

Excerpt from the Minutes of the Planning Commission Meeting of May 16, 2019:

Item No. 3

PUBLIC HEARING to consider an appeal of the Director of Resource Management's denial of Administrative Permit Application No. AD-18-02 of **Leeanna Ellis** for an outdoor special events facility for up to 6 events per year with up to 150 attendees. The property is located at 5580 Nicholas Lane, a 31.9-acre parcel approximately 2.5 miles east of the City of Vacaville in an Exclusive Agriculture "A-40" Zoning District, APN: 0141-090-250. (Project Planner: Karen Avery) Staff Recommendation: Deny appeal and affirm the Director of Resource Management's decision of denial

Karen Avery, senior planner, provided a summary of the written staff report. The report provided the neighborhood history, administrative permits and appeal, and a detailed discussion of events. Per the letter from the Director of Resource Management, there are two reasons the administrative permit was denied. One reason being that there is not adequate access to the property and secondly, approval of the administrative permit would be inconsistent with a restraining order issued by the Superior Court. Until such time as the private road access easement is resolved and the Superior Court's restraining order is lifted or expires, the Director of Resource Management is unable to make a finding that there is adequate access to the property for the operation of a special events facility. In the absence of such a finding, the Director has no authority to approve Administration Permit No. AD-18-02.

Commissioner Hollingsworth inquired about access and wanted to know if a road would need to be constructed. Ms. Avery stated that there is an existing road called Nicholas Lane that is being used and is depicted in yellow on the map. She said the road is not built to county private road standards. Ms. Avery pointed out the easement which was depicted in red on the map, stating that there is a road maintenance agreement on that easement. Ms. Avery said in looking at its history, Nicholas Lane is being used and most driveways access that road.

Commissioner Hollingsworth asked if it was possible for someone to come in and build a road where the yellow line is depicted. Jim Laughlin, deputy county counsel, stated that if the individual could establish prescriptive rights it would go a long way toward helping their cause. They would need a judge to establish prescriptive rights in order to use that area as an easement. He stated that the county cannot recognize its existence until the court says it exists.

Commissioner Hollingsworth wanted to know what the property owner would need to accomplish to meet the standards for the 6 events per year as it pertains to the road. Ms. Avery answered by saying the road would need to be connected to a public road and be built to private road standards with a road access agreement signed by all lot owners served by that road.

Commissioner Hollingsworth referred to the fire district's comments that the road is completely inadequate and wanted to know what would have to be done to meet their requirements. Jim Laughlin stated that the fire district's comments were that the road is in such poor condition they cannot drive on it. He said the property owner would need to bring the road up to standard. He said Cal Fire sets statewide standards for roads within state responsibility areas and he believed the road standard is 20 feet wide. Mr. Laughlin noted that he did recall if this road fell within the state responsibility area.

Commissioner Rhoads-Poston said that it appears to her that step one is the applicant needs to obtain prescriptive rights for Nicholas Lane. Either that or have the restraining order lifted

from the easement to move forward in obtaining a permit. Mr. Laughlin said he did not believe the county would go as far as requiring they go to court and establish prescriptive rights for Nicholas Lane. He said the county could try to get the property owners within the neighborhood to agree to a road maintenance agreement for the existing Nicholas Lane which would comply with the zoning code.

Commissioner Rhoads-Poston commented that it almost seems the purpose of appealing the denial is moot because the applicant cannot move forward as they do not have road access. Mr. Laughlin said the applicant needs a road that is adequate for access and for which there is a road maintenance agreement. He stated that there is, to some extent, a road maintenance agreement for the easement which is highlighted in red; however, that road does not actually exist and so it is theoretical at this point.

Mr. Laughlin noted that the county does not have the leeway or discretion to waive the standards. He said that this is a use that is allowed by right but only if the objective standards can be met.

Since there were no further questions, Chairman Walker opened the public hearing.

Karen Treseler, Lewis Road, Vacaville, stated that she lives to the southwest of the Ellis property. She stated that the maintenance of Nicholas Lane is bad, so bad that the Ellis family constantly trespass across their property to reach the public roadway. She stated that she has been both a witness and a victim of the noise. Ms. Treseler said the applicant is proposing a dirt bike track which she did not believe was appropriate for this area. She said the Ellises have always pushed the boundaries of what is legal and what is a good neighbor, for example removing dirt from her property without permission. Ms. Treseler said she is concerned because unpermitted activities are already taking place on the Ellis property and she was afraid of what might happen if the proposed activity is permitted.

Several people spoke in favor of the project. Their names are as follows: Marian Smith, Lewis Road, Vacaville; Kari Comack, Pleasants Valley Road, Vacaville; and Arcelia Virelas Mendoza, Nicholas Lane, Dixon. The speakers stated that Ms. Ellis is an asset to the community and is a good neighbor, friend, and businesswoman. Two speakers stated that they have never experienced any negative impacts from the Ellis property. They believed that the events as proposed by the applicant would provide value to the neighborhood. There was agreement that Nicholas Lane did need some improvement.

Marshall Foletta, Nicholas Lane, Dixon, mentioned that he had supplied the commission with a package of information to support their opposition of the project. He stated that the access issue is a complex one. He referred to the red line on staff's area map as the easement which is currently the subject of a series of complicated lawsuits. He noted that those hearings are moving toward trial in December. He stated that his position is the easement was abandoned long ago. Mr. Foletta said they have a restraining order against Ms. Ellis' husband. He commented that it was a 6-day trial and in the end, the Judge concluded that he and his family were the subject of harassment by Mr. Ellis over a sustained two-year period. He shared testimony from a neighbor who had said that the intent of the Ellises was to pay them back because they had filed a complaint with the county and the Ellis' goal was to drive them out of their home and property and force them to close their business. Mr. Foletta stated that they did have to move out of their home for 10 months to escape the harassment and were also forced to close their business.

Marshall Foletta commented that the Ellises appealed the restraining order and the Appellant Court upheld his family's position. He stated that he did not believe it is the position of the commission to entertain a rereading of the restraining order which is very explicit. He said noise was used as a weapon and at times would reach 85 decibels. This was one of the reasons they are so sensitive to this issue and want to maintain rigid enforcement of the noise restrictions. Mr. Foletta said Ms. Ellis is trying to draw a distinction between herself and her husband. He commented that Ms. Ellis was a willing participant and when he reached out to her to try and control the situation she testified in court that at times she was the one blasting music in their direction. He said if the commission were to issue this permit under some understanding that Mr. Ellis would not be participating, he believed that would be impossible to regulate and monitor, especially in this circumstance, because the Ellises are essentially non-compliant people. Even though the county told them to shut down their business they brought it back. When the county told them that they could not build a road on the easement and issued a stop work order, they worked at night, under the cover of darkness, and built the road disregarding the stop work order.

The applicant, Leeanna Ellis, stated that she worked very hard to buy a country property and set up a wedding venue. She stated that this is an administrative permit and so it is allowed by right. She said she believes she has met all the criteria required. Ms. Ellis said that she believed the county has been biased against her. She said the Foletta family make a point to use the county as a weapon. She stated there have been no noise violations in 8 months, noting that there were only 3 instances of noise violations prior. Ms. Ellis spoke about the settlement agreement that the Foletta family entered into with the Mendoza family who live nearby. She provided the document to the commission. She stated that the agreement limited the Mendoza family to 4 large parties a year and up to 12 other parties. She believed that it is not a noise issue for Mr. and Mrs. Foletta, but a control issue. She said what is in dispute is the easement. In 1978 the original easement that runs through the Foletta property was intended to be Nicholas Lane. She said it was recorded as an easement and no prescriptive easement is necessary because it was taken as appurtenant to the deed in the 2002 road maintenance agreement. The road maintenance agreement specifically was approved by the county as an adequate road and adequate access. In 2014 the county approved a horse business next door to the Foletta property. She said that her proposed 6 events per year, in her opinion is not going to be as burdensome as the 6 trailers a day that are already approved for the horse events. She said the county is being biased against her because the county has cited Nicholas Lane as an adequate public access. Regarding the restraining order, she said the order only restricts a person, not the property. She offered to have her husband's name taken off the property deed.

Leeanna Ellis commented that if the commission is going to deny this based on the restraining order, she reiterated that she would not have a problem with taking her husband's name off the deed entirely. She said she has no problem complying with everything the county would require with respect to noise and dust. She commented that they have tried to be good neighbors with the Foletta family. She said she has been working hard with the county to try and bring her property into compliance. She said that she has been denied an electrical and fence permit due to this restraining order. She asked the commission to be fair and unbiased and grant her the same rights that other people have been granted. She said not only has the county approved a permit for the Foletta family on Nicholas Lane but have also approved a permit for the Fielding property which is also on Nicholas Lane. She said if the commission is going to deny her permit, she requested they deny it with the stipulation to fix the road and clear up the restraining order because those are things that are under her control.

Since there were no further speakers, Chairman Walker closed the public hearing.

Commissioner Cayler stated that one of her concerns is the condition of the road. She said if the fire district has issue with it then the commission should respect their decision. She said having that many events over the course of a year will bring a good number of attendees and sooner or later a medical emergency could arise that would require first responders. She said she certainly would not want to be a passenger in an ambulance having to travel over potholes on a road that has not been maintained to the point where even the fire trucks are hesitant to travel. Commissioner Cayler said that she drove by the property earlier in the day and it appeared to her that it is not something that is viable at this time. She said she appreciated the idea of a wedding venue but said the county needs to be cognizant of the folks who would be attending those events.

Commissioner Rhoads-Poston stated that this is not something she would be able to support at this time. She felt the point of the appeal to be moot until the issues with the road restriction and the active restraining order have been resolved. She said the commission cannot approve a project on the assumption that the outstanding issues will be fixed. She thought it to be unfortunate that the neighbors cannot find a common ground and hoped that they could work together and sign a maintenance agreement which would be a step in the right direction. She commented that removing Mr. Ellis from the deed would not mean that he would no longer reside on the property.

Commissioner Hollingsworth asked if the commission could continue this matter to a later date to allow time for the applicant to settle these issues. Bill Emlen, director, stated that the best course of action is to deny the appeal. He noted that the applicant can refile once their issues are resolved. Jim Laughlin agreed that this would be the best approach since the commission is not asking for specific information to be brought back by the applicant. He said it would be better to deny the application and let the property owner bring back their proposal when they are ready.

Commissioner Bauer stated that she agreed the commission needs to deny the permit for the reasons already discussed that deal with the road and the restraining order.

Chairman Walker said it would not be within the purview of the planning commission to intimate that the applicant should remove her husband from title or require him to vacate the premises. He stated that the commission must operate with the information and the knowledge they currently have. Chairman Walker said however he is sympathetic to the inconsistent application of the roadway standards because Ms. Ellis is correct, there have been three other permits that have been authorized for the three adjoining neighbors, and she is not being held exactly to the same standards. Chairman Walker said that for him, the restraining order is the primarily issue. He told Ms. Ellis if she wanted to pursue a different avenue with respect to when the restraining order is no longer being enforced, then the commission would most likely be amenable to a different conversation at that time, but at this time he would not be able to support the appeal.

A motion was made by Commissioner Rhoads-Poston and seconded by Commissioner Bauer to deny the appeal and affirm the Director of Resource Management's decision denying Administrative Permit Application No. AD-18-02. The motion passed unanimously. (Resolution No. 4673)