



AGENCY: City Council
MEETING DATE: August 12, 2019
DEPARTMENT: City Manager
PRESENTED BY: Tabatha Miller
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AGENDA ITEM SUMMARY

TITLE:

Receive Report and Consider Directing City Manager to Issue a Refund of \$1,000 Appeal Fee to Gabriel Quinn Maroney Regarding the Appeal of Coastal Development Permit 11-12/17 (CDP 11-12/17) – Demolition of Dry Shed 4

ISSUE:

On March 12, 2018 the City Council considered the appeal by Gabriel Quinn Maroney of Coastal Development Permit CDP 11-12/17 for the demolition of Dry Shed 4 on the Mill Site property owned, at the time, by Georgia Pacific. The Council denied the appeal and approved the demolition permit with a 3-2 vote.

A timely appeal of that decision was made to the California Coastal Commission and on June 6, 2018, the Commission found a substantial issue and agreed to a de novo hearing of the appeal. In August 2018, the Skunk Train shared with the City that it was in escrow to purchase approximately 77 acres of the Mill Site north of Redwood Avenue and did not intend to demolish Dry Shed 4, which was located on that property. The Skunk Train closed escrow on the Mill Site property on approximately June 20, 2019, making the appeal decision on Dry Shed 4 moot.

Since then there were a few comments that the appeal fee should or could be refunded to Mr. Maroney. At a recent City Council meeting during public comments, Mr. Maroney made the comment it wouldn't hurt his feelings if the appeal fee was refunded to him. In July, Mayor Will Lee asked staff to look into refunding the fee to Mr. Maroney and the Council agreed to consider the matter.

ANALYSIS:

A public hearing for the original CDP was held by the Planning Commission on June 24, 2017. The permit applicant was Georgia Pacific. At that meeting, the Commission directed staff to prepare a resolution to deny the permit because the information relied upon for environmental review was potentially out of date (2003) and further directed staff to research current state historic preservation law and historic resources. Over the next several months, staff and Georgia Pacific consultants gathered information on the historic status of the Dry Shed structure and if significant historical status could be a reason to deny the CDP. Several issues with public hearing notices and agenda descriptions delayed the final action on the CDP.

On November 8, 2017, the Commission recommended to City Council that Dry Shed 4 not be designated as a Historical Landmark. On November 27, 2017, the City Council adopted a resolution to not designate Dry Shed 4 as a Historical Landmark with a 3-2 vote. On January 10, 2018, the Planning Commission approved CDP 11-12/17 for the demolition of

Dry Shed 4. On January 22, 2018, Mr. Maroney filed a timely appeal of that decision and paid the \$1,000 appeal fee (see Attachment 1). On March 12, 2018, the Council denied Mr. Maroney's appeal and approved the CDP demolition permit. As noted above, Mr. Maroney was successful in appealing the matter to the Coastal Commission.

The City's Coastal Land Use and Development Code (CLUDC) allows the City Council to refund an appeal fee, if the appeal is sustained by City Council and a majority of the Council vote to refund the fee (see Attachment 2 – section 17.92.030(B)(3)). In this case, Mr. Maroney's appeal to City Council was not successful or sustained, although his appeal to the Coastal Commission was successful. The CLUDC is silent on whether Council may approve refunding the appeal fee if the appellant is ultimately successful with the Coastal Commission. This may be because the CLUDC did not consider this situation.

This situation is notable in that Mr. Maroney could have appealed the Planning Commission's decision directly to the Coastal Commission, which would not have required the \$1,000 fee. The City's CLUDC does not require an appellant to exhaust all local appeals before appealing directly to the Coastal Commission (see Attachment 2 – applicable code sections). Both section 17.92.040(B)(2) of the Fort Bragg CLUDC and the Coastal Act (see Attachment 3 – FAQ Appeals) 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. The appellant only need qualify as an aggrieved person and Mr. Maroney qualified as such.

In communications with Mr. Maroney, he was unaware that he could appeal the Planning Commission's January 10, 2018 decision directly to the Coastal Commission and avoid the \$1,000 appeal fee. Mr. Maroney relied on information from the Planning Commission, City Council and information staff provided to proceed forward with his appeal. If information regarding a direct appeal to the Coastal Commission had been provided to Mr. Maroney, he may have avoided the local appeal and not spent the \$1,000. It is staff's opinion that this is reasonable grounds to refund the appeal fee, if Council so chooses.

RECOMMENDED ACTION:

Staff recommends the Council consider a motion and roll call vote to direct the City Manager to refund Mr. Maroney the \$1,000 appeal fee.

ALTERNATIVE ACTION(S):

1. Take no action, and/or
2. Provide staff further direction.

FISCAL IMPACT:

Refunding the \$1,000 fee will reduce revenue by the same amount. The fee serves as a means to recoup at least some of the costs of the City conducting an appeal but it can also serve as a deterrent to an aggrieved person (as defined by the CLUDC) from appealing local decisions.

GREENHOUSE GAS EMISSIONS IMPACT:

Processing a \$1,000 refund check will have minimal, if any, impact on greenhouse gas emissions.

CONSISTENCY:

N/A

IMPLEMENTATION/TIMEFRAMES:

The refund could be processed in the weekly accounts payable process and assuming all paperwork is processed this could happen as soon as August 16, 2019.

ATTACHMENTS:

1. Mr. Maroney's Appeal of Planning Commission Decision and confirmation of \$1,000 fee payment.
2. Applicable Fort Bragg Municipal Code Sections
3. California Coastal Commission FAQ on Appeals

NOTIFICATION:

1. Gabriel Maroney
2. Georgia Pacific Site Plan Notify Me Subscriber List