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OPINION	:	No. 80-107
	:	
of	:	<u>February 28, 1980</u>
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SUBJECT: MERGER PROVISIONS—Under Ventura County Ordinance Code section 8162.7, as it presently reads, the finding of a merger of unimproved, nonconforming, contiguous lots separately acquired and owned by spouses or other closely related or associated individuals does not take place solely by virtue of their close relationship.

The Honorable Michael D. Bradbury, District Attorney, County of Ventura, has requested an opinion on a question which may be rephrased as follows:

Do the merger provisions of Government Code section 66424.2 apply under Ventura County Ordinance Code section 6162–7 when two unimproved, nonconforming, contiguous parcels are owned separately by (1) spouses, (2) members of same immediate family, (3) partners of the same partnership, (4) officers of the same corporation or (5) shareholders of a closely held corporation?

CONCLUSION

The merger provisions of Government Code section 66424.2 do not apply under Ventura County Ordinance Code section 6162–7 when two unimproved, nonconforming,

contiguous parcels are owned separately by (1) spouses, (2) members of the same immediate family, (3) partners of the same partnership, (4) officers of the same corporation, or (5) shareholders of a closely held corporation.

ANALYSIS

The County of Ventura has an ordinance providing for the merger of unimproved, nonconforming, contiguous parcels when they are held, in whole or part, by the same owner. The question presented here for determination is whether a close relationship, whether by blood, marriage or business association between two or more individuals who separately acquire and own such parcels results in a merger. We conclude that it does not.

The merger ordinance of the County of Ventura is authorized by Government Code section 66424.2,¹ a statute contained in the Subdivision Map Act (§§ 66410–66499.37).

Government Code section 66424.2 provides:

Notwithstanding Section 66424,² two or more contiguous parcels or units of land which have been created under the provisions of this division or any prior law regulating the division of land or a local ordinance enacted pursuant thereto or were not subject to such provisions at the time of their creation shall not merge by virtue of the fact that such contiguous parcel, or units are *held by the same owner* and no further proceeding under the provisions of this division or a local ordinance enacted pursuant thereto shall be required for the purpose of sale, lease or financing of such contiguous parcels or units, or any of them: . . . except that, a local agency may, by ordinance, provide that if any one of such contiguous parcels or units *held by the same owner* does not conform to standards for minimum parcel size to permit use or development under a zoning, subdivision or other ordinance of the local agency and at least one of such contiguous parcel or units is not developed with a building for which a permit has been issued by the local agency, or which was built prior to the time such permits were required by the local agency then such parcels shall be merged for the purposes of this division” (Emphasis added.)

¹ All unidentified section references are to the Government Code.

² Section 66424 defines “subdivision” as “the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease or financing.”

Ventura County's merger ordinance. Ventura County Ordinance Code section 6162.7 reads as follows:

“The use of land as permitted for the zone or sub-zone in which it is located shall be permitted on a lot or parcel or a combination of contiguous lots or parcels of less area or frontage than that required by the regulation of such zone or sub-zone only if the *owner* or, if there be more than one, any one of the owners of such lot or parcel or combination thereof does not own, in whole or part, any adjoining property and has nor owned, in whole or part, any adjoining property since the effective date of this ordinance”
(Emphasis added)

When construing a statute, we should look to the principles of statutory construction. We must “ascertain the intent of the Legislature so as to effectuate the purpose of the law.” (Select *Base Materials v. Board of Equalization* (1959) 51 Cal. 2d 640, 645.) “Legislative intent” is discerned at the onset by looking to the words used in the statute, giving them effect according to their usual and ordinary meaning. (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230.) Words should not be added to an unambiguous statute (*Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152, 155) as long as the results are not absurd (*Nightingale v. State Personnel Board* (1972) 7 Cal. 3d 507, 513). An exception contained in a statute, such as the exception in section 66424.2, should be strictly construed. (*City of National City v. Fritz* (1949) 33 Cal. 2d 635, 636.) Thus, the merger provisions of section 66424.2 should be strictly construed against the finding of a merger.

Under both section 66424.2 and Ventura County Ordinance Code section 8162.7, a merger occurs when two contiguous parcels are owned by the same owner under certain conditions. An “owner” is “one that has the legal or rightful title whether the possessor or not.” (Webster's Third New Internat. Dict. (3d ed. 1966) p. 1612.) We believe that the references to “same owner” are plain and unambiguous. Individual persons may lawfully acquire and own contiguous parcels separately though they are man and wife, partners, or are otherwise related. In such cases, they are not the “same” owner. In the absence of evidence that such owners are circumventing the Subdivision Map Act,³ there is nothing in section 66424.2 to indicate that different persons should be deemed to be the “same.”

We are aware of no California case which has specifically dealt with the problem

³ In cases where there is evidence of subterfuge by closely related individuals, our result may very well be different. (See, for example, *Bright v. Board of Supervisors* (1977) 66 Cal. App. 3d 191; *Pratt v. Adams* (1964) 229 Cal. App. 2d 602.) We have been presented here, however, with no such facts.

here under discussion. States outside California, however, have considered this problem under similar statutes and have arrived at the same conclusion.⁴

We conclude that under Ventura County Ordinance Code section 8162.7, as it presently reads, the finding of a merger of unimproved, nonconforming, contiguous lots separately acquired and owned by spouses or other closely related or associated individuals does not take place solely by virtue of their close relationship.⁵

⁴ See, for example, *Steisler v. Commerdinger* (1966) 269 N.Y.S. 865. The tendency among state appellate courts has been to strictly construe merger ordinances so as to avoid mergers. (See *Clarke v. Board of Appeals of Nahant* (Mass. 1959) 155 N.E.2d 754.)

⁵ The question of whether two contiguous parcels owned separately and individually by husband and wife were purchased with community funds is not before us, and, therefore, we do not voice an opinion thereon.