



Agenda Date: 2/28/2006
Agenda Placement: 8F
Set Time: 2:30 PM PUBLIC HEARING
Estimated Report Time: 1 Hour

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Steven Lederer for Hillary Gitelman - Director
Conservation, Development & Planning
REPORT BY: Steven Lederer, Deputy Planning Director, 253-4417
SUBJECT: Public Hearing - Appeal filed by One True Vine

RECOMMENDATION

Consideration and possible action regarding an appeal filed by One True Vine LLC concerning the following:

1. Planning Commissioner David Graves' decision not to recuse himself; and
2. The Planning Commission's decision not to disqualify Commissioner David Graves from hearing and participating in the Planning Commission's use permit revocation hearing regarding One True Vine's use permit.

EXECUTIVE SUMMARY

The Planning Commission has instituted formal proceedings to consider possible revocation of One True Vine's use permit in accordance with the procedures of County Code section 18.124.120. Prior to the revocation hearing, One True Vine filed two motions (a peremptory challenge and motion to disqualify), both of which sought to prevent Commissioner Graves from participating in any manner in the revocation hearing. The basis of both motions was an argument that Commissioner Graves has a direct and substantial pecuniary interest in the outcome of the proceeding as he is an economic competitor of One True Vine, and thus precluded by law from participating in the proceedings. At a meeting of the Planning Commission on January 18, 2005, Commissioner Graves argued that he does not have a substantial pecuniary interest in the outcome of the hearing and declined to recuse himself based on the peremptory challenge. On the same date, the Commission denied the motion to disqualify. The appellant seeks to overturn both decisions.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is categorically exempt from CEQA under 14 California Code of Regulations 15321 (State CEQA Guidelines), Class 21[Enforcement Actions by Regulatory Agencies].

BACKGROUND AND DISCUSSION

Prior to the Planning Commission conducting a hearing regarding possible revocation of One True Vine's use permit, One True Vine filed a peremptory challenge and a motion to disqualify Commissioner Graves on the grounds that as an economic competitor of wine produced by One True Vine, he has a direct and substantial pecuniary interest in the outcome of the hearing. Both motions were heard by the Planning Commission on January 18, 2006. In response to the first motion, Commissioner Graves refused to recuse himself. The Commission then denied the motion to disqualify, with Graves abstaining from that vote. Both decisions have been appealed.

The gravamen of One True Vine's motions is that Graves is co-founder, owner, and general manager of Saintsbury Vineyard, which produces a Chardonnay that is sold to the public for approximately \$20 per bottle. One True Vine also produces a wine known as "Gold," which is a white table wine that contains over 50% Chardonnay and is sold to the public at around \$20 per bottle. One True Vine contends that as these wines compete with each other in the market place, Graves has a financial interest in the outcome of the revocation hearing such that he should be disqualified from participating, and if he did participate, it would constitute a denial of One True Vine's due process rights to a fair and impartial tribunal.

The issue before the Board is not whether Graves harbors actual bias against One True Vine, but rather are his pecuniary interests sufficient to constitute an appearance of bias. There is no bright line legal test to make this determination. Distilling applicable case law, the question is whether Graves has a "direct, personal, and substantial pecuniary interest" in making an adverse decision, or whether his interest is only "indirect, impersonal, or insubstantial". By way of example, in Stivers v. Pierce 71 F.3d 732 (1995) the court stated:

"There are undoubtedly cases in which the appearance of partiality rising from competitive interests is sufficiently strong to warrant recusal. (citation). A lawyer in a one-lawyer town, for example, would probably have a "direct" and "substantial" pecuniary interest in the licensing of a competitor planning to hang a shingle across the street. On the other hand, it is unlikely that any attorney practicing in a city like Los Angeles would have a competitive interest sufficiently strong to require that he be disqualified from considering the licensing of an additional lawyer."

In this case, Commissioner Graves eloquently rejected the appellant's assertions (transcript provided to the Board), as did the Planning Commission. Staff recommends that the Board deny the appeal and uphold the decisions by Commissioner Graves and by the Planning Commission.

SUPPORTING DOCUMENTS

- A . Appeal
- B . Peremptory challenge
- C . Motion to disqualify
- D . Declaration of Mike Fisher
- E . Supplemental Brief

CEO Recommendation: Approve

Reviewed By: Andrew Carey