



Agenda Date: 8/8/2006  
Agenda Placement: 8H  
Set Time: 10:30 AM PUBLIC HEARING  
Estimated Report Time: 1 Hour

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** Karen Gratton for Nancy Watt - County Executive Officer  
Affordable Housing  
**REPORT BY:** Howard Siegel, Community Partnership Manager, 253-4621  
**SUBJECT:** Public Hearing - Appeal filed by Randy Mihm

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### **RECOMMENDATION**

Consideration and possible action regarding an appeal filed by Randy Mihm to a decision by the Director of Conservation, Development and Planning on May 26, 2006 denying a request for the refund of housing mitigation fees paid by Mr. Mihm regarding the property located at 5851 Knoxville Road. (Assessor's Parcel No. 019-060-009)  
**ENVIRONMENTAL DETERMINATION:** The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

### **EXECUTIVE SUMMARY**

Pursuant to Napa County Code Section 2.88, the denial by the Director of Conservation, Development and Planning of the applicant's request for a refund of a housing mitigation fee may be appealed to the Board of Supervisors by any interested person, as defined in that code section. This hearing has been scheduled as a result of the appeal filed by Mr. Randy Mihm.

### **FISCAL IMPACT**

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
What is the revenue source?	Affordable Housing Fund
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	In the event that it is determined - as a result of this appeal - that Mr. Mihm should have been declared exempt from the housing mitigation fee, then the revenue originally generated by his payment would have been generated erroneously.

Is the general fund affected? No  
Future fiscal impact: None.  
Consequences if not approved: Possible litigation.  
Additional Information: None

### **ENVIRONMENTAL IMPACT**

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

### **BACKGROUND AND DISCUSSION**

The appellant, Mr. Mihm, obtained a building permit from the County in October 2004, in order to construct a new 3,600-square foot residence. Prior to that time, he resided on the same parcel in a preexisting smaller home (less than 1,200 square feet).

At that time, he paid the required housing mitigation fee of \$10,011.12 (2% of the approximate construction cost of approximately \$500,000). No formal request for waiver of that fee was submitted. However, over a year later (November 23, 2005), a refund was requested based upon income eligibility of the occupants (his parents); namely, that their income was considered sufficiently low for them to qualify.

It is important to note that County Code (Section 15.60.280.C) requires that refund requests be made within 10 days of paying the fee. In this particular instance, over a year passed before such request was officially made, to the Napa Valley Housing Authority (NVHA), a Joint Powers Authority of which the County is a member.

County staff became unofficially aware of this request in December of 2005, at which time staff responded to questions regarding both income eligibility for such exemptions, waivers or refunds as well as the issue of whether or not a so-called "second unit" (on a single parcel) was sufficient grounds for such relief.

As a result of research conducted by County Counsel staff, the County opined that the construction of an additional unit on a single parcel that already has an occupied residence on it is not a situation that is eligible for such an exemption, based on the definitions and requirements included in Napa County Code Sections 15.60.010 and 130. This ruling is irrespective of the relative size or construction sequence of the two units in question. As a result of this ruling, the NVHA sent Mr. Mihm a letter articulating that opinion on January 17, 2006.

After further inquiries by the applicant, Hillary Gitelman, Director of Conservation, Development and Planning, sent a letter to Mr. Mihm on May 26, 2006, reiterating that opinion along with an offer to Mr. Mihm to file an appeal, notwithstanding the 10 day window of opportunity for such appeals. This was done in the interest of fairness since it is not clear as to whether or not Mr. Mihm was ever properly informed of his rights to appeal at the time his fee was paid. That letter is attached to this report as an exhibit.

Finally, pursuant to County Code Section 15.60.128, the appeal of staff's denial of Mr. Mihm's request for a refund, had it been received in a timely manner, would have been submitted to the Planning Commission. Because the Board is likely to hear testimony on the substance of Mr. Mihm's request as well as the timing of the appeal, and because any decision by the Commission can ultimately be appealed to the Board, staff is requesting that the Board review both the substance of this matter and the timeliness of the appeal. As a result, a decision to grant Mr.

Mihm's appeal would be deemed a decision to grant Mr. Mihm a refund of his housing mitigation fee. A decision to deny the appeal would uphold staff's determination that Mr. Mihm was not eligible for a refund and that his request for a refund was not received within the time period prescribed in the Code.

**SUPPORTING DOCUMENTS**

- A . Mihm Response Letter
- B . Mihm Appeal Form

CEO Recommendation: Approve

Reviewed By: Karen Gratton