



Agenda Date: 1/31/2006  
Agenda Placement: 8D  
Set Time: 10:30 AM PUBLIC HEARING  
Estimated Report Time: 15 Minutes

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** Britt Ferguson for Nancy Watt - County Executive Officer  
Clerk of the Board  
**REPORT BY:** Pamela Miller, Clerk of the Board/Admin. Manager, 253-4196  
**SUBJECT:** Public Hearing - Appeal of a decision by the Clerk of the Board to reject as incomplete an appeal filed by Bruce Krell

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### **RECOMMENDATION**

Consideration and possible action regarding an appeal filed by Farella, Braun and Martel, LLP, on behalf of their client, Bruce Krell, to a decision of the Clerk of the Board of Supervisors on December 13, 2005 to reject as incomplete a lot line adjustment appeal filed by Bruce Krell.

**ENVIRONMENTAL DETERMINATION:** The appeal of the Clerk's determination of the completeness of the original appeal is not a "project" (14 CCR 15378).

### **EXECUTIVE SUMMARY**

On November 7, 2005, the Department of Public Works determined the lot line adjustment application involving the lands of John and Andrea Robinson and the Patrick and Julie Garvey Trust should be approved, and on November 10, 2005, sent written notification of the decision by mail to those persons owning properties that were contiguous to the property involved in the lot line adjustment. The notice advised the persons owning properties that were contiguous to the property involved in the lot line adjustment that the final day to file an appeal would be December 6, 2005.

On December 6, 2005, Mr. Bruce Krell attempted to file an appeal in the office of the Clerk of the Board. The documents submitted were insufficient and Mr. Krell was verbally notified of that fact. The missing documents were a title insurance report and copy of the assessor's map book pages. On December 13, 2005, Mr. Krell was notified in writing of the decision by the Clerk of the Board to reject his appeal.

On December 27, 2005, Mr. Krell filed an appeal to the administrative decision of the Clerk of the Board to reject as incomplete his original appeal. This second appeal contained all of the required documentation and therefore was deemed complete on December 29, 2005.

**The hearing scheduled today is to address the appeal of the Clerk's decision only, not the merits of the lot line adjustment appeal.**

**FISCAL IMPACT**

Is there a Fiscal Impact?                      No

**ENVIRONMENTAL IMPACT**

**ENVIRONMENTAL DETERMINATION:** The appeal of the Clerk's determination of the completeness of the original appeal is not a "project" (See 14 CCR 15378).

**BACKGROUND AND DISCUSSION**

On November 7, 2005, the Public Works department concluded it should approve a lot line adjustment application involving the lands of John and Andrea Robinson and the Patrick and Julie Garvey Trust (Assessor Parcel Numbers 027-460-031 and 027-460-032). Notification of this approval determination was mailed by the Public Works department on November 10, 2005 to all persons owning property contiguous to the properties involved in the lot line adjustment as required by Napa County Code section 17.46.070. The notice of approval was also published in the Napa Valley Register on November 18, 2005. The deadline to file an appeal to the decision of the Public Works department was identified in the notice received by each person owning property contiguous to the properties involved in the lot line adjustment as December 6, 2005 at 5:00 p.m.

The office of the Clerk of the Board received an appeal, delivered by courier, at approximately 4:00 p.m. on December 6, signed by Mr. Bruce Krell. At the time the appeal was delivered, Clerk of the Board staff telephoned the office of Mr. Krell at the number on the appeal form. Mr. Krell's assistant, Ms. Dolly Marques, was informed the packet was incomplete as it did not contain the information required by section 2.88.050 of the Napa County Code. Whereupon Ms. Marques requested that county staff notify Mr. Krell directly and provided a cell phone number as well as a home phone number. Staff contacted Mr. Krell directly and advised him the appeal packet delivered was incomplete and the deadline to file the completed appeal was the same day at 5:00 p.m. Mr. Krell was advised as to the specific items missing from the appeal packet which were a title insurance report and a copy of the assessor's map book page. Pursuant to Section 2.88.050 of the Napa County Code, a notice of appeal is required to contain the following pieces of information, both of which were missing from the appeal packet filed by Mr. Krell:

1. A title insurance report issued no earlier than six months prior to the date of the decision being appealed that certifies, by name, address and assessor's parcel number, the owners of all real property located within three hundred feet of any real property which is the subject of the appeal; and
2. A copy of the assessor's map book pages current as of the date of the decision being appealed that shows all real property which is the subject of the appeal and all properties in the property owners list as described above.

On December 13, 2005, the Clerk of the Board notified Mr. Krell, in writing, of the rejection of the appeal due to incompleteness, providing specific information as to the missing documents. Along with the letter, the original appeal documents and blank check were returned to Mr. Krell.

On December 23, 2005, the appellant's attorney faxed the Clerk of the Board a one-page appeal to the decision of the Clerk of the Board to reject as incomplete the original appeal. Subsequently, on December 27, 2005, the appellant provided a signed hardcopy version of the appeal form and the remaining required documents. Through

their attorney, the appellant was notified, in writing, on December 29, 2005, that the appeal packet was deemed complete and was advised of the date and time of the scheduled public hearing.

**STATED BASIS FOR THE APPEAL AND STAFF RESPONSE:** The following outlines the basis of the appeal as contained in the appellant's submittal. For convenience, staff has numbered each issue and provided a summary response. While the appeal filed addresses the reasons for appealing the decision of the Clerk of the Board, it also addresses the basis of the original appeal of the approval of the lot line adjustment. ***Since the merits of the lot line adjustment cannot be considered at the January 31st hearing, those points raised in the appeal will not be addressed here. Only the basis for the appeal of the Clerk's decision will be considered.***

**Appeal Ground 1:** The appellant did not submit the required title insurance report and assessor's map book pages because both documents were already on file with the County.

Staff response:

While the documents were on file with the department of Public Works, Napa County Code Section 2.88.050 states the notice of appeal shall include certain information, which must be received by the Clerk of the Board within the time prescribed in Section 2.88.040 (A), including:

(F) A title insurance report issued no earlier than six months prior to the date of the decision being appealed that certifies, by name, address and assessor's parcel number, the owners of all real property located within three hundred feet of any real property which is the subject of the appeal; and

(G) A copy of the assessor's map book pages current as of the date of the decision being appealed that shows all real property which is the subject of the appeal and all properties in the property owners list as described in subsection (F).

**It is the responsibility of the appellant to provide all required documents in accordance with 2.88.050. It is not the responsibility of the Clerk to determine whether the documents exist in another county department's files and obtain copies from those departments.**

**Appeal Ground 2:** The appellant states he was led to believe that the appeal could be filed without these documents based in part on discussions with County staff. The appellant states he spoke with staff the week prior to the filing deadline and inquired whether the County could take notice of both documents already in the County's possession, and if not whether or not the Board of Supervisors would allow for filing of such documents after the deadline. The appellant states staff did not know the answers, stated they would respond back and never did. Further, the appellant indicates he did not receive notification from county staff at the time of the delivery of the appeal on December 6 that the appeal was incomplete.

Staff response:

County staff has no recollection that a conversation occurred the week prior to the filing deadline. Furthermore, the standard response to such a question is to refer the caller to the appeal packet which contains information as to what documentation is required, references to the relevant provisions of the Napa County Code, and the appropriate timelines.

As noted above, in the presence of the delivery courier, the staff of the Clerk of the Board contacted the office of Mr. Krell and spoke with Ms. Dolly Marques. Ms. Marques was informed the packet was incomplete as it did not contain the information required pursuant to Napa County Code Section 2.88.050. Ms. Marques requested that county staff notify Mr. Krell directly and provided a cell phone number as well as a home phone number. Staff contacted Mr. Krell directly and advised him the appeal packet delivered was incomplete, advised him of the specific pieces of information missing, and further advised the deadline to file the completed appeal was the same day at 5:00 p.m. Had Mr. Krell submitted the appeal in a timeframe not so close to the deadline, he would have

had the additional time needed to obtain the required documents. Further, he knew the documents were available to him through the Public Works department but chose not to obtain same.

**Appeal Ground 3:** The appellant states the reason the appeal was filed so close to the deadline was because of representations made to him by a member of Public Works staff regarding the consequences of approving the lot line adjustment.

Staff response:

Mr. Krell did contact the Department of Public Works on two recallable occasions regarding the Lot Line Adjustment application (LLA). On one occasion, Mr. Krell inquired at some point prior to the appeal deadline date as to what the resulting effects on the properties would be if the proposed LLA was approved. Staff indicated that in general parcels involved in a LLA are not granted any development rights other than those that existed prior to the LLA being approved. At that time Mr. Krell did not inquire as to whether the property line setback requirements would be affected by the LLA approval.

The second inquiry occurred the day before the appeal deadline for the LLA. This time Mr. Krell contacted the Public Works staff regarding setback requirements for the proposed lot line adjusted parcels. Public Works staff referred Mr. Krell to staff at the Conservation, Development, and Planning Department (CDPD) for a response to his question since that department is responsible for setback requirements. Public Works staff at no point during any conversation with Mr. Krell indicated, inferred, or implied that the LLA would, or would not, affect the setback requirements of the parcels involved.

Furthermore, CDPD staff indicated information was given to persons calling on the day before and the day of the appeal deadline regarding the setback requirements for the parcels involved in the LLA. CDPD could not confidently recall whether Mr. Krell was one of the callers; however, both callers inquired to the setback requirements and were given information thereof. Subsequently, CDPD recalls that Mr. Krell did call around two weeks after the LLA appeal deadline and asked questions about the setback requirements for the recently approved LLA and also whether he could appeal the issuance of a building permit.

**Staff recommends the Board:**

1. Deny the appeal and uphold the decision of the Clerk of the Board to reject the original appeal as incomplete; and
2. Set a date for consideration and adoption of a resolution of Findings of Fact and Decision on Appeal.

**SUPPORTING DOCUMENTS**

- A . Appeal filed December 27, 2005
- B . County Counsel letter to appellant dated December 23, 2005
- C . Original incomplete appeal and letter to appellant

CEO Recommendation: Approve

Reviewed By: Maiko Klieman