



AGENCY: City Council
MEETING DATE: May 10, 2021
DEPARTMENT: City Manager
PRESENTED BY: Tabatha Miller
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AGENDA ITEM SUMMARY

TITLE:

Receive Report and Consider Two Requests for a Waiver of the Fee to Appeal a Planning Commission Decision to the City Council

ISSUE:

On Monday, April 26, 2021, staff received two separate appeals of the Planning Commission approval of the Coastal Development Permit 3-20 (CDP 3-20) to upgrade a section of State Route 1 to current Americans with Disabilities Act (ADA) standards. The Planning Commission decision (3-1) was April 14, 2021 and both appeals were received within ten (10) days of the decision by parties that met the definition of aggrieved person, as each had provided public comment at the Planning Commission hearing.^{1, 2}

Prior to receiving the appeal request from Ms. Tiffani Ferris, Ms. Ferris delivered a letter (Attachment 1) to the City Manager requesting a waiver of the \$1,000 appeal fee. The City Manager reached out to Ms. Ferris to explain that there were no provisions in the Coastal Land Use and Development Code (CLUDC) for the City Manager to waive the fee but a request could be made to the City Council. The City Manager agreed that Ms. Ferris could file the appeal on April 26 without the fee, but if the City Council did not waive it that evening, the fee must be paid Tuesday morning for the appeal to be complete. Ms. Ferris paid the \$1,000 fee when she delivered the appeal to City Hall Monday, but requested the refund from City Council during public comments on non-agenda items at the regular City Council meeting that same day.

As the item was not on the agenda, City Council did not take action on the request. The Council was advised that to consider the item, four-fifths of Councilmembers would need to vote to determine that there was an urgent need for immediate action.³ As the appeal fee had been paid and Ms. Ferris's ability to appeal secured, the Council requested staff place the waiver request on an agenda for a future Council meeting and did not take a roll call vote to determine if the request was urgent.

The \$1,000 fee for the second appeal, filed by the Albion Bridge Stewards, Annemarie Weibel and Gabriel Quinn Maroney was received and Ms. Weibel has requested a refund of that fee on behalf of these appellants.

¹ The tenth day fell on April 24, 2021, which was a Saturday. As a result, the appeals were due on the next business day, which was Monday, April 26, 2021.

² Aggrieved Person is anyone who, in person or through an explicitly identified representative, appeared at a public hearing before the Director, Commission, or Council in connection with the decision or appeal of any development, or who by other appropriate means before a hearing, informed the City of the nature of their concerns, unless for good cause was unable to do either. [Section 17.92.040\(A\)2 CLUDC](#).

³ [California Government Code section 54954.2\(b\)](#).

ANALYSIS:

An aggrieved person, may file an appeal from any decision following a public hearing. The Coastal Land Use and Development Code (CLUDC) Section 17.92.030(B) provides:

B. Timing and form of appeal. *An appeal shall be submitted in writing and shall specifically state the pertinent facts and the basis for the appeal.*

1. An appeal shall be filed with the Department or City Clerk, as applicable, within 10 days of the date the decision was rendered.

a. Appeals addressed to the Commission shall be filed with the Department;

b. Appeals addressed to the Council shall be filed with the City Clerk.

2. An appeal shall be accompanied by the filing fee identified in the City's Fee Schedule.

3. The appeal fee may be refunded by a majority vote of the Council if the appeal of the applicant is sustained by the Council.

The CLUDC⁴ does not provide a means for an appellant to request a waiver of the appeal fee prior to the appeal. It does provide that the City Council may by a majority vote refund the fee, if the applicant's appeal is successful.

An aggrieved person, as defined, may also appeal to the Coastal Commission without a fee. The City's CLUDC does not require an appellant to exhaust all local appeals before appealing directly to the Coastal Commission. Both section 17.92.040(B)(2) of the Fort Bragg CLUDC and the Coastal Act allow for appeal to the Coastal Commission without having to exhaust all local appeals if the local government charges a fee to appeal. The City charges \$1,000 to appeal a Planning Commission decision to City Council. There is no charge to appeal a decision to the Coastal Commission.

Separate and distinct from planning permit decisions, the Fort Bragg Municipal Code does have a provision that allows the City Manager to waive processing fees for appeals associated with administrative decisions. Section 1.08.010 (C) provides in part:

No appeal hearing shall proceed without payment of the processing fee and deposit of the administrative penalty, if any, with the City Clerk at the time the Request for Hearing is filed; provided, however, that the City Manager may waive or defer the processing fee upon written request for good cause shown. Good cause may include severe economic hardship, significant attempts and/or good faith efforts to address and remedy the subject matter of any administrative penalty or hearing [emphasis added].

The more flexible discretion provided to the City Manager to determine good cause to waive payment of processing fee and deposit of the administrative penalty was the subject of a recent claim for damages and characterized as "arbitrary and capricious."⁵ Hence, it is

⁴ The ILUDC's provisions for appeal are almost identical and do not have a provision for waiving a fee prior to the outcome of final decision on the appeal.

⁵ The processing was paid and the appeal will be scheduled before an impartial third party hearing officer.

important that the City Council consider the precedent and effect that waiving or not waiving these fees will have on future requests for fee waivers. While discretion in making such decisions ensures that individuals have access to appeals and all facts may be considered, it does leave such actions open to allegations of unfairness or worse.

A fee can be an insurmountable financial barrier to an individual's ability to protect an interest. However, the fee also serves to cover the cost of the right to challenge an agency's decision and to ensure that the party bringing the appeal has a legitimate interest in the outcome. The challenge with considering economic hardship alone without considering the merits of the appeal or the interest that may be adversely affected by the agency decision, is that the taxpayers bear the costs of those appeals that may be unsuccessful or even meritless. Further, if economic hardship is the only factor considered, certain parties have free access to appeal any future decision. An aggrieved party does not have to be a resident of the City, County or even the State, but just needs to have participated in the public hearing process.

These considerations may be the basis for the ILUDC and CLUDC requirement that the appellant's challenge be decided and successful prior to deciding if the fee should be waived. It is important to note that an aggrieved person has had an opportunity to participate in the decision by providing public input (in written and/or verbal comments) before and during the original hearing.

The City Council establishes fees for hearings and appeals through approval of the City's Fee Schedule. The Council policy is to collect the reasonable cost of providing a service to the particular user(s) of that service. This has required the appellant, requesting the appeal, to pay at least a portion of the costs of conducting a hearing. The City Council may reduce, eliminate or consider waiving fees based on other policy reasons and could choose to shift the cost of waiving fees from the taxpayers to the permit applicant.

RECOMMENDED ACTION:

Determine whether an appeal fee waiver or fee reduction is appropriate for the parties requesting such waivers.

ALTERNATIVE ACTION(S):

Provide staff direction to revise the City's Fee Schedule based on alternative policy considerations. For example, the City Council could reduce appeal fees, eliminate appeal fees or create an established set of criteria for when it is appropriate to charge a lesser fee or no fee.

FISCAL IMPACT:

The following is an estimate for the costs associated with conducting an Appeal Hearing for CDP 3-20.

Expense	Amount	
Mailing Hearing Notice Postage (350 X .55)	\$	193.00
Staff Time Processing Public Notice (3 Sf X .75 hour)		99.00
Advocate Charge for Publishing Hearing Notice		275.00
Processing Appeal City Clerk Staff Time (1 Hour)		54.00
Appeal Staff Report - M-Group (10 hours + 2 hours)		1,740.00
City Attorney Time (3 hours + 2 hours)		1,025.00
City Council Hearing Staff Time (2 hours)		414.00
	\$	3,800.00

GREENHOUSE GAS EMISSIONS IMPACT:

N/A

CONSISTENCY:

N/A

IMPLEMENTATION/TIMEFRAMES:

Processing a fee refund may take up to two weeks, depending on the Accounts Payable Check schedule.

ATTACHMENTS:

1. Ferris Fee Waiver Request

NOTIFICATION:

1. Tiffani Ferris
2. Annemarie Weibel