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Agenda Date: 2/16/2011

Agenda Placement: 10A

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission

FROM: John McDowell for Florin, Lawrance - Director
Community and Intergovernmental Affairs Division

REPORT BY: Nancy Johnson, HOUSING AND COMMUNITY DEV COOR - 707-299-1352

SUBJECT: Bremer Affordable Housing Unit and Fee Refund

RECOMMENDATION

BREMER FAMILY WINERY/ NEW AFFORDABLE HOUSING UNIT AND HOUSING FEES REFUND - BUILDING PERMIT B08-01030

CEQA Status: Categorically Exemption pursuant to Class 3, Section 15303 of the California Environmental Quality Act and Class 3, Item 9, Farmworker Housing, of Napa County's Local Procedures for Implementing the California Environmental Quality Act. The project will result in construction of a farmworker dwelling unit within a previously graded and developed portion of the subject property. This project site is not on any of the lists of hazardous waste sites enumerated under Government Code Section 65962.5.

REQUEST: Approval a refund of \$16,839 of Affordable Housing fees paid December 3, 2010 on commercial building permit B08-01030 in exchange for construction of an approximately 600 square foot one bedroom, one bathroom, deed restricted affordable housing unit located on a 43.8 acre property on the east side of Deer Park Road approximately 1,600 ft. south of its intersection with Sanitarium Road within the AW (Agricultural Watershed) zoning district (Assessor's Parcel Number 0250-370-058) 150 Pine Place, Deer Park.

Staff Recommendation: Approve the refund of Affordable Housing Fees contingent upon execution of a long term affordability agreement with County.

Staff Contact: Nancy Johnson, 299-1352 or nancy.johnson@countyofnapa.org

EXECUTIVE SUMMARY

Proposed Action:

That the Planning Commission:

1. Finds the Bremer Family Winery Affordable Housing Unit Categorically Exempt under Class 3, Section 15303 of the California Environmental Quality Act and Class 3, Item 9, Farmworker Housing, of Napa County's Local Procedures for Implementing the California Environmental Quality Act.
2. Approves the Alternative Compliance request for the Bremer Family Winery Affordable Housing Unit as meeting the required findings set forth in County Code Section 18.107.060.C and directs staff to execute a Regulatory Agreement and Declaration of Restrictive Covenants to refund Affordable Housing Fees on Building Permit 10-01030 in exchange for the construction of an affordable unit.

Discussion:

On December 3, 2010, building permit B08-01030 was issued on the Bremer Family Winery for improvements to the cave portion of the existing winery. The winery is located at 975 Deer Park Road which is adjacent to the intersection of Deer Park Road and Sanitarium Road. As a commercial/agricultural project, payment of an ordinance mandated affordable housing impact fee was required to issue the building permit. The ordinance (Ord. 1334) establishes a per gross square foot fee on non-residential development to mitigate the impact of such development on affordable housing needs. The Affordable Housing Fee on permit B08-01030 was \$16,839.

The ordinance also contains language authorizing the Planning Commission to approve an alternative to the payment of the Housing Fee, when the Commission finds that the alternative mitigates the impacts of development on the need for affordable housing. In lieu of payment of a Housing Fee of \$16,839, the Bremer's have proposed to construct and operate an affordable housing unit on their property. The unit will be a pre-fabricated modular dwelling of approximately 600 square feet that contains one bedroom and one bathroom. Rather than on the winery property, the modular unit will be located on an adjacent parcel near the Bremer's residence. Mrs. Bremer plans to provide the unit to the property manager, a long term employee.

The Provisions of County Code Title 18 permit the construction of farm worker housing on agriculturally zoned sites. The property is located within the Agricultural Watershed (AW) Zoning District. Section 18.104.300(J) of the County Code requires that a deed restriction be recorded against all units of permanent farm worker housing constructed on agriculturally zoned parcels to ensure that the housing is used for qualified farm worker occupants. The Bremers have agreed to enter into and record an agreement to regulate and restrict the rents and continued occupancy of the affordable unit. The covenants of the Agreement are intended to run with the land and be binding on the owner and its successors. Attorneys for the County are preparing the necessary documents to effectuate the guarantee that the unit remain affordable for a minimum of 40 years. The Bremers, or any future owner of the property, will agree to annual monitoring to ensure the unit remains affordable to an income qualified tenant.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Funds collected are kept in the Affordable Housing Fund 11200. Each year, \$30,000 is budgeted for refunds.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	The applicant is applying for a refund of \$16,839 paid upon issuance of building permit B08-0130 on 12/3/2010 in exchange for the construction/purchase of one affordable unit on her property.
Is the general fund affected?	No

Future fiscal impact: The Planning/Community and Intergovernmental Affairs departments receive occasional requests for refunds. This is one of the first requests for a refund where the applicant wishes to build the unit rather than pay the fee.

Consequences if not approved: The County subsidy for affordable is generally higher per unit than \$16,000. Should Mrs. Bremer not get the refund, then the money will stay in the Affordable Housing Fund until such time as it is loaned out for a different project.

Additional Information:

ENVIRONMENTAL IMPACT

Categorical Exemption Class 3: It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. The project will not impact an environmental resource of hazardous or critical concern, has no cumulative impact, there is no reasonable possibility that the activity may have a significant effect on the environment due to unusual circumstances, will not result in damage to scenic resources, is not located on a list of hazardous waste sites, cause substantial adverse change in the significance of a historical resource or extract groundwater in excess of the Phase 1 groundwater extraction standards as set by the Department of Public Works. [See Class 3 ("New Construction or Conversion of Small Structures") which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15303; see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B.]

BACKGROUND AND DISCUSSION

In 1992, the Board of Supervisors adopted Ordinance 1026 creating the Affordable Housing Fund to encourage the building and availability of affordable housing, and to mitigate for the impact of new development on affordable housing needs. The fund was established to ensure the development and preservation of housing affordable to low and moderate income Napa County residents. The fund offsets the impact of new non-residential and market rate residential development on existing housing resources and it provides a means for developers to pay for their fair share of affordable housing. To date, nearly \$18 million has been expended in furtherance of over 30 affordable housing projects and programs resulting in over 800 units of affordable housing.

In January 2010, the Board of Supervisors adopted Ordinance 1334 which repealed and replaced Ordinance 1026. This ordinance included a provision that an applicant may suggest an alternative to payment of the housing impact fee so long as such alternative will increase the supply affordable housing. The ordinance assigns the Planning Commission as the decision maker for determining if the alternative will provide as much or more affordable housing as payment of the housing fee. This project is the first request of this type to be brought to the Commission since adoption of the ordinance. The Bremers are proposing the construction of one affordable unit to be located on an adjacent parcel to the winery (Building Permit B08-0130 was issued for a wine cave) to be rented to their property manager.

Required Commission Action:

County Code Section 18.107.060.C (Affordable Housing and Incentives Ordinance, Nonresidential Developments Housing Fee Requirement) states that the Planning Commission may approve or conditionally approve an alternative to housing impact fee payment based on substantial evidence that such an alternative will:

1. provide as much or more affordable housing at the same or lower income levels;
2. is consistent with the County General Plan and Housing Element; and
3. will otherwise provide greater public benefit than would payment of the housing fee.

The Commission must also determine that any affordable units constructed on-site or off-site shall comply with affordable housing provisions mandated in County Code Section 18.107.110 through 18.107.140, as applicable.

Analysis:

The Bremer proposal to construct an affordable unit on their property adjacent to the winery parcel not only adds to the County affordable housing stock, but is a role model for other commercial winery projects that could construct individual units in compliance with the Employee Housing Act rather than paying Affordable Housing fees as part of their building permit. In the case of the Bremers, who have chosen to purchase a modular home, the affordable unit will be ready for occupancy in a matter of months. Past use of the Affordable Housing Funds have been for multi family affordable projects that can take years between site selection, financing, entitlements and construction. By complying with Health and Safety Code Section 17021.5 and 17021.6, which allows agricultural employee housing on any agriculturally zoned parcel, the Bremers do not lose the potential for a second unit on their parcel, consistent with their Agricultural Watershed (AW) zoning. Employee housing can consist of up to 12 single family units or 36 beds in a group quarters without a use permit. The intent of the Employee Housing Act is to encourage the development and use of a sufficient number of housing units commensurate with local needs. The unincorporated areas of Napa County are predominantly agricultural and in the 2007 Assessment of the Demand for Farm Worker Housing in Napa County, the authors concluded there was a significant need for year round affordable housing for agricultural workers.

Zoning Compliance:

- 1 18.107.060.C - Housing impact fees on the Bremer Winery Building Permit (B10-01030) amount \$16,839. Considered independently, the fee is not sufficient for the County to construct an individual affordable housing unit. However, the County has the ability to pool these funds with other housing impacts fees, and can leverage those funds to qualify for housing grants and match funding from other government revenue sources when such opportunities present themselves. As such, \$16,839 can result in significant contribution to a multi-unit project. Staff believe the Bremer proposal provides an equal or greater amount of affordable housing compared to payment of the fee. Benefits of the Bremer facility are: 1) the unit will be within several months as opposed to the time involved pooling funds; 2) there are no site acquisition costs as the unit is being constructed on land owned by the Bremers; 3) the Bremer's are shouldering the costs of ongoing maintenance of upkeep unlike a publicly-sponsored project.
- 1 18.107.110 - This code section allows residential development proposals (subdivisions) to provide a percentage of the units as affordable in lieu of paying housing impacts fees. Section 18.107.060.C requires the Commission's action on the Bremer's alternative compliance to be consistent with this code section. Being that the Bremer's proposal is to construct a single farm worker unit on an existing developed parcel, the provisions of Section 18.107.110 are not directly applicable to this type of project, and consequently the Commission's action will not conflict with the requirements of this code section.
- 1 18.107.120 - This section pertains to County incentives eligible to affordable housing projects. Several of the subsections are inapplicable to this project type, but subsection A provides for waiver of building fees and expedited permit processing directly applicable to this project. Assuming the applicant will request this incentive, the Department is prepared to expedite the plan check and to waive all fees that qualify under the ordinance provisions. The project is therefore consistent with this section.
- 1 18.107.130 - This code section requires submittal of an affordable housing plan for all residential

developments that will be developing affordable housing. This affordable housing plan essentially depicts where all affordable housing units are located within a residential development. This code section does not apply to the current project, because the current project is simply a single affordable unit and not a residential development (subdivision, apartment complex, planned development, etc.). Therefore, the proposed project is in compliance as it is not in conflict with any portion of this code section.

- | 18.107.140 - This section requires all affordable units to meet certain continuing affordability requirements. Subsection A requires this project to enter into a Regulatory Agreement, which is essentially a contract between the County and the Bremers to ensure long term affordability of the unit. This contract will be executed prior to issuance of the building permit for the unit, and it will outline not only the 40 year affordability restriction, but other requirements specific to the project.
- | General Zoning Requirements - At the time of building permit submittal, the dwelling unit will be evaluated for compliance with all of zoning requirements. Attached to this report is an initial site plan showing the potential location of the unit. In fact, the modular unit has already been purchased by the applicant and is being stored, but not in use, in the same location as shown on the site plan. On February 7, 2010, a complaint was received concerning the unit being placed in this location. Initial investigation of the complaint has concluded with a determination that the present storage of the structure in that location does not constitute a violation of County Code, but issuance of a building permit to allow occupancy of the unit will require processing of a Viewshed Application. Building Division staff have also commented that this tentative location may require preparation of soil study to evaluate the fill material where it will be placed for structural stability. The Commission's action at present is to determine whether construction of an affordable unit is a suitable alternative compliance to paying the housing impact fee. If the Commission makes that finding, then execution of the Regulatory Agreement and issuance of the building permit for the structure will be conducted by staff. The Bremers have the option of moving the structure to an alternative location which may avoid the need for further discretionary review. If they proceed with the project in the current location, the Viewshed Application would be subject to review and approval by the Zoning Administrator.

Affordable Housing Regulatory Agreement: A draft copy of the Regulatory Agreement will be provided to the Commission prior to the meeting. The final executed agreement between the County and the Bremers will specify the following:

- | The term of affordability is 40 years.
- | The size of the unit does not exceed 1,200 square feet.
- | The rent, if rent is collected, will be affordable to median, low or very low income households based on family size as published annually by the California Department of Housing and Community Development.
- | The unit will be occupied by a qualified farmworker
- | The unit will be constructed in a timely basis and shall be constructed prior to a certificate of occupancy for the commercial development.
- | The applicant will agree to annual monitoring of the unit through both a self certification process and random site visits from County staff.
- | The applicant acknowledges that other discretionary permits may be required before construction of the unit commences.
- | The covenants and restrictions set forth in the agreement shall run with the land and shall bind all successors in interest to the property.

SUPPORTING DOCUMENTS

A . Site plan

Napa County Planning Commission: Approve

Reviewed By: John McDowell