

COUNTY OF NEVADA
STATE OF CALIFORNIA
BOARD OF SUPERVISORS



Nathan H. Beason, 1st District
Edward C. Scofield, 2nd District
Chair Dan Miller, 3rd District
Vice-Chair Wm. "Hank" Weston, 4th District
Richard Anderson, 5th District

Julie Patterson Hunter,
Clerk of the Board

NEVADA COUNTY BOARD OF SUPERVISORS
Board Agenda Memo

MEETING DATE: December 13, 2016
TO: Board of Supervisors
FROM: Julie Patterson Hunter, Clerk of the Board
SUBJECT: Request by Mr. James and Carol Fuller Powell, Appellants, for the County to return the appeal fee in the amount of \$1,374.20 filed in connection with her appeal of the Planning Commission's decision on the Byers Leafguard and Solar's commercial expansion and renovation project.

RECOMMENDATION: Adopt Resolution denying the refund of fees in the amount of \$1,374.20 related to an appeal filed by James Powell and Carol Powel Fuller Powell on August 5, 2016.

FUNDING: The \$1,374.20 adopted appeal fee is based on a flat fee approved by Resolution 15-221 that represents Planning Department's time to process its response to appeals, calculated at 10 hours at the hourly rate of \$137.42 per hour at the time of the appeal filing. Per Resolution 16-218, effective August 6, 2016, the hourly rate is now \$141.54. The fee would be refunded to the Planning Department fund. In this case, staff has estimated that its current cost to process the appeal was \$5,626.21, which including 39.75 hours of staff time at the current hourly rate of \$141.54.

BACKGROUND: On July 28, 2016 the Planning Commission approved the necessary permits and voted 5-0 to recommend to the Board of Supervisors to adopt the Mitigated Negative Declaration for the rezone and approve the rezone component of the Project. Specifically, the Board was requested to amend District Map 052b (Z16-001) to rezone APN 09-320-25 at 11773 Slow Poke Lane, Grass Valley, from M1-SP to M1 in order to remove the SP overlay district and its attendant notes, which are currently impeding development of the site.

Mr. James Powell and Carol Fuller Powell, Appellant, filed an appeal on August 5, 2016 with the Board of Supervisors regarding the actions of the Planning Commission. The appeal fee in the amount of \$1,374.50 was also received on August 5, 2016.

On September 13th, the Board approved by 5-1 vote to accept the appeal filed by Mr. James Powell and scheduled a public hearing for October 11, 2016.

At the October 11, 2016 public hearing, the Nevada County Board of Supervisors considered the appeal and on a 5-0 vote, took the following action:

The Board voted unanimously to adapt as amended Resolution 16-500 denying the appeal but amending the Condition of approval D.7 to add language indicating the turnouts shall have signage indicating "No Parking." Moreover, the Board's discussion also led the Project Proponent, Mr. Rob Wood representing Byers Enterprises, to work with the Planning Department to ensure proper fencing was constructed around the property.

On October 19, 2016, the Clerk of the Board received a letter dated October 17, 2016 from James Powell and Carol Fuller Powell requesting a refund of the filing fee that was required to submit an appeal of \$1,374.20 because while the outcome of the appeal resulted in no change to the decision that due to their appeal filing participation and comments added clarification to the project.

The Nevada County Land Use & Development Code, Section L-II 5.12 Appeals states:

N. Refund of Appeal Fees.

1. Upon the conclusion of any appeal, where the Board of Supervisors upholds the appeal and overturns the decision of the Planning Agency, the Board may also authorize the return of all appeal fees filed by the appellant. The Board shall not authorize the return of the appeal fees if it finds that the Board's decision was, in whole or in part, based upon new evidence submitted by the appellant at the appeal hearing and which evidence was not provided to the lower hearing body.
2. Upon the conclusion of any appeal, where the Board denies the appeal but finds that appellants raised issues of substantial merit causing some affirmative change in the decision of the Planning Agency, the Board may also authorize the return of any portion of the appeal fees it deems just. (Ord. 2370 § 1, 2013)

Because the appeal was denied, the request is considered under Land Use and Development Code Section L-II 5.12 N.2. In the case of Mr. James and Carol Fuller Powell's request, the following would need to be considered:

- Whether, in the process of partially denying the appeal, the Board found that the appellant raised issues of substantial merit, causing some affirmative change in the decision of the Planning Commission.

Planning has estimated that its current cost to process the appeal at \$5,626.21 including 39.75 hours of staff time at the hourly rate of \$141.54 and materials.

In summary, although language was added to the Conditions of Approval directing turnouts to have signage indicating "No Parking" and the Planning Department was directed to ensure proper fencing was constructed around the property, the outcome of the appeal resulted in no changes to the Planning Commission's July 28, 2016 decision. Therefore, staff is recommending the request for return of the appeal fee be denied. Please consider Mr. James and Carol Fuller Powell's request and make a determination as to whether any portion or the entire appeal fee should be refunded to Mr. James and Carol Fuller Powell.

Item Initiated and Approved by: Julie Patterson Hunter

Submittal Date: November 10, 2016