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Agenda Date: 12/15/2020
Agenda Placement: 9I
Set Time: 2:00 PM PUBLIC HEARING
Estimated Report Time: 2 Hours

NAPA COUNTY BOARD OF SUPERVISORS
Board Agenda Letter

TO:	Board of Supervisors
FROM:	David Morrison - Director Planning, Building and Environmental Services
REPORT BY:	Emily Hedge, Planner III - 259-8226
SUBJECT:	Balloons Above the Valley Appeal

RECOMMENDATION

Consideration and possible direction regarding an appeal filed by Robert Barbarick on behalf of Balloons Above the Valley to a decision by the Napa County Planning Commission to deny Use Permit No. P19-00303 requesting daily launching of up to eight hot air balloons year round and related activities between the hours of 6:00 a.m. and 9:30 a.m., on a 2.03-acre parcel within the Agricultural Preserve (AP) zoning district, with a General Plan land use designation of Agricultural Resource (AR) located at 5360 Washington Street, Napa, California, APN: 036-130-029.

ENVIRONMENTAL DETERMINATION: Denial of the Project is exempt from CEQA pursuant to Public Resources Code Section 21080(b)(5) and State CEQA Guidelines Section 15061(b)(4), which exempt disapproval of projects from CEQA review. Alternatively, if the Board desires to approve the Project, consideration and possible adoption of a Negative Declaration. The Negative Declaration was circulated for public review and comment but not adopted.

EXECUTIVE SUMMARY

The matter before the Board involves an appeal by the applicant of the Planning Commission's final decision on November 4, 2020 to deny (3:2– NOES: Gallagher, Whitmer, and Cottrell; AYES: Mazotti and Dameron) a request for a use permit to allow daily launching of up to eight hot air balloons year round and related activities between the hours of 6:00 a.m. and 9:30 a.m., on a 2.03-acre parcel. The Commission took a tentative action to deny the Project on September 2, 2020 and on November 4, 2020 adopted Resolution No. 2020-01 formally confirming their tentative action of denial.

The Commission’s denial of the Project was based on inconsistency with agricultural policies in the General Plan and the inability to find that the Project would not adversely affect the public health, safety and welfare of Napa County residents.

PROCEDURAL REQUIREMENTS

1. Chair introduces item and requests disclosures from Board members.
2. Chair invites the Staff Report presentation.
3. Chair opens the public hearing and invites testimony from Appellant and their witnesses as previously disclosed on their witness list and in the order noted on the witness list attached as **Attachment B**. Appellant has been allocated a maximum of 30 minutes for their presentation including rebuttal.
4. Chair invites any other interested members of the public to testify regarding the appeal.
5. Chair then invites Appellant to have final rebuttal (time permitting).
6. Chair closes the public hearing.
7. A motion of intent is made and seconded to deny, uphold, and/or remand the appeal.
8. Chair refers the matter to County Counsel's office for preparation of a Resolution of Findings and Decision on Appeal. Staff recommends that the Board direct County Counsel's office to return to the Board on January 5, 2021 at 1:30 p.m. with the proposed Resolution for the Board's consideration and adoption.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
County Strategic Plan pillar addressed:	Livable Economy for All Effective and Open Government

ENVIRONMENTAL IMPACT

Denial of the Project is exempt from CEQA pursuant to Public Resources Code Section 21080(b)(5) and State CEQA Guidelines Section 15061(b)(4), which exempt disapproval of projects from CEQA review. Alternatively, if the Board desires to approve the Project, consideration and possible adoption of a Negative Declaration. The Negative Declaration was circulated for public review and comment but not adopted.

BACKGROUND AND DISCUSSION

All documents associated with Balloons Above the Valley including but not limited to the application materials, the Negative Declaration, Planning Commission Staff Report, comments and correspondence, the transcript of the Planning Commission meeting, and the appeal packet can be accessed at:
https://pbes.cloud/index.php/s/DWnQmswHLc58cWD

The matter involves an appeal filed by the Applicant of the Planning Commission's decision to deny a use permit that would allow daily launching of up to eight hot air balloons year round. Hours of operation would be 6:00 a.m. and 9:30 a.m. with launches starting no earlier than 7:00 a.m. Guests are picked up from prearranged locations such as lodging facilities or public sites (i.e. Oxbow Public Market) and driven to the site. Multiple balloons can be launched simultaneously depending on the weather. Following the launch, the transport vehicle(s) and equipment truck follow the balloon to the landing site, and then return guests to their pick up location and equipment to the equipment storage location.

The Project was appealed by the Applicant because the Applicant disagrees with the basis for the Planning Commission's denial and asserts that the Commission abused its discretion by finding the Project inconsistent with the County's General Plan.

All adjacent parcels have a General Plan designation of AR and a Zoning designation of AP. The 2.03-acre parcel is located in the unincorporated County, approximately 1.4 miles north of the City of Napa and 1.75 miles south of the Town of Yountville. The site is accessed via a private driveway off of Washington Street. The parcel is currently developed with an approximately 1,500 square foot single family residence with an attached garage and a detached storage shed. The eastern 1.25 acres is undeveloped grass with some trees. At the closest location, Dry Creek is approximately 1,300 feet from the southeastern corner of the property. The Appellant is currently launching balloons from the property under Administrative Permit No. P19-00235, which allows balloons to be launched on 50 or fewer launch days per year. Hours of operation are between 5:30 a.m. and 9:30 am. Between June 6, 2019, and June 5, 2020, Appellant launched on 47 days. Between June 5, 2020, and November 5, 2020, the Appellant launched on 32 days, and expected to use the remaining 18 launch days prior to the appeal hearing.

The adjacent properties to the north and west are developed with residential structures. The property is bordered to the east and south by one parcel, developed with a residence, agricultural structures, and planted in vineyards. Residential neighborhoods are located approximately 950 feet to the south of the site and across State Highway 29 and Solano Avenue approximately 800 feet to the southwest.

Code Compliance:

Between January 2019 and August 2020, the County received eight (8) submittals of complaints from neighbors regarding the flight activities of Balloons Above the Valley. **Attachment C** provides a table summarizing the complaints. As of December 7, 2020 Staff has not received any additional complaints regarding Balloons Above the Valley.

The County also received logs from the Professional Balloon Pilots Association of Napa County, Inc. (PBPANC). The log for 2019 through August 2020 included 11 reports regarding Balloons Above the Valley, including one about an unpermitted launch site, one regarding a balloon receiving permission to land at a school and that the school had followed up with a request to not land there in the future, and one accident report. The others generally regarded low flying. The summary of complaints in **Attachment C** includes the PBPANC records.

Staff reviewed the information provided by the public, as well as PBPANC, and determined that the Applicant's operations over the past year remain in good standing as defined in County Code Section 18.104.400.

Public Process:

The Balloons Above the Valley Use Permit No. P19-00303-UP was submitted June 28, 2019.

Resubmittal applications with additional information about the operation were provided on September 4, 2019; November 11, 1019; and January 1, 2020. The application was determined to be complete on February 7, 2020.

On October 23, 2019, a New Project Submittal Courtesy Notice was mailed to all property owners within 1,000 feet of the subject property and emailed to those persons on the general CEQA document notification list.

On August 12, 2020, the Public Notice for the Planning Commission hearing and Notice of Intent to Adopt a Negative Declaration was mailed to all property owners within 1,000 feet of the subject property as well as any other persons who had requested notice. It should be noted that the County's requirements to notice all property owners within 1,000 feet far exceeds the State mandate of noticing all owners within 300 feet. Notice was also provided to those persons on the general CEQA document notification list. The Notice was published in the Napa Valley Register on August 12, 2020.

During the public hearing on September 2, 2020, the Planning Commission considered the public comments and

complaints received, impacts to neighbors, regulation of the flight once a launch has occurred, enforcement procedures, and consistency with General Plan policies.

At the time the September 2, 2020, Staff Report was posted, one written comment had been received expressing support for the Project and six comments had been received opposing the Project. The comments opposing the Project generally consisted of safety concerns, allegations of balloons flying too low, invasion of privacy, and impacts to neighbor quality of life.

Public notice of this appeal hearing were mailed and provided to all parties who received notice of the Planning Commission hearing on September 2, 2020. The notice ran in the Napa Valley Register on December 4, 2020.

The public comment period on this appeal will have run for 11 days by the time the hearing is held on December 15, 2020.

Findings:

When reviewing the proposed Project, the Planning Commission based its decision on a series of findings, as required under both County Code and State law. The Board of Supervisors must also consider all of the same findings in reaching its decision. To uphold the Planning Commission's denial of the Project and denial of the appeal, the Board must determine that the Project is inconsistent with at least one (or more) of the following findings. Alternatively, to approve the Project and grant the appeal, the Board must determine that the Project is consistent with all of the findings listed below.

CEQA:

To adopt a Negative Declaration pursuant to CEQA and Napa County's Local Procedures for Implementation of CEQA, the Board must make all of the following findings no. 1 through 6:

1. The Board of Supervisors has read and considered the Negative Declaration prior to taking action on said Negative Declaration and the proposed Project.
2. The Negative Declaration is based on independent judgment exercised by the Board of Supervisors.
3. The Negative Declaration was prepared and considered in accordance with the requirements of the California Environmental Quality Act (CEQA).
4. There is no substantial evidence in the record as a whole that the proposed Project will have a significant effect on the environment.
5. There is no evidence in the record as a whole that the proposed Project will have a potential adverse effect on wildlife resources or habitat upon which the wildlife depends.
6. The site of the proposed Project is not on any of the lists of hazardous waste sites enumerated under Government Code Section 65962.5 and is not within the boundaries of any airport land use plan.

Use Permit:

To approve the use permit request, in accordance with Napa County Code Section 18.124.070, the Board must make all of the following findings no. 1 through 5 and the six findings in Section 18.104.400 (below):

1. The Board of Supervisors has the power to issue a use permit under the zoning regulations in effect as applied to the property.
2. The procedural requirements for a use permit set forth in Chapter 18.124 of the County Code (zoning regulations) have been met.
3. The grant of the use permit, as conditioned, will not adversely affect the public health, safety or welfare of Napa County.

4. The proposed use complies with applicable provisions of the County Code and is consistent with the policies and standards of the Napa County General Plan and any applicable specific plan.
5. The proposed use would not require a new water system or improvement causing significant adverse effects, either individually or cumulatively, on the affected groundwater basin in Napa County, unless that use would satisfy any of the other criteria specified for approval or waiver of a groundwater permit under Sections 13.15.070 or 13.15.080 of the County Code.

Hot Air Balloon Launching Site – Additional Findings:

To approve a use permit request for a hot air balloon launching site with more than 50 launch days a year, in accordance with County Code Sections 18.120.010 (B)(16) and 18.104.400, the Board must make all of the following additional special use permit findings nos. 1 through 6:

1. The proposed launch site is located more than 500 feet from any off-site residence or if the launch site is proposed within 500 feet of any off-site residence, the permittee has submitted written consent to the Planning Department from the owners or residents of any off-site residence within 500 feet stating that they have no objection to the proposed launch site.
2. The permittee has submitted a signed statement which acknowledges that the permittee: (a) has read the County's adopted code of conduct; (b) agrees that all users of the launch site will be bound by the County's adopted code of conduct; and (c) certifies that all activities within the last year at any other sites operated by the permittee have complied with the County's adopted code of conduct.
3. The permittee has provided written authorization from either the property owner where the launch site is proposed or the property owner's authorized agent together with a statement from the property owner or the property owner's authorized agent confirming that balloon launchings will not interfere or conflict with any existing or planned agricultural uses on the property.
4. The site is proposed for use only between the hours of 5:30 a.m. and 9:30 a.m.
5. The permittee has provided the Planning Department with a certificate of insurance naming the County and the property owner as additional insureds on the personal injury/property damage insurance in an amount acceptable to the County's risk manager and which is consistent with the County's corporation yard license requirements currently existing or as amended.
6. The permittee has provided a list of intended landing areas that are both reasonable given the launch location and prevailing winds and permitted or allowed.
7. The permittee and each balloon operator utilizing the permittee's launch site agree to conduct their operations so as to remain in good standing with the County. For purposes of this section, "in good standing with the county" means that within the last twelve-month period, the County has not received more than three verified complaints or a number of verified complaints equivalent to three percent of the total number of launches, whichever is greater. All complaints must be: (1) submitted on a form provided by the Planning Department for verification; and (2) submitted by a property owner or resident who has certified that the permittee or a balloon operator using the permittee's launch site has landed on the property owner's or resident's property without permission.

On November 6, 2020, Robert Barbarick on behalf of Balloons Above the Valley (Appellant or Applicant) timely filed an appeal packet (the Appeal) to the Planning Commission’s decision to deny the Project. (Please see **Attachment A**). Pursuant to the County's appeals ordinance (Napa County Code Chapter 2.88) a public hearing on an appeal must be scheduled not less than 15 days nor more than 90 calendar days from submittal of an appeal. Because of the limited number of grounds raised on appeal, the Appeal hearing was scheduled for December 15, 2020.

Pre-Hearing Conference:

To clarify the County's procedural requirements and expectations regarding land use appeals, the Board of

Supervisors has adopted a policy that requires a pre-hearing conference with the parties and the Chair of the Board to discuss estimates on presentation lengths, scope of evidence, and testimony to be presented, together with witness lists. Because Appellant's Appeal raises a limited number of grounds, does not seek to augment the Planning Commission record of proceedings, and included a witness list, a pre-hearing conference was determined unnecessary.

Appeal Hearing Public Comments:

As of December 7, 2020 no public correspondence had been received since the Planning Commission's decision.

GROUNDS OF APPEAL:

The following outlines the basis of the Appeal as contained in Appellant's Appeal dated November 6, 2020. (See **Attachment A**.) For convenience, Staff has provided a summary below, but recommends the Board review the actual appeal for details.

Appeal Ground No. 1: Appellant asserts that the Planning Commission abused its discretion by deciding that the zoning ordinance is inconsistent with the County's General Plan, and that balloon launchings should not be permitted, as a rule, in the Agricultural Preserve. Appellant claims that the Board of Supervisors determined in 2006 that Ordinance No. 1276 was consistent with the General Plan and remained consistent with the General Plan update in 2008. Appellant further asserts that the Board made a decision that balloon launching would be permitted in the Agricultural Preserve under very exacting standards.

Staff Response:

Appellant is mistaken. The Planning Commission did not abuse its discretion and its finding of General Plan inconsistency applied to the specific Project before it rather than the underlying zoning ordinance. The Planning Commission articulated its reasoning in **Attachment D.**

In that Resolution, the Commission acknowledged that while the Project may be consistent with some of the policies and goals in the Napa County General Plan, the Commission found that the Project is inconsistent and not in harmony or agreement with the following three General Plan Policies and Goals (Some of the policies have been abbreviated. Please refer to the actual policy for the complete text.) and is therefore inconsistent overall with the General Plan:

1) Agricultural Preservation and Land Use Element Goal AG/LU-1. Preserve existing agricultural land uses and plan for agriculture and related activities as the primary land uses in Napa County.

2) Agricultural Preservation and Land Use Element Policy AG/LU-4. The County will reserve agricultural lands for agricultural use including lands used for grazing and watershed/open space, except for those lands shown on the Land Use Map as planned for urban development.

3) Agricultural Preservation and Land Use Element Policy AG/LU-12. No new non-agricultural use or development of a parcel located in an agricultural area shall be permitted unless it is needed for the agricultural use of the parcel, except as provided in AG/LU-2, AG/LU-5, AG/LU-26, AG/LU-44, AG/LU-45 and ROS-1.

Staff recognized that hot air balloon launchings are not directly related to agriculture, but Staff recommended a finding of consistency because use of the site for launches is not detrimental to agricultural uses adjacent to the area and would not prohibit future agricultural use of the property. Staff also found that since launching was already occurring under Administrative Permit P19-00235, the use permit was an expansion and not the establishment of

a new non-agricultural use. However, Staff's recommendation was merely advisory and the Planning Commission was not bound to endorse it. Ultimately, a majority of the Commission did not follow the Staff recommendation and instead felt that simply because the Project would not displace agriculture that does not make it consistent with the agricultural policies. Similarly, because of the increase in intensity and level of activity proposed, the Commission viewed the Project as a new use that would render the primary use of the parcel as commercial rather than agriculture.

The Commission noted that the non-agricultural activity would occur on land that has an AR General Plan designation and AR designated lands are intended to continue agriculture as the predominant land use, and preclude uses incompatible with agriculture. Individual Commissioners also emphasized that the Project site is located in an area surrounded by vineyards in the heart of the agricultural preserve. A majority of the Commission found that even though agriculture would not be displaced, the significant increased level of commercial, non-agricultural activity that would occur by granting the use permit would result in the conversion of an approximately 2.03-acre parcel of agricultural land to a commercial non-agricultural use.

Under Administrative Permit No. P19-00235 up to 50 hot air balloon launch days a year already occur on the site with no limit on the number of balloons launched per day. The Applicant informed Staff that Balloons Above the Valley currently has eight balloons so under the Administrative Permit a maximum of 400 launch days per year could occur. The Commission noted that the use permit would authorize launching of up to eight launches per day for 365 days, weather permitting, with a maximum of 2,920 launches. The Appellant estimated launching would occur 229 days per year (or approximately 1,832 launches annually) though the request would allow up to 365 days a year. Commissioners expressed concern with the level of intensity. Commissioner Gallagher suggested perhaps a policy change or update to address the entire balloon industry was needed "rather than go from 50 launches to essentially every single day of the year for one particular applicant, one particular company" (Certified Planning Commission Hearing Transcript, September 2, 2020, Page 59:22-25). Commissioner Dameron echoed Commissioner Gallagher's concerns, "I feel that 365 days a year as an option is far too much, …" (Certified Planning Commission Hearing Transcript, September 2, 2020, Page 61:20-21). The Commission found this increase in the level of intensity and activity is a new use that would render the primary use of the parcel as commercial rather than agriculture.

Because use permits run with the land, the Commission also expressed concern that the increased level of commercial activity on this particular agricultural parcel would in effect permanently remove the land from agricultural use. Commissioner Cottrell expressed "…the concept of this entitlement in perpetuity is troubling for me in terms of the idea that this is the parcel in the ag preserve, and everything about our general plan policy is to protect agriculture going forward" (Certified Planning Commission Hearing Transcript, September 2, 2020, Page 65:9-12). Commissioner Mazotti dissented from the vote to deny the Project, but explained that "I definitely am struggling with the idea of the permit going in perpetuity …to just have a piece of ag land, you know entitled for hot air balloon launches, like I said, in perpetuity, it seems a little—I don't know how I feel about that." (Certified Planning Commission Hearing Transcript, September 2, 2020, Page 63:23-25; 64:6-9).

Cognizant of Ordinance No. 1276, Commissioner Cottrell reiterated, "…yes, we have an ordinance that allows for ballooning operations with a use permit, but that doesn't mean we still don't need to analyze the appropriateness of this particular site for that activity, and we also need to look at how the other parts of the County code and the general plan, as I mentioned, work in this particular situation" (Certified Planning Commission Hearing Transcript, September 2, 2020, Pages 65:20-25; 66:1-2). Commissioner Cottrell went on to say "So I think there is a place, you know, as our ordinance suggests, for ballooning in the County, but I just don't feel comfortable with this form of the use permit in perpetuity,…" (Certified Planning Commission Hearing Transcript, September 2, 2020, Pages 66:23-25; 67:1).

The Planning Commission explained the basis and rationale for its decision in Resolution No. 2020-01. The Resolution denied the Project based on the unique site specific characteristics of the property including its size

and location coupled with the specific level of proposed non-agricultural activity. Nothing in the Resolution broadly finds or concludes that the zoning ordinance as a whole is inconsistent with the General Plan or that hot air balloon launching is an inappropriate use on all agricultural lands.

Appeal Ground No. 2: Appellant asserts that the area used for balloon launching is actually about an acre that has not been in agricultural use for at least 40 years. Balloon launchings already occur on the property, so granting the requested use permit would not create a new use.

Staff Response:

Although the Applicant holds an Administrative Permit No. P19-00235 permitting a maximum of 50 launch days per year or attempted launches (for an annual maximum of 400 launches or attempted launches per year), the Planning Commission found that grant of this use permit would authorize a new maximum of 2,920 launches per year. The Commission determined that this increase in level of intensity and activity is a new use of such magnitude as to render the primary use of the parcel as commercial rather than agriculture. See also Staff Response to Appeal Ground No. 1 incorporated here by reference.

Appeal Ground No. 3: Appellant asserts that the Project and the zoning ordinance that permits the Project both further the objectives and policies of the General Plan, including Agricultural Policies AG/LU-1, AG/LU-4 and AG/LU-12, which require the preservation and reservation of agricultural lands for agricultural uses, because hot air balloon flights allow people to experience and enjoy the County's agricultural lands that are otherwise inaccessible. This visual experience draws tourists to partake in other aspects of the County's agricultural identity, including wine tasting and tours. The Project's small footprint and lack of permanent physical changes to the property mean that future agricultural use of the property is neither inhibited nor obstructed.

Staff Response:

Staff's General Plan Consistency Analysis addressed the Project's consistency with the Community Character Element, Recreation and Open Space Element, and Economic Development Element, noting that hot air balloons provide an opportunity for residents and visitors to view the Napa Valley Floor and the developed and natural resources of the County. Multiple Planning Commissioners acknowledged this as well, with Commissioner Dameron considering hot air balloon launchings as a type of "Agritourism", stating "…it supports, I suppose if you look at it this agritourism…" (Certified Planning Commission Hearing Transcript, September 2, 2020, Page 80:1-3). Commissioner Mazotti concurred and added "…the purpose of the hot air balloon is to tour the agriculture of Napa, the vineyards and things like that" and "…so I can see how it can be ancillary to agriculture and what we're doing in Napa." (Certified Planning Commission Hearing September 2, 2020, Page 84:10-23.)

However, a majority of the Commissioners viewed the proposed request as of such magnitude as to be a commercial activity. Commissioner Gallagher also pointed out that "agritourism" is not specifically referenced in the General Plan and is not a part of the County's definition of agriculture (County Code Section 18.08.040), stating "Also, there is nothing about agritourism being agriculture. I just think that needs to be clarified. That the general plan does not say that agritourism is agriculture." (Certified Planning Commission Hearing Transcript, September 2, 2020, Page 95:6-9). Chair Whitmer noted "I just have a very specific concern about this specific location, and I don't feel that it's appropriate. I think it's a commercial –again, a commercial activity in the ag preserve, …" (Certified Planning Commission Hearing September 2, 2020, Page 83:5-8.) Commissioner Cottrell concurred with the Chair's comments, stating "I think that the points you are making, Commissioner Whitmer, about the -- this site being ag in nature and this activity being commercial in nature as kind of a foundational conflict is compelling" (Certified Planning Commission Hearing Transcript, September 2, 2020, Page 85:25 and Page 86:1-4).

Also See Staff Responses to Appeal Ground Nos. 1 and 2 incorporated here by reference.

Appeal Ground No. 4: Appellant asserts that the Commission erred in substituting its own judgment for that of the Board of Supervisors who adopted Ordinance No. 1276 and the General Plan and for the Staff members who carefully prepared the General Plan Consistency Analysis.

Staff Response:

Appellant is incorrect. The Planning Commission did not substitute its judgment for that of the Board of Supervisors. The Commission used its judgment and discretion and interpreted the General Plan policies in a reasonable manner. The fact that the interpretation does not comport with Appellant's interpretation does not make it erroneous.

Appellant also overly relies on the Staff recommendation. Based upon Staff's review of the submitted materials, Staff believed that the request could be found consistent with the Zoning Ordinance and applicable General Plan policies. It is important to note that Staff's recommendations are merely advisory. They are not binding and have no legal effect. (*Ocean Harbor House Homeowners Assn. v. California Coastal Com.* (2008) 163 Cal.App.4th 215, 225, fn. 6 [recognizing that decisions of the Commission may be "'different than those proposed by the staff in the staff recommendation' "]; *Benson v. California Coastal Com.* (2006) 139 Cal.App.4th 348, 354 [staff recommendation not "binding" on Commission]) Furthermore, Staff's recommendations are based on information provided prior to the public hearing and without benefit of public comment, Commissioner observations, or the Applicant's presentation.

Furthermore, the Staff Report specifically directed the Commission to make its own determination with respect to consistency as follows: "In summary, staff found potential consistency with all applicable General Plan policies, as summarized below [in the General Plan Consistency Analysis], however the Commission should review the document and overall analysis in this Staff Report in order to make the final determination (*emphasis added*)" (September 2, 2020 Planning Commission Staff Report, page 6.) Lastly, the Staff Report provided the Commission with multiple decision-making options including denying the requested use permit, or modifying the request, or continuing the matter for additional information and testimony. (September 2, 2020 Planning Commission Staff Report, page 9.)

Just as the Commission is not bound by the Staff recommendation, the Board is not bound by the Planning Commission's interpretation and may make its own reasonable interpretation of the policies at issue.

Appeal Ground No. 5: Appellant asserts that it has safely operated a balloon launching business from the property since June 2019. Any suggestion by the Commission that its application adversely affects the health, safety and welfare of the County is overreaching and belies the fact that the application was not given fair consideration. Appellant asserts that the Planning Commission does not have any reasonable facts at its disposal that show that Appellant is not operating safely or poses any meaningful risk to public health, safety or welfare.

Staff Response:

Appellant appears to disregard the verbal and written neighbor testimony, complaints, and photographs from homeowners in the vicinity regarding impacts to their quality of life and disruption of their use and enjoyment of their property resulting from living in close proximity to the launch site and common flight path, and issues of public safety. While Staff noted in the Staff Report that the Applicant's operation is in good standing with the County, the Appellant also erroneously seeks to limit the Commission's broad discretion to consider factors beyond just whether the Applicant is in good standing with the County when determining whether to grant a new use permit.

A. Impacts to Health, Safety and Welfare

The Planning Commission reviewed the comment letters and also heard and considered testimony, complaints,

and photographs from residents regarding impacts to their quality of life and disruption of their use and enjoyment of their property resulting from living in close proximity to the launch site and common flight path, and issues of public safety.

The parcel is located 950 feet north and 880 feet northeast of two residential neighborhoods consisting of approximately 75 residences. Once launched, the balloons generally fly south toward the City of Napa, a path that carries them directly over these two residential neighborhoods. The Applicant made clear in its application and in testimony at the Commission hearing that launches, flights, and landings are all subject to wind current and weather. This can result in times of low flight and unintended or emergency landings, both of which have the potential to cause damage to structures or agricultural crops.

County regulations are specific to the launch site and the launch itself. Once the launch occurs the flight is subject to FAA Regulations and jurisdiction and the flight altitude and path of travel is not enforced by the County. The majority of the public complaints raised at the Commission concerned impacts from post-launch activity. These complaints included flying below minimum FAA altitudes, a lack of privacy from the balloon patrons being able to see into their homes and private yards, noise from the balloon passengers talking in low flying gondolas, and property damage caused by gondolas hitting trees, corners of structures and power lines. Regarding flying below FAA-required altitudes, the Applicant testified at the Commission hearing that the balloon pilots attempt to ascend to the FAA minimum altitudes as quickly as possible to avoid disturbing residential areas, but the altitude and direction of the balloon is subject to wind current and weather.

Because the FAA is the agency responsible for monitoring, enforcing and regulating hot air balloon activity after the balloon launches, the Planning Commission had concerns about the extent to which the FAA would assure compliance and adequately protect the public health, safety and welfare of Napa County residents. The Commission also noted that the County's complaint form is specific to landings and that the most common concerns shared by the public are not expressly included in the Code of Conduct or County Code. Considering this, the Planning Commission expressed concerns with authorizing the use of a site for an activity that the County has no control over once the launch is completed. Commissioner Gallagher stated "While we cannot -- we cannot control what happens in the air and we don't have jurisdiction, that's the -- sort of the purview of the FAA, we enable that vehicle to get into the air by approving the launch permit, so we do have some level of responsibility there." and "…I would imagine it's not so easy to make a complaint to the FAA and have them, you know, put you at the top of the list." (Certified Planning Commission Hearing Transcript, September 2, 2020, Page 60:18-23 and Page 61:3-6). Chair Whitmer agreed, adding "We're making a decision about the appropriateness of a launch site, but once those balloons go into the air, there are impacts, and I don't think it is our responsibility to say, well, … -- we don't have authority, because I think, well, okay, then if we don't have authority, then I'm not sure we have the ability to say that it's okay to launch from a particular location because the impacts are going -- are going to be there." (Certified Planning Commission Hearing Transcript, September 2, 2020, Page 83:20-25 and Page 84:1-4).

Based on their review of the public comments and the location of the site, the Commission found that the existing activity was already impacting neighbors and therefore could not support Use Permit No. P19-00303, which could intensify impacts to the overall welfare of the public. Chair Whitmer stated "We know that they [impacts] are going to be there, we've heard it, and there is ample evidence from the community who are concerned about this." (Certified Planning Commission Hearing Transcript, September 2, 2020, Page 84:4-6). Commissioner Cottrell added "… already at this level, we have a set of the unresolved complaints" and "So adding anything to that is only, in my view, going to increase those conflicts…" (Certified Planning Commission Hearing Transcript, September 2, 2020, Page 86:23-25 and Page 87:1-4; 5-6).

As discussed above, the County's complaint form is specific to landings and the most common concerns shared by the public are not regarding landings, but result from activities occurring post-launch. The concerns commonly expressed are not explicitly included in the Code of Conduct or County Code and there is no set standard to quantify those types of complaints.

The Applicant provided a list of intended landing areas; however, the County does not regulate landing sites. The Applicant testified that while the balloon pilots attempt to land in one of the intended locations, the landing is dependent on weather, wind and other factors, and unexpected landings have occurred. According to records from the PBPANC, between January 2019 and August 2020, there were two occurrences where the Applicant's balloons landed in unintended areas and/or without permission from the property owners. As noted above, the records reviewed did not have specific reference to damage caused by Balloons Above the Valley in the January 2019-August 2020 timeframe.

For all of these reasons, a majority of the Commissioners found they could not make the required use permit finding that approving the Project would not adversely affect the public health, safety or welfare of Napa County (Section 18.124.070(C)).

B. Code of Conduct – Good Standing

The Planning Commission applied a broader lens by considering public comments and testimony regarding impacts to overall quality of life and impacts to general public welfare and not just whether the Applicant is in good standing. Staff's determination of "good standing" was based specifically on the language in the County Code Section 18.104.400(G) and Staff's review of the 2019-2020 records, and information provided by the public, as well as the PBPANC. Staff determined that the Applicant's operations over the past year remain in "good standing" as defined in County Code because within the last twelve-month period, the County had not received more than three verified complaints or a number of verified complaints equivalent to three percent of the total number of launches, whichever is greater.

In 2006, when the Board of Supervisors adopted Ordinance No. 1276 and established an administrative permit and use permit process for hot air balloon launching, it also adopted a "Code of Conduct for Balloon Operations in Napa County" (September 2, 2020 Planning Commission Staff Report, Attachment E). The Code of Conduct describes that the PBPANC was created to serve as a central contact point for local residents, landowners, and government officials, and to be a clearinghouse for information sharing among balloon companies regarding concerns and complaints about specific balloon operations or operators.

To obtain either an administrative permit or a use permit for hot air balloon launching, County Code Section 18.104.400(B) requires the permittee to agree to be bound by the Code of Conduct. The Code of Conduct includes Ground Operations, Flight Operations, Individual Company Responsibilities, and PBPANC Responsibilities and compliance with Federal Aviation Administration (FAA) minimum flight altitude regulations. The FAA flight regulations require hot air balloons to ascend to a minimum altitude of 500 feet or 1,000 feet depending on the density of the area, and to stay above this minimum altitude, pending unforeseen weather occurrences (FAR § 91.119). This is an FAA requirement, and flight levels are not enforced by the County. The Code of Conduct notes that because of the nature of hot air ballooning, the industry cannot guarantee 100% compliance with every aspect of the Code of Conduct on every flight day.

County Code Section 18.104.400(G) states that "The permittee and each balloon operator utilizing the permittee's launch site agree to conduct their operations so as to remain in good standing with the county. For purposes of this section, "in good standing with the county" means that within the last twelve-month period, the county has not received more than three verified complaints or a number of verified complaints equivalent to three percent of the total number of launches, whichever is greater. All complaints must be: (1) submitted on a form provided by the planning department for verification; and (2) submitted by a property owner or resident who has certified that the permittee or a balloon operator using the permittee's launch site has landed on the property owner's or resident's property without permission." (The Hot Air Balloon Launching Notice of Trespass Form is included in Attachment F of the September 2, 2020 Planning Commission Staff Report.)

As discussed in the Planning Commission Staff Report, under the paragraph titled "Code Compliance Process

and History for the Proposed Site," the County's practice when receiving complaints is to review the information and provide a copy to the PBPANC. Complaints may be emailed to the Code Enforcement Division or mailed or delivered to the Planning, Building and Environmental Services Department. A compliance officer will contact the complainant once the complaint has been received. In addition to the complaints regarding Appellant's operations as discussed below, Staff has also had ongoing correspondence with multiple members of the public regarding general questions about balloon launchings, the County Code, and enforcement issues.

Between January 2019, and August 2020, the County received eight (8) complaints from neighbors regarding the flight activities of Balloons Above the Valley as summarized in the table at **Attachment C**. The complaints were received after approval of Appellant's Administrative Permit No. 19-00235, therefore it is assumed the launches occurred at 5360 Washington Street, the site of the requested use permit. Six of the complaints were regarding balloons flying at what was believed to be less than 500 feet, and two of the complaints were regarding balloons not having identification numbers and trespassing in air space. Included in one of the eight complaints was a copy of a notice sent to local balloon companies asking them not to land on a specific property.

Flying below the minimum altitude requirements is the most common complaint that Staff receives. While these comments often include photographs as visual evidence, it can be difficult to confirm balloon elevations, and the reason behind the low elevation (e.g., currently ascending upward, weather impacts, the pilot's choice) is not known. As a result of one of these complaints, the Code Enforcement Division opened code case CE19-01024 to investigate. After review by Code Enforcement Staff, it was determined that since the complaint was regarding FAA minimum altitude regulations, it was not within the County's authority to enforce. As such, the complaint information was provided to the PBPANC for their records and the code case was closed.

Of the eight complaints received, four were submitted on the County form. However, the complaints were not regarding landings, but noted that the operator was flying into private airspace.

The County received logs from the PBPANC that were filtered to only look at Balloons Above the Valley. Review of the PBPANC January 2019 through August 2020 records did not include records of damage to adjacent vineyards or other agricultural processes. As noted above, this review was to determine compliance with County Code and was not an exhaustive history or the Applicant's flight history. The logs for Balloons Above the Valley for 2019 through August 2020 included 11 reports/complaints, including one about an unpermitted launch site, one regarding a balloon receiving permission to land at a school and that the school had followed up with a request to not land there in the future, and one accident report. The others generally concerned low flying. One entry was from County Code Enforcement forwarding correspondence that was received and two of the reports had also been sent directly to County Staff.

Board Considerations and Staff Recommendation:

The following options are provided for the Board's consideration regarding possible action on the Appeal:

- Deny the Appeal in its entirety and uphold the Planning Commission's denial of the Project;
- Uphold one or more grounds of the Appeal and reverse the Planning Commission's decision, thereby approving the Balloons Above the Valley Use Permit No. P19-00303-USE as requested by the Appellant;
- Uphold one or more grounds of the Appeal and reverse the Planning Commission's decision, thereby approving the Balloons Above the Valley Use Permit No. P19-00303-USE, but modifying the request made by the Appellant; or
- Remand the matter to the Planning Commission with direction.

In Staff's opinion, none of the information provided in the appeal and/or other public comments received to date substantively challenges or requires modification of the decision reached by the Planning Commission regarding this matter. As a result, Staff recommends that the Board deny the Appeal in its entirety and uphold the Planning

Commission’s denial of the Project.

SUPPORTING DOCUMENTS

A . Attachment A - Appeal Filed by Bob Barbarick

B . Attachment B - Appellant's Witness List

C . Attachment C - Complaint Table

D . Attachment D - Planning Commission Resolution

CEO Recommendation: Approve

Reviewed By: Helene Franchi