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September 22, 2023

VIA EMAIL AND HAND DELIVERY AT HEARING

Clerk of the Board of Supervisors
Board of Supervisors
COUNTY OF VENTURA
800 S. Victoria Avenue
Ventura, CA 93009
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Re: Agenda Item 74 - Appellant: Everett Woody
Appeal No. PL20-0032
Property: 2275 Aliso Canyon Road
APNs: 064-0-130-145, 064-0130-125

Dear Honorable Board Members:

This letter brief is submitted on behalf of Rick Cortez and Tracy Cortez (collectively, the "Owners") who are the real parties in interest in the above-referenced appeal as they are the owners of the real property commonly known as 2275 Aliso Canyon Road in Santa Paula, otherwise known as the Billiwhack Ranch (the "Ranch") that is the subject of the appeal. The appellant, Everett Woody, is the architect hired by the Owners to assist with their development of the Ranch. Mr. Woody's appeal documents submitted on September 8, 2020, include, inter alia, analysis of legal issues regarding the appeal. This letter brief is intended to supplement, but not replace, the legal analysis included with the appeal submission.

The BOS Must Provide Appellant and the Owners Due Process

As an initial matter, it is important that the Board of Supervisors ("BOS") be reminded of their obligation to provide Appellant and the Owners due process in connection with the appeal. While the concept of due process may be familiar to some of the BOS members, there are some key concepts that warrant mentioning. "The requirements of due process extend to administrative adjudications." (*Hipsher v. Los Angeles County Employees Retirement Association* (2020) 58 Cal.App.5th 671, 700.) The exercise of a quasi-judicial power requires that a local agency must satisfy at least minimal requirements of procedural due process. (See, e.g., *Horn v. County of Ventura* (1979) 24 Cal.3d 605; *Sommerfield v. Helmick* (1997) 57 Cal.App.4th 315.)

"When…a governmental entity vested with broad administrative powers acts in an arbitrary manner so as to affect capriciously the property or property rights of persons subjected to its administrative controls it has denied to those persons due process of law." (*Walsh v. Kirby* (1974) 13 Cal.3d 95, 105–106.) A decision reached in violation of due process is a nullity. (*American Motors Sales Corp. v. New Motor Vehicle Bd.* (1977) 69 Cal.App.3d 983.) If a court finds an administrative action to be arbitrary, oppressive, or unjust, it will be struck down as

contrary to due process. (See, e.g., *Knudsen Creamery Co. of Cal. v. Brock* (1951) 37 Cal.2d 485; *Wulzen v. Board of Sup'rs of City and County of San Francisco* (1894) 101 Cal. 15.)

Because the BOS is acting in a quasi-judicial body adjudicating the rights of Appellant and the Owners in regard to their use of the Ranch, the BOS cannot act in an arbitrary or capricious manner in hearing the appeal. If the BOS does so, then any decision reached by the BOS would be a nullity as contrary to due process.

In particular, an administrative hearing officer cannot exclude evidence so as to prevent a party from establishing a claim or defense. (*Bank of America v. City of Long Beach* (1975) 50 Cal.App.3d 882.) Hearsay evidence is admissible in an administrative hearing if (1) it is relevant, and (2) it is of the character or quality on which responsible persons are accustomed to rely in the conduct of serious affairs. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1053–1054; *Mast v. State Board of Optometry* (1956) 139 Cal.App.2d 78, 85.) Appellant and the Owners expect the Ventura County Planning Division ("Planning") to rely almost exclusively on hearsay evidence as to the allowable uses of the Ranch to support its denial of Appellant's application for a zoning clearance. If the BOS is going to accept hearsay evidence from Planning, then due process requires the BOS to allow Appellant and the Owners to submit hearsay evidence that supports their claims as to the prior uses of the Ranch throughout its history. Should the BOS refuse to admit reliable hearsay evidence from Appellant to support their claims regarding the myriad of uses of the Ranch throughout its history, Appellant and the Owners will identify that refusal as a denial of due process and grounds to have any adverse decision by the BOS overturned by the courts.

Planning's Claimed Limitations on the Allowable Uses of the Ranch are Not Supported by Local or State Law

One of the primary issues on appeal is Planning's denial of Appellant's application for a zoning clearance based on the current zoning ordinance that a limited number of residential uses and sizes can exist on the property. Additionally, Planning denied legal non-conforming status of dwellings that have existed on the property for many years. Because the Ranch is a designated historic property, it is indisputably subject to the California Historic Building Code (the "CHBC") which allows the Ranch to be used as it has been used at any prior time in history. Planning unlawfully believes that it can insert the words along the lines of "currently allowable use" into the CHBC when California law makes such insertion unlawful and demonstrative of arbitrary and capricious conduct.

The County of Ventura (the "County") adopted the CHBC as part of the Ventura County Ordinance Code ("VCOC") through Ordinance 4548 enacting the 2019 Ventura County Building Code (the "VCBC") with one amendment to the CHBC. "In order to carry out the necessary, civil, administrative, and criminal procedures for enforcing the standards and provisions contained in the [CHBC], the Scope and Administration provisions of the [VCBC] shall be used , as adopted, and as amended in Article 2." (VCBC, p. 138.) Chapter 8-1 of the CHBC, entitled "Administration" is the portion of the CHBC amended by the VCBC. Chapter 8-3 of the CHBC,

entitled "Use and Occupancy," contains CHBC Section 8-301.2 which discusses "Scope." Thus, other than Chapter 8-1 and Section 8-301.2, the County has adopted the balance of the CHBC.

The CHBC is intended to provide alternative regulations for repairs, alterations and additions necessary for the preservation, rehabilitation, related construction and change of use or continued use of a qualified historical building. The "intent of the CHBC is to save California's architectural heritage by recognizing the unique construction problems inherent in historical buildings and by providing a code to deal with these problems." (CHBC § 8-101.2). Application of the CHBC by state and local agencies is mandatory under Health & Safety Code § 18954:

> "The building department of every city or county or other local agency that has jurisdiction over the enforcement of code within its legal authority shall apply the alternative building standards and regulations adopted pursuant to Section 18959.5 in permitting repairs, alterations and additions necessary for the preservation, restoration, rehabilitation, moving or continued use of a qualified historical building or structure."

(Health & Saf. Code, § 18954). Section 18955 of the Health and Safety Code § 18955 states as follows:

> "For the purposes of this part, a qualified historical building or structure is any structure or property, collection of structures, and their related sites deemed of importance to the history, architecture, or culture of an area by an appropriate local or state governmental jurisdiction. This shall include historical buildings or structures on existing or future national, state or local historical registers or official inventories, such as the National Register of Historic Places, State Historical Landmarks, State Points of Historical Interest, and city or county registers or inventories of historical or architecturally significant sites, places, historic districts, or landmarks. This shall also include places, locations, or sites identified on these historical registers or official inventories and deemed of importance to the history, architecture, or culture of an area by an appropriate local or state governmental jurisdiction."

(Health & Saf. Code, § 18955.) The regulations of the CHBC "have the same authority as state law and are to be considered as such." (See CHBC Introduction.) Where a qualified historical building is involved, the CHBC must be applied to allow any historical building to satisfy CBC requirements through alternative methods. If the CHBC does not specify an alternative method of compliance, it requires all public agencies to "accept solutions that are reasonably equivalent to the regular code…" (CHBC § 8-101.2).

Under the "Purpose" description in CHBC § 8-102.1, "the CHBC is applicable to all issues regarding code compliance for qualified historical building or properties. The CHBC may

be used in conjunction with the regular code to provide a solution to facilitate the preservation of qualified historical buildings." Under § 8-105.1 "repairs to any portion of a qualified historical building … may be made in-kind with historical materials and the use of original or existing historical methods of construction, subject to the conditions of the CHBC." In sum, the CHBC allows building owners to achieve compliance with the provisions of the regular VCBC through alternative means that are "reasonably equivalent" when applied to qualified historical buildings such as the Ranch. (CHBC § 8-102.1.)

CHBC Section 8-302.1 states in full as follows: "The use or character of occupancy of a qualified historical building or property, or portion thereof, shall be permitted to continue in use regardless of any period of time in which it may have remained unoccupied or in other uses, provided such building or property otherwise conforms to all applicable requirements of the CHBC." (CHBC, § 8-302.1.) CHBC Section 8-302.2 states in full as follows: "The use or character of the occupancy of a qualified historical building or property may be changed from or returned to its historical use or character, provided the qualified historical building or property conforms to the requirements applicable to the new use or character of occupancy as set forth in the CHBC. Such change in occupancy shall not mandate conformance with new construction requirements as set forth in regular code." (CHBC § 8-302.2.)

Taken together, the only reasonable interpretation of those sections is that a qualified historical building may be returned to any prior use provided the building conforms to the requirements of the use as set forth in the CHBC, but a change in occupancy will not require conformance with construction requirements in the VCBC. Planning, on the other hand, wants to read the words "returned to any currently allowable use" into the CHBC referenced above. This is directly contrary to established canons of statutory construction adopted by the appellate courts in California. "The preeminent canon of statutory interpretation requires us to 'presume that [the] legislature says in a statute what it means and means in a statute what it says there.' " *(O&C Creditors Group, LLC v. Stephens & Stephens XII, LLC* (2019) 42 Cal.App.5th 546, 575, as modified (Dec. 17, 2019).) "In construing a statute, we do not insert words into it as this would 'violate the cardinal rule that courts may not add provisions to a statute.' " (*People v. Roach* (2016) 247 Cal.App.4th 178, 184.) As such, to allow Planning to insert words into the CHBC to satisfy is denial is legally unsupportable, contrary to the law, and demonstrative of arbitrary and capricious conduct.

It is undisputed that the Ranch is a qualified historic property. The Ranch was added to the local register of historic properties following the County's survey completed in 1996. The State Architect confirmed that the Ranch's qualified historic status. Even Planning now admits that the Ranch is historic when it identifies the Ranch as such in its denial of Appellant's zoning clearance application. Thus, since the Ranch is a qualified historic building, it is subject to the CHBC. This is despite the express misrepresentations of Planning staff and other County staff members that the CHBC could only be used if the Ranch was given landmark status. While this is not the proper venue to address the misrepresentations by County staff in this regard, it is very important for the Board to understand that staff appears to be unfamiliar with the law and its application despite staff's willingness to make what amount to legal determinations based on laws that staff does not understand.

Therefore, because the Ranch is subject to the CHBC, once the Owners acquired the Ranch, which constituted a change in occupancy, and the Ranch was deemed a qualified historic property, then the Owners were entitled to use the Ranch as it has been used at any time in history and such use has to comply with the requirements of the CHBC, not the portions of the VCBC that apply to non-historic properties. Planning cannot require the Owners to use the Ranch in a currently allowable use under the VCOC. Rather, the County must allow the Owners to use the Ranch as it has been used at any prior time in history.

Planning's Designation of Building Uses are Not Determinative of their Historic Uses

In its denial of Appellant's zoning clearance application, Planning identifies several buildings on the Ranch by the names given to them on certain assessor's records. Planning cites Ms. Triem's 1995 report as to the uses of each building on the Ranch, but Ms. Triem's report itself is hearsay in that the report is a statement made outside of the BOS hearing, but its contents are being offered for the truth of the matter, i.e., that the buildings on the Ranch were used for particular purposes. In addition, Ms. Triem's report fails to identify Building 2, which she refers to as a "cow barn" as having any habitable units in her report of the present day uses despite the fact that Building 2 does, in fact, have two (2) existing habitable units, as well as failing to mention the original ranch office, Building H1, which the County currently recognizes as the "main residence." Ms. Triem's report itself is premised on hearsay in that she was not present for the historical uses and, instead, relied on other documents including County records to render her opinion as to the uses of the various buildings in her report. Because the County's assessor records and Ms. Triem's report identify one building on the Ranch as a "creamery" and another as a "cow barn," Planning will not allow those habitable units to remain unless they are part of the allowable number and size of the dwellings on the Ranch. . The evidence on which Planning relies is woefully inaccurate and fails to account for the veritable cornucopia of uses of the buildings on the Ranch over the years.

Enclosed herewith are several newspaper articles regarding the Ranch over the years. These articles explain that the buildings on the Ranch have been used for, inter alia, a veterinary hospital, an emergency hospital, administrative officers, milker's dormitory, 40-unit worker dormitories with club house, gardens, dining hall, commercial kitchen, and swimming pool, by the original owner. Other than the uses by the original owner, the Ranch has been used as:

- A nursery
- A private boys school
- The County's own animal shelter (a "dog pound")
- A Christian co-educational school
- An electronics manufacturing plant – Houston Fearless manufactured astrodomes for instrumentation of the Army's drone tracking station in Arizona
- An electronic manufacturing and research plant with offices and showrooms – Pacific Electronics who, inter alia, manufactured crystal units for guided missiles for the United States Signal Corps pursuant to a contract that brought in $965,083 in revenue in 1951

- A wasp apiary – astronaut Scott Carpenter used the Ranch to raise wasps

In addition, also enclosed herewith are photographs that were taken by the Owners after they acquired the Ranch demonstrating that the buildings that Planning believes were solely a "creamery" and "cow barn" were, in fact, being used as "dwellings" as that term is defined by the VCOC ("A building or portion thereof designed or occupied exclusively for residential purposes," see VCOC § 8102.0.) The "cow barn" has evidence of the historic use of the building as a residence based on the plumbing installed in that building. The Owners were told by the immediate prior owner that the "cow barn" was used as a bunkhouse from the time he purchased the Ranch in 1969 with rooms down the length of the building along with a communal dining hall. In addition, one of the farm workers who currently lives on the Ranch had been using the "cow barn" as a residence since 1974.

Appellant and the Owners anticipate that Planning will contend that the use of the "creamery" or "cow barn" as a dwelling was not a permitted use. The problem with Planning's argument is that the VCOC allows non-conforming uses. VCOC § 8113-5.3 allows non-conforming uses inside of structures provided that there is no expansion of the use (VCOC § 8113-5.3.1) and the use cannot change to a use that requires a conditional use permit (VCOC § 8113-5.3.2). The VCOC only requires a zoning clearance in the AE zone to use a building as a dwelling; no CUP is required. Thus, the prior use of the "creamery" and "cow barn" as dwellings both historically and currently as a dwelling may have been a non-conforming use. Since the Ranch is historical and CHBC allows the Ranch to return to any prior use in history, the Owners can use the "creamery" or the "cow barn" as a residence since there is both reliable hearsay (newspaper articles, statements by prior owners) and photographic evidence of their use as dwellings.

Moreover, many of the prior uses of the Ranch are not currently allowable under the VCOC and its use restrictions for AE zones. The current prohibition of those uses simply do not apply to the Ranch because it has been determined to have historical value. Thus, the Owners can use the Ranch in the manner used at any prior time in history, provided the use is in conformance with the requirements of the CHBC. There is nothing in the CHBC that prohibits the Owners from using the buildings on the Ranch as residences since those buildings have been used as residences in the past, as demonstrated by the same kind of reliable hearsay relied upon by Planning to determine what uses it believes are appropriate for the Ranch. That Planning calls the building a "creamery" has no value as to the determination of how that building may be used, particularly when that building has been used as a dwelling.

Additionally, the Cultural Heritage Board issued an emergency repair permit to the Owners to repair the southwest corner of Building 4 (the "creamery"). The CHB came up with that idea after having toured the Ranch prior to a hearing. The problem is that Planning is relying on the VCOC to restrict the Ranch to one primary dwelling, one accessory dwelling unit with a maximum size of 1,800 sq. ft., and one farmworker dwelling of 1,800 sq. ft. per 30 acres of crop, which used to be 40 acres, Planning is relying on current zoning laws to determine what can be used on a property that is a qualified historic property when the law makes it clear that qualified historic properties can be returned to any use in history and are not bound by current zoning laws

to determine uses based on sizes of the buildings including allowing to keep the habitable units in Building 2 without those units being subject to the NCZO's (as part of the VCOC) current limitations on the number and sizes of dwellings

Appellant and the Owners expect Planning to claim that they have provided paths to solve the problems that Planning has created. This claim is misleading because those paths are (a) limited to what Planning believes are the appropriate uses for the Ranch based on current NCZO requirements and (b) not what the Owners want. The path or paths are "discretionary" and Planning is likely to take the position that the Owners are being short-sighted or difficult because they will not agree to Plannings discretionary paths. Coupled with the nightmare the Owners know the discretionary path will be, the Owners want what they are entitled to by right. Both County and State law allow the Owners to use the CHBC. Both CHB and Planning claim that the Ranch is not entitled to use the CHBC. This is an example of how Planning has determined that the County does not need to follow the law. Another example has been the fact that State law allows the Owners to use Building 4 as an ADU, and the ADU governing body, the Housing and Community Development Department (HCD), in a February 2023 determination, agrees with the Owners, but Planning says they cannot. In September of 2023, the HCD issued a four page correction notice of the County's adopted ADU Ordinance to address its non-compliance with State Law. The County does not exist outside of the law with Planning picking and choosing what law it follows when it suits them.

So that the Board has a better idea of what the Owners have experienced, and may be excluded from the Staff Report that is almost certainly going to exclude their own misdeeds, the Board should know what has led us to this point. Planning reviewed the Owner's application and drawings in June and July 2019 and issued a very short correction notice which was fulfilled by Appellant. Planning accepted Appellant's corrections and sent the Owners to CHB which constituted a tacit admission by Planning that the Owners' project was acceptable to Planning.

CHB wanted a historic resources report which took approximately six (6) months to prepare and cost the Owners tens of thousands of dollars to address what amounted to less than two percent (2%) change of the overall project. At the CHB, Planning staff had written a recommendation to approve the Owners' project prior to the hearing, but then the CHB "director" asserted multiple times that the Owners should consider designating the Ranch as a landmark if the Owners wanted to use the CHBC. When Appellant denied the "CHB director's" request, the CHB director instructed Building & Safety not to approve the Owner's project. Yet, CHB decided to issue that permit to repair Building 4. After Planning reviewed, corrected and accepted the corrections, and based on the outcome of the CHB hearing, the Owners believed that they only needed to satisfy the rules of the Cultural Heritage Ordinance in order for the project to be fully approved for a zoning clearance. Subsequent thereto, the Owners learned that the CHB is "advisory only" and were not bound by anything CHB stated.

There is something wrong with a government agency giving a property owner a permit to repair a building for the costs of $1 million without knowing the rest of the project is cleared. Frankly, this almost amounts to the County's taking of the Ranch and the Owners money over the last four (4) years. They purchased a nearly 100-year old property in 2018. All the uses were

there and have been there since at least 1969 when the people from whom the Owners purchased the Ranch purchased it themselves. The Board should allow Appellant and the Owners to demonstrate these uses through the evidence submitted herewith.

Conclusion

Accordingly, for the reasons set forth in the appeal itself, those that will be stated at the upcoming hearing, and those reasons set forth hereinabove, Appellant and the Owners respectfully request the BOS to overturn Planning's denial of Appellant's zoning clearance application and allow the proposed project to proceed as submitted.

Please note that this letter brief does not set forth a complete statement of the facts or applicable law relating to this matter nor is it intended to constitute a complete statement of any rights or remedies available to my clients, all of which are expressly reserved.

If you have any questions or concerns regarding the contents of this letter brief, please feel free to contact me either by email at james@jamesbdevine.com or by telephone at 805-845-7500.

Sincerely,

LAW OFFICES OF JAMES B. DEVINE, APC

/s/ James B. Devine

James B. Devine

JBD

cc: Appellant
Owners