

Transcript of Closed Session Item 2, Board Action re. Nemees & Trinitas; Public Comments re. Item 2

Tuesday, August 12, 2014 Calaveras County Board of Supervisors Meeting

A. Chair Debbie Ponte Reports out from Closed Session, Item 2:

Chair Ponte:

Item #2, was Pursuant to Government Code Section 54956.9 (d)(1): conference with legal counsel re: existing litigation. There were four cases: Michael Nemees and Michelle Nemees v. County of Calaveras, Calaveras Superior Court Case No. CV35775; Michael Nemees and Michelle Nemees v. County of Calaveras, Calaveras Superior Court Case No. CV36297; Michael Nemees and Michelle Nemees v. Brent Harrington, et al., United States District Court, Eastern District of California Case No. 1:12-cv-02048; Michael Nemees and Michelle Nemees v. County of Calaveras, Ninth Circuit Court of Appeals, Case No. 12-16570 - County Counsel;

Board action today was, on a vote of 5-0, to approve the final settlement dismissing with prejudice any and all pending or potential disputes and claims between the County and the Nemees regarding Trinitas. In exchange for the dismissal, the County waives and relinquishes its rights to the costs awarded to the County in case numbers 09-9088 and 12-16570, in the amounts of \$7,500.82 and \$33,791.

Supervisor Merita Callaway:

I just want clarification, Madame Chair. This completes all cases that the Nemees have charged the County, and they won't be back?

Chair Ponte:

That's correct.

Supervisor Callaway:

Current and future, correct?

Chair Ponte:

Final settlement for past and the future.

B. Public Comments on Item 2:

1) Bonnie Newman:

Good morning, Bonnie Newman, from Double Springs. I just had a question about that agreement that was reached with the Nemees parties. We gave up \$7,000 and \$33,000 in exchange for them dropping all of their cases, and what was that \$7,000 and \$33,000 supposed to have been for?

County Counsel:

It's to cover the attorney's fees; those are fees awarded—yes, legal fees.

2) Lew Mayhew:

Good morning, Madame Chair, Members of the Board. My name is Lew Mayhew, speaking on behalf of Keep It Rural, Calaveras. Is it appropriate at this point to reference the closed session action on the Nemees' suits?

County Counsel:

Typically, in the Public Comments Session, it's regarding any item that's not on the agenda. Any item that's in closed session, the public is able to comment on it before the closed session. We do open the meeting in advance for public comment for any item on the closed session agenda. But this would ultimately be up to the Chair as to – it's in the Chair's discretion as to whether you would like to take the comments.

Chair Ponte:

Go ahead.

Lew Mayhew:

Could I ask first, this step in the process, is the settlement final now, or does it still need the Court to take some action before it is totally resolved?

County Counsel:

The Settlement would be signed and finalized, it would be submitted to the Court ultimately but the parties have, all parties have signed the Settlement Agreement.

Lew Mayhew:

So then the Court's only action would be magisterial and not discretionary at this point?

County Counsel:

Correct.

Lew Mayhew:

Okay, then I would like to make a couple of comments. I would like to thank past and present County Supervisors for seeing this through to the end, and protecting the property rights of rural landowners against incompatible uses. It's a victory for rural land use and the right to farm. Of great importance in seeing this through, the Board makes it clear that the rules apply equally to everybody, and those that choose to ignore our land use designations and zoning, and build without entitlements, do so at their own peril. They will gain no advantage over responsible developers.

So, thank you. I know that was years of complex litigation and you navigated it very well, and to, I think, a good conclusion.

Finally, I would like to thank all in the community and throughout the county that supported Keep It Rural Calaveras, who had the courage to stand up and oppose the illegal development, and those that defended the neighbors who did so. Thank you very much.