



# council agenda report

Meeting Date	1/5/10
Item Number	PH 1

CITY OF SAN LUIS OBISPO

**FROM:** John Mandeville, Community Development Director  
Prepared By: James David, Assistant Planner

**SUBJECT:** APPEAL OF THE PLANNING COMMISSION'S ACTION UPHOLDING THE HEARING OFFICER'S DECISION TO ALLOW A SUBDIVISION CREATING THREE CONFORMING LOTS FROM ONE (MS 78-09).

## RECOMMENDATION:

Adopt a resolution denying the appeal, and upholding the Planning Commission's action to allow a subdivision creating three conforming lots from one in the Low-density residential zone (R-1), subject to conditions.

## REPORT-IN-BRIEF

The property owners of 2410 Johnson Avenue received approval from the Subdivision Hearing Officer of a tentative parcel map to subdivide their 42,850 square foot R-1 lot into three conforming lots. The approval was appealed to the Planning Commission by neighboring property owners. The Planning Commission denied the appeal and approved the project, based on findings of consistency with the General Plan and Subdivision Regulations. The neighbors appealed this decision again, motivated by concerns over viewshed, property values, slope and potential fire hazards. Staff recommends the Council support the subdivision, subject to conditions governing future development that require height limits, architectural review and an increased building setback to ensure neighborhood compatibility.

## DISCUSSION

### Site Description

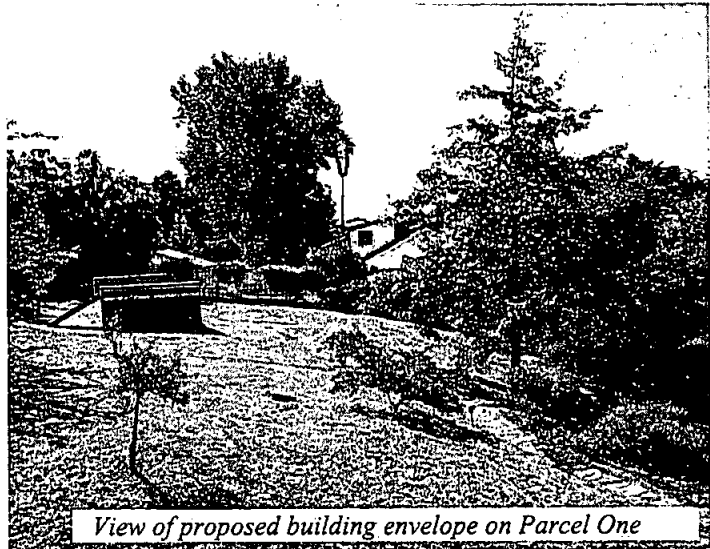
The subject property is located on the north side of Johnson Avenue between Ella Street and Sydney Street (Attachment 1, Vicinity Map). The lot contains one residential dwelling, situated in the center of the lot. The subject lot is part of Tract 1272 which created 14 lots, three fronting Johnson Avenue and 11 clustered around Corona Court to the north, in 1985 (Attachment 2, Tract 1272 Map).

The project site is just shy of an acre with one residential dwelling and landscape improvements. The dwelling has no covered parking spaces. The existing crescent-shaped driveway is steep coming off Johnson Avenue and then levels out as it climbs to the house. There are two curb cuts on Johnson Avenue. The subject property's average cross-slope is 15 to 17 percent and is surrounded by low-density residential (R-1) development. There are many ornamental shrubs and trees throughout the site. The property owner has an above-ground pool adjacent to the home, as well as a gazebo, pond, and play equipment in the rear yard.

PH 1-1

### **Project Description**

The flag lot subdivision creates one lot between the existing house and Johnson Avenue, one lot containing the house, and a third lot behind the house (Attachment 3, Tentative Parcel Map). The applicant is not proposing any new site development with the subdivision entitlement at this time. The existing driveway will be removed and curb cuts abandoned. A new driveway is proposed along the northern edge to serve all three parcels. The access way will be owned in fee by the parcel furthest from the street, Parcel One, with an access easement over Parcels Two and Three. Guest parking spaces will be provided for all three proposed parcels in accordance with deep lot subdivision requirements. A fire truck turnaround is included on Parcel Three to serve all three parcels. As proposed, the subdivision meets all standards of the City's Subdivision and Zoning Regulations and does not require any exceptions.



### **Previous Review**

The property owners of 2410 Johnson applied for a minor subdivision (creation of three lots) on August 5, 2009. According to the City's Subdivision Regulations, a subdivision map proposal creating four or fewer lots is reviewed by the Hearing Officer at a public hearing. On September 18, 2009, the Hearing Officer conducted a hearing and approved the tentative map based on findings of consistency with the Subdivision Regulations and the General Plan. The Hearing Officer heard testimony from the applicant's representative and concerned neighbors. Primary opposition was from northern neighbors concerned about eventual development of Parcel One at the rear of the subject property. Neighbors raised issues about impacts to views and property values, fire hazards and development of a sloping site. The Hearing Officer acknowledged these concerns and included conditions of approval to mitigate aesthetic impacts of eventual site development. These conditions included limiting future development to single-story structures, reducing the size of the building envelope on Parcel One, and designating sites "sensitive" thereby requiring architectural review.

An appeal of the Hearing Officer's decision was heard at the Planning Commission on October 28, 2009. The Planning Commission voted 5-2 to deny the appeal based on findings that the proposed subdivision complied with the Subdivision Regulations and the General Plan, and is subject to more restrictive conditions. Two "No" votes were cast because two Commissioners did not agree that imposing conditions on the new lots that were more restrictive than the surrounding lots was necessary. These two Commissioners otherwise did not support the appeal.

PHI-2

Based on Planning Commission deliberations, the desire to deny the appeal and thereby allow the subdivision was unanimous.

The majority vote of the Planning Commission modified the conditions of approval in response to appellant concerns. The condition limiting future development on Parcel One to single-story was clarified by setting the 406-foot elevation contour as the absolute height limit. This would allow a roof peak height from grade of approximately 16 feet. Given the grade is higher on neighboring parcels to the rear, the Planning Commission felt this height limit would adequately address appellant concerns about viewshed preservation. The Planning Commission also strengthened the condition about reducing the size of the building envelope by requiring any future building footprint to be setback ten feet from the rear property line of Parcel One, which is five feet more than what is shown on plans. A ten-foot setback is twice what is normally required for a single-story residence.

#### **Staff's Response to Appeal Issues**

The following is an abbreviated list of the appellants' concerns followed by staff's evaluation:

***1. The proposed building envelope for Parcel 1 contains significant areas of steep slope.***

**Response:** The average cross-slope of Parcel One is 17.2 percent. The area of Parcel One (12,895 sq. ft.) is sufficiently large to support a single-family residence, per Zoning Regulations density standards (minimum 10,890 sq. ft. based on slope category). As conditioned, the slope of the driveway meets City engineering standards. There is adequate area for development of an average-sized house (2700 square feet) on the eastern portion of Parcel One where average slope is less severe (about 13 percent). The delineated building envelope is overly large and encompasses steep areas less suitable for development. The Planning Commission has required that the final map indicate a precise building *footprint* that is setback at least ten feet from the northeast property line to mitigate privacy impacts to surrounding neighbors.

Parcel One has been designated a "sensitive site" making the parcel subject to architectural review, and future development will be limited to single-story. Architectural review will ensure that grading is minimized and development of the land generally follows the natural terrain contour (Community Design Guidelines 5.2).

***2. The setback should be 25 feet to respect neighborhood privacy and views.***

**Response:** In the R-1 zone, the minimum required other (side/rear) yard is five feet for a point that is 12 feet high on the roof of a building (MC 17.16.020). The Planning Commission has doubled this required setback to ten feet to mitigate potential privacy impacts. Requiring a 25-foot setback from the rear property line would push the building footprint of a single-family house down the slope resulting in more severe grading, cut slopes, and would force removal of the existing oak tree. This is inconsistent with Community Design Guidelines (CDG 2.1) and Subdivision Regulations (MC 16.18.130).

The appellant relies on correspondence from the Community Development Director, dated 1986, to substantiate need for a 25-foot setback. These letters discuss setback requirements for 1650 Corona Court, which is subject to specific Tract 1272 conditions governing lots 5 through 10. 2410 Johnson is lot 1, and on the opposite side of the Tract. There is no nexus for requiring a 25-foot setback based on this information.

**3. *Once a parcel is legally created it has the ability and perception to be developed.***

**Response:** The applicant could build two additional single-family residences on his one-acre lot without a subdivision entitlement. The zoning for the site is R-1, and according to the Zoning Regulations, multiple dwellings are allowed in the R-1 zone subject to administrative use permit approval and density standards (MC 17.22).

**4. *The Planning Commission's height limit not to exceed a 406-foot elevation at the highest point of the roof was based on arbitrary assumptions and pure guesswork.***

**Response:** The Planning Commission duly considered all evidence, including the testimony of the applicant, appellant, interested parties, and the evaluation and recommendations by staff presented at the hearing, in making its decision. The primary purpose of the hearing was to decide whether a *subdivision* of a one-acre parcel into three lots complies with City policies. Based on Planning Commission deliberations, the Commissioners were unanimous in affirming that the proposed subdivision is acceptable.

The Commission also agreed with the Hearing Officer's decision to condition the height of future development, in order to preserve views from and towards the property and remain consistent in character with the neighborhood. The Commissioners felt "single-story" was vague, and decided to assign a quantifiable limit to allowable building height on Parcel One only. It can be ascertained from the applicant's proposed map and the appellant's survey work that the 390-foot contour bisects a feasible one-story building envelope for a structure on Parcel One. The Commission therefore set a roof peak of 16 feet from grade, and resolved to limit height on Parcel One to the 406-foot elevation contour.

It is important to note that this application is for a subdivision entitlement, and recommended conditions require architectural review to ensure that potential compatibility concerns such as privacy, overlook, visual impacts and neighborhood character are addressed at the time of property development. Architectural review is a public process that requires noticing the neighbors, posting a sign at the subject property and advertising in the local newspaper. Plans for any project submitted to the City are always available for review at the Community Development Department. Neighborhood input is a welcome influence on architectural approvals.

**5. *A Preliminary Grading & Vegetation Removal Plan should be prepared now that will likely require CEQA.***

**Response:** A preliminary soils report prepared by Geosolutions, Inc., dated May 19, 2009, was submitted with the original subdivision application. The parcel map includes proposed

PHI-4

grading activities. The Public Works Department reviewed the map and supports the application as conditioned, finding that proposed grading activities comply with City Engineering Standards. The Community Development Director has determined that the proposed parcel map is categorically exempt (CEQA Guidelines Class 15; Section 15315) because: no variances or exceptions are required; all services and access to the proposed parcels to local standards are available; the parcel was not involved is a division of a larger parcel within the previous two years; the parcel does not have an average cross slope of greater than 20%; and no rare, threatened or endangered species are affected.

***6. A fire truck turnaround in the middle of this subdivision is an inappropriate fire protection solution.***

**Response:** The Fire Marshal has visited the site, reviewed the tentative map and supports the project. The applicant has proposed a 20-foot wide driveway leading up to a fire truck turnaround, which is an improvement over existing fire prevention access. According to the Fire Marshal, this 20-foot unobstructed access is adequate for fire apparatus maneuverability on the private driveway. With the provision of a fire truck turnaround at rear of Parcel Three, fire trucks will be able to pull a 300-foot hose to the farthest back corner of Parcel One. When Parcel One (sensitive site) is developed it will require architectural review and the Fire Marshal will require sprinklers for new construction. Code requirements have been included in the draft resolution that require the shared driveway and fire truck turnaround is conspicuously posted "NO PARKING – FIRE LANE CVC 22500". If at any time these areas are blocked, the offending party will receive a City-issued citation.

The Public Works Department has reviewed the tentative map and supports the project. Conditions and code requirements are included in the draft resolution to ensure that driveway improvements, grading and drainage comply with City standards to the satisfaction of the Public Works Director, Fire Marshal and Building Official.

***7. The character of this project and this site is different from other flag lots in the vicinity.***

**Response:** The subject property is the last remaining one-acre parcel in the neighborhood. Flag lot subdivisions have occurred on adjacent properties at 2330 Johnson and 2417 Flora. 2330 Johnson is improved with a single-family residence constructed at a slightly higher elevation contour with a ten-foot setback from the rear property line. 2417 Flora is a 50,000 square-foot parcel that was divided into four lots, creating more intense infill development than what has been proposed at the subject property. The average lot size in the neighborhood is 7,000 to 13,000 square feet including the lots in adjacent Tract 1272. The subdivision request is for three lots over 12,000 square feet each, which is compatible with the neighborhood.

***8. Development of Parcel One is not supported by eight neighbors, motivated by concerns about privacy, views and neighboring property values.***

**Response:** While many of the City's policies and standards that regulate property development are based in part on preserving land values, guaranteeing one private property owner's views over another person's does not trump the other property owner's right to equal use and enjoyment of his/her property. The City's development policies and regulations seek to preserve and maximize both property owners' enjoyment of their properties. Conservation and Open Space Element (COSE) Policy 9.2.2 states that private development designs should cause the least view blockage for neighboring property that allows project objectives to be met. Conditions included from the Hearing Officer and Planning Commission in the draft resolution designating all parcels sensitive sites, restricting building height, and increasing the setback for Parcel One's building footprint, successfully respond to neighborhood concerns while allowing the applicants to subdivide their property for infill development. The General Plan contains numerous policies encouraging infill development, including:

1. HE 3.12.9 – Balance City efforts to encourage residential development by focusing as much on infill development and densification within City limits as on annexation of new residential land.
2. LUE Community Goal #31 – Grow gradually outward from its historic center until its ultimate boundaries are reached, maintaining a compact urban form.
3. COSE 4.4.3 – Compact, high-density housing to achieve more efficient use of public facilities, services, and land resources.
4. COSE 1.6.2 – Community size should be designed that housing, jobs, daily needs and other activities are within easy walking distance of each other.
5. COSE 1.6.13 – The community design should help conserve resources and minimize waste.

**Staff's Response to Additional Letter of Appeal (Boud)**

Letters were submitted to the Hearing Officer and Planning Commission from neighbors in support and opposition to the project. These letters were addressed in previous staff reports (Attachment 6, Planning Commission Staff Report) and hearings. A new appeal letter was submitted to the Council (Attachment 5, Boud Appeal Letter) that relies on historical reasons and City policy interpretations to argue that the subdivision should be denied. The following is staff's response that demonstrates project compliance with the General Plan, Community Design Guidelines, and Subdivision Regulations:

***1. General Plan Conformance***

The project site is designated as Low Density Residential on the General Plan Land Use Element (LUE) map and located within an existing subdivision. The project is consistent with the General Plan because it promotes policies related to residential project objectives (LUE 2.2.12) and infill development. Each parcel provides security and safety, adequate usable outdoor area, adequate parking and storage space. Furthermore, proposed Parcel One is bounded by houses on all sides that are built at the same or higher elevation contours.

PH1-6

Conditions of approval limit the height of eventual housing development to keep pleasant views from and toward the project (LUE 2.2.12).

The project is compatible with the neighborhood (LUE 2.2.10) because it intensifies development of a one-acre parcel in an area that has residential lots averaging 7,000 to 13,000 square feet, which were created by previous subdivisions, some dating back to 1978. The subdivision of Tract 1272 created a deep flag lot immediately adjacent to proposed Parcel One, and a recent four-lot subdivision was approved in the vicinity at 2417 Flora.

General Plan policies noted in the opposition letter (Attachment 5) govern compatible development in existing neighborhoods. All proposed parcels are subject to architectural review, which will ensure that any future development is in scale, respects privacy, and provides neighborhood cohesion.

## ***2. Consistency with Community Design Guidelines***

Section 1.4 of the Guidelines state, “The primary goals of the City’s *design review process* are to: maintain the community’s quality of life for residents, maintain property values, attract growth in the local economy, and preserve the natural beauty and visual character.” The City Guidelines are implemented in a way to serve both property owners in a manner consistent with other policies and standards. In this case, design standards are implemented in the context of density and subdivision standards. As conditioned, all proposed parcels are subject to architectural review, thereby ensuring future development will respect these stated goals. Design review also implements infill development guidelines that are “intended to provide for infill projects of high architectural quality that are compatible with existing development” (CDG 5.3). Building design, visual impacts from building height, outdoor living areas, exterior finish materials and exterior colors will all be evaluated upon development of the proposed parcels.

The appeal letter calls attention to Community Design Guidelines governing hillside development (Attachment 5). This section of the Guidelines is intended to implement “hillside development policies in Land Use Element Section 6.2.2” (CDG 7.2A). The General Plan identifies specific hillside planning areas in Land Use Element Figure 6. The LUE policies strive to preserve the steep, open hillsides that “function as landscape backdrops for the community.” The subject property is not an open and visible hillside, but instead is developed with a single-family residence and completely surrounded by urban development. Furthermore, Section 7.2 of the Community Design Guidelines states, “no parcel shall be created with an overall average slope of 30 percent or more, *and* without at least one building site of at least 5,000 square feet that has no natural slope of 10 percent or more”. The proposed subdivision is consistent with this guideline since the largest average cross-slope on a parcel is no more than 17.2 percent, which is well below the 30 percent threshold.

## ***3. Compliance with Subdivision Regulations***

Flag lots may be approved for subdividing deep lots where development would not be

feasible with the installation of a standard street. The proposed subdivision conforms to the following subdivision regulations:

Figure 1: Comparison of proposed lots and R-1 zoning district standards

Lot Dimension	Minimum Requirements	Parcel 1 Avg. slope = 17.2%	Parcel 2 Avg. slope = 4.9%	Parcel 3 Avg. slope = 15.7%
Net area (square feet) <i>Avg. cross-slope 0-15%</i>	6,000	n/a	12,370	n/a
Net area (square feet) <i>Avg. cross-slope 16-20%*</i>	10,890	12,895	n/a	12,185
Width (feet)	50	64	101	124
Depth (feet)	90	200	128	98
Frontage (feet)	20	26	124	26

*\*Residential lots sloped 16% or greater must be increased in size to meet minimum density requirements to allow at least one density unit per lot in accordance with Zoning Regulations Chapter 17.16.010.*

Parcels One and Three slope an average of approximately 15 to 17 percent, but both parcels are sufficiently large to satisfy Zoning Regulations density requirements. Conditions included in the draft resolution (Attachment 7, Draft Council Resolution) require that grading is minimized to the smallest practical area of land for development on each parcel. The project abandons two existing curb cuts to create one accessway to serve all three parcels. This brings the site further into conformance with Parking and Driveway Standards.

## CONCLUSION

The Hearing Officer and Planning Commission supported the project because it complies with the Subdivision Map Act, the City's Subdivision Regulations, Zoning Regulations, General Plan and Community Design Guidelines. Conditions imposed by the Hearing Officer and Planning Commission require height limits, architectural review and increased setbacks for future development abutting Corona Court neighbors to recognize the expressed concerns about neighborhood compatibility. The entitlement follows the traditional neighborhood pattern of subdivisions creating larger than average R-1 parcels. The tentative map has been supported by all relevant departments and conditions and code requirements included in the draft resolution will ensure that the final map meets all applicable City ordinances and codes.

## CONCURRENCES

The application has been reviewed by multiple City departments, including Public Works, Fire, Community Development, Transportation and Utilities. As conditioned, the project does not require any exceptions from City policies or codes.

PHI-8



## **FISCAL IMPACT**

When the General Plan was prepared, it was accompanied by a fiscal impact analysis, which found that overall the General Plan was fiscally balanced. This project will have no fiscal impact.

## **ALTERNATIVES**

1. The Council may uphold the appeal and deny the tentative parcel map, provided that the Council can make the required findings.
2. The Council may continue action, if more information is needed. Direction should be given to staff and the appellant.

## **ATTACHMENTS**

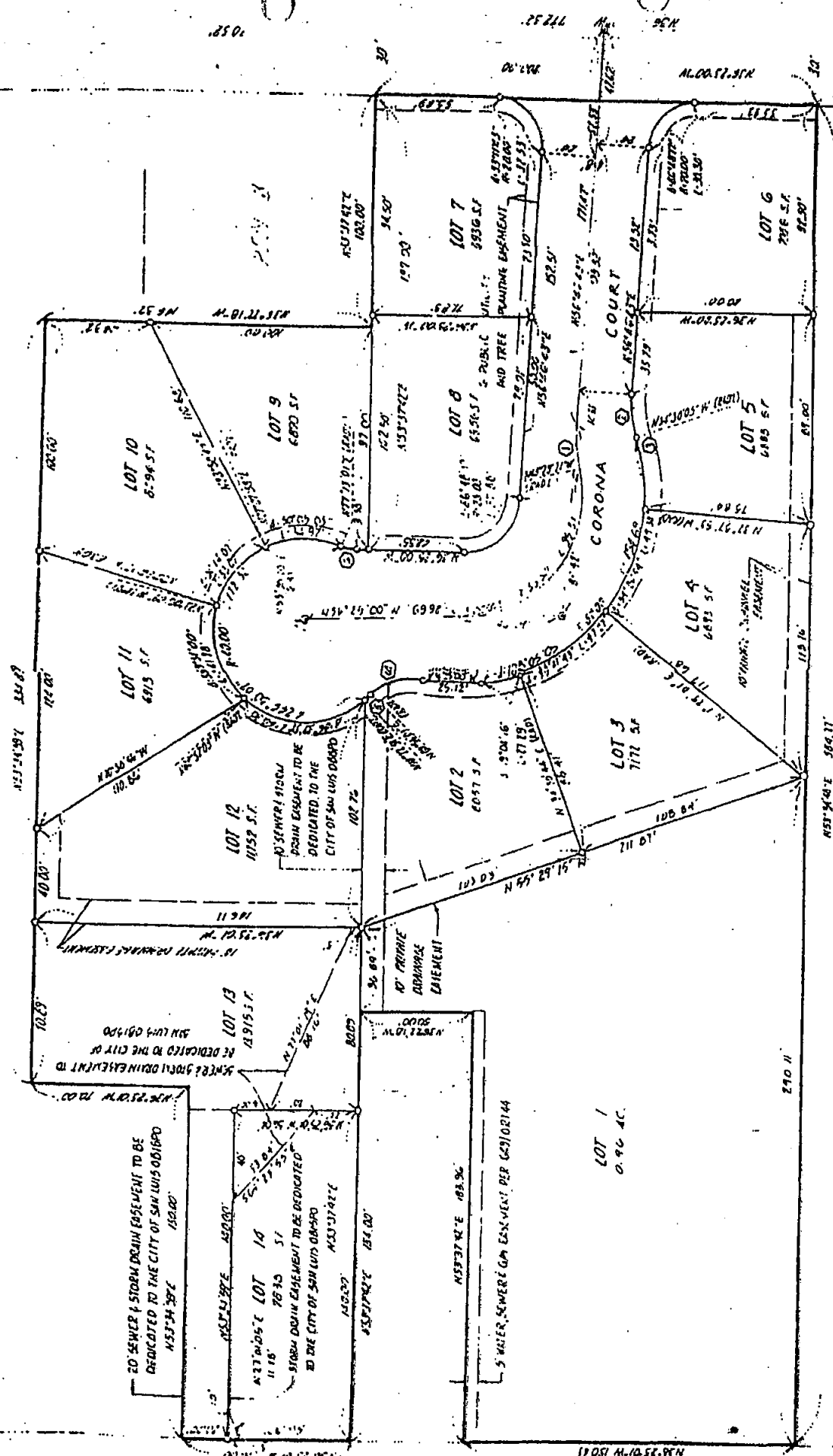
Attachment 1: Vicinity Map  
Attachment 2: Tract 1272 Map  
Attachment 3: Tentative Map  
Attachment 4: Appeal documentation  
Attachment 5: Boud Appeal Letter  
Attachment 6: Planning Commission Staff Report  
Attachment 7: Draft Council Resolution



# Attachment 2

PTN. 27

PTN. 7



PTN. 24

PTN. 10

TRACT 1272

LEGEND

CURVE	DATA	ANGLE	LENGTH
(1)	15' 15" 03"	72.00'	19.77'
(2)	21' 15" 45"	50.00'	18.51'
(3)	21' 30" 18"	37.23'	30.68'

- INDICATES STREET SURVEY ADJUSTMENT TO BE SET
- INDICATES 36" DIA. PIPE 31.63' TO BE SET

PHI-11





Filing Fee: \$250.00

Paid

N/A

\*REFER TO SECTION 4

CITY OF SAN LUIS OBISPO

NOV 09 2009

COMMUNITY DEVELOPMENT

## APPEAL TO THE CITY COUNCIL

### SECTION 1. APPELLANT INFORMATION

Name NANCY SHOKOH1 et al (SEE ATTACHED) Mailing Address and Zip Code 1659 CORONA CT, SLO 93101

Phone 805-234-5972

Fax

Representative's Name NA

Mailing Address and Zip Code

Title

Phone

Fax

### SECTION 2. SUBJECT OF APPEAL

1. In accordance with the procedures set forth in Title 1, Chapter 1.20 of the San Luis Obispo Municipal Code (copy attached), I hereby appeal the decision of the:

PLANNING COMMISSION

(Name of Officer, Committee or Commission decision being appealed)

2. The date the decision being appealed was rendered: 10/28/09
3. The application or project was entitled: MA 18-09, PM-SLO-09-0014

4. I discussed the matter with the following City staff member:

NA on \_\_\_\_\_ (Date)  
(Staff Member's Name and Department)

5. Has this matter been the subject of a previous appeal? If so, when was it heard and by whom:  
YES - 10/28/09 - PLANNING COMMISSION

### SECTION 3. REASON FOR APPEAL

Explain specifically what action/s you are appealing and why you believe the Council should consider your appeal. Include what evidence you have that supports your appeal. You may attach additional pages, if necessary. This form continues on the other side.

RECEIVED

NOV 09 2009

SLO CITY CLERK

Reason for Appeal continued

SEE ATTACHED

**SECTION 4. APPELLANT'S RESPONSIBILITY**

The San Luis Obispo City Council values public participation in local government and encourages all forms of citizen involvement. However, due to real costs associated with City Council consideration of an appeal, including public notification, all appeals pertaining to a planning application or project are subject to a **filing fee of \$250**, which must accompany the appeal form.

Your right to exercise an appeal comes with certain responsibilities. If you file an appeal, please understand that it **must** be heard within 45 days from filing this form. You will be notified in writing of the exact date your appeal will be heard before the Council. You or your representative **will be expected to attend** the public hearing, and to be prepared to make your case. Your testimony is limited to 10 minutes.

A continuance may be granted under certain and unusual circumstances. If you feel you need to request a continuance, you must submit your request in writing to the City Clerk. Please be advised that if your request for continuance is received after the appeal is noticed to the public, the Council may not be able to grant the request for continuance. *Submitting a request for continuance does not guarantee that it will be granted; that action is at the discretion of the City Council.*

**I hereby agree to appear and/or send a representative to appear on my behalf when said appeal is scheduled for a public hearing before the City Council.**

*Nancy Alshook*  
(Signature of Appellant)

*11/9/09*  
(Date)

Exceptions to the fee: 1) Appeals of Tree Committee decisions are \$100. 2) The above-named appellant has already paid the City \$250 to appeal this same matter to a City official or Council advisory body.

This item is hereby calendared for

TUESDAY, JANUARY 5, 2010

cc:

City Attorney

City Manager

Department Head JOHN MANDEVILLE

Advisory Body Chairperson CHUCK STEVENSON

Advisory Body Liaison KIM MURRAY, DONG DAVIDSON

City Clerk (original)

JAMES DAVID

Page 2 of 3

(blank)

## APPEAL OF SUBDIVISION APPROVAL

Attachment 4

**Date:** November 9, 2009

**To:** City Council  
City of San Luis Obispo

**Appellants:** Nancy Shokohi, Owner – Lot 3, Tract 1272  
Maureen Eyermann, Owner – Lot 2, Tract 1272  
Kevin & Julie Elder, Residents – Lot 2, Tract 1272  
Joseph & Barbara Boud, Owners – Lot 12, Tract 1272  
Steven & Paula Dooley, Owners – Lot 13, Tract 1272  
William & Barbara Herrerras, Owners – Lot 4, Tract 1272  
James & Marlene Killian, Owners – Lot 5, Tract 1272  
Chris & Alyssa Holland, Owners 2448 Johnson

**Applicant:** Jeff & Susan Spevack  
2410 Johnson Avenue

**Subject:** MS 78-09; PM-SLO-09-0074

On 9/18/09 the above referenced three-lot subdivision was approved by the Community Development Department at an Administrative Hearing. It was appealed to the City's Planning Commission who, on 10/28/09, also approved the project with modified conditions.

The Appellants continue to believe that this project is inappropriate and will result in significant and unavoidable negative impacts to their properties and their neighborhood. The Appellants do not believe that the modified conditions imposed by the Planning Commission provide adequate protections and mitigation of impacts that fully address their concerns.

The grounds for Appeal are enumerated in Attachment 1, the Planning Commission Appeal package, and should be considered in concert with the minutes and testimony at the Planning Commission meeting along with the following comments. Principal concerns continue to center around Slope and Useable Building Envelope, Grading & Vegetation Removal, Building Height & Setbacks, Visual Impacts, Driveway Access & Grades, Fire Access and Neighborhood Compatibility. These subjects are discussed in greater detail below and illustrated in the accompanying Exhibits A and B.

### SLOPE / BUILDING ENVELOPE

Slope calculations and site sections are described in Attachment 1 and its related Exhibits. Expanded comments are as follows:



The Appellants do not dispute that Parcel 1 may have an average cross slope within the gross lot area of 17.2%, however an examination of the delineated building envelope results in a more accurate depiction of the useable building area.

Building Envelope w/10' rear setback = 6,213 sf

Building Envelope less drive, guest parking & garage = 5,213 sf

Building Envelope less areas of >25% slope = 2,863 sf useable area

The building envelope includes the building footprint, patios, walks, retaining walls and circulation elements. In Parcel 1, the steep slope areas (at least 2,350 sf) occupy most of the center area of the envelope, forcing a future building onto the least slope impacted area of the envelope, the easterly area, which coincidentally, is the most intrusive and impacting to the neighboring lots.

Using the Appellant preferred 25' setback, which was required by the City elsewhere in the underlying subdivision (see Attachment 1, Exhibit 3) results in the following:

Building Envelope w/25' rear setback = 4,348 sf

Building Envelope less drive, guest parking & garage = 3,348 sf

Building Envelope less areas of >25% slope = 998 sf useable area

The above scenario illustrates the severely constrained useable site area, essentially rendering Parcel 1 as a non-building site, if reasonable and historically consistent 25' setback restrictions are imposed to protect the integrity of the existing neighborhood. A 25' setback reflects the setback applied to the abutting Flora Street lots for Tract 1272 lot development and this same requirement should be applied here. It is the Appellant's position that pushing a future structure onto an area of a parcel that creates the greatest impact to neighboring parcels produces an unavoidable, unmitigatable negative impact.

Contrary to the Applicant's representative testimony at the Planning Commission, this is not a case of a "Not In My Backyard" attitude by the neighbors. The grounds for Appeal are factual, not emotional. This Parcel 1 area has never been a candidate for development because: (1) Dr. & Mrs. Gelinas (original and previous owners) wanted maximum privacy for their backyard area. They emphasized this fact in participating in the development of Tract 1272 and requiring that the Lots 2 & 3 houses were sited as close as possible to Corona Court; and, (2) it has always been widely recognized by all as being far too constrained to support any development.

Once a parcel is legally created it has the ability and perception to be developed, whether by the present owner or a subsequent owner. City approval of a parcel that has no and/or marginal future development opportunity could potentially expose the City to be found liable for a denial of property rights. The City should

certainly exercise an abundance of caution in approving such a severely constrained properties.

### **HEIGHT / VISUAL IMPACTS**

The Planning Commission established a maximum building height not to exceed elevation 406', however an examination of the testimony at Planning Commission reveal that the assumptions related to neighboring lot residences finish floor elevations (FFL) were arbitrary and pure guesswork. The comments at the Planning Commission meeting make it clear that the Commissioners struggled with the height conditions due to that fact. With today's technology it is bewildering that an accurate Visual Simulation model was not provided. Failing the absence of such a model, the Appellants conducted recent survey and dimensioned site plan work that is depicted in Exhibit A of this Appeal.

The site and section information in Exhibit A and Photos in Exhibit B represent the correct conditions and elevations and should be considered along with previously submitted Visual Impact information in Attachment 1, Exhibit 4. If this subdivision is approved with three lots, including Parcel 1 as configured, the Appellants insist that any future development building height is limited to the 398' elevation to protect and maintain views and privacy from the neighboring properties. As an aside, privacy is not limited to view overlook as suggested by one of the Planning Commissioners. Privacy includes noise, activity, pets, vehicles, presence, etc., all of which have an effect on the ambient qualities of a neighborhood.

Further, if this project is approved as three lots, it is recommended that the Architectural Review Commission must review any future development on Parcel 1 in a public hearing.

---

### **GRADING /DRIVE / VEGETATION IMPACTS**

Testimony given at the Planning Commission meeting repeatedly stated that issues related to grading, earthwork quantities, retaining wall structures, vegetation removal and access would be worked out later. The Appellants disagree. A Preliminary Grading & Vegetation Removal Plan should be prepared now, before subdivision approval, and will very likely require a CEQA Initial Study analysis to understand earthwork and vegetation impacts with either a Mitigated Negative Declaration and/or an Environmental Impact Report required.

### **FIRE ACCESS / HAZARD**

A Fire Truck turnaround in the middle of this subdivision, requiring fire responders to drag their equipment up a 20% slope for a distance of over 250' to access a structural and/or wildland fire before it engulfs Parcel 1 improvements and threatens neighboring lots is the proposed fire protection solution. However,

this scenario is pure fantasy, especially when considering the functional reality of the turnaround area.

It is tortured logic to believe that a red painted curb and signage will deter the drive and/or turnaround from being occupied by vehicles, toys, and the like, even if posted with signs threatening a City citation if they are blocked. If blocked or occupied, no fire truck operator would dare jeopardize their equipment and apparatus by entering a site that has no escape, making a successful response and suppression to Parcel 1 even more remote.

And, from an aesthetic viewpoint, such a turn around, smack-dab in the front yard of the existing residence, is a purely industrial design solution that is completely inappropriate in this residential neighborhood.

### **NEIGHBORHOOD LOTTING CHARACTER**

Continual reference to this flag lot subdivision being similar to others in the neighborhood is misleading. The character of this project and this site is vastly different from other flag lots in the vicinity.

The flag lot subdivision to the south was developed by Roy Newell in 1978 and had, and still has, vacant land upslope with no visual impact issues. The flag lot subdivision directly east of Newell's, by Spencer Bunya in 2007, is well down slope and setback from the existing residences along Flora Street, so no visual impacts are possible in that case. And, flag Lot #13 of Tract 1272, which was developed and sold by Appellants Joseph & Barbara Boud who, as members of the self-imposed Tract 1272 ARC, approved the subsequent house design after requiring setback modifications to protect viewsheds from their Lot #12.

---

### **SUMMARY & RECOMMENDATIONS**

Opposition by eight concerned neighboring lot owners and residents to this project cannot be understated. These property owners have invested a lifetime of personal resources and energy to create and establish a quality neighborhood and residential environment for themselves and future owners. The Appellants feel that the Applicant has more than ample opportunity to gain reasonable financial benefit in developing their property with a project that does not severely impact the abutting properties safety, views, values, privacy and neighborhood. Frankly, the Appellants are puzzled why the City is so willing to support and accommodate such a marginal project, squeezing an improbable building site into an area with so many problems and impacts.

The Appellants submit the following recommendations for consideration by the City Council.

**Recommendation #1 - Preferred**

Deny the project with guidance given to the Applicant to pursue a two-lot subdivision with a future Lot Line Adjustment negotiated between the Applicant's and the abutting lots to the east (Lots 2 & 3, Tract 1272; see Attachment 1 for more information on the LLADJ possibility). This would not only be supported by the Appellants but would also eliminate the extensive and expensive infrastructure improvements, grading, vegetation removal, fire hazard & turnaround issues, etc., that will be necessary to improve Parcel 1 as a separate parcel.

**Recommendation #2 – Alternative**

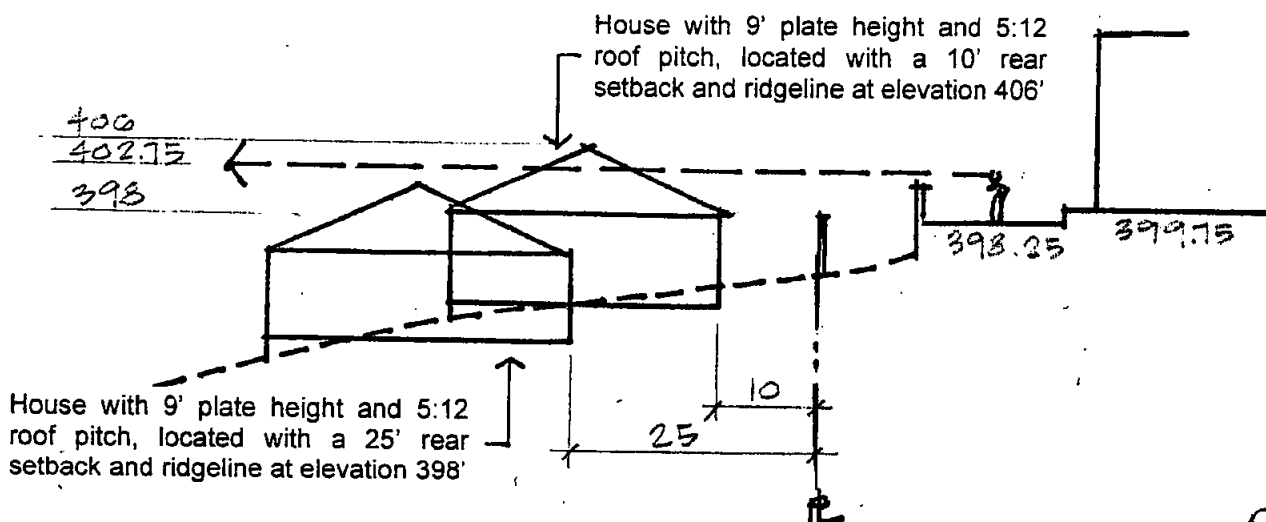
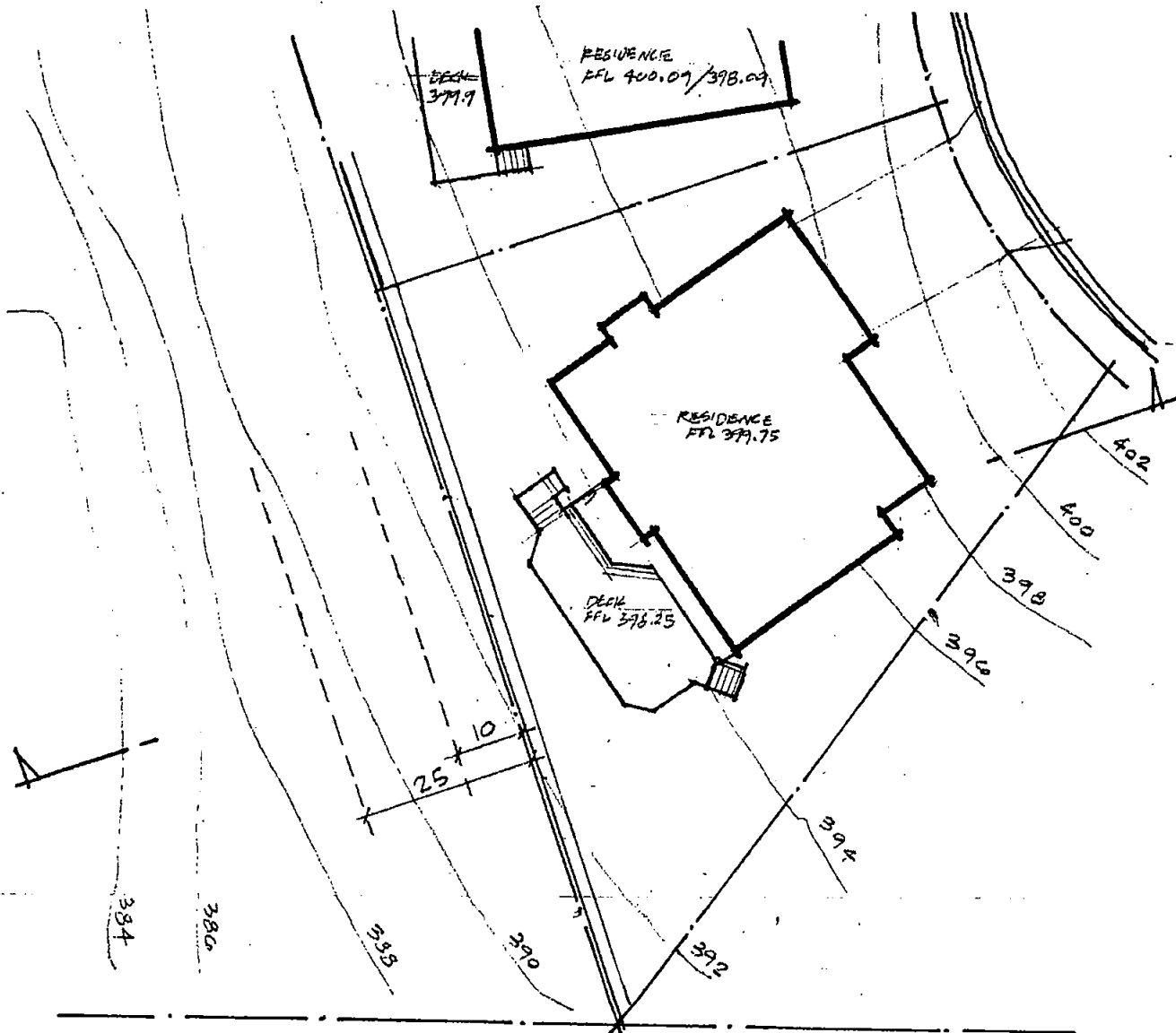
If a three-lot project is approved it should require the submittal of a Preliminary Grading & Vegetation Removal Plan prior to approval and include the following conditions:

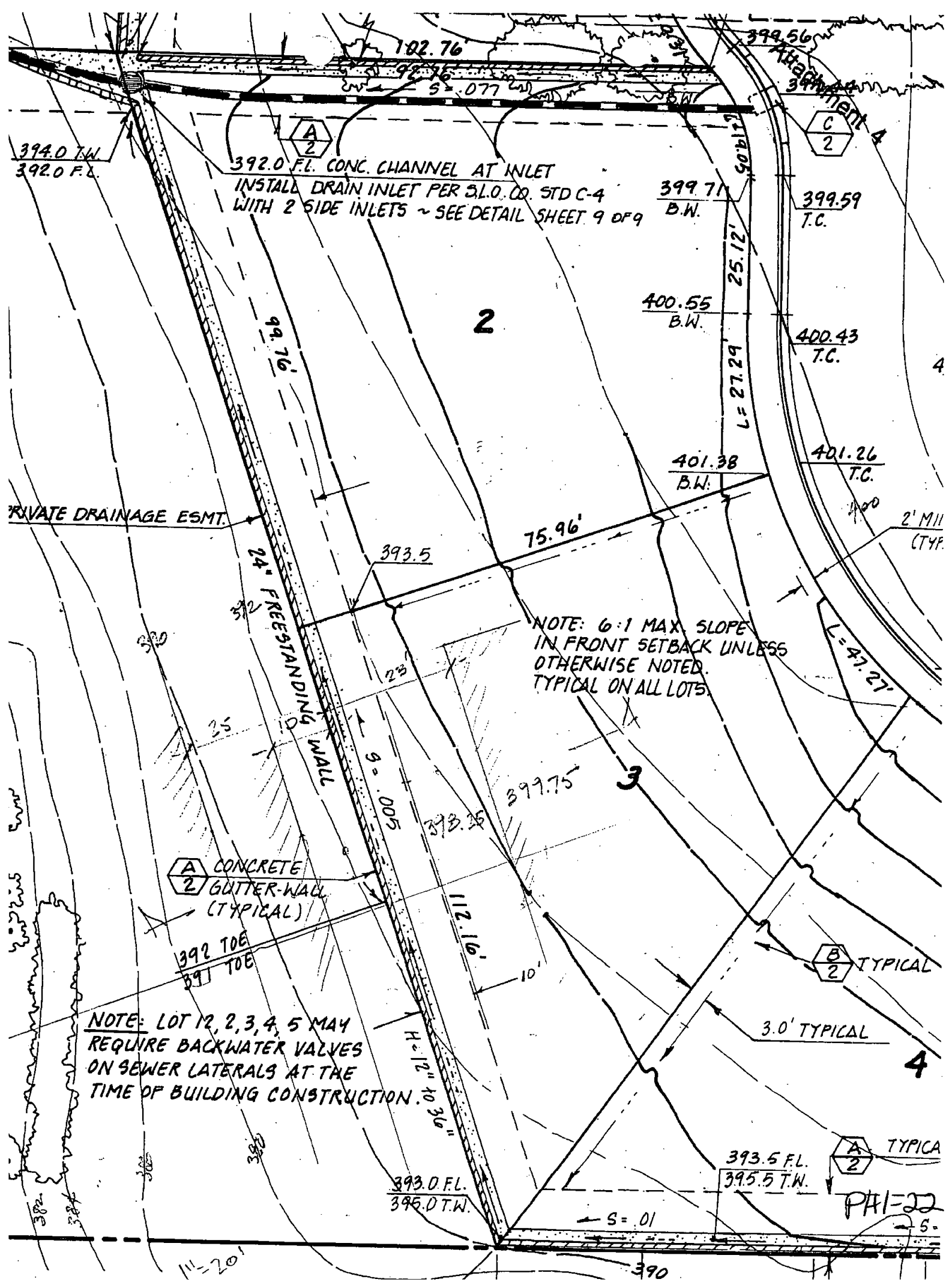
1. A 25' rear yard setback from the lots to the east (1649 & 1659 Corona Court) and to the south (2448 Johnson Avenue) for any structure, driveway or guest parking space
2. A maximum building height not to exceed elevation 398'
3. Public hearing review by the City's Architectural Review Commission

The Appellants appreciate your consideration of this information and trust the City Council will make the right decision to protect our properties and maintain the quality of our neighborhood.

# EXHIBIT A

## Site & Section Information





## EXHIBIT B

Photos with Pole @ 406' Elevation



# **ATTACHMENT 1**

**Appeal Package to Planning Commission with Exhibits 1-5**



## APPEAL OF SUBDIVISION APPROVAL

Attachment 4

**Date:** September 25, 2009

**To:** Department of Community Development  
City of San Luis Obispo

**Appellants:** Nancy Shokohi, Owner – Lot 3, Tract 1272  
Maureen Eyermann, Owner – Lot 2, Tract 1272  
Kevin & Julie Elder, Residents – Lot 2, Tract 1272  
Joseph & Barbara Boud, Owners – Lot 12, Tract 1272  
Steven & Paula Dooley, Owners – Lot 13, Tract 1272  
William & Barbara Herrerras, Owners – Lot 4, Tract 1272  
James & Marlene Killian, Owners – Lot 5, Tract 1272  
Chris & Alyssa Holland, Owners 2448 Johnson

**Applicant:** Jeff & Susan Spevack  
2410 Johnson Avenue

**Subject:** MS 78-09; PM-SLO-09-0074

The above noted property owners and residents (Appellants) who abut the above referenced subdivision proposed by Applicant (Spevack) hereby appeal the 9/18/09 Administrative Hearing approval of said Subdivision to the City of San Luis Obispo Planning Commission as described in Chapter 17.66 of the City Zoning Regulations.

### APPLICABLE CITY ORDINANCES & POLICIES

The following cited policies are applicable in evaluating the project's consistency with City Ordinances.

#### Chapter 16.18.020 – General

Discusses the design of lots and states that lots that are impractical for intended uses due to terrain, natural features, access, or developable area should not be approved.

#### Chapter 16.18.020A - Grading

This chapter states that natural contours in new subdivisions shall be preserved; Restricts retaining walls to no greater than 3 feet and slopes to 2:1 maximum

#### Chapter 16.18.050 – Depth/Width Relationship

States that lots with 3:1 depth-to-width ratio are not permitted unless it can be demonstrated that the flag lot subdivision can be accomplished without detriment to adjacent properties.

**Chapter 16.18.060C – Flag Lots**

Requires access way to the rear be at least twenty feet wide with width and paving subject to approval of Community Development Department Director.

**Chapter 16.18.060D – Flag Lots**

Requires access driveways greater than 300' to provide two way access and fire truck access with appropriate turn around areas to exit in a forward direction. Fire Code requires that access roads are a maximum of 15% grade, all weather surface and provide an unobstructed width of 20'.

**Chapter 16.18.060G – Flag Lots**

Requires new parcels that are surrounded by residential development to be designated as a "Sensitive Site" requiring ARC review to consider impacts of overlook, solar access encroachment, noise protections and privacy.

**Chapter 16.18.130B – Hillside Subdivisions**

States that substantially larger lots or open space should be applied to the steepest areas, drainage swales, etc.

**Chapter 16.18.130C – Hillside Subdivisions**

States that grading is to be kept at an absolute minimum

**Chapter 16.18.130D – Hillside Subdivisions**

Contains design standards related to minimum grading and avoidance of potential hazards such as erosion, sedimentation, fire or water quality.

**Parking & Driveway Standard 2130 / City Fire Department Access Standards**

The City's Upward Driveway Standard #2130 contains slope and dimension standards for the driveway ramp connection with the public road, slope of driveway and vertical curve standards where the driveway levels out. The Fire Department establishes standards of 15% maximum slope, turnaround side slope and 20' unobstructed access width for the driveway.

**APPEAL**

The Appellants do not believe that Subdivision MS 78-09/PM-SLO-09-0074 should be approved for the following reasons:

**Building Envelope Parcel 1 - Slope**

The proposed building envelope for Parcel 1 contains significant areas of steep slopes; nearly 35% of the proposed envelope contains slopes greater than 25% (see attached Exhibit 1). Future development will require the removal of significant mature vegetation, including oak and pine trees. Both of these conditions would clearly require massive grading operations and retaining walls,

violating a number of the aforementioned City Ordinances related to minimum grading, erosion and sedimentation hazards.

#### **Building Envelope Parcel 1 – Setbacks**

The proposed building envelope shows a minimum 5' setback on the east, south and west. The subject property is Lot 1 of Tract 1272, approved by the City in 1985. CC&R's were developed for the tract that made it very clear that respect for neighboring privacy and views was paramount (see attached Exhibit 2). Lot 1 was not included in the CC&R's because it was understood that no further development would occur on the Lot 1, therefore it was pointless to include it in the covenants, however the spirit of privacy and views was endorsed by all.

Further, conditions of approval and historical decisions and correspondence addressing development of properties within Tract 1272 required developments to increase rear-yard setbacks, set development into existing grade and limit them to a single story where possible (see attached Exhibit 3). At the very least, the building envelope on Parcel 1 should adhere to the historical rear-yard setback of 25' and limit the building to a single story.

#### **Parcel 1 – Access**

The Tentative Map shows a 17% driveway grade for the first approximate 60' from Johnson Avenue with a driveway width of 20'. The driveway then narrows to 16' wide for the next 80' with a fire department turn around at the 90' distance, then continues up the hill at 7% increasing to 20% within a driveway width of 12'.

We believe the 17% grade is questionable, as our survey indicates it approaches 20%, either case will require it to be excavated to comply with City code of 15% with retaining walls constructed along the sides. This will also necessitate the removal of existing property line screening vegetation. As the drive continues into Parcel 1 at 12' wide, it climbs up a grade that our slope calculation shows approaches 20%, not 15%, with no information provided on retaining wall and/or grading required to demonstrate the feasibility and/or impacts to the landform and existing drainage structure that runs along the common property line between Lots 1, 2 & 3. All of these conditions clearly contradict City Ordinance and Fire Code requirements and/or have the potential to cause serious environmental damage.

#### **Fire Hazard**

As was pointed out in a 9/09/09 letter from Appellant to City and discussed above, the southern boundary of the building envelope on Parcel 1 is about 325' from Johnson Avenue along this proposed 12' wide driveway with grades of more than 17% and a very tight turn on a 20% slope. The Fire Code requires a maximum 15% gradient with a 20' wide unobstructed access. To believe that painting the curbs red with no parking signs will restrict owners and guests from parking within the driveway or the fire truck turn around is unenforceable and pure fantasy. The functional reality is this: this severely constrained access road

exceeds gradient and does not satisfy width requirements and the proposed fire truck turnaround will certainly be blocked by car or RV parking, children's play equipment, trash cans or the like. In the event of a structural or wildland fire any delayed response time would immediately engulf the neighboring wood fences, exterior wood decks and homes. What kind of tortured logic is staff using to compromise and deviate from long-standing City health and safety requirements?

When Tract 1272 was approved and the improvement plans prepared, the flag lot gradient and width requirement to access Lot 13 was satisfied as required. Why are these access standards being compromised now?

### **Visual Impacts**

As noted above, the design of Tract 1272, its conditions of approval, the CC&Rs, and historic decisions by the City as well as the ARC reviews for the tract made it abundantly clear that this development was intent on maintaining maximum privacy, views and vistas. Even a single story house located on Parcel 1 would compromise and severely affect the expectations established on this tract and in this neighborhood resulting in significant quality of life impacts for the residents as well as producing severely diminished property values (see attached Exhibit 4). For the neighboring properties to embrace this parcel map proposal so the Applicant can gain financial benefit while their land values are diminished is patently absurd.

Further, Condition #1 of MS 78-09 requiring ARC review provides no assurance or comfort to the Appellants. Once a parcel is legally created it has the ability and perception to be developed, whether by the present owner or a subsequent owner. The ARC would ultimately approve a project on this lot or the City would be found liable for a denial of property rights. The approval of this subdivision is a ploy to enhance the speculative value of the Applicant's real estate at the expense of the neighboring lot owner's values. It is in the City's best interest to use an abundance of caution when considering development or subdivision of marginal properties with significant constraints that conflict with so many City land use policies.

### **Neighborhood Controversy**

This project is not supported by any abutting property owner and/or resident that will be affected by its approval and development. This includes Dooley (Lot 13), Boud (Lot 12), Eyermann (Lot 2), Elder (resident, Lot 2), Shokohi (Lot 3), Herraras (Lot 4), Killian (Lot 5), and Holland (2348 Johnson, abuts Parcel 1).

The properties that abut this project were purchased and developed with the understanding and assurance that the condition of the neighborhood, the views, the privacy and ambience was predictable and long lasting. Historic City decisions, Tract 1272 conditions and covenants and tract ARC reviews of subsequent development all reinforce the intentions establishing this

neighborhood and the Appellants have no desire for our quality neighborhood, our investments and expectations to be eroded or compromised.

Secondly, a similar proposal to subdivide Lot 1 of Tract 1272 was submitted to the City in 1995 (PM SLO-95-020 (see Attached Exhibit 5). All of these same salient comments were presented at that time. City staff did not support the project and it was subsequently withdrawn. Why must we continue to time and again defend and protect our neighborhood from subsequent proposals when the record is very clear that this Parcel 1 site is unsuitable for development?

Finally, the Applicants undertook a major remodel and renovation to their residence, removing all walls except the northern one. They then rebuilt the residence on the exact same footprint! With foresight, they should have reconfigured the siting of the house to allow for future development without impacting the neighboring properties, however they did not. We do not believe that the abutting properties should now be obligated to suffer for their lack of foresight, nor do we feel obliged to underwrite their retirement planning efforts.

#### **Project Alternatives**

Denial of MS 78-09; PM-SLO-09-0074 does not preclude the property owner of achieving a reasonable level of benefit from potential future value and/or development of their property. Several years ago, the owners of Lots 2 and 3, individually approached the Applicants with the desire to purchase the rear, unused and inaccessible, portions of the Applicant's property abutting Lots 2 & 3. The Applicants were not interested in selling, so presumably an acre of land was not too much for them to maintain at that time. This option is still available to pursue and would require subsequent negotiations and cooperative processing of a Lot Line Adjustment. This land area would not be buildable, however would enable the Lot 2 & 3 owners to expand their yard areas and formalize their privacy areas with the only condition being that the storm drainage system curb wall and inlet along their rear property lines is not compromised.

Additionally, denial of MS 78-09; PM-SLO-09-0074 would not deny the Applicants from subdividing the front portion of their property along Johnson Avenue. The front yard area contains more than adequate land area that could be parceled off and, if properly designed, could still maintain adequate separation, privacy and yard areas for the existing residence, as well as minimize grading, vegetation removal, safety hazards and visual impacts as discussed herein.

#### **Recommendation**

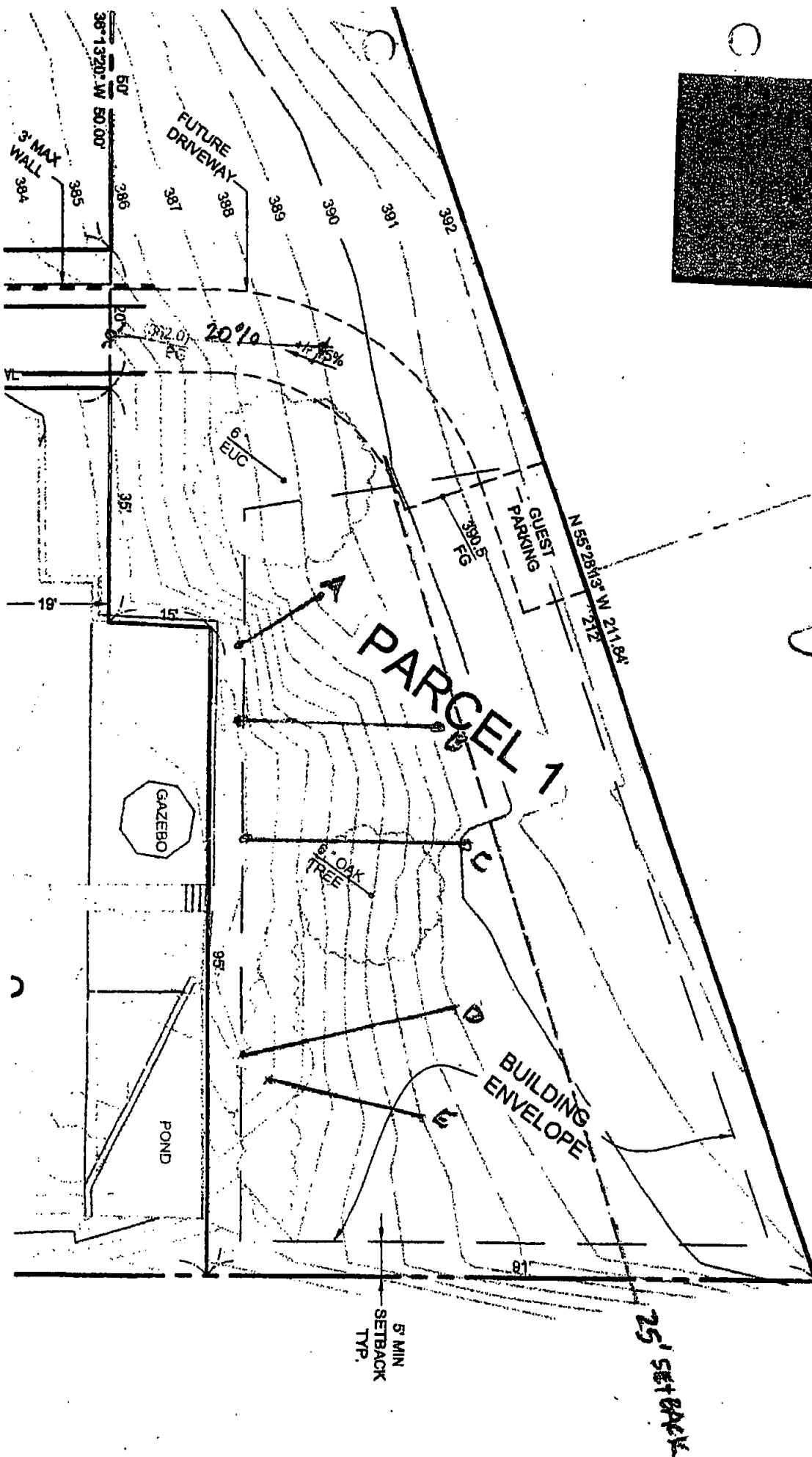
This application is not about implementing Strategic Growth objectives, General Plan Goals, compliance with AB32 or other State or City planning objectives. It has to do with the respect for the quality of life and land use within an existing neighborhood, conformance with City codes and consistency of decision-making. There is no compelling reason to approve such a marginal project especially

when Alternatives are available and, frankly, the Appellants are bewildered by the recent approval of MS 78-09 given the 25-year history of decisions that have protected the integrity of this neighborhood.

We recommend that the Planning Commission deny MS 78-09; PM-SLO-09-0074. We believe that Findings #2, 3, 4 and 6 cannot be satisfied, the project does not comply with the numerous City codes and policies as described above and the historical record makes it clear that this Parcel 1 area is not a candidate for subdivision and/or structural development.

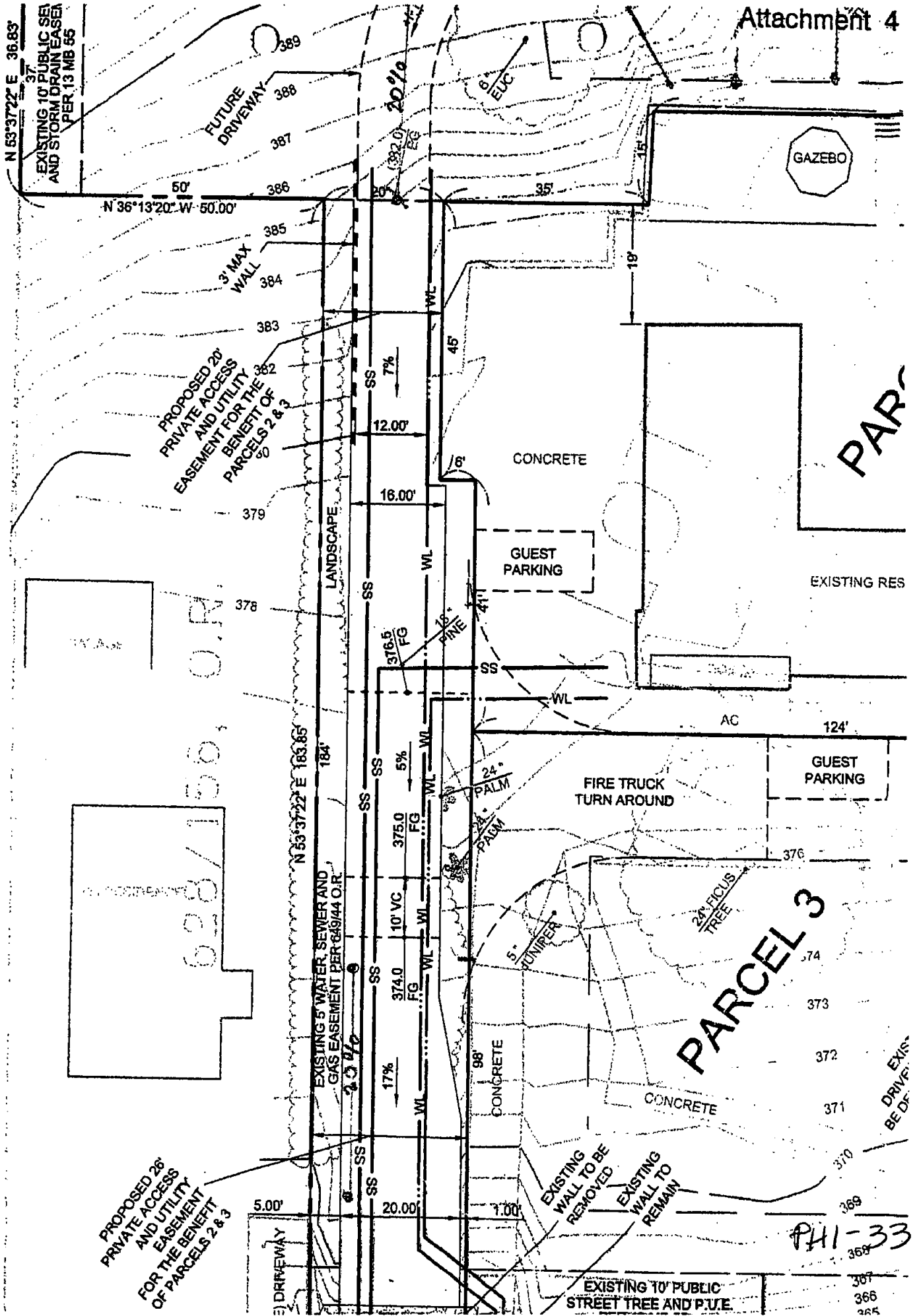
We recommend that the Planning Commission direct the Applicant to pursue the Project Alternatives as discussed above.

**EXHIBIT 1**



④  $6/13 = 46\%$   
 ③  $7/29 = 24\%$   
 ②  $9/32 = 28\%$   
 ①  $8/32 = 25\%$   
 ⑤  $5/22 = 23\%$   
 LOT 3





**EXHIBIT 2**

PHI-34

Recording requested by: Ticor Title Insurance Company

10/29 3:52 PM

11:31  
8:30  
10:30

When Recorded Mail to:  
Joseph C. Boud  
1009 Morro Street, Suite 206  
San Luis Obispo, CA 93401

DOC. NO. **70437**  
OFFICIAL RECORDS  
SAN LUIS OBISPO CO., CA

OCT 29 1986

FRANCIS M. COONEY  
County Clerk-Recorder  
TIME 8:00 AM

**DECLARATION & ESTABLISHMENT  
OF PROTECTIVE  
COVENANTS & RESTRICTIONS**

This is a Declaration, made and dated this 17 th day of OCTOBER, 1986 by and between Joseph C. Boud, Barbara K. Boud, Fred G. Kennedy, Hazel J. Kennedy, and Michael Bravo, hereinafter called "Declarant".

**WITNESSETH:**

WHEREAS, Declarant is now the owner of that certain real property in the City of San Luis Obispo, County of San Luis Obispo, State of California, described as follows: All or portions of Lots 7, 8, 9, 10, 24, 25, 26 & 27 in Block 4 of Goldtree Vineyard Tract, according to the map recorded in Book 1, Page 14 of Record of Surveys, in the Office of the County Recorder of said County; said property also described as Lots 2 to 14, inclusive, of Tract 1272 in the City of San Luis Obispo. BOOK 13, PAGE 55.

WHEREAS, it is the intention of Declarant to impose certain mutual beneficial restrictions under a general scheme of use and improvement for the benefit of all the property;

NOW, THEREFORE, Declarant hereby declares that all of the property described herein is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and/or improved subject to the following limitations, restrictions, covenants and reservations, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the property, and are established for the purpose of enhancing and protecting the value, desirability, and attractiveness of the property and every part of it. All of the limitations, restrictions, and covenants shall run with the land, and shall be binding on all parties having or acquiring any right, title, or interest in the property described herein and shall inure to the benefit of all of the property and the future owners of that property or any portion of it.

PH1-35

149547RB

## Article I

## DEFINITIONS

- A. "Lot" means one of the numbered parcels of real property described herein.
- B. "Property" means the property described herein or any portion of it.
- C. "Set-back" means the minimum distance between a building or other structure and a given street or property line.
- D. "Map" shall mean the Final Subdivision Map recorded for Tract 1272 on file with the County Recorder of San Luis Obispo County.
- E. "Drainage System" means any drainage ditch, swale or pipe located within drainage easements on any lot of the final map for Tract 1272.
- F. "Owner" or "Owners" shall mean the record holder or holders of title of any lot.
- G. The singular shall include the plural and the masculine shall include the feminine, wherever the context so requires.
- G. "Board" means the Architectural Control Board as described herein.

## Article II

## BASIC RESTRICTIONS

**A. Use of Property.** No lot shall be used except for residential purposes and no building shall be erected, constructed, altered or maintained on any of the lots other than a residence for a single family with customary and suitable incidental detached buildings as permitted by the Architectural Control Board (the Board).

**B. Architectural Control.** No building shall be erected, constructed, altered or placed on any lot until the construction plans and specifications and a plan showing the location of the structure has been approved by the Board, whose function is to insure quality of workmanship and materials, harmony of external design with existing structures and outdoor yard areas, and site location with respect to topography and finish grade elevations.

**C. Fencing.** Property line fencing must be erected and placed in accordance with the standard fence design on file with the City of San Luis Obispo and completed prior to the final building inspection and occupancy permit for each individual lot. All other internal fencing or garden walls, including the location, style, material, color and height shall be subject to written approval of the Board. Any fence, or combination fence and retaining wall, greater than six (6) feet in total height as measured from the lower abutting grade elevation may be required to obtain a Variance from the City of San Luis Obispo. This shall be the responsibility of the individual lot owners as lots are developed.

**D. Landscape Requirements.** Front yard areas and property line fencing shall be landscaped by each individual lot owner and installed within 90 days after the final building inspection and occupancy permit for each individual lot. Street trees, as required by City ordinance, shall be planted by lot owners as lots are developed.

**E. Special Sidewalk/Landscape Requirements.** The four foot wide (4') sidewalk in front of Lots 9 and 10 shall be expanded to a full six foot wide (6') sidewalk with the retaining wall relocated in the event the existing oak tree, whose location in the cul-de-sac prompted the lesser width sidewalk, is ever removed and/or destroyed. Special attention will be given landscape plans in the vicinity of this tree, so that proposed landscape materials and watering requirements are compatible with those of the oak tree.

**F. Upkeep of Real Property.** Each lot owner covenants to keep, maintain, water, plant and replant all required landscape areas, slopes, banks, right-of-ways, and set-back areas located on his/her lots so as to maintain landscaping in a healthy condition, prevent erosion and to present an attractive, clean, sightly and wholesome appearance at all times.

**G. Upkeep of Drainage Systems.** Each lot owner shall continuously maintain, repair and/or replace all drainage system improvements serving the property within those areas designated on the final map of Tract 1272 as drainage easements, except for those improvements for which a public authority or utility company is responsible.

**H. Garbage and Refuse Disposal.** No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept, except in sanitary containers, which must be maintained in a clean and sanitary condition and stored from public view.

**I. Nuisance, Retail Sales and Non-Conformity.** No noxious or offensive activity shall be carried on or upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the property or neighborhood. Retail sales, including garage sales, vehicle sales, household items, etc., are permitted and may be displayed provided said sale and display does not exceed two consecutive days in any 30 day period.

**J. Temporary Structures.** No structure of a temporary character, trailer, recreational vehicle, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

**K. Signs.** No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sale period.

**L. Poles, Masts, Disks and Antennas.** No poles, masts, satellite disks or antennas of any type, size or height shall be constructed on any lot, or on or above the roof of any dwelling or structure without the consent of the Board. A satellite disk must be shielded or screened from view by adjacent lots with an enclosure which must be approved by the Board.

**M. Storage of Materials, Junk, Trash and Equipment.** The storage of or accumulation of junk, trash, materials and other offensive or noxious material is specifically prohibited.

**N. Storage of Cars, Trailers, Campers, Boats or Other Motor Vehicles.** No livestock trailer, house trailer, travel trailer, self-propelled vehicle, boat, boat trailer or other similar type of vehicle shall be parked, stored or kept on the public streets, private driveways, or common driveways of any lot for any period exceeding 48 hours. Storage of these types of vehicles is permitted, provided they are hidden from view by screening, stored in garages, or other such method.

PHI-37

**D. Common Driveways.** Where adjacent lots choose to develop a common access driveway, any and all necessary permits and documents must be obtained and/or processed through the City of San Luis Obispo by the affected property owners. In no case shall the common drive be occupied so as to prevent the unobstructed ingress or egress of the lot owners.

**P. Livestock and Poultry.** No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot, except that two adult dogs, two adult cats or two other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose.

### Article III

#### ARCHITECTURE STANDARDS

**A. Dwelling Size.** No residence shall be erected on any lot having a total living space floor area, exclusive of open porches, garages, patios, exterior stairways and landings, of less than 1800 square feet. Every proposed residence must have a minimum two car garage.

**B. Building Location.** No building shall be located on any lot nearer to the front, side or rear lot lines than the minimum building setback lines as required by the City of San Luis Obispo, unless an exception is granted by this Board and a Variance received from the City of San Luis Obispo. The location of the structure or structures and the landscaping shall bear such over-all relation to the adjacent properties so as to create an aesthetically pleasing overall appearance with particular attention given to maintaining adjacent properties privacy and views.

**C. Colors.** All exterior colors, textures and materials, including roofs, must be set forth in the plans and specifications and approved in writing by the Board prior to commencement of construction. Color samples shall be submitted with plans and specifications which shall be coded or marked to indicate where the colors are to be used on the finished dwelling.

**D. Landscape Plans.** A landscape plan, including types and sizes of plants, trees or other landscape materials and their method of maintenance, shall be submitted to the Board for approval along with plans for the structure to be constructed on the lot.

**E. Fire Protection Systems.** New residences constructed on Lots 2 through 4 and 9 through 13 shall be equipped with automatic residential rated fire sprinklers to the approval of the San Luis Obispo City Fire Department.

**F. Exceptions to Architecture Standards.** All of the above architectural standards apply to construction and/or development activities on all of the property described herein, with the exception of the existing improvements located on Lot 14 and the relocated improvements located on Lot 10. Any new construction or remodeling proposed for these lots shall be subject to the architectural standards and procedures herein described.

PHI-38

## Article IV

## ARCHITECTURAL CONTROL BOARD

**A. Membership.** The Architectural Control Board is composed of Joseph C. Boud, Barbara K. Boud and Michael Bravo; 1009 Morro Street, Suite 206; San Luis Obispo, CA 93401. A majority of the board may designate a representative to act in its place. In the event of death or resignation of any member of the board, the remaining members shall have full authority to designate a successor. Neither the members of the board, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant.

At any time, the then record owners of three-quarters of the lots shall have the power through a duly recorded written instrument to change the membership of the board or remove or restore to it any of its powers, duties and responsibilities.

**B. Procedure.** The Board shall review individual plans and specifications submitted and provide a written approval within 30 days. If no notice of rejection or denial is received within 30 days from the date of receipt of the submittals, and no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

Declarant, or their officers or agents, all acting singularly or together, shall not be responsible for any loss or damage or be liable in any other way for any errors or defects, either latent or patent, in the plans and specifications submitted for approval, or any building or structure erected in accordance with such plans and specifications.

**C. Inspection and Conformity to Plans.** During construction, Declarant or any agent or member of the Board may, from time to time, at any reasonable hour or hours, with reasonable notice, enter any lot and inspect any construction subject to this Declaration as to compliance with the approved submittals. Deviations shall be diligently guarded against, and all such deviations or nonconformities set forth in any notice of noncompliance issued by the Board shall be corrected prior to any final occupancy permit granted by the City of San Luis Obispo. Declarant, the Board, or any agent or officer thereof, acting in good faith, shall not be deemed guilty of, or become liable for any manner of trespass for such entry or inspection.

**D. Enforcement of Board Ruling.** The Board or Declarant shall have the right and authority, after reasonable notice, to perform the subject matter of such noncompliance correction, and the cost of the performance thereof shall be charged to such owner and may be recovered by the Board or Declarant in an action of law against such owner.

## Article V

## GENERAL PROVISIONS

**A. Scope and Duration.** All the covenants and restrictions in this Declaration are imposed upon the property for the direct benefit of the owners as part of a general plan of improvement, development, building, occupation and maintenance; and shall run with the land and shall be binding upon all of the owners of the property and all persons claiming under them and continue to be in full force and effect for a period of 20 years from the date that this Declaration is recorded. After this 20 year period, the covenants and restrictions shall be automatically extended for successive periods of two years each, unless an instrument, signed by three-fourths of the then owners of record of the property, has been recorded signifying termination.

**B. Interpretation of Restrictions.** All questions of interpretation or construction of any of the terms or restrictions herein shall be resolved by the Board or the Declarant and its decision shall be final, binding and conclusive upon all the parties affected.

**C. Breach.** The covenants hereby established shall operate as covenants running with the land; and Declarant and/or the owner of any of the real property described herein, including a bona fide purchaser under contract, or any association formed or used by the owners, in the event of a breach of any of these restrictions or covenants or a continuance of any such breach may by appropriate legal proceedings take steps to enjoin, abate or remedy the same. It is hereby agreed that damages are not an adequate remedy for such breach.

Every act or omission whereby any of the covenants contained in this Declaration are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable and may be exercised by Declarant, the Board, or the owner of any of the real property described herein.

**D. Protection for Mortgagees and Title Insurance Companies.** A breach of the covenants contained in this Declaration shall not affect or impair the lien or charge of any bona fide mortgage or deed of trust made in good faith and for value as to said lots or property, whether such owner's title was acquired by foreclosure or in a trustee's sale or otherwise. A lender who acquired title by foreclosure or deed in lieu of foreclosure or trustee's sale shall be obligated to cure any breach of the covenants which occurred prior to such acquisition of title, and shall be bound by these covenants.

Breach of any of said covenants and restrictions, or any re-entry by reason of such breach, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to said lots or property, or any part thereof. Any subsequent owner of such property shall be bound by these restrictions or covenants whether the owner of said property acquired title by foreclosure, trustee's sale, or otherwise.

**E. Right to Enforce.** The provisions contained in this Declaration shall inure to the benefit of and be enforceable by Declarant, its successors or assigns, or the owner of any of the real property described herein and each of their legal representatives, heirs, successors or assigns.

The failure to enforce any of such covenants or restrictions herein contained shall in no event be deemed to be a waiver of the right to do so thereafter. In any legal proceedings commenced by anyone entitled to enforce or restrain a violation of this Declaration, or any provision thereof, the losing party or parties shall pay the attorney's fees of the winning party or parties in such amount as may be fixed by the Court in such proceedings.

**F. Severability.** Invalidity of any of these covenants by judgement or court order shall in no way affect any of the other provisions which shall remain in full force and effect.



This Declaration is executed by Declarant to acknowledge and establish the terms and conditions set forth in this Declaration.

Executed on August 17, 1986 in San Luis Obispo, California.

**DECLARANTS**

Joseph C. Boud  
Joseph C. Boud

Barbara K. Boud  
Barbara K. Boud

Michael Brevo  
Michael Brevo

Fred G. Kennedy  
Fred G. Kennedy

Hazel J. Kennedy  
Hazel J. Kennedy

PH1-41

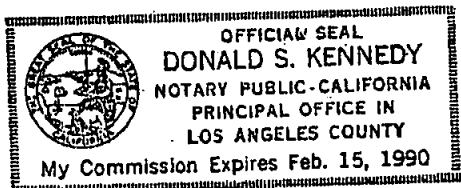
STATE OF CALIFORNIA

COUNTY OF Los Angeles

SS.

On OCTOBER 17, 1986, before me, the undersigned, a Notary Public in and for the State, personally appeared Fred G. & Hazel J. Kennedy, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose names are subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.



Donald S. Kennedy  
Notary Public in and for said State

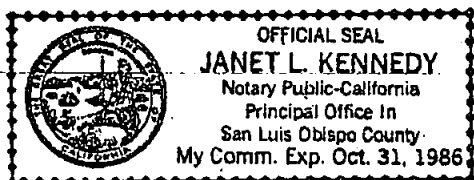
STATE OF CALIFORNIA

COUNTY OF San Luis Obispo

SS.

On October 24, 1986, before me, the undersigned, a Notary Public in and for the State, personally appeared Joseph C. & Barbara K. Boud, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.



Janet L. Kennedy  
Notary Public in and for said State

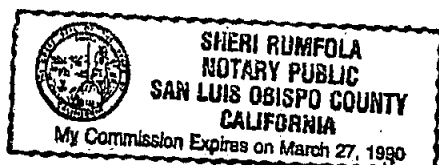
STATE OF CALIFORNIA

COUNTY OF San Luis Obispo

SS.

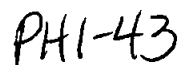
On October 27, 1986, before me, the undersigned, a Notary Public in and for the State, personally appeared Michael Bravo, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.



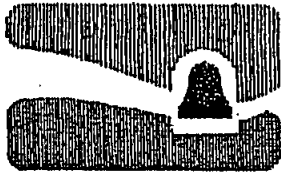
Sheri Rumpfola  
Notary Public in and for said State

PH1-42



**EXHIBIT 3**

PH1-44



# city of san luis obispo

990 Palm Street/Post Office Box 8100 • San Luis Obispo, CA 93403-8100

August 20, 1986

Joe Boud  
1009 Morro Street  
San Luis Obispo, CA 93401

SUBJECT: Request to move a house from 2324 Johnson Avenue to 1650 Corona Court (from lot 12 to lot 9 of Tract 1272)

Dear Mr. Boud:

I have reviewed your proposal to move this house, including original and revised plans, and I have determined that it will not comply with tract condition 21, which says that houses on lots 5 through 10 "shall not diminish the views and privacy of existing neighboring houses." I believe moving this house to any of lots 5 through 10 would have difficulty complying with this tract condition. It appears that single story houses set into the existing grade or with generous rear-yard setbacks, or both, would best meet this condition.

You may be able to keep the house in this tract by repositioning it on lot 12 or moving it to some lot other than lots 5 through 10.

You may contact Glen Matteson of this office if you have any questions.

Sincerely

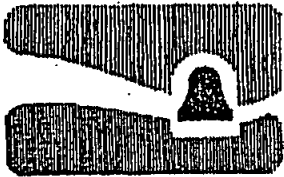
A handwritten signature in cursive script, appearing to read "Michael Multari".

Michael Multari  
Community Development Director

copies: Jack Kellerman  
Mr. & Mrs. Honeyman  
Mr. & Mrs. Gillen

gm

PH1-45



# city of san luis obispo

990 Palm Street/Post Office Box 8100 • San Luis Obispo, CA 93403-8100

August 25, 1986

Joe Boud  
1009 Morro Street  
San Luis Obispo, CA 93401

SUBJECT: House Moving  
2324 Johnson Avenue

Dear Mr. Boud:

Thank you for meeting with me to discuss your proposal to move the existing house at 2324 Johnson Avenue to 1650 Corona Court (from lot 12 to lot 10 in Tract 1272). As we discussed, I believe the intent of the conditions of approval of the tract can be met if the building is set back 25 feet from the rear property line and the finished floor elevation does not exceed 408 feet, as illustrated on the exhibits you submitted which are on file with this department. You stated that you would like to have at least an 18-foot separation between the main structure and the garage, and I understand the value to the use of the property of maintaining a sense of continuity among the front yard open areas. Therefore, if it proves impossible in the field to provide both the 25-foot setback and an 18-foot building separation (due to location of trees, for example), please contact me and we can explore an alternative approach.

If you have any questions, please give me a call at 549-7170.

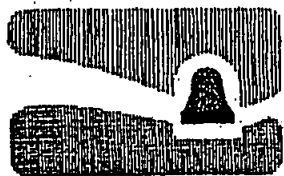
Sincerely,

Michael Multari, Director  
Community Development

MM:drs

cc: Glen Matteson (file)  
Jack Kellerman

PHI-46



# city of san luis obispo

990 Palm Street/Post Office Box 8100 • San Luis Obispo, CA 93403-8100

October 17, 1986

Mr. & Mrs. John P. Honeyman  
2323 Flora Street  
San Luis Obispo, CA 93401

SUBJECT: House Moving in Tract 1272

Dear Mr. & Mrs. Honeyman:

I appreciate your concerns with the former Miller house which Joe Boud has moved from lot 12 to lot 10 in the new subdivision near your home. As you may know, planning staff rejected Mr. Boud's first proposal to locate the house at the pre-grading ground level and 15 feet from the rear property line. We suggested that, if the house was to be kept in the tract, that it be moved to a location other than the lots 5 through 10, which border the houses on Flora Street.

Mr. Boud responded that his financing for the tract included retention of the house, and that he had designed lot 10 to accommodate it. He insisted that from his perspective and understanding of the Council's intent in conditioning the approval of the tract, that staff's interpretation was unfair and unreasonable. I then considered alternatives that I felt still met the intent of the conditions. Among those alternatives was approval of the relocation with conditions that the house be at least 25 feet from the rear property line and that the floor of the house not exceed 408 feet elevation, which required excavating part of the lot, about four feet. Mr. Boud still felt this was unfairly strict but apparently was able to accept it. It might be worth noting that without the tract condition, the zoning regulations would allow a full two-story house within eight to ten feet of the property line, at the pre-grading level. Therefore, it was felt that the unusually large setback and sinking of the pad constituted protection measures significantly in excess of typical, to help reduce impacts on nearby properties.

Also, the relocation was approved with the understanding that Mr. Boud would repaint and reroof the house, make other repairs such as replacing rain gutters, and landscape the lot consistent with other homesites in the neighborhood. I have encouraged Mr. Boud to meet with his neighbors to explain in detail his plans for repainting and upgrading the house to make it compatible with others in the area. I continue to offer our offices in the city as a meeting place if that is more convenient. I'd also be happy to attend any meeting to help in any way to reach a satisfactory solution to your concerns. I will continue to talk with Mr. Boud to ensure he does let you know his specific plans and intentions for the house.

PH1-47

We will continue to take a close look at houses proposed on lots 5 through 10 and to contact the immediate neighbors before acting on applications. Also, we will consider referring development proposals for these lots to the Architectural Review Commission, though the council did not require architectural review when it approved the tract.

Contact me or Glen Matteson of our staff if you have any questions on this matter.

Sincerely,



Michael Multari, Director  
Community Development Department

cc: Joe Boud  
2656 Lawton  
San Luis Obispo, CA 93401

Paul Lanspery  
Ron Dunin

PH1-48



**EXHIBIT 4**

# **VISUAL IMPACTS**

## **Existing**



**Lots 12 & 13**



**Lot 2**

P41-50



Lot 3 south



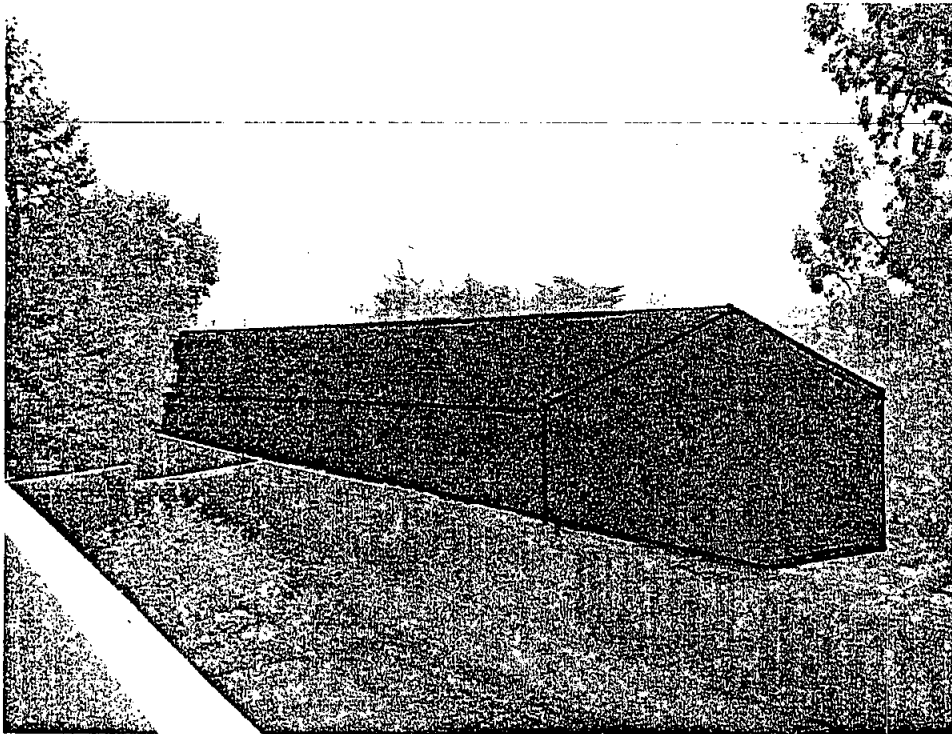
Lot 3 north

PH1-51

## VISUAL IMPACTS With Development



Lots 12 & 13

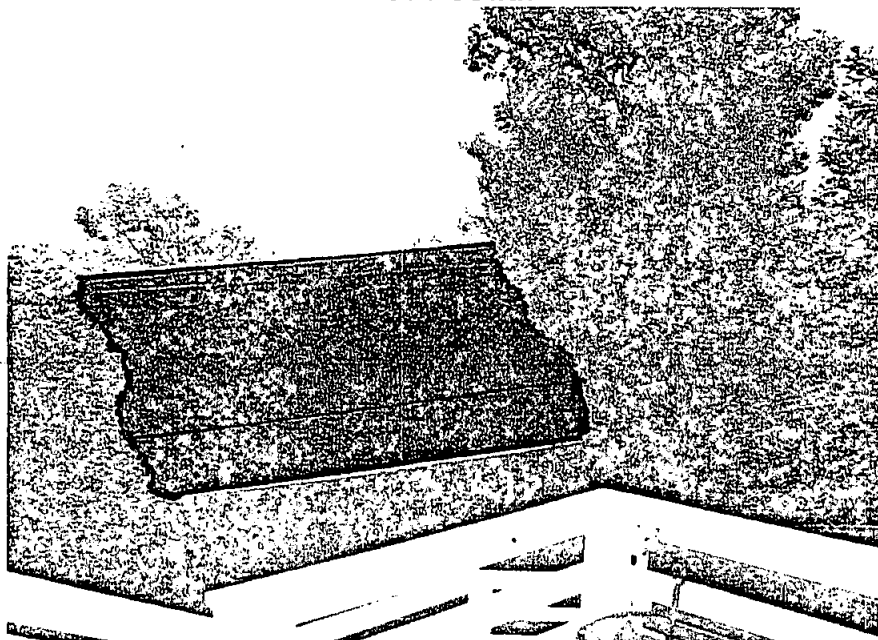


Lot 2

PHI-52



Lot 3 south

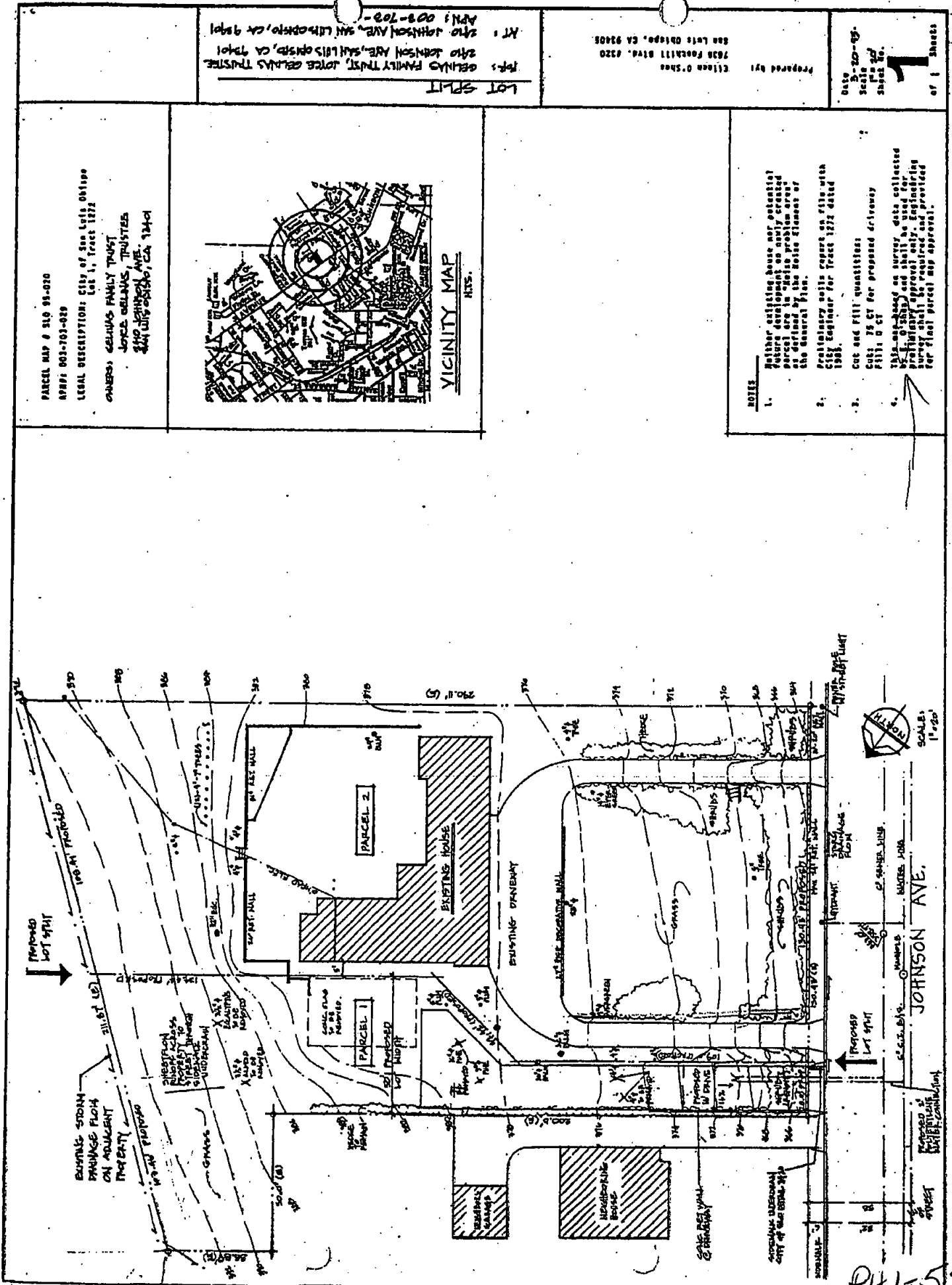


Lot 3 north

Residence shown assumes a single story 2500 sf residence w/2 car garage located w/in building envelope as presented at the Administrative Hearing on 9/18/09

**EXHIBIT 5**

PHI-54



JOSEPH BOUD  
& ASSOCIATES

July 19, 1995

Pam Ricci  
Community Development Department  
City of San Luis Obispo  
990 Palm Street  
San Luis Obispo, CA 93401

Re: Gelinis Parcel Map

Dear Pam,

We reside next to the above referenced project and have a number of comments that we feel should be considered in the City's review of this application.

History. The Gelinis property and two other estate sized parcels were combined together a few years ago and subdivided as Tract 1272. The original developers of Tract 1272 were Joseph & Barbara Boud, Fred & Hazel Kennedy, Michael Bravo, and Dr. & Mrs. Edmond Gelinis. The Gelinis parcel was designated as Lot 1. As an original subdivider, it is my understanding that the State Subdivision Map Act specifies that a resubdivision of the same property by the original subdivider would require the processing of a Subdivision Map, rather than a Minor Parcel Map. If this is the case, this application should be processed differently.

However, regardless of the level of processing, certain agreements and mutual understandings were made by Dr. & Mrs. Gelinis with the other parties that cooperated in the original subdivision that have relevance in considering this present request.

The design and odd configuration of Lot 1 was a result of the drainage structure that runs along Lots 2 & 3, carrying surface water to the storm drain inlet at the corner of Lots 2, 12 and 13. This strange configuration was discussed at length with Community Development Department staff, Engineering staff, the Planning Commission and the City Council, with the collective understanding that the steep sloped "panhandle" areas behind the existing house were not ever to be considered for development.

Conditions of approval of the subdivision and restrictive covenants were established for Tract 1272 that, among other objectives, were intended to insure that the subsequent build-out of the tract would be architecturally compatible and attractive, be sensitive and respectful to neighboring private yard areas, and would maintain views and vistas of the City, Edna Valley and the hills beyond.

The Gelinis lot was not included in the CC&R's because it was an existing, completely developed parcel and we were given assurance by all parties that additional development, other than minor and incidental improvements, were not to take place. Consequently, it seemed unnecessary to encumber Lot 1 with the CC&R review process. Obviously, this understanding has not been carried forth by the present Gelinis Family Trust members, who apparently are interested only in increasing the speculative value of the estate.



One final point related to these historical decisions. At the request of Dr. & Mrs. Gelinas, the build-out of the parcels along Corona Court immediately behind the Gelinas house (Lots 2 & 3), were placed as close to the Corona Court frontage as permissible by the City, thus creating as much building separation as possible between the Gelinas home and its rear yard area and the homes on Lots 2 & 3.

Lot Configuration & Developable Area. The City of San Luis Obispo has a number of ordinances, guidelines and policies that contain specific standards for design and configurations of new parcels. This proposal fails to meet these standards in nearly every category. Useable lot area, depth to length ratios and realistically useable outside yard areas are obviously deficient. Once the road access, turn around area, setback areas and steep sloped areas are deleted, the net developable land area on this proposed parcel is virtually non-existent.

Grading. Another major area of concern is the amount of grading that will be necessary to access and subsequently develop this parcel. There is no doubt that an enormous amount of grading will be necessary to develop access into the parcel. The City's driveway standards contain a verticle curve alignment that would result in substantial cut banks from the Johnson Avenue frontage that would then require massive retaining wall improvements to hold these cut areas.

The project has not identified a building site area or footprint area, so we can only speculate that the building area is intended to key into the sloped area at the rear of the lot. That would result in even more massive amounts of grading and retaining wall development and may have the potential to undermine the drainage system that runs along Lots 2 & 3.

Topography. The topography of the site directly relates to the grading and developable lot area issues. The topography shown on the tentative map is not correct. Presumably it was taken from the topography developed for Tract 1272, however one of the two foot contour lines was deleted. Consequently, the lot drops from 392.5 feet to 380 feet, or 12.5 feet, in a distance of 60 feet resulting in a slope calculation of 21%. This 21% slope covers at least 85% of the potential building area. Since the City's subdivision driveway standards require a 20' dedication with a minimum 16' wide improvement and a turn around area for driveways that exceed 150' in length, the flat area of the site must be used for circulation. This means that nearly 100% of the buildable site area will be on the steep sloped areas. Even if this project's building footprint were limited to the flat area of the proposed lot, the vegetation removal and access grading in itself would be far too extensive.

Vegetation Removal. To accomodate this project, its circulation needs and grading requirements, will require the removal of nearly all of the mature trees, shrubs and landscape materials on the site and most of the screening hedge on the neighboring property line to the north. It is optimistic and pure fantasy to think that any vegetation will remain in the vicinity of the road access improvement, whether the project chooses to use a common driveway or not. This fact alone will destroy the softness that mature landscaping provides and create a major disruption to the visual integrity along Johnson Avenue and in the neighborhood.

Visual Impacts. All of the properties within Tract 1272 were located and designed to maintain maximum views and vistas for all lots and properties in the vicinity. In fact, one of the conditions of approval for Tract 1272 required that the lots abutting the neighboring upsloped properties along Flora Street required review by the City's Architectural Review Committee to evaluate this viewshed issue. This issue has also been incorporated and administered through the CC&R procedures to make absolutely certain that views, vistas and private yard spaces were not impacted or intruded upon. Even a single story house located on the flat portion of the proposed parcel would severely affect the visual continuity in the neighborhood because of the loss of vegetation, grading and view obstruction impacts.

Neighborhood Controversy. This project is not supported by any abutting property owner that will be affected by its approval and development. This includes Hinsdale (Lot 14), Baldwin (Lot 13), Boud (Lot 12), Martin (Lot 2), Emmons (Lot 3) and Leitner (Lot 4). The properties that abut this project were purchased and developed with the understanding and assurance that the condition of the neighborhood, the views, the privacy and ambience was predictable and long lasting.

Project Alternatives. To deny this project, as presently submitted, does not eliminate the development potential of the Gelinis property. The front yard area contains more than adequate land area that could be parceled off and, if properly designed, could still maintain adequate separation from the existing house and could also minimize grading, vegetation removal and visual impacts in the vicinity.

Conclusion. This project is poorly conceived and does not meet the planning, zoning, subdivision and engineering standards and policies that the City has adopted and administered for many years. This project is not an infill lot situation. It very simply is an attempt to squeeze a parcel into an excess sideyard area for purely speculative purposes. It does not represent orderly and harmonious development and good planning principals, and has no neighborhood support. What it does do however, is severely affect the desireability of investment and occupation of the properties in the surrounding area, which is protected by City Ordinance and State Law.

This project should be denied and the applicant's directed to consider the development of the vacant land fronting the existing house at 2410 Johnson.

Sincerely yours,



Joe & Barbara Boud  
Property Owners; 1645 Corona Court, San Luis Obispo

July 15, 1995

Community Development Department  
990 Palm Street  
San Luis Obispo, CA 93401

To: Administrative Hearing Officer  
Regarding: Application Number: MS 75-95  
2410 Johnson Avenue  
San Luis Obispo, CA. 93401

We are writing in regard to the above mentioned lot split which would create a building site from a flag lot. We live directly behind said property at 1659 Corona Court. We object to the lot split on the grounds that, if built upon, it would block our view and considering the size of the lot, force building close to property lines making it very "congested".

Since purchasing our property, values have gone down. If this lot were built upon it would greatly effect the value of our property. We are asking that you deny this request. We would attend the hearing but we are going to be out of town.

Kay and Michael Emmons

*Kay Emmons  
Copy for Joe Bauld*

PHI-59

July 14, 1995

Attachment 4

Dear Pam Ricci

My name is Timothy J. Martin. I own property immediately adjacent (1649 Corona Court) to a proposed lot split at 2410 Johnson Ave. that has an application number of MS 75-95. Unfortunately I will be unable to attend the hearing that is scheduled for July 21, 1995. Consequently, I would like this letter and my strong opposition to this lot split to be entered as part of the hearing record.

A casual look (it looks even worse under close observation) at the proposed building site clearly shows that this is "shoe horning" at its best. Values from adjacent pieces of property will be impacted (in my case, severely) with the resulting decrease in property values. I respectfully submit that the lot split application is purely motivated by the pursuit of money with total disregard to its impact on the existing neighborhood.

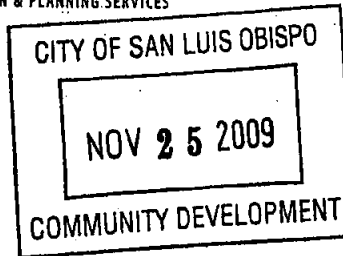
I know that my strong opposition is equally shared by my friends and neighbors and I sincerely hope that the City of San Luis Obispo will not override the will of this established neighborhood.

Sincerely,  
Jim Martin

PH1-60

November 17, 2009

City Council  
City of San Luis Obispo  
1180 Palm Street  
San Luis Obispo, CA 93401



Subject: Appeal of MS 78-09; PM-SLO-09-0074

Dear Mayor and City Council members,

We are one of the eight property owners and/or residents of the above subdivision project that have Appealed the Planning Commission's approval of the project to the Council. We reside at 1645 Corona Court and have lived there from its origin. As the original developers of the underlying Tract 1272, of which this subject property was designated Lot 1, we would like to provide the Council with a historical perspective of the development of this neighborhood and additional regulatory standards to supplement the information contained in the Appeal package submitted on November 29, 2009.

Three estate-sized parcels were combined in a cooperative effort to develop Tract 1272. During the design and processing of the subdivision, great effort was made to convert this vacant property, surrounded by residential development, into a quality neighborhood. Extraordinary and explicit measures were undertaken to protect the neighboring properties privacy and views.

For example, CC&R's for Tract 1272 self-imposed a requirement for Architectural Review by three of the tract's developers (Joseph Boud, Barbara Boud, Michael Bravo) to insure that viewsheds, privacy, overlook and thoughtful design were taken into considered and materials of construction were of a high quality. In many cases, new house siting and fenestration were altered to minimize the impacts to neighboring residences within the tract and external to the tract to satisfy these objectives and neighborhood concerns.

Further, the City's Planning Commission, in reviewing the project, required that the original 15-lot subdivision be reduced to 14 parcels, not because the 15 lots weren't consistent with the City's Ordinances, but because it simply felt "too tight" (actual quote). The City also required increased setbacks and lowered building elevations for lots that abutted the upslope properties along Flora Street (see correspondence in the Appeal package) to protect these properties views and privacy.

We see no difference here. The development of this project should show the same respect as Tract 1272 did to protect the existing Flora Street neighborhood. In this case the neighborhood is now the Corona Court and abutting property residential neighborhood. Discretionary approvals for projects such as this should consider strict compliance with City policies as well as less quantified standards that affect neighborhood character and quality of life expectations.

Continued reference in staff reports and by the Applicant to this project complying with all City Codes, Ordinances and Policy is simply not correct. The following City requirements are inconsistent with this project and clearly indicate that this project cannot establish the requisite Legal Findings. For example:

**GENERAL PLAN LAND USE ELEMENT: COMMUNITY'S GOALS**

#29. Maintain existing neighborhoods and assure that new development occurs as part of a neighborhood pattern.

LUE 2.2.10 Housing built within existing neighborhoods should be in scale and in character with that neighborhood.

***How does view obstruction and industrial design solutions (mid-tract fire truck turnaround) reflect the sensitive development and neighborhood character that occurred in Tract 1272?***

#### **LUE 2.2.12 Residential Project Objectives**

Residential Projects should provide:

- A. Privacy, for occupants and neighbors of the project
- D. Pleasant views from and toward the project
- E. Security and Safety

***Privacy, views and fire safety are all severely compromised with the development of a three-lot project that includes a lot in this difficult accessed, view blocking, visually intruding Parcel 1.***

#### **2.4.5 Low Density Residential**

Low-density residential development should be primary dwellings having locations and forms that provide a sense of both individual identity and neighborhood cohesion for households occupying them.

***The 25 years of Corona Court as a cohesive, attractive, high quality, esteemed neighborhood is severely compromised with the introduction of a three-lot project.***

#### **CONSERVATION & OPEN SPACE ELEMENT**

##### **9.1.5 View protection in new development**

The City will ... carefully consider effects of new development, streets and road construction on views and visual quality by applying the Community Design Guidelines, height restrictions, hillside standards ...

***By merely making this statement, the City acknowledges the importance of the retention of visual quality. This is a long held philosophy in our City and certainly applies to each and every property within the City.***

##### **9.2.2 Views to and from private development**

Projects should incorporate as amenities views from and within private development sites. Private development designs should cause the least view blockage for neighboring property that allows project objectives to be met.

***It is not possible for Parcel 1 to development without impacting neighboring properties, including the existing residence located on proposed Parcel 2. Very simply, the project objectives of the Applicant are ill conceived and unattainable. A revised project objective, as discussed in the Appeal package, would be a two-lot project with a negotiated lot line adjustment between abutting lots and the area contained in Parcel 1.***

#### **COMMUNITY DESIGN GUIDELINES**

##### **1.4 Goals for Design Quality and Character**

- Maintain the quality of life for residents
- Maintain property values

***The impacts of proposed Parcel 1 have severe quality of life and property value impacts to all of the abutting properties, including the existing residence on proposed Parcel 2.***

##### **5.3 Residential: Infill Development**

...The guidelines are intended to provide for infill projects that are compatible with existing development ...

***As discussed above, the development of the Corona Court neighborhood with acute attention to views, privacy, overlook, and quality of life are all compromised with this project and certainly cannot be considered compatible with those long held expectations.***

##### **7.2 Hillside Development**

1. **Subdivision Design.** A proposed subdivision of two or more parcels shall be designed to comply with the following guidelines:

PH1-62

2 tomsdosta

- a. Parcel and building site slope. No parcel shall be created:  
 (2) Without at least one building site of at least 5,000 square feet that has no natural slope of 10 percent or more.

*This is a three-lot subdivision. The proposed two vacant parcels have average slopes of 15.7% and 17.2%, with even greater slope characteristics and constraints within their proposed building envelopes. There is an existing residence located on proposed Parcel 2 that does have an average cross slope of less than 10%. However, the intent of the standard, creating at least one new, building site with less than 10% slopes, cannot be satisfied. This project creates no new building site of at least 5,000 square feet on a slope less than 10%.*

3. Placement of Structures. Each structure shall be located in the ... least visually prominent ... portion of the site.

9. View Protection. Each proposed structure should be designed and located to avoid unnecessarily blocking views from other properties.

- a. Where feasible, a new structure should not be placed directly in the view of the primary living areas on a neighboring parcel.

*The language and spirit of the hillside development standards certainly should be considered in this situation and the proposed Parcel 1 clearly violates the visually prominent and view obstruction objectives. See the Visual Simulation information in the Appeal package, especially the photograph with the story pole.*

#### SUBDIVISION REGULATIONS

##### Section 16.10.030 J&K.

A Detailed Slope Analysis for projects containing slopes greater than 15% and a Preliminary Grading and Vegetation Removal Plan has not been submitted.

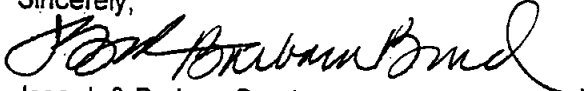
*The above information will confirm the severely constrained building area within Parcel 1 and 3 and provide information related to earthwork and vegetation removal impacts that should be evaluated through the CEQA Initial Study analysis.*

This project is not a clever or innovation subdivision and in no way reflects good land use planning and community design. Parcel 1 and its building envelope create a multitude of problems and concerns as enumerated in this letter and the Appeal package. For instance, a structural and/or wildland fire with the high probability of the fire truck turnaround blocked could easily result in damage or loss of three residential structures. Even a task as simple as wheeling the garbage cans to the Johnson Avenue curb on Friday mornings will prove to be a major challenge if Parcel 1 is developed.

If this project is approved, squeezing a lot into an improbable area with a future residence looming above the backyard and staring into the windows of the existing house and in the face of the abutting neighbor's homes, along with sticking an industrial fire truck turnaround at the front door of their home, the Applicants will succeed in making a mockery of good, thoughtful planning, violate numerous City standards and degrade and devalue not only the abutting properties, but also their own.

We urge the City Council to deny this project and direct the Applicant to pursue the other development options that are cited in the Appeal package. Thank you for your consideration.

Sincerely,



Joseph & Barbara Boud  
 1645 Corona Court, San Luis Obispo

C: Appellants to MS 78-09; PM-SLO-09-0074  
 C: SLO Community Development Department

PH1-63

(blank)

PHI-64



**CITY OF SAN LUIS OBISPO  
PLANNING COMMISSION AGENDA REPORT****ITEM # 1****BY:** James David, Assistant Planner (781-7576) *JD***MEETING DATE:** October 28, 2009**FROM:** Doug Davidson, Deputy Director *D.D.***FILE NUMBER:** AP-PC 78-09**PROJECT ADDRESS:** 2410 Johnson

**SUBJECT:** Appeal of Hearing Officer's decision to allow a subdivision proposal to create three conforming lots from one in the Low-density residential zone (R-1).

**RECOMMENDATION**

Deny the appeal and uphold the Hearing Officer's approval of the tentative parcel map based on findings, and subject to conditions and code requirements in the attached draft resolution.

**BACKGROUND**Situation

Engineering Development Associates (EDA), received approval of a tentative parcel map to subdivide a 42,850 square foot R-1 lot into three conforming lots on the north side of Johnson Avenue between Ella Street and Sydney Street (Attachment 1, Vicinity Map). The subject lot contains one residential dwelling, situated in the center of the lot. The subject lot is part of Tract 1272, which created 15 lots (three fronting Johnson Avenue and 12 clustered around Corona Court to the north) in 1985. The parcel map proposes one lot between the existing house and Johnson Avenue, one lot containing the house, and a third lot behind the house. The existing house conforms to property development standards such as building heights and setbacks.

The Hearing Officer approved the tentative parcel map on September 18, 2009, based on findings of consistency with the Subdivision Regulations and subject to conditions and code requirements. An appeal to the Planning Commission was filed by the neighbors on September 28, 2009, motivated by concerns over viewshed, property values, slope, and potential fire hazards (Attachment 3, Appeal Documentation).

Data Summary**Address:** 2410 Johnson**Property Owner:** Jeffrey and Susan Spevack**Applicant/Representative:** EDA, Jeff Wagner**Appellants:** Joseph Boud et. al.**Zoning:** Low-density residential (R-1)**General Plan:** Low Density Residential

PH1-65

AP-PC 78-09  
2410 Johnson  
Page 2

**Environmental Status:** Categorically exempt (CEQA Guidelines Class 15; Section 15315) because: no variances or exceptions are required; all services and access to the proposed parcels to local standards are available; the parcel was not involved is a division of a larger parcel within the previous two years; and the parcel does not have an average cross slope of greater than 20%.

Site Description

The project site is just shy of an acre with one residential dwelling and landscape improvements. The dwelling has no covered parking spaces. The existing crescent-shaped driveway is steep coming off Johnson Avenue and then levels out as it climbs to the house. There are two curb cuts on Johnson Avenue. The subject property's average cross-slope is 15 to 17 percent and is surrounded by low-density residential (R-1) development. There are many ornamental shrubs and trees throughout the site. The property owner has an above-ground pool adjacent to the home, as well as a gazebo, pond, and play equipment in the rear yard.

Project Description

The applicant received a tentative parcel map approval to subdivide the lot into three parcels. The flag lot subdivision creates one lot between the existing house and Johnson Avenue, one lot containing the house, and a third lot behind the house. (Attachment 2, Tentative Parcel Map). The applicant is not proposing any new site development with the subdivision entitlement at this time. The existing driveway will be removed and curb cuts abandoned. A new driveway is proposed along the northern edge to serve all three parcels. The accessway will be owned in fee by the parcel furthest from the street, Parcel One, with an access easement over Parcels Two and Three. Guest parking spaces will be provided for all three proposed parcels in accordance with deep lot subdivision requirements. A fire truck turnaround is included on Parcel Three to serve all three parcels. As proposed, the subdivision does not require any exceptions to the City's Subdivision or Zoning Regulations.



**EVALUATION**

Flag lots may be approved for subdividing deep lots where development would not be feasible

PH1-66

AP-PC 78-09  
2410 Johnson  
Page 3

with the installation of a standard street. The proposed subdivision conforms to the following subdivision regulations:

#### Minimum Lot Area and Dimensions

Figure 1: Comparison of proposed lots and R-1 zoning district standards

Lot Dimension	Minimum Requirements	Parcel 1 Avg. slope = 17.2%	Parcel 2 Avg. slope = 4.9%	Parcel 3 Avg. slope = 15.7%
Net area (square feet) Avg. cross-slope 0-15%	6,000	n/a	12,370	n/a
Net area (square feet) Avg. cross-slope 16-20%	10,890	12,895	n/a	12,185
Width (feet)	50	64	101	124
Depth (feet)	90	200	128	98
Frontage (feet)	20	26	124	26

*\*Residential lots sloped 16% or greater must be increased in size to meet minimum density requirements to allow at least one density unit per lot in accordance with Zoning Regulations Chapter 17.16.010.*

#### Lot Lines

The location of lot lines is slightly irregular because of the unusual shape of the parcel being subdivided. Given that site area for all proposed parcels is more than adequate to support density, and the existing lot shape was previously approved when Tract 1272 was created, staff supports the proposed subdivision design.

#### Slope

Parcels One and Three slope an average of approximately 15 to 17 percent, but both parcels are sufficiently large enough to satisfy Zoning Regulations density requirements. Conditions included in the draft resolution (Attachment 5, Draft Planning Commission Resolution) require that grading is minimized to the smallest practical area of land for development on each parcel.

#### Flag Lot Requirements

Each lot has adequate yard setbacks and area for parking spaces. The applicant should be aware that three parking spaces (one covered) are required for future single-family residential development, and two parking spaces in addition to a guest parking space must be shown for Parcel Two on the parcel map prior to final recordation. The accessway is at least 20 feet wide and there is a designated landscape area with sufficient width to plant screening shrubs and trees on either side. Conditions of approval ensure that all three parcels are designated "Sensitive Sites" because surrounding residential development exists on adjacent parcels. A sensitive site requires architectural review to review the proposed development design and protect adjacent

PH1-67

AP-PC 78-09  
2410 Johnson  
Page 4

properties from overlook, encroachment of solar access, and adequate noise protection and privacy. The project also abandons two existing curb cuts to create one accessway to serve all three parcels. This brings the site further into conformance with Parking and Driveway Standards.

#### General Plan Conformance

The project site is designated as Low Density Residential on the General Plan Land Use Element (LUE) map and located within an existing subdivision. The project is consistent with the General Plan because it promotes policies related to residential project objectives (LUE 2.2.12) and infill development. Each parcel provides security and safety, adequate usable outdoor area, adequate parking and storage space. The project is compatible with the neighborhood (LUE 2.2.10) because it intensifies development of a one-acre parcel in an area that has residential lots averaging 7,000 to 13,000 square feet, which were created by previous subdivisions. The subdivision of Tract 1272 created a deep flag lot immediately adjacent to proposed Parcel One, and a recent four-lot subdivision was approved in the vicinity at 2417 Flora. Furthermore, proposed Parcel One is bounded by houses on all sides that are built at the same or higher elevation contours. Conditions of approval limit eventual housing development to single-story to keep pleasant views from and toward the project (LUE 2.2.12).

#### Hearing Officer Action

On September 18, 2009, the Hearing Officer approved the tentative map based on findings of consistency with the Subdivision Regulations and the General Plan. The Hearing Officer heard testimony from the applicant's representative and concerned neighbors. Primary opposition was from northern neighbors concerned about eventual development of Parcel One at the rear of the subject property. Neighbors raised issues about impacts to views and property values, fire hazards and development of a sloping site. The Hearing Officer acknowledged these concerns and included conditions of approval to mitigate aesthetic impacts of eventual site development. These conditions included limiting future development to single-story structures, reducing the size of the building envelope on Parcel One, and designating sites "sensitive" thereby requiring architectural review.

#### Staff Response to Appeal Issues

The following is an abbreviated list of the appellants' concerns followed by staff's response:

- 1. The proposed building envelope for Parcel 1 contains significant areas of steep slope.**

**Response:** There is adequate area for development of a house in the northeast corner of Parcel One where slope is less severe (10 to 12 percent). The building envelope is overly large and

PH1-68

AP-PC 78-09  
2410 Johnson  
Page 5

encompasses steep areas less suitable for development. The Hearing Officer has required the applicant to reduce the building envelope to be more compatible with the site and surrounding neighbors.

The average cross-slope of Parcel One is 17.2 percent. The area of Parcel One (12,895 sq. ft.) is sufficiently large enough to support a single-family residence, per Zoning Regulations density standards (minimum 10,890 sq. ft. based on slope category). Parcel One has been designated a sensitive site making the parcel subject to architectural review, and future development is limited to single-story. Architectural review will ensure that grading is minimized and development of the land generally follows the natural terrain contour (CDG 5.2).

- 2. The proposed building envelope shows a minimum 5-foot setback. The setback should be 25 feet to respect neighborhood privacy and views.**

**Response:** In the R-1 zone, the minimum required other (side/rear) yard is 5 feet for a point that is 12 feet high on the roof of a building (MC 17.16.020). Requiring a 25-foot setback from the rear property line would push the building footprint of a single-family house down the slope resulting in more severe grading, cut slopes, and force removal of the existing oak tree. This is inconsistent with Community Design Guidelines (CDG 7.2) and Subdivision Regulations (MC 16.18.130).

The appellant has stated at the administrative hearing and in his appeal package that the subject parcel is not governed by the CC&Rs in question. The provisions of this document have no legal bearing on the project under review. Furthermore, the CC&Rs default to the City of San Luis Obispo setback requirements for building locations (Appellant's CC&Rs, Article III).

The appellant also relies on correspondence from the Community Development Director, dated 1986, to substantiate need for a 25-foot setback. These letters discuss setback requirements for 1650 Corona Court, which is subject to specific Tract 1272 conditions governing lots 5 – 10. 2410 Johnson is lot 1, and on the opposite side of the Tract. There is no nexus for requiring a 25-foot setback based on this information.

- 3. The Tentative Map shows an initial 17 percent driveway grade with a driveway width of 20 feet tapering to 16 feet and then 12 feet.**

**Response:** The Fire Marshal has reviewed the tentative map and supports the project. Since this is not a final map, small revisions to the initial driveway slope are feasible to bring the slope down to 15 percent. The applicant has proposed a 20-foot driveway leading up to a fire truck turnaround. According to the Fire Marshal, this 20-foot unobstructed access is all that is necessary for fire apparatus maneuverability on the private driveway. The Fire Marshal will ensure that the driveway meets applicable fire codes upon recordation of the final map.

PH1-69

AP-PC 78-09  
2410 Johnson  
Page 6

The Public Works Department has reviewed the tentative map and supports the project. Conditions and code requirements are included in the draft resolution to ensure that driveway improvements, grading and drainage comply with City standards to the satisfaction of the Public Works Director and Building Official.

4. **The building envelope for Parcel One is 325 feet from Johnson Avenue, and the fire code requires maximum 15 percent gradient with a 20 foot wide unobstructed access.**

**Response:** The Fire Marshal has reviewed the tentative map and supports the project. The applicant has proposed a 20-foot driveway leading up to a fire truck turnaround. According to the Fire Marshal, this 20-foot unobstructed access is all that is necessary for fire apparatus maneuverability on the private driveway. With the provision of a fire truck turnaround at rear of Parcel Three, fire trucks will be able to pull a 300 foot hose to the farthest back corner of Parcel One. When Parcel One (sensitive site) is developed it will require architectural review and the Fire Marshal will require sprinklers for new construction. Code requirements have been included in the draft resolution that require the shared driveway and fire truck turnaround is conspicuously posted "NO PARKING - FIRE LANE CVC 22500". If at any time these areas are blocked, the offending party will receive a City-issued citation.

5. **Development of Parcel One with a single-story house will impact privacy, views and diminish neighboring property values.**

**Response:** There are no City policies that specifically protect residential viewsheds or property values. Based on zoning (R-1), lot size (acre) and density, the property owner could develop a second two-story single-family dwelling or secondary dwelling unit with an administrative use permit without the subdivision entitlement. Conditions included in the draft resolution designating all parcels sensitive sites, restricting building height, and reducing Parcel One's building envelope successfully respond to neighborhood concerns while allowing the applicants to subdivide their property for infill development.

The appellant has included visual simulations to demonstrate potential impacts to viewsheds of uphill properties. These sketches assume a 2500 square foot home, which is the entire extent of the building envelope. Conditions included in the draft resolution require the building envelope to be reduced in size so that eventual development of the parcel will be consistent in size with the existing house on Parcel Two and the rest of the neighborhood. The applicant's representative has provided a formal response to the appeal documentation, which includes a plausible cross-section sketch of potential visual impacts to uphill neighbors that is less severe (Attachment 4, Applicant's Response to Appeal). The Commission should bear in mind that this application is for subdivision of land, and compatibility concerns with eventual development will be addressed through the required architectural review process.

PH1-70

AP-PC 78-09  
2410 Johnson  
Page 7

- 6. The project is not supported by eight neighbors, who had an understanding that their neighborhood would remain unchanged. A previous subdivision request for this parcel was withdrawn in 1995.**

**Response:** The subject property is the last remaining acre parcel in the neighborhood. Flag lot subdivisions have occurred on adjacent properties at 2330 Johnson and 2417 Flora. The average lot size in the neighborhood is 7,000 to 10,000 square feet. The subdivision request is compatible with the neighborhood.

The previous subdivision application in 1995 was withdrawn after staff sent an incomplete letter. Staff did not formulate a position on the application since it was incomplete.

- 7. Several years ago the neighbors approached the applicants with the desire to purchase the rear portions of the lot. The applicants did not want to sell at that time.**

**Response:** The applicant has reconsidered this alternative and extended a desire to negotiate sale of Parcel One to the uphill neighbors. This is a matter between the property owners and does not affect the analysis of the parcel map.

- 8. This project is not about implementing Strategic Growth objectives, General Plan Goals, compliance with AB32 or other State or City standards.**

**Response:** The General Plan contains numerous policies encouraging infill development, including:

- HE 3.12.9 – Balance City efforts to encourage residential development by focusing as much on infill development and densification within City limits as on annexation of new residential land.
- LUE Community Goal #31 – Grow gradually outward from its historic center until its ultimate boundaries are reached, maintaining a compact urban form.
- COSE 4.4.3 – Compact, high-density housing to achieve more efficient use of public facilities, services, and land resources.
- COSE 1.6.2 – Community size should be designed that housing, jobs, daily needs and other activities are within easy walking distance of each other.
- COSE 1.6.13 – The community design should help conserve resources and minimize waste.

## CONCLUSION

The Hearing Officer approved the project because it complies with the Subdivision Map Act, the City's Subdivision Regulations, Zoning Regulations, General Plan and Community Design

PH1-71

# Attachment 6

AP-PC 78-09  
2410 Johnson  
Page 8

**Guidelines.** The Hearing Officer restricted the parcels to single-story development to recognize the expressed concerns about neighborhood compatibility. The entitlement follows the traditional neighborhood pattern of subdivisions creating larger than average R-1 parcels. The tentative map has been supported by all relevant departments and conditions and code requirements included in the draft resolution will ensure that the final map meets all applicable City ordinances and codes.

## **ALTERNATIVES**

1. The Commission may uphold the appeal and deny the tentative parcel map, provided that the Commission can make the required findings.
2. The Commission may continue action, if more information is needed. Direction should be given to staff and applicant.

## **ATTACHMENTS**

Attachment 1: Vicinity Map  
Attachment 2: Tentative Map  
Attachment 3: Appeal documentation  
Attachment 4: Applicant's Response to Appeal  
Attachment 5: Draft Planning Commission Resolution

PH1-72



**RESOLUTION NO. (2010 Series)**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN LUIS OBISPO DENYING  
AN APPEAL OF THE PLANNING COMMISSION'S ACTION, UPHOLDING  
APPROVAL OF A SUBDIVISION CREATING THREE LOTS ON PROPERTY  
LOCATED AT 2410 JOHNSON, MS 78-09**

**WHEREAS**, the applicant, on August 5, 2009, submitted an application for a minor subdivision of a one-acre parcel into three conforming parcels in the R-1 zone; and

**WHEREAS**, the Hearing Officer, at an administrative hearing held in the Council Hearing Room of City Hall, 990 Palm Street, San Luis Obispo, California, on September 18, 2009, approved the tentative parcel map creating three lots from one lot; and

**WHEREAS**, Nancy Shokohi, Joseph & Barbara Boud, Maureen Eyermann, Kevin & Julie Elder, Steven & Paula Dooley, William & Barbara Herrerras, James & Marlene Killian, Chris & Alyssa Holland [appellants], filed a joint appeal of the Hearing Officer's action on September 28, 2009; and

**WHEREAS**, the Planning Commission of the City of San Luis Obispo at a public hearing held in the Council Chamber of City Hall, 990 Palm Street, San Luis Obispo, California, on October 28, 2009, denied the appeal and upheld the Hearing Officer's decision approving the tentative parcel map creating three lots from one lot; and

**WHEREAS**, Appellants filed a joint appeal of the Planning Commission's action on November 9, 2009; and

**WHEREAS**, the City Council conducted a public hearing on January 5, 2010, for the purpose of considering the appeal of the Planning Commission's action upholding the Hearing Officer's decision to allow a subdivision creating three lots on property located at 2410 Johnson (MS 78-09); and

**WHEREAS**, the City Council has duly considered all evidence, including the testimony of the appellant, interested parties, the records of the administrative hearing, the records of the Planning Commission hearing, and the evaluation and recommendations by staff, presented at said hearings.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of San Luis Obispo as follows:

**Section 1. Denial of Appeal.** The appeal of the Planning Commission's action denying an appeal and upholding the Hearing Officer's decision to allow a subdivision creating three lots on property located at 2410 Johnson is hereby denied based on the following findings:

1. The design of the tentative parcel map is consistent with the General Plan, which designates the area for low-density residential development and promotes infill development.

PH1-73

2. The sites are physically suited for the type and density of development allowed in the R-1 zone because the proposed parcels meet the minimum area, width and depth standards for lots with an average cross-slope of 16-20%.
3. The project is compatible with the neighborhood (LUE 2.2.10) because it intensifies development of a one-acre parcel in an area that has residential lots averaging 7,000 to 13,000 square feet, which were created by previous subdivisions. Furthermore, proposed Parcel One is bounded by houses on all sides that are built at the same or higher elevation contours.
4. The design of the tentative map and the proposed improvements are not likely to cause serious health problems, substantial environmental damage or substantially and unavoidably injure fish or wildlife or their habitat because the sites do not have any creeks or other potentially significant habitat areas for fish and wildlife, are surrounded by urban development and have already been developed with one single-family dwelling and landscaping improvements.
5. As conditioned, the design of the subdivision will not conflict with easements for access through (or use of property within) the proposed subdivision since required easements will remain in place following the subdivision and will be applicable to the newly created parcels, and code requirements require the recordation of new easements and the relocation of utilities wherever necessary to the satisfaction of the Community Development Director and Public Works Department Director.
6. The tentative map is categorically exempt from environmental review (Class 15, Minor Land Divisions, Section 15315 of the CEQA Guidelines) because: no variances or exceptions are required; all services and access to the proposed parcels to local standards are available; the parcel was not involved in a division of a larger parcel within the previous two years; and the parcel does not have an average cross slope of greater than 20%.

**Section 2. Conditions and Code Requirements.** The denial of the appeal of the Planning Commission's decision, Application No. MS 78-09, is subject to the following conditions and code requirements applicable to the subdivision approval:

1. The Community Development Director has designated Parcels One, Two and Three as "sensitive sites". This status ensures that future infill development will respect existing site constraints, privacy for occupants and neighbors of the project, provide for adequate parking, and be compatible with the scale and character of the existing neighborhood. An application for architectural review will be required in accordance with Municipal Code Section 2.48.050.
2. Applications submitted for architectural review on Parcel One shall include housing designed not to exceed a 406-foot elevation at the highest point of the roof, to preserve pleasant views from and towards the property (LUE 2.2.12), and remain consistent in character with the neighborhood.
3. The building footprint shown on Parcel One shall be reduced in size so that eventual

PH1-74

housing development of the parcel will be setback at least 10 feet from the northeast property line. The driveway shall not be allowed within this required 10 foot setback.

4. Future development of Parcels One & Three shall provide one (1) additional on-site guest parking space per lot, subject to the approval of the Community Development Director.
5. Grading and site disturbance on all parcels shall be limited to that required for providing access, utilities, and drainage improvements to these parcels until complete development plans are submitted for review.
6. Grading associated with development of new structures shall be minimized to the smallest practical area of land for development on each parcel.
7. Existing overhead utility lines serving the house on Parcel 2 shall be undergrounded. Undergrounding of all wire utilities serving this subdivision shall be achieved without a net increase in the number of utility poles unless specifically approved by the city and serving utility companies.
8. The existing driveway approaches shall be abandoned. New curb, gutter, and sidewalk shall be installed per City Engineering Standards.
9. The proposed northerly approach shall be installed per City Engineering Standard #2111. The subdivision improvement plan submittal shall include a line-of-sight analysis of pedestrians located on the public sidewalk and/or ADA sidewalk for exiting vehicles.
10. The subdivision improvement plans and map shall show and honor the existing sump and berm area located at the northeast corner of proposed Parcel 2 that serves the upslope lots of Tract 1272. The final map shall include an additional drainage easement if the existing containment area and safe overflow for the storm drain system are not located within the existing easement area. Otherwise, the applicant shall demonstrate that the existing grading improvements are not necessary and shall propose a revised solution for the safe overflow.
11. It is highly recommended that a common driveway be provided to serve this development and the underdeveloped parcel to the north (2374 Johnson). The applicant shall exhaust all opportunity to provide and develop a common driveway with 2374 Johnson for the mutual benefit of both properties. Development costs shall not be considered as a reason to not pursue a common driveway unless it can be shown that the common improvements would be excessive in comparison to a driveway dedicated to serve the parcels within this subdivision.
12. Within the City right-of-way sewer laterals proposed to serve Parcels 1 and Parcel 2 must be no less than 16" on center.
13. A CCTV inspection of the existing sewer lateral proposed to serve Parcel 3 shall be submitted to the Building Division during the building permit process.

**Code Requirements**

*The following code requirements are included for information purposes only. They serve to give the applicant a general idea of other City requirements that will apply to the project. This is not intended to be an exhaustive list as other requirements may be identified during the plan check process.*

1. Any required building permits for utility installations, relocations, or building alterations shall have all work completed and receive final inspection approvals to the satisfaction of the Building Official prior to recordation of the map.
2. The Shared driveway and the fire truck turn-around shall be conspicuously posted "NO PARKING – FIRE LANE CVC 22500".
3. A separate exhibit showing all existing public and private utilities shall be approved to the satisfaction of the Community Development Director and Public Works Director prior to recordation of the map. The utility plan shall include water, sewer, storm drains, site drainage, gas, electricity, telephone, cable TV, water wells/springs, , and any utility company meters for each parcel if applicable. The relocation of any utility shall be completed with proper permits prior to recordation of the map. Utilities shall not cross proposed property lines unless located within suitable easements. Easements, if proposed, shall be shown on the final map or shall be recorded concurrently to the satisfaction of the Community Development Director, Public Works Director and serving utility companies.
4. Final lot line locations and building setbacks shall consider building allowable area analysis, exterior wall protection, projections, and the location of building service equipment in accordance with the uniform codes and to the satisfaction of the Building Division and Planning Division. Any necessary analysis and/or exhibits shall be submitted for review and shall be approved prior to recordation of the map.
5. Any building permits issued for work required to satisfy the conditions of the subdivision shall receive final inspection approvals or shall have substantially completed all work to the satisfaction of the Building Official prior to recordation of the map.
6. A separate building permit shall be obtained for the upgrade, alteration, and/or relocation of any on-site utilities or structures. Any required improvements shall have all work completed and final inspections approved to the satisfaction of the Building Official prior to recordation of the map.
7. Any easements including but not limited to provisions for all public and private utilities, access, drainage, common driveways, and maintenance of the same shall be shown on the final map or recorded separately prior to map recordation if applicable. A private waterline easement shall be provided for the water services crossing Parcel 3 to serve Parcels 1 and 2.

PH1-76

**Public Right-of-Way**

8. Any sections of damaged or displaced curb, gutter & sidewalk or driveway approach shall be repaired or replaced to the satisfaction of the Public Works Director prior to recordation of the map.
9. Additional public right-of-way or public pedestrian easements may be necessary to accommodate improvements required for Americans with Disabilities Act (ADA) compliance, to the satisfaction of the Public Works Director.

**Site, Water, Sewer & Utilities**

10. The proposed driveway shall be shown to comply with the Parking and Driveway Standards for sloping driveways.
11. The improvement plans shall show the location of the proposed parking spaces to serve the existing developed Parcel 2 in accordance with the zoning regulations and the Parking and Driveway Standards.
12. Separate utilities, including water, sewer, gas, electricity, telephone, and cable TV shall be served to each parcel to the satisfaction of the Public Works Director and serving utility companies. A private sewer main may be proposed to the satisfaction of the Building Official, Utilities Engineer, and Public Works Director.
13. If proposed, an on-site sewer main will be privately owned and maintained by the Homeowner's/Property Owner's Association and shall be covered in the CC&R's or comparable maintenance agreement.
14. The existing water service shown to serve the proposed Parcel 3 shall be shown to comply with current city standards and be capable of providing adequate fire service to a new residence. Otherwise, the service shall be abandoned at the public main in favor of a new meter manifold designed to serve all three parcels.

**Grading & Drainage**

15. The preliminary soils report prepared by Geosolutions, Inc with Report No SLO6905-1, dated May 19, 2009 shall be referenced on the final map in accordance with the city's Subdivision Regulations.
16. All elevations must be based on a City Bench Mark and noted per City datum elevations. The plans shall note the benchmark number, location and elevation. Include a clear description of the benchmark referenced on the plans. Clarify whether the NGVD 29 or NAVD 88 datum is being used.
17. The subdivision improvements and/or building plans shall include provisions to minimize the amount of any collected groundwater seepage that would be directed to the gutter at the public street in accordance with City Engineering Standard 1010.B.

PH1-77

18. Development of the proposed parcels shall comply with the erosion control provisions of the Waterway Management Plan Drainage Design Manual.
19. All lots shall be graded to preclude cross-lot drainage, or, appropriate easements/blanket easements, and drainage facilities shall be provided, to the satisfaction of the Public Works Director and Building Official.
20. The subdivision improvement plans shall clarify where the existing drainage facilities are located and where they are discharged.

#### **Trees and Landscape Requirements**

21. Street trees are required as a condition of subdivision. Street trees shall generally be planted at the rate of one 15-gallon street tree for each 35 lineal feet of property frontage.
22. The subdivision improvement plans shall correctly show the size and location of all existing trees. Tree species, diameter, and accurate canopy depictions shall be shown and noted for reference.
23. Tree protection measures shall be implemented to the satisfaction of the City Arborist. The City Arborist shall review and approve the proposed tree protection measures prior to commencing with any demolition, grading, or construction. The City Arborist shall approve any safety pruning, the cutting of substantial roots, or grading within the dripline of trees. A city-approved arborist shall complete safety pruning. Any required tree protection measures shall be shown or noted on the building plans.
24. The subdivision improvement plans shall provide clarification on the existing and proposed landscape and landscape irrigation improvements on the proposed undeveloped Parcel 3. Landscape irrigation shall be provided to the existing landscape if deemed necessary by the Planning Division. The landscape irrigation shall be separate from the remaining parcels. A new landscape irrigation meter may be required for this purpose. Water Impact fees will be required for any additional water meters.

#### **Flag lot Subdivision**

25. The final map shall include any required easements required for the reasonable development of the affected properties. Easements may include but are not limited to grading, drainage, water, sewer, storm drainage, access, vehicle turn-around, and utilities. Any maintenance agreements shall be completed and recorded before or concurrent with final map approval.
26. The proposed access easement for Parcel 1, 2, and 3 shall comply with the City's parking and driveway standards for slopes and maneuverability. These standards require adequate area to allow vehicles to exit from all legal parking spaces and garages in a forward direction in not more than two maneuvers.

PH1-78

**Misc. Requirements**

27. The subdivision improvements shall be completed to the satisfaction of the Community Development Director and City Engineer prior to final inspection approvals and/or recordation of the map. A completion guarantee shall be provided per city standards if the map is approved for recordation prior to completion of all required subdivision improvements.
28. The required public and private subdivision improvements may be completed with a separate subdivision/public improvement plan submittal processed through the Public Works Department. As an alternate, the building plan submittal may be used to show all required improvements. Improvements located within the public right-of-way will require a separate encroachment permit and associated inspection fees.
29. A separate plan review fee payable to the Public Works Department may be required for the Public Works Department review of subdivision improvements associated with the building plan submittal. Said review fee shall be in accordance with the subdivision improvement plan review fee resolution in effect at the time of the building permit application submittal.
30. Subdivision improvement plans shall be submitted to the city for review and approval. The plans shall be approved prior to map recordation. Public improvements shall comply with the City Engineering Standards and Standard Specifications in effect at the time of submittal of the improvement plans. The current standards are dated January 2009.

**Mapping and Misc. Requirements**

31. All boundary monuments, lot corners and centerline intersections, BC's, EC's, etc., shall be tied to the City's *Horizontal Control Network*. At least two control points shall be used and a tabulation of the coordinates shall be submitted with the final map or parcel map. All coordinates submitted shall be based on the City coordinate system. A computer disk, containing the appropriate data compatible with *Autocad* (Digital Interchange Format, DXF) for Geographic Information System (GIS) purposes, shall be submitted to the City Engineer.
32. The parcel map preparation and monumentation shall be in accordance with the city's Subdivision Regulations, Engineering Standards, and the Subdivision Map Act. The parcel map shall use English Units in accordance with the current City Engineering Standards. All record data shall be entered on the map in the record units, metric translations should be in parenthesis if applicable.

PH1-79

Council Resolution XXXX (2010 Series)

Page 8

Upon motion of \_\_\_\_\_, seconded by \_\_\_\_\_, and on the following vote:

AYES:

NOES:

ABSENT:

The foregoing Resolution was adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Mayor David F. Romero

ATTEST:

\_\_\_\_\_  
Audrey Hooper, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Jonathan Lowell, City Attorney

PHI-80



RED FILE  
MEETING AGENDA  
DATE 1/5/10 ITEM # PH1

HARD COPY	EMAIL
<input checked="" type="checkbox"/> COUNCIL	<input type="checkbox"/> CDD DIR
<input checked="" type="checkbox"/> CAO CITY MGR	<input type="checkbox"/> FIN DIR
<input checked="" type="checkbox"/> AGAO/RES. CITY MGR	<input type="checkbox"/> FIRE CHIEF
<input checked="" type="checkbox"/> ATTORNEY	<input type="checkbox"/> PW DIR
<input checked="" type="checkbox"/> CLERK/ORIG	<input type="checkbox"/> POLICE CH
<input type="checkbox"/> DEPT HEADS	<input type="checkbox"/> REC DIR
<input type="checkbox"/> P/B	<input type="checkbox"/> UTIL DIR
<input checked="" type="checkbox"/> TRIBUNE	<input type="checkbox"/> HA DIR
NEWSPAPERS	COUNCIL
	CITY MGR
	CLERK



December 30, 2009

City Council  
990 Palm Street  
San Luis Obispo, CA 93401

RE: **APPEAL OF PLANNING COMMISSION'S ACTION UPHOLDING THE HEARING OFFICER'S DECISION TO ALLOW A SUBDIVISION CREATING THREE CONFORMING LOTS FROM ONE ON PROPERTY LOCATED AT 2410 JOHNSON (MS 78-09) (PM-SLO-09-0074)**

To the City Council:

On behalf of the project applicants, Sue and Jeff Spevack, **eda - design professionals** submits the following response to the subject appeal. Our responses to the Planning Commission appeal are in your hearing packet, and will not be repeated here. We support and agree with the Staff Report. This letter focuses only on the new information raised in the appeal.

This appeal is, first and foremost, a test of the City's resolve to implement the growth strategies in the General Plan, and as expressed in the **Conservation and Open Space Element, Section 4.4.3. Compact, high-density housing**, which states:

*The City will promote higher-density, compact housing to achieve more efficient use of public facilities and services, land resources, and to improve the jobs/housing balance.*

This map creates two lots for two additional dwelling units, consistent with the density allowed for the original 0.96-acre lot and with General Plan policies and goals.

The sole reason for this appeal is to prevent partial obstruction of the appellant's view over the Spevack's property, even though there is no legal protection for views from a private residence. Arguments about the building envelope, grading, fire issues, and lot configurations are merely attempts to justify the goal of view protection. All these arguments have been rejected by staff, the Administrative Hearing Officer, and the Planning Commission.

#### **SLOPE / BUILDING ENVELOPE**

The appeal recommends a 25-foot setback, which would eliminate flat portions of the site and push a homesite onto steeper slopes. The appeal's objective is a map condition

**RECEIVED**

DEC 31 2009

SLO CITY CLERK

1998 Santa Barbara Street, Suite 200, San Luis Obispo, CA 93401  
805-549-8658 fax 805-549-8704 www.edainc.com

that would "render Parcel 1 as a non-building site". This setback is counter to City requirements, and it was correctly rejected by the Planning Commission.

Furthermore, the appeal claims that there is insufficient usable area within the Parcel 1 building envelope to allow a home to be built. This is simply not the case, and there are many homes in the City built on much steeper lots. It is likely that the house foundation will be constructed with three to five-foot stem walls on the downhill side, which would allow a house to be built over the slope, without grading to level the hillside. This is common practice.

#### **HEIGHT / VISUAL IMPACTS**

The appeal provides photographs and rough sketches to imply visual impacts. **eda** has not verified whether the story poles photographed at the fence line were placed accurately.

Although the cross-section shown in Exhibit A of the appeal is very similar to the one reviewed by the Planning Commission, its graphics are potentially misleading. The appeal "insists" on a 398-foot ridgeline elevation, which would maintain the entire view currently enjoyed by the appellant. It would also force the floor elevation down to 383 feet and put the house in a deep hole, requiring cuts of up to eight feet across the rear and side of Parcel 1. This is not feasible, nor is it consistent with City policies as noted in the Staff Report.

#### **FIRE ACCESS/HAZARD**

The Fire Marshall has indicated that the driveway configuration on the map is acceptable with a minor revision to the driveway slope, to be addressed at permit application. There are no issues here.

#### **NEIGHBORHOOD LOTTING CHARACTER**

All three lots are consistent with other lots in the neighborhood and comply in every way with the City's ordinances.

#### **RECOMMENDATIONS**

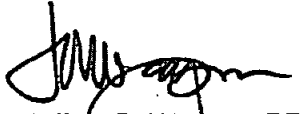
The Spevacks recommend once more that the City's stringent architectural review process be utilized so that the site, the proposed architecture, lot grading, and other project impacts can be analyzed as a system. Short-circuiting the review process by placing unnecessary and damaging restrictions on Parcel 1 is not good planning. The Spevacks accepted the additional protections and mitigations imposed by the Planning

City Council  
Appeal of 2410 Johnson Map  
December 30, 2009  
Page 3 of 3

Commission. Further details are best left to architectural review – when all the relevant factors can be weighed properly and accurately. Micromanagement by the City Council is not necessary.

The Spevacks request that the City Council uphold its General Plan policies and goals, concur with the findings of its staff and the Planning Commission, and deny this appeal. Thank you very much.

Yours truly,  
**eda - design professionals**



Jeffrey P. Wagner, PE  
Vice President

**eda – design professionals**

---

1998 Santa Barbara Street, Suite 200, San Luis Obispo, CA 93401  
805-549-8658 fax: 805-549-8704 [www.edainc.com](http://www.edainc.com)

Date: December 30, 2009  
To: City Council  
City of San Luis Obispo

**RED FILE**  
**MEETING AGENDA**  
**DATE 1/6/10 ITEM # PH1**

Subject: MS 78-09 PM-SLO-09-0074

I am the owner of the property at 1649 Corona Ct. for over 14 years. I have attended two hearings regarding the proposed subdivision at 2410 Johnson Ave. I am still perplexed that the subdivision was approved with very minor modifications by the Planning Commission. Even with these changes, the third parcel will obstruct the views from neighboring lots, remains a fire hazard, impedes traffic flow on Johnson Ave. and significantly reduces the property values and quality of the neighborhood.

I am saddened that Mr. Spevack continues to pursue this project knowing the impact that it has on his neighbors. One would think that the subdivision of his property into two parcels would have met his goals in having a more secure financial future. We approached Mr. Spevack approximately four years ago with the intent of purchasing part of his lot. We were turned down. Unfortunately I am currently not in a position to purchase this land, especially as a single mother. My financial future, as well as my daughter's, is in jeopardy due to decreasing property values.

The 406 foot height limit was arbitrarily selected without much substantiation or degree in accuracy. This height would clearly block views from my balcony. A ten foot setback, proposed in the October 28, 2009 hearing would only obscure the view even more.

Mr. Spevack continues to pursue his own financial gains at the expense of many others. I am opposed to the development of parcel 3 for all of the reasons indicated above as well as in our November 9, 2009 appeal.

I implore the City Council to listen to the citizens in our neighborhood who clearly oppose this subdivision. I also ask Mr. Spevack to look beyond his own financial gains and consider the request of his neighbors in order to maintain a civil relationship with them.

Thank you for your consideration.

Maureen Eyerman

**RECEIVED**

DEC 30 2009

SLO CITY CLERK

HARD COPY	EMAIL
<input checked="" type="checkbox"/> COUNCIL	<input checked="" type="checkbox"/> CDD DIR
<input checked="" type="checkbox"/> CAO CITY MGR	<input checked="" type="checkbox"/> FIN DIR
<input checked="" type="checkbox"/> CAO ASST. MGR	<input checked="" type="checkbox"/> FIRE CHIEF
<input checked="" type="checkbox"/> ATTORNEY	<input checked="" type="checkbox"/> PW DIR
<input checked="" type="checkbox"/> CLERK/ORIG	<input checked="" type="checkbox"/> POLICE CH
<input checked="" type="checkbox"/> DEPT HEADS	<input checked="" type="checkbox"/> REC DIR
<input checked="" type="checkbox"/> PLO	<input checked="" type="checkbox"/> UTIL DIR
<input checked="" type="checkbox"/> TRIBUNE	<input checked="" type="checkbox"/> HR DIR

— NEWTIMES — COUNCIL  
— CITY MGR  
— CLERK

To: San Luis Obispo City Council(Dave Romero,John Ashbaugh,Andrew Carter,Jan Marx,Allen Settle)

Re: 2410 Johnson Avenue 3 lot subdivision, being appealed at your upcoming Jan. 5<sup>th</sup> meeting

My name is Jeff Spevack, my wife and I have owned and lived in our house at 2410 Johnson Ave, for the past 10 years. Over the past year we have gone through the City planning process to be permitted to subdivide our one acre lot into three one-third acre lots. Our reasons for wanting to subdivide are: we only use a third of our one acre, we are the only acre lot left in the neighborhood, this would give us more options with our property. We have followed the City's guidelines and regulations, City staff from planning, public works, and fire departments have all been out to our site, and are all in support of our project. Our new lots will conform to the other lot sizes in our neighborhood, and there are no variances to City regulations.

At the Director's Subdivision Hearing on 9/18/09, the project was approved by hearing officer Doug Davidson. Our concerned neighbors were there to voice their positions, but they were advised to raise their concerns through the architectural planning process. Our neighbors appealed this decision to the City Planning Commission on 10/28/09, but their appeal was denied and our project was once again approved, with a few modifications. Now they are appealing again.

To address our neighbors appeals and concerns, we have responded to every concern, now for the third time. Their appeal is based on questioning the planning that has already been done step by step by EDA/Jeff Wagner(our planner), who has worked over the year with James David(SLO City planner), and has been supported at the Preliminary Hearing and at the Planning Commission hearing. Their concerns about this being an unbuildable lot, and regarding viewshed issues are really a NIMBY issue. You are welcome to come visit our lot and see for yourselves.

In light of our efforts, we are very disappointed that this is being appealed by our neighbors, for the same redundant and meritless reasons as before. We are not developers, we are not trying to split our property into a bunch of tiny lots, we are trying to do a sensible and conservative lot split. This is costing us a lot of money, and the city a lot of time and money. Ironically, the neighbors who are appealing our project all live in large two-story houses that significantly block the views of their uphill neighbors on Flora Street.

We ask that you support the Staff's recommendations, and deny this appeal in the strongest language possible!

\*\*I would like to discuss this in person, and I would be brief and to the point(maybe 15 minutes?)  
Please call Jeff at 423-2335!

RECEIVED

DEC 16 2009

SLO CITY CLERK

*Council*  
*Correspondence -*  
*Appeal*  
*2410 Johnson*

**Chippendale, Sue**

---

**From:** Chippendale, Sue  
**Sent:** Wednesday, December 16, 2009 4:24 PM  
**To:** Council\_ALL; Hampian, Ken; Lichtig, Katie; Stanwyck, Shelly; Elke, Brigitte; Dietrick, Christine; Mandeville, John; David, James  
**Subject:** Council Correspondence for January 5 Council Meeting  
**Attachments:** councilcorrespondencespevack.pdf

Attached please find a letter from Jeff Spevack regarding the upcoming appeal of a proposed subdivision at 2410 Johnson (MS 78-09). The appeal is scheduled to be heard at the Council meeting on January 5, 2010. Mr. Spevack and his wife are the original applicants and would like Council members to call them and discuss the matter in person if at all possible.

Thanks,

Sue

12/16/2009

RECEIVED

DEC 21 2009

SLO CITY CLERK

To the City Council of San Luis Obispo

Re: Spevack subdivision

RED FILE

MEETING AGENDA

DATE 1/5/10 ITEM # PH1

We, William and Barbara Herreras, reside at 1669 Corona Court [Lot 4 Tract 1272]. We have resided at this address for more than 10 years. Both of us have been residents of the City of San Luis Obispo for in excess of 40 years.

We join in the protest expressed by our neighbors regarding the Spevack subdivision.

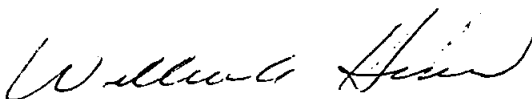
The subdivision has a material negative impact on our property values and the integrity of the neighborhood.

In order to avoid redundancy we request that the City Council consider the following negative impact that has been summarized in the Appeal of Subdivision Approval:

- Slope/building envelope
- Grade/drive/vegetation impact
- Fire Access/Hazard
- Neighborhood Lotting character

HARD COPY	EMAIL
<input checked="" type="checkbox"/> COUNCIL	<input checked="" type="checkbox"/> CDD DIR
<input checked="" type="checkbox"/> <del>GAO CITY MGR</del>	<input checked="" type="checkbox"/> FIN DIR
<input checked="" type="checkbox"/> <del>GAO CITY MGR</del>	<input checked="" type="checkbox"/> FIRE CHIEF
<input checked="" type="checkbox"/> ATTORNEY	<input checked="" type="checkbox"/> PW DIR
<input checked="" type="checkbox"/> CLERK/ORIG	<input checked="" type="checkbox"/> POLICE CHF
<input type="checkbox"/> DEPT HEADS	<input checked="" type="checkbox"/> REC DIR
<input checked="" type="checkbox"/> <del>PIB</del>	<input checked="" type="checkbox"/> UTIL DIR
<input checked="" type="checkbox"/> <del>TRIBUNE</del>	<input checked="" type="checkbox"/> HR DIR
<input checked="" type="checkbox"/> NEW TIMES	<input checked="" type="checkbox"/> COUNCIL
	<input checked="" type="checkbox"/> CITY MGR
	<input checked="" type="checkbox"/> CLERK

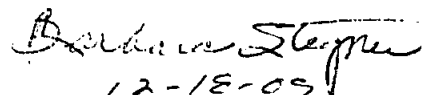
We respectfully request that the City Council accept the recommendations urged by our neighbors in this appeal and follow the recommendations contained in the appeal.



William A. Herreras

12-18-09

Barbara Herreras

  
12-18-09

RECEIVED

JAN 5 2010

SLO CITY CLERK



October 21, 2009

RED FILE

MEETING AGENDA

James David

City of San Luis Obispo

Community Development Department

San Luis Obispo, CA 93401

DATE 1/5/10 ITEM # PH1

HARD COPY	EMAIL
<input checked="" type="checkbox"/> COUNCIL	<input checked="" type="checkbox"/> CDD DIR
<input checked="" type="checkbox"/> SLO CITY MGR	<input checked="" type="checkbox"/> FIN DIR
<input checked="" type="checkbox"/> CAO/ASST CITY MGR	<input checked="" type="checkbox"/> FIRE CHIEF
<input checked="" type="checkbox"/> ATTORNEY	<input checked="" type="checkbox"/> PW DIR
<input checked="" type="checkbox"/> CLERK/ORIG	<input checked="" type="checkbox"/> POLICE CHF
<input checked="" type="checkbox"/> DEPT HEADS	<input checked="" type="checkbox"/> REC DIR
<input checked="" type="checkbox"/> <u>PIB</u>	<input checked="" type="checkbox"/> UTIL DIR
<input checked="" type="checkbox"/> <u>TRIBUNE</u>	<input checked="" type="checkbox"/> HR DIR
<input checked="" type="checkbox"/> <u>NEW TIMES</u>	<input checked="" type="checkbox"/> <u>COUNCIL</u>
	<input checked="" type="checkbox"/> <u>CITY MGR</u>
	<input checked="" type="checkbox"/> <u>CLERK</u>

RE: MS 78-09, PM-SLO-09-0074, 2410 Johnson Avenue  
APPLICANT'S RESPONSE TO APPEAL OF SUBDIVISION APPROVAL

Dear Mr. David,

On behalf of the project applicants, Sue and Jeff Spevack, **eda - design professionals** submits the following response to the appeal of the approval of the subject Tentative Parcel Map. Please place this response in the Planning Commissions packet for the October 20, 2009 hearing. Thank you.

#### APPLICANT'S RESPONSE TO THE APPEAL OF SUBDIVISION APPROVAL

The applicants are the owners of the 2410 Johnson Avenue property. They request that the appeal of the Administrative Officer's approval be denied by the Planning Commission. The appeal presents no significant new information. Both the Spevacks and **eda** believe that staff acted appropriately in its approval of the Tentative Parcel Map, and that staff's findings should be upheld so the Spevacks can move on without further unnecessary costs and delays.

The applicants believe that their map is a test of their right to develop their property within the bounds of the City's policies and ordinances. It is also a test of the City's resolve to fulfill Strategic Growth objectives, General Plan goals, AB32 and other planning objectives. This project complies with all City requirements, policies, goals, and contrary to the appeal, staff Findings 2, 3, 4, and 6. We respectfully request that the Planning Commission deny the appeal.

A point-by-point response to the appeal is offered below, in a format similar to the appeal itself.

#### Building Envelope Parcel 1 - Slope

Slope. City staff reviewed the slope gradients that **eda** presented on the approved map and concurred with our figures. The area of 30% slope cited in the appeal comprises approximately 250 square feet, and is a manufactured slope resulting from backyard



construction. The point is irrelevant, however, since the development standards are based on average slope.

Trees and landscaping. The map was not conditioned to preserve the 24" eucalyptus or the 6" oak, so their removal is not prohibited. There is no intent to remove the trees unnecessarily, as they are recognized as assets. Regardless, their fate will become evident after building plans are developed and the plans are subjected for ARC and City staff review. Some ornamental landscaping may be removed, which is allowed. ARC will review landscape issues during permit review.

Massive Grading. eda's preliminary grading review indicates that cuts and fills for the driveway and related walls should not exceed three feet in height. Construction of a house should not require more significant grading. In eda's opinion this does not represent massive grading and is within allowed limits. ARC will review grading issues when it reviews a building permit application.

#### **Building Envelope Parcel 1 – Setbacks**

For clarification, the Spevacks propose to subdivide Lot 1 of Tract 1272 into Parcels 1, 2, and 3.

Tract 1272 CC&Rs. The appeal points out that the Tract 1272 CC&Rs do not apply to Lot 1 (Spevack). We agree. The CC&Rs are irrelevant.

Setbacks. eda intended the building envelope to define the limits of construction of a home and yards, including possible retaining walls. We evaluated the use of three-foot retaining walls at the top of Parcel 1 to provide for a lower elevation for a yard and future house, to mitigate impacts on neighbors' views. The applicants wanted to provide for that option. Higher walls could be considered by the owner and reviewed by ARC.

ARC Review. ARC will evaluate building setbacks when application is made for a building permit, as well as building orientation and height, depth of the rear yard, landscaping, and other issues. Let us allow ARC to apply all of the considerations and do its job properly. We recommend the building envelope remain as approved by staff.

#### **Parcel 1 – Access**

Driveway grade. The Final Parcel Map will be based on driveway slopes of 15% or less and all Fire Department requirements will be met. The effect of reducing the grade of the first 60 feet of the proposed driveway is shown on the attached exhibit. Reducing the grade from 17% to 15% changes little. At one point near the top of Parcel 2 the driveway will indeed climb a 20% existing slope for approximately 20 feet, but cuts of two to three feet at the break will allow a driveway to be designed at a 15% grade.

**Vegetation.** Vegetation along the property line that must to be removed will be replaced with appropriate new plantings. The applicants are in favor of maintaining the visual screen between properties.

**Drainage Structure.** There is a drainage easement on Lots 2 and 3 (Tract 1272) that abuts Lot 1 (Spevack). Future construction will not cross the property line, so whatever structures exist on Lots 2 and 3 will remain. The 10'-drainage easement at the NW corner of Lot 1, adjacent to Lot 13 (Tract 1272), and the small drainage structure will be unaffected or addressed to the City's satisfaction.

**Fire Hazard.** The Tentative Map was presented to the City's Fire Marshall, Roger Magglo. He indicated that with driveway grades limited to 15% and the turnaround as presented within design limits, the Fire Department would be satisfied, subject to his final approval of the actual construction documents. Fire safety standards are not being compromised.

### **Visual Impacts**

**CC&Rs and Owner Expectations.** The Spevacks are not responsible for the development expectations of their neighbors or the incorrect reliance on CC&Rs that do not apply to their lot. The appellants have no vested right to the views into and across the Spevack's back yard and home. The Spevacks cannot accept the appeal's implication that their legitimate financial interests are secondary to the appellants'.

**Visual Impact Sketches.** The rough sketches presented in the appeal reflect a worst-case analysis that overstates the likely view impacts of a home on Parcel 1. The sketches reflect no back yard and assume the possible highest floor elevation for the home. We believe that adding a backyard and lowering the home by at approximately three feet would more be more realistic. We expect that ARC will consider view impacts and building setbacks in its deliberations.

**City Land Use Policies.** The Spevack's investment in their map and this costly appeal process is not a "ploy", as claimed in the appeal. It is a legitimate exercise of their property rights, consistent with City ordinances and City and state policies to fully utilize existing lots for infill development. The staff found that the approved Tentative Map is consistent with all City policies and ordinances, and we concur.

**ARC Review.** The City's ARC is widely known as a strong and active review body. The appellants should take comfort in ARC review of a future home project on this property. We anticipate that the appellants will participate in that process, as well.

### **Neighborhood Controversy**

The abutting neighbors have freely enjoyed the view benefits provided by the Spevack's. The applicants understand why these neighbors would resist any change to that condition. Nevertheless, views of the Spevack's back yard and over their home are not a vested right held by the neighbors.

It is true that the Spevacks remodeled their home in 2001, but that is irrelevant to this appeal. The approved Tentative Map enables the Spevacks to pursue a land division, as other landowners in the neighborhood have already done.

Future Parcel 1 is suitable for development, despite the appeals' attempts to show otherwise. This appeal is, quite literally, NIMBY opposition to a project that fits the goals of the City to intensify development within the city limits.

### **Project Alternatives**

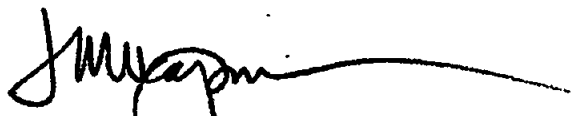
We concur that selling Parcel 1 to the abutting neighbors is a viable option. The Spevacks have formally offered to meet to discuss this opportunity to the owners of Lots 2 and 3 (see attached letter dated October 12, 2009). To date, neither owner has indicated an interest in pursuing the alternative suggested in the appeal.

### **Recommendation**

The Spevacks believe that this appeal is about their right to develop their property within the bounds of the City's policies and ordinances. This is a test of the City's intentions to fulfill Strategic Growth objectives, General Plan goals, AB32 and other planning objectives in the face of neighbors who wrongly believe they are entitled to protect their interests by infringing on the legitimate rights of others. This is a project that complies with all City requirements, including Findings 2, 3, 4, and 6. We respectfully request that the Planning Commission deny the appeal.

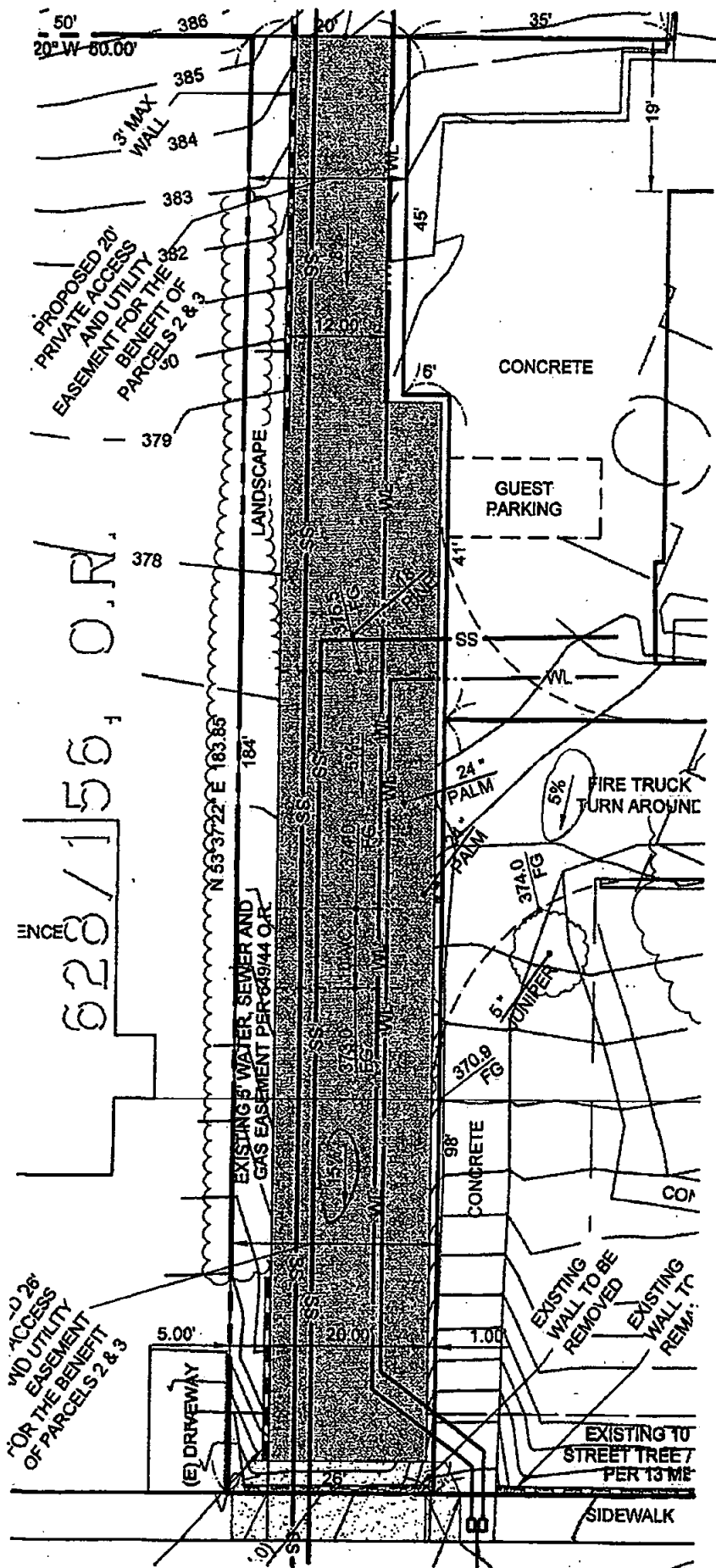
We look forward to presenting our project on October 28.

Yours truly,  
**eda - design professionals**



Jeffrey P. Wagner, PE  
Vice President

copy: Sue and Jeff Spevack



628/156, O.R.

PM SLO-09-0074  
 2410 JOHNSON AVENUE  
 REVISED DRIVEWAY GRADES



SCALE: 1" = 20'

To: Nancy & Emil Shokohi, Maureen Eyerman,

10/12/09

From: Jeff & Sue Spevack

Re: Property Subdivision

Dear Nancy & Emil, and Maureen,

Sue and I would like to extend an offer. In fact, it is raised in the Appeal as a Project Alternative to our proposed map.

We would like to revisit the idea of selling Parcel 1, to one or both of you. That way, you could extend and improve your yards, to enhance the value of your homes, and own and preserve your own viewshed. Our engineer agrees that a Lot Line Adjustment between us would not be a difficult task once our map is finalized. It is another process, but a relatively easy one.

Please let us know if this is a resolution you are serious about. We think it has merit.

I have left phone messages with you both, and Nancy has left a phone message back, but I thought a letter would be best.

Sincerely,

Jeff & Sue Spevack

*Jeff Spevack*  
*Sue Spevack*



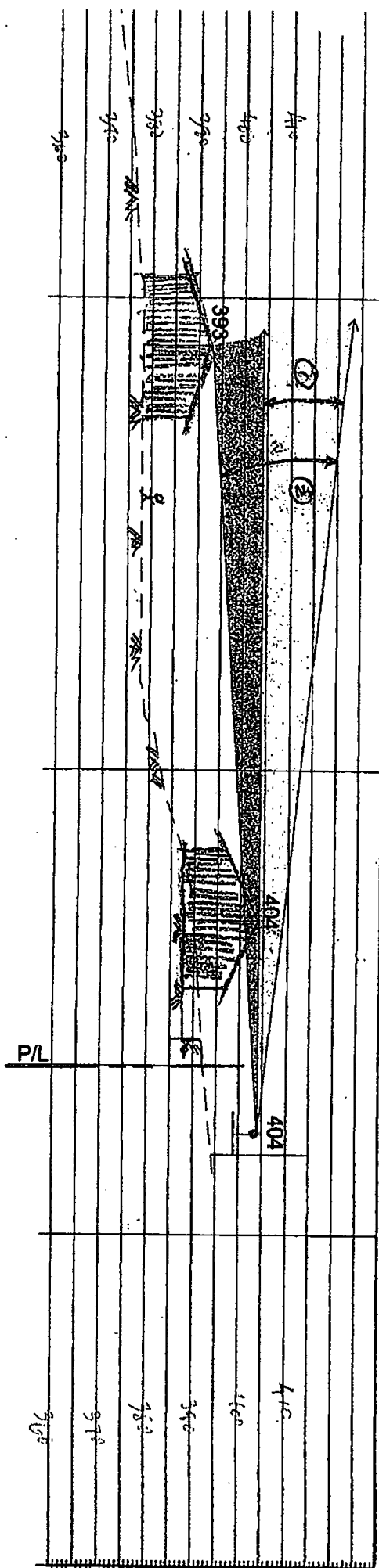
NEW PARCELS



PRIMARY VIEW

PM SLO-09-0074  
2410 JOHNSON AVENUE  
NEIGHBORHOOD CONTEXT





# SPEVACK CROSS SECTION

**SCALE: 1" = 20'**

Submitted @ CC  
01-05-2010

December 26, 2009

To: City Council of San Luis Obispo

Re: Spevack subdivision

We reside at 2448 Johnson Avenue, which is directly adjacent to the proposed Spevack three-lot subdivision. We recently moved to San Luis Obispo from Sacramento in August of 2009, and still own our home in Sacramento, which is located in a high density subdivision. We were pleased to find our current residence at Johnson Avenue as it has much more space and privacy than we were used to in Sacramento. In fact, the strict building regulation of this city is among the many reasons why we were drawn to living in San Luis Obispo. You can imagine our surprise, after being moved in for one month, to find out of the Spevak's plans.

The planned property will clearly infringe on our privacy, with the major concern being over look, in addition to negatively affecting our property value as well as the value of surrounding properties. We ask that you preserve the integrity of this neighborhood and not allow it to become high density housing. Allow us to enjoy the quality of life that we paid so much for in the purchase of this home.

We respectfully request that the City Council accept the recommendations urged by the appellants. Thank you for your time and consideration.

Chris and Alissa Holland







Filing Fee: \$250.00

Paid

N/A

\*REFER TO SECTION 4

CITY OF SAN LUIS OBISPO

NOV 09 2009

COMMUNITY DEVELOPMENT

## APPEAL TO THE CITY COUNCIL

### SECTION 1. APPELLANT INFORMATION

Name NANCY SHOKOH1 et al (SEE ATTACHED) Mailing Address and Zip Code 1659 CORONA CT, SLO 93401

Phone 805-234-5972

Fax

Representative's Name NA

Mailing Address and Zip Code

Title

Phone

Fax

### SECTION 2. SUBJECT OF APPEAL

1. In accordance with the procedures set forth in Title 1, Chapter 1.20 of the San Luis Obispo Municipal Code (copy attached), I hereby appeal the decision of the:

PLANNING COMMISSION  
(Name of Officer, Committee or Commission decision being appealed)

2. The date the decision being appealed was rendered: 10/28/09

3. The application or project was entitled: MA 18-09, PM-SLO-09-0074

4. I discussed the matter with the following City staff member:

NA on \_\_\_\_\_ (Date)  
(Staff Member's Name and Department)

5. Has this matter been the subject of a previous appeal? If so, when was it heard and by whom:

YES - 10/28/09 - PLANNING COMMISSION

### SECTION 3. REASON FOR APPEAL

Explain specifically what action/s you are appealing and why you believe the Council should consider your appeal. Include what evidence you have that supports your appeal. You may attach additional pages, if necessary. This form continues on the other side.

RECEIVED

NOV 09 2009

SLO CITY CLERK

11/9 Called appellants & got OK for Dec. 15 date.

Later, received e-mail from Doug Davidson requesting Jan 5 date due to holidays & complexity of appeal. Will call appellants to get Jan 5 OK.

11/10 Called Nancy Shokohi. She's OK w/ Jan. 5 date, but wants to read it by other "appeal header" of the appeal. I am to send letter to her & she will show it to, & believe Mr. Bond. She to call if all is well. I told her I would mail letter on Thursday, Nov. 12,

She also gave me her e-mail address:

nashokohi@gmail.com for distribution to rest of her appellant group.

11/12 Mailed 45 day letter to Nancy Shokohi confirming our conversation on 11/10. She to return letter by Nov. 23. Will await her call after she shows letter to others in group. E-mailed Doug Davidson w/ progress to date.

11/18 LM to Nancy Shokohi to get letter to Clerks by 11/23/09.

11/23 Letter received.  
sent e-mail to Nancy w/ pdf of all appeal papers, requesting she read to other appellants.

per Doug Davidson, appellants have been contacted

**Reason for Appeal continued**

SEE ATTACHED

**SECTION 4. APPELLANT'S RESPONSIBILITY**

The San Luis Obispo City Council values public participation in local government and encourages all forms of citizen involvement. However, due to real costs associated with City Council consideration of an appeal, including public notification, all appeals pertaining to a planning application or project are subject to a **filing fee of \$250**, which must accompany the appeal form.

Your right to exercise an appeal comes with certain responsibilities. If you file an appeal, please understand that it **must** be heard within 45 days from filing this form. You will be notified in writing of the exact date your appeal will be heard before the Council. You or your representative will be expected to attend the public hearing, and to be prepared to make your case. Your testimony is limited to 10 minutes.

A continuance may be granted under certain and unusual circumstances. If you feel you need to request a continuance, you must submit your request in writing to the City Clerk. Please be advised that if your request for continuance is received after the appeal is noticed to the public, the Council may not be able to grant the request for continuance. *Submitting a request for continuance does not guarantee that it will be granted; that action is at the discretion of the City Council.*

**I hereby agree to appear and/or send a representative to appear on my behalf when said appeal is scheduled for a public hearing before the City Council.**

*Nancy Alshook*  
(Signature of Appellant)

11/8/09  
(Date)

\* Exceptions to the fee: 1) Appeals of Tree Committee decisions are \$100. 2) The above-named appellant has already paid the City \$250 to appeal this same matter to a City official or Council advisory body.

This item is hereby calendared for TUESDAY, JANUARY 5, 2010

cc: City Attorney  
City Manager  
Department Head JOHN MANDEVILLE  
Advisory Body Chairperson CHUCK STEVENSON  
Advisory Body Liaison KIM MURRAY, DONG DAVIDSON  
City Clerk (original)  
JAMES DAVID

# Department of Community Development Planning Application

City of San Luis Obispo  
919 Palm Street  
San Luis Obispo, CA 93401  
(805) 781-7172

Project Address 2410 JOHNSON Parcel # 003-703-029  
Project Title \_\_\_\_\_  
Legal Description CY SLO TR 1272 LT 1  
Zoning 1 R-1 Zoning 2 \_\_\_\_\_  
Property Owner SPEVACK JEFFREY & SUSAN  
In Care Of \_\_\_\_\_  
Owner Address \_\_\_\_\_  
2410 JOHNSON AVE  
SLO CA 93401-5350  
Applicant Name EDA DESIGN PROFESSIONALS Day Phone (805)549-8658  
Address 1998 SANTA BARBARA STREET, SUITE 200  
SAN LUIS OBISPO, CA 93401  
Representative JEFF WAGNER PE Day Phone (805)549-8658  
Address 1998 SANTA BARBARA STREET, SUITE 200  
SAN LUIS OBISPO, CA 93401  
Appellant #1 Nancy Shokohi Day Phone (805)234-5972  
Address 1659 Corona Ct  
San Luis Obispo, CA  
Appellant #2 Joe Boud Day Phone ( )543-0565  
Address 1645 Corona Ct  
SLO CA 93401  
Send correspondence to Representative

Application made pursuant to Chapter/Section \_\_\_\_\_ of the San Luis Obispo Municipal Code.

## Planning Services Summary

Application #	Type of Application	Received	Fee
MS	78-09 Review of a subdivision creating three lots from one in the R-1 zone	SLOMS09-0074 8/5/2009	\$6,328
AP-PC	78-09 Appeal of hearing officer's decision to allow a three-lot subdivision	9/28/2009	\$250
AP-CC	78-09 Appeal of Planning Commission's decision on the project approval	11/9/2009	\$0
Total fees			\$6,578

Received By TYLER COREY

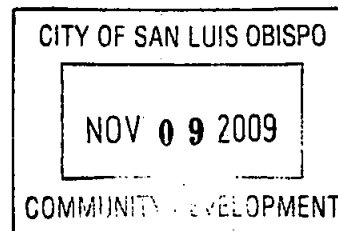
Fee Paid by Applicant ( 6328)

Appellant#1 ( 250)

Assigned planner JAMES DAVID

Hearings  
MS Admin. Hearing 9/18/2009  
AP-PC PC Hearing 10/28/2009

*City Council 12/15/09*



# **APPEAL OF SUBDIVISION APPROVAL**

**Date:** November 9, 2009

**To:** City Council  
City of San Luis Obispo

**Appellants:** Nancy Shokohi, Owner – Lot 3, Tract 1272  
Maureen Eyermann, Owner – Lot 2, Tract 1272  
Kevin & Julie Elder, Residents – Lot 2, Tract 1272  
Joseph & Barbara Boud, Owners – Lot 12, Tract 1272  
Steven & Paula Dooley, Owners – Lot 13, Tract 1272  
William & Barbara Herrerras, Owners – Lot 4, Tract 1272  
James & Marlene Killian, Owners – Lot 5, Tract 1272  
Chris & Alyssa Holland, Owners 2448 Johnson

**Applicant:** Jeff & Susan Spevack  
2410 Johnson Avenue

**Subject:** MS 78-09; PM-SLO-09-0074

On 9/18/09 the above referenced three-lot subdivision was approved by the Community Development Department at an Administrative Hearing. It was appealed to the City's Planning Commission who, on 10/28/09, also approved the project with modified conditions.

The Appellants continue to believe that this project is inappropriate and will result in significant and unavoidable negative impacts to their properties and their neighborhood. The Appellants do not believe that the modified conditions imposed by the Planning Commission provide adequate protections and mitigation of impacts that fully address their concerns.

The grounds for Appeal are enumerated in Attachment 1, the Planning Commission Appeal package, and should be considered in concert with the minutes and testimony at the Planning Commission meeting along with the following comments. Principal concerns continue to center around Slope and Useable Building Envelope, Grading & Vegetation Removal, Building Height & Setbacks, Visual Impacts, Driveway Access & Grades, Fire Access and Neighborhood Compatibility. These subjects are discussed in greater detail below and illustrated in the accompanying Exhibits A and B.

## **SLOPE / BUILDING ENVELOPE**

Slope calculations and site sections are described in Attachment 1 and its related Exhibits. Expanded comments are as follows:

The Appellants do not dispute that Parcel 1 may have an average cross slope within the gross lot area of 17.2%, however an examination of the delineated building envelope results in a more accurate depiction of the useable building area.

Building Envelope w/10' rear setback = 6,213 sf

Building Envelope less drive, guest parking & garage = 5,213 sf

Building Envelope less areas of >25% slope = 2,863 sf useable area

The building envelope includes the building footprint, patios, walks, retaining walls and circulation elements. In Parcel 1, the steep slope areas (at least 2,350 sf) occupy most of the center area of the envelope, forcing a future building onto the least slope impacted area of the envelope, the easterly area, which coincidentally, is the most intrusive and impacting to the neighboring lots.

Using the Appellant preferred 25' setback, which was required by the City elsewhere in the underlying subdivision (see Attachment 1, Exhibit 3) results in the following:

Building Envelope w/25' rear setback = 4,348 sf

Building Envelope less drive, guest parking & garage = 3,348 sf

Building Envelope less areas of >25% slope = 998 sf useable area

The above scenario illustrates the severely constrained useable site area, essentially rendering Parcel 1 as a non-building site, if reasonable and historically consistent 25' setback restrictions are imposed to protect the integrity of the existing neighborhood. A 25' setback reflects the setback applied to the abutting Flora Street lots for Tract 1272 lot development and this same requirement should be applied here. It is the Appellant's position that pushing a future structure onto an area of a parcel that creates the greatest impact to neighboring parcels produces an unavoidable, unmitigatable negative impact.

Contrary to the Applicant's representative testimony at the Planning Commission, this is not a case of a "Not In My Backyard" attitude by the neighbors. The grounds for Appeal are factual, not emotional. This Parcel 1 area has never been a candidate for development because: (1) Dr. & Mrs. Gelinas (original and previous owners) wanted maximum privacy for their backyard area. They emphasized this fact in participating in the development of Tract 1272 and requiring that the Lots 2 & 3 houses were sited as close as possible to Corona Court; and, (2) it has always been widely recognized by all as being far too constrained to support any development.

Once a parcel is legally created it has the ability and perception to be developed, whether by the present owner or a subsequent owner. City approval of a parcel that has no and/or marginal future development opportunity could potentially expose the City to be found liable for a denial of property rights. The City should

certainly exercise an abundance of caution in approving such a severely constrained properties.

## **HEIGHT / VISUAL IMPACTS**

The Planning Commission established a maximum building height not to exceed elevation 406', however an examination of the testimony at Planning Commission reveal that the assumptions related to neighboring lot residences finish floor elevations (FFL) were arbitrary and pure guesswork. The comments at the Planning Commission meeting make it clear that the Commissioners struggled with the height conditions due to that fact. With today's technology it is bewildering that an accurate Visual Simulation model was not provided. Failing the absence of such a model, the Appellants conducted recent survey and dimensioned site plan work that is depicted in Exhibit A of this Appeal.

The site and section information in Exhibit A and Photos in Exhibit B represent the correct conditions and elevations and should be considered along with previously submitted Visual Impact information in Attachment 1, Exhibit 4. If this subdivision is approved with three lots, including Parcel 1 as configured, the Appellants insist that any future development building height is limited to the 398' elevation to protect and maintain views and privacy from the neighboring properties. As an aside, privacy is not limited to view overlook as suggested by one of the Planning Commissioners. Privacy includes noise, activity, pets, vehicles, presence, etc., all of which have an effect on the ambient qualities of a neighborhood.

Further, if this project is approved as three lots, it is recommended that the Architectural Review Commission must review any future development on Parcel 1 in a public hearing.

## **GRADING /DRIVE / VEGETATION IMPACTS**

Testimony given at the Planning Commission meeting repeatedly stated that issues related to grading, earthwork quantities, retaining wall structures, vegetation removal and access would be worked out later. The Appellants disagree. A Preliminary Grading & Vegetation Removal Plan should be prepared now, before subdivision approval, and will very likely require a CEQA Initial Study analysis to understand earthwork and vegetation impacts with either a Mitigated Negative Declaration and/or an Environmental Impact Report required.

## **FIRE ACCESS / HAZARD**

A Fire Truck turnaround in the middle of this subdivision, requiring fire responders to drag their equipment up a 20% slope for a distance of over 250' to access a structural and/or wildland fire before it engulfs Parcel 1 improvements and threatens neighboring lots is the proposed fire protection solution. However,

this scenario is pure fantasy, especially when considering the functional reality of the turnaround area.

It is tortured logic to believe that a red painted curb and signage will deter the drive and/or turnaround from being occupied by vehicles, toys, and the like, even if posted with signs threatening a City citation if they are blocked. If blocked or occupied, no fire truck operator would dare jeopardize their equipment and apparatus by entering a site that has no escape, making a successful response and suppression to Parcel 1 even more remote.

And, from an aesthetic viewpoint, such a turn around, smack-dab in the front yard of the existing residence, is a purely industrial design solution that is completely inappropriate in this residential neighborhood.

### **NEIGHBORHOOD LOTTING CHARACTER**

Continual reference to this flag lot subdivision being similar to others in the neighborhood is misleading. The character of this project and this site is vastly different from other flag lots in the vicinity.

The flag lot subdivision to the south was developed by Roy Newell in 1978 and had, and still has, vacant land upslope with no visual impact issues. The flag lot subdivision directly east of Newell's, by Spencer Bunya in 2007, is well down slope and setback from the existing residences along Flora Street, so no visual impacts are possible in that case. And, flag Lot #13 of Tract 1272, which was developed and sold by Appellants Joseph & Barbara Boud who, as members of the self-imposed Tract 1272 ARC, approved the subsequent house design after requiring setback modifications to protect viewsheds from their Lot #12.

### **SUMMARY & RECOMMENDATIONS**

Opposition by eight concerned neighboring lot owners and residents to this project cannot be understated. These property owners have invested a lifetime of personal resources and energy to create and establish a quality neighborhood and residential environment for themselves and future owners. The Appellants feel that the Applicant has more than ample opportunity to gain reasonable financial benefit in developing their property with a project that does not severely impact the abutting properties safety, views, values, privacy and neighborhood. Frankly, the Appellants are puzzled why the City is so willing to support and accommodate such a marginal project, squeezing an improbable building site into an area with so many problems and impacts.

The Appellants submit the following recommendations for consideration by the City Council.



### **Recommendation #1 - Preferred**

Deny the project with guidance given to the Applicant to pursue a two-lot subdivision with a future Lot Line Adjustment negotiated between the Applicant's and the abutting lots to the east (Lots 2 & 3, Tract 1272; see Attachment 1 for more information on the LLADJ possibility). This would not only be supported by the Appellants but would also eliminate the extensive and expensive infrastructure improvements, grading, vegetation removal, fire hazard & turnaround issues, etc., that will be necessary to improve Parcel 1 as a separate parcel.

### **Recommendation #2 – Alternative**

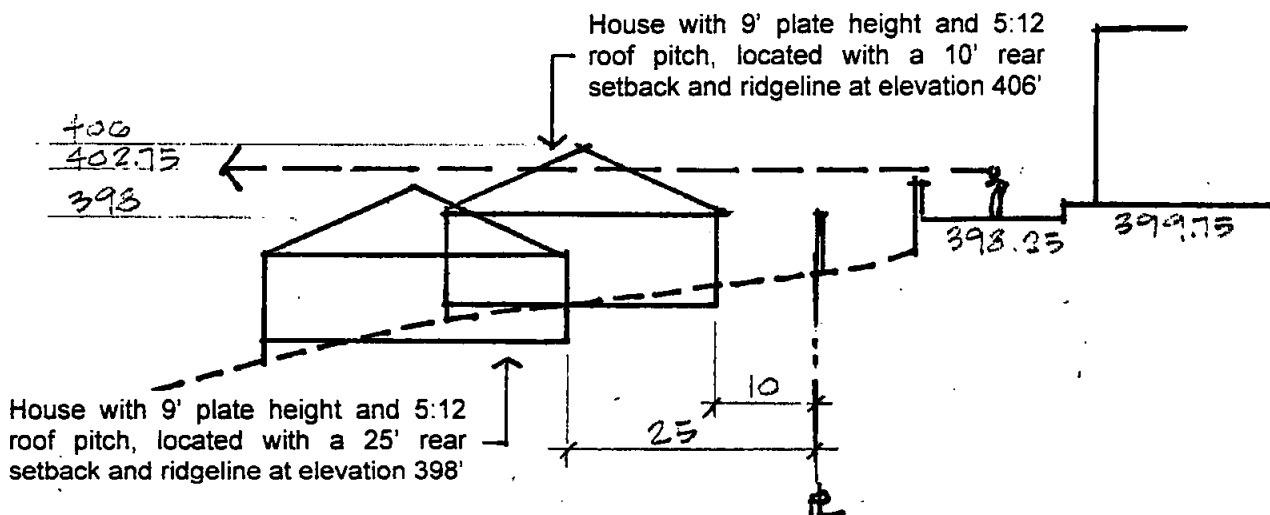
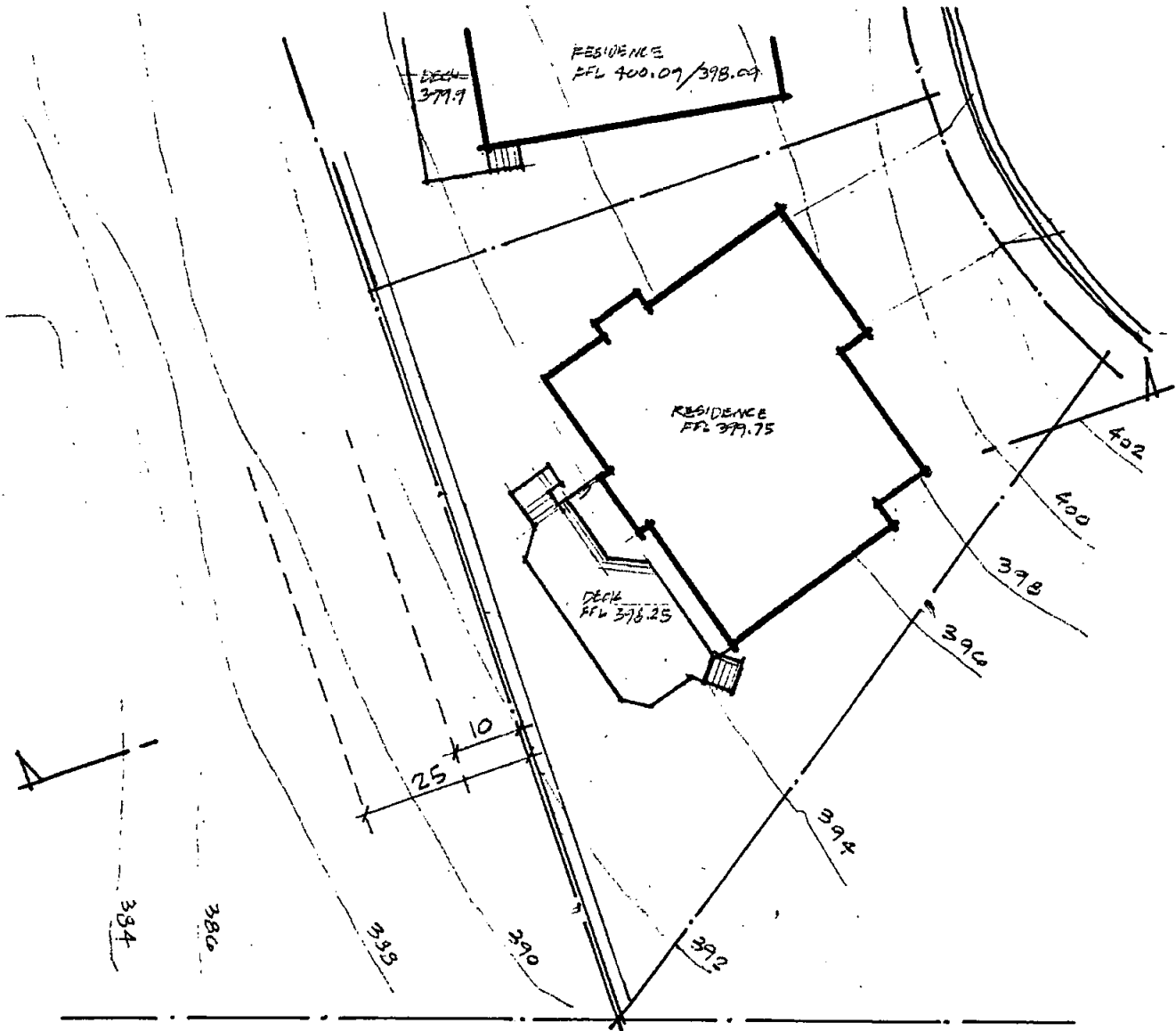
If a three-lot project is approved it should require the submittal of a Preliminary Grading & Vegetation Removal Plan prior to approval and include the following conditions:

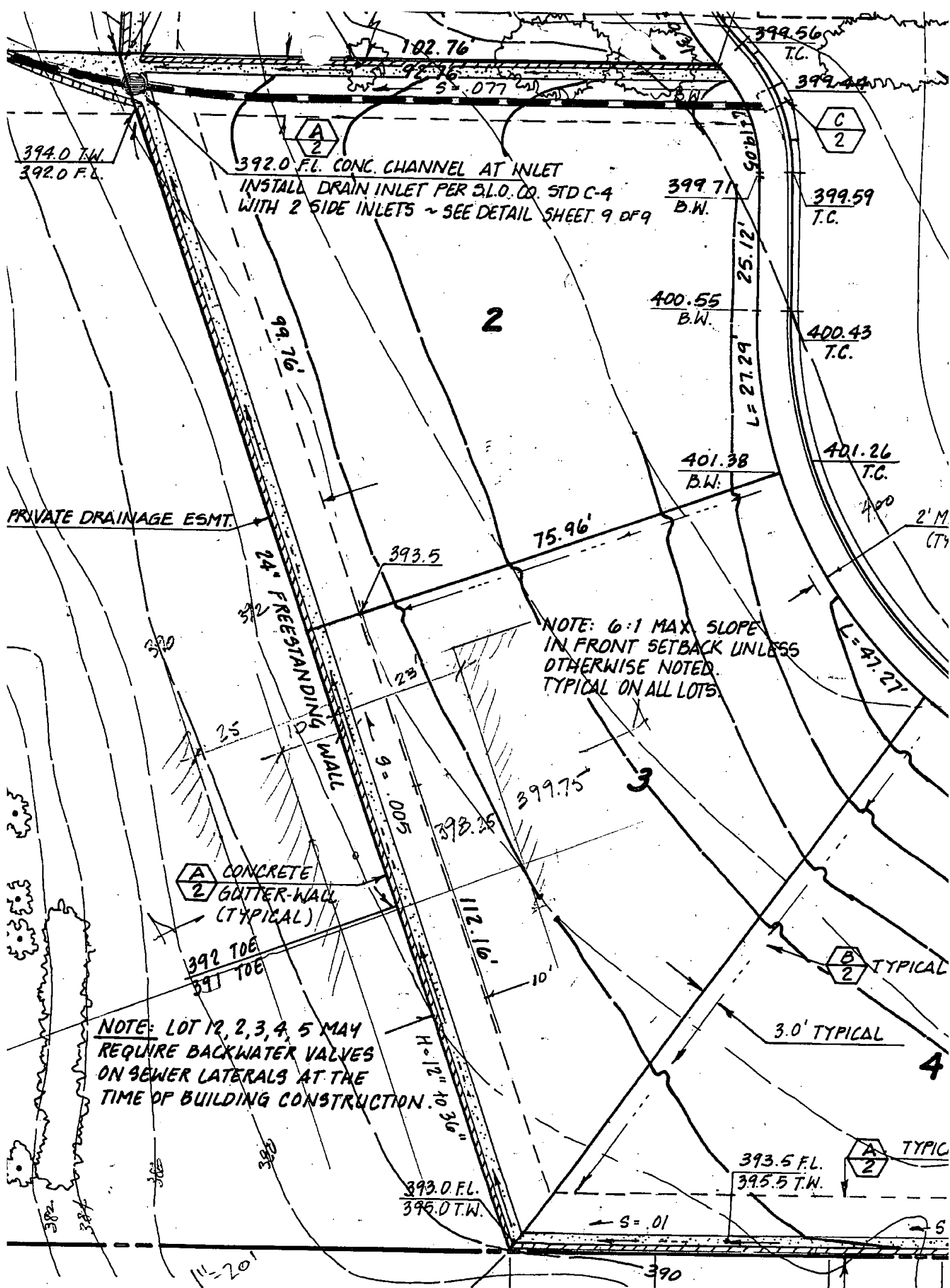
1. A 25' rear yard setback from the lots to the east (1649 & 1659 Corona Court) and to the south (2448 Johnson Avenue) for any structure, driveway or guest parking space
2. A maximum building height not to exceed elevation 398'
3. Public hearing review by the City's Architectural Review Commission

The Appellants appreciate your consideration of this information and trust the City Council will make the right decision to protect our properties and maintain the quality of our neighborhood.

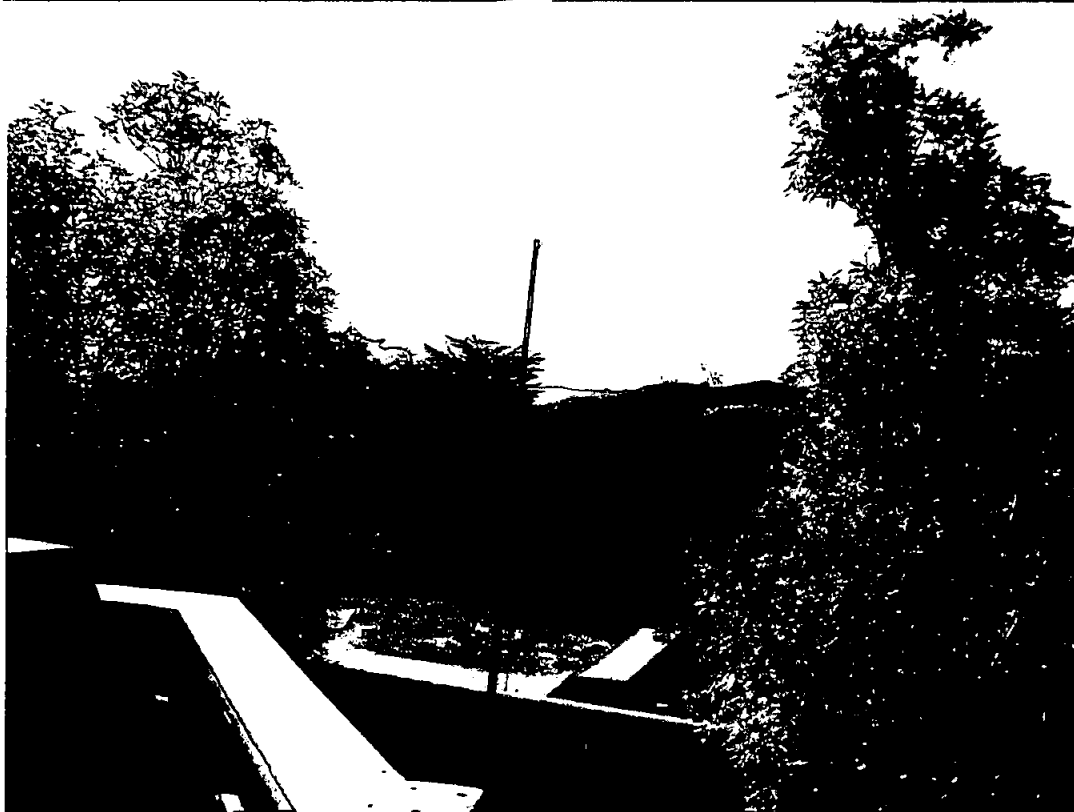
# EXHIBIT A

## Site & Section Information





**EXHIBIT B**  
**Photos with Pole @ 406' Elevation**



# **ATTACHMENT 1**

**Appeal Package to Planning Commission with Exhibits 1-5**

# APPEAL OF SUBDIVISION APPROVAL

**Date:** September 25, 2009

**To:** Department of Community Development  
City of San Luis Obispo

**Appellants:** Nancy Shokohi, Owner – Lot 3, Tract 1272  
Maureen Eyermann, Owner – Lot 2, Tract 1272  
Kevin & Julie Elder, Residents – Lot 2, Tract 1272  
Joseph & Barbara Boud, Owners – Lot 12, Tract 1272  
Steven & Paula Dooley, Owners – Lot 13, Tract 1272  
William & Barbara Herrerras, Owners – Lot 4, Tract 1272  
James & Marlene Killian, Owners – Lot 5, Tract 1272  
Chris & Alyssa Holland, Owners 2448 Johnson

**Applicant:** Jeff & Susan Spevack  
2410 Johnson Avenue

**Subject:** MS 78-09; PM-SLO-09-0074

The above noted property owners and residents (Appellants) who abut the above referenced subdivision proposed by Applicant (Spevack) hereby appeal the 9/18/09 Administrative Hearing approval of said Subdivision to the City of San Luis Obispo Planning Commission as described in Chapter 17.66 of the City Zoning Regulations.

## APPLICABLE CITY ORDINANCES & POLICIES

The following cited policies are applicable in evaluating the project's consistency with City Ordinances.

### Chapter 16.18.020 – General

Discusses the design of lots and states that lots that are impractical for intended uses due to terrain, natural features, access, or developable area should not be approved.

### Chapter 16.18.020A - Grading

This chapter states that natural contours in new subdivisions shall be preserved; Restricts retaining walls to no greater than 3 feet and slopes to 2:1 maximum

### Chapter 16.18.050 – Depth/Width Relationship

States that lots with 3:1 depth-to-width ratio are not permitted unless it can be demonstrated that the flag lot subdivision can be accomplished without detriment to adjacent properties.

**Chapter 16.18.060C – Flag Lots**

Requires access way to the rear be at least twenty feet wide with width and paving subject to approval of Community Development Department Director.

**Chapter 16.18.060D – Flag Lots**

Requires access driveways greater than 300' to provide two way access and fire truck access with appropriate turn around areas to exit in a forward direction. Fire Code requires that access roads are a maximum of 15% grade, all weather surface and provide an unobstructed width of 20'.

**Chapter 16.18.060G – Flag Lots**

Requires new parcels that are surrounded by residential development to be designated as a "Sensitive Site" requiring ARC review to consider impacts of overlook, solar access encroachment, noise protections and privacy.

**Chapter 16.18.130B – Hillside Subdivisions**

States that substantially larger lots or open space should be applied to the steepest areas, drainage swales, etc.

**Chapter 16.18.130C – Hillside Subdivisions**

States that grading is to be kept at an absolute minimum

**Chapter 16.18.130D – Hillside Subdivisions**

Contains design standards related to minimum grading and avoidance of potential hazards such as erosion, sedimentation, fire or water quality.

**Parking & Driveway Standard 2130 / City Fire Department Access Standards**

The City's Upward Driveway Standard #2130 contains slope and dimension standards for the driveway ramp connection with the public road, slope of driveway and vertical curve standards where the driveway levels out. The Fire Department establishes standards of 15% maximum slope, turnaround side slope and 20' unobstructed access width for the driveway.

**APPEAL**

The Appellants do not believe that Subdivision MS 78-09/PM-SLO-09-0074 should be approved for the following reasons:

**Building Envelope Parcel 1 - Slope**

The proposed building envelope for Parcel 1 contains significant areas of steep slopes; nearly 35% of the proposed envelope contains slopes greater than 25% (see attached Exhibit 1). Future development will require the removal of significant mature vegetation, including oak and pine trees. Both of these conditions would clearly require massive grading operations and retaining walls,

violating a number of the aforementioned City Ordinances related to minimum grading, erosion and sedimentation hazards.

#### **Building Envelope Parcel 1 – Setbacks**

The proposed building envelope shows a minimum 5' setback on the east, south and west. The subject property is Lot 1 of Tract 1272, approved by the City in 1985. CC&R's were developed for the tract that made it very clear that respect for neighboring privacy and views was paramount (see attached Exhibit 2). Lot 1 was not included in the CC&R's because it was understood that no further development would occur on the Lot 1, therefore it was pointless to include it in the covenants, however the spirit of privacy and views was endorsed by all.

Further, conditions of approval and historical decisions and correspondence addressing development of properties within Tract 1272 required developments to increase rear-yard setbacks, set development into existing grade and limit them to a single story where possible (see attached Exhibit 3). At the very least, the building envelope on Parcel 1 should adhere to the historical rear-yard setback of 25' and limit the building to a single story.

#### **Parcel 1 – Access**

The Tentative Map shows a 17% driveway grade for the first approximate 60' from Johnson Avenue with a driveway width of 20'. The driveway then narrows to 16' wide for the next 80' with a fire department turn around at the 90' distance, then continues up the hill at 7% increasing to 20% within a driveway width of 12'.

We believe the 17% grade is questionable, as our survey indicates it approaches 20%, either case will require it to be excavated to comply with City code of 15% with retaining walls constructed along the sides. This will also necessitate the removal of existing property line screening vegetation. As the drive continues into Parcel 1 at 12' wide, it climbs up a grade that our slope calculation shows approaches 20%, not 15%, with no information provided on retaining wall and/or grading required to demonstrate the feasibility and/or impacts to the landform and existing drainage structure that runs along the common property line between Lots 1, 2 & 3. All of these conditions clearly contradict City Ordinance and Fire Code requirements and/or have the potential to cause serious environmental damage.

#### **Fire Hazard**

As was pointed out in a 9/09/09 letter from Appellant to City and discussed above, the southern boundary of the building envelope on Parcel 1 is about 325' from Johnson Avenue along this proposed 12' wide driveway with grades of more than 17% and a very tight turn on a 20% slope. The Fire Code requires a maximum 15% gradient with a 20' wide unobstructed access. To believe that painting the curbs red with no parking signs will restrict owners and guests from parking within the driveway or the fire truck turn around is unenforceable and pure fantasy. The functional reality is this: this severely constrained access road



exceeds gradient and does not satisfy width requirements and the proposed fire truck turnaround will certainly be blocked by car or RV parking; children's play equipment, trash cans or the like. In the event of a structural or wildland fire any delayed response time would immediately engulf the neighboring wood fences, exterior wood decks and homes. What kind of tortured logic is staff using to compromise and deviate from long-standing City health and safety requirements?

When Tract 1272 was approved and the improvement plans prepared, the flag lot gradient and width requirement to access Lot 13 was satisfied as required. Why are these access standards being compromised now?

### **Visual Impacts**

As noted above, the design of Tract 1272, its conditions of approval, the CC&Rs, and historic decisions by the City as well as the ARC reviews for the tract made it abundantly clear that this development was intent on maintaining maximum privacy, views and vistas. Even a single story house located on Parcel 1 would compromise and severely affect the expectations established on this tract and in this neighborhood resulting in significant quality of life impacts for the residents as well as producing severely diminished property values (see attached Exhibit 4). For the neighboring properties to embrace this parcel map proposal so the Applicant can gain financial benefit while their land values are diminished is patently absurd.

Further, Condition #1 of MS 78-09 requiring ARC review provides no assurance or comfort to the Appellants. Once a parcel is legally created it has the ability and perception to be developed, whether by the present owner or a subsequent owner. The ARC would ultimately approve a project on this lot or the City would be found liable for a denial of property rights. The approval of this subdivision is a ploy to enhance the speculative value of the Applicant's real estate at the expense of the neighboring lot owner's values. It is in the City's best interest to use an abundance of caution when considering development or subdivision of marginal properties with significant constraints that conflict with so many City land use policies.

### **Neighborhood Controversy**

This project is not supported by any abutting property owner and/or resident that will be affected by its approval and development. This includes Dooley (Lot 13), Boud (Lot 12), Eyermann (Lot 2), Elder (resident, Lot 2), Shokohi (Lot 3), Herraras (Lot 4), Killian (Lot 5), and Holland (2348 Johnson, abuts Parcel 1).

The properties that abut this project were purchased and developed with the understanding and assurance that the condition of the neighborhood, the views, the privacy and ambience was predictable and long lasting. Historic City decisions, Tract 1272 conditions and covenants and tract ARC reviews of subsequent development all reinforce the intentions establishing this

neighborhood and the Appellants have no desire for our quality neighborhood, our investments and expectations to be eroded or compromised.

Secondly, a similar proposal to subdivide Lot 1 of Tract 1272 was submitted to the City in 1995 (PM SLO-95-020 (see Attached Exhibit 5). All of these same salient comments were presented at that time. City staff did not support the project and it was subsequently withdrawn. Why must we continue to time and again defend and protect our neighborhood from subsequent proposals when the record is very clear that this Parcel 1 site is unsuitable for development?

Finally, the Applicants undertook a major remodel and renovation to their residence, removing all walls except the northern one. They then rebuilt the residence on the exact same footprint! With foresight, they should have reconfigured the siting of the house to allow for future development without impacting the neighboring properties, however they did not. We do not believe that the abutting properties should now be obligated to suffer for their lack of foresight, nor do we feel obliged to underwrite their retirement planning efforts.

#### **Project Alternatives**

Denial of MS 78-09; PM-SLO-09-0074 does not preclude the property owner of achieving a reasonable level of benefit from potential future value and/or development of their property. Several years ago, the owners of Lots 2 and 3, individually approached the Applicants with the desire to purchase the rear, unused and inaccessible, portions of the Applicant's property abutting Lots 2 & 3. The Applicants were not interested in selling, so presumably an acre of land was not too much for them to maintain at that time. This option is still available to pursue and would require subsequent negotiations and cooperative processing of a Lot Line Adjustment. This land area would not be buildable, however would enable the Lot 2 & 3 owners to expand their yard areas and formalize their privacy areas with the only condition being that the storm drainage system curb wall and inlet along their rear property lines is not compromised.

Additionally, denial of MS 78-09; PM-SLO-09-0074 would not deny the Applicants from subdividing the front portion of their property along Johnson Avenue. The front yard area contains more than adequate land area that could be parceled off and, if properly designed, could still maintain adequate separation, privacy and yard areas for the existing residence, as well as minimize grading, vegetation removal, safety hazards and visual impacts as discussed herein.

#### **Recommendation**

This application is not about implementing Strategic Growth objectives, General Plan Goals, compliance with AB32 or other State or City planning objectives. It has to do with the respect for the quality of life and land use within an existing neighborhood, conformance with City codes and consistency of decision-making. There is no compelling reason to approve such a marginal project especially

when Alternatives are available and, frankly, the Appellants are bewildered by the recent approval of MS 78-09 given the 25-year history of decisions that have protected the integrity of this neighborhood.

We recommend that the Planning Commission deny MS 78-09; PM-SLO-09-0074. We believe that Findings #2, 3, 4 and 6 cannot be satisfied, the project does not comply with the numerous City codes and policies as described above and the historical record makes it clear that this Parcel 1 area is not a candidate for subdivision and/or structural development.

We recommend that the Planning Commission direct the Applicant to pursue the Project Alternatives as discussed above.

## **EXHIBIT 1**



N 53°37'22" E 36.83'  
EXISTING 10' PUBLIC SEE  
AND STORM DRAIN EASEMENT  
PER 13 MB 55

N 36°13'20" W 50.00'

PROPOSED 20'  
PRIVATE ACCESS  
AND UTILITY  
EASEMENT FOR THE  
BENEFIT OF  
PARCELS 2 & 3

EXISTING 5" WATER SEWER AND  
GAS EASEMENT PER 689/44 O.R.

PROPOSED 28'  
PRIVATE ACCESS  
AND UTILITY  
EASEMENT  
FOR THE BENEFIT  
OF PARCELS 2 & 3

DRIVEWAY

LANDSCAPE

CONCRETE

GUEST  
PARKING

FIRE TRUCK  
TURN AROUND

GUEST  
PARKING

PARCEL 3

CONCRETE

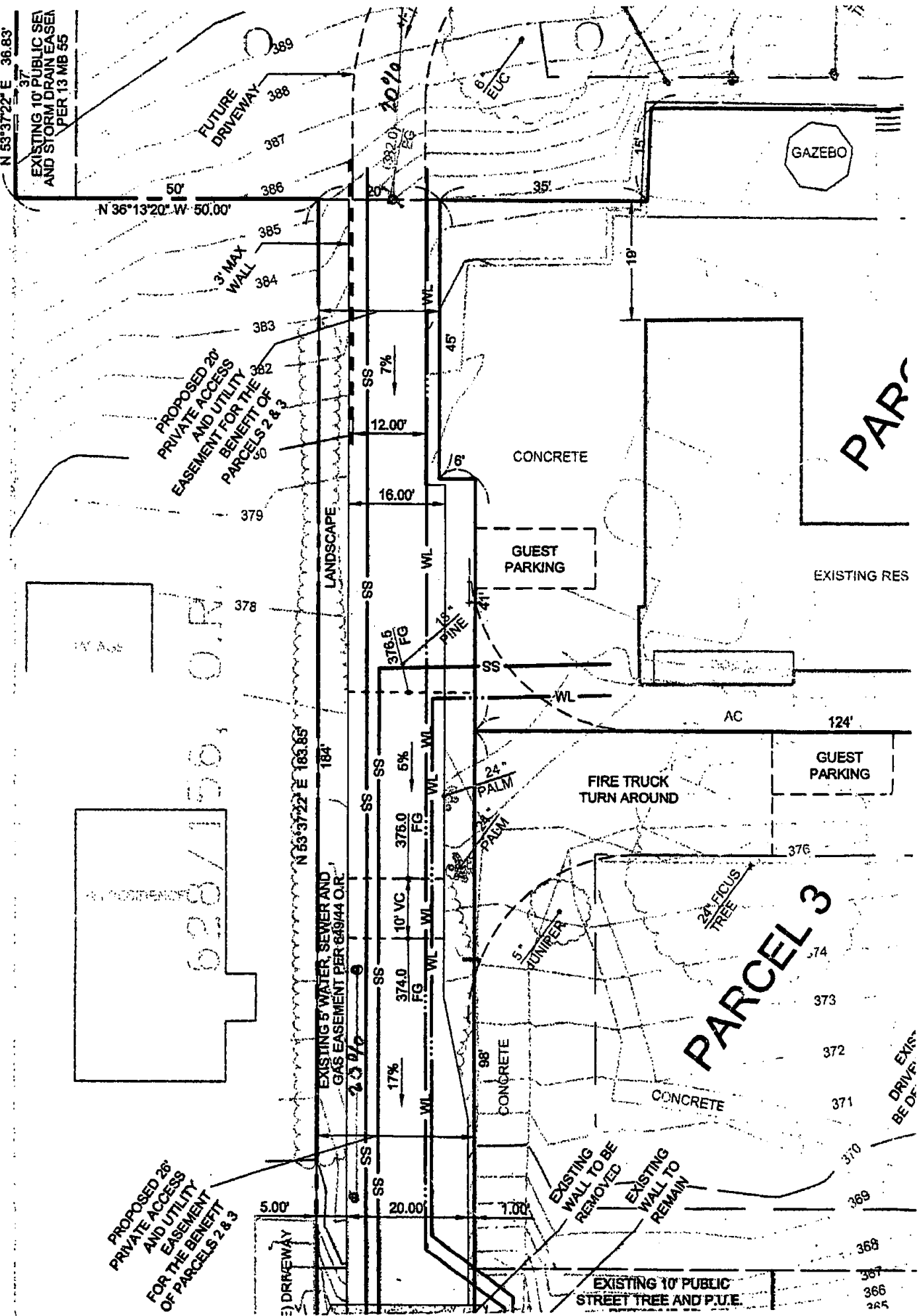
EXISTING 10' PUBLIC  
STREET TREE AND P.U.E.

GAZEBO

PARC

EXISTING RES

EXISTING  
DRIVEWAY  
BE DR



## **EXHIBIT 2**

Recording requested by: Ticor Title Insurance Company

10/29 357 1 3

11/01 12  
8:00 12  
10/29/86

When Recorded Mail to:  
Joseph C. Boud  
1009 Morro Street, Suite 206  
San Luis Obispo, CA 93401

DOC. NO. **70437**  
OFFICIAL RECORDS  
SAN LUIS OBISPO CO., CA

OCT 29 1986

FRANCIS M. COONEY  
County Clerk-Recorder  
TIME 8:00 AM

**DECLARATION & ESTABLISHMENT  
OF PROTECTIVE  
COVENANTS & RESTRICTIONS**

149547 RB  
This is a Declaration, made and dated this 17th day of OCTOBER, 1986 by and between Joseph C. Boud, Barbara K. Boud, Fred G. Kennedy, Hazel J. Kennedy, and Michael Bravo, hereinafter called "Declarant".

**WITNESSETH:**

WHEREAS, Declarant is now the owner of that certain real property in the City of San Luis Obispo, County of San Luis Obispo, State of California, described as follows: All or portions of Lots 7, 8, 9, 10, 24, 25, 26 & 27 in Block 4 of Goldtree Vineyard Tract, according to the map recorded in Book 1, Page 14 of Record of Surveys, in the Office of the County Recorder of said County; said property also described as Lots 2 to 14, inclusive, of Tract 1272 in the City of San Luis Obispo. BOOK 13, PAGE 55.

WHEREAS, it is the intention of Declarant to impose certain mutual beneficial restrictions under a general scheme of use and improvement for the benefit of all the property;

NOW, THEREFORE, Declarant hereby declares that all of the property described herein is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and/or improved subject to the following limitations, restrictions, covenants and reservations, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the property, and are established for the purpose of enhancing and protecting the value, desirability, and attractiveness of the property and every part of it. All of the limitations, restrictions, and covenants shall run with the land, and shall be binding on all parties having or acquiring any right, title, or interest in the property described herein and shall inure to the benefit of all of the property and the future owners of that property or any portion of it.



## Article I

### DEFINITIONS

- A. "Lot" means one of the numbered parcels of real property described herein.
- B. "Property" means the property described herein or any portion of it.
- C. "Set-back" means the minimum distance between a building or other structure and a given street or property line.
- D. "Map" shall mean the Final Subdivision Map recorded for Tract 1272 on file with the County Recorder of San Luis Obispo County.
- E. "Drainage System" means any drainage ditch, swale or pipe located within drainage easements on any lot of the final map for Tract 1272.
- F. "Owner" or "Owners" shall mean the record holder or holders of title of any lot.
- G. The singular shall include the plural and the masculine shall include the feminine, wherever the context so requires.
- G. "Board" means the Architectural Control Board as described herein.

## Article II

### BASIC RESTRICTIONS

**A. Use of Property.** No lot shall be used except for residential purposes and no building shall be erected, constructed, altered or maintained on any of the lots other than a residence for a single family with customary and suitable incidental detached buildings as permitted by the Architectural Control Board (the Board).

**B. Architectural Control.** No building shall be erected, constructed, altered or placed on any lot until the construction plans and specifications and a plan showing the location of the structure has been approved by the Board, whose function is to insure quality of workmanship and materials, harmony of external design with existing structures and outdoor yard areas, and site location with respect to topography and finish grade elevations.

**C. Fencing.** Property line fencing must be erected and placed in accordance with the standard fence design on file with the City of San Luis Obispo and completed prior to the final building inspection and occupancy permit for each individual lot. All other internal fencing or garden walls, including the location, style, material, color and height shall be subject to written approval of the Board. Any fence, or combination fence and retaining wall, greater than six (6) feet in total height as measured from the lower abutting grade elevation may be required to obtain a Variance from the City of San Luis Obispo. This shall be the responsibility of the individual lot owners as lots are developed.

**D. Landscape Requirements.** Front yard areas and property line fencing shall be landscaped by each individual lot owner and installed within 90 days after the final building inspection and occupancy permit for each individual lot. Street trees, as required by City ordinance, shall be planted by lot owners as lots are developed.

**E. Special Sidewalk/Landscape Requirements.** The four foot wide (4') sidewalk in front of Lots 9 and 10 shall be expanded to a full six foot wide (6') sidewalk with the retaining wall relocated in the event the existing oak tree, whose location in the cul-de-sac prompted the lesser width sidewalk, is ever removed and/or destroyed. Special attention will be given landscape plans in the vicinity of this tree, so that proposed landscape materials and watering requirements are compatible with those of the oak tree.

**F. Upkeep of Real Property.** Each lot owner covenants to keep, maintain, water, plant and replant all required landscape areas, slopes, banks, right-of-ways, and set-back areas located on his/her lots so as to maintain landscaping in a healthy condition, prevent erosion and to present an attractive, clean, sightly and wholesome appearance at all times.

**G. Upkeep of Drainage Systems.** Each lot owner shall continuously maintain, repair and/or replace all drainage system improvements serving the property within those areas designated on the final map of Tract 1272 as drainage easements, except for those improvements for which a public authority or utility company is responsible.

**H. Garbage and Refuse Disposal.** No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept, except in sanitary containers, which must be maintained in a clean and sanitary condition and stored from public view.

**I. Nuisance, Retail Sales and Non-Conformity.** No noxious or offensive activity shall be carried on or upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the property or neighborhood. Retail sales, including garage sales, vehicle sales, household items, etc., are permitted and may be displayed provided said sale and display does not exceed two consecutive days in any 30 day period.

**J. Temporary Structures.** No structure of a temporary character, trailer, recreational vehicle, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

**K. Signs.** No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sale period.

**L. Poles, Masts, Disks and Antennas.** No poles, masts, satellite disks or antennas of any type, size or height shall be constructed on any lot, or on or above the roof of any dwelling or structure without the consent of the Board. A satellite disk must be shielded or screened from view by adjacent lots with an enclosure which must be approved by the Board.

**M. Storage of Materials, Junk, Trash and Equipment.** The storage of or accumulation of junk, trash, materials and other offensive or noxious material is specifically prohibited.

**N. Storage of Cars, Trailers, Campers, Boats or Other Motor Vehicles.** No livestock trailer, house trailer, travel trailer, self-propelled vehicle, boat, boat trailer or other similar type of vehicle shall be parked, stored or kept on the public streets, private driveways, or common driveways of any lot for any period exceeding 48 hours. Storage of these types of vehicles is permitted, provided they are hidden from view by screening, stored in garages, or other such method.

**D. Common Driveways.** Where adjacent lots choose to develop a common access driveway, any and all necessary permits and documents must be obtained and/or processed through the City of San Luis Obispo by the affected property owners. In no case shall the common drive be occupied so as to prevent the unobstructed ingress or egress of the lot owners.

**P. Livestock and Poultry.** No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot, except that two adult dogs, two adult cats or two other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose.

### **Article III**

#### **ARCHITECTURE STANDARDS**

**A. Dwelling Size.** No residence shall be erected on any lot having a total living space floor area, exclusive of open porches, garages, patios, exterior stairways and landings, of less than 1800 square feet. Every proposed residence must have a minimum two car garage.

**B. Building Location.** No building shall be located on any lot nearer to the front, side or rear lot lines than the minimum building setback lines as required by the City of San Luis Obispo, unless an exception is granted by this Board and a Variance received from the City of San Luis Obispo. The location of the structure or structures and the landscaping shall bear such over-all relation to the adjacent properties so as to create an aesthetically pleasing overall appearance with particular attention given to maintaining adjacent properties privacy and views.

**C. Colors.** All exterior colors, textures and materials, including roofs, must be set forth in the plans and specifications and approved in writing by the Board prior to commencement of construction. Color samples shall be submitted with plans and specifications which shall be coded or marked to indicate where the colors are to be used on the finished dwelling.

**D. Landscape Plans.** A landscape plan, including types and sizes of plants, trees or other landscape materials and their method of maintenance, shall be submitted to the Board for approval along with plans for the structure to be constructed on the lot.

**E. Fire Protection Systems.** New residences constructed on Lots 2 through 4 and 9 through 13 shall be equipped with automatic residential rated fire sprinklers to the approval of the San Luis Obispo City Fire Department.

**F. Exceptions to Architecture Standards.** All of the above architectural standards apply to construction and/or development activities on all of the property described herein, with the exception of the existing improvements located on Lot 14 and the relocated improvements located on Lot 10. Any new construction or remodeling proposed for these lots shall be subject to the architectural standards and procedures herein described.

## Article IV

### ARCHITECTURAL CONTROL BOARD

**A. Membership.** The Architectural Control Board is composed of Joseph C. Boud, Barbara K. Boud and Michael Bravo; 1009 Morro Street, Suite 206; San Luis Obispo, CA 93401. A majority of the board may designate a representative to act in its place. In the event of death or resignation of any member of the board, the remaining members shall have full authority to designate a successor. Neither the members of the board, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant.

At any time, the then record owners of three-quarters of the lots shall have the power through a duly recorded written instrument to change the membership of the board or remove or restore to it any of its powers, duties and responsibilities.

**B. Procedure.** The Board shall review individual plans and specifications submitted and provide a written approval within 30 days. If no notice of rejection or denial is received within 30 days from the date of receipt of the submittals, and no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

Declarant, or their officers or agents, all acting singularly or together, shall not be responsible for any loss or damage or be liable in any other way for any errors or defects, either latent or patent, in the plans and specifications submitted for approval, or any building or structure erected in accordance with such plans and specifications.

**C. Inspection and Conformity to Plans.** During construction, Declarant or any agent or member of the Board may, from time to time, at any reasonable hour or hours, with reasonable notice, enter any lot and inspect any construction subject to this Declaration as to compliance with the approved submittals. Deviations shall be diligently guarded against, and all such deviations or nonconformities set forth in any notice of noncompliance issued by the Board shall be corrected prior to any final occupancy permit granted by the City of San Luis Obispo. Declarant, the Board, or any agent or officer thereof, acting in good faith, shall not be deemed guilty of, or become liable for any manner of trespass for such entry or inspection.

**D. Enforcement of Board Ruling.** The Board or Declarant shall have the right and authority, after reasonable notice, to perform the subject matter of such noncompliance correction, and the cost of the performance thereof shall be charged to such owner and may be recovered by the Board or Declarant in an action of law against such owner.

## Article V

### GENERAL PROVISIONS

**A. Scope and Duration.** All the covenants and restrictions in this Declaration are imposed upon the property for the direct benefit of the owners as part of a general plan of improvement, development, building, occupation and maintenance; and shall run with the land and shall be binding upon all of the owners of the property and all persons claiming under them and continue to be in full force and effect for a period of 20 years from the date that this Declaration is recorded. After this 20 year period, the covenants and restrictions shall be automatically extended for successive periods of two years each, unless an instrument, signed by three-fourths of the then owners of record of the property, has been recorded signifying termination.

**B. Interpretation of Restrictions.** All questions of interpretation or construction of any of the terms or restrictions herein shall be resolved by the Board or the Declarant and its decision shall be final, binding and conclusive upon all the parties affected.

**C. Breach.** The covenants hereby established shall operate as covenants running with the land; and Declarant and/or the owner of any of the real property described herein, including a bona fide purchaser under contract, or any association formed or used by the owners, in the event of a breach of any of these restrictions or covenants or a continuance of any such breach may by appropriate legal proceedings take steps to enjoin, abate or remedy the same. It is hereby agreed that damages are not an adequate remedy for such breach.

Every act or omission whereby any of the covenants contained in this Declaration are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable and may be exercised by Declarant, the Board, or the owner of any of the real property described herein.

**D. Protection for Mortgagees and Title Insurance Companies.** A breach of the covenants contained in this Declaration shall not affect or impair the lien or charge of any bona fide mortgage or deed of trust made in good faith and for value as to said lots or property, whether such owner's title was acquired by foreclosure or in a trustee's sale or otherwise. A lender who acquired title by foreclosure or deed in lieu of foreclosure or trustee's sale shall be obligated to cure any breach of the covenants which occurred prior to such acquisition of title, and shall be bound by these covenants.

Breach of any of said covenants and restrictions, or any re-entry by reason of such breach, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to said lots or property, or any part thereof. Any subsequent owner of such property shall be bound by these restrictions or covenants whether the owner of said property acquired title by foreclosure, trustee's sale, or otherwise.

**E. Right to Enforce.** The provisions contained in this Declaration shall inure to the benefit of and be enforceable by Declarant, its successors or assigns, or the owner of any of the real property described herein and each of their legal representatives, heirs, successors or assigns.

The failure to enforce any of such covenants or restrictions herein contained shall in no event be deemed to be a waiver of the right to do so thereafter. In any legal proceedings commenced by anyone entitled to enforce or restrain a violation of this Declaration, or any provision thereof, the losing party or parties shall pay the attorney's fees of the winning party or parties in such amount as may be fixed by the Court in such proceedings.

**F. Severability.** Invalidation of any of these covenants by judgement or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

This Declaration is executed by Declarant to acknowledge and establish the terms and conditions set forth in this Declaration.

Executed on October 17, 1986 in San Luis Obispo, California.

**DECLARANTS**

Joseph C. Boud  
Joseph C. Boud

Barbara K. Boud  
Barbara K. Boud

Michael Bravo  
Michael Bravo

Fred G. Kennedy  
Fred G. Kennedy

Hazel J. Kennedy  
Hazel J. Kennedy

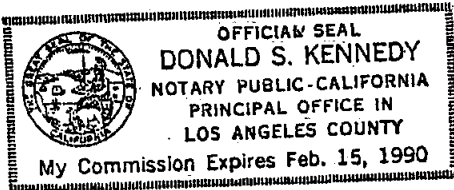
STATE OF CALIFORNIA

COUNTY OF Los Angeles

SS.

On OCTOBER 17, 1986, before me, the undersigned, a Notary Public in and for the State, personally appeared Fred G. & Hazel J. Kennedy, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose names are subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.



Donald S. Kennedy  
Notary Public in and for said State

STATE OF CALIFORNIA

COUNTY OF San Luis Obispo

SS.

On October 24, 1986, before me, the undersigned, a Notary Public in and for the State, personally appeared Joseph C. & Barbara K. Boud, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.



Janet L. Kennedy  
Notary Public in and for said State

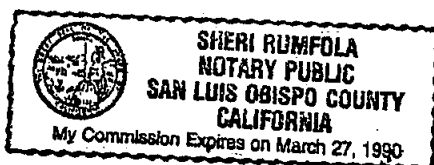
STATE OF CALIFORNIA

COUNTY OF San Luis Obispo

SS.

On OCTOBER 27, 1986, before me, the undersigned, a Notary Public in and for the State, personally appeared Michael Bravo, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

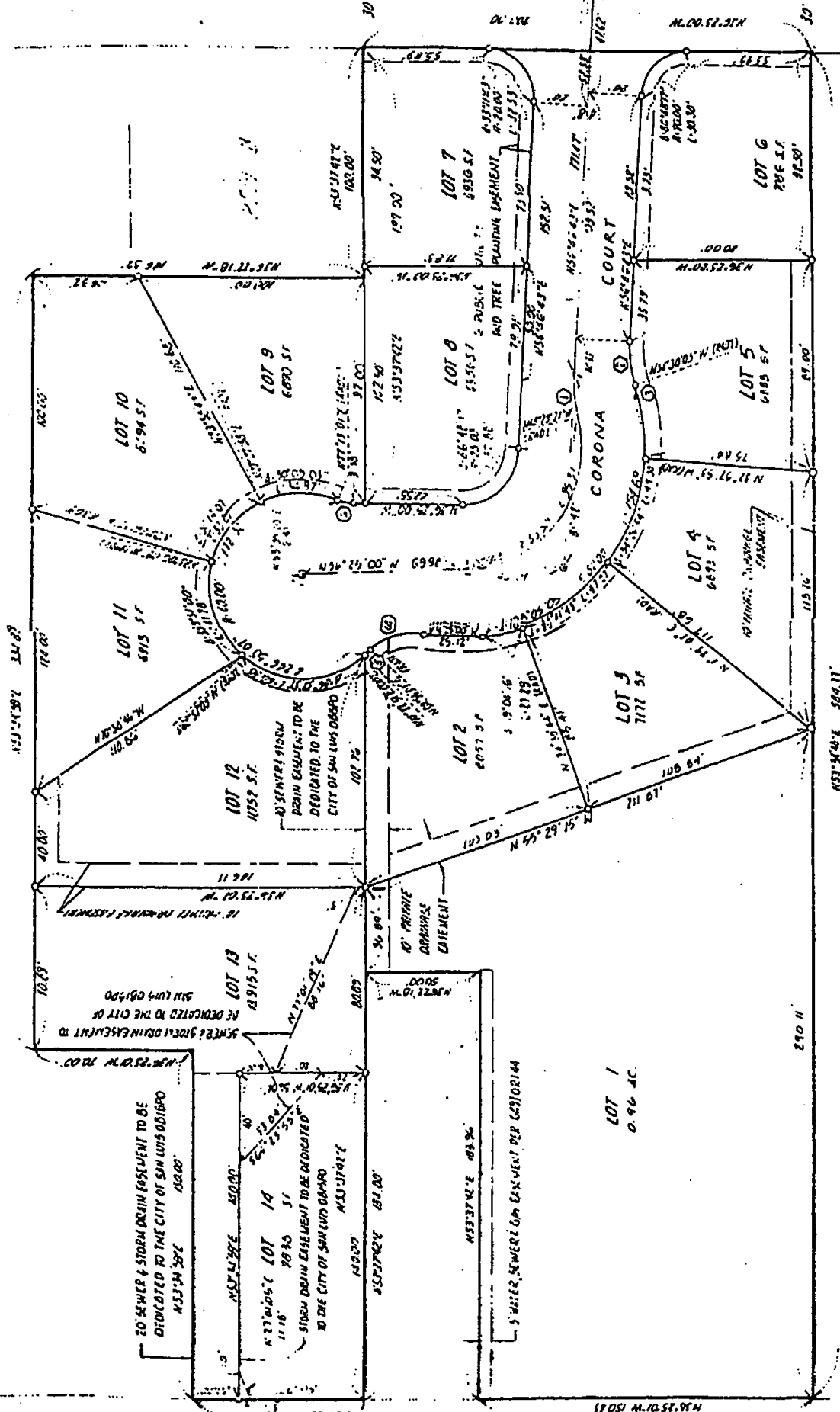
WITNESS my hand and official seal.



Sheri Rumfola  
Notary Public in and for said State

PTN. 27

PTN. 7



PTN. 27

PTN. 10

# TRACT 1272

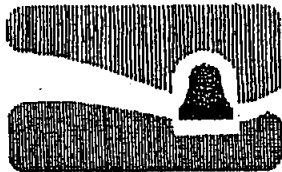
## LEGEND

- ADJACENT SURVEY ADJACENT TO BE SET
- ADJACENT SURVEY ADJACENT TO BE SET

CURVE DATA			
NO.	ANGLE	RADIUS	LENGTH
1	15° 12' 03"	74.00	19.72
2	21° 16' 43"	50.00	14.51
3	11° 11' 11"	47.75	30.81



**EXHIBIT 3**



# city of san luis obispo

990 Palm Street/Post Office Box 8100 • San Luis Obispo, CA 93403-8100

August 20, 1986

Joe Boud  
1009 Morro Street  
San Luis Obispo, CA 93401

SUBJECT: Request to move a house from 2324 Johnson Avenue to 1650 Corona Court (from lot 12 to lot 9 of Tract 1272)

Dear Mr. Boud:

I have reviewed your proposal to move this house, including original and revised plans, and I have determined that it will not comply with tract condition 21, which says that houses on lots 5 through 10 "shall not diminish the views and privacy of existing neighboring houses." I believe moving this house to any of lots 5 through 10 would have difficulty complying with this tract condition. It appears that single story houses set into the existing grade or with generous rear-yard setbacks, or both, would best meet this condition.

You may be able to keep the house in this tract by repositioning it on lot 12 or moving it to some lot other than lots 5 through 10.

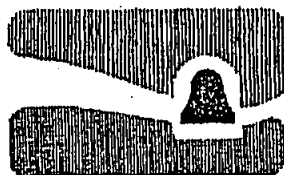
You may contact Glen Matteson of this office if you have any questions.

Sincerely

Michael Multari  
Community Development Director

copies: Jack Kellerman  
Mr. & Mrs. Honeyman  
Mr. & Mrs. Gillen

gm



# City of San Luis Obispo

990 Palm Street/Post Office Box 8100 • San Luis Obispo, CA 93403-8100

August 25, 1986

Joe Boud  
1009 Morro Street  
San Luis Obispo, CA 93401

SUBJECT: House Moving  
2324 Johnson Avenue

Dear Mr. Boud:

Thank you for meeting with me to discuss your proposal to move the existing house at 2324 Johnson Avenue to 1650 Corona Court (from lot 12 to lot 10 in Tract 1272). As we discussed, I believe the intent of the conditions of approval of the tract can be met if the building is set back 25 feet from the rear property line and the finished floor elevation does not exceed 408 feet, as illustrated on the exhibits you submitted which are on file with this department. You stated that you would like to have at least an 18-foot separation between the main structure and the garage, and I understand the value to the use of the property of maintaining a sense of continuity among the front yard open areas. Therefore, if it proves impossible in the field to provide both the 25-foot setback and an 18-foot building separation (due to location of trees, for example), please contact me and we can explore an alternative approach.

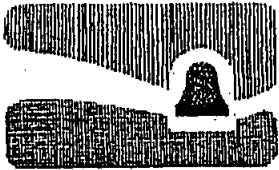
If you have any questions, please give me a call at 549-7170.

Sincerely,

Michael Multari, Director  
Community Development

MM:drs

cc: Glen Matteson (file)  
Jack Kellerman



# city of san luis obispo

990 Palm Street/Post Office Box 8100 • San Luis Obispo, CA 93403-8100

October 17, 1986

Mr. & Mrs. John P. Honeyman  
2323 Flora Street  
San Luis Obispo, CA 93401

SUBJECT: House Moving in Tract 1272

Dear Mr. & Mrs. Honeyman:

I appreciate your concerns with the former Miller house which Joe Boud has moved from lot 12 to lot 10 in the new subdivision near your home. As you may know, planning staff rejected Mr. Boud's first proposal to locate the house at the pre-grading ground level and 15 feet from the rear property line. We suggested that, if the house was to be kept in the tract, that it be moved to a location other than the lots 5 through 10, which border the houses on Flora Street.

Mr. Boud responded that his financing for the tract included retention of the house, and that he had designed lot 10 to accommodate it. He insisted that from his perspective and understanding of the Council's intent in conditioning the approval of the tract, that staff's interpretation was unfair and unreasonable. I then considered alternatives that I felt still met the intent of the conditions. Among those alternatives was approval of the relocation with conditions that the house be at least 25 feet from the rear property line and that the floor of the house not exceed 408 feet elevation, which required excavating part of the lot, about four feet. Mr. Boud still felt this was unfairly strict but apparently was able to accept it. It might be worth noting that without the tract condition, the zoning regulations would allow a full two-story house within eight to ten feet of the property line, at the pre-grading level. Therefore, it was felt that the unusually large setback and sinking of the pad constituted protection measures significantly in excess of typical, to help reduce impacts on nearby properties.

Also, the relocation was approved with the understanding that Mr. Boud would repaint and reroof the house, make other repairs such as replacing rain gutters, and landscape the lot consistent with other homesites in the neighborhood. I have encouraged Mr. Boud to meet with his neighbors to explain in detail his plans for repainting and upgrading the house to make it compatible with others in the area. I continue to offer our offices in the city as a meeting place if that is more convenient. I'd also be happy to attend any meeting to help in any way to reach a satisfactory solution to your concerns. I will continue to talk with Mr. Boud to ensure he does let you know his specific plans and intentions for the house.

We will continue to take a close look at houses proposed on lots 5 through 10 and to contact the immediate neighbors before acting on applications. Also, we will consider referring development proposals for these lots to the Architectural Review Commission, though the council did not require architectural review when it approved the tract.

Contact me or Glen Matteson of our staff if you have any questions on this matter.

Sincerely,



Michael Multari, Director  
Community Development Department

cc: Joe Boud  
2656 Lawton  
San Luis Obispo, CA 93401

Paul Lanspery  
Ron Dunin

**EXHIBIT 4**

# **VISUAL IMPACTS**

## **Existing**



**Lots 12 & 13**



**Lot 2**



**Lot 3 south**



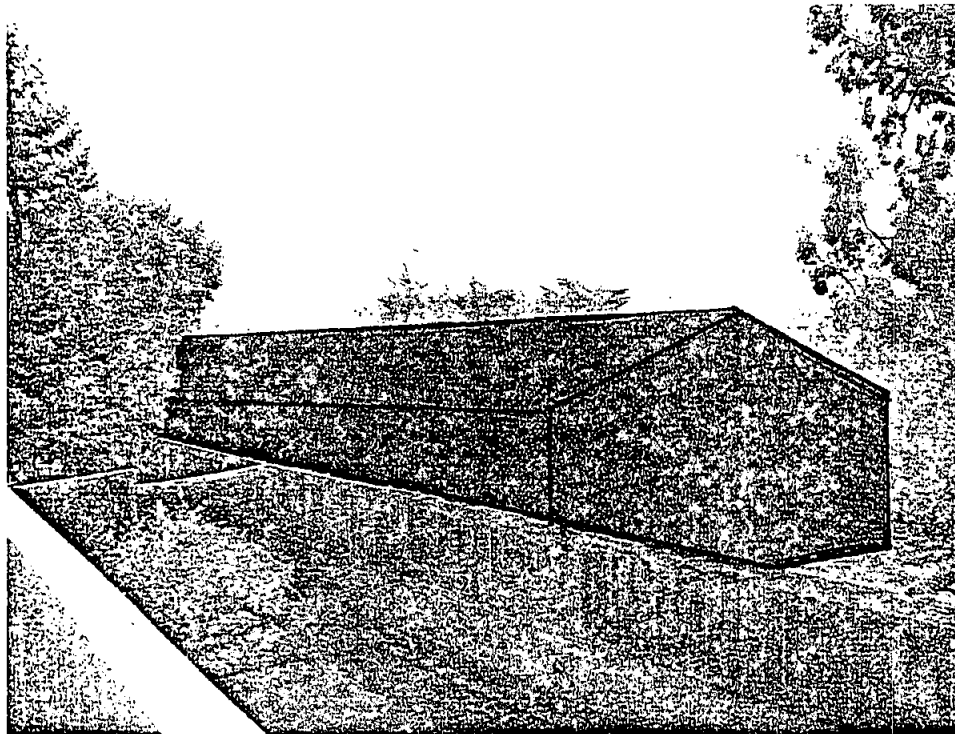
**Lot 3 north**



# **VISUAL IMPACTS With Development**



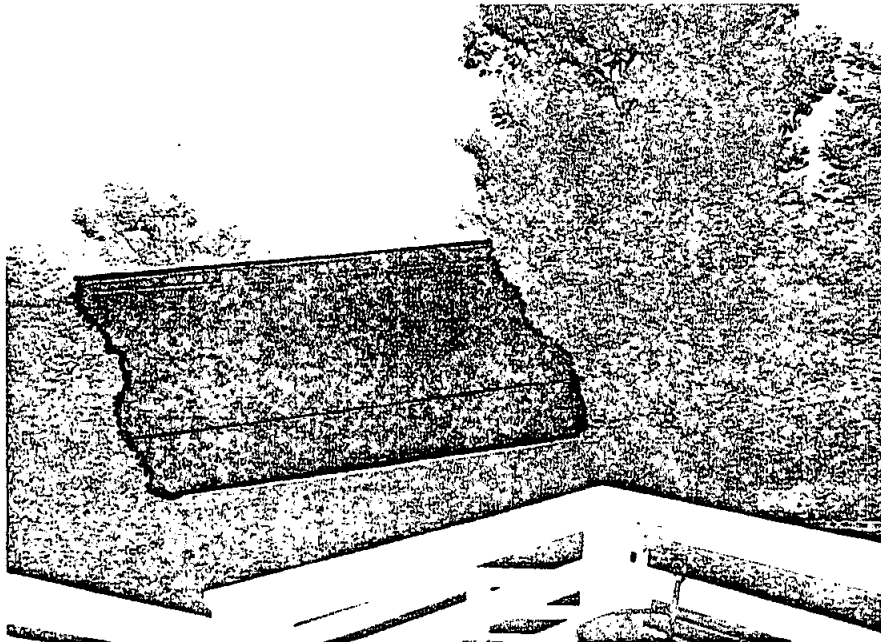
**Lots 12 & 13**



**Lot 2**



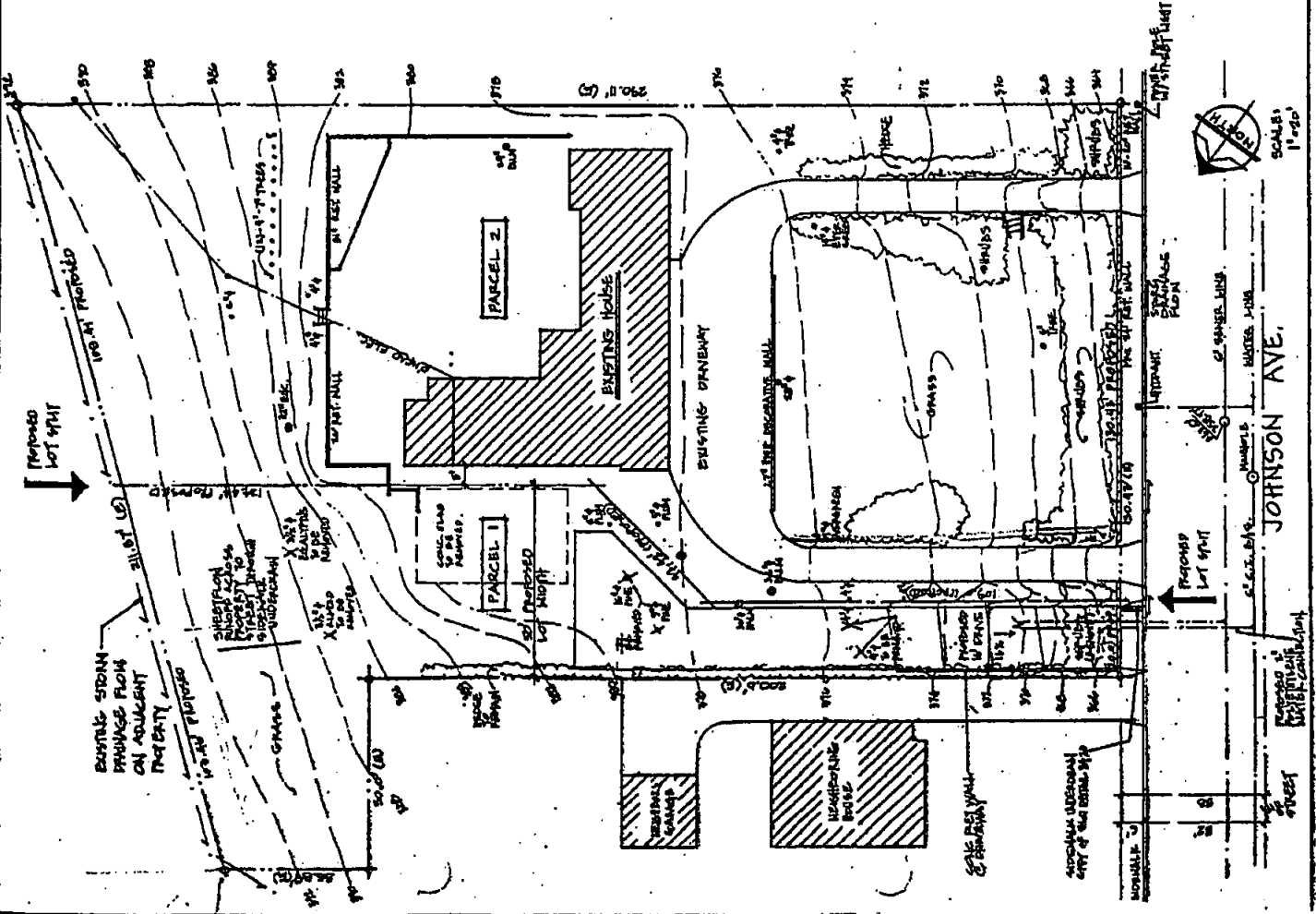
**Lot 3 south**



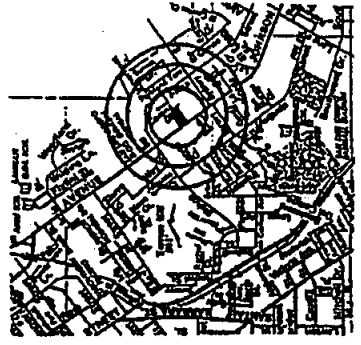
**Lot 3 north**

Residence shown assumes a single story 2500 sf residence w/2 car garage located w/in building envelope as presented at the Administrative Hearing on 9/18/09

## **EXHIBIT 5**



PARCEL MAP # SLO 95-020  
 APN: 003-703-029  
 LEGAL DESCRIPTION: City of San Luis Obispo  
 Lot 1, Tract 1272  
 OWNERS: CELIUS FAMILY TRUST  
 JORCE CELIUS, TRUSTEE  
 240 JOHNSON AVE  
 SAN LUIS OBISPO, CA 93401



VICINITY MAP  
 H.T.S.

LOT SPLIT  
 FOR: CELIUS FAMILY TRUST, JORCE CELIUS TRUSTEE  
 AT: 240 JOHNSON AVE, SAN LUIS OBISPO, CA 93401  
 AT: 240 JOHNSON AVE, SAN LUIS OBISPO, CA 93401

Prepared by: Citeco O'Shea  
 7628 Foothill Blvd., #220  
 San Luis Obispo, CA 93405

Date: 10-10-95  
 Scale: 1"=20'  
 Sheet No. 1  
 of 1 Sheets

- NOTES
1. All other existing base map potential parcels are in "Public Problem Area" as defined by the Public Element of the General Plan.
  2. Preliminary soils report on file with City Engineer for Tract 1272 dated 1995.
  3. Cut and Fill quantities:  
 Cut: 28 CY for proposed driveway  
 Fill: 0 CY
  4. This map based on survey data collected by Citeco O'Shea and shall be used for preliminary approval only. Engineering survey shall be required and provided for final parcel map approval.

July 19, 1995

Pam Ricci  
Community Development Department  
City of San Luis Obispo  
990 Palm Street  
San Luis Obispo, CA 93401

Re: Gelinas Parcel Map

Dear Pam,

We reside next to the above referenced project and have a number of comments that we feel should be considered in the City's review of this application.

History. The Gelanis property and two other estate sized parcels were combined together a few years ago and subdivided as Tract 1272. The original developers of Tract 1272 were Joseph & Barbara Boud, Fred & Hazel Kennedy, Michael Bravo, and Dr. & Mrs. Edmond Gelinas. The Gelinas parcel was designated as Lot 1. As an original subdivider, it is my understanding that the State Subdivision Map Act specifies that a resubdivision of the same property by the original subdivider would require the processing of a Subdivision Map, rather than a Minor Parcel Map. If this is the case, this application should be processed differently.

However, regardless of the level of processing, certain agreements and mutual understandings were made by Dr. & Mrs. Gelinas with the other parties that cooperated in the original subdivision that have relevance in considering this present request.

The design and odd configuration of Lot 1 was a result of the drainage structure that runs along Lots 2 & 3, carrying surface water to the storm drain inlet at the corner of Lots 2, 12 and 13. This strange configuration was discussed at length with Community Development Department staff, Engineering staff, the Planning Commission and the City Council, with the collective understanding that the steep sloped "panhandle" areas behind the existing house were not ever to be considered for development.

Conditions of approval of the subdivision and restrictive covenants were established for Tract 1272 that, among other objectives, were intended to insure that the subsequent build-out of the tract would be architecturally compatible and attractive, be sensitive and respectful to neighboring private yard areas, and would maintain views and vistas of the City, Edna Valley and the hills beyond.

The Gelinas lot was not included in the CC&R's because it was an existing, completely developed parcel and we were given assurance by all parties that additional development, other than minor and incidental improvements, were not to take place. Consequently, it seemed unnecessary to encumber Lot 1 with the CC&R review process. Obviously, this understanding has not been carried forth by the present Gelinas Family Trust members, who apparently are interested only in increasing the speculative value of the estate.

One final point related to these historical decisions. At the request of Dr. & Mrs. Gelinas, the build-out of the parcels along Corona Court immediately behind the Gelinas house (Lots 2 & 3), were placed as close to the Corona Court frontage as permissible by the City, thus creating as much building separation as possible between the Gelinas home and its rear yard area and the homes on Lots 2 & 3.

Lot Configuration & Developable Area. The City of San Luis Obispo has a number of ordinances, guidelines and policies that contain specific standards for design and configurations of new parcels. This proposal fails to meet these standards in nearly every category. Useable lot area, depth to length ratios and realistically useable outside yard areas are obviously deficient. Once the road access, turn around area, setback areas and steep sloped areas are deleted, the net developable land area on this proposed parcel is virtually non-existent.

Grading. Another major area of concern is the amount of grading that will be necessary to access and subsequently develop this parcel. There is no doubt that an enormous amount of grading will be necessary to develop access into the parcel. The City's driveway standards contain a verticle curve alignment that would result in substantial cut banks from the Johnson Avenue frontage that would then require massive retaining wall improvements to hold these cut areas.

The project has not identified a building site area or footprint area, so we can only speculate that the building area is intended to key into the sloped area at the rear of the lot. That would result in even more massive amounts of grading and retaining wall development and may have the potential to undermine the drainage system that runs along Lots 2 & 3.

Topography. The topography of the site directly relates to the grading and developable lot area issues. The topography shown on the tentative map is not correct. Presumably it was taken from the topography developed for Tract 1272, however one of the two foot contour lines was deleted. Consequently, the lot drops from 392.5 feet to 380 feet, or 12.5 feet, in a distance of 60 feet resulting in a slope calculation of 21%. This 21% slope covers at least 85% of the potential building area. Since the City's subdivision driveway standards require a 20' dedication with a minimum 16' wide improvement and a turn around area for driveways that exceed 150' in length, the flat area of the site must be used for circulation. This means that nearly 100% of the buildable site area will be on the steep sloped areas. Even if this project's building footprint were limited to the flat area of the proposed lot, the vegetation removal and access grading in itself would be far too extensive.

Vegetation Removal. To accomodate this project, its circulation needs and grading requirements, will require the removal of nearly all of the mature trees, shrubs and landscape materials on the site and most of the screening hedge on the neighboring property line to the north. It is optimistic and pure fantasy to think that any vegetation will remain in the vicinity of the road access improvement, whether the project chooses to use a common driveway or not. This fact alone will destroy the softness that mature landscaping provides and create a major disruption to the visual integrity along Johnson Avenue and in the neighborhood.

Visual Impacts. All of the properties within Tract 1272 were located and designed to maintain maximum views and vistas for all lots and properties in the vicinity. In fact, one of the conditions of approval for Tract 1272 required that the lots abutting the neighboring upsloped properties along Flora Street required review by the City's Architectural Review Committee to evaluate this viewshed issue. This issue has also been incorporated and administered through the CC&R procedures to make absolutely certain that views, vistas and private yard spaces were not impacted or intruded upon. Even a single story house located on the flat portion of the proposed parcel would severely affect the visual continuity in the neighborhood because of the loss of vegetation, grading and view obstruction impacts.

Neighborhood Controversy. This project is not supported by any abutting property owner that will be affected by its approval and development. This includes Hinsdale (Lot 14), Baldwin (Lot 13), Boud (Lot 12), Martin (Lot 2), Emmons (Lot 3) and Leitner (Lot 4). The properties that abut this project were purchased and developed with the understanding and assurance that the condition of the neighborhood, the views, the privacy and ambience was predictable and long lasting.

Project Alternatives. To deny this project, as presently submitted, does not eliminate the development potential of the Gelinas property. The front yard area contains more than adequate land area that could be parceled off and, if properly designed, could still maintain adequate separation from the existing house and could also minimize grading, vegetation removal and visual impacts in the vicinity.

Conclusion. This project is poorly conceived and does not meet the planning, zoning, subdivision and engineering standards and policies that the City has adopted and administered for many years. This project is not an infill lot situation. It very simply is an attempt to squeeze a parcel into an excess sideyard area for purely speculative purposes. It does not represent orderly and harmonious development and good planning principals, and has no neighborhood support. What it does do however, is severely affect the desireability of investment and occupation of the properties in the surrounding area, which is protected by City Ordinance and State Law.

This project should be denied and the applicant's directed to consider the development of the vacant land fronting the existing house at 2410 Johnson.

Sincerely yours,



Joe & Barbara Boud  
Property Owners; 1645 Corona Court, San Luis Obispo

July 15, 1995

Community Development Department  
990 Palm Street  
San Luis Obispo, CA 93401

To: Administrative Hearing Officer  
Regarding: Application Number: MS 75-95  
2410 Johnson Avenue  
San Luis Obispo, CA. 93401

We are writing in regard to the above mentioned lot split which would create a building site from a flag lot. We live directly behind said property at 1659 Corona Court. We object to the lot split on the grounds that, if built upon, it would block our view and considering the size of the lot, force building close to property lines making it very "congested".

Since purchasing our property, values have gone down. If this lot were built upon it would greatly effect the value of our property. We are asking that you deny this request. We would attend the hearing but we are going to be out of town.

Kay and Michael Emmons

*Kay Emmons  
Copy for Joe Baud*



July 14, 1995

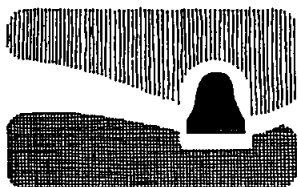
Dear Pam Ricci

My name is Timothy J. Martin. I own property immediately adjacent (1649 Corona Court) to a proposed lot split at 2410 Johnson Ave. that has an application number of MS 75-95. Unfortunately I will be unable to attend the hearing that is scheduled for July 21, 1995. Consequently, I would like this letter and my strong opposition to this lot split to be entered as part of the hearing record.

A casual look (it looks even worse under close observation) at the proposed building site clearly shows that this is "shoe horning" at its best. Values from adjacent pieces of property will be impacted (in my case, severely) with the resulting decrease in property values. I respectfully submit that the lot split application is purely motivated by the pursuit of money with total disregard to its impact on the existing neighborhood.

I know that my strong opposition is equally shared by my friends and neighbors and I sincerely hope that the City of San Luis Obispo will not override the will of this established neighborhood.

Sincerely  
Jim Martin



# city of san luis obispo

990 Palm Street, San Luis Obispo, CA 93401-3249

November 12, 2009

*Please sign  
and return.*

Nancy Shokohi  
1659 Corona Court  
San Luis Obispo, CA 93401

RE: **APPEAL OF PLANNING COMMISSION DECISION – 2410 JOHNSON.**  
(30 MINUTES)

Dear Ms. Shokohi:

In reference to your appeal being heard by the City Council, City code requires an appeal to be set for the next reasonably available council meeting, but in no event later than forty-five calendar days after the date of the filing of such notice of appeal with the City Clerk.

Although you have agreed by phone to permit us to schedule your appeal after the 45 day deadline (i.e. December 15, 2009), we require a signed acknowledgement.

Therefore, please sign and return this letter to the City Clerk's Office no later than November 23rd. An envelope has been enclosed for your convenience.

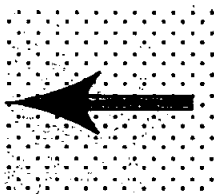
If you have any questions, please give me a call at 781-7102.

\_\_\_\_\_  
Ms. Nancy Shokohi

Sincerely,

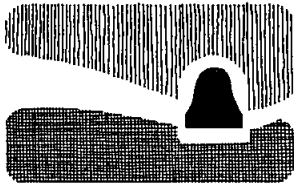
*Elaina Cano*

Elaina Cano  
City Clerk



**SIGN  
HERE**





# city of san luis obispo

990 Palm Street, San Luis Obispo, CA 93401-3249

November 12, 2009

Nancy Shokohi  
1659 Corona Court  
San Luis Obispo, CA 93401

RE: **APPEAL OF PLANNING COMMISSION DECISION – 2410 JOHNSON.**  
(30 MINUTES)

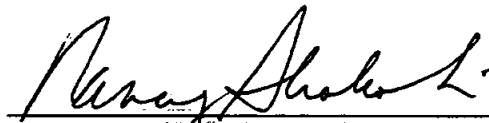
Dear Ms. Shokohi:

In reference to your appeal being heard by the City Council, City code requires an appeal to be set for the next reasonably available council meeting, but in no event later than forty-five calendar days after the date of the filing of such notice of appeal with the City Clerk.

Although you have agreed by phone to permit us to schedule your appeal after the 45 day deadline (i.e. December 15, 2009), we require a signed acknowledgement.

Therefore, please sign and return this letter to the City Clerk's Office no later than November 23rd. An envelope has been enclosed for your convenience.

If you have any questions, please give me a call at 781-7102.

  
Ms. Nancy Shokohi

Sincerely,



Elaina Cano  
City Clerk

RECEIVED

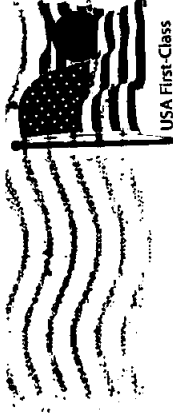
NOV 20 2009

SLO CITY CLERK

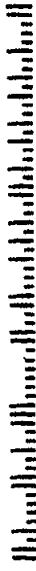


SANTA BARBARA  
CA 93101-3249  
NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES

City Hall  
City Clerk's Office  
990 Palm Street  
San Luis Obispo, CA 93401-3249



93401-3249



RECEIVED

NOV 25 2009

SLO CITY CLERK

November 17, 2009

City Council  
City of San Luis Obispo  
1180 Palm Street  
San Luis Obispo, CA 93401

Subject: Appeal of MS 78-09; PM-SLO-09-0074

Dear Mayor and City Council members,

We are one of the eight property owners and/or residents of the above subdivision project that have Appealed the Planning Commission's approval of the project to the Council. We reside at 1645 Corona Court and have lived there from its origin. As the original developers of the underlying Tract 1272, of which this subject property was designated Lot 1, we would like to provide the Council with a historical perspective of the development of this neighborhood and additional regulatory standards to supplement the information contained in the Appeal package submitted on November 29, 2009.

Three estate-sized parcels were combined in a cooperative effort to develop Tract 1272. During the design and processing of the subdivision, great effort was made to convert this vacant property, surrounded by residential development, into a quality neighborhood. Extraordinary and explicit measures were undertaken to protect the neighboring properties privacy and views.

For example, CC&R's for Tract 1272 self-imposed a requirement for Architectural Review by three of the tract's developers (Joseph Boud, Barbara Boud, Michael Bravo) to insure that viewsheds, privacy, overlook and thoughtful design were taken into considered and materials of construction were of a high quality. In many cases, new house siting and fenestration were altered to minimize the impacts to neighboring residences within the tract and external to the tract to satisfy these objectives and neighborhood concerns.

Further, the City's Planning Commission, in reviewing the project, required that the original 15-lot subdivision be reduced to 14 parcels, not because the 15 lots weren't consistent with the City's Ordinances, but because it simply felt "too tight" (actual quote). The City also required increased setbacks and lowered building elevations for lots that abutted the upslope properties along Flora Street (see correspondence in the Appeal package) to protect these properties views and privacy.

We see no difference here. The development of this project should show the same respect as Tract 1272 did to protect the existing Flora Street neighborhood. In this case the neighborhood is now the Corona Court and abutting property residential neighborhood. Discretionary approvals for projects such as this should consider strict compliance with City policies as well as less quantified standards that affect neighborhood character and quality of life expectations.

Continued reference in staff reports and by the Applicant to this project complying with all City Codes, Ordinances and Policy is simply not correct. The following City requirements are inconsistent with this project and clearly indicate that this project cannot establish the requisite Legal Findings. For example:

**GENERAL PLAN LAND USE ELEMENT: COMMUNITY'S GOALS**

**#29.** Maintain existing neighborhoods and assure that new development occurs as part of a neighborhood pattern.

**LUE 2.2.10** Housing built within existing neighborhoods should be in scale and in character with that neighborhood.

***How does view obstruction and industrial design solutions (mid-tract fire truck turnaround) reflect the sensitive development and neighborhood character that occurred in Tract 1272?***

#### **LUE 2.2.12 Residential Project Objectives**

Residential Projects should provide:

- A. Privacy, for occupants and neighbors of the project
- D. Pleasant views from and toward the project
- E. Security and Safety

***Privacy, views and fire safety are all severely compromised with the development of a three-lot project that includes a lot in this difficult accessed, view blocking, visually intruding Parcel 1.***

#### **2.4.5 Low Density Residential**

Low-density residential development should be primary dwellings having locations and forms that provide a sense of both individual identity and neighborhood cohesion for households occupying them.

***The 25 years of Corona Court as a cohesive, attractive, high quality, esteemed neighborhood is severely compromised with the introduction of a three-lot project.***

### **CONSERVATION & OPEN SPACE ELEMENT**

#### **9.1.5 View protection in new development**

The City will ... carefully consider effects of new development, streets and road construction on views and visual quality by applying the Community Design Guidelines, height restrictions, hillside standards ...

***By merely making this statement, the City acknowledges the importance of the retention of visual quality. This is a long held philosophy in our City and certainly applies to each and every property within the City.***

#### **9.2.2 Views to and from private development**

Projects should incorporate as amenities views from and within private development sites. Private development designs should cause the least view blockage for neighboring property that allows project objectives to be met.

***It is not possible for Parcel 1 to development without impacting neighboring properties, including the existing residence located on proposed Parcel 2. Very simply, the project objectives of the Applicant are ill conceived and unattainable. A revised project objective, as discussed in the Appeal package, would be a two-lot project with a negotiated lot line adjustment between abutting lots and the area contained in Parcel 1.***

### **COMMUNITY DESIGN GUIDELINES**

#### **1.4 Goals for Design Quality and Character**

- Maintain the quality of life for residents
- Maintain property values

***The impacts of proposed Parcel 1 have severe quality of life and property value impacts to all of the abutting properties, including the existing residence on proposed Parcel 2.***

#### **5.3 Residential: Infill Development**

...The guidelines are intended to provide for infill projects that are compatible with existing development ...

***As discussed above, the development of the Corona Court neighborhood with acute attention to views, privacy, overlook, and quality of life are all compromised with this project and certainly cannot be considered compatible with those long held expectations.***

#### **7.2 Hillside Development**

1. **Subdivision Design.** A proposed subdivision of two or more parcels shall be designed to comply with the following guidelines:

- a. Parcel and building site slope. No parcel shall be created:  
(2) Without at least one building site of at least 5,000 square feet that has no natural slope of 10 percent or more.

***This is a three-lot subdivision. The proposed two vacant parcels have average slopes of 15.7% and 17.2%, with even greater slope characteristics and constraints within their proposed building envelopes. There is an existing residence located on proposed Parcel 2 that does have an average cross slope of less than 10%. However, the intent of the standard, creating at least one new, building site with less than 10% slopes, cannot be satisfied. This project creates no new building site of at least 5,000 square feet on a slope less than 10%.***

3. **Placement of Structures.** Each structure shall be located in the ... least visually prominent ... portion of the site.

9. **View Protection.** Each proposed structure should be designed and located to avoid unnecessarily blocking views from other properties.

- a. Where feasible, a new structure should not be placed directly in the view of the primary living areas on a neighboring parcel.

***The language and spirit of the hillside development standards certainly should be considered in this situation and the proposed Parcel 1 clearly violates the visually prominent and view obstruction objectives. See the Visual Simulation information in the Appeal package, especially the photograph with the story pole.***

#### **SUBDIVISION REGULATIONS**

##### **Section 16.10.030 J&K.**

A Detailed Slope Analysis for projects containing slopes greater than 15% and a Preliminary Grading and Vegetation Removal Plan has not been submitted.

***The above information will confirm the severely constrained building area within Parcel 1 and 3 and provide information related to earthwork and vegetation removal impacts that should be evaluated through the CEQA Initial Study analysis.***

This project is not a clever or innovation subdivision and in no way reflects good land use planning and community design. Parcel 1 and its building envelope create a multitude of problems and concerns as enumerated in this letter and the Appeal package. For instance, a structural and/or wildland fire with the high probability of the fire truck turnaround blocked could easily result in damage or loss of three residential structures. Even a task as simple as wheeling the garbage cans to the Johnson Avenue curb on Friday mornings will prove to be a major challenge if Parcel 1 is developed.

If this project is approved, squeezing a lot into an improbable area with a future residence looming above the backyard and staring into the windows of the existing house and in the face of the abutting neighbor's homes, along with sticking an industrial fire truck turnaround at the front door of their home, the Applicants will succeed in making a mockery of good, thoughtful planning, violate numerous City standards and degrade and devalue not only the abutting properties, but also their own.

We urge the City Council to deny this project and direct the Applicant to pursue the other development options that are cited in the Appeal package. Thank you for your consideration.

Sincerely,



Joseph & Barbara Boud  
1645 Corona Court, San Luis Obispo

C: Appellants to MS 78-09; PM-SLO-09-0074  
C: SLO Community Development Department

**JOSEPH BOUD**  
**& ASSOCIATES**

1009 Morro Street, Suite 206  
San Luis Obispo, CA 93401

**RECEIVED**

**NOV 25 2009**

**SLO CITY CLERK**

*city council*





Filing Fee: \$250.00

Paid

N/A

\*REFER TO SECTION 4

CITY OF SAN LUIS OBISPO

NOV 09 2009

COMMUNITY DEVELOPMENT

## APPEAL TO THE CITY COUNCIL

### SECTION 1. APPELLANT INFORMATION

Name NANCY SHOKOH1 et al (SEE ATTACHED) Mailing Address and Zip Code 1659 CORONA CT; SLO 93401

Phone 805-234-5912

Fax

Representative's Name NA

Mailing Address and Zip Code

Title

Phone

Fax

### SECTION 2. SUBJECT OF APPEAL

1. In accordance with the procedures set forth in Title 1, Chapter 1.20 of the San Luis Obispo Municipal Code (copy attached), I hereby appeal the decision of the:

PLANNING COMMISSION  
(Name of Officer, Committee or Commission decision being appealed)

2. The date the decision being appealed was rendered: 10/28/09

3. The application or project was entitled: MA 18-09, PM-SLO-09-0074

4. I discussed the matter with the following City staff member:

NA on \_\_\_\_\_  
(Staff Member's Name and Department) (Date)

5. Has this matter been the subject of a previous appeal? If so, when was it heard and by whom:

YES - 10/28/09 - PLANNING COMMISSION

### SECTION 3. REASON FOR APPEAL

Explain specifically what action/s you are appealing and why you believe the Council should consider your appeal. Include what evidence you have that supports your appeal. You may attach additional pages, if necessary. This form continues on the other side.

RECEIVED

NOV 09 2009

SLO CITY CLERK

**Chippendale, Sue**

---

**From:** Chippendale, Sue  
**Sent:** Monday, November 23, 2009 1:00 PM  
**To:** 'nashokohi@gmail.com'  
**Subject:** Appeal of Planning Commission's Decision on the Project Approval 2410 Johnson  
**Attachments:** Shokohi 1-5-10.pdf

Attached please find a copy of the above mentioned appeal, including a copy of your signed 45-day letter. Please distribute to other appellants as you see fit.

Thank You,

Sue Chippendale  
City Clerk's Office  
City of San Luis Obispo  
990 Palm Street  
San Luis Obispo, CA 93401  
(805) 781-7103

## Chippendale, Sue

---

**From:** Davidson, Doug  
**Sent:** Monday, November 23, 2009 1:12 PM  
**To:** Chippendale, Sue  
**Subject:** RE: 2410 Johnson Appeal

Yes we have, Sue. No need to call them again. Thanks for checking.

Doug Davidson, AICP  
City of San Luis Obispo  
Deputy Director, Development Review  
Community Development Department  
919 Palm Street  
San Luis Obispo, CA 93401  
805-781-7177

---

**From:** Chippendale, Sue  
**Sent:** Monday, November 23, 2009 1:10 PM  
**To:** Davidson, Doug  
**Subject:** 2410 Johnson Appeal

Hi Doug,

Just a quick question about the above. Has CDD given the Spevacks a heads up as to the date of the appeal? I plan on sending them a legal notice and the agenda report when the time comes, but was wondering if I need to give them a call right now? If they've already been contacted, I don't want to keep bugging them.

Thanks,

Sue

## Chippendale, Sue

---

**From:** David, James  
**Sent:** Tuesday, December 01, 2009 3:49 PM  
**To:** Chippendale, Sue  
**Subject:** RE: Correspondence from Joseph Boud

Let's go with the first option because I will definitely be referencing his letter in the agenda report. Thanks for checking!

**James David**  
Assistant Planner  
City of San Luis Obispo  
(805) 781-7576  
[jdavid@slocity.org](mailto:jdavid@slocity.org)

---

**From:** Chippendale, Sue  
**Sent:** Tuesday, December 01, 2009 2:09 PM  
**To:** David, James  
**Subject:** RE: Correspondence from Joseph Boud

I checked with Elaina on this and she said if you are referencing Mr. Boud's correspondence in your agenda report, then the correspondence should be as an attachment to said report. If not, and it is just extra "stuff" then we can send it out as a Red File after the agenda is distributed next Tuesday. Your call.

Sue

---

**From:** David, James  
**Sent:** Tuesday, December 01, 2009 1:37 PM  
**To:** Chippendale, Sue  
**Subject:** RE: Correspondence from Joseph Boud

Hi Sue,

I was planning on attaching it with the appeal to the Council Staff Report. Do you think the Red File is still necessary?

**James David**  
Assistant Planner  
City of San Luis Obispo  
(805) 781-7576  
[jdavid@slocity.org](mailto:jdavid@slocity.org)

---

**From:** Chippendale, Sue  
**Sent:** Tuesday, December 01, 2009 10:19 AM  
**To:** David, James  
**Subject:** Correspondence from Joseph Boud

Hi James,

On November 25<sup>th</sup>, I received in the Clerk's Office a copy of correspondence by Joseph Boud, one of the appellants appealing the PC decision at 2410 Johnson. I've attached a copy for you in case you haven't seen it, although he said he would drop one off to CD. My question is: How do you want me to handle it? Do you want

12/1/2009

me to hang on to this and send it as a Red File for the Jan. 5<sup>th</sup> agenda? Or????? Please let me know what you think.

Thanks,

Sue

RED FILE  
MEETING AGENDA  
DATE 1/3/10 ITEM # PH1

HARD COPY	EMAIL
<input checked="" type="checkbox"/> COUNCIL	<input type="checkbox"/> CDD DIR
<input type="checkbox"/> CAO CITY MGR	<input type="checkbox"/> FIN DIR
<input checked="" type="checkbox"/> AGAO ASST CITY MGR	<input type="checkbox"/> FIRE CHIEF
<input checked="" type="checkbox"/> ATTORNEY	<input type="checkbox"/> PW DIR
<input checked="" type="checkbox"/> CLERK/ORIG	<input type="checkbox"/> POLICE CHF
<input type="checkbox"/> DEPT HEADS	<input type="checkbox"/> REC DIR
<input checked="" type="checkbox"/> PIB	<input type="checkbox"/> UTIL DIR
<input checked="" type="checkbox"/> TRIBUNE	<input type="checkbox"/> HR DIR
<input checked="" type="checkbox"/> NEW TIMES	<input type="checkbox"/> COUNCIL
	<input type="checkbox"/> CITY MGR
	<input type="checkbox"/> CLERK

September 16, 2009

Attention San Luis Obispo City Planning Dept.

We do not object to the proposed subdivision at 2410 Johnson Ave.

*We live at 2375 Flora Street, S.L.O.  
The two story house on Corona Court  
block our view.*

*Rosemary L. Dewar  
John Dewar*

RECEIVED

DEC 31 2009

SLO CITY CLERK

September 16, 2009

Attention San Luis Obispo City Planning Dept.

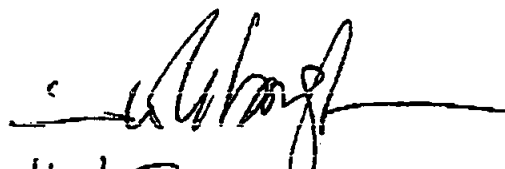
We do not object to the proposed subdivision at 2410 Johnson Ave.

*Mary J. Christenson*  
Mary J. Christenson  
2462 Johnson Ave.  
SLO 543-3703

September 16, 2009

Attention San Luis Obispo City Planning Dept.

We do not object to the proposed subdivision at 2410 Johnson Ave.

A handwritten signature in black ink, appearing to read "Nick Robertson", with a horizontal line extending to the right.

NICK ROBERTSON  
2348 JOHNSON AVE  
SAN LUIS, CA 93401

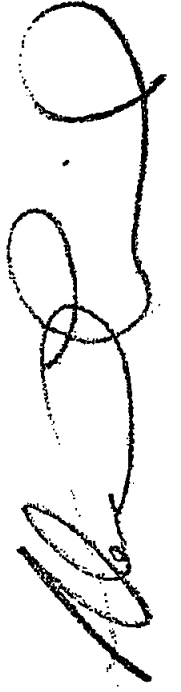


October 23 2009

Dear Jeff Spevack,

My name is Abraham Laird and I own and live next door at 2374 Johnson Ave. and have recently been informed by the city of your plans to create new parcels by dividing your existing parcel into three separate parcels. These new parcels would be accessed from a common driveway that would boarder my property and this change would greatly affect my property more than any other adjacent property due to this common driveway. I want to convey in this letter also to the city that I support the proposed change in the subdivision. Please contact me if I can be of help and also please keep me informed of your progress.

Abraham Laird  
619-213-2306  
alaird@san.rr.com

A handwritten signature in black ink, appearing to read 'Abraham Laird', with a stylized, looping flourish at the end.