



COUNTY OF HUMBOLDT

For the meeting of: 4/5/2022

File #: 22-396

To: The Humboldt County Board of Supervisors

From: Planning and Building Department

Agenda Section: Time Certain Matter

SUBJECT:

10:00 AM Public Hearing - Dany Avi-David Appeal of Planning Division Denial of a proposed Lot Line Adjustment

RECOMMENDATION:

That the Board of Supervisors:

1. Open the public hearing and receive the staff report, testimony by the appellant (applicant), and public; and
2. Close the public hearing; and
3. Adopt the attached Resolution to take the following actions:
 - a. Find that the Application is exempt from CEQA under Statutory Exemption 15270 as a project that is denied; and
 - b. Find that the application does not qualify for a Lot Line Adjustment because it is inconsistent with the General Plan and Zoning Ordinance; and
 - c. Deny the Appeal of the Planning Director's Decision and Deny the Lot Line Adjustment; and
4. Direct the Clerk of the Board to give notice of the decision to the appellant, the Planning and Building Department, and any other interested party.

SOURCE OF FUNDING:

The appellant has paid the fee associated with filing this appeal.

DISCUSSION:

Executive Summary

This is an appeal of the Humboldt County Planning and Building Department's February 23, 2022, denial of a proposed Lot Line Adjustment between two assessor parcels. One of the parcels involved (APN 107-272-006) was created as an open space parcel providing recreation and river access to all other properties in the subdivision. This is not a developable parcel. The purpose of the LLA is to expand the parcel area to create a development pad for the parcel. The property has a B-6 overlay which limits the number of building sites to that shown on the Final Subdivision Map. The purpose of

this Lot Line Adjustment is to create a new developable lot and new building site area which is inconsistent with the B-6 combining zone regulations. Lot Line Adjustments must be consistent with the General Plan and Zoning and this proposal is not consistent with the General Plan or Zoning Regulations and thus is not eligible for a Lot Line Adjustment.

BACKGROUND

The two parcels included in the application are APN 107-272-005 which is 48.36 acres in size and APN 107-272-006 which is 8.76 acres. APN 107-272-006 was created as a recreation easement for other properties in the subdivision. The parcels are held under different ownerships. APN 107-272-005 is currently developed with two residences and multiple agricultural structures including a barn, shop, sheds, and cannabis greenhouses. APN 107-272-006 has a small, unpermitted shed, and previously had unpermitted cannabis cultivation occurring in the Streamside Management Area (SMA) of the Mattole River. The purpose of this Lot Line Adjustment is to move the current shared boundary to create a second developable lot which complies with zoning ordinance requirements, specifically Streamside Management Area (SMA) setbacks, for a proposed cannabis project on the newly reconfigured parcel.

A. Honeydew Land Unit 1 Subdivision

The parcels were created by the Honeydew Land Unit 1 Subdivision approved by the Planning Commission on August 19, 1976, approved the creation of 20 lots and one parcel ("Lot A") for common ownership (Attachment 4). The Honeydew Land Unit 1 Subdivision was approved with a condition requiring that prior to recordation of the Final Map the property be rezoned. "*The subdivision shall be zoned to a minimum parcel size as indicated on the map using B-6 combining zone. It is recommended that an exclusive agriculture zone (AE) be the primary zone*" (Attachment 5). The intent of the B-6 combining zone designation is to identify the building site areas as indicated on the subdivision map of record and to preclude further subdivision. The approval of Ordinance 1114 (Attachment 9) rezoned the subject property and other lands in the subdivision as AE-B-6 and AG-B-6 on December 14, 1976. The final subdivision map was approved by the Planning Commission on May 17, 1978 (Attachment 8).

The Staff Report details the intent of the B-6 combining zone designation in the Findings and Conditions of Approval (Attachment 4). Finding #1 confirms that the rezone of the Honeydew Land Unit 1 Subdivision is consistent with the General Plan and Specific Plans pursuant to Sections 66473.5 and 66474 of the Subdivision Map Act. Finding #2 states, "*Further subdivision of these parcels shall not be approved based on the facts that, (1) Public services are not available, and (2) the site location is not sufficiently close to an urban area to justify further development.*"

The record is clear that in approving the Tentative Subdivision Map the County did not want to see any additional developable parcels created in this area (Attachment 7). The B-6 zoning overlay on the property is a permanent monument to reflect this intent.

ANALYSIS

The Subdivision Map Act, Section 66412(d) "*limits local discretion to determining only if the Lot Line*

Adjustment conforms to the General Plan, the local Zoning Ordinance, and Building Ordinance". The proposed LLA is not in conformance with the Humboldt County Zoning Ordinance in two areas. First, (HCC) Section 314-7.1 Agriculture Exclusive (AE) zone has a minimum parcel size of 60-acres. The current lot size of APN 107-272-005 is 48.36-acres, and the proposed Lot Line Adjustment would subtract 8.4-acres to be added to APN 107-272-006. The parcel is already non-conforming, and a further reduction would further increase the severity of an existing non-conforming parcel in the AE zone.

The HCC Section 325.5-6(c) provides a finding for approval of Lot Line Adjustment. The required finding states, *"the proposal neither causes non-conformance nor increases the severity of preexisting nonconformities with zoning and building ordinances. Providing compliance with this subsection, the approval shall not be conditioned on correction or preexisting non-conformities with zoning and building ordinances"* This finding cannot be made in the affirmative as this proposal would result in increasing the severity of a non-conforming parcel size.

HCC Section 314-17.1 B-6 Special Building Site combining zone places limitations on the number of building sites which may be created states, *"the building site area as shown on the subdivision maps of record."* The language of this does not limit the number of parcels, but rather states the building sites cannot be increased. This language is intentionally in the Zoning Ordinance to address circumstances such as this where there is a desire to change property boundaries to convert a parcel not intended for development into a developable parcel. The purpose of the B-6 overlay was to preclude the creation of new developable parcels. Taking property from one parcel and adding land to another undevelopable parcel is inconsistent with this provision. This proposal is for the purpose of creating development area for a parcel that is not intended for development. This is inconsistent with the B-6 overlay which limits development to the building sites shown on the Final Map. The Final Map shows this parcel is encumbered with an easement for access to the river to the benefit of the other lot owners of the subdivision map. The LLA would create a new building site which is inconsistent with the Zoning Ordinance.

The proposed LLA is not in conformance with the Humboldt County General Plan (General Plan), Chapter 10, the Conservation and Open Space Elements, Section 10.2.5, Standard No. CO-S2 and CO-S5. CO-S2 identifies lands designated as Agricultural Exclusive as resource lands and both parcels are designated Agricultural Exclusive. CO-S5 is the standard for Lot Line Adjustments on Resource Lands and states, *"Lot line adjustments for lands planned for resource production may be allowed to create logical management units where densities are met and there is no resulting increase in the number of building sites."* The approval of this Lot Line Adjustment would create an additional building site where one does not exist; therefore, the project is not in compliance with the General Plan.

The appellant filed a timely appeal of the Planning and Building Department's denial on March 1, 2022. The appellant disputes the determination that the project is inconsistent with the Humboldt County Zoning Code and has indicated that denial is not warranted. The appeal is addressed in more detail below.

Appeal

The appellant has presented the following statements in support of the appeal. This report lists the claims, followed by a staff response.

Appeal Issue 1:

The staff report's reliance upon an approved tentative map is inappropriate.

Item 2A of the staff report indicates that an approved tentative map described Lot A as being for common ownership and not for development. However, the actual recorded map contains no restrictions upon the ownership or development of Lot A and there is no reference to common ownership. Furthermore, Lot A is identified as a legal lot in the recorded map. The County surveyor, auditor, clerk, and recorded each executed and acknowledged the map. A tentative, unrecorded map is not properly relied upon by the County or any owners or purchasers of the property. Furthermore, even common area lots in a subdivision can be owned by a single party and often are. Those lots are also typically developable.

Response:

Humboldt County Zoning Code Section 323-5 and 323-6 details the intent of the tentative subdivision map. 323-5 (a) "The Tentative Subdivision Map is essentially a study plan which when approved will serve as a basis for the preparation of a Final Map or Parcel Map." 323-5(b)(13) "The Tentative Subdivision Map shall contain: any area for public use. A Tentative Subdivision Map for a Parcel Map subdivision need not show this information." 323-6(a) (1-2) A subdivider's statement shall be submitted with each Tentative Subdivision Map. The subdivider's statement shall contain the following information: The existing use or uses of the property and the proposed use or uses of the lots including the remainder, if any, with a description of the area or location of each use." The Tentative Subdivision map shows Lot A as "not for residential use."

The final recorded map (Attachment 8) does in fact have a note on Lot A that it is not intended for residential use, but due to the digital scanning capabilities of the late 1970's, the note is very faint. The Appellant states in their response, "even common area lots in a subdivision can be owned by a single party... Those lots are also typically developable." It is correct that a single entity can own common ownership parcel, but that does not inherently mean that the area is developable. The process to confirm if a parcel is developable goes through an extensive research process of site suitability and consistency with zoning regulations. In this case, APN 107-272-006 was created as an easement for recreation and incidental purposes for the surrounding properties in the Honeydew Land Unit 1 Subdivision. It was not assessed for site suitability, i.e., a building site, because it was not created for or developmental purposes ("residential use"). Humboldt County Zoning Code, Section 314-17.1 for the Special Building Site B-6 combination zone states the "Building site area as shown on subdivision maps of record. Front, side, and rear yards to be not less than B-4 requirements unless otherwise indicated on the subdivision map of record". In this specific case, APN 107-272-006 was not created

with a building site.

The Humboldt County General Plan, Chapter 10, the Conservation and Open Space Elements, Section 10.2.5, Standards No. CO-S2 and CO-S5 present a framework of goals and policies for use and protection of the open space assists of the County. *Standard No. CO-S2* identifies lands designated as Agricultural Exclusive as resource lands. Both parcels are designated as Agricultural Exclusive. *Standard No. CO-S5*, Lot Line Adjustments on Resource Lands states “*Lot line adjustments for lands planned for resource production may be allowed to create logical management units where densities are met and **there is no resulting increase in the number of building sites.***”

The proposed project is not consistent with the Humboldt County General Plan or Zoning Ordinance because it would result in the increase/creation of a building site where one does not exist. The Lot Line Adjustment cannot be approved because it does not conform with the Humboldt County General Plan Standards No. CO-S2 and CO-S5, Humboldt County Zoning Ordinance Sections 314-17.1 and 314-7.1, or the Subdivision Map Act, Section 66412(d).

Appeal Issue 2:

The Environmental Health Department Condition of Approval #3 does not support denial.

The County’s reliance upon the Environmental Health Department’s proposed condition of approval #3 in connection with the original subdivision does not support denial of the application. That condition merely says that the parcel was not (at the time of subdivision, prior to any lot line adjustment), suitable for the installation of an individual sewage disposal system. No sewage disposal system is required of this project and that cannot serve as a ground for denial.

Response

The Environmental Health Departments (DEH) imposed condition of approval does in fact support the denial of this application. The recommendation specifically states, “*Parcel (Lot) A is not a building site, it is to be used as access to the Mattole River for all property owners. This parcel is not suitable for the installation of an individual sewage disposal system.*” The Condition of Approval provided by DEH supports Humboldt County Zoning Code, Section 314-17.1 for the Special Building Site B-6 combination zone. “*Building site area as shown on subdivision maps of record. Front, side, and rear yards to be not less than B-4 requirements unless otherwise indicated on the subdivision map of record.*” APN 107-272-006 was not created with a building site on the subdivision map of record because it was not created or intended to be utilized for any development purposes.

This Condition of Approval provided by DEH supports the Planning Division’s decision to deny the proposed Lot Line Adjustment because Lot A was not created with a building site area, because the lot was never intended for developmental purposes. DEH did not review or analyze the parcel as a potential building site because it was not created or intended to be utilized for developed purposes.

Appeal Issue 3:

References to finding from original subdivision, which occurred in 1977, are inapposite.

The County references findings that occurred in connection with the original subdivision, in 1977 about the proximity of public services and other items. Beyond the mere fact that this reference is patently absurd, it has no bearing upon the issue at hand. Further subdivision is not being sought at this time. A lot line adjustment and zoning clearance certificate for agricultural use is being sought.

Response:

The findings detailed in the Staff Report regarding the Honeydew Land Unit 1 subdivision are absolutely critical to this project because this subdivision was created with a B-6 combination zone for all the properties involved in the subdivision. The B-6 combination zone (HCC 314-17.1) states, "Building site area as shown on subdivision maps of record." As mentioned in Appeal Issues 1 and 2, there is no building site on APN 107-272-006, and it is not detailed on the subdivision map of record. This subdivision created 20 developable lots and Lot A (currently APN 107-272-006) as a recreation easement. Most of the lots were nonconforming with respect to lot size; therefore, a Zone Reclassification which established the B-6 combination zone was approved and recorded, and so the area could not be further subdivided in the future. The Findings and the Conditions of Approval detailed in the Staff Report and Staff Report Addenda acknowledge the intent of the AE primary zone and B-6 combining zone in this subdivision.

The findings detailed in the Staff Report regarding the Honeydew Land Unit 1 Subdivision are absolutely critical to this project because this subdivision was created with a B-6 combination zone for all the properties involved in the subdivision. Further subdivision is not authorized because is not consistent with the Subdivision Map Act, General Plan, the Humboldt County Zoning Code.

Appeal Issue 4:

The title report exceptions do not support the County's denial of the application.

The County references certain non-exclusive easements and a reference that Lot A is not for residential use per a recorded map in its denial. Non-exclusive easements have no bearing upon the approval of the property. The person who owns the property with an easement on it can use the property, including the easement area, in any way they want that does not unreasonably interfere with the use of the easement. They can make changes and improvements to the area. As long as this use doesn't prevent the use of the easement by the easement holder, the property owner can use it for any purposes. This is extremely well established in the law (Court cases stated). Enforcement of relative easement rights, in any event, is a civil matter outside the purview of the planning department. The project, if approved, would not prevent use of the easement. Notably, the proposed agricultural uses will occur only in the adjusted portion of land and falls outside of the easement area. These activities would, certainly, not interfere with the use of the easement in any way. Furthermore, this project does not seek a "residential use" of the property.

Response:

The recreation easement on Lot A compromises the entirety of the parcel, not just a portion of the property. The parcel in its entirety is dedicated as recreation access to the Mattole River for the neighboring parcels in the subdivision. The development of the subject property would compromise the use of the recreation easement because the parcel as a whole is the easement, not just a portion of the property. The goal of the proposed lot line adjustment was to create an additional building site area that does not currently exist, so a cannabis cultivation operation could eventually be located on a newly created building site. The fact that the building site area is proposed to be located outside of the existing easement area is not relevant. This proposal would create a new developable building site which is in violation of HCC Section 314-17.1 in that it would cause a non-conformance with the Zoning Ordinance. HCC Section 314-17.1 Special Building Site Combining Zone, B-6, states, "Building site area as shown on subdivision maps of record." The Honeydew Land Unit 1 Subdivision clearly shows that Lot A does not have a building site area. Lot A was not created with a building site area, because the lot was never intended for developmental purposes. The intent of this subdivision does not authorize the creation of additional building sites because the B-6 Combining Zone was added to the entire subdivision area prior to the recordation of the Final Map. The proposed Lot Line Adjustment would create an additional building site area not shown on the subdivision maps of record. The proposed Lot Line Adjustment is not in conformance with the Agricultural Exclusive zone and the B-6 combining zone in the Humboldt County Code, Section 314-7.1, and Section 314-17.1, respectively. The court cases cited in the appeal are not relevant to the denial of the Lot Line Adjustment.

Appeal Issue 5:

The project neither causes non-conformance nor increases the severity of preexisting nonconformities.

The County errantly states that the project would increase the severity of non-conformance by reducing one parcel. However, the Department ignores the reality of the lot line adjustment to reach this conclusion. The surrounding parcels in the subdivision include a number of parcels that are less than 10 acres and, the proposed parcels as adjusted here would each exceed the minimum lot size for the subdivision. There is effectively no change in the alleged con-conformity. While the Lot line adjustment would reduce one parcel size from 48.36-acres to 39.96-acres (Footnote: It is unclear what the minimum lot size actually is, as the minimum parcel size for AE parcel can be as low as 20 acres, and it is unclear from any records that have been provided as to whether this is actually in a 60-acre minimum, as suggested by County Staff), it would increase the other lot size from 8.76-acres to 17.16-acres and the proposed use, an agricultural use, is principally permitted. It is absurd to say that the severity of any preexisting nonconformities would be increased by the proposed lot line adjustment. The County subdivision ordinance requires lot line adjustments to be evaluated for conformance with the zoning and building code as opposed to the general plan (HCC 325.5-6(c)). The zoning code provides for a 20-acre minimum for AE parcels, as opposed to a 60-acre minimum as stated by the Planning Department. Even if a 60-acre minimum were applicable generally to AE parcels, the original subdivision approval permitted lots well below the 39.96-acres proposed here.

Response:

To clarify, APN 107-272-006 is zoned AE and AG with a B-6 combining zone, and APN 107-272-005 is zoned AE with a B-6 combining zone. The minimum lot area for AE is in fact 60-acres (HCC 314-7.1) and the current lot size of this parcel is 48.36-acres, which would be reduced to 39.96-acres. The Honeydew Land Unit 1 Subdivision included the B-6 combining zone for all parcels to not allow any additional building sites to be created. The subdivision resulted in 20 developable lots and Lot A (APN 107-272-006) which was not created for development purposes. The B-6 combining zone was added to ensure that no further subdivision or “building site areas” were created in the subject area. If the County were to recognize APN 107-272-006 as a developable parcel and complete the lot line adjustment to create a “building site area” on that parcel, the end result would be 21 developable lots instead of the 20 that currently exist.

The Humboldt County General Plan, Standard No. *CO-S2* in the same Chapter identifies lands designated as Agricultural Exclusive as resource lands. Both parcels have a land use designation of Agricultural Exclusive. Standard No. *CO-S5: Lot Line Adjustments on Resource Lands* states “*Lot line adjustments for lands planned for resource production may be allowed to create logical management units where densities are met and there is no resulting increase in the number of building sites.*”

Currently, no building site exists on Lot A, so if approved the Lot Line Adjustment will create another building site which would not be in compliance with the Standards *CO-S2* and *CO-S5* of the General Plan, Sections 314-7.1, 314-17.1, 325.5-6(b) of the Humboldt County Zoning Ordinance, and which makes it in violation of Section 66412(d) of the Subdivision Map Act.

Appeal Issue Conclusion:

The recorded map has no stipulation against development of the subject parcel other than noting it is “not for residential use”. The title report exceptions cited by the County do not support denial of this project. The severity of any zoning nonconformities would not be increased by this lot line adjustment and zoning clearance certificate. Zoning clearance certificates and lot line adjustments are ministerial, are not discretionary, and cannot be denied when the application meets the requirements of the applicable regulations. These two applications meet all of the requirements of the applicable regulations and have been wrongfully and unlawfully denied for these and other reasons as will be presented during the appeal.

Response:

The Appellant does not adequately address how the proposed LLA is consistent with the General Plan, Zoning Ordinance, the Subdivision Map Act, or how the project meets the Lot Line Adjustment Project Approval Criteria. Also, the Appellant does not address how the project does not create a greater non-conformity in relation to the zoning regulations. Local jurisdiction has the discretion to deny any project that does not conform to the General Plan, Zoning Ordinance, the Subdivision Map Act, or the Project Approval Criteria.

The findings stated in the Honeydew Land Unit 1 Subdivision Staff Report includes the following recommendations for approval: (1) “Further subdivision of these parcels shall not be approved based on the fact that public services are not available, and the site location is not sufficiently close to an urban area to justify further development.” (2) “In order to implement the above finding, the subdivision shall be zoned to a minimum parcel size as indicated on the map using B-6 combining zone. It is recommended that an exclusive agriculture zone (AE) be the primary zone.”

The Condition of Approval provided by DEH supports the decision to deny the proposed lot line adjustment because the parcel was never intended to have a building site for developmental purposes i.e., residential use. It is true, a single entity or landowner can own a common ownership parcel, but this does not imply that the parcel is suitable for development. The critical findings detailed in the Honeydew Land Unit 1 subdivision are highly significant in the denial of this project because this subdivision created 20 lots with a condition to rezone the property and restrict the creation of additional building sites. Lot A which was not for development but was instead a recreation easement for the remainder of the subdivision lots.

The proposed Lot Line Adjustment is not in compliance with the Subdivision Map Act, Section 66412 (d) “limits local discretion to determining only if the Lot Line Adjustment conforms to the General Plan, the local Zoning Ordinance, and Building Ordinance”. The proposed project is not in conformance with the Humboldt County Zoning Ordinance (HCC) Section 314-7.1 Agriculture Exclusive (AE) zone minimum parcel size of 60-acres or HCC Section 314-17.1 B-6 Special Building Site combining zone which states, “the building site area as shown on the subdivision map of record” and subsequently, no building site exists on the parcel. The project is not in conformance with the HCC Section 325.5-6(c) which states, “the proposal neither causes non-conformance nor increases the severity of preexisting nonconformities with zoning and building ordinances. Providing compliance with this subsection, the approval shall not be conditioned on correction or preexisting non-conformities with zoning and building ordinances” which is clarified in the discussion above. The proposed LLA is not in conformance with the Humboldt County General Plan, Standard No. CO-S2 and CO-S5. CO-S2 identifies lands designated as Agricultural Exclusive as resource lands and both parcels are designated Agricultural Exclusive. CO-S5 is the standard for Lot Line Adjustments on Resource Lands, “*Lot line adjustments for lands planned for resource production may be allowed to create logical management units where densities are met and there is no resulting increase in the number of building sites.*”

Lastly, the proposed Lot Line Adjustment does not conform to the Project Approval Criteria. The Project Approval Criteria for Lot Line Adjustments is, “(1) The project is found to be complete, (2) Either parcel to be adjusted are found to be in compliance with the Subdivision Map Act and local subdivision regulations, or a Conditional Certificate of Subdivision Compliance for the parcel or parcels has been issued for recordation prior to or concurrent with the Lot Line Adjustment, and (3) the proposal neither causes non-conformance nor increases the severity of preexisting nonconformities with zoning and building ordinances. Providing compliance with this subsection, the approval shall not be conditioned on correction or preexisting non-conformities with zoning and building ordinances.”

In conclusion, the grounds for the appeal are not valid and legitimate. The proposed Lot Line

Adjustment does not conform to the local zoning regulations, ordinances, or State law. There is no substance or evidence to support their claims that the project is in compliance with the required regulations. This is resulting in a de facto subdivision of the property via lot line adjustment which is in violation of Section 66412(d) of the California Subdivision Map Act, HCC Sections 314-7.1, 314-17.1, 325.5-6(b), and CO-S2 and CO-S5 of the Humboldt County General Plan.

FINANCIAL IMPACT:

There will be no additional effect on the General Fund.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by its support of the Goals and Policies of of Humboldt County General Plan Chapter 10.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

If the Board wishes to approve the appeal to allow the lot line adjustment to occur, staff would need to return to the Board at a subsequent meeting with findings and conditions to allow the lot line adjustment. This alternative is not recommended at this time as the project would be inconsistent with guiding General Plan, Zoning Regulations, the California Subdivision Map Act.

ATTACHMENTS:

NOTE: The attachments supporting this report have been provided to the Board of Supervisors; copies are available for review in the Clerk of the Board's Office.

1. Draft Board Resolution and Findings
2. Appeal filed by Dany Avi-David
3. Lot Line Adjustment Denial Staff Report
A. Denial Letter February 7, 2022
4. Honeydew Subdivision Unit 1 Staff Report
5. Honeydew Subdivision Unit 1 Staff Report Addenda
6. Title Report
7. Tentative Subdivision Map
8. Final Subdivision Map
9. Ordinance 1114
10. Public comments