

RESOLUTION NO. 24-065

RESOLUTION OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS DENYING THE APPEAL AND AFFIRMING THE REVOCATION OF BOUNDARY LINE ADJUSTMENTS B_2018-0068 AND B_2019-0054, LOCATED NEAR THE COMMUNITY OF IRISH BEACH, AND FURTHER FINDING THAT THE BOUNDARY LINE ADJUSTMENTS WERE VOID AB INITIO.

WHEREAS, pursuant to Mendocino County Code (MCC) section 20.532.010, any person proposing to undertake any development as defined in MCC section 20.308.035(D) shall obtain a Coastal Development Permit in accordance with the provisions of MCC Chapter 20.532. Pursuant to MCC section 20.532.015(E) “a coastal development standard permit must be secured for any other activity not specified above which is defined as a development in Section 20.308.035(D), including, but not limited to, land divisions, lot line adjustments and any other entitlement for use” (emphasis added); and

WHEREAS, boundary line adjustments within the Coastal Zone and subject to the above-referenced MCC section are assigned a “B” case number and not separately assigned a coastal development permit number and are approved pursuant to the provisions of Chapter 20.532; and

WHEREAS, the Coastal Permit Administrator approved Boundary Line Adjustment B_2018-0068 on June 13, 2019 reconfiguring two (2) assessor parcel numbers (APNs), at that time known as APNs 132-210-40 and 132-210-41. The Boundary Line Adjustment was finalized on November 21, 2019; and

WHEREAS, the Coastal Permit Administrator approved Boundary Line Adjustment B_2019-0054 on June 11, 2020 reconfiguring the boundaries between three (3) assessor parcel numbers and merging a fourth assessor parcel number (then APNs 132-210-37, 132-210-38, 132-210-39, and 132-210-61 (resulting APN from B_2018-0068)). The Boundary Line Adjustment was finalized on August 28, 2020; and

WHEREAS, both Boundary Line Adjustment B_2018-0068 and Boundary Line Adjustment B_2019-0054 contained final findings consistent with the requirements of MCC Chapter 20.532 and referred to the ability for the approvals to be appealed pursuant to MCC section 20.544.015, which is for appeals of decisions of the Coastal Permit Administrator; and

WHEREAS, under MCC section 20.536.035, a Coastal Development Permit may be revoked or modified for cause as provided by the section including section 20.536.035(A)(1) that such permit was obtained or extended by fraud; and

WHEREAS, subsequent to the finalization of the two above referenced Boundary Line Adjustments, staff conducted research on the parcel history of the above referenced assessor parcel numbers as part of the processing of a General Plan Amendment and Rezoning request for these sites (GP_2019-0006/R_2019-0008). This research located documents referencing a court case between the property owner, William and Tona Moores (“Property Owner” or “Appellants”), and Mendocino County that explicitly dealt with several of the parcels at issue in the General Plan Amendment and Rezoning request; and

WHEREAS, *Moores v. Board of Supervisors of Mendocino County* (2004) 122 Cal. App. 4th 883 (*Moores*), involved an action by the Property Owner seeking to set aside the determination of the County that property then-identified as Assessor’s Parcel Numbers (APNs) 132-210-37, -38, -39, -40, and -41 had been merged by operation of law into a single legal parcel pursuant to the County’s merger ordinance. The case affirmed the determination of the County and confirmed that the five referenced APNs had been merged by operation of law as of 1981; and

WHEREAS, the applications for Boundary Line Adjustments #B_2018-0068 and B_2019-

0054 submitted by the Appellants involved adjusting the boundaries of several of the APNs that were the subject of the *Moores* case. These applications are attached to the November 9, 2023 Coastal Permit Administrator Packet as Attachments B and C. The applications included maps showing certain APNs as they existed and as they were proposed to be adjusted. The application forms submitted for both B_2018-0068 and B_2019-0054 were signed under an attestation that the applicant and property owner signature on the form certifies “that the information submitted with this application is true and accurate”; and

WHEREAS, the submitted applications were for boundary line adjustments, which can only occur between separate legal parcels. A legal parcel is not the same as an APN, which exists only for assessment purposes and is established by the County Assessor’s office. Boundary line adjustments are reviewed and approved by the Department of Planning and Building Services pursuant to the County’s subdivision regulations and for parcels within the County’s Coastal Zone, pursuant to the County’s Coastal zoning regulations. As such, the applications necessarily asserted that the APNs on the application maps were separate legal parcels and the Appellants certified that the information submitted with the application is true and accurate; and

WHEREAS, pursuant to MCC section 20.536.035(A)(1) the Coastal Permit Administrator found that the permits were obtained or extended by fraud. Given the result of *Moores* there were no boundaries to adjust, since these APNs were not separate legal parcels but a single legal parcel that had been merged by operation of law in 1981. In subsequently applying for boundary line adjustments, the Appellants attested to the information in the applications was true and accurate. However, given the outcome of the *Moores* case, the maps and assertions of the applications that there were legal parcel boundaries to adjust were demonstrably false; and

WHEREAS, the Appellants have argued that there has been no showing that the Appellants were aware of, recalled or understood the precise meanings of the *Moores* case which bears their name and thus did not make any attempt to commit fraud in making the applications. It is not credible that a party to an action which was appealed from a County determination to the County Planning Commission, the County Board of Supervisors, the Superior Court and the Appellate Court, over a course of multiple calendar years would simply not be aware of or remember the case which applies to the specific APNs that are the subject to the boundary line adjustments. The position of the County that was affirmed at every level of the appeal was not arcane or difficult to understand: the subject APNs had been merged by operation of law as of 1981; and

WHEREAS, the *Moores* case also conclusively determined as between the Appellants and the County that the property at issue in the subject Boundary Line Adjustments is a single legal parcel; and

WHEREAS, as a result of the holding of *Moores*, the County’s approval of the previous boundary line adjustments were both *void ab initio*, as there were no separate legal boundaries to adjust and a boundary line adjustment cannot create additional parcels; and

WHEREAS, the Department of Planning and Building Services mailed a written notification of intent to revoke the Boundary Line Adjustments to the Property Owner on November 4, 2022; and

WHEREAS, a Notice of Public Hearing for the Coastal Permit Administrator’s public hearing on September 14, 2023, regarding the revocation of the Project was provided in accordance with MCC section 20.536.015; and

WHEREAS, in accordance with the applicable provisions of law, the Coastal Permit Administrator held a Public Hearing on September 14, 2023, at which time the Coastal Permit Administrator continued said hearing to November 9, 2023; and

WHEREAS, in accordance with the applicable provisions of law, the Coastal Permit Administrator held a Public Hearing on November 9, 2023, at which time the Coastal Permit Administrator heard and received all relevant testimony and evidence presented orally or in writing regarding the Project. All interested persons were given an opportunity to hear and be heard regarding the Project; and

WHEREAS, on November 9, 2023, based on the evidence in the record and findings contained in staff report, the Coastal Permit Administrator revoked Boundary Line Adjustments B_2018-0068 and B_2019-0054 finding that such permits were obtained or extended by fraud; and

WHEREAS, on November 17, 2023, Colin W. Morrow, on behalf of Appellants, filed an appeal of the Coastal Permit Administrator's revocation of Boundary Line Adjustments B_2018-0068 and B_2019-0054 (the "Appeal"); and

WHEREAS, the Mendocino County Board of Supervisors held a duly noticed Public Hearing on April 23, 2024, to hear all relevant testimony and evidence presented orally or in writing regarding the Project and Appeal. All interested persons were given an opportunity to hear and be heard regarding the Project and Appeal.

NOW, THEREFORE, BE IT RESOLVED that the Mendocino County Board of Supervisors makes the following findings, based on the evidence in the record before it:

1. The Board of Supervisors hereby affirms the determinations of the Coastal Permit Administrator.
2. The Board of Supervisors hereby denies the Appeal and affirms the Coastal Permit Administrator's denial of the project, finding that the applications were obtained or extended by fraud.
3. The Board of Supervisors further revokes Boundary Line Adjustments B_2018-0068 and B_2019-0054 on the basis that both approvals were *void ab initio*. As a matter of law there is only one legal parcel that includes all of the subject APNs and thus no interior legal parcel boundaries that could be adjusted by any action of the County. The approval of the applications could not have had the effect of shifting a parcel line that did not exist and the approval of the County could not have created a boundary line as that would be contrary to both Mendocino County Code sections 20.532.010 and 17-17.5 or the provisions of Government Code section 66412, subdivision (d). A boundary line adjustment can only adjust existing parcel boundaries and cannot have the effect of creating more parcels than existed prior to the adjustment.

BE IT FURTHER RESOLVED that the Board of Supervisors designates the Clerk of the Board of Supervisors as the custodian of the documents and other materials, which constitutes the record of proceedings upon which the Board of Supervisors' decision herein is based. These documents may be found at the office of the Office of the Clerk of the Board of Supervisors, 501 Low Gap Road, Room 1010, Ukiah, CA 95482.

The foregoing Resolution introduced by Supervisor Haschak, seconded by Supervisor McGourty, and carried this 23rd day of April, 2024, by the following vote:

AYES: Supervisors McGourty, Mulheren, Haschak, Gjerde and Williams
NOES: None
ABSENT: None

WHEREUPON, the Chair declared said Resolution adopted and SO ORDERED.

ATTEST: DARCIE ANTLE
Clerk of the Board

MAUREEN MULHEREN, Chair
Mendocino County Board of Supervisors

Deputy

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

APPROVED AS TO FORM:
JAMES R. ROSS
Interim County Counsel

BY: DARCIE ANTLE
Clerk of the Board

Deputy