

DEPARTMENT: Planning

BY: Sarah Williams, Deputy Director
PHONE: 742-1215

RECOMMENDED ACTION AND JUSTIFICATION:

Adopt a resolution denying Appeal No. 2009-169 with findings, upholding the Planning Director's actions to approve a "Consolidated" Certificate of Compliance; to record Certificate of Compliance No. 2084113, Mariposa County Records; and to authorize issuance of Building Permit No. 28614.

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

BACKGROUND AND HISTORY OF BOARD ACTIONS:

None for Appeal No. 2009-169.
Other background information provided in Staff Report to the Board.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Grant the appeal and reverse the Planning Director's determination and action to approve the "Consolidated" Certificate of Compliance and authorization of Building Permit.

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:
A. Vicinity Maps
B. Notice of Appeal from MERG
C. 12/4/09 Approval for Consolidated Cert of Compliance
D. Cert of Compliance recorded 12/8/09 Document No. 2094841
E. Draft Board of Supervisors Resolution
F. Excerpt from Subdivision Map Act
G Excerpt from County Subdivision Ordinance

CLERK'S USE ONLY:

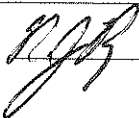
Res. No.: 10-203 Ord. No. _____
Vote - Ayes: 4 Noes: Bibby
Absent: _____
() Approved
() Minute Order Attached () No Action Necessary

COUNTY ADMINISTRATIVE OFFICER:

Requested Action Recommended
 No Opinion
Comments:

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

CAO: 



COUNTY OF MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

KEVIN CANN, CHAIR
JIM ALLEN, VICE-CHAIR
BRAD ABORN
LYLE TURPIN
JANET BIBBY

DISTRICT IV
DISTRICT V
DISTRICT I
DISTRICT II
DISTRICT III



MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: KRIS SCHENK, Planning Director

FROM: MARGIE WILLIAMS, Clerk of the Board *MW*

SUBJECT: PUBLIC HEARING to Consider **Appeal No. 2009-169**, an Appeal of the Planning Director's Determination Regarding a Portion of Certificate of Compliance Application No. 2007-093 for Approval of a "Consolidated" Certificate of Compliance and Authorization of Building Permit No. 28614. Appellants: MERG (Mariposans for the Environment and Responsible Government). Applicants and Property Owners: Jeff Miller and Layne Clifton. Project site for "Consolidated" Certificate of Compliance is APN 016-080-014 and Portion of APN 016-080-016; 871 Highway 140 near the Merced/Mariposa County Line

RES. 10-203

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on April 27, 2010

ACTION AND VOTE:

13

Planning

PUBLIC HEARING to Consider **Appeal No. 2009-169**, an Appeal of the Planning Director's Determination Regarding a Portion of Certificate of Compliance Application No. 2007-093 for Approval of a "Consolidated" Certificate of Compliance and Authorization of Building Permit No. 28614. Appellants: MERG (Mariposans for the Environment and Responsible Government). Applicants and Property Owners: Jeff Miller and Layne Clifton. Project site for "Consolidated" Certificate of Compliance is APN 016-080-014 and Portion of APN 016-080-016; 871 Highway 140 near the Merced/Mariposa County Line (Public Hearing Continued from March 2, 2010)

BOARD ACTION: Kris Schenk introduced the matter.

Jeff Miller, applicant and property owner, raised a question relative to jurisdiction – he referred to the County's appeal rules and cited the definition of "interested party" as someone whose rights will be affected by the decision made on the appeal. He stated MERG is a non-profit corporation and he does not feel that they qualify as an "interested party" as there is no impact to them with this appeal; and he objected with going forward with the hearing on this legal basis.

County Counsel advised the Board that the appellant should have a chance to respond to this issue.

John Brady, Chair of MERG/appellant, advised that MERG has taken an active interest in land issues in the County, and he cited their purpose to inform the

public and decision makers about responsible government, land use, and environmental issues so that the best choices can be made. He noted the land use issues are important to our County – for the present and in the future.

County Counsel referred to Resolution No. 97-3 – Appeal Procedures and he quoted from Section 2 – Filing of Appeals, and he noted that this does not refer to “interested party.” He referred to the Information Sheet for the Appeal Procedure, adopted by Resolution No. 98-364 and he noted that the term “interested party” is used; but he does not feel that the definition cited by the applicant is applicable. He feels MERG can proceed with this appeal. Supervisor Cann asked whether there should be a modification made to the Information Sheet; and County Counsel responded that the language needs to be modified. The Board proceeded with the hearing.

Sarah Williams, Deputy Planning Director, presented the staff report – reviewed the status of the subject parcel, appeal issues, processing information for the garage permit, and advised of correspondence that was received. Staff responded to questions from the Board relative to the use of a “consolidated” Certificate of Compliance and what that would allow versus having a fractionalized parcel - staff advised that a fractionalized parcel does not allow for any kind of development permit to be obtained; whether a Certificate of Compliance could be obtained if a chain of title could be shown; whether the land owner could merge/consolidate the parcels with a whole patent and whether that would eliminate underlying patents; clarifying that with the “consolidated” Certificate of Compliance the property owner should still have the option to merge parcels or to establish a chain of title; and as to what is involved for a full chain of title. Chair Cann reviewed the appeal hearing process. Staff responded to additional questions from the Board relative to Appeal Issue No. 6 that there is reason to believe that the division of the Chase ranch in 1971 extinguished the underlying patents, and staff’s response that they did not have enough information on this; and relative to the request for policy direction to requiring full chain of title information from applicants for Certificate of Compliance applications and regarding the appropriateness of not issuing permits during a 20-day appeal period. County Counsel advised that the policy issues are not before the Board for action as a part of the appeal issue.

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

Appellants Presentation:

John Brady reviewed the Board’s actions relative to the fractionalized parcels; expressed concern and raised legal issues with issuing an amended Certificate of Compliance and allowing a non-binding consolidation of fractional and whole portions of parcels; they feel that this should be a merger and not a temporary consolidation, and that this is not about a building permit but the issue is recognizing parcels for development; questioned whether the Subdivision Map Act has been violated; they feel that the County should require that a chain of title be provided; and referred to the Certificate of Compliance check list requirements. He advised that MERG requests that the appeal be upheld and the Planning Director’s determination to issue the amended Certificate of Compliance be overturned; that the County’s practice of allowing non-binding consolidation of fractional to whole portions for development purposes be ended; that applicants be allowed to merge property when they wish to; that the County require full title history; that staff be supported in lawfully carrying out their obligations as to how and when conditional or unconditional Certificates of Compliance will be issued; and that a fee structure be established so that the process is self-supporting for the workload and costs of applications. Mr. Brady responded to a question from the Board relative to the policy issues that were raised that the actions taken by Planning that are not founded by law.

Staff responded to a question from the Board relative to Mr. Brady's statement that the practice of issuing "consolidated" Certificates of Compliance could be used to give development rights to the fractionalized parcels that are less than one-acre in the 160-acre minimum zone.

Speakers in support of the appellant: none.

Opponents/Property Owners Presentation:

Jeff Miller stated the temporary/"consolidated" Certificate of Compliance was issued before the Board's decision in January relative to the fractionalized portions of land. He questioned why he should have to give up his rights to be able to do anything, including repairs, while things are in process. He referred to his efforts to provide chain of title information; and he stated he does not feel that the Court case (the *Tehama* case) requires a separate deed for each parcel. He feels that if full chains of title are going to be required, that it should be for future applications and he commented on the costs involved; and he feels that there are other avenues to approach the request for policy decisions. He asked what would happen to his building (garage) if the appeal is upheld. He stated he doesn't feel that the Subdivision Map Act has anything to do with this Certificate – it was a temporary fix. He responded to questions from the Board relative to Appeal Issue No. 5 as to whether the division of the Chase ranch in 1971 violated the Subdivision Map Act and stated he feels that this is a "red herring" and did not apply to the division between family members. He noted there is a deed from 1926 that specifies the parcels in the section in question. He responded to further questions from the Board as to how long he thinks it will take to settle this matter and have a permanent fix, and he advised that he filed another appeal with the Board on Monday relative to this parcel and an action in Superior Court on all of the parcels; and it could be a number of years before the matter is resolved. He responded that he feels the parcel with the garage could stand on its own; and it is his intention to get everything legal and to sort out the patent issues – they want his sister's children to be able to build their houses there. He responded as to the timeframes for building the garage and the Board's action to approve his first appeal and the subsequent change to denial of the appeal; and he advised that he received the Certificate of Completion on the garage in the mail on Monday.

Speakers in Support of the Opponents/Property Owners:

Anita Starchman Bryant, Starchman Bryant Law Offices, advised that she is not representing any particular individual, but is very familiar with the *Tehama* case. She stated she feels that the issues involved in this matter are unsettled areas of law and there may be a case that addresses this situation in the future and the law may change. She feels that if the property owner is required to merge the parcels, he would be unable to have the fractionalized patent recognized. She stated the *Tehama* case did not address "leftover" fractionalized patents; and there is no basis in law to require a merger of the parcels. She responded to questions from the Board as to what would happen if the existing rules are not applied, and advised that there is no case law today – this was a "holding pattern" application.

Appellants Rebuttal:

Rita Kidd, Secretary for MERG, stated she does not feel there is validity to the points that were raised as to whether the parcels would have to be merged to redo a roof and whether the structure was appropriate at the time it was constructed. She stated State law would permit a merger and subdivision in one act without having to revert to acreage, and she feels that could have been done. She does not feel that a merger would preclude further application for division of land. She noted that they went through tortured evaluation of the chain of title in the *Tehama* case to determine whether a Certificate of Compliance could be issued and this case challenged Civil Code 1093. She agrees that the law is changing rapidly; and she referred to information on Abbott & Kindermann's law blog concerning Certificates of Compliance and patented parcels. She referred to the Court case of *Morehart v.*

Santa Barbara relative to the merger of parcels and subdivision. She noted that Anita Starchman Bryant represented the Redington ranch and they have been issued a number of Certificates of Compliance. She stated it is her understanding from MERG's counsel that once the County issues a building permit, the property owner has a vested right to have that parcel recognized separately; and there are any number of those situations on the Redington ranch where this could happen. This provides a legal means for Mr. Miller with the parcel for his garage. She referred to the Court case of *Lakeview Ranch v. Santa Clara*, and advised that the *Abernathy* case says the County has the option to issue conditional, unconditional Certificates of Compliance, or to deny the issuance. She advised that in her research, that the County has recognized almost 700 parcels in the western lands of the County with Certificates of Compliance. They are asking the Board to satisfy the remedies, give direction on the procedural issues raised in the appeal, and that staff be given direction to move forward; and that the appeal be upheld. She responded to questions from the Board relative to her input that the County established a legal parcel by granting a permit; and relative to the "consolidated" Certificate of Compliance process the County used.

The public portion of the hearing was closed.

Cc: Steve Dahlem, County Counsel
File



COUNTY OF MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

KEVIN CANN, CHAIR
JIM ALLEN, VICE-CHAIR
BRAD ABORN
LYLE TURPIN
JANET BIBBY

DISTRICT IV
DISTRICT V
DISTRICT I
DISTRICT II
DISTRICT III



MARIPOSA COUNTY BOARD OF SUPERVISORS

CORRECTED MINUTE ORDER

TO: KRIS SCHENK, Planning Director

FROM: MARGIE WILLIAMS, Clerk of the Board

SUBJECT: PUBLIC HEARING to Consider **Appeal No. 2009-169**, an Appeal of the Planning Director's Determination Regarding a Portion of Certificate of Compliance Application No. 2007-093 for Approval of a "Consolidated" Certificate of Compliance and Authorization of Building Permit No. 28614. Appellants: MERG (Mariposans for the Environment and Responsible Government). Applicants and Property Owners: Jeff Miller and Layne Clifton. Project site for "Consolidated" Certificate of Compliance is APN 016-080-014 and Portion of APN 016-080-016; 871 Highway 140 near the Merced/Mariposa County Line (Public Hearing Continued from March 2, 2010)

RES. 10-203

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on April 27, 2010

ACTION AND VOTE:

13

Planning

PUBLIC HEARING to Consider **Appeal No. 2009-169**, an Appeal of the Planning Director's Determination Regarding a Portion of Certificate of Compliance Application No. 2007-093 for Approval of a "Consolidated" Certificate of Compliance and Authorization of Building Permit No. 28614. Appellants: MERG (Mariposans for the Environment and Responsible Government). Applicants and Property Owners: Jeff Miller and Layne Clifton. Project site for "Consolidated" Certificate of Compliance is APN 016-080-014 and Portion of APN 016-080-016; 871 Highway 140 near the Merced/Mariposa County Line (Public Hearing Continued from March 2, 2010)

BOARD ACTION: Kris Schenk introduced the matter.

Jeff Miller, applicant and property owner, raised a question relative to jurisdiction – he referred to the County's appeal rules and cited the definition of "interested party" as someone whose rights will be affected by the decision made on the appeal. He stated MERG is a non-profit corporation and he does not feel that they qualify as an "interested party" as there is no impact to them with this appeal; and he objected with going forward with the hearing on this legal basis.

County Counsel advised the Board that the appellant should have a chance to respond to this issue.

John Brady, Chair of MERG/appellant, advised that MERG has taken an active interest in land issues in the County, and he cited their purpose to inform the public and decision makers about responsible government, land use, and environmental issues so that the best choices can be made. He noted the land use issues are important to our County – for the present and in the future.

County Council referred to Resolution No. 97-3 – Appeal Procedures and he quoted from Section 2 – Filing of Appeals, and he noted that this does not refer to “interested party.” He referred to the Information Sheet for the Appeal Procedure, adopted by Resolution No. 98-364 and he noted that the term “interested party” is used; but he does not feel that the definition cited by the applicant is applicable. He feels MERG can proceed with this appeal. Supervisor Cann asked whether there should be a modification made to the Information Sheet; and County Council responded that the language needs to be modified. The Board proceeded with the hearing.

Sarah Williams, Deputy Planning Director, presented the staff report – reviewed the status of the subject parcel, appeal issues, processing information for the garage permit, and advised of correspondence that was received. Staff responded to questions from the Board relative to the use of a “consolidated” Certificate of Compliance and what that would allow versus having a fractionalized parcel - staff advised that a fractionalized parcel does not allow for any kind of development permit to be obtained; whether a Certificate of Compliance could be obtained if a chain of title could be shown; whether the land owner could merge/consolidate the parcels with a whole patent and whether that would eliminate underlying patents; clarifying that with the “consolidated” Certificate of Compliance the property owner should still have the option to merge parcels or to establish a chain of title; and as to what is involved for a full chain of title. Chair Cann reviewed the appeal hearing process. Staff responded to additional questions from the Board relative to Appeal Issue No. 6 that there is reason to believe that the division of the Chase ranch in 1971 extinguished the underlying patents, and staff’s response that they did not have enough information on this; and relative to the request for policy direction to requiring full chain of title information from applicants for Certificate of Compliance applications and regarding the appropriateness of not issuing permits during a 20-day appeal period. County Council advised that the policy issues are not before the Board for action as a part of the appeal issue.

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

Appellants Presentation:

John Brady reviewed the Board’s actions relative to the fractionalized parcels; expressed concern and raised legal issues with issuing an amended Certificate of Compliance and allowing a non-binding consolidation of fractional and whole portions of parcels; they feel that this should be a merger and not a temporary consolidation, and that this is not about a building permit but the issue is recognizing parcels for development; questioned whether the Subdivision Map Act has been violated; they feel that the County should require that a chain of title be provided; and referred to the Certificate of Compliance check list requirements. He advised that MERG requests that the appeal be upheld and the Planning Director’s determination to issue the amended Certificate of Compliance be overturned; that the County’s practice of allowing non-binding consolidation of fractional to whole portions for development purposes be ended; that applicants be allowed to merge property when they wish to; that the County require full title history; that staff be supported in lawfully carrying out their obligations as to how and when conditional or unconditional Certificates of Compliance will be issued; and that a fee structure be established so that the process is self-supporting for the workload and costs of applications. Mr. Brady responded to a question from the Board relative to the policy issues that were raised that the actions taken by Planning that are not founded by law.

Staff responded to a question from the Board relative to Mr. Brady’s statement that the practice of issuing “consolidated” Certificates of Compliance could be used to give development rights to the fractionalized parcels that are less than one-acre in the 160-acre minimum zone.

Speakers in support of the appellant: none.

Opponents/Property Owners Presentation:

Jeff Miller stated the temporary/“consolidated” Certificate of Compliance was issued before the Board’s decision in January relative to the fractionalized portions of land. He questioned why he should have to give up his rights to be able to do anything, including

repairs, while things are in process. He referred to his efforts to provide chain of title information; and he stated he does not feel that the Court case (the *Tehama* case) requires a separate deed for each parcel. He feels that if full chains of title are going to be required, that it should be for future applications and he commented on the costs involved; and he feels that there are other avenues to approach the request for policy decisions. He asked what would happen to his building (garage) if the appeal is upheld. He stated he doesn't feel that the Subdivision Map Act has anything to do with this Certificate – it was a temporary fix. He responded to questions from the Board relative to Appeal Issue No. 5 as to whether the division of the Chase ranch in 1971 violated the Subdivision Map Act and stated he feels that this is a “red herring” and did not apply to the division between family members. He noted there is a deed from 1926 that specifies the parcels in the section in question. He responded to further questions from the Board as to how long he thinks it will take to settle this matter and have a permanent fix, and he advised that he filed another appeal with the Board on Monday relative to this parcel and an action in Superior Court on all of the parcels; and it could be a number of years before the matter is resolved. He responded that he feels the parcel with the garage could stand on its own; and it is his intention to get everything legal and to sort out the patent issues – they want his sister's children to be able to build their houses there. He responded as to the timeframes for building the garage and the Board's action to approve his first appeal and the subsequent change to denial of the appeal; and he advised that he received the Certificate of Completion on the garage in the mail on Monday.

Speakers in Support of the Opponents/Property Owners:

Anita Starchman Bryant, Starchman Bryant Law Offices, advised that she is not representing any particular individual, but is very familiar with the *Tehama* case. She stated she feels that the issues involved in this matter are unsettled areas of law and there may be a case that addresses this situation in the future and the law may change. She feels that if the property owner is required to merge the parcels, he would be unable to have the fractionalized patent recognized. She stated the *Tehama* case did not address “leftover” fractionalized patents; and there is no basis in law to require a merger of the parcels. She responded to questions from the Board as to what would happen if the existing rules are not applied, and advised that there is no case law today – this was a “holding pattern” application.

Appellants Rebuttal:

Rita Kidd, Secretary for MERG, stated she does not feel there is validity to the points that were raised as to whether the parcels would have to be merged to redo a roof and whether the structure was appropriate at the time it was constructed. She stated State law would permit a merger and subdivision in one act without having to revert to acreage, and she feels that could have been done. She does not feel that a merger would preclude further application for division of land. She noted that they went through tortured evaluation of the chain of title in the *Tehama* case to determine whether a Certificate of Compliance could be issued and this case challenged Civil Code 1093. She agrees that the law is changing rapidly; and she referred to information on Abbott & Kindermann's law blog concerning Certificates of Compliance and patented parcels. She referred to the Court case of *Morehart v. Santa Barbara* relative to the merger of parcels and subdivision. She noted that Anita Starchman Bryant represented the Redington ranch and they have been issued a number of Certificates of Compliance. She stated it is her understanding from MERG's counsel that once the County issues a building permit, the property owner has a vested right to have that parcel recognized separately; and there are any number of those situations on the Redington ranch where this could happen. This provides a legal means for Mr. Miller with the parcel for his garage. She referred to the Court case of *Lakeview Ranch v. Santa Clara*, and advised that the *Abernathy* case says the County has the option to issue conditional, unconditional Certificates of Compliance, or to deny the issuance. She advised that in her research, that the County has recognized almost 700 parcels in the western lands of the County with Certificates of Compliance. They are asking the Board to satisfy the remedies, give direction on the procedural issues raised in the appeal, and that staff be given direction to move forward; and that the appeal be upheld. She responded to questions

from the Board relative to her input that the County established a legal parcel by granting a permit; and relative to the "consolidated" Certificate of Compliance process the County used.

The public portion of the hearing was closed.

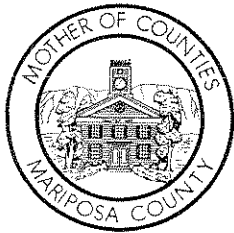
4:00 p.m. Recess

4:12 p.m. Sarah Williams reviewed the conclusion - questions that the Board needs to answer for this appeal; and she advised that the formal resolution will be updated to show action being taken on this appeal this date versus March 2nd. The Board commenced with deliberations. Staff responded to questions from the Board as to how setbacks were applied for the garage with the temporary merger; what standards were followed; clarifying that a subdivision could be applied for in the future even after a merger – the minimum parcel size would be determined by the zoning; and relative to issuance of a building permit to a parcel that is not legally created and the status. Supervisor Cann clarified that the parcels are temporarily merged because of the "consolidated" Certificate of Compliance until there is a change in the circumstances; and he further stated he feels that the setbacks should be enforced from the individual property lines. Discussion was held.

Motion by Aborn, Res. 10-203 was adopted denying Appeal No. 2009-169; upholding the Planning Director's action on December 4, 2009, to approve a "consolidated" Certificate of Compliance; upholding the Planning Director's action on December 8, 2009, to record a Certificate of Compliance; and upholding the Planning Director's action on December 8, 2009 to authorize issuance of Building Permit No. 28614. County Counsel recommended that the Board make a finding of the jurisdictional issue that was raised based on the preceding argument to the appeal. The motion was amended by the maker, to include a finding that the Board has jurisdiction to consider this appeal. The motion was seconded by Allen. Supervisor Bibby reiterated her concerns with the setbacks and issuance of a temporary "consolidated" Certificate of Compliance and application of standards. Ayes: Aborn, Turpin, Cann, Allen; Noes: Bibby. The hearing was closed.

County Counsel asked about the status of the policy issues that were raised and staff recommendation to bring back an item to require a full chain of title information from applicants for Certificate of Compliance applications; relative to the appropriateness of not issuing permits during a 20-day appeal period; and relative to the fee structure issue raised by the appellant. Kris Schenk advised that they are working on a fee structure proposal for the Department and will include this issue; and that staff would like direction on the other two policy issues. The Board concurred with staff bringing back a proposal relative to the 20-day appeal period and with information on how other counties are handling the chain of title information.

Cc: Steve Dahlem, County Counsel
File



COUNTY OF MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

BRAD ABORN
LYLE TURPIN
JANET BIBBY
KEVIN CANN
JIM ALLEN

DISTRICT I
DISTRICT II
DISTRICT III
DISTRICT IV
DISTRICT V



MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: KRIS SCHENK, Planning Director

FROM: MARGIE WILLIAMS, Clerk of the Board *MW*

SUBJECT: PUBLIC HEARING to Consider **Appeal No. 2009-169**, an Appeal of the Planning Director's Determination Regarding a Portion of Certificate of Compliance Application No. 2007-093 for Approval of a "Consolidated" Certificate of Compliance and Authorization of Building Permit No. 28614. Appellants: MERG (Mariposans for the Environment and Responsible Government). Applicants and Property Owners: Jeff Miller and Layne Clifton. Project site for "Consolidated" Certificate of Compliance is APN 016-080-014 and Portion of APN 016-080-016; 871 Highway 140 near the Merced/Mariposa County Line.

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on March 2, 2010

ACTION AND VOTE:

14

Planning

PUBLIC HEARING to Consider **Appeal No. 2009-169**, an Appeal of the Planning Director's Determination Regarding a Portion of Certificate of Compliance Application No. 2007-093 for Approval of a "Consolidated" Certificate of Compliance and Authorization of Building Permit No. 28614. Appellants: MERG (Mariposans for the Environment and Responsible Government). Applicants and Property Owners: Jeff Miller and Layne Clifton. Project site for "Consolidated" Certificate of Compliance is APN 016-080-014 and Portion of APN 016-080-016; 871 Highway 140 near the Merced/Mariposa County Line.

BOARD ACTION: Chair Cann advised that the applicant/property owner is asking for a continuance.

Jeff Miller/applicant-property owner, advised that he has been out of the country for three weeks and just returned on Saturday; and he has not had a chance to review all of the documentation for this hearing. He advised that he furnished a 1926 deed to Planning in October 2009 that lists separate parcels; and if Certificates of Compliance are issued, he feels that this appeal may be moot. If not, he could appeal that decision and have both appeals heard at the same time. He responded to a question from the Board relative to submitting the 1926 deed.

Sarah Williams, Deputy Planning Director, responded to questions from the Board relative to continuing the hearing to a date and time certain and relative to the applicant's request for the appeals to be heard together if the second appeal is filed. Sarah advised that they would like to discuss the issues with County Counsel

relative to recognition of separate parcels in the 1926 deed and whether the appeals would be separate. Kris Schenk provided input on available dates for scheduling the continuance.

John Brady, Chair of MERG/appellant, stated they were hoping the hearing would be continued to the next meeting; however, if that is not going to work, they are agreeable with the April 27th hearing date.

Chair Cann opened the public portion and called for input on the issuance of the continuance only. No input was received and the public portion was closed. (M)Allen, (S)Aborn, the hearing was continued to April 27, 2010 at 2:30 p.m./Ayes: Unanimous.

Cc: Steve Dahlem, County Counsel
File

STATE OF CALIFORNIA
COUNTY OF MARIPOSA
BOARD OF SUPERVISORS

Resolution
No. 10-203

A resolution denying Appeal No. 2009-169, and upholding the Planning Director's approval of a "Consolidated" Certificate of Compliance to APN 016-080-014 and a portion of APN 016-080-016; upholding the Planning Director recordation of Certificate of Compliance as Document No. 2084113, Mariposa County Records; and upholding the Planning Director's authorization for issuance of Building Permit No. 28614; for property located at 871 Highway 140 near the Merced/Mariposa County line

WHEREAS Certificate of Compliance Application No. 2007-093 was submitted on the 1st day of June, 2007 by Jeff Miller and Layne Clifton; and

WHEREAS the application requested thirty-four (34) Certificates of Compliance for acreage known as APN 016-080-002, a 4,333 acre property located at 871 Highway 140 near the Merced/Mariposa County line (within Mariposa County), hereinafter referred to as "subject property"; and

WHEREAS the Planning Director wrote a letter on the 5th day of September, 2008 which stated that he could support issuance of unconditional Certificates of Compliance for twenty-two (22) of the requests, as they were for "whole" patents within the subject property; and

WHEREAS the Planning Director correspondence written on the 5th day of September, 2008 stated that twelve (12) of the requested Certificates of Compliance were for "fractionalized" patents and there was not adequate justification provided with the application materials to support issuance of unconditional Certificate of Compliance; and

WHEREAS this position of the Planning Director regarding "fractionalized" patents was based upon a recently published appellate level court case, *The People v. Tehama County Board of Supervisors*, et al., (2007) 147 Cal.App.4th 891 (hereinafter referred to as "the *Tehama case*"); and

WHEREAS the applicant requested that the Planning Director take action on the twenty-two requests, and "hold" the twelve requests for "fractionalized" patents in order that he could conduct additional research on this matter; and

WHEREAS the applicant submitted a letter on the 7th day of April, 2009 which provided his justification for issuance of unconditional Certificates of Compliance to the twelve

fractionalized patents remaining within Certificate of Compliance Application No. 2007-093; and

WHEREAS the Planning Director considered this additional information; and

WHEREAS the Planning Director's determination regarding the additional information provided for the fractionalized patents was provided to the applicant in correspondence dated the 30th day of July, 2009; and

WHEREAS the fractionalized patents are the following "parcel numbers" from the application diagram:

"Parcel 3" - a 120 acre portion of a 160 acre parcel originally created by US Patent recorded in Book N of Patents at Page 431 Mariposa County Records;

"Parcel 5" - an 80 acre portion of a 120 acre parcel originally created by US Patent recorded in Book S of Patents at Page 441 Mariposa County Records;

"Parcel 8" - a 40 acre portion of a 160 acre parcel originally created by US Patent recorded in Book O of Patents at Page 181 Mariposa County Records;

"Parcel 18" - an approximately 140 acre portion of a 160 acre parcel originally created by US Patent recorded in Book N of Patents at Page 74 Mariposa County Records;

"Parcel 19" - an approximately 20 acre portion of a 40 acre parcel originally created by US Patent recorded in Book S of Patents at Page 168 Mariposa County Records;

"Parcel 27" - a less than 160 acre portion of a 160 acre parcel originally created by US Patent recorded in Book P of Patents at Page 157 Mariposa County Records;

"Parcel 29" - an approximately 420 acre portion of a 480 acre parcel originally created by US Patent recorded in Book P of Patents at Page 152 Mariposa County Records;

"Parcel 30" - an approximately 80 acre portion of a 160 acre parcel originally created by US Patent recorded in Book P of Patents at Page 153 Mariposa County Records;

"Parcel 31" - an approximately 40 acre portion of an 80 acre parcel originally created by US Patent recorded in Book P of Patents at Page 325 Mariposa County Records;

"Parcel 32" - a less than 1 acre triangular portion of a 40 acre parcel originally created by US Patent recorded in Book P of Patents at Page 322 Mariposa County Records;

"Parcel 33" - a less than 1 acre triangular portion of a 480 acre parcel originally created by US Patent recorded in Book P of Patents at Page 151 Mariposa County Records;

"Parcel 34" - a less than 40 acre portion of a 40 acre parcel originally created by US Patent recorded in Book P of Patents at Page 306 Mariposa County Records; and

WHEREAS the Planning Director was still unable to support the issuance of unconditional Certificates of Compliance to the fractionalized patents; and

WHEREAS this determination included findings and options for continued processing of the application; and

WHEREAS an appeal of the Planning Director's determination was received from Jeff Miller and Layne Clifton and that appeal was complete for processing on the 12th day of August, 2009; and

WHEREAS that appeal is known as Appeal No. 2009-114; and

WHEREAS Appeal No. 2009-114 was made to the Board of Supervisors; and

WHEREAS during processing of Appeal No. 2009-114, property owner Jeff Miller submitted an application for Building Permit No. 28614 to construct a garage near his existing residence; and

WHEREAS the location of the proposed garage was on one of the fractionalized patents; and

WHEREAS because no action had yet been taken on Appeal No. 2009-114, and a Certificate of Compliance had not yet been recorded for the fractionalized patents, Building Permit No. 28614 could not be authorized by Mariposa Planning due to parcel legality issues; and

WHEREAS on the 1st day of December 2009 the property owner submitted an application for a "Consolidated" Certificate of Compliance to combine the acreage of Parcel 29 listed above, "fractionalized" Patent P-152, with "whole" Patent P-282 for which a Certificate of Compliance had already been issued; and

WHEREAS this was intended by the property owner and applicant Jeff Miller to be a temporary solution to enable the issuance of Building Permit No. 28614 pending resolution of Appeal No. 2009-114; and

WHEREAS on the 4th day of December 2009 the Planning Director approved the application for the "Consolidated" Certificate of Compliance; and

WHEREAS on the 8th day of December 2009 the Planning Director recorded the Certificate of Compliance as Document No. 2084113, Mariposa County Records; and

WHEREAS as a result of the recordation of the Certificate of Compliance, on the 8th day of December 2009 the Planning Director authorized the issuance of Building Permit No. 28614; and

WHEREAS on the 23rd day of December 2009 an appeal of the Planning Director's actions to approve the "Consolidated" Certificate of Compliance, to record the Certificate of Compliance and to authorize the Building Permit was received; and

WHEREAS on the 29th day of December 2009 that appeal was accepted as complete and was assigned a file number Appeal No. 2009-169; and

WHEREAS processing of Appeal No. 2009-169 was conducted pursuant to Mariposa County Resolution No. 97-3; and

WHEREAS a duly noticed Board of Supervisors public hearing to consider Appeal No. 2009-169 was scheduled for the 2nd day of March 2010; and

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

WHEREAS on the 2nd day of March 2010 the Board of Supervisors continued the public hearing until the 27th day of April 2010 at 2:30 p.m. or as soon thereafter as possible; and

WHEREAS the Board of Supervisors did hold a continued public hearing on Appeal No. 2009-169 on the 27th day of April 2010 and considered all of the information in the public record, including the Staff Report packet, a draft Board Resolution with Findings Denying Appeal No. 2009-169, correspondence and testimony presented by the public concerning the Planning Director Determinations and Findings, the Notice of Appeal, the comments of the property owner and applicant, 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. 2009-169;
2. Uphold the Planning Director's action on December 4, 2009 to approve a "consolidated" Certificate of Compliance (Amended Certificate of Compliance Application No. 2007-93, submitted on December 1, 2009);
3. Uphold the Planning Director's action on December 8, 2009 to record a Certificate of Compliance (Document No. 2084113, Mariposa County Records); and
4. Uphold the Planning Director's action on December 8, 2009 to authorize issuance of Building Permit No. 28614.

BE IT FURTHER RESOLVED THAT the Board of Supervisors action is based upon the following findings:

1. The Board of Supervisors finds the use of the "consolidated" Certificate of Compliance procedure is appropriate for Amended Certificate of Compliance Application No. 2007-93 as approved by the Planning Director on December 4, 2009. The Board of Supervisors finds the "consolidated" Certificate of Compliance to be an appropriate procedure, since it does not require that an applicant legally merge a fractionalized patent together with an adjacent whole patent. The Board of Supervisors acknowledges that the parcelization decisions for a "consolidated" Certificate of Compliance may not final. A property owner may provide information to justify a later unconditional Certificate of Compliance for the fractionalized patent.

2. The Planning Director's authorization for issuance of Building Permit No. 28614 was appropriate based upon the Certificate of Compliance recorded as Document No. 2084113, Mariposa County Records.
3. The Planning Director considers the Subdivision Map Act (Government Code), the County Subdivision Ordinance (Mariposa County Code) and the Mariposa County General Plan in evaluation of an application for Certificate of Compliance. The Planning Director also considers case law.
4. Mariposa Planning establishes application submittal requirements based upon consideration of state law. Mariposa Planning also considers local needs for processing an application when establishing the submittal requirements for an application. At the time of the submittal of Amended Certificate of Compliance Application No. 2007-93 on the 1st day of December 2009, Mariposa Planning did not require that complete chain of title research be submitted with the application for a Certificate of Compliance.
5. The Subdivision Map Act, the County Subdivision Ordinance, and the Mariposa County General Plan do not use the term "fractionalized" patent and do not provide direction or give specific authority to the Planning Director on how to address an application for a Certificate of Compliance for a "fractionalized" patent.
6. The *Tehama* case is a published appellate level case which addresses "fractionalized" patents. The *Tehama* case is not exactly the same as the Appeal (Appeal No. 2009-169). The *Tehama* case doesn't conclude or direct a local agency "what" to do with a fractionalized patent which may be "left over" following issuance of a Certificate of Compliance to a whole patent (such as is the case for Certificate of Compliance No. 2007-093). This is because the *Tehama* case was about counting parcels before and after a Lot Line Adjustment. The *Tehama* case was not about processing Certificate of Compliance applications for whole and fractionalized patents. However, the *Tehama* case is very clear in its conclusion that, if there isn't a separate deed which conveys a fractionalized patent separately or if there isn't some clearly established intention of the parties to create a separate parcel, a fractionalized patent isn't a separate parcel. If a fractionalized patent isn't a separate parcel, it isn't eligible for an unconditional Certificate of Compliance.
7. Based on consideration of Civil Code 1093, the Board of Supervisors finds the Planning Director's action to approve a "consolidated" Certificate of Compliance on the 4th day of December 2009, to consolidate the acreage of a "fractionalized" patent together with a "whole" patent is appropriate and that a full history of title for the fractionalized patents within the subject property is not necessary to support this particular action.
8. The Board of Supervisors has jurisdiction to consider and act upon Appeal No. 2009-169 pursuant to Section II of the Mariposa County Appeals Procedures, Resolution No. 97-3 as amended by Resolution No. 10-92.

BE IT FINALLY RESOLVED THAT the denial of Appeal No. 2009-169 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.

Board of Supervisors Resolution No. 10-203 for Appeal No. 2009-169
Miller and Clifton, property owners and applicants
MERC, appellants; April 27th, 2010

Page 6 of 6 pages

ON MOTION BY Supervisor Aborn, seconded by Supervisor Allen, this resolution is duly passed and adopted this 27th day of April 2010 by the following vote:

AYES: Aborn, Turin, Cann, and Allen

NOES: Bibby

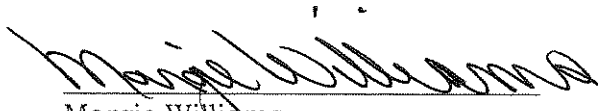
EXCUSED: None

ABSTAIN: None



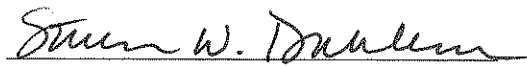
Kevin Cann, Chairman
Mariposa County Board of Supervisors

ATTEST:



Margie Williams
Clerk of the Board of Supervisors

APPROVED AS TO LEGAL FORM:



Steven W. Dahlem
County Counsel