

DEPARTMENT: Planning

By: Jean Clark, Associate Planner

Phone: 966-5151

**RECOMMENDED ACTION AND JUSTIFICATION:**

(Policy Item: Yes\_\_ No X)

Adopt a resolution denying Appeal No. 2000-4, upholding the Planning Commission's approval of Land Division Application No. 1519 with conditions, and modifying condition of approval No. 3.

Recommended action is based upon County authority to apply conditions to land division projects, and further staff/surveyor's review of conditions in the field.

**BACKGROUND AND HISTORY OF BOARD ACTIONS:**

None.

**LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

**ALTERNATIVES:**

Grant the appeal and modify the Planning Commission's conditions of approval pursuant to some of all of the appellants' issues

NEGATIVE ACTION, to Deny the appeal or to take no action on the appeal would mean the Planning Commission's conditions of approval of the land division are unchanged

**COSTS:** ( X ) Not Applicable

- A. Budgeted current FY \$ \_\_\_\_\_
- B. Total anticipated Costs \$ \_\_\_\_\_
- C. Required additional funding \$ \_\_\_\_\_
- D. Internal transfers \$ \_\_\_\_\_

**COSTS:** ( ) 4/5th Vote Required

- A. Unanticipated revenues \$ \_\_\_\_\_
- B. Reserve for contingencies \$ \_\_\_\_\_
- C. Source description: \_\_\_\_\_

Balance in Reserve Contingencies, If Approved:  
\$ \_\_\_\_\_

**SPECIAL INSTRUCTIONS:**

List the attachments and number the pages consecutively:

Memorandum to Board with Attachments:

- A. Appellants' Notice of Appeal
- B. Planning Commission Minutes, 8/18/2000
- C. Planning Commission Minutes, 9/22/2000
- D. Staff Report to Planning Commission 8/18/2000
- E. Conditions That Currently Apply to the Project
- F. Maps
- G. Correspondence

**CLERK'S USE ONLY**

Res. No.: 01-25 Ord. No.: \_\_\_\_\_

Vote - Ayes: \_\_\_\_\_ Noes: \_\_\_\_\_

Absent: \_\_\_\_\_ Abstained: \_\_\_\_\_

Approved  Denied

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

By: \_\_\_\_\_

Deputy

**ADMINISTRATIVE OFFICER'S RECOMMENDATION:**

This item on agenda as:

- \_\_\_\_\_ Recommended
- \_\_\_\_\_ Not Recommended
- \_\_\_\_\_ For Policy Determination
- \_\_\_\_\_ Submitted for Comment
- \_\_\_\_\_ Returned for Further Action

Comment: \_\_\_\_\_

A.O. Initials:



# COUNTY of MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222  
DOUG BALMAIN, CHAIRMAN  
ROBERT C. STEWART, VICE-CHAIRMAN  
PATTI A. REILLY  
GARRY R. PARKER  
BOB PICKARD



## MARIPOSA COUNTY BOARD OF SUPERVISORS

### MINUTE ORDER

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TO: ERIC TOLL, PLANNING DIRECTOR  
FROM: MARGIE WILLIAMS, Clerk of the Board  
SUBJECT: APPEAL NO. 2000-4; LDA NO. 1519  
TOMLIN, APPLICANTS; BROWER, APPELLANTS  
Res. No. 01-25

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THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,

ADOPTED THIS Order on January 23, 2001

#### ACTION AND VOTE:

Eric Toll, Planning Director;

A) **PUBLIC HEARING** to Consider Appeal of Planning Commission's Conditions of Approval for Land Division Application No. 1519 Regarding Access Easements, Lack of Road Maintenance Association and Paving for Coyote Court, and Lack of Assurance of Water for LDA 1519; Tomlin, Applicants; Brower, Appellants

**BOARD ACTION:** Eric Toll advised that the only area of discretion that the Board has in the appeal is relative to issues associated with the road. Jean Clark, Associate Planner, presented the staff report and reviewed the issues raised in the appeal, as well as the Planning Commission and staff's recommendation for changes in the width of the easement. Staff responded to questions from the Board relative to whether the 60-foot easement allows adequate access for the Browers; which parcels are in the existing Zone of Benefit and options for the homeowners association; and change in the location of the cul de sac from the preliminary map to the recorded map. Jerry Freeman, PWD/Surveyor, provided input relative to the survey and calculations for the cul de sac and the existing access for the parcel. Staff responded to additional questions from the Board relative to the location of existing residences and the driveway to the parcel in question; status of the subdivision and size of the parcels; and the location of the cul de sac.

Public portion of the hearing was opened. Input was received from the following:

#### Appellants:

John Jamison, Attorney at Law representing the appellants, stated the appellants are asking for access to their parcel. He feels that when the subdivision was first created, it did not provide for adequate access to the Brower parcel. He advised that they have a declaration from the previous property owner (Vaughn) relative to the intent to provide access, and that this subject driveway has been used to access his

clients property since 1984. He stated they are asking for a 30-foot easement along the boundary line between parcels "A" and "B" which he feels is consistent with the use of the property. Attorney Jamison responded to a question from the Board relative to the Planning Commission's approval of a 30-foot easement. Attorney Jamison continued with his appeal presentation citing a notation on the subdivision map relative to the existing road. He stated he does not feel that what is being recommended can comply with the Fire Safe Standards for the grade for a driveway. Attorney Jamison responded to a question from the Board relative to the recommendation that allows the applicant access to the property, and he stated he still does not feel they could comply with the regulations restricting the steepness of a driveway. He stated he feels the problem needs to be corrected in a manner that allows the applicant to construct a driveway that meets all requirements. He stated he felt conditions should have been met for access before approving the final map. He stated they are not asking for the type of access required to subdivide the property, just a 30-foot easement where the driveway currently exists.

Frank Tena commented on dust problems with the road and impacts increased density would have with a subdivision. However, he feels the people that have been using the road should be allowed to continue to do so.

Barbarann Thompson stated she is not opposed to the subdivision, just to trying to keep the appellants from access to their property. She stated the road was in existence when the applicant purchased the property and it does not affect the usefulness of the property. She stated that constructing another road near the existing driveway may cause drainage problems. She also stated that she does not understand why the appellants would be denied access on the driveway at this time to their property – she feels that is unneighborly.

#### Applicants:

Don Starchman, Starchman Law Offices, stated he is representing the Tomlins/applicants. He stated access to the appellants has never been denied. The appellants have been there a couple of years and his clients have owned the property for eight years, and they have allowed access. This became a problem when they wanted to raise horses. He noted that the existing driveway goes into the Tomlin property up to 30 and 40 feet in places, and it does not always parallel the property boundary. He referred to the location of the easement versus the existing roadway on the map. He noted that there is an easement, but there is no reservation for a roadway in the grant deed. He presented documents to County Counsel relative to the easement on the parcel maps. He stated the appellants were aware of the problem before they took title, and it is his understanding that the seller because of this made compensation. He stated this is not a part of the parcel map, and this is correcting a problem from when the original map was created. He noted that if this map does not go forward, the appellants will not get a solution to an existing problem that his clients had nothing to do with. He stated there is no provision for the Board to make a requirement that the appellants have access on the existing roadway – there is no provision in the law for a public taking for a private good. He noted that the appellant is quoted in the Planning Commission minutes as not having a problem with the project as long as she is not landlocked, and he noted that it is his understanding that there is also access to the property from the backside. He stated he does not feel that his clients can be forced to meet the State Fire Safe Standards requirements that were not in affect at the time this map was recorded. He noted the Planning Commission previously approved the map and the time ran before it was recorded, and they have resubmitted it. He commended staff for their work on the project and for their presentation on this appeal. He stated they are in agreement with staff recommendations and they will meet all requirements and conditions, and they will go along with the additional recommendation by staff for the easement, which is above and beyond what the Commission required for access. Attorney Starchman responded to questions from the Board relative to the location of the parcels involved in this project; the original subdivision and the creation of the Coyote Court cul de sac being short of parcel "A" and their offer to extend the easement to reach parcel "A."

Helen Kwalwasser, mother of Debbie Tomlin/applicant, stated she originally purchased the property from Ken Vaughn in the original subdivision. She disagreed with having the driveway in question shown on the parcel map and the seller agreed to remove it. After awhile, use of the driveway was discontinued for two years, and it eroded and washed out part of driveway which her daughter had to correct. She stated there is another access off of Silva Road to the property. She noted that she did not create this mess, and that when the Browsers purchased the property they were aware that this was not an access. She feels that the County should not force them to grant access.

**Appellant's Rebuttal:**

Attorney Jamison referred to the reservation of the easement and the documents that Attorney Starchman provided to County Counsel, and he referred to the grant deed from Vaughn to Kwalwasser and the easement wording. He also referred to the last correspondence received from the applicant and he stated he does not feel there is very much room for negotiation. He stated a 75-foot turn-around will not solve the problem. He offered to indemnify and hold the County harmless if a 30-foot easement is offered along the driveway, and they would pay for a survey of the easement. Attorney Jamison responded to a question from the Board as to whether a lot line adjustment has been discussed with the applicant. He requested a recess to discuss these issues with Attorney Starchman, and he responded to another question from the Board relative to the assertion that the parcel is landlocked. Eric Toll stated if the attorneys reach an agreement, it would not have an impact on the appeal, because the County can not require the easement.

Public portion of the hearing was closed.

**3:15 p.m.** Recess

**3:34 p.m.** The Board was advised that the attorneys did not reach an agreement. Staff responded to a question from the Board relative to clarification of the options for modifying the easement. Board commenced with deliberations. (M)Pickard, (S)Stewart, Res. 01-25 adopted denying the appeal, upholding the Planning Commission's approval of Land Division Application No. 1519, and modifying condition No. 3 to provide for a 75-foot easement for access to the adjacent (appellants') parcel as recommended by staff. Jeff Green, County Counsel, responded to a question from the Board as to whether there is any change in his opinion from the Planning Commission's hearing on this matter. Ayes: Reilly, Balmain, Stewart, Pickard; Excused: Parker. Hearing was closed.

cc: Jim Petropulos, Public Works Director  
File