

**From:** [John A. Henning, Jr.](#)  
**To:** [Scott Orr](#); [Luke Bowman](#)  
**Cc:** [Hannah Spencer](#); [Cecily Condon](#); [Marina Herrera](#); [Jennifer Klein](#)  
**Subject:** RE: Appeal for DRC  
**Date:** Tuesday, June 1, 2021 8:34:35 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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Mr. Orr –

Thank you. Pursuant to your instructions we will be submitting the appeal letter to Ms. Herrera momentarily and shortly thereafter we will pay the fee online.

Best,

John Henning

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John A. Henning, Jr.  
Attorney at Law  
125 N. Sweetzer Ave. Unit 202  
Los Angeles, CA 90048

Ph. (323) 655-6171  
Fax (323) 655-6109  
[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)

---

**From:** Scott Orr [<mailto:Scott.Orr@sonoma-county.org>]  
**Sent:** Friday, May 28, 2021 9:32 AM  
**To:** 'John A. Henning, Jr.'; Luke Bowman  
**Cc:** Hannah Spencer; Cecily Condon; Marina Herrera; Jennifer Klein  
**Subject:** Appeal for DRC  
**Importance:** High

Mr Henning, since it does not appear likely that we will find a resolution today I am forwarding you instructions on how to file an appeal. We will, if necessary, refund the full amount after coming to consensus on the applicability of the appeal at hand. Alternatively, should you wish to appeal the Board of Zoning Adjustments decision we will be able to transfer the funds in our system provided that we have an updated basis for the appeal after the BZA decision.

Please find the appeal invoice and instructions on how to make a payment online attached. Payments can be made using our citizens access webpage linked [here](#), click 'Pay Fees' and follow the

instructions on the attached.

A written letter of appeal and appeal fee must be submitted to PRMD this can be sent directly to Marina. The letter should state the project file number and address, name and contact information of the appellant, and ***specific reason(s) for the appeal.***

**Scott Orr**

Deputy Director of Planning

[www.PermitSonoma.org](http://www.PermitSonoma.org)

County of Sonoma

Planning Division

2550 Ventura Avenue, Santa Rosa, CA 95403

Direct: 707-565-1754 | Office: 707-565-1900



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**From:** [John A. Henning, Jr.](#)  
**To:** [Marina Herrera](#)  
**Cc:** [Debra DiBetta](#); [Scott Orr](#); [Luke Bowman](#); [Hannah Spencer](#); [Cecily Condon](#); [Marina Herrera](#); [Jennifer Klein](#)  
**Subject:** APPEAL re Case No. UPE-19-0083 (cell tower at 4515 Santa Rosa Ave., Santa Rosa) (Design Review Committee hearing May 19, 2021)  
**Date:** Tuesday, June 1, 2021 8:43:32 AM  
**Attachments:** [Letter Henning to Herrera re UPE-19-0083 4515 Santa Rosa 06-01-2021.pdf](#)

---

Ms. Herrera –

Please see the attached letter re the above-referenced appeal. To ensure timely receipt by the County we have copied Ms. DiBetta, Mr. Orr, Mr. Bowman and several others who have been copied on recent correspondence about this appeal.

We will now proceed to pay the filing fee online pursuant to Mr. Orr's instructions in his email to me of May 28, 2021.

I would appreciate your replying to confirm that you have received this letter and that the appeal fee has been paid.

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John Henning

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**Subject:** RE: APPEAL re Case No. UPE-19-0083 (cell tower at 4515 Santa Rosa Ave., Santa Rosa) (Design Review Committee hearing May 19, 2021)  
**Date:** Tuesday, June 1, 2021 9:07:05 AM

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**To:** [Marina.Herrera@sonoma-county.org](mailto:Marina.Herrera@sonoma-county.org)  
**Cc:** Debra DiBetta ([DDiBetta@sbsite.com](mailto:DDiBetta@sbsite.com)); 'Scott Orr'; 'Luke Bowman'; 'Hannah Spencer'; 'Cecily Condon'; 'Marina Herrera'; 'Jennifer Klein'  
**Subject:** APPEAL re Case No. UPE-19-0083 (cell tower at 4515 Santa Rosa Ave., Santa Rosa) (Design

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**Cc:** [Debra DiBetta](#); [Luke Bowman](#); [Hannah Spencer](#); [Cecily Condon](#); [Jennifer Klein](#); [Rebecca Mateja](#)  
**Subject:** RE: APPEAL re Case No. UPE-19-0083 (cell tower at 4515 Santa Rosa Ave., Santa Rosa) (Design Review Committee hearing May 19, 2021)  
**Date:** Tuesday, June 1, 2021 10:12:06 AM

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Mr. Henning,

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As you are having difficulty paying this fee online, please contact Rebecca Mateja ([Rebecca.Mateja@sonoma-county.org](mailto:Rebecca.Mateja@sonoma-county.org)) her phone number is (707) 565-3944 and she has been cc'ed on this email thread. I have notified her that you will be contacting her to make this payment.

*Marina Herrera*

Planner III

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County of Sonoma

2550 Ventura Avenue, Santa Rosa, CA 95403

Direct: 707-565-2397 |

Office: 707-565-1900 | Fax: 707-565-1103

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**Sent:** Tuesday, June 1, 2021 9:06 AM

**To:** Marina Herrera <Marina.Herrera@sonoma-county.org>; Scott Orr <Scott.Orr@sonoma-county.org>

**Cc:** Debra DiBetta <DDiBetta@sbsite.com>; Luke Bowman <Luke.Bowman@sonoma-county.org>; Hannah Spencer <Hannah.Spencer@sonoma-county.org>; Cecily Condon <Cecily.Condon@sonoma-county.org>; Marina Herrera <Marina.Herrera@sonoma-county.org>; Jennifer Klein <Jennifer.Klein@sonoma-county.org>

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**Sent:** Tuesday, June 01, 2021 8:43 AM  
**To:** [Marina.Herrera@sonoma-county.org](mailto:Marina.Herrera@sonoma-county.org)  
**Cc:** Debra DiBetta ([DDiBetta@sbsite.com](mailto:DDiBetta@sbsite.com)); 'Scott Orr'; 'Luke Bowman'; 'Hannah Spencer'; 'Cecily Condon'; 'Marina Herrera'; 'Jennifer Klein'  
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**Subject:** RE: APPEAL re Case No. UPE-19-0083 (cell tower at 4515 Santa Rosa Ave., Santa Rosa) (Design Review Committee hearing May 19, 2021)  
**Date:** Tuesday, June 1, 2021 2:02:28 PM

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Ms. Herrera –

I left a voice mail for Ms. Mateja this afternoon at about 1:45 p.m., and emailed her as well (and copied you). It is now 2:00 p.m. and I haven't heard back from her yet. It is not possible to pay this fee online because your system (as confirmed by the instructions that Mr. Orr sent me) does not accept partial payments of the balance owed on a permit. I will await hearing from Ms. Mateja this afternoon. Anything you can do to encourage her or someone else to contact me promptly about this would be helpful. I am not in the office so the best number to reach me on is my cell, which is 323 252 4650.

Best,

John

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**From:** Marina Herrera [<mailto:Marina.Herrera@sonoma-county.org>]  
**Sent:** Tuesday, June 01, 2021 10:12 AM  
**To:** 'John A. Henning, Jr.'; Scott Orr  
**Cc:** Debra DiBetta; Luke Bowman; Hannah Spencer; Cecily Condon; Jennifer Klein; Rebecca Mateja  
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*Marina Herrera*

Planner III

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**Sent:** Tuesday, June 1, 2021 9:06 AM

**To:** Marina Herrera <Marina.Herrera@sonoma-county.org>; Scott Orr <Scott.Orr@sonoma-county.org>

**Cc:** Debra DiBetta <DDiBetta@sbsite.com>; Luke Bowman <Luke.Bowman@sonoma-county.org>; Hannah Spencer <Hannah.Spencer@sonoma-county.org>; Cecily Condon <Cecily.Condon@sonoma-county.org>; Marina Herrera <Marina.Herrera@sonoma-county.org>; Jennifer Klein <Jennifer.Klein@sonoma-county.org>

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**Sent:** Tuesday, June 01, 2021 8:43 AM  
**To:** [Marina.Herrera@sonoma-county.org](mailto:Marina.Herrera@sonoma-county.org)  
**Cc:** Debra DiBetta ([DDiBetta@sbsite.com](mailto:DDiBetta@sbsite.com)); 'Scott Orr'; 'Luke Bowman'; 'Hannah Spencer'; 'Cecily Condon'; 'Marina Herrera'; 'Jennifer Klein'  
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**Subject:** RE: APPEAL re Case No. UPE-19-0083 (cell tower at 4515 Santa Rosa Ave., Santa Rosa) (Design Review Committee hearing May 19, 2021)  
**Date:** Tuesday, June 1, 2021 4:07:56 PM

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Ms. Herrera –

I spoke with Jeff Thompson and he took the payment for the appeal so we are all set with that. Thank you for your help with this.

Best,

John

---

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**From:** John A. Henning, Jr. [<mailto:jhenning@planninglawgroup.com>]  
**Sent:** Tuesday, June 01, 2021 2:01 PM  
**To:** 'Marina Herrera'; 'Scott Orr'  
**Cc:** 'Debra DiBetta'; 'Luke Bowman'; 'Hannah Spencer'; 'Cecily Condon'; 'Jennifer Klein'; 'Rebecca Mateja'  
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**From:** [John A. Henning, Jr.](#)  
**To:** [Marina Herrera](#)  
**Cc:** [Elaine Murillo](#); [Hannah Spencer](#); [Cecily Condon](#); [Marina Herrera](#); [Jennifer Klein](#); [Scott Orr](#); [Luke Bowman](#)  
**Subject:** RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice  
**Date:** Tuesday, June 8, 2021 3:16:43 PM

---

Marina –

Thank you for your reply. We received a courtesy notice of the Planning Commission hearing by email yesterday. We are pleased that the Planning Commission is hearing our appeal of the recommendation from the Design Review Committee. However, I do not understand by what authority the Planning Commission would hear the underlying use permit application, rather than the Board of Zoning Adjustments.

Under section 26-92-070 of the code use permits are to be issued by the Board of Zoning Adjustments, except in the PC district.

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Other than the above-referenced code section, I am unaware of any provision of the code by which the planning commission can assume jurisdiction over a single application that would otherwise be heard by the BZA. (Contrast this with the express provisions granting the Board of Supervisors authority to assume “original jurisdiction” over an application under section 26-92-155, or over multiple related applications or approvals pursuant to that section and section 26-92-060(c).) Even if there were such a provision, the planning commission has not met to discuss the question of whether jurisdiction is properly assumed in this case, as the Board of Supervisors would be required to do to exercise its original jurisdiction over related approvals.

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Pending your reply, my client strenuously objects to this case being heard by the Planning Commission for anything other than the appeal of the Design Review Committee’s decision, and further insists that the BZA hear the underlying use permit application after the design review appeal has been heard by the Planning Commission and a proper design recommendation has been made by the Planning Commission to the BZA.

I am copying the same people who were included in recent correspondence about our appeal to the Planning Commission, in case any of them can respond.

Thank you.

Regards,

John Henning

---

John A. Henning, Jr.  
Attorney at Law  
125 N. Sweetzer Ave. Unit 202  
Los Angeles, CA 90048

Ph. (323) 655-6171  
Fax (323) 655-6109  
[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)

---

**From:** Marina Herrera [mailto:Marina.Herrera@sonoma-county.org]  
**Sent:** Tuesday, June 08, 2021 1:53 PM  
**To:** 'John A. Henning, Jr.'  
**Cc:** Elaine Murillo  
**Subject:** RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

John,

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Stay safe, be well & talk soon,

*Marina Herrera*

Planner III  
[www.PermitSonoma.org](http://www.PermitSonoma.org)  
County of Sonoma  
2550 Ventura Avenue, Santa Rosa, CA 95403  
Direct: 707-565-2397 |  
Office: 707-565-1900 | Fax: 707-565-1103

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*Thank you for your patience as we work to keep staff and the community safe.*

---

**From:** John A. Henning, Jr. <jhenning@planninglawgroup.com>  
**Sent:** Monday, June 7, 2021 2:28 PM  
**To:** Marina Herrera <Marina.Herrera@sonoma-county.org>  
**Cc:** Elaine Murillo <Elaine.Murillo@sonoma-county.org>  
**Subject:** FW: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Marina –

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Would you please confirm whether this item has been removed from the agenda?

I am copying Elaine Murillo as well, in case she can respond.

Thank you.

Best,

John Henning

---

John A. Henning, Jr.  
Attorney at Law  
125 N. Sweetzer Ave. Unit 202  
Los Angeles, CA 90048

Ph. (323) 655-6171  
Fax (323) 655-6109  
[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)

---

**From:** Elaine Murillo [<mailto:Elaine.Murillo@sonoma-county.org>]  
**Sent:** Friday, May 28, 2021 9:14 AM  
**To:** Gina Belforte; Jacquelynne Ocana; Sean Hamlin; Scott Orr; Cecily Condon; Jennifer Klein; Sita Kuteira; Christa Shaw; Ivan Jimenez; 'mkim@completewireless.net'; 'JWoolf@sbsite.com'; 'jhenning@planninglawgroup.com'  
**Cc:** Marina Herrera  
**Subject:** UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Good Morning,

Please see attached BZA Legal Notice for project referenced in the project line above.

If you have any questions please feel free to contact the project planner at

[Marina.Herrera@sonoma-county.org](mailto:Marina.Herrera@sonoma-county.org).

Thank you,

**Elaine Murillo**

**Administrative Assistant**

County of Sonoma

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**Subject:** RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice  
**Date:** Thursday, June 10, 2021 12:02:01 PM

---

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I have received no reply to my email below. Would you please advise when I will hear from someone at the County about this?

Thanks.

Best,

John Henning

---

John A. Henning, Jr.  
Attorney at Law  
125 N. Sweetzer Ave. Unit 202  
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Ph. (323) 655-6171  
Fax (323) 655-6109  
[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)

---

**From:** John A. Henning, Jr. [mailto:[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)]  
**Sent:** Tuesday, June 08, 2021 3:15 PM  
**To:** 'Marina Herrera'  
**Cc:** 'Elaine Murillo'; 'Hannah Spencer'; 'Cecily Condon'; 'Marina Herrera'; 'Jennifer Klein'; 'Scott Orr'; 'Luke Bowman'  
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**Sent:** Tuesday, June 08, 2021 1:53 PM  
**To:** 'John A. Henning, Jr.'  
**Cc:** Elaine Murillo  
**Subject:** RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

John,

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Stay safe, be well & talk soon,

*Marina Herrera*

Planner III

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**From:** John A. Henning, Jr. <jhenning@planninglawgroup.com>  
**Sent:** Monday, June 7, 2021 2:28 PM  
**To:** Marina Herrera <Marina.Herrera@sonoma-county.org>  
**Cc:** Elaine Murillo <Elaine.Murillo@sonoma-county.org>  
**Subject:** FW: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice



Marina –

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Best,

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Ph. (323) 655-6171  
Fax (323) 655-6109  
[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)

---

**From:** Elaine Murillo [<mailto:Elaine.Murillo@sonoma-county.org>]

**Sent:** Friday, May 28, 2021 9:14 AM

**To:** Gina Belforte; Jacquelynne Ocana; Sean Hamlin; Scott Orr; Cecily Condon; Jennifer Klein; Sita Kuteira; Christa Shaw; Ivan Jimenez; 'mkim@completewireless.net'; 'JWoolf@sbase.com'; 'jhenning@planninglawgroup.com'

**Cc:** Marina Herrera

**Subject:** UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Good Morning,

Please see attached BZA Legal Notice for project referenced in the project line above.

If you have any questions please feel free to contact the project planner at [Marina.Herrera@sonoma-county.org](mailto:Marina.Herrera@sonoma-county.org).

Thank you,

**Elaine Murillo**



**Administrative Assistant**

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**From:** [Jennifer Klein](#)  
**To:** [John A. Henning, Jr.](#)  
**Cc:** [Marina Herrera](#); [Elaine Murillo](#); [Hannah Spencer](#); [Cecily Condon](#); [Scott Orr](#); [Luke Bowman](#)  
**Subject:** Re: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice  
**Date:** Thursday, June 10, 2021 12:54:02 PM

---

Dear Mr. Henning,

If you object to the Planning Commission's action on the appeal or the permit, then you may appeal either or both to the Board of Supervisors.

Best Regards,  
Jennifer Klein  
Chief Deputy County Counsel

Sent from my iPhone

On Jun 10, 2021, at 12:02 PM, John A. Henning, Jr.  
<[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)> wrote:



Marina –

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Thanks.

Best,

John Henning

---

John A. Henning, Jr.  
Attorney at Law  
125 N. Sweetzer Ave. Unit 202  
Los Angeles, CA 90048

Ph. (323) 655-6171  
Fax (323) 655-6109  
[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)

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**From:** John A. Henning, Jr. [mailto:jhenning@planninglawgroup.com]  
**Sent:** Tuesday, June 08, 2021 3:15 PM  
**To:** 'Marina Herrera'  
**Cc:** 'Elaine Murillo'; 'Hannah Spencer'; 'Cecily Condon'; 'Marina Herrera'; 'Jennifer Klein'; 'Scott Orr'; 'Luke Bowman'  
**Subject:** RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

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**From:** Marina Herrera [mailto:Marina.Herrera@sonoma-county.org]  
**Sent:** Tuesday, June 08, 2021 1:53 PM  
**To:** 'John A. Henning, Jr.'  
**Cc:** Elaine Murillo  
**Subject:** RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

John,

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*Marina Herrera*

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**Sent:** Monday, June 7, 2021 2:28 PM  
**To:** Marina Herrera <Marina.Herrera@sonoma-county.org>  
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<image001.jpg>

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**To:** [Jennifer Klein](#)  
**Cc:** [Marina Herrera](#); [Elaine Murillo](#); [Hannah Spencer](#); [Cecily Condon](#); [Scott Orr](#); [Luke Bowman](#)  
**Subject:** RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice  
**Date:** Thursday, June 10, 2021 1:03:26 PM

---

Ms. Klein –

I recognize that we can appeal any Planning Commission decision to the Board of Supervisors. However, this right of appeal does not protect my client's rights, and it does not respond to my previous communication to Ms. Herrera. Regardless of any appeal rights my client may have, the Board of Zoning Adjustments has original jurisdiction over the permit, and my client and other members of the public have the right to present their case to the BZA first. I would appreciate your replying with an explanation of the legal authority by which you believe that the Planning Commission has jurisdiction over this permit rather than the BZA.

Thank you.

Regards,

John Henning

---

John A. Henning, Jr.  
Attorney at Law  
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Los Angeles, CA 90048

Ph. (323) 655-6171  
Fax (323) 655-6109  
[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)

---

**From:** Jennifer Klein [<mailto:Jennifer.Klein@sonoma-county.org>]  
**Sent:** Thursday, June 10, 2021 12:54 PM  
**To:** John A. Henning, Jr.  
**Cc:** Marina Herrera; Elaine Murillo; Hannah Spencer; Cecily Condon; Scott Orr; Luke Bowman  
**Subject:** Re: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

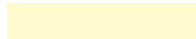
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I am also unaware of any provision by which the County staff, the Planning Director or County Counsel can divest the BZA of jurisdiction over an application and confer such jurisdiction to the Planning Commission.

Please reply to explain your position on this to me as soon as possible.

Pending your reply, my client strenuously objects to this case being heard by the Planning Commission for anything other than the appeal of the Design Review Committee’s decision, and further insists that the BZA hear the underlying use permit application after the design review appeal has been heard by the Planning Commission and a proper design recommendation has been made by the Planning Commission to the BZA.

I am copying the same people who were included in recent correspondence about our appeal to the Planning Commission, in case any of them can respond.

Thank you.

Regards,

John Henning

---

John A. Henning, Jr.  
Attorney at Law  
125 N. Sweetzer Ave. Unit 202  
Los Angeles, CA 90048

Ph. (323) 655-6171  
Fax (323) 655-6109  
[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)

---

**From:** Marina Herrera [mailto:Marina.Herrera@sonoma-county.org]  
**Sent:** Tuesday, June 08, 2021 1:53 PM  
**To:** 'John A. Henning, Jr.'  
**Cc:** Elaine Murillo  
**Subject:** RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

John,

The project has been removed from the 6/10 BZA Agenda and has been rescheduled for the 6/17 Planning Commission to address both the appeal and the use permit. You will be receiving notice of this meeting.  
Stay safe, be well & talk soon,

*Marina Herrera*

Planner III  
[www.PermitSonoma.org](http://www.PermitSonoma.org)  
County of Sonoma  
2550 Ventura Avenue, Santa Rosa, CA 95403  
Direct: 707-565-2397 |  
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**From:** John A. Henning, Jr. <jhenning@planninglawgroup.com>  
**Sent:** Monday, June 7, 2021 2:28 PM  
**To:** Marina Herrera <Marina.Herrera@sonoma-county.org>  
**Cc:** Elaine Murillo <Elaine.Murillo@sonoma-county.org>  
**Subject:** FW: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Marina –

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Would you please confirm whether this item has been removed from the agenda?

I am copying Elaine Murillo as well, in case she can respond.

Thank you.

Best,

John Henning

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John A. Henning, Jr.  
Attorney at Law  
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Ph. (323) 655-6171  
Fax (323) 655-6109  
[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)

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**From:** Elaine Murillo [<mailto:Elaine.Murillo@sonoma-county.org>]  
**Sent:** Friday, May 28, 2021 9:14 AM  
**To:** Gina Belforte; Jacquelynne Ocana; Sean Hamlin; Scott Orr; Cecily Condon; Jennifer Klein; Sita Kuteira; Christa Shaw; Ivan Jimenez; 'mkim@completewireless.net'; 'JWoolf@sbsite.com'; 'jhenning@planninglawgroup.com'  
**Cc:** Marina Herrera  
**Subject:** UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Good Morning,

Please see attached BZA Legal Notice for project referenced in the project line above.

If you have any questions please feel free to contact the project planner at

[Marina.Herrera@sonoma-county.org](mailto:Marina.Herrera@sonoma-county.org).

Thank you,

**Elaine Murillo**

**Administrative Assistant**

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<image001.jpg>

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**To:** [Jennifer Klein](#)  
**Cc:** [Marina Herrera](#); [Elaine Murillo](#); [Hannah Spencer](#); [Cecily Condon](#); [Scott Orr](#); [Luke Bowman](#)  
**Subject:** RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice  
**Date:** Monday, June 14, 2021 1:05:25 PM

---

Ms. Klein –

I continue to await some explanation of the legal authority by which you believe that the Planning Commission has jurisdiction over this permit application rather than the Board of Zoning Appeals.

Please reply at your earliest opportunity, as the Planning Commission hearing is this Thursday.

Thank you.

Regards,

John Henning

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[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)

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**From:** John A. Henning, Jr. [<mailto:jhenning@planninglawgroup.com>]  
**Sent:** Thursday, June 10, 2021 1:03 PM  
**To:** 'Jennifer Klein'  
**Cc:** 'Marina Herrera'; 'Elaine Murillo'; 'Hannah Spencer'; 'Cecily Condon'; 'Scott Orr'; 'Luke Bowman'  
**Subject:** RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Ms. Klein –

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**From:** Jennifer Klein [mailto:Jennifer.Klein@sonoma-county.org]  
**Sent:** Thursday, June 10, 2021 12:54 PM  
**To:** John A. Henning, Jr.  
**Cc:** Marina Herrera; Elaine Murillo; Hannah Spencer; Cecily Condon; Scott Orr; Luke Bowman  
**Subject:** Re: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

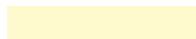
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Best Regards,  
Jennifer Klein  
Chief Deputy County Counsel

Sent from my iPhone

On Jun 10, 2021, at 12:02 PM, John A. Henning, Jr. <jhenning@planninglawgroup.com> wrote:



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**From:** John A. Henning, Jr. [mailto:[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)]  
**Sent:** Tuesday, June 08, 2021 3:15 PM  
**To:** 'Marina Herrera'  
**Cc:** 'Elaine Murillo'; 'Hannah Spencer'; 'Cecily Condon'; 'Marina Herrera'; 'Jennifer Klein'; 'Scott Orr'; 'Luke Bowman'  
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**Sent:** Tuesday, June 08, 2021 1:53 PM  
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Stay safe, be well & talk soon,

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Planner III

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**Sent:** Monday, June 7, 2021 2:28 PM  
**To:** Marina Herrera <Marina.Herrera@sonoma-county.org>  
**Cc:** Elaine Murillo <Elaine.Murillo@sonoma-county.org>  
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John Henning

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Ph. (323) 655-6171  
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[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)

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**From:** Elaine Murillo [<mailto:Elaine.Murillo@sonoma-county.org>]  
**Sent:** Friday, May 28, 2021 9:14 AM  
**To:** Gina Belforte; Jacquelynne Ocana; Sean Hamlin; Scott Orr; Cecily Condon; Jennifer Klein; Sita Kuteira; Christa Shaw; Ivan Jimenez; 'mkim@completewireless.net'; 'JWoolf@sbsite.com'; 'jhenning@planninglawgroup.com'  
**Cc:** Marina Herrera  
**Subject:** UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Good Morning,

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If you have any questions please feel free to contact the project planner at  
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Thank you,

**Elaine Murillo**  
**Administrative Assistant**  
County of Sonoma  
2550 Ventura Avenue, Santa Rosa, CA 95403  
Direct: 707-565-1935 |  
Office: 707-565-1900 | Fax: 707-565-1103  
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<image001.jpg>

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**From:** [Jennifer Klein](#)  
**To:** ["John A. Henning, Jr."](#)  
**Cc:** [Marina Herrera](#); [Elaine Murillo](#); [Hannah Spencer](#); [Cecily Condon](#); [Scott Orr](#); [Luke Bowman](#)  
**Subject:** RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice  
**Date:** Monday, June 14, 2021 1:33:53 PM

---

Dear Mr. Henning:

The County intends to move forward with concurrent processing and review by the Planning Commission as scheduled in accordance with section 26-92-060(a).

Regards,

Jennifer C. Klein  
Chief Deputy County Counsel  
County of Sonoma  
575 Administration Drive, 105A  
Santa Rosa CA 95403  
Tel. (707)565-2421  
Dir. (707)565-6007  
Fax (707)565-2624

---

**From:** John A. Henning, Jr. <jhenning@planninglawgroup.com>  
**Sent:** Monday, June 14, 2021 1:05 PM  
**To:** Jennifer Klein <Jennifer.Klein@sonoma-county.org>  
**Cc:** Marina Herrera <Marina.Herrera@sonoma-county.org>; Elaine Murillo <Elaine.Murillo@sonoma-county.org>; Hannah Spencer <Hannah.Spencer@sonoma-county.org>; Cecily Condon <Cecily.Condon@sonoma-county.org>; Scott Orr <Scott.Orr@sonoma-county.org>; Luke Bowman <Luke.Bowman@sonoma-county.org>  
**Subject:** RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Ms. Klein –

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**To:** 'Jennifer Klein'  
**Cc:** 'Marina Herrera'; 'Elaine Murillo'; 'Hannah Spencer'; 'Cecily Condon'; 'Scott Orr'; 'Luke Bowman'  
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**Sent:** Thursday, June 10, 2021 12:54 PM

**To:** John A. Henning, Jr.

**Cc:** Marina Herrera; Elaine Murillo; Hannah Spencer; Cecily Condon; Scott Orr; Luke Bowman

**Subject:** Re: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

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I received the courtesy notice for the BZA hearing on June 10 (attached) and yet there is no mention of this item on the agenda located at <https://share.sonoma-county.org/link/hAWXH5q1byM/20210610%20BZA%20Agenda.pdf> and <https://sonomacounty.ca.gov/Board-of-Zoning-Adjustments/Calendar/Board-of-Zoning-Adjustments-Meeting-June-10-2021/> .

Would you please confirm whether this item has been removed from the agenda?

I am copying Elaine Murillo as well, in case she can respond.

Thank you.

Best,

John Henning

---

John A. Henning, Jr.

Attorney at Law  
125 N. Sweetzer Ave. Unit 202  
Los Angeles, CA 90048

Ph. (323) 655-6171  
Fax (323) 655-6109  
[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)

---

**From:** Elaine Murillo [<mailto:Elaine.Murillo@sonoma-county.org>]  
**Sent:** Friday, May 28, 2021 9:14 AM  
**To:** Gina Belforte; Jacquelynne Ocana; Sean Hamlin; Scott Orr; Cecily Condon; Jennifer Klein; Sita Kuteira; Christa Shaw; Ivan Jimenez; 'mkim@completewireless.net'; 'JWoolf@sbsite.com'; 'jhenning@planninglawgroup.com'  
**Cc:** Marina Herrera  
**Subject:** UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Good Morning,

Please see attached BZA Legal Notice for project referenced in the project line above.  
If you have any questions please feel free to contact the project planner at  
[Marina.Herrera@sonoma-county.org](mailto:Marina.Herrera@sonoma-county.org).

Thank you,

**Elaine Murillo**  
**Administrative Assistant**  
County of Sonoma  
2550 Ventura Avenue, Santa Rosa, CA 95403  
Direct: 707-565-1935 |  
Office: 707-565-1900 | Fax: 707-565-1103  
[www.PermitSonoma.org](http://www.PermitSonoma.org)

<image001.jpg>

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***Thank you for your patience as we work to keep staff and the community safe.***

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**From:** [John A. Henning, Jr.](#)  
**To:** [Jennifer Klein](#)  
**Cc:** [Marina Herrera](#); [Elaine Murillo](#); [Hannah Spencer](#); [Cecily Condon](#); [Scott Orr](#); [Luke Bowman](#)  
**Subject:** RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice  
**Date:** Monday, June 14, 2021 4:24:41 PM

---

Ms. Klein –

As I explained in my June 8 email to Ms. Herrera, the code section you have cited does not confer jurisdiction to the Planning Commission because it requires multiple “related applications,” and there is only one application here. The code section states, in relevant part (with emphasis supplied):

Sec. 26-92-060. - Concurrent processing of related applications.

Where a development project requires multiple approvals from different decision making bodies authorized to act under this chapter and [Chapter 25](#) or [26C](#) of the Sonoma County Code, notwithstanding anything else contained in this chapter and [Chapter 25](#) or [26C](#) to the contrary, the following administrative rules shall be applied to achieve concurrent processing of related applications:

(a) The Sonoma County planning commission may, at the same meeting that it acts upon an application within its jurisdiction, act on a related application which would otherwise be decided by the board of zoning adjustments.

For this code section to apply there must be (a) two or more “related applications” for the same project; and (b) at least one “application” already within the jurisdiction of the planning commission. When both of these circumstances exist the planning commission “may,” at the same meeting, act upon a separate “related application” that would otherwise be decided by the BZA.

Thus, for example, if a project involves an application for a conditional use permit (to be decided by the BZA) and a related application for a rezoning (to be decided by the planning commission), the planning commission “may,” at the same meeting, act upon both related applications.

As I stated in my June 8 email to Ms. Herrera, there are not multiple applications here. There is only a single application for a use permit, which is considered first by the DRC (for the limited purposes of a design recommendation) and then by the BZA. As evidence of this, there is only one application number, i.e., “UPE19-0083”.

It may be tempting to define “design review” as a separate “application,” but to my knowledge in this case there was no separate “application” for design review filed by the applicant. Hence, unlike cases with the prefix “ADR” or “DRH” – reflecting separate design review applications – here there was no design review application number. Instead, staff determined administratively that design review should be conducted and presented the use permit application to the Design Review Committee for review. At most, this process led to a “preliminary recommendation” by the DRC to

the BZA. Both Marina Herrera, the project planner, and Luke Bowman, your Deputy County Counsel, have emphasized this fact in their respective emails to me concerning the appealability of the DRC decision.

It may also be tempting to contend that the DRC decision was an “approval” of the project and that on that basis alone it comes within the ambit of 26-92-060(a). Initially, it is questionable whether a “preliminary recommendation” by the DRC qualifies as an “approval” at all, and Mr. Bowman’s strenuous argument in his May 27, 2021, email to me that the DRC did not make a “decision” at all strongly contradicts any notion that the DRC rendered an “approval.” However, even if the DRC decision was an “approval,” that alone would not trigger section 26-92-060(a), because there was no “application” made for design review.

First, the very title of the code section at issue is “Concurrent processing of related applications.” Not related “approvals.”

Second, as quoted above, the first sentence of section 26-92-060 states, in relevant part: “Where a development project requires multiple approvals from different decision making bodies . . . the following administrative rules shall be applied to achieve concurrent processing of related applications”. Under this language, the mere fact that a project requires “multiple approvals from different decision making bodies” is not sufficient to transfer jurisdiction from the BZA to the planning commission. Rather, the administrative rules to be applied (including the rule at issue, set out in subsection (a)) “shall be applied to achieve concurrent processing of related applications”.

In sum, for section 26-92-060(a) to apply at all, there must be “related applications,” not just “multiple approvals from different decision making bodies.” There are not related applications here, so the provision allowing transfer of jurisdiction to the planning commission does not apply.

I urge you to reconsider the path you are presently on. My client has an absolute right under the County code to have the application heard by the Board of Zoning Adjustments. If the planning commission acts on the underlying use permit application rather than the BZA, its action would be null and void and any approval of the application would be subject to legal challenge in court, regardless if it is later ratified by the Board of Supervisors on appeal.

I await a meaningful reply to the above points.

Best,

John

---

John A. Henning, Jr.  
Attorney at Law  
125 N. Sweetzer Ave. Unit 202  
Los Angeles, CA 90048

Ph. (323) 655-6171  
Fax (323) 655-6109  
[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)

---

**From:** Jennifer Klein [mailto:Jennifer.Klein@sonoma-county.org]  
**Sent:** Monday, June 14, 2021 1:34 PM  
**To:** 'John A. Henning, Jr.'  
**Cc:** Marina Herrera; Elaine Murillo; Hannah Spencer; Cecily Condon; Scott Orr; Luke Bowman  
**Subject:** RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Dear Mr. Henning:

The County intends to move forward with concurrent processing and review by the Planning Commission as scheduled in accordance with section 26-92-060(a).

Regards,

Jennifer C. Klein  
Chief Deputy County Counsel  
County of Sonoma  
575 Administration Drive, 105A  
Santa Rosa CA 95403  
Tel. (707)565-2421  
Dir. (707)565-6007  
Fax (707)565-2624

---

**From:** John A. Henning, Jr. <jhenning@planninglawgroup.com>  
**Sent:** Monday, June 14, 2021 1:05 PM  
**To:** Jennifer Klein <Jennifer.Klein@sonoma-county.org>  
**Cc:** Marina Herrera <Marina.Herrera@sonoma-county.org>; Elaine Murillo <Elaine.Murillo@sonoma-county.org>; Hannah Spencer <Hannah.Spencer@sonoma-county.org>; Cecily Condon <Cecily.Condon@sonoma-county.org>; Scott Orr <Scott.Orr@sonoma-county.org>; Luke Bowman <Luke.Bowman@sonoma-county.org>  
**Subject:** RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice



Ms. Klein –

I continue to await some explanation of the legal authority by which you believe that the Planning

Commission has jurisdiction over this permit application rather than the Board of Zoning Appeals.

Please reply at your earliest opportunity, as the Planning Commission hearing is this Thursday.

Thank you.

Regards,

John Henning

---

John A. Henning, Jr.  
Attorney at Law  
125 N. Sweetzer Ave. Unit 202  
Los Angeles, CA 90048

Ph. (323) 655-6171  
Fax (323) 655-6109  
[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)

---

**From:** John A. Henning, Jr. [<mailto:jhenning@planninglawgroup.com>]  
**Sent:** Thursday, June 10, 2021 1:03 PM  
**To:** 'Jennifer Klein'  
**Cc:** 'Marina Herrera'; 'Elaine Murillo'; 'Hannah Spencer'; 'Cecily Condon'; 'Scott Orr'; 'Luke Bowman'  
**Subject:** RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Ms. Klein –

I recognize that we can appeal any Planning Commission decision to the Board of Supervisors. However, this right of appeal does not protect my client's rights, and it does not respond to my previous communication to Ms. Herrera. Regardless of any appeal rights my client may have, the Board of Zoning Adjustments has original jurisdiction over the permit, and my client and other members of the public have the right to present their case to the BZA first. I would appreciate your replying with an explanation of the legal authority by which you believe that the Planning Commission has jurisdiction over this permit rather than the BZA.

Thank you.

Regards,

John Henning

---

John A. Henning, Jr.  
Attorney at Law  
125 N. Sweetzer Ave. Unit 202  
Los Angeles, CA 90048

Ph. (323) 655-6171  
Fax (323) 655-6109  
[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)

---

**From:** Jennifer Klein [<mailto:Jennifer.Klein@sonoma-county.org>]  
**Sent:** Thursday, June 10, 2021 12:54 PM  
**To:** John A. Henning, Jr.  
**Cc:** Marina Herrera; Elaine Murillo; Hannah Spencer; Cecily Condon; Scott Orr; Luke Bowman  
**Subject:** Re: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

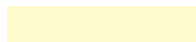
Dear Mr. Henning,

If you object to the Planning Commission's action on the appeal or the permit, then you may appeal either or both to the Board of Supervisors.

Best Regards,  
Jennifer Klein  
Chief Deputy County Counsel

Sent from my iPhone

On Jun 10, 2021, at 12:02 PM, John A. Henning, Jr. <[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)> wrote:



Marina –

I have received no reply to my email below. Would you please advise when I will hear from someone at the County about this?

Thanks.

Best,

John Henning

---



John A. Henning, Jr.  
Attorney at Law  
125 N. Sweetzer Ave. Unit 202  
Los Angeles, CA 90048

Ph. (323) 655-6171  
Fax (323) 655-6109  
[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)

---

**From:** John A. Henning, Jr. [<mailto:jhenning@planninglawgroup.com>]  
**Sent:** Tuesday, June 08, 2021 3:15 PM  
**To:** 'Marina Herrera'  
**Cc:** 'Elaine Murillo'; 'Hannah Spencer'; 'Cecily Condon'; 'Marina Herrera'; 'Jennifer Klein'; 'Scott Orr'; 'Luke Bowman'  
**Subject:** RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Marina –

Thank you for your reply. We received a courtesy notice of the Planning Commission hearing by email yesterday. We are pleased that the Planning Commission is hearing our appeal of the recommendation from the Design Review Committee. However, I do not understand by what authority the Planning Commission would hear the underlying use permit application, rather than the Board of Zoning Adjustments.

Under section 26-92-070 of the code use permits are to be issued by the Board of Zoning Adjustments, except in the PC district.

When there are multiple “applications” for the same project and the planning commission has jurisdiction over one of them, section 26-92-060(a) confers jurisdiction to the planning commission over a related application that would otherwise be heard by the BZA. However, there are not multiple applications here. There is only a single application for a use permit, which is considered first by the DRC (for the limited purposes of a design recommendation) and then by the BZA.

Other than the above-referenced code section, I am unaware of any provision of the code by which the planning commission can assume jurisdiction over a single application that would otherwise be heard by the BZA. (Contrast this with the express provisions granting the Board of Supervisors authority to assume “original jurisdiction” over an application under section 26-92-155, or over multiple related applications or approvals pursuant to that section and section 26-92-060(c).) Even if there were such a provision, the planning commission has not met to discuss the question of whether jurisdiction is properly assumed in this case, as the Board of Supervisors would be required to do to exercise its original jurisdiction over related approvals.

I am also unaware of any provision by which the County staff, the Planning Director or County Counsel can divest the BZA of jurisdiction over an application and confer such jurisdiction to the Planning Commission.

Please reply to explain your position on this to me as soon as possible.

Pending your reply, my client strenuously objects to this case being heard by the Planning Commission for anything other than the appeal of the Design Review Committee's decision, and further insists that the BZA hear the underlying use permit application after the design review appeal has been heard by the Planning Commission and a proper design recommendation has been made by the Planning Commission to the BZA.

I am copying the same people who were included in recent correspondence about our appeal to the Planning Commission, in case any of them can respond.

Thank you.

Regards,

John Henning

---

John A. Henning, Jr.  
Attorney at Law  
125 N. Sweetzer Ave. Unit 202  
Los Angeles, CA 90048

Ph. (323) 655-6171  
Fax (323) 655-6109  
[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)

---

**From:** Marina Herrera [<mailto:Marina.Herrera@sonoma-county.org>]  
**Sent:** Tuesday, June 08, 2021 1:53 PM  
**To:** 'John A. Henning, Jr.'  
**Cc:** Elaine Murillo  
**Subject:** RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

John,

The project has been removed from the 6/10 BZA Agenda and has been rescheduled for the 6/17 Planning Commission to address both the appeal and the use permit. You will be receiving notice of this meeting.

Stay safe, be well & talk soon,

*Marina Herrera*

Planner III

[www.PermiTSonoma.org](http://www.PermiTSonoma.org)

County of Sonoma

2550 Ventura Avenue, Santa Rosa, CA 95403

Direct: 707-565-2397 |

Office: 707-565-1900 | Fax: 707-565-1103

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**OFFICE HOURS:** *The Permit Center has reopened with limited capacity and modified hours. Monday, Tuesday, Thursday, Friday: 9:00 AM – 1:00 PM; Wednesday, 12:00 PM – 4:00 PM.*

*Thank you for your patience as we work to keep staff and the community safe.*

---

**From:** John A. Henning, Jr. <[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)>

**Sent:** Monday, June 7, 2021 2:28 PM

**To:** Marina Herrera <[Marina.Herrera@sonoma-county.org](mailto:Marina.Herrera@sonoma-county.org)>

**Cc:** Elaine Murillo <[Elaine.Murillo@sonoma-county.org](mailto:Elaine.Murillo@sonoma-county.org)>

**Subject:** FW: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Marina –

I received the courtesy notice for the BZA hearing on June 10 (attached) and yet there is no mention of this item on the agenda located at <https://share.sonoma-county.org/link/hAWXH5q1byM/20210610%20BZA%20Agenda.pdf> and <https://sonomacounty.ca.gov/Board-of-Zoning-Adjustments/Calendar/Board-of-Zoning-Adjustments-Meeting-June-10-2021/> .

Would you please confirm whether this item has been removed from the agenda?

I am copying Elaine Murillo as well, in case she can respond.

Thank you.

Best,

John Henning

---

John A. Henning, Jr.  
Attorney at Law  
125 N. Sweetzer Ave. Unit 202  
Los Angeles, CA 90048

Ph. (323) 655-6171  
Fax (323) 655-6109  
[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)

---

**From:** Elaine Murillo [<mailto:Elaine.Murillo@sonoma-county.org>]  
**Sent:** Friday, May 28, 2021 9:14 AM  
**To:** Gina Belforte; Jacquelynne Ocana; Sean Hamlin; Scott Orr; Cecily Condon; Jennifer Klein; Sita Kuteira; Christa Shaw; Ivan Jimenez; 'mkim@completewireless.net'; 'JWoolf@sbsite.com'; 'jhenning@planninglawgroup.com'  
**Cc:** Marina Herrera  
**Subject:** UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Good Morning,

Please see attached BZA Legal Notice for project referenced in the project line above.  
If you have any questions please feel free to contact the project planner at  
[Marina.Herrera@sonoma-county.org](mailto:Marina.Herrera@sonoma-county.org).

Thank you,

**Elaine Murillo**  
**Administrative Assistant**  
County of Sonoma  
2550 Ventura Avenue, Santa Rosa, CA 95403  
Direct: 707-565-1935 |  
Office: 707-565-1900 | Fax: 707-565-1103  
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<image001.jpg>

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**From:** [Jennifer Klein](#)  
**To:** [John A. Henning, Jr.](#)  
**Cc:** [Marina Herrera](#); [Elaine Murillo](#); [Hannah Spencer](#); [Cecily Condon](#); [Scott Orr](#); [Luke Bowman](#)  
**Subject:** Re: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice  
**Date:** Monday, June 14, 2021 4:40:45 PM

---

Mr. Henning:

You will have an opportunity during the public comment period to express your views on this topic at the scheduled hearing on the permit should you choose to take advantage of that. Any further comments should be directed to staff for distribution to the Commission.

Jennifer Klein

Sent from my iPhone

On Jun 14, 2021, at 4:24 PM, John A. Henning, Jr.  
<[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)> wrote:



Ms. Klein –

As I explained in my June 8 email to Ms. Herrera, the code section you have cited does not confer jurisdiction to the Planning Commission because it requires multiple “related applications,” and there is only one application here. The code section states, in relevant part (with emphasis supplied):

Sec. 26-92-060. - Concurrent processing of related applications.

Where a development project requires multiple approvals from different decision making bodies authorized to act under this chapter and Chapter 25 or 26C of the Sonoma County Code, notwithstanding anything else contained in this chapter and Chapter 25 or 26C to the contrary, the following administrative rules shall be applied to achieve concurrent processing of related applications:

(a) The Sonoma County planning commission may, at the same meeting that it acts upon an application within its jurisdiction, act on a related application which would otherwise be decided by the board of zoning adjustments.

For this code section to apply there must be (a) two or more “related applications” for the same project; and (b) at least one “application” already within the jurisdiction of the planning commission. When both of these circumstances exist the planning commission “may,” at the same meeting, act upon a separate “related application” that

would otherwise be decided by the BZA.

Thus, for example, if a project involves an application for a conditional use permit (to be decided by the BZA) and a related application for a rezoning (to be decided by the planning commission), the planning commission “may,” at the same meeting, act upon both related applications.

As I stated in my June 8 email to Ms. Herrera, there are not multiple applications here. There is only a single application for a use permit, which is considered first by the DRC (for the limited purposes of a design recommendation) and then by the BZA. As evidence of this, there is only one application number, i.e., “UPE19-0083”.

It may be tempting to define “design review” as a separate “application,” but to my knowledge in this case there was no separate “application” for design review filed by the applicant. Hence, unlike cases with the prefix “ADR” or “DRH” – reflecting separate design review applications – here there was no design review application number. Instead, staff determined administratively that design review should be conducted and presented the use permit application to the Design Review Committee for review. At most, this process led to a “preliminary recommendation” by the DRC to the BZA. Both Marina Herrera, the project planner, and Luke Bowman, your Deputy County Counsel, have emphasized this fact in their respective emails to me concerning the appealability of the DRC decision.

It may also be tempting to contend that the DRC decision was an “approval” of the project and that on that basis alone it comes within the ambit of 26-92-060(a). Initially, it is questionable whether a “preliminary recommendation” by the DRC qualifies as an “approval” at all, and Mr. Bowman’s strenuous argument in his May 27, 2021, email to me that the DRC did not make a “decision” at all strongly contradicts any notion that the DRC rendered an “approval.” However, even if the DRC decision was an “approval,” that alone would not trigger section 26-92-060(a), because there was no “application” made for design review.

First, the very title of the code section at issue is “Concurrent processing of related applications.” Not related “approvals.”

Second, as quoted above, the first sentence of section 26-92-060 states, in relevant part: “Where a development project requires multiple approvals from different decision making bodies . . . the following administrative rules shall be applied to achieve concurrent processing of related applications”. Under this language, the mere fact that a project requires “multiple approvals from different decision making bodies” is not sufficient to transfer jurisdiction from the BZA to the planning commission. Rather, the administrative rules to be applied (including the rule at issue, set out in subsection (a)) “shall be applied to achieve concurrent processing of related applications”.

In sum, for section 26-92-060(a) to apply at all, there must be “related applications,” not just “multiple approvals from different decision making bodies.” There are not related applications here, so the provision allowing transfer of jurisdiction to the planning commission does not apply.

I urge you to reconsider the path you are presently on. My client has an absolute right under the County code to have the application heard by the Board of Zoning Adjustments. If the planning commission acts on the underlying use permit application rather than the BZA, its action would be null and void and any approval of the application would be subject to legal challenge in court, regardless if it is later ratified by the Board of Supervisors on appeal.

I await a meaningful reply to the above points.

Best,

John

---

John A. Henning, Jr.  
Attorney at Law  
125 N. Sweetzer Ave. Unit 202  
Los Angeles, CA 90048

Ph. (323) 655-6171  
Fax (323) 655-6109  
[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)

---

**From:** Jennifer Klein [mailto:[Jennifer.Klein@sonoma-county.org](mailto:Jennifer.Klein@sonoma-county.org)]  
**Sent:** Monday, June 14, 2021 1:34 PM  
**To:** 'John A. Henning, Jr.'  
**Cc:** Marina Herrera; Elaine Murillo; Hannah Spencer; Cecily Condon; Scott Orr; Luke Bowman  
**Subject:** RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Dear Mr. Henning:

The County intends to move forward with concurrent processing and review by the Planning Commission as scheduled in accordance with section 26-92-060(a).

Regards,

Jennifer C. Klein  
Chief Deputy County Counsel



County of Sonoma  
575 Administration Drive, 105A  
Santa Rosa CA 95403  
Tel. (707)565-2421  
Dir. (707)565-6007  
Fax (707)565-2624

---

**From:** John A. Henning, Jr. <jhenning@planninglawgroup.com>  
**Sent:** Monday, June 14, 2021 1:05 PM  
**To:** Jennifer Klein <Jennifer.Klein@sonoma-county.org>  
**Cc:** Marina Herrera <Marina.Herrera@sonoma-county.org>; Elaine Murillo <Elaine.Murillo@sonoma-county.org>; Hannah Spencer <Hannah.Spencer@sonoma-county.org>; Cecily Condon <Cecily.Condon@sonoma-county.org>; Scott Orr <Scott.Orr@sonoma-county.org>; Luke Bowman <Luke.Bowman@sonoma-county.org>  
**Subject:** RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Ms. Klein –

I continue to await some explanation of the legal authority by which you believe that the Planning Commission has jurisdiction over this permit application rather than the Board of Zoning Appeals.

Please reply at your earliest opportunity, as the Planning Commission hearing is this Thursday.

Thank you.

Regards,

John Henning

---

John A. Henning, Jr.  
Attorney at Law  
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Los Angeles, CA 90048

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[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)

---

**From:** John A. Henning, Jr. [<mailto:jhenning@planninglawgroup.com>]  
**Sent:** Thursday, June 10, 2021 1:03 PM  
**To:** 'Jennifer Klein'  
**Cc:** 'Marina Herrera'; 'Elaine Murillo'; 'Hannah Spencer'; 'Cecily Condon'; 'Scott Orr'; 'Luke Bowman'  
**Subject:** RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Ms. Klein –

I recognize that we can appeal any Planning Commission decision to the Board of Supervisors. However, this right of appeal does not protect my client's rights, and it does not respond to my previous communication to Ms. Herrera. Regardless of any appeal rights my client may have, the Board of Zoning Adjustments has original jurisdiction over the permit, and my client and other members of the public have the right to present their case to the BZA first. I would appreciate your replying with an explanation of the legal authority by which you believe that the Planning Commission has jurisdiction over this permit rather than the BZA.

Thank you.

Regards,

John Henning

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John A. Henning, Jr.  
Attorney at Law  
125 N. Sweetzer Ave. Unit 202  
Los Angeles, CA 90048

Ph. (323) 655-6171  
Fax (323) 655-6109  
[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)

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**From:** Jennifer Klein [<mailto:Jennifer.Klein@sonoma-county.org>]  
**Sent:** Thursday, June 10, 2021 12:54 PM  
**To:** John A. Henning, Jr.  
**Cc:** Marina Herrera; Elaine Murillo; Hannah Spencer; Cecily Condon; Scott Orr; Luke Bowman  
**Subject:** Re: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Dear Mr. Henning,

If you object to the Planning Commission's action on the appeal or the permit, then you may appeal either or both to the Board of Supervisors.

Best Regards,  
Jennifer Klein  
Chief Deputy County Counsel

Sent from my iPhone

On Jun 10, 2021, at 12:02 PM, John A. Henning, Jr. <[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)> wrote:



Marina –

I have received no reply to my email below. Would you please advise when I will hear from someone at the County about this?

Thanks.

Best,

John Henning

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John A. Henning, Jr.  
Attorney at Law  
125 N. Sweetzer Ave. Unit 202  
Los Angeles, CA 90048

Ph. (323) 655-6171  
Fax (323) 655-6109  
[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)

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**From:** John A. Henning, Jr. [<mailto:jhenning@planninglawgroup.com>]  
**Sent:** Tuesday, June 08, 2021 3:15 PM  
**To:** 'Marina Herrera'  
**Cc:** 'Elaine Murillo'; 'Hannah Spencer'; 'Cecily Condon'; 'Marina Herrera'; 'Jennifer Klein'; 'Scott Orr'; 'Luke Bowman'

**Subject:** RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Marina –

Thank you for your reply. We received a courtesy notice of the Planning Commission hearing by email yesterday. We are pleased that the Planning Commission is hearing our appeal of the recommendation from the Design Review Committee. However, I do not understand by what authority the Planning Commission would hear the underlying use permit application, rather than the Board of Zoning Adjustments.

Under section 26-92-070 of the code use permits are to be issued by the Board of Zoning Adjustments, except in the PC district.

When there are multiple “applications” for the same project and the planning commission has jurisdiction over one of them, section 26-92-060(a) confers jurisdiction to the planning commission over a related application that would otherwise be heard by the BZA. However, there are not multiple applications here. There is only a single application for a use permit, which is considered first by the DRC (for the limited purposes of a design recommendation) and then by the BZA.

Other than the above-referenced code section, I am unaware of any provision of the code by which the planning commission can assume jurisdiction over a single application that would otherwise be heard by the BZA. (Contrast this with the express provisions granting the Board of Supervisors authority to assume “original jurisdiction” over an application under section 26-92-155, or over multiple related applications or approvals pursuant to that section and section 26-92-060(c).) Even if there were such a provision, the planning commission has not met to discuss the question of whether jurisdiction is properly assumed in this case, as the Board of Supervisors would be required to do to exercise its original jurisdiction over related approvals.

I am also unaware of any provision by which the County staff, the Planning Director or County Counsel can divest the BZA of jurisdiction over an application and confer such jurisdiction to the Planning Commission.

Please reply to explain your position on this to me as soon as possible.

Pending your reply, my client strenuously objects to this case being heard by the Planning Commission for anything other than the appeal of the Design Review Committee’s decision, and further insists that the BZA hear the underlying use permit application after the design review appeal has

been heard by the Planning Commission and a proper design recommendation has been made by the Planning Commission to the BZA.

I am copying the same people who were included in recent correspondence about our appeal to the Planning Commission, in case any of them can respond.

Thank you.

Regards,

John Henning

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Attorney at Law  
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Los Angeles, CA 90048

Ph. (323) 655-6171  
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**From:** Marina Herrera [<mailto:Marina.Herrera@sonoma-county.org>]  
**Sent:** Tuesday, June 08, 2021 1:53 PM  
**To:** 'John A. Henning, Jr.'  
**Cc:** Elaine Murillo  
**Subject:** RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

John,

The project has been removed from the 6/10 BZA Agenda and has been rescheduled for the 6/17 Planning Commission to address both the appeal and the use permit. You will be receiving notice of this meeting.  
Stay safe, be well & talk soon,

*Marina Herrera*

Planner III  
[www.PermitSonoma.org](http://www.PermitSonoma.org)  
County of Sonoma  
2550 Ventura Avenue, Santa Rosa, CA 95403  
Direct: 707-565-2397 |  
Office: 707-565-1900 | Fax: 707-565-1103

*Due to the Public Health Orders, online tools remain the best and fastest way to access Permit Sonoma's services like permitting, records, scheduling inspections, and general questions. You can find out more about our extensive online services at [PermitSonoma.org](http://PermitSonoma.org).*

**OFFICE HOURS:** The Permit Center has reopened with limited capacity and modified hours. Monday, Tuesday, Thursday, Friday: 9:00 AM – 1:00 PM; Wednesday, 12:00 PM – 4:00 PM.

*Thank you for your patience as we work to keep staff and the community safe.*

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**From:** John A. Henning, Jr. <[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)>  
**Sent:** Monday, June 7, 2021 2:28 PM  
**To:** Marina Herrera <[Marina.Herrera@sonoma-county.org](mailto:Marina.Herrera@sonoma-county.org)>  
**Cc:** Elaine Murillo <[Elaine.Murillo@sonoma-county.org](mailto:Elaine.Murillo@sonoma-county.org)>  
**Subject:** FW: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Marina –

I received the courtesy notice for the BZA hearing on June 10 (attached) and yet there is no mention of this item on the agenda located at <https://share.sonoma-county.org/link/hAWXH5q1byM/20210610%20BZA%20Agenda.pdf> and <https://sonomacounty.ca.gov/Board-of-Zoning-Adjustments/Calendar/Board-of-Zoning-Adjustments-Meeting-June-10-2021/> .

Would you please confirm whether this item has been removed from the agenda?

I am copying Elaine Murillo as well, in case she can respond.

Thank you.

Best,

John Henning

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Attorney at Law  
125 N. Sweetzer Ave. Unit 202  
Los Angeles, CA 90048

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Fax (323) 655-6109  
[jhenning@planninglawgroup.com](mailto:jhenning@planninglawgroup.com)

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**From:** Elaine Murillo [<mailto:Elaine.Murillo@sonoma-county.org>]  
**Sent:** Friday, May 28, 2021 9:14 AM  
**To:** Gina Belforte; Jacquelynne Ocana; Sean Hamlin; Scott Orr; Cecily Condon; Jennifer Klein; Sita Kuteira; Christa Shaw; Ivan Jimenez; 'mkim@completewireless.net'; 'JWoolf@sbase.com'; 'jhenning@planninglawgroup.com'  
**Cc:** Marina Herrera  
**Subject:** UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Good Morning,

Please see attached BZA Legal Notice for project referenced in the project line above.

If you have any questions please feel free to contact the project planner at [Marina.Herrera@sonoma-county.org](mailto:Marina.Herrera@sonoma-county.org).

Thank you,

**Elaine Murillo**  
**Administrative Assistant**  
County of Sonoma  
2550 Ventura Avenue, Santa Rosa, CA 95403  
Direct: 707-565-1935 |  
Office: 707-565-1900 | Fax: 707-565-1103  
[www.PermitsSonoma.org](http://www.PermitsSonoma.org)

<image001.jpg>

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***Wednesday, 12:00 PM – 4:00 PM.***

***Thank you for your patience as we work to keep staff and the community safe.***

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