

**PLANNING COMMISSION
COUNTY OF MONTEREY, STATE OF CALIFORNIA**

RESOLUTION #03045

A.P. # 417-021-034-000

FINDINGS & DECISION

In the matter of
Karl and Lisa Kleissner (CC010138)

denying the appeal of Karl and Lisa Kleissner from the Administrative Interpretation of the Director of Planning and Building Inspection regarding whether a leased parcel of land created a separate and legal lot, came on regularly for hearing before the Planning Commission on August 13, 2003.

Said Planning Commission, having considered the application and the evidence presented relating thereto,

FINDINGS OF FACT

This Appeal was heard by the Planning Commission of the County of Monterey (Commission) on June 25, 2003 and July 9, 2003, pursuant to an appeal filed by Mark Blum, Esq., on behalf of his clients Karl and Lisa Kleissner. The Appeal is from an Administrative Interpretation of the Director of Planning and Building Inspection regarding whether a lease executed in 1968 “created” a separate and legal lot. Appellants were represented by Mark Blum and Aengus Jeffers. At the conclusion of the de novo hearing, the matter was submitted to the Commission for decision. Having considered all the evidence, including, written and documentary information submitted, the staff reports, oral testimony and other evidence presented, the Commission now renders its decision denying the Appeal and adopts findings in support of its decision as follows:

1. **FINDING:** Karl and Lisa Kleissner requested a certificate of compliance for a parcel of land in the Big Sur area. The Director of Planning and Building Inspection determined that the parcel did not qualify for a certificate of compliance. The decision involved an administrative interpretation that the execution of a lease in 1968 did not create a parcel legally cognizable under the Subdivision Map Act (SMA). That administrative interpretation was timely appealed to the Planning Commission pursuant to Chapter 19.17 of Title 19 Monterey County Code (Subdivisions).

EVIDENCE: Materials in file PLN010138; administrative record.

2. **FINDING:** The appeal was considered by the Planning Commission on June 25, 2003 and July 9, 2003. Appellants were represented by counsel Aengus Jeffers and Mark Blum.

EVIDENCE: Materials in file PLN 010138; administrative record.

3. **FINDING:** The basic facts, which are undisputed, are as follows:
Appellants own a parcel of land (“original parcel”) in the Big Sur area. They applied for a certificate of compliance for a portion of that land (“leasehold”) believed by them to be a separate and legal parcel created by lease within the original parcel. The boundaries of the leasehold were formed by a 99 year lease executed in May, 1968, and recorded in June, 1968. The 99 year lease was granted by John Robert Louis Lange to Robert F. Coppla and Marilyn Joyce Coppla. On the same date the lease was recorded, another document, signed by Mr. Lange, was recorded in which Mr. Lange made “Robert F. Coppla and Marilyn Joyce Coppla the legal heirs to Lot one...” (the leasehold). An Affidavit of Death of Joint Tenant was recorded July 3, 1980, stating that John Robert Louis Lange died July 1, 1978. A quitclaim deed was recorded Dec. 7, 1979, stating that Robert F. Coppla and Marilyn Joyce Coppla quitclaimed the leasehold to Selma J. Vining, as Executrix of the Will of John Robert Louis Lange.

EVIDENCE: Materials in PLN010138; administrative record.

4. **FINDING:** Appellants raised five specific issues/arguments in their Appeal each of which is summarized and listed as follows.
- a. Applicant argues that the presumption presented in Government Code Section 66412.6(a) applies to the leased premises leased under the 99 year lease.
 - b. Applicant argues that a prior opinion issued by the County Counsel’s Office supports applicant’s position.
 - c. Applicant argues that since Monterey County Code section 19.14.045(A)(1) (sic)(it is believed that this was reference to 19.050 A.1.) states that a contract of sale or deed of trust recorded before March 7, 1972, is sufficient to create a new parcel, it follows that a lease creates a new parcel.
 - d. Applicant argues that Government Code section 66499.30 exempts this leasehold from the SMA’s general prohibition against selling, leasing or financing real property for which a parcel map is required since it was leased in compliance with or was exempt from regulation at the time the lease was executed.
 - e. Applicant argues that the County has taken a position that the lease creates a parcel which merged into a larger estate as a result of the quitclaim.

EVIDENCE: Materials in file PLN010138; administrative record; oral testimony.

FINDINGS AND DECISION

After consideration of all the evidence in this case, both written and oral, presented at the hearing on this matter and the above findings and evidence, the Commission affirmed the Director's administrative interpretation that the lease in this case did not create a legal parcel and denied the appeal in its entirety for the following reasons:

1. The 1968 lease did not create a parcel legally cognizable under the SMA. The lease was simply a transfer of possessory interest of a portion of a parcel owned by Mr. Lange. The lease was not a conveyance of title and did not create a legally cognizable parcel warranting a certificate of compliance. When the lease terminated, the boundaries ceased to exist and all rights automatically reverted to the owner of the underlying fee. There was no conveyance or reconveyance of the title to the fee underlying the leasehold property. The lease did not create a legally cognizable parcel.
2. There was no evidence presented that title to the leased premises, as a separate parcel, has ever been conveyed, has ever been designated a parcel on a subdivision map, or has ever been sold or transferred. There is simply no evidence that a legally cognizable parcel has ever been created.
3. The Commission rejects the five specific issues/arguments raised in the Applicant's Appeal, and listed in the findings above, as follows:
 - a. The Commission rejects the argument that the presumption presented in section 66412.6(a) applies to the leased premises leased under the 99 year lease. Section 66412.6 does not apply to the leasehold in this case. Government Code Section 66412.6 is a "grandfather" provision which provides that lots created as a result of a division of land prior to March, 1972, are presumed to have been legally created. For this section to apply, a lot must have been created and such creation must have resulted from a division of land pursuant to the SMA, neither of which occurred here.
 - b. The Commission rejects the argument that a prior opinion issued by the County Counsel's Office supports applicant's position. The previous County Counsel's opinion to which appellant refers addresses a Trust Deed, not a lease, and is distinguishable on that ground. A trust deed conveys title to property whereas a lease does not.
 - c. The Commission rejects the argument that Monterey County Code section 19.14.045(A)(1) provides that a lease creates a new parcel. Section 19.050 A.1. applies to conveyances of title but does not apply to leases. This section states that evidence of such conveyance may be in the form of "a contract of sale, grant deed, or deed of trust..." These documents address a conveyance of title. A lease, which does not convey title, is not included. There is no mention in this section of a lease, tenant, landlord, leasehold or anything else to suggest that this section is applicable to a lease.

- d. The Commission rejects the argument that Government Code section 66499.30 exempts this leasehold from the SMA's general prohibition against selling, leasing or financing real property for which a parcel map is required. To the extent that section 66499.30 applies at all, it applies only to the lease executed in 1968 which terminated by quitclaim in 1979. It no longer exists. Any new sale or lease would have to comply with the SMA.
- e. The Commission rejects the argument that the County's position is that the lease creates a parcel which merged into a larger estate as a result of the quitclaim. The Commission agrees with the County's position that the lease did not create a legal parcel and that the quitclaim, simply conveyed to the executrix whatever rights in the property were held by the Copplas.

PASSED AND ADOPTED this 13th day of August, 2003, by the following vote.

AYES: Errea, Sanchez, Hawkins, Pdilla, Brennan, Parsons, Diehl, Gonzalves, Rochester, Wilmot
NOES: None
ABSENT: None

Original Signed By:

JEFF MAIN, SECRETARY

Copy of this decision mailed to applicant on

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK OF THE BOARD OF SUPERVISORS ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE