



AGRICULTURAL COMMISSION

PC 12/11/08
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311 Fair Lane
Placerville, CA 95667
(530) 621-5520
(530) 626-4756 FAX
eldcag@co.el-dorado.ca.us

Greg Boeger, Chair – Agricultural Processing Industry
Lloyd Walker, Vice-chair – Other Agricultural Interests
Chuck Bacchi – Livestock Industry
Bill Draper, Forestry /Related Industries
Tom Heflin – Fruit and Nut Farming Industry
David Pratt – Fruit and Nut Farming Industry
Gary Ward, Livestock Industry

MEMORANDUM

DATE: November 25, 2008
TO: Roger Trout, Development Services Director
FROM: Greg Boeger, Chair *GB*
SUBJECT: DRAFT WINERY ORDINANCE

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PLANNING DEPARTMENT
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During the Agricultural Commission’s Special Meeting held on November 5, 2008, the following discussion and motion occurred regarding the Draft Winery Ordinance:

Bill Stephans gave a brief review of past discussions regarding the Winery Ordinance. At the October 8, 2008 Agricultural Commission meeting staff was directed to schedule a Special Meeting for further discussion of this topic. The date of November 5, 2008, allowed time for the draft to be reviewed by the El Dorado Winery Association and the Fairplay Winery Association. At the last Agricultural Commission meeting, only minor issues were identified. The Winery Ordinance will be heard at the Planning Commission again on November 13, 2008, and the next meeting of the Agricultural Commission will be November 12, 2008. If the public or the Ag Commission requests any amendments at this meeting, they will be incorporated into a letter that will be submitted to the Planning Commission.

Roger Trout stated that Planning also gave a brief update to the Board of Supervisors on October 21, 2008. There were only a couple minor changes requested at this meeting which will be incorporated into the Winery Ordinance. He stated that he would like to officially incorporate the color matrix into the Winery Ordinance, replacing section B.2 with the matrix as it is easier to read and does not change the intent of the document.

Several Commission members complimented Roger Trout on the easier to read drafted Winery Ordinance and his work on the project.

Chair Boeger opened the meeting to public comment.

Paul Bush, representing the El Dorado Winery Association, stated that during their meeting on November 3, 2008 after discussion and going through the draft Winery Ordinance again, the members present, voted their unanimous support. This association believes that although it is not a perfect document, it is a reasonable compromise for continued growth of agriculture and wineries in El Dorado County. Paul Bush personally thinks that Section B is very clear and well-written. He requests that both the written Section B and the color matrix be included in the document.

John Smith, representing the Fairplay Winery Association, stated that they also met on November 3, 2008 to consider the ordinance. During the association’s discussions many misconceptions were

clarified especially regarding marketing events. At the end of this discussion, the association

clarified especially regarding marketing events. At the end of this discussion, the association members present voted unanimously to support the draft Winery Ordinance.

Bill Snodgrass gave a brief history of the Winery Ordinance, saying the process began in January, 2001, to aid the growing wine industry in El Dorado County. He stated that from the beginning, the purpose of the ordinance was drafted not to allow for more activities, only to make the requirements more restrictive and clear. He complimented Bill Stephans, and the Agriculture and Wine Industries for the pro-active work that has been done.

Valerie Zentner had comments regarding the proposed mitigation measures in the initial study. She referred to Appendix D, the criteria used for wineries that are visible from a county maintained road. The aesthetics values might be of concern if built along a scenic corridor and the design should not be overly restrictive when it is *not* built in a scenic corridor, which has other, higher values. She spoke of biological resources that may be restricting winery and vineyard uses in Important Biological Corridors. The Plant and Wildlife Technical Advisory Committee and the Stakeholders Advisory Committee will be developing the Integrated Natural Resources Management Plan to better define important biological corridors and how to apply these policies in the General Plan. Ms. Zentner said she is not suggesting that there will not be an impact, but it may be premature to apply these restrictions on any private property use in the Important Biological Corridors. Limiting property uses must be based on sound science. She requested that this be deferred until the INRMP committee has developed a process with science to back it up.

Roger Trout replied that the proposed aesthetics mitigation measures were under situations where there were larger wineries exceeding 10,000 square feet of floor area visible from a county maintained road. This mitigation measure was based on an analysis of the potential for having an unknown number of larger facilities going into the wrong place, at the wrong time. The 10,000 square foot number sounded reasonable, so there may be some flexibility to further clarify the mitigation measure as long as it maintains the same intent. It was hoped to reach an easy, enforceable threshold so if a winery were to be built under 10,000 square feet in view of a public road, it would be allowed without going through a design review process.

In response to Valerie Zentner's comments regarding Biological Resources in the General Plan, Roger Trout stated that the Important Biological Corridors (IBC's) policy required additional land use limitations for development projects. Some of the tools to do this are increasing permit requirements, increasing tree retention or increasing stream setbacks. Using these concepts in the initial study as potential mitigation measures for wineries in the IBC's again allows the Board flexibility to adopt an ordinance through an MND. As far as he is aware, not many of IBC's overlap Ag areas, but there are a few. It is in those circumstances where these additional biological resource issues may require further mitigation.

The Commission asked if the IBC policy would treat new projects differently than existing projects. Roger Trout replied that the same grandfathering rule would apply. The language would read that if a proposed project was located in an IBC, then additional mitigation would be required either through the CEQA process or through a Conditional Use Permit. It would not be a "By Right" condition.

The Commission asked about the minimum lot size of 20 acres and the maximum of 2.5 acres. If an individual owned 200 acres would it still be a maximum of 2.5 acres for winery buildings and accessory uses? Roger Trout stated that yes, 2.5 acres is the maximum allowable acreage for any parcel size without a use permit.

Art Marinaccio, referring to the first column in the color matrix showing the allowance of projects over 20 acres outside of the Ag districts, basically feels that anytime you have any of these types of uses that are in residentially zoned areas a Use Permit is appropriate, at least a minor Use Permit that addresses the noise. The idea that somebody could have a 40 or 50 acre piece of land in the middle of

five acre residential parcels and have concerts By Right without a Use Permit does not make sense and needs to be dealt with somewhere in this process. He also feels that the new zoning codes will not fix this problem. He disagreed that the ordinance should be held up due to biological issues such as the IBC's, stating that there is no other way to read the General Plan. Policy 7.4.1.6 in the General Plan specifically requires all development projects involving discretionary review be designed to avoid disturbance or fragmentation of important habitats.

Bill Stephans stated that the draft ordinance does address Mr. Marinaccio's statements in regards to putting in a winery adjacent to residential properties. Section D.2 specifically requires a use permit when a winery is proposed adjacent to MFR, HDR, MDR and LDR land use designations.

Bob Leidigh spoke about how he received his Special Use Permit. He asked Planning staff about micro-wineries and the purpose of the draft ordinance section. He asked if he would migrate into that class overtime or was this section added only for future wineries. Roger Trout answered that it would apply to future wineries. Bob Leidigh referred to section D.10 (c) specifically not including electronic, fax and phone orders for wine. He feels that those types of sales ought to be clearly permitted and the current language does not appear to allow these types of sales. Although it permit's a micro-winery on five acres where there is a sufficient amount of crop land and grapes, the setbacks in E2 seem to make this very difficult if the micro-winery is outside a general Plan Ag District, then there is a minimum requirement of 200 feet. He explained that he has 200 feet to the east, west, and north but not on the south side. It is very hard to get 200 feet in all directions on a five acre parcel. He also mentioned that there are a couple provisions in the development standards that should not be applied to micro-wineries but as the ordinance is structured it could be interpreted in that way.

Roger Trout stated that electronic, fax and phone orders are allowed and that they will be added to the ordinance. The main concerns with a micro-winery are to not allow direct sales/tasting on site. The concern regarding development standards applying to micro-wineries was addressed in Section E.0. The Development Standards section state that these standards are the minimum requirements for all wineries and accessory uses in Section C which exempts the D section (micro-wineries).

Bob Leidigh acknowledged this point of clarification and suggested a clarification be included regarding Building Size in Table A, by moving it to the micro-winery section and removing it from Table E. It is his hope that other micro-winery owners, like himself, might be able to migrate into this, and overtime there would not be any, home-occupation situations. He has concerns for those who may follow in his footsteps, under this new ordinance with regards to those provisions.

Chris Alarcon spoke in regards to building size. He suggested that a straight ratio of land size to building size would eliminate the stepped approach listed in the table.

Valerie Zentner reminded the Commission of General Plan Policy 7.4.2.9 regarding Land Use and Important Biological Corridors. It states that "restrictions will not apply to the extent that the Agricultural practices do not interfere with the purposes of the IBC overlay." She feels that this has not yet occurred and may be a product of the IMRMP process. She disagrees that the IBC's do not occur in Ag areas. There are also exemption entitlements in the General Plan language that have not been incorporated.

The Commission asked if anything had been added to the Winery Ordinance regarding an economic analysis of the impacts of the ordinance.

Roger Trout said that General Plan Policy 10.1.2.5 speaks about the effect on business, with statements on economic effects and taking implications. After hearing all the comments, he would like the ordinance to contain the continued allowance for wineries to operate and grow. This ordinance will be more restrictive than the current ordinance, but with two winery associations giving

their approval, he feels he can make the statement that there will be no significant economic impacts to winery development in the county.

Dave Pratt agreed that the ordinance is more restrictive and because of that, it will have an impact because of these additional restrictions.

Roger Trout said that this ordinance is more restrictive in some areas but now there are clearer uses allowed by right. The smaller wineries, the simpler business plans, are allowed by right in particular zones that are clearly identified, with larger wineries and wineries in the other zones that simply apply for a use permit, they are not prohibited. The use permit process does have an economic impact side to it although once a use permit is granted, more surety is granted for the project which runs with the parcels, making the parcel more valuable. In his opinion, use permits for proposed larger facilities will not be a deterrent to developing wineries or winery operations. The reverse of this ordinance is to have an ordinance that requires a use permit for everything but that approach may not be as palatable. Dave Pratt feels that the draft Winery Ordinance is more restrictive than those in other counties, so in his opinion there has to be an economic impact. His concern is that if someone wanted to build a winery in El Dorado County these restrictions might deter them and force them to other counties which may be more appealing through their less restrictive ordinances.

Roger Trout said that he planned to articulate this impact but the point is that it is a General Plan Policy and he is required to demonstrate consistency with the policy. If the Commission feels this ordinance will have a negative impact on the industry, then this ordinance would not be consistent with the General Plan. He believes those types of economic impacts from this ordinance are pure speculation. In his experience, the cost of the land would be a primary reason for choosing to build somewhere other than El Dorado County, not the restrictions in the ordinance.

Dave Pratt expressed another concern regarding the existing vineyard operations that are outside of Ag Districts. If they were allowed to do some things By Right under the old ordinance for the past 10-15 years, or are zoned RE, they are impacted by the ordinance in some way. With the outcome of the new zoning ordinance, which will be defined at a future point, there should be some form of amnesty program that should be associated to help those operators that may have been impacted by this. His feeling is there are at least 40% of the vineyard operators outside of the Ag Districts, such as in the Garden Valley Divide area. If someone has invested into a vineyard operation and wishes to go into the wine business, or sell to someone who wants to go into this type of business, (internal growth – not all new development) by being outside an Ag District, if they were not zoned AE, PA or SA they would be forced into a use permit process. He feels there would be an impact on these types of vineyard operations.

Roger Trout replied that when those questions are asked, Planning staff gives the applicants their options. They can go through the use permit process, rezone their property or they can add to their property to increase the acreage. There are multiply options under the old and new draft Winery Ordinances. In his opinion, there will not be a significant change yet there are fine-tuned provisions to require Special Use Permits. He feels there is no profound flaw in the ordinance or the necessary findings that need to be made under the Economic Element of the General Plan that this ordinance is somehow detrimental to the industry. If all that needs to be done is a rezone, or a use permit, this is not a significant burden to get project proponents to where they want to go. This ordinance makes it easier to rezone to Agriculture because there have been parameters placed on the uses that are not in the current ordinance.

Chair Boeger asked for any further recommendations or motions from the Commission.

Roger Trout suggested that he and Bill Stephans meet and put together the few changes that need to be added to the ordinance before the November 12, 2008 meeting of the Agricultural

Commission. At that time, if the Commission agrees with the amendments, the Commission can give their final approval. They could then be taken to the Planning Commission meeting on the following day, November 13, 2008.

The Commission noted the following changes to be made:

- o The Color Matrix be added to the ordinance and retain section B2
- o The maximum micro-winery size be removed from Table A and moved to Section D
- o Phone, fax, telecommunication devices (electronic orders) be added to the section D.10.c
- o Section D5 – change 5 acres to one acre and add “fruit crops”

Roger Trout added the following:

- o Add “special” in front of events in section D.7.
- o E5(a) – change fire department to fire districts

Chair Boeger mentioned an email received from Dave Bolster regarding “other fruit wines.”

Roger Trout said that he was not clear what this addition would do to the CEQA analysis. It may be a minor change but at this time it has not been analyzed. He feels that if this draft Winery Ordinance is adopted there might still be some changes that will be addressed within the next six months with this change being included.

It was moved by Mr. Pratt and seconded by Mr. Walker to make the suggested changes and bring the draft Winery Ordinance back for approval at the November 12, 2008 meeting of the Agricultural Commission.

Motion passed.

AYES: Bacchi, Pratt, Heflin, Walker, Ward, Boeger
NOES: None
ABSENT: Draper

If you have any questions regarding the Agricultural Commission’s actions, please contact the Agriculture Department at (530) 621-5520.

GB:na

cc: Char Tim, Clerk to the Planning Commission