



MARIPOSA COUNTY

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RESOLUTION - ACTION REQUESTED 2013-278

MEETING: July 9, 2013
TO: The Board of Supervisors
FROM: Sarah Williams, Planning Director
RE: Appeal No. 2013-28 - Baker Oakander

RECOMMENDED ACTION AND JUSTIFICATION:

The recommended action is based on the action taken by the Board of Supervisors at the continued public hearing for Appeal No. 2013-028 conducted on June 25, 2013. The findings are based on the January 23, 2013 Planning Director correspondence, the staff report for Appeal No. 2013-028, and information from the public hearing on June 25, 2013. Input may be allowed on the text or format of the resolution only.

BACKGROUND AND HISTORY OF BOARD ACTIONS

- On June 25, 2013, the Board of Supervisors conducted the continued public hearing for Appeal No. 2013-028 and took action to deny the appeal.
- On May 7, 2013, the Board of Supervisors continued the noticed public hearing on Appeal No. 2013-028 to June 25, 2013.
- Summary background provided in Staff Report to Board of Supervisors from Mariposa Planning made available to the public and appellant on May 3, 2013.
- On November 3, 2009, the Board of Supervisors adopted Resolution No. 09-535 which upheld the Planning Director's denial of Building Permit Application No. 27628.
- On January 27, 2009, the Board of Supervisors adopted Resolution No. 09-42 which approved the site plans and enabled staff to authorize the issuance of Building Permit Application Nos. 26937, 26938, 26939, 26940, 26941, 26942, 27681, 26819, and 28274.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Modify text or findings in Resolution.

FINANCIAL IMPACT:

None

ATTACHMENTS:

130625 BOS Resolution 2013-278 for Appeal 13-28 (DOC)

CAO RECOMMENDATION

Resolution - Action Requested 2013-278

Requested Action Recommended


Rick Benson, County Administrator/Office

RESULT: ADOPTED [UNANIMOUS]
MOVER: John Carrier, District V Supervisor
SECONDER: Merlin Jones, District II Supervisor
AYES: Stetson, Jones, Bibby, Cann, Carrier

STATE OF CALIFORNIA
COUNTY OF MARIPOSA
BOARD OF SUPERVISORS

Resolution
No. 2013-278

A resolution denying Appeal No. 2013-028 with findings, and upholding the Planning Director's determination to rescind authorization of multiple building permits at one of the parcels which previously comprised a portion of the Coyote Springs Ranch; APN 016-220-008; a 21.47 acre parcel located at 2100 Old Highway in Catheys Valley

WHEREAS, on January 23, 2013 the Planning Director wrote a letter to property owner Alfonse Castaldi describing her determination to rescind authorization for issuance of multiple building permits which were submitted for one of the parcels, a 21.47 acre parcel, which previously comprised a portion of the 10-parcel, 940.94 acre Coyote Springs Ranch; and

WHEREAS, the building permit applications included:

- Permit Application Nos. 26937, 26938, 26939, 26940, 26941, and 26942, which were submitted for six (6) cabins; and
- Permit Application No. 27681, which was submitted for an Interior remodel – kitchen; and
- Permit Application No. 26819, which was submitted for a septic system for the cabins; and
- Permit Application No. 28274 which was submitted for a bathroom for the kitchen and cabins; and

WHEREAS, building permit issuance was authorized by the Planning Department for facilities for agritourism based on Board of Supervisors' Resolution No. 09-42, which was adopted following the conduct of a public hearing on Appeal No. 2008-193 on January 27, 2009; and

WHEREAS, the Planning Department's site plan approval and authorization for building permit issuance is required pursuant to Mariposa County Code, Zoning Section 17.08.090; and

WHEREAS, it is the responsibility of the Building Department to actually issue building permits once all requirements for permit issuance are obtained pursuant to California Code of Regulations Title 24, Part 2, Section 105.1 and Part 2.5 Section R105.1; and

WHEREAS, the building permits were never issued by the Building Department because the property owner did not meet all the requirements for permit issuance; and

WHEREAS, Board of Supervisors Resolution 09-42 approved the site plan and project description for the cabins and kitchen development as part of an agritourism use. This authorization was based in part on information provided by the ranch owners and is found in the "Factual Basis" in Exhibit A of Resolution 09-42; and

WHEREAS, the Board's approval considered a map submitted by the ranch owners which showed a total of 10 parcels "checked" as part of the ranch, with total ranch acreage at 940.94 acres; and

WHEREAS, the approval considered "Livestock and Agricultural Information" submitted by the ranch owners which indicated that the ranch was used as a year-round, fall-calving, cow-calf operation (approximately 120 pair); and

WHEREAS, Board of Supervisors Resolution 09-42 states, "This production use is what qualifies the ranch for the agritourism permits." The authorization considered the fact that the ranch grew several acres of oat hay during 2007, which was part of the ranch's agricultural production; and

WHEREAS, the Board's action in January 2009 considered the agricultural production uses at the ranch occurring on the majority of the ranch acreage, with the agritourism support facilities proposed to be developed on one 21.47 acre parcel; and

WHEREAS, at the time of the Board's action in January of 2009, the ten (10) parcels which comprised Coyote Springs Ranch were owned by "co-partners" Patricia Oakander and Theresa Castaldi; and

WHEREAS, the Board's January 2009 resolution was written to include very specifically worded "factual basis" and "operating provisions", because Mariposa County was just commencing the process of developing more comprehensive and detailed code provisions for agritourism; and

WHEREAS, as part of the Board's action in January of 2009, the Board found that the 21.47 acre parcel would not be eligible for agritourism support facilities without an agricultural operation on the adjacent large acreage parcels which were part of the ranch at the time; and

WHEREAS, the Board of Supervisors Resolution No. 09-42 considered the ranch owners' specific project information; and

WHEREAS, the Board of Supervisors Resolution No. 09-42 was not challenged; and

WHEREAS, the ten (10) parcels which originally comprised Coyote Springs Ranch in January, 2009 are now owned by Alfonse Castaldi (1 parcel), F.E. & M. Inc. (1 parcel), Norma Zaragoza (1 parcel), Eric & Elizabeth Down (1 parcel), and Taxiway LLC (6 parcels); none of whom are the original Coyote Springs Ranch co-partners; and

WHEREAS, Mariposa Planning made two written attempts to establish compliance issues with regard to the Board Resolution No. 09-42; one attempt was made by correspondence dated January 19, 2011 and one was made by correspondence dated August 27, 2010. Neither of these letters was answered; and

WHEREAS, as part of the January 23, 2013 determination, the Planning Director also gave direction to the Building Director to close out the building permit files for unissued Building Permit Application No. 27628 (for a Public Restroom) and unissued Building Permit No. Application 26575 (for a septic system for a Public Restroom). These two permits are related to Permit Application Nos. 26937, 26938, 26939, 26940, 26941, 26952, 27681, 26819, and 28274; and

WHEREAS, the Planning Director's direction to the Building Director on the two related permits was based on Board of Supervisors Resolution No. 09-535 adopted following a public hearing on Appeal No. 2009-138 conducted on November 3, 2009. Resolution No. 09-535 upheld the Planning Director's denial of Building Permit No. 27628 for the proposed construction of a 957 square foot structure entitled "agritourism bathroom" on APN 016-220-008; and

WHEREAS, Board of Supervisors Resolution No. 09-535 was not challenged; and

WHEREAS, an appeal of the Planning Director's January 23, 2013 determination to rescind authorization for the unissued building permit applications was received from Ken Baker and Patricia Oakander, and that appeal was accepted as complete for processing on the 14th day of February 2013; and

WHEREAS, that appeal is known as Appeal No. 2013-028; and

WHEREAS, the "specific conditions, findings, and/or portions of decision or determination being appealed" as listed in the Notice of Appeal form submitted for processing by appellant Ken Baker states,

"All Decisions to rescind (sic) or close out building permits for 2100 Old Highway APN #016-220-008 known as Coyote Springs Ranch as listed & described in Planning Dept. letter of January 23, 2013"; and

WHEREAS, Appeal No. 2013-028 was made to the Board of Supervisors; and

WHEREAS, processing of Appeal No. 2013-028 was conducted pursuant to Mariposa County Resolution No. 02-525, entitled the Mariposa County Appeals Procedure; and

WHEREAS, County Resolution No. 09-525 states that the focal point of the appeal shall be the "Statement of Grounds" also known as the "grounds for appeal". The statement of grounds shall be the appellant's statement of the reasons why the decision or determination is being appealed and shall include the appellant's description of why they believe the decision or determination was inappropriately decided; and

WHEREAS, County Resolution No. 09-525 states that evidence considered at the public hearing on the appeal shall be limited to the issues clearly identified in the Notice of Appeal...; and

WHEREAS, a duly noticed Board of Supervisors public hearing to consider Appeal No. 2013-028 was scheduled for the 7th day of May 2013; and

WHEREAS, a Staff Report addressing the Notice of Appeal was prepared pursuant to local administrative procedures; and

WHEREAS, the Staff Report packet to the Board of Supervisors for the Appeal public hearing was posted on-line and available to the public and appellant on the 3rd day of May 2013; and

WHEREAS, on the 30th day of April 2013, the appellant was notified via e-mail regarding the on-line location of the staff report packet for the public hearing for Appeal No. 2013-028; and

WHEREAS, on the 7th day of May 2013, pursuant to a request by the appellant's legal representative, the Board of Supervisors continued the public hearing for Appeal No. 2013-028 until 2:15 p.m. on the 25th day of June 2013; and

WHEREAS, on the 20th day of June 2013, the appellant was notified via e-mail regarding the on-line location of the staff report packet for the continued public hearing for Appeal No. 2013-028; and

WHEREAS, there were no changes to the staff report packet submitted for the continued public hearing for Appeal No. 2013-028 conducted on the 25th day of June 2013; and

WHEREAS, on the 25th day of June 2013, the Board of Supervisors did hold a continued public hearing on Appeal No. 2013-028 and considered all of the information in the public record, including the Staff Report packet prepared and made available for the originally scheduled May 7th public hearing, testimony presented by public member Kris Casto, the Notice of Appeal, and the comments of appellant Ken Baker; and

WHEREAS, no documentation was submitted to the Board of Supervisors by the appellant in support of his position on Appeal No. 2013-028; and

WHEREAS, on the 9th day of July 2013, the Board of Supervisors considered the format and text of a resolution denying Appeal No. 2013-028 at a noticed public meeting and considered public comment on the draft document.

NOW BE IT RESOLVED THAT the Board of Supervisors of the County of Mariposa does hereby:

- 1) Deny Appeal No. 2013-028;
- 2) Uphold the Planning Director's action to rescind the authorization (Site Plan Approvals) for unissued building permit application nos. 26937, 26938, 26939,

26940, 26941, and 26952, and unissued building permits application nos. 27681, 26819, and 28274;

- 3) Uphold the Planning Director's direction to the Building Director to close out the files for unissued building permit application no. 27628 (for a public restroom) and unissued building permit no. 26575 (for a septic system for a public restroom).

BE IT FURTHER RESOLVED THAT the Board of Supervisors of the County of Mariposa does hereby incorporate the findings as contained in Exhibit A of this Resolution.

BE IT FURTHER RESOLVED THAT the Board of Supervisors of the County of Mariposa does hereby incorporate Board of Supervisors Resolution No. 09-42 by reference into this Resolution.

BE IT FURTHER RESOLVED THAT the Board of Supervisors of the County of Mariposa does hereby incorporate Mariposa County Code Section 17.08.170 by reference into this Resolution.

BE IT FURTHER RESOLVED THAT the denial of Appeal No. 2013-028 is based upon the discussion of Appeal Issues as contained in the Staff Report packet (including attachments) to the Board of Supervisors for Appeal No. 2013-028 which is hereby incorporated into this resolution by reference.

BE IT FINALLY RESOLVED THAT, as a result of this action, a current or future property owner of APN 016-220-008 is entitled to development and use of the property pursuant the provisions of the prevailing:

- Mariposa County Zoning Ordinance, including Chapter 17.40, the Agriculture Exclusive (AE) Zone,
- Mariposa County General Plan, including Section 5.3.04, the Agriculture Working Landscape Land Use, and
- Catheys Valley Community Plan.

ON MOTION BY Supervisor Carrier seconded by Supervisor Jones, this resolution is duly passed and adopted this 9th day of July, 2013 by the following vote:

AYES: Stetson, Jones, Bibby, Cann, Carrier

NOES: None

EXCUSED: None

ABSTAIN: None



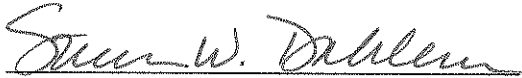
Lee Stetson, Chair
Mariposa County Board of Supervisors

ATTEST:



Rene' LaRoche
Clerk of the Board of Supervisors

APPROVED AS TO LEGAL FORM:



Steven W. Dahlem
County Counsel

Exhibit A

Findings:

1. When the Board of Supervisors adopted Resolution No. 09-42, Coyote Springs Ranch was comprised of ten (10) parcels which totaled 940.94 acres. When the Board of Supervisors adopted Resolution No. 09-42, all ten (10) parcels were under the ownership of either Castaldi or Oakanders. Theresa Castaldi and Patricia Oakander were partners.
2. The current ownership of Coyote Springs Ranch has changed since the Board of Supervisors adopted Resolution No. 09-42. The ten (10) parcels comprising Coyote Springs Ranch are now under five (5) different property owners. There has been no evidence of a legal arrangement or partnership between these property owners presented to the Planning Department.
3. The permit applications for significant agritourism support facilities, including permit application nos. 26937, 26938, 26939, 26940, 26941, and 26942, submitted for six (6) cabins; permit application no. 27681, submitted for an interior remodel – kitchen; permit application no. 26819, submitted for a septic system for the cabins; permit application no. 28274 submitted for a bathroom for the kitchen and cabins; permit application no. 27628 submitted for a public restroom, and permit application no. 26575 submitted for a septic system for a public restroom are all for APN 016-220-008, a 21.47 acre parcel.

4. Operating Provision No. 1 as contained on Page 5 of Board of Supervisors Resolution No 09-42 provides as follows:

“If at any time the ranch ceases to conduct a commercial cattle operation on the 940.94-acre ranch and there is no longer a viable agricultural production use occurring on the 940.94 acre Coyote Springs Ranch, the rental cabins approved as an Agritourism Use for the ranch shall not be permitted...”.

There is no documentation or objective evidence that the ten (10) parcels which previously comprised the Coyote Springs Ranch are being maintained as a joint commercial cattle operation business.

5. Operating Provision No. 5 as contained on Page 5 of Board of Supervisors Resolution No. 09-42 provides as follows:

“The operations that constitute the primary agriculture production usage of the Coyote Springs Ranch are conducted, linked to and may occur on all of the ten (10) ranch parcels.... The information submitted to the County by Coyote Springs Ranch owners indicates that the Agritourism and visitor activities are carried out as a joint program involving all parcels and all owners of the Coyote Springs Guest Ranch, including Theresa Castaldi and Patricia and Larry Oakander. If ownership,

management or operational control of portions of the ranch become separated in the future, such that the primary agriculture use of the ranch and the Agritourism uses are no longer conducted jointly, then the cabin rental and visitor facilities shall become an invalid Agritourism use and must cease.”

There is no documentation or objective evidence that the ten (10) parcels which previously comprised the Coyote Springs Ranch are being maintained as a joint agricultural operation.

6. Operating Provision No. 6 as contained on Page 5 of Resolution No. 09-42 provides as follows:

“As an Agritourism facility, the sale and service of food and alcoholic beverages must be only to Agritourism guests who are visiting the facility in conjunction with an authorized Agritourism use. The facility is not approved as a restaurant or a bar which may be open to the general public.”

If there is no allowed or authorized agritourism use on-site, there can be no sale of food and alcoholic beverages to agritourism guests.

7. The Board’s resolution, which allowed Mariposa Planning to approve the site plan and authorize the building permits, was based on operations which constituted an agricultural production usage of the Coyote Springs Ranch. The operations were conducted, linked to and occurring on all of the ten (10) ranch parcels which made up Coyote Springs Ranch in 2009 as identified in Exhibit A of the Resolution, Factual Basis, item number 2 (see Exhibit A of the Resolution, Operating Provisions, Provision 5, Page 5 of Resolution). Without a legal arrangement between the current five (5) property owners of the ten (10) parcels which previously comprised the Coyote Springs Ranch, it is not possible for this to now occur.

There is no evidence that there is any linkage between any of the ten (10) parcels which previously comprised the Coyote Springs Ranch, other than the six (6) parcels which are currently owned by one entity.

8. The permit approvals (site plan approvals) by Mariposa Planning have expired pursuant to Mariposa County Code, Section 17.08.170, Permit Time Limits. This section of County Code states:

“An approved site plan shall be null and void if the project is not completed within three (3) years from date of approval thereof, unless the approval authority finds and stipulates in its original approval that a different time limit is necessary and not detrimental to the public health, safety and welfare, or, unless an extension of time has been approved.”

It has been more than three (3) years since the date the Board of Supervisors originally authorized the land uses (it has been more than four and one half (4-1/2) years). There was no different time limit approved in the original authorization. The permits have not been issued.

9. Any agritourism uses which are or have been on-going at or on APN 016-220-008 in structures on-site would not be established non-conforming uses or non-conforming structures ("grandfathered") based on the definitions in Mariposa County Code. In order to be non-conforming uses or structures, the uses or structures would have to be legally established.
10. The State of California does not have local land use authority. The State of California does not have authority to approve cabin uses in the County of Mariposa.
11. Board of Supervisors Resolution No. 09-42 was reviewed by County Counsel for legal form and was adopted by the Board of Supervisors on January 27, 2009. Board of Supervisors Resolution No. 09-42 was not challenged in a court of law. It is the responsibility of county staff to implement adopted Board policy.
12. Board of Supervisors Resolution No. 09-535 was reviewed by County Counsel for legal form and was adopted by the Board of Supervisors on November 3, 2009. Board of Supervisors Resolution No. 09-535 was not challenged in a court of law. It is the responsibility of county staff to implement adopted Board policy.
13. County Code Section 17.08.170 Permit Time Limits was originally adopted by County Ordinance 704 (Section I) in 1988 and amended by County Ordinance 912 (Section II) in 1997. It is the responsibility of county staff to implement adopted County Ordinances.
14. Building permit processing issues are not a part of the Planning Director's January 27, 2013 determination.
15. The Planning Director's January 27, 2013 determination is separate and distinct from the Building Director and Building Department's review and processing of building permits for Coyote Springs Ranch (although Planning Department Site Plan Approval for a building permit is one necessary requirement of the building permit process).
16. The Planning Director's January 27, 2013 determination is not about the building permit process and planning has no authority over Title 24 provisions.
17. The Planning Director's action to rescind the authorization for the Building Permits (Site Plan Approvals) was based upon the provisions in the Board of Supervisors Resolution No. 09-42, as described in the January 27, 2013 correspondence and was based on the time limits established by County Code Section 17.08.170.
18. Permits, land use determinations and zoning entitlements run with the land. The Planning Director has access to property ownership information. Because the county has no business license requirement, there is no procedural way for, and no requirement that, the county notify a business owner about an action on a permit application.