SAN BENITO COUNTY PLANNING COMMISSION
January 16, 2008
Minutes

PRESENT: Bettencourt, DeVries, Machado, Scattini, Tognazzini

ABSENT: None

STAFF: Director of Planning (DoP) Art Henriques; Principal Planner (PP) Byron Turner; Assistant Planner (AP) Ann Dolmage; Assistant Planner (AP) Michael Kelly; (DCC) Shirley Murphy; and Clerk Janet Somavia.

Chair Tognazzini opened the Meeting at 6:02 p.m. as he led the pledge of allegiance to the flag and reiterated the standing rules of order.

DIRECTOR'S REPORT

DoP Henriques reported on recent Board of Supervisor meetings and information on the following items:

Reported that the County has received the application from DMB. Have not received the full application for the Specific Plan/General Plan Amendment. We will be getting back to the Commission and the Board in the future with follow-ups.

- December 18, 2007 Board meeting:
  - Board voted to update the various Building, Fire and related codes. The 2007 International Codes were adopted.
  - Commercial Zone Study. Staff to return with further action items.
  - Initial Public Hearing on the Commission's recommendations for amending the Agricultural building exemptions. Staff will have a formal meeting with the Farm Bureau and Cattle Association. Will then return back to the Board of Supervisors.
  - Proposed recommendations on revising the Hillside Ordinance to repeal and re-intact with design guidelines and GIS focus. Board did not adopt and sent back to the Planning Commission for repeal.

- January 8, 2008 Board Meeting:
  - The Board of Supervisors elected Supervisor Jaime De la Cruz as Chair and Supervisor Anthony Botelho as Vice-Chair.
  - Pinnacles is celebrating their 100th Anniversary.
  - Discussion regarding the adopted Fire Code and local amendment request regarding sprinklers, fire warning systems and defensible space. The Board of Supervisors approved these local amendments.
  - The Board of Supervisors also denied the appeal of the Ken May subdivision project in Aromas.

PUBLIC COMMENT

Chair Tognazzini opened and then closed, the opportunity for public comment as there were no persons present to address matters not appearing on the agenda.

CONSENT AGENDA

1. Acknowledge Public Hearing Notice
2. Acknowledge Certificate of Posting
3. Minutes of December 5, 2008

Commissioner Scattini made the motion to approve the Consent Agenda. Commissioner Bettencourt seconded this motion. The motion passed with a favorable vote of 5-0.

CONTINUED ITEM – COMMISSION ACTION

4. Hillside Design Ordinance – Repeal of Ordinance No. 781 as directed by the San Benito County Board of Supervisors.

Byron Turner (PP) noted that on December 18, 2007 the Board of Supervisors voted not to amend the Hillside Ordinance to require design review and directed staff to prepare the necessary documents to repeal the Hillside Ordinance. Hillside Ordinance #781 was approved December, 2004 and enacted in January, 2005. From January, 2005 thru December, 2007 no projects were processed subject to this ordinance. The Board of Supervisors has requested that this be repealed and determined that existing regulations are in place to insure that development will not degrade hillside areas. An initial study has been prepared for the repeal of the Hillside Ordinance and is attached.

Commissioner Tognazzini asked for clarification regarding the action.

(DCC) Shirley Murphy stated that she has handed out copies of the relevant Government Codes section. Under section 65857 and since the Board of Supervisors is intent on doing something different then what the Planning Commission recommended, this needs to be referred back to the Planning Commission for recorded recommendations. She noted if the Planning Commission does not take any action that after 40 days the Board can move on without a formal report back.

Commissioner Scattini stated that the way he reads this is that there is nothing else for the Commission to do.

(DCC) Shirley Murphy stated that this has been referred back to the Commission for a report and recommendation.

Commissioner Tognazzini stated that they can do nothing or report back.
(DCC) Shirley Murphy stated that the question is the report and recommendation on the proposed change, which is instead of adopting the revisions that the Commission has recommended to simply repeal the Ordinance outright.

Commission Bettencourt stated that he was at that meeting and he thought it was sent back to the Commission for findings and conditions.

(DCC) Shirley Murphy stated that what the Commission forwarded to the Board of Supervisors was Categorically Exempt.

(PP) Byron Turner stated that what was originally forwarded was Categorically Exempt because it was an action by a regulatory agency for the protection of the environment. With the repeal there is no exemption under CEQA, therefore this Initial Study had to be done.

Commissioner DeVries asked what responsibility the Planning Commission has to approve the Negative Declaration.

(DCC) Shirley Murphy stated that ultimately the Board of Supervisors has to agree with the Negative Declaration before they can repeal the Ordinance.
Commission DeVries stated that he completely disagrees with the Mitigated Negative Declaration that says that aesthetics will be less then significantly impacted by the complete repeal of this Ordinance.

(PP) Byron Turner stated that the existing regulations are in place to protect hillside. This is only for major subdivisions. There is no existing hillside protection for single family homes or minor subdivisions; it is only major subdivisions that this ordinance applied to in the first place. Other General Plan elements are in place to protect the hillside, as well as design review as requested by the Planning Commission.

(DCC) Shirley Murphy clarified that CEQA speaks to the obligation for the lead agency to make determination. She does not see an absolute mandatory obligation on the Planning Commission's part to make a recommendation. It is important that the ultimate decision maker make the findings and in this case it would be Board of Supervisors because it is a legislative act.

There was much discussion as to why this has come back to the Planning Commission and how the Commission should respond.

Commissioner Machado spoke that from the very beginning this was a scenic and aesthetic issue. The Commission has spent sixteen (16) public hearings, a year and half doing due diligence recognizing what the concern was and then passed it forward. Now the Board of Supervisors has turned it down basically as a bureaucracy ordinance.

Commissioner Bettencourt asked if it is in the General Plan there are issues that deal with hillside.

(PP) Byron Turner responded that there are General Plan policies as well as a provision to develop a ridgeline ordinance. If the ordinance is rescinded the General Plan remains the same.

Commissioner Bettencourt stated that the hillside is still protected by the Planning Commission because they can require a design review.

Commissioner DeVries spoke to the fact that the original Ordinance was sent back to them by the current Board of Supervisors to make some changes. The Planning Commission worked hard for a long time to try to make it better. Now, the Board of Supervisors does not feel it is good enough and now wants the whole thing gone.

Commissioner Tognazzini called for Public Hearing on this issue

Speaker #1 – M. Jones – South Street – Hollister,
Recommend Board to rescind it. Then publicize it.

Speaker #2 – R. Brians – Shore Road – Hollister,
The web poll shows that the public do want some hillside development control. The Board of Supervisors appoints the Commission and the Board did not listen to you.

Speaker #3 – Richard Saxe - Aromas,
Handed out a letter to the Commission. Against the repeal of the Hillside Ordinance.

Commissioner Tognazzini closed the Public Hearing.

Commissioner DeVries spoke that our County will be one of the only Counties that do not have a hillside ordinance.

Commissioner Machado spoke that we send a report back that we stand by our original decision.

The Commission had a lengthy discussion regarding the time and hard work put into this Ordinance by them as well as Staff.

Commissioner Scattini made a motion to send back to the Board of Supervisors to just rescind the Hillside Ordinance. Motion seconded by Commissioner Bettencourt.

Discussion of the motion and the hillside issue then pursued amongst the Commissioners.

Commissioner Tognazzini called for vote on the motion. Motion to rescind Hillside Ordinance #781 failed by the following vote: Ayes – Scattini & Bettencourt;
Nays – Machado, DeVries and Tognazzini.
Commissioner Machado made a motion to acknowledge receipt of the action of the Board of Supervisors and to stand by their original recommendation. Seconded by Commissioner DeVries. Motion carried by the following vote:
Ayes – DeVries, Machado and Tognazzini; Nays – Scattini and Bettencourt

PUBLIC HEARING ITEM ~ COMMISSION ACTION

5. **USE PERMIT NO. 980-07** –APPLICANT: Metro PCS, c/o Patrick Cruzen. OWNER: Judi Vierra LOCATION: 85 5th Street, Tres Pinos APN: 022-14-0-019-0 REQUEST: To install a 40-foot high "treepole" with three panel antennas for telecommunications service. ZONING: Single-Family Residential (R-1) ENVIRONMENTAL EVALUATION: Categorical Exemption
Project Planner: Ann Dolmage (***adolmage@planning.co.san-benito.ca.us***)

(AP) Ann Dolmage presented the project, a Metro PCS wireless telecommunications facility on the Vierra property. The project is located on the north side of 5th Street adjacent to Highway 25. The applicant is requesting a use permit to install a wireless telecommunications facility on this

property. The purpose of this facility is to provide wireless phone coverage in area not currently served. The proposed facility will consist of pole disguised as mature pine tree that is 40 feet in height. Three panel antennas will be attached to the pole. There will two radio cabinets and one battery cabinet located on a cement slab. The entire facility will be screened by a six foot natural fence and vegetation on the side facing Highway 25. The properties vinyl fence will be expanded to incorporate this facility. This property is designated as Rural/Urban in the County General Plan and is zoned R-1 in the County Zoning Maps. There is currently one single family dwelling on the property surrounded by crazing land. The project is exempt from the California Environmental Quality Act. Visual representations show a minimal visual impact to the proposed site. Because the site is in a highly visible area, staff has included conditions of approval regarding landscaping and exterior color. Staff is recommending that the Planning Commission approve UP 980-07.

(AP) Ann Dolmage then presented a slide show of the project.

John Schwartz – Metro PCS then explained the colored areas on the map. Green area – indoor coverage. Yellow area – mobile coverage. Red area – outside coverage.

John Schwartz then answered questions from the Commission.

Commissioner Bettencourt brought up the landscape issue. Oleander will not be used because it is toxic to all animals. Vegetation shall be used.

Commissioner Bettencourt stated that he did not feel there was a need for vegetation as there is going to be two fences surrounding the facility.

Commissioner Tognazzini called for Public Hearing on this project.

Patrick Cruzen – San Leandro - Examined several properties in the Tres Pinos area. Found that the Vierra property was an ideal location and met the 500 foot set backs. The site is co-locatable. It will house up to two more carriers. The six foot wood fence would cover the facility adequately. Vegetation would require us to bring out water.

Commissioner Bettencourt brought up the possibility of the new hotel or sub-division meeting the 500 foot set back.
Commissioner Scattini addressed the issue of foliage around the project. He agrees with Commissioner Bettencourt that with the fences there would be no need for vegetation.

(AP) Ann Dolmage then brought up two changes to the staff report. Recommended Condition #1 is changed as follows: "Pursuant to Section 66474.9 of the government Code" has been removed from this condition.
Recommended Condition #11 now reads as follows: "Prior to issuance of a building permit, the applicant shall record a deed restriction stating that the property owner/developer is aware of the potential issues regarding the placement of a wireless communication facility **within 500 feet of the single-family dwelling**, and that any future development on the site would be required to adhere to the 500 foot separation policy."

(DCC) Shirley Murphy then requested that Recommended Condition #1 also be changed as follows: "San Benito County shall be subject to Section 66474.9(b)(2) of the Government Code" has been removed from this condition.

Commissioner Machado spoke regarding the Commission has always required vegetation in mitigated the view. He concurs that the vegetation should be there. He also has a concern that the bars are outside the tree and not hiding. John Schwartz spoke that they would be willing to pull in the antenna bars so they would not be visible.

Commissioner Bettencourt moved that UP 980-07 with the following findings and conditions with revisions suggested by staff to Condition #1 and #11 and deleting Condition #9. Seconded by Commissioner Scattini.

There was discussion among the Commissioners regarding the vegetation and landscaping.

Commissioner Tognazzini called for a vote. The project was approved by the following vote: Ayes - Bettencourt, Scattini, Tognazzini. Nays – Machado & DeVries

DoP Art Henriques then stated that this will be final within 10 days unless anyone has an appeal. He then acknowledges Ann Dolmage as the County's newest planner.

CONDITIONS OF APPROVAL:

1. **Hold Harmless:**
   Upon written notice by the County the applicant shall defend, indemnify, and hold harmless San Benito County and its agents, officers, and employees from any claim, action, or proceeding against the County or its agents, officers, or employees to attack, set aside, void, or annul the approval of the subdivision and applicable proceedings. [PLANNING]
2. **Conformity with Plan:**
   The development and use of the site shall conform substantially with the proposed site plan and the Conditions of Approval as declared by the Planning Commission. [PLANNING]
3. **Improvement Plans:** Prior to issuance of a building permit, the applicant shall submit building and improvement plans to the County Building Department for approval.
4. **Exterior Color:** Any color applied to the exterior of the equipment shelter shall be non-reflective. The exterior appearance of the equipment cabinets shall be maintained at all times.
5. **Lighting:** Any exterior equipment lighting shall be installed with a manual on/off switch and shall only be lighted while maintenance personnel are working at the site. Exterior lights shall be shielded to direct light downward.
6. **Equipment Removal:** Applicant shall remove the equipment and equipment shelter no later than six (6) months after operation of the communication facility ceases.
7. **Fire:** The project shall meet the standards set forth in the latest adopted editions of the Uniform Fire Code, the Uniform Building Code, the San Benito County Code, and other related codes as they apply to a project of this type and size.
8. **Renewal:** Renewal of the Use Permit shall be required every 5 years from the date of approval.

9. Deed Restriction: Prior to issuance of a building permit, the applicant shall record a deed restriction stating that the property owner/developer is aware of potential issues regarding the placement of a wireless communication facility within 500 feet of the single-family dwelling, and that any future development on the site would be required to adhere to the 500-foot separation policy.

Commissioner Tognazzini then called for a short break at 7:30 p.m.

Commissioner Tognazzini called the Planning Commission to order at 7:38 p.m.

DISCUSSION ITEM

6. Interpretation of General Plan Open Space and Conservation Element Policy 42 (Flood Hazard) Action 3: EIR Required for Creation of Residential Lots in 100-Year Flood Plain. ***Project Planner: Michael Kelly (mkelly@planning.co.san-benito.ca.us)***

(AP) Michael Kelly presented this as a discussion of Minor Subdivision 1201-07 located on Churchill Road. A 26.1 acre parcel to be divided into four 5.2 acre parcels with a remainder of 5.2 acres. The purpose of this discussion is to consider the project and interpret whether the General Plan Open Space and Conservation Element Policy 42 Action 3 requires an environmental impact report for this project. This project is fully within a FEMA designated flood zone. Though the project would create lots containing residences, the residences themselves already exist. (Built in the 1980's with permits.) A determination of whether this project constitutes "creation of residential lots" is requested.

(PP) Byron Turner summarized that Staff is not asking for a determination on sub-division at this point or any potential conditions. What we need is a determination on the general plan policy where we have a property developed at maximum density; is there need for an EIR for a project.

(DoP) Art Henriques clarified that there are multiple homes on only one lot therefore, they have to finance as one lot and deal with assessor as one lot. It would simplify their ability to obtain financing, simplify the assessor's ability to do the annual assessments. There are practical reasons for doing this, but the County has a pretty strong General Plan policy so Staff felt the need to come as the Commission to interpret that policy.
The Commissioner then held a discussion on this issue.

Commissioner Tognazzini opened Public Comment on this issue.

Speaker #1 – Matt Kelley, Engineer – Hollister
There would be no significant impact for the following reasons:
No new construction is being proposed other than the road.
There are no traffic impacts.
No impact on water as the property is served by well & blue valve.
No impact to agriculture. The homes are on 3 acres the remaining 26 acres on row crops.
Flood plain issues. Surveyed all houses and they are above flood plain.

Speaker #2 – Ernesto Arias – Hollister
Taxes are a big issue. The first application was made 18 years ago.

Speaker #3 – Erny Arias – Hollister
Financing made easier. Only financing is balloon loans. No new financing available.

Speaker #4 – Angelica Fernandez – Hollister
Emergency services. Ambulance unable to find them.

Speaker #5 – Eva Arias – Hollister
Cannot add cable or extended services. They are not seen as existing.

Commissioner Tognazzini closed public hearing.

Commissioner Machado stated that all his questions were answered by the Engineer. After a brief discussion it was the consensus of the Commission that an EIR would not be needed.

INFORMATIONAL – NON-ACTION ITEM

Commissioner Bettencourt asked regarding the appeal of the Preliminary Allocations.
(DoP) Art Henriques responded that there was an appeal and it will be coming back next week. The appeal was Anderson because they did not get their two PA's. Staff is recommending the Board uphold the Commission's action.

Commissioner Bettencourt would like to bring up the 1% growth initiative and the 30% affordable housing requirement. We are to discuss this once every couple of years.

(PP) Byron Turner responded that yes, we are to review this every other year. While staff has gone in and looked at the scoring system every year we have not provided you with a report. This will be on your agenda sometime in early 2008.

(DoP) Art Henriques spoke that he is putting together an end of the year summary for the CAO and the Board of Supervisors. He will be sending this to the Planning Commission. Hopefully, that summary will be to you soon.

Commissioner Bettencourt moved to adjourn. Motion seconded by Commissioner Scattini. Motion passed with a unanimous vote.

Minutes prepared by:
Janet Somavia
Planning Commission Clerk

Attest:
Art Henriques
Director Planning