

Attachment No. 5
Exhibit H
Applicant's Attorney Rebuttal to
Comments Received on Initial Study

Gordon J. Steuck
PLN080454

Board of Supervisors
February 7, 2012

EXHIBIT H

LETTER FROM APPLICANT'S ATTORNEY
REBUTTAL TO COMMENTS RECEIVED
ON INITIAL STUDY

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*PLEASE SUBMIT ALL
CORRESPONDENCE & FAXES
TO THE SALINAS OFFICE

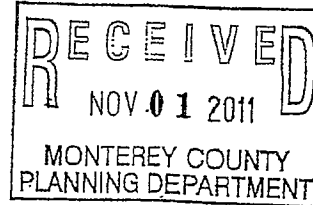
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November 1, 2011

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File No. 2251.000

VIA FACSIMILE & EMAIL

Mike Novo
County of Monterey RMA
Planning Department
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901

Re: **Steuck (PLN 080454)**

Dear Mike:

I am in receipt of Mr. Lombardo's letter dated October 28, 2011, wherein he asks you to rewrite and re-circulate the Initial Study based on several claims that simply have no merit.

This is to request that we proceed with the November 10 hearing date before the Minor Subdivision Committee and approve the lot line adjustment as proposed. This letter is also to respond to comments made by Mr. Lombardo.

The purpose of this Initial Study is to analyze the potential impact of a lot line adjustment of two legal lots of record, nothing more.

Mr. Lombardo repeats (wrongfully) that you have been asked to piecemeal several approvals. In effect, you are being invited by him to speculate on the type and scope of development that simply is not there. You are then invited, without the benefit of such a proposal, to express an opinion on the validity and proper conditions and resulting exactions. On what? There is no further proposal, nor is one contemplated at this time.

For the same reason our Courts must deny claims that fail for "ripeness", our County's administrative and political decision-makers should not be drawn into disputes which depend for their immediacy (projects that require conditions) on speculative future events. (*Selby Realty Co. v. City of San Buenaventura*) A Project by definition is "the whole of a project" and conditions, exactions and environmental review are limited to the proposal at hand. The whole of the Project here is the lot line adjustment. Anything else is speculative and we are not required to provide the County with plans that do not exist.



In response to Mr. Lombardo's comment letter, I will address each issue as they arise in his letter:

General Comments
(Page 1 of Lombardo letter)

The approval of this lot line adjustment application does not grant other entitlements or rights to build on the property, nor does it circumvent the requirement that future development will be subject to public review. It simply modifies the lines between two legal lots of record.

Plans submitted to the County years ago are not the subject of this lot line adjustment and were withdrawn at the request of Dr. Steuck. Additionally, many projects that were potentially feasible 4 years ago are absolutely not feasible now given the change in the economy and many other factors. Alternative uses are being proposed in some areas while others lay fallow with no development contemplated. To say a certain project will happen here based on plans submitted, and withdrawn, years ago is pure speculation.

If and when Dr. Steuck applies to build on either legal lot, it will contain an element that avoids speculation: scope and definition of development that will assist in determining if impacts occur and whether conditions must be imposed. In the event future development is required, it will require a public hearing, wherein the County, people of Monterey County and Mr. Del Piero will have the opportunity to analyze biological, visual and water conditions, if necessary – the items Mr. Lombardo ironically complains about in his letter.

Reliance on Certificates of Compliance (Page 2 of Lombardo letter): Mr. Lombardo and Dale Ellis, on behalf of Lombardo & Gilles, have claimed that the Unconditional Certificates of Compliance were issued in error. Ironically, it was Dale Ellis who reviewed and approved those certificates while he worked for the County of Monterey, before working for Mr. Lombardo. The properties here were given Unconditional Certificates of Compliance and were never merged. Mr. Lombardo's claim that Mr. Ellis wrongfully issued the Certificates is not timely, not related to this lot line adjustment, nor is it a requirement to revisit the authenticity of such Certificates when approving a lot line adjustment.

History of Development on the Property (Page 2 of Lombardo letter): Mr. Lombardo once again invites you go beyond the scope of review of a lot line adjustment. A lot line adjustment application cannot proceed if an open code enforcement case exists. The standard of review for whether a lot line adjustment can be approved in light of code enforcement violations is: Do any violations exist today? There are no open code enforcement cases here.

It is beyond the scope of a lot line adjustment to document two property owners' contentious history just as it is to speculate about future development on existing lots of record.



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SPECIFIC COMMENTS

Page 4 of the Initial Study (Page 2 of Lombardo letter): The project was deemed complete on May 15, 2009, before the 2010 General Plan Update. Nonetheless, we are not asking to be rezoned or to have specific uses that would remotely impact the City of Monterey or Carmel (which is the action that would typically precede the need to "review and recommend" in an "Urban Reserve Overlay"). I'm not aware of any lot line adjustment that has required such a review by cities.

Page 4 of the Initial Study (Page 3 of Lombardo letter): There is ample evidence in the record and by the admission of Mr. Lombardo that an adequate water supply and connections exist to serve the two legal lots of record that Dr. Steuck owns.

Page 5 of the Initial Study (Page 3 of Lombardo letter): The Department of Environmental Health has issued proper permits for septic and water. Mr. Lombardo's claims do not appear to reflect the current permitting requirements nor are they relevant to the approval of a lot line adjustment.

Page 6 of the Initial Study (Page 3 of Lombardo letter): This is an application for a lot line adjustment. Dr. Steuck is not proposing to build homes on his site, nor is he required to. Mr. Lombardo's tone is that development is a certainty. That is flatly not the case. The public's ability to analyze particular impacts of a proposed project in the event one does occur is not hindered by the approval of this lot line adjustment.

Page 7 of the Initial Study (Page 4 of Lombardo letter): See response to Page 5 of Initial Study (Page 3 of Lombardo letter), above.

Page 8 of the Initial Study (Page 4 of Lombardo letter): Again, Mr. Lombardo skews the record with allegations that are not part of this lot line adjustment application. This application does not propose to introduce hazardous materials into the environment. It is to move lot lines on two legal lots of record. The building department has visited the site on numerous occasions to verify the accuracy of these allegations. They have cleared the property of any code violations resulting from using recycled concrete as fill as Dr. Steuck worked diligently to remedy all concerns the County requested.

Page 9 of the Initial Study (Page 4 of Lombardo letter): The map filed for this lot line adjustment adequately addresses water drainage. There are no code violations that exist today. Grading is not proposed as a part of this lot line adjustment application.

Page 10 of the Initial Study (Page 5 of Lombardo letter): The project was deemed complete before the 2010 General Plan took effect. Nonetheless, the lot line adjustment application has no impact on the legal right of Dr. Steuck to access his two parcels.



Page 11 of the Initial Study (Page 5 of Lombardo letter): No development is proposed at this time. See comments above regarding making an informed decision on speculation.

Page 13 of the Initial Study (Page 5 of Lombardo letter): No development is proposed at this time. See comments above regarding making an informed decision on speculation.

Page 16 of the Initial Study (Page 5 of Lombardo letter): Visual impacts will certainly be addressed when and if development is proposed. We acknowledge the sensitivity and beauty of the property in question, and the public's ability to review and respond to a proposal to build on this site remain intact. This issue is addressed by staking a particular project that is actually proposed, not on speculation. Again, no development is proposed at this time. See comments above regarding making an informed decision on speculation.

Page 19 of the Initial Study (Page 5 of Lombardo letter): See response to Page 5 of Initial Study (Page 3 of Lombardo letter), above. This is not a hearing on past violations, it is on a lot line adjustment on a property that has been cleared of all violations. The Initial Study properly analyzes the environmental impacts of adjusting lines on two legal lots of record.

Page 23 of the Initial Study (Page 6 of Lombardo letter): This project is consistent with the General Plan in effect at the time the application was deemed complete. See above for comments to reiterate arguments here.

Page 24 of the Initial Study (Page 6 of Lombardo letter): See above.

To conclude, Mr. Del Piero and his representatives continue the long-standing battle between adjacent property owners, the resolution of which will likely be left to a civil court. Many of the issues they raise erroneously point to piecemeal approvals. However, the County's duty is to analyze the "whole of the project", which is a lot line adjustment and nothing more. The public remains protected in the event development were to occur in the future and the allegations regarding the history of this project and speculation of further development are simply red herrings that must be disregarded.

Very truly yours,

Johnson, Moncrief & Hart, PC

A handwritten signature in black ink, appearing to read 'Aaron P. Johnson', written over a horizontal line.

Aaron P. Johnson

APJ/lt

Mike Novo
County of Monterey RMA
November 1, 2011
Page 5



cc: Supervisor Dave Potter
Les Girard, Esq.
Dr. Lew Bauman
Taven Kinison Brown
Ramon Montano
Dr. Gordon Steuck



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