



STAFF REPORT

TO: PLANNING COMMISSION

PREPARED BY: Cindy Gnos, AICP, Contract Planner
Raney Planning & Management, Inc.

GENERAL INFORMATION

APPLICANT: Humann Company/Izzat Nashashibi, Civil Engineer

OWNER: Albert Mark & Corina Fraschieri

APPELLANT: Albert Mark & Corina Fraschieri

LOCATION: 950 Tavan Estates Drive – APN: 365-321-001, (“Subject Property”)

PROPOSAL: Public hearing on an appeal of the Zoning Administrator’s denial of the Minor Subdivision (MS #551-16) of an existing 2.6 acre parcel into two separate single-family parcels (Parcel “A” and “B”), each approximately 1.3 acre in size.

GENERAL PLAN: CUL (Open Space/Conservation Use Land): 0 to 2 units per gross acre

ZONING: R-20 (One-Family Residential: 20,000 square feet minimum lot size), approximately 0.6 acres of the site
OS (Open Space), approximately 2 acres of the site

ENVIRONMENTAL REVIEW: Applications which are denied are not subject to CEQA. In the event that the Planning Commission grants the appeal and approves the land division, staff proposes that the Planning Commission find that this permit be categorically exempt (Class 1 - Section 15301, Existing Facilities and Class 15 - Section 15315, Minor Land Divisions) from the requirements of CEQA. If the Planning Commission adopts this proposed finding, no further environmental review would be required by State law.

RECOMMENDATION

Staff recommends the Planning Commission adopt the attached draft resolution denying the appeal and denying the proposed subdivision thereby upholding the Zoning Administrator's denial of the proposed subdivision.

BACKGROUND

The Subject Property is part of the Tavan Estates subdivision approved by the City in 1975. The Tavan Estates project site has been within the Open Space/Conservation Land Use (CUL) General Plan land use designation since 1973. Pursuant to the CUL designation, an EIR was required prior to the approval of any development. The 1975 project approvals included certification of an EIR which included mitigation requiring open space and view corridors to be maintained. As part of the approval, the entire Tavan Estates project site was rezoned from ECD-R-40 (Residential Single-Family 40,000 square foot (sf) minimum lot/Environmental Conservation District) to a combination of Residential and Open Space (OS) Districts, corresponding to the mitigated site plan created as part of the EIR and as part of the Tavan Estates subdivision conditions of approval (Attachment B). The Subject Property was zoned R-20 and OS. The OS zoning corresponds to the approximately 2-acre portion of the site restricted by a scenic easement dedicated to the City by the original subdivider and accepted by the City Council in 1976. The Subject Property currently contains a single-family residence which fronts on Tavan Estates Drive. Access to the residence is from a private driveway off Tavan Estates Drive.

In June 2015, the applicant submitted an application for a building permit to construct an approximately 1,700 sf accessory structure (consisting of an approximate 1,250 sf Secondary Housing Unit and 250 sf garage) on the Subject Property. At that point, the applicant was informed that a variance for setbacks and a use permit to allow an accessory structure exceeding 1,000 square feet and 15 feet in height would be required. Subsequent meetings were held with City staff and the applicant ultimately decided to submit for a Minor Subdivision to split the lot into two 1.3 acres lots in order to build the additional single family residence on the R-20 portion of the new parcel. The proposed Minor Subdivision map is included as Attachment C. Attachment D is an annotated version of the map depicting the zoning designations.

On June 22, 2016, the Zoning Administrator, after a significant amount of public testimony, denied the request, determining that the proposal was not in conformity with the City General Plan, Zoning, and Subdivision regulations. The Zoning Administrator denial letter, staff report, and draft conditions of approval are included as Attachment E. The applicant's Letter of Appeal is set forth in Attachment F.

Section 21.42.090 of the Martinez Municipal Code sets forth the grounds for approval or denial of a tentative map. That section provides, in relevant part that the action shall be based on conformity of the tentative map with the Subdivision Map Act, with the City's Subdivision Ordinance, with the zoning provisions, with the General Plan, with precise plans and official plan lines adopted by the City Council, and on the quality of the design of the proposed subdivision.

The State Subdivision Map Act, (California Government Code Section 66474), provides that a City shall deny a tentative or parcel map if it makes any of the following findings:

- (a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
- (b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
- (c) That the site is not physically suitable for the type of development.
- (d) That the site is not physically suitable for the proposed density of development.
- (e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- (f) That the design of the subdivision or type of improvements is likely to cause serious public health problems.
- (g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

DISCUSSION

The applicant submitted an application to subdivide the Subject Property into two residential lots in order to construct an additional single family residential unit on the subdivided additional parcel. The application proposes to split the existing 2.6-acre parcel into two parcels of approximately 1.3 acres each. The lot which would include the existing residential structure would consist of 1.29 total acres with 0.41 acres (17,857 sf) zoned R-20 and 0.88 acres zoned OS. The new lot, which would include the new residential structure, would consist of 1.32 total acres with 0.26 acres (11,442 sf) zoned R-20 and 1.06 acres zoned OS.

Splitting 30,000 sf homesite and subdividing OS Parcel: The project site contains 2.6 acres with a split zoning designation of R-20 and OS. The Martinez Municipal Code Section 22.28.050 states: "No division of land zoned for open space shall be permitted." While staff's original interpretation of the code was that the proposed subdivision of open space could be permitted if development of the open portion of the property would not occur, further review and analysis of Section 22.28.050 leads staff to conclude that a subdivision of the Subject Property appears to violate the intent of the ordinance.

The purpose of Section 22.28.050 appears to be to preserve open space lands from development pressure and to prevent such lands from being subdivided and incorporated into other lots thereby increasing the potential development density of lands located adjacent to such open space.

The original approval of the Tavan Estates subdivision, of which the Subject Property is a part, included rezoning, annexation, and a tentative map, along with an EIR analyzing the environmental impacts of that project. The overall subdivision was developed similar to a Planned Unit Development in that some areas were permitted higher densities and other areas restricted to lower densities in order to preserve the environmental and scenic qualities of the area. The mitigation measures in the EIR required the preservation of significant amounts of open space and scenic corridors, in order to preserve the scenic amenities associated with the hillside. The area of the proposed subdivision is one of these sensitive areas identified in the EIR. The mitigated site plan in the EIR identified the open space to be preserved and limited development to three homesites at the end of this cul-de-sac in the environmental sensitive area. Attachment B includes the Figure approved as part of the Tavan Estates subdivision.

While subdividing the parcel would not create overall lots less than the minimum size if the open space area is taken into account in determining parcel size, such subdivision would allow for development of two units on 0.67 acres of R-20 zoned land. This would exceed the densities envisioned by the zoning and the original approval of the Tavan Estates subdivision. In addition, permitting subdivision of the portion of the lands zoned open space, effectively increases the development density of the adjacent land.

Further, General Plan Policy 21.21 provides that "Land to remain for open uses is designated Public Permanent Open Space or Open Space/Conservation Use Land. These designations shall apply where the following conditions are prevalent: natural conditions such as steep or potentially unstable slope, hazardous geologic conditions, watershed stability and floods hazard, seismic hazard, and fire hazard, which constitute major constraints to development or threats to life and property, where soils, land forms, vegetation, watersheds, creekways, and water bodies combine to provide either a significant habitat for wildlife or agricultural resource and where land forms, vegetation, waterways and surfaces constitute a major scenic and recreational resource which should be preserved either for purposes of public use or protection and shaping of the scenic setting of the community." Permitting the subdivision and addition of open space lands to increase the density of adjacent parcels is generally inconsistent with the preservation of the scenic setting of the community in which such open space is located. If all private open space were to be subdivided in order to increase density on adjacent parcels, the character of the lands abutting such open space would change from predominantly rural in appearance at 1 unit per 20,000 square feet of land to the more urbanized appearance of 1 unit per approximately 12,000 square feet of land. The net effect would be the general appearance of a doubling of density adjacent to the preserved open space. Such action appears antithetical to the purposes of preserving the scenic setting of the community.

Staff undertook a review of other land in the City subject to open space easements and/or with open space zoning. The results of that review revealed that several other parcels in the City have split zoning, including in Tavan Estates. Staff did not find any examples where the OS zoned area was further subdivided – after the subject

subdivision and its “split zoning” plan were originally approved – to allow for the creation of an additional lot.

Based upon the above, staff recommends that the proposed subdivision be denied as being in violation of Section 22.28.050 of the Martinez Municipal Code. The open space nature and steep topography, as well as the easement encumbering the majority of the Subject Property render the site physically unsuitable for the type of development and additional density proposed in that an additional home would have only 11,442 sf of developable area outside the scenic easement available for development of all structures and other improvements, far less than the remainder of the homes in the area and substantially less than the 20,000 sf minimum of the applicable zoning district. In addition, subdivision of the Subject Property would be inconsistent with General Plan Policy 21.21, in that such subdivision would not protect the scenic setting of the community and would lessen the scenic value of the open space area by effectively increasing development density immediately adjacent to the open space.

Street Frontage Improvements: Section 21.08.010 of the Martinez Municipal Code requires full street improvements to the hillside standards along the R-20 portion of the project site. At a minimum, this would require a path, with full improvements which could be deferred along the OS portion of the project site. Tavan Estates Drive has sidewalk located on the one side of the street for its entire length, except for this parcel. The applicant objected to the inclusion of compliance with this requirement at the Zoning Administrator hearing (see discussion below).

Zoning Administrator Hearing: The Zoning Administrator denied the applicant’s request for a Minor Subdivision at a publicly noticed hearing on June 22, 2016. The decision was based on the record as whole, including the information contained in the staff report and attachments, public testimony, and evidence submitted at the hearing. The Zoning Administrator found that the subdivision would create a density not consistent with original Tavan Estates approvals, would result in the subdivision of land zoned Open Space, and that the Zoning Administrator had no authority to waive frontage improvements. Public testimony at the hearing was both in favor of and in opposition to the proposed project.

Appeal: The applicant submitted an appeal of the Zoning Administrator’s decision with an appeal letter dated July 11, 2016, along with neighbor support letters (see Attachment F). The following bullet points address each finding of the Zoning Administrator’s action, followed by the applicant’s rebuttal from the applicant’s appeal letter.

- Finding of denial #1

Your proposal would divide the existing .67 acre homesite into two (2) homesites, each smaller than ½ acre in size, creating a total of four (4) residential lots at the end of Tavan Estates Drive. The original Tavan Estates Subdivision approval allowed a maximum of three (3) lots at the end of Tavan Estates Drive, each with a minimum ½ acre homesite size.

Applicant's Rebuttal: In the appeal letter, the applicant writes that reliance on past approvals would be the equivalent of claiming that no previously subdivided property in any previously recorded map could ever be further subdivided, which the applicant claims would be "a misunderstanding at best and illegal at worst."

RESPONSE: The Tavan Estates approvals were a product of a mitigated site plan that was developed through a certified EIR, which itself was required by the Subject Property's Open Space/Conservation Land Use General Plan Designation. Such mitigations measures "run with the land" and are thus still in force. The suitability of the site for the type of development proposed was reviewed at the time that the Tavan Estates EIR and original subdivision was approved. Such review led the decision makers at that time to require larger lots in the areas surrounding the the area with steep slopes to be preserved as open space. The physical topography of this area has not changed nor has the original reason for permitting a maximum of three lots in this area.

- Finding of denial #2

Your proposal would divide the approximately two (2) acre portion of your property which is within the OS (Open Space) Zoning District between the proposed Parcels A and B. MMC Section 22.28.050 states the "no division of land zoned for open space shall be permitted."

Applicant's Rebuttal: In the appeal letter, the applicant disputes the existence of the Scenic Easement's Restriction or the applicability of the OS zoning. The appeal letter further notes that the open space zoned land is not intended to be subdivided, and that the open space is being maintained by the owner.

RESPONSE: Both the Scenic Easement and the OS zoning district were established with the original entitlements of the subdivision and prior to the sale of the property. As outlined above, Section 22.28.050 which states "No division of land zoned for open space shall be permitted" should be seen as a prohibition of any subsequent subdivision which divides land within an established OS zoning district for the purposes of intensifying development beyond that original approval. There is no question that the open space easement was dedicated to the City by the original subdivider and accepted by the City at the time of the Tavan Estates final map. The open space zoning is consistent with the purposes of Section 21.21-21.23 of the General Plan.

- Finding of denial #3

Your request for the Zoning Administrator to waive the required frontage improvements is in conflict with MMC 21.44.120, Improvements – Required When. The Zoning Administrator has no authority to waive the requirements of the City's Subdivision regulations.

Applicant's Rebuttal: In the appeal letter, the applicant claims he had not requested a waiving of the required frontage improvements adjacent to the proposed new residence, only deferral, that such requests were made by his neighbors.

RESPONSE: While the requirement for frontage improvements may be moot, the applicant is required by Section 21.08.010 of the Martinez Municipal Code to install improvements, with a deferral for portions of such improvements being at the discretion of the City Engineer. The applicant appears to be taking the position that a deferral is appropriate because in his view it will never be necessary to install the improvements. This is tantamount to a request for a waiver. The purpose of a deferral is to defer required improvements to a time in the future when adjacent property develops or changed development occurs that would make the improvements more economical and less disruptive to install. The purpose of a deferral is not to constitute a de-facto waiver by deferring improvements indefinitely. In the present case, as deferral does not appear to be logical in that it is not expected that any additional increased development adjacent to this property would be likely or that any additional public frontage improvements in that area would be warranted. In addition, such a deferral would be subject to a deferred improvement agreement which must include security for the improvements to be constructed in the future. Thus such deferral would result in the applicant posting a bond or cash deposit for an indefinite period of time, which would not appear to serve the applicant's apparent desire to reduce costs.

Based upon the analysis presented above, staff recommends that the Planning Commission deny the appeal and deny the proposed subdivision. Proposed findings for denial are contained within the draft resolution attached hereto as Attachment H.

Other Options for the Planning Commission to Consider: The Planning Commission can make a decision on the appeal, based on the staff report, and other substantial evidence presented at or prior to the public hearing. An option for consideration is that the Planning Commission direct the applicant to submit for a Second Housing Unit consistent with the requirements of the Martinez Municipal Code (which would not require a subdivision of the property), which would allow a second unit to be built on the site. Second residential units may not exceed 1,000 square feet; however, with approval of a Use Permit can be larger. Architectural standards for secondary housing units are that they be visually subordinate to the primary single-family dwelling on the parcel, by its size, location, and design.

ATTACHMENTS

- A. Site Context Map
- B. Tavan Estates Subdivision Conditions of Approval Site Plan
- C. Minor Subdivision Map
- D. Annotated Subdivision Map
- E. Zoning Administrator Denial Letter, Staff Report, and Draft Conditions of Approval
- F. Applicant's Letter of Appeal (applicant's attachment provided to Planning Commission under separate cover)
- G. Existing Yard Orientation

H. Additional Correspondence

- I. DRAFT Resolution of the Planning Commission of the City of Martinez, denying an appeal upholding the Zoning Administrator's denial of the Minor Subdivision (MS #551-16) of an existing 2.6 acre parcel into two separate single-family parcels in the R-20 and OS zoning districts, located at 950 Tavan Estates Drive

F:\Community Development\All Projects\MINOR SUBDIVISIONS\MS 551-16 - TavanEstDr, 950 - Frasieri\2016.07.26 - PC (Notice.RptETC)\Frascheri@950Tavan-PC RTP(f) 2016.07.26..docx

SITE CONTEXT MAP

2 – LOT MINOR SUBDIVISION
(MS 551-16)

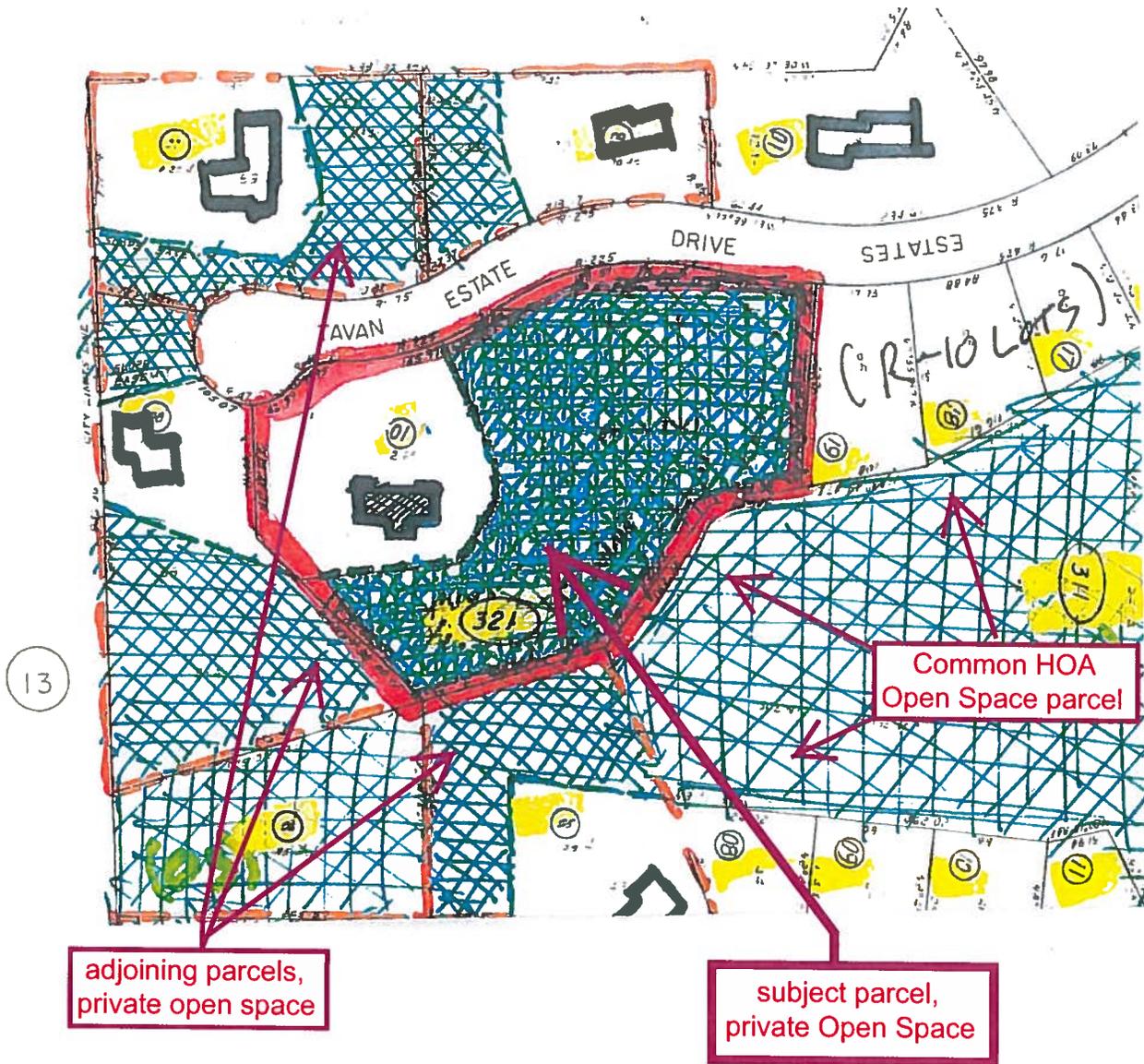
FRASCHIERI PROPERTY
950 TAVAN ESTATES DRIVE

PLANNING APPLICATION # 16PLN-0008

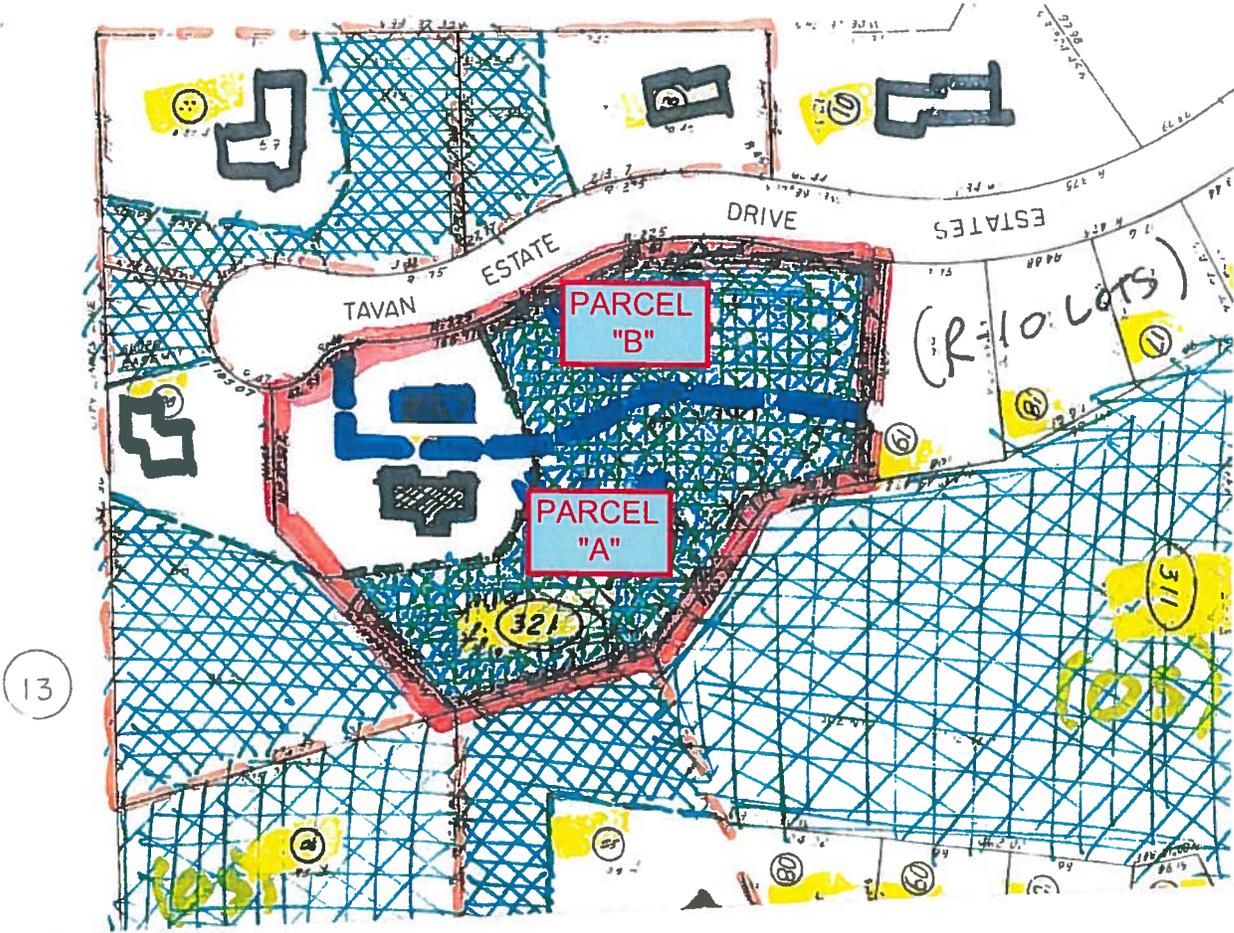


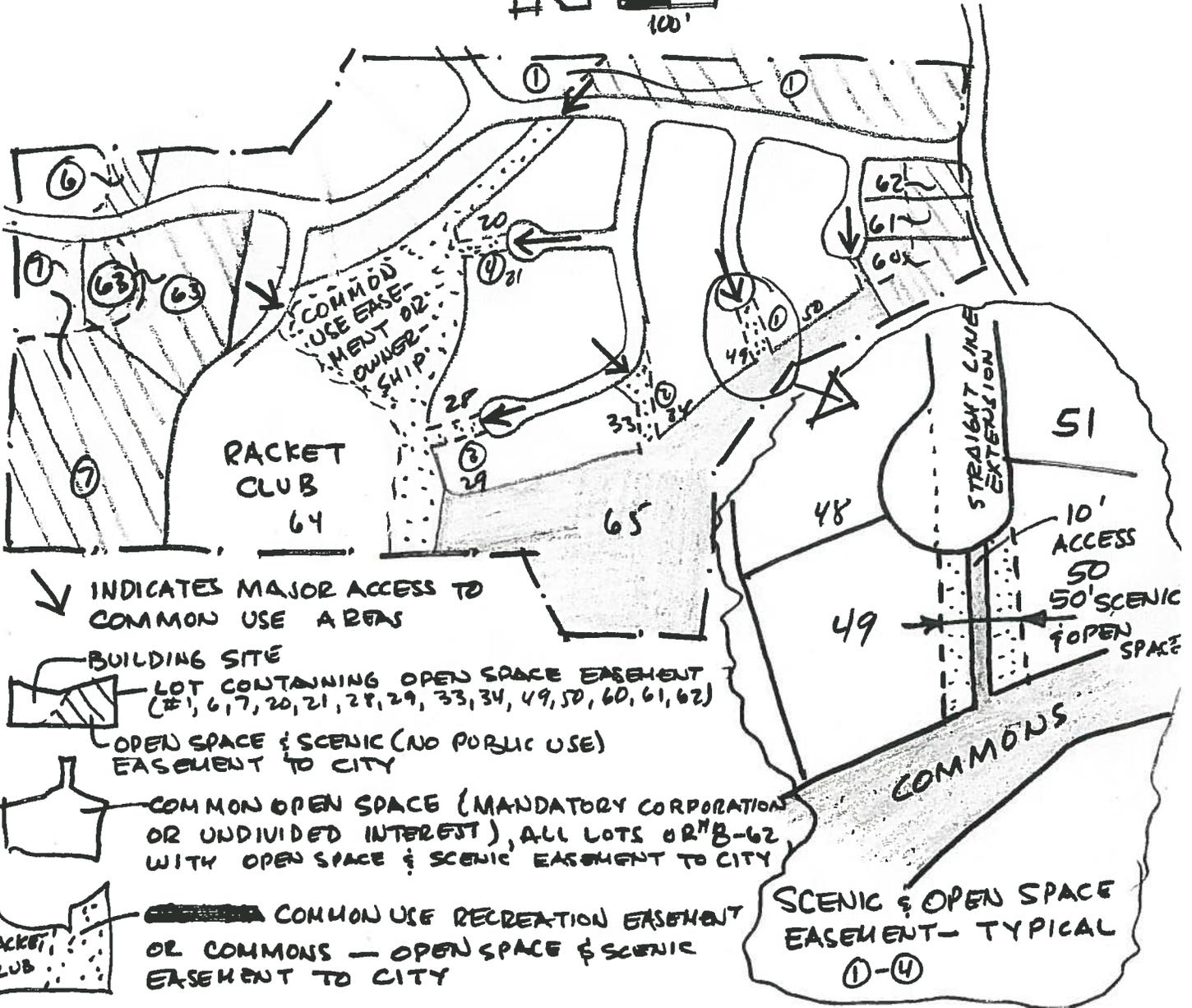
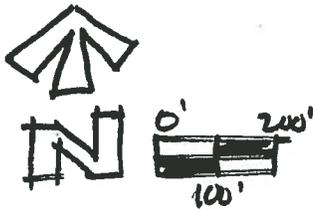
ATTACHMENT A
(CONT.)

SITE CONTEXT MAP DETAIL, SHOWING SUBJECT PROPERTY IN RELATION TO:
a) APPROVED R-20 ZONED BUILDING SITES, b) EXISTING RESIDENCES and c) OPEN SPACE AREAS

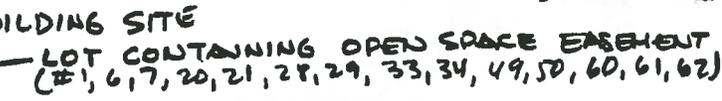


SITE CONTECT MAP DETAIL, SHOWING SUBJECT PROPERTY IN RELATION TO:
a) APPROVED R-20 ZONING BUILDING SITES, b) EXISING RESIDENCES, c) OPEN SPACE AREAS and
d) PROPOSED SUBDIVISION OF LOT 67 INTO "A" (EXISITNG RESDIENCE) and "B"



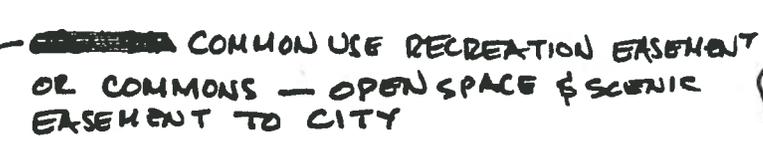


↓ INDICATES MAJOR ACCESS TO COMMON USE AREAS

 BUILDING SITE
 LOT CONTAINING OPEN SPACE EASEMENT (61, 6, 7, 20, 21, 28, 29, 33, 34, 49, 50, 60, 61, 62)

 OPEN SPACE & SCENIC (NO PUBLIC USE) EASEMENT TO CITY

 COMMON OPEN SPACE (MANDATORY CORPORATION OR UNDIVIDED INTEREST), ALL LOTS 61-62 WITH OPEN SPACE & SCENIC EASEMENT TO CITY

  COMMON USE RECREATION EASEMENT OR COMMONS - OPEN SPACE & SCENIC EASEMENT TO CITY

 PRIVATE PARCELS

SCENIC & OPEN SPACE EASEMENT - TYPICAL ①-④

OPEN SPACE PLAN

FIGURE 15
1-10-75



City of Martinez

525 Henrietta Street, Martinez, CA 94553-2394

ATTACHMENT E

[925] 372-3515

June 23, 2016

Albert & Corina Fraschieri
950 Tavan Estates Drive
Martinez, CA 94553

SUBJECT: DENIAL OF APPLICATION 16PLN-0008 (MS 551-16) FOR A MINOR
SUBDIVISION LOCATED AT 950 TAVAN ESTATES DRIVE

Dear Mr. & Mrs. Fraschieri:

On Wednesday, June 22, 2016, acting as Zoning Administrator, I denied the request for the approval of a minor subdivision for the creation of one new single family residential lot located at 950 Tavan Estates Drive, in Martinez. I found that the proposal was NOT *in conformity with the City's General Plan, Zoning provision and Subdivision regulations* (as required by MMC 21.42.090.B), in that:

- a) Your proposal would divide the existing .67 acre homesite into two (2) homesites, each smaller than ½ acre in size, creating a total of four (4) residential lots at the end of Tavan Estates Drive. The original Tavan Estates Subdivision approval allowed a maximum of three (3) lots at the end of Tavan Estates Drive, each with a minimum ½ acre homesite size; and
- b) Your proposal would divide the approximately two (2) acre portion of your property which is within the OS (Open Space) Zoning District between the proposed Parcels A and B. MMC Section 22.28.050 states the "no division of land zoned for open space shall be permitted."
- c) Your request for the Zoning Administrator to waive the required frontage improvements is in conflict with MMC 21.44.120, *Improvements – Required When*. The Zoning Administrator has no authority to waive the requirements of the City's *Subdivision regulations*.

This decision may be appealed to the Planning Commission by yourself or any interested person. There is a 10-day appeal period which ends on Tuesday, July 5, 2016.

If you wish to appeal will need to submit a letter of appeal along with \$150.00 payable to the City of Martinez.

Sincerely,

David Scola
Public Works Director

cc: Project File
Chron



STAFF REPORT

TO: ZONING ADMINISTRATOR

PREPARED BY: Planning Staff

GENERAL INFORMATION

APPLICANT: Humann Company/Izzat Nashashibi, Civil Engineer

OWNER: Albert Mark & Corina Fraschieri

LOCATION: 950 Tavan Estates Drive (APN: 365-321-001)

GENERAL PLAN: Open Space/Conservation Use: Up to 2 units per gross acre

ZONING: R-20 (One-Family Residential: 20,000 square feet min. lot size) - approx $\frac{2}{3}$ ac.
OS (Open Space), approx. 2 ac.

ENVIRONMENTAL REVIEW: Staff proposes that the Zoning Administrator find that this permit be categorically exempt (CLASS 1 - Section 15301 Existing Facilities and CLASS 15- Section 15315 Minor Land Divisions) from the requirements of CEQA. If the Zoning Administrator adopts this proposed finding, no further environmental review would be required by State law.

PROPOSAL: Subdivision of an existing 2.6 acre parcel to be divided into two separate single-family parcels (Parcel "A" and "B"). each approx. 1.3 acre in size.

APPROVAL REQUESTED: Tentative map for Minor Subdivision MS 551-16

RECOMMENDATION

Approve Minor Subdivision #551-16, subject to the attached conditions of approval.

BACKGROUND and PROJECT DESCRIPTION

The subject parcel is within the 1970's "Tavan Estates" Subdivision/Planned Unit Development. The subject portion of the neighborhood requires a 20,000 sq. ft. minimum lot size, and the oversized lot (the majority of which will remain in the unaltered Scenic Easement) will permit the lot's original development area - i.e. area outside recorded Scenic Easement - of approx $\frac{2}{3}$ acre to be divided in two, allowing one new homesite in addition to the existing residence. Neither the original conditions of approval for the Tavan Estates development, nor the current

Tavan Estates HOA regulations, appear to preclude such a lot split; only that such a newly created lot be annexed into the HOA prior to its development. Applicable R-20 Zoning District requirements are outlined below:

R 20 RESIDENTIAL DISTRICT REQUIREMENTS

Criteria	Required/ Allowed	<i>[EXISTING]</i>	PROPOSED (PARCEL "A")	PROPOSED (PARCEL "B")	PROPOSED CONFORMITY
Minimum Site Area	20,000 sq. ft.	<i>[113,905 sq. ft.]</i>	56,396 sq. ft.	57,509 sq. ft.	Y
(net area outside scenic easement)	NA (no required "minimum")	<i>[29,299 sq. ft.]</i>	(17,857 sq. ft)	(11,442 sq. ft)	
Maximum Site Area Coverage	25%	<i>[less than 5%]</i>	<i>[less than 10%]</i>	NA	Y
Minimum Ave. Lot Depth	100 ft.	<i>250+ ft.</i>	150+ ft	135 ft	Y
Minimum Ave. Lot Width	100 ft.	<i>400+ ft.</i>	300+ ft	400+ ft.	Y
New Interior Side Yards <small>(TO BE CREATED W/ SUBDIVISION)</small>	(@Parcel "A" & Parcel "B") 15 feet	NA	15 feet	NA	Y

It should be noted that the pre-existing front, rear and (peripheral) side yards, nor the restrictions of the existing Scenic Easement and its concomitant OS Zoning District, will be altered by the proposed subdivision.

STANDARDS FOR APPROVAL and DRAFT FINDINGS

Staff recommends that Zoning Administrator find that the proposal substantially conforms to the R-20 Zoning District, the State Subdivision Map Act, and Title 21 of the Martinez Municipal Code, and thereby approve the Tentative Parcel Map for Minor Subdivision #551-16

ATTACHMENTS

- A. Site context map
- B. Communication for Tavan Estates HOA
- C. Conditions of Approval [DRAFT]

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CONDITIONS OF APPROVAL

AS APPROVED BY ZONING ADMINISTRATOR [*DRAFT*]

Project Name: Frascheri Minor Subdivision

Site Location: 950 Tavan Estates Drive

I. Description of Permit

These conditions apply to and constitute the approval of Minor Subdivision No 551-16 to create a new single-family residential lot (in addition to the existing residence), to allow an approximate 2.6 acre parcel to be divided into two (2) lots, with each approx. 1.3 acre in size

II. Exhibits

The following exhibits are incorporated as conditions of approval, except where specifically modified by these conditions:

EXHIBIT	DATE RECEIVED	PREPARED BY	PAGES
Tentative Parcel Map	May 16, 2016	Izzat Nashashibi, Humann Co, Engineering & Surveying	1

All construction plans shall be consistent with the addition design as conceptually illustrated by the above exhibits. Where a plan or further information is required by these conditions, it is subject to review and approval by the Planning Division, Engineering Division and/or Building Division, or as noted.

III. Special limitations and requirements for Parcel Map *Owner's Statement* and *Deed Restrictions*. The following limitation and requirement for the development of the subdivision (Parcel A and B) shall be listed on the *owner's statement* on the parcel map, and on a deed restriction to be recorded concurrently with the parcel map. Final wording subject to Staff approval:

- A. Prior to any construction of improvements on Parcel B, the subject Parcel shall be annexed into the Tavan Estates Homeowners Association. All subsequent construction shall first obtain the HOA's approval (as per the HOA's regulations and bylaws that are applicable at that time) prior to filing any City Permit application.
- B. Parcel B shall relinquish vehicular abutters' right to the City on Tavan Estates Drive (except for the existing common access driveway to both lots).
- C. The minimum "front yard" (adjacent to the joint access and utility easement)

and the "street-side side yard" (adjacent to the Tavan Estates Drive ROW) shall both be 25 feet. [NOTE: the "schematic house layout" and "allowable building site" as illustrated on the tentative parcel map shall NOT be shown on final parcel map]

IV. Landscaping, fences, retaining walls and drives

- A. Site paving and landscape plans shall be provided with the building permit application for Parcel B, and shall:
 - 1. Be prepared in accordance with the applicable water conservation and landscaping ordinance.
 - 2. Specify a minimum of five (5) trees of a minimum 15 gallon size within the *street-side* side yard area, adjacent to the Tavan Estates Drive ROW).
 - 3. Specify shrubs of minimum 5-gallon size.
 - 4. Provide either lawn or a continuous ground cover with appropriate sizes and spacing to provide complete coverage within 3 years.
- B. All fencing, retaining walls, barriers, etc., shall be shown on the required Building Permit's site plan. The maximum height for all walls, fences and/or fences on retaining walls shall be 6 feet. Fences off-set from retaining walls 18 inches or greater shall be considered separate structures with a maximum height of 6 foot each.

V. Noise Control, Dust and Conditions for Construction Activity

- A. All construction activities shall conform to the City's Noise Control Ordinance, Chapter 8.34 of the Municipal Code.
- B. Contractors shall be required to employ the quietest construction equipment available, and to muffle noise from construction equipment and to keep all mufflers in good working order in accordance with State law.
- C. Adequate dust control measures shall be employed throughout all grading and construction periods. The Contractor shall regularly water areas that are exposed for extended periods to reduce wind erosion.
- D. Contractor shall ensure that surrounding streets stay free and clear of silt, dirt, dust, tracked mud, etc. coming in from or in any way related to project construction. Paved areas and access roads shall be swept on a regular basis. All trucks to be covered.

- E. Speeds of construction equipment shall be limited to 10 miles per hour. This includes equipment traveling on local streets to and from the site.
- F. Access shall be maintained to all driveways at all times.
- G. Truck routes for the import or export of cut/fill material shall be identified and approved by the City Engineer prior to the issuance of any permits. Developer shall be responsible for the repair of any damage to city streets (private and public) caused by the import or export of soils materials necessary for the project.
- H. Prior to construction, contractor shall contact city inspector for a pre-construction meeting. A construction program and schedule shall be submitted and reviewed by staff at the meeting. The program shall provide the contractor's name and contact information and a general description of the hours of construction, number of workers on site, and information on construction vehicles (location and duration of parking, quantity and type of vehicles, haul routes, etc).

VI. Agreements, Fees and Bonds

- A. All improvement agreements required in connection with said plans shall be submitted to and approved by City and other agencies having jurisdiction prior to City approval of the Parcel Map or issuance of the any permits.
- B. All required faithful performance bonds and labor materials bonds in penal amount equal to 100 percent of the approved estimates of construction costs of improvements shall be submitted to and approved by City and other agencies having jurisdiction prior to City approval of the Parcel Map or issuance of the any permits permit.
- C. Prior to approval of the plans and issuance of permits, applicant shall pay all applicable fees and deposits as required by the Community Development Director/or his or her designee in accordance with the City's fee schedule, the City's Municipal Code, and these conditions of the project's approval. The fees include: Plan check and inspection fees; drainage fees; and Development Impact Mitigation fees for a single family unit which include: transportation, park (in lieu of land dedication), park and recreation facilities, cultural facilities, and police facilities. The final amount shall be determined in accordance with the fee schedule at the time of payment.
- D. All fees and deposits required by other agencies having jurisdiction shall be paid prior to City approval of the Final Map or issuance of the Building, Encroachment, Grading or Site Development Permit, whichever comes first.

VII. Grading

- A. All grading shall require a grading and drainage plan prepared by a registered Civil Engineer, a soils report prepared by a registered Geotechnical Engineer and a Grading Permit approved by the City Engineer. The grading plans and soils report shall require review by the City's geotechnical consultant (if deemed necessary by the City Engineer) with all costs to be borne by the applicant.
- B. All recommendations made in the Soil Engineers report, (unless amended through the City's review) and all recommendations made by the City's geotechnical consultant shall be incorporated into the design and construction of the project.
- C. Contour grading techniques with spot elevations shall be employed throughout the project to achieve a more natural appearance, even where this will increase the amount of grading.
- D. Tops of cuts or toes of fills adjacent to existing public rights-of-way or easements shall be set back two feet minimum from said rights-of-way and easements.
- E. Erosion control measures shall be implemented per plans approved by the City Engineer for all grading work not completed before October 1. At the time of approval of the improvement and/or grading plans, an approved Erosion Control Plan prepared by a registered Civil Engineer shall be filed with the City Engineer.
- F. All graded slopes in excess of 5 ft. in height shall be hydroseeded or landscaped no later than September 15 and irrigated (if necessary) to ensure establishment prior to the onset of the rainy season.
- G. The applicant's engineer shall certify the actual pad elevation for the lot in accordance with City standards prior to issuance of Building Permit.
- H. All front yard landscaping or alternate erosion control measures shall be installed prior to release for occupancy to mitigate erosion problems.
- I. The finished grading shall be inspected and certified by the developer's engineer that it is in conformance with the approved Grading Plan and Soils Report pursuant to the provisions of Title 15 of the Martinez Municipal Code.
- J. All existing trees (if any) shall be clearly indicated on the grading plan.
- K. Any grading on adjacent properties will require written approval of those property owners affected.

- L. If cultural resources are discovered during subsurface excavations, the Contractor shall cease construction and a qualified archeologist shall be contacted to make recommendations for mitigation.
- M. The plans shall include the boundary treatment shown on cross sections, drawn to scale, for retaining walls, fencing and drainage.

VIII. Street Improvements

- A. Street Frontage Improvement: Pursuant to Chapter 12.30 of the Martinez Municipal Code sidewalks, curb, gutter, and street pavement shall be constructed and/or replaced along the entire frontage of the property. Street frontage improvement shall conform to Hillside Local street section in accordance with the City Standard Details, Which include: widening the width of existing pavement to a minimum of 28 feet (measured for face of curb to face of curb), constructing curb, gutter and sidewalk, and repair existing damaged pavement (if any) to centerline of the street.

A portion of the frontage improvement (described above) may be deferred to a later date, subject to the approval of City Engineer. The property owner will be required to sign a deferred improvement agreement covering the non constructed improvements. This agreement will run with the land.

As a minimum, the developer shall construct a sidewalk along the entire frontage, widening a portion of the street pavement to accommodate two parking spaces, and repair any existing damaged pavement, along the entire frontage, to centerline of the street. All improvements shall be subject to the City Engineer's approval.

Street pavement section design and construction control shall be based on State of California "R" value method, using Traffic Index (T.I.) of 5.5, with a minimum 0.20 ft. AC pavement depth over a minimum of 0.50 ft. Class 2 aggregate base.

- B. Each lot should be served by a separate utility, water and sewer services. All new utility distribution services shall be installed underground.
- C. A City Encroachment Permit is required for any work within the City Right-of-Way.

IX. Water System

- A. Water system facilities shall be designed to meet the City's Water District requirements, and the fire flow requirements of the Contra Costa County Consolidated Fire Protection District. All requirements of the responsible agency shall be guaranteed prior to approval of the improvement plans.

- B. Water system connection, including installation of the water meter(s), shall be made in accordance with the Water District standards. Prior to obtaining water service, all fees shall be paid in accordance with the water fee schedule in effect at time of payment.
 - C. Backflow prevention, required as part of the water service installation, must be completed before occupancy of the building.
- X. Sanitary Sewer System (if changes to existing facilities are proposed)
- A. Sewer system connections and plans for sanitary sewer facilities shall be approved by the Central Contra Costa Sanitary District. All requirements of that District shall be met before approval of the improvement plans.
- XI. NPDES Requirements
- A. Efficient irrigation, appropriate landscape design and proper maintenance shall be implemented to reduce excess irrigation runoff, promote surface filtration, and minimize use of fertilizers, herbicides, and pesticides.
 - B. To the maximum extent practicable, as determined by the City Engineer, drainage from paved surfaces shall be routed through grassy swales, buffer strips or sand filters prior to discharge into the storm drain system.
 - C. For projects one (1) acre or larger, developer shall comply with the State Construction General Permit requirements. The Developer shall be responsible preparing the SWPPP with all required documents, and obtaining coverage by filing a Notice of Intent (NOI) with State Water Resource Control Board (SWRQB). A copy of the SWPPP and the Notice of Intent (WDID) shall be submitted to the City prior to issuing permits for construction. The SWPPP and the WDID shall be kept at the job site during construction.
 - D. Comply with the requirements of Provisions C.3 of the Municipal Regional Permit (MRP 2.0) of the State Regional Water Resources Control Board NPDES Permit as applicable to this project. Implementation of provisions C.3 shall be in accordance with the current edition of the Contra Costa Clean Water Program's Stormwater C.3 Guidebook (including the C.3 requirements for a Small Land Development Projects).
 - E. Improvement plans, calculations, maps, and specifications as required for the C.3 facilities shall be submitted to the City for review and approval. All required agreements shall be executed prior approval of the Parcel Map. The property owner, in perpetuity, shall be responsible for the ongoing operation and maintenance of the C.3 facilities on his/her property.

XII. Drainage

- A. The storm drain system shall be designed per City and County Flood Control District Standards to carry at least a 10-year storm. The developer shall comply with Contra Costa County Flood Control requirement.
- B. Collect and convey the storm drain runoff from the site to existing adequate drainage facilities. When required by the City Engineer, submit drainage study and hydraulic calculations for the existing downstream drainage facilities to demonstrate the adequacy of the existing system to the satisfaction of the City Engineer. If the existing facilities are not adequate to handle the additional runoff, the developer shall construct all necessary upgrades and improvements to existing systems to the satisfaction of the City Engineer.
- C. All concentrated runoff shall be collected and conveyed to an approved storm drainage system. Existing slopes that have no additional discharge directed onto them or are not substantially re-graded can remain as natural runoff.
- D. Applicant shall not increase storm water runoff to adjacent downhill lots unless either, (1) a Drainage Release is signed by the property owner(s) of affected downhill lots and recorded in the office of the County Recorder; or (2) site drainage is collected and conveyed in approved drainage facilities within a private drainage easement through a downhill property. This condition may require collection of on-site runoff and construction of an off-site storm drainage system. All required releases and/or easements shall be obtained prior to filing of Final Map or issuance of the Building, Encroachment, Grading or Site Development Permit, whichever comes first.
- E. When approved by the City Engineer, drainage may be conveyed under the sidewalk and discharged through the curb in accordance with City standards. Drainage shall be directed to a concrete curb and gutter whenever practical.
- F. Concentrated drainage flows shall not be permitted to cross sidewalks or driveways.
- G. Fifteen (15) inch minimum RCP (reinforced concrete pipe) shall be used for all public storm drain lines and 12-inch minimum pipe shall be used for laterals and for private storm drain lines.

XIII. Other Requirements

- A. Construction shall comply with all applicable City and State building codes and requirements including handicapped and energy conservation requirements, grading and erosion control ordinances.
- B. Design of all public improvements shall conform to the City of Martinez Design Guidelines, Standard Special Provisions, and Standard Drawings. Prior to the preparation of improvement plans, the developer or his representative should contact the City's Engineering Development Review section of the Community Development Department.
- C. Complete plans, specifications shall be submitted to and approved by the City Engineer, Community Development Director, and/or other agencies having jurisdiction for all improvements within the proposed development prior to filing of the Parcel Map or issuance of any Permits.
- D. Prior to City approval of the Parcel Map, all fees, bonds, and deposits shall be paid and posted; all agreements shall be executed and all plans shall be approved by the City Engineer and Community Development Director. No construction shall take place until issuance of the appropriate Encroachment, Site, Grading and/or Building Permits.
- E. Prior to issuance of the certificate of occupancy, all required the public improvements shall be installed, unless otherwise approved by the City Engineer.

XIV. Validity of Permit and Approval

- A. Planning Commission approval is subject to appeal to the City Council within ten calendar days of the approval.
- B. The permit and approval shall expire in one year from the date on which they became effective (unless extended under C) unless a building permit is obtained and construction begun within the one year time period. The effective date of the permit and approval is June 22, 2016.
- C. The time extension of the expiration date, June 22, 2017, of a permit or approval can be considered if an application with required fee is filed at least 45 days before the original expiration date. (Otherwise a new application is required.) A public hearing will be required for all extension applications, except those involving only Design Review. Extensions are not automatically approved: Changes in conditions, City policies, surrounding neighborhood, and other factors permitted to be considered under the law, may require or permit denial.

- D. Nothing contained herein shall be construed to permit any violation of relevant ordinances and regulations of the City of Martinez, or other public agency having jurisdiction.
- E. The permittee, Albert Mark & Corina Frasccheri, shall defend, indemnify and hold harmless the City and its agents, officers, attorneys and employees from any claim, action, or proceeding brought against the City or its agents, officers, attorneys or employees to attack, set aside, void, or annul the Zoning Administrator's decision to approve permit 16PLN-0008, and any environmental document approved in connection therewith. This indemnification shall include damages or fees awarded against the City, if any, cost of suit, attorneys' fees, and other costs and expenses incurred in connection with such action whether incurred by Albert Mark & Corina Frasccheri, the City, and/or the parties initiating or bringing such action.
- F. Albert Mark & Corina Frasccheri shall defend, indemnify and hold harmless the City, its agents, officers, employees and attorneys for all costs incurred in additional investigation of, or study of, or for supplementing, preparing, redrafting, revising, or amending any document (such as the Negative Declaration), if made necessary by said legal action and if Albert Mark & Corina Frasccheri desires to pursue securing such approvals, after initiation of such litigation, which are conditioned on the approval of such documents, in a form and under conditions approved by the City Attorney.
- G. In the event that a claim, action or proceeding described in Subsection E, above, is brought, the City shall promptly notify Albert Mark & Corina Frasccheri of the existence of the claim, action or proceeding, and the City will cooperate fully in the defense of such claim, action or proceeding. Nothing herein shall prohibit the City from participating in the defense of any claim, action or proceeding. In the event that Albert Mark & Corina Frasccheri is required to defend the City in connection with any said claim, action, or proceeding, the City shall retain the right to (i) approve the counsel to so defend the City, (ii) approve all significant decisions concerning the manner in which the defense is conducted, and (iii) approve any and all settlements, which approval shall not be unreasonably withheld. The City shall also have the right not to participate in said defense, except that the City agrees to cooperate with Albert Mark & Corina Frasccheri in the defense of said claim, action or proceeding. If the City chooses to have counsel of its own to defend any claim, action or proceeding where Albert Mark & Corina Frasccheri has already retained counsel to defend the City in such matters, the fees and expenses of the counsel selected by the City shall be paid by the City, except that the fees and expenses of the City Attorney shall be paid by the applicant.
- H. Albert Mark & Corina Frasccheri shall indemnify the City for all the City's costs, fees, and damages which the City incurs in enforcing the above indemnification provisions.

- I. The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirement, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

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**Letter of Appeal for application 16PLN-008
Minor Subdivision for property located at 950 Tavan Estates Drive (Lot
67)**

To: David Scola, Public Works Director

From: Mark and Corina Fraschieri

Date: July 11, 2016

In accordance with the appeal process outlined in the denial letter dated June 23, 2016 for the above project, the following serves to appeal the findings of the Zoning Administrator to the Planning Commission. The reasons for this appeal are provided below and will be organized in the following manner.

1. Background
2. Rebuttal to Zoning Administrator findings
3. Observations at Public Hearing
4. Comments at Public Hearing and letters read
5. Attachments

1. Background:

In September 2015 the applicant Mr. Mark Fraschieri, Keegan Fraschieri and Brad Davis (former planning director, city planner, AICP) met with the Planning Manager, Dina Tasini. The purpose of this meeting was to explore building a home on the subject property to allow for Mr. Fraschieri's son, Keegan, to live on the property. Mr. and Mrs. Fraschieri built their existing home in 1986 and still resides there after raising their family. Several options to build another residence were explored at this meeting from an accessory dwelling unit to subdividing the property. Ms. Tasini suggested that subdividing the property would be a more viable solution as it provided added benefits to the applicant, primarily financing, better building codes and development guidelines. She confirmed the project, as proposed, should be viewed favorably by the city. Ms. Tasini has subsequently left the city but stayed informed of the project up to her departure and did not indicate any concerns.

Mr. Fraschieri proceeded under this and subsequent guidance and assurances from city staff and hired a professional engineer, Mr. Izzat Nashashibi from Humann Company Engineering on October 20, 2015 to coordinate with city staff, conduct further inquiries and provide a feasibility analysis before expending any additional time and money.

It should be noted and understood that the applicant and his engineer coordinated closely with City Staff for over five (5) months before submitting a formal subdivision application to the Planning Department and paid the required fee of \$7,700 on 2/11/2016. City staff on 3/10/2016 provided a list of needed items and additionally on 3/25/2016 requested a Geotech report. The applicant ordered this at a cost of \$800 from GrayGeotech, who subsequently confirmed to the City the project's feasibility. All other items requested by the city were provided promptly.

To date Mr. Frascieri has spent over \$7,450 in engineer costs and \$7,700 in application fees after receiving repeated staff assurances the project, as proposed, meets all city zoning and development codes and guidelines. At no time during the nine (9) months of planning consultation with city staff was the applicant or his representative informed the project was not in compliance with state or city requirements.

To the contrary, the well-researched staff report and analysis dated June 22, 2016 to the Zoning Administrator recommended approval subject to conditions. This report and recommendation came to the logical conclusion of "approval" based on over ten (10) months of direct communication and cooperation with city staff and an expenditure of over \$15,000 dollars by Mr. Frascieri. Moreover, the staff report clearly and unequivocally states: "Staff recommends that the Zoning Administrator find the proposal substantially conforms to the R-20 Zoning District, the State Subdivision Map Act and Title 21 of the Martinez Municipal Code, and thereby approve the Tentative Parcel Map for Minor Subdivision #551-16".

The obvious question given the evidence is: Why did the city planner support the subdivision and then opposed it at the public hearing with the Zoning Administrator and then find the project not in compliance - when clearly it is? Additionally, why did Mr. Simon inform the applicant he was opposing the subdivision the day of the hearing after supporting it for nine (9) months?

Chronology of city/applicant email correspondence:

September 2015: Initial meeting with Dina Tasini, Planning Manager.

October 2, 2015: Conceptual Plan forwarded to Mr. Corey Simon, Planner

October 2015: Applicant hires Humann Co. Engineering

January 8, 2016: Mr. Simon determines no building setback required from Scenic Easement.

February 11, 2016: Application to City

March 10, 2016: 1st Letter of Items to complete application from the Planning Department to applicant.

March 14, 2015: Letter of support/approval from Tavan Estates Home Owners Association (included in Staff Report)

March 25, 2016: Letter of items to complete application from the Planning Department to applicant.

May 2015: Khalil Yowakim and Tim Tucker recommended moving the project to a public hearing with no adjustment to the application.

June 22, 2016: Public Hearing, Zoning Administrator

2. Rebuttal to Zoning Administrator Findings:

Finding A:

The Zoning Administrator cites in his denial that the " The original Tavan Estates Subdivision approval allowed a maximum of three (3) lots at the end of Tavan Estates Drive each with a minimum of 1/2 acre homesite size".

Rebuttal:

Continuing this logic then all previously subdivided property in any previously recorded plat cannot be further subdivided within the incorporated boundary of the City of Martinez, even upon compliance to

the Subdivision Map Act requirements and all applicable regulations. This is clearly a misunderstanding at best and illegal at worst.

Finding B:

"No division of land zoned for open space shall be permitted"

Rebuttal 1:

No land zoned open space is intended to be subdivided nor was ever proposed to be subdivided.

The applicant is well aware the lots by themselves do not equal the required R-20 minimum lot size of 20,000 square feet. Even emailing Mr. Simon on October 8, 2015 confirming and recognizing this fact. Mr. Simon reported that the scenic easement portion of the property can be used to meet minimum lot size requirement since the site has been previously graded (soil disturbance) and the property contains an adjoining large scenic easement. He further stated the designation of "Open Space" within this subdivision is unknown and may be misapplied. This is especially true in light of the recorded Subdivision Map for Tavan Estates dated April 1976 which clearly states that the subject lot number 67 is permitted to construct up to a 2,500 square foot outbuilding, corrals and similar structures. Clearly this property abuts a scenic easement as identified on the original subdivision and should have been retained as such rather than rezoned to public open space that prohibits this use. Nowhere is it indicated this space is to be used for public access and use and is designated solely as a "view easement" with further development rights for lots 67, 68 and 74. Granted, the city has rezoned this easement to public Open Space allowing public use but it remains to be determined the genesis of this rezone, its justification and if proper notice was provided.

Rebuttal 2:

Furthermore, the scenic easement is completely and thoroughly maintained by Mr. Fraschieri; not the city or the county. This is evidenced by Mr. Fraschieri paying to till the property with a tractor each year. Furthermore, the property has been previously fenced and two llamas were stabled there for many years. The Fraschieri's have "openly and notoriously" used this scenic easement as an extension of their property for over 30 years since they purchased the property as a vacant lot. They were never notified this land which they pay property tax was to be reclassified and zoned Open Space.

Rebuttal 3:

Nonetheless, the appropriate and practical zoning determination by the Planning Department for this property is that its scenic easement can be used to meet the 20,000 square foot minimum lot size requirement. This determination was provided by planning staff in October 2015 and the applicant proceeded in good faith and considerable cost as a result. It remains to be determined when this property was rezoned to "Open Space" and whether it was done in accordance with proper public disclosure, findings and hearings. The applicant has no knowledge of receiving any public notices.

Rebuttal 4:

Given the above evidence provided by the original subdivision map, accepted allowed uses per the map, comments by planning staff that the zoning may be in error, the intent appears clear this property was to

be retained as an easement only and not rezoned to a more restrictive designation of Open Space maintained and improved by the City of Martinez. The city neither maintains this property and the easement is described as part of the subject property for which the homeowner pays annual property taxes for its use with restrictions. Although there is disagreement as to its zoning and public use, there is no question that City Staff acknowledged this area can be used to meet the minimum lot size requirement under the current subdivision request.

Finding C:

"Your request for the Zoning Administrator to waive the required frontage improvements is in conflict with MMC21.44.120, improvements -required when. The Zoning Administrator has no authority to waive the requirements of the City Subdivision Regulations".

Rebuttal 1:

At no time did the applicant suggest or request the City frontage requirements be waived. In fact, the applicant as well as the majority of the public testimony requested the improvements be deferred as recommended in paragraph two of Section VIII, Street Improvements, contained in the staff report. Paragraph three is in conflict with paragraph two as paragraph three requires the improvement whereas paragraph two allows the City Engineer to defer such improvements with a Deferred Improvement Agreement. The applicant is in full agreement with this condition contained in paragraph two.

Rebuttal 2:

It should be noted a large majority of the neighbors support this project but do not support the need for additional curb, gutter, and parking area and sidewalk improvements. Although the city can require these improvements they make little sense when: (1) they are not connected to Tavan Estates Drive ROW improvements further to the east, (2) increase and encourage nonresidential parking, (3) increase impervious surface and (4) appear unnecessary to provide added safety on a little used cul-de-sac, and (5) it is an impractical expense and burden on the applicant. In short, it appears obvious why the City Engineer recommended to defer these improvements until a more practical time, if ever.

3. Observations at Public Hearing

The meeting was held on June 22, 2016 and summarily moved to the council chambers due to a larger than normal number of residents in attendance; it was later determined the majority were in support of the subdivision. It became immediately apparent that Mr. Simon and the Zoning Administer were surprised and concerned about the number of people and kept commenting on the large number, causing the meeting to be moved to the council chambers.

There was a very brief description of the application by Mr. Simon and then recorded testimony was permitted. A staff report was not provided to the attendees which should be considered unusual for a public hearing and in most jurisdictions is a matter of standard practice.

The majority of residences spoke in favor of the subdivision with restrictions on the road widening, as recommended by the engineering staff. There was widespread agreement to not widen the road and provide sidewalk improvements.

Three (3) members of the audience of approximately twenty (20) people were opposed to the subdivision claiming that any change in the original platting was not allowed. No proof was provided or documents provided by those in opposition. Members of the HOA board testified that after consulting with the association's attorney that they were not opposed to the subdivision and nothing in the CC&R's prohibited a subdivision and construction of an additional home on this lot.

A transcript of the recording of the hearing (**Attachment #7 in Section #5.**) identifies Mr. Simon and the Zoning Administrator commenting during the testimony "are we going to stick to our guns"? This seems to confirm what many in the audience felt after their decision that they had conferred beforehand when they saw the large audience gathered in the foyer and made up their mind to deny the application before the hearing. Thereby ignoring public testimony in support of the application and at the last minute contradicting Mr. Simon's own staff report recommending approval. At one point during Larry Dobson's public testimony, Mr. Simon interjects, seemingly making an effort to imply there is a potential CC&R and Bylaw issue with the project, when clearly there is not. When questioned why after nine (9) months he decided to oppose the subdivision both he and the Zoning Administrator claimed there "is new evidence to consider".

Furthermore, Mr. Simon speaks after the public testimony to foreshadow the Zoning Administrator's denial in which he cites no clear reason or support for the city's sudden change in their view of the project. He cites a "similar situation" that was denied, providing no support or applicability to the project. Additionally, he states that the applicant "cleared the CC&R issue, but the other key wouldn't open. There was other plan issues far more complex than this property. But it's clear it's very bad for the city." This testimony significantly contradicts over nine (9) months of applicant interaction with Mr. Simon, moving on to each costly next step of the project at his guidance.

As illustrated earlier in this appeal, the findings and the rebuttals contained herein to deny the application are seemingly arbitrary and lacking in merit as no new evidence has been found or presented that was not available during the application process and staff recommendation of approval.

Finally, few residents ever encounter the city staff, its officers or even participate in a public hearing. It is often a first and lasting impression when they do so. Unfortunately this particular meeting and its surprising conclusion doesn't serve to further the highest ideals of the City of Martinez. Finally, it should be noted the Zoning Administrator by his own admission has been in his capacity for only two months. He appeared unprepared and by his questionable findings of denial, in need of more experience and support by staff.

4. Comments at Public Hearing and letters

Compiled directly from testimony provided on 6/22/16 **Attachment #7 in Section #5.**

- 7 households in support of lot split
- 3 households against lot split
- 2 households in support of street improvements
- 6 households against street improvements

Below represents a summary of the statements of the individuals that spoke at the public hearing:

Steve Ladrech: **In support of lot split** read his letter of support for the project (**Attachment #3 below**) – **against street improvements** to occur in Section VII of staff report.

Corina Fraschieri read **Attachment #2 in Section #5 below- In support of lot split- against street improvements** to occur in Section VII of staff report.

Christina Naughton- 926 Tavan Estates Dr. **In support of lot split- against street improvements** to occur in Section VII of staff report.

Don Lovasik- his home's proximity is unknown to prospective lot- **Against lot split** because CC&Rs states 74 lots. **In support of street improvements** to occur in Section VII of staff report if project moves forward.

Mark and Mrs. Hubbard 6724 Corte Tercera (1st time speaking) Mr. Hubbard says he spoke to John Benson (original developer), and stated Mr. Benson informed him that no subdivision can occur in 1975- appears Mr. Hubbard is **against lot split and in support of street improvements** to occur in Section VII of staff report. Mrs. Hubbard agrees with her husband, elaborates that she does not want more people to subdivide. (2nd time speaking) Mr. Hubbard doesn't want his money going to attorneys associated with any CC&Rs and Bylaws changes.

Bob Thompson (1st time speaking) 6705 Corte Tercera-based on testimony implies **in support of lot split- against street improvements** to occur in Section VII of staff report. (2nd time speaking) wants street improvements to occur in between Tavan Estates and Reliez Valley Road for a crosswalk.

Brian Cisterman- 6709 Corte Segunda. **In support of lot split- against street improvements** to occur in Section VII of staff report. States there is no lots on his street that have the acreage to subdivide.

John McFadden- his home's proximity is unknown to prospective lot. **Against lot split.**

Larry Dobson- 964 Calle Verde- HOA board member. **In support of lot split**, states brand new house may improve his property value. States HOA is in the process of amending CC&Rs and this would be an opportunity to amend CC&Rs and Bylaws to include 75th prospective lot. States that there is nothing in the CC&Rs and Bylaws that would prevent lot split.

Karen Patterson- 6735 Corte Tercera- HOA board member states the HOA longstanding attorney who knows the Tavan Estates CC&Rs and Bylaws "like the back of their hand" said that the proposed lot split would be added to HOA since it would be built on a lot that is included in the HOA. Attorneys concluded that there is not anything in the CC&Rs and Bylaws that would prevent subdivision.

Bob Michaud- 909 Calle Verde- Tavan Estates Architectural Control Committee member. States he met with the HOA attorneys and they informed him that any legal costs related to amending CC&Rs and Bylaws for the 75th lot would be the responsibility of the new home owner.

Soren Prestemon- 938 Tavan Estates Dr.: States that the project would not affect his household directly, but is concerned about potential of other lots to subdivide.

Keegan Fraschieri read **Attachment #1** below- **in support of lot split- against street improvements** to occur in Section VII of staff report.

5. Attachments: (Applicant's attachments provided to Planning Commission under separate cover)

Attachment #1- Letter of support from 956 Tavan Estates Dr. (1 of 3 homes that share cul-de-sac with applicant)

Attachment #2- Letter of support from 955 Tavan Estates Dr. (2 of 3 homes that share cul-de-sac with applicant)

Attachment #3- Letter of support from 943 Tavan Estates Dr (3 of 3 homes that share cul-de-sac with applicant)

Attachment #4- Letter stating the reasons why the above addresses (including applicant) are opposed to Street Improvements in Section VIII of Staff Report, and to request all improvements be included in a Deferred Improvement Agreement.

Attachment #5- E-mail regarding CC&R and Bylaws from the Head of Architectural Control Committee of Tavan Estates HOA, stating attorney confirmed HOA cannot prevent a subdivision.

Attachment #6: Recent Preliminary Title Report describing scenic easement on 950 Tavan Estates Dr.

Attachment #7: Transcription of recording of 6/22 public hearing obtained from Laura Austin at the City of Martinez.

*Christina Naughton
926 Tavan Estates Dr.
Martinez, CA 94553*

ATTACHMENT H



July 18, 2016

Planning Commission
City of Martinez
525 Henrietta Street
Martinez, CA. 94553

Regarding public hearing on 950 Tavan Estates Drive on July 26, 2016 which I cannot attend, I want to say I have no objection to building a single family house.

I do object to the additional street parking and new sidewalk in front of the property which was spoken about at the June 22nd hearing.

Christina Naughton
Christina Naughton

RESOLUTION NO. PC 16-__

**A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF MARTINEZ, DENYING AN APPEAL UPHOLDING THE ZONING
ADMINISTRATOR'S DENIAL OF THE MINOR SUBDIVISION (MS #551-16) OF AN
EXISTING 2.6 ACRE PARCEL INTO TWO SEPARATE SINGLE-FAMILY PARCELS
IN THE R-20 AND OS ZONING DISTRICTS, LOCATED AT 950 TAVAN ESTATES
DRIVE (APN: 365-321-001)**

WHEREAS, the City of Martinez received a request for a Minor Subdivision approval ("Project") to allow construction of an additional single family residence at 950 Tavan Estate Drive, identified as APN 365-321-001 ("Project Lot", "Project site", "site", or "subject property"), within the City of Martinez; and

WHEREAS, the applicant proposes to split the existing 2.6-acre parcel into two parcels of approximately 1.3 acres each. The lot which would include the existing residential structure would consist of 1.29 total acres with 0.41 acres (17,857 sf) zoned R-20 and 0.88 acres zoned OS. The new lot, which would include the new residential structure, would consist of 1.32 total acres with 0.26 acres (11,442 sf) zoned R-20 and 1.06 acres zoned OS; and

WHEREAS, the zoning applicable to the property is R-20 (One-Family Residential District), as set forth in the Municipal Code, Martinez, California, at Title 22 "Zoning," and Chapter 22.12 "Residential Districts" ("Zoning Ordinance"), establishing a minimum site area of 20,000 sq. ft., and OS (Open Space) as set forth in Chapter 22.28 of the Zoning Ordinance; and

WHEREAS, the Zoning Administrator (ZA) denied the applicant's (Humann Company, Engineer/Albert Mark and Corina Fraschieri, owner) application for a Minor Subdivision at a duly noticed and held public hearing on June 22, 2016; and

WHEREAS, the appellants (Albert Mark and Corina Fraschieri) filed a timely appeal of the Zoning Administrator's decision with the City of Martinez; and

WHEREAS, the Planning Commission held a duly noticed public hearing on July 26, 2016, to consider the appeal and consider public testimony on the matter and all other substantial evidence in the record; and

WHEREAS, the Record of Proceedings ("Record") upon which the Planning Commission bases its decision regarding the Project includes, but is not limited to: (1) all staff reports, City files and records and other documents prepared for and/or submitted to the Zoning Administrator, the Planning Commission, and the City relating to the Project, (2) the evidence, facts, findings and other determinations set forth in this resolution, (3) the City of Martinez General Plan, Central Martinez Specific Area Plan, and the Martinez Municipal Code, (4) all applications, designs, plans, studies, data and correspondence submitted by the applicant in connection with the Project, (5) all documentary and oral evidence received at public hearings or submitted to the City relating to the Project, (6) all other matters of common knowledge to the Planning

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Commission including, but not limited to, City, state and federal laws, policies, rules regulations, reports, records and projections related to development within the City and its surrounding areas; and

NOW, THEREFORE, the Planning Commission of the City of Martinez resolves and finds as follows:

- 1) That the above recitals are found to be true and constitute part of the findings upon which this resolution is based.
- 2) The Planning Commission hereby makes the following findings with respect to the Appeal:

(a) ZA Denial Finding #1

Your proposal would divide the existing .67 acre homesite into two (2) homesites, each smaller than ½ acre in size, creating a total of four (4) residential lots at the end of Tavan Estates Drive. The original Tavan Estates Subdivision approval allowed a maximum of three (3) lots at the end of Tavan Estates Drive, each with a minimum ½ acre homesite size.

Appellant's Allegation of the ZA Denial Finding #1: In the appeal letter, the applicant writes that reliance on past approvals would be the equivalent of claiming that no previously subdivided property in any previously recorded map could ever be further subdivided, which he claims would be "a misunderstanding at best and illegal at worst."

Finding to Deny Appeal Based on Finding #1: The Tavan Estates approvals were a product of a mitigated site plan that was developed through a certified EIR, which itself was required by the Subject Property's Open Space/Conservation Land Use General Plan Designation. Such mitigations measures "run with the land" and are thus still in force. The suitability of the site for the type of development proposed was reviewed at the time that the Tavan Estates EIR and original subdivision was approved. Such review led the decision makers at that time to require larger lots in the areas surrounding the the area with steep slopes to be preserved as open space. The physical topography of this area has not changed nor has the original reason for permitting a maximum of three lots in this area.

Facts in Support of Finding: While subdividing the parcel would not create overall lots less than the minimum size if the open space area is taken into account in determining parcel size, such subdivision would allow for development of two units on 0.67 acres of R-20 zoned land. This would exceed the densities envisioned by the zoning and the original approval of the Tavan Estates subdivision. In addition, permitting subdivision of the portion of the lands zoned open space, effectively increases the development density of the adjacent land.

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(b) ZA Denial Finding #2

Your proposal would divide the approximately two (2) acre portion of your property which is within the OS (Open Space) Zoning District between the proposed Parcels A and B. MMC Section 22.28.050 states the “no division of land zoned for open space shall be permitted.”

Appellant’s Allegation of the ZA Denial Finding #2: In the appeal letter, the applicant disputes the existence of the Scenic Easement’s Restriction or the applicability of the OS zoning. The appeal letter further notes that the open space zoned land is not intended to be subdivided, and that the open space is being maintained by the owner.

Finding to Deny Appeal Based on Finding #2: Both the Scenic Easement and the OS zoning district were established with the original entitlements of the subdivision and prior to the sale of the property. As outline above, Section 22.28.050 which states “No division of land zoned for open space shall be permitted” should be seen as a prohibition of any subsequent subdivision which divides land within an established OS zoning district for the purposes of intensifying development beyond that original approval. There is no question that the open space easement was dedicated to the City by the original subdivider and accepted by the City at the time of the Tavan Estates final map. The open space zoning is consistent with the purposes of Section 21.21-21.23 of the General Plan.

Facts in Support of Finding: The purpose of Municipal Code Section 22.28.050 appears to be to preserve open space lands from development pressure and to prevent such lands from being subdivided and incorporated into other lots thereby increasing the potential development density of lands located adjacent to such open space. While subdividing the parcel would not create overall lots less than the minimum size if the open space area is taken into account in determining parcel size, such subdivision would allow for development of two units on 0.67 acres of R-20 zoned land. This would exceed the densities envisioned by the zoning and the original approval of the Tavan Estates subdivision. Permitting subdivision of the portion of the lands zoned open space effectively increases the development density of the adjacent land.

(c) ZA Denial Finding #3

Your request for the Zoning Administrator to waive the required frontage improvements is in conflict with MMC 21.44.120, Improvements – Required When. The Zoning Administrator has no authority to waive the requirements of the City’s Subdivision regulations.

Appellant’s Allegation of the ZA Denial Finding #3: In the appeal letter, the applicant claims he had not requested a waiving of the required frontage improvements adjacent to the proposed new residence, only deferral, that

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such requests were made by his neighbors.

Finding to Deny Appeal Based on Finding #3: While the requirement for frontage improvements may be moot, the applicant is required by Section 21.08.010 of the Martinez Municipal Code to install improvements, with a deferral for portions of such improvements being at the discretion of the City Engineer. The applicant appears to be taking the position that a deferral is appropriate because in his view it will never be necessary to install the improvements. This is tantamount to a request for a waiver. The purpose of a deferral is to defer required improvements to a time in the future when adjacent property develops or changed development occurs that would make the improvements more economical and less disruptive to install. The purpose of a deferral is not to constitute a de-facto waiver by deferring improvements indefinitely. In the present case, as deferral does not appear to be logical in that it is not expected that any additional increased development adjacent to this property would be likely or that any additional public frontage improvements in that area would be warranted. In addition, such a deferral would be subject to a deferred improvement agreement which must include security for the improvements to be constructed in the future. Thus such deferral would result in the applicant posting a bond or cash deposit for an indefinite period of time, which would not appear to serve the applicant's apparent desire to reduce costs.

Facts in Support of Finding: Section 21.08.010 of the Martinez Municipal Code requires full street improvements to the hillside standards along the R-20 portion of the project site. At a minimum, this would require a path, with full improvements which could be deferred along the OS portion of the project site. Tavan Estates Drive has sidewalk located on the one side of the street for its entire length, except for this parcel.

3) The Planning Commission hereby makes the following findings with respect to the applicability of CEQA to the project:

(a) Applications which are denied are not subject to CEQA.

4) The Project is inconsistent with the Martinez General Plan Policy 21.21 related to Open Space/Conservation Use Land. The Planning Commission hereby makes the following findings with respect to the General Plan:

(a) **21.21 - Land to remain for open uses is designated Public Permanent Open Space or Open Space/Conservation Use Land. These designations shall apply where the following conditions are prevalent: natural conditions such as steep or potentially unstable slope, hazardous geologic conditions, watershed stability and floods hazard, seismic hazard, and fire hazard, which constitute major constraints to development or threats to life and property, where soils, land forms, vegetation, watersheds, creekways, and water bodies combine to provide either a significant habitat for wildlife or agricultural resource**

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and where land forms, vegetation, waterways and surfaces constitute a major scenic and recreational resource which should be preserved either for purposes of public use or protection and shaping of the scenic setting of the community.

Facts in Support of Finding: Permitting the subdivision and addition of open space lands to increase the density of adjacent parcels is generally inconsistent with the preservation of the scenic setting of the community in which such open space is located. If all private open space were to be subdivided in order to increase density on adjacent parcels, the character of the lands abutting such open space would change from predominantly rural in appearance at 1 unit per 20,000 square feet of land to the more urbanized appearance of 1 unit per approximately 12,000 square feet of land. The net effect would be the general appearance of a doubling of density adjacent to the preserved open space. Such action appears antithetical to the purposes of preserving the scenic setting of the community.

- 5) As set forth in the Municipal Code Section 21.42.080, regarding denial of a tentative map, the section provides, in relevant part, that the action shall be based on conformity of the tentative map with the Subdivision Map Act, with the City's Subdivision Ordinance, with the zoning provisions, with the General Plan, with precise plans and official plan lines adopted by the City Council, and on the quality of the design of the proposed subdivision. Based thereon, the Planning Commission hereby makes the following findings with respect to the denial of a Minor Subdivision for the Project.

(a) The proposed Minor Subdivision is not in conformance with the Subdivision Map Act.

Facts in Support of Finding: The state Subdivision Map Act, (California Government Code Section 66474), provides that a City shall deny a tentative or parcel map if it makes any one of a list of findings. The relevant finding in this case is that the proposed map is not consistent with the applicable general plan. The Conservation Use Land Designation of the Project Site is intended for preserving the scenic areas as outlined in the original approvals of Tavan Estates. General Plan Policy 21.21 provides that land to remain for open uses is designated Public Permanent Open Space or Open Space/Conservation Use Land. Permitting the subdivision and addition of open space lands to increase the density of adjacent parcels is generally inconsistent with the preservation of the scenic setting of the community in which such open space is located. If all private open space were to be subdivided in order to increase density on adjacent parcels, the character of the lands abutting such open space would change from predominantly rural in appearance at 1 unit per 20,000 square feet of land to the more urbanized appearance of 1 unit per approximately 12,000 square feet of land. The net effect would be the general appearance of a doubling of density adjacent to the preserved open space. Such action appears

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antithetical to the purposes of preserving the scenic setting of the community.

(b) The proposed Minor Subdivision is not in conformance with the City's Subdivision Ordinance.

Facts in Support of Finding: Section 21.08.010 of the Martinez Municipal Code requires full street improvements to the hillside standards along the R-20 portion of the project site. At a minimum, this would require a path, with full improvements which could be deferred along the OS portion of the project site. Tavan Estates Drive has sidewalk located on the one side of the street for its entire length, except for this parcel. The applicant objected to full compliance with this requirement at the Zoning Administrator hearing and requested deferral of the improvements.

(c) The proposed Minor Subdivision is not in conformance with the City Zoning provisions.

Facts in Support of Finding: The Martinez Municipal Code Section 22.28.050 states: "No division of land zoned for open space shall be permitted." The purpose of Section 22.28.050 appears to be to preserve open space lands from development pressure and to prevent such lands from being subdivided and incorporated into other lots thereby increasing the potential development density of lands located adjacent to such open space. While subdividing the parcel would not create overall lots less than the minimum size if the open space area is taken into account in determining parcel size, such subdivision would allow for development of two units on 0.67 acres of R-20 zoned land. This would exceed the densities envisioned by the zoning and the original approval of the Tavan Estates subdivision. In addition, permitting subdivision of the portion of the lands zoned open space effectively increases the development density of the adjacent land.

(d) The proposed Minor Subdivision is not in conformance with the City General Plan.

Facts in Support of Finding: The proposed project is inconsistent with the intent of General Plan Policy 21.21, in that such subdivision would not protect the scenic setting of the community and would lessen the scenic value of the open space area by effectively increasing development density immediately adjacent to the open space. See also Finding (a), above.

NOW, BE IT FURTHER RESOLVED that based on the findings set forth herein and the Record as a whole, the Planning Commission hereby denies the appeal and denies the Minor Subdivision (MS #551-16). The action of the Planning Commission may be appealed to the City Council pursuant to Martinez Municipal Code Section 22.06.050 within ten (10) calendar days of the date a decision was rendered.

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I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the Planning Commission of the City of Martinez at a regular meeting of said Commission held on the 26th day of July, 2016.

AYES:

NOES:

ABSENT:

ABSTAINED:

BY: _____
Corey M. Simon
Senior Planner/Clerk Pro Tem