

SAN BENITO COUNTY PLANNING COMMISSION

Minutes of February 2, 2005

Following the Pledge of Allegiance, Chair Bettencourt called the meeting to order at 7:00 PM. Commissioners Machado, Tognazzini, DeVries, and Araujo were present. Staff in attendance was Director of Planning (DOP) Rob Mendiola, Associate Planner (AP) Byron Turner, Associate Planner (AP) Mary Paxton, Assistant Planner (AP) Steven Valdez, Deputy Director of Public Works (DDPW) Arman Nazemi; Deputy County Counsel (DCC) Shirley Murphy and Clerk Trish Maderis.

Chair Bettencourt read the standing rules of order: no new business agenda items heard after 10:30 PM; speakers are limited to five minutes with rebuttal limited to three minutes.

PUBLIC COMMENT

Chair Bettencourt read the Public Comment format stating the this open forum period is provided to allow members of the public an opportunity to address the Planning Commission on general issues of land use planning and community development. It is not intended for comments on items on the current agenda, any pending items, or items that have been continued to a future public hearing date.

CONSENT AGENDA

Chair Bettencourt turned attention to the Consent Agenda:

- 1) Roll
- 2) Certificate of Posting
- 3) Minutes of January 19, 2005 Commissioner DeVries asked to 'pull' the minutes of the meeting; Chair Bettencourt so ordered.
- 4) **Certificate of Compliance 04-50:** Request: The applicant is requesting Certificates of Compliance for two parcels to establish legality and compliance with the Subdivision Map Act. Applicant: Esther Matthews Location: 530 Aquistapace Road. Zoning: Agricultural Productive (AP) Environmental Review: Categorical Exemption.

COMMISSIONERS MACHADO/ TOGNAZZINI MOTIONED TO APPROVE THE CONSENT CALENDAR AS AMENDED. THE MOTION PASSED WITH THE UNANIMOUS AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT; NONE WERE ABSENT.

Minutes of January 19, 2005 Commissioner DeVries said he had asked to have these minutes pulled for discussion and called attention to discussion on the Preliminary Allocation Process (page 12). He explained this is to be ‘more of roadmap for the future’, as well as clerical accuracy – these being objectives of this communication. “I thought that further discussion items would include on the last bullet point: having staff and engineers review the criteria by which a one year extension might be granted to an allocation holder,” Commissioner DeVries articulated, “as opposed to the way it is worded now which is just to review the criteria for allocations.”

DoP Mendiola said, “And that would be more specific; that would be fine.”

Commissioner DeVries had written the statement and reread it at the request of DoP Mendiola.

Commissioner DeVries continued: “This would clarify subsequent staff reports containing mention of this. In other words, what is the threshold that all the applicants must cross before they are given the extensions. I thought that was kinda the substance of our discussion. And lastly, (asking Rob what his thoughts were on this), but I didn’t get the impression that a good portion of our discussion was mentioned in these minutes and that would relate to ‘the extent to which a defective application will be subject to termination’. That issue and also the issue of whether a defective application would have the opportunity to be cured.”

DoP Mendiola asked if Commissioner DeVries wanted that added as a bullet point.

Commissioner DeVries responded, “I would think so, because we spent a lot of time talking about if something doesn’t meet muster at the time it’s ---it goes through the staff’s office, it should not come to the Commission.”

Commissioner Tognazzini joined the discussion, saying, “If the applications don’t contain the mandatory elements, they don’t even get here.”

Commissioner DeVries agreed, saying, “They don’t even get to that point. Right. I don’t think that sentiment and that idea which we talked about a lot is reflected is here.”

DoP Mendiola asked Commissioner DeVries to state for the record the items which he would have included. Commissioner DeVries responded, “Defective applications and the opportunity to cure same and termination based upon the defect.”

Chair Bettencourt said more workshops would be conducted on the subject. DoP Mendiola assured that would be the case. Commissioner DeVries clarified that it was his thinking that the specific language he suggested would be well put into the record. Chair Bettencourt so ordered.

COMMISSIONERS DEVRIES/MACHADO MOTIONED THAT THE MINUTES OF JANUARY 19, 2005, AS MODIFIED, BE APPROVED AS AMENDED. THE MOTION CARRIED WITH THE FOLLOWING VOTE: AYES: ARAUJO, BETTENCOURT, DEVRIES, MACHADO, TOGNAZZINI; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

Chair Bettencourt opened the floor to the public for comment.

Making certain no persons were present to address matters not appearing on the agenda, Chair Bettencourt closed the public comment period.

CONTINUED BUSINESS

Minutes of December 1, 2004

DCC Murphy asked which of the three new Commissioners had reviewed the tapes for voting purposes. Commissioner Tognazzini said he had done so. DCC Murphy reminded that those who had not reviewed the tapes would be required to abstain on the vote.

COMMISSIONERS MACHADO/TOGNAZZINI MOTIONED THAT THE MINUTES OF DECEMBER 1, 2004, BE APPROVED. THE MOTION CARRIED WITH THE FOLLOWING VOTE: AYES: BETTENCOURT, MACHADO, TOGNAZZINI; NOES: NONE; ABSTAIN: ARAUJO, DeVRIES; ABSENT: NONE.

Minutes of December 15, 2004

Discussion ensued with DCC Murphy asking Commissioner DeVries if he had attended the meeting. He replied that he had been present for a portion of the meeting but would not feel comfortable voting because he was not present for the full meeting. It was ascertained that the three new Commissioners needed to listen to the tapes for voting purposes; therefore this matter was continued at the direction of Chair Bettencourt until the tapes could be examined.

Rural Home Enterprise – Home Occupation – Review of Ordinance

Continued from 7/7/04, 9/1/04, 10/6/04, 11/3/04 & 12/1/04)

DoP Mendiola reminded that former Commissioner Tonascia had asked this matter to be agendaized for this meeting. Rural Home Enterprise and Home Occupation uses are contained within the Zoning Ordinance.

DoP Mendiola this Ordinance provides for limited business in the home within the qualifiers that are contained by the Ordinance. He gave examples of limitations of the Ordinance (section 30.4.1):

- window displays
- foot traffic beyond that normal for the district
- must be on a 5-acre parcel

DoP Mendiola said there is a little broader use of property and allows for employment one additional person beyond family members. He indicated that the permits granted are not totally unlike use permits. Commissioners must determine that the use proposed would not in any way be detrimental to the neighborhood itself. DoP Mendiola distributed the materials pertinent to the Ordinance.

Commissioners asked questions (for clarification and information) regarding specific issues associated with the Ordinance:

- animal hospitals
- animal clinics
- real estate offices in the home (DCC Murphy explained that there are exceptions for telecommunicating businesses; it is limited to electronic communication, not having clients to the home. DoP Mendiola added that Real Estate law also has governance over this issue.)
- traffic
- notification (required for neighbors as indicated by Ordinance and State law)
- not interfere with neighbors: noise, light, general nuisances
- agriculture – uses permitted on small acreage
- length of permit (goes with owner, not land, unlike a Use Permit)
- complaints/code enforcement (history of permits retained)
- size/building limitations
- proposed construction for the business (Section 30.7e)
- roll of the Commission in review and approval
- appeal of Commissioners decision – goes to Board of Supervisors
- ability of Planning Staff to review and approve Rural Home Enterprise and Home Occupation uses administratively
- issues/ problems associated with former/existing roll of the Commission in review and approval of the Rural Home Enterprise and Home Occupation uses
- ‘cures’ for failure to obtain permit

Chair Bettencourt opened the public hearing.

Noting that no persons were in attendance to speak to the matter, Chair Bettencourt closed the public hearing.

Commissioners clarified this had been agendaized for the purpose of discussion. Chair Bettencourt declared the item closed.

Use Permit No. 905-04: REQUEST: Convert a senior accessory second unit to an affordable residence. APPLICANT: Felipe Luis Diaz. LOCATION: 1541 Union Road. ZONING: Agricultural Productive. ENVIRONMENTAL REVIEW: Categorical Exemption (*continued from 12/1/04*)

AP Steve Valdez presented the staff report, reminding this had been continued from the December 1, 2004 meeting. This request is to convert a senior accessory second unit to a second unit which will be an affordable residence. He said that the staff recommendation is for approval – noting the diligent work of the applicant - with the matter being continued to the April 6, 2005 in order to allow the solution to identified septic tank violations.

Chair Bettencourt opened the public hearing.

Joe Martin, 1358 Oak Knoll Dr., spoke as the former owner of the property, telling Commissioners he was present at the request of the neighbors. He said that he had not been allowed any permits at all when he had owned the property, and told the history of the building in existence. Mr. Martin stated this sounds like harassment issue to him.

Commissioner Machado asked Mr. Martin about the relation of his report and the current request. Mr. Martin responded the neighbors are worried about it.

Chair Bettencourt asked if the (senior) residence was legal at the time Mr. Martin owned the property.

Responding to a question from Commissioner DeVries, DoP Mendiola explained that the issue is not past history, but trying to have the current owner is in conformance. Commissioner DeVries and DCC Murphy clarified this matter was before the Commissioners at this meeting to receive the staff report and recommendation.

Chair Bettencourt closed the public hearing.

Chair Bettencourt reopened the public hearing.

Gary Corlett, 1547 Union Road, reiterated his concerns from the December 1, 2004, telling Commissioners that he would give other information which would disallow tabling of the topic, including matters such as traffic, violations of the current Use Permit, effect on neighborhood, violation of County Ordinances, discriminatory acts by the Planning Department Staff, complaints purged from files at Planning Department, and several other issues. Mr. Corlett said it is necessary for reversal of previous decisions regarding this matter, with immediate remedy.

Luis Diaz, 1541 Union Road, appeared to represent the applicant (his family); Mr. Diaz gave a brief overview of the purchase of the property, and the events since. He told of working with the Planning Department Staff, noting that the septic work would be completed as soon as the workers were available. Mr. Diaz asserted that he was willing to continue to do 'whatever we can to get it done'.

Chair Bettencourt interjected several times that it is important to have the new Commissioners told of the issues involved in order to make intellectual decisions.

AP Valdez noted for the record that there was a letter of intent to complete the work from the installers of the septic tank. The company and Environmental Health are waiting for the soils to dry for work completion. He indicated that the timeframe is somewhat uncertain due to the weather.

Rochelle Corlett, 1547 Union Road, who stated that she feels the County staff, has treated her unfairly in response to her complaints and issues. Ms. Corlett said the 'system isn't working the way it is supposed to be working'. She indicated that in December the Board waited to have the new members seated, and now the files are in disarray. Ms. Corlett expressed dismay at the process and the treatment the neighbors were receiving.

Commissioner DeVries indicated that no staff report had been received, and said he had been under the impression that the meeting tonight was not for decision making. He said that he had been present at the December 1, 2004 meeting, and was aware of the issues. Commissioner DeVries commented that the information would be better presented at the time of decision making.

DCC Murphy said that since the public hearing had been opened, others in attendance could be heard.

Dave Christinsen, 1551 Union Road, urged the Commissioners to listen to the neighbors who have concerns. He advocated 'open discussion' for fact finding purposes.

Chair Bettencourt assured that would be the case, citing the April continuance date.

Mr. Christinsen asked about the process, saying he was curious about what would be accomplished in April.

Commissioner Machado spoke on the work previously completed, and the current request (correction of the violation) and how the cure is achieved. He also spoke on the 'status quo' of the project.

Commissioner Araujo asked for a report on the complaints and violations. DoP Mendiola explained that the items pertinent to the current application would be provided.

DCC Murphy explained that the process for reviewing the Planning Department files.

Following discussion, Chair Bettencourt closed the public hearing.

COMMISSIONERS DeVRIES/ARAUJO MOTIONED TO CONTINUE THE PUBLIC HEARING TO THE APRIL 6, 2005 PLANNING COMMISSION MEETING. THE MOTION CARRIED WITH THE UNANIMOUS AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT; NONE WERE ABSENT.

Commissioner Machado expressed concern that the issues, concerns, and accusations attempted to be brought forward at this meeting were in an inappropriate forum. Commissioner Machado went on to explain the Planning Commissioner functions and role with the Planning Staff.

DISCUSSION ITEM

Zone Change No. 04-141 and General Plan Amendment No. 24-25. Changes to the Zoning Ordinance and General Plan Land Use Element, Land Use Map and Housing Element to implement 2001 ~ 2008 Housing Element Programs.

AP Paxton reminded this matter had been before the Commissioners at the January 5, 2005 meeting, and reporting that the issue tonight is to implement existing programs in the Housing Element and help facilitate the certification of the adopted Element. AP Paxton went over the directions given to staff, including density requested by the State for the two cities in the County and the level of consistency with allowing some unincorporated development within the Spheres of Influence, with those items now included in the presented staff report. Recommended changes were explained by AP Paxton, in addition to one new recommended change: Administrative review – which she clarified by comparison, of previous and proposed language.

Commissioners asked several questions regarding the report, and the review/discussions of Planning Staff and the City(s) representatives. Obstacles to market rate housing were clarified by AP Paxton.

Subsequent discussion with the Commissioners revealed concerns about the Administrative review in the areas of: affordable housing and scenic corridor review (would not come to the Commissioners under Administrative review). Also discussed was:

- public input
- affordable housing
- requirements from the State through MBAG (restatement of the correspondence received from the state on the submitted application)
- fees related to housing permits
- splits of the family properties
- need to relax standards for affordable housing
- exceptions to the specific plan for San Juan Bautista (removed from density requirements)
- clarification of the process of adoption of the Housing Element (including input from the public and other agencies)
- need for increased affordable housing units

Chair Bettencourt opened the public hearing.

Brad Sullivan, of the law firm of Lombardo and Gilles, addressed the Commissioners, saying ‘something needs to be done with the County’s requirements for growth control’. Mr. Sullivan warned that the approval of Housing Element plans might be legally challenged, and suggested ‘nothing will be built’ if modifications are not completed, including any exemptions.

Kathy Flores (no card provided) told Commissioners she is the Director of Community Services and Work Force Development for San Benito County. Ms. Flores explained what the Housing Element does for the County, including opening the opportunity for funding that would not have otherwise been available. She spoke on the importance of the grant monies received in this small rural county. Ms. Flores told of the successes (and frustrations) by the County in obtaining grant funding for on-going programs.

With no other speakers to the matter, the public hearing was closed.

COMMISSIONERS DeVires/TOGNAZZINI TO HAVE THE AFFORDABLE HOUSING AND SCENIC CORRIDOR PROVISIONS OF THE HOUSING ELEMENT REVIEWED BY THE COMMISSIONERS PENDING USE PERMITS OR OTHER APPROVAL MATTERS. THE MOTION PASSED BY THE FOLLOWING VOTE: AYES: ARAUJO, BETTENCOURT, DeVRIES, MACHADO, TOGNAZZINI; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

COMMISSIONERS MACHADO/TOGNAZZINI MOTIONED THAT STAFF BE DIRECTED TO PREPARE THE ENVIRONMENTAL DOCUMENTS NECESSARY TO ACCOMPLISH UPDATES FOR CHANGES TO THE ZONING ORDINANCE AND GENERAL PLAN LAND USE ELEMENT. THE MOTION CARRIED BY THE FOLLOWING VOTE: AYES: ARAUJO, BETTENCOURT, DeVRIES, MACHADO, TOGNAZZINI; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

WORKSHOP

An overview of the Planning Commissioner's Handbook (a State of California publication) was presented by DoP Mendiola. DCC Murphy was instrumental in providing information about the relevance of the matters for the Commissioners and gave suggestions on handling difficult situations.

Commissioners asked questions regarding:

- specific Ordinances
- Commissioner generated discussion items at the end of the meetings
- complaints
- compliance with the laws and requirements of the position
- procedures necessary to agendaize and discuss items
- interaction with County Staff
- proper way to access sites of projects coming before the Commission
- need for impartiality in decision making

DoP Mendiola urged the Commissioners to visit the Planning Department offices and ask questions regarding concerns on how best to deal with issues before them. All Commissioners agreed that having completed staff reports is invaluable.

ANNOUNCEMENTS

Commissioner DeVries announced he will not be present for the February 16 meeting.

COMMISSION DISCUSSION

Commissioners discussed the value of the workshops which have been prepared and presented by Planning Staff. Responding to a concern raised, DoP Mendiola said that if an issue is returned to the Commissioners from the Board of Supervisors, a work shop can be presented to clarify the issues being raised.

Ascertaining there were no additional agenda or discussion items to be considered, Chair Bettencourt adjourned the meeting at 9:13 PM.

***Minutes transcribed by:
Judi Johnson***

***Attest:
Rob Mendiola, Director of Planning***