DEPARTMENT: Planning
BY: Damon Golubics, Senior Planner
PHONE: 742-1250

RECOMMENDED ACTION AND JUSTIFICATION:

Adopt a resolution denying Appeal No. 2010-82 with findings, upholding the Planning Director’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 Director’s determination finding that there is adequate justification to grant unconditional Certificates of Compliance for two (2) parcels (Lots 90-1/4 & 90-7/8) within APN 011-080-010, a 27 acre APN.

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
Transfer Between Funds
Contingency
( ) General ( ) Other

Staff Report to the Board with Exhibits:
A. Vicinity Map
B. June 8th 2010 Planning Director Determination
C. Notice of Appeal No. 2010-82: Hornitos Land Co. LLC
D. Maps Showing Lot 33, 90-1/4, 90-7/8, 91, 92 and 93
E. Draft Board of Supervisors Resolution
F. Record of Survey
G. Grant Deed
H. Appellate Level Cases (Abrahnathy & Witt)
I. Correspondence

CLERK’S USE ONLY:
Res. No.: 9-3
Vote – Ayes: 3
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: ____________________________________________

COUNTY ADMINISTRATIVE OFFICER:
Requested Action Recommended
No Opinion
Comments:

CAO: ____________________________
TO: KRS SCHENK, Planning Director
FROM: MARGIE WILLIAMS, Clerk of the Board

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA
ADOPTED THIS Order on October 26, 2010

ACTION AND VOTE:

16

Planning

NOTE: This Public Hearing will be continued to November 23, 2010 at 2:00 p.m.

BOARD ACTION: Kris Schenk advised of the request received from the agent for the applicant to continue this hearing for the full Board to be present. (M)Bibby, (S)Aborn, the hearing was continued to November 23, 2010, at 2:00 p.m./Ayes: Aborn, Turpin, Bibby, Allen; Excused: Cann.

Cc: Steven W. Dahlem, County Counsel
   File
NOTICE OF A PUBLIC HEARING

Project: Appeal No. 2010-082
Property Owners: Hornitos Land Company, LLC
Appellants: Hornitos Land Company, LLC, c/o Steve Sloan
Property location: No Assigned Address; APN 011-080-010
Located East of Bear Valley Road in the 2900 Block,
Town of Hornitos - Please See Attached Vicinity Map

Please note: Water Street is identified on the vicinity
map, however, this is an old right-of-way not currently
used as a street, easement or access way.

The Hornitos Land Company, LLC submitted Certificate of Compliance Application No. 2009-037 to the Planning Department with the intent of recognizing six (6) parcels in the town of Hornitos. The Planning Department processed two (2) of the six (6) Certificates of Compliance requests recognizing two parcels. It is the appellants’ position that there is information submitted that supports their request to have two (2) additional Certificates of Compliance processed as part of their request. They are pursuing recognition of Lots 90 - 1/4 and 90 - 7/8 located within APN 011-080-010. On 6/8/10, the Planning Director made a determination that did not support the property owners’ position. This matter was originally scheduled to be heard by the Board of Supervisors on Tuesday October 26, 2010. On October 26, 2010, the Board of Supervisors formally continued this matter to their meeting on Tuesday November 23, 2010.

The agent for the project, Starchman and Bryant Attorneys at Law, appealed this determination on behalf of the applicant to the Board of Supervisors and a public hearing will be conducted on the appeal.

Hearing Date: Tuesday, November 23, 2010
Hearing Time: 2:00 p.m.
Hearing Location: Mariposa County Government Center (upper floor)
5100 Bullion Street, Mariposa California

You are receiving this notice as required by State law and County code because (1) you own property which is near or adjacent to the subject property.

Our Mission is to provide our clients with professional service and accurate information in a respectful, courteous, and enthusiastic manner resulting in a well-planned rural environment.
If you have any questions about this appeal or the information in this notice, or if you would like a copy of staff report information, please contact Damon Golubic at Mariposa Planning, (209) 742-1250. E-mail may be sent to Damon Golubic at dgolubic@mariposacounty.org

You may also write us at P.O. Box 2039 Mariposa CA 95338, or drop by the office at 5100 Bullion Street (lower floor), Mariposa to review available information.

Action: The Board of Supervisors will consider the Planning Director’s action and the appeal. The Board of Supervisors will consider adoption of a Resolution granting or denying the appeal.

Written comments may be submitted now, and at any time during the public review period up to, and including, the public portion of the public hearing time. Comments received prior to completion of the staff report will be included and directly addressed in the Staff Report. Comments received prior to the Board of Supervisors’ hearing will be copied and given to the Supervisors.

You will not receive any further notice regarding the Board of Supervisor’s action unless you request such information.

This action of the Board of Supervisors is the final county action on this appeal. Please be advised that any concerns or issues relating to the appeal must be raised during the public review process described in this notice, if those issues are to be used for the basis of a future court challenge. If you challenge the action of the Board of Supervisors to grant or deny Appeal No. 2010-082 in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board of Supervisors at, or prior to, the public hearing.

Sincerely,

Damon Golubic
Mariposa Planning
NOTICE OF PUBLIC HEARING

The Hornitos Land Company, LLC submitted Certificate of Compliance Application No. 2009-037 to the Planning Department with the intent of recognizing six (6) parcels in the town of Hornitos. The Planning Department processed two (2) of the six (6) Certificates of Compliance requests recognizing two parcels. It is the appellants’ position that there is information submitted that supports their request to have two (2) additional Certificates of Compliance processed as part of their request. They are pursuing recognition of Lots 90 - 1/4 and 90 - 7/8 located within APN 011-080-010. On 6/8/10, the Planning Director made a determination that did not support the property owners' position. This matter was originally scheduled to be heard by the Board of Supervisors on Tuesday October 26, 2010. On October 26, 2010, the Board of Supervisors formally continued this matter to their meeting on Tuesday November 23, 2010.

The agent for the project, Starchman and Bryant Attorneys at Law, appealed this determination on behalf of the applicant to the Board of Supervisors (Appeal No. 2010-82) and a public hearing will be conducted on the appeal.

**Board of Supervisors Hearing Date:** Tuesday, November 23, 2010  
**Hearing Time:** 2:00 p.m.  
**Hearing Location:** Mariposa County Government Center  
5100 Bullion Street, Mariposa, California

**Action:** The Board of Supervisors will consider the Planning Director’s action and the appeal. The Board of Supervisors will consider adoption of a resolution granting or denying the appeal.

This is the final county action on this appeal. Please be advised that any concerns or issues relating to the appeal must be raised during the public review process described in this notice, if those issues are to be used for the basis of a future court challenge. If you challenge the action of the Board of Supervisors to grant or deny Appeal No. 2010-82 in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board of Supervisors at, or prior to, the public hearing.

Written comments may be made and submitted at any time during the public review period up to, and including, the public portion of the public hearing time. Letters or written comments submitted after the public input time of the public hearing will become part of the file.
documents, but will not become part of the record unless the public input time is reopened. You may submit written comments to P.O. Box 2039 Mariposa CA 95338.

Please contact Damon Golubics at Mariposa Planning, (209) 742-1250 to discuss your concerns, or for more information on the appeals or the Board of Supervisors meeting. E-mail may be sent to dgolubics@mariposacounty.org

This notice is being provided pursuant to Section 17.132.020 of the Mariposa County Code.

Posting Locations: Mariposa County Clerk’s Office
Mariposa County Courthouse
Mariposa County Planning Department
Hornitos Post Office
www.mariposacounty.org/planning

Posting Date (mailed to Post Office): 11/05/10 • Leave Posted Until: 5:00 p.m. 11/23/10
NOTICE OF PUBLIC HEARING

The Horntos Land Company, LLC submitted Certificate of Compliance Application No. 2009-037 to the Planning Department with the intent of recognizing six (6) parcels in the town of Horntos. The Planning Department processed two (2) of the six (6) Certificates of Compliance requests recognizing two parcels. It is the appellants' position that there is information submitted that supports their request to have two (2) additional Certificates of Compliance processed as part of their request. They are pursuing recognition of Lots 90 - 1/4 and 90 - 7/8 located within APN 011-080-010. On 6/8/10, the Planning Director made a determination that did not support the property owners' position.

The agent for the project, Starchman and Bryant Attorneys at Law, appealed this determination on behalf of the applicant to the Board of Supervisors (Appeal No. 2010-82) and a public hearing will be conducted on the appeal.

Board of Supervisors Hearing Date: Tuesday, October 26, 2010
Hearing Time: 2:00 p.m.
Hearing Location: Mariposa County Government Center
Mariposa, California

Action: The Board of Supervisors will consider the Planning Director's action and the appeal. The Board of Supervisors will consider adoption of a resolution granting or denying the appeal.

This is the final county action on this appeal. Please be advised that any concerns or issues relating to the appeal must be raised during the public review process described in this notice, if those issues are to be used for the basis of a future court challenge. If you challenge the action of the Board of Supervisors to grant or deny Appeal No. 2010-82 in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board of Supervisors at, or prior to, the public hearing.

Written comments may be made and submitted at any time during the public review period up to, and including, the public portion of the public hearing time. Letters or written comments submitted after the public input time of the public hearing will become part of the file documents, but will not become part of the record unless the public input time is reopened. You may submit written comments to P.O. Box 2039 Mariposa CA 95338.
Please contact Damon Golubics at Mariposa Planning, (209) 742-1250 to discuss your concerns, or for more information on the appeals or the Board of Supervisors meeting. E-mail may be sent to dgolubics@mariposacounty.org

This notice is being provided pursuant to Section 17.132.020 of the Mariposa County Code.

Posting Locations: Mariposa County Clerk's Office
Mariposa County Courthouse
Mariposa County Planning Department
Hornitos Post Office
www.mariposacounty.org/planning

Posting Date (mailed to Post Office): 10/07/10 • Leave Posted Until: 5:00 p.m. 10/26/10
PROJECT VICINITY MAP

PROJECT #: 2010-082
PROJECT TYPE: Appeal of Certificate of Compliance No. 2009-037
AGENT: Anita Starchman Bryant, Starchman & Bryant Attorneys at Law
APPLICANT: Hornitos Land Co, LLC C/O Steve Sloan
APN: 011-080-010
SITE ADDRESS: Unassigned
MAP CREATED ON: OCTOBER 5, 2010
DATA SOURCE: PARCEL MAP FROM MARIPOSA COUNTY ASSESSOR'S MAP; AUGUST 2010 UPDATE
MAP CREATED BY: EE MERIAM, GIS TECHNICIAN

MARIPOSA COUNTY PLANNING DEPARTMENT
PO BOX 2039 5100 BULLION STREET
MARIPOSA, CALIFORNIA 95338-2039
209.996.5151 FAX 209.742.5924
MARIPOSAPLANNING@MARIPOSACOUNTY.ORG
HTTP://WWW.MARIPOSACOUNTY.ORG/PLANNING

MARIPOSA COUNTY MAKES NO WARRANTY REGARDING THE ACCURACY OF THE GIS OR THE ANALYSIS AND CONCLUSIONS RESULTING FROM USING OUR GIS DATA.
RECOMMENDED ACTION AND JUSTIFICATION:

Approve format of resolution granting Appeal No. 2010-82 with the Planning Director’s action regarding a portion of Certificate of Compliance No. 2009-037 for six (6) Certificates of Compliance for property located:

Justification is provided in the draft resolution.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

None

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Modify format including findings for action.

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

Amount in Budget: $  
Additional Funding Needed: $  
Source:  
Internal Transfer  
Unanticipated Revenue  
Transfer Between Funds  
Contingency  
( ) General ( ) Other  

Staff Memorandum to the Board with Exhibit:

A. Draft Board of Supervisor’s Resolution

________________________
________________________
________________________
________________________

CLERK’S USE ONLY:

Res. No. 09-553  
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: 

________________________
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________________________
________________________

CAO: 

________________________
MEMORANDUM

Date: November 29, 2010
To: Board of Supervisors
From: Damon Golubics, Senior Planner
RE: Appeal No. 2010-82

At the November 23, 2010 Board of Supervisor’s meeting, the Board adopted a Resolution granting Appeal No. 2010-82 and overturning the Planning Director’s determination regarding a portion of Certificate of Compliance Application No. 2009-037 for six (6) Certificates of Compliance.

Per the Board’s direction, staff has prepared a draft resolution reflecting the decision to reverse the Planning Director’s determination that the grant deed was like a Lot Line Adjustment. Thus the Planning Director shall approve unconditional Certificates of Compliance for Lots 90-1/4 & 90-7/8.

ATTACHMENTS:

Draft Board of Supervisor’s Resolution
A resolution granting Appeal No. 2010-82 with findings, and overturning the Planning Director's determination regarding a portion of Certificate of Compliance Application No. 2009-037 for six (6) Certificates of Compliance for property located within APN 011-080-010 and located east of Bear Valley Road in the town of Hornitos

WHEREAS, Certificate of Compliance Application No. 2009-037 was submitted on the 6th day of March, 2009 by Hornitos Land Company, LLC, c/o Steve Sloan and Starchman and Bryant Attorneys at Law; and

WHEREAS, the application requested six (6) Certificates of Compliance for acreage known as APN 011-080-010, a 27.90 acre APN located at the end of Bauer and Water Streets in the town of Hornitos; and

WHEREAS, this application was part of a package involving nine (9) separate applications for Certificates of Compliance and 57 parcels; and

WHEREAS, on June 8th, 2010, the Planning Director sent a letter to the applicant and agent indicating that 2 Certificates of Compliance could be approved for Lots 92 and 93, however, 4 of the proposed Certificates of Compliance could not be approved based on the information submitted with the application; and

WHEREAS, the Planning Director determination found that the indenture conveying Lots 90-1/4 and 90-7/8 was like a Lot Line Adjustment; and

WHEREAS, the Planning Director correspondence written on the 8th day of June, 2010 identified options for continued processing but the agent for the applicant appealed the Planning Director determination; and

WHEREAS, on the 28th day of June 2010 an appeal of the Planning Director's action on a portion of Certificate of Compliance Application No. 2009-037 for six (6) Certificates of Compliance was made to the Board of Supervisors. That appeal was accepted as complete for processing on the 29th day of June 2010 and that appeal is known as Appeal No. 2010-82; and

WHEREAS, processing of Appeal No. 2010-82 was conducted pursuant to Mariposa County Resolution No. 10-42; and
WHEREAS, a duly noticed Board of Supervisors public hearing to consider Appeal No. 2010-82 was scheduled for the 26th day of October 2010; and

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

WHEREAS, the Board of Supervisors continued Appeal No. 2010-82 from the 26th day of October 2010 to the 23rd day of November 2010.

WHEREAS, at a public hearing on the 23rd day of November 2010, the Board of Supervisors considered all of the information in the public record, including the Staff Report packet, correspondence and testimony presented by the public concerning the Planning Director Determination, the Notice of Appeal, case law language and the comments of the property owner and appellant pertaining to Appeal No. 2010-82; and

WHEREAS, the Board of Supervisors gave particular consideration to a grant of Hornitos Townsite Lots 90-1/4 and 90-7/8; both of these two “lots” were granted to Gagliardo and Co. in one indenture, recorded in Book 1 at Page 85 by the original “developers” of the town of Hornitos on April 11, 1899.

NOW, THEREFORE, BE IT RESOLVED THAT, the Board of Supervisors of the County of Mariposa does hereby grant Appeal No. 2010-82 and overturn the Planning Director’s determination regarding a portion of Certificate of Compliance Application No. 2009-037 involving Lots 90-1/4 and 90-7/8.

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

1. The indenture recorded in Book 1 at Page 85, Mariposa County Records, grants Hornitos Townsite Lots 90-1/4 and 90-7/8 from one party to another party.
2. The indenture refers to the lots as “those two certain pieces or parcels of land”.
3. Lot 90-1/4 and Lot 90-7/8 are not contiguous.
4. The indenture is a “grant deed” recorded prior to March 4, 1972 based upon text within the document to “grant” and “convey”.

BE IT FINALLY RESOLVED THAT, based upon this action to grant Appeal No. 2010-82 and overturn the Planning Director’s determination, the indenture recorded in Book 1 at Page 85, Mariposa County Records is not like a Lot Line Adjustment. Therefore, the Planning Director can and shall take action to grant two unconditional Certificates of Compliance to Lots 90-1/4 and 90-7/8.

ON MOTION BY Supervisor Allen, seconded by Supervisor Turpin, this resolution is duly passed and adopted this 23rd day of November, 2010 by the following vote:

AYES: Allen, Turpin and Cann

NOES: Aborn and 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
On Friday December 3, 2010, it was brought to the attention of staff that there was a perceived error on circle page 2 of the draft resolution. As is it pertains to the 7th “whereas,” the following correction should be considered by the Board of Supervisors prior to adoption of this resolution. The recommended changes are shown in italicized underlined type and deleted text shown in strike-thru type:

WHEREAS, on the 29th 28th day of June 2010 an appeal of the Planning Director’s action on a portion of Certificate of Compliance Application No. 2009-037 for six (6) Certificates of Compliance was made to the Board of Supervisors, That appeal was accepted as complete for processing on the 29th day of June 2010 and that appeal is known as Appeal No. 2010-82; and

This revision should bring added clarity to the draft resolution prior to formal adoption by the Board of Supervisors.
TO: KRS SCHENK, Planning Director
FROM: MARGIE WILLIAMS, Clerk of the Board

RES. 10-543

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on November 23, 2010

ACTION AND VOTE:

15

Planning
PUBLIC HEARING to Consider Appeal No. 2010-82, an Appeal of the Planning Director’s Determination Regarding a Portion of Certificate of Compliance Application No. 2009-037 for Six (6) Certificates of Compliance. Property Owners and Appellants: Hornitos Land Company LLC/Steve Sloan. Project Site is APN 011-080-010; Located at the end of Bauer Street in the Town of Hornitos

BOARD ACTION: Chair Cann reviewed the hearing process. Kris Schenk introduced the appeal. Sarah Williams, Deputy Planning Director, was present. Damon Golubics, Senior Planner, presented the staff report; including review of the processing of the Certificates of Compliance for this applicant; advising that the Hornitos Land Company has appealed the Director’s decision regarding two triangular pieces of land that staff does not feel should be legal parcels; staff found that the two lots in question (lots 90-1/4 and 90-7/8) have always been conveyed together with lot 92; and he advised of correspondence received from George and Linda Meyer expressing concern, petitions with signatures by residents of Hornitos urging denial of the appeal, and a letter received from MERG expressing concerns. He advised of options available to the Board for action, including the possibility of merger of the lots with lot 92.

Appellants Presentation:
Anita Starchman Bryant, Starchman & Bryant Law Offices, advised that she is representing the property owner/appellant – Hornitos Land Company. She addressed the staff report relative to the two parcels in question (90-1/4 and 90-7/8) always being conveyed together with lot number 92; and she advised that lot 92 was
granted out in 1871 and it was separately conveyed out. Later in 1899, lots 90-1/4 and 90-7/8 were granted out. So the three have been conveyed in legal documents as three parcels described as 90-1/4, 90-7/8 and 92 since that conveyance in 1899, but they have not always been conveyed together. She referred to the option staff provided that the Board can make a determination to merge 90-1/4 and 90-7/8 with 92; and she advised that the Board cannot require that—that would be an involuntary merger and the County does not have that ordinance in place. The Board can provide that as an option if it finds that they were not legally created; but these parcels are legally created. She asked that all testimony today be restricted to the issues of the appeal; that she would like to reserve the right in rebuttal to call experts, Don Starchman and Rick Lobaugh/Inter-County Title Company President, in response to comments made by the opponents to the appeal; and she would like to reserve the right to reopen the public hearing should any new information be brought up by staff or questions or testimony be brought up by the Board that have not been addressed. She reviewed her written presentation that she gave to the Board, including deed information for lots 90-1/4 (which is about ¼-acre) and 90-7/8 (which is about .68-acre); what a Certificate of Compliance is and noted that she has not seen a finding from staff that the parcels were created illegally; criteria for determining parcel legality based on the deed; facts and case law concerning the creation of the parcels by deed versus a map and noted that these are two non-contiguous parcels that are separately described and created by 1899 deed; reviewed their objections to the Planning Director’s determination; and summarized her conclusions and stated she feels the Certificates of Compliance should be issued immediately. She responded to questions from the Board relative to the ownership of parcels 090 and 100 to the left of the subject property and advised that it is under separate ownership; and relative to the location of the Meyer property and advised that she does not know.

**Speakers in Support of the Appellant:**

Rick Lobaugh stated he insured the title to the subject property when it was purchased by Hornitos Land Company. He addressed the issues raised in the letter from MERG relative to the title, and relative to being able to research when the property was granted by the Trustees of Hornitos—ownership was granted in fee title. He feels the title to the lots is good for Hornitos Land Company.

**Speakers in Opposition to the Appellant:** None

The public portion of the hearing was closed for the Board to commence with deliberations.

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

Don Starchman, Starchman & Bryant Law Offices, noted that the document used to transfer ownership was an “Indenture” and that the Courthouse was granted by an “Indenture” – and this should not affect the title. He referred to the merger option that was mentioned and stated he does not feel that is an option. He referred to issues raised in the Meyer letter relative to the history of the property and the possibility that survey errors were being corrected; and he advised that these parcels were deeded separately and are separate legal parcels and he does not feel that there is any discretion involved in this. He commented on merger of parcels in subdivisions.

The public portion of the hearing was closed and the Board commenced with deliberations. Staff responded to questions from the Board relative to parcel 93 and the difference in title in relation to 90-1/4 and 90-7/8; relative to the concept of ministerial responsibility and staff’s finding that there is no deed for these parcels; relative to deed and indenture documents and whether there are differences since the language is similar; relative to accepting an indenture for the Courthouse; relative to the status of other land that was divided and stayed with one owner; relative to the separate conveyance of the two lots in question; whether action on 90-1/4 and 90-7/8 would affect adjoining property; clarification that issuance of a Certificate of Compliance does not insure that each piece of property is developable; whether there
have been other situations like this in the Hornitos; relative to the topography — whether drainage goes through lot 90-7/8; relative to the history of the lots and the suggestion of lot line adjustments and whether there is anything else in the maps that were presented in the staff report where other pieces of land in this situation were given parcel numbers; what documents would have been acceptable to Planning; whether there was new information contained in the appellant’s presentation that was not provided to Planning for making its determination; whether subsequent lot line adjustment(s) can be applied for if the Certificates of Compliance are issued; as to how lots 90-5/8, 90-1/2 and 90-3/8 are described; and whether the appellant owns all three parcels — 90-1/4, 90-7/8 and 92.

Rick Lobaugh responded to questions from the Board relative to the Title Company’s research and recognition of the indenture in the title search as being similar to a deed, and he advised that he considers the indenture to be the same as a deed as the same words are used in the documents. He insured the parcels separately. The “Indenture” is just the heading of the document. He responded to questions as to whether he has seen two parcels listed on the same deed in the past, and advised that this occurs when people buy two parcels in a subdivision, but it does not merge the parcels — they are still two separate parcels. He responded to a question as to what would happen if the Board questions the validity of the documents — he feels this is a good, valid transfer deed.

Anita Starchman Bryant noted that the deed used to transfer lot 93 was the exact same form that was used for lots 90-1/4 and 90-7/8; and she presented the Board with a copy of the 1971 indenture and read its language. She referred to the fractions used in numbering the lots and does not feel that should make a difference in this matter. She asked if staff would have issued Certificates of Compliance if there were separate deeds for 90-1/4 and 90-7/8. She noted that these are two separate parcels that do not touch each other, and she suggested that perhaps they were put together in the document to save recording costs. She noted that lot 93 contains drainage area and that was not considered by staff when they issued the Certificate of Compliance and that there are smaller lots than these. She does not feel that the chain of title matters because these lots were never merged. There is no discretion to consider future developability, and her client’s plans for the parcels has nothing to do with the law today — this is not a discretionary decision, it is a ministerial act. She responded to a question from the Board relative to the number 90 used in the parcels and advised that it was not applicable to this appeal and she has not reviewed that.

Following discussion, (M) Allen, (S) Turpin, Res. 10-543 was adopted granting Appeal No. 2010-82, and reversing the Planning Director’s determination that there is not sufficient evidence to support unconditional Certificates of Compliance for lots 90-1/4 and 90-7/8. Supervisors Bibby and Aborn commented on the maps and the history of the configuration of the parcels. Ayes: Turpin, Cann, Allen; Noes: Aborn, Bibby. Sarah Williams asked about preparing a document to formalize this action — it is to be scheduled for the Consent Agenda. The hearing was closed.

Cc: Steven W. Dahlem, County Counsel
File