

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

RESOLUTION #04006

CC010028-30
CC020070-72
CC020073-75

DENYING THE APPEAL OF DAN)
MAININI FROM THE DECISION)
OF THE DIRECTOR OF PLANNING)
AND BUILDING INSPECTION)
DENYING CERTIFICATES OF)
COMPLIANCE NINE LOTS IN)
SOUTH MONTEREY COUNTY)

This Appeal was heard by the Planning Commission of the County of Monterey (Commission) on February 11, 2004 pursuant to an appeal filed by Fred Strong on behalf of his client Dan Mainini. The Appeal is from an Administrative Interpretation of the Director of Planning and Building Inspection regarding whether a patent created one lot or three lots. There are three such patents at issue. Appellants were represented by Fred Strong. 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:** Dan Mainini requested certificates of compliance for three parcels of land in the south Monterey County area. The request was for three certificates to be issued on each of three parcels based on patents dating from 1890. The Director of Planning and Building Inspection determined that each parcel qualified for one certificate of compliance not three as requested by the appellant. The decision involved an administrative interpretation that the patents created a single parcel each rather than three parcels each. 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 February 11, 2004. Appellants were represented by Fred Strong.

EVIDENCE: Materials in files CC010028-30, CC020070-72, CC020073-75; administrative record.
- 3. FINDING:** The basic facts, which are undisputed, are as follows: Appellants own three parcels of land in the south Monterey County area. Each parcel was created by patent from the United States government. Appellants applied for nine certificates of compliance (three

certificates for each of the patents) for land believed by them to be separate and legal parcels created within the patents. The patents were properly documented, created, and executed in 1890. The patents describe the parcel being created and transferred.

EVIDENCE: Materials in files CC010028-30, CC020070-72, CC020073-75; administrative record.

- 4. FINDING:** Appellants raised three specific issues/arguments in their Appeal each of which is summarized and listed as follows.
- a. The appellant contends that under Government Code Section 66499.35 a parcel that is "...real property [that] complies with the provisions of this division and of local ordinances enacted pursuant to this division" is entitled to a certificate of compliance.
 - b. The appellant contends that by the language of the patents each patent conveyed three lots.
 - c. The appellant contends that refusal to issue certificates of compliance for three lots from each patent is contrary to law.

EVIDENCE: Materials in files CC010028-30, CC020070-72, CC020073-75; administrative record.

DECISION

After consideration of all the evidence in this case, both written and oral, presented at the hearing on this matter and the above and evidence, the Commission affirms the Director's administrative interpretation that the each patent created only one lot and denies the appeal in its entirety for the following reasons:

1. Each patent is clear on its face that it created and transferred a single lot. Although the description of the parcel created and transferred uses the word "lots" it is for the purpose of describing the parcel being created and transferred and, this does not create separate lots. The court in *Gomes v County of Mendocino* (1995), citing a U.S. Supreme Court decision, defined a federal patent as follows: "A patent is a deed of the United States, the conveyance by which it passes title to portions of the public domain."
2. There was no evidence, nor cases on point, presented to show that the patents in question were intended to, did, or were judged to create or transfer multiple separate lots within a single patent.
3. The Commission rejects the three specific issues/arguments raised in the Applicant's Appeal, and listed in the findings above, as follows:
 - a. There is no real dispute on this point. The Director and appellant agree that a legally created lot is entitled to a certificate of compliance. The issue in the appeal is how many lots were created by three specific patents. Each patent created and transferred one parcel. Therefore, the appellant is entitled to three (3) certificates of compliance and, not nine as requested by the appellant.
 - b. The Commission rejects the appellant's argument that each of the patents in question created three lots. A patent was the mechanism by which the United States government created and transferred a lot. In each case, each patent transferred the described property as a single unit of property including the total size to the hundredths of an acre. There is no apparent evidence that the portions had previously been separately created or that there was any intent but to convey them as a single lot.
 - c. The Planning Commission rejects the argument that refusal to issue nine certificates in the specific circumstances of this case is contrary to law. There is no evidence in the appeal

arguments or citation of cases on point that indicates that a patent can or does convey more than one lot. The patent is the original creation of the lot. As such, the Commission concurs with the Director's opinion that each patent created one lot and each lot is entitled to a certificate of compliance.

NOW, therefore be it resolved that the Planning Commission affirms the Director's administrative interpretation that each patent created only one lot and denies the appeal in its entirety.

On motion of Commissioner Rochester, seconded by Commissioner Hawkins, the foregoing findings and decision are adopted the 11th day of February, 2004.

AYES: Sanchez, Hawkins, Padilla, Parsons, Diehl, Salazar, Rochester, Vandever
NOES: Errea, Wilmot
ABSENT: None

Original Signed By:

JEFF MAIN, SECRETARY

COPY OF THIS DECISION WAS MAILED TO THE APPLICANT ON

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS. 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

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.