

**ACTION MINUTES
LAND USE & COMMUNITY DEVELOPMENT COMMITTEE**

July 27, 2022

MEMBERS PRESENT: Frank Axe, Supervisor District 4
Richard Forster, Supervisor District 2

STAFF PRESENT: Glenn Spitzer, Deputy County Counsel
Chuck Beatty, Planning Director
Mary Ann Manges, Recording Secretary

Supervisor Forster called the meeting to order at 2:00 p.m.

AGENDA: Approved.

PUBLIC MATTERS NOT ON THE AGENDA: Brian Jobson shared that the Foothill Conservancy has submitted comments and will be submitting a map to the consultant and to staff for the Wicklow Way project which will be taken up at future Land Use meeting.

APPROVAL OF MINUTES: May 25, 2022 approved with minor corrections.

CORRESPONDENCE: Letters from Foothill Conservancy and Meredith Sierra

Supervisor Forster asked that comments be received well in advance of the meeting.

Mr. Beatty asked that comments be sent to the Department email at planning@amadorgov.org instead of to individual staff emails to ensure they are seen.

ITEM 1: Continued review and discussion of the County's zoning ordinances related to wineries, wine tasting rooms, and their associated events.

Supervisor Forster introduced the item and shared that he would like to know sooner than later if the Committee is going the wrong direction. He stated that he would like to get this to the Board of Supervisors for their input. He shared that the survey has not been done yet and asked staff that it be put on the list.

Bailey Lubenko, Amador Vintners Association (AVA), said they are waiting for a list of questions of what the Committee wants from AVA and are ready to get AVA member input.

Supervisor Forster said the minutes referenced how many events are currently held and how many events are successful in order to thrive. He shared that there might also be other areas to be added on the list. He added that this review process should take about 6 months to a year with some issues taking longer.

Supervisor Axe stated that he does not know what can be done with traffic right now. He went on to say that noise and lights are coupled with events. He asked what can be done about those. Supervisor Forster agreed about traffic and said that it might have to go through the Public Works Committee with traffic on Shenandoah Rd. such as volume and general speed limit and that he was not sure about the smaller roads.

Ken Deaver said that he is having a hard time hearing Supervisor Forster and Supervisor Axe. Measures were taken to remedy the problem.

Supervisor Forster began discussion with the 500 ft. setback and mentioned that Mr. Peters had previously commented that there is not a lot of science behind the 500 ft. number and that he had suggested to just say a setback. Mr. Peters clarified that for the purpose of the minutes that he indicated

that there was a discussion of setbacks, that 500 ft. is arbitrary, and to not give it a number. Supervisor Forster shared that 500 ft. is the number that he has been talking to people about and that some of the winery owners were in agreement that it is an acceptable number. Mr. Peters said that there are those that would disagree. Supervisor Axe said that we should agree that a distance needs to be rationally decided.

Discussion continued amongst the Committee and Mr. Peters about what from and to setbacks should be from a property line. Supervisor Forster said to the tasting room where the events usually take place. Mr. Peters said that typically tasting rooms do not generate the noise and that they have varying events. He stated that he does not want to broad brush every tasting room with the same setback.

Supervisor Forster asked staff for help with language using a 500 ft. setback. Mr. Beatty suggested from the property line to possibly their bonded premises. Deputy County Counsel Spitzer suggested from the noise source. Supervisor Forster asked what the noise source is. Supervisor Axe said that there might be two different types of noise sources such as tasting rooms with some sort of music and then event centers that may be further away from the tasting room and suggested that policies may have to be adapted for the two. He added that they may not need the same setback or that it might have to be in the conditions in which they can operate. Supervisor Forster stressed that he does not want to take rights away but it is a quality of life issue because rights are being taken away from adjacent property owners and trying find a happy medium. He stated that he does not want to just say setback. Mr. Beatty suggested on properties that do not comply with a 500 ft. setback due to an odd shape that a variance could be requested with some language that the varied setback is the greatest extent possible from their adjoining property lines. Deputy County Counsel Spitzer suggested setting a decibel level at the property line which could allow some flexibility in variance applications. Mr. Peters made a point that if establish a 500 ft. setback from all property lines that the smallest parcel can be 1000 ft. on each side which is a 23 acre sized parcel which will apply County wide.

Discussion ensued amongst the Committee about potential language and standards of a variance taking into account quality of life for neighbors that live around the property and property rights of those wanting tasting rooms. It was decided to put down a broad brush template of ideas to establish a setback of some sort to the noise source and if the property cannot meet the setbacks the owner can apply for a variance to the setback to mitigate the impacts on adjacent properties to the greatest extent practicable.

Jamie Lubenko asked how the source is determined and shared that Rancho Victoria is a good example with a tasting room and then a wedding venue further on the property. Deputy County Council Spitzer suggested any source that exceeds a decibel level of x.

Supervisor Forster questioned whether a variance is difficult to obtain. Mr. Beatty responded that a variance is intended to apply to unique circumstances caused by development constraints on a piece of property such as size. Deputy County Council Spitzer stated that have to meet the state requirement and whatever requirements are in the winery ordinance and that it does not seem that difficult to him. Supervisor Axe suggested to have a setback of x or a decibel level at the property line of y and commented that maybe not every property is appropriate. Mr. Peters stated that smaller properties do want tasting rooms, wonders which criteria would apply, and asked what questions to have an applicant answer. He stressed that it is not like a building setback variance. Supervisor Axe stated that it could have a different set of conditions. Mr. Peters said that we are hyper-focused on a variance and that it might not be the right tool. Deputy County Council Spitzer suggested that instead of a variance can set alternative criteria to satisfy setback component one of a number of ways. Mr. Beatty said it would simplify the requirements if there were some kind of prescriptive requirements in place if they could not meet the set back.

Supervisor Forster said for the sake of time that they will talk with staff to come up with language and come back to the public again before going before the Board of Supervisors to review what the Committee has done. Supervisor Axe asked if these changes are going to apply to new properties going forward or to anything existing. Supervisor Forster said we have not gotten to that discussion yet.

Mr. Jobson shared that at the last meeting regarding setbacks that ag parcels with by right uses that are 500 ft. or more will not have any change in the ordinance. He stated that if a setback is less than 500 ft. that reductions in frequency and hours may be appropriate to mitigate impacts on adjacent property owners. He added that there may be other criteria that need to be prescribed for this. He continued that in a rural area at night 60 decibels at the property line is loud and suggested that there be serious consideration on limitation on hours.

The Committee decided to move traffic issues onto the Public Works Committee. There were no public comments.

Supervisor Forster moved on to noise and lights. Supervisor Axe said that noise and lights tend to come with events, where they are happening, and how close they are to those impacted. He stated that it can be addressed by being far enough away or having conditions that limit that. Supervisor Forster stated that staff has indicated that noise decibels are set in the General Plan. He added that lights can be resolved if the Board of Supervisors take up the dark skies ordinance. Supervisor Axe said that Mr. Jobson had suggested that there could be a limitation of hours. Mr. Beatty said that the County ordinance would need to be changed if it is desired to change from 10:00 p.m. Ms. Lubenko shared that the impact of lights travels more than noise and believes it is the bigger issue. Supervisor Forster shared that light destroys quality of life. Ms. Lubenko said that she suggests putting in downward facing lights. Supervisor Forster shared that we are bound by state law to put in downward facing lights.

Mr. Jobson said that he has a comment on noise and traffic and shared that the existing ordinance asks for a slightly lower decibel level after 10 p.m. He shared that if it is not a by right use that you have discretion to lower noise standard if the conditions warrant such as for rock and roll music. He stated that for traffic issue if let commercial uses like events and restaurants spread out from urban areas there are going to be traffic impacts. He explained that these could be mitigated for future facilities with regulations for new commercial establishments in urban, not rural areas. Mr. Beatty explained that for A and AG zoning where both indoor and outdoor amplified music is allowed until 10 p.m. that the General Plan limits the decibel level at the property line and to most people this will be perceived as excessive.

Supervisor Axe brought up traffic on narrow roads and asked what can be done to what can do. He stated there should be restriction on events if a tasting room is not on a major collector road or in close proximity to neighbors.

Discussion began regarding compliance with ABC requirements with Supervisor Forster stating there were a lot of previous comments on this. Supervisor Axe referenced receiving letters from Jane O'Riordan and Boris Seymour. Supervisor Forster read points from a recent Foothill Conservancy letter stating there has been very weak enforcement with numerous tasting rooms violating the winery ordinance and State law. Supervisor Forster said that he understands that wineries have to have a 02 Winegrower's master license assigned to their Amador County premises to make wine in the County. Mr. Beatty added that the 02 license requires 50% of the wine sold at a tasting room to be made on site. Supervisor Forster said he needs help from those in the industry with this.

Mr. Jobson said that a number of their members are Vintners who are all competing with some of them complying with the law and some not. He shared that members feel enforcement needs to begin and some members are happy to give suggestions. He suggested maybe having a separate workshop on enforcement.

Supervisor Forster shared that the County has gotten away from just enforcement and is now more about education and compliance and maybe the first step is to identify those that are not in compliance in order to educate them, and that it is difficult to know who is not complying with the state law. Mr. Beatty said that if the zoning code was changed to include the 50% rule, violations would first will go to Planning for enforcement, and then to Code Enforcement if compliance wasn't achieved. Mr. Jobson said the Vintners have some ideas and would be happy to suggest ways that would be effective and not over burdensome on County staff.

Supervisor Forster asked if a separate workshop on compliance could be scheduled in August or September focusing on education and communication. Mr. Beatty responded that staff could set that up.

Ms. Lubenko commented to keep harvest in mind when scheduling a workshop.

Supervisor Forster asked that comments be received before the workshop.

Bailey Lubenko stressed that the AVA has not taken a solid stance on 02 license compliance, though different members have commented.

Supervisor Forster brought up by-right uses with current tasting room activities in the A and AG zones being grandfathered, and that more research is going to be done. He asked if there is an indication that those who own now would retain those rights. Deputy County Counsel Spitzer responded yes, that it is correct, and explained that if rights are removed or changed by way of ordinance that some uses would be grandfathered and for those with a Williamson Act contract that they have a contractual use. He explained that if currently allowed uses are removed, it would arguably be a breach of contract.

Supervisor Forster said if uses in the A and AG zones were grandfathered, if any future limitations could be put in place. Deputy County Counsel Spitzer said yes. Supervisor Axe asked if a use is changed going forward if it is a nonconforming use. Mr. Beatty responded that uses in the AG zone are contractually grandfathered, but in the A zone if the use has not taken place that the new rules would apply. Supervisor Axe commented that when the ordinance was originally created that no one realized how great things would turn out for the wine industry, but things have changed.

Supervisor Forster stated for sake of time, he and Supervisor Axe and staff will look at options for a revised winery ordinance, and take those to the public and then take to the Board of Supervisors for changes or modifications. Mr. Peters said he is curious why not continue to go through a public process with an audience. Supervisor Forster said the committee could come back with a template even if it does not look like the final draft. Supervisor Axe said it would be helpful if members of the public join the process.

Supervisor Forster began to discuss standard conditions for wineries with and without use permits and asked what this is on the agenda. Mr. Beatty responded that this is what is currently required and demonstrates that many of the requirements are the same for by-right tasting rooms and those processed through a use permit. He added that what gets regulated more specifically with a use permit is event frequency and attendance. Supervisor Forster asked to meet with staff to discuss events and what is a reasonable setback distance to adjoining properties. Supervisor Axe concurred.

Supervisor Forster asked to have a survey take place with AVA before the next meeting so have their input. A meeting time for the next land use discussing the winery ordinance was set for October 27th. A workshop date was set for Monday, August 15th at 2pm regarding ABC licenses.

Mr. Jobson said that he encourages the workshop to include County regulations as well ABC, State or Federal regulations. He stressed the importance of discussing food preparation facilities for catering on premise indoor or outdoor functions since some are in line with this and some are not.

Deputy County Counsel Spitzer and Mr. Beatty said there would be no grandfathering for noncompliance with ABC permits. Supervisor Forster said this could be discussed at the workshop.

Mr. Jobson shared that there are tasting rooms that are out of compliance with food preparation rules with some having full on restaurants that do not have anything to do with catering functions. He said that another issue is signage and to limit to signboards on posts.

Ms. O’Riordan said we should also discuss the definition of a winery because this is where some of the issues are. She stressed that the ABC rule is that 50% of wine needs to be made on that premise. Ms. Lubenko asked what does premise mean and clarified that 50% of the wine needs to be made at their master license location.

Supervisor Forster said we can expand the workshop and add food service. Ms. Lubenko said it would be irresponsible not to have some way to feed people. She said that Villa Toscano was allowed to exist and given an unfair advantage to their neighbors, and now those neighbors want to compete because there is no food in Plymouth. Supervisor Forster said that he understands there is a need to provide some kind of food for tasting room customers.

Supervisor Forster stated that the next Land Use Committee meeting focusing on the Winery Ordinance will be in October with a workshop on August 15th.

Supervisor Axe asked for clarification that the workshop is going to include ABC compliance, restaurants and food service, and signage.

Supervisor Forster said that it can include signage on the books now.

Mr. Jobson said that similarly sized signage is great for the future and that it would be good to address trying to bring existing wineries in compliance with it.

Mr. Jobson said that there is a definition of a winery and that it should be included with the ABC compliance discussion.

The Committee concurred that the workshop agenda would include ABC compliance, restaurants/food, and signage and be open to the public with notification sent to those on the Winery Ordinance notification list.

The meeting was adjourned at 3:55 p.m. The next regular Land Use Committee meeting is tentatively scheduled for August 25, 2022 at 2:00 p.m.