September 21, 2005

Honorable Mayor and Members of the Hermosa Beach City Council

Regular Meeting of September 27, 2005

APPEAL OF THE PLANNING COMMISSION DECISION TO MERGE TWO OF THE FOUR LOTS THAT COMPRISE THE PROPERTY AT 550 21ST STREET--RESULTING IN THREE LOTS

APPELLANT: ROSALIE MURPHY

Planning Commission Recommendation

To sustain the decision to merge 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).

Background

The owner currently has four legal lots from the original subdivision (three at 40 feet in width and one at 27' in width created when the owner sold 13-feet of property to a neighbor in 1961 and recorded a lot line adjustment with the County. The property contains a single dwelling that is sited on all four of the contiguous lots.

Chapter 16.20 - Merger of Parcels - establishes the process for merging sub-standard lots and was adopted in 1986. Nearly 700 lots were merged under the Ordinance between 1987 and 1990.[1] When two or more lots merge, they become a single parcel to be developed, sold, leased, or financed together. Sections 16.20.020 and 16.20.030 allows lots to be merged if the same owner holds two or more contiguous parcels of land where certain conditions are met.[2]

Staff recently accepted an 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 during the lot merger program initiated between 1987 and 1990. However, upon further review by the City Attorney, it was determined these lots should have been considered for merger. Staff then commenced with a lot merger for the subject property pursuant to Section 16.20.050 and the Planning Commission considered the matter on August 16, 2005.

Analysis

The applicant 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 Commission considered the hearing testimony and felt that no specific evidence was presented that the property does not meet the requirements for merger. The City Attorney prepared a detailed written response to Commission questions regarding the obligations of the City to merge lots and the restriction of property sale and permit issuance for property subject to the Ordinance. (Please see attached).

In summary, the City Attorney indicates that the City is not compelled to merge the lots, however, it has the authority to merge the four lots into one or merge the contiguous smaller lot with the adjacent lot if it advances the City's land use policies and objectives. Consequently, the only matter under consideration for the appeal is whether to merge the four lots into one lot , retain all existing lots or affirm the Commission decision.

The Planning Commission felt that given the standard for review under the Lot Merger Ordinance (lots less than 40' wide and 4,000 sq. ft. shall be merged) that two of the lots should remain 40' and the smaller 27' wide lot should be merged with the adjacent 40' wide lot creating one 67' wide lot. Thus, the Commission decided to prohibit development of a very small lot, and create three resulting lots more consistent with the lot pattern in the area. The owner has since submitted a lot line adjustment to make minor adjustments to the lot widths, so that the three resulting lots will contain equal-size 49-foot wide lots, containing 4,900 square feet each.

Ken Robertson
Senior Planner

CONCUR:

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Sol Blumenfeld, Director
Community Development Department

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Stephen R. Burrell,
City Manager

Attachments
1. City Attorney response
2. Assessor's Map
3. Aerial Photo
4. Correspondence

[1] 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.

[2] The criteria are as follows:

1. 1. The parcels were created under the provisions the City's Subdivision Ordinance or any prior state law or ordinance regulating the division of land, or which were not subject to any prior law regulating the division of land.
2. 2. At least one of the contiguous parcels or units of land held by the same owner does not conform to standards for minimum parcel size to permit use or development under the City's Zoning and/or Subdivision Ordinance.
3. 3. The main structure is partially sited on the contiguous parcel and not more than 80% of the lots on the same block of the affected parcel have been split and developed separately.
4. 4. One or more of the following conditions exist with respect to one or more of the contiguous parcels:
    a. Comprises less than 4,000 square feet in area at the time of the determination of merger.
    b. Was not created in compliance with applicable laws and ordinances in effect at the time of the creation.
    c. Does not meet current standards for sewage disposal and domestic water supply.
    d. Does not meet slope stability standards.
    e. Has no legal access which is adequate for vehicular and safety equipment access and maneuverability.
    f. Its development would create health or safety hazards.
    g. Is inconsistent with the applicable General Plan and any applicable specific plan, other than minimum lot size or density standards.

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 21st 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