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Agenda Date: 3/8/2016
Agenda Placement: 9D
Set Time: 2:00 PM PUBLIC HEARING
Estimated Report Time: 3 Hours

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: David Morrison - Director
Planning, Building and Environmental Services
REPORT BY: John McDowell, Deputy Planning Director - 299-1354
SUBJECT: Bell Wine Cellars Appeal

RECOMMENDATION

Consideration and possible action regarding an appeal filed by Janice R. Russell, Trustee of the Frank J. Massa and Adra V. Massa Revocable Trust, and Michael Clark to a decision by the Planning Commission to approve a modification to **Bell Wine Cellars** Use Permit Nos. U-90-42 and 03315-MOD to allow the following: 1) Increase in the approved production capacity to a maximum of 60,000 gallons; 2) Interior remodeling of the existing 8,911± sq. ft. winery to construct an additional 1,048 sq.ft. storage mezzanine and to allocate space for a new 628 sq.ft. tasting room area, a 210 sq.ft. meeting room, and a new 150 sq.ft. commercial kitchen for on-site marketing event meals and food pairings and tastings, resulting in a total of 9,959± sq.ft. winery floor area plus a 1,450 sq.ft. exterior covered crush pad; 3) Increase existing visitation from 24-76 persons per week to a maximum of 100 persons per day subject to the following: Visitation shall not exceed 400 persons per week from May 1 to October 31; visitation shall not exceed 250 persons per week from November 1 to April 30; and the total annual visitation shall not exceed 13,780 persons including the 24 marketing events but excluding the four per year marketing events of up to 200 persons; 4) Modify the existing Marketing Event Program to remove the prior programs and replace with the following new Marketing Event Program: a) Two marketing events per month of up to 40 persons with lunch or dinner. The number of persons at the events shall be included within the daily, weekly, and annual visitation maximums; b) four Wine Auction-related and other major events such as the Napa Film Festival, accompanied by food and wine, sometimes with a non-amplified musical program for a maximum of 200 guests; c) all marketing events shall be held in the various winery facilities, including the winery structure and patio area. The events may last approximately 4-5 hours between 10:00 a.m. and 9:00 p.m. depending on morning or evening schedule. Up to 80 overflow parking spaces in the vineyard along the side of the access road are available during large events; five spaces are available on the grass-crete hard surface adjacent to the winery (near the lawn area adjacent to the winery and driveway entrance); and nine spaces are available in the center area of the circular driveway near the residence; and d) on-premises wine consumption consistent with Business and Professions Code §23358, 23390 and 23396.5 (also known as the Picnic Bill) in the winery or on the patio or lawns adjacent to the bocce ball courts; 5) Employ a maximum of 15 persons; 6) Revise Condition #7 of Use Permit No. U90-42, to exclude for-hire cars, vans and public transit; 7) Installation of a new subsurface drip wastewater system; and 8) Installation of a Transient Non-Community Water system and a water backflow prevention system. The Project is located on a 7.8

acre parcel on the east side of the State Highway 29 frontage road, Washington Street, approximately 550 feet north of its intersection with Hoffman Lane and 0.9 miles south of the Town of Yountville, within the AP (Agricultural Preserve) Zoning District; 6200 Washington Street, Yountville, CA in an unincorporated area of Napa County, Assessors Parcel Number 036-110-030-000.

ENVIRONMENTAL DETERMINATION: Consideration and possible adoption of a Mitigated Negative Declaration. According to the Mitigated Negative Declaration, the proposed project would have, if mitigation measures are not included, potentially significant environmental impacts in the following areas: Noise. This project site is not on any of the lists of hazardous waste sites enumerated under Government Code section 65962.5.

(CONTINUED FROM AUGUST 25, NOVEMBER 24, DECEMBER 15, 2015 AND FEBRUARY 2, 2016)

EXECUTIVE SUMMARY

The matter before the Board involves a neighbor generated appeal to the Planning Commission's decision (the Commission) on May 6, 2015, to approve an application submitted by Bell Wine Cellars/Spanos Berberian Properties, LLC. (Applicant or Bell) to expand winery production from 40,000 gallons to 60,000 gallons annually; to remodel the existing 8,911± sq. ft. winery to construct an additional 1,048 sq.ft. storage mezzanine; to increase visitation and marketing activities; and to make other associated improvements to the winery and changes to the operation

On May 18, 2015, and within the prescribed filing period, a Notice of Intent to Appeal was filed by John DeMeo, Esq. on behalf of Frank J. Massa and Adra V. Massa Revocable Trust, Janice R. Russell, the successor trustee of said trust and Michael Clark (the Appellant). On May 28, 2015, an Appeal Packet was timely submitted by Appellant. The appeal was originally scheduled for hearing on August 25, 2015 and continuances were granted to November 24, 2015, December 15, 2015 and February 2, 2016. Negotiations and a proposed settlement offer have occurred, however it does not appear that a compromise will be reached between Appellant and Applicant. Because of new information provided in the independent noise study, the Board continued the item to March 8, 2016 to allow for recirculation of the revised environmental document which has been changed to a proposed Mitigated Negative Declaration to mitigate for potential noise impacts.

PROCEDURAL REQUIREMENT

1. Chair introduces item and requests that staff briefly delineate the issues on appeal in front of the Board.
2. Staff delineates the issues on appeal.
3. Chair reports that as part of the pre-hearing conference, prior Chair Dillon found good cause existed to augment the record with: (a) Appellant's, Applicant's and County's noise studies; (b) supplemental groundwater evidence (if any) from Appellant; and (c) the records from the 1992 Board of Supervisors appeal filed by Appellant to the original winery use permit approval. This decision by the Chair may be overruled by a majority of the Board.
4. Chair asks if any "interested party" wants to assert that "good cause" exists to: (a) augment the record with new evidence on existing issues and/or (b) hear the matter de novo (e.g., entirely fresh hearing). The Chair may authorize either or both of the above requests. This decision by the Chair may be overruled by a majority of the Board.
5. Chair opens public hearing, invites staff presentation and testimony from Appellant, followed by interested parties and Applicant. Appellant has the final rebuttal.
6. After the Board has heard all testimony and received evidence from Appellant, Applicant, staff and interested parties supporting each, Chair closes the public hearing.
7. A motion of intent is made and seconded to take one or more of the following actions: (a) deny the appeal; (b) uphold the appeal; (c) uphold one or more grounds of appeal and modify the Commission's decision; and/or (d) remand the matter to the Planning Commission for consideration.
8. Chair calls for the votes on the motion and refers the matter to County Counsel's office for preparation of a

Resolution of Findings of Fact and Decision on Appeal.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Consideration and possible adoption of a Mitigated Negative Declaration. According to the Mitigated Negative Declaration, the proposed project would have, if mitigation measures are not included, potentially significant environmental impacts in the following areas: Noise. This project site is not on any of the lists of hazardous waste sites enumerated under Government Code section 65962.5.

BACKGROUND AND DISCUSSION

The matter before the Board is a neighbor generated appeal to the Planning Commission's decision on May 6, 2015 to approve modification of a use permit increasing production capacity to 60,000 gallons per year, accessory uses, marketing, visitation, employees; on-premises consumption of wines produced on-site; interior remodeling of the winery; construction of a new commercial kitchen, meeting room, storage mezzanine, and covered crush pad; installation of a subsurface drip wastewater system; and installation of a Transient Non-Community Water system and a water backflow prevention system (the Project). The Project is located on a ±7.8 acre parcel on the east side of the State Highway 29 frontage road, Washington St., approximately 600 feet north of its intersection with Hoffman Lane and .5 miles south of the Town of Yountville, within the AP (Agricultural Preserve) Zoning District at 6200 Washington St., Yountville, CA.

After considering all written and verbal evidence presented, the Planning Commission closed the public hearing and voted 3:2 to adopt the Negative Declaration and approve the Project as conditioned. On May 18, 2015, subsequent to the Planning Commission's decision and within the prescribed period, a Notice of Intent to Appeal was filed by Appellant.

On May 28, 2015, an Appeal Packet was submitted by Appellant within the required timeframe. The Massa Trust owns the property, and Michael Clark is the beneficial owner of the real property.

A brief summary of Appellant's ground of appeal is provided below with staff's response. This is a summary only and staff recommends that the Board review the actual appeal, and the balance of the administrative record for more detail.

Pre-Hearing Conference.

In an effort to clarify the County's procedural requirements and expectations regarding appeals of Planning Commission decisions, the County Counsel's office has initiated a program whereby a pre-hearing conference is held with the parties (Applicant and Appellant) and the Chair of the Board to discuss estimates of the time length of their respective presentations, the scope of evidence and testimony they intend to present, together with witness lists explaining who the witness is, the subject matter they will testify about, and length of their testimony. Any witness not appearing on the witness list at the pre-hearing conference will be treated as an ordinary member of the public and be allotted the usual three minutes of speaking time.

A pre-hearing conference was held on July 29, 2015 with Applicant and his counsel, Appellant and his counsel, the Chair and County Counsel's office. At that time, Appellant identified the following five individuals: John DeMeo, Esq., Jean Kapolchok, Eric Yee, a groundwater expert and Michael Clark as witnesses expected to testify in support of Appellants' position for a total of approximately three to four hours. Applicant identified the following five individuals: Scott Greenwood-Meinert, Esq., Paul Donovan, Peter Galloway or George Nickelson and Carl Butts as witnesses expected to testify in support of Applicant's position for a total of approximately seventy five minutes. It was agreed by Appellants and Applicant that witnesses not previously identified at the pre-hearing conference would testify as ordinary members of the public subject to the three minute limit.

County Code Section 2.88.090 provides that with respect to appeals of Planning Commission decisions, the Board's appeal hearing shall be based on the documentary record, including transcripts of the Commission's hearing, plus any evidence that could not have been presented at those hearings, unless the Chair affirmatively permits any additional evidence based on good cause shown. As part of the pre-hearing conference proceedings, prior Chair Dillon found "good cause" existed to augment the record with: (a) Appellant's, Applicant's and County's noise studies; (b) supplemental groundwater evidence (if any) from Appellant; and (c) the records from the 1992 Board of Supervisors appeal filed by Appellant to the original winery use permit approval. The Chair's decision may be overruled by a majority of the Board upon request by a member of the Board.

STATED BASIS FOR THE APPEAL AND STAFF RESPONSE:

GROUND OF APPEAL

The following outlines the basis of the appeal as contained in the Appeal. For convenience, staff has numbered each issue and provided a summary, but recommends the Board review the actual Massa Appeal for details.

Massa Appeal Ground No. 1: Appellant asserts that insufficient information exists to determine if the Project, as proposed, is consistent with the County's Noise Ordinance and if the Project is consistent with noise policies of the County General Plan. Specifically, Appellant asserts that the Initial Study (IS) lacks information to support the conclusion that noise impacts will be "less than significant" given that the document acknowledges that the new marketing plan could create additional noise impacts. The IS simply states that events will end by 10 pm, vehicles will be prohibited from idling and there will be no amplified music; there is no mention of daytime noise.

Staff Response:

This Project was approved by the Napa County Planning Commission on May 6, 2015 after a duly noticed public hearing. During the public hearing, a neighbor raised concerns that the existing winery operation caused noise impacts to his property and requested that the Commission not expand the entitlement. No noise study had been prepared prior to the Commission's decision. Subsequent to the Commission's decision on May 6, 2015, the neighbor filed a timely appeal of the Commission's action. On August 3, 2015 and August 4, 2015 noise studies were submitted by the Appellant neighbor and the Applicant. The Appellant's noise professional is Charles M. Salter Associates, Inc. (Salter), and the Applicant's noise professional is Illingworth & Rodkin, Incorporated. Both of these firms are recognized as having expertise in acoustics and preparation of CEQA noise studies.

County Staff evaluated both studies and determined that each study correctly applies County Noise Ordinance standards, but that some of the conclusions in both studies were not well supported by substantial evidence in the form of actual noise measurements or the studies made assumptions regarding the level of activity occurring at the existing facility. The reported and forecasted noise levels were generally quite close between the two studies with the Applicant's study finding that Project related noise fell below County noise standards, and the Appellant's study forecasting that noise exceeded County standards. In general, the Applicant's noise study did not have actual noise measurements on the neighbor's property, and the Appellant's noise study speculates on the size/scope of uses occurring on the winery Property. Staff raised these issues with both parties and as such both parties agreed

to fund the County preparing a third, comprehensive sound study performed by a qualified firm chosen by the County and under the County's independent direction.

The independent third noise impact report was prepared by RGD Acoustics (RGD). This study includes actual sound measurements of the winery's activities, including outdoor events, with measurements taken on both the winery Property and the neighbor's property. The size and scope of the activities were also known by RGD. The RGD study finds that most of the uses do not exceed the County's sound level thresholds, but conservatively determines that mobile bottling operations have the potential to exceed sound levels by 1 dBA. A 1 dBA increase is not typically discernible to the human ear. This study indicates that this forecasted exceedance could feasibly be addressed by relocating or reorienting the mobile bottling truck. Noise impacts are a somewhat subjective issue. What is tolerable or may have no impact to one individual may be considered unacceptably loud to another individual. As such, the County's Noise Ordinance applies "reasonability" standards based on what most people find acceptable and unacceptable. As a result, the County's noise standards are similar to those used by many other communities.

RGD's study was shared with both parties in November, 2015. On December 3, 2015, the Appellant submitted a response to RGD's findings. Expert opinion was provided again by Salter and by an additional land use and planning firm, J. Kapolchok & Associates (Kapolchok). This correspondence is attached. Below are responses to the points raised in that correspondence:

1. Salter and Kapolchok are critical of how RGD classifies the land use occurring at the shared property line at Hopper Creek. Under the direction of the County Zoning Administrator and County Noise Officer, RGD properly classifies those areas of the Appellant's property that are not used for residential use as agriculture. Salter and Kapolchok improperly suggest that the "residential multiple or country" designation from the Noise Ordinance (Title 8.16) be applied to the Hopper Creek area on the basis that Table 8.16.070 A(2) classifies the open space area of the creek as "residential multiple and country." It appears that Salter and Kapolchok did not consult with or otherwise contact County staff prior to rendering their interpretation of County Zoning and the Noise Ordinance. The term "residential multiple and country" is derived from the Zoning Ordinance (Title 18) land uses for Residential Multiple (RM) and Residential Country (RC). The County does apply the word "country" to describe open space. Open space is a land use within the General Plan Agricultural Resource and Agriculture, Open Space and Watershed land use designations, which are reflected under zoning as Agricultural Preserve (AP) and Agricultural Watershed (AW) respectively. In evaluating noise impacts, Table 8.16.070 A(2) sets conservative standards for noise intrusion to receiving land uses. The 45 dBA standard for "residential multiple and country" applies to residential multiple and residential country (i.e. – rural residences) land uses. It does not apply to creeks or open spaces which are designated by the County as Agricultural Resource or Agriculture, Watershed and Open Space. There is no noise standard for agricultural lands, due to the County's long standing "right to farm" statute which acknowledges that noise from agricultural operations is necessary to sustain agriculture as the highest and best use of land within the Agricultural Preserve (AP). This interpretation is consistent with past practices.

2. Salter states that the RGD report inappropriately subtracts ambient noise levels when evaluating noise generated from existing mechanical equipment and thus understates noise generation by 2 dBA (44 dBA versus 42 dBA). Although the County Noise Officer and Zoning Administrator believe the RGD report properly considers ambient noise levels, County accepts Salter's more conservative opinion and has treated the sound from the existing mechanical equipment as a potentially significant impact requiring mitigation although 44 dBA is only 1 dBA below the threshold of significance. A mitigation measure has been applied requiring the construction of a sound attenuating enclosure around the mechanical equipment prior to issuance of building permits for any portion of the proposed Project. The enclosure will ensure that sound generated from the mechanical equipment will not result in an increase in mechanical equipment noise above existing conditions, but within an ambient noise setting context and without consideration of existing noise levels. Existing mechanical equipment noise will be reduced as a result of constructing the enclosure.

3. Salter states that the ambient nighttime noise level is as low as 34 dBA and opines that noise from the mechanical equipment would be perceived as twice as loud. Salter does not opine on the fact that the mechanical equipment is part of the existing Project and therefore represents the existing setting from which the existing ambient noise levels were taken. The Project proposes no expansion, relocation, replacement or otherwise redevelopment of this existing mechanical equipment configuration, and therefore, the Project does not have a potential to result in a new significant impact. However, the County is applying a mitigation measure requiring enclosure of the mechanical equipment which will reduce the amount of noise it currently makes in addition to ensuring that it will comply with noise standards in the future.

4. Kapolchok states that the RGD study failed to analyze an additional, unoccupied residence on the Appellant's property which is located closer to the winery than the main residence. It is noted that RGD worked with the Appellant on setting up noise measuring devices and at no point during that process did the Appellant disclose to the County or RGD that the unoccupied second unit was intended to be used for residential purposes. The Salter study prepared by the Appellant also fails to recognize this structure as a receiving residential use. Since Kapolchok first raised this point in December 2016, the County has investigated the history of this dwelling unit. There are no known building permits for this second unit but County addressing records confirm an address assignment for a secondary dwelling unit (addresses are not assigned to accessory uses such as garages, studios and guest cottages). Under current AP zoning regulations, secondary dwelling units are not allowed within this agricultural zoning district. Given that there is no known building permit and that an address has been assigned, in all likelihood the living unit was established prior to zoning regulations that now prohibit the use, and thus the use is a pre-existing nonconformity. County Zoning allows nonconformities to continue provided that they were legally established, and have not been voluntarily abandoned. Legal status for nonconformities is determined by filing a discretionary Certificate of Legal Nonconformity (CLN) application, which is a discretionary land use action heard by the County Zoning Administrator. Until such time that a CLN is executed, the County cannot recognize the unit as a legal residential land use. With that noted, for the purposes of CEQA impact evaluation, the County considers the unit as having the potential to be reoccupied and thus it is appropriate to ensure that winery noise levels comply with the receiving residential use standard. As such, all three mitigation measures described herein are applicable, and will attenuate noise to levels that meet County standards. Outdoor events, which take place on the north end of the building, have sufficient noise shielding for the main residence, but the second unit is located closer to Hopper Creek and more in a direct line with the outdoor events area. Mitigation Measure X.II.3 requires installation of a temporary sound curtain when outdoor events are occurring. The RGD report includes an exhibit of potential locations for the sound curtain.

5. Kapolchok asserts that the Project description evaluated by RGD was incomplete and that the application materials fail to identify the whole of the Project. A single example was given speculating that the proposed conversion of barrel storage to hospitality space will result in displaced winery operations outside. The Project description is complete and was properly considered by RGD. No expansion of outdoor (or indoor) wine production spaces is proposed or authorized. Winery operations vary greatly between each business. Some wineries age wine off site. Some wineries stack barrels two or greater in height, where others do not stack barrels. The period for barrel aging varies greatly as well depending on varietal and wine making objectives. It is completely speculative to assume that winery operations will expand out of doors as a result of visitation space expanding indoors. In the event that outdoor wine making activities were proposed, it would be subject to a new discretionary use permit modification. In moving forward, Staff recommends that the Board adopt the Mitigated Negative Declaration, impose the mitigation measures as conditions of approval and also apply the recommendations of the County's noise consultant to the Project. Sound attenuating shielding will be installed for mechanical equipment, a sound curtain will be required for the mobile bottling operation and outdoor events, and outdoor visitation/marketing will not be permitted outside of the events area on the northern side of the building.

Massa Appeal Ground No. 2: The County's Noise Ordinance requires projects, which are likely to cause noise in violation of noise control regulations and are subject to mandatory review and approval, to prepare a sound analysis. (See NCC Section 8.16.030 (B)(5)(b).) Appellant contends that because the Project has the potential to

create noise impacts, an acoustical study is required. Appellant further asserts that the Project, as approved by the Planning Commission, will result in a very substantial increase in the use of the property over that which was previously approved and the increased use is likely to cause a significant noise impact to the adjoining residential uses thereby effecting the general welfare of the area. Without an acoustical analysis, Appellant contends that a determination of consistency with the Noise Ordinance and General Plan cannot be made.

Staff Response:

See response above for Appeal Ground No. 1. Subsequent to the Planning Commission's approval of the Project, three separate sound studies have been prepared for the Project. In response to this appeal, the CEQA document was revised and recirculated as a mitigated negative declaration with mitigation measures added to address potential noise impacts in response to the Appellant's noise concerns.

Massa Appeal Ground No. 3: Appellant asserts that insufficient information exists to determine if the proposed Project will have a potentially significant impact on biological resources. Specifically, Appellant contends that there is no information anywhere in the record that has assessed noise impacts on nesting birds or raptor habitat associated with construction. Pre-construction surveys may need to be required.

Staff Response:

The mitigated negative declaration properly identified that the Project area is not designated as sensitive habitat for any known protected or special status species. Noise is already generated from the existing operation, and the sound studies indicate that noise levels will not substantially increase as a result of the Project. New construction is primarily limited to interior remodeling with minor improvements to the northern parking lot area. The vast majority of the site will remain unchanged from existing conditions. No trees or other potential nesting habitat will be removed as part of the Project. The parking area improvements will occur within previously developed parking areas. The CEQA document properly concluded that the Project does not have a potential to result in significant impacts to sensitive or protected biotic resources.

Massa Appeal Ground No. 4: Appellant contends that the proposed marketing/hospitality and non-agricultural components of the Project are a disproportionately higher use than the agricultural/winery production facility and no longer accessory, incidental or subordinate to primary operation of the winery as a production facility.

Staff Response:

The Planning Commission thoroughly vetted this aspect of the Project. Considerable testimony was presented by Staff, the Applicant, and interested third parties including the Appellant. The Applicant was requesting higher levels of visitation and marketing than other comparably sized wineries, but the Applicant had scaled back the proposal from that which was originally submitted.

At the conclusion of the hearing, a majority of the Commission (3-2 vote) supported the hospitality components at higher levels than other comparable wineries. Commissioners supported this level based on the Applicant providing extensive rationale as to why this was warranted. The Applicant noted that the winery relies heavily on direct-to-consumer marketing of the wines made at the facility. Commissioners also acknowledged that the Applicant had substantially reduced the scope of visitation and marketing from their original request. A majority of the Commission felt that the reductions made to the proposal were sufficient and that the Applicant had demonstrated that the approved levels of visitation and marketing were clearly accessory to the production of wine made at the facility. The two dissenting Commissioners could not support the requested levels of visitation and marketing.

Massa Appeal Ground No. 5: County Code Section 18.124.070 requires certain mandatory findings be made in

order to grant a use permit. One such finding is that the use permit, as conditioned, will not adversely effect the public health, safety or welfare of the county. Appellant claims that the proposed Project is likely to cause significant noise impacts, change the rural character of the area and could impact biological resources which could adversely effect public health, safety or welfare.

Staff Response:

As discussed in the prior Appeal Ground Sections, the Planning Commission found that the Project would not result in adverse effects to public health, safety or welfare. Changes to the character of the property were found not be significant to health, safety or welfare.

The Project involves minimal new construction, mostly within the interior of the existing building resulting in no potential significant impact to biological resources. Potential impacts to biological resources were found to be less-than-significant, since no known sensitive resources are located on the Project site or in the vicinity, and the Project site is already developed.

The proposal's main component involves expansion of the visitation and marketing plan that the Commission found to be consistent with the Winery Definition Ordinance and General Plan. These documents define the scope of Napa County's rural character and provide standards for regulating new development within that framework.

Potential noise impacts have been thoroughly evaluated subsequent to the Planning Commission's action. Conclusive findings from the studies indicate that noise levels will not substantially change as a result of the Project, but that sound attenuation measures are recommended to ensure noise levels do not exceed standards. Staff is recommending augmentation of the conditions of approval to attenuate sound generated by both the existing and proposed conditions from the Project.

Massa Appeal Ground No. 6: According to Appellant, the application materials indicate that there will be no loss of vines because there is no increase to the building footprint and the additional parking will be within non-planted areas. However, the intensification of use requires expansion of the waste disposal system. Appellant asserts that there is nothing in the Project materials or conditions of approval that affirmatively states that the expanded wastewater system will not result in the loss of vines, either by system construction, operation, and/or prohibits the removal of existing vineyard.

Staff Response:

Wineries are considered an agricultural use of land. There are no provisions of County Code or the General Plan that mandate retention of existing vineyards when approving new winery facilities. However, the Commission has questioned the amount of vineyard loss in some cases. The Planning Commission regularly considers the extent of vineyards, vineyard loss and general grape sourcing when acting on a winery proposal, but vineyard loss has not been previously used as a basis to deny an application.

In this case, the Applicant had a thorough explanation correlating the proposed level of wine production to the extent of vineyards supplying the Project. Any loss of vineyards to septic system improvements would be minor, if any. In fact, evidence was put forth by the Project's engineer that no vineyards would need to be removed to implement the septic system improvements. The septic systems involves only a small portion of the 4.6 acres of vineyards on site, and those 4.6 acres of vineyards account for approximately 3,000 gallons of the 60,000 gallons of annual production (40,000 gallons under prior entitlement).

The Appellant is correct in noting that there is nothing in the conditions of approval prohibiting the removal of existing vineyards. However, since loss of vineyards is not a requirement for winery development, the Planning Commission appropriately did not apply such a condition. If vineyards are lost as a result of installing the septic

system, the Project would remain consistent with the County Code and the County General Plan.

Massa Ground of Appeal No. 7: The IS prepared for the Project and County policy requires all exterior lighting to be shielded and directed downward. Appellant contends that this is not the current condition and the Project will result in an expansion of light pollution.

Staff Response:

No new lighting is proposed as part of this Project, but the Planning Commission did apply the standard condition of approval for light shielding. At the Planning Commission meeting, the Applicant committed to shield any existing lighting that did not comply with this standard. In particular, there is a light mounted on the building near the outdoor work area that is a glare issue for the Appellant. The Applicant committed to shielding and/or repositioning this light so as not cast light or glare onto the Appellant's property. The Planning Commission appropriately conditioned the Project, and the Applicant will be held to this requirement prior to County final authorization of the additional entitlement.

In response to the appeal, Staff recommends that the Board direct Staff to augment the prior conditions of approval to specifically address this concern by requiring submittal of a facility lighting plan, inclusive of shielding retrofit improvements, to be submitted concurrent with the initial building permit to implement any portion of this proposed expansion.

Massa Ground of Appeal No. 8: The administrative records for the property indicate that a permit was issued for the construction of one bocce ball court. There are two courts on site. Appellant claims that this use is inconsistent with the AP zoning district.

Staff Response:

The County does not have a specific adopted policy or guideline concerning use of bocce ball courts at wineries. Approval of bocce ball courts at wineries therefore has depended upon such features being found on a case-by-case basis to be consistent with the Winery Definition Ordinance's (WDO) provisions for accessory uses. Although rare, there have been cases where the Planning Commission has previously approved bocce ball courts at wineries.

For the Bell Winery, a bocce ball court was approved in 2003 as part of a previous use permit modification (File No. 03315-MOD). This modification entitled, among other improvements, construction of a patio, barbecue area and bocce ball court on the west side of the building. Subsequent to that approval, Use Permit Minor Modification P06-0168-MOD was approved at a Staff level in May of 2006 which eliminated the patio and barbecue area and replaced it with an expanded barrel storage area. That 2006 entitlement was silent on the status of the bocce ball court, but it could be argued that the bocce ball court was eliminated since it too was within the eliminated patio area. Construction of the addition commenced in 2007 with construction being staged from the north side of the building where the bocce ball courts now exist.

In June 2008, Use Permit Very Minor Modification P08-0447-VMM was submitted to recognize conversion of 280 sq. ft. of production space into additional tasting area within the building and authorizing outdoor by-appointment tastings on the patio on the north side of the building adjacent to where the bocce ball courts exist. Approval was granted for the Modification in August 2008 with no mention of bocce ball courts, either being requested or expressly approved. The bocce ball court area is shown on those use permit modification plans as existing vineyards, although aerial photographs show that the vineyards were removed in 2007. The bocce ball courts and lawn area were installed sometime between May 2008 and March 2009.

The bocce ball courts were identified as a discussion item in the Staff Report for the current Use Permit

Modification request. During the hearing Commissioners and Staff discussed bocce balls as an accessory use to wineries, with Staff indicating (as noted above) that there was no specific policy or guideline addressing them. Staff indicated that at least one bocce ball court had been approved in the 2003 action. At the conclusion of the hearing, the majority of the Commission (3-2) supported retention of the bocce ball courts.

In absence of a policy or guideline for bocce ball courts at wineries, the Board will need to find that the use qualifies as an accessory use to wine production as part of this action. Final conditions of approval adopted by the Board will detail the full extent of any bocce ball courts included in the entitlement. Based on the past use permit and building permit record, there appears to be no vested right for the bocce balls as it appears County representatives did not review or approve them in their present configuration, and that the bocce ball court approved in 2003 was likely eliminated as part of the use permit modification in 2006.

Massa Appeal Ground No. 9: In 1992, the Massa Family appealed the Planning Commission's approval of a use permit modification expanding the Bell Winery from 20,000 gallons to 40,000 gallons per year. The appeal was upheld by the Board subject to modified conditions of approval and mitigation measures. Appellant contends that in upholding the appeal certain negotiated terms were adopted by the Board such that the Appellant had an expectation that the terms of the 1992 action would be protected, notwithstanding subsequent modification which did not have the opposition from the Appellant.

Staff Response:

The Appellant essentially is asserting that as a result of a separately negotiated agreement reached between the Applicant and Appellant in 1992 that lead to resolution of the Use Permit Modification Appeal before the Board, that the Planning Commission now circumvented that agreement by approving the current request without the consent of the Appellant. The Board's 1992 action in no way obligated or predisposed the Planning Commission to obtain Appellant consent as part of considering future use permit modification requests. In fact, such a condition would not be legal as the County cannot assign its discretionary authority, in full or in part, to a neighbor or any other entity. Discretion to approve, deny, or modify a land use entitlement request within unincorporated Napa County lies solely within the responsibility of Napa County. Any agreement reached between parties to secure support (or at least to withdraw opposition) of a project pending review before the County is just that, a private agreement. Likewise, if dispute exists between the parties of that agreement, resolution of that dispute is not a matter within the discretion of County.

SUPPORTING DOCUMENTS

- A . Appeal Packet
- B . Appeal Packet Supplement - August 5, 2015
- C . Transcript May 6, 2015
- D . Planning Commission Staff Report 4-1-2015
- E . Transcript April 1, 2015
- F . Planning Commission Staff Report 5-6-2015
- G . Approval Letter and Conditions
- H . Revised Mitigated Negative Declaration
- I . County Consultant Noise Study - RGD Associates, February 12, 2016
- J . Appellant Noise Assessment - Charles M. Salter Assoc., August 4, 2015
- K . Applicant Noise Assessment - Illingworth & Rodkin, Inc. August 3, 2015

L . Appellant Correspondence & Charles M. Salter Peer Review December 8, 2015

M . J. Kapolchok & Associates Peer Review December 2015

N . Graphics

CEO Recommendation: Approve

Reviewed By: Helene Franchi