

CITY OF SANTA ROSA
DEPARTMENT OF COMMUNITY DEVELOPMENT
STAFF REPORT FOR PLANNING COMMISSION
AUGUST 11, 2022

PROJECT TITLE

Elm Tree Station – Appeal of Subdivision
Committee Approval Parcel Map Waiver
and of Certificate of Compliance

APPELLANT

Woody Hastings

ADDRESS/LOCATION

874 North Wright Road

PROPERTY OWNER/APPLICANT

Mangal Dhillon

APPLICANT'S REPRESENTATIVE

Jean Kapolchok, J Kapolchok and
Associates

ENGINEER/SURVEYOR

BKF Engineering

ASSESSOR'S PARCEL NUMBER

035-063-001

FILE NUMBER

CC18-004

PROJECT SITE ZONING

PD-0435 (Planned Development: Wright-
Sebastopol Commercial District)

GENERAL PLAN DESIGNATION

Retail and Business Services

APPLICATION DATE

Appeal Filed December 16, 2019

APPLICATION COMPLETION DATE

Not Applicable

PROJECT PLANNER

Michael Wixon, Contract Planner

RECOMMENDATION

Denial

Agenda Item # 8.3
For Planning Commission Meeting of: August 11, 2022

CITY OF SANTA ROSA
PLANNING COMMISSION

TO: VICE-CHAIR PETERSON AND MEMBERS OF THE
COMMISSION

FROM: MICHAEL WIXON, CONTRACT PLANNER

SUBJECT: APPEAL OF SUBDIVISION COMMITTEE APPROVAL OF A
PARCEL MAP WAIVER AND CERTIFICATE OF COMPLIANCE
FOR ELM TREE STATION

AGENDA ACTION: RESOLUTION

RECOMMENDATION

The Subdivision Committee and the Planning and Economic Development Department recommends that the Planning Commission, by resolution, deny the appeal and approve the Parcel Map Waiver and Certificate of Compliance (CC18-004) for Elm Tree Station located at 874 North Wright Road.

EXECUTIVE SUMMARY

On December 12, 2019, the Subdivision Committee approved the Parcel Map Waiver and Certificate of Compliance for Elm Tree Station -- to allow the subdivision of a 0.98 acre parcel into two parcels, Parcel 1 = .73 acres, and Parcel 2 = .25 acres. On December 16, 2019, an appeal was filed by Mr. Woody Hastings. City Code Section 19-32.050, Appeal to Planning Commission, states that "any decision of the Subdivision Committee regarding a tentative parcel map may be appealed to the Planning Commission." The Subdivision Committee adopted the necessary findings to approve the Parcel Map Waiver and Certificate of Compliance at the December 12, 2019, public hearing. The Subdivision Committee and the Planning and Economic Development Department recommend that the Planning Commission uphold the approval and deny the appeal.

BACKGROUND

1. Project Description

The proposed Elm Tree Station project includes three (3) applications, a Conditional Use Permit (CUP21-100), a Design Review (DR21-069), and Parcel Map Waiver with a Certificate of Compliance (CC18-004), which is the subject of the appeal, and this staff report.

The approved Parcel Map Waiver and Certificate of Compliance will subdivide a 0.98 acre site into two parcels which would facilitate the development of Elm Tree Station. Parcel 1 is proposed at 31,143 square-feet and would enable the development of a future gasoline and electric charge fueling station and a neighborhood market with an 806-square-foot, one-bedroom apartment above. Parcel 2 is proposed at 11,600 square-feet and would facilitate the development of a small, 432-square-foot retail building and park amenities, including a patio/trellis area, benches, picnic area and bike path. Access easements and shared parking agreements between Parcel 1 and Parcel 2, and utility easements to serve each parcel, are also included in conditions of approval. Public improvements would facilitate two proposed driveways from North Wright Road. The southerly driveway would provide both ingress and egress, while the northerly driveway would provide egress only.

On December 12, 2019, the Subdivision Committee approved the Parcel Map Waiver and Certificate of Compliance. The Parcel Map Waiver and Certificate of Compliance would facilitate the proposed development and operation of the Elm Tree Station Project, if the CUP for the use is subsequently approved by the Planning Commission.

While the Subdivision Committee considered the public comments during the December 12, 2019, meeting, it ultimately adopted several findings of fact before approving the application with conditions. The adopted findings of fact that determined: 1) The project is consistent with the General Plan; 2) The site has physically suitable for the lot split, it has suitable size, shape and topography that lend itself towards mixed uses; 3) The site is suitable for the intensity of development can accommodate the physical suitable for the intensity of development as previously vetted and approved by the Planning Commission in 2013; 4) Neither the design of the proposed lot split nor the improvements will cause substantial environmental damage (including fish and wildlife habitat) based upon the previously adopted MND; 5) The lot split and improvements would not conflict with any access easements or the use of any property in and around the project site; 6) The project and improvements would not create any sanitary issues because the City is able to deliver adequate water and sanitary sewer services to the properties; 7) The proposed lot split and improvements will not discharge waste into the City's sewer system that would result in any violation of any requirements prescribed by the California Regional Water Quality Control Board; and, 8) The project was found to be in compliance with CEQA based upon the Initial Study and Mitigated Negative Declaration adopted by the Planning Commission in 2013.

Subsequently, on December 16, 2019, Mr. Woody Hastings filed an appeal asking that the Planning Commission overturn the Subdivision Committee's action with the following as grounds for the request:

"It is my/our contention that the Subdivision Committee did not adequately take into account significant changes that have occurred since this project was last before a decision-making body."

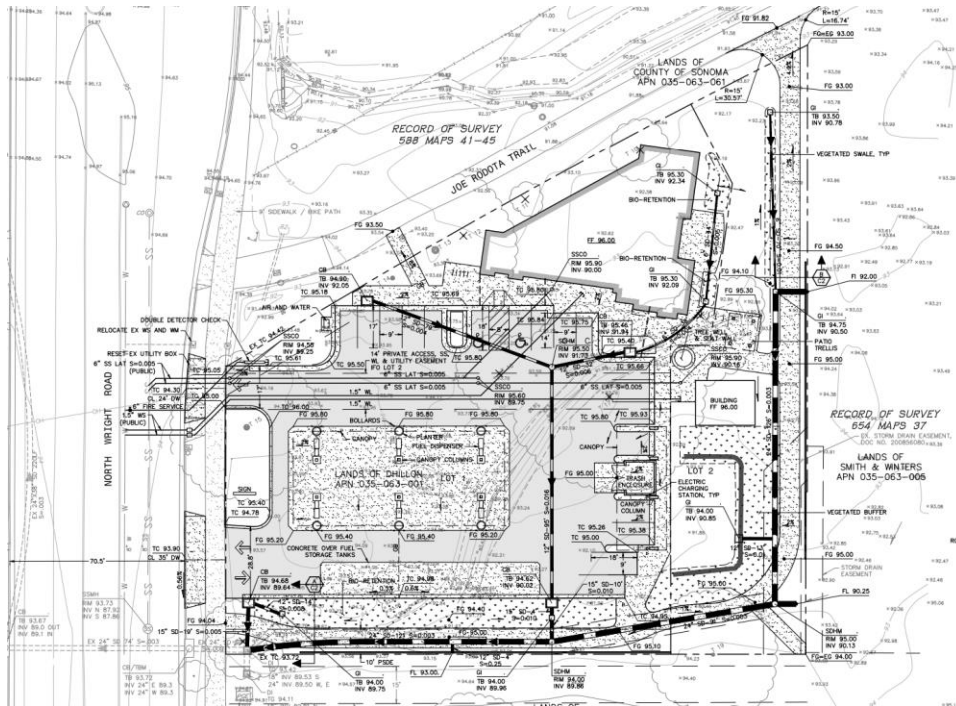
However, the Subdivision Committee acted properly in applying the City's Subdivision Code in processing and approving the application for a Parcel Map Waiver and Certificate of Compliance (City of Santa Rosa Municipal Code, Chapters 19-16 – Subdivision Map Processing -- Generally, 19-20 – Subdivision Design, and 19-24 – Tentative Map Procedures). Also, the stated grounds for an appeal are broad and no specific changes were identified in writing by the appellant. Further still, no changes have occurred since the Subdivision Committee action which would alter staff's recommendation of approval.

An aerial image of the site and an image of the approved Certificate of Compliance and Parcel Map Waiver for Elm Tree Station are presented below.

Image 1: Aerial view of subject parcel



Image 2: Parcel Map Waiver Map



2. Project History

On July 12, 2007, the Planning Commission reviewed a Conditional Use Permit for the construction of a service station with a car wash, neighborhood market and a drive-through restaurant on the subject site. The proposal also included a Zoning Code Text Amendment that would have amended the Code to allow such uses to be adjacent to each other, with the approval of a Conditional Use Permit. The Planning Commission did not support the Zoning Code Text Amendment and the resulting project. The Planning Commission continued the item to July 26, 2007, to prepare resolutions denying the applications with prejudice.

On July 26, 2007, the Planning Commission adopted resolutions denying, with prejudice, the Conditional Use Permit and Zoning Code Text Amendment. Pursuant to Zoning Code Section 20-54.080(C), by denying the application with prejudice, no further application for the denied request could be filed for the ensuing 12 months.

On October 4, 2012, the applicant submitted Conditional Use Permit (CUP12-082), Design Review (DR12-066) and Tentative Map (TM12-002) applications for the project.

On September 9, 2013, an Initial Study/Mitigated Negative Declaration (IS/MND) was posted at the County of Sonoma and the State Clearinghouse for a 30-day

public review period. Public hearing notices were mailed to owners within 400 feet of the subject property, and a public hearing sign was posted on the project site.

On October 24, 2013, the Planning Commission approved three Resolutions for the IS/MND, Conditional Use Permit (CUP12-082), and a Tentative Parcel Map (MIN12-002).

On December 19, 2013, the Design Review Board approved Preliminary Design Review for the project (DR12-066).

On March 20, 2014, the Design Review Board approved Final Design Review (DR12-066) for the project.

On June 1, 2018, the applicant filed a Parcel Map Waiver and Certificate of Compliance application (CC18-004) in response to the determination that the Tentative Map had expired. A minor subdivision for a property can be allowed through Parcel Map Waiver and Certificate of Compliance pursuant to City Code Section 19-16.030.

On November 14, 2019, the Certificate of Compliance and Parcel Map Waiver Application (CC18-004) was deemed complete.

On December 12, 2019, the Subdivision Committee approved the Parcel Map Waiver and Certificate of Compliance. More than a dozen people with CONGAS were present at the meeting and spoke against the project for various reasons. The Subdivision Committee considered the comments from the public in attendance and having written via email and letter. These public comments are summarized and addressed in the Public Comment subsection of the Analysis section below. Public comments were in general opposition to the gas station use and were either adequately addressed in the staff report dated December 12, 2019, or were issues which had no direct bearing on the Parcel Map Waiver and Certificate of Compliance application.

On December 16, 2019, Woody Hastings filed an appeal of the Subdivision Committee's decision to approve the Parcel Map Waiver. During the time since the Appeal was filed City staff and the applicant have been working to determine the best path forward for the project following a determination that the previous CUP and DR had expired. Now new CUP and DR applications have been submitted, action on the Appeal has been scheduled.

On December 17, 2021, applications for a Conditional Use Permit (CUP21-100) and Design Review (DR21-069) were filed for Elm Tree Station (PRJ21-033). The applications have been deemed complete by the Department and will be processed following the Planning Commission's action on this appeal.

ANALYSIS

The Appellant submitted an Appeal Application, which states the following as grounds for the appeal:

“It is my/our contention that the Subdivision Committee did not adequately take into account significant changes that have occurred since this project was last before a decision-making body.”

1. Planning Response to Grounds for Appeal

The grounds for appeal imply significant changes have occurred without stating what significant changes did, in fact, occur when last before a decision-making body -- between the dates of March 20, 2014 (Final Design Review approval by the Design Review Board) and December 14, 2019 (date of Subdivision Committee approval of CC18-004).

City staff is not aware of any significant changes that have occurred on the project site, or in the vicinity of the project site, nor is staff aware of any policy changes that have occurred since the March 20, 2014, Design Review Board action. A proposed ordinance recommending a ban of new fossil fuel stations, or expansion of existing fossil fuel stations, was reviewed by the Planning Commission on July 14, 2022, for consideration of a recommendation to the City Council. The Commission supported the recommended Draft Ordinance with minor modifications, which included provisions for exemptions from the Draft Ordinance for projects which have submitted complete applications prior to the effective date of the Ordinance. The proposed ordinance is scheduled for review by the City Council on August 23, 2022. However, language in the proposed ordinance would exempt gas station projects that have submitted complete applications to the City on or before adoption of the gas station ban.

2. General Plan

The project site is designated Retail and Business Services on the Santa Rosa General Plan 2035 land use diagram. This designation allows retail and service enterprises, offices, restaurants, and regional centers. The Parcel Map Waiver and Certificate of Compliance would allow for future retail development of the site, and therefore the project is consistent with the General Plan. The Parcel Map Waiver and Certificate of Compliance also demonstrate how future development would attract a regional clientele due to its visible location adjacent to Highway 12, which will minimize traffic on City streets. Further, the project demonstrated a connection through the site to the Joe Rodota Trail, as well as a picnic area and bicycle amenities, which would benefit trail users.

3. Zoning

Site: PD-0435 (Wright-Sebastopol Commercial District)
North: Open Space Reserve (OSR)
South: Planned Development (PD-0435: Wright-Sebastopol Commercial District)
East: Multi-Family Residential (R-3-18)
West: General Commercial (CG)

The subject property is located in the Planned Development (PD-0435: Wright-Sebastopol Commercial District) Zoning District. The Policy Statement for PD-0435 allows the subdivision of land proposed by the Parcel Map Waiver and Certificate of Compliance.

Proximity of the Service Station to Residentially Zoned Land:

Zoning Code Section 20-42.150, Service Stations, includes specific site requirements for service stations, including allowed proximity to residential. Specifically, Section 20-42.150(A)(2) states the following:

“The site shall not adjoin an existing R-1, R-2 or R-3 zoning district or single-family or two-family residential use at the time the service station use is established, except a nonconforming single-family or two-family residential use, or a single-family or two-family residential use in a commercial zone.”

The subject site adjoins a vacant property to the east that is zoned R-3-18 (multi-family residential). As such, pursuant to the above noted Zoning Code section, the proposed service station would not be allowed on the subject site without approval of this subdivision. To address the location issue, the applicant received approval of a Certificate of Compliance and Parcel Map Waiver that would subdivide the property into two parcels -- proposed Parcel 2 would separate Parcel 1, where the service station is proposed, from the residential land to the east. The result would be that the parcel containing the service station would not adjoin the residentially zoning land, thereby conforming to the aforementioned Zoning Code section. The size and shape of each parcel also contributes to Zoning Code standards which call for a separation of service stations from residential uses.

To further separate the fueling station use from the residential land to the east, the applicant is proposing development of a small general retail building on Parcel 2, which could be occupied by a food-service use or small retail establishment.

4. Public Improvements/On-Site Improvements

The project was reviewed by the City's Transportation and Public Works Department and the Engineering Development Services Division, which were incorporated as conditions of approval related to parcel and easement dedications, driveway improvements, storm drainage and utilities.

5. Public Comments

As noted above, more than a dozen people attended the December 12, 2019 Subdivision Committee meeting to express their opposition to the Parcel Map Waiver and Certificate of Compliance. Those in attendance expressed opposition primarily based upon the fueling station use shown on the map exhibit for the project. Final Subdivision Committee Reports, which are signed with the adopted findings and conditions of approval, are intended to capture basic actions from the meeting itself, it does not include detailed minutes from the meeting. Mr. Woody Hastings has submitted a letter which captures more details of the meeting, including many of the names of those in attendance as members of CONGAS and their reasons expressed at the meeting for their opposition to the Parcel Map Waiver and Certificate of Compliance (see attached public correspondence). Other reasons expressed to oppose the project were:

1) Lack of public hearing records from earlier project files being provided before acting on the current Certificate of Compliance project; 2) An error of parcel size and location in the staff report; 3) A claim rejecting the adopted High Fire Severity Map used by the Fire Department and City because the previous Tubbs Nun Fire crossed over Highway 12 to the south; 4) A claim that the previously adopted environmental document was outdated and should be rejected and a new document prepared because it did not address Greenhouse Gas Emissions or wetlands and trees on-site; 5) And, a request to deny the project because the applicant had not completed all of the conditions of approval, particularly a Municipal Separate Storm Sewer System and Urban Stormwater Mitigation Plan following the City's Low Impact Development Guidelines.

Each item is responded to below:

1) The ability to produce a public hearing record upon request for a previous project approved by the City would not create reason to withhold action on the Parcel Map Waiver and Certificate of Compliance by the Subdivision Committee. Public hearing records are always available for inspection by the public upon request; 2) The parcel size and project location were printed in several locations within the staff report and were included in the public hearing notice. A single minor error would not constitute a reason for granting an appeal when the

location and project description were or could have been known at the meeting and/or by public hearing notice; 3) The High Fire Severity Map used by the Fire Department and City of Santa Rosa clearly shows the site outside of a High Fire Severity Area, which the appellant understands and believes should be changed. Disagreement with current documents adopted by the City would not be reason to grant an appeal. The project will comply with all Fire Department standards as conditioned; 4) The Environmental Document (i.e., the Initial Study and Mitigated Negative Declaration) was considered by the Subdivision Committee. It was specifically incorporated into the project conditions of approval to ensure mitigation measures would be implemented. Page 4 of the Initial Study included a list all relevant Climate Action Plan policies which were to be considered with the project to reduce energy consumption and possible greenhouse gas emission impacts. Pages 19-21 of the MND included mitigation for nesting raptors, nesting passerine birds, waters of the United States, California Tiger Salamander, special plant species, and the loss of protected and heritage trees. CEQA §15162(a)(1) and (2) allows the use of previously adopted environmental documents where the document adequately addresses potentially significant impacts. It is not uncommon for commercial projects to take several years to complete the conditions of approval necessary to obtain a building permit. Being that the previous document adequately addressed these impacts, there is no reason to disregard the previously adopted environmental document simply because 6-9 years passed while the project remained unchanged. 5) All storm water and sewer storm water impacts, including best practices for storm water runoff pre-treatment, were considered with the project and the previous Initial Study and Mitigated Negative Declaration. All improvements need not be shown to demonstrate to the City's satisfaction that the improvements required can be completed. Moreover, the conditions of approval require that they be completed as part of the project before, during and after construction.

FISCAL IMPACT

This action does not have a fiscal impact on the General Fund.

ENVIRONMENTAL IMPACT

An Initial Study was prepared in compliance with the California Environmental Quality Act (CEQA) and resulted in preparation of a Mitigated Negative Declaration during the original project review. The Elm Tree Station Initial Study and Mitigated Negative Declaration (ISMND) was prepared to evaluate the environmental effects of a gas station and retail use, in addition to a subdivision of the parcel. The Initial Study identified potential significant impacts in a variety of topic areas, including biological resources, air quality, geology/soils, and noise. Mitigation was identified and approved to reduce all potential impacts to less than significant. The Mitigated Negative

Declaration was adopted by the Planning Commission on October 24, 2013. The IS/MND was considered and incorporated into the approval of the Certificate of Compliance and Parcel Map Waiver by the Subdivision Committee action. Since no substantial changes have occurred to the project since the environmental document was adopted in 2013, and since there are no substantial changes which have occurred with respect to the circumstances under which the project is undertaken which would require major revisions of the previously adopted Initial Study and Mitigated Negative Declaration, no new environmental document need be prepared according to CEQA Guidelines Section §15162(a)(1) and (2).

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

As noted above, the previous Conditional Use Permit (CUP13-100) and Design Review (DR13-069) have since expired, but new applications for the same project have been submitted by the applicant. The new applications may be considered by both the Planning Commission and Design Review Board, following action of the appeal.

PLANNING COMMISSION'S ROLE

The appeal to Planning Commission is filed in accordance with Santa Rosa Municipal Code (SRMC) §20-50.020, Table 5-1 – Review Authority, and §20-62.030, Table 6-1 – Appeal Review Authority. The appeal has been processed in accordance with §20-62.030 as it relates to filing and processing of an appeal. A copy of the appeal is also attached to this report, as are all original Subdivision Committee report documents.

The Planning Commission may consider any issue involving the matter that is the subject of the appeal, in addition to the specific grounds for the appeal (Zoning Code §20-62.030.F).

1. *The Review Authority may:*
 - a. *Affirm, affirm in part, or reverse the action, the determination, or decision that is the subject of the appeal;*
 - b. *Adopt additional conditions of approval, that may address issues or concerns other than the subject of the appeal; or*
 - c. *Deny the land use permit or approval granted by the previous review authority, even though the appellant only requested a modification or elimination of one or more conditions of approval.*
2. *If new or different evidence is presented on appeal, the Commission or Council may also refer the matter to the Director or Commission for further consideration.*

NOTIFICATION

This appeal was noticed as a public hearing per the requirements of Chapter 20-66 of the City Code. Notification of this public hearing was provided by posting an on-site sign, publishing notice in a newspaper of general circulation, mailed notice to surrounding property owners and occupants, electronic notice to parties that had expressed interest in projects taking place in this geographic area of Santa Rosa, and bulletin board postings at City Hall and on the City website. Pursuant to Government Code Section 65091, where necessary, the City has incorporated notice procedures to the blind, aged, and disabled communities. These procedures include audio amplifier/assistive listening device support at public meetings, closed captioning, and optical character recognition conversion of electronic notices.

ATTACHMENTS:

Attachment 1	December 12, 2019 Subdivision Committee Report with Attachments (signed and with findings and conditions of approval)
Attachment 2	Appeal Form, dated December 16, 2019
Attachment 3	Public Correspondence