



Agenda Date: 8/2/2005
Agenda Placement: 8H
Set Time: 9:30 AM PUBLIC HEARING
Estimated Report Time: 90 Minutes

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Hillary Gitelman - Director
Conservation, Development & Planning
REPORT BY: Sean Trippi, Principal Planner, 253-4417
SUBJECT: Houck Appeal Hearing

RECOMMENDATION

Consideration and possible action regarding an appeal filed by attorney Bruce Ahnfeldt on behalf of his client, Gary Houck, of a decision by the Conservation, Development and Planning Commission on May 18, 2005 to deny Mr. Houck's Viewshed application request (No. P05-0005-VIEW) to construct a two-story 8,219 sq. ft. main residence, including a swimming pool, a covered pool cabana, yard and spa and an approximate 10,000 sq. ft. separate landscaped yard area including a bocce ball court with two small shade structures at either end, and a covered barbeque area and restroom. The main residence, yard area, and accessory structures and uses are proposed on the ridgeline and to the west of ridgeline of the site, south of Stags Leap, which can be viewed from Silverado Trail and State Highway 29, scenic roadway candidates identified in the Scenic Highways element of the Napa County General Plan [pp. 7-1] and Chapter 18.106 of the Napa County Code, Viewshed Protection Program. The project also includes improving and extending the existing private access drive from Soda Canyon Road to provide an all-weather surface to the project development areas and also includes a new septic system, water storage tanks and a 1,500 square foot horse barn. The septic field, water tanks and horse barn are located on the east side of the ridgeline and would not be visible from Silverado Trail. This project is within an AW (Agricultural Watershed) zoning district. (Assessor's Parcel No. 039-640-001) 2275 Soda Canyon Road, Napa.

ENVIRONMENTAL DETERMINATION: Mitigated Negative Declaration prepared. According to the Mitigated Negative Declaration, the proposed project would have, if mitigation measures are not included, potentially significant impacts in the following areas: aesthetics and biological resources.

EXECUTIVE SUMMARY

The hearing before the Board is to consider an appeal filed by Gary Houck, project applicant and owner of the subject property, to the Planning Commission's decision to deny his Viewshed application. The appeal is based on the contention that (1) provisions of the Viewshed Ordinance are vague, ambiguous, contradictory and subject to arbitrary interpretation; (2) provisions of the Viewshed Ordinance are not consistent with the purpose and intent of the Ordinance; (3) the intent of the Ordinance was not to prevent buildings on parcels subject to the Ordinance, and denial constitutes a "taking" of property rights; (4) the Planning Commission's action was a prejudicial abuse of discretion, and; (5) the application was processed on the basis of exceptions. Further detail, together with staff's

responses to these points, is included below. The applicant has also submitted proposed modifications to the project intended to address the Planning Commission's concerns, which are also described below.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Conservation, Development & Planning Clerk of the Board County Counsel
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	Yes
Future fiscal impact:	None.
Consequences if not approved:	County Code allows for the appeal of Planning Commission decisions.
Additional Information:	Since the fee schedule adopted by the Board does not fully recover costs for an appeal, there is direct impact on Department resources for responding to each appeal.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Mitigated Negative Declaration prepared. 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: aesthetics and biological resources. However, the State CEQA Guidelines, Section 15270 provide that CEQA does not apply to projects that are denied by a public agency. Since the project was denied by the Planning Commission, the Mitigated Negative Declaration was not adopted.

BACKGROUND AND DISCUSSION

PROCEDURAL BACKGROUND: On May 18, 2005, the Planning Commission denied the subject project after considering all written and oral evidence presented regarding the Viewshed application and the Conditions of Approval. On June 2, 2005, subsequent to the Planning Commission's final decision, and within the prescribed 10-day period for appeal, an appeal was filed by attorney Bruce Ahnfeldt on behalf of Gary Houck.

CURRENT STATUS AND ACTIONS REQUESTED BY THE BOARD OF SUPERVISORS: The matter before the Board is the appeal of a Planning Commission decision denying the appellant's request for approval under the County's Viewshed Protection Program (County Code Chapter 18.106). County Code Section 2.88.090 provides for appeals of Planning Commission decisions and indicates that the Board's appeal hearing shall be based on the documentary record, including a transcript of the Planning Commission hearing, plus any additional evidence that could not have been presented at that time, unless the Board affirmatively permits additional evidence. The Code further states that following the appeal hearing, the Board may affirm, reverse, or modify the decision by the Planning Commission. Should the Board reverse or modify the Planning Commission's decision and approve the project, the Board would also need to adopt the Mitigated Negative Declaration.

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, but recommends the Board review the appeal for additional details.

Appeal Ground 1: Provisions of the Viewshed Protection Program Ordinance are vague, ambiguous, overbroad, contradictory, and subject to arbitrary and capricious interpretation in regard to the definition of "major ridgeline" and "substantially."

Response: The Planning Commission staff report points out that the project site includes areas that meet the definition of both "major" and "minor" ridgelines in that the site is visible from more than one designated road, and that a portion of the site when viewed from Silverado Trail has no topographical backdrop (major ridgeline), and a portion of the site does have a topographical backdrop when viewed from Silverado Trail (minor ridgeline). The entire site has a topographical backdrop when viewed from State Highway 29. While it may be debatable whether the site is "visible from a substantial land area within the county" (major ridgeline) or "not prominently visible to a large area of the county" (minor ridgeline) as defined by the Code, provisions of the Viewshed Protection Program apply equally to major and minor ridgelines, rendering the distinction between them irrelevant to the Commission's denial of the applicant's request for approval under the Program.

The term "substantially" is clearly defined in the code at Section 18.106.020 (C) as "fifty-one percent or more of the viewable areas as it relates to views or screening of structures and benches and shelves from the designated road(s)." This term was defined in the staff report and was also clarified during the Planning Commission hearing.

Appeal Ground 2: Provisions of the Ordinance as written are not in compliance with the intent or the original purpose of [the] Ordinance, and are oppressive and constitute a "Taking" of property.

Response: The appellant cites Section 18.106.040 (C)(4) as being overbroad and oppressive regarding a lack of definition or the boundaries of Stag's Leap. This paragraph is only one of the conditions that must be met, as determined by the Planning Director, to process a project at an administrative level. If all the conditions of this section are met a project may be approved administratively by the Director. If this condition or any of the other conditions in Section 18.106.040(C) are not met, the project is referred to the Zoning Administrator or the Planning Commission for review and consideration. The provisions of this section do not constitute a taking, they merely determine the review process and decision-maker. The applicant's proposal does not qualify for administrative review because, among other reasons, the main house would not be sited 25 feet or more below the ridgeline as required by Section 18.106.040(C)(1) for administrative approval.

Appeal Ground 3: The intent of the Ordinance was not to prevent building on parcels subject to the Ordinance, but to provide guidelines to reduce the building's impact. The denial of this project constitutes a "Taking" of property rights without compensation.

Response: Although the viewshed ordinance was not intended to prevent construction on legal parcels, it was intended to protect the scenic quality of the County by guiding the visibility and placement of structures. The Planning Commission's decision to deny the project does not constitute disapproval of *all* construction on the parcel, merely the specific project proposed. The Planning Commission noted in its deliberations that with alterations to the project such as reducing lighting impacts, reducing or removing the tower, re-locating the accessory structures off of the Silverado Trail side of the ridge, relocating or reducing the size of the residence, additional landscaping, etc., it would be more likely to meet the intent of the ordinance.

The appellant contends that there is no other viable area on the property to place the residence which is as

functional and buildable as the requested site and that he has been denied economically viable use of his land. There are other areas of the site that would support development. However, they are on the east side of the ridgeline, such as the proposed location of the horse barn, and would not capture the views afforded development on the top of the ridge or on the west side of the ridgeline. The Commission's action does not constitute a taking as it only applies to the project before them and does not deny the applicant development on other areas of the property. In addition, the Commission made several suggestions at the end of the hearing on how to modify the request to bring the project into compliance with the Viewshed Protection Program.

Appeal Ground 4: The Planning Commission decision was a prejudicial abuse of discretion, no facts were presented by them to justify or support their denial, and the hearing was not fair and impartial.

Response: The Planning Commission reviewed all written and oral evidence presented at two public hearings regarding this application and it is within their discretion to review the Planning Department's staff report and to disagree with its recommendation. The Commission heard extensive public testimony and continued the public hearing to allow the applicant to erect story poles on the site so that they would have visual evidence of the potential impacts of the project. Each Commissioner stated a rationale for supporting or disagreeing with the staff report (see the hearing transcript) and, as noted above, the Commission made several suggestions to modify the project to address their concerns.

Appeal Ground 5: The application was processed on the basis of exceptions and there were discussions at the hearing regarding exceptions and variances, and the applicant applies for such.

Response: The Planning Commission staff report points out that the project applicant did not request an exception pursuant to Section 18.106.070, and the applicant's project was not processed on the basis of the referenced section. Specifically, the staff report focused on whether the Commission could make findings 1 through 8 in Section 18.106.050(B). If these findings could be made, no exception would be required.

Notwithstanding the staff report, if the Commission determined that the "predominant portion of the proposed structure" would not be screened from view, it could still have approved the project based on an exception if it could make the findings included in Section 18.106.070. These findings include a finding that there are no alternative locations on the site that would result in lesser impacts, and that the proposed building has been designed "to minimize silhouetting against the sky." It was the Commission's decision that they could make neither the findings in Section 18.106.050(B) nor those in Section 18.106.070. The applicant did not apply for a variance.

PROPOSED CHANGES/MODIFICATIONS: The applicant has proposed eight (8) revisions to the plans considered by the Planning Commission. As explained earlier, County Code Section 2.88.090 indicates that the Board's appeal hearing shall be based on the documentary record, *unless the Board affirmatively permits additional evidence*. Thus, the Board's first decision should be whether to permit additional evidence and consider the proposed revisions, or to limit the evidence and/or refer the modified project back to the Planning Commission for review.

If the Board elects to consider the proposed revisions, it may uphold the Commission's denial of the project, approve the project subject to the findings and conditions of approval in the Planning Commission staff report, or approve the project with the proposed modifications and/or additional conditions of approval intended to address concerns raised at the Planning Commission hearing. Staff's analysis of the applicant's proposed project revisions as they relate to the general guidance provided by the Planning Commission follows:

1. Tower Height: The applicant proposes to reduce the tower "so that the highest peak of the tower is no higher than the main ridge when viewed from Silverado Trail." The Planning Commission recommended that the tower simply be removed, thus this design modification would address the Commission's concern only if the revised tower would not be visible from any designated roadways.

2. Pool Lighting: The applicant proposes to reduce lighting within the pool. The Commission was concerned that lighting in the pool area would be very visible from Silverado Trail. It is unclear whether the applicant's proposed modification would fully address this issue.
3. Pool color: A darker pool color would tend to reduce its visibility and reflective qualities although, again, it is unclear whether this would fully address the Commission's concerns.
4. Uplighting of home and trees: The applicant proposes to eliminate uplighting of trees and the house. The Commission requested elimination of all uplighting of the house and elimination of any lighting of trees. The proposed revision would address this concern.
5. Use of non-reflective windows: The Commission was concerned that the windows of the main house would be very visible when lit at night, and might also reflect light. The proposed revision would somewhat address this concern if it were applied to all windows on the west, north, **and** south of the proposed home (applicant proposal stated "**or**").
6. Timing of Tree Planting: The Commission was concerned about the size and viability of trees proposed as landscape screening. The applicant proposes to plant screening trees prior to commencing construction.
7. Bocce Court area: The applicant proposes to replace the roofs of the structures around the bocce ball court with open wood trellises. The Commission noted that these structures, although admittedly small, will be difficult to screen and could be located elsewhere (such as on the back side of the ridge). The Commission also requested that all lighting be removed from this area.
8. Chimneys: The applicant proposes to remove two chimneys. The Commission made no comments on the chimneys.

OPTIONS/RECOMMENDATION: After the Board of Supervisors decides whether or not to permit additional evidence, and thus whether to consider the proposed modifications to the project, it may:

1. Remand the revised project to the Planning Commission for further consideration, additional findings or an advisory report to the Board within 45 days of the remand.
2. Declare its intent to deny the appeal and uphold the Planning Commission's decision denying the project.
3. Declare its intent to approve the project as originally proposed or as modified by the applicant.
4. Declare its intent to approve the project with further, specific modifications necessary to address all of the Planning Commission's concerns, as explained in items 1 through 8, above.

Based on direction provided by the Planning Commission, the staff recommends selection of Option 2 or 4.

In the case of Options 3 and 4, the Board should first adopt the Mitigated Negative Declaration and Mitigation Monitoring Program.

In the case of Options 2 through 4, the Board should refer the matter to County Counsel for preparation of the appropriate resolution of findings in support of the Board's intended decision and request the resolution be brought back to the Board on September 13th for consideration and possible adoption.

SUPPORTING DOCUMENTS

A . Appeal

B . Revised Plans and Supporting Documents

- C . Petition
- D . Correspondence
- E . Denial Letter
- F . Planning Commission Memo and Correspondence
- G . Planning Commission Staff Report and Correspondence

CEO Recommendation: Approve

Reviewed By: Britt Ferguson