



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 4/21/2015
Agenda Placement: 9G
Set Time: 11:15 AM PUBLIC HEARING
Estimated Report Time: 10 Minutes

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors

FROM: Rick Marshall for Steven Lederer - Director of Public Works
Public Works

REPORT BY: Rick Marshall, Deputy Director of Public Works - Engr - (707) 259-8381

SUBJECT: Ordinance Updating Lot Line Adjustment and Certificate of Compliance Ordinances (1st Rdg)

RECOMMENDATION

First reading and intention to adopt an ordinance amending various sections of Chapter 17.46 (Lot Line Adjustments), Section 17.51.020 (Voluntary Mergers - Application Requirements) and all of Chapter 17.52 (Certificates of Compliance and Conditional Certificates of Compliance).

ENVIRONMENTAL DETERMINATION: General Rule. It can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable. [See Guidelines For the Implementation of the California Environmental Quality Act, 14 CCR 15061(b)(3)].

(CONTINUED FROM APRIL 7, 2015)

EXECUTIVE SUMMARY

Chapter 17.46 of the Napa County Code governs the processing of applications for lot line adjustments. Chapter 17.51 governs the process for voluntary mergers, and Chapter 17.52 pertains to certificates of compliance. Minor changes are proposed in all three areas to clarify requirements and improve customer service.

The ordinance to implement these changes was originally introduced on November 25, 2014. At the hearing, a few items of concern were identified in public testimony and in the Board's discussion. As a result, the Board continued the matter to February 3, 2015, to allow staff time to address these items. In working with interested stakeholders, it was determined that additional time would be needed, so on February 3 the agenda item was dropped.

The ordinance was re-advertised and re-introduced on April 7, 2015. At that time, additional concerns were identified in public testimony and Board discussion, and the Board continued the hearing to April 21, 2015.

PROCEDURAL REQUIREMENTS

1. Open Public Hearing.
2. Staff reports.
3. Public comments.
4. Close Public Hearing.
5. Clerk reads the Ordinance Title.
6. Motion, second, discussion and vote to waive the balance of the reading of the ordinance.
7. Motion, second, discussion and vote on intention to adopt the ordinance.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: General Rule. It can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable. [See Guidelines For the Implementation of the California Environmental Quality Act, 14 CCR 15061(b)(3)].

BACKGROUND AND DISCUSSION

Chapter 17.46 of the Napa County Code governs the processing of applications for lot line adjustments. Chapter 17.51 governs the process for voluntary mergers, and Chapter 17.52 pertains to certificates of compliance. Minor changes are proposed in all three areas to clarify requirements and improve customer service.

The proposed ordinance changes were originally introduced to the Board June 10, 2014, at which time the Board directed staff to conduct public outreach prior to returning for action on the ordinance. The minor change to Chapter 17.51 (Voluntary Mergers) was included within the same agenda item which discussed the proposed changes to the lot line adjustment ordinance; a separate agenda item presented the proposed changes to the certificate of compliance ordinance. At that time, there was potential that these topics might be combined with other code changes, so these topics were introduced in this configuration to keep all options open. Public Works staff subsequently determined that no other code changes were being brought forward, so it was decided that the lot line adjustment, voluntary merger and certificate of compliance updates could be combined into one ordinance for the Board's action. The single ordinance is what was presented to the Board at the November 25 hearing.

Staff conducted stakeholder outreach and received feedback on the proposed changes in July, 2014. In August, staff prepared and circulated responses to the feedback received from stakeholders. Staff incorporated changes that resulted from the public outreach process into the ordinance, which was introduced at a public hearing on November 25, 2014. A copy of the November 25, 2014, staff report is attached for reference.

At the hearing in November, a few items of concern were identified in public testimony and in the Board's discussion. As a result, the Board continued the matter to February 3, 2015, to allow staff time to address these items. In working with interested stakeholders, staff determined that additional time would be needed, so on February 3 the agenda item was dropped. The ordinance was re-advertised and re-introduced on April 7, 2015. At that time, additional concerns were identified in public testimony and Board discussion, and the Board continued the hearing to April 21, 2015.

The proposed ordinance for the Board's consideration is attached, in both "clean" and "tracked" formats. Following is a discussion of the issues that were raised in the April 7, 2015 public hearing, and how they were addressed in the version of the ordinance that is presented today.

Compliance with zoning

One speaker expressed concern that lot line adjustments could be approved which would create circumstances which would not conform with zoning requirements. An example would be adjusting a property line to result in a greater number of dwelling units than zoning would allow on a single parcel.

Prior to the last major revision of the ordinance in 2009, the code contained a provision in Section 17.46.040(A) that "The tentative approval may include conditions, including but not limited to those referenced in (C) of this section, which the director of public works determines must be satisfied prior to approval and recordation of the deeds for the lot line adjustment in order for the resultant parcels to conform to the county general plan, and to the county zoning and building ordinances, wherever such regulations are located in this code; to facilitate relocation of existing utilities, infrastructure or easements; and to ensure prepayment of real property taxes prior to recordation of the lot line adjustment deeds." The 2009 update deleted this statement due to the specific concern that the inclusion of conditions of approval led to the incorrect perception that the approval of lot line adjustments was a discretionary action (and therefore subject to CEQA review).

A new statement was added in Section 17.46.040(C) which stated that "Applications complying with the following standards are deemed to conform to the county general plan, any applicable specific plan, and county zoning and building ordinances." This statement was included to confirm the County's position that, with the application of the objective standards following this statement, the review and approval of lot line adjustment applications is a ministerial action on the part of staff.

The concern identified in the April 7 hearing demonstrated that the application of the Approval Standards as enumerated in Section 17.46.040(C) was not sufficient to ensure conformance with all zoning requirements, even though that was intended. As a result, staff propose to add one additional standard to the list: "The transfer of property from one parcel to the adjoining parcel will not create any new non-conformance with county zoning or building ordinances of any existing uses or improvements, on either parcel. For purposes of this approval standard, "new non-conformance" shall mean the addition of any new uses or structures to a parcel, or the creation of inadequate setbacks, caused by the adjustment of lot lines, which as a result creates non-conformance with the county zoning and building ordinances."

Minimum parcel size in Agricultural Watershed (AW) zoning district

The other topic which was raised at the April 7 hearing is a provision of the ordinance which allows parcels in the Agricultural Watershed (AW) zoning district to be reduced from 160 acres to 40 acres through a lot line adjustment.

Section 17.46.040(C)(4) is one of the Approval Standards which must be satisfied in order for a lot line adjustment to be tentatively approved by the County Surveyor. It reads as follows: "Parcels that equal or exceed the minimum parcel size established by the applicable zoning district, or forty acres in the case of parcels located within the Agricultural Watershed Zoning District, will not be reduced by the lot line adjustment below the minimum size allowed by the applicable zoning district, or forty acres in the case of parcels located within the Agricultural Watershed Zoning District, unless a corresponding number of parcels involved in the lot line adjustment which are located within the same zoning district and are smaller than such minimum parcel size, or less than forty acres in the case of parcels located within the Agricultural Watershed Zoning District, prior to the lot line adjustment will be increased by the lot line adjustment to exceed such minimum parcel size, or forty acres in the case of parcels located within the Agricultural Watershed Zoning District."

In its essence, this says that a parcel which conforms with the minimum parcel size (MPS) cannot be reduced below MPS unless one which is below MPS is raised above it. The language which serves as an exception for parcels in AW was added in 1995, following the earlier approval of Measure J, the voter-approved ballot measure that increased MPS from 40 to 160 acres for subdividing land in AW. One concern which was identified following this change was that all parcels between 40 and 160 acres, which had until then been "conforming," had suddenly become "nonconforming" and thus potentially easier to reduce in size through a lot line adjustment.

An example to illustrate this concept would involve two parcels of 150 acres each. When MPS was 40 acres, neither of these parcels could be reduced below 40 acres through a lot line adjustment, as there is no other sub-40 parcel to increase above MPS. An adjustment could be proposed to adjust these to parcels of 40 acres and 260 acres.

When MPS was increased to 160 acres the same two parcels would now be below MPS, so the standard in subsection (C)(4) would simply not apply. One parcel could be reduced as small as the other approval standards would allow. The total of 300 acres could still be no more than two parcels, but could be configured in something like a parcel of 10 acres and a parcel of 290 acres. To avoid this concern, the language added in 1995 retained a "floor" of 40 acres for parcels like these, to keep all parcels which had conformed to the 40-acre MPS before Measure J from going any smaller than 40 acres afterward.

An important consideration to keep in mind when thinking about the effect of subsection (C)(4) is the companion effect of the final approval standard (currently subsection (C)(12), though the proposed ordinance would renumber it to (C)(11) due to an unrelated earlier change). In a lot line adjustment, any parcel being enlarged cannot be increased to a size which would permit subdivision into a greater number of parcels than could have been created otherwise given the zoning. This restriction tends to limit the effect of the ability to reduce parcel sizes per the provisions of subsection (C)(4).

Based on this understanding of the history and effect of Section 17.46.040(C)(4), staff is not proposing any change to this provision of the ordinance.

BACKGROUND FROM APRIL 7, 2014 STAFF REPORT

The text below is the remainder of the Background section from the April 7, 2015 staff report. The original staff report from November 25, 2014 is included in the attachments for additional information.

Changes proposed since [November 25, 2014] public hearing

LLA Approval Standards

1. Wording of septic system requirements – There was a desire to improve the wording of Section 17.46.040 (C) (9).

Staff response: Ordinance language as proposed in November read as follows:

- 17.46.040 (C) (9) The size of any adjusted parcel that will utilize an individual sewage system will equal or exceed the minimum parcel size established by Section 13.32.040. For purposes of this subsection, the size of the adjusted parcel shall be computed by deducting from the gross area of the parcel that portion of the parcel which has been dedicated or offered for dedication to a public agency for public roadway purposes and utility easements. This approval standard shall not apply to parcels less than the minimum parcel size that have an existing legal individual sewage disposal system, provided the adjusted parcel is not getting smaller and still has the required 100% expansion area.

In the hearing, it was indicated that there was a desire to clarify/improve the phrasing of “parcel is not getting smaller” and “required 100% expansion area.”

In recognition of this input, staff is now proposing to have this section read as follows:

- 17.46.040 (C) (9) The size of any adjusted parcel that will utilize an individual sewage system will equal or exceed the minimum parcel size established by Section 13.32.040. For purposes of this subsection, the size of the adjusted parcel shall be computed by deducting from the gross area of the parcel that portion of the parcel which has been dedicated or offered for dedication to a public agency for public roadway purposes and utility easements. This approval standard shall not apply to parcels less than the minimum parcel size that have an existing legal individual sewage disposal system, provided the adjusted parcel is not ~~getting smaller~~ reduced in size and still has the required 100% expansion area as required by Section 13.40.040.

LLA Processing

2. Submittal of application materials – Staff has identified one additional minor process improvement since the November hearing. Since the majority of the review of Lot Line Adjustment (LLA) applications is performed in the Department of Public Works (DPW), it has been office policy to have application materials submitted directly to DPW, rather than through the Permit Center in the Department of Planning, Building and Environmental Services (PBES). Staff proposes a change to Section 17.46.030 (A) to codify this practice.

3. Verifying accuracy of application materials – There was a concern expressed about the accuracy of application materials in two cases over the past several years.

Staff response: Staff has processed 178 Lot Line Adjustment applications over the past five years and is aware of only two in which there were questions about the contents of the application materials. In each of those cases, there was a satisfactory explanation and staff was able to proceed with processing the application. However, to add greater certainty to this process and to make these applications more consistent with other real-property-related applications reviewed by the County, staff is proposing to require that applications include a signed statement that the application is complete and accurate to the best of the applicant's knowledge.

4. Provisions for providing notice of decisions, filing of appeals – In the hearing there was expressed a desire that the notification of decisions on LLA applications should be provided to property owners within a 1,000-foot radius, rather than only 300 feet as is provided now. There was also interest in measuring the distance from the perimeter of all contiguous property held in the same ownership.

Staff response: In December 2014, the Board of Supervisors approved Ordinance No. 1395, which extended the radius of notification from 300 feet to 1,000 feet, for discretionary land use applications (such as Use Permits). Although Lot Line Adjustments are not a discretionary approval, the Board indicated its desire to increase the radius of notification for these applications as well, to be consistent among all real-property-related applications. Therefore, language has been included to increase the radius for notification of LLA decisions from 300 to 1,000 feet. The same change is also recommended for Conditional Certificates of Compliance.

It is noted that staff has received feedback from stakeholders expressing concern about increasing the radius of notification for these ministerial approvals from 300 to 1,000 feet, especially if the property involved

is near a large subdivision. One example of this is a lot line adjustment which involved property adjacent to the city limits of American Canyon. In this example, a 300-foot radius of notification required sending 143 notices; it is estimated that a 1,000-foot radius would have involved approximately 600 parcels.

Staff also notes that significant time and expense is incurred in preparing and mailing the notices associated with LLA applications. If the radius of notification is increased, staff will recommend an increase to the LLA application fee as a function of the upcoming update of the countywide fee schedule.

5. Timing for processing a request for time extension – In the version of the ordinance presented at the public hearing in November, staff recommended creating a provision for requesting a 45-day time extension for the recording of deeds. The language included a provision that the request must be submitted 5 days prior to the original expiration date. In the hearing, there was an inquiry as to whether this was intended to be “working” days or “calendar” days, noting concern about holidays and other factors affecting this short time frame.

Staff response: Section 1.04.010 of the Napa County Code indicates that the word “day” means calendar days unless otherwise indicated. As noted in the hearing, the intent in this instance was to provide 5 business days, so staff is proposing language to clarify that a request for time extension must be submitted 5 business days prior to the expiration of the tentative approval of the application.

6. Clarifying that Lot Line Adjustments cannot increase potential for subdivision – The Napa Valley Grapegrowers submitted a comment letter recommending that Section 17.46.060 be amended to require this statement be placed on the deeds which finalize the adjustment: “This parcel was involved in a lot line adjustment pursuant to which the boundaries of [insert number of parcels adjusted] parcels comprising [insert total acreage of parcels] acres were adjusted and is therefore subject to the provisions of Napa County Code Section 17.46.040(C)(11), as that Section may be amended or replaced from time to time.” The letter from the Grapegrowers is attached for the Board's information -- note that it makes reference to this section of code by its previous number (it is being re-numbered from 12 to 11 due to an unrelated change earlier in this section).

Staff response: Section 17.46.040 (C) (11) is one of the Approval Standards – the County Surveyor “shall approve the lot line adjustment if it meets the following standards ...” This specific subsection reads as follows:

- 17.46.040 (C) (11) The transfer of property from one parcel to the adjoining parcel will not enable more parcels to be created through future subdivision of any of the adjusted parcels than could have been created through merger and resubdivision of the original unadjusted parcels.

The following examples demonstrate how this section operates.

Example 1

Miss Green has parcels which are 60 acres and 50 acres, located in an area in which the minimum parcel size for subdivision is 40 acres. The code would not allow Miss Green to adjust the two parcels to 80 and 30 acres, to set up the 80-acre parcel to subdivide in the future (resulting in three parcels where there had been only two). The reasoning is that Miss Green could merge the land into a single parcel of 110 acres, which would only be large enough to subdivide into a maximum of two parcels. If such an application were submitted by Miss Green, it would be denied by the County Surveyor, because (at a minimum) Approval Standard 11 could not be satisfied.

Example 2

Mr. Brown has parcels which are 60 acres and 70 acres, located in an area in which the minimum parcel size for subdivision is 40 acres. The code would allow Mr. Brown to adjust the two parcels to 80 and 50 acres, with the 80-acre parcel being eligible to subdivide in the future. The reasoning is that Mr. Brown could merge the land into a single parcel of 130 acres, and then resubdivide the property to create a total of three parcels. Although neither of the existing parcels is large enough to divide by itself, the total of 130 acres would be enough to create three parcels which would each exceed the 40-acre minimum. If such an application were submitted by Mr. Brown, it could potentially be approved by the County Surveyor, assuming the other Approval Standards were satisfied.

The language requested by the Grapegrowers would not change the effect of the restriction which is already in place, but could potentially assist future parties in understanding the overall effect of Approval Standard 11. Staff is recommending inclusion of the language as requested by the Napa Valley Grapegrowers in Section 17.46.060.

SUPPORTING DOCUMENTS

- A . Ordinance showing changes in red-line
- B . Ordinance (Final version)

CEO Recommendation: Approve

Reviewed By: Molly Rattigan