroachment onto a road, all the while being able to meet the required setbacks especially between a septic
system and a well. Parcel B in this case is undeveloped and non-conforming. The project proposes for Parcel B to go from 0.556 acres to 0.493 acres, making it even more non-conforming. Staff does not find that evidence has been submitted to support a finding that making Parcel B more non-conforming by making it smaller and thus more non-conforming is an improvement in the circumstances and design of the parcel.

The “encroachments” on to Parcel B are currently within an easement on Parcel B, so they would (or should) have some legal right to remain within the easement (in response to cloud on title comment). And while staff agrees that a Lot Line Adjustment would be the best way to address the matter, staff has not yet been provided any evidence to show that an equal acreage exchange is not possible. An equal acreage exchange would provide the greatest amount of acreage for future development of the undeveloped Parcel B, instead of taking acreage away from this parcel.

2. There is no legal basis under the County Code, California State law or County precedent for the County to require the applicant to present “evidence to show why an equal acreage exchange project cannot achieve the same project objective.” There is no legal basis to require an equal acreage exchange to effectuate a lot line adjustment. Moreover, Staff’s “equal acreage exchange” option does not improve the design of both parcels, but rather greatly diminishes the design of both parcels, would devalue both parcels and would be costly to re-survey and re-fence.

The legal requirements, pursuant to County Code and the General Plan, relate to the Findings. Staff’s goal is to assist the applicant in achieving an approvable project in order to save the applicant time and money. One of the fields in the application requires that the applicant provide the “Purpose of lot line adjustment (providing this information will enable Mariposa Planning staff to assist the applicant, should changes to the project be necessary).” The applicant stated that it was “To correct well & house encroachments.” When the Planning Director did not find that the applicant provided adequate justification to make the required findings, staff provided several processing options that the applicant could take, some of which would help the applicant meet the purpose of the lot line adjustment. One of those options was to change the proposal to an “equal acreage exchange.” With this proposal, neither of the sizes of the already non-conforming parcels would decrease and the required findings could be made. This obviously is not a requirement of all lot line adjustments, but since this project had to do with non-conforming parcels, this was an option that made sense.

3. There is no legal basis under the County Code, California State law or County precedent for the County to require the applicant to present “evidence to show why merging Parcels B and C (APNs 015-052-018 and 015-052-017, respectively) and then conducting a Lot Line Adjustment between the merged parcels and Parcel A (APN 015-052-019) cannot achieve the same project objective.” There is no legal basis to require merger to effectuate a lot line adjustment. Parcel C is not the subject of the Lot Line
Adjustment Application and therefore is not and should not have been subject to discussion or consideration by the County or Planning Commission. A merger would require the lidas to lose existing property rights and a significant investment as a direct consequence of attempting to be good neighbors to the Dormers.

See above discussion for No. 3.

4. Mariposa County Code 17.108.040.C is inapplicable to the circumstances and facts before the Planning Commission and should not have been applied or considered by the Planning Commission.

The possibility of a variance was brought up during the Planning Commission meeting. Staff reminded the commission that Section 17.108.040.C reads "No variance shall be granted, under any circumstances, for reducing the minimum parcel or lot size." There was no attempt to apply this to the actual lot line adjustment and was provided as an answer to the question posed, to which it was applicable and relevant.

5. The November 6, 2009 corrected minutes, as approved by the Planning Commission at its November 20, 2009 meeting, demonstrate that the Planning Commission misunderstood the applicable zoning. Several Planning Commissioners acted on their incorrect assumption that the applicable zoning was .5 acres. Staff failed to correct the Planning Commission when, on numerous occasions, including during the Planning Commission's correction of the minutes, the Planning Commission misstated the applicable zoning as being .5 acres. These parcels are located within the Residential Land Use and the Rural Residential zoning designation, which establishes a minimum parcel size of 5 acres. This affected the Planning Commission’s determination, as it appears that several Commissioners incorrectly assumed that Parcel B was a conforming parcel (over .5 acres) that would become non-conforming as a result of the Lot Line Adjustment. In fact, both Parcel A and Parcel B are non-conforming and would continue to remain so after a Lot Line Adjustment. Moreover, there is no legal basis under County Code, California State law or County precedent for the County to require that a non-conforming parcel become conforming as a result of a lot line adjustment.

If the Board of Supervisors determines this to be an issue, the Board has an option to refer the matter back to the Planning Commission for another public hearing and ask that this issue be addressed by the Planning Commission. Depending on the Planning Commission’s action at the hearing, the matter may again be appealed to the Board of Supervisors.

6. Staff has no authority to re-design parcels. It is not proper for Staff to recommend denial of a project simply because the Appellants will not redesign a project in a manner arbitrarily set forth by Staff.
Staff at no time attempted to re-design parcels. The recommendation for denial of the project was based on the fact that the findings for approval could not be made and to date, the applicant has not provided adequate justification for those findings as required by Section 17.08.040 of County Code which states that “It shall be the burden of an applicant to provide all necessary information in support of any matter heard and decided by the planning commission or board of supervisors. Failure to provide such necessary information in support of a matter as described above shall be deemed grounds for denial of application”. Staff provided suggestions to the appellants on how they could get a project that would be able to meet the findings. One of the fields in the application requires that the applicant provide the “Purpose of lot line adjustment (providing this information will enable Mariposa Planning staff to assist the applicant, should changes to the project be necessary).” Staff’s goal is to assist the applicant’s in getting an approvable project.

7. The findings are based on a misapplication and misinterpretation of Mariposa County Code section 17.108.040 as evidenced by its strict reading, numerous examples of past County application of said ordinance and as evidenced by the legislative intent and history.

The Planning Director has consistently taken a conservative position on Lot Line Adjustments involving non-conforming parcels. The Planning Director reads the findings as requiring that the design and circumstances of BOTH parcels must be improved in order to approve a Lot Line Adjustment involving parcels which are nonconforming in size. In order that the applicant be provided a hearing and decision by five (5) persons, staff gave the applicants the option of having the application decided by the Planning Commission, which occurred.

Supporting Evidence and Staff Discussion and Response (based on additional information submitted January 5, 2010, Attachment G) –

Section C. Analysis of Facts and Application of Law of Supporting Evidence (Attachment G submitted January 5, 2010.)

When reviewing the creation of new parcels for design, staff does encourage that natural features such as roads or creeks be used as boundaries, however the findings must still be able to be made for a lot line adjustment involving non-conforming parcels. Section 17.108.040.B of the Mariposa County Zoning Ordinance states that “In a proposal to modify the boundaries of one or more parcels or lots where one or more of these parcels or lots do not meet minimum parcel or lot size standards of the applicable zone, the planning commission may approve such boundary modifications provided such modifications will result in the improvement of the circumstances and/or design of both parcels or lots.” Parcel B loses 0.063 acres, and staff does not find that the evidence has been submitted to support a finding that the losing of this acreage is an improvement to undeveloped Parcel B, when it is already non-conforming by more than 4.5 acres.
The "encroachments" on to Parcel B are currently within an easement on Parcel B, so they would (or should) have some legal right to remain within the easement (in response to cloud on title comment). And while staff agrees that a Lot Line Adjustment would be the best way to address the matter, staff has not yet been provided any evidence to show that an equal acreage exchange is not possible. An equal acreage exchange would provide the greatest amount of acreage for future development of the undeveloped Parcel B, instead of taking acreage away from this parcel, and not require the non-conforming findings to have to be made.

Section D. Mariposa County Precedent (Attachment G submitted January 5, 2010.)

Various examples of previously approved lot line adjustments, which dealt with non-conforming parcels becoming more non-conforming, including some that were conforming and became non-conforming are provided as examples of precedent. The Planning Director and further the Planning Commission have it in their purview to interpret Mariposa County Zoning Ordinance. Each Planning Director has interpreted the required findings slightly differently. Currently the findings are interpreted conservatively and during the current Planning Director's tenure, staff has no examples of lot line adjustments that have been approved which made non-conforming parcels even smaller.

The Board of Supervisors has the ability and opportunity to provide direction regarding the interpretation of findings, specifically regarding non-conforming parcels, becoming even more non-conforming by becoming smaller.

Section E. Conclusion (Attachment G submitted January 5, 2010.)

As mentioned above, staff has no knowledge of lot line adjustments that have been approved under the current Planning Director's tenure, which made non-conforming parcels relative to size even smaller. There may be other examples of lot line adjustments approved that dealt with the same circumstances under previous Planning Directors or Planning Commissions; however staff is reviewing this case against the required findings and information provided by the applicant. Staff considers the Planning Director's actions taken during the past 5½ years.

**Recommended Action:**

Staff recommends that the Board of Supervisors uphold the Planning Commission's action and adopt a resolution:

1) Denying Appeal No. 2009-160 based on findings;

2) Upholding the Planning Commission's determination found in Resolution No. 2009-028 that the project does not meet all of the required findings.
Effect of Recommended Action:

The effect of the recommended action to deny the appeal and uphold the Planning Commission’s action is that:

Lot Line Adjustment No. 2009-090 is denied. The appellants would have to submit a new application with a revised project that would meet the required findings or rely on the existing easement in place.

Attachments:

A. Tentative Map
B. Staff Report to Planning Commission dated November 6, 2009
C. Resolution No. 2009-028
D. Mariposa Planning correspondence dated August 24, 2009
E. Applicants e-mail dated July 22, 2009
F. Notice of Appeal No. 2009-160: James Craig and Robin Dormer, appellants
G. Additional Supporting Evidence submitted January 5, 2010
H. Draft Board of Supervisors Resolution
I. Public Comments Received
J. Minutes from November 6, 2009 Planning Commission Meeting
Attachment A
Tentative Map
PARED BY: Douglas Bredahl  
Engineering Field Services  
P. O. Box 424  
North Fork, CA 93643  
559.877.4537  
solohoh@yahoo.com  
Date: 9June 2009

NOTES

--- Existing easement lines
- --- old lot line to be abandoned
Existing lot 6 per ROS Map #1214A
Existing lot 5 per ROS Map #1214A
--- indicates Magoon Creek (seasonal)
data by USGS Topographic Map

if LLA: correct well & access encroachmentsite map contains all required inform-completes to the best of my knowledgemay be delayed if said map is incorrect

Douglas Bredahl
S - Septic System
L - Leach Lines
Attachment B
Staff Report to Planning Commission dated November 6, 2009
MARIPOSA PLANNING STAFF REPORT

From: Kris Schenk, Planning Director
By: Alvaro Arias, Associate Planner
Planning Commission Meeting Date: November 6, 2009

PROJECT: Lot Line Adjustment No. 2009-090 proposes a lot line adjustment to correct the well and house encroachments. The parcels involved are Parcel A, which is known as APN 015-052-019 and Parcel B which is known as APN 015-052-018.

APPLICANTS: James Craig and Robin Dormer and Irwin and Jessica Ida.

AGENT: Douglas Bredahl

COMMISSION ACTION: Staff recommends the Planning Commission adopt a resolution: Denying Lot Line Adjustment No. 2009-090 with the recommended findings

STAFF SUMMARY ANALYSIS & RECOMMENDATION:

Lot Line Adjustment (LLA) No. 2009-090 proposes to adjust the boundary between APNs 015-052-019 and 015-052-018 in the Lushmeadows area. The parcels currently are 0.461 and 0.556 acres, and are proposed to be 0.524 and 0.493. These parcels are located within the Residential Land use and the Rural Residential zoning designation, which establishes minimum parcel size of 5 acres, when on-site well and sewage disposal is provided. Both parcels are considered non-conforming parcels relative to existing parcel size. The Planning Director considered the information provided and does not support the findings as required by County Code and the General Plan. The applicants were given several processing options based on the fact that the Planning Director does not support the findings as required, and they chose to request that the project, as submitted, be taken to the Planning Commission for review and action.
Project Description for Lot Line Adjustment No. 2009-090

A. Description of Project (see Site Plan, Page 3)

The project being considered is Lot Line Adjustment No. 2009-090, which proposes to adjust the lot line between APN 015-052-019 (Parcel A) and APN 015-052-018 (Parcel B). Currently the well and home on Parcel A encroach onto Parcel B within an existing easement, and the lot line adjustment proposes to correct that and place them on the correct parcel. Parcel A and B are currently existing non-conforming parcel relative to existing parcel size. The parcels are in the Rural Residential zoning designation, which establishes a minimum parcel size of 5 acres, when on-site well and sewage disposal is provided.

B. Project Background Data

Existing Zoning: Rural Residential

General Plan: Residential Land Use

Current Land Use: Parcel A: Home, well and septic. Home and well encroach onto Parcel B. Parcel B: Vacant. Septic system developed for this parcel is off-site on Parcel C which is not a part of this lot line adjustment. Parcels B and C are in the same ownership.

Site Topography And Vegetation: Site topography is generally flat. Seasonal drainage runs through Parcel B.

C. Information Provided by the Applicant

To support the project design as submitted and to support the required findings, the applicant provided the following:

1. The two property owners reached an agreement to eliminate the existing 20 foot wide easement before the application was made.
2. A new fence, which cost $2000, was constructed along the proposed property line before the lot line adjustment application was made.
3. The two parcels, following the Lot Line Adjustment, are almost the same size as the existing parcel sizes, but in reverse.
4. To accomplish an equal area Lot Line Adjustment would require a series of short jagged lines around the encroachment which would be unpleasant in appearance and which would devalue the property. This would also make large portions of the lots unusable and expensive to fence and maintain.

5. The new fence as constructed harmonizes with the location of the creek.

6. The new fence as constructed is a nice improvement to both properties.

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**Project Analysis for Lot Line Adjustment No. 2009-090**

**A. Required Findings For Lot Line Adjustments**

Section 17.108.040 reads:

"Minimum parcel or lot size shall apply to all proposals for actions which will result in the creation of a parcel or lot, or the modification of the dimensions or land area of a parcel or lot." The applicable requirements include:

"B. In a proposal to modify the boundaries of one or more parcels or lots where one or more of the parcels or lots do not meet minimum parcel or lot size standards of the applicable zone, the planning commission may approve such boundary modifications provided such modifications will result in the improvement of the circumstances and/or design of both parcels or lots. Under no other circumstances can a boundary modification proposal be approved wherein such modification will result in the creation of a substandard parcel or lot."

Implementation Measure 5-9a(2) of the General Plan states,

"In a proposal to modify the boundaries of one or more parcels or lots where one or more of the parcels or lots do not meet minimum parcel size or density of the applicable land use, the County may approve such boundary modifications provided such modifications will result in the improvement of the circumstances and/or design of both parcels or lots and in achieving the goals and policies of the General Plan and the purpose of the applicable land use classification."

In reviewing the application and the information provided by the applicant, in order to recommend approval staff must find that all of the required findings can be made. In reviewing this case, unfortunately staff cannot find that the project meets all of the required findings. Both of the above findings require that in a case where one or more of the parcels or lots do not meet minimum parcel size, the County can approve the lot line adjustment provided that the adjustment results in improvement of the circumstances and/or design of both parcels. In this case, Parcel A goes from 0.461 to 0.524 acres and Parcel B goes from 0.556 to 0.493 acres. Parcel A goes from being
more non-conforming to less non-conforming, however Parcel B goes from less non-conforming to more non-conforming. The situation for Parcel A improves since more acreage is added to an already non-conforming parcel, but it worsens for Parcel B as acreage is removed from a non-conforming parcel. Because of this staff cannot find that the "...circumstances and/or design of both parcels..." is improved. Because of this reason, the Planning Director would not be able to approve the lot line adjustment as submitted and the applicants were given several processing choices. The applicants chose to bring the application to the Planning Commission for review.

B. Environmental Review

The project is a minor lot line adjustment in an area with an average slope of less than 20%. Approval of a lot line adjustment project which does not result in any changes in land use or density, or the creation of a new parcel is typically categorically exempt from the provisions of the California Environmental Quality Act (CEQA). This project would result in a very substandard undeveloped parcel becoming smaller. If approval action is taken, a finding would be evaluated in accordance with the provisions of Section 15305(a) of the CEQA Guidelines.

Denial does not require environmental review.

C. Agency Comments and Practical Concerns

Health Department: Had no comments or concerns.

Project Findings for Lot Line Adjustment No. 2009-090

In order to approve an application for a lot line adjustment, the required 2 findings must be able to be made. Because staff cannot support all the findings, staff recommends denial of the Lot Line Adjustment No. 2009-090 and findings No. 3 and 4.

Staff believes Finding 2 can be made for this application.

Staff does not believe that Finding 1 can be made for the project based upon the information available at this time.

1. FINDING: The lot line adjustment involves two (2) parcels which in their current or modified configurations do not comply with the minimum parcel size standards of the Residential land use classification of the General Plan and the Rural Residential zoning district of Title 17. In a proposal to modify the boundaries of one or more parcels or lots where one or more of the parcels or lots do not meet minimum parcel
or lot size standards of the applicable zone, the planning commission may approve such boundary modifications provided such modifications will result in the improvement of the circumstances and/or design of both parcels or lots. Under no other circumstances can a boundary modification proposal be approved wherein such modification will result in the creation of a substandard parcel or lot. (Section 17.108.040 of the Mariposa County Zoning Ordinance and Section 5.3.01 of the Mariposa County General Plan).

EVIDENCE: It cannot be found that the project meets the required finding. This finding requires that in a case where one or more of the parcels or lots do not meet minimum parcel size, the County can approve the lot line adjustment provided that the adjustment results in improvement of the circumstances and/or design of both parcels. In this case, Parcel A goes from 0.461 to 0.524 acres and Parcel B goes from 0.556 to 0.493 acres. Parcel A goes from being more non-conforming to less non-conforming, however Parcel B goes from less non-conforming to more non-conforming, meaning the situation for Parcel A improves since more acreage is added to an already non-conforming parcel, but it worsens for Parcel B as acreage is removed from a non-conforming parcel. Because of this staff cannot find that the “...circumstances and/or design of both parcels...” is improved. Making a very substandard parcel, which is undeveloped, smaller (reducing the development area) cannot be found to be an improvement.

2. FINDING: The lot line adjustment involves two existing adjacent parcels. The adjustment results in land being taken from one parcel and added to an adjacent parcel, and a greater number of parcels than originally existed is not being created by the lot line adjustment (this finding is made in accordance with the provisions of Section 66412(d) of the State Subdivision Map Act.

EVIDENCE: The lot line adjustment increases the size of Parcel A and decreases the size of Parcel B. A greater number of parcels than originally existed is not being created by the lot line adjustment. This finding is made in accordance with the provisions of Section 66412(d) of the State Subdivision Map Act.

3. FINDING: The location of the house and well on Parcel A over the property line on Parcel B are existing conditions. The applicant has not presented evidence to show why an equal acreage exchange project cannot achieve the same project objective, which is to put the house and well on the correct property.

4. FINDING: The location of the house and well on Parcel A over the property line on Parcel B are existing conditions. The location of a septic system on Parcel C for future residential development on Parcel B is an indication of the limited development potential (soils and setbacks) on Parcel B. The applicant has not presented evidence to show why merging Parcels B and C and then conducting a Lot Line Adjustment between the merged parcels and Parcel A cannot achieve the same project objective (to put the house and well on the correct property line) and address the nonconformity issues associated with Parcel B.
Attachment C
Resolution No. 2009-028
Mariposa County
Planning Department
P.O. Box 2039
Mariposa, CA 95338-2039

STATE OF CALIFORNIA
COUNTY OF MARIPosa
PLANNING COMMISSION

Resolution
No. 2009-028


WHEREAS an application for Lot Line Adjustment No. 2009-090 was received on June 10, 2009 from James Craig and Robin Dormer and Irwin and Jessica Ida for a property located at 5999 Meadow Lane and 5769 Clouds Rest in Mariposa, also known as Assessor Parcel Numbers 015-052-019 and 015-052-019; and

WHEREAS Lot Line Adjustment No. 2009-090 proposes to adjust the boundary between APNs 015-052-018 and 015-052-019 to locate a well and home that encroaches over the property line on the correct parcel; and

WHEREAS both parcels are located in the Residential land use and Rural Residential zoning designation, which establishes a minimum parcel size of 5 acres when on-site well and sewage disposal is provided and therefore both parcels are existing, non-conforming in size; and

WHEREAS Section 17.108.040 of the Mariposa County Zoning Ordinance and Section 5.3.01 of the Mariposa County General Plan requires that in a proposal to modify the boundaries of one or more parcels or lots that do not meet minimum parcel or lot size standards of the applicable zone, the planning commission may approve such boundary modifications provided such modifications will result in the improvement of the circumstances and/or design of both parcels or lots. Under no circumstances can a boundary modification proposal be approved wherein such modification will result in the creation of a substandard parcel or lot; and

WHEREAS the Planning Director considered the information provided and does not support the findings as required by County Code and the General Plan; and

WHEREAS based on this the applicants were given several processing choices and the applicants chose to take the application for Planning Commission review; and

WHEREAS the Planning Department circulated the application among trustee and responsible agencies, interested public organizations, and others as appropriate; and

WHEREAS a Lot Line Adjustment No. 2009-090 was scheduled for Planning Commission consideration as an action item at the Planning Commission meeting on the 6th day of November 2009; and
WHEREAS a Staff Report was prepared pursuant to the California Government Code, Mariposa County Code, and local administrative procedures; and

WHEREAS the Planning Commission considered all of the information in the public record, including the Staff Report, and testimony presented by the applicant.

NOW THEREFORE, BE IT RESOLVED THAT the Planning Commission of the County of Mariposa does hereby deny Lot Line Adjustment No. 2009-090; and

BE IT THEREFORE BE IT FURTHER RESOLVED THAT the project is denied based upon the inability of the Commission to make all of the required findings required by State Law and County Code. The Commission’s findings for denial are set forth in Exhibit 1 of this Resolution.

ON MOTION BY Commissioner Francisco, seconded by Commissioner Tucker, this resolution is duly passed and adopted this November 6, 2009 by the following vote:

AYES: Francisco, Tucker, Marsden, Ross, and Rudzik

NOES: None

EXCUSED: None

ABSTAIN: None

Robert L. Rudzik, Chair
Mariposa County Planning Commission

Attest:

Judy Mueller, Secretary to the Mariposa County Planning Commission
Exhibit 1 – Findings

1. **FINDING:** The lot line adjustment involves two (2) parcels which in their current or modified configurations do not comply with the minimum parcel size standards of the Residential land use classification of the General Plan and the Rural Residential zoning district of Title 17. In a proposal to modify the boundaries of one or more parcels or lots where one or more of the parcels or lots do not meet minimum parcel or lot size standards of the applicable zone, the planning commission may approve such boundary modifications provided such modifications will result in the improvement of the circumstances and/or design of both parcels or lots. Under no other circumstances can a boundary modification proposal be approved wherein such modification will result in the creation of a substandard parcel or lot. (Section 17.108.040 of the Mariposa County Zoning Ordinance and Section 5.3.01 of the Mariposa County General Plan).

**EVIDENCE:** It cannot be found that the project meets the required finding. This finding requires that in a case where one or more of the parcels or lots do not meet minimum parcel size, the County can approve the lot line adjustment provided that the adjustment results in improvement of the circumstances and/or design of both parcels. In this case, Parcel A goes from 0.461 to 0.524 acres and Parcel B goes from 0.565 to 0.493 acres. Parcel A goes from being more non-conforming to less non-conforming, however Parcel B goes from less non-conforming to more non-conforming, meaning the situation for Parcel A improves since more acreage is added to an already non-conforming parcel, but it worsens for Parcel B as acreage is removed from a non-conforming parcel. Because of this staff cannot find that the “…circumstances and/or design of both parcels…” is improved. Making a very substandard parcel, which is undeveloped, smaller (reducing the development area) cannot be found to be an improvement.

2. **FINDING:** The lot line adjustment involves two existing adjacent parcels. The adjustment results in land being taken from one parcel and added to an adjacent parcel, and a greater number of parcels than originally existed is not being created by the lot line adjustment (this finding is made in accordance with the provisions of Section 66412(d) of the State Subdivision Map Act.

**EVIDENCE:** The lot line adjustment increases the size of Parcel A and decreases the size of Parcel B. A greater number of parcels than originally existed is not being created by the lot line adjustment. This finding is made in accordance with the provisions of Section 66412(d) of the State Subdivision Map Act.

3. **FINDING:** The location of the house and well on Parcel A over the property line on Parcel B are existing conditions. The applicant has not presented evidence to show why an equal acreage exchange project cannot achieve the same project objective, which is to put the house and well on the correct property.
4. **FINDING:** The location of the house and well on Parcel A over the property line on Parcel B are existing conditions. The location of a septic system on Parcel C for future residential development on Parcel B is an indication of the limited development potential (soils and setbacks) on Parcel B. The applicant has not presented evidence to show why merging Parcels B and C and then conducting a Lot Line Adjustment between the merged parcels and Parcel A cannot achieve the same project objective (to put the house and well on the correct property line) and address the nonconformity issues associated with Parcel B.
Attachment D
Mariposa Planning Correspondence dated August 24, 2009
August 24, 2009

James Craig and Robin Dormer
5769 Clouds Rest
Mariposa, CA 95338

Irwin K. and Jessica C. Iida
3491 Triangle Road
Mariposa, CA 95338

Douglas Breadahl
P.O. Box 424
North Fork, CA 93643

RE: Processing Information regarding Lot Line Adjustment No. 2009-090

Dear Applicants,

Thank you for your Lot Line Adjustment (LLA) No. 2009-090 proposing to adjust the boundary between APNs 015-052-019 and 015-052-018 in the Lushmeadows area. These parcels are 0.461 and 0.556 acres in size, existing. The proposed size of these parcels is 0.524 and 0.493 acres.

The project parcels are in the Residential land use and the Rural Residential zoning designation, which establishes a minimum parcel size of 5 acres, when on-site well and sewage disposal is provided. Consequently, both project parcels are considered non-conforming parcels relative to existing parcel size.

In order to approve a LLA for non-conforming sized parcels, Section 17.108.040.B of the Mariposa County Zoning Ordinance states,

“In a proposal to modify the boundaries of one or more parcels or lots where one or more of these parcels or lots do not meet minimum parcel or lot size standards of the applicable zone, the planning commission may approve such boundary modifications provided such modifications will result in the improvement of the circumstances and/or design of both parcels or lots.”

Implementation Measure 5-9a(2) of the General Plan states,
"In a proposal to modify the boundaries of one or more parcels or lots where one or more of these parcels or lots do not meet minimum parcel size or density of the applicable land use, the County may approve such boundary modifications provided such modifications will result in the improvement of the circumstances and/or design of both parcels or lots and in achieving the goals and policies of the General Plan and the purpose of the applicable land use classification."

The Planning Director reviews Lot Line Adjustments involving non-conforming sized parcels very carefully with respect to these required findings.

The Planning Director has considered the information you included in your application submittal and response e-mail, which included the following:

1. The two property owners reached an agreement to eliminate the existing 20 foot wide easement before the application was made.
2. A new fence, which cost $2000, was constructed along the property line before the application was made.
3. The two parcels, following the Lot Line Adjustment, are almost the same size as the existing parcel size, but in reverse.
4. To accomplish an equal area Lot Line Adjustment would require a series of short jagged lines around the encroachment which would be unpleasant in appearance and which would devalue the property. This would also make large portions of the lots unusable and expensive to fence and maintain.
5. The new fence as constructed harmonizes with the location of the creek.
6. The new fence as constructed is a nice improvement to both properties.

Unfortunately, the Planning Director does not support the findings as required by County Code and the General Plan in order to approve this project, based upon the information you have provided.

I see that there are the following options:

1) Modify the Lot Line Adjustment to make an equal acreage exchange. You will need to submit an amended map if you choose this alternative.

2) Modify the project to include a merger together with a Lot Line Adjustment. The project would propose merging the two lots which are owned by the lidas, to result in one lot (eliminate the property line between the two parcels). If you choose this alternative, you will need to submit an amended map as well. The Planning Director stated he could support this project based on the required findings.

3) Withdraw the application and request a refund of the fees. Continue to rely upon the existing easement.

4) Request that your project, as submitted, be taken to the Planning Commission for review and action. The Planning Commission will consider the project and your justification, together with the Planning Director’s recommendation for denial.

I realize that the acreage adjustments proposed by this project are not significant, however the findings don’t give flexibility relative to minor or major adjustments. Additionally, the
existing parcels are very substandard in size relative to the minimum requirement of 5 acres.

I will await your direction or resubmittal on this application. If no direction is received by September 30 2009, Mariposa Planning will process your application and will recommend denial of the project based upon the inability to make the findings listed above.

Should you have any questions regarding this information, please contact me at (209) 742-1215.

Sincerely,

Sarah Williams
Deputy Director

Cc: Kris Schenk, Planning Director
Attachment E
Applicants’ e-mail dated July 22, 2009
Dear Sarah:

I stopped by to see you last Thursday to discuss your (attached) email and added some notes on the map to answer your questions.

Lot 4 and lot 5 are owned by the Iidas. I put lot 4 on the map because the septic system for lot 5 is located on lot 4. Environmental Health may be interested in the lot 6 house and the two approved septic systems if they do not have an as-built map of these improvements. The directional arrow is shown to indicate that this is an improvement that benefits lot 5.

The driveway to the house on lot 6 is now on the map, "undeveloped" lot 5 has no driveway. Lot 6 is "not a part" so I did not show the driveway.

I did not find any explanation on the original subdivision map for the 15 foot easement. Todd and I confirmed this by doing some research at the Assessor's office. It probably is a "FEU," but I am not sure enough to place anything more than what the original subdivision map says ("15 foot easement") on the LLA map.

My client, James Craig, reached an agreement with his neighbor, Irwin Iida, about eliminating the 20 foot well, road & house encroachment easement and moving the boundary before I was called to do this LLA. A new fence (cost about $2000) along the boundary shown on the LLA map was already in place when I arrived.

Mr. Craig and I discussed the Mariposa County Planning Commission's policy on area reduction of small acreage lots.

Our considerations for moving ahead with this project are:

The end result of this LLA will be that the original (A/B) areas 0.461/0.556 will end up as 0.493/0.524, which not only is almost a reversal, but a near equalization of the areas. This could be viewed as an improvement.

To keep the areas of the lots the same we would need a series of short jagged lines around the encroachments. This would have an unpleasant aesthetic appearance that would devalue the properties. It would not only make large portions of the two lots unusable, but expensive to fence and maintain.

The new fence harmonizes with the location of the creek and is a nice improvement to both properties.

Sincerely, Douglas Bredahl

--- On Mon, 7/13/09, Sarah Williams <swilliams@mariposacounty.org> wrote:
  From: Sarah Williams <swilliams@mariposacounty.org>
  Subject: question on LLA Map
  To: solohoh@yahoo.com
  Cc: "Todd Lewis" <tlewis@mariposacounty.org>, "Kris Schenk"
Hi Doug,

It's Sarah Williams from Planning in Mariposa here.

I have a couple of questions on the Lot Line Adjustment map for Dormer and Iida:

Open the attachment. What does the pink highlighted arrow indicate? Is / was there some other development on Parcel B, which is / was served by the septic system on Parcel C.

The checklist requires that driveways be shown. Where are the driveways for the existing houses you've shown on the map?

What kind of
easement is the 15
foot wide easement along the easterly property line of
Parcel A?

Please realize
that the
findings for approval require the Planning Director to
find that the
circumstances on both parcels are improved with the
project. Parcel
A is clearly improved because it is non-conforming in
size and becoming larger.
Also, existing improvements are proposed to be located
entirely on-site as
a result of the project. Parcel B is
non-conforming in size and
undeveloped. It is becoming smaller by the
project. Although
existing improvements serving off-site parcels are
being removed from the
parcel (even though they are in an existing easement),
the non-conforming
sized, undeveloped parcel is becoming smaller.

I wasn’t
sure why Parcel C was
shown on the map, other than that if Parcel C and Parcel B
"went together"
due to parcel sizes or some other reason...or perhaps
the answer is related
to question 1 above.

Thanks
Doug,

Sarah
Attachment F
Notice of Appeal No. 2009-160; James Craig and Robin Dormer, appellants
MARIPOSA PLANNING
NOTICE OF APPEAL

APPELLANT / CONTACT PERSON

NAME James Craig and Robin Dormer (Agent Starchman & Bryant Attorneys at Law)

MAILING ADDRESS Starchman & Bryant Attorneys at Law, 4750 Highway 49 South, Suite 1, Mariposa, 95338

DAY TELEPHONE NUMBER (209) 966-6111

☐ Check this box if the appeal form is being filed by additional appellants. Attach list with name, address, and signatures of appellants. You may designate two persons on the list to receive copies of all correspondence and staff reports related to the appeal. The list must contain a statement which states the person signing the list has reviewed the Notice of Appeal form.

☐ Check this box if appellant is also the application or permit applicant for the finding or decision being appealed.

APPEAL BODY

Decision, finding, or determination is being appealed to

☐ PLANNING COMMISSION (Submit appeal form to Planning Director)

☐ BOARD OF SUPERVISORS (Submit appeal form to Clerk of the Board of Supervisors)

DECISION BODY

Decision, finding, or determination being appealed was made by

☐ PLANNING DIRECTOR

☐ PLANNING COMMISSION

☐ OTHER COUNTY COMMISSION OR BODY (Name) (Name)

Date of Decision November 6, 2009
DECISION, FINDING, OR DETERMINATION BEING APPEALED (Attach copy of decision/findings)

APPLICATION NUMBER OR TYPE OF
PERMIT Lot Line Adjustment No. 2009-090

OTHER (Specify)

SPECIFIC CONDITIONS, FINDINGS, AND/OR PORTIONS OF DECISION OR DETERMINATION BEING APPEALED

Project Finding #1 to Resolution No. 2009-028
Project Finding #2 to Resolution No. 2009-028
Project Finding #4 to Resolution No. 2009-028

Resolution No. 2009-028 statement "WHEREAS, the Planning Commission considered all of the information in the public record, including the Staff Report, and testimony presented by the applicant."

STATEMENT OF GROUNDS OF APPEAL

(If additional space is needed, attach additional sheets to Notice of Appeal form. The grounds of appeal must clearly state those issues or portions of the finding, decision, or determination being appealed. The Board of Supervisors or Planning Commission will consider only those issues which are raised in the appeal form.)

See attached.
Check this box if you request the right to submit additional reasons for appeal and amendments or supplements to the appeal. This additional information must be submitted no later than twenty five (25) calendar days prior the hearing date of the appeal.

I have reviewed the attached Notice of Appeal form.

Signature of Appellant
James Craig Dormer
5769 Clouds Rest
Mariposa CA 95338

Date
11-22-2009

Signature of Appellant
Robin Dormer
5769 Clouds Rest
Mariposa CA 95338

Date
11-22-2009

Signature of Appellant
Irwin lida
3491 Triangle Rd
Mariposa CA 95338

Date
11-22-09

Signature of Appellant
Jessica lida
3491 Triangle Rd
Mariposa CA 95338

Date
11-22-09
Dear Mrs. Williams,

James Craig Dormer and Robin Dormer are the current owners of the real property, commonly known as Mariposa County Assessor Parcel Number 015-052-019, containing 0.461 acres and located in the Lushmeadows area, Mariposa County, California. James Craig Dormer and Robin Dormer hereby authorize Starchman & Bryant Attorneys at Law ("Starchman & Bryant"), the attorneys for James Craig Dormer and Robin Dormer, to submit and process the attached Notice of Appeal relating to Lot Line Adjustment No. 2009-090.

By: [Signature]
   James Craig Dormer

By: [Signature]
   Robin Dormer

[Signature]
[Signature]
VIA HAND DELIVERY

November 24, 2009

Mariposa County Board of Supervisors
5100 Bullion Street
Mariposa, CA 95338

Re: STATEMENT OF GROUNDS
For Appeal of Mariposa County Planning Commission Adoption of Resolution Number 2009-028 Denying Lot Line Adjustment No. 2009-090.

Dear Chair and Members of the Board of Supervisors:

Pursuant to Mariposa County Code section 17.136.030, the Mariposa County Planning Appeals Procedure and other applicable provisions of law, James Craig and Robin Dormer (“Dormer”) and Irwin and Jessica Iida (“Iida”) (collectively “the Appellants”) respectfully appeal the November 6, 2009 determination of the Mariposa County Planning Commission (“Planning Commission”), concerning an Application for Lot Line Adjustment, No. 2009-090 between APN 015-052-019 (Dormer, “Parcel A”) and APN 015-052-018 (Iida, “Parcel B”) in order to fully locate on APN 015-052-019 a well and house that both encroach over the property line between the two parcels.

In the November 6, 2009 Planning Commission determination, as evidenced by Resolution No. 2009-028 “Resolution denying Lot Line Adjustment No. 2009-090, James Craig and Robin Dormer and Irwin and Jessica Iida [sic], applicants” and the corrected and adopted minutes from the November 6, 2009 meeting, the Planning Commission stated that it “considered all of the information in the public record, including the Staff Report, and testimony presented by the applicant,” and therefore made four “Findings” in support of Resolution No. 2009-028.

The Grounds of the Appeal are as follows: As set forth below, the Planning Commission based its determination upon a misunderstanding, misinterpretation and misapplication of the applicable law, including, but not limited to Mariposa County Code sections 17.108.040 B. and 17.108.040 C., Mariposa County General Plan Implementation Measure 5-9a(2), the applicable and current zoning of the subject properties, and precedent set by previous Planning Director and Planning Commission lot line adjustment application determinations.

(1) Pursuant to Mariposa County Code section 17.108.040 B. and Mariposa County General Plan Implementation Measure 5-9a(2), the proposed lot line adjustment does result in the improvement of the circumstances and design of both parcels as
the lot line adjustment removes a cloud on the title for both Parcel A and Parcel B by fully locating on APN 015-052-019 (Parcel A) a well and house that both encroach over the property line between the two parcels. The proposed lot line adjustment also removes the need for the existing easement over Parcel B, thus increasing the usability of Parcel B. The encroachment of the house and well onto the neighboring parcel has already made a non-conforming parcel (Parcel B) a smaller lot.

(2) There is no legal basis under the County Code, California State law or County precedent for the County to require the applicant to present “evidence to show why an equal acreage exchange project cannot achieve the same project objective.” There is no legal basis to require an equal acreage exchange to effectuate a lot line adjustment. Moreover, Staff’s “equal acreage exchange” option does not improve the design of both parcels, but rather greatly diminishes the design of both parcels, would devalue both parcels and would be costly to re-survey and re-fence.

(3) There is no legal basis under the County Code, California State law or County precedent for the County to require the applicant to present “evidence to show why merging Parcels B and C [APNs 015-052-018 and 015-052-017, respectively] and then conducting a Lot Line Adjustment between the merged parcels and Parcel A [APN 015-052-019] cannot achieve the same project objective.” There is no legal basis to require merger to effectuate a lot line adjustment. Parcel C is not the subject of the Lot Line Adjustment Application and therefore is not and should not have been subject to discussion or consideration by the County or Planning Commission. A merger would require the fidias to lose existing property rights and a significant investment as a direct consequence of attempting to be good neighbors to the Dormers.

(4) Mariposa County Code 17.108.040 C. is inapplicable to the circumstances and facts before the Planning Commission and should not have been applied or considered by the Planning Commission.

(5) The November 6, 2009 corrected minutes, as approved by the Planning Commission at its November 20, 2009 meeting, demonstrate that the Planning Commission misunderstood the applicable zoning. Several Planning Commissioners acted on their incorrect assumption that the applicable zoning was .5 acres. Staff failed to correct the Planning Commission when, on numerous occasions, including during the Planning Commission's correction of the minutes, the Planning Commission misstated the applicable zoning as being .5 acres. These parcels are located within the Residential Land Use and the Rural Residential zoning designation, which establishes a minimum parcel size of 5 acres. This affected the Planning Commission’s determination, as it appears that several Commissioners incorrectly assumed that Parcel B was a conforming parcel (over .5 acres) that would become non-conforming as a result of the Lot
Line Adjustment. In fact, both Parcel A and Parcel B are non-conforming and would continue to remain so after a Lot Line Adjustment. Moreover, there is no legal basis under County Code, California State law or County precedent for the County to require that a non-conforming parcel become conforming as a result of a lot line adjustment.

(6) Staff has no authority to re-design parcels. It is not proper for Staff to recommend denial of a project simply because the Appellants will not redesign a project in a manner arbitrarily set forth by Staff.

(7) The findings are based on a misapplication and misinterpretation of Mariposa County Code section 17.108.040 as evidenced by its strict reading, numerous examples of past County application of said ordinance and as evidenced by the legislative intent and history.

For all of the above reasons, the Appellants respectfully request that the Board of Supervisors take the following actions:

(1) Uphold the Appeal; and

(2) Direct Planning Staff to approve and process Lot Line Adjustment No. 2009-090 as provided, designed and requested in the application.

Sincerely,
STARCHMAN & BRYANT ATTORNEYS AT LAW

[Signature]

Anita Starchman Bryant
ASB:asb
Cc: Clients

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1 See Mariposa County Planning Commission November 6, 2009 CORRECTED Minutes: “Tucker asked Bredahl if there have been any negotiations with the owners of Parcel C to move the lot line between Parcel C and Parcel B shifting the whole of Parcel B so that it could remain at the .5 acre minimum.” (p. 6, emphasis added); “Tucker stated that the Ildas own both Parcel A and Parcel B and again asked if in order to make Parcel B the proper minimum acreage size is there enough acreage in Parcel A to make a lot line adjustment between the two parcels.” (p. 7; note that the Ildas own Parcels B and C (not A) and that Tucker is again assuming that the minimum parcel size is .5 acre); “Marsden said that when you add up the acreage of Parcels B and C it comes to a total acreage of 1.17 acres so there is the potential of having two parcels that are conforming without having to consider Parcel C.” (p. 7, note that Marsden’s statement demonstrates that he is assuming that the minimum parcel size is .5 acres); “Marsden went on to explain that to go from the existing frontage on Triangle Road cutting back into Parcel C and then cut back into Parcel A, thus giving in excess of ¼ acre for each property.” (p. 7-8); “Marsden said that the problem is that there is currently a non-conforming property that is just sitting there and is not an issue, but if an action by the Planning Commission creates another non-conforming property there is a problem as the Planning Commission does not have the authority to create non-conforming parcels.” (p. 8, note that if the Lot Line Adjustment had been approved the Planning Commission would not be creating another non-conforming property as both Parcels A and B are already non-conforming because they are well below the .5 acre minimum).
Attachment G
Additional Supporting Evidence submitted January 5, 2010
Dear Chair and Members of the Board of Supervisors:

In support of the above referenced November 24, 2009 Grounds of the Appeal, Starchman & Bryant Attorneys at Law provide the following examples of decisions by the Mariposa County Planning Directors and Mariposa County Planning Commissions to demonstrate previous application of Mariposa County Code section 17.108.040 B (lot line adjustment).

A. Applicable Law

As stated in Mariposa County Code section 17.108.040 B and “Finding 1” to Resolution No. 2009-028, “In a proposal to modify the boundaries of one or more parcels or lots where one or more of these parcels or lots do not meet minimum parcel or lot size standards of the applicable zone, the planning commission may approve such boundary modifications provided such modifications will result in the improvement of the circumstances and/or design of both parcels or lots. Under no other circumstances can a boundary modification proposal be approved wherein such modification will result in the creation of a substandard parcel or lot.”

B. Planning Commission Determination

The Planning Commission made the determination that LLA 2009-090 did not meet the requirements of Mariposa County Code Section 17.108.040 B. The only evidence provided to support the conclusion that the circumstances of both parcels were not improved by the lot line adjustment was as follows: “Parcel A goes from being more non-conforming to less non-conforming, however Parcel B goes from less non-conforming to more non-conforming, meaning the situation for Parcel A improves since more acreage is added to an already non-conforming parcel, but it worsens for Parcel B as acreage is removed from a non-conforming parcel... Making a very substandard parcel, which is undeveloped, smaller (reducing the development area) cannot be found
to be an improvement.” In other words, because a non-conforming parcel was made
more non-conforming, the Planning Commission determined it could not find that the
circumstances of both parcels were improved by the lot line adjustment, and therefore
could not approve the application.

C. Analysis of Facts and Application of Law

The proposed LLA 2009-090 does not reduce the development area of Parcel B. The
purpose of proposed LLA 2009-090 is to adjust the boundary between Parcels A and
Parcel B such that the house and well on Parcel A are fully located on Parcel A. The area
proposed for adjustment to be taken from Parcel B and given to Parcel A is already
undevelopable because it contains a portion of a house and a well. Moreover, Parcel B
contains a seasonal creek which, when taking into account setback requirements, would
prohibit any development on Parcel B to the southeast of the seasonal creek. The
encroachments and, thus the area proposed for the lot line adjustment, are located to the
southeast of the seasonal creek. Thus, Parcel B’s “development area” is unaffected by
the lot line adjustment. The lot line adjustment improves the circumstances for Parcel B
by removing an area that is both undevelopable and presents a cloud on both Parcel A
and Parcel B’s title. Common sense dictates approval of the proposed lot line adjustment.

D. Mariposa County Precedent

The following examples demonstrate that past application of Mariposa County Code
Section 17.108.040 B has allowed for consideration of the “overall situation” and the
specific facts presented, rather than the new and unjustified application of the ordinance
requiring a determination based solely on acreage calculations.

1. Lot Line Adjustment No. 485; Seastrom; Approved August 4, 1995

The purpose of this lot line adjustment was to include an existing septic tank/leach field
on Parcel 1 (1.136 acres, zoned Mountain Home (5 acre minimum) and thus non-
conforming), to insure adequate expansion area for existing leach field on Parcel 1, and to
provide a better parcel configuration. The existing septic was not on Parcel 1 as the
existing leach field encroached across the existing property line onto Parcel 2 (5.242
acres, zoned Mountain Home and conforming). The approved lot line adjustment
resulted in Parcel 1 increased to 3.189 (remaining non-conforming) and Parcel 2
decreased to 3.189 acres (thus making a conforming parcel non-conforming). The
circumstances of Parcel 2 were improved in that the lot line adjustment ensured that the
encroaching leach field was completely located on Parcel 1. This approval removed a
cloud on title for both Parcel 1 and Parcel 2.

2. Lot Line Adjustment No. 486; Seastrom; Approved October 6, 1995

Staff Report states “The applicant is requesting a lot line adjustment between two parcels.
Both parcels were created by patents prior to the Subdivision Map Act and County
Zoning Ordinance. Parcel A [8.03 acres] exists below the minimum parcel size
[Mt. Mountain General; 40 acres] and is proposed to be above the minimum parcel size
[115.613 acres]. Parcel B [134.56 acres] exists above the minimum parcel size and is
proposed to be below the minimum parcel size [26.972 acres]. The configuration of Parcel A will be improved by the lot line adjustment because it will increase in size to conforming status and acquire access (which it currently does not have). The configuration of Parcel B will be improved by the lot line adjustment because it will be defined by natural boundaries, the roadway, and will not have a landlocked, substandard parcel located behind it. . . . FINDINGS: . . . The modification of the parcel boundary will result in one parcel which does not meet minimum parcel size. However the modification of the parcel boundary improves the situation on both parcels. This finding is made in accordance with the provisions of Section 17.108.040 of the Mariposa County Zoning Ordinance . . . .

3. Lot Line Adjustment No. 543; Woolstenhulme; Filed October 30, 1997; Approved 1997

This lot line adjustment involved 6 parcels zoned Agriculture Exclusive (160 acre minimum); 2 of which were merged voluntarily by the applicant. After the merger, and prior to the lot line adjustment, 4 of the parcels were conforming and 1 was non-conforming. After the lot line adjustment 4 parcels remained conforming and 1 parcel became non-conforming. The location of the 1 non-conforming parcel changed in order to meet the applicant’s intent of providing each parcel with direct frontage on Merced Falls Road. The Planning Director determined that “It is an improvement in the design of all parcels to have direct frontage on Merced Falls Road for access and future development purposes. . . . This finding is made in accordance with the provisions of Section 17.108.040.B. of the Mariposa County Zoning Ordinance . . . .”

4. Lot Line Adjustment No. 421; Erickson, Erickson & Woolstenhulme; Approved September 10, 1993

The purpose of this lot line adjustment among 10 historic parcels was to reconfigure the parcels so that the overall design was improved to create more usable parcels. The applicant stated that the “reconfiguration creates a more equitable distribution of the finite acreage among the 10 historic parcels.” All parcels were within the Agriculture Exclusive zone (160 acre minimum). Parcel 1 went from a conforming 160 acres to a non-conforming 43 acres; Parcel 2 went from non-conforming 5 acres to less non-conforming 41 acres; Parcel 3 went from non-conforming 4 acres to less non-conforming 45 acres; Parcel 4 went from conforming 160 acres to non-conforming 30 acres; Parcel 5 went from non-conforming 45 acres to more non-conforming 42 acres; Parcel 6 went from non-conforming 4 acres to less non-conforming 124 acres; Parcel 7 went from non-conforming 139 acres to more non-conforming 81 acres; Parcel 8 went from non-conforming 12 acres to less non-conforming 80 acres; Parcel 9 went from non-conforming 3 acres to less non-conforming 40 acres; Parcel 10 went from non-conforming 34 acres to less non-conforming 40 acres.

The Staff Report stated “There are 2 parcels that currently meet the minimum parcel size requirement of the AE zone and will be adjusted below the minimum parcel size
requirement. In most lot line situations, Section 3.602C(1) would be strictly adhered to. This project, which involves 10 historic parcels [sic], demands some thought as to the result of the overall situation. At the expense of 2 parcels going below the minimum parcel size, 7 of the remaining 8 parcels dramatically improve their individual situations by getting a more usable parcel configuration and getting larger in size. Access to 3 more parcels is obtained by this lot line adjustment. The overall situation is greatly improved by this lot line adjustment. This lot line adjustment will result in a more equal distribution of the total acreage among the 10 parcels with only two conforming parcels being amended to go below the minimum parcel size requirement.” (Emphasis added).

5. Lot Line Adjustment No. 567; Merced Irrigation District; Approved June 14, 1999

In this lot line adjustment the Planning Director found that “Even though seven of the eight proposed parcels will not meet the 160-acre minimum parcel size requirement of the Agriculture Exclusive zone, after the project all of the parcels will be above 40 acres in size which is the minimum necessary to construct a single-family residence pursuant to provisions in Land Conservation Act contracts.” Thus, non-conforming parcels were made even more non-conforming to allow an increase in acreage of several very small non-conforming parcels; thereby improving the overall design of the parcels.

E. Conclusion

None of the five examples referenced above would have been approved under the Planning Department’s current interpretation and application of Mariposa County Code section 17.108.040 B as to a proposed lot line adjustment involving a non-conforming parcel. Yet, to our knowledge there has been no subsequent change in Planning Department policy or to the subject provision of County Code. A new philosophy by the Planning Department cannot be justified without action by the Board of Supervisors.

The above examples represent a small sample of lot line adjustment applications of which this office has personal knowledge. In addition to the above examples, the Appellant respectfully requests Staff to provide additional information to the Board of Supervisors of other examples within Staff’s knowledge of approved lot line adjustments in which non-conforming (or conforming parcels) were further reduced and made more non-conforming (or actually made non-conforming), yet the overall circumstances of the applications were found to be in compliance with Mariposa County Code section 17.108.040 B.

1 Former Mariposa County General Plan provision identical to Section 17.108.040.B. of the Mariposa County Zoning Ordinance.
For all of the above reasons and those as stated in the above referenced November 24, 2009 Grounds of the Appeal, the Appellants respectfully request that the Board of Supervisors take the following actions:

(1) Uphold the Appeal; and

(2) Direct Planning Staff to approve and process Lot Line Adjustment No. 2009-090 as provided, designed and requested in the application.

Sincerely,

STARCHMAN & BRYANT ATTORNEYS AT LAW

[Signature]

Anita Starchman Bryant
ASB:asb
Cc: Clients
    Irwin and Jessica Iida
Attachment H
Draft Board of Supervisors Resolution
STATE OF CALIFORNIA
COUNTY OF MARIPosa
BOARD OF SUPERVISORS

Resolution No. ____
A resolution denying Appeal No. 2009-160, and upholding the Planning Commission's determination and findings regarding Lot Line Adjustment Application No. 2009-090 between APNs 015-052-19 and 015-052-018 located at the corner of Meadow Lane and Triangle Road

WHEREAS Lot Line Adjustment Application No. 2009-090 was submitted on the 10th day of June, 2009 by James Craig and Robin Dormer and Irwin and Jessica Iida; and

WHEREAS Lot Line Adjustment No. 2009-090 proposes to adjust the boundary between APNs 015-052-018 and 015-052-019 to locate a well and home that encroaches over the property line on the correct parcel; and

WHEREAS both parcels are located in the Residential land use and Rural Residential zoning designation, which establishes a minimum parcel size of 5 acres when on-site well and sewage disposal is provided and therefore both parcels are existing, non-conforming in size; and

WHEREAS Section 17.108.040 of the Mariposa County Zoning Ordinance and Section 5.3.01 of the Mariposa County General Plan requires that in a proposal to modify the boundaries of one or more parcels or lots that do not meet minimum parcel or lot size standards of the applicable zone, the planning commission may approve such boundary modifications provided such modifications will result in the improvement of the circumstances and/or design of both parcels or lots. Under no circumstances can a boundary modification proposal be approved wherein such modification will result in the creation of a substandard parcel or lot; and

WHEREAS the Planning Director considered the information provided and did not support the findings as required by County Code and the General Plan; and

WHEREAS correspondence was sent to the applicants on August 24, 2009 stating that the Planning Director could not support the findings and were given several processing options; and

WHEREAS the applicants chose to schedule the application for Planning Commission review; and

WHEREAS the Planning Department circulated the application among trustee and responsible agencies, interested public organizations, and others as appropriate; and
WHEREAS a Lot Line Adjustment No. 2009-090 was scheduled for Planning Commission consideration as an action item at the Planning Commission meeting on the 6th day of November 2009; and

WHEREAS a Staff Report was prepared pursuant to the California Government Code, Mariposa County Code, and local administrative procedures; and

WHEREAS the Planning Commission considered all of the information in the public record, including the Staff Report, and testimony presented by the applicants and their agent; and

WHEREAS the Planning Commission adopted Resolution No. 2009-028 denying Lot Line Adjustment No. 2009-090 with findings in Exhibit 1 of said resolution; and

WHEREAS an appeal of the Planning Commission’s denial determination was received from James Craig and Robin Dormer and that appeal was complete for processing on the 25th day of November, 2009; and

WHEREAS that appeal is known as Appeal No. 2009-160 (Appeal); and

WHEREAS Appeal No. 2009-160 was made to the Board of Supervisors; and

WHEREAS additional a letter titled “Supporting Evidence” and dated January 5, 2010 was submitted by the appellants; and

WHEREAS processing of Appeal No. 2009-160 was conducted pursuant to Mariposa County Resolution No. 02-525 as amended; and

WHEREAS a duly noticed Board of Supervisors public hearing to consider Appeal No. 2009-160 was scheduled for the 2nd day of February 2010; and

WHEREAS a Staff Report addressing the Notice of Appeal was prepared pursuant to local administrative procedures; and

WHEREAS the Board of Supervisors did hold a public hearing on Appeal No. 2009-160 on the 2nd day of February, 2010 and considered all of the information in the public record, including the Staff Report packet, testimony presented by the public concerning the Planning Commission’s Determination and Findings, the Notice of Appeal, and the comments of the appellant.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Supervisors of the County of Mariposa does hereby:

1. Deny Appeal No. 2009-160; and

2. Uphold the Planning Commission Resolution No. 2009-028 denying Lot Line Adjustment No. 2009-090; and
BE IT FURTHER RESOLVED THAT the Board of Supervisors action is based upon the findings in Exhibit 1 of Resolution No. 2009-028.

BE IT FINALLY RESOLVED THAT the denial of Appeal No. 2009-160 is based upon the discussion of Appeal Issues as contained in the Staff Report to the Board of Supervisors which is hereby incorporated into this resolution by reference.

ON MOTION BY Supervisor _____ seconded by Supervisor _______, this resolution is duly passed and adopted this ___ day of February, 2010 by the following vote:

AYES:

NOES:

EXCUSED:

ABSTAIN:

______________________________
Kevin Cann, Chairman
Mariposa County Board of Supervisors

ATTEST:

______________________________
Margie Williams
Clerk of the Board of Supervisors

APPROVED AS TO LEGAL FORM:

______________________________
Steven W. Dahlem
County Counsel
Attachment I
Public Comments Received
January 12, 2010

Mariposa County Board of Supervisors
5100 Bullion Street
Mariposa, CA 95338

Re: Project: Appeal No. 2009-160
Appellant's: James Craig and Robin Dormer
Lot Line Adjustment No. 2009-090

Honorable Supervisors,

I have reviewed the lot line adjustment application and the minutes of the Planning Commission's November 6, 2009 meeting and would like to make a comment for consideration at the Public Hearing set for February 2, 2010.

I support approval of the lot line adjustment and adoption of a resolution granting the appeal based upon the following.

Both parcels are currently non-conforming with existing zoning and do not meet the minimum parcel size, however pursuant to Section 17.108.040 of County Code, and Implementation Measure 5-9a(2) of the General Plan, the County may approve such boundary modifications provided such modifications will result in the improvement of the circumstances and/or design of both parcels or lots.

The proposed boundary adjustment appears to improve the circumstances for both parcels in that currently, the smallest parcel is 0.461 acres. After the adjustment, the smallest parcel size will be 0.493 acres which increases the size of the smallest parcel. I would consider this an overall improvement of the circumstances.

Also, from a title insurance standpoint, the circumstances of both parcels would be improved by approval of the lot line adjustment based upon the following:

Without the adjustment, both parcels are negatively affected by encroachment issues affecting its marketability:
1. Parcel B is affected by an encroachment of improvements from the adjoining property. This encroachment is disclosed in title insurance reports, guarantees and policies as an encumbrance against the title to said land. Encumbrances against land represent a right of other parties to an interest in the property and generally lessen a property's value. Depending upon the encumbrance, potential buyers and lenders may be limited.
2. Parcel A is affected by this same encroachment issue. Its marketability is also negatively impacted by the fact that the residence and the appurtenant well are located outside the boundaries of the land. Rights to these improvements, including maintenance and/or replacement in the case of damage, is only vague in the existing easement and could be subject to potential litigation. Additionally, the encroachment is similar to an encumbrance and may limit the potential buyers and/or lenders.

For the reasons stated herein, the title insurance industry would support approval of the boundary adjustment as an improvement to the existing circumstances.

Thank you for your consideration,

Rick Lobaugh,
President
Attachment J
Minutes from November 6, 2009 Planning Commission Meeting
Public Portion of the Hearing Opened.

Eileen Bissmeyer, applicant, informed the Commission that this is a practice of small animals.

Marsden asked Bissmeyer if an animal had to spend the night are there accommodations for staff to be with them.

Bissmeyer said she has a lounge area for staff or herself to spend the night in cases where the animal needs to stay overnight.

Marsden then asked about the procedure for the disposal of hazardous waste.

Bissmeyer said that everything will be confined inside the building, any liquid items would go down the drain to the septic and tissue and animals for cremation will be frozen and sent to the cremation facility in Merced.

Francisco congratulated Bissmeyer for growing her home based business to the point where she can move to a commercial area. He then asked if there will be areas for the animals to relieve themselves.

Bissmeyer said that there will be “pooper stations” for the clients to pick up after their animals.

Tucker asked about the animals escaping and mingling with the children at the day care center across the street.

Bissmeyer said that there will be a chain link fenced area at the back of the property which will prevent escapes.

Public Portion of the Hearing Closed.

Deliberations: None

On Motion of Commissioner Francisco, seconded by Commissioner Tucker, the Planning Commission adopted resolution approving Use Permit Determination 2009-139 with the recommended findings and adopt a Notice of Exemption.

Motion carried by the following vote:

AYES: 5 (Marsden, Francisco, Rudzik, Tucker, Ross)
NOES: 0

3. ACTION ITEM:

3A. Lot Line Adjustment No. 2009-090; James Craig and Robin Dormer and Irwin and Jessica Iida, Applicants.

Alvaro Arias presented Lot Line Adjustment 2009-090 explaining that the request is to adjust boundary lines between APNS 015-052-019 and 015-052-018 located in the Lush Meadows area. The parcels are currently 0.461 and 0.556 acres respectively and the request is to adjust the lines resulting in acreages of 0.524 and 0.493.

Planning Commission Meeting Date: November 6, 2009
Arias concluded that it was staff's recommendation that the Planning Commission adopt a resolution denying Lot Line Adjustment No. 2009-090 with the recommended findings.

Clarifications: None

Public Portion of the Hearing Opened:

Doug Bredahl, surveyor and agent for applicants, said that the County can approve a lot line adjustment provided that it is determined that both parcels are improved and he and the applicants feel that both parcels would be improved. Bredahl informed the commission that the applicants, at a cost of $2,000.00, have installed a fence in a straight line showing the proposed lot line adjustment. He said that the Planning Department has asked them to redesign the lot line in a "zig zag" fashion that would go around trees and not be aesthetic. Bredahl said that the Planning Department's interpretation of the Ordinance is a severe application because this lot line adjustment is just an exchange of acreage.

Bredahl went on to address the non-conforming parcel status of the properties and said that when the original subdivision map was approved in 1964 the parcels met all the standards and to now refer to the parcels as substandard and non-conforming "casts the property in a bad light".

Bredahl then stated that both parcels are being improved because the public utility easement that runs down the property on the right side is not usable. He said that moving the property line over increases the "net" acreage and usable space and the map shows only the "gross" acreage.

Rudzik asked where the well is for the second parcel, Parcel B.

Bredahl said that the middle parcel, Parcel B, is an unimproved area and has no well.

Francisco said he does not see where Parcel B will be improved. Francisco said that on the site plan the new line is still within a portion of the easement and that would make Parcel B .493 acres and it was .556 acres, which is a decrease in size. Francisco asked Bredahl how that adds up to Parcel B being improved and increased.

Bredahl said that the areas that are being discussed are "gross" areas and does not take into consideration the abandonment of the easement and increases the usability of Parcel B.

Francisco said that Parcel B, in its current state, enjoys the use of the easement, so he does not follow Bredahl's logic.

Rudzik asked Arias what the set back on property lines for buildings.

Arias said that side yard set backs are 25 feet from the property line or 10% of the lot width, which in this case, for Parcel B, would be 11 feet and Parcel A would be 9 ½ feet.

Francisco then asked if the lot line was adjusted to the proposed diagram would the 9 ½ foot set back meet today’s standards.

Arias said that it would fall short of today’s standards.

Tucker asked Bredahl if there have been any negotiations with the owners of Parcel C to move the lot line between Parcel C and Parcel B shifting the whole of Parcel B so that it could remain at the .5 acre minimum.
Bredahl said that had been discussed, but his clients like the lot line as it is being proposed, but his clients could answer the question in more detail.

James Craig Dormer, applicant and property owner of Parcel A, said that he recently purchased the property and two days before the purchase he had the property surveyed and found out that the house was three feet into the adjacent parcel. Dormer said he negotiated with the seller who put money in escrow so that the lot line adjustment could be done after the sale. Dormer showed pictures of the property and the fence that was erected and stated that it is an improvement to both parcels. Dormer said that they chose to do a straight line adjustment so that they would not have to take down any of the existing trees and feels that with the proposed lot line adjustment both parcels are being improved. Dormer said that all that is being done is a “flip flop” of the acreage of both parcels.

Tucker stated that the lids own both Parcel B and Parcel C and again asked if in order to make Parcel B the proper minimum acreage size is there enough acreage in Parcel A to make a lot line adjustment between the two parcels.

Dormer said that there are 31 “non-conforming” lots on the subdivision map that were created in 1964 and were they “fine” then, the lots have not changed but are now substandard and non-conforming. Dormer said that the lots would have never sold in 1964 if they had been advertised as substandard and non-conforming. Dormer said that he is trying to make the best of the situation he has as the lots will always be substandard and non-conforming so it really does not matter what is done with the acreage.

Rudzik asked Arias to quote from the finding the portion that supports denial of the lot line adjustment.

Arias read from circle page 4:

Section 17.108.040 reads:

“Minimum parcel or lot size shall apply to all proposals for actions which will result in the creation of a parcel or lot, or the modification of the dimensions or land area of a parcel or lot.” The applicable requirements include:

“B. In a proposal to modify the boundaries of one or more parcels or lots where one or more of the parcels or lots do not meet minimum parcel or lot size standards of the applicable zone, the planning commission may approve such boundary modifications provided such modifications will result in the improvement of the circumstances and/or design of both parcels or lots. Under no other circumstances can a boundary modification proposal be approved wherein such modification will result in the creation of a substandard parcel or lot.”

Implementation Measure 5-9a(2) of the General Plan states,

“In a proposal to modify the boundaries of one or more parcels or lots where one or more of the parcels or lots do not meet minimum parcel size or density of the applicable land use, the County may approve such boundary modifications provided such modifications will result in the improvement of the circumstances and/or design of both parcels or lots and in achieving the goals and policies of the General Plan and the purpose of the applicable land use classification.”

Marsden said that when you add up the acreage of Parcels B and A it comes to a total acreage of 1.017 acres, so there is the potential of having two parcels that are conforming without having to consider Parcel C. Marsden went on to explain that to go from the existing frontage on Triangle Road
cutting back into Parcel B and then cut back into Parcel A, thus giving in excess of ½ acre for each property. He said that solution would then match the General Plan’s requirement which the Planning Commission has no authority to break.

Francisco asked staff if there is no net gain or loss between Parcels A and B, an even trade, can a lot line adjustment be approved within the requirements of Section 17 and the General Plan.

Arias answered that was one of the suggestions the applicant was given, to consider an even acreage exchange.

Francisco went on to ask if the property line and fence line can be adjusted to allow the correct set back at the corner of the house, as long as there is not a net gain to either property, that would be acceptable. He said that it would not solve the non-conforming lot size issue.

Dormer asked if the equal acreage is created for both parcels wouldn’t that bring the line closer to the house? He said that is why he did not like that suggestion from staff.

Rudzik answered that it would have to be the “zig zag” line that was discussed earlier.

Francisco said that he does not find any way to solve the problem and certainly not with a straight line unless the owner of Parcels B and C would be agreeable to move his lot line between the parcels and dissolve Parcel B and then sell Dormer a portion of Parcel B making Parcel A larger. Francisco went on to say that anything that decreases Parcel B will be more non-conforming and the Planning Commission cannot move in that direction as they are restricted by County Ordinance. Francisco added that the only solution would be to adjust the lot line so that there is no net gain or loss to Parcel A or B.

Tucker asked staff if there is any provision in any of the County Codes that would allow for a variance or waiver from the minimum lot size.

Arias said that there is a specific sentence right below the section that he read from earlier that prohibits any variances to minimum parcel size. Arias then read the section he had referred to, “No variance shall be granted under any circumstances for reducing the minimum parcel or lot size”.

Dormer said that the lidas would have no interest in turning their two lots into one large lot because they already have the septic set up on Parcel B and this would limit the potential of the property. Dormer said that he and the lidas have come up with the best possible solution to their problem.

Williams said that to approve this lot line adjustment as proposed, a finding would have to be made that the circumstances of both parcels has been improved.

Marsden said that the problem is that there is currently a non-conforming property that is just sitting there and is not an issue, but if an action by the Planning Commission creates another non-conforming property there is a problem as the Planning Commission does not have the authority to create non-conforming parcels.

Dormer then asked if the term “non-conforming” is a new term as the parcels were not sold with that terminology.

Rudzik said that in the 1960s developers came into California and made these developments before the codes were written in the 1970s.
Williams added that when these parcels were created there was not the minimum standard size that there is today.

Dormer asked then why is he being restricted on something that was established before the codes were created.
Williams answered that the codes that are established are intended to address the minimum area needed for development of parcels.

Dormer said that these parcels are already developed.

Rudzik clarified that as long as the non-conforming parcels are left alone, they are historically taken care of, but the problem arises if someone wants to change the parcels, then they must be brought up to today's codes and standards.

Marsden compared the situation to the real estate property taxes under Prop. 13 where the taxes remain at one level until the property is sold and then the property is reassessed to the current tax base.

Francisco compared the situation to the building codes and the structures that are grandfathered in until a change is made and then everything must be brought up to today's codes. Francisco said that is exactly what is happening with these parcels. As long as nothing is done to change the acreage of the parcels, they remain non-conforming, but if the acreage is changed, then they must be made to conforming standards.

Rudzik said that the only option would be to do the "zig zag" line.

Francisco said that they could also leave the property as it is now and be sure to give full disclosure to any future buyers.

Rudzik then added that the Dormers and lidas could draw up a legal agreement as to how the property is shared between both owners and have that attached to the properties and have it presented to any future buyers of the properties.

Irwin lida, owner of Parcels B and C, asked if they created the zig zag lot line adjustment it would be approved by the Planning Commission.

Williams said that is correct.

lida said that would devalue the properties and the costs would be very high.

Francisco said that no matter what Parcel B will be non-conforming and with the stream that goes through it and the setbacks required for a home, it would be a very challenging project to develop that parcel on its own. Francisco said before lida discounts the idea of merging Parcel B and Parcel C, he should go to the Planning Department and research how useable Parcel B is and consider the merger with Dormer purchasing part of Parcel B thus improving all parcels.

Public Portion of the Hearing Closed:

Deliberations:

On Motion of Commissioner Francisco, seconded by Commissioner Tucker, the Planning Commission adopted a resolution denying Lot Line Adjustment No. 2009-090 with the recommended findings.

Planning Commission Meeting Date: November 6, 2009
AYES: 5 (Marsden, Francisco, Rudzik, Tucker, Ross)
NOES: 0

4  INFORMATIONAL ITEM:

Williams announced the items on the November 20, 2009 Agenda for the Planning Commission Meeting:

- Regular Planning Commission Meeting with a workshop tour of the Silver Tip Project Site.

Williams then announced the following Advisory Committee Meetings:

- Fish Camp, Saturday, November 7th at Tenaya Lodge at 9:00am
- El Portal, Tuesday, November 10th at 7:00pm
- Midpines, Thursday, November 19th at 7:00pm

Kris Schenk informed the Commission of the Board of Supervisors meeting on Tuesday November 3rd and the three appeals that were on the Agenda. Schenk said the first appeal of Coyote Springs Ranch for an Agritourism Bathroom and that appeal was denied. Schenk said the second appeal was of Coyote Springs Ranch and the Building Director’s determination for bathrooms in connection with the six cabins and eating facility and that appeal was overturned. Schenk concluded that the third appeal was from Miller and Clifton, a portion of the old Chase Ranch, and involved 12 fractionalized parcels that were lacking any evidence that they were legitimate parcels and the Board of Supervisors believed the intent of the Miller Family was to recognize the parcels as legitimate and that appeal was overturned.

A discussion regarding impact fees took place.

There being no further business, the Commission adjourned at 11:35 a.m.

[Signature]
Bob Rudzik, Chair
Mariaposa County Planning Commission

ATTEST:

Judy Mueller, Secretary
Mariaposa County Planning Commission