

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings; Meeting on April 5, 2022

Resolution No. 21-___ Resolution of the Board of Supervisors of the County of Humboldt ADOPTING FINDINGS OF FACT, DETERMINING THE PROJECT IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, DENYING THE APPEAL FOR RECORD NO. PLN-2021-17465 Dany Avi-David Appeal of Planning Division Denial of a proposed Lot Line Adjustment RECORD NO. PLN-2021-17465.

WHEREAS, Dany Avi-David, on October 4, 2021, applied for a Lot Line Adjustment to adjust the parcel boundaries of APN 107-272-005 and APN 107-272-006; and

WHEREAS the Planning and Building Department reviewed the application and supporting evidence and referred the application materials to applicable reviewing agencies for site inspections, comments, and recommendations; and

WHEREAS the Planning Division denied the Lot Line Adjustment on February 23, 2022; and

WHEREAS Dany Avi-David (“Appellant”) on March 1, 2022, filed an appeal in accordance with the Appeal Procedures specified in Humboldt County Code Section 312-13 et seq.; and

WHEREAS the Board of Supervisors held a duly-noticed public hearing, *de-novo*, on April 5, 2022 and reviewed, considered, and discussed the application and appeal for the Lot Line Adjustment; and reviewed and considered all public testimony and evidence presented at the hearing; and

WHEREAS the Board of Supervisors closed the public hearing on April 5, 2022 and adopted a motion to deny the appeal and to deny the Lot Line Adjustment.

Now, **THEREFORE BE IT RESOLVED**, that the Board of Supervisors makes all the following findings and adopts all of the following evidence:

- 1. FINDING:** **Project Description:** A Lot Line Adjustment between two assessor parcels. APN 107-272-005 is 48.36 acres in size and APN 107-272-006 is 8.76 acres and was created as a recreation easement for owners of 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) setback of the Mattole River. The purpose of the 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.

EVIDENCE: a) Project File: PLN-2021-17465

2. FINDING: The proposed project is statutorily exempt from the provisions of the California Environmental Quality Act (CEQA).

EVIDENCE: a) CEQA Guidelines Section 15270 specifically exempts from environmental review projects which are disapproved.

b) The application is for a Lot Line Adjustment which is not consistent with the General Plan or Zoning Ordinance and thus does not qualify for a Lot Line Adjustment. The appeal and the application are being denied.

3. FINDING: The Lot Line Adjustment is not in compliance with the Zoning Ordinance requirements for the AE Zone.

EVIDENCE: a) Section 314-7.1 of the Humboldt County Code states that the minimum lot area for the Agriculture Exclusive (AE) zone is 60-acres.

b) The current lot size of APN 107-272-005 is 48.36-acres, and the proposed Lot Line Adjustment would allocate 8.4-acres to APN 107-272-006.

c) The resulting parcel size would be 40 acres which is smaller than allowed by the AE Zone.

4. FINDING: The Lot Line Adjustment is not in compliance with the Zoning Ordinance requirements for the B-6 Overlay Zone.

EVIDENCE: a) Section 314-17.1 of the Humboldt County Code (HCC) Special Building Site B-6 Combining zone states, "*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*".

b) The lot line adjustment as proposed would result in an additional building site not shown on the subdivision maps of record. The creation of an additional building site is in direct violation of the intent of the B-6.

5. FINDING: The mandatory findings for approval of a Lot Line Adjustment contained in HCC section 325.5-6 cannot be made in the

- affirmative because the Lot Line Adjustment would increase the nonconforming condition of an existing nonconforming parcel.
- EVIDENCE:**
- a) Section 314-7.1 of the Humboldt County Code states that the minimum lot area for the Agriculture Exclusive (AE) zone is 60-acres.
 - b) The current lot size of APN 107-272-005 is 48.36-acres, and the proposed Lot Line Adjustment would allocate 8.4-acres to APN 107-272-006.
 - c) The resulting parcel size would be 40 acres which is smaller than the existing 48.36 acre parcel size and would further increase the severity of an existing non-conforming parcel.

- 6. FINDING:** The Lot Line Adjustment is not in compliance with the General Plan Chapter 4 which specifically limits Lot Line Adjustments on Agricultural Parcels to not creating new building sites.
- EVIDENCE:**
- a) The Humboldt County General Plan, Chapter 10, the Conservation and Open Space Elements, specifically 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.*”
 - b) The Lot Line Adjustment as proposed would result in an additional building site where one does not exist which is not in compliance with the General Plan Standard CO-S5.

APPEAL

- 7. FINDING:** The grounds for appeal are not adequate to warrant granting the appeal. The Appellant does not address in the appeal how the proposed Lot Line adjustment is consistent with the General Plan, Zoning Ordinance, or how the project meets the LLA Project Approval Criteria.
- EVIDENCE**
- a) No evidence has been submitted which refutes Findings and Evidence 3,4, or 5 above which document how the LLA is inconsistent with the General Plan and Zoning Ordinance.
- 8. FINDING:** The Appellant incorrectly argues that: *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.

This argument does not supersede the fact that the application is inconsistent with the General Plan and Zoning. The information relative to the Tentative Map and Final Map represent the County's intent in adopting the existing Zoning.

- EVIDENCE**
- a) 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."
 - b) The final recorded map 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.
 - c) The Appellant states, "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 all applicable Plans, Zoning Ordinances, and the Subdivision Map Act. Humboldt County Zoning Code, Section 314-17.1 for the Special Building Site B-6 combining 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 (Lot A) was not created with a building site. The proposed lot line adjustment would have added an additional building site that was not shown on the

subdivision map of record on a property that is zoned with the B-6 combining zone.

- 9. FINDING:** The applicant's argument that "*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*" ignores the fact that the subsequent action to rezone the property to include a B-6 overlay not allowing additional building sites comes from the concern for lack of utilities to serve the area. This condition is relevant to understanding the current regulatory context.

- EVIDENCE:**
- a) 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.*"
 - b) 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. Also, almost the entirety of APN 107-272-006 is located within the flood plain of the Mattole River.

- 10. FINDING:** The applicant makes the comments that *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.* The findings relative to the map anticipate the regulatory context that exists today which involves the AE Zone, the B-6 Overlay and the General Plan. The LLA is inconsistent with each of these regulations.

- EVIDENCE:**
- a) The B-6 combining 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 (Lot A), and it is not detailed on the subdivision map of record.

- b) This subdivision created 20 developable lots and Lot A as a recreation easement. In order to preclude further subdivision of the property; a Zone Reclassification which established the B-6 combination zone was required prior to recordation of the Final Map.

11. FINDING:

The applicant makes the statements: *“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.* These statements may have validity in some circumstances but have not validity in this particular context as the property was created for recreation and river access without having been evaluated for development. Zoning was imposed on the property to ensure that additional development sites are not created.

EVIDENCE:

- a) 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.
- b) 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 proposed Lot Line Adjustment would create an additional building site area not shown on the subdivision maps of record

- c) Lot A was not created with a building site area, because the lot was never intended for developmental purposes.
- d) 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.
- e) 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.
- f) The fact that the building site area is proposed to be located outside of the existing easement area is not relevant. The B-6 Combining Zone was added to the entire subdivision area prior to the recordation of the Final Map to ensure no new building sites would be created.

12. **FINDING:**

The Appellant states: *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. These*

statements are incorrect. The minimum parcel size for the AE Zone is 60 acres. This was the result of a change to the General Plan adopted in 2017 and subsequent change to the Zoning Ordinance text in 2019.

- EVIDENCE:**
- a) Prior to Adoption of the General Plan in 2017, the minimum lot size in the AE Zone was 20 Acres. The General Plan adopted on October 8, 2017, established a minimum lot size of 60 acres.
 - b) At the time the Zoning was imposed on the property in 1979, the parcels were conforming to the zoning ordinance standards.
 - c) The County's implementation of the General Plan included revisions to the Zoning Ordinance to conform the Zoning Ordinance requirements with the General Plan standards.
 - d) On August 27, 2019, the Board of Supervisors adopted Ordinance 2635 which among other changes modified the minimum lot size of the AE zone to be a minimum of 60 acres.

14. **FINDING:**

The Appellant states: *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.*

These statements are incorrect because the request for a Lot Line Adjustment is not consistent with the General Plan or Zoning Ordinance. The requirement for approval of ministerial applications including a Lot Line Adjustment and Zoning Clearance Certificate is that they are in compliance with the General Plan and Zoning Ordinance. When a ministerial permit is found inconsistent with the General Plan and Zoning Ordinance the application cannot be approved.

- EVIDENCE**
- a) Findings and Evidence 3,4,5 and 6 above detail how the application is inconsistent with the General Plan and Zoning Ordinance.

NOW, THEREFORE, based on the above findings and evidence, the Humboldt County Board of Supervisors does hereby:

- a. Adopt the Findings and supporting evidence contained in this resolution.
- b. Deny the Appeal submitted by Dany Avi-David for a Lot Line Adjustment.
- c. Deny the Lot Line Adjustment.

The foregoing Resolution is hereby passed and adopted by the Board of Supervisors on April 5, 2022, by the following vote:

Adopted on motion by Supervisor _____, seconded by Supervisor _____ and the following vote:

AYES: Supervisors:

NOES: Supervisors:

ABSENT: Supervisors:

Virginia Bass

_____, Chair
Humboldt County Board of Supervisors

STATE OF CALIFORNIA)) SS. County of Humboldt

I, Kathy Hayes, Clerk of the Board of Supervisors of the County of Humboldt, State of California do hereby certify the foregoing to be a full, true, and correct copy of the original made in the above-titled matter by said Board of Supervisors at a meeting held in Eureka, California as the same now appears of record in my office.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Board of Supervisors.

KATHY HAYES Clerk of the Board of Supervisors of the County of Humboldt, State of California

By: KATHY HAYES

Date: _____, 2022

By _____ Deputy