

INTEROFFICE MEMO

DATE: April 12, 2013
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TO: **THE HONORABLE PLANNING COMMISSION**

APRIL 18, 2013 AGENDA ITEM #2

SUBJECT: **BEN EBY; CONDITIONAL USE PERMIT P200900360**

The Planning Commission conducted a public hearing on March 7, 2013 to consider this application for a Conditional Use Permit to establish a 20,000-square foot covered arena and a 6,000-square foot barn on a 4.28-acre parcel. A Major Variance is also requested to allow the accessory structures to extend in front of the primary residence.

During the public hearing, several neighbors expressed concerns summarized in this memo. The Planning Commission continued the item to April 4, 2013, and requested that the applicant consider an alternative project design. It was suggested that the applicant consider merging the project site with adjacent parcels, and relocate the proposed arena and barn to an adjacent parcel to the north. The applicant has decided to move forward with the project design as originally proposed. The applicant decided not to modify the application and requested an additional continuance to April 18, 2013 to prepare for the continued public hearing. Following is a summary of issues raised in the March 7 hearing, with responses from staff.

Issues Raised in Public Testimony:

Concern: Neighboring property owners object to the number of horses kept on the applicant's property. Upon reviewing the Development Code standards for accessory animal raising, the opponents of the project stated that a maximum of nine horses should be permitted on the site.

Response: Accessory animal raising in the Single Residential (RS) land use district is limited to a maximum of nine horses. The project site is located in the Rural Living (RL) land use district, where animal keeping is permitted as a primary land use, in addition to a primary residential land use. As stated in the March 7 staff report, in addition to the 4.28-acre project site, the applicant owns two adjacent parcels, for a total of approximately 19 acres. The applicant raises horses, so the number of animals varies, but he keeps an average of 50 horses. The maximum number of horses permitted on the entire 19 acres would be 82 (one per 10,000 sq. ft.), but a maximum of 18 horses may be kept on the subject 4.28 acres. The following sections of the Development Code explain the number of horses permitted on the site.

Table 84-3 lists animal densities permitted for animal keeping as a primary use. In the RC, RL, SD, and Floodway land use zoning districts, one horse per 10,000 square feet is permitted as a primary land use.

Section 810.01.180 (ww) defines "Primary Use" as "A primary, principle or main use of a subject property that is allowed by the applicable land use zoning district independent of any other use of the property. A property may have more than one primary use of the property."

Concern: Neighbors also stated that the applicant allows manure to accumulate on his property, creating nuisance odors, and that the applicant generates excessive dust.

Response: There are provisions in the County Code that define and regulate nuisance odors and dust generation. These issues are not related to the proposal to construct accessory structures on the subject property. Conditions of approval recommended for the proposed project require compliance with all applicable regulations of the County and other regulatory agencies, including the Air Quality Management District. The following regulations govern nuisance odors and dust.

Title 3, Division 3, Chapter 8, Section 33.08143 relates to manure storage where manure is produced and reads "[n]o person shall store manure in piles, stacks, or heaps, for more than 120 days unless prior written approval is obtained from DEHS." (DEHS = Division of Environmental Health Services).

Section 83.01.040 of the Development Code sets general air quality performance standards, and the Mojave Desert Air Quality Management District (MDAQMD) has rules governing fugitive dust generation.

Concern: Neighbors raised concerns about the proposed structures blocking their views.

Response: The proposed barn and arena cover conform to maximum building heights and setbacks of the RL land use district. Only the placement in front of the residence requires a variance from Code requirements. The height of the proposed barn is 20 ft., and the arena is proposed as an open shade structure, 24.5 ft. in height. These heights are well within the maximum heights described below.

Table 82-9C in Code Section 82.04.060 states the maximum height of structures in the RL land use zoning district in the Desert Region as 35 ft. Section 83.02.040(c)(2)(A) permits barns, silos, grain elevators, and other farm structures in Resource Conservation, Agricultural, or Rural Living land use zoning districts to exceed the maximum structure height by up to 50%. With this height limit exception, the maximum height for such a structure would be 52.5 feet.

Concern: Neighbors also expressed concerns about the intended use of the proposed structures. The arena is proposed as an accessory structure for the owner's use in the training and exercising of horses. The neighbors are concerned about the arena being used commercially, for public events.

Response: The recommendation for the Project specifies that the arena cover is for personal use for exercising the property owner's horses only. No events or horse shows will be allowed. Any public events would constitute a violation of the permit, subject to Code Enforcement action.

Summary and Conclusions:

1. The applicant does not choose to modify the proposed project as presented to the Planning Commission on March 7, 2013.
2. Merger of the parcels under the applicant's ownership is not required by the Code, and would not change the total number of horses the applicant would be permitted to have. However, it would remove the limit of 18 horses on the 4.28-acre site where the arena is proposed.
3. Other than the variance requested for placement of accessory structures in front of the residence, the proposed structures conform to Code requirements.
4. There are enforcement mechanisms in place to respond to potential violations.

Recommendation: Staff recommends the following actions, as previously recommended in the March 7, 2013 staff report:

- 1) **ADOPT** the Negative Declaration and find that the Initial Study was completed in compliance with the California Environmental Quality Act, that it has been reviewed and considered prior to approving the Project and that the Initial Study/Negative Declaration reflects the independent judgment of San Bernardino County;
- 2) **ADOPT** the Findings for approval of a Conditional Use Permit and a Major Variance as contained in the Staff Report;
- 3) **APPROVE** the Conditional Use Permit to establish a 20,000-square foot covered arena with a 6,000-square foot barn, both for personal use only on a portion of 4.28 acres, subject to the conditions of approval contained in the Staff Report;
- 4) **APPROVE** the Major Variance to allow the accessory structures to extend in front of the primary residence; and
- 5) **FILE** a Notice of Determination.