

# ***MINUTES OF THE SOLANO COUNTY PLANNING COMMISSION***

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## **Meeting of September 4, 2008**

The regular meeting of the Solano County Planning Commission was called to order at 7:00 p.m. in the Board of Supervisors' Chambers, Fairfield, California.

**PRESENT:** Commissioners Moore, Barnes, Mahoney, McAndrew and Chairperson Barton

**EXCUSED:** \_\_\_\_\_

**STAFF PRESENT:** Birgitta Corsello, Director; Mike Yankovich, Planning Program Manager; Jim Leland & Jim Louie, Principal Planners; Stan Schram, County Surveyor; David Cliché, Building Official; Jeff Bell, Senior Environmental Health Specialist; Jim Laughlin, Deputy County Counsel; Kristine Letterman, Planning Commission Clerk

Items from the floor - none

**THE MINUTES** of the regular meeting of July 17, 2008, and the special meetings of June 26 and July 31, 2008, were approved as prepared.

1. **DETERMINATION** of General Plan consistency for the vacation of Jacksnipe Road (County Road No. 579) which is located east of Chadbourne Road (County Road No. 579), 2½ miles south of Cordelia Road (County Road No. 76). (Contact: Stan Schram) **Staff Recommendation:** Approval

Stan Schram gave a brief presentation of the written staff report. He stated that the portion of roadway to be vacated is surrounded by the lands of Albert Seeno and is currently maintained by the County of Solano. Jacksnipe Road begins at Chadbourne Road (County Road No. 2370) and continues east for three quarters of a mile across Section 15 Township 4 North, Range 2 West to the westerly right of way line of the Union Pacific Railroad. The Road was created by road Petition Number 579 in 1917. Mr. Schram stated that due to trespass and illegal dumping issues, the applicant has requested that the County of Solano vacate Jacksnipe Road so that access can be restricted and thus alleviate the situation. The other landowner, Allied Investments, has consented to the proposed vacation. An easement for private access, railroad access, and public utilities will be reserved from the vacation to protect any current access rights.

Chairperson Barton opened the public hearing. Since there were no speakers either for or against this matter, the public hearing was closed.

A motion was made by Commissioner Barnes and seconded by Commissioner McAndrew to find the proposed vacation of Jacksnipe Road is in conformance with the Solano County General Plan. The motion passed unanimously. (Resolution No. 4502)

2. **PUBLIC HEARING** to consider an appeal of the Zoning Administrator's approval of Use Permit Application No. U-08-06 of **Stan Lester** for an existing fruit drying operation which dries fruit and vegetables produced offsite, located at 4317 Margaret Lane in an "A-40" Exclusive Agricultural Zoning District, 1 mile south of the City of Winters, APN: 0103-090-180. This project is determined to be categorically exempt from the provisions of the California Environmental Quality Act (Project Planner: Jim Leland) **Staff Recommendation:** Approval

Staff noted that a request was made by the appellants to continue this item to a future date. The Commission unanimously agreed to hear the item as scheduled.

Jim Leland gave a brief presentation of staff's report. He stated that on August 27, 2008 the Zoning Administrator approved a use permit to allow agricultural processing on the subject property. Lester Farms dries tomatoes, apricots, peaches, cherries, pears and nectarines. The products are grown on-site and trucked in from off-site locations. The farm employs 30 full-time year round employees with a peak of 52 employees during the summer drying season. The agricultural processing activities take place on approximately 10 acres of the 69 acre parcel. The balance of the property is planted with fruit and nut orchards.

Mr. Leland stated that during the course of the Zoning Administrator hearing, several residents expressed their concerns and objections to the Use Permit. The concerns included the use of and release of Sulfur Dioxide as a part of the fruit drying process, the hours of operation, noise and traffic conflicts and congestion. At the conclusion of the public hearing, the Zoning Administrator approved the Use Permit with the inclusion of two additional conditions to help alleviate those concerns.

Mr. Leland stated that Anthony Morales and Dennis and Kathy Bryant filed an appeal of the decision of the Zoning Administrator's approval. The appeal deals with several issues, including the history of permit violations on the property, prior actions by the Board of Supervisors pertaining to nuisance complaints, inaccuracies in the staff report regarding surrounding land uses, discrepancies in the hours of operations, the CEQA exemption, traffic conflicts and safety issues, and the staff report's conclusion that the proposed use will not constitute a nuisance. Mr. Leland briefly reviewed staff's responses to the appeal as listed in the staff report.

Commissioner Barnes asked County Counsel to comment on the issue of the California Environmental Quality Act (CEQA) exemption. Jim Laughlin stated that there has been some question about whether this should be considered an existing facility, and if the facility is currently operating in compliance with county ordinance. He explained that CEQA requires the commission to look at the existing environment. It is not the purpose of CEQA to be an enforcement tool to analyze whether what is existing today is legal or illegally being conducted, it is suppose to be a scientific document that analyzes what is existing on the ground and give an educated forecast of how the commission's action might change the existing environment. Mr. Laughlin stated that since the applicant is not proposing to change anything from what is taking place today, it is his opinion that staff has properly applied CEQA on this project.

Mr. Laughlin noted that some neighbors have complained about the level of impacts that are currently taking place, but CEQA is not needed to tell the commission what those impacts might be in the future. He said the commission can take testimony and consider what the impacts of the

existing operation are, but it is not the purpose of CEQA to try to make a forecast of what those impacts might be in the future.

Commissioner McAndrew inquired about the statement concerning Holmes Lane and Putah Creek Road that it is dangerous corner with overgrown trees. Mr. Yankovich stated that the Public Works Division inspected the location and found nothing that would create a hazard with regard to safety.

In response to Commissioner McAndrew's inquiry, Mr. Yankovich stated that the days of operation are Monday through Saturday.

Commissioner McAndrew inquired about Condition No. 11 with regard to truck travel and undue noise. She wondered if the use of Jake brakes needed to be reviewed. Mr. Yankovich stated that typically truckers will use that type of brake when there is sloping, but in this case that would be less of a problem because the grade is level. He indicated that part of the discussion with regard to the trucking was that the business was starting before and after the hours operation, and so the condition was added so there would not be trucking operations prior to the start up and later than the close of business. He said the use of the brakes themselves should not be a problem.

The appellant, Kathy Bryant, 8597 Holmes Lane, Winters, CA, 95694, stated that Holmes Lane and Putah Creek Road is a dangerous corner. She commented that cars have to leave the road to allow Lester Farm's trucks to pass. She stated that she and her husband are awakened at night when the facility releases Sulfur Dioxide because they have to close their windows to stop from coughing. She stated that the turbines run well before the hours described in the staff report and are very loud. Ms. Bryant stated that they are not asking that the facility be shut down, they are asking for prudent practices that take into regard the health and the safety of neighbors. She said there are also problems with regard to noise such as loud speakers, idling truck engines, and horn honking.

The appellant, Dennis Bryant, 8597 Holmes Lane, Winters, CA, 95694, stated that this industrial food processing facility did not exist when he and his wife moved into their residence. He stated that they filed their first complaint with the County in 1999. Mr. Bryant stated that they support agriculture, but do not support the localized nuisance that this particular operation has created. He spoke to the maximum number of 3 trucks per day, stating that those trucks are 80,000 pound delivery trucks which have not been discussed in the report. He said there is a constant travel of trucks up and down the road before 6 a.m. and often after 6 p.m. Mr. Bryant referred to the condition that was added regarding the noticing of neighbors for the release of Sulfur Dioxide and asked that the commission expand this to not only include Sulfur Dioxide but other chemicals that are also hazardous to human health. Mr. Bryant proposed that the applicant be required to build a sound wall to help alleviate noise. Mr. Bryant noted that the Board of Supervisors previously declared Stan Lester Farms to be a public nuisance. Mr. Bryant objected to Finding No. 3 in the draft Resolution which states that the operation will in no way constitute a nuisance. He said that he and his wife have demonstrated that this is a nuisance, as well as other neighbors in the area voicing their belief that it is a nuisance. He commented that there is no validation provided in the staff report to actually say it is not a nuisance or to mitigate the nuisance. Mr. Bryant stated that this operation is a pollutant, a contaminant, and noise pollution problem.

The appellant, Anthony Morales, 4127 Putah Creek Road, Winters, CA, 95694, stated that he purchased his property in the year 2000. He stated that after 3 years of service on his farm from Mr. Lester and non-payment of a crop that Mr. Lester removed, he decided to find someone else to take care of his orchard. In 2003, Mr. Morales stated that Mr. Lester came to him about the added cost being put into Workman's Comp and they decided that they would underground the sprinkler

system which would save Mr. Lester some labor and PG&E costs. Mr. Morales stated that he spent about \$1,000 an acre and undergrounded his entire 30 acre orchard. He stated that at the end of the year he asked Mr. Lester for an accounting who submitted \$13,000 worth of invoices. Mr. Morales stated that he took the invoices to his attorney and indicated Mr. Lester has not given them an accounting for their 2003 crop year, but he was sending them invoices for custom farming. Mr. Morales stated that he and the applicant went to court over non-payment of the 2003 crop year. He stated that Mr. Lester agreed to maintain 2 million dollar liability policy while he was working on his ranch. In December of 2003, Mr. Morales stated that he received a notice from Blackhawk Insurance that as of the 22<sup>nd</sup> of the month he no longer had a 2 million dollar liability policy on his property. He stated that at that point he called Mr. Lester and told him he wanted him off his property until he could resolve the liability policy issue. He noted that they went to small claims court and Mr. Lester admitted that he owed him \$20,000 for the 2003 crop. Mr. Morales stated that if the commission allows this permit to be issued for all the illegal buildings that have been built, there are a lot of farmers in the audience who can see that it is a lot easier and less expensive to come in and ask for the commission's forgiveness rather than their permission.

Chairperson Barton opened the public hearing.

Kate Kelly, 8484 Quail Lane, Winters, 95694, spoke in favor of the project. She stated that when she moved to the area she was aware that farming was taking place. She made reference to the Right to Farm Ordinance and how it provides people who move to the country with notification that farming operations will be taking place and include noise and traffic. She stated that Lester Farms is an important service to the community. Ms. Kelly commented that the intersection of Holmes Lane and Putah Creek Road is a straight section of roadway. She stated that the trees are not overgrown trees, but a walnut orchard. Ms. Kelly stated that this use is consistent with the County's General Plan.

Denise Sacara, 1767 County Road 86, Esparto, 95627, spoke on behalf of the Yolo County Farm Bureau. She read from a letter voicing support for the project. The letter stated that Lester Farms generates income for the area by purchasing locally grown tomatoes and other fruit and vegetables. Lester Farms also purchases farm supplies, parts, tools and equipment in Yolo County, all which supports the local economy. The letter also stated that the Lester Farms operation facility is well maintained and the grounds are well kept. Ms. Sacara stated that the Farm Bureau supports the project and asked the commission to approve the application.

Tom Tindel, 4284 Putah Creek Road, Winters, 95694, stated that he has a small walnut orchard adjacent to Lester Farms. He acknowledged that farming operations do provide some impact to the environment due to pesticide spraying. He said the applicant has been an excellent neighbor and that he supported the project.

Herb Wimmer, 4275 Putah Creek Road, Winters, 95694, stated that his property is located less than 1 mile from Lester Farms. He said his crop is currently farmed by Mr. Lester and will have to be farmed long into the future. He said he was aware of the existence of Lester Farms before he purchased his property. Mr. Wimmer stated that with regard to traffic, he is more concerned with the motorcycles and cars racing down the street at the start and end of each day. He said he has never really noticed the trucks coming to or leaving from Lester Farms and did not see traffic as an issue. With regard to noise, Mr. Wimmer stated that there are times when farm sounds occur, but 95% of the time it is very peaceful. Mr. Wimmer noted that in his own orchard operation he puts out just as

much dust and spray irritant as any of his neighbors. He commented that traffic, noise, and dust are part of any agricultural operation.

Joe Castro, 104 3<sup>rd</sup> Street, Winters, 95694, stated that he farms his family's property at the end of Holmes and Margaret Lane adjacent to the Lester property, and has been farming the land since 2000. He said that prior to the Mr. Lester's ownership, the land was a dry yard, along with several other dry yards in the area. He noted that every day and every night during harvest season smoke houses were smoking with sulfur, and in those days it was not as regulated as the current day standards. Mr. Castro stated that due to his full-time job he has to spray his orchard sometimes at 4:30 or 5:00 a.m. He stated that Holmes Lane is a single lane road and sometimes can get a little tricky when folks are driving fast. He noted that Mr. Lester has added gravel to the road shoulder so when people do go off the lane they are not going to get stuck in dirt. Mr. Castro voiced his concern with the hours of operation being limited between 6 a.m. and 6 p.m. He stated that he runs his own operation before and after hours.

Philip Snow, 4358 Margaret Lane, Winters, 95694, stated that he lives 400 feet from Mr. Lester's farming operation. He said that he has never had a problem with traffic and feels the road is very safe as long as it is not travelled beyond the approved rate of speed. He said that he is up early in the morning and never hears noise from idling engines or honking horns. He said that he is not aware of any pollution and has never been affected by Sulfur Dioxide. Mr. Snow said he has never seen Mr. Lester's operation operate 24 hours, it is a very clean operation, and has no odor.

Joe Ogando, 102 Wolfskill Street, Winters, 95694, stated that the operation has not been a problem and supported the project.

Paul Underhill, 8870 Wintu Way, Winters, 95694, stated that he is a farmer who grows, packs, and ships fruits and vegetables primarily in Solano County, but also in Yolo County. He indicated that he is in the process of moving his packing and shipping facility from Yolo to Solano County, but if the commission does not deny this appeal, he will choose to stay in Yolo County where county government is supportive of agriculture. Mr. Underhill noted that Stan Lester is not the only farmer who uses sulfur products, and that there are other agricultural operations in the area that are also potential sources of that problem. He stated that dusting sulfur is the most commonly used pesticide in California. With regard to nighttime hours, Mr. Underhill stated that this is an agricultural area and one of the most productive in Northern California. He said the fact that there are wealthy people who are relocating to the area to build their big houses is great, but it makes farming more difficult. He commented that his operation ships most of their produce to San Francisco and the San Francisco produce terminal hours of operation run from midnight until noon. He said that in order to get produce to the terminal from Solano County, a delivery truck would need to leave around 4 a.m. He said the precedence of a 12 hour operation for coolers or other industrial farming equipment would put farmers like him out of business.

Commissioner Mahoney inquired as to how late Mr. Underhill farms his property.

Mr. Underhill stated that he irrigates his crops at night. In the early spring he works nights to perform frost protection. Mr. Underhill stated that because of environmental concerns a lot of farmers in the area have taken to spraying at night. He noted that this is a relatively high wind area and spraying is prohibited when the wind is blowing because of drift. He stated that spraying could happen at 3 a.m. due to wind conditions.

Michael Martin, 3805 Putah Creek Road, Winters, 95694, stated that his family has farmed in Solano County since the 1930's. He commented that he has known Mr. Lester for many years. He indicated that he travels Putah Creek Road on a daily basis and he can attest to the fact that Mr. Lester's trucks are not a problem. He said that one of the biggest problems on Putah Creek Road is the urbanization of the road. He noted that bicycles pose a real problem. Mr. Martin stated that the urbanization of Putah Creek Road with small ranchette farms with people who are not farmers have created a tremendous problem for him as a farmer. He stated that he lives in an area surrounded with homes and has had to change his farming operations in order to not have problems with his neighbors. Mr. Martin stated that he sprays at odd hours and makes noise with his sprayer. He said much of what is going on in the area is people want to move to the country because they want their little piece of the world, but they do not want farmers to do what they have been doing for generations. He said that these people who move to the country need to know that farmers need to farm, and to put restrictions on any farmer would kill their operation. He stated that Solano County land is a precious resource that we need to nurture it.

Stan Lester, 8560 Holmes Lane, Winters, 95694, stated that he established Lester Farms in 1975. He said that he purchased the property with a dry yard, crops, buildings, a small residence, and farm labor housing. He stated that Margaret Lane is a paved street that is privately owned and maintained by his family. He commented that there was a time where every parcel on Margaret Lane had a small family dry yard. He stated that when he started drying tomatoes, and since he was not raising his own crops, it became an issue with the county. He said that in the old days Winters was a prime fresh marketing place. He said they exported most of there product all over the U.S. and Canada. Mr. Lester stated that when there was adverse weather there was no other choice but to cut and dry the fruit in order to salvage the crop. Mr. Lester stated that he has a long established relationship with farm families both in Yolo and Solano Counties. He said 58% of what he dries is grown in Solano County and 35% comes from Yolo County.

Mr. Lester explained that he received a notice from the county telling him that he needed a building permit because his buildings were in violation of the zoning code because some of the fruit he dries he did not grow on the premises. He commented that this was a surprise to him because in 1988 he received a letter from the county building inspector that indicated he did not need a building permit because the structures were agricultural buildings. He said the building permit issues did not come about until early 1990 when the building code and county zoning regulations were in conflict. He said that he met with the building and planning division to resolve any issues, and was required to make application for a use permit. Mr. Lester noted that has a permit from the Yolo-Solano Air Quality Control District for the Sulfur Dioxide usage, and that agency has recently inspected his operation giving him a passing mark. Mr. Lester stated that he was not aware of the nuisance determination that was made by the Board of Supervisors. He said he never received a notice of this issue and believes he was denied due process. He said the way he found out about this declaration by the Board was the Internet. He said he hoped this could be resolved because he never had a chance to address the issue.

Chairperson Barton inquired about the hours of operation of the facility.

Mr. Lester stated that their crew starts at 6 a.m., but noted that some of their employees come in earlier to start up the equipment because hydraulic motors need to be warmed up. He said that ever since the Zoning Administrator imposed the 6 a.m. time limit, they have been starting at 6 a.m. with

the rest of the crew coming in at 6:30 a.m. He noted that it has been troublesome because the issue is the hot weather. The workers like to start early when it is cool and end early when it gets hot. Mr. Lester commented that there is no control over the weather, and he has had to go out on the property as late as 10 p.m. to pick up trays in avoidance of rain.

In response to Commissioner Mahoney's inquiry about working late hours, Mr. Lester stated that when wind is present or rain is anticipated there is no other choice than to go out into the field at any hour. He said that these are all things that have to be dealt with as farmer.

Mr. Yankovich stated that the 6 a.m. to 6 p.m. hours cover the processing portion of the operation. He said the additional condition with regard to the 7 day notification for spraying was placed in the permit because it is known that spraying can take place at other hours of the day.

Ken Shaw, 4265 Morse Lane, Winters, 95694, stated that he farms wine grapes and sprays his crops at night. He stated that he also harvests at night. Mr. Shaw commented that Mr. Lester notifies him if he feels that what he is doing is going to interfere with his operation. He said that Mr. Lester has been a good neighbor.

Since there were no further speakers, Chairperson Barton closed the public hearing.

Commissioner Mahoney stated that he has a problem with placing a limitation on the hours of operation. He said it is putting an urban restriction on a rural area that is an agricultural area. He stated that once the county starts limiting this one producer, where will it stop. Mr. Mahoney said he did not believe the restriction is fair and he favored removing the condition from the permit. Mr. Mahoney also inquired about the notification to neighbors regarding pesticide spraying and wanted to know if every other farmer is required to provide notification, or if Mr. Lester is the only one being singled out. He said he has a real problem with that. As far as agricultural use goes, Mr. Mahoney stated that this is an agricultural area and the county should be looking at it as such.

Commissioner Moore stated that he supported Commissioner Mahoney's position. He stated that it appears from what the commission has heard tonight, an evolution such as spraying is dictated by a whole lot more than a clock. He said it does not seem reasonable to expect a person to project wind conditions 7 days in advance. He stated that in adding the conditions with regard to limited hours of operation and written notification to neighbors, he wondered what the outcome is for the rest of the farmers in the county. He wondered if those farmers are going to be subjected to the same kind of restrictions where they can not operate when they need to. He said that he could not agree with including those particular conditions in the permit.

Commissioner McAndrew stated that she also agreed with Commissioners Mahoney and Moore. She believed that this is unfairly singling out Mr. Lester. She believed it goes to the restricting of farmers' necessity, and she did not agree that those two conditions are fairly applied in this case.

A motion was made by Commissioner Moore and seconded by Commissioner McAndrew to deny the appeal and uphold the decision of the Zoning Administrator approving Use Permit No. U-08-06, subject to the Findings and Conditions contained in Zoning Administrator Resolution No. 08-27, and as repeated in the Planning Commission Resolution with the deletion of Condition Nos. 2 and 10 regarding hours of operation and written notification to adjacent property owners, respectively. The motion passed unanimously. (Resolution No. 4503)

3. **ANNOUNCEMENTS and REPORTS**

Commissioner Moore spoke with regard to his participation on the Solano County Art Council's subcommittee and asked the commission to consider appointing someone to replace him. He explained that the subcommittee is responsible for selecting public art. They are currently active in selecting art for the Claybank prison expansion for their two clinics, one in Fairfield and one in Vallejo, and the Suisun library. Mr. Moore commented that he has enjoyed every minute of serving on the committee. Commissioner Barnes volunteered to take Commissioner Moore's place.

4. Since there was no further business, the meeting was **adjourned**.