

Attachment C

Appellant's Good Cause Request and
Applicant's Opposition

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Via email to CHRIS.APALLAS@countyofnapa.org

5 June 2020

Chris Apallas
Deputy County Counsel
County of Napa
1195 Third Street
Napa, CA 94559

Re: Julie Arbuckle/Anthem Winery application P14-00320-MOD, P14-00321-VAR, P14-00322-ECPA

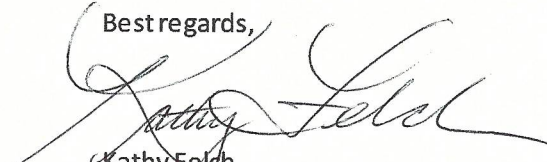
Dear Chris,

Appellant Patricia Damery requests a trial de novo of her appeal of the Planning Commission's decision in the above-referenced application.

At this time, which is the County's chosen cut-off date to request a trial de novo, it is impossible to determine the extent of the record on appeal. I have issued a public records request which is attached. The County's response to it should result in the parties knowing what is in the record on appeal. Should it not, Ms. Damery reserves her right to request a trial de novo.

Please contact me should you have any questions or concerns regarding this.

Best regards,



Kathy Felch
Attorney for Patricia Damery

Attachment: as indicated

cc: Kevin Block (via email)
Rob Anglin (via email)
KF/msm

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June 5, 2020

Dear Chair Dillon:

Applicants Julie and Justin Arbuckle oppose the requests of Appellant Patricia Damery for a *de novo* hearing and the requests of Appellant Patricia Damery and Appellants Paul Rowe and Jeff Atlas to augment the record with new evidence on appeal. For the reasons stated below, the Applicants oppose a *de novo* hearing and any augmentation of the record.

Background

The Anthem project has been in process since October 2014 and was the subject of two lengthy substantive hearings before the Planning Commission. The first hearing on October 4, 2018 lasted approximately four hours. The second hearing on February 5, 2020 lasted approximately six hours. In addition to public hearings, all Commissioners visited the Anthem site and met with concerned neighbors, including some of the Appellants. The public, including all Appellants involved in these appeals, were able and did participate in both hearings by submitting lengthy verbal and written comments. The Planning Commission received voluminous comments and reports from the Applicants' consultants and experts, County staff, independent experts retained by Napa County, and consultants retained by the public. At the conclusion of these hearings, the Planning Commission approved the Anthem project, but only after making drastic reductions to Applicants' proposed visitation and after the Applicants withdrew requests for a variance and increased production. The Planning Commission decision was unanimous (5-0).

Legal Standard

"In hearing the appeal, the board shall exercise its independent judgment in determining whether the decision appealed was correct."¹

"[T]he decision of the board on appeal shall be based on a review of the documentary record ... and such additional evidence as may be presented which could not have been presented at the time the decision appealed was made."²

In making the determination on whether to admit additional evidence, the Chair requires a showing of "good cause".³ While good cause is not defined in Napa County Code, a California appellate decision made the following observation:

As a general rule, however, "good cause" includes reasons that are fair, honest, in good faith, not trivial, arbitrary, capricious, or pretextual, and reasonably related to legitimate needs, goals, and purposes. In determining the meaning of "good

¹ NCC §2.88.090(A).

² NCC §2.88.090(A).

³ NCC §2.88.090(B).

cause” in a particular context, the courts utilize common sense based upon the totality of the circumstances. Those circumstances include the purpose of the underlying statutory scheme.⁴

Thus, requests for de novo review of a Planning Commission decision are routinely denied when appellants had ample opportunity to submit comments and reports to the Planning Commission.

Appellant Damery’s Request for De Novo Review

Appellant Damery’s Appeal Packet requests a *de novo* review, but the Appeal Packet does not state any specific grounds supporting a *de novo* review by the Board. Appellant Damery has not pointed to any error on the Planning Commission proceedings or an inability to participate in those proceedings. To the contrary, Appellant Damery received notice of the Planning Commission hearings, as well as an opportunity to be heard and to submit all evidence she wanted considered. In addition to notifying Appellant Damery by mail, Staff prepared an Agenda Letter to the Planning Commission along with Project Supporting Documents and Studies that were included in the public record available on the County’s website in advance of both the October 3, 2018 and February 5, 2020 hearings.

In fact, Appellant Damery was heard when she verbally addressed the Commission at both hearings, and when the Planning Commission reviewed 56 pages of her written comments and attachments. Specifically, from December 12, 2014 to February 4, 2020, Appellant Damery sent eleven letters and emails for inclusion in the Planning Commission record in which she objects to the Applicants’ project on the grounds of her organic certification, tree easement, quality of life, as well as her earthquake, safety, fire, watershed, groundwater, oak savanna, and erosion concerns. (See 10/3/18 Hearing Items V and W, and 2/5/20 Hearing Items J, L, M and Q.) Prior to the Planning Commission hearing, Appellant Damery also consulted with several governmental and environmental agencies, and submitted a seven page ecologist study and several photographs regarding erosion on her property. (See 2/5/20 Hearing Item M.) Further, Appellant Damery has been aware of the proposed project since 2014, and has spoken with the Applicants, Staff, and the Planning Commissioners about it on many occasions. Given these facts, it is clear Appellant Damery has had more than ample time and opportunity to submit grounds for her opposition.

As the Chair is aware, proceedings before the Planning Commission are recorded, and a transcript will be part of these appeal proceedings. Appellant Damery has not articulated a legitimate purpose that would be served by repeating the hours of testimony before the Planning Commission. Appellant Damery has not presented any legitimate reason that the hard work of the Planning Commission should be discarded. Moreover, Applicants would be prejudiced by having the Board conduct a *de novo* review in this context, especially given they have been applying to amend their use permit for over five years and have conducted every study the County requires. By choosing to wait to present new material after filing an appeal, Appellant Damery deprived Staff, Applicants and the Planning Commission with a reasonable opportunity to respond. Applicants respectfully request that the Chair deny Appellant Damery’s request for a *de novo* hearing.

⁴ *Laraway v. Sutro & Co., Inc.* (2002) 96 CalApp.4th 266, 274 (internal citations omitted).

Appellant Damery's Request to Augment the Record

Appellant Damery's Appeal Packet asserts that multiple governmental agencies will complete site visits in March 2020 and "issue their findings regarding various aspects of the Anthem project." The Applicants note that the California Department of Fish and Game already has provided comments dated October 3, 2018 as part of the CEQA process. That comment letter is part of the record on this appeal, and any statement that DFG has not reviewed and commented on the Anthem project is incorrect. The other agencies listed, California Water Resources Control Board, NRCS, and USGS, do not commonly comment on projects through the CEQA process. None of these agencies issue "findings" on a winery use permit or vineyard erosion control plan. Findings for those permits are made by Napa County. For these reasons and the reasons discussed above, there is no good cause for allowing Appellant Damery to augment the record.

Appellants Rowe/Atlas Reservation of Right to Augment the Record

The Appeal Packet for Appellants Rowe/Atlas reserves the right to request to augment the record with documents that could not have been presented to the Planning Commission. Though the nature of these possible submissions is not described in their Appeal Packet, there is a reference documents withheld from Appellants' Public Records Act ("PRA") request. While the Applicants are not privy to this PRA request, any documents reviewed by the Planning Commission in reaching its unanimous decision would not be withheld from a PRA request. For this reason, it is unlikely such documents have any bearing on whether the Planning Commission's decision was correct.

Like Appellant Damery, Appellants Rowe and Atlas were well aware of the project for years, received proper notice of the Planning Commission hearings, and had ample opportunity to comment on the project and to submit all evidence they deemed appropriate. Appellants Rowe and Atlas were represented by counsel at both hearings, and from April 6, 2016 to February 4, 2020, they collectively submitted 81 pages of letters, emails, and attachments objecting to the proposed access road. (See 10/3/18 Hearing Items V and W, and 2/5/20 Hearing Items L, M and N.) Accordingly, there is no good cause for allowing Appellants Rowe and Atlas to augment the Planning Commission record.

Applicants respectfully request the Chair to deny the requests for de novo review and to augment the administrative record with new evidence.

Sincerely,



Rob Anglin