



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 5/21/2014

Agenda Placement: 10A

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission
FROM: John McDowell for David Morrison - Director
Planning, Building and Environmental Services
REPORT BY: John McDowell, Deputy Planning Director - 299-1354
SUBJECT: Public Hearing Noticing Procedures

RECOMMENDATION

STUDY SESSION ON PUBLIC HEARING NOTICING PROCEDURES

CEQA Status: 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.

Request: Presentation, discussion and possible action concerning existing noticing practices and options for changes to noticing procedures for projects subject to public hearing before the Zoning Administrator, Planning Commission and Board of Supervisors. Staff will outline existing County Code noticing requirements and administrative practices, and present options for providing additional public noticing that the Commission may request the Board of Supervisors consider for implementation.

Staff Recommendation: That the Commission receive the presentation, take public testimony, and provide direction to Staff on next steps.

Staff Contact: John McDowell, Deputy Planning Director, 299-1354 or john.mcdowell@countyofnapa.org

CONTINUED FROM MAY 7, 2014 REGULAR COMMISSION MEETING

EXECUTIVE SUMMARY

Proposed Action: Provide comments to Staff for future consideration by the Board of Supervisors.

Discussion: In recent times, there has been an increasing frequency of neighbor complaints that public noticing for development proposals subject to Planning Commission review are insufficient. Since April of 2013, 43 private development applications have been heard by the Commission, and of those 11 involved complaints from neighbors about the extent of noticing. Most complaints about noticing centered on the length of time the notice

was provided prior to the hearing, and on the extent notice was provided to nearby property owners. Napa County's current noticing requirements call for publishing the hearing notice in the newspaper, and sending notices to all property owners within 300 feet of the subject project. In addition, Staff follow an administrative practice of providing notice to all property owners on a shared private access road to a project site. These notices are sent 20 to 30 days in advance of the hearing. The purpose of this study session is to seek Commission feedback on potentially enhancing noticing practices, with any Commission direction to be forwarded to the Board of Supervisors for consideration.

It is asked that the Commission receive Staff's presentation, take public testimony, and provide direction to Staff.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

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 frequency of neighbor concerns regarding extent of public notice provided on private development proposals subject to Planning Commission review has been increasing in recent times. Since last April 43 "new" private development projects have been heard by the Planning Commission with 11 of those projects involving at least one neighbor expressing concern that notice was insufficient and/or the applicant or Staff should have contacted neighbors earlier in the process. In many of those cases, neighbors were upset that applications had been on file for months yet they learned of the project only weeks, or sometimes days, prior to the hearing. In all of the cases where complaints were received, the County's notice complied with the current noticing requirements set forth in County Code, which are consistent with the minimum noticing requirements set forth in State law. This has led to suggestions that the County should consider changing noticing requirements to be more extensive and provide more transparency in the permitting process.

CURRENT NAPA COUNTY NOTICING PRACTICES

Zoning Ordinance Section 18.136.040 contains the current noticing requirements for Planning Commission and Board of Supervisor level actions. Similar noticing requirements apply for Staff-level actions except that publishing in the newspaper is not required for minor administrative permits, such as fences, entry structures, home occupations and minor modifications that are Categorically Exempt under CEQA. Noticing for Commission and Board of Supervisors public hearing items includes the following:

State and County Code Requirements:

- | Notice mailed and published in newspaper:
 - 10 days in advance for Categorically Exempt projects;
 - 20 days for Negative Declarations;
 - 30 days for Negative Declarations requiring State Clearinghouse review.

- | Notice mailed to all property owners within 300 ft. of subject property.
- | Notice provided to any persons who have previously requested notice of all hearings.
- | Notice to each public agency providing public services to the project.

Administrative Practices:

- | Notice extended to all property owners on shared private drive/road to a project site.
- | Notice provided to known owner and/or homeowner associations when applicable.
- | Any customer may join email group list for Commission's public notices, and Commission packet notification that occurs one week prior to all hearings
- | Any person requesting notice of pending project added to the mailing list

County Code also states (Section 18.136.040.E) that the "...Commission may give notice of the hearing in any other manner it deems necessary or desirable." This section is generally applied only on large scale projects like Napa Pipe, or on policy documents like the Housing Element or General Plan.

OTHER AGENCY PRACTICES

County Staff inquired with the California County Planning Director's Association (CCPDA) for feedback on noticing practices and issues. Twelve counties responded to the inquiry. All 12 were rural counties, and all had noticing practices similar to Napa County that follow the State's minimum standards. One County expressed that they will only do the noticing prescribed in their code (and State law) and do not augment noticing in any form as a means to protect the County from potential challenge by an aggrieved applicant. The concern is that an applicant could claim unfair treatment should a more extensive public notice occur than what other similar projects were held to. The remaining 11 counties indicated that they regularly augment noticing beyond code minimums in similar manners to what occurs in Napa County. Of the responding counties, seven commented that they had been facing similar neighbor concerns about timing and extent of noticing. In follow up discussions with two "wine country" counties, Staff that the noticing concerns were secondary to larger policy issues concerning type and extent of development occurring in rural areas. One county was struggling with a retooling of their 'winery definition ordinance'. The other was dealing with a ground water issue in region where considerable rural development has been occurring.

OPTIONS FOR AUGMENTED NOTICING PRACTICES

Like most aspects of land use regulation, public notice must balance the needs of the community and the needs of the property owner seeking entitlement. Staff can only speculate on how changing noticing processes will affect processing times and project controversy. In general, the more notice that is provided, the better informed neighbors will be and more Staff costs and time may be required to process the application. Since all costs associated with processing and application are borne by the applicant, expanded noticing may result in added processing costs to the applicant.

However, it is also possible that involvement of neighbors earlier and more extensively may reduce overall Staff costs (and costs to the applicant) if complaints about lack of opportunities for citizen involvement are reduced due to expanding noticing. It is understandable why an applicant may be reluctant to voluntarily disclose pending development plans to their neighbors, because some residents do not wish to see changes to their neighborhood. Early notice by the County would ensure that neighbors are informed of any significant proposed development well in advance of the public hearing. However, expanded noticing may also result in greater opportunities for concerned citizens to delay a project they oppose.

In the legal realm, County Counsel has advised that the courts generally lean toward locally agencies providing more notice and ensuring due process rights are met in situations where due process rights have arisen. As long

as the county treats all applicants in a consistent manner, it is perfectly appropriate to have noticing requirements that exceed the minimums prescribed in State law. On the other hand, the courts have been increasingly negative toward deliberate stall tactics by project opponents. Additional noticing may exacerbate such tactics, but it may also streamline permitting by daylighting potential controversies so that they can be addressed early in the process. Regardless of the courts' leanings, the extent of noticing is simply a Board of Supervisors policy call.

Several concepts for providing additional noticing are listed below, include Staff comments on each alternative. This list is not intended to be exhaustive, and is simply a compilation of potential approaches, some of which are in use in other communities.

- 1 Expanding Mailing Radius - See attached exhibit showing examples of how the noticing lists would be expanded if increased to 500 ft., 700 ft. or 1,000 ft. from the subject property. The three examples are project sites that were recently heard by the Commission. To implement this concept the County Code Section 18.136 would need to be amended. As lot density of surrounding properties increases, so would the number of persons included in the notice. For example, in a typical infill city setting, a 1,000 ft. notice may include several hundred properties. The rural examples attached however, the expanded radii only result in what appears to be a modest increase in number of neighbors receiving notice. Expanded mailing would result in some nominal additional costs to applicants as title companies may charge more to prepare the mailing radius, and it would slightly increase the amount of time staff spends checking the mailer for accuracy and sending out more mailers (stamps, copies, staff time, etc.).
- 1 Set Minimum Number of Properties Receiving Notice - One rural county commented that they were contemplating changing their code to require that a certain minimum number of surrounding properties be notified. As parcel sizes increase, the number of properties within 300 ft. of a subject property decreases. This concept appears overly complex and is not recommended.
- 1 Expand Notice on Prevailing Area Property Size - An administrative practice at another rural county was to expand the noticing distance in areas where the parcels sizes were larger. Three hundred feet was used in most areas, but up to a 1,000 ft. was used where there were large tracts of land. This was implemented at staff's discretion. Like the prior concept, this concept is not recommended as it appears to raise consistent application issues.
- 1 Mailing Radius from Outer Boundary of Commonly Owned Parcels - In some cases, an applicant owns one or more separate parcels adjoining the subject parcel, and as such the applicant winds up being at least one of their own 'neighbors'. In rare occasion, generally where there are larger holdings, the applicant is the only neighbor. A concerns with this concept centers on how 'same ownership' is defined given that some commonly owned property falls under different limited liability corporations (Napa 1 LLC, Napa 2 LLC, etc.);
- 1 Exclude Napa Valley Business Park (Airport Industrial Park) from Expanded Noticing - Of the 11 projects where concerns were raised over noticing, 6 were new developments and 5 were expansions of existing projects. Therefore, it does not appear that noticing needs differ between new projects versus expansion of developed sites. However, during this same period, 4 projects in the Napa Valley Business Park were processed with no comments raised by any surrounding properties owners. Comments on project in the industrial park are rare, and thus there may be no net value in expanding noticing in this area. There may be some nominal cost savings to applicants by continuing with current noticing practices, however, having different noticing practices for different areas appears to complicate process.
- 1 Early Notice During Processing - Advanced notice could be sent at some point prior to, and in addition to the standard public hearing notice. Many cities in the Bay Area employ some form of advance notice in their standard practices ranging from mailers to holding preliminary hearings before decision makers. Advanced notice may alleviate neighbor concerns regarding their involvement, but issues could arise on projects where the design is in flux. On occasion, there are significant project changes that occur early in the review process. Processing commences with applications being referred to various agencies for comments. On some projects, agency comments result in complete redesign of the proposal. It is possible that neighbor concern over a project may result simply out of a design that is otherwise infeasible.

On the other hand, there could be value in hearing neighbor issues and having an opportunity to address their concerns before the design becomes more static and finite.

- I Posting Subject Property - Some jurisdictions, especially cities, have been increasing the use of placing billboard and/or story poles on a development sites to increase general public awareness of impending development. This method of notice can raise public awareness for interested persons who would not be included in an expanded mail notice or who may not seek out notices in the newspaper. Story poles can be effective in showing the extent a structure may be visible off site. On-site posting may have minor effects on the public viewshed.
- I Post New Projects to County Webpage - Planning, Building and Environmental Services has been moving toward providing more services and information on-line, including provision of pending applications. Presently, project staff reports, environmental documents and plans are available approximately one week prior to the hearing. Also, Staff are generally able to send electronic copies of pending project submittal materials to any interested party aware that an application is on file. Staff has also been working with County Counsel's office and Technology Staff to post public hearing notices on line. It is anticipated that this will be implemented over the summer. Although this may increase overall awareness of projects, it is only effective for those persons who proactively seek out notification.

In considering these concepts, the Commission is being asked to find balance between the competing priorities of encouraging public involvement in planning decisions and ensuring a streamlined and cost efficient permit process. With that in mind, Staff recommends that expanding our mailing radius, and sending out an advance notice (in addition to the formal notice), would be an appropriate way to balance the public's interest in proposed land use changes, without significantly increasing applicant costs.

NEXT STEPS

The Commission is tentatively scheduled to meet in joint session with the Board of Supervisors on May 20th. At that meeting Staff will request that the Board provide direction on any changes they wish to consider to noticing procedures, if any. The Commission's direction will be presented to the Board during that joint session business item. In the event that the Board wishes to augment or alter zoning text language, the subsequent zoning text amendment would be subject to public hearings before the Planning Commission and Board of Supervisors.

SUPPORTING DOCUMENTS

- A . Noticing Radius Example 1
- B . Noticing Radius Example 2
- C . Noticing Radius Example 3
- D . Comments Received at the Meeting (added after meeting)

Napa County Planning Commission: Approve

Reviewed By: John McDowell