

Brian E. Washington
COUNTY COUNSEL

April 4, 2017

Jack F. Govi
ASSISTANT COUNTY COUNSEL

Marin County Board of Supervisors
3501 Civic Center Drive
San Rafael, CA 94903

Renee Giacomini Brewer
SUPERVISING DEPUTY

Mari-Ann G. Rivers
David L. Zaltsman
Michele Keno
Patrick M. K. Richardson
Stephen R. Raab
Steven M. Perl
Edward J. Kiernan
Brian C. Case
Jenna J. Brady
Valorie R. Boughey
Kerry L. Gerchow

SUBJECT: Resolution to Implement Settlement Agreement in:
Diversified Realty Services v. County of Marin

Dear Supervisors:

DEPUTIES

RECOMMENDATION: Adopt Resolution

Jeanine Michaels
ADMINISTRATIVE ASSISTANT

SUMMARY: As some of your Board will recall, Jack Krystal has been processing an application to develop a hotel on his property near Sausalito between the "Shoreline Center" (see upper left hand corner of the Google Earth aerial at Exhibit "A"), and the "Commodore Center" and houseboats at the right hand portion of the aerial. During the development process he has claimed that the "Floor Area Ratio" (FAR) allowed by the Tamalpais Community Plan of 35% of dry land area does not allow for an economically viable project. Therefore he has pursued various efforts to increase the FAR.

Marin County Civic Center
3501 Civic Center Drive
Suite 275
San Rafael, CA 94903
415 473 6117 T
415 473 3796 F
415 473 2226 TTY
www.marincounty.org/cl

Most recently in July of 2014 a workshop was held before your Board to discuss various options for "vacation" of some or all of a portion of the roads offered or accepted for dedication adjoining Mr. Krystal's property such that the area of the vacated portions might be considered to be part of his unencumbered ownership for purposes of the FAR calculation. However your Board rejected any such partial or total vacation that might result in an increased FAR.

Following your Board's action, Mr. Krystal filed a lawsuit seeking to have the court determine that the offers of dedication for the roads (which was made by a deed recorded subsequent to the filing of the subdivision map in 1869), were deemed not accepted given the length of time between the offer and the acceptance.

ORIGINAL

In working through the issues in this case our office had been in contact with the owner of the Commodore (Seaplane) Center and adjacent houseboat uses as well as his attorney. This property owner and his tenants have apparently had on-going disputes with Mr. Krystal over the use of Parepa street which lies between their properties. The owner expressed concern that Mr. Krystal might continue to assert that the current parking use of the street was not allowed by the offer of dedication that offered this street for public use as a street.

Our office therefore agreed to attend a mediation of the lawsuit that would include the interests of this adjacent property owner. At the end of the process, Mr. Krystal proposed a settlement agreement. That settlement agreement was considered by your Board at a closed session on September 13, 2016. At that time your Board authorized our office to propose a modified settlement agreement - described below – that was accepted by Mr. Krystal with minor non-substantive amendments.

Reason for Recommendation: As a practical matter, neither the undeveloped portion of Pohono street, nor the one block portion of Bolinas and Parepa, are ever going to be needed for true public roads. Indeed it appears the only reason the County accepted the offer of dedication to the one block of Bolinas in 1985 (see Exhibit "B,") was to force Mr. Krystal to remove the impediments to the access to the Commodore/Houseboat property. Therefore, since Mr. Krystal and the Commodore owner have now worked out an agreement for access to and the use of Pohono, it solves a lot of potential uncertainty.

Similarly Mr. Krystal will finally and fully give up any efforts to claim that the area of the streets –to which he admittedly owns the underlying fee as to the half adjacent to his property- are not included in FAR. This will clarify the development process moving forward.

The included resolution implements your Board's approved settlement agreement as delineated below:

1. The County shall promptly initiate a vacation process pursuant to Streets and Highways Code section 8320 et seq, to vacate / disavow any County interest in Parepa Street, the unpaved portion of Pohono Street, and Bolinas Street, and agree that the offer of dedication for said streets is no longer open as to the County, upon the receipt of a written acknowledgement and consent of the owner(s) of the adjacent Commodore Marina and seaplane facility. However the parties acknowledge and agree that this vacation/disavowance only applies to the County of Marin. In addition the parties acknowledge and agree that this action in no way affects or impairs the rights of the other property owners who own property pursuant to the 1869 "Official Map" that also created plaintiff's property, nor the streets' status as "adjacent street right-of-way" pursuant to the Marin County Development Code definition of the term "lot area," for the purposes of FAR calculation only, or the application of Program LU32.1c (f) of the Tamaipais Community Plan to the property.


2. It shall be agreed that the square footage of Parepa Street, the paved portion of Pohono Street, and paved portion of Bolinas Street shall not be included in the Floor Area Ratio calculation for any hotel development at APN Nos. 052-227-09 and / or 052-227-04. It shall be further agreed that the controlling Floor Area Ratio for said APN's shall be that found in the Tam Valley Community Plan – 0.35, or 42,000 square feet whichever is less. However, the parties further understand and agree that the 0.35 Floor Area Ratio is neither a promise nor guarantee of ultimate development. Said maximum Floor Area Ratio may be changed during the development review process based upon other factors including, but not limited to, other planning and zoning policies and/or environmental constraints through the CEQA process.

3. If all the above is accomplished, plaintiff shall dismiss the subject action with prejudice:

FISCAL/STAFFING IMPACT: N/A

REVIEWED BY:

- | | | | |
|--------------------------|--------------------|--------------------------|-----|
| <input type="checkbox"/> | Auditor-Controller | X | N/A |
| X | County Counsel | <input type="checkbox"/> | N/A |
| <input type="checkbox"/> | Human Resources | X | N/A |

Respectfully submitted,

 David L. Zaltsman
 Deputy County Counsel

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