

July 27, 2006

**Honorable Mayor and Members of the
Hermosa Beach City Council**

**Regular Meeting of
August 8, 2006**

SUBJECT: REVISION TO LOT MERGER ORDINANCE

Recommendation:

That the City Council review the issues outlined in the staff report and provide direction related to:

1. Intent of the Lot Merger Ordinance.
2. Criteria for merging lots.
3. Procedures for merging lots
4. Setting a date to review draft revisions to the Lot Merger Ordinance.

Background:

A citywide lot merger program was completed 17 years ago following adoption of the Lot Merger Ordinance in 1986. The City examined hundreds of lots and conducted hearings in accordance with the Ordinance. All lots surveyed were either deemed separately developable by the Commission and City Council, or were subject to merger. 1,100 lots were eventually merged into 500 parcels with a list of the merged lots presented to the Planning Commission on May 16, 1989.

At the conclusion of this program, the lot merger ordinance was never repealed. Consequently, any lots that qualify for merger are still subject to lot merger requirements that governed during the citywide process described above. Based on the City Attorney's advice in 2005, in view of the fact that the lot merger ordinance is still a part of the Municipal Code, staff has been processing lot mergers for properties that may qualify for lot merger on a case by case basis, for referral to the Planning Commission pursuant to the Ordinance.

Analysis:

The purpose of the present agenda item is to obtain policy direction on clarifying, revising and implementing the Ordinance. When two or more lots merge, they become a single parcel to be developed, sold, leased, or financed as one. Sections 16.20.020 and 16.20.030 allow lots to be merged if: 1) the same owner holds two or more contiguous parcels, 2) the lots are substandard in area (less than 4,000 square feet in area) 3) the main structure straddles the contiguous parcels and 4) not more than 80% of the lots on the same block have been split and developed separately. (Please see attached Ordinance for the exact language).

Summary of Citywide Survey of Potential Lot Mergers

The following summarizes staff's recent citywide survey of the number of lots that may potentially be merged under the Ordinance as it exists today:

- 170 Assessor's Parcels were found with lot ties that potentially could be merged.
- 60 parcels were found to meet the all the essential criteria for merger.
- 45 of the 60 parcels identified involve remnant lots and cannot be developed separately (as they are less than 20-feet wide).
- Several more lots are questionable because of the difficulty in applying the 80% "split and developed separately" rule as it is currently written.
- 15 parcels meet the criteria for merger in the R-1 zone, containing two or more lots that can separately be developed.

Problems with the Current Ordinance

The current Ordinance requires that staff examine lots for potential merger as follows:

- Examine current L.A. County Assessor's Parcel Maps for lot ties indicating common ownership.
- Determine whether one of the lots that comprise the property is substandard in lot area
- Determine if structures straddle the property line
- Calculate the percent of lots on the block that have "already been split and developed separately"
- If the lot is similar to more than 80% of the lots on the block, then the lot is not subject to merger.

In many situations, the current ordinance is difficult to interpret and apply primarily with respect to the 80% rule listed above. It is not clear in all circumstances what constitutes "split and developed separately" and it is not clear whether the affected lot should be included in the 80% calculation. Also it is not clear when making this calculation if remnant parcels or lots are included in the calculation.¹ For the majority of the City, the lot patterns are not uniform, and ownership ties that combine adjacent parcels are often small remnants, half lots, or other odd divisions of property that occurred before lot divisions were regulated by the Subdivision Map Act. In these cases "split and developed separately" does not apply and, therefore, this phrase should be clarified in any revisions to the Ordinance.

Also, for small blocks, lot mergers will likely meet the 80% criteria even if the general trend of neighborhood development is not consistent. For example, some blocks are comprised of four or fewer lots and if the lot is included where two other lots have already been split, then the "not more than 80%" rule applies and it is subject to merger, however, if it is excluded then over 80% have been split and the property is not subject to merger. Further, it is unclear if a "block" includes only lots fronting a street (i.e. the side with lots narrowest frontage). If the intent of the Ordinance is to ensure neighborhood compatibility with surrounding lots, then application of the law in this manner may not be consistent with the neighborhood.

The ordinance is written to apply in all zones, even though it the original intent may have been to address density concerns in residential zones only (as implied by the 4,000 square foot lot size criteria) and likely, it was intended to be limited to the R-1 zone. However, as written it requires including all properties. Based on a review of the decisions to adopt the original ordinance, it seems that the City's intent was to prevent separate development of 25-foot wide lots in areas generally east of and near Prospect Avenue which are R-1. Many of these lots, originally subdivided into substandard lots, have since been developed largely into 50-wide home sites that comply with the ordinance.²

The proper implementation of Section 16.20.120 of the Ordinance is also unclear. Section 16.20.120 sets out prohibitions for separate sale and permit issuance where an existing building straddles two or more lots. According to the City Attorney, this is misleading as it only applies to lots subject to merger and does not apply to all properties. Instead the intent is to deter owners from trying to circumvent the law by transferring ownership to obtain a permit while a lot is under consideration for lot merger. The hearing process also is problematic. Section 16.20.060 sets out the requirements for hearings and is intended to provide an opportunity for the affected owner to address Commission on the merger. However, it does not require formal public notification of surrounding owners which leaves other potentially affected property owners out of the process.

Finally, the ordinance does not provide clear direction on how to deal with small remnant portions of lots that are essentially not developable. Many remnants, some as small as 2-feet wide, are subject to the Ordinance. Forcing mergers of such remnants does not accomplish the objective of reducing density and may in some cases result in a parcel inconsistent with the prevailing pattern of neighborhood development.

Issues to Consider

1. Intent of the Ordinance
2. Criteria for Merging lots (Block or Neighborhood or Both)
3. Procedures for Merging Lots (Citywide vs. Case by Case Review & Public Notice)
4. Survey of Potential Lot Mergers

1. Intent of the Ordinance

The City Council must confirm what the Ordinance was originally intended to do and if there is any reason to change direction at this time. It appears the intent was to reduce the number of potential units (i.e. to maintain current densities) and to reduce the number of nonconforming lots incompatible with the neighborhood. However, an alternative intent would be to allow development that is consistent with the prevailing pattern of development in the immediate neighborhood, requiring merger when the prevailing pattern consists of conforming lots, and not requiring merger if the prevailing pattern is nonconforming. Knowing the intent of the Ordinance provides the necessary direction for clarifying or revising the merger criteria of the Ordinance.

If the intent is simply to reduce the number of potential new housing units (density) then the general criteria should not be materially changed and the focus should be on finishing the task in a fair and timely manner. If the intent is to make lots compatible with the existing neighborhood, than the Council should consider modifying the existing criteria.

The current ordinance requires the City to implement mergers on R-2 and R-3 zoned property, although it is not clear whether this is consistent with the original intent. In the R-2 and R-3 zones density is a function of lot area, not necessarily the existing lot pattern. By forcing mergers, the City may actually be encouraging more dense development, rather than allowing the development of individual parcels for single family projects. For example if two adjacent 30 X 90 R-2 lots are merged, the resulting parcel can be developed for three units, and the option to build the property as two single-family homes has been precluded. In fact, the City has recently granted two Variances to the minimum lot size to allow property owners to revert back to their original lots sizes of approximately 2,700 square feet (prior to merger) at 26 9th Street (aka 836 Beach Drive) and 501 & 507 29th Street in order to allow the development of two single-family homes rather than 3-unit condominium projects.

2. Criteria for Merging Lots

Block Level Criteria

The current Ordinance provides direction on merging lots when not more than 80% of the lots on a block have already been split and developed separately but is not explicit as to how to implement this in all cases. If a block level analysis is to be used the 80% rule should be reworded as follows:

If the substandard parcel is similar in size and width to more than 80% of the parcels on the same block, inclusive of the subject parcel, then the parcel shall be exempt from lot merge.

With this revision, which does not change the general intent or scope from the original ordinance, the City can more clearly identify blocks with a dissimilar lot pattern (size and width) and remnant parcels that are inconsistent with other development on the block. Thus, nonconforming lots dissimilar and smaller to the rest of the block will be subject to merger. At a minimum, the existing language should be rephrased because it is very difficult to understand. Further, the Council can consider changing the 80% to another percentage, if deemed appropriate.

Neighborhood Compatibility Criteria

Another standard for review is neighborhood compatibility. The Council should decide if it is necessary to look beyond a block and apply more subjective criteria to the lot merger decision. A specified radius such as 300' can be used to look at more properties to determine compatibility with the neighborhood. Between 60 and 120 parcels would typically be included in a 300' radius area depending on the lot size. Other neighborhood criteria may be groups of blocks within the same zone and general plan area within defined common boundaries that could include arterials or collector streets, parks or open space such as the greenbelt or other significant topographical features such as hillsides. This criterion is consistent with the requirements for approval of a Subdivision Map. (Please See Assessor Radius Map Illustrations and Neighborhood Map Illustration.).

Combined Block Level and Radius or Neighborhood Analysis Criteria

The current merger criteria are primarily based on a calculation that in some cases fails to recognize the actual conditions of the neighborhood since the 80% rule only focuses upon a percentage of "lots split and developed separately" that comprise a block. The ordinance criteria can instead be written to contain two tiers of review. First it can establish the minimum percentage of lots on a block (the 80% rule) to determine if a parcel should be considered for merger. However, when there are an insufficient number of lots to review, it should also allow for a broader look at the prevailing pattern of development in the area (defined per Subdivision Ordinance, Section 16.08). The initial review by staff would involve a calculation to determine whether the lot qualifies for merger (lot less than 4000 sq. ft. area, building straddling the lots and held under one ownership) relative to all other lots on the block. This calculation works if there are more than five lots that comprise a block. However, if there are five or fewer lots on a block, the review should be expanded to a larger area to determine the prevailing lot pattern within a neighborhood area. The broader review should be part of the appeal process to Planning Commission.

3. Procedures for Merging Lots

Citywide Review vs. Case by Case Review

The Council must determine whether to initiate a citywide program potentially involving up to 60 hearings following the City's standard hearing notice procedures or continue to consider lot mergers on a case-by-case basis as applications for development are brought forward by property owners. Staff recommends that the ordinance be implemented with a citywide program focusing on R-1 zoned property where there is most potential to increase density with development on small lots that conflicts with the neighborhood pattern of development. This will focus efforts on approximately 15 properties. Case-by-case merger is recommended for the remaining R-1 properties affecting mostly remnant parcels and for the multi-family zones when the property is being redeveloped. For example, a 10-foot wide existing remnant from a prior real estate transaction obviously cannot be developed separately, and can be merged at the time of redevelopment of the property, or when the owner prefers to sell it. In another example, an R-2 zoned 30' x 90' lot combined with another 30' by 90' lot

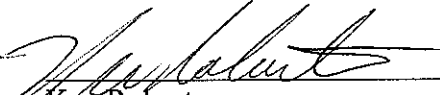
permits development of 3 units rather than two single family homes on two separate lots--there is no reason to force this merger if the owner prefers to maintain the current condition or develop two single family homes. Following a determination to merge lot, the lot merger when recorded, is a final action, and there is no other appeal or change permitted to the lots without filing an application for a subdivision.

Definitions

The definition of block is not included in the Lot Merger Ordinance, however the term is used in the criteria for merger. Section 17.04 of the Zone Code provides a definition of block that must be incorporated into the lot merger ordinance with modifications. The modified definition should include only lots that *front* on a common street, and that are within the same zone, to identify a block face and frontage. Also the Subdivision Ordinance description of "prevailing lot pattern should be incorporated in the Ordinance to define the prevailing pattern of neighborhood development in establishing criteria for neighborhood character.

In summary, staff seeks City Council direction as to:

1. Confirming the original intent of the Ordinance related to density and neighborhood compatibility and whether to simply modify "80% rule" to achieve a consistent development pattern for all affected blocks.
2. Determining whether it is necessary to establish other criteria for lot mergers based on block level analysis, or neighborhood analysis either separately or in combination.
3. Establishing procedures for merging lots through a mandatory citywide program or on a case-by-case basis, or both, and revised noticing requirements for appeals (300 foot mailed notice, notice published in local newspaper of general circulation and posted notice) with notice costs borne by the property owner.
4. The date on which a draft ordinance should be returned for Council consideration.

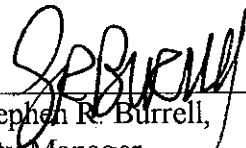


Ken Robertson
Senior Planner



Sol Blumenfeld, Director
Community Development Department

Concur:



Stephen R. Burrell,
City Manager

Notes

1. For blocks in the districts east of Prospect Avenue, it is relatively easy to apply this section, because a uniform lot pattern was established in which 25-foot wide lots were the norm, with a portion of those lots developed and sold with a single home on a combined 50-foot wide lot. The common ownership was clearly reflected on the County Assessor Parcel Maps tying the two 25-foot lots together. For those blocks, it is clear what split and developed separately means. However, for the majority of the City, the lot patterns are not so uniform, and ownership ties that combine adjacent parcels

are often small remnants, half lots, or other odd divisions of property that occurred before lot divisions were regulated by the Subdivision Map Act. In these cases "split and developed separately" does not apply.

2. Planning Commission and City Council Minutes from 1987 – 1989. Approximately half of the 1100 parcels/units of land merged were located in the general area east of and near Prospect Avenue involving merger of 25-foot wide lots into 50-foot wide parcels.

3. "Block" for the purpose of determining lots to be merged is currently defined as follows:

All property fronting upon one side of a street between intersecting and intercepting streets, or between a street and a railroad right-of-way, waterway, terminus or dead-end street, or city boundary. An intercepting street shall determine only the boundary of the block on the side of the street which it intercepts;

Where the need for determination regarding lot merger, Section 16.20.030, occurs, the following definition shall apply:

All lots facing a common street on both sides of said street, except where residential zoned lots do not exist, or are not within the city limits, and said lots are between intersecting and/or intercepting streets or between a street and a railroad right-of-way, terminus, dead-end street or city boundary.

This definition is problematic since it does not address the issue of whether to include lots on properties in different residential zone and it does not adequately define what "facing" means.

4. Section 16.08.060 of the Subdivision Ordinance provides for the following in making a subdivision determination:

D. The size of the proposed lots is not smaller than the prevailing lot size and lot frontage within the same zone and general plan designation within a three hundred (300) foot radius; provided, however, that all such lots used in the comparison shall be in the same neighborhood area;

E. The granting of the subdivision would result in the creation of lots that would be of a size and configuration which would be in keeping with the standards of development specified by the zoning ordinance for the land use zone in which it is located;

F. The creation of the proposed lots would be in conformity with the intent and purpose of the comprehensive general plan for the city;

G. The tentative subdivision map complies with the requirements for approval set forth in the Subdivision Map Act of the state of California.

For purposes of this section "neighborhood area" is defined as the block or group of blocks, within the same zone and general plan designated area, being located within clearly defined common boundaries. Boundaries shall include arterial or collector streets, parks or open space designated areas (such as the "greenbelt"), or significant topographical features such as hillsides

Attachments:

1. Lot Merger Ordinance
2. Citywide Survey (Available in the Community Development Department)
3. Assessor Map Illustration 300' and 500' (Available as supplemental item.)
4. Neighborhood Map Illustration (Available as supplemental item.)

P:/LotMergerOrd

CITY OF
HERMOSA BEACH
MUNICIPAL CODE ON-LINE

SUBDIVISIONS

Chapter 16.20

MERGER OF PARCELS

- 16.20.010 Intent and purpose.
- 16.20.020 Applicability.
- 16.20.030 Requirements for merger.
- 16.20.040 Determination of ownership.
- 16.20.050 Notice of intention to determine status.
- 16.20.060 Hearing date, fee, presentation of evidence --Planning commission determination.
- 16.20.070 Merger--Notice--Effective date.
- 16.20.080 When parcels not merged --Release and clearance of notice of intention to determine status.
- 16.20.090 Planning commission determination without hearing-- Notice to owner.
- 16.20.100 Appeal.
- 16.20.110 Industry merger.
- 16.20.120 Development involving contiguous parcels.

16.20. 010 Intent and purpose.

The purpose of this section and the following sections relating to merger of parcels is to provide a procedure by which two or more contiguous parcels or units of land held by the same owner may be merged. This procedure is adopted pursuant to Sections 66541.10 through 66451.21, inclusive, of the California Government Code, and this code.

Any procedure found within this chapter which is inconsistent or not authorized under the California Government Code shall not be followed. If any such procedures conflict with or are not authorized by the Government Code, the rules and procedures established under the Government Code shall be followed when implementing this chapter. (Prior code § 29.5-19)

16.20. 020 Applicability.

A. The provisions set forth in this chapter for the merger of parcels shall be applicable to two or more contiguous parcels of land held by the same owner where:

1. The parcels were created under the provisions of this code regulating subdivisions 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. 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.

B. Nothing in the provisions relating to merger of parcels shall be construed or interpreted to prohibit the sale, lease or financing of such contiguous parcels of land, or any of them, where the same have not been merged pursuant to the procedure set forth in this chapter. (Prior code § 29.5-20)

16.20. 030 Requirements for merger.

Any two or more contiguous parcels or units of land held by the same owner which are subject to the merger provisions set forth as provided in Section 16.20.020 may be merged if all of the following requirements are satisfied:

A. The main structure is partially sited on the contiguous parcel and not more than eighty (80) percent of the lots on the same block of the affected parcel have been split and developed separately.

B. With respect to any affected parcel, one or more of the following conditions exists:

1. Comprises less than four thousand (4,000) square feet in area at the time of the determination of merger;
2. Was not created in compliance with applicable laws and ordinances in effect at the time of its creation;
3. Does not meet current standards for sewage disposal and domestic water supply;
4. Does not meet slope stability standards;
5. Has no legal access which is adequate for vehicular and safety equipment access and maneuverability;
6. Its development would create health or safety hazards;
7. Is inconsistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.

C. The requirements set forth in subsection B of this section shall not be applicable if any of the conditions set forth in Section 66451.11(b)(A) through (E) of the California Government Code exist. **D.** If the merger of parcels results in the creation of a parcel that is at least eight thousand (8,000) square feet in size, the planning commission and/or city council may,

with the consent of the property owner, redivide the parcel into separate parcels that are at least four thousand (4,000) square feet in size. (Prior code § 29.5-21)

16.20. 040 Determination of ownership.

For purposes of determining whether contiguous parcels or units are held by the same owner, ownership shall be determined as of the date that notice of intention to determine status is recorded pursuant to Section 16.20.050. (Prior code § 29.5-22)

16.20. 050 Notice of intention to determine status.

Whenever the director of planning has knowledge that real property may be merged pursuant to the merger provisions of this chapter, he shall:

A. Mail by certified mail to the then current record owner of the property a notice of intention to determine status. Such notice shall state that:

1. The affected parcels may be merged pursuant to the merger provisions of Sections 16.20.010 through 16.20.100, inclusive of this chapter,
2. The owner may file a request with the planning department any time within thirty (30) days after the date the notice of intention to determine status is recorded for a hearing before the planning commission and may present evidence at the hearing that the property does not meet the requirements for merger, and
3. That the notice of intention to determine status was filed for recording with the county recorder's office on the same date such notice was mailed to the property owner;

B. File for record with the county recorder's office, on the same date that the notice is mailed to the property owner, the notice of intention to determine status. (Prior code § 29.5-23)

16.20. 060 Hearing date, fee, presentation of evidence--Planning commission determination.

A. Upon receipt of a request for a hearing on determination of status and receipt of the filing fee as set forth by resolution of the city council, the director of planning shall fix a time, date and place for a hearing to be conducted by the planning commission and shall so notify the property owner by certified mail. The hearing shall be conducted not less than thirty (30) days following the receipt of the property owner's request therefor, but may be postponed or continued with the mutual consent of the planning commission and the property owner.

B. At the hearing, the property owner shall be given the opportunity to present any evidence that the affected property does not meet the requirements for merger as set forth in Sections 16.20.020 and 16.20.030.

C. At the conclusion of the hearing, the planning commission shall make a determination as to whether the affected parcels are to be merged and shall

notify the owner of its determination as soon thereafter as practicable, but no later than five working days after the determination has been reached. If such notification cannot be made at the time of the hearing to the owner in person, the notification shall be made by certified mail. (Prior code § 29.5-24)

16.20. 070 Merger--Notice--Effective date.

A. If the planning commission or city council determines that the affected parcels are merged, the director of planning shall file for record with the county recorder's office a notice of merger specifying the names of the record owners and particularly describing the real property to be merged.

B. The notice of merger for any parcel merged by the planning commission or city council shall be filed no later than thirty (30) days after the conclusion of the final hearing on determination of status.

C. A merger of parcels becomes effective on the date the notice of merger is duly filed with the county recorder's office. (Prior code § 29.5-25)

16.20. 080 When parcels not merged--Release and clearance of notice of intention to determine status.

If the planning commission or city council determines that the affected parcels are not to be merged, the director of planning shall:

A. File for record with the county recorder's office a release of the notice of intention to determine status, recorded pursuant to Section 16.20.050, specifying the names of the record owners and particularly describing the real property to be merged; and

B. Mail a clearance letter to the then current owner of record;

C. The release and clearance letter shall be filed and mailed, respectively, within five working days of the date of the city council's determination or within five working days after the applicable ten-day appeal period has run following a determination of the planning commission. (Prior code § 29.5-26)

**16.20. 090 Planning commission determination without hearing--
Notice to owner.**

If the property owner fails to file a request for hearing within the thirty (30) day period as provided in Section 16.20.060, the planning commission may, at any time thereafter, make a determination as to whether the affected parcels are to be merged.

A. If the planning commission makes a determination of merger, the director of planning shall file a notice of merger no later than ninety (90) days after the mailing of the notice of opportunity for hearing as provided in this section, and shall notify the property owner of such determination by certified mail.

B. If the planning commission makes a determination of nonmerger, the director of planning shall follow the procedure set forth in Section 16.20.080. (Prior code § 29.5-27)

16.20. 100 Appeal.

A. The property owners, a member of the city council or any interested person may appeal a decision of the planning commission within ten days of such decision, file an appeal with the city clerk of the city. The city council shall consider the appeal within thirty (30) days. This appeal shall be a hearing held at no cost to the appellant with notice being given pursuant to Section 16.20.060 and with additional notice to be given to the property owner. Upon conclusion of the hearing, the city council shall declare its findings at a time not later than the next regularly scheduled city council meeting after the hearing is held. The city council may sustain, modify, or reject or overrule any recommendations or rulings of the planning commission and may make such findings as are consistent with the provisions of this chapter or the state Subdivision Map Act.

B. All decisions of the planning commission regarding the merger or nonmerger of parcels shall be final, unless appealed from as prescribed in this section, or until any condition precedent to its effectiveness has been fulfilled, whichever is later in time. After final resolution of an appeal by the city council, the director of planning shall file all appropriate notices within the time limits established under Sections 16.20.070 and 16.20.080. (Prior code § 29.5-28)

16.20. 110 Industry merger.

Two or more contiguous parcels, under common ownership, may be voluntarily merged without reverting to the procedures of this chapter. Such merger requires that the recordation of an instrument evidencing the merger be made with the county recorder. (Prior code § 29.5-29)

16.20. 120 Development involving contiguous parcels.

It shall be prohibited to separately sell or separate two or more contiguous lots owned by the same person or legal entity that have an existing structure or improvements straddling their common property line. For property not owned by the same person or legal entity which has been conveyed in violation of this section, no permits for the demolition, construction or addition to the structure shall be issued by the building department. (Prior code § 29.5-31)