

**PLANNING COMMISSION DECISION
 APPEALED TO THE BOARD OF SUPERVISORS
 April 14, 2009**

08APL-00000-00010 APN: 099-030-040 Area: Los Alamos District: Fourth	Appeal of El Encinal Pole/Hay Barn Applicant: Carson Scheller Appealed by: Susan Petrovich (agent for Carson Scheller) Date appealed: April 14, 2009; 4:42 p.m. Planner: Florence Trotter-Cadena, ext. 6253 Supervising Planner: Alice McCurdy, ext. 6256						
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">Planning Commission</td> <td style="width: 50%; text-align: center;">Board of Supervisors</td> </tr> <tr> <td>Hearing Date: April 8, 2009</td> <td>Upheld the appeal and denied the project.</td> </tr> <tr> <td>Fee Paid:</td> <td style="text-align: right;">\$ 443</td> </tr> </table>	Planning Commission	Board of Supervisors	Hearing Date: April 8, 2009	Upheld the appeal and denied the project.	Fee Paid:	\$ 443
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APPELLANTS REASON FOR APPEAL: See Attached FACILITATION: N/A. OUTCOME OF BOS HEARING: TBA							

cc: John Baker, Director
 Dianne M. Black, Director, Development Services
 Alice McCurdy, Supervising Planner
 Florence Trotter-Cadena, Planner
 Records Management
 Linda Bishop, Accounting
 David Villalobos, Hearing Support

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APR 17 2009

S.B. COUNTY (NORTH)
PLANNING & DEVELOPMENT

APPEAL TO THE BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA

Submit to: Clerk of the Board
County Administration Building
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101

APR 14 2009
COUNTY OF SANTA BARBARA
CLERK OF THE BOARD

RE: Project Title El Encinal Pole/Hay Barn

Case Number 08-LUP-00000-00024, 08-APL-00000-00010

Tract/ APN Number 099-030-040

Date of action taken by Planning Commission, Zoning Administrator, or Surveyor 04/08/2009

I hereby appeal the approval of the Planning Commission
(approval/ approval with conditions/ or denial) (Planning Commission/ Zoning Administrator/ or County Surveyor)

Please state specifically wherein the decision of the Planning Commission, Zoning Administrator, or Surveyor is not in accord with the purposes of the appropriate zoning ordinance (one of either Articles I, II, III, or IV), or wherein it is claimed that there was an error or an abuse of discretion by the Planning Commission, Zoning Administrator, or Surveyor. {References: Article I, 21-71.4; Article II 35-182.3, 2; Article III 25-327.2, 2; Article IV 35-475.3, 2}

Attach additional documentation, or state below the reason(s) for this appeal.

Planning Commission Approval of Appeal from Land Use Permit issuance. No valid ground for granting appeal. Findings adopted in support of granting appeal re not supported by the evidence in the record.

See attached.

Specific conditions being appealed are:

Name of Appellant (please print): Susan F. Petrovich

Address: P.O. Drawer 720

(Street, Apt #)

Santa Barbara, CA 93102

(City/ State/ Zip Code)

(805) 882-1405

(Telephone)

Appellant is (check one): Applicant Agent for Applicant Third Party Agent for Third Party

Fee \$ 443.00 {Fees are set annually by the Board of Supervisors. For current fees or breakdown, contact Planning & Development or Clerk of the Board. Check should be made payable "County of Santa Barbara".}

Signature: Susan F. Petrovich

Date: 4/13/09

FOR OFFICE USE ONLY

Hearing set for: _____ Date Received: _____ By: _____ File No. _____

Brownstein | Hyatt Farber | Schreck

April 10, 2009

VIA HAND DELIVERY

Board of Supervisors
County of Santa Barbara
105 East Anapamu Street
Santa Barbara, CA 93101

Susan F. Petrovich
805.882.1405 tel
805.965.4333 fax
spetrovich@bhfs.com

RE: Appeal of Planning Commission Action on April 8, 2009, Granting Scheller Appeal of Issued Land Use Permit for El Encinal Barn, Case Nos. 80LUP-00000-0024, 08APL-00000-00010

Dear Honorable Board Members:

Brownstein Hyatt Farber Schreck has represented El Encinal and the King family in opposing the Scheller appeal to the Planning Commission of the Land Use Permit issued for an "as built" pole/hay barn constructed in the 1980's. We contend that the appeal was upheld in error and that the findings adopted in support of that decision are not supported by the evidence in the record. In fact, we urge the Board to compare the content and proposed findings attached to the original staff report, written *in support of denying the appeal and allowing the LUP to stand*.

Introduction

The Planning Commission conducted three (3) lengthy hearings on the appeal. The original staff report presents the relevant facts thoroughly and includes findings for denial of the appeal. These findings are supported by substantial evidence in the record. Following the Commission's second hearing, the staff prepared a revised Finding 1.1.3 to support granting the appeal. We believe that the findings adopted by the Planning Commission in their granting of the appeal are not supported by the evidence in the record or by the staff report. We ask that the Board overturn the Planning Commission's action and allow the pole/hay barn to remain in its historic location.

Agricultural Viability

This case centers upon an issue of maintaining agricultural viability of an on-going farming operation vs. preserving for the Schellers an opportunity to further subdivide the parcel created by the parcel map upon which some Planning Commissioners appeared to base their decision on the Scheller appeal.

The evidence in the record was clear – the Schellers' sole objective in forcing the removal of a hay barn that has been on the same site for over 20 years is to create the *impression* for potential purchasers that the access to the Scheller land is unimpeded. Mature eucalyptus trees are not subject to County regulation and remain as long-standing obstacles to any widening of the existing access to the Scheller land. Because these trees stand between the existing access road and the pole/hay barn, there is no basis for concluding that it is the hay barn that is a potential constriction of the Scheller access road. The trees have stood for in their present location for approximately 100 years and will remain regardless of the existence of the hay barn.

What was accomplished to benefit the Schellers from the Planning Commission action? Nothing of real value. Even if the pole barn were to be demolished, El Encinal would continue to use the historic

concrete slab, which predates zoning and which forms the foundation for the pole/hay barn, for storage of equipment and agricultural materials such as irrigation equipment, wood planking, stock trailers, etc. El Encinal is legally entitled to use this area as it has in the past.

What will the result be for El Encinal and the King family? They will lose valuable covered storage area for hay and supplies that are not weather resistant. The Kings make their living from farming and ranching so the requirement that they invest in another covered barn will impair the viability of their operation. The original barn, which the disputed barn replaced after storm damage, pre-dated zoning and permitting requirements.

Because private easements are not the County's concern, the existence of a wider easement than the Schellers historically have utilized would constitute a County intervention in a private easement dispute at the cost of agricultural viability.

Interpretation and Application of the Lot Split Map Condition

The lynch pin of the Planning Commission's decision seemed to be interpretation of the condition imposed on the original lot split map, which created the parcel that the Schellers' parents purchased. The Commission discussed this condition at length during its hearings.

The condition reads as follows:

All access roads and driveways serving this project shall conform to Department of Public Works, Road Division Standards. Roads to be a minimum of 20' in width, all weather surface capable of serving a 16 tone fire apparatus.

The existing road has ample room to meet this condition. The pole/hay barn doesn't intrude. The Schellers have found this roadway, with the barn in place, adequate throughout the entire history of their ownership of their parcel.

This pole/hay barn does not block the mandated access easement to the 1700 acres. The parcel map condition requires a 20-foot wide paved road. The evidence in the record is clear that with the barn in its present location, there is ample room for a 20-foot wide paved road. The Schellers' representatives made much of the supposed creek erosion, yet the existing road has been in the same location for over 20 years. The creek has not eroded it one inch.

What is clear from the record is that the parcel only contemplated an access easement for (1) one additional lot (the one purchased by the Schellers' parents) and the conditions imposed reflect that understanding. See, for example, the Public Works, Road Division, letter dated January 23, 1984 in the Planning Commission's record, imposing conditions on the Tentative Parcel Map. Note that it includes no conditions as to road width. It does impose a modest traffic mitigation fee for only one (1) peak hour trip. It obviously didn't contemplate heavy use of the access roadway or the nearby highway as a result of the Tentative Parcel Map approval. Yet, the Schellers now contend that they are entitled to a wide enough access road for additional subdivision of their land.

See also the letter from the Fire Department, dated January 25, 1984, in the record for the tentative map. It is the only condition letter referencing road standards for the map and calls for a 20-foot wide paved road capable of supporting a 16 ton fire engine. The sole condition for this map pertaining to the access road width, then, was a 20-foot wide paved road.

Despite the Schellers' claim that they must have an adequate access road for existing residences and parcels, the County Fire Department's development standards require only a 20-foot wide road for three to nine residential lots or dwellings. Granting this Land Use Permit does not impede reasonable use of the access easement required by the map condition.

Use of this access road for more than one parcel, given the history of the granting of the easement in conjunction with creation of only one new lot, is likely to be considered as an overburdening of the easement. Both parcels are zoned for agricultural use only. The Schellers and Mrs. King obviously contemplated that only one Scheller lot would be served by the access road. They have kept this road narrow both before and ever since the lot split. Why would the Planning Commission depart from this clear intention of the property owners? There is nothing in the lot split map that would justify such a departure. That map was solely for two parcels. This is a civil dispute between two private land owners and not the County's concern. The sole issue is whether the pole/hay barn meets current Land Use Permit requirements. We believe that it does.

There Is No Evidence in the Record to Support Proposed Finding 1.1.3

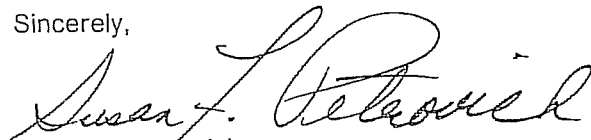
The new Finding #1.1.3 adopted by the Planning Commission to justify overriding the staff's support of the pole/hay barn concludes that the potential future creek erosion could result in the driveway not meeting minimum standards. The evidence in the record reflects that for over 20 years the creek has not eroded in a manner that endangers the existing roadway. The evidence also reveals that, even if the creek were to narrow the roadway, the eucalyptus trees that existed prior to the parcel map approval and the Schellers' acquisition of this property provide greater narrowing than the hay barn so there is nothing to be gained by denying the hay barn LUP.

Conclusion

We request that the Board reconsider the evidence presented to the Planning Commission and consider the issue of agricultural viability and the actual parcel map condition language, applied as it would have been **when the lot split map was approved and recorded**. In so doing, the Board can conclude that the map condition is being met with the pole/hay barn in its present location and the Land Use Permit can and should stand. Any other easement issues between the parties should be left for a civil action between the parties.

We request that the Planning Commission decision be overturned so the pole/hay barn can stay in service, supporting the El Encinal farming and ranching business.

Sincerely,



Susan F. Petrovich