

CITY OF YUBA CITY
STAFF REPORT

Date: May 19, 2009
To: Honorable Mayor & Members of the City Council
From: Community Development and Public Works Departments
Presentation By: Aaron Busch, Community Development Director
George Musallam, Public Works Director

Summary

Subject: Appeal of Planning Commission's conditional approval of Subdivision Map SM 08-02 – Red Cross.

Recommendation: Conduct a public hearing and uphold the Planning Commission's conditional approval of Subdivision Map SM 08-02, requiring the undergrounding of overhead utility lines.

Fiscal Impact: None if the Planning Commission's conditional approval is upheld. If the Commission's approval is modified to waive the requirement for a deferred improvement agreement, the City would pay the full cost of undergrounding the utilities in front of the applicant's property at the time the undergrounding takes place.

Background:

On April 22, 2009, the Planning Commission unanimously approved Subdivision Map SM 08-02 to allow the applicant, the Red Cross, to subdivide its 3.9-acre property into two parcels. (See Attachment 1, "aerial photo" and Attachment 2, "subdivision map") The approval contained eight conditions, one of which (Condition Number 6) requires that the applicant enter into a deferred improvement agreement with the City to provide security for the future undergrounding of overhead utilities located on the applicant's property. The applicant is appealing the Planning Commission's decision to impose Condition Number 6 on the project based on earlier actions associated with an earlier subdivision of the property. (See Attachment 5, "appeal letter") The subject property was part of East Onstott Estates, which was approved by the Planning Commission in 2003, with a condition requiring a deferred improvement agreement for undergrounding the existing overhead utilities. The applicant appealed the Planning Commission's imposition of the undergrounding requirement, and the City Council approved the applicant's appeal on March 13, 2003.

Analysis:

Utility undergrounding is required at the time of subdivision or development of property that contains above-ground utilities. Historically, if it is unlikely that utilities in the vicinity of a project will be placed underground in the near term, staff recommends that the City enter into deferred improvement agreements in lieu of actually undergrounding the utilities. This flexibility spares applicants immediate expense while ensuring that the City will not later pay the applicant's share of placing the utilities underground. The requirement to place overhead utilities underground and the ability to

allow a deferred improvement agreement in lieu of immediate undergrounding are found in the following sections of the Municipal Code:

Section 8-2.1412(b) of the Municipal Code requires that utility distribution facilities be placed underground.

Sections 8-2.705, 8-2.809, and 8-2.1001-1002 of the Municipal Code state that Deferred Improvement Agreements may be approved by the City Council when it is not feasible for a subdivider to meet the standards required by the Municipal Code, as long as security for the future value of the improvements is obtained by the City.

Although the requirement to either underground the utilities or enter into a deferred improvement agreement had been waived in 2003, that does not relieve the requirement being placed on this current map. According to the City Attorney's office, if the City Council desires to remove the condition on the current map, the City Council should direct staff to amend the Municipal Code sections listed above to establish procedures for waiving undergrounding requirements.

Fiscal Impact:

None if the Planning Commission's conditional approval is upheld. If the Commission's approval is modified to waive the requirement for a deferred improvement agreement, the City would pay the full cost of undergrounding the utilities in front of the applicant's property at the time the undergrounding takes place.

Alternatives:


Direct staff to amend the Municipal Code to allow waiver of the requirement to underground utilities.

Recommendation: Conduct a public hearing and uphold the Planning Commission's conditional approval of Subdivision Map SM 08-02

Prepared By:

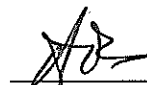
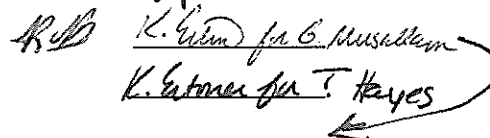

Katie Ertmer
Senior Planner

Submitted By:


Steven R. Jepsen
City Manager

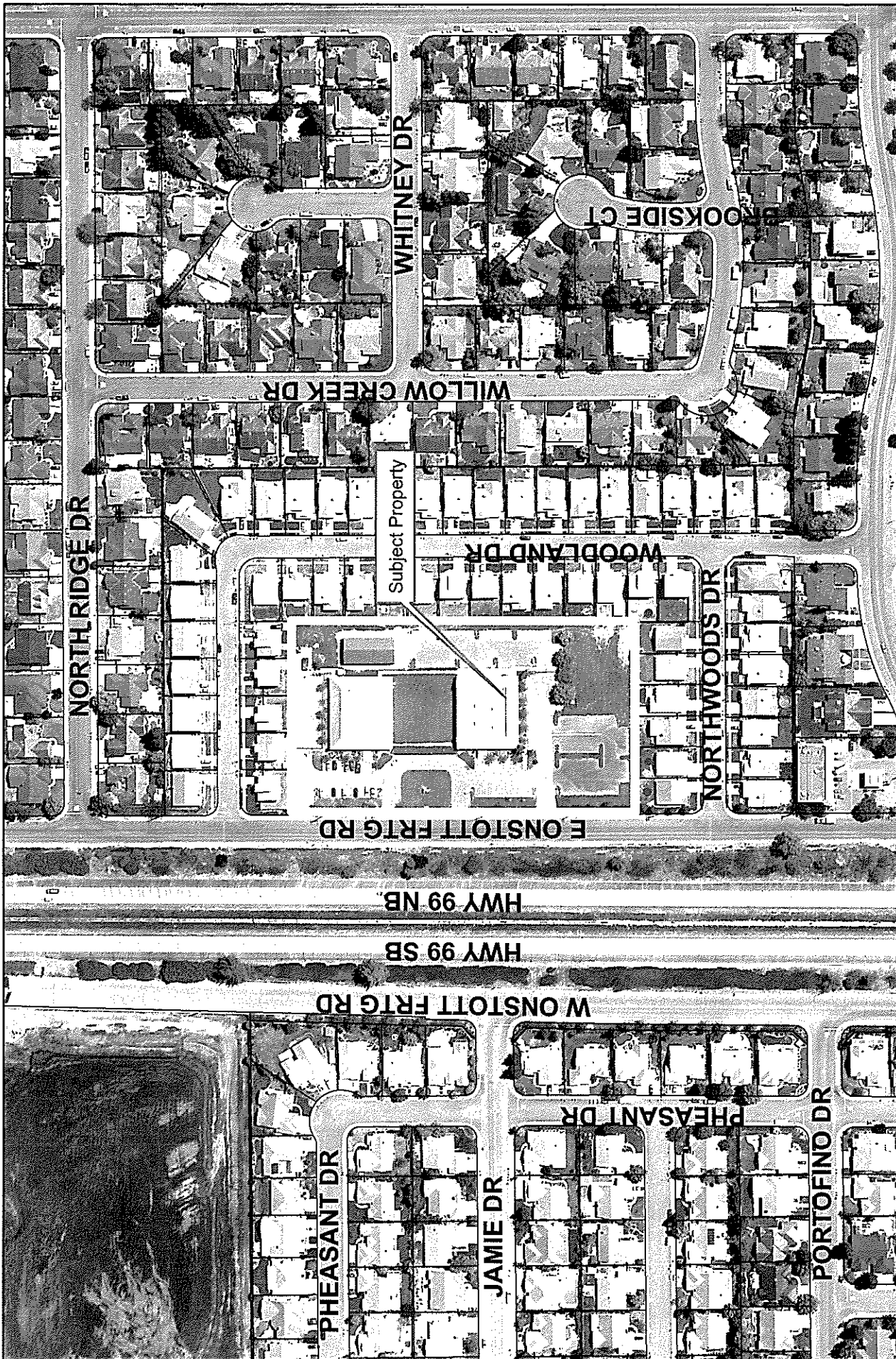
Reviewed By:

Department Head
Finance
City Attorney
Public Works Director



K. Ertmer for T. Hayes

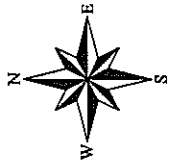
Attachments:

1. Aerial photo
2. Subdivision map
3. Planning Commission staff report
4. Planning Commission staff minutes
5. Appeal letter



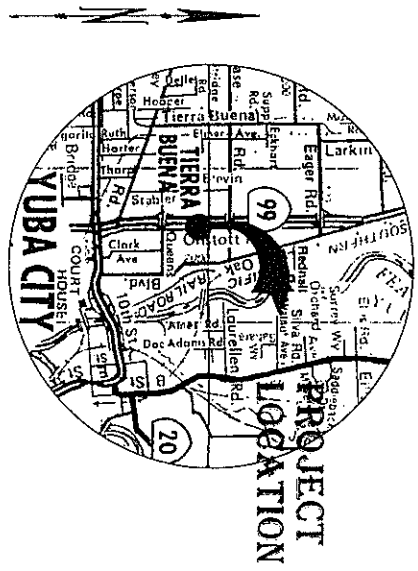
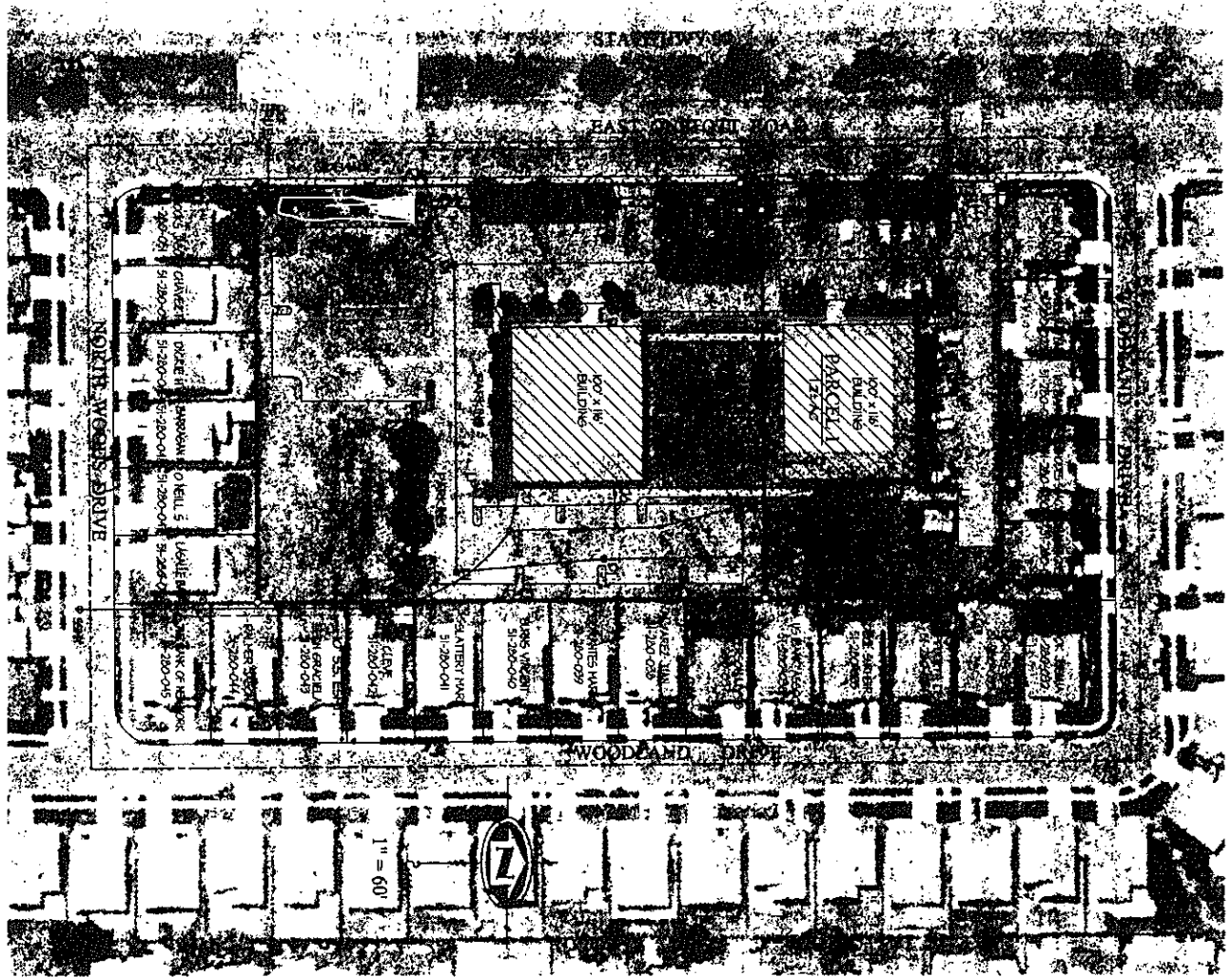
Red Cross 2125 E. Onstott Frontage Rd.

Subdivision Map SM 08-02



100 50 0 100 Feet





VICINITY MAP
N.T.S.

OWNER/SUBDIVIDER:
THREE RIVERS CHAPTER RED CROSS
2125 EAST ONSTOTT
YUBA CITY, CA 95992
NANCY GRIESE, C.E.O.
PH. 530-673-1400

ENGINEER:
VON GELDERN ENGINEERING COMPANY
430 SECOND STREET
YUBA CITY, CA 95991
(530) 673-6330

EXISTING USE:
PROPOSED USE:
ZONING:
DRAINAGE:
WATER SUPPLY:
IMPROVEMENTS PROPOSED:

PUBLIC UTILITY EXEMPTIONS:
MINIMUM LOT SIZE:
MINIMUM SIDE YARD AREA:
NUMBER OF LOTS:
ASSESSOR'S PARCEL NO.:

AS REQUIRED
121 AC
531 SQUARES
2
51-280-0660

ALL DIMENSIONS SHOWN ARE AS OWNED & ENGINEER TO RECEIVE ALL COMMUNICATIONS.

TENTATIVE MAP NO.
YUBA CITY

BEING A RE-REVISION OF LOT 60 OF ONSTOTT ESTATES SUBDIVISION AS RECORDED IN BOOK 16 OF SURVEYS AT PAGE 85, SA CO. RECORDS AND BEING A PORTION OF THE S.W. 1/4 OF SECTION 10 T.15 N., R. 3 E., M.D.M. IN YUBA CITY, SUTTER CO.

APR - 8 2008

REVISIONS	Date
MINOR ADDNS.	11-5-08
ADJUSTED BLDG SETBACK	11-12-08



Von Geldern Engineering Company
430 Second Street • Yuba City, Calif. 95991 • (530) 673-6330
Planning • Civil Engineering • Building Design • Land Surveying

TENTATIVE MAP

FOR
THREE RIVERS CHAPTER RED CROSS
2125 E. ONSTOTT YUBA CITY, CA 95992

Job No. 08-049 Date AUGUST 6, 2008 Drawn By Ingrid

Sheet No.
1
of 1

20-80 11-2
ATTACHME



City of Yuba City
 Planning Division Staff Report
 Planning Commission Meeting

April 22, 2009

Prepared By: Katie Ertmer, Senior Planner

PUBLIC HEARING: TENTATIVE MAP SM 08-02 TO SUBDIVIDE ONE PARCEL INTO TWO PARCELS LOCATED AT 2125 EAST ONSTOTT FRONTAGE ROAD; ASSESSOR'S PARCEL NUMBER: 51-280-060; PROPERTY OWNER/APPLICANT: AMERICAN NATIONAL RED CROSS, THREE RIVERS CHAPTER

Background:

On February 25, 2009, the Planning Commission continued Subdivision Map SM 08-02 to a later date to allow staff additional time to assess the applicant's request to remove condition number 6, which requires execution of a Deferred Improvement Agreement for the future undergrounding of the overhead utilities. Since that time, staff has met with the applicant to further discuss the merits of their request.

Staff Analysis:

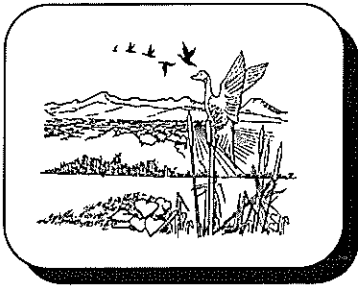
After further review, staff recommends that condition number 6 be retained as originally proposed because it conforms to the requirements of the Municipal Code. The applicable sections of the Municipal Code are listed below:

Section 8-2.1412(b) of the Municipal Code requires that utility distribution facilities be placed underground.

Sections 8-2.705, 8-2.809, and 8-2.1001-1002 of the Municipal Code state that Deferred Improvement Agreements may be approved by the City Council when it is not feasible for a subdivider to meet the standards required by the Municipal Code, as long as security for the future value of the improvements is obtained by the City.

Waiving the requirement to either underground the utilities or to enter into a Deferred Improvement Agreement to secure payment of the subdivider's fair share for the future undergrounding of utilities would not be consistent with the Municipal Code. Therefore, staff recommends that the Planning Commission uphold the original recommendation in the staff report dated February 25, 2009, which includes the requirement for a Deferred Improvement Agreement to underground the utilities.

The applicant is aware of staff's recommendation and will be present at the meeting to address the Commission on this matter. The attached staff report has not been changed since the Planning Commission first reviewed it.



City of Yuba City
Planning Division Staff Report
Planning Commission Meeting

February 25, 2009

Prepared By: Katie Ertmer, Senior Planner

PUBLIC HEARING: TENTATIVE MAP SM 08-02 TO SUBDIVIDE ONE PARCEL INTO TWO PARCELS LOCATED AT 2125 EAST ONSTOTT FRONTAGE ROAD; ASSESSOR'S PARCEL NUMBER: 51-280-060; PROPERTY OWNER/APPLICANT: AMERICAN NATIONAL RED CROSS, THREE RIVERS CHAPTER

Project Description:

The applicant proposes to subdivide a 3.9-acre parcel into two parcels of approximately 1.2 acres and 2.7 acres. The purpose of the map is to provide the applicant the ability to sell the portion of its site that is not used for Red Cross operations.

Property Description:

The 3.9-acre parcel is currently developed with two 11,600 square foot office buildings, a 3,200 square foot storage building, and related site improvements, such as parking and landscaping. Parcel 1 will contain the building currently occupied by the Red Cross and the storage building, and Parcel 2 will contain the second building, most of the onsite parking, and a small, undeveloped portion of land. (See Attachment 1, "Aerial Photo".)

General Plan Designation:

Office & Office Park

Zoning Classification:

R-3, Multiple Family Residence District

Surrounding Land Use:

Single family homes surround the project on the north, east, and south sides. East Onstott Frontage Road and State Route 99 are located to the west.

Previous Actions and/or Policies:

UP 519: On December 11, 1985, the Planning Commission approved a Use Permit for a church to construct and occupy the two buildings that currently exist on the site.

UP 98-05: On January 13, 1999, the Planning Commission approved a Use Permit to allow the conversion of the buildings from a church to the current use by the American National Red

Cross.

SM 02-22 (East Onstott Estates): The subject property was part of East Onstott Estates, which was approved, upon appeal, by the City Council on March 18, 2003. The City Council removed a condition that the overhead utilities along East Onstott Frontage Road be placed underground. SM 02-02 created all of the single-family parcels that currently surround the project site.

Environmental:

Categorically Exempt per Section 15315 pertaining to minor land divisions.

Staff Comments:

Section 8-2.609 of the Yuba City Municipal Code and the Subdivision Map Act require that findings be made in order to approve a tentative map. The required findings are listed below in bold italics and are followed by an evaluation of the tentative map in relation to each finding.

- 1. The proposed tentative map is consistent with the General Plan and the design or improvement of the proposed subdivision is consistent with the General Plan.***

Staff Analysis: The proposed tentative map conforms to the General Plan and the Yuba City Zoning Regulations in all respects. Specifically, the proposed parcels exceed the 10,000 square foot minimum lot size and meet all setbacks that are required in the R-3 District. Offices are permitted with the approval of a Use Permit by the Planning Commission. As noted above, a Use Permit for the current use was approved on January 13, 1999.

- 2. The site is physically suited for the type and proposed density of development.***

Staff Analysis: The proposed tentative map does not involve additional development on the project site. The site currently accommodates the existing development in accordance with all applicable standards; approval of the tentative map would not result in a nonconforming situation. By requiring cross access and parking easements, Condition Number 7 ensures that the owners of the northerly building will be allowed to use the parking located on Parcel 2.

- 3. The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage and the type of improvements are not likely to cause serious public health problems.***

Staff Analysis: The proposed tentative map does not involve additional development or public improvements at this time. Division of the property into two parcels will not result in environmental damage or public health problems. Condition Number 6 requires that the applicant enter into a deferred improvement agreement for undergrounding the utilities along East Onstott Frontage Road.

- 4. The design of the subdivision or type of improvements will not conflict with easements***

acquired by the public at large for access through or use of property within the proposed subdivision.

Staff Analysis: As shown on the tentative map, the existing sewer lines serving both buildings are located in an easement that runs along the back yards of four homes on the southeast corner of the project site. The proposed subdivision does not interfere with this easement. The applicant or future owners of the site will be required to conform to Section 6-5.301(c) of the Yuba City Municipal Code, which requires two things. First, it requires the owners of the property to develop an agreement for maintenance of the sewer line. Second, it requires the owners of the property to enter into a subdivision agreement with the City wherein the owners agree to connect immediately to a sewer line when it exists in the public right-of-way adjacent to the parcels. Because all properties to the north and south of the subject parcel are already served by City sewer, it is unlikely that a sewer line will be constructed in East Onstott Frontage Road adjacent to the Red Cross property. Conditions 3 and 8 ensure compliance with Section 6-5.301(c) of the Yuba City Municipal Code.

Recommended Action:

The Planning Division recommends that the Planning Commission take the following actions:

A. Adopt the following findings:

1. SM 08-02, in accordance with Section 15315 of the California Environmental Quality Act, is exempt from further environmental review since it consists of the division of property in an urbanized area and is in conformance with local General Plan and Zoning requirements.
2. The design or improvement associated with the proposed SM 08-02 is consistent with the Yuba City General Plan and the Yuba City Zoning Regulations.
3. The site of the proposed SM 08-02 is physically suited for the type and proposed density of development.
4. The design of SM 08-02 and the proposed improvements are not likely to cause substantial environmental damage and the types of improvements are not likely to cause serious public health problems.
5. The design of SM 08-02 and the proposed improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision.

B. Approve Tentative Map SM 08-02 subject to the following 8 conditions of approval:

General

1. Tentative Map SM 08-02 is approved as shown in Exhibit A and as conditioned herein.

2. Approval of Tentative Map SM 08-02 shall expire two years from the date of the project approval.

Prior to Final Map Recordation

Engineering Division

3. The applicant and the City shall enter into a Subdivision Agreement stipulating that the property owner agrees to connect immediately to the public sewer when it exists in the public right-of-way adjacent to the property. All construction costs and City fees associated with the new connection shall be the responsibility of the property owner.
4. All domestic, landscape, and fire service water lines, including existing lines, shall have reduced pressure backflow preventers.
5. All reduced pressure backflow preventers shall be tested and a backflow preventer certification performed by an AWWA licensed tester shall be submitted to the Public Works Department.
6. A Deferred Improvement Agreement shall be executed providing for the future undergrounding of all existing overhead utilities (of 26,000 volts or less). This does not include surface mounted transformers, pedestal mounted terminal boxes and meter cabinets.
7. Cross easements shall be reserved in deeds for all underground utilities, ingress and egress, parking, drainage, landscaping, and the maintenance thereof to the benefit of all parcels involved in the division.
8. A Maintenance Agreement shall be drafted providing for maintenance of the sewer line servicing both properties from Northwoods Drive and the shared storm drain lines on-site.

Attachment:

1. Aerial Photo

Exhibit:

- A. SM 08-02

YUBA CITY PLANNING COMMISSION
MINUTES

Regular Meeting
April 22, 2009
City Hall Council Chambers

The meeting was called to order by Chairman Starkey at 7:00 p.m. Members present were as follows:

PRESENT

Chairman Craig Starkey
Commissioner John Sanbrook
Commissioner George Parker
Commissioner Preet Didbal
Commissioner John Hager III

ABSENT

Commissioner Satwant Takhar
Commissioner Jose Flores

Also present were Aaron Busch, Community Development Director, Katie Ertmer, Senior Planner, Roberta Kyle, Recording Secretary, and Alfredo Castillo, of RRM Design Group, consultant for the Lincoln East Specific Plan.

The Pledge of Allegiance was led by Commissioner Parker.

Commissioner Sanbrook moved to approve the meeting minutes of February 25, 2009 as written, was seconded Commissioner Hager, and the motion passed by a vote of 4-0-3. Commissioners Takhar and Flores were absent, and Commissioner Parker abstained.

Appearance of Interested Citizens: - None

Correspondence: - None

Commission Consideration: - None

Public Hearing:

- TENTATIVE MAP SM 08-02 TO SUBDIVIDE ONE PARCEL INTO TWO PARCELS LOCATED AT 2125 EAST ONSTOTT FRONTAGE ROAD; ASSESSOR'S PARCEL NUMBER: 51-280-060; PROPERTY OWNER/APPLICANT: AMERICAN NATIONAL RED CROSS, THREE RIVERS CHAPTER**

Ms. Ertmer presented a staff report.

Chairman Starkey opened the public hearing.

Bill Walker of Von Geldern Engineering, 430 Second St., Yuba City, stated the applicant is in agreement with the Conditions of Approval with the exception of Condition #6 which would require The Red Cross to enter into a deferred improvement agreement for the future undergrounding of existing utilities, and stated they were told that the City Council waived that requirement in 2002 or 2003 when the surrounding subdivision was created. Mr. Walker said that he is of the opinion that once something is waived, it stays waived, and suggested that the City Council look at this issue again.

Chairman Starkey stated that when the Planning Commission approve the surrounding subdivision, they required that the undergrounding be done, then the City Council waived the requirement to do undergrounding, and said that because the City Council made a mistake, it does not mean it can be done again. Chairman Starkey stated that the Planning Commission has to do what is right in regards to the code, and needs to make wise planning decisions for the City.

Mr. Walker stated that if they wanted to appeal the Planning Commission's action they would need to make it known at this point and time. Mr. Walker stated that the properties both to the north and south have overhead utilities and have no deferred improvement agreements on those properties. Mr. Walker further stated that he does not disagree with Chairman Starkey's account of what happened previously, however, once that happened, values were established and the Red Cross is faced with a piece of property that at the time did not have a deferred improvement agreement. Mr. Walker explained that undergrounding those facilities can be very expensive and if the undergrounding were to be imposed, the value of the Red Cross would change considerably which is unfair to them.

Chairman Starkey stated he understands and appreciates the argument.

Commissioner Sanbrook stated that the argument of once waived always waived, is not a valid point and said he does not know if there was ever any legal input from counsel on that issue. Commissioner Sanbrook also stated that the applicant is coming in now for a separate entitlement to split this property and the Planning Commission can impose any reasonable condition on that split. Commissioner Sanbrook said that if the Planning Commission chooses to require undergrounding or a deferred improvement agreement with the necessary security to ensure undergrounding will take place when it is needed, he feels it is appropriate. Commissioner Sanbrook asked Mr. Walker what the approximate cost would be for undergrounding the utilities in this area, and how many feet would be required.

Mr. Walker said he has heard the cost is around \$200 a running foot to underground existing utilities, and that there would be around 374 feet that would need to be done. Mr. Walker stated this will establish values on the property and that when a buyer comes in, they will look at the cost associated with having to underground the utilities, and will most likely subtract that amount from their purchase offer. Mr. Walker said that the previous waiver benefited the developer, not the Red Cross.

Commissioner Sanbrook stated that at this point and time, for the Planning Commission to waive this requirement would not only be inconsistent with the requirements of the municipal code, but actually contrary to the code, and said it would not be wise to take that course of action.

Stephen De Sena, 101 Boulder Street, Nevada City, who is part of the De Sena Development Group, talked about Commissioner Sanbrook's comments, and stated that the probability of undergrounding ever happening is unlikely, and said if it isn't going to happen, why have a deferred improvement agreement as a condition, and said that a buyer coming in would use that as leverage on a purchase price.

Chairman Starkey stated that if the applicant entered into a deferred improvement agreement, and never did the undergrounding, it would cost them nothing.

Mr. De Sena stated it would cost the Red Cross through a purchase offer, and said it is not reasonable for the Red Cross to have to bear the burden because of the mistake made before, and said again that the area will probably never be undergrounded.

Commissioner Sanbrook stated he appreciates Mr. De Sena's arguments.

Commissioner Parker asked Aaron Busch, Community Development Director, if there is a sunset period for deferred improvement agreements.

Mr. Busch stated it is typically 30 years.

There being no further testimony, Chairman Starkey closed the public hearing.

Commissioner Sanbrook stated that if the Red Cross disagrees, this issue will have to be directed to the City Council, and said he feels the Planning Commission should not go against the code.

Commissioner Parker said that consistency across the board is imperative and concurs with Commissioner Sanbrook.

Commissioners Hager and Didbal also concurred with Commissioner Sanbrook.

Commissioner Sanbrook moved to A. Adopt the 5 findings, and B. Approve Tentative Subdivision Map #SM 08-02 subject to the 8 conditions of approval, was seconded by Commissioner Hager, and the motion passed by a vote of 5-0-2 (Commissioners Takhar and Flores absent).

Chairman Starkey read the appeal process to the applicant.

Commission Discussion:

Presentation regarding the Lincoln East Specific Plan.

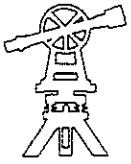
Aaron Busch, Community Development Director, presented a brief staff report.

Alfredo Castillo, RRM, presented a power point presentation giving an overview of the Lincoln East Specific Plan and the Draft Environmental Impact Report. Throughout the presentation, several questions were posed by the Planning Commissioners.

Questions and responses are as follows:

Commissioner Sanbrook stated that there is an area that lies east of the LESP that is not the subject of any specific plan, and asked if that was correct.

Mr. Busch said that the area east of the Siller Ranch Master Plan is currently in the County and is fully developed. Mr. Busch stated the area chose not to be annexed in to Yuba City, and because it is fully developed, there is no need for a specific plan in that area.



von Geldern Engineering Company

CIVIL ENGINEERING - LAND SURVEYING - BUILDING DESIGN - PLANNING
430 SECOND STREET - YUBA CITY, CALIFORNIA 95991 - (530) 673-6330 - FAX (530) 673-9067 - vongeldern@sbcglobal.net

Richard von Geldern R.C.E.
Edward von Geldern R.C.E.
(1887-1971)
Bill J. Walker L.S.
Michael P. Medley L.S.

April 27, 2009

City Council
City of Yuba City
1201 Civic Center Blvd.
Yuba City, CA 95993

Received

APR 29 2009

RE: Tentative Map #SM 08-02;
The American Red Cross

**City of Yuba City
Community Development**

Honorable Council:

The Planning Commission conditionally approved the subject Tentative Map on April 22, 2009. On behalf of our client, I hereby appeal condition 6 of the conditions of approval.

Condition 6 states "A Deferred Improvement Agreement shall be executed providing for the future undergrounding of all existing overhead utilities (of 26,000 volts or less). This does not include surface mounted transformers, pedestal mounted terminal boxes and meter cabinets."

The subject parcel is Lot 60 as shown on the "Onstott Estates Subdivision" which was approved, on appeal, by the city council on March 18, 2003, at which time the Council removed a condition requiring a Deferred Improvement Agreement for the undergrounding of existing overhead utilities along the East Onstott Frontage Road.

In 2003 when the Council removed the undergrounding condition, one would assume that removed meant removed, not temporarily removed. Property values were established at that time based on the fact that no undergrounding would be required. If the City now requires an undergrounding agreement, property values will reduce accordingly. In 2003, if the Council had denied the developers appeal, the cost of undergrounding existing overhead utilities would have been spread over all 60 lots in the "Onstott Estates Subdivision." Imposing such a Deferred Improvement Agreement today places the entire financial burden on the Red Cross parcel.

The imposition, at this time, of a Deferred Improvement Agreement to underground existing overhead utilities would place a significant financial obligation on any potential buyer for the property. Although the undergrounding of utilities could be put off until some future date, any prudent buyer would reduce his purchase offer by an amount similar to the cost of undergrounding.

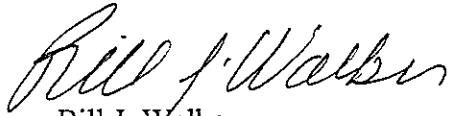
Tentative Map #SM 08-02
The American Red Cross
Page 2

Adjacent properties to the north and south are served by overhead utilities and are not subject to Deferred Improvement Agreements.

Most of us feel that if a Deferred Improvement Agreement were to be imposed, the likelihood of the City calling the agreement would be very slim. The problem however, is that even if the agreement is never called, the property has lost value because of its' existence. If the City believes that there is only a slim prospect of calling such an agreement then what have they lost by not requiring it.

Thank you for considering this request.

Very truly yours,



Bill J. Walker

CC: Martha Griese, CEO, American Red Cross
Steve De Sena

Received

APR 29 2009

City of Yuba City
Community Development