

LAKE COUNTY PLANNING COMMISSION

MINUTES

REGULAR MEETING

December 14, 2017

Commission Members

P John Hess, District I
P Bob Malley, District II
P Eddie Crandall, District III
P Matt Levesque, District IV
P Daniel Suenram, District V

Staff Members

P Robert Massarelli, CDD Director
P Michalyn DelValle, Principal Planner
A Byron Turner, Principal Planner
P Shanda Harry, Deputy County Counsel
P Danae Bowen, Office Assistant III

9:06 a.m. CALL TO ORDER

Pledge of Allegiance was led by Bob Malley.

9:07 a.m. CITIZEN'S INPUT – None

9:08 a.m. Public Hearing on consideration of a Parcel Map (PM 16-05) based on Initial Study (IS 16-23). The project applicant is CONSER LAND SURVEYING on behalf of DAVID BETAT proposing to divide a +/- 1.4 acre parcel into two parcels; Parcel 1 proposed at 0.86 gross acres and Parcel 2 proposed at 0.47 gross acres. The project is located at 3387 E. State Highway 20, Nice and further described as APN 032-124-02. Environmental Evaluation: Mitigated Negative Declaration. (Eric Porter)

Eric Porter, Associate Planner, provided background information and a power point presentation of the project application.

9:14 a.m. Opened Public Hearing

Steve Bella, Conser Land Surveying, announced that he was present for questions.

9:14 a.m. Closed Public Hearing

Comm. Crandell moved, 2nd by Comm. Hess that the Planning Commission find that on the basis of the Initial Study IS 16-23 prepared by the Planning division and the parcel map as applied for by David Betat on property located at 3387 East Highway 20, Nice and the mitigation measures which have been added to the project, will not have a significant effect on the environment, and, therefore, a mitigated negative declaration shall be issues with the findings listed in the staff report dated November 14, 2017.

MITIGATED NEGATIVE DECLARATION 5 Ayes 0 Noes

Comm. Crandell moved, 2nd by Comm. Levesque that the Planning Commission find that the tentative parcel map applied for by David Betat on property located at 3387 East Highway 20, Nice is in conformity with the provisions of the subdivision Map Act and Chapter 17 of the Lake County Code and, upon that basis, approve said map subject to the conditions and with the findings listed in the staff report dated November 14, 2017.

TENTATIVE PARCEL MAP 5 Ayes 0 Noes

Comm. Malley noted that there is a fifteen (15) calendar day appeal period provided by the Lake County Subdivision Ordinance.

9:20 a.m. Public Hearing on consideration of a Deviation (DV 17-01) for a Tentative Parcel Map (PM 09-02) and (DV 09-03) based on Initial Study (IS 09-37). The project applicant is RODNEY BARNES proposing a Deviation from Lake County Subdivision Ordinance Road Design Standards for a Tentative Parcel Map. The project is located at 12209 Elk Mountain Road, Upper Lake and further described as APN 002-025-15. Environmental Evaluation: Subsequent Mitigated Negative Declaration. (Mireya Turner)

Mireya Turner, Associate Planner, provided background information and a power point presentation on the proposed project application.

Comm. Levesque asked what the elevations are on the steep sections.

Ms. Turner said on the tentative map has a listing of 2200 to 2600 feet.

Comm. Suenram noted that on the design, 20% is the maximum slope that they are looking at. He asked how far off they are on the turns as far as meeting the standard. He said it was his understanding when a Fire Department gets a call for a structure fire, they respond with a ladder truck and that would be the reason for these minimum centerline radii's, for a ladder truck to be able to access the site, which would enable the proper equipment on an emergency call access the site.

Ms. Turner said she does not have the centerline radii listed out for what is existing.

Comm. Suenram said what is proposed by the engineer does not meet the minimum standards.

Ms. Turner said it is, because they cannot supply staff with plans that comply to the grade standard and the centerline radii standards. She said the applicant is asking for a deviation and requesting to be able to go with what is existing.

Comm. Suenram said if this is approved, would this engineering plan be filed for use down the road if it is ever needed as that.

Ms. Turner said if this deviation is approved, then the plans that are supplied in their current condition would be accepted by the Public Works Department. She said it would also satisfy one of the last outstanding conditions prior to recordation of the parcel map.

9:33 a.m. Opened Public Hearing

Steven Brown, Attorney for the applicant, pointed out in the staff report, that the deviation could affect public services, but the fire protection representatives have reviewed the current conditions of the existing private road and they support the requested deviation, which was an important fact to consider. He said the Surveyor is present to answer those questions and added that his clients request that the Planning Commission approve the recommendation of the Community Development Director, for the reasons that have been provided.

Comm. Levesque asked if this currently is a gravel road.

Mr. Brown said yes it was a gravel road.

Dan Martinez, Surveyor on the project application, said that the plans for this are preliminary in nature and because of the current zoning there is no future road development allowed in this area, because of the low density the County wants to maintain in that area. He said he did not believe there will be any future development or parcel splits, because the zoning law does not allow it.

Comm. Suenram asked if there was a map showing the exact location of the existing road. He asked if you were to access the one property, it would cross the other property, and in this case it does not seem like there are any other options.

Mr. Martinez said yes, the engineering plans have the original and development plans and there would have to be an offsite road dedication from an adjoiner and that is a condition of the parcel map and they are prepared to do that.

9:37 a.m. Closed Public hearing

Comm. Crandell moved, 2nd by Comm. Levesque that the Planning Commission find that the Mitigated Negative Declaration based on Initial Study IS 09-37, which was previously prepared for Parcel Map PM 09-02 meets the requirements of Section 15162(a) of the CEQA guidelines, and therefore find that no additional environmental review need be prepared with the findings listed in the Staff Report dated November 9, 2017.

RECONSIDERATION OF A PREVIOUSLY APPROVED MITIGATED NEGATIVE DECLARATION 5 Ayes 0 Noes

Comm. Crandell moved, 2nd by Comm. Levesque that the Planning Commission find that the Deviation (DV 17-02) applied for by Rodney Barnes, on property located at 12209 Elk Mounty Road, Upper Lake, does meet the requirements of Section 17-31 of the Lake County Subdivision Ordinance, and grants the deviation to modify Condition B2 with the findings in the staff report dated November 9, 2017.

DEVIATION APROVAL 5 Ayes 0 Noes

Comm. Malley noted that there is a fifteen (15) calendar day appeal period provided by the Lake County Subdivision Ordinance.

9:38 a.m. Break

9:47 a.m. Back to Order

9:47 a.m. Public Hearing on consideration of a Deviation (DV 16-01) for Tentative Parcel Map (PM 15-03) based on Initial Study (IS 15-12). The project applicant is PATRICK SMYTHE proposing a deviation from specific requirements of the County of Lake's subdivision Ordinance and modification of conditions for Tentative Parcel Map (PM 15-03). The project is located at 19658 and 19697 East Road, Lower Lake and further described as APNs 012-049-07 and 012-049-10. Environmental Evaluation: Subsequent Mitigated Negative Declaration. (Keith Gronendyke)

Keith Gronendyke, Associate Planner, provided background information and a power point presentation on the project application. He said modifications to certain conditions of approval for Parcel Map PM 15-03 have been deleted, while others have been combined. He said staff recommends that the applicant complies with the Road's Departments requirement in improving East Road to minor road standards along the entire length. He noted the green sheets submitted on December 11, 2017, which the applicant had submitted additional information. He added that the Surveyor had commented on changes to Condition D4 to read: *"Prior to recordation of the final map, an off tract offer of dedication for a public road and public utility easement shall be recorded for the portion of road from Spruce Grove Road to the West boundary of the subject parcel. The portion of roadway through parcels two and three to the East line of parcel two shall be offered for dedication as a public roadway and public utility easement on the final map. In addition, the portion of roadway through parcel three to the north boundary of parcel one, shall be offered for dedication. The width of the dedication at 50 feet and provisions for an approved turnaround will be provided at the end of the dedication."* Mr. Gronendyke said that would be for the portion of the existing driveway that goes through parcel one, where the driveway starts to the required turnaround. He said if the parcel was sold, there would have to be a public right-of-way to it.

Comm. Hess asked how the information presented to the Commission fits into the additional information received from Mr. Smythe, in terms of the work he has done on parcel three, the deeds and additional costs he has incurred and how does it fit as an overlay from what has been presented today.

Mr. Gronendyke said Mr. Smythe has done some grading on the road to widen it to minor road standards, but it would still need a gravel surface. He said Todd Mansell, Lake County Department of Public Works Special Project Engineer, and Gordon Haggitt, Lake County Surveyor are here to answer questions.

Gordon Haggitt, Lake County Surveyor, addressed the public dedication and reviewed the history of this dedication requirement. He said it was not until 1974 that the County required dedications on parcel and final maps. He said public dedication is to allow for the person who is developing the property and future owners of the lots along with adjacent parcels to have an unimpeded access to their property, without having to deal with the issues that go with private easements and gates and there are many issues to be addressed with private easements. He said the idea of a public dedication was so that law enforcement and any County personnel would have to access the property without having the right to fight for that right.

Mr. Haggitt spoke to the off-track dedication, which does create a problem in this case and other cases for allowing development of a property, because if there is a property owner/neighbor, who is not willing to give that public dedication, then the project will sit and not move forward. He said the current status is the way the ordinance reads and staff has to decide if the ordinance should be changed, revised or continue on with the way it currently reads. He said if it is revised, staff needs to protect the interest and the spirit of what the original intent was.

There was further discussion between the Planning Commission and staff with reference to parcel divisions and concerns with the properties to the east where the easement continues and future decisions to be made with the roadway if the property is developed.

Mr. Haggitt said there may be a way to address public dedication fashioned around a gated community and it will take legal counsel and research to make sure all the bases are covered. He said it is a possibility, but there still needs to be an offer of dedication for the public roadway to be made separate from the public utilities and offer the right for law enforcement and government agencies to have the right to use the roads.

Mr. Haggitt said the Board of Supervisors, basically rejects the offer of dedication to allow the public to use the road until such time as the existing gate comes down. He said if the gate is left open for a period of 30-60 days, East Road would automatically become a public thoroughfare, but until that time it remains a private gated community. He said the offer has to be made and all the property owners or any lenders would have to consent to it as well, which is a process. He said a public dedication is there to protect everyone and there could be language to address a gated community type of public dedication and noted that this is different, because there are three separate properties being proposed with the Parcel Map application.

10:15 a.m. Opened Public Hearing

Patrick Smythe, property owner, provided background history of this proposed Tentative Parcel Map. He said if there was a fire or an emergency, he would want the Fire Department and Sheriff to be able to access the site. He said he does not want public access and that was the whole reason for the gate.

Comm. Hess shared his concerns with public safety issues and spoke to taking this kind of action and granting this deviation, even though staff sounds conflicted on whether it creates a special privilege or not, and asked if this does not create a broader precedent countywide, in terms of how these minor roads get treated versus leaving them the way they are.

Todd Mansell, Lake County Department of Public Works Special Projects Engineer, said that this would set a very dangerous precedent granting this. He said he has worked with developers and property owners for thirty years on this subject and it can be difficult when someone wants to purchase a property and they do not have public right-of-way to a publically maintained road. He said if you do not have public right-of-way, then you cannot divide your property. He said this is a land division creating a new parcel with more traffic and houses, and he has never seen a deviation for this public right-of-way dedication or the road standards. He said there have been hundreds of parcel maps and sub-divisions done in the County where you have to get off-tract dedication and improve the road to fire safe standards and County minor road standards to get to the property and new parcels. He said it is what you have to do if you want to divide your property and if you cannot do it, then you cannot divide it, it is that simple.

Comm. Malley asked Mr. Mansell about the two property owners to the west of the applicant on Spruce Grove Road.

Mr. Mansell said there is a sixty-foot easement that is not a public right-of way and property beyond that, you cannot divide it unless you can get the property owners to agree to make an offer of dedication.

Comm. Malley said it was his understanding, that it is already divided and there are two parcels there now.

Mr. Haggitt thought those parcels were divided back in 1960-70s into forty-acre parcels.

Comm. Malley asked if it was okay in the 60-70s, why it was not okay now and what is causing staff to say that that this needs a deviation, when it is already there in existence. He asked what the trigger is now.

Mr. Mansell said it was done before the Subdivision Ordinance went into effect. He said what triggered it was the land division application by Mr. Smythe.

Comm. Malley stated when the applicant originally brought this to us, the division was not part of the plan.

Mr. Smythe said the original parcel map has three lots on it and road issues were discussed two years ago. He said at that time the Commission declared that the road could be private and no reason for a public easement. He said there was not any discussion about public dedication and in Section 21.3(1) of the Subdivision Ordinance, it has a right-of-way with an easement agreement and no public dedication. He said an easement is a document that allows parcel owners to go access their properties and currently there are three parcels in its current configuration, the two that he owns and his neighbors to the east. He said they all have the same rights and access to East Road and he has a legal right to go through his neighbors parcels. He said he does not have a legal right to change that road.

Mr. Haggitt referenced section 17.21.3 out of chapter 17 of the current LC Subdivision Ordinance.

Comm. Hess asked why staff felt the granting of the deviation would not in this case create a special privilege. He said at one point in the report it seems that it does, but when it comes to the recommendation staff finds otherwise.

Mr. Gronendyke said that staff has altered some of the other conditions of PM 15-03 that Mr. Smythe wanted changed and that is why staff feels if he did that, then staff could honor the deviation, however staff still wants the off-tract dedication of the road, and the improvement of East road to minor road standards.

Comm. Hess asked if it was staffs opinion in doing the deviation this way, it does not set a broader precedent.

Mr. Gronendyke said no, because he would still have to comply with the Subdivision Ordinance, which is the overlying factor in this and it would not set a precedence, because he would not be getting the deviations that he is requesting, but he is getting some allowance for other conditions of approval from the parcel map.

Comm. Malley asked County Counsel, as far as legal precedent, what she believes as staff has said, that this is not truly a deviation.

Shanda Harry, Deputy County Counsel, said that is more of a factual decision for the Commission to make, but as long as the Commission, as a body, states what the factors are that make this situation unique, it would not create an overall precedent for this type of situation. She said land has unique factors to it that can easily make it difficult for some parcels to comply with every ordinance or that type of thing and you can state that because of this impossibility or difficulty, then a deviation in this particular situation could be warranted, which means that it would not necessarily create a precedent as long as you make that statement on the record for this particular parcel.

Comm. Hess said he would be more comfortable moving ahead knowing that the Commission was not today creating a precedent for the County, that would be an ongoing can of worms for many people for many years, and if that is the way to address that issue, that makes it possible for him to see a path forward.

Michalyn DelValle, Principal Planner, said that staff would like to bring the Commissions attention to the recommended additions/changes listed in attachment 8, specifically condition D4 prepared by staff. She said if the Planning Commission decides to make alterations to those conditions, this is the document that staff would like to discuss.

Mr. Gronendyke said this would be for including the driveway as an offer of dedication. He said the applicant has reviewed the changes that staff has proposed.

Mr. Smythe said that he does not support creating a public road on his private property and felt there was no need for it. He said he will work on some kind of language that says the public services for fire and police access has a right to use it, which makes sense, but does not want the general public using the road.

Comm. Suenram asked Mr. Smythe if the neighbors to the west would be more inclined to allow public services and not the general public.

Mr. Smythe said he supports their findings, that it is their road and have the right to gate it.

Ms. Harry stated that the Commission has several options to deny, or accept with new parameters suggested by staff and also send it back to staff to bring back at a later date to work out these issues beforehand, if the Commission feels there is not adequate information at this point to make a decision.

Comm. Malley thought he had enough information, but did not know if the applicant is going to be happy with the amount of information he has, if he is not willing to go along with the new stipulations, which staff wants and it would have to go back for more discussion. He said if the applicant does not agree with the stipulations that staff has imposed, then he suggested that this item be postponed, so that the applicant can discuss with staff further options. He said if Mr. Smythe is comfortable with what staff is proposing as conditions in the staff report, then he thought a decision could be made today.

Mr. Smythe said he has tried to work this out beforehand, but his thoughts would be to eliminate public access and if staff can come up with some language that allows for emergency services access, he would be fine with that and it may in fact have to be postponed. He said he understands what is trying to be accomplished and does not necessarily disagree with it, but the public wording is inaccurate for situations like this.

Comm. Malley asked staff about the proposal being worded as such that arrangements be made with a keyed gate/crash gate for emergency vehicles to be allowed.

Mr. Gronendyke said the issue here is that this road services other parcels that are not associated with this parcel map. He said there will have to be approvals from the other parties involved, which is the issue here.

Comm. Malley said they have this agreement on the gate and he did not know if it was the applicants problem to worry about the first two property owners off of Spruce Grove Road as to what they are going to say about any decision the Commission makes on the applicants parcel. He said he would assume that the others would go along with emergency services having access. He said the Commission could stipulate that the applicant put a gate at the edge of his property, after he gets 800 feet off of Spruce Grove Road, but he wondered if the Commission could make a provision that would require him to do that. He said they did not ask permission for the gate that is already on Spruce Grove Road.

Mr. Gronendyke said when someone wants to put a gate at their driveway there needs to be a Knox Box for Fire Department and Sheriff access.

Mr. Smythe confirmed that there is a Knox box on the gate now.

Comm. Malley said there is nothing the County can do to force a property owner to sign off on an easement agreement.

Mr. Gronendyke said if someone did not want to sign off on an easement agreement then the parcel map could not move forward, because they would have to have access it in some way.

Mr. Haggitt said the off tract dedication being addressed by a gated community in this situation would be a new spin on the way that the gated community dedication was meant to be, because there are three or four different property owners outside of the division. He said the access would have to be addressed and he could not see a way around the offer of dedication being made in some form.

Mr. Haggitt said if it is a gated community, language might be able to be worked out to protect the last property owner, because in this situation, one of the things they have to consider is what is going to happen if that last property owner wants to do a development. He said part of the problem is the current road easement was designed for the forty-acre parcels, and now these forty-acre parcels are being divided into three to four parcels, so you are creating a scene where more people would be involved in this at some point, and unless the County does not have some kind of offer of dedication from all the owners involved, someone will contest that old recorded 60 foot easement agreement. He thought they were setting people up for potential future law suits and that is one of the reasons for the public dedication, to avoid fights over private easements.

Ms. DelValle suggested a break to discuss various types of dedications with Mr. Haggitt.

Comm. Levesque said he was wrestling with the idea where this isn't someone circumventing the rules to benefit anybody in this situation. He said as he understands it: "It is a subdivision and regulations to subdivide are that you have a public right-of-way for that road, so if we were to do anything other than that, we are setting a precedent, whereby you do not have to meet that stipulation for that subdivision." He said: "We are trying to change the rules in the middle of the game."

Ms. Harry asked for a break so that she could speak with Mr. Haggitt specifically on the use of terminology.

10:50 a.m. Break

10:57 a.m. Back to Order

Mr. Smythe said in the parcel map section there is not any language that says public dedication, and it only says division of land under this section shall provide a fifty-foot minimum width right-of-way easement together with an irrevocable offer of dedication for access over properties outside the land covered by the parcel map or waiver or the nearest public road. Mr. Smythe also said in the parcel map section in the Subdivision Ordinance that it says nothing about public right-of-way, only an easement dedicated right-of-way is required, which he thought has already been established.

Ms. Harry said what she was looking for was in section 17.22 of the Subdivision Ordinance, which requires a dedication for a public utility and any public use shall be offered for dedication. She said it is more complex that the Subdivision Ordinance is requiring a dedication for a public utility or any public use. She said we have been talking about it as a dedication for access but farther in, it requires a dedication for public utility and public use and she wanted to clarify the terminology that is being used.

Comm. Malley asked if the subdivider is required to have public access through the property and is it going to a park or to another piece of property.

Ms. Harry said her understanding is because this is not a gated community, this is a community with a gate and there is a difference which the public use easement would make it a public road and asked Mr. Haggitt if that was correct.

Ms. Haggitt said yes it is correct.

Ms. Harry said the way this is worded, because it is not a gated community, this would then make it a public road and this dedication requirement, that the Subdivision Ordinance requires it to be a public road and to add some clarity to this, it has come up in several other situations, where you have locked parcels that are trying to be subdivided and to be clear, it would be a deviation from the rules to grant this application.

Comm. Malley said he is confused by the gate discussion.

Ms. Harry said there has been some examples discussed, and this is allowed in gated communities, which is a legal definition that allows different things. She said this is not a gated community, it is a community that put up a gate.

Comm. Malley asked if you could put a gate across a public road.

Ms. Harry said no, not without a lot of permits and there are none connected with this gate.

Comm. Malley said this is not currently a public road, it is an easement/private road at this time. He said: "Because of this subdivision, which we are looking at, it needs to be a public road."

Mr. Haggitt said yes, according to the Subdivision Ordinance.

Comm. Suenram asked staff about the gate being left open or taken down for a certain period of time.

Mr. Haggitt said the way the language is worded for the gated community, the offer has to been made on the subdivision map itself, where the owner offers for dedication the roads as public utility easements and there is another provision for the right of access for public agencies; law enforcement and welfare to have the right to use the roads. He said those offers are made on the map itself and also all the adjacent property owners acknowledg that. He said any lenders/banks also have to make that offer and sign a similar acknowledgement on the parcel map that gets recorded.

Mr. Haggitt said typically the Board of Supervisors will accept the offer of the dedication of a public utilities dedication across the roads to allow the infrastructure to be put in, but they reject the offer of dedication of the roads for public use and they insert the caveat

that until such time as the gate is left open for a period of 30 to 90 days, then automatically East Road would become a public right-of-way for use by the public.

Mr. Smythe said the section that Mr. Haggitt is referencing is Section 21.13, in the Subdivision Ordinance, that streets intended for the exclusive use of owners of the subdivision, their licensees, visitors, tenants and servants may be shown as a private road provided:

- A. Provision is made for continuing maintenance of said streets,
- B. Said streets are designated and improved in accordance with the standards of this chapter,
- C. Intent of private use should be shown as provisions for keeping said street physically closed to travel by the public at all times or by adequately posting a private street.

Mr. Smythe said this is the piece he is talking about, the final map shall contain an offer of dedication, which may be accepted by the County at such time the street shall cease to remain physically closed or posted and shall have been open to public travel for a period of not less than three months.

Mr. Smythe said he felt this was designed for larger subdivision and the parcel map section of the Subdivision Act is intended for small things like this and we do not have to go through all this language. He thought we are getting too broad in the definition of what a subdivision is when a parcel map seems to define that as a much smaller piece a division of land, three parcels or less.

Comm. Malley asked staff if they agreed with the characterization of what the applicant just made.

Mr. Gronendyke said he thought the Subdivision Ordinance deals with either parcel maps or subdivision maps. He said subdivision regulations, which does include subdivisions of five or more lots or parcel maps, which create four or fewer lots.

Comm. Hess asked Mr. Smythe if he would be prepared to do all the work on the road in which the section you just read from requires.

Mr. Smythe said all they would have to do is bring it up to the minimum standard. He said it is already graveled and they would have to have discussion with the County as far as what they would like to see for the gravel to go further up the road. He said they already improved the first 900 feet of the road, which cost \$17,000. He said it is a fair amount of money to do it and it already has a gravel base. He said they could make a provision to put more gravel base down and he could put this provision on his parcel map for public dedication, but it will not solve their problem that he has with his neighbors to the east. He said in the ordinance he is granted the deviation due to title restrictions and he does not own title to those properties to the east, so he is restricted from doing any of this road improvement work, because of the title restrictions, and if he faces that problem, that he can be granted his deviation.

Comm. Levesque asked if this would apply to the portion of the road that is on Mr. Smythes property.

Mr. Haggitt said the idea with the provision in the parcel map is that there is public dedication, within the division itself to each created parcel so that there are basically no questions as to fights over gates and private easements. He said that is the spirit of what the parcel map dedication is for and the subdivision map allows for the gated community provision so that roads are private and there is no public access to these roads.

Mr. Haggitt said in this particular case: "All the property owners out there are not opposed to having the gated community/public easement, the way the current ordinance is written and the development of your property is not necessarily your right, it is a privilege." He also said language can possibly be rewritten to address these certain situations, but the way things are currently, he did not know how you could get around not making some kind of an offer of dedication.

Mr. Smythe said that any future landowners have the same rights to use East Road, and if this is the Commission's intent, then the easement rights granted with those parcel sales, would be irrevocable, and he did not see what any public right-of-way had to do with those irrevocable rights of an easement.

Comm. Malley said the problem that he is seeing is the amount of time that has passed between the time the original parcels were subdivided and the current state of affairs and laws that are in existence now. When Mr. Smythe is trying to add another parcel and split it again, he is subject to the laws and regulations that are in effect today, so by trying to create another parcel from his two parcels, he is in effect bringing today's requirements upon himself.

Mr. Smythe agreed with Comm. Malley, but thought the section in the Subdivision Ordinance was cloudy and unclear.

Ms. Harry said that you have to read the ordinance in order for relevance.

Mr. Mansell said there is still an issue of the existing twelve-foot road, between Mr. Smythes property and Spruce Grove Road. He said it is only a twelve-foot wide gravel improved road and the Subdivision Ordinance clearly states that parcels burdening an existing road need to be improved to minor road standard to the nearest publicly maintained road. He asked how fire trucks are going to get into these parcels as the property owners are trying to evacuate, and that is one of the problems here.

Comm. Malley asked if it was Mr. Mansell's contention that in order for Mr. Smythe to move on that he has to have that worked out with the two property owners who own that section of land.

Mr. Mansell said yes.

Mr. Smythe said he was willing to enter into something that has dedication for the roads as long as the public access part of that is taken out. He asked if condition D4 could be modified to take the public dedication out of the conditions and to modify it to say that public services has the right to access the road at any time, but not the general public. He added, if nothing is done the road remains the same as it is and he can do a Lot Line Adjustment.

Comm. Hess asked if Mr. Smythe was familiar with all the conditions in attachment 8 and if the Commission were to act on this today, East Road would need to be improved to a minor road standard.

Mr. Smythe was a little bit unsure of exactly what the County was looking for and the road already has a gravel base and is already an existing road.

Mr. Gronendyke said it was a twelve-foot wide gravel surface now, which is not nearly wide enough as Mr. Mansell stated and it is not built to minor road standards.

Comm. Suenram asked for clarification of the 800 foot section of the road that the County wants to have upgraded and the fact that Mr. Smythe cannot do it, because he does not own it and he cannot dedicate that piece of the road, without the property owners consent. He said without those property owners here, he felt they are going in circles discussing that portion of the road.

Comm. Malley said: "Without Mr. Smythes having some kind of an agreement with the neighbors about upgrading the entire road, it means he cannot move forward until he gets that agreement. He said if the Planning Commission says one of the conditions is that the road has to be upgraded, then it is incumbent on Mr. Smythe to get a hold of the property owners to get a letter of agreement to bring the road up to whatever standards are required." He pointed out that there is a sixty-foot easement requirement.

Ms. Harry said: “Before it is subdivided it requires a dedication and the applicant is not the only one to make the dedication.”

Comm. Malley said if they refuse then it cannot go forward.

Comm. Suenram said it would be in Mr. Smythes best interests to look at the other option that Mr. Haggitt mentioned and discuss it with the other property owners and hopefully, come back with a solution.

Ms. DelValle said even the option that Mr. Haggitt is recommending, still requires a dedication.

Mr. Smythe said the only thing he had in the terms and conditions is that they want a biological study of the wetlands and he felt it was a waste of money and not necessary. He said he built a winery building there and it has a fifty-foot setback from the vernal lake on parcel one and two, not parcel three. He said he does not own the entire lake and it would be a half of a study and felt it would be a waste of time and money.

Comm. Malley asked why a study was not completed at the time the building was constructed.

Mr. Smythe said there was not a requirement when it was done in 2014-2015.

Mr. Gronendyke said there was not any CEQA done on the Minor Use Permit and that is why staff is requiring it now. He said staff has come up with a recommended change for condition D4 of the use permit conditions to read: ***“Prior to recordation of the final map, a fifty-foot wide conditional offer of dedication and public utility easement shall be made, which may be accepted by the County at such time as the street shall have ceased to remain physically closed or posted and shall have been made open to public travel for a period of not less than three months or East Road from Spruce Grove Road to the west property boundary of parcel two. Provisions of keeping and across the driveway access from East Road on parcel three to parcel one, provisions of keeping East Road physically closed to travel by the public at all times, followed by adequate posting as a private street shall be made.”***

Ms. DelValle asked Mr. Haggitt if condition D4 would allow East Road to continue to be used as a private road.

Mr. Haggitt said yes, if you went under the gated community concept, the public utility easement along the shown roadways would be accepted.

Ms. DelValle said East Road and the access road to the property lines between parcels three and one would remain private considering they meet all the other criteria.

Mr. Haggitt said yes, and that applies to subdivision maps and it will take some research and input from County Counsel to see if and how this is going to apply to a minor division, because you have other parties using that road.

Ms. DelValle said staff will not be able to make that recommendation today and it will need to be brought back.

Comm. Levesque noted that other property owners would need to agree before this could be completed.

Mr. Gronendyke said the issue is there are separate properties owned by separate parties that is the issue.

Ms. DelValle said staff has processed parcel maps in the past and there is a condition that they have to meet that requires an offer of dedication in order to record the final map. She added that it is not a requirement to get permission from the surrounding property owners, before it is brought to the Planning Commission, but it is something they have to do before the final map can be recorded.

Comm. Hess said a property owner could object when it is before the Planning Commission.

Ms. DelValle said yes. She said that the tentative parcel map can be approved without the surrounding property owner's permission at this time and there will be condition that Mr. Smythe has to obtain their approval before the final map is recorded.

Mr. Gronendyke clarified that all property owners within 725 feet of the applicant's property lines were notified of this parcel map and the deviation requests.

Mr. Haggitt said the neighbors would have to record a separate irrevocable offer of dedication prior to or concurrently with the parcel map. He said the Board of Supervisors would have to accept whatever the terminology would be the same as what is stated on the parcel map, so the off-tract dedications do not show up on the map itself, thereby a separate instrument that gets recorded would need to be written up.

Comm. Malley clarified that what is being talked about is the two properties to the west off of Spruce Grove Road, and if the neighbor on the east property line of Mr. Smythes property decides he does not want to sign off and make it a public access to his property he does not have to.

Mr. Haggitt said that is where the twist comes in a community concept and it will take some research and legal advice because the way the gated community dedication is written is, that it still a private road until the gate comes down and remains open for a period of at least three months and the public has access. As such, anything past that gate is private until the gate comes down. He said anybody beyond that is going to be hamstrung until the gate comes down and it becomes public access, because they basically are behind that and they currently have a deeded easement which allows them access to their property, but if they ever wanted to develop it, it could become a problem for them.

Ms. DelValle said either way the Commission would like to go, it sounds like they will still need to do the dedication, which requires the approval of the property owner on Spruce Grove Road.

Mr. Haggitt said the way the Subdivision Ordinance is written he did not see any way around it.

Mr. Smythe requested that his parcel map runs out May 2, 2018 and formally asked for an extension of six months, to work out whatever needs to be worked out.

Ms. DelValle said he will have to apply for a parcel map extension, which also would be brought back before the Planning Commission.

11:40 a.m. Closed Public Hearing

Comm. Crandell asked if there are other situations that would have a similar type of hindrance or a problem, if the public found out that this application was passed, if others would then come forward and say that they wanted to do this too.

Mr. Mansell said yes there are other situations.

Comm. Hess said should the person to the east want to develop, they would essentially revisit the same issues as Mr. Smythe.

Mr. Haggitt said if they wanted to divide the property, they would be subject to the same conversations as Mr. Smythe.

Comm. Suenram said if this item is approved, then the east property owner would become part of this application.

Mr. Haggitt said that property owner would have to agree to it and this would replace the old easement description that was done by the developer back in the 60-70s. He said if everyone that used that road got on board with specific language for addressing the access to future developed parcels, then it will make it a lot better for everyone.

Comm. Hess said the options before us is to still make a subsequent negative declaration finding and a deviation motion would be made, which would include the revised condition D4, that was just read or the deviation request can be sent back for more discussion between the applicant and Planning Staff or deny the deviation. He said personally he does not want to deny the deviation, but to encourage ongoing conversation or to move with the option that Ms. DelValle has developed.

Comm. Malley said what Ms. DelValle has suggested is a good start and there is going to be some discussion still, and did not know if the Commission would want to force that situation and then come back and redo some decisions or just send this on for more discussion before a final determination is made. He said he would like to see it come back and finish it as quickly as possible so the applicant can know where he stands. Mr. Smythe has to figure out how to get his neighbors on board. He did not know what the legal determination is as far as CEQA kicking in on this whole situation and if it was not done before, why are we requiring to do it now.

Mr. Gronendyke said there was no vernal pool wetland delineation done previously, so we do not know where the edge of the wetland area is, so that is why the need to protect that area from development.

Comm. Malley said when he was allowed to build a building a couple of years ago, staff did not know there was a vernal pool there.

Mr. Gronendyke said they did not require a wetland delineation like that from the applicant, for what reason he did not know and the winery application was found to be categorically exempt.

Comm. Levesque said they are not going to make him pull that building down, but if there is new construction, he would have to come in for a permit anyway, so it would be covered at that point.

Mr. Gronendyke said it really has to do with parcel two.

Comm. Levesque said his thoughts are if we approve the deviation, it has language in there that will require the property owners to the east and the west to have to approve it, and Mr. Smythe is pretty sure that is not going to happen, so we are basically approving something that is unlikely to move forward anyway, which seems like under any circumstance we are going to get to hear this again, so it does not do Mr. Smythe any good if we even approve it because he cannot do anything with it.

Comm. Malley said Mr. Smythe thought he could get the neighbor to the west on Spruce Grove Road to agree and whether the east neighbor does or doesn't, it should not affect this project. and if easterly property owner does not develop, then Mr. Smythe will not have to worry about it.

Comm. Levesque said as staff was saying the easterly neighbor has to buy into the gated community concept the way it is written.

Mr. Haggitt said the terminology on the dedication from everybody before you get to the far east parcel is going to have to be such that it addresses future development for that guy, if that is what we want to do and if he does not care about future development then we don't want to feel it is our right to protect rights to develop, then you are just concerned with parcels to the west of Mr. Smythe.

Comm. Malley said if the east neighbor decides he does not want to go along and sign anything, he does not have to, and that should not affect whether or not this agreement goes through or not.

Ms. Harry said it would be because he is part of the gated community and it would require the neighbor to the east to buy in, because we are putting that under a gated community concept.

Mr. Haggitt said it will have to be worded as such that he is not prohibited from developing his parcel, he will always have access by virtue of that old agreement, unless someone wants to contest the validity of that and he has always had it and has always used it under that concept.

Comm. Malley said if he decided tomorrow to apply for a building permit, he could do that the way it sits right now.

Mr. Haggitt said if planning staff is comfortable with the access.

Comm. Levesque said as he understands the gated community concept, it has to apply to everyone who is affected by the gated community. He said the neighbor to the east will have to agree to public access if the gate ever comes down and if it did, he would have to grant public access and Mr. Smythe says there is no way he is going to do that.

Mr. Haggitt said everyone who has the right to access that road, off of Spruce Grove Road is going to have to be brought into the mix here and be made aware of all of the conditions and stipulations that apply to them.

Ms. Harry said what we are trying to do is impose a gated community concept so the road can remain private. She said it would require buy-ins for all the people who will be affected by that road, which would include Mr. East versus making the road public is what was being discussed to begin with, so either way, whether we have this condition or we use the other conditions, there would be a requirement for the other parties who own property in this area one way or the other to be approved of to be involved with the dedication and/or the gated community situation.

Ms. Harry said it can be approved with these conditions, but either conditions that we go with, will still require that the applicant makes sure that his neighbors are in agreement one way or the other, so that is where the situation comes in, so you can approve this with this condition, it is perfectly appropriate, but it doesn't become approved or recorded as a parcel map until that dedication and/or agreement to be a gated community is approved by all parties.

Comm. Malley felt no action should be taken today and he also said let this go to some discussion between the property owner to contact the other three landowners and see if there is any way to move this forward, if there is going to be a requirement on there that all three of them have to agree with him then it should be worked out ahead of time. He said he did not think staff should spend time on developing alternatives until we know for a fact that Mr. Smythe will be able to move forward.

Mr. Smythe requested from staff a draft proposal of what their agreement language is so that he can present that to the neighboring property owners and, that if he gets this dedication, it will approve the deviation through their property so he will not have to widen the road through their property.

Ms. DelValle suggested continuing this item to the January 25, 2018 Planning Commission Hearing at 9:05 a.m.

Comm. Malley advised Mr. Smythe to confirm with the planning department about making the extension request at the same time and confirmed the continuance of this item to the January 25, 2018 hearing at 9:05 a.m.

12:00 p.m. Public Hearing on consideration of a Minor Modification (MMM 16-04) to a Tentative Parcel Map (PM 15-15) based on Initial Study (IS 17-26). The project applicant is LINDA GARNHART proposing to amend the previously approved tentative Parcel Map to reduce the

number of resulting parcels from three parcels to two parcels, +/- .22 net acres each. The project is located at 15657 Armstrong Street, Middletown and further described as APN 024-454-03. Environmental Evaluation: Negative Declaration. (Mireya Turner)

Mireya Turner, Associate Planner, provided background information and a power point presentation of the proposed project application.

12:05 p.m. Opened Public Hearing

Steve Bella, Conser Land Surveying, stated he was present for any questions that the Planning Commission should have.

12:05 p.m. Closed Public Hearing

Comm. Hess moved, 2nd by Comm. Crandell that the Planning Commission find that on the basis of the Initial Study IS 17-26 prepared by the Planning Division that the minor modification to Tentative Parcel Map PM 15-15, MMM 16-04 as applied for by Linda Garnhart will not have a significant effect on the environment and therefore a negative declaration shall be issued with the findings in the staff report dated December 14, 2017.

NEGATIVE DECLARATION 5 Ayes 0 Noes

Comm. Hess moved, 2nd by Comm. Crandell that the Planning Commission find that the Minor Modification (MMM 16-04) to Tentative Parcel Map (PM 15-15) applied for by Linda Garnhart on property located at 15657 Armstrong Street, Middletown, is in conformity with the provisions of the Subdivision Map Act and Chapter 17 of the Lake County Code and upon that basis, approve said map subject to the conditions and the findings in the staff report dated December 14, 2017.

MODIFIED TENTATIVE PARCEL MAP APPROVAL 5 Ayes 0 Noes

Comm. Malley noted that there is a fifteen (15) calendar day appeal period provided by the Lake County Subdivision Ordinance.

12:08 p.m. Public Hearing on consideration of a Lakebed Encroachment Permit based on Initial Study (IS 17-32). The project applicant is RANDALL LEWIS proposing the construction of piers, gangways, a swim platform, and a boat lift with 10 pilings. The project is located at 2055 Westlake Drive, Kelseyville and further described as APN 044-171-09. Environmental Evaluation: Mitigated Negative Declaration. (Peggy Barthel)

Peggy Barthel, Assistant Resource Planner, provide background information and a power point presentation on the project application.

12:10 p.m. Opened Public Hearing

No one present wished to speak.

12:10 p.m. Closed Public Hearing

Comm. Suenram moved, 2nd by Comm. Levesque that the Planning Commission find on the basis of the Initial Study (IS 17-32) prepared by the Planning Division and the mitigation measures and conditions of approval which have been added to the project, that the Lakebed Encroachment Permit as applied for by Randall Lewis will not have a significant effect on the environment and therefore a mitigated negative declaration shall be issued with the findings listed in the staff report dated November 30, 2017.

MITIGATED NEGATIVE DECLARATION 5 Ayes 0 Noes

Comm. Suneram moved, 2nd by Comm. Levesque that the Planning Commission find that the Lakebed Encroachment Permit applied for by Randall Lewis on property located at 2055 Westlake Drive, Kelseyville does meet the requirements of the Clear Lake Shoreline Ordinance and that the Planning Commission has reviewed and considered the Mitigated Negative Declaration which was adopted for this project and the Lakebed Encroachment Permit be granted subject to the conditions and with the findings listed in the staff report dated November 30, 2017.

LAKEBED ENCROACHMENT PERMIT APPROVAL 5 Ayes 0 Noes

Comm. Malley noted that there is a seven (7) calendar day appeal period provided by the Lake County Zoning Ordinance.

1213 p.m. Public Hearing on consideration of a Major Use Permit (UP 16-10) based on Initial Study (IS 16-26). The project applicant is VERIZON WIRELESS – EPIC WIRELESS proposing a sixty-five foot tall mono-pine tree foliage wireless communication facility, with nine panel antennas, two six-foot microwave dishes and ancillary equipment, contained within a leased area of approximately 875 square feet with a six-foot chain link fence accessible from a twenty-foot wide gated non-inclusive utility easement off of Little Peak Road. The project is located at 15447 Spruce Grove Road, Hidden Valley Lake and further described as APN 013-060-05. Environmental Evaluation: Mitigated Negative Declaration. (Continued from October 26, 2017) (Mark Roberts)

Mark Roberts, Associate Planner, provided background information on the project application. He noted a letter dated November 30, 2017 from Andrew Lesa, project applicant requesting a continuance of this item to a time and date certain, to allow Verizon Wireless to shift the site location slightly downslope on the parcel, which would help to reduce the visibility from certain vantage points and limit soil disturbance on the property.

12:15 p.m. Opened Public Hearing

No one present wished to speak.

12:15 p.m. Closed Public Hearing

Comm. Malley confirmed the rescheduling of this item.

12:15 p.m. Break for Lunch

1:32 p.m. Back to Order

1:32 p.m. Public Hearing on consideration of a Major Use Permit (UP 17-05) for Specific Plan of Development and Tentative Subdivision Map (SD 06-01), prior projects GPD 06-01, GPAP 06-02, RZ 04-23 and Certified Final Environmental Impact Report (FEIR) based on Initial Study (IS 06-11). The project applicant is KIMCO DEVELOPMENT proposing a planned residential development of approximately 380 detached single family homes, three-acre medium density residential parcels having a density of up to fifteen units per acre, two and one-half acre multi-family residential care and/or assisted living facility, and approximately 31 acres of commercial development. A Major Use Permit is also required for Subdivisions of land that include more than three parcels within the Floodway Fringe Combining District. The project location is 18196 & 18426 South State Highway 29, Middletown and further described as APNs 014-260-36 & 014-260-51. Environmental Evaluation: Certified Final Environmental Impact Report. (Robert Massarelli)

Robert Massarelli, Community Development Director, provided background information and a power point presentation on the Valley Oaks Tentative Map and Specific Plan of Development.

- Overview
 1. Procedures
 2. Entitlements
 3. Tentative Map
 4. Specific Plan of Development
 5. Requested CEQA Amendments
 6. Background
- Major issues
- Review summary
- Staff recommendations

2:26 p.m. Break

2:35 p.m. Back to Order

2:35 p.m. Opened Public Hearing

Fletcher Thornton, Middletown resident, spoke to the Middletown Unified School District and said they are in trouble, due to lack of revenue from taxes and a drop in population, because of the fires. He said businesses in Middletown are constantly going out of business, because there are not any people or houses available. He said he understands the problems facing the Community Development Director, and it is his job to point out dangers in subdivision applications, but South County needs the Planning Commissions help to get this County back and running to where people want to live. He pointed out that there are parcels in Middletown with travel trailers on them, waiting for their houses to be rebuilt. He asked that the Commissioners approve this much needed subdivision.

Melissa Fulton, Lake County Chamber of Commerce CEO, said this project has been in the works for a decade now. She referenced the lengthy 400 page staff report and realized that there are rules, restrictions and requirements at every level, however agreed with Mr. Thornton that homes are needed in Lake County. She said in fairness to everyone, this meeting should be continued and started in the morning so that everyone gets all of the information in one day. She pointed out that she or her governmental affairs committee have not the time to review a 400 page staff report. She said this is a very important project for everyone and it will impact the entire County and it deserves the amount of time it will take to go through this. She urged the Commission to continue this item to a date certain.

Jack Lair, Middletown resident, said he served on the Middletown Area Plan for seven years and this project was prevalent at that time. He said his concerns are that housing is a big factor and Lake County residents rely on commuting to Napa and Santa Rosa to generate a wage they can survive on. He said there is a big need for housing and Lake County is affordable and we currently have a low vacancy rate. He said we need the housing to bring people here.

Mr. Massarelli said he understands the need for housing in this County and this project has up to 380 homes and this review is to get it in compliance with the code so this subdivision can be built. He said he has addressed the issues that need to be done by the code and there is a constant flow of information being handed to him by the developer that needs to be reviewed and evaluated.

Comm. Malley asked the Commission if this item should be discussed in further detail today or come back at a later date for a Special Hearing.

Comm. Hess asked about the possibility of a Special Hearing just on this subject rather than cramming it into an already existing Planning Commission hearing. He said his

preference today, would be to not stick it out until the end of the day, because of the Middletown Area Plan scheduled for later in the evening.

Mr. Massarelli said the General Plan of Development has been approved on this project and there are some conditions of approval that have not been met and there are gaps that have to be dealt with.

Comm. Levesque said everyone would like to approve this and now it is just trying to find a way to do that.

Mr. Massarelli suggested continuing this item to January 4th 2018 at 9:05 a.m., so that a full day can be devoted to this item.

Comm. Levesque announced that he would not be available on January 4th. The rest of the Commissioners agreed to the continuation of this item.

Mr. Massarelli continued with his power point presentation and pointed out a several things to the Commission, so he could get some guidance and the applicant could have a better idea of what they need to have done by January 4th.

Topics of discussion between staff and the Planning Commission were:

- Drainage from the north and elevation issues
- Utilities – under roadway, problematic drainage
- Middletown Area Plan
- Pedestrian friendly
- Town Center and what should it look like (conceptual stages)
- Flooding
- Dam Inundation (Evacuation Plans)
- Environmental Analysis (CEQA)
- Parking
- Specific Plan of Development

Ken Porter, Project Developer, addressed XXII Environmental Analysis (CEQA), which states: *“Since this project is located within the dam failure inundation area for Coyote Creek Dam, and even though the potential for a dam failure at this location is considered to be beyond the realm of reasonable foreseeability, the Director of the County Office of Emergency Services shall review the project development as it relates to evacuation plans on file for the area as required per County standards. If the Director of the County Office of Emergency Services imposes any special requirements as a result of this review, these special requirements shall be followed, as a condition of site development.”* He said this particular mitigation measure the way he reads it, at this point, they are required to do a whole new study and he felt it was beyond the intent of this mitigation measure. He said the dam is going to be in the subdivision report, which all future home buyers have to sign and there will be mention of it in the CC&Rs. He said the dam is monitored every year by the State of California, and there is a warning device on it. He said there is currently a dam study that Hidden Valley is doing and he said that he provided the consultant who is doing the dam study, all their engineering for the downstream channel capacity for water. He said they are trying to work with them for any potential issues that may arise. He said the likelihood of this dam failing according to the EIR is remote and almost beyond the realm of possibility.

Bob Bridges, former Legal Advisor to the Planning Commission, said he still has an active Bar Card and is still a Lawyer. He said he was here as a member of the public today, however Mr. Porter had asked him to review some things, which he found interesting and some of it distressing, but he said for the record he is not working for Mr. Porter and he is here as a member of the public and hoped that he could aid the Commission in making a better decision. He said he was concerned not only about this project, but future projects, like Konocti Harbor Inn, and if they were to reopen again tomorrow, are they going to go through an endless process with a 400 page staff report and that he would never get to go there in his lifetime again. He said he was interested in the future treatment of projects and how they are handled.

Mr. Bridges said he always thought the Planning Commission was a buffer between a zealous and academic staff, who is trying to do what they consider to be the best academic possible result, versus a developer who is in the real world and has to build a project that can make money, is appealing to people and can be sold. He said the Planning Commission has an important role in balancing that, to arrive at compromises and things that were the best overall for the community and not agree with staff all the time or the developer all the time and to come to something, which is fair and legal.

Mr. Bridges said in 1996 the Legislature passed the Permit Stream Lining Act and it was designed to expedite decisions of development projects and to prevent applicants from being subject to protracted and unreasonable delay. He said this project under both state law and the County Ordinance, which he helped draft, there is a provision in there that says when you submit an application, it says: *“The Planning Department shall within thirty-days of the receipt of any application, notify the applicant in writing of the completeness of the application. Failure of the Planning Department to provide such notice, shall be deemed to be acceptance of the application as complete.”* He said if you read the 400 page staff report, the planning department did not respond until forty-five days out and this application was accepted as complete. He said when he hears things like staff wants additional studies, when the planning department did not respond within thirty days, they bought this application the way it is, and they do not have the ability to ask for an endless stream of continuous requests for reports. He said he looks upon it as more of a public relations view of what the world thinks of how we are treating people. He said as soon as this application was submitted, forty-five days later there was this endless stream of application requests and he felt it was frankly out-of-bounds. He said staff can ask for clarification and supplemental information, but as far as the big picture, staff is going way beyond what can be legitimately asked of someone. He said when the developer gets an application that is complete, it is a big deal and they do not have to go through anymore big hoops. He felt that there are giant hoops being thrown at the applicant and the Planning Commission needs to be in control of this behavior that goes on and on.

Mr. Bridges said he has reviewed hundreds of staff reports for huge projects and he has never seen a staff report like this one before and felt it was over-the-top. He said Mr. Porter is being subject to treatment that he has never witnessed before in thirty-six years. He said part of Mr. Porter’s application was for a Vesting Tentative Map, which was accepted as complete, but in the staff report, the word Vesting is gone, that staff has unilaterally decided just to dump, which is part of what Mr. Porter has applied for. He said it was inappropriate to unilaterally change a complete application for a Vesting Tentative Map, and to suddenly call it a Tentative Map. He asked that the Planning Commission keep those thoughts in mind as this process is continued.

Mr. Massarelli said he appreciates Mr. Bridges experience and history with the County, but Mr. Bridges has never met him and does not know him. He addressed the academic and zealous term Mr. Bridges used and said he is not academic and half of his career was on the private sector side and getting projects like this through the permitting process. He said he understands what it takes for a developer to get projects approved. He said the first thing he did as a consultant was to pull out the regulations and go through them item by item to make sure they were complied with. He said if the project did not comply with the regulations the project was changed. He said that he is getting things from the applicant as late as today, changing this project and felt it was impossible for staff to review it. He said it is a 400 page document, because there are so many things that are not addressed per the Code, not meeting the basic fundamental requirements and that is why staff is doing this and he takes an exception of being called an academic and that is not where he is coming from and not how he is dealing with this project.

Mr. Massarelli addressed the Environmental Analysis (CEQA) and he said he cannot find the evacuation plans on file and he does not know what was being referred to in 2007, because it is not clear in the document. He said he spoke to the Office of Emergency Services (OES) Director, and it is Hwy 29 and Hartman Road that are the evacuation lots he is concerned about, because of filling in on the property and the possibility of changing the flood characteristics, as well as the area impacted by the dam if it was to

fail, he wants a study to show it changes, to make sure the evacuation routes are still functional. He said that is a special requirement that the OES Director is placing on this says, it shall be followed. He said he will see if the OES Director can attend the January 4, 2018, Special Hearing, to explain why he wants that condition, which is critical for him.

Mr. Porter said that he does not have a problem with any study that is in place or any requirements, but to prepare this study that they will have to comply with, at this point in time seems like it is not something they should be required to do. He said they have been working on this project since 2004-05 and the EIR was completed two and a half years ago.

Mr. Massarelli said this is a requirement of the Final EIR, and staff sent the FEIR over to the OES Director and he said that a study would be needed to determine the impacts on Hwy. 29 and Hartman Road for evacuation routes.

Comm. Malley said if the Director of OES imposes any special requirements as a result of this review, these special requirements shall be followed as a condition of site development. He said the EIR was already done prior to the OES Director being in his position and it was referring to someone else at the time, and he felt that the OES Director was late to the party.

Mr. Massarelli disagreed, because a good many, if not all of the mitigation measures are in the future when this occurs and we are now at a project development stage, the Specific Plan of Development and a Vesting Tentative Map and that is when it is supposed to occur.

Mr. Porter asked where the evacuation plan is and would like to see it so they know what they are complying with.

Mr. Massarelli said he is interpreting it as there is a lot of things in the FEIR that do not exist anymore or are not clear in what is being said and staff cannot find any evacuation plans that they are referring to.

Mr. Porter said they are not trying to comply with something, they just want to know what they are complying with so they can comment on it.

Comm. Hess said if this was language in the FEIR, stating prospectively, that at the time of project development review certain requirements might be imposed, then it has been laid out there since the FEIR, that it was possible that additional requirements could be imposed by County OES. He said it sounds like what Mr. Massarelli is saying, is that the County OES imposed those special requirements and language is *shall* rather than *may*, which from a legal point-of-view makes it a requirement rather than optional.

Mr. Porter said in respect to the evacuation plan, with Comm. Hess's interruption, someone could argue that we have to build the dam ten-feet higher and fifty-feet wider, because that was an idea that came up after the fact. He said his argument is that it refers to a document that it sounds like was in existence when the DEIR and FEIR was prepared.

Comm. Hess asked if project development was reviewed at that time or was that language put in to address things that were prospective in nature.

Mr. Porter said this language was in the EIR at that time, but whether they did it or not he did not know.

Comm. Hess said they had to address prospective issues the way it is phrased.

Mr. Porter said they did not receive comments from the Sheriff's Department or if there was an OES at that time, there were no comments from them either.

Mr. Massarelli said he could go through mitigation measures 4.8.2(f), the final map of this subdivision shall depict the limitation of the current regulatory flood plan and floodway. He said every one of these mitigation measures are future and it is clearly for Specific Plan of Development.

Mr. Porter asked how his Specific Plan of Development changes the evacuation plan, he said what staff has just referred to, those items theoretically could change once the engineering work is done on it and raise the flat elevation for instance or move some of the channel, which will be addressed at that point in time.

Mr. Massarelli said they need to understand what the impacts are and then come up with the mitigations. He said this is obviously an issue and he would like to have the OES Director present in the meeting on January 4th.

Comm. Levesque said he wants to make sure we have the specificity we need, because it is not about the inundation of the dam, it is about the evacuation plans.

Mr. Massarelli said by filling the property, Hwy. 29 be adversely impacted and can the project be designed to eliminate or mitigate the adverse impacts.

Comm. Levesque said if the dam fails, Hwy. 29 will be under water.

Mr. Porter said technically they are not raising the elevation of the site and it is a balanced cut and fill site.

Mr. Massarelli said this is another instance of inconsistencies and Mr. Porter's Engineer has given him documentation which is not balanced.

Mr. Porter said when information is given and backed up he felt it was no longer an issue. He said he addresses issues when they are brought up, so that they can be addressed to Mr. Massarelli's satisfaction. He said the information that has been given to Community Development is that the site balances and did not know what else could be done.

Comm. Hess asked if it was the developer's fault that no evacuation plan is on file with the County.

Mr. Massarelli said what OES is saying is the evacuation routes are Hwy. 29 and Hartman Road. He said it is the Director of Office of Emergency Services issue and he will ask him to be present at the next hearing.

Comm. Malley said coming out of the subdivision into a traffic circle will not help get people out of there quicker. He said an evacuation with one way out. with 300 homes will take some time. He said if the dam breaks, everyone who lives there is going to have a problem.

Mr. Massarelli asked the Commission to continue this item to the January 4, 2018 Special Planning Commission Hearing at 9:05 a.m.

Mr. Porter asked Mr. Massarelli for the four items of concern that was established in this hearing in writing.

Comm. Crandell said it was a good decision to continue the hearing and to provide Mr. Porter with the list of items of contention.

Comm. Malley confirmed the continuance of this item to January 4, 2018, at 9:05 a.m.

ADJOURNED 4:07 p.m.

Bob Malley, Chair
Lake County Planning Commission

Respectfully Submitted,

By: _____
Danae Bowen
Office Assistant III