



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning and Development
Department No.: 053
For Agenda Of: January 12, 2021
Placement: Administrative: Set Hearing
on January 12, 2021 for
February 9, 2021
Estimated Time: 1.25 hours on February 9,
2021
Continued Item: No
If Yes, date from: N/A
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Lisa Plowman, Director, Planning and Development
Director: (805) 568-2086
Contact Info: Travis Seawards, Deputy Director, Development Review Division
(805) 568-2518
SUBJECT: **Applicant Appeal of the Decker Greenhouse Project, Case No. 20APL-00000-00028, Third Supervisorial District**

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

On January 12, 2021, set a hearing for February 9, 2021, to consider the Applicant's appeal, Case No. 20APL-00000-00028, filed by Steve Decker, applicant, of the County Planning Commission's denial of the Decker Greenhouse project, Case No. 19LUP-00000-00469.

On February 9, 2021, your Board can take the following actions:

- a. Deny the appeal, Case No. 20APL-00000-00028;
- b. Make the required findings for denial of the project, Case No. 19LUP-00000-00469, included as Attachment 1, including California Environmental Quality Act (CEQA) findings;
- c. Determine that the project is exempt from CEQA pursuant to CEQA Guidelines Section 15270(a) (Attachment 2); and,
- d. Deny the project *de novo*, Case No. 19LUP-00000-00469.

Summary Text:

A. Proposed Project

The proposed project is a request for a Land Use Permit (Case No. 19LUP-00000-00469) to allow the construction of a 15,648 square foot greenhouse that will be used for vegetable cultivation. The maximum height of the proposed greenhouse is 20 feet. The project includes the demolition/removal of 3,329 square foot of existing development consisting of greenhouses, sheds, and storage containers. A new fence is proposed around the greenhouse. Proposed grading is 3,200 cubic yards of cut and 3,106 cubic yards of fill. No tree or vegetation removal is proposed. Access would continue to be provided from an existing private driveway off of Fredensborg Canyon Road. Proposed parking includes 11 new spaces (1 ADA). Approximately six (6) full-time employees would be working from 8 a.m. through 5 p.m. Monday through Friday and occasional Saturdays. The proposed project includes a new private septic system and 3,930 square feet of new landscaping. Water to the new greenhouse will be provided by a new agricultural water well. Blackout curtains will be installed and used from sunset to sunrise while the grow lights are active. The greenhouse will also have a 46,741 kWh/year solar array mounted on the roof, which is exempt from Planning review. The project is located on a 5.24-acre parcel zoned AG-I-5 shown as APN 137-140-033 and addressed as 988 Fredensborg Canyon Road, Solvang, CA 93463, Third Supervisorial District.

B. Background:

On November 1, 2019, the Applicant, Steve Decker, submitted an application for a Land Use Permit (LUP) for a 15,648 square foot greenhouse that will be used for vegetable cultivation (Case No. 19LUP-00000-00469). Staff reviewed the LUP application for compliance with Sections 35.21.030, 35.21.050, and 35.42.140 of the County Land Use and Development Code (LUDC), and the Director approved the application on June 8, 2020. A timely appeal of the Director's approval (Case No. 20APL-00000-00011) was filed by Stephen Jacobs, the prior Appellant, on June 16, 2020.

The County Planning Commission heard the appeal on August 5, 2020, at which time the Planning Commission continued the item, with direction to staff to return with findings for denial. At the October 7, 2020, hearing, the Planning Commission moved to uphold the appeal (Case No. 20APL-00000-00011) and deny the project (Case No. 19LUP-00000-00469). During the hearings on August 5, 2020 and October 7, 2020, the Planning Commission considered evidence in the record, statements given by the Appellant and the Applicant, and public testimony with regard to the proposed project. The Planning Commission staff report dated July 28, 2020, and subsequent memorandum dated September 24, 2020, are included as Attachments 4 and 5 respectively, provided analysis of the proposed project's consistency with the LUDC, Comprehensive Plan, and Santa Ynez Valley Community Plan (SYCVP). The staff report dated July 28, 2020, included as Attachment 4, also contains background information on the property and project history. The Commission made the required findings for denial of the project at the October 5, 2020 hearing and denied the project, Case No. 19LUP-00000-00469 (see Commission Action Letter included as Attachment 6), due to the fact that the Commission was not able to make specific applicable findings to approve the project, as further described under Appeal Issue 1 below.

On October 13, 2020, the Applicant filed a timely appeal to the Board of Supervisors (Case No. 20APL-00000-00028) of the Planning Commission's denial of the project. The appeal application and letter are

included as Attachment 3. The Applicant's appeal issues and staff's responses are discussed in further detail under Section C of the Board Agenda Letter.

Subsequent to the Planning Commissions's denial of the project and the Applicant's appeal to the Board, the Applicant amended the project description to include a roof-mounted solar array and blackout curtains, as described in Section A above, and offered to have the following condition of approval added to the project:

- **Blackout Curtains.** The Applicant shall install and maintain a blackout screening system within growing areas to prevent interior night lighting (grow lights) from being visible outside the greenhouse structure between sunset and sunrise. **Plan Requirements.** The blackout screen system shall be noted on plans submitted for Permit approval. **Timing.** The system shall be installed prior to Final Building Inspection Clearance or Commencement of Use. **Monitoring.** The Applicant shall demonstrate proper installation and functioning of blackout screen system prior to Final Building Inspection Clearance or Commencement of Use to P&D Building Inspectors.

C. Appeal Issues and Staff Responses

The appeal application (Attachment 3) contains a letter detailing why the Applicant believes that the decision of the Commission is not in accordance with applicable law, including the Comprehensive Plan. The appeal issues include the contention that the Planning Commission erred in its application of County policies, the Commission did not fully discuss presented issues, and the lack of a fair and impartial hearing.

Applicant Appeal Issue 1 – Errors in Policy Application

The Applicant asserts that the Planning Commission erred in applying the SYVCP Policies LUA-SYV-3 and VIS-SYV-3. Policy LUA-SYV-3 requires that new development be compatible with adjacent agricultural lands. The Applicant contends that the proposed project is an agricultural use and thus cannot be incompatible with adjacent agricultural lands, and that the policy is meant to protect agricultural operations from encroachment by non-agricultural or urban residential uses. Policy VIS-SYV-3 requires that new development not use excessive or unnecessary lighting to protect the night sky. The Applicant contends that this only refers to exterior lighting, which he claims does not include greenhouse lighting, and that the greenhouse lighting would be temporary agricultural lighting, which is exempt from the policy.

Staff Reponse

The Planning Commission denied the project based on the inability to make the required findings for approval of a Land Use Permit under LUDC Section 35.82.110.E, which requires that the project be consistent with the Comprehensive Plan, including any applicable community plan. The Commission found the project inconsistent with Policies LUA-SYV-3 and VIS-SYV-3 as analyzed in the memorandum to the Planning Commission dated September 24, 2020 (Attachment 5). Policy LUA-SYV-3 requires that all new development be compatible with adjacent agricultural lands. The Commission found that the scale and nature of the project is not consistent with the surrounding area. Policy VIS-SYV-3 requires that the night sky of the Santa Ynez Valley be protected from excessive and unnecessary light associated with new development and redevelopment. The Commission found that the greenhouse would introduce new and excessive light to the neighborhood and night sky.

The Applicant has since proposed to have the project conditioned to use blackout curtains to be consistent with Policy VIS-SYV-3. This would adequately block light from escaping the greenhouse after sunset. However, the project remains inconsistent with Policy LUA-SYV-3. The project is significantly larger in scale than any other structure in the surrounding area. The Planning Commission found that the surrounding properties are developed with single-family dwellings, personal equestrian facilities, and small accessory structures. The only commercial agricultural use in the surrounding area is a small-scale mushroom farm, which does not include any agricultural structures.

Applicant Appeal Issue 2 – Lack of Consideration

The Applicant asserts that the Commission did not fully discuss the project and the applicable policy inconsistency used for the denial. The Applicant contends that his statements on the conflicting policy citations, his offer to further condition the project, and interpretations of the policies were not completely considered, and thus the Commission's decision was made in error.

Staff Response

The Applicant submitted a response letter to the Commission's intended reasons for denial after the deadline to submit, and the Commission accepted this letter into the record with a 5 to 0 vote. This is the first action on the Commission Action Letter included as Attachment 6. The Commission was fully aware of the Applicant's statements regarding the policies when they considered the project and moved and voted to deny the project.

Additionally, as discussed in staff's response to Appeal Issue 1, above, the Applicant's proposed blackout curtain condition would not bring it into complete conformity with the Santa Ynez Valley Community Plan.

Applicant Appeal Issue 3 – Lack of a Fair and Impartial Hearing

The applicant asserts that the hearing before the Planning Commission was unfair and biased due to a prior business arrangement with a Commissioner. The applicant also claims that a Commissioner was biased to the project due to the Commissioner having large buildings on their own property. (See Attachment 3)

Staff Response

The Planning Commission considered the evidence in the record, statements given by the Appellant and the Applicant at the hearings, and public testimony with regards to the proposed project. The Planning Commission subsequently denied the project due to their inability to make the findings relating to the project's consistency with the policies outlined in the Santa Ynez Valley Community Plan as discussed in staff response to Appeal Issue 1 above. The hearing before the Boards is a de novo hearing on the merits of the appeal and project.

Fiscal and Facilities Impacts:

Budgeted: Yes

Total costs for processing the appeal are approximately \$8,715 (35 hours of staff time). The costs for processing appeals are partially offset by a fixed appeal fee and General Fund subsidy in Planning and Development's adopted budget. The fixed appeal fee was paid by the Applicant in the amount of \$701.06.

Funding for processing this appeal is budgeted in the Planning and Development Permitting Budget Program, as shown on page D-294 of the adopted 2020-21 Fiscal Year budget.

Special Instructions:

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on February 9, 2021. The notice shall appear in the *Santa Ynez Valley News*. The Clerk of the Board shall also fulfill mailed noticing requirements. The Clerk of the Board shall forward a minute order of the hearing, a copy of the notice, and proof of publication to the Planning and Development Department, Hearing Support.

Attachments:

1. Findings
2. CEQA Exemption
3. Board of Supervisors Applicant Appeal Application dated October 13, 2020
4. Planning Commission Staff Report with attachments dated July 28, 2020
5. Planning Commission Memorandum with attachments dated September 24, 2020
6. Planning Commission Action Letter dated October 9, 2020
7. Site Plan

Authored by:

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