

August 8, 2005

**Honorable Chairman and Members of the  
Hermosa Beach Planning Commission**

**Regular Meeting of  
August 16, 2005**

CONTINUED FROM JULY 19, 2005

SUBJECT: LOT MERGER – REQUEST FOR HEARING  
550 21<sup>ST</sup> STREET, DOROTHY BUSBY, APPLICANT, AS TRUSTEE OF LUTHER  
W. BUSBY JR. TRUST

PURPOSE: TO DETERMINE WHETHER THE PROPERTY AT 550 21ST STREET,  
COMPRISED OF FOUR LOTS, SHALL BE MERGED INTO ONE PARCEL

**Recommendation**

To merge the property by one of the following two methods:

1. To merge the property into one parcel, thus requiring the owner to process a subdivision map to re-divide the property.
2. Merge only lots 37 with 38 (the 27-foot wide lot), which will result in three parcels: one parcel of 67' X 100' feet (6700 square feet), and two with dimension of 40' X 100' (4,000 square feet). The owner may then process a lot line adjustment make the lots more equal in size so long as each of the three resulting lots is not less than 40 feet in width.

**Background**

At the July meeting the Planning Commission continued the hearing, directing staff to return with an opinion from the City Attorney on whether the P.C. is compelled to merge the lots and what other options are available for re-dividing the property should it be merged, and to provide more background on the lot merger ordinance and its original intent. The owner currently has four legal lots from the original subdivision (three at 40 feet in width and the smaller one at 27' in width created when the owner sold 13-feet of property to neighbor in 1961 and recorded a lot line adjustment with the County.)

**Lot Merger Ordinance Background**

Chapter 16.20 establishing the process for merging sub-standard lots was adopted into the Municipal Code in 1986. The ordinance was adopted in response to State Legislation of 1984, which completely overhauled the provisions of the Subdivision Map Act with respect to merging contiguous parcels under common ownership. The new state law required cities to adopt ordinances and set up a due process to merge such properties, and eliminated previous laws whereby local governments were allowed to automatically merge lots. Therefore, in response to these new laws the City determined that it was in the public interest to preserve the character of existing neighborhoods and adopted the merger provisions in accordance with State legislation. The City first adopted an emergency interim ordinance in 1984, to address the threat to the public welfare of the proposed development of substandard lots due to the “cumulative effect of increased traffic, density, traffic congestion, and reduction of available street parking....” The concern was largely in response to a recent trend in the development of 50-foot wide parcels containing one home, into two 25-foot wide parcels with a home on each lot. The lots were in

blocks concentrated in areas east of Prospect Avenue, but also included R-1 areas between 16th Street and Artesia Blvd/Gould Avenue, both east and west of P.C.H., and west of P.C.H. at 30th Street and Longfellow Ave. A memorandum to the Planning Commission in 1984 described that in the period between 1981 and 1984 there were 16 developments of these 50-foot wide lots resulting in 32 new single-family homes being built on “substandard” 25-foot wide lots. The 1984 emergency measure, however, was not extended and the splitting of lots continued in 1985 and 1986. The City Council revisited the issue in 1986, and adopted most of the provisions found in the current lot merger ordinance in August of 1986 (Ordinance 86-851). An emergency ordinance was subsequently adopted in September to place a moratorium on the issuance of demolition permits on lots subject to the merger ordinance. In December 1986 the City adopted a resolution to establish the procedures for implementing the lot merger ordinance. The ordinance was subsequently amended for clarification, and to add the provisions regarding re-dividing a merged lot that is greater than 8,000 square feet (now Section 16.20.030D), and prohibiting separate sale of contiguous parcels with a structure straddling the property line (now Section 16.20.120).

Based on the Resolution of the City Council, City staff implemented the ordinance in the years 1987 through 1990, by geographical areas known as lot merger groups. The staff identified all properties eligible for merger, began the notification process, and the Planning Commission took final action to merge the lots by lot merger group. Notices of Lot Mergers were then recorded with the affected properties. If a hearing was requested by the affected property owner the Planning Commission conducted the hearing, and either confirmed the merger, or in some cases unmerged the lots when evidence was provided to demonstrate the proposed merged did not meet the requirements of the merger ordinance.

By 1990 the City merged nearly 700 parcels pursuant to these provisions, including several on the subject block of 21st Street. Approximately 300 of the parcels merged were 50-foot wide parcels that contained two 25-foot wide lots located in the R-1 areas around Prospect Avenue noted above, while the remaining involved the combining of remnant sub-standard parcels located throughout the City. The City keeps a record of lots merged and recorded pursuant to these provisions, both on file, and referenced in City parcel maps.

Staff recently accepted the application to develop four separate single-family homes on the subject property after checking the City’s merger records and determining they were not merged in this period between 1987 and 1990. However, upon further review by the City Attorney, it was determined these lots should have been considered for merger, and the fact they were not included was an oversight. Given that the owner now wants to develop the lots separately City staff is required by the ordinance, whenever it has knowledge that property may be merged to begin the merger process by mailing and recording a “notice of intention to determine status (Section 16.20.050) and the Planning may consider the lots for merger.

### **Analysis**

The applicant has requested a hearing, pursuant to Section 16.20.060, to be given the opportunity to present evidence that the lots do not meet the requirements for merger. The applicant stated their issues at the prior meeting, however no specific evidence was presented that the property does not meet the requirements for merger as described in the previous staff report.

In response to the Commission's questions about the process of re-dividing the lots pursuant to Section 16.20.030 D, and the applicability of Section 16.20.120 the City Attorney's office has prepared a detailed response, which is attached. An attorney will be at the hearing to present their analysis and to respond to questions.

In summary, the City Attorney indicates that the Commission is not compelled to merge the lots. However, the Commission has the authority to merge the four lots into one if it desires to have the owner process a parcel map to subdivide the property, in which case the subdivision will be subject to a public hearing and a review for consistency with the prevailing lot size in the area as required by the Subdivision Ordinance. Alternately, the Commission may choose to eliminate the 27-foot wide lot and merge it with the adjacent lot to the east, if the intent is simply to prohibit development of a very small lot. The owner may then process a lot line adjustment as necessary to make minor adjustments to the lot widths, so long as each of the three resulting lots is not less than 40 feet in width.

CONCUR:

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Ken Robertson  
Senior Planner

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Sol Blumenfeld, Director  
Community Development Department

Attachments

1. July Staff Report w/ attachments
2. City Attorney response

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JENKINS & HOGIN, LLP  
A LAW PARTNERSHIP

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MEMORANDUM

TO: MEMBERS OF THE PLANNING COMMISSION  
FROM: MICHAEL JENKINS, CITY ATTORNEY  
DATE: AUGUST 10, 2005  
RE: INVOLUNTARY MERGER

This memorandum responds to questions raised during your meeting of July 19, 2005 concerning the lot merger determination for 550 21<sup>st</sup> Street.

1. Section 16.20.030 allows for merger of “two or more contiguous parcels” under specified circumstances. Hence, two alternatives are available to the Commission: (a) merger of the easterly-most nonconforming lot (portion of lot 38) with the immediately adjacent lot (lot 37), resulting in three lots, and leaving lots 35 and 36 as is; or (b) merger of all four lots into a single lot.

The first alternative is mechanically less complicated; the nonconforming lot 38 may be merged with lot 37, and a subsequent over-the-counter lot line adjustment may be requested by the property owner to adjust the remaining lot lines in any manner requested, as long as the three resulting lots are conforming.

You have asked whether, in the second of the two alternatives, a parcel map must be filed and processed to re-subdivide the new parcel. Subsection (D) of Section 16.20.030 seems to contemplate a less formal procedure for re-subdividing the merged lot than processing a new parcel map, so as not to place that burden on a property owner whose lots have been involuntarily merged. This subsection suggests that with the consent of the property owner, the merger/re-subdivision process may be integrated in a single process, but is silent as to the mechanics of the process.

The difficulty with subsection (D), however, is that there is no mechanism in the subdivision ordinance or in the Map Act, short of a parcel map, for subdividing a parcel once it has been formally created. Once the four parcels are merged into one, and a notice of merger is recorded as required by Section 16.20.070, no mechanism short of a parcel map would suffice to subdivide the new lot. Hence, if subsection (D) contemplates a “shortcut,” this shortcut would, in effect, be precisely the same as the first alternative discussed above; in other words, the Commission would not formally create a single lot from the existing four, but

instead would simply merge lots 38 and 37, and leave to the property owner the decision whether to obtain a lot line adjustment.

Finally, it is my opinion that the Commission may select either of the two alternatives. If the Commission believes that the City's land use policies and objectives would be advanced by merging the four existing lots into one and, in effect, requiring subsequent submission and processing of a parcel map to re-subdivide the lot, it may do so.

2. You next ask whether the merger is permissive or mandatory. Section 16.20.030 is written in permissive terms ("two or more parcels . . . *may* be merged). Section 16.20.080 contemplates that parcels may *not* be merged, presumably even if they qualify for merger. Section 16.20.090 repeatedly uses the phrase "[i]f the planning commission makes a determination of merger," suggesting that the decision is permissive. Read as a whole, the language in Chapter 16.20 suggests that the decision is permissive, and that the Commission may consider all relevant factors in determining whether merger in a particular case advances the City's land use policies and objectives.

The language of Section 16.20.120 no doubt creates confusion. It expressly precludes the separate sale of contiguous lots with an existing structure straddling property lines. Its purpose, however is not clear: whether to *require* merger by forbidding separate sale of a nonconforming lot held under the same ownership as the adjoining lot, or merely as a device to prevent property owners from circumventing the merger process until that process has been completed, one way or the other. Further, it does not appear on its face to be limited to situations where one or more of the lots are nonconforming; yet, if none of the contiguous lots are nonconforming, there is no reason to preclude separate sale of the lots, unless the objective is to assure that lots under common ownership be realigned to conform to the prevailing lot size in the neighborhood, and not merely to conform to minimum lot size standards.

Section 16.20.120 is ambiguous and would benefit from clarification by way of a code amendment. Insofar as it may apply in this instance, I do not believe that the section supersedes the clearly permissive language elsewhere in Chapter 16.20. Hence, in my view its purpose here is to prevent the property owner from selling contiguous lots until a final determination as to the merger has been made.

You have also inquired into the relationship, if any, between the merger provisions and section 17.46.200 in the zoning ordinance. Section 17.46.200 merely establishes that substandard lots are to be considered legal nonconforming if they were legal lots of record as of the effective date of the ordinance. The fact that these lots may be legal nonconforming does not immunize them from the potential for merger if the criteria of Chapter 16.20 are

satisfied. Similarly, section 17.46.210 essentially provides that no lot can be separated in ownership or otherwise split into four or fewer parcels unless a lot split is properly accomplished in accordance with the provisions of Chapter 17.46 and the subdivision ordinance.

3. During the public hearing, counsel for the property owner argued that the City is “estopped” from merging the parcels in question. While I am not aware of the asserted basis for that contention, I can tell you it is well recognized that the doctrine of estoppel will only be applied against the government in the most unusual of cases. *Pettit v. City of Fresno* (1973) 34 Cal.App.3d 813, 819. It is also well established that an estoppel will not be applied against the government if to do so would effectively nullify a strong rule of policy (such as that established by a zoning law) adopted for the benefit of the public. *Id.* at 819-820. Here, the merger provisions are creatures of both State and local law and they exist to promote public policy concerns that have been recognized by both the State Legislature and the City Council. Under these circumstances, there is little chance of the City being estopped from taking any action authorized by the merger provisions.

I hope that the foregoing answers your questions. Gregg Kovacevich of this office will be present at your meeting on August 16, 2005 in order to answer any further questions you may have and to assist your deliberations in this matter.