

MEIBEYER LAW GROUP



TRUSTED COUNSEL TO THE WINE INDUSTRY

CITY OF CALISTOGA
City Clerk

JUN - 4 2012

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June 1, 2012

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VIA E-MAIL

Mayor Gingles, Vice-Mayor Dunsford &
Councilmembers Canning, Kraus & Slusser
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

Re: Brian Arden Winery

Mayor Gingles, Vice-Mayor Dunsford &
Councilmembers Canning, Kraus & Slusser:

While the video from the April 17th hearing has not yet been posted online, the Aubert family was able to obtain a copy of the DVD and spent the weekend carefully and accurately logging the comments made by all of the Councilmembers regarding their concerns regarding the size and scale of the Brian Arden Winery, and the winery's need to work with the Aubert Winery on a smaller, revised plan, as well as the drainage issues impacting the Aubert's property. I previously provided you one communication we sent to City staff and Brian Arden's counsel regarding the need for cooperation between the parties on these issues. The other communications regarding these issues were not included in the materials provided by the Staff so I have included them so the Council will have no doubt of our efforts to cooperate with the BAW team.

My clients and I were even more shocked regarding the disappointing revised submittal after we finished reviewing the Council's own comments at the April 17th hearing. It is apparent from this log that the Brian Arden Winery defied each and every expression of concern and recommended action by the Council.

The Councilmembers directed and encouraged BAW and staff to work with Aubert Winery regarding the design and drainage issues as is referenced in numerous Councilmember comments. As previously noted, BAW NEVER contacted the Auberts

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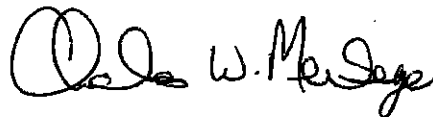
at any time since the April 17th hearing despite our communications to them and staff requesting such cooperation.

While the log is replete with comments similar to Mayor Gingles' note that the BAW "needs to scale down --way too large", the BAW new submittal, as we showed on Friday, overstates the amount of square footage removed, and constitutes a minor tinkering with the project, without the removal of any material aspect of the over-sized Hospitality facilities.

In addition, three of the Councilmembers expressly noted a need for story poles for this project, including Mayor Gingles at Paragraph 29, Vice-Mayor Dunsford at Paragraph 26: BAW needs to "downscale, then install story poles to show changes" and Councilmember Slusser at Paragraph 14. And, none of the other Councilmembers objected to the use of story poles. I expressly requested in my May 3rd e-mail (attached) to city staff, and copied to Brian Arden's attorney James Rose, that story poles be erected and that because of "the Council's strong preference for 'story poles' for the revised project (and other new projects) there will need to be some time period to evaluate the real world impacts of any paper proposals." Nonetheless, BAW refused to install the story poles to show the effect of the changes, and the actual impact of the new design.

BAW's complete failure to address any of the Council's recommendations and concerns justifies a denial of its application.

Very truly yours,

A handwritten signature in black ink, appearing to read "Charles W. Meibeyer". The signature is written in a cursive style with a large initial "C".

Charles W. Meibeyer

Council comments at 04-17-12 City Council Meeting regarding changes need at Brian Arden Winery ("BAW"):

1. Dunsford- Roofline comments, only 1 ft. higher than Aubert Winery ("AW").
2. Slusser disagrees with Lundquist on within 1 ft. of AW
3. Canning questions Delta about drainage and Bartelt responds
4. Dunsford's reaction to Don Luvisi's suggestion of directing drainage to Silverado Trail is it sounds like it could be a great idea
5. Rayner responds that a lift station would be needed
6. Dunsford and Canning talk of scale hospitality BAW, 40/day weekday and 60/weekend. So why do you need such a large retail room?
7. Burt Harlan wants a place where people can come hang out because wine tasting is tiresome
8. Burt Harlan says that AW is 120ft long and BAW, is 100 ft. long
9. Slusser comments about tinkering with GP, basically that staff is tinkering, RR zoning is not going to bring any homes, so a winery is the only alternate.
10. Slusser emphatic about planners telling no to applicants.
11. Slusser, "don't bring come back until it is proper."
12. Slusser is concerned that planning staff's failure to do so will cause a waste of everyone's time.
13. Slusser, "I am worried about scale."
14. Slusser wants story poles
15. Slusser, "BAW must be considerate of neighbors".
16. Slusser, "what a mess in regards to drainage." "need to work together to solve it".
17. Krause has 3 concerns: Drainage, traffic, size/scale. "not ok to impact another property adversely."
18. Krause, "no problem with another winery being there, but size big concern".
19. Krause, story poles a good idea, building winery into hillside, is there chance of mudslide, collapse?
20. Dunsford believes drainage can be resolved. Urges staff to work with AW, BAW and Luvisi.
21. Dunsford, architecture not fitting with Calistoga. Solage and AW are understated, this is not, "McWinery" used as analogy
22. Dunsford comment on second story adding mass, low rise s/be one story but with AW being the compromise
23. Dunsford believes ft2 at BAW should equal AW.
24. Dunsford believes that parking blocks AW view shed to its detriment.
25. Dunsford says left turn lane not needed if BAW scales back.
26. Dunsford says it is "in your face come to my place." Need downscale, then add story poles to show changes
27. Dunsford, cautions about the need for screening out applicants to not have to process projects that are too large.
28. Dunsford concerned with BAW kitchen and why do you have one, if the events are limited?
29. Gingles, story poles are good idea, concerned too about drainage, needs to scale down "way too large". BAW "must work with AW on this".

30. Canning, "Why did this go so far to Planning Commission? Why did this get to us as so large?"
Winery is ok in this location, "but scale is key concern."
31. Dunsford, if staff waves red flags early it will help applicants stop wasting time and money.
32. Dunsford concerned with massing of BAW, need to take another look and scale back
33. Spittler "staff should work with neighbors on drainage." "Can be solved."
34. McNab comments Council has spoken clearly on concerns regarding BAW.
35. Spittler comments CEQA, is needed to be reopened if goes back to Planning Commission.
36. Lundquist acknowledges recommendation to remove kitchen and scale back project.
37. Slusser "must be able to work with AW."
38. McNab and Lundquist acknowledge that BAW should be similar scale to AW.

Subj: **RE: Brian Arden Winery**
Date: 5/4/2012 11:54:14 A.M. Pacific Daylight Time
From: ELundquist@ci.calistoga.ca.us
To: Meibeyerlaw@aol.com
CC: jamesroselaw@sbcglobal.net, KMacNab@ci.calistoga.ca.us, RSpitler@ci.calistoga.ca.us, DTakasugi@ci.calistoga.ca.us

Chuck

You are correct and we have/continue to encourage the parties to get together.

Have a great weekend.

- Erik

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From: Meibeyerlaw@aol.com [<mailto:Meibeyerlaw@aol.com>]
Sent: Thursday, May 03, 2012 6:00 PM
To: Erik Lundquist
Cc: jamesroselaw@sbcglobal.net; Ken MacNab; Richard Spitler; Dan Takasugi
Subject: Re: Brian Arden Winery

Thank you very much Erik. I had thought, however, that Councilmember Canning had encouraged the parties to work together so it has been my hope, as I've expressed previously, that the neighbors and the City won't just be presented with a "fait accompli". I guess we'll just have to wait and see what develops. It does help me to know for sure about the 15th as I have a commitment out of town that week.

Chuck Meibeyer
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In a message dated 5/3/2012 5:54:12 P.M. Pacific Daylight Time, ELundquist@ci.calistoga.ca.us writes:

Chuck

Thank you for your email. We have not received revised plans either and the City Council is not scheduled to consider the matter on May 15, 2012. You and your client will be notified of any resubmittal and a public notice will be sent to your client regarding any upcoming City Council meeting.

Thank you

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elundquist@ci.calistoga.ca.us



From: Meibeyerlaw@aol.com [mailto:Meibeyerlaw@aol.com]
Sent: Thursday, May 03, 2012 3:42 PM
To: Ken MacNab; Erik Lundquist; Dan Takasugi; Richard Spittler
Cc: jamesroselaw@sbcglobal.net
Subject: Brian Arden Winery

Ken and Erik:

I wanted to write to note that it's now been 16 days since the City Council hearing and we have still received no communication from the applicant, and have received no information or even conceptual plans regarding any potential new site plan for the property or design of the new building(s). Moreover, given the Council's strong preference for "story poles" for the revised project (and other new projects) there will need to be some time period to evaluate the real world impacts of any paper proposals. While we have every intention of trying to work toward a mutually agreeable revision to the project, we believe that there is no fathomable way to effectively move toward a May 15 hearing date when we haven't even seen the first glimmer of an idea just one week before the staff report would need to be completed. Please advise if you have any updates to provide.

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