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Sarah Mayer *Public Comment - Reicker PFAU*

From: Mark Carney <rmcarney@rppmh.com>
Sent: Thursday, April 25, 2024 5:01 PM
To: sbcob; Plowman, Lisa; Villalobos, David
Subject: The Proposed Rezoning and Redevelopment of Glen Annie Golf Course
Attachments: Letter to BOS and Lisa Plowman 4-25-24.docx

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Dear Ms. Plowman, Members of the Board of Supervisors, and Members of the Planning Commission, Please see the attached letter regarding the proposed rezoning and redevelopment of the Glen Annie Golf Course. Please also confirm that each of the Supervisors and Commissioners will receive a copy of the letter no later than tomorrow.

Thank you,
Mark Carney

R. MARK CARNEY, PARTNER | REICKER PFAU | 1421 State Street, Suite B | Santa Barbara, CA 93101 | Phone: (805) 966-2440 | Fax: (805) 966-3320 | Email: rmcarney@rppmh.com; www.reickerpfau.com

REICKER PFAU

ATTORNEYS AT LAW

ALAN A. BLAKEBORO
JOHN G. BUSBY
R. MARK CARNEY
BARTON E. CLEMENS, JR
ROBERT B. FOROUZANDEH
KEVIN R. NIMMONS
MICHAEL E. PFAU
DANIEL A. REICKER
RUSSELL D. TERRY
TIMOTHY J. TRAGER
FERNANDO VELEZ, JR.
MEGHAN K. WOODSOME

CORY T. BAKER
NICHOLAS A. BEHRMAN
JAKE J. GLICKER
MELISSA C. RAPP

1421 STATE STREET, SUITE B
SANTA BARBARA, CA 93101

TELEPHONE: (805) 966-2440
FACSIMILE: (805) 966-3320
WWW.REICKERPFAU.COM
RMCARNEY@RPPMH.COM

April 26, 2024

Board of Supervisors
County of Santa Barbara
Lisa Plowman
Director of Planning and Development

By Email:
c/o sbcob@countyofsb.org
By Email:
lplowman@countyofsb.org

Re: ***The Proposed Rezoning and Redevelopment of Glen Annie Golf Course***

Dear Supervisors and Ms. Plowman:

Reicker Pfaue represents Glen Annie Organics, the owner of a 42.16-acre AG-II 40 parcel located north of and adjacent to Glen Annie Golf Course, and a 45.51-acre AG-II 40 parcel located north of and adjacent to the golf course. Both properties have been producing avocados, lemons, and mandarin oranges for public consumption for three decades. Glen Annie Organics is also in escrow to purchase a 41.09-acre AG-II 40 parcel located north of and adjacent to the golf course, which is commonly known as the "Abate Parcel." We write in response to a letter to Ms. Plowman and the Planning Commission dated April 5, 2024, from Graham Lyons, the attorney for JTGVL LLC ("JTGVL"). JTGVL proposes to replace the golf course with a "residential neighborhood" with up to 1000 units and assorted recreational and commercial facilities and uses (the "Project").

Mr. Lyons' letter takes issue with public comments by Jonathan Cornelius, Glen Annie Organic's authorized representative, at the Planning Commission's hearing on April 1, 2024. Specifically, Mr. Cornelius informed the Planning Commission that JTGVL does not "own or control" two 40-acre parcels which underly portions of the golf course, such that JTGVL can "file development applications on those parcels." The parcels to which Mr. Cornelius referred are the Abate Parcel and the "Linden Parcel," a 40.56-acre parcel located west of and adjacent to the golf course property that is also zoned AG-II 40. The Grant Deed and Easement Agreements ("Grant Deed(s)") by which the owner of the golf course sold the Abate Parcel and the Linden Parcel to the grantees (the "Fee Title Owners") reserve an "***irrevocable and perpetual easement***," in favor of the owner of the golf course, "to use the Easement Area to maintain, use and operate Glen Annie Golf Course" (the "Golf Course Easement(s)").

Mr. Lyons' letter does not claim that JTGV "owns" either the Abate Parcel or the Linden Parcel. Instead, it claims that JTGV "controls" both parcels because the Grant Deeds provide that: (1) either JTGV or the Fee Title Owners may process an application for a "lot split" to divide each parcel into two lots: one whose boundaries coincide with the easement area described in the Golf Course Easement and the other whose boundaries coincide with the remainder of the property; (2) JTGV's right to divide the parcels "are not limited by or conditioned on any discretionary rights or powers" of the owners of the Abate Parcel or the Linden Parcel; and (3) if the parties effectuate a lot split, then the Fee Title Owners are required to convey the lot with boundaries that coincide with the easement area to JTGV, at no cost, while the Fee Title Owner retains the other lot.

The terms of the Grant Deeds and the County's Zoning Ordinance ("County Code"), *not JTGV*, "control" whether JTGV can include the Abate Parcel and the Linden Parcel in any development application for the Project. As discussed below, the Grant Deeds and the County Code do not permit JTGV or the County to include the Abate Parcel or the Linden Parcel in the Project because: (1) the Grant Deeds evidence the parties' mutual intent that Glen Annie Golf Course shall operate on the Abate Parcel and the Linden Parcel in perpetuity; (2) the terms of the Grant Deeds permit the parties to process an application for a lot split *only if* "such actions do not adversely affect" the Conditional Use Permit ("CUP") by which the golf course operates; (3) the County Code prohibits the subdivision of the Abate Parcel and the Linden Parcel because the minimum lot size for parcels zoned AG-II 40 is 40 acres; and (4) the AG-II zone does not permit the high-intensity recreation and commercial facilities and uses that JTGV proposes to locate on the Abate Parcel.

I. The Grant Deeds Confirm the Parties' Mutual Intent that the Golf Course Shall be Operated in Perpetuity.

The Amended CUP for the golf course, which includes the Abate Parcel and the Linden Parcel, was approved in January 1997. In 2001, the then-owner of the golf course sought to raise capital by selling those portions of the Abate Parcel and the Linden Parcel that were not required for golf course operations. However, in apparent acknowledgment that the Zoning Code in effect in 2001 prohibited the division of the Abate Parcel and the Linden Parcel, the owner chose to "work around" the Zoning Code prohibition and the requirements of the California Subdivision Map Act. Specifically, the golf course owner chose to sell fee title to the entire Abate Parcel to Mark and Carol Abate, and to sell fee title to the entire Linden Parcel to David and Gail Lee, the original Fee Title Owners of the Linden Parcel, and to reserve *non-exclusive easements*¹ over those portions of the parcels that the golf course owner wanted to remain part of the golf course. The Grant Deeds also included the right for the golf course owner to reacquire fee title to the easement areas (if it ever became permissible to subdivide the Abate Parcel and the Linden Parcel into two lots).

¹ Although Mr. Lyons' letter states that JTGV has "exclusive use" of the Golf Course Easements, paragraph 3.b. of the Grant Deed and Easement Agreements states: "Grantee shall continue to be free to use the Transferred Property and the Easement Area in any manner so long as it does not interfere with Glen Annie's full and free use and enjoyment of the Easement and the Easement Area."

Recital D of the Grant Deeds states that "the parties desire that Glen Annie continue to operate the Glen Annie Golf Course..." Page 2, paragraph 4 of the Grant Deed and Easement Agreements provides:

PURPOSES OF EASEMENT. The Easement reserved herein is *an irrevocable and perpetual easement to use the Easement Area to maintain, use and operate the Glen Annie Golf Course.* [Emphasis added.]

Therefore, the Grant Deeds confirm that the parties' mutual intent was for the golf course to be operated in perpetuity. The Grant Deeds do not mention the possibility that the Golf Course would be replaced with a high-density residential development like the Project.

II. *The Grant Deeds Prohibit JTGV from Processing a Lot Split Intended to Facilitate the Elimination of the Golf Course.*

Page 3, paragraph b. i) of the Grant Deeds provides, in pertinent part:

Lot Split. At the option of either Grantee or Glen Annie, an application may be processed to divide the property so that the Grantee Area and the Easement Area are separate lots *so long as (i) such actions do not adversely affect that certain Santa Barbara County Conditional Use Permit (Incorporating Settlement Provisions) Case No. 91-CP-091, recorded by Penfield and Smith Engineers, Inc. on July 24, 1996 as Document No. 96-044642 (the "CUP"), and (ii) in the event Glen Annie requests the division, such division does not unreasonably restrict Grantee's right to use the Grantee Area for purposes permitted by the County of Santa Barbara in a single-family residence zone (i.e., the development of a guest house or additional dwelling unit)...* [Emphasis added.]

Since the sole reason that JTGV proposes to pursue the lot split is to accommodate JTGV's efforts *to vacate the CUP* and replace the golf course with the Project, the lot split would adversely affect the CUP. Moreover, the CUP applies to the *entire* Abate Property, and the current and future owners of the Abate Property will not agree to vacate the CUP, even if it were divided. They intend to ensure that the golf course which abuts the Abate Property's residence remains in perpetuity.

III. *The County Code Prohibits JTGV's Proposed Lot Split.*

The County Code states that the "Minimum Lot Size" for a Parcel that is zoned AG-II 40 is 40 acres. Section 35-69.5 requires that "each main dwelling unit and its permitted accessory building and structures shall be located on a lot having a minimum lot area as indicated" for the applicable zone (40 acres). Since the Abate Parcel and the Linden Parcel are both zoned AG-II 40, and each parcel contains just over 40 acres, neither parcel may be subdivided unless it is rezoned. Mr. Lyons' letter states, however, that the Abate Parcel and the Linden Parcel "are not subject to potential rezone but would remain zoned AG-II 40." (Lyons letter, page 2, paragraph 2.)

IV. *The County Code Prohibits the Project's Proposed High-Intensity Recreational and Commercial Facilities and Uses.*

County Code Section 35-69.3 and 35-69.4 list the "Permitted Uses" in the AG-II zone. Those sections do not permit any high intensity recreational or commercial facilities or uses. Only the following uses and facilities are permitted in the AG-II zone, with a Major Conditional Use Permit:

2. Low intensity recreational development such as hiking trails, public riding stables, recreational camps, campgrounds, retreats, and guest ranches, provided that such development:
 - a. Is in character with the rural setting,
 - b. Does not interfere with agricultural production on or adjacent to the lot on which it is located,
 - c. Does not include commercial facilities open to the general public who are not using the recreational facility, and
 - d. Does not require an expansion of urban services which will increase pressure for conversion of the affected agricultural lands.

JTGV's Conceptual Site Plan shows that the Project would include *high-intensity recreational facilities and uses*, including "Public Pickle Ball Courts" and a "Public Swimming Pool" on the Abate Parcel, which are not permitted in the AG-II zone. The Conceptual Site Plan also shows that the Project would include *commercial facilities and uses* on the Abate Parcel, including a Public Community Clubhouse, Events Center, Child Care Center, and Ranch Market, none of which is permitted in the AG-II zone. Therefore, even if JTGV were somehow able to process a lot split for the Abate Parcel and obtain fee title to the land underlying the Golf Course Easement, then JTGV would not be permitted to located anything on the Abate Parcel other than "low intensity recreational development," as defined in the Zoning Code.

IV. Conclusion.

The terms of the Grant Deeds and the County Code provide four reasons that JTGV cannot include the Abate Parcel and the Linden Parcel in a development application for the Project. First, the Grant Deeds evidence the parties' mutual intent that Glen Annie Golf Course shall operate on the Abate Parcel and the Linden Parcel in perpetuity. The Grant Deeds do not indicate that the parties ever contemplated the replacement of the golf course with a high-density residential development. Second, the Grant Deeds allow the parties to process an application for a lot split *only if* "such actions do not adversely affect" the CUP by which the golf course operates. Since the sole purpose of the proposed lot split is to vacate the CUP and replace the golf course with the Project, the lot split would adversely affect the CUP. Third, the County Code prohibits the subdivision of the Abate Parcel and the Linden Parcel because the minimum lot size for parcels zoned AG-II 40 is 40 acres. Fourth, the AG-II zone does not permit the high-intensity recreational and commercial facilities and uses that JTGV proposes to locate on the Abate Parcel.

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For these reasons, Glen Annie Organics opposes any effort by JTGV and the County to vacate the CUP and/or to include the Abate Property and the Linden Property in the proposed Project.

Sincerely,

REICKER, PFAU, PYLE & McROY LLP

A handwritten signature in black ink that reads "R. Mark Carney". The signature is written in a cursive style with a large, stylized initial "R".

By R. Mark Carney

CC: Santa Barbara Planning Commissioners
(By email to David Villalobos: dvillalo@co.santa-barbara.ca.us)