

Attachment No. 3  
Notice of Appeal  
December 19, 2011

Gordon J. Steuck  
PLN080454

Board of Supervisors  
February 7, 2012



## NOTICE OF APPEAL

Monterey County Code  
Title 19 (Subdivisions)  
Title 20 (Zoning)  
Title 21 (Zoning)

RECEIVED  
MONTEREY COUNTY  
2011 DEC 19 PM 3:24  
CLERK OF THE BOARD  
*OTB*  
DEPUTY

No appeal will be accepted until a written decision is given. If you wish to file an appeal, you must do so on or before 12\*19<sup>2011</sup> (10 days after written notice of the decision has been mailed to the applicant).  
Date of decision 12\*8. 2011

1. Please give the following information:
  - a) Your name Aguajito Property Owners Association; Eric and Teresa Del Piero
  - b) Address 24704 Aguajito Road City Carmel Zip 93923
  - c) Phone Number 831-375-5066
  
2. Indicate your interest in the decision by checking the appropriate box:  
 Applicant  
 Neighbor  
 Other (please state) Property Owners Association
  
3. If you are not the applicant, please give the applicant's name:  
Gordon Steuck
  
4. Indicate the file number of the application that is the subject of the appeal and the decision making body.
5.

|                           | File Number      | Type of Application | Area         |
|---------------------------|------------------|---------------------|--------------|
| a) Planning Commission:   | _____            |                     |              |
| b) Zoning Administrator:  | _____            |                     |              |
| c) Subdivision Committee: | <u>PLN080454</u> | <u>LLA</u>          | <u>GMPAP</u> |
| d) Administrative Permit: | _____            |                     |              |

5. What is the nature of your appeal?

a) Are you appealing the approval  or the denial  of an application? (Check appropriate box)

b) If you are appealing one or more conditions of approval, list the condition number and state the condition(s) you are appealing. (Attach extra sheets if necessary).

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6. Check the appropriate box(es) to indicate which of the following reasons form the basis for your appeal:

There was a lack of fair or impartial hearing; or

The findings or decision or conditions are not supported by the evidence; or

The decision was contrary to law.

You must next give a brief and specific statement in support of each of the bases for appeal that you have checked above. The Board of Supervisors will not accept an application for appeal that is stated in generalities, legal or otherwise. If you are appealing specific conditions, you must list the number of each condition and the basis for your appeal. (Attach extra sheets if necessary).

Findings 1, 2, 4, 5 and 6 are not supported by the evidence. Decision violates the California Environmental Quality Act and the Monterey County Zoning Ordinance with regards to piece mealing, restoration and the issuance of permits where a violation exists.

7. As part of the application approval or denial process, findings were made by the decision making body (Planning Commission, Zoning Administrator, Subdivision Committee or Director of Planning and Building Inspection). In order to file a valid appeal, you must give specific reasons why you disagree with the findings made. (Attach extra sheets if necessary).

Findings are not supported by the evidence.

Please see attached.

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8. You are required to submit stamped addressed envelopes for use in notifying interested persons that a public hearing has been set for the appeal. The Resource Management Agency - Planning Department will provide you with a mailing list.

9. Your appeal is accepted when the Clerk to the Board's Office accepts the appeal as complete on its face, receives the filing fee \$5,040.95 and stamped addressed envelopes.

APPELLANT SIGNATURE

DATE 12/19/11

ACCEPTED

(Clerk to the Board)

DATE 12/19/11

#### **Finding 1- CONSISTENCY**

Approval of the lot line adjustment will allow the applicant to build two very large homes on what was consistently transferred as a single lot. The maximum allowable density in this location is 5.1 acres per unit. Each of the surrounding properties has been developed consistent with this density designation. Allowing two building sites within the 8.9 acre parcel is clearly inconsistent with the zoning density and rural character of this planning area. The project is therefore inconsistent with the Zoning Ordinance and the General Plan.

Approval of the project is also inconsistent with Sections 21.84.120 and 21.84.130 of the Zoning Ordinance as it relates to existing violations and restoration of the site.

#### **Finding 2-Site Suitability**

The project is not suitable for this location because it will allow the applicant to create a second building site on an 8.9 acre parcel where density is restricted to one unit per 5.1 acres. This area of the County is considered rural and visually sensitive. Crowding development into this location is neither acceptable nor appropriate.

#### **Finding 4- VIOLATIONS**

The record illustrates that the Steuck's deposited undocumented and potentially hazardous fill on the property which lead to a notice of violation. In 2009 the former Building Official issued and subsequently withdrew approval of a grading permit to correct the violation because he found that Mr. Steuck failed to complete the work as described in the permit and that the permit was based upon incorrect information. The incorrect information included the extent of the existing fill and the location of the existing natural grade.

A subsequent grading plan was prepared by H.D. Peters and the permit reissued. The permit was finalized but the property was not restored as required by Section 21.84.130 of the Zoning Ordinance.

Because the site was not completely restored as required, a violation of the Ordinance still exists, and no further permits shall be issued on the property (21.84.120).

The Del Piero's have appealed the grading final. Until that appeal is resolved either through the County process or the Courts this application should not be approved.

#### **Finding 5- CEQA**

Please see the attached letter dated October 28, 2011. The proposal is clearly a piecemeal attempt to provide building areas for two large homes. Clearly, the "whole" of the action was not analyzed as required.

#### **Finding 6- LOT LINE ADJUSTMENT**

Evidence contained in finding six relies completely upon the assertion that the parcels are in fact two separate legal lots of record. The County made the determination that the property was entitled to two certificates of compliance based on the property being described in two separate 1945 deeds. However, after 1945, both parcels were acquired by Mr. Carl Von Saltza who subsequently sold the property to the Sweetman's in 1950. In this transaction, the property was described by a metes and bounds description as a single parcel. There were eight subsequent sales of this property starting in 1957. In each of these sales the lot was described by metes and bounds as a single parcel without any reference to the parcels that may have existed in 1945; including the sale from Fox to Steuck. While certificates of compliance were issued in error, this property is a single parcel and cannot qualify for a lot line adjustment.

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October 28, 2011

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File No. 00143.003

Mr. Mike Novo  
Monterey County Planning  
168 W. Alisal Street, Second Floor  
Salinas, CA 93901

Re: **Steuck Initial Study and Negative Declaration; PLN080454**

Dear Mike:

I have reviewed the Initial Study prepared by your staff. The Initial Study is so flawed and replete with material omission that it needs to be fully rewritten and recirculated. To proceed with a document that is so incomplete circumvents the purpose of CEQA and compromises the ability of the public and the County's decision makers to make a fully informed decision. In the *Sunnyvale West Neighborhood Association v. City of Sunnyvale City Council*, the Sixth District Court of Appeal recently confirmed that the "failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed decision making and informed public participation." The omissions in the Initial Study are substantial and prejudicial. The Initial Study is adequate for "informed decision making and informed public participation."

#### GENERAL COMMENTS

Project Description: The first omission is that of an accurate and complete project description. The Negative Declaration and the Initial Study describe the project as "a lot line adjustment between two legal lots of record of approximately 4.6 acres and 4.3 acres ... resulting in two newly reconfigured lots of 4.6 acres (westerly Parcel A) and 4.3 acres (easterly Parcel B)." The CEQA Guidelines defines "project" as "the whole of an action which has the potential for resulting in either a direct physical change in environment or reasonably perceivable indirect physical change in the environment." It has clearly been documented both in writing and in presentations to the Minor Subdivision Committee that this particular lot line adjustment is much more. The Steucks have shown in application materials submitted to both the Planning Department and the Environmental Health Department their intention to create a water system, install septic systems and ultimately to build houses. This is not speculation. They have demolished a garage and clearly intend to demolish the house. They have graded to create a building pad. The Steucks clearly have a plan for the development of this property. They intend to build a house on each lot. While there may not be a specific house design presented as part of

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this application, the Steucks have clearly shown in past applications their desire to build homes in excess of 10,000 square feet. Development has been piecemealed on this property from the late 1990s when the Steucks began to illegally grade the property through their demolition of the garage to their more recent bait and switch septic system. Because of all of the development that has occurred without CEQA review and the Steucks' clearly displayed intent to do more development, this CEQA document must fully and critically identify the full project, as defined by CEQA, and analyze it accordingly.

Reliance on Certificates of Compliance: The second critical error is the Initial Study's continuing reliance on certificates of compliance that are, at best, questionable. The County made its determination that the property was entitled to two certificates of compliance based on the property being described in two separate 1945 deeds. However, after 1945, both parcels were acquired by Mr. Carl Von Saltza and Mr. Von Saltza then sold the property to the Sweetmans in 1950. It is important to note that in the sale from Mr. Von Saltza to the Sweetmans, the property was no longer described as two parcels, but was described by a metes and bounds description as a single parcel. This is a clear indication that it was Mr. Von Saltza's intention to combine the parcels and transfer it as a single lot. Mr. Von Saltza was one of the early developers in the Aguajito area. He was very knowledgeable about real estate and real estate transactions and had he intended to transfer two lots that intention would have been clear in the deeds. Instead he clearly demonstrated his intention to combine the properties by describing them as a single lot.

Additionally, there were eight subsequent sales of this property starting in 1957 (Sweetman to Garlick) through 1986 (Fox to Steuck). In each of these sales, the lot was described by metes and bounds as a single parcel without reference to the parcels that may have existed in 1945. The sellers' and buyers' intentions dating back to 1950 were clear. The property was combined by Mr. Von Saltza into a single lot and was sold as a single lot nine times.

History of Development on the Property: Initial Study is silent on the large body of history of illegal grading on the property or the County's extensive enforcement files for the property, or the County's history of issuing grading permits after the fact without requiring restoration as required by both the County Zoning Ordinance and the County Grading Ordinance. These facts are well documented and are fully disclosed in our previous correspondence to the County regarding this property. The Initial Study fails to acknowledge, disclose or discuss these issues or the specific effects of the significant grading that was done on the property in its environmental review.

#### **SPECIFIC COMMENTS**

Page 4: The Initial Study indicates that the property is in an "Urban Reserve" zoning district. Pursuant to Section 21.50.030(c), the project application should have been referred to

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the City of Monterey and the City of Carmel for "review and recommendation," however, there is no evidence in the record that the application has been referred to either City. The Initial Study distribution does indicate that the Initial Study was referred to the City of Monterey, however, that is inadequate based on the County's Ordinance. Given the gross deficiencies of the project description and the Initial Study, referral of the Initial Study is inadequate for either City to make an informed decision.

Page 4: The Initial Study states that "there is also a domestic water well on the property that the owner intends to keep available for service to Parcel B, should he wish to develop it in the future." There is no "should" here. The Steucks' intentions are clear, they do propose to develop Parcel B. Plans submitted to the County clearly identify building areas and the location of a proposed septic system on Parcel A and Parcel B, however, the Initial Study fails to disclose this and provides no analysis of its potential effect. Further, the Steucks applied to the County Environmental Health Bureau for a water system for up to three connections. Testing by the Health Department has determined that there is water pursuant to their regulations for a two-connection water system. Again, the Initial Study fails to disclose or analyze these facts.

Page 5: The Initial Study indicates that during the course of the review of the lot line adjustment, the Environmental Health Bureau identified that the septic system which serves the existing house "must be demolished and a new system installed prior to recording the lot line adjustment." The Initial Study fails to disclose and does not then analyze the effect of the installation of new septic systems on the property, although the planned locations for the systems are clearly shown on plans in the possession of the County. Those plans show septic systems to be installed on slopes over 25% among numerous oak and pine trees. The Initial Study also does not disclose that the septic system that would serve Parcel A has already been installed under the guise of a repair system for the existing house. As has been clearly documented, the Steucks applied for a repair system for the house that was to be located immediately adjacent to the house and be of a size to serve only that house. However, the system that was installed (apparently with the full approval of Environmental Health) is not the system for which the permit was applied and issued. It is in an entirely different location in the midst of oak trees on slopes in excess of 25% and sized for a large home. The Initial Study fails to disclose or analyze these facts.

Page 6: The Initial Study states that "the Greater Monterey Peninsula Area Plan ('GMP-AP') designates the site as 'RDR/5.1-UR-D-S' or Rural Density Residential, 5.1 acres per unit/urban reserve/design control district/site plan review." That is how the property is zoned, not its General Plan designation. The Greater Monterey Peninsula Area Plan designates the property as Residential-Rural Density, 5 acres +/-unit with an urban reserve overlay. It should also be noted that the Greater Monterey Peninsula Area Plan also identifies the property as "highly sensitive" on the Visual Sensitivity Map (Figure 14) of the Plan.



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Further, the Initial Study states "as there is no development proposed and no intensification of use with the proposal, the proposal is consistent with understood and mapped rural residential land uses of which the Air Quality Management Plan and Airport Land Use Plan are constructed." The Initial Study fails to disclose and identify the extent of development that has been applied for here, including grading, installation of septic systems, establishment of a water system and ultimately the construction of homes.

Page 7: Under Biological Resources, the Initial Study states that the "site is vegetated with numerous oak trees" and that again states that "no development is proposed at this time. Therefore, there will be no impacted biological resources." The Initial Study fails to disclose or analyze the fact that the Steucks have shown on their plans the location of septic systems (and already installed one new system) on slopes over 25% in the midst of an oak grove. There is no discussion or analysis of the effect of the installation of large scale septic systems in the oaks or the long term effect of increased watering of the oak trees due to septic discharge. There is no disclosure or analysis of the effect of the prior illegal grading on the oak resources.

Page 8: The Initial Study indicates that there is no issue with hazardous materials. That is not the case. The neighborhood concerns over the dumping of potentially hazardous materials on the Steuck property are well documented. When the property was illegally graded, there were numerous reports of concrete rubble and similar material being brought to the site and buried in the fill. There are documented reports of yellow, viscous, fowl smelling runoff after that dumping. This was proven in the last two years when the site was regraded and a significant amount of "undocumented fill" was removed from the property. However, there has been no testing, that we are aware of, of the material that was removed or the material that remains to determine what, if any, toxic content there might be. That both the Environmental Health Bureau and the Regional Water Quality Control Board has reviewed this issue does not excuse the Initial Study from disclosing and addressing this issue.

Page 9: The discussion under Hydrology and Water Quality, again, is inadequate in that it fails to disclose or discuss the potential for the water system for which the Steucks have already applied or the septic systems that are clearly shown on their project plans that are on file with the County.

The Initial Study also indicates that the project will not "substantially alter the existing drainage pattern of the site" but it fails to disclose or discuss the fact that the drainage pattern for the Steuck property has already been substantially altered by the amount of illegal grading that was done on the property, subsequent grading work that was allowed by the County without first requiring full restoration of the site or environmental review and the potential for further grading, particularly on slopes over 25% as the property is further developed.

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Page 10: In the Transportation/Traffic Section, the Initial Study indicates that the parcels will have continued access from an easement (Gentry Hill Road) from Aguajito Road. There is, however, no evidence in the record that establishes that the Steuck property has legal right of access for more than one lot. As has been previously discussed, the Steuck property was combined as a single parcel in 1950 and has been sold as a single parcel nine times since 1950. Each of those grant deeds indicates that the described parcel has an easement to Aguajito Road. At no time since 1950 has there been any indication or evidence that that easement is intended to provide access for more than one lot. Monterey County General Plan 2010 Policy C-3.6 states in part "Proof of access shall be required as part of any development application when the proposed use is not identified in the provisions of the applicable agreement." There is no "applicable agreement" or other proof of access. The Initial Study does not disclose or address these facts.

Page 11: Under the section of Mandatory Findings and Significance, the Initial Study again states that "No development is proposed at this time." As has been stated previously, that is not the case. The materials submitted by the Steucks clearly indicate their intention to apply for a water system, install septic systems and to build homes. This is not idle speculation, but fact based on the application materials submitted by the Steucks contained in the County's own files. The Initial Study continues to fail to disclose these facts and analyze the impacts. The public and decision makers cannot make an informed decision based on the content of the Initial Study.

Page 13: Mr. Kinison-Brown, the planner who prepared the Initial Study, has found that the project "could not have a significant effect on the environment and a negative declaration will be prepared." This finding is based on an inadequate project description and an Initial Study that fails to disclose known facts about the intended development of the property, nor does it analyze the potential effects of that intended development.

Page 16: The discussion of the project's potential effects on aesthetics is incomplete. The Initial Study fails to disclose that the Greater Monterey Peninsula Area Plan identifies this area of Aguajito Road as being visually "highly sensitive."

The Initial Study also assumes, without any evidence in the record, that the proposed lot configuration will reduce the potential for visual impacts if the parcel between Gentry Hill Road and Aguajito Road were to be developed. The Initial Study speculates that use permits would be required to develop that parcel due to its steep slopes and likelihood for removal of protected trees. There is no evidence in the records which indicates that any significant evaluation has been made of that parcel and its potential for development.

Page 19: Biological Resources – The Initial Study indicates that the project would have no impact related to a "conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance." That is clearly not the case. As has been shown on plans submitted by the Steucks, it is their intention to construct septic systems on steep slopes

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and areas covered with oak and pine trees. The Initial Study fails to disclose this fact, nor does it provide any analysis to support the conclusion that the oak or pine resources would not be adversely affected by either the physical construction of the septic systems or the long term impact to the oak and pine habitat due to waste discharge and the potential for over watering of the oak trees. No mitigations for those effects are identified. Additionally, the Initial Study does not disclose nor discuss the impact to the oak and pine habitat of the long term grading violations on the property.

Page 23: The Initial Study is completely inadequate in its discussion of the project's consistency with the Monterey County General Plan 2010. The Initial Study only discusses the policies in the General Plan (LU-14, 15 and 16) related to lot line adjustments. This section does not even mention, much less discuss, the project's consistency with General Plan 2010 Policy C-3.6 regarding proof of access, consistency with Policy OS-3.5(1)(D) and the "general policy" to require dedication of the scenic easement on slopes over 25%, the potential for future development of the property should the areas over 25% be placed in a scenic easement or the project's consistency with Greater Monterey Peninsula Area Plan Policy 3.5 regarding the protection of oak and pine trees.

Page 24: The Initial Study seems to rely on future discretionary permits for development of the project that would presumably address issues such as development on 25% + slopes and tree removal. That deferred analysis is inappropriate given the clear intent of the Steucks to develop the property.

In conclusion, the Initial Study that has been prepared and is in circulation is inadequate. The Initial Study fails to properly describe the project. The Initial Study fails to disclose facts about the proposed development of the property that are well known and documented in the County's own files. The Initial Study fails to address the history of illegal development and grading on the property, major general plan issues including development on slopes over 25% and impacts to forest resources. The Initial Study will not adequately inform the public of the full project and the potential effects of that project. The Initial Study should be completely rewritten and recirculated.

Sincerely,

**Lombardo & Gilles, LLP**



Anthony L. Lombardo  
ALL:DLE:ncs

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cc: Supervisor Dave Potter  
Les Girard, Esq.  
Dr. Lew Bauman  
Mr. Taven Kinison Brown  
Dr. and Mrs. Eric Del Piero