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January 7, 2009

Contra Costa County Board of Supervisors  
c/o Clerk of the Board  
651 Pine Street  
Martinez, CA 94553-0095

**Re: Round Hill Country Club –Driving Range Netting (County File LP07-2078)**

Honorable Supervisors:

We represent Round Hill Country Club. The club has applied for a land use permit amendment and variances to install netting at the end of its driving range – mainly to protect one neighbor at the end of the range, Kenneth Barker. On September 8, 2008 the Zoning Administrator approved the club's application. However, Mr. Barker appealed the decision to the San Ramon Valley Regional Planning Commission. On October 22 the Commission denied the appeal and upheld approval. Mr. Barker continues to object and has appealed to the Board. The Board's hearing should be scheduled soon.

We ask you to deny the appeal and affirm the approval. None of Mr. Barker's arguments have merit or warrant preventing installation of the new netting. He opposes the netting and has unsuccessfully attempted to force the club to close or move the driving range. To help give you an understanding of the situation, this letter provides a brief summary and addresses Mr. Barker's objections.

The club controls use of the driving range to protect the Barkers and other nearby neighbors. Only limited flight balls are allowed. The longest-hitting club (a driver) may only be used on the back tees of the range that are furthest from the end of the club property. These restrictions are enforced by staff who monitor use of the range. Now the club offers to install tall netting that will provide additional protection and prevent most if not all range balls from being hit over it.

**History.**

The driving range has been in operation for nearly 50 years at the same location. There is no evidence to support Mr. Barker's claim that the range has been moved or shortened. In fact we have provided information that confirms it has not been changed as Mr. Barker claims. Exhibit 9 in the staff report to the Planning Commission provided aerial photos from 1970 and

1978 showing the range and its tees exactly where they are today. Mr. Barker draws arrows on an aerial photo supposedly showing earlier, more distant tees for the driving range, but the starting points for his arrows are false – as supported by the older aerials in the staff report.

In 1973 the first owner of Mr. Barker's home was required to give the club an easement for a fence on his property, as a condition to being able to build at the location and to provide additional safety to the home and its occupants. Furthermore, in 1972 the owner also agreed to indemnify and defend the club from claims if anyone on his property was injured by a golf ball. Both agreements are binding on Mr. Barker, and he acknowledges he was aware of and is bound by both when he purchased the property. The price he paid reflected a reduction in value in his home caused by its proximity to the range and the risk of golf balls entering his property.

Mr. Barker states that he had no problems with golf balls entering his property before 1995, when he claims the club redesigned the driving range. However, club records show he complained before then, dating back to the 1980's.

#### **Setback Variance.**

The club could use its easement and erect the netting on Mr. Barker's land, close to his backyard. However, it proposes locating the new structure on the driving range, further away from Mr. Barker's yard behind vegetation and the old fence, making it less visible from his home. The setback variance (2 feet instead of 10) allows the club to avoid using the easement, providing a benefit to Mr. Barker. Moving the netting 8 feet further away from the property line to avoid a variance would reduce its effectiveness. The variance is a reasonable compromise.

#### **Height Variance.**

The proposed netting is 45 feet tall, which will require a height variance. Mr. Barker challenges how the netting should be classified and what standard should apply. Staff has determined that the proper standard for judging the height variance is the County's 35-foot limit on houses "*or other structures*" as permitted in the R-15 zone (see Code §84-4.802). The staff report contains my September 29 memo to the County on this point. However, Mr. Barker argues that the County's fence height limit (6 feet) should apply.

Mr. Barker quotes the dictionary to support his position that the netting structure should be treated as a "fence". However, in this case the County's actual treatment of fences and structures should govern. The County Code mainly deals with fences to regulate how they enclose special types of land uses: swimming pools (§718-4.104); vacant property (§720-6.406); vacant structures (§720-4.406); mobile home parks (§84-68.1216); dangerous animals (§416-12.422); excavation of underground tanks (§450-6.406); electric fencing around livestock (§76-4.606); windmill towers (§88-3.604); and junkyards (§88-4.602). It is interesting to note that junkyard fencing must be at least 8 feet high, and the Code doesn't say that a variance is needed, meaning that the County recognized that need for greater height for that particular special use.

The netting will be free-standing and open at either end. It is a unique structure intended solely to stop golf balls, not to enclose an area or keep out trespassers. Thus under the Code it is more appropriate to treat the netting as a "structure" than a "fence."

Mr. Barker's October 23 appeal letter harshly criticizes staff for treating the netting structure like an accessory building or a house. Mr. Barker is wrong on both counts, and his attacks on staff are unwarranted. We agree that the netting and poles do not qualify as an "accessory building" because we understand the Code requires such a structure to include a roof. As to his "house" claim, Mr. Barker simply ignores the plain wording of Code section 84-4.802, which authorizes 35 feet for a "*single-family dwelling or other structure*". No one has ever suggested that the netting should be treated as a house.

We believe the variance is justified and reasonable whichever height limit the Board may choose to apply as the initial standard: 6 feet for fences, 15 feet for accessory buildings, or 35 feet for structures. This is a unique situation, where the netting must be taller than other typical structures to adequately improve the safety of the Barkers.

Mr. Barker claims the proposed 45-foot tall netting structure will not be tall enough to stop every golf ball. The club's design includes support poles that could be extended if needed. The club's application requested a height variance to 45 feet. However, the Planning Commission decided to allow the club to raise the netting higher in the future if experience shows that some balls are getting over. The Commission modified the variance to allow up to 55 feet in height. The club appreciates the Commission's desire to provide this flexibility and is willing to install the net at 55 feet.

#### **Shadows and Harm to Vegetation.**

Mr. Barker claims that the netting will block light and air, and cast shadows over his house that will kill trees and other vegetation. This is completely false. First, as the staff report explains the netting will be north of Mr. Barker's property, while the sun at this latitude tends to cross the sky to the south – so any shadow should fall on the driving range and will not affect his home or landscaping. The existing fence with ivy growing above it already stands up to 20 feet tall right next to Mr. Barker's yard on his property. The fence and ivy are essentially solid, so its shadow already would be harming his landscaping – except that the fence also stands to the north so its shadow falls harmlessly toward the driving range.

More importantly, the netting is practically invisible. According to the contractor, the net and poles together will only block approximately 8 percent of sunlight. The staff report includes photos of similar netting already on the driving range. The other side behind the divider can be seen quite clearly and the netting is barely visible. We provided photos to the Commission that should be in the Board packet, showing similar netting at other golf courses. The netting is barely visible from a distance and does not create shadows that would harm vegetation or interfere with use of Mr. Barker's yard.

### **Harm to Birds.**

Mr. Barker also claims the netting will catch and kill birds. During the Planning Commission hearing he testified that he spoke to someone at a local golf course (we could not hear clearly if it was Buchanan Fields or Franklin Canyon). Greg Gonsalves, General Manager for Round Hill, has talked to the Superintendents at both courses. Neither one recalls discussing the topic with Mr. Barker. The Buchanan Fields superintendent said he has never experienced birds flying into and being injured by their netting. At Franklin Canyon, on rare occasions course workers have seen birds fly against the netting and then simply turn and fly away, and they have never found a bird dead or injured near the netting.

Round Hill's contractor has worked on hundreds of golf courses, installing nets up to 160 feet high. They have never seen a dead or injured bird around their netting, or heard of such a problem from any golf course. There is no evidence to support Mr. Barker's wild claim.

### **Trajectory Analyses.**

The club has submitted several trajectory analyses prepared by a consultant experienced in such evaluations. They are based on assuming the perfect combination of (1) a very strong swing, (2) professional-level golfing ability, (3) using clubs likely to produce the longest shot, and (4) starting at the tees where each type of golf club is allowed. We understand that average golfers typically swing clubs at 80-90 miles per hour. To be overly cautious the consultant assumed faster swings: 110 mph for the three-iron club and 127 mph for the driver. These higher speeds would produce much longer shots than typical players at Round Hill. The studies show that three-iron shots may barely reach the foot of the netting. The best shot using a driver may hit the netting in the air, but is very unlikely to clear the top and carry to Mr. Barker's house.

Mr. Barker claims that the 45-foot high netting will not block every single ball. The analysis indicates that it should stop all or almost all balls from reaching his property. It is possible that on rare occasions a ball may clear the netting – but this new netting can only improve Mr. Barker's situation. How can he object to that?

In any case, the County is not obligated to require that the netting block 100 percent of shots, and failing to do so would not be a valid reason for the County to deny the application. The driving range has been operating for many years. There is no doubt that this netting will provide more protection for the neighbor, and no evidence it will cause any harm.

Mr. Barker challenges the assumptions used in the club's trajectory analyses regarding elevations, wind speeds, temperature and other variables. He complains that the County should hire a consultant to independently verify the conclusions. That is not required for the purpose of approving this application. There are an infinite number of variable combinations that could be applied, and each might lead to different results – but that would not undermine the value of this proposal. Even if Mr. Barker is right that on a very hot and windy day a higher barrier is needed to stop every ball, no one can deny that 45- or 55-foot tall netting will protect him and substantially improve his situation. Because this is an existing situation the County does not

have to make sure the netting will stop 100% of the balls, and so does not need to study the details or spend the time and money to independently verify the study results.

#### **Limited Flight Balls.**

The club has made another significant effort to avoid the problem of balls entering the neighbors' property. It requires golfers to use only limited distance balls on the driving range. These balls are specially designed to travel 80% of the distance of regular balls. The trajectory analyses calculated longest shots based on using these balls. According to the club's General Manager, the Cayman Golf Company's 80% ball is the most restricted golf ball available that retains the feel of a regular golf ball when hit.

Mr. Barker presents literature from Cayman's website which reads that the 80% balls are good for courses and ranges "that are less than 260 yards deep." He interprets this to mean that golfers will hit a ball 260 yards in the air, which might allow many balls to clear the proposed netting. Mr. Barker is wrong. Greg Gonsalves, General Manager of the club, can testify that a representative of the golf ball company explained that the 260-yard distance refers to how far the ball may fly in the air and then bounce and roll along the ground. He agreed that the club's planned netting should block all or most balls.

#### **Scenic Stone Valley Road.**

Mr. Barker claims the netting will conflict with the scenic roadway designation of Stone Valley Road. According to the September 8, 2008 staff report to the Zoning Administrator (page SR-5), the netting structure will be approximately ¼ mile from that road, with trees and houses in between that prevent distant views. The staff report agrees that this is not a credible complaint, and Mr. Barker has not submitted any evidence to support it.

#### **Changing Conditions.**

Mr. Barker argues that the driving range should close because it is too short. He points out that improvements in golf clubs and technique now allow golfers to hit the ball longer than when the range opened, and that new driving ranges usually are longer, but the remedy he asks for is not appropriate. The Planning Commission compared the situation to airports and freeways that enlarge or find new development coming closer. In those cases the solution is not to close the airport or highway, but to build a sound wall or take other appropriate actions. Similarly, the club's proposed netting structure is the best solution in this case.

#### **CEQA Exemption.**

The Planning Commission ruled that the project qualifies for a categorical exemption under CEQA Guidelines section 15301(f), which covers adding a safety protection device to an existing facility but not expanding the existing use. We agree with that determination. In addition, two other CEQA exemptions are available that also cover the netting structure and can be relied on by the County: Guidelines section 15303(e) (construction of small accessory

structures) and Section 15311 (construction of minor accessory structures). There is no credible evidence to support claims that the netting might cause a significant environmental impact. As an added measure to help protect approval of the netting from Mr. Barker's threat of litigation, we ask the Board to add these two exemption grounds as alternatives supporting the decision.

**Conclusion.**

At the Commission hearing Mr. Barker admitted that no netting height will satisfy him, no matter how tall it is built. He demands that the driving range be closed or moved. Such a redesign would be very expensive and would only result in exposing different neighbors to potential errant golf balls. It is not reasonable or legal to require such a drastic change to the golf course layout, given that the range has been in use for decades and the Barkers purchased their home with the full knowledge and understanding of where it was located and that the existing indemnity agreement and easement were in place to provide the protections intended (as well as allowing the Club latitude to increase the height in the future if needed).


The club has made every effort to accommodate the Barkers, restricting where drivers may be used and only allowing limited flight balls. This new netting should resolve the issue. However, nothing changes the fact that Mr. Barker purchased a home at the end of the driving range knowing that balls go onto the property and that he is obligated to defend and indemnify the club for injury that occurs on his property caused by a golf ball!

A representative of the Alamo Improvement Association spoke at the Commission hearing to say that the AIA supports the application. The Home Owners Association also accepted the Club's proposed solution.

We ask the Board to follow the recommendations of staff, the Zoning Administrator, the Planning Commission, the AIA and the HOA: deny the appeal, approve the application, and allow the option to install the netting up to 55 feet tall. The General Manager of the club will be available at the hearing to answer questions.

Very truly yours,

ARCHER NORRIS



Edward L. Shaffer

ELS/oev

cc: Christine Louie, County planner  
Greg Gonsalves, Round Hill General Manager



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October 10, 2008

San Ramon Valley Regional Planning Commission  
c/o Contra Costa County Department of Conservation and Development  
651 Pine Street, 2nd Floor-North Wing  
Martinez, CA 94553-0095

Re: Round Hill Country Club - Application to Erect Driving Range Netting  
(County File LP07-2078)

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Honorable Commissioners:

We represent Round Hill Country Club. The Zoning Administrator has approved the club's application to install netting at the end of its driving range. On October 22 the Commission is scheduled to hear an appeal filed by one neighbor, Kenneth Barker. We ask you to deny the appeal and affirm the approval. None of the Mr. Barker's arguments have merit or warrant preventing installation of the new netting.

The driving range has been in operation for decades at the same location. To protect adjacent properties, only limited flight balls are allowed. The longest-hitting club (a driver) may only be used on back tees that are furthest from the planned netting location. These restrictions are enforced by club staff.

In 1973 the previous owner of Mr. Barker's home gave the club an easement for a fence on his property, to stop long shots from the driving range. Furthermore, in 1972 the owner also agreed to indemnify and defend the club from claims if anyone on his property was injured by a golf ball – which is binding on Mr. Barker. The club is not required to install netting or take any other action. It questions Mr. Barker's claim that golf balls frequently hit his house. Nevertheless, to provide added protection the club is willing to install this higher netting.

In addition, the club is placing the netting on its own property rather than in the easement, moving it away from Mr. Barker's backyard behind a line of trees to make it less visible and to avoid harming any trees. This makes the setback variance reasonable to approve, compared to the alternative of placing the netting in the easement.

The proper standard for judging the height variance is the County's 35-foot limit on houses "or other structures" permitted in the R-15 zone. The staff report should contain my September 29 memo to the County on this point. Mr. Barker may recite the standard dictionary definition of a fence to argue that the 6-foot fence standard should apply. However, in this case the County's treatment of fences and structures should govern. The County Code regulates fences in terms of their function enclosing parcels of land, certain types of uses (e.g., junkyards), or particular improvements (e.g., towers). The netting structure will be free-standing and open at either end, intended solely to stop golf balls and not to enclose any area or keep out trespassers. Even if the Commission decided to apply the fence standard, the height variance is justified and reasonable to approve given the circumstances and the benefit it will provide.

The Zoning Administrator ruled that the project qualifies for a categorical exemption under CEQA Guidelines section 15301(f), which covers adding a safety protection device to an existing facility but not expanding the existing use. We agree with that determination. In addition, two other CEQA exemptions are available that also cover the netting structure and can be relied on by the County: Guidelines section 15303(e) (construction of small accessory structures) and Section 15311 (construction of minor accessory structures). There is nothing to support claims that the netting might cause a significant environmental impact.

The staff report contains two trajectory analyses prepared by the club's consultant. They are based on the perfect combination of a very strong swing, professional-level golfing ability, using clubs likely to produce the longest shot, and starting at the tees where each club is allowed. Average golfers typically swing clubs at 80-90 miles per hour. To be overly cautious the analyses assumed much harder and faster swings: 110 mph for the three-iron and 127 mph for the drive. These higher speeds would produce much longer shots. The studies show that three-iron shots may barely reach the foot of the netting. The best shot using a driver may hit the netting in the air, but is very unlikely to clear the top and carry to Mr. Barker's house.

Mr. Barker claims that the netting will block light and air, and cast shadows over his house that will kill trees and other vegetation. This is completely false. First, as the staff report explains the netting will be north of Mr. Barker's property, while the sun at this latitude tends to cross the sky to the south – so any shadow should fall on the driving range and will not affect his home or landscaping. The existing fence with ivy growing above it is on Mr. Barker's property right next to his back yard. The fence and ivy are essentially solid, so its shadow already would be harming his landscaping – except that the fence also lies to the north.

More importantly, the netting is practically invisible. According to the contractor, the net and poles together will only block approximately 8 percent of sunlight. The staff report includes photos of similar netting already on the driving range. The other side behind the divider can be seen quite clearly and the netting is barely visible.



Mr. Barker also claims the netting will catch and kill birds. The contractor has worked with hundreds of golf courses, installing nets up to 160 feet high. They have never seen a dead or injured bird around their netting, or heard of such a problem from any golf course.

Mr. Barker claims that the 45-foot high netting will not block all the balls. The analysis indicates that it should stop all balls from reaching his property. Even if on rare occasions an especially hard-hit shot may clear the netting, this new netting can only improve his situation. How can he object to that?

In any case, the County is not obligated to require that the netting block 100 percent of shots, and this would not be a valid reason for the County to deny the application. The driving range already exists and has been operating for many years. There is no doubt that this netting will provide more protection for the neighbor.

We ask the Commission to deny the appeal and approve the application, as recommended by staff and the Zoning Administrator. The General Manager of the club will be available at the hearing to answer questions.

Very truly yours,

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Edward L. Shaffer

ELS/oev

cc: Greg Gonsalves



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## MEMORANDUM

**TO:** Robert Drake, Principal Planner  
Contra Costa County Department of Conservation and Development

**FROM:** Edward L. Shaffer

**DATE:** September 29, 2008

**RE:** Round Hill Country Club Netting Application (County File LP07-2078)

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The staff report for the September 8, 2008 Zoning Administrator hearing stated that the 45-foot-high netting structure requires a height variance. It determined that the variance should be tested against the limit authorized for accessory buildings in the County Code – 15 feet. An opponent claimed that the more appropriate standard should be to treat the structure as a fence and apply the Code's 6-foot height limit.

However, at the hearing you applied neither standard, instead stating that the land use permit amendment allowing the netting structure also will cover the requested height so no height variance is needed. Golf courses are allowed in the R-15 zone with a land use permit. Golf courses typically include netting along fairways and driving ranges to control balls, making it reasonable to treat the netting structure as an integral part of the golf course and so covered by the land use permit (and its amendment).

However, as we discussed yesterday it may be prudent for the County to also recognize that the proposed height exceeds the maximum allowed for structures in the R-15 zone, and then formally approve a height variance in addition to including the netting structure in the L.U.P. amendment. The staff report had recommended approval of a height variance under the 15-foot standard. I believe during the hearing staff also indicated that the variance qualified for approval even if the lower 6-foot fence standard was applied.

However, in my opinion a careful reading of the County Code suggests that neither height standard (6 feet for fences nor 15 feet for accessory buildings) should apply. Instead, as explained below the proposed netting structure should be considered under the 35-foot limit for "structures" in the R-15 zone. We ask you to revise the staff report and its recommendations accordingly, for the upcoming appeal before the San Ramon Valley Regional Planning Commission. The findings provided on page COA-4 of the prior staff report should apply

equally to this height variance – with minor editing to clarify that they cover the increased height as well as the reduced setback.

The driving range is zoned R-15. County Code §84-12.802 applies the R-6 height provisions to development in the R-15 district. Section 84-4.802 specifies the following R-6 height standard:

“No single-family dwelling *or other structure* permitted in the R-6 district shall exceed two and one-half stories or thirty-five feet in height.” (emphasis added)

Golf courses are allowed in the R-15 zone with a land use permit. Golf courses commonly include tall netting to protect adjacent properties from wayward balls, both along fairways and at driving ranges. Thus the R-6 “other permitted structure” standard should apply.

As we discussed, it appears the netting structure is not an “accessory building” under the Code because the definition of a building requires a roof (§82-4.210). The Code does not provide a definition for a “fence,” but the definition of “structure” (§82-4.270) specifically excludes fences. In our opinion the netting structure should not be treated as a fence because it does not serve the primary function of a fence, which is to enclose a piece of land. Where fences are referenced and regulated in the Code, they are discussed in terms of enclosing particular areas (e.g., junkyards) or improvements (e.g., towers). The netting structure will be a free-standing installation not attached to any continued fencing on either side, intended solely to stop golf balls.

We recognize that this proposed netting does not easily fit within any particular category of structure as defined in the County Code. It should be treated as a unique installation and judged on its merits in light of the location, the County’s prior approval of the golf course, and other circumstances that may apply. We believe the County treats other unique installations – such as flagpoles and communication towers – in a similar way. Please advise the Planning Commission to approve the height variance in addition to the setback variance and land use permit amendment.

cc: Christine Louie  
Greg Gonsalves  
Lee Archer