



Sandra Kandell &lt;skandell@cityofpacificgrove.org&gt;

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## Attention Mayor and Council

1 message

**'Robin' via City Clerk** <cityclerk@cityofpacificgrove.org>

Tue, Feb 19, 2019 at 2:28 PM

Reply-To: Robin &lt;robinaeschliman@aol.com&gt;

To: cgarfield@cityofpacificgrove.org, bpeake@cityofpacificgrove.org, huitt@comcast.net, rhuitt@cityofpacificgrove.org, nsmith@cityofpacificgrove.org, citymanager@cityofpacificgrove.org, cityclerk@cityofpacificgrove.org, atomlinson@cityofpacificgrove.org, jamelio@cityofpacificgrove.org, jmcadams@cityofpacificgrove.org, dave@laredolaw.net, heidi@laredolaw.net

Mayor Peake and Council Members,

**Subject: Bluhm Certificates of Compliance  
Item 11 A**

I would like to support Mr. Bluhm's request for the following reasons:

1. The action will contribute to much needed housing in Pacific Grove.
2. The sizes of the resulting buildable parcel and that of the existing built-out lot are consistent with the immediate neighborhood and many Pacific Grove neighborhoods beyond.
3. The action does not set precedent: In my neighborhood, [in which I've lived for 47 years] I've observed two similar situations on lots extending from Bentley Street to Walcott Way -- that is, the once street to street lots holding one home, now hold two newer homes. In addition, previous owners of street to street property extending from Forest Park to Bentley shared they had done the same thing with their large parcel. I've been told of an additional instance of splitting a lot extending from Bentley to Forest Park but by the current owner, not the historical owner. Too, I am aware of other situations within Pacific Grove that have received city approval.
4. The request is not unique -- Pacific Grove has a history consistent with the applicant's request.

Thank you for your consideration,  
Robin Aeschliman  
[220 Bentley Street](#)  
[Pacific Grove](#)



Sandra Kandell &lt;skandell@cityofpacificgrove.org&gt;

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**City Council Hearing 420 Monterey Ave Bluhm 2-20-2019**

1 message

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**Bluhm, Bill** <bill.bluhm@sothebyshomes.com>  
To: Sandra Kandell <skandell@cityofpacificgrove.org>

Tue, Feb 19, 2019 at 10:34 AM

Dear Sandra,

I sent this out to all City Council Members last night and have since been informed that for it to be considered as evidence you need to include it, whatever method is appropriate.

Best Regards,

Bill Bluhm

Dear City Council Member,

This is my attempt to boil down the 100+ pages of the staff report and evidence into some bullet points that I hope you will find helpful.

The City Attorney has instructed you must make your decision on the facts.

Here are the facts as I see them,( both when I applied for the Certificate of Compliance and now). A Certificate of Compliance is a legal document prepared by the city that states that the property complies with the provisions of the Map Act and local subdivision ordinance.

1. There are 6 contiguous lots of record (15-20) in the Third Addition to The Pacific Grove Retreat . These are all 30 X 60 feet. Lots 15 and 16 are street to street and make a 3600 square foot lot 30' X 120'.
2. Pacific Grove Zoning Code Title 23.16.080 Building Site area Required (b) (1) "In the subdivisions designated as additions to the Pacific Grove Retreat, where lot sizes as legally and originally subdivided are 30 X 60 feet the minimum lot size shall be 3600 square feet with lot lines along the lines of said original subdivision." These 2 lots meet this condition.
3. Pacific Grove Subdivision Ordinance Title 24.04.035 Regarding certificate of Compliance and Subdivision Map Act 66499.35 state that the Chief Planner is to issue a certificate of compliance if the real property complies with the Subdivision Map act and this title. Until I applied the City had approved these requests by letter and did not object to the

applications for new APN numbers and accept the lots as separate parcels. The City attorney, until after I applied, had not made objection to the City's prior acknowledgment of these parcels as being legal parcels and had not proposed a change in the previous practice. See the letters attached.

4. In 1981 the planning commission issued a proposed amendment to the Zoning code legalizing 3600 square foot building sites in the Retreat and Additions to the Retreat and it was codified in Ordinance 1260 June 3<sup>rd</sup> 1981. This section of the ordinance has been carried through in our zoning code through many updates with no change. (see attachment).

This Quote comes from Curtains California Land use and Planning Law 2014 Edition. "The Legislature in enacting a comprehensive scheme to regulate the creation and control of subdivisions and other divisions of land, past and present, and in an obvious effort to provide a fair and equitable scheme to settle the divisions of land occurring in decades past under earlier provisions of law also provided a means whereby land owners could request that a local government make a determination about the validity of a prior subdivision of land".

5. Additionally, as per City of Pacific Grove Zoning Code 23.80 (Accessory Dwelling Code), pursuant to the State of California mandate that "units contribute to a suitable living environment for all residents" the division of these lots into separate APN's would allow the potential development of 1 ADU per parcel ( subject to available water). This would require 23.80 to change the minimum lot size to 3600 from 4,000 square feet which I believe was an oversight. The combination of lots 15 and 16 are an example of the "hidden lots" mentioned in our General plan that are underutilized. I would be willing to put a deed restriction on the new parcel created for lots 15-16 requiring plans require an ADU. Our City faces the same challenges that many other coastal cities in CA have. The Governor's office is focusing on communities such as ours and requiring the cities to address the need for small affordable housing units. By the infill process such as my proposed use of an underutilized conforming building site throughout portions of Pacific Grove we will be able to offer evidence of continued intent to comply with the State Mandate for ADU's

You are the local Government you make the decision. I am also attaching a more detailed summary regarding the City's authority to issue the Certificates, for your reference.

Mr. Abbott's opinion of the court's decision to deny Certificates of compliance in the Witt Home, Gardner and Abernathy are all cases where 100 year old rural subdivisions with a rudimentary map had never been developed requested certificates of Compliance . This just doesn't relate to Pacific Grove and our detailed 1887 map and subsequent ordinances regulating our land. This map has served Pacific Grove very well.

I hope you will reverse the decision to deny my request for Certificate of Compliance. I would welcome the opportunity to meet or talk with you or answer any questions or concerns you have prior to the meeting.

Sincerely

**Bill Bluhm, CRS Broker Associate**

**Sotheby's International Realty**

574 Lighthouse Avenue

Pacific Grove, CA 93950

Cell: 831.277.2782

Fax: 831.375.7790

Email: [Bill.Bluhm@Sothebyshomes.com](mailto:Bill.Bluhm@Sothebyshomes.com)

Cal BRE #01075634

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 **City Council Hearing Item 11A Bluhm 420 Monterey Ave..pdf**  
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## **Basis for City Approval of Two Certificates of Compliance - 420 Monterey Ave.**

### **Bluhm Request –**

- Bluhm requests **two Certificates of Compliance** for his six lots at 420 Monterey Ave.  
A Certificate of Compliance for Lots 15-16 - Block 128 Third Addition  
A Certificate of Compliance for Lots 17-20 - Block 128 Third Addition

### **What is a Certificate of Compliance -**

- An Unconditional Certificate of Compliance means that a parcel was legally created and is a legal lot that can be separately sold or developed without violating the Subdivision Map Act.
- A Conditional Certificate of Compliance means that a parcel, as conditioned, meets the City subdivision standards, and can be separately sold or developed, as conditioned.

### **Why the Appeal –**

- Staff's recommended "path" to resolution, in October 2018, and again today, is that Bluhm file a lawsuit against the City to determine whether the City should issue the two Certificates. Code of Civil Procedure Section 1094.6, referenced in the staff report, is a lawsuit. Bluhm requested an appeal before your Council, rather than initiate litigation.
- The City Council has the authority to make a decision to issue the two Certificates of Compliance based the interpretation of its own codes and the factual evidence in the record. Litigation is not necessary.
- The Courts give great deference to a public agency's interpretations of its own regulations<sup>1</sup>. Where there is substantial evidence in the record to support the City Council's decision, the Courts will defer to the City Council's interpretation of its own codes and regulations<sup>2</sup>.

### **Recommended Action for Unconditional Certificates of Compliance –**

- The City Council does not need to revise its ordinances or codes to issue two Unconditional Certificates of Compliance for these lots. The City Council can find that:

The City Council, interpreting its own ordinances, confirms, and finds (1) that the City accepted the Second and Third Additions to the Pacific Grove Retreat shown on the recorded 1887 Map, as a City subdivision map; (2) that the design and improvements shown on the Map, including the streets, public improvements, and parcel configurations, were, and remain, sufficient for City implementation of the Map; (3) that City hereby confirms that said lots are legal lots of

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<sup>1</sup>San Diegans for Open Government v. City of San Diego (2018) 31 Cal.App.5th 349

<sup>2</sup>Donley v. Davi (2009) 180 Cal.App.4th 447

record; and (3) that the two requested Certificates of Compliance for the six subject Third Addition lots, as combined (a Certificate for Lots 15-16 Block 128 Third Addition and a Certificate for Lots 17-20 Block 128 Third Addition), meet the City's 3600 sq. ft. minimum (section 23.16.080 (b) (1)); and, therefore the City grants the appeal, and shall cause the two Unconditional Certificates of Compliance (a Certificate for Lots 15-16 Block 128 Third Addition and Certificate for Lots 17-20 Block 128 Third Addition) to be filed for record with the recorder of the County of Monterey.

#### **Alternative Recommended Action for Conditional Certificates of Compliance –**

- The City Council does not need to revise its ordinances or codes to issue two Conditional Certificates of Compliance for these lots. If the City finds the 1887 Map was not accepted by the City as a subdivision map, then the City can still issue two Conditional Certificates of Compliance that require compliance with the City's current conditions for subdivision of the parcels. The City Council can find that:

The City Council finds (1) that the six parcels (Lots 15-20 Block 128 Third Addition) for which two Certificates of Compliance are requested do not comply with the provisions of the Subdivision Map Act; (2) that, as a condition to granting the two Certificates of Compliance (a Certificate for Lots 15-16 Block 128 Third Addition and a Certificate for Lots 17-20 Block 128 Third Addition), the City imposes all conditions on said Certificates that would have been applicable to the division of the property at the time the applicant acquired his interest in the property; (3) that the two requested Certificates of Compliance for the six subject Third Addition lots, as combined (a Certificate for Lots 15-16 Block 128 Third Addition and a Certificate for Lots 17-20 Block 128 Third Addition), meet the City's 3600 sq. ft. minimum (section 23.16.080 (b) (1)); and therefore, with the imposition of said conditions, the City grants the appeal and shall cause the two Conditional Certificates of Compliance (a Certificate for Lots 15-16 Block 128 Third Addition and Certificate for Lots 17-20 Block 128 Third Addition) to be filed for record with the recorder of the County of Monterey.

#### **Substantial Evidence in the Record to Support the City's Decision –**

- Both Bluhm and the City obtained a legal opinions regarding issuance of the Certificates. The legal opinions differ. Both parties can argue back and forth on the legal theories. The facts in this case, however, are quite different than those in the cases cited.
- While the 1887 Map was prepared and recorded before the Subdivision Map Act, the City's subsequent actions validated and accepted the Map as a City subdivision map, consistent with the purpose of the Subdivision Map Act.
- The recorded 1887 Map created the Second and Third Additions to the Pacific Grove Retreat, and specifically laid out the design and public improvements for the subdivision, including the lot configurations, public improvements, and streets for the Second and Third Additions.

- “By generally requiring local review and approval of all proposed subdivisions, the [Subdivision Map] Act aims to ‘control the design of subdivisions for the benefit of adjacent landowners, prospective purchasers and the public in general (citations). More specifically, the Act seeks to ‘encourage and facilitate orderly community development, coordinate planning with the community pattern establish by local authorities, and assure proper improvements are made, so that the area does not become an undue burden on the taxpayer’” (citations) (*Gardner*, at 997-998).
- To effectuate these objectives, the Supreme Court in *Gardner* looked at whether there was any kind of local involvement when the map in that case was recorded or thereafter.
- In this case, there has been substantial City involvement with the 1887 Map after it was recorded, with the goals of the Subdivision Map Act effectuated by the City in their actions.
- This is not vacant land. The City has been built out in reliance upon the 1887 Map. Most of the parcels shown on the Map’s Second and Third Additions have already been developed in accordance with the Map, as have the streets and other public improvements.
- The Second and Third Additions, as laid out on the recorded 1887 Map, continue to be referenced in the City’s codes as legally created parcels.
- In 1981 the City amended its zoning ordinance regarding the lots within the Second and Third Additions stating in its staff report for Ordinance 1260 that, “*This amendment legalizes the 3600 square foot building sites (interior and corner sites) in the Pacific Grove Retreat and the additions thereto which have been subdivided in to 30 by 60 square foot lots many years ago.*”
- In 1992 (Ordinance No. 1845) and in 1996 (Ordinance 96-14) the City again acknowledged the Second and Third Addition Map, as a subdivision map, creating legal lots, in the City’s Zoning Code, stating, “*In the subdivisions designated as additions to the Pacific Grove Retreat, where lot sizes, as legally and originally subdivided, re 30 feet by 60 feet, the minimum lot size shall be 3600 square feet, with the lot lines along the lines of said original subdivision.*”
- Current Pacific Grove Zoning Code section 23.16.080 (b) (1) reflects this language.
- The words “*with the lot lines along the lines of said original subdivision*” in the City’s ordinances and code are evidence the City considered the recorded 1887 Map a “subdivision” map.
- The ordinances and code also refer to the lots in the Additions as “*legally and originally subdivided*” lots.
- In 1989, the City recognized the separate legality of Lots 13 and 15 in Block 76 of the Third Addition of the Map, stating “*No further subdivision will be required because your*

*lots currently conform to the original subdivision of the tract they are in and by virtue of their 3600 square feet area constitute a legal building site*". (May 15, 1989 Lobay letter) These lots had previously been conveyed together in a single deed.

- In 1994, the City recognized the separate legality of Lots 11, 12, 13 and 14 in Block 99 of the Third Addition Map, stating, "*The subject property is comprised of four 30' x 60' lots*", and citing City Code section 23.16.080 (b)(1), states "*Lots 11 and 12 could be used as one building site....; Lots 11 and 13 could be used as one building site....; [and] Lots 12 and 14 could be used as one building site...*", subject to structures on the site meeting City zoning and building codes. (March 22, 1994 Oldfield letter). These lots had previously been conveyed together in a single deed.
- Between 2004-2018 the City allowed an owner (Scholink) of 10 lots (Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 & 10 in Block 83 Third Addition) to grant five separate deeds to five separate individuals, combining two lots each, to meet the 3600 sq. ft. minimum. These 10 lots were previously conveyed together in one deed and had never been separately deeded.
- Based on these code sections, and the City's actions, the City recognized the Third Addition lots as legal lots, even when the individual lots were previously conveyed together and not separately deeded out, as is the case with these lots.
- Both of the requested Certificates of Compliance meet the City's 3600 minimum sq. ft. size required by City Code section 23.16.808(b)(1).
- Bluhm requests you grant his appeal and issue the two Certificates of Compliance based on the substantial evidence in the record



Sandra Kandell <skandell@cityofpacificgrove.org>

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## City Council Hearing Item 11A Bluhm 420 Monterey Ave

1 message

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William Fredrickson <william.fredrickson@me.com>  
To: skandell@cityofpacificgrove.org

Tue, Feb 19, 2019 at 4:47 PM

**Sandra,**

**Please distribute the memo below to Council members.**

**Council members,**

**I completely support Bill Bluhm's position on this subject. The Certificate of Compliance could have and should have been issued locally without the City consulting with an expensive outside attorney and without costing the applicant significant expense to protect his rights.**

**Regards,**

**Bill Fredrickson**



Sandra Kandell &lt;skandell@cityofpacificgrove.org&gt;

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**Fwd: Regular agenda item 11 A, file number; COC 18-0404**

1 message

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**Terri Schaeffer** <tschaeffer@cityofpacificgrove.org>  
To: Sandra Kandell <skandell@cityofpacificgrove.org>

Wed, Feb 20, 2019 at 11:23 AM

FYI Public Comment.

Terri C. Schaeffer, Program Manager  
Ph:831.648.3182 | Fax:831.648.3184  
City of Pacific Grove  
Community & Economic Development Department  
300 Forest Avenue, Pacific Grove, CA 93950

**Email:** [tschaeffer@cityofpacificgrove.org](mailto:tschaeffer@cityofpacificgrove.org)**[www.cityofpacificgrove.org/cedd](http://www.cityofpacificgrove.org/cedd)**

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From: **STEFANIE CARMINATI** <jscarminati@att.net>  
Date: Wed, Feb 20, 2019 at 10:55 AM  
Subject: Regular agenda item 11 A, file number; COC 18-0404  
To: <tschaeffer@cityofpacificgrove.org>

Terri,

I would like the following comments, in favor of the applicant, read into the record at this evenings council meeting:

Dear and honorable council members, my name is John Carminati. I am a property owner, general contractor, Realtor , Business owner and past ARB member in this city. I would urge you to approve the certificate of compliance before you tonight based on fairness, equal treatment and all previous applications for the same issue. The facts are clear and non-disputable that The planning department has granted certificates of compliance For many similar properties and conditions set before you in this application regardless of the presence of Public Utilities serving the parcel in question. A striking recent example would be the property located at [511 17th St](#). If Pacific Grove truly is America's last hometown it should treat all applicants equally and fairly. Please vote in favor for this item.

Respectfully, John CARMINATI

Sent from my iPhone

February 20, 2019

Mayor Bill Peake and Members of the City Council  
City of Pacific Grove  
300 Forest Avenue  
Pacific Grove, California 93950

Dear Mr. Mayor and Council Members:

This letter is to express support for Bill Bluhm's request for certificates of compliance on lots 15-16 and 17-20 in the Pacific Grove retreat.

It is not my intention to get in an exhaustive review of the facts, either as presented by Mr. Bluhm or the City staff. However, it seems to me that the 150+ pages of information you have had to wade through come down to a few salient points:

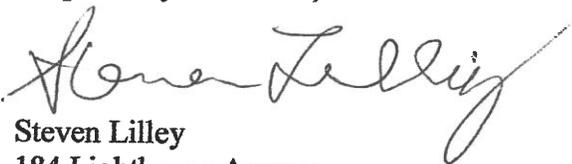
- Mr. Bluhm is not subdividing or changing the lot lines on his property.
- Parcels 15-16 and 17-20, as described presently, comply with the requirements of the City Code for certificates of compliance.
- Mr. Abbott, the City's legal expert, cites the Gardner and Witt Home Ranch cases in his opinion to deny Mr. Bluhm's request. However, many of the facts reviewed by the courts in those cases are not the same as we have here. In fact, Mr. Abbott, in his writings on Gardner, has stated that the Supreme Court "left unanswered the status of pre-1929 subdivision maps." In Witt, he said, "The First Appellate District has now tackled (only) one aspect of this issue in the context of a 1915 subdivision map." (Posted in Subdivision Map Act, August 18, 2008.)

There is a much larger issue here to consider. If you were to deny Mr. Bluhm's certificates of compliance, where does this leave decades of activity on previous lot line adjustments and subdivision of properties in this City?

Finally, it is equally clear that our ordinance on appeals is flawed. Over a year ago, I pointed out conflicting language in Chapter 23.74, Appeals and Call-Ups. Our Associate City legal counsel agreed. Now we also find out the lot line adjustments and letters of compliance are not part of our appeal process. Our appeals ordinance needs to be changed, as well.

Regardless of the decision you make this evening, the City has a problem that should be corrected. In my view, it is not enough for the City to simply say no and then tell Mr. Bluhm to file a lawsuit. Rather, if there is a problem, as Mr. Abbott contends, then the City should address the matter by adopting changes to ordinances on certificates of compliance and appeals.

Respectfully submitted,



Steven Lilley  
184 Lighthouse Avenue  
Pacific Grove, CA 93950