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Sonoma County Planning Commission Hearing

The WCTA project is the product of an extraordinary 1999 land use decision by the Sonoma County Board of Supervisors.

Historically, the parcel at issue was pasture and wetland in a rural a residential area. To the immediate north and west there are homes and farms in a rural residential area.

By a 3-2 vote the Board of Supervisors granted the WCTA a zoning change and a use permit to allow "a school bus storage yard," which is essentially an industrial use next to preexisting homes in a rural residential area.

57 lengthy and very detailed conditions have been imposed regarding nearly every aspect of the project. Their primary focus is to protect the environment and the rural residential character of the neighborhood.

The 1999 Conditions and the Sonoma County Code require the Planning Commission to wear two hats:

1. A quasi-judicial hat requires enforcing the 57 conditions as intended by the Board of Supervisors in 1999 without discretion.

2. A discretionary hat that requires imposing additional new conditions to protect the rural “character” of the neighborhood and the “desirability of investment or occupation in the neighborhood.”

The quasi-judicial hat requires ascertaining the Board of Supervisors intent in 1999 from the ordinary meaning of the language in the 57 conditions. The California Supreme Court instructs:

"Our role in construing a statute is to ascertain the Legislature's intent so as to effectuate the purpose of the law. In determining intent, we look first to the words of the statute, giving the language its usual, ordinary meaning. If there is no ambiguity in the language, we presume the Legislature meant what it said, and the plain meaning of the statute governs." See *Hunt v. Superior Court (1999) 21 Cal.4th 984, 1000* (Emphasis added.)

The quasi-judicial hat also requires not reading a condition out of context if ambiguity requires interpretation. The California Supreme Court instructs:

"do not construe statutes in isolation, but rather read every statute 'with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.' "
Berkeley Hillside Pres. v. City of Berkeley 60 Cal.4th 1086, 1099 (Cal. 2015) citing *Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unified Sch. Dist*. (1978) 21 Cal.3d 650, 659.

The discretionary hat requires that the planning commission to use its discretion to impose additional conditions to preserve the rural character of the neighborhood.

Section Sec. 26-82-050 of the Sonoma County Code explains the design review requirement:

"The committee, or other applicable decision-making body as the case may be, shall endeavor to provide that the architectural and general appearance of buildings or structures and **grounds are in keeping with the character of the neighborhood** and are not detrimental to the orderly and harmonious development of the county and do not impair **the desirability of investment or occupation in the neighborhood."** (Emphasis added.)

Before the WCTA project began in 1999 the lot at issue was **pasture and wetland** in a rural residential area. It continued to be pasture and wetland until it was bulldozed last year. I t borders homes to the north and west in a rural residential zone.

1. Pursuant to condition 57, the WCTA use permit should be revoked for egregious noncompliance with the 1999 conditions and utter disregard of the land use process.

Condition 30 requires that, "All development shall be according to the approved plans and application." The WCTA has rushed ahead of the design review process to build its school bus storage yard without valid permits. It has been subject to a **correction notice** and **two stop work order**s as a result. It installed **tons of soil, gravel, curbs and a fence, knowing that they are all issues that have been raised as part of the design review process and are subject this appeal**. Allowing this disregard of the law with impunity only encourages more of the same. So far no penalties have been imposed..

The WCTA has also failed to record an **open space easement** for wetland mitigation as required by condition 40 and discussed in issue 3 below.

Condition 57 reads:

"57. This permit shall be subject to revocation or modification by the Board of Zoning Adjustments if: (a) the Board finds that there has been noncompliance with any of the conditions or (b) the Board finds that the use for which this permit is hereby granted constitutes a nuisance. Any such revocation shall be preceded by a public hearing noticed and heard pursuant to Section 26-465.1 and 26-465.2 of the Sonoma County Code. Sec. 26-92-130. "

2. Pursuant to Section 26-92-130 of the Sonoma County Code, the use permit for the western parcel is "automatically void and of no further effect" because it "has not been used within two (2) years." The western parcel has a different use, different conditions, different zoning, and is physically separate from the two eastern parcels.

"Section 26-92-130. - Revocation for failure to use or for abandonment of use.

In any case where a zoning permit, **use permit**, design review approval or variance permit **has not been used within two (2) years** after the date of the granting thereof or for such additional period as may be specified in the permit, such permit shall become **automatically void and of no further eff**ect, provided, however, that upon written request by the applicant and payment of applicable fees prior to the expiration of the two-year period, the permit approval may be extended for not more than one (1) year by the planning director subject to public notice and opportunity for hearing before the authority which granted the original permit." (Emphasis added)

3. Because no open space easement was ever recorded as required for wetland mitigation, the western acer should be restored to wetlands pursuant to condition 40.

"40. **The westerly portion (one acre) of APN 134-074-022 shall be permanently set aside for wetlands mitigation and an open space easement shall be recorded over it.** If an alternative wetlands mitigation site is found at **a later date** that is recommend by the State Department of Fish and Game and approved by the County Permit and Resource Management Department, the applicant may apply to rescind the open space easement over APN 134-074-022 after a new open space easement has been applied over the alternative site. Wetland areas to be disturbed on the eastern portion of the parcel shall be mitigated through creation of at least an equal amount of new wetland area in the set aside area. Alternately, the applicant shall purchase an equal value of Wetlands Mitigation Bank Credits. All applicable U.S. Army Corps of Engineers and Fish and Game permits shall be obtained prior to disturbance of any wetland area." (Emphasis added.)

4. Employee parking violates the permitted use of “a school bus storage yard” as stated in the 1999 conditions pursuant to condition 31.

Section 26C-183(g) of the Sonoma County Code specifically requires a **use permit** for **“parking lots”** in a **Public Facilities district**.

Condition 31 granted the permitted a use permit for “**a school bus storage yard**” and not for “**an employee parking lot.”** Because there is no ambiguity in the language, no interpretation is allowed and the Board of Supervisors **intent in 1999** must be **presumed** from the **“usual, ordinary meaning”** of the language.

Even if there were ambiguity that required interpretation, the **surrounding conditions are very detailed and refer to buses and not to employee parking.** For example condition 31 limiting activity on the western parcel, condition 37 regarding paving, and condition 42 regarding landscape screening all refer only to buses and not to employee parking.

Moreover, having employees park on the street in an industrial area, as they have been doing for the past twenty years, is preferable to having them park next to homes in a rural residential area.

Additionally, the approved plan from 2000, shows employee parking on the eastern two parcels and not on the western parcel. It is good evidence of the Board of Supervisors intent and how condition 31 was understood in 1999.

4. The WCTA argument that the 80-vechile limit on the western parcel implies that the Board of Supervisors intended parking for vehicles other than buses on the parcel is illogical.

If the "80-vechicle limit" was instead worded as "80-bus limit" the WCTA would be arguing that it could put an unlimited number of vehicles other than busses on the western parcel.

The permitted use is a **"school bus storage yard."** An "employee parking lot" is a different use for which a use permit is required in a public facilities zone.

There is no **"ambiguity"** in the **"usual ordinary meaning"** of the words **"school bus storage yard."** An ordinary person on the street knows what these words mean."

"If there is no ambiguity in the language, we presume the Legislature meant what it said, and the plain meaning of the statute governs." See *Hunt v. Superior Court, supra.*

Even if there was ambiguity the permitted use, the 110-bus limit, and the 80—vehicle limit are all in harmony based on their **"usual ordinary meaning."** They all reinforce each other and were intended to help preserve the **rural character** of the neighborhood by limiting the intensity of use.

5. The proposed project violates the 110-bus limit for all three WCTA parcels pursuant to condition 32.

Existing striping on the western two lots is sized for 51 spaces for 40-foot buses and 24 spaces for 20-foot buses-- or 75 buses total.

The photo to the left is the front half of the existing WCTA facility. The WCTA has submitted an updated site plan that does not count the 24 spaces striped for 20-foot busses shown toward the top of the photo or the 11 spaces striped for 40-foot busses shown at the bottom of the photo. These spaces should be counted.

The WCTA should be limited to 35 new bus spaces because 75 + 35 = 110.

6. The proposed project violates the 80-vechicle limit on the western parcel pursuant to condition 32 because "80 vehicles" means "80 vehicles" and not "160 vehicles".

If the Board of Supervisors had intended a bizarre arrangement of 160 rotating cars and busses, it would have **said so expressly** and imposed length and detailed conditions regarding how the rotation would work. It wrote 17 pages with **57 extremely detailed conditions** about every other aspect of the project.

None of the 57 conditions refer to employee parking on the western parcel. They refer only to busses on the western parcel e.g. condition 31 limiting activity on the western parcel, condition 37 regarding paving, and condition 42 regarding screening.

The WCTA argument renders the 80-vechicle limit completely impractical and unenforceable, especially because bus drivers will constantly be coming and going **due to field trips and split shifts**.

7. The proposed project violates the 1999 Board of Supervisors' lighting restrictions pursuant to condition 46, which require that security lights be "located at the periphery of the property and not as flood lights."

Condition 46 states:

46. **An exterior security lighting plan** shall be submitted to the Permit and Resource Management Department for review and approval. Exterior lighting shall be internal only and not "wash out" onto adjacent properties nor be a source of glare onto adjacent streets. Generally, fixtures should accept sodium vapor lamps and lighting **should be located at the periphery of the property and not as flood lights.** The lighting shall be installed in accordance with the approved lighting plan during the construction phase. (Emphasis added.)

8. The proposed berm, set back, and landscaping do not meet condition 42, which requires that "the berm and setback area shall contain a dense evergreen landscape screening, which shall shield the buses from view" and that this screening shall be in place before the bus storage yard is used.

The berm is too steep and narrow to effectively grow trees to create the required screen. It is currently a 2:1 slope with a two-foot wide top. It looks like a strip mine or a shooting range. Don Mc Nair explained that it is difficult to grow trees on a slope greater than 3:1

The berm should be redesigned so that it looks more natural and is appropriate for growing trees to create a screen, which is the whole point of the berm.

Much larger trees are required or the screen will not be effective for years to come if ever. The required screen must be in place before the bus storage yard can be used. 20-year old redwood trees similar to the ones bulldozed by the WCTA should be used.

9. The WCTA drainage / erosion plan required by condition 42 is totally inadequate as demonstrated by the recent storms.

10. The chain link fence to the north and to the west violates condition 42 and must be removed.

Condition 42 states in part:

"The berm and setback area **shall contain a dense evergreen landscape** screening which shall shield the buses from view in those directions. **A chain link fence with slats** or other view blocking fence design at least 6 feet in height **shall surround all other areas** that are not shielded by the berm."

An industrial looking fence with plastic slats is not appropriate in a rural residential area and defeats the purpose of having "a dense evergreen landscape screening."

At the design review hearing, the WCTA offered to put the fence inside the berm. Security was not a concern then and should not be a concern now.

11. EV charging should be prohibited pursuant to condition 31 which prohibits “refueling activities” on the western parcel.

Condition 31 prohibits “refueling activities” on the western parcel. EV charging stations often create a humming noise. The purpose of conditions 31 was to limit activity on the western parcel as much as possible to protect the rural character of the neighborhood for the surrounding homes.

12. The Planning Commission should use its discretion to prevent noise from the bus storage yard from destroying the rural character of the neighborhood. The 1999 conditions assume that there will be no split shifts. New conditions should require:

(1) a layout that does not require backing up like the layout in the plan that was approved for the eastern parcels in 2000;

(2) the use of backup cameras instead of backup beepers to the extent allowed by law, and

(3) a time-controlled gate that prevents the bus storage yard from being used for split shifts.

The CEQA review from 1999 cannot be relied upon because substantial changes are proposed in the project and substantial changes have occurred with respect to the circumstances under which the project is being undertaken.

Ca. Pub. Res. Code § 2116 - Subsequent or supplemental report required

When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.

(b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.

(c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

New CEQA review is also required because Sonoma County's design review process gives the Planning Commission discretion to impose additional conditions to preserve the environment and because condition 57 gives the Planning Commission discretion to revoke the use permit for noncompliance with any of the 57 conditions.

"CEQA applies only to "*discretionary* projects proposed to be carried out or approved by public agencies ...." (*Pub. Res. Code sec 2108*0) italics added.) A "discretionary project" is defined as one "which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations." (Guidelines, § 15357.) The "touchstone" for determining whether an agency is required to prepare an EIR is whether the agency could meaningfully address any environmental concerns that might be identified in the EIR. McCorkle Eastside Neighborhood Group v. City of St. Helena (2018) 31 Cal.App.5th 80, 242 Cal.Rptr.3d 379.