



# SAN BENITO COUNTY BOARD OF SUPERVISORS

Margie Barrios  
District No. 1

Anthony Botelho  
District No. 2

Pat Loe  
District No. 3  
Vice-Chair

Reb Monaco  
District No. 4  
Chair

Jaime De La Cruz  
District No. 5

County Administration Building – Board of Supervisors Chambers, 481 Fourth Street, Hollister, California

## REGULAR MEETING ACTION MINUTES JUNE 1, 2010

The Board of Supervisors of San Benito County met in the Board Chambers on the above date in *regular session*. Supervisors Botelho, Loe, Barrios, De La Cruz and Monaco were present. Also present was Assistant County Administrative Officer Rich Inman, County Counsel Matthew Granger, Assistant Clerk Janet Slibsager for the morning session and Clerk of the Board Linda Churchill for the afternoon session. Chairman Reb Monaco presided.

### 9:00 a.m. CALL TO ORDER:

- a) Supervisor Loe led the Pledge of Allegiance.
- b) *Upon motion duly made, seconded and carried, acknowledged Certificate of Posting.*

### c) PRESENTATIONS & RECOGNITIONS:

**Present Certificate of Recognition to Juanita Luna who is retiring after over 20 years of service with the County of San Benito.**

Certificate to be presented at a later date. *File #810*

- e) **Public Comment:** Sandy Patterson, Hollister resident, spoke in regards to a March 8, 2010 incident that happened at the Willow Grove School grounds where she was physically assaulted by the retired Superintendent of School Tim Foley. Ms. Patterson said that she would file a complaint with the Grand Jury.
- f) **Department Head Announcements:** There were no Department Head announcements.
- g) **Board Announcements, Introductions and Presentations:** Supervisor Barrios congratulated the promoters, organizers and the Mayor of Hollister for doing a fabulous job at the Air Show at the Hollister Airport.  
Supervisor De La Cruz announced that he attended the Veteran's Memorial Service held at the Veterans Memorial Building, Hollister.  
Supervisor Loe commended the Veterans' Offices for putting on a great program at the Veteran's Service.  
Supervisor Loe announced that she attended the Gang Task Force meeting and that she was really impressed as to what was accomplished in a

short period of time and mentioned that she would be presenting a full report to the Board of Supervisors at a later date.

Supervisor Botelho announced that he attended the Veterans Memorial Service in San Juan Bautista and the Post Commander did a great job and they had a wonderful turnout.

Chairman Monaco announced that he attend the Pinnacles National Monuments Settlers Days where he demonstrated some blacksmithing.

Chairman Monaco said that he attended the Air Show on Sunday and reported that it was a very successful event.

## **CONSENT AGENDA:**

*Upon motion made by Supervisor Loe and seconded by Supervisor Barrios, approved Consent Agenda Items 1 through 13.1, with the exception of Items 3, 5, 10 & 13 which were pulled for discussion.*

### **AGRICULTURAL COMMISSIONER – R. Ross:**

- 1) **Approved** contract with the California Department of Food & Agriculture for the European Grapevine Moth (EGVM) trapping services for period of March 1, 2010 through September 30, 2010 in the amount of \$8,519.00. *File #1.1*
- 2) **Approved** contract with the California Department of Food & Agriculture for the Organic Inspection Services for the FY 2010/2011 in the amount of \$4,675.00. Chairman Monaco sustained himself. *File #1.1*
- 3) **Accepted the Mosquito & Disease Control Assessment Engineers Report from SCI Consulting Group; and schedule a public hearing for June 22, 2010 and adopt Resolution of Intent to levy the assessment for Fiscal Year 2010/2011. (Res. No. 2010-65)**  
*Item pulled for discussion.*  
*Marty Richman, Hollister resident, and Marvin Jones, Hollister resident both spoke in regards to this item.*  
**BOARD ACTION:** *Upon motion made Supervisor Loe and seconded by Supervisor Botelho, continued this item to the afternoon session. File #1.1 (Unanimous)*

*Chairman Monaco announced that he was asked to add Item #13.1 to the consent agenda.*

**BOARD ACTION:** *Upon motion made by Supervisor Botelho and seconded by Supervisor De La Cruz, **moved** to add Item 13.1 to the consent agenda and **approved** item as presented.*

### **CLERK OF THE BOARD:**

- 4) **Approved** the action minutes of the May 11, 2010 meeting.

### **HEALTH & HUMAN SERVICES AGENCY – K. Flores:**

- 5) **Adopt Resolution authorizing the HHSA Director to sign amendment to Memorandum of Understanding (MOU) related to Foster Family Home**

**Licensing and Certification Clauses with the State Department of Social Services. (Res. No. 2010-66)**

*This item was pulled for discussion.*

**BOARD ACTION:** Upon motion made by Supervisor Barrios and seconded by Supervisor Loe, **adopted Resolution No. 2010-66**, authorizing the HHSA Director to sign amendment to Memorandum of Understanding related to Foster Family Home Licensing and Certification Clauses with the State Department of Social Services. File #130 (Unanimous)

- 6) **Approved** the Workforce Investment Act (WIA) Youth Work Experience Agreement Template and **authorized** the Director of HHSA and/or the Deputy Director of CSWD to sign contracts on the county's behalf. File #939
- 7) **Adopted Resolution No. 2010-67**, accepting the Workforce Investment Act (WIA) Title 1 Master Sub grant, Youth Program Allocation for Program Year 2010-2011 in the amount of \$225,530; and **authorized** the Director of HHSA to sign the sub grant agreement and other documents related to receipt of the sub grant. File #939
- 8) **Approved** the amended County Participation Agreement for the Restated County Medical Services Program (CMSP). File #130

**INTERNAL SERVICES – R. Inman:**

- 9) **Approved** memorandum serving notice that the Board of Supervisors will not authorize issuance of Tax and Revenue Anticipation Notes (TRANS) on behalf of San Benito High School and Hollister Elementary School Districts and **authorized** the Clerk of the Board of Supervisors to sign. File #13
- 10) **Approve job specification for Information Technology Support Technician III at range 21.4 and add to schedule of authorized positions and establish classification series of Information Technology Support Technician I, II, and III/Data Base Administrator.**  
*Item pulled for discussion.*  
**BOARD ACTION:** Upon motion made by Supervisor De La Cruz and seconded by Supervisor Loe, **approved** item as presented. File #119.1 (Unanimous)
- 11) **Approved** contract with USDN Inc. Consulting Services to do an Internal County IT Security Audit effective June 1, 2010 through August 31, 2010, not to exceed \$38,400. File #119.1

**PUBLIC WORKS DEPARTMENT – S. Wittry:**

- 12) **Adopted Resolution No. 2010-68** calling for Mail Ballot Elections for County Service Area No. 34, Ausaymas Estates and No. 53, Riverview Estates for Tuesday, August 31, 2010 in connection with Property-Related Fees. File #CSA's

**SHERIFF'S DEPARTMENT – C. Hill:**

- 13) **Find that Emergency Vehicle Services, Inc. is a sole source provider of maintenance and repair for the San Benito County repeater sites and approve the service agreement for the period of July 1, 2010 through June 30, 2011 in the amount of \$27,720.**

**BOARD ACTION:** Upon motion made by Supervisor Loe and seconded by Supervisor De La Cruz, **moved** to continue item to 1:30 p.m.

**INTEGRATED WASTE MANAGEMENT – M.Rose:**

- 13.1) **Approved** contract with McIntire Electric for installation of the panels needed to hook into the Pacific Gas & Electric line at John Smith Road Landfill for the period of June 1, 2010 through July 31, 2010, in the amount of \$53,701.26. *File #75.4*

**PUBLIC HEARINGS (9:00 a.m. or as soon thereafter as the matter may be heard):**

**PUBLIC WORKS DEPARTMENT – S. Wittry:**

- 14) **Hold a public hearing and adopt Resolution, imposing a property-related fee in County Service Area No. 24, Santa Ana Estates, and No. 35, Union Heights, confirming the fee report, fee schedule and fee and providing for the levy of the Fiscal Year 2010/11 property-related fee.**

Assistant County Counsel Barbara Thompson asked to have this item continued to the July 9, 2010 Special Meeting at 1:30 p.m. due to improper noticing.

**BOARD ACTION:** Upon motion made by Supervisor Loe and seconded by Supervisor Botelho, **moved** to continue this item to July 9, 2010 at 1:30 p.m. *File # CSA's (Unanimous)*

**REGULAR AGENDA:**

**AGRICULTURAL COMMISSIONER – R. Ross:**

- 15) **Receive report on regulatory procedures that are required for a Certified Farmer's Market.**

Agricultural Commissioner Ron Ross provided information in regards to procedures and state guidelines for Farmers Market in San Benito County.

Environmental Health Director Bob Shingui provided information under the County Health & Safety Code and the Health Permit requirements.

Assistant Planning Director Byron Turner provided information in regards to zoning ordinance and temporary use fee for Farmers Markets.

Discussion ensued by Board and staff.

Marty Richman, Hollister resident, spoke in regards to what it costs to set up a fruit stand and those who are on the corners selling fruit that do not have a permit to sell. *File #1.1*

**COUNTY FIRE DEPARTMENT – P. Avila:**

- 16) **Approve County Fire's participation in a regional grant for Self Contained Breathing Apparatus (SCBA) for the Fiscal Year 2010/11, in the amount of \$80,000.**

Battalion Chief, Paul Avila, provided information in regards to County Fires participation in the regional grant for self contained breathing apparatus for the Fiscal Year 2010/2011.

Questions ensued by Board of Supervisors to Mr. Avila.

**BOARD ACTION:** Upon motion made by Supervisor Barrios and seconded by Supervisor De La Cruz, **approved** County Fire's submission of an application for Assistance Firefighter Grant for self contained for FY 2010/2011 in the amount of \$80,000. *File #60 (Unanimous)*

- 17) **Approve County Fire's submission of an application for Assistance Firefighter Grant (AFG) for a Self Contained Breathing Apparatus (SCBA) refill station for FY 2010/2011 in the amount of \$45,000.**

Battalion Chief Paul Avila provided information in regards to the second part of the grant for the self contained breathing apparatus refill station for FY 2010/2011.

Discussion ensued by Board and staff.

**BOARD ACTION:** *Upon motion made by Supervisor Botelho and seconded by Supervisor Loe, **approved** County Fire's submission of an application for Assistance firefighter Grant for self contained breathing apparatus refill station for FY 2010/2011 in the amount of \$45,000. File #60 (Unanimous)*

**COUNTY COUNSEL – M. Granger:**

- 18) **Introduce and waive reading of a Weed Abatement Ordinance; and set a public hearing for June 22, 2010 Board meeting for adoption of said ordinance.**

Supervisor Barrios excused herself from this item.

Deputy County Counsel Shirley Murphy stated that they are before the Board today to introduce an ordinance of the County of San Benito adopting Weed Abatement regulations, which was asked to be brought back with changes by the Board of Supervisors, and set a public hearing for June 22, 2010 for adoption of ordinance.

**BOARD ACTION:** *Upon motion made by Supervisor Loe and seconded by Supervisor De la Cruz, **introduced** and **waived** reading of a weed abatement ordinance; and **set** a public hearing for June 22, 2010 board meeting for adoption. File #160 (Unanimous)*

**PUBLIC WORKS DEPARTMENT – S. Wittry:**

- 19) **Status update on Streambed Maintenance Agreement with California Department of Fish and Game.**

Public Works Administrator Steve Wittry provided update on Stream Alteration Agreement – routine maintenance with the California Department of Fish and Game for bridges in San Benito County.

Discussion ensued by Board and staff. *File #105*

**1:15 P.M.**

**CONSENT AGENDA: (Continued from morning session)**

**AGRICULTURAL COMMISSIONER – R. Ross:**

- 3) **Accept the Mosquito & Disease Control Assessment Engineers Report from SCI Consulting Group; and schedule a public hearing for June 22, 2010 and adopt Resolution of Intent to levy the assessment for Fiscal Year 2010/2011. (Res. No. 2010-65)**

Management Analyst Margie Riopel handed out the Mosquito Abatement Program budget that is proposed for this year and clarified questions posed by Board members.

Ms. Riopel answered questions posed by Board members.

*Chairman Monaco indicated that doing a bi-annual review, as discussed during the morning session, will be discussed at budget hearings in August.*

**BOARD ACTION:** *Upon motion made by Supervisor Botelho and seconded by Supervisor Barrios, accepted the preliminarily Engineers Report from SCI Consulting Group, directed staff to schedule a public hearing; and adopted **Resolution No. 2010-65** a resolution of intent to levy the assessment for fiscal year 2010/2011. (Unanimous) File #1/1*

**SHERIFF'S DEPARTMENT – C. Hill:**

- 13) **Find that Emergency Vehicle Services, Inc. is a sole source provider of maintenance and repair for the San Benito County repeater sites and approve the service agreement for the period of July 1, 2010 through June 30, 2011 in the amount of \$27,720.**

Management Analyst Catherine Shaw clarified that the Agenda Item Transmittal for this item was corrected to read \$32,120 for Current Year Cost and Annual Cost indicating that \$4400 for emergency maintenance was built in and budgeted.

Ms. Shaw answered questions posed by Board members.

**BOARD ACTION:** *Upon motion made by Supervisor Barrios and seconded by Supervisor De La Cruz, found that Emergency Vehicles Services, Inc. is a sole source provider of maintenance and repair for the San Benito County repeater sites and approved the service agreement with a term to begin July 1, 2010 through June 30, 2011 for a budgeted amount of \$32,120. (Unanimous) File #110*

The Board adjourned at 1:24 p.m. and reconvened at 1:30 p.m. re:

**AFTERNOON SESSION**

**1:30 P.M.**

**PUBLIC HEARINGS – 1:30 P.M. (or as soon thereafter as the matter may be heard)**

**ASSESSOR – T. Slavich:**

- 20) **Held public hearings to consider the following Land Conservation Act Requests:**

Assessor Tom Slavich provided background information and noted that the Agricultural Preserve Advisory Committee recommended approval for each request.

Chairman Monaco opened and closed the public hearing for each request and there was no one wishing to address the Board on any of the requests.

- **Pfau-Pfau & Pfau LLC: Compatible Use Request: 29 Assessor Parcels in Book 28, Pages 32, 33, 34, 36 & 37 and Book 29 Pages 21, 22, & 27**

**BOARD ACTION:** *Upon motion made by Supervisor Barrios and seconded by Supervisor Loe, directed staff to return at a future meeting with findings that this*

request meets the criteria of the San Benito County Code Section 19.01.023(B)(1),(F),(H) & (I) and California Government Code Section 51238.1 & 51238.2 and approved this compatible use request for LCA Contract #91-902. (Unanimous)

- **Daniel Weatherly, Anna White, Mary Adams, Janelle McDonald, Patricia McDonald, Patrick McDonald, Weatherly Family Trust, 1994 Chiappari Family Trust:** *Compatible Use Request: APN's: 21 Assessor Parcels in Book 28 Pages 26, 28, 31 & 33 and Book 29 Page 16.*

**BOARD ACTION:** *Upon motion made by Supervisor De La Cruz and seconded by Supervisor Monaco, directed staff to return at a future meeting with findings that this request meets the criteria of the San Benito County Code Section 19.01.023(B) (1), (F), (H) & (I) and California Government code Section 51238.1 & 51238.2 and approved this compatible use request for LCA Contract #87-13. (Unanimous)*

- **Robert Frusetta, ETAL.:** *Compatible Use Request: 11 Assessor Parcels in Book 28 Pages 28 & 33 and Book 29 Pages 16 & 21*

**BOARD ACTION:** *Upon motion made by Supervisor Monaco and seconded by Supervisor Botelho, directed staff to return at a future meeting with findings that this request meets the criteria of the San Benito County Code Section 19.01.023(B)(1),(F),(H) & (I) and California Government Code Section 51238.1 & 51238.2 and approved this compatible use request for LCA Contract #87-12. (Unanimous)*

- **Lee James – Jean Strohn:** *Compatible Use Request: APN's 028-260-004; 028-250-009*

**BOARD ACTION:** *Upon motion made by Supervisor Botelho and seconded by Supervisor Loe, directed staff to return at a future meeting with findings that this request meets the criteria of the San Benito County Code Section 19.01.023(B)(1),(F),(H) & (I) and California Government Code Section 51238.1 & 51238.2 and approved this compatible use request for LCA Contract #71-77. (Unanimous)*

- **Charles Strohn, Eugene Strohn, Lee James – Jean Strohn:** *Compatible Use Request: APN's: 028-250-008; 028-260-007; 028-270-003; 028-280-001*

**BOARD ACTION:** *Upon motion made by Supervisor Barrios and seconded by Supervisor Botelho, directed staff to return at a future meeting with findings that this request meets the criteria of the San Benito County Code Section 19.01.023(B)(1),(F),(H) & (I) and California Government Code Section 51238.1 & 51238.2 and approved this compatible use request for LCA Contract #72-42. (Unanimous)*

- **Jeanette Christina Velasquez Rev. Tr.:** *Compatible Use Request: APN 028-260-005*

**BOARD ACTION:** *Upon motion made by Supervisor Barrios and seconded by Supervisor Monaco, directed staff to return at a future meeting with findings that this request meets the criteria of the San Benito County Code Section 19.01.023(B)(1),(F),(H) & (I) and California Government Code Section 51238.1 & 51238.2 and approved this compatible use request for LCA Contract #69-27. (Unanimous)*

- **Paicines' 98 Holdings, LLC, Ronald Donati, Matthew Donati:** *Division Request: APN's: 4 Assessor Parcels in Book 23 Pages 10 & 11 and Book 26 Page 15 and APN 023-100-048*

**BOARD ACTION:** Upon motion made by Supervisor Barrios and seconded by Supervisor Loe, directed staff to return at a future meeting with findings that this request meets the criteria of the San Benito County Code Section 19.01.021(B)(2) &(D)(1) and approved this division request. (Unanimous)

- **Beverly Tobias:** Division Request: 16 Assessor Parcels in Book 22 Pages 13, 14 & 15

**BOARD ACTION:** Upon motion made by Supervisor Botelho and seconded by Supervisor Monaco, directed staff to return at a future meeting with findings that this request meets the criteria of the San Benito County Code Section 19.01.021(B)(2)&(D)(1) and approved this division request. (Unanimous) File #7.1

**PLANNING DEPARTMENT – C. Woodbury:**

- 21) **Hold a public hearing to consider an appeal of the San Benito County Planning Commission's April 7, 2010 approval of Use Permit No. 789-99 (B). APPELLANT: William S. Lee. APPLICANT: Frank Leal, LOCATION: 300 Maranatha Dr, Hollister ZONING: Rural**

Assistant Planning Director Byron Turner provided staff report and presented a PowerPoint presentation titled "Use Permit 789-89(B), Leal Winery" covering the following points:

- 1) History
  - Temporary Use Permit 809-00 approved September 2000
  - Use Permit 789-99 approved 2001
  - Photo advertisements
  - Use Permit 789-99A approved 2004
  - Conditions of Approval
  - Conditions of Approval for use have never been met
  - Site Map
- 2) Enforcement History
  - Website advertising
  - 2005-2006
  - July 2006
  - March 2007
  - July 2007
  - March 2009
  - May 2009
  - Stop Order has never been rescinded.
- 3) April 7, 2010 Planning Commission
  - Staff recommended approval of Use Permit 789-99B with amended Conditions of Approval
  - If approved, applicant would have options regarding the tent structure, would be allowed to hold events in the barrel room, and have the ability to demonstrate that the turn-lane was not needed
  - New Conditions
  - Planning Commission deleted traffic/road improvement conditions
  - Modified condition requiring tent to be taken down or sprinklered
  - Modified condition requiring yearly event plans and security plan

- Modified condition requiring annual compliance review
- 4) Building & Fire Codes
- Please note that the Planning Commission does not have the authority to waive Building or Fire Codes
  - Building permits changing the occupancy of the barrel room have not been obtained
  - The tent is still classified under Fire and Building codes as "temporary" thereby falling under the jurisdiction of County Fire
  - Permits for the changing room and kitchen have not been obtained
- 5) Recommendation
- Staff recommends direction to return at later meeting with a resolution reflecting the decision of the Board of Supervisors.

Question and answer period ensued with regards to the Fire Code.

Supervisor Barrios stated for the sake of transparency she met with the appellant along with Planning Commissioner Culler and there were no notes taken. Supervisor Barrios also received one telephone call about the appeal.

Supervisor Monaco stated he also spoke to the appellant and to the applicant, Frank Leal, and he has received e-mail communications and a couple of telephone calls both supporters of the appeal and supporters of Mr. Leal.

Supervisors De La Cruz, Botelho and Loe stated that they each met with the appellant, William Lee.

Chairman Monaco opened the public hearing.

County Counsel Matt Granger explained the appeal hearing process.

William "Bill" Lee, appellant, stated that he is the neighboring landowner of the Leal property and he lives at the end of Old Ranch Road. Mr. Lee said it was a sad state that he had to file this appeal and be here today but it has been difficult to sleep many a time because of the noise that has come from the Leal event center and in particular the noise from the tent facility. Mr. Lee stated that he has tried to work with Mr. Leal in the past and his response was that I shouldn't build on my property where the house had been for 30 years. Mr. Lee said he was before the Board of Supervisors asking for preservation of his property rights.

Mr. Lee explained the levels of noise and how the events run past 10:00 p.m. and he has called the Sheriff's Department and they have done nothing about it. Mr. Lee said he was not here to ask to shut down the Leal venue but Mr. Leal needs to work within the rules.

Mr. Lee talked further about the noise levels and noting the many violations by Mr. Leal in the past including the non-enforcement issues of the Fire Code. Mr. Lee stated there was a Stop Order in effect but Leal still goes on

Mr. Lee urged the Board of Supervisors to protect his property rights and to hold Mr. Leal to be consistent with noise levels.

Mr. Lee also asked that the traffic turn lane be looked into and also noted that he was not notified in to time to make these statements to the Planning Commission.

Christine Breen, Attorney representing applicant Frank Leal, handed out her written response to the appeal and directed to the San Benito County Board of Supervisors. Ms. Breen referred to her handout with regards to what the Standard of Review requires. Ms. Breen pointed out that the very basis for this

appeal is not founded. Ms. Breen referred to Exhibit B, a letter to Senior Planner Lissette Knight dated March 26, 2010, which presented Mr. Lee's concern of the noise. Ms. Breen pointed out that the letter was actually referenced in the staff report to the Planning Commission and that Ms. Knight made findings taking it into consideration.

Ms. Breen referred to Exhibit A of her presentation materials, which basically sets forth the appeal form submitted by the Lees, and pointed out that the appeal form asks the appellant to set forth any alleged errors for the Board to consider and several items of the items that we have heard from Mr. Lee today exceed the scope, not only of what was presented on the appeal form, but also the matters that were considered before the Planning Commission on April 7, 2010.

Ms. Breen addressed the inconsistency of code enforcement. Ms. Breen stated that a full hearing was held by the Planning Commission on April 7, 2010 and issues of non compliance were addressed and we ended up with an amended Conditional Use Permit (CUP) which attempts to meet some of Mr. Leal's concerns and also meet the concerns of the county in a fair and equitable way. Ms. Breen stated that it was too premature to decide whether the conditions have been met sufficiently and she respectfully requested that the Board of Supervisors permit sufficient time for the applicant to meet those requirements and conditions set forth in the amended CUP before making any judgments.

Ms. Breen stated she was reluctant to take the time to address the issues that were raised today that are outside the scope of the appeal that are addressed substantively in the packet that she submitted.

Ms. Breen answered questions posed by Board members including questions with regards to the noise and the traffic turn lane.

County Counsel Matt Granger explained that the Board is entitled to receive evidence in this appeal and that is not narrowly construed, it is broadly construed. County Counsel Granger explained at the end of this hearing, after all of the evidence to whatever extent has been offered, the items that are in question for the Board to act upon that make up the Planning Commission's decision are the modifications or deletions that were made on Conditions of Approval Nos. 5, 6, 7, 15, 21 and 22 which the Board needs to decide whether to uphold those changes or not.

Further discussion ensued and Board members posed questions to staff including the public notice guidelines for the Planning Commission meetings as well as the Board of Supervisor's public hearings.

Matt Kelly, Engineer, addressed the Board with regards to the turn lane issue and answered questions posed by Board members.

Art Bliss, Public Works Department, answered questions with regards to the traffic turn lane issue.

Debbie Pivetti, Riverside Road, stated she did not experience any noise problems when she lived on Old Ranch Road right next to Leal Vineyards.

Owie Popescu, Manager for Leal Vineyards, stated he has never had problems with noise levels and answered questions posed by Board members.

Frank Leal, applicant, stated that noise has not been an issue with any of his other neighbors and now the noise issue is dragging everything else into the equation. Mr. Leal stated he has been there for 10 years and Mr. Lee just purchased the property and intends to develop it so he will be raising the noise issue at every event that is held at Leal Vineyards. Mr. Leal further stated that

this isn't just about noise. Mr. Leal expressed frustration stating that the County threw in a turn lane that wasn't warranted and now every time he goes to file for a permit application he gets turned down and he is very tired of it.

Board members posed questions to Mr. Leal and emphasized that they did not want to shut down his operation but would like to work with him in order for him to be in compliance and work to get the many issues addressed.

Further discussion ensued.

Supervisor Barrios stated that making a decision doesn't have to take a long time and the county must address the rights of both Mr. Lee and Mr. Leal. Supervisor Barrios further stated that the current Board has made a commitment to be consistent. Supervisor Barrios noted that the appellant is concerned about the overall lack of compliance on the Leal property over the last 10 years of the project. Supervisor Barrios stated that there are three things that need to be discussed with regards to ways that proper enforcement will be insured and those are: 1) Level of noise; 2) Traffic issue; and, 3) Permit issues.

Chairman Monaco stated that compliance issues need to be met and Mr. Leal needs to be willing to comply with those issues as well as resolving the noise issue which affects his neighbor.

The Board adjourned for a break at 3:55 p.m. and reconvened at 4:05 p.m.

The following members of the public addressed the Board: Phil Fortino, local resident; Denny Madigan, local resident and Marty Richman, local resident.

Paul Avila, County Fire Battalion Chief, stated that the Board of Supervisors adopted the Fire Code and County Fire has been given the task to look at the issues and do plan checks and there has been no enforcement. Chief Avila stated that County Fire has identified several life safety issues at the Leal Vineyards and there has been no compliance. Chief Avila further stated that the Planning Commission has no legal authority to overturn the Fire Code, which they did. Chief Avila stated that County Fire has no authority to enforce the Fire Code and indicated that they have identified life safety issues and have it in writing and it has to be complied with and that is the responsibility of the Board of Supervisors.

Curt Itson, Cal Fire Division Chief, emphasized that the California Fire Code was adopted by the Board of Supervisors and that it what we utilize here in the county. Chief Itson addressed the safety issues with regards to the tent at Leal Vineyards stating there are ways to mitigate these issues and it takes cooperation to do so.

Chairman Monaco called for rebuttals.

Appellant Bill Lee rebutted with regards to the issues of the timeliness of his appeal, the noise issue, the occupancy issue, the number of persons per event, the fact that he is not a developer, traffic report, the water issue, event closing times, health and safety issues, and the inconsistency of the rules and bringing all the issues into compliance.

Christine Breen, rebutted stating that we had gotten far afield from where we started and she wanted to bring it back to the noise issue. Ms. Breen stated that the applicant is fully committed to working through each one of the issues with the County that were before the Planning Commission on April 7, 2010 and those are noise, traffic, and the permitting. Ms. Breen also addressed the fire code issues. Ms. Breen addressed the appeal form stating that the issues were quite

narrow. Ms. Breen stated that Mr. Lee's comments were taken into consideration by the Planning Commission.

Chairman Monaco closed the public hearing.

Lengthy discussion ensued and supervisors expressed their concerns and detailed issues that they felt must be addressed which include CEQA documents, noise, fire code issues and traffic turn lane.

Supervisor Barrios asked if Mr. Lee's concern with not receiving the notice in sufficient time was satisfied by this public hearing.

Mr. Lee answered yes this hearing today does satisfy the public hearing request and basically what he said today is what he would have said at the Planning Commission level had he been given the opportunity.

Supervisor Barrios noted the following issues that require solutions: Request by Mr. Leal to update Site Plan; Onsite food preparation; Changing tent to permanent structure to address fire issues; Barrel Room occupancy classification; Project signage; Noise levels; Clarification of industrial or rural decibels; Traffic report – take history into consideration; and Parking.

Chairman Monaco asked for clarification for the issue regarding the number of people at events.

Mr. Turner explained that Condition #8 states that maximum occupancy for any one event shall be 225 persons to keep consistent with the Traffic Report.

Further discussion and question and answer period continued with regards to the Fire Code issues, noise issues (decibel levels) and enforcement issues.

Chairman Monaco summarized that the applicant is aware that he has to comply with the conditions and right now he has an operating permit to operate a winery and a tasting room. Chairman Monaco further noted that the applicant has some other desires to operate some other activities on his properties and he is not at this present time permitted to operate those activities. Chairman Monaco stated that the applicant has agreed to correct some of these problems and he has a right to have a check list of those actions that he must take to comply with those conditions to get the permits. Chairman Monaco further stated that the Board of Supervisors has the responsibility to make sure that staff can assure Mr. Leal of date certains that if he complies then he will be issued the permits. Chairman Monaco also stated that the applicant has a right to address any grievances that he may have with either the Board of Supervisors or the Planning Commission if he does not feel he has been treated fairly.

Chairman Monaco recommended that this matter be brought back to the Board of Supervisors on June 22, 2010 for clarification and absolute direction after Mr. Leal has had the opportunity to meet with staff and meet the conditions.

*It was the consensus of the Board to continue this item to June 22, 2010 after the applicant has met with staff.*

*Chairman Monaco summarized the request stating that the applicant will have the opportunity to meet with Planning staff to deal with the issues that have been discussed today and make him compliant with the noise, the Fire Code and the traffic issues including the process of permitting.*

Christine Breen asked for clarification on the issues that the applicant needs to meet and resolve with staff because it was their understanding that most of the issues had been resolved but now narrowed down to noise, traffic and Fire Code.

Chairman Monaco answered that was correct.

Supervisor Barrios asked if the winery was permitted to continue its events at this point with the directions that the Board has given.

Mr. Turner verified that the Use Permit is in compliance for the winery but the event use permit is currently not in compliance with its approval nor are the structures in compliance with the Building Code or Fire Code. Mr. Turner stated that all of the Conditions of Approval have not been met. Mr. Turner further explained that there are structures that were built there that currently have no building permits.

Chairman Monaco stated that they were getting far afield because this appeal basically was for the tent facility and event center. Chairman Monaco said it seems that there are still some issues related to the use of winery facility itself and events that can occur there and he didn't know if that was under the purview to take care of those issues today

County Counsel Granger stated that he did not feel that they have to be dealt with as a separate issue; however, Mr. Turner has quoted that they are out of compliance and that is not necessarily the issue before the Board right now.

Chairman Monaco stated that the issue being dealt with today is the issues related to the tent facility including noise, traffic and Fire Code.

Mr. Turner stated that the issue requiring building permits was not one of the conditions amended by the Planning Commission except for the one regarding the tent.

Chairman Monaco stated that he would like to canvass the Board again to make sure we have a clear understanding of what the recommendation is to continue this matter to a date certain, June 22, 2010, to deal with just issues of the tent facility and have the applicant deal with the Planning Department to clarify those issues around noise, traffic and Fire Code.

Supervisor Barrios stated she was not clear on this because the Planning Commission decision was being appealed and the decision that the Planning Commission made refers to Conditions of Approval 5, 6, 7, 15, 21 and 22 and those six issues are the ones that we, as a Board, should be taking on and how we're going to move forward with either accepting those conditions made by the Planning Commission or do we take these conditions individually and solve them at this level.

County Counsel Granger explained that on appeal the Board of Supervisors has the ability to uphold, deny and modify the Planning Commission's decision. The Planning Commission's decision, as Supervisor Barrios pointed out, was to issue the Conditional Use Permit which allowed an update of the Site Plan, onsite food preparation, permanent tent structure, barrel room and those things and modified the Conditions of Approval, 5, 6, 7, 15, 21 and 22. County Counsel Granger further explained that the Board can say they want to uphold the whole appeal, they want to uphold the portion of the Planning Commission's decision and deny a portion of the appeal. County Counsel Granger further stated the Board can continue the appeal and get more information from staff and the applicant, and then come back at a later date and make the decision.

Further discussion ensued as to the process of making the decision.

Mr. Turner stated that given the direction that they received today they can work with the applicant and come back on the June 22<sup>nd</sup> with a plan as far as what conditions we can come to an agreement on and which ones we can't.

Supervisor De La Cruz asked about the current violations and what was the Board's jurisdiction over that.

County Counsel Granger explained that the Board of Supervisors has taken an oath to uphold the law and the Fire Code is the law of State of California and the law of the County of San Benito.

***BOARD ACTION:*** *Upon motion made by Supervisor Botelho and seconded by Supervisor Loe, continued this matter to the June 22, 2010 meeting at 1:30 p.m. and directed staff to bring back more information with regards to the noise, traffic and Fire Code.*

Under the Question. Supervisor Barrios asked then if we were not bringing back the other Conditions of Approval for discussion.

Supervisor Loe stated that we have specific issues that we want more information on and we are continuing it so we could go back and ask questions on the other items if we choose to on that date and everything else will still be on the table on June 22<sup>nd</sup>.

*Chairman Monaco called for the question.*

*The motion passed unanimously. Appeal File*

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The vote of each member of the Board of Supervisors upon each matter at the foregoing meeting, unless otherwise stated, was as follows:

AYES: SUPERVISORS: Botelho, Loe, Barrios, De La Cruz, Monaco  
NOES: SUPERVISORS: None  
ABSENT: SUPERVISORS: None

There being no further business the Board adjourned at 5:45 p.m. to June 8, 2010 at 9:00 a.m. for a regular meeting.

**REB MONACO, CHAIRMAN**

San Benito County Board of Supervisors

**ATTEST:**

Janet Slibsager, Assistant Clerk  
Morning Session  
Linda Churchill, Clerk of the Board  
Afternoon Session