

Commissioners/Chair  
Scott White  
1531 Lewiston Road  
Project Applicant and Agent for Boeger Trust  
I have lived in Trinity County since 1994

Exhibit 4  
11/17 to ( Bundle 3

<< Read County Code Section Here >>

e-mail to staff on 11/26

<< Read Planning Staff Report Here >>

<<Read Board of Supervisors Agenda Item 2.1 Here>>

My Relevant Background:

- Bachelor's Degrees in Business and Economics - both with honors
- Master's Program (no thesis) – Rural and Town Planning
- 27 years of land use and transportation planning experience
  - 6+ Trinity County
  - 20+ Caltrans District 2 – 18 years as a supervisor
- Managed numerous consultant contracts as well as both short and long range planning studies.
- Have won both personal and project-level awards.
- Participated in the development of staff training materials, testing materials and planning series job specifications.

I'm not telling you all of this to belittle your staff, but to let you know I have been down in the trenches as a professional planner. I have done land use and transportation planning across the seven counties in North-eastern California.

From the start my mantra has been for all of us to follow the rules.

I expressed my desire from outset to make project effort easy for staff.

This project will either keep folks the same or make them better off.

All of our plans have been on hold for months now because County staff has not been following the rules.

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COUNTY CODE SECTIONS I WILL REFER TO TONIGHT ARE:  
If you want to circle in your copy

The 17's are the Zoning Ord while the 16's are the Subdivision Ord

17.30E	30.5
17.30E.020	30.5.B
17.30E.020.C	30.5.B.3
17.30E.030.A	30.5.C.1
17.30E.030.E	30.5.C.5
17.30E.030.G	30.5.C.7
17.30E.040.A	30.5.D.1

16.32

16.32.010

16.32.040

SECTIONS I WILL REFER TO BUT WERE NOT PROVIDED BY STAFF ARE:

16.08.040

16.48

16.48.010

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**TRINITY COUNTY  
PLANNING – CANNABIS**  
530 MAIN ST., PO BOX 2819  
PHONE – 530-623-1351  
WEAVERVILLE, CALIFORNIA 96093

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**Edward Prestley, Interim Deputy Director**

## MEMORANDUM

DATE: Thursday, November 3, 2022  
TO: Trinity County Planning Commission  
FROM: Skylar Fisher, Associate Planner  
SUBJECT: Item 3 - Major Lot Line Adjustment (P-22-19)

Planning staff is seeking Commission input and guidance regarding major lot line adjustment application P-22-19 which would result in the reconfiguration of three existing parcels in the Lewiston area. The existing and proposed parcel configurations are presented in an attached map. The application packet submitted to the Planning Department was reviewed by the County Surveyor and determined to lack sufficient evidence to show that the Parcel C was legally created or had legal access.

The application was submitted to the Planning Department on September 8, 2022. The County Surveyor contacted the surveyor who prepared the map about the legal access and creation concerns and requested vesting deeds for the project parcels on October 6, 2022. The surveyor did not respond until 30-days had passed from initial application intake. The surveyor who prepared the map was also not an authorized agent on the application. Due to not being directly contacted until after the 30-day window, the applicant states that the requested information is not required to process the lot line adjustment as the application should be deemed complete.

**Recommendation:**

*I clearly stated "is complete by action of ordinance" in the application.*

Planning Staff recommends that the Planning Commission find application P-22-19 incomplete.

**Attachments:**

- A. Lot Line Adjustment Narrative
- B. Lot Line Adjustment Exhibit
- C. October 27, 2022 Applicant Email
- D. October 21, 2022, Applicant Letter
- E. October 6, 2022 County Surveyor Email
- F. Trinity County Code Section 17.30E – Application Processing Requirements
- G. Trinity County Code Section 16.32

*Have no issue w/ Skylar*

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TRINITY COUNTY Board of Supervisors  
Item Report 1.2

(page 1 insert) C

Meeting Date: 4/29/2022

Department:  
Human Resources

Contact:  
Shelly Nelson

Phone:  
530-623-1325

Modify Interim Deputy Director of Building and Planning

**Requested Action:**

Approve waiving the requirement to obtain a relevant Land Use and Environmental Planning Certification and waive the requirement to possess 5 years progressive planning experience for Employee ID #02338 and appoint as Interim Deputy Director of Planning.

**Fiscal Impact:**

Approximate cost in salary and benefits per month for a Deputy Director of Planning at A step is \$11,356 and at C step is \$12,407.

**Summary:**

Within Building and Planning currently both the Director and Deputy Director positions are vacant. A recruitment for Director of Building & Planning has been running since December 2021 and currently have not received any qualified applicants. A recruitment for the Deputy vacancy will be started shortly. There is no current staff within the county that has the qualifications to assume either role, and current consultants are tasked with many other duties.



I am asking the Board to waive the planning requirements for the Deputy Director position so I am able to promote an employee to the role of Interim Deputy Director were this individual will serve in the role of administrator. The Interim Deputy Director will provide oversight of contracts with consultants, monitor work flow, and provide fiscal management to the department.

The County will continue to recruit for a Director, but the interim will provide needed support during this time.

**ATTACHMENTS:**

- Description
- Job Description
- Salary Worksheet

So No planning Experience and no tasks assigned to do Planning.

The Board set Ed and Planning up for failure.

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## Chronology from Aug 9 Meeting

### Purchased summer of 2021

March 2022– Met w/ Lisa Lozier – GREAT, App. Ready - then lots of difficulty after this!

### Nine months to finally get here

Aug 9 – Meeting at Planning. Agreed to process to move forward – we would all follow regulations (which is what I always wanted and asked to do)

Sept 7 – Met with Skylar to review LLA application – “most complete LLA has seen”

Sept 8 – Submitted LLA and paid fees, 30-day period begins

Sept 8 – Submitted DG Permit App (DOT noted not likely required – no fee)

Sept 20 – Submitted Building Permit Apps (retaining wall, barn)

Oct 7 – 30-day limit for decision on complete/not complete (Zone Ord.: 30.5.B.3)  
No communication from Ed to me so automatically deemed complete

Oct 7- 15-day limit for agencies to submit comments begins (Sub Ord. 16.32.040)

Oct 11- E-mail to Skylar – Since app is complete, when schedule site review?

Oct 13 – E-mail Skylar again – Forward Oct 11 e-mail and request response

Oct 13 – Return e-mail from Skylar with County Surveyor e-mail to Kolstad Surveying  
Inference is that this e-mail was sufficient to determine not complete

Oct 13 – E-mail to Ed Prestley – Provided him with Section 30.5.B.3  
Inform that application is complete as a matter of County Ordinance

Oct 13 – E-mail from Ed – If complete, must go to Planning Commission.

Oct 21 – 15-day period for agencies to submit comments ended.

Oct 21 – Letter to Ed regarding Ord requirements and the application being deemed complete – also noted still available to work with staff.

Oct 24 – Visited Planning. Was informed 15-day route required by Ord. NOT DONE

Nov 1 – Expressed concerns about Planning Dept to BOS during Public Comment.

Nov 17 – Planning Commission

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BRIDGE  
FROM CHRONOLOGY TO APPLICATION PROCESS

As you know, the determination of “complete” is a very important milestone in the progress of any project.

Clearly there is a disagreement on this issue:

TC Planning – has not occurred

We – has occurred

So what is the process?

I'm going to try and be fast, but there is a lot to cover after waiting nine months.

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**Application Processing:  
How it Works and How Complete is Determined**

**Subdivision Ordinance (Addresses the how and who of complete for maps ONLY)**

**Chapter 16.32** is the procedure for LLA and application requirements.

**Section 16.08.040** defines “complete” relative to adequacy of maps.

Applicable Guidance Listed in this Section on “Complete”

1. Subdivision Improvement Standards: DON'T ACTUALLY APPLY TO LLA  
Chapter 16.48 – “Subdivision Improvements”  
Sec. 16.48.010 – “Applicability”  
“All divisions of Land” which an LLA is not
2. “This Title” which is the Subdivision Ordinance itself “Title 16”  
Specifically, Section 16:32 as noted earlier
3. Subdivision Map Act  
Gov Code Section 66412(d) addresses Lot Line Adjustments.

What is the bottom-line from this?

The range of issues that actually apply overall to an LLA and specifically to determining if a “map” is complete are VERY NARROW by State law.

We should note that as used for an LLA “map” simply means a “drawing” or “depiction” since a MAP (tentative, parcel, final) cannot be required by law for an LLA.

Also, nothing in the Subdivision Ordinance addresses “complete” in terms of the overall application – that is addressed in the zoning ordinance.

**Zoning Ordinance (The who, how and when of determining the application itself is complete) - DECISION**

**Section 30.5** - is the procedure for Planning to follow in processing applications.

**Section 30.5.B** – is the procedure for issuing determination of whether application is complete/not complete.

**Section 30.5.B.3** - lays out time period (30 days) and requirements for Planning Director to issue a decision to the applicant. Clock starts at submittal and payment of fees. One of three things can happen:

1. Application Complete (must happen in less than or equal to 30 days)
2. Application not Complete (must happen in less than or equal to 30 days)
3. Application automatically Complete (if greater than 30 days)

If the applicant does not receive contact or attempt for contact from Planning Director within 30 days, number 3 is automatic.

“Complete” by definition means that all information necessary for review is available. If information was desired but notice to applicant not given, it is moot for any further review. In other words, staff cannot argue application is incomplete or more information is needed once determined to be complete by power of Ordinance. The BOS made that determination!

**Subdivision Ordinance (Governs process and period for comment, authority for approval)**

**Section 16.32.040** – QUOTE - “After the application is deemed complete, each agency (which are listed here) shall have a maximum of 15-days to submit their comments”.

This is the period for review and comment on the complete application/project by agencies - it STARTS ON THE DAY the application is complete.

This is clearly not a process to get further information (which closed upon determination of complete) – it is to comment on the project.

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County Surveyor E-mail:  
Evaluation

**Facts:**

String of 3 e-mail from Joan Carr to Dylan Kolstad on Thursday, October 6  
cc: includes Ed Prestley and Skylar Fisher – but not me  
Afternoon of day 29 of 30 for Planning Director to determine complete/incomplete  
Friday, October 7 was day-30.

**Does Staff Know About the 30-Day Requirement?**

- When Skylar circulated Planning’s “Request for Comment” form on Sept 21, she noted a due date of October 5 – which was Day 28.
- E-mail from Joan Carr was on afternoon of Day 29.
- Skylar’s October 13 e-mail response to my inquiry regarding scheduling site visit:  
*“In regards to application completeness, Joan Carr (the Trinity County Surveyor), had requested items from your surveyor for her review. I have attached the email thread as verification.”*

This all sure seems to indicate County staff has knowledge of the 30-day time limit.

**Could these e-mail meet the 30-day requirement for determination and notice of complete?**

No. This is where lack of experience shows.  
Only Planning Director communicating to applicant counts (30.5.B.3).

**Lets Go Ahead and Look at the 10/6/22 E-mail Chain from Joan Carr:**

“supply vesting deed for the 3 properties” (3:09)

Not required as part of the application, but  
No problem, already has to be done, make a condition of approval.

“provide copies of all documents referenced in title reports” (3:09)

Have never seen this before – the application just requires Title Reports.

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**Then there is this language:**

“and, **if necessary**, proof of legal creation for the Boeger property” (3:09)

“date **seems to suggest** that further proof of legal creation **may be necessary**” (3:57)

“**Did you want to** supply closure calcs” (3:57)

“I also need a copy *maps* – this **may also help with your legal access question**” (3:57)

**Would the above comments have met ordinance requirements if Ed had forwarded to me prior to by the end of day 30?**

Zoning Ordinance Section 30.5.C.1

*If the Planning Director determines that further information is required, he shall so inform the applicant specifying the information requested.*

**<< READ OFF SPECIFY/SPECIFYING SHEET >>**

Clearly these vague comments from the County Surveyor do not meet the ordinance requirement to be specific. Heck, legality of a parcel created 50 years ago isn't even within the allowed scope of review of a Lot Line Adjustment.

**How About:**

“I will suspend checking for now”

- I. Let's look first at what the PERMIT STREAMLINING ACT includes:

*Gov. Code Section 65943- Relevant Portion*

*If the application is determined to be incomplete, the lead agency shall provide the applicant with an **exhaustive list of items that were not complete**. That list **shall be limited to those items actually required on the lead agency's submittal requirement checklist**.*

Important Point:

The requirements in this section have been amended by the State several times over the years – each time getting more specific or rigid in what can be asked for.

So this addresses not only the issue of being specific about what is needed, but it also requires that everything needed is asked for at the same time – not ongoing.

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## Specifying Sheet

I went and looked up definitions:

What is "Specifying"?

To explain or describe something clearly and exactly.

Specific?

To name or state explicitly or in detail.

Specification?

An act of describing or identifying something precisely or of stating a precise requirement.

So what does the Ordinance require?

Clear, exact, explicit, precise

What are antonyms or opposites for specify?

- Generalize.
- Obfuscate.
- To be Vague.

II. Now let's look at the COUNTY ORDINANCE REQUIREMENT:

Zoning Ordinance Section 30.5.C.1 again:

*If the Planning Director determines that further information is required, he shall so inform the applicant specifying the information requested.*

**BUT IT HAS TO BE DONE WITHIN THE 30 DAYS OF 30.5.B.3**

**So the County Ordinance does not allow so-called "checking" to be suspended either. It must happen once and within the 30-days.**

**Let's go back and look at the issue County Surveyor raised about legal access.**

"please provide information on the legal access from Lewiston Road (public r/w) to the Boeger property. The other two properties are immediately adjacent to the public r/w of Old Lewiston Road" (3:09)

"I also need a copy of *MAP* – this may also help with your legal access question" (3:57)

- The LLA does not have any effect on existing access to Boeger parcel/home.
- The access road/driveway has been there for over 20 years –
  - Would meet the legal requirements of a Prescriptive Easement if went to court.
- The e-mail assumes legal access automatically exists as a result of adjacency to a public road – this assumption is flawed.
  - Many parcels fronting onto roads are subject to Access Control – do not own the right to access the road. Legal access is either a question for all three parcels or none of the parcels.
- One requirement when the County issues a Building Permit is proof of legal access to the building site. Usually accomplished via obtaining an Encroachment Permit.
  - Question of legal access already resolved by County via prior permit.

The above evaluation shows that the issue of legal access really isn't an issue at all – which means that the County Surveyor is simply asking for something just to be asking for it, not because it is actually in question – the answer is known.

## So, Let's Review:

Did the e-mail from Joan Carr modify or extend the 30-day requirement OR even meet what the ordinance requires in order for it to do so?

**The answer is clearly "no". It didn't meet the first condition or any others.**

- It has to be from Ed (Director) to me (applicant).
- I heard nothing until Skylar replied to my e-mail on day 36.
- It wasn't specific as required.
- It did not attempt to cover all items as required.
- Think about it: Given the lackadaisical approach to the items taken by the County Surveyor on the afternoon of day 29, how important can they really be?
- It is effectively a fishing expedition which is NOT what law or ordinance provide for.

## So What is the Bottom-line?

The suggestion that County staff met the ordinance requirements and therefore may legitimately ask you to determine the application is incomplete is NOT VALID.

- CLEARLY THEY DID NOT MEET THE REQUIREMENTS NOR WOULD THEIR REQUEST OF YOU.

The application is complete by action of Board of Supervisors Ordinance.

Discussion of this issue tonight by County staff violates the ordinance because the Board of Supervisors via terms in that ordinance DIRECTED staff that the application is complete. They are effectively ignoring the BOS.

County staff has violated my rights as established by the BOS under County Ordinance.

They did this by bringing matters to you for consideration that were already determined to be not relevant as a matter of ordinance.

Finally, it is the Planning Director's job to evaluate any comments received from agencies to determine if they are actually relevant and then send only those to an applicant. The Planning Director has no experience in planning and has not even been tasked to do any planning by the BOS action to appoint him. An experienced planner would know that the County Surveyor's comments fall far outside of what is "relevant" for a LLA as defined in law.

So where do we go from here?

<<NEXT PAGE>>

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## In deciding where to go, we are guided by the following:

1. "Complete" - as defined **for a map** and the parameters set forth in the Subdivision Ordinance for the County Surveyor - has been achieved.
2. "Complete" as defined **for an application** in the Zoning Ordinance - has been achieved.
3. Subdivision Ordinance 16.32.010 notes that "all lot line adjustments must also be consistent with the provisions of Government Code Section 66412(d)".  
But Section 66412(d) is actually much more restrictive on local agencies – and has been made more stringent over the years by the State:

*"A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances."*

SO WE HAVE: Complete Map, Complete Application, Restrictive Review Parameters  
Some Possible Options are:

1. Deny our project.
  - Not supported by the applicable rules and facts that I have presented to you tonight.
2. I could leave and revise the project to drop Boeger parcel.
  - This might seem an "easy" fix, but:
    - It isn't necessary because the issues raised by the County Surveyor fall outside of our "complete" application and outside the scope of review allowed for in a LLA.
    - It also wouldn't fix a very fixable setback issue for the Boeger Trust property.
3. You could utilize Section 30.5.C.7 to get further information.
  - As applicable in this instance, this provision is specific to information identified by the Commission - not the Planning Director.
  - This section, however, really revolves around changes to the project or circumstances around it after the project is deemed "complete".

4. You could utilize Section 30.5.D.1 to get further information.
  - This involves decision-makers getting all relevant information from an applicant, keeping in mind that “relevant” lies within the parameters of the applicable ordinances.
  - As I described tonight, I believe I have provided all “relevant” information as required by Ordinance and the Subdivision Map Act.
  
5. You could move to continue the item.
  - The concern here should be what this is this supposed to achieve?
    - To date, staff has been unwilling to acknowledge what the Zoning Ordinance requires or willing to work with me.
    - This also would not modify the 60-day requirement for making a decision as required by the Permit Streamlining Act.
  
6. You could agree that the application is “complete” as defined by Ordinance and act tonight based on the merits of the project and Government Code Section 66412(d) which governs Lot Line Adjustments.
  - Not sure if you are ready for this or not???
  
7. You could utilize Section 30.5.C.5 to determine that no further information is needed.
  - This section gives you – as the advisory agency – the authority to determine that the information requested by the Planning Director [QUOTE] “**is not necessary or relevant to the decision to be made**”.
  - For numerous reasons outlined earlier, I believe the Commission is more than justified in reaching this conclusion.
  - If you chose to enact this section, I am willing to accept a continuance to allow your staff time to prepare an evaluation of our project.
  - **But this is only so long as you direct staff to work with me and keep the evaluation within the parameters of Gov Code Sec 66412(d).**
  - Given everything that has happened, I believe this is the most reasonable move forward for both ourselves and the County.
  - And while there isn’t a lot of time available, I will work with your staff to meet the 60-day decision requirement of the Permit Streamlining Act and be ready for the December 10 meeting.

I urge you to choose to use Section 30.5.C.5 and let me work with your staff so we can get this wrapped up before Christmas. This is really the only option available that makes sense given where we are tonight.

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