



MINUTES OF THE SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE NAPA SANITATION DISTRICT, NAPA COUNTY, CALIFORNIA, HELD AND CONVENED AT SOSCOL RECYCLED WATER FACILITY ADMINISTRATION OFFICE, WEDNESDAY, DECEMBER 12, 2017 CALLED TO ORDER AT 4:05 PM.

1. **OPEN SESSION:**

2. **ROLL CALL:**

PRESENT: JILL TECHEL, Chair; MARY LUROS, DAVID GRAVES and PETE MOTT, Directors. ALSO PRESENT: TIMOTHY HEALY, General Manager; and JOHN BAKKER, Legal Counsel.

ABSENT: RYAN GREGORY, Vice-Chair.

3. **REVIEW OF AGENDA:** No changes.

4. **SAFETY MOMENT:** None.

5. **PUBLIC COMMENT:** None.

6. **SPECIAL PRESENTATIONS:** None.

7. **CONSENT CALENDAR:** None.

8. **REGULAR CALENDAR:**

a. **Receive presentation from staff, appeal from development team, and provide direction on development of 1031 McKinstry Street.**

Andrew Damron presented a report to Board on the property at 1031 McKinstry Street. He noted that at the December 6, 2017 Board meeting, Katie Shaffer, Suzanne Truchard, and Andrew Siegal requested the Board consider project requirements for the proposed project.

Damron presented a history of the project including the planning review with the City of Napa and NapaSan. He indicated the core problem is that the property owner is not willing to install the required grease improvements and pay capacity charges for a Food Service Establishment, nor sign an agreement acknowledging the requirements if the use changes to a Food Service Establishment. Owner is appealing that they should not have to sign the agreement or pay capacity charges.

Damron indicated that Planning applications were received at the City of Napa in October, 2015 and April, 2016. The City of Napa Planning Department routes

planning applications to NapaSan. NapaSan sent conditions of approval to the City Planner on project.

The Planning application stated the project was “proposed two-story commercial (retail/restaurant) project, in an adjacent and supportive location to First Street corridor of the Oxbow district, provides an opportunity for a high-quality but quaint commercial building, and establishes at both the levels much-needed purpose-built commercial spaces for potential restaurant-retail uses to service both tourists and locals.” Damron commented that the paragraph from planning application indicated owner didn’t know what would occupy the space. Whenever “restaurant” is noted in a planning application, NapaSan requires the plans to show the required sanitary sewer improvements, to be prepared by a registered civil engineer conforming to NapaSan standards, and to be submitted to the Napa Sanitation District for approval. A grease interceptor is required for any restaurant or food service type of uses. Additionally, outdoor trash enclosures with floor drains connected to the sanitary sewer must be covered and the drain line must be connected to a grease interceptor. The owner must also obtain a demolition permit from NapaSan prior to relocating the existing building, and the proposed development would be subject to fees.

Damron reviewed NapaSan District Code Section 4.04.170 (F) regarding the requirements for interceptors.

Damron commented that the planning application allowed for restaurant use to be included. Conditions were written by NapaSan consistent with food service establishments, including the requirements for a grease interceptor, trash enclosure and paying capacity charges. The comments also included instructions to obtain a demolition permit from NapaSan prior to beginning any construction. He indicated the first plan submittal was received on September 19, 2016 and comments were returned to property owner on October 18, 2016.

Damron noted that in an email dated October 20, 2016 from the project engineer Derrick Dittman to NapaSan engineer Matt Lemmon, “current plans are for shell renovations. From what I understand the owner is in negotiations with a tenant and the food preparation needs are to be determined. The intent was that a grease interceptor would be addressed and included with the tenant improvement plans.” An email from Matt Lemmon to the project engineer on October 26, 2016 stated that the “grease interceptor must be addressed during this phase. It does not necessarily have to be installed during the shell renovations but must be shown on the plans and the system must be designed to accommodate the interceptor (adequate room, no trees/landscaping, adequate slope/drop across interceptor, etc.). If the tenant does not require a grease interceptor then it doesn’t have to be installed, but it should remain an option for future tenants.”

Damron indicated that the second submittal of plans was on November 14, 2016 and NapaSan comments were returned on December 7, 2016. This set of plans showed a grease interceptor for trash enclosure on the plans. Matt Lemmon requested on December 6, 2016 that they change the design of the grease interceptor so it can serve both the trash enclosure and the future grease waste line from the building. A follow-up email was sent from Matt Lemmon on March 7, 2017 responding to a phone call from the project engineer on March 6, 2017

asking if separate grease facilities would be allowed for this development (outdoor grease interceptor for trash enclosure and interior grease traps for fixtures). Lemmon indicated to the engineer that this would not be allowed and that all grease lines must drain to an exterior grease interceptor that is sized by the designer per the plumbing code and meets NapaSan standards.

Damron reported that three months passed and in June 2017 another email from Lemmon was sent to Mr. Dittman. It indicating NapaSan had received a tenant improvement (TI) plan submittal from Feast It Forward at 1031 McKinstry. He inquired as to the status of the site improvements. Damron indicated that during the three months' time construction had begun and was underway without NapaSan's knowledge, and no permit had been issued by NapaSan. The building had been relocated, with new foundation poured without approved plans or permit from NapaSan. The plumbing did not include a grease line. Andrew Siegal, the property owner, and his team were aware and chose not to follow NapaSan Code requirements.

Damron reported that NapaSan received submittal of tenant improvements from Feast it Forward on June 6, 2017. NapaSan staff informed them of required fees and grease improvements consistent with Food Service Establishments, based on the information shown in the plans. Feast it Forward disagreed and a meeting was scheduled for October 18, 2017 to discuss the matter.

Damron reported that at the October 18, 2016 meeting, the tenant claimed that the use will not include food service and that prepared food is not for consumption. It was agreed to allow the tenant improvements to proceed without requiring the installation of an external grease interceptor or paying "restaurant use" capacity charges based on tenant's claims. In exchange, NapaSan staff required documentation of the decision and an acknowledgement that if the use changed in the future to a food service establishment, then grease improvements would need to be installed and additional fees collected.

Damron noted that after the meeting, he and Matt Lemmon discussed the issue with the General Manager and NapaSan legal counsel, who were not present at the October 18<sup>th</sup> meeting. They agreed that the best way to adequately document this decision was to record an agreement, signed by the property owner. The agreement would be with the owner, not the tenants; would document that future food service will require additional capacity charges and grease improvements; and that the installation of these improvements were necessary to protect the sewer infrastructure against grease, plugged mains, overflows, and collapsed pipes.

Damron reviewed the possible capacity charges that would be due for a commercial use designation based on the uses in the building: \$49,750 for restaurant use on both floors, \$18,877 for wine tasting and retail on first floor and restaurant use on second floor, and \$0 for wine tasting and retail on first floor and a theater on the second floor. These fees take into consideration the 3 EDU capacity credit of \$27,897 already credited to the property from prior development.

Damron noted that the applicant claims in recent correspondence that NapaSan has not previously required this type of agreement for other projects. The reasons for requiring the agreement are several: 1) the unprecedented failure of owner Siegal to comply with NapaSan requirements; 2) project has failed to follow NapaSan Code and plan comments/project conditions, thus far; 3) NapaSan has never previously waived grease-related requirements for plans that include food service improvements on the plans (“commercial kitchen”, “dining area”, etc.); and 4) City of Napa has determined this tenant to be food service establishment.

Damron stated the property owner’s claim that NapaSan does not have the legal authority to require this agreement. Staff believes the situation is similar to Deferred Improvement Agreements which are issued and recorded against real property on a regular basis. The requirement of a recorded agreement in this instance does not create a new policy or practice. The project representatives claim that this agreement is an “11<sup>th</sup> hour” requirement. Damron stated that the requirements for Food Service Establishments have been conveyed to the project starting in October, 2015.

Damron noted the property owner’s claim that this is an issue between NapaSan and the tenant. The property owner did not install the proper grease improvements for a Food Service Establishment. Damron explained that an agreement signed by only the current tenant does not protect against a future tenant or current/future property owner assuming or claiming that a Food Service Establishment is approved based on information shown on the plans, planning application, and improvements installed in the building.

Damron indicated the property owner claims that an agreement is redundant, creates a financial burden and impacts the property owners banking/financing covenants. Staff has replied that the agreement would only burden the property owner and impact banking/financing covenants if he intends to use the space as a Food Service Establishment. Although requested several times, owner has not provided any information regarding how such an agreement violates his loan covenants.

Damron noted the property owner’s unwillingness to sign the agreement because he claims it is factually inaccurate, and there is no legal requirement for him to do so. Damron indicated that owner’s actions were contrary to discussion and decisions reached at the October 18<sup>th</sup> meeting.

Damron set out two options for resolution of this matter: 1) require grease improvements and fees consistent with conditions of approval, plan comments, and NapaSan Code, for a Food Service Establishment; or 2) require owner to sign agreement requiring grease improvements and fees if the property becomes a Food Service Establishment in the future and authorize staff to issue a permit to Feast It Forward (\$0 capacity charges, no grease improvements).

Director Mott asked whether NapaSan staff considered “red tagging” the project. Damron responded that is not something we like to do and that it is often not productive.

Property owner, Andrew Siegal, stated that any required grease improvements or additional capacity charges are the responsibility of the tenant. Siegal claimed that it is unfair to require him to allow a lien on the title of his real property.

Suzanne Truchard, attorney for Feast It Forward, addressed the Board on the matter. She indicated that Feast It Forward is a lifestyle brand and network “all things food, wine and philanthropy.” No commercial appliances will be contained in the business. It will consist of a wine bar, live music space and retail shop. It will be a parallel foundation giving to local charities and developing countries. Katie Shaffer commented that Feast It Forward is the newest online lifestyle and food network. The bottom floor will be a retail design showroom and everything is donated. The second floor will contain a full demo kitchen with residential appliances. There will be no food service; it will be completely demonstration.

Ms. Truchard indicated that relevant matters happened June onward. Feast It Forward sought out NapaSan to make sure things were in order. At the October 18<sup>th</sup> meeting NapaSan claim that the initial process was not followed appropriately with permits. She recalls the agreement to pay fees based on the space being a “theater/wine bar” and not a commercial kitchen. Ms. Truchard understood that NapaSan needs some sort of confirmation that Feast It Forward is not a food service establishment and any change of use would require additional fees.

Ms. Truchard reviewed the correspondence between NapaSan and Feast It Forward. On November 28<sup>th</sup> they received an email from Matt Lemmon indicating they would need a Declaration of Restrictive Covenant. Feast It Forward replied stating the declaration was never agreed to. Ms. Truchard indicated that NapaSan stopped communication with Katie Shaffer and stated everything should go through legal counsel. She had a discussion on November 29<sup>th</sup> with NapaSan legal counsel John Bakker. He explained NapaSan has been “burned in the past.” Ms. Truchard didn’t understand how that is the fault of Feast It Forward.

Ms. Truchard indicated they have multiple issues regarding the Declaration. The District Code is silent as to requiring a declaration in this scenario and it was not agreed to in the original meeting. If this is to be required, the policy needs to be addressed. The Declaration gives NapaSan additional powers. She indicated Feast It Forward has complied with all requirements of the law and the October 18<sup>th</sup> meeting and has paid fees. She suggested a resolution of having a letter on file with NapaSan or other government entity confirming they are aware of requirements and confirming that any future tenant would be required to comply with NapaSan requirements.

Director Lueros inquired as to what happens if owner doesn’t inform tenant of requirements. Truchard responded that there should be some alert in the system. Ms. Truchard indicated that it was NapaSan's responsibility to put something in Code to allow such action.

Director Lueros asked what specifically in the agreement that tenant feels is unduly burdensome. Truchard responded that it is a policy issue to have something

recorded on property that has a potential to place a lien. This doesn't make sense since it is not in the Code.

Director Mott inquired if Truchard represents the property owner. She responded that she does not and only represents Katie Shaffer. Director Mott inquired as to how to establish a trigger to recognize a future change in use. Truchard responded that she has seen in other agencies typically when there are changes in use a notice be sent to all affected departments.

Director Graves addressed Mr. Siegal about what he said earlier regarding paying fees. Siegal responded it is up to tenant, not the owner, to pay capacity charges. Any new restaurant going in to a space would be responsible for paying capacity charges and TI fees for that restaurant use. Since the building was developed without a known tenant, a grease interceptor was not required. That change would be on the tenant and resolved with their TI application.

Director Graves commented that if the current scenario did include a restaurant, the building would be credited the associated connection fees, and they would run with the property. Graves commented that he doesn't understand the harm to Siegal as owner for signing an agreement. Graves stated that an agreement would make it absolutely clear that if there is a change in use to a restaurant, all these requirements would need to be met. Siegal responded that is up to NapaSan and the City of Napa how they go about Code enforcement.

Siegal commented that he is being asked to sign a restrictive covenant on real property, something that is not required anywhere else in the state of California. He indicated that it may cause harm sometime in the future. He commented that the agreement is trying to solve a much bigger problem, which is enforcing changes in use.

Director Mott indicated the issue is not with the tenant but is with the property owner and that the fees go with the property. Siegal interrupted, saying "if you think we have done something wrong, red tag us." Chair Techel commented that she believes NapaSan is trying to be very accommodating. Siegal disagreed, indicated that they don't need to have grease improvements if they are not going to have a restaurant.

Chair Techel commented regarding the grease interceptor and the cost-benefit of not having that built initially and having the foundation completed. Siegal responded that he thought they could defer those costs since there was no need to spend \$50,000 on a grease interceptor if not needed. Siegal acknowledged that he poured a foundation without knowing whether a grease interceptor was needed. He noted that he received a building permit from the City of Napa and that the permit allowed him to do everything he has done so far.

Chair Techel asked if they got a permit from NapaSan before moving forward with the construction. Siegal responded they did not need a permit from NapaSan. General Manager Healy responded that a demolition permit was required, that this was noted in the conditions of approval for the project, and that they did not get the required permit prior to pouring the foundation. Director Graves asked whether a demolition permit requirement was in the District Code. Healy

responded that yes, it is in Code and that it was also in the conditions of approval for project.

Public comment was received from the contractor on the project, JB Liemer of CR Builders. He noted comments on drawing going back and forth by designer and NapaSan, and stated that property owners and tenants do not always clearly understand the code and requirements. NapaSan communication with designers dropped off around December, 2016. When he came on board, it was clear they needed to call NapaSan and bring them to the site. He reiterated that the parties tried to sit down and reach agreement at the October 18<sup>th</sup> meeting. He felt it was clear they were going to get something done from that meeting. He stated that his notes and Damron's notes are similar. He commented he is surprised that we are here at this point. He cannot speak to whether the Declaration was fair.

Director Graves commented that the proposed agreement doesn't assign blame but is a neutral document. He views the document as a way to solve the issue in a way that is fair to tenant. It is not unfair to the owner and it serves to protect the interests of the District ratepayers.

Chair Techel asked what the Declaration provides that a letter doesn't. Legal Counsel Bakker responded that it gives NapaSan the ability to lien a property for not following District requirements. He added that, according to state law and District code, if someone does not pay a charge NapaSan already can lien the property. The Declaration merely notifies future buyers of the rules that would be in place if the space were converted to a food service establishment.

Chair Techel commented that the Declaration would make sure in the future there weren't any unintended consequences. Bakker added that there have been circumstances where a tenant moved in thinking they could use the space for a particular use, and then were told by District staff that additional fees would be required. According to his review, Bakker believes the General Manager's determination that the upstairs of building property should be classified as a food service establishment is correct. The General Manager is willing to waive the associated fees and improvements only if the property owner agrees and records on property that there are additional requirements if it is ever used as a food service establishment.

Director Mott commented that there are two options: pay the fees now or record a document against the building, which is not unduly burdensome.

Director Luross asked what the cost would be to install a grease interceptor after construction has been completed. Damron indicated that to install a grease interceptor to function properly, all the fixtures would need to be plumbed to it. Internal plumbing fixtures would need to be rebuilt involving jackhammering up the foundation, etc. and he does not have any idea how much that would cost. Installation of just an external concrete structure/interceptor probably would cost around \$10,000.

Ms. Shaffer commented that the space is not designated as food service. She believes what triggered the current issue was the Fire Division requirement to install a hood system over the range.

Siegal commented that regardless of any Board action, he would not sign the document. He stated that no attorney would recommend signing this. He said that Ms. Shaffer should not have to pay the fees for a restaurant because it is not a restaurant.

Chair Techel asked if Siegal drafted the attached letter. He indicated that he did.

Director Mott stated that he is excited about Ms. Shaffer's business plan. He stated he does not think she has anything to do with this issue. It is NapaSan and the property owner's issue. Mott stated that it is up to the property owner how he deals with his tenant. Mott noted the plans and comments that went back and forth. He noted that NapaSan is not part of the City or County but is an independent agency, and that there is a lack of triggers available for agencies to recognize when a business use changes. He noted similar issues with winery-related businesses, where use changed without notification to NapaSan.

Mott inquired what happens to the food once it has been cooked. Ms. Shaffer commented it will go in the trash and not be consumed.

Mott commented that he supports the position that something should be recorded. Siegal commented that he will not sign the document. He then noted that he had to leave the meeting.

Ms. Truchard commented that NapaSan does not have in their Code the authority to lien the property and should implement a Code change.

Siegal commented that it is not part of Code. He suggested that the Board asks management to come up with a way to fix it. Siegal stated he is not going to sign the agreement. He stated that right now, the permit being discussed is for Feast It Forward and NapaSan wants to call it something it is not.

Chair Techel commented that she discussed this with the Planning Department at the City of Napa and there may be another tool in the tool box that might help us in this situation in the future. City staff could put a "lock" on file and anything that came up would get flagged and would have to go through the highest level at the Planning Department. The file should clearly document that any fees due in the future would be the fee amount applicable at the time.

Mott stated that the agreement is not burdensome. Siegal commented that what NapaSan is trying to do is extort the landowner and that the document is not required of any other property owner in town.

Director Mott commented there is no money involved in signing the agreement whatsoever. It is a very elegant solution and he does not understand the pushback from Siegal.

Noting several interruptions by Mr. Siegal, Director Luross asked Siegal to stop interrupting the Board.



Director Luross stated that, being an attorney, she does not see the agreement as overly restrictive. She noted that when asked, the owner has not provided any reason why it is overly restrictive. Siegal commented that it should be part of the District's Code if they want to enforce this.

Director Luross commented that it is unfortunate that the owner is holding the tenant hostage. Siegal commented that he is not holding them hostage. Siegal stated that he will not sign the agreement and that the issue is between the tenant and NapaSan. Siegal left the meeting at this point.

Ms. Shaffer commented that the file lock mechanism described by Chair Techel is a reasonable method to move forward. Truchard commented that the lock mechanism seems the most reasonable path.

Chair Techel indicated she looked at the draft letter and would recommend changing some of the verbiage. Bakker noted that a letter cannot be recorded, only an agreement.

Director Mott asked why the tenant is appealing and not the owner. General Manager Healy replied that NapaSan has felt all along this is an issue between the property owner and NapaSan, and that the tenant is caught in middle. NapaSan came up with a solution; however the property owner states he will not sign the agreement. Healy stated that NapaSan offered that if owner came up with some other agreement or method to resolve the matter, he would consider it. He stated that he believes an agreement needs to be recorded.

Ms. Shaffer indicated that they got a sign off from County on the property and they have been sitting two months not doing anything hoping to move forward. The appeal was to expedite the process. Mott asked if tenant has had a discussion about a different recordable document. Truchard commented that the owner thinks the document recording will put a cloud on the title. She does not believe he has discussed an alternate agreement with his legal counsel.

Healy commented that the problem for NapaSan is that the Planning application called the building a restaurant. Engineering drawings that came through called it a restaurant. Even the TI references a kitchen area and dining area. It would be easy to change to a food service establishment in the future. The October 18<sup>th</sup> meeting agreed one meal would be made and go in the trash can, but nothing would stop the tenant from making food for parties, private parties, etc. Plans may change in six months or a year. Or they may sell it to someone else that sees it as a kitchen in a commercial facility. Healy noted that the owners should have made changes before pouring the slab. It would have been easy to add before the slab was poured. Staff was trying to work with building owner long before Feast It Forward came into the picture. Healy noted that it is common for a facility that starts out operating one way to change its operation without notification or permit.

Director Luross asked if we can have an agreement with Ms. Shaffer indicating she will not use the facilities for anything else. Healy agreed that the tenant should sign something, but indicated that it would not be binding on the owner or future tenant.

Director Mott suggested that NapaSan ask the city to put in a “stop notice” on the property in the city files. Bakker stated that there is still no guarantee that the process would work, and it does not alert future buyers of the situation prior to buying the property.

Ms. Shaffer indicated she is happy to sign a letter to go into the city’s file. Chair Techel indicated we should change some verbiage in the letter from “trap” to “interceptor.” Bakker commented that there is a statement in the Declaration that NapaSan would want and that language should be put in the letter for the owner to sign.

Director Mott commented that he believes Siegal has been inappropriate with NapaSan staff and that he should apologize for his behavior.

Bakker suggested a motion directing the General Manager to work on the issuance of a permit and ask Siegal to sign a letter agreeing to do all the things in Section 1 of proposed Declaration, i.e. “Owner shall not operate a Food Service Establishment on the property unless.....”. This letter would not be recorded but put on file with the City of Napa and NapaSan. The tenant Feast It Forward would sign a similar letter and NapaSan staff will work with the City of Napa to get it in their files to be flagged with any use change in the future.

The Board discussed the option and a motion was made as noted above.

Motion by GRAVES, seconded by MOTT, by the following vote:

AYES: GRAVES, LUROS, MOTT, TECHEL  
NOES: NONE  
ABSENT: GREGORY  
ABSTAIN: NONE

- 9. **GENERAL MANAGER REPORT:** None.
- 10. **LEGAL COUNSEL REPORT:** None.
- 11. **BOARD OF DIRECTORS REPORTS/GENERAL DISCUSSION:** None.
- 12. **ADJOURNMENT: (5:53 P.M.)**

Adjourn to Napa Sanitation District Regular Meeting on Wednesday, January 10, 2018 at 4:00 p.m. for a Regular Meeting to be held at the Napa Sanitation District Administration Building, 1515 Soscol Ferry Road, Napa, California.

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CHAIR

ATTEST:

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Clerk of the Board