



COUNTY OF SAN MATEO
Inter-Departmental Correspondence

Date: July 17, 2002

Board Meeting Date: July 23, 2002

To: Honorable Board of Supervisors

From: County Counsel

Subject: Appeal of Planning Commission's decision to approve a Coastal Development Permit (CDP98-0086), a Resource Management/Coastal Zone Permit and a Stable Permit to allow legalization of a 3-horse stable, tractor shed, agricultural barn, replacement of one 8,000-gallon water tank with two 5,000-gallon water tanks, and a mobilehome as an affordable housing unit. The project is located at 1589 Higgins Canyon Road in the unincorporated Half Moon Bay area of San Mateo County.

[County File Number: PLN 1999-00079 (Oscar Braun)]

RECOMMENDATION

1. Consider and determine whether the substantive regulatory requirements for legalizing the project have been met;
2. Consider and determine the amount of permit and investigation fees due to legalize the project;
3. Adopt findings, as stated in the attached resolution, that legal requirements have not been met to legalize the project, and that necessary fees have not been paid;
4. Deny the permits; and
5. Direct staff to issue a notice of decision denying the permits.

BACKGROUND

This Planning appeal was last before your Board on June 18, 2002. At that hearing, your Board continued this matter to allow the applicant time to fulfill remaining requirements for legalizing the property and to pay outstanding fees.

The remaining items which must be legalized are summarized in Table I (attached). The

main issues are that the septic system and the well which serve the affordable housing unit/mobilehome must be legalized in order to comply with Environmental Health Regulations. We seek your Board's determination that these requirements have not been met.

The remaining fees to be paid are summarized in Table II (summary form) and Table III (detailed form). The tables which summarize the fees can be compared side-by-side to the tables presented by the Brauns on June 18, 2002 (a copy of which is attached). The amounts indicated in the County's "Paid-to-Date" column (see Table III) are also equal to the amounts which the Brauns contend they owe. In other words, the Brauns have paid all the fees they believe they owe. We seek your Board's determination that the fees listed in the County's tables are owed and have not been paid.

Finally, your Board requested that we prepare findings to support the alternative of denying the permits, in the event that the legalization requirements had not been met and the fees were not paid. Those findings are listed in the attached Resolution.

DISCUSSION

1. The Project Does Not Comply With Environmental Health Regulations for Septic Systems and Wells.

The septic system in place for the affordable housing unit was not permitted or approved by Environmental Health (EH); and the septic tank is within the minimum 100 foot setback from the drinking water well. There is no pump test on file showing that the well serving both residences (main house and affordable housing unit) meets the ordinance requirement of 5 gallons per minute. Since no permit applications have been received, EH has not received any fees; and thus far, EH has not received any plans from the Brauns.

2. Total Amount of Fees Due Has Not Been Paid.

We are in agreement that Mr. Braun has paid \$7,509.58 already -- \$2092.58 for Building fees; \$4477 for Planning fees; and \$940 for Environmental Health fees. Prior to the last Board meeting, Braun had paid a total of \$5,716.50. In a letter dated, June 26, 2002, the Brauns' attorney requested that Braun pay additional fees of \$1,793.08, the total amount he believes is owed. On July 15, 2002, Mrs. Braun submitted a check for \$1,793.08 to Planning.

The County believes that the Brauns owe an additional \$18,039.38 for Building fees, \$4,477 for Planning fees, and \$1,068 for Environmental Health fees; for a total of **\$23,584.38**.

3. Well Permit Fees.

We disagree with Braun's claim that he does not owe any fees for well construction or well certification. The permit and fees which are being required now are to satisfy the requirement that water flow at the rate of 5 gallons per minute to the affordable housing unit (mobilehome). The applicant claims that because this requirement is stated in the well ordinance, it would not apply because the Brauns' well predates the ordinance (County Ord. Code 4.68.220). A permit was issued in 1990 for the domestic well before the main house was

built by the Brauns, meaning that well does not predate the ordinance as it was built after 1987. (The County has conceded that the agricultural well was probably built prior to the enactment of the well ordinance in 1987.) The application seeks to legalize the affordable housing unit, not the well. It is the addition of the affordable housing unit which triggers additional water requirements, so the current water requirements in the well ordinance will apply.

4. Investigation Fees

a. Planning Investigation Fees.

The applicant challenges the validity of the Planning Investigative Fees because they are stated in a resolution and not an ordinance, citing Govt. Code §25336. However, section 25336 only applies to fees adopted under that particular chapter of the Government Code. The County's Planning fees were adopted under Government Code sections 66016 et seq., part of a different chapter, which requires a public hearing, but otherwise allows fees to be adopted by resolution or ordinance. On April 10, 1973, the Board of Supervisors adopted County Ordinance No. 2193, allowing Planning fees to be revised by Resolution. (Ordinance No. 2512, adopted June 13, 1978, made the same provision for Building fees). The current Planning Fee Schedule was adopted on June 2, 1998 in Resolution No. 61978. As such, the investigative fees specified in the Planning Fee Schedule are valid and do apply in this case.

b. Environmental Health Investigation Fees.

The applicant's attorney has challenged these fees on the grounds that Environmental Health does not have an ordinance providing for investigative fees on the basis of doubling the usual permit fee. We agree, and those amounts have been deleted from calculation of the proposed fees. However, Environmental Health's fee ordinance does provide for charging on an hourly basis for excess investigation time, which may become an issue in the future.


5. Storage Shed is Not Exempt from Permit Requirements.

Braun cites UCAC (Building Regulations) §9026(1) to say that the storage shed adjacent to the stable is exempt from permitting requirements. But, that exemption does not apply here because the storage shed exceeds the eight foot height limit, and because there is more than one such structure on the parcel.

Some confined animal structures (stables or stalls) may be exempt from permitting under §9026(3), but not in this case. The new Confined Animal Ordinance is not yet applicable in the Coastal Zone, as it still awaits review by the Coastal Commission. On the coast, the old Stable Regulations (section 7700 et seq.) apply.

6. Statute of Limitations (Fees Are Not "Time Barred").

We strongly disagree with Braun's position that collection of the fees due is barred by any statute of limitations. Some of the applications which will require accompanying fees have yet to be made (particularly the building permits, which trigger the bulk of the fees). More importantly, payment of fees is a prerequisite to issuance of a permit. Unless the permits being sought here are issued, the Braun property will continue to be in violation of numerous ordinances and subject to further enforcement action.



THOMAS F. CASEY III, COUNTY COUNSEL

TFC:MS

cc: William Warhurst

TABLE I - COMPLIANCE WITH REGULATIONS

| Project Component | Compliance with County Regulations | Outstanding Problems |
|--------------------------------------|---|--|
| 720 sq.ft. addition to main house | Complies with applicable County regulations | Non-payment of fees |
| Stable | Complies with applicable County regulations | Non-payment of fees |
| Tractor Shed | Complies with applicable County regulations | Non-payment of fees |
| Agricultural Barn | Complies with applicable County regulations | Non-payment of fees |
| Water tanks | Complies with applicable County regulations | Non-payment of fees |
| Storage Shed Adjacent to Stable | Complies with applicable County regulations | Non-payment of fees |
| Affordable Housing Unit (Mobilehome) | Does not comply with Environmental Health regulations regarding well and septic systems | Non-compliance with regulations Non-payment of fees |

TABLE II - COUNTY'S SUMMARY OF FEES

| Type of Fees | Permit Fee | Investigation Fee | Permit Fee + Investigation Fee | Paid-to-date | Balance |
|----------------------|--------------------|--------------------|--------------------------------|---------------------|--------------------|
| Building | 4,476.16 | 15,655.80 | 20,131.96 | (2,092.58) | 18,039.38 |
| Planning | 4,477 | 4,477 | 8,954 | (4,477.00) | 4,477 |
| Environmental Health | 2,008 | 0 | 2,008 | (940.00) | 1,068 |
| TOTALS | \$10,961.16 | \$20,132.80 | \$31,093.96 | (\$7,509.58) | \$23,584.38 |

TABLE III - FEE DETAIL

| Type of Fees | Permit Fee | Investigation Fee | Paid-to-Date | Outstanding Balance |
|--|------------|-------------------------------|--------------|---------------------|
| Building Permit Fees | | | | |
| For Items Before April 2, 2002 Inspection | | | | |
| <i>For Stable</i> | | | | |
| Filing Fee | 12.50 | N/A | | |
| Building Permit Fee | 475.20 | (4,750) 3,000.00 ¹ | | |
| Electrical Fee | 36.00 | 360.00 | | |
| Plumbing Fee | 36.00 | 360.00 | | |
| <i>For Mobile Home (Aff. Housing)</i> | | | | |
| Filing Fee | 12.50 | N/A | | |
| Building Permit Fee | 500.00 | N/A | | |
| Electrical Fee | 36.00 | N/A | | |
| Plumbing Fee | 36.00 | N/A | | |
| <i>For Tractor Shed</i> | | | | |
| Filing Fee | 12.50 | N/A | | |
| Building Permit Fee | 811.80 | (8,118) 3,000.00 ¹ | | |
| Electrical Fee | 36.00 | 360.00 | | |
| <i>For Agricultural Barn</i> | | | | |
| Filing Fee | 12.50 | N/A | | |
| Building Permit Fee | 66.00 | 660.00 | | |
| <i>For Water Tanks</i> | | | | |
| Filing Fee | 12.50 | N/A | | |
| Building Permit Fee | 198.00 | 1,980.00 | | |
| Plumbing Fee | 36.00 | 360.00 | | |
| For Items After April 2, 2002 Inspection | | | | |
| <i>For Addition to the House</i> | | | | |
| Filing Fee | 12.50 | N/A | 12.50 | |
| Building Permit Fee | 439.20 | (4,392) 3,000.00 ¹ | 439.20 | |
| Mechanical Fee | 108.00 | 1,080.00 | 108.00 | |

| Type of Fees | Permit Fee | Investigation Fee | Paid-to-Date | Outstanding Balance |
|--|-----------------|-------------------|-----------------|---------------------|
| Electrical Fee | 108.00 | 1,080.00 | 108.00 | |
| Plan Check Fee | 452.88 | N/A | 452.88 | |
| Road Mitigation Fee | 972.00 | N/A | 972.00 | |
| <i>For Storage Shed Adjacent to Stable</i> | | | | |
| Filing Fee | 12.50 | N/A | 0 | |
| Building Permit Fee | 41.58 | 415.80 | 0 | |
| Total Building Fees | 4,476.16 | 15,655.80 | 2,092.58 | 18,039.38 |

| <u>Planning Fees</u> | | | | |
|---|--------------------|-----------------------|-------------------|--------------------|
| For Items Before April 2, 2002 Inspection | | | | |
| Coastal Development Permit - Public Hearing | 1,300.00 | 1,300.00 ² | 1,300.00 | 1,300.00 |
| Resource Management Permit | 214.00 | 214.00 ² | 214.00 | 214.00 |
| Stable Permit | 1,323.00 | 1,323.00 ² | 1,323.00 | 1,323.00 |
| Initial Study and Negative Declaration | 833.00 | 833.00 ² | 833.00 | 833.00 |
| Public Noticing | 50.00 | 50.00 ² | 50.00 | 50.00 |
| For Items After April 2, 2002 Inspection | | | | |
| Amended Coastal Development Permit - Public Hearing | 650 ³ | 650.00 ² | 0.00 | 1,300.00 |
| Amended Resource Management Permit | 107 ³ | 107.00 ² | 0.00 | 214.00 |
| Total Planning Fees | 4,477.00 | 4,477.00 | 4,477.00 | 4,477.00 |
| <u>Environmental Health Fees</u> | | | | |
| Site Exam | 333.00 | N/A | 333.00 | 0 |
| Soil Percolation Test | 607.00 | N/A | 0.00 | 607.00 |
| Septic Permit for Mobile Home | 607.00 | N/A | 607.00 | 0 |
| Well Certification Permit | 461.00 | N/A | 0.00 | 461.00 |
| Total Envir. Health Fees | 2,008.00 | | 940.00 | 1,068.00 |
| GRAND TOTAL | \$10,961.16 | \$20,132.80 | \$7,509.58 | \$23,584.38 |

¹Investigation fees equal ten times building permit fee, plumbing fee and electrical fee but not to exceed \$3,000 per trade. Per Section 9041, total fees for building violations are investigation fees in addition to the permit fees.

²All planning permit fees to be assessed two times the permit fee amount.

³Planning fees for amendment to permits assessed at one-half the permit fee.

BRAUN FAMILY PERMIT FEES RE COUNTY OF SAN MATEO

I. Summary of Fees

| Type of Fee | Permit Fee | Investigation Fee | Permit Fee + Investigation Fee | Paid-to-Date | Balance |
|----------------------|-----------------|-------------------|--------------------------------|-----------------|-----------------|
| Building | 2,092.58 | 0 | 2,092.58 | 1,996.50 | 96.08 |
| Planning | 4,477.00 | 0 | 4,477.00 | 3,720.00 | 757.00 |
| Environmental Health | 940.00 | 0 | 940.00 | 0 | 940.00 |
| TOTALS | 7,509.58 | 0 | 7,509.58 | 5,716.50 | 1,793.08 |

II. Fee Detail

| Type of Fee | Permit Fee | Investigation Fee | Explanation of Difference with County Counsel |
|---|------------|-------------------|--|
| Building Permit Fees | | | |
| For Items Before April 2, 2002 Inspection | | | |
| <i>For Stable</i> | | | |
| Filing Fee | 0 | 0 | Time barred: Code of Civ. Proc., §§338(a), 340(1); <i>City of Santa Cruz v. Pacific Gas & Electric Co.</i> (2000) 82 Cal.App.4th 1167, 1178 - but permit fee paid voluntarily |
| Building Permit Fee | 0 | 0 | Same |
| Electrical Fee | 0 | 0 | Same |
| Plumbing Fee | 0 | 0 | Same |
| <i>For Mobile Home</i> | | | |
| Filing Fee | 0 | 0 | Same |
| Building Permit Fee | 0 | 0 | Same |
| Electrical Fee | 0 | 0 | Same |
| Plumbing Fee | 0 | 0 | Same |
| <i>For Tractor Shed</i> | | | |
| Filing Fee | 0 | 0 | Same |
| Building Permit Fee | 0 | 0 | Same |
| Electrical Fee | 0 | 0 | Same |
| <i>For Agricultural Barn</i> | | | |
| Filing Fee | 0 | 0 | Same |
| Building Permit Fee | 0 | 0 | Same |
| <i>For Water Tanks</i> | | | |
| Filing Fee | 0 | 0 | Same |
| Building Permit Fee | 0 | 0 | Same |
| Plumbing Fee | 0 | 0 | Same |
| Totals | 0 | 0 | \$1,996.50 paid voluntarily |
| For Items After April 2, 2002 Inspection | | | |
| <i>For Addition to the House</i> | | | |
| Filing Fee | 12.50 | N/A | Same as County Counsel |
| Building Permit Fee | 439.20 | Disputed | Same as County Counsel except Inv. Fee |
| Mechanical Fee | 108.00 | Disputed | Same as County Counsel except Inv. Fee |

| | | | |
|--|-----------------|----------|--|
| Electrical Fee | 108.00 | Disputed | Same as County Counsel except Inv. Fee |
| Plan Check Fee | 452.88 | N/A | Same as County Counsel |
| Road Mitigation Fee | 972.00 | N/A | Same as County Counsel |
| <i>For Storage Shed Adjacent to Stable</i> | | | |
| Filing Fee | 0 | 0 | Structure exempt by UCAC §9026(1) |
| Building Permit Fee | 0 | 0 | Structure exempt by UCAC §9026(1) |
| <i>For Trespassing Dumpster</i> | 0 | 0 | (County has dropped previous charges of \$1,002; Brauns have filed for Trespass) |
| Totals | 2,092.58 | 0 | |

Planning Fees

For Items Before April 2, 2002 Inspection

| | | | |
|---|----------|---|--|
| Coastal Development Permit – Public Hearing | 1,300.00 | 0 | County Ordinance No. 2193 (4/10/73) is legally insufficient to authorize the charged investigation fees. (Gov. Code, §25336.) In addition, County is estopped to charge these fees by its representations to the San Mateo Courts during the public nuisance trial proceedings in docket No. 941588-3. |
| Resource Management Permit | 214.00 | 0 | Same |
| Stable Permit | 1,323.00 | 0 | Same |
| Initial Study and Negative Declaration | 833.00 | 0 | Same |
| Public Noticing | 50.00 | 0 | Same (\$50 when fee paid in 1998.) |

For Items Before April 2, 2002 Inspection

| | | | |
|---|-----------------|----------|--|
| Amended Coastal Development Permit – Public Hearing | 650.00 | 0 | Board of Supervisor's Resolution No. 61978 is legally insufficient to authorize the charged investigation fees. (Gov. Code, §25336.) |
| Amended Resource Management Permit | 107.00 | 0 | Same |
| Totals | 4,477.00 | 0 | |

Environmental Health Fees

| | | | |
|-------------------------------|---------------|----------|--|
| Site Exam | 333.00 | 0 | (County has dropped investigation fee) |
| Soil Percolation Test | 0 | 0 | Previously filed with County. (County has dropped investigation fee only) |
| Septic Permit for Mobile Home | 607.00 | 0 | (County has dropped investigation fee) |
| Well Certification Permit | 0 | 0 | Well certification permit made expressly inapplicable by SMC Ord. Code § 4.68.220. (County has dropped investigation fee only) |
| Well Construction Permit | 0 | 0 | (County has dropped all previous charges of \$1,383) |
| Totals | 940.00 | 0 | |

GRAND TOTALS \$7,509.58 - \$5,716.50 = 1,793.08 Bal due

- Braun has amended applications as requested by County; Brauns have agreed to comply with all Environmental Health re septic system on old perc site
- Braun has agreed to go by "old" stable ordinance with much higher fees yet his efforts are the primary force behind the new ordinance (New fee is \$50); Brauns volunteered thousands of dollars and hundreds of hours on this project gathering thousands of voter signatures (there are THOUSANDS of HORSES in the County but only handful of your constituents have been subjected to the old ordinance)
- Braun has agreed to pay ALL permit fees, even if time barred
- Braun was originally prevented from paying fees by Sheriff citing Braun *while he was in the application process* at the Planning Department
- Braun requested the Court oversee the payment of fees and the County at that time set fees Braun paid
- The County put the Braun's home at risk when it demanded payment in full of fees and penalties YET it is undisputed:
 - Brauns paid thousands of dollars **not credited** to them (contained in filings by the County with the Court --- not a "mystery" or "surprise" to County)
 - The County has sought collection of fees **AGAINST THE LAW** (Gov. Code, §25336) and there is NO DISPUTE as that portion of fees
 - Other than the Well Ordinance which declares this well **EXEMPT**, there is NO COUNTY requirement for water quality or quantity --- a "a politically unacceptable" result but legally accurate; all well fees/water fees
- The application of the Statute of Limitations is apparently disputed.
- The County apparently contends some investigative fees are "bootstrapped in" by a 1973 Ordinance, and Brauns firmly state County's position is without any merit and County cannot override subsequent mandatory State law
- The Appeal Contentions were without merit (helicopter pads, thousands of square feet, etc.) and the main contention, that the Braun's INVITED the dumpster has been refuted in full under penalty of perjury by the witness the appellants cited to (see handout) yet the Braun household was subject to a 6 car (3 police cars with flashing lights) forced search.
- Brauns are adding to the County's inventory of affordable housing ---part of "Visioning" goal
- Given the ENTIRE HISTORY and RECORD, the County should accept the Brauns proposal to pay all permit fees as the full measure of payment and deny the appeal.

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8 Attorneys for Oscar Braun.

9 I, Gino Magri, declare:

10 1. I am an a resident of Half Moon Bay, State of California. I have resided in the
11 area for over 58 years.

12 2. I have watched and listened to the April 16, 2002 public hearing comment to the
13 San Mateo County Board of Supervisors by Cynthia Giovannoni. I heard and understood every
14 word of her comments. I personally know Ms. Giovannoni, the speaker. I have known the
15 Giovannoni family most of my life, and for a period of time I was supervised by Ms.
16 Giovannoni's father-in-law during the course of my employment, where I enjoyed a friendship
17 with him. Our respective families were always on "good terms" with each other over a period of
18 many decades.

19 3. With respect to her comments about me, Ms. Giovannoni's statements are
20 completely false. I have never been at any time an agent for either or both Oscar Braun or
21 Andrea Braun. They have never paid me any sum whatsoever, nor have they ever employed me.
22 My occasional help on their property has always been based on friendship and not based on any
23 form of economic relationship, employment or agency.

24 4. At no time did I ever authorize Ms. Giovannoni or any member of her family, or
25 for that matter anyone associated with Half Moon Bay Sealing and Paving, nor any other person
26 or business, to place the subject trailer on the Braun property. Ms. Giovannoni's statements in
27 this regard are absolutely false.

28 5. It is true that Gary Giovannoni asked me if the trailer could be placed on the

1 Braun property and I told Mr. Giovannoni that the matter would need to be taken up by Mr.
2 Giovannoni directly with the property owner, Mr. Braun. At no time did I say or suggest that
3 they had any form of permission to bring the trailer on the property.

4 6. I witnessed Mr. Giovannoni bring the trailer on the property in the fall of 1997;
5 Mr. Braun was not present. I presumed from his actions that he had contacted Mr. Braun and
6 that Mr. Braun must have approved the trailer. Only after the trailer was placed there did I learn
7 that Mr. Giovannoni had acted without the permission of the Brauns.

8 7. For the record, I wish to clearly state at no time did I ever participate in any form
9 of agreement or approval with respect to the bringing of the subject trailer on to the Braun
10 property, and I resent the false claim that I was an agent for the Brauns and that I approved the
11 movement of the trailer on to the Braun property. I wish it to be known that Ms. Giovannoni's
12 contentions on the record before the County of San Mateo Board of Supervisors as to this trailer
13 are absolutely and completely false.

14 Executed on May 2, 2002 at 1512 W. Caballo Hwy, California.

15 I declare under penalty of perjury that the foregoing is true and correct.

16
17 
18 Gino Magri