

SAN BENITO COUNTY PLANNING COMMISSION

Minutes of June 1, 2005

Following the Pledge of Allegiance, Chair Bettencourt called the meeting to order at 7:05 PM. Commissioners Araujo, DeVries (who arrived at 7:06 p.m. to be seated with his fellow Commissioners), Machado, and Tognazzini were present; Staff in attendance were: Interim Director of Planning (IDoP) Michael Bethke, Senior Planner (SP) Mary Paxton, Assistant Planner (AP) Steve Valdez, Deputy Director of Public Works (DDPW) Arman Nazemi; Deputy County Counsel (DCC) DCC Murphy and Clerk Judi Johnson.

Chair Bettencourt reiterated 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 that 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.

Chair Bettencourt opened the floor to opportunity of public comment.

Noting that there were no persons in attendance indicating a wish to speak to items not on the agenda, Chair Bettencourt closed the public comment period.

CONSENT AGENDA:

NOTING THAT ITEM 4 WAS PULLED FOR CONSIDERATION OF CONTINUATION, AS REQUESTED, COMMISSIONERS MACHADO/TOGNAZZINI MOTIONED TO APPROVE THE CONSENT AGENDA:

- Acknowledge Public Hearing Notice
- Acknowledge Certificate of Posting
- Minutes May 4, 2005 [Commissioner DeVries noted abstention on this item as he had not attended the meeting]

THE MOTION PASSED WITH THE FOLLOWING VOTE: AYES: ARAUJO, BETTENCOURT, DEVRIES, MACHADO, TOGNAZZINI; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

Certificate of Compliance No. 05-52: REQUEST: Certificate of Compliance for three parcels. APPLICANT: Sunnyslope County Water District. OWNERS: Sunnyslope County Water District and Guerra Nut Shelling. ZONING: Rural (R). ENVIRONMENTAL REVIEW: Categorical Exemption.

COMMISSIONERS MACHADO/ TOGNAZZINI MOTIONED TO CONTINUE THE MATTER OF CERTIFICATE OF COMPLIANCE NO. 05-52, SUNNYSLOPE COUNTY WATER DISTRICT AND GUERRA NUT SHELLING, TO THE JUNE 15, 2005 PLANNING COMMISSION MEETING. THE MOTION PASSED BY THE FOLLOWING VOTE: AYES: ARAUJO, BETTENCOURT, BETTENCOURT, DEVRIES, MACHADO, TOGNAZZINI; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

CONTINUED BUSINESS

Use Permit No. 905-04 - REQUEST: Convert a senior accessory second unit to an affordable residence. APPLICANT: Felipe Luis Diaz. LOCATION: 1541 Union Road, Hollister. ZONING: Agricultural Productive ENVIRONMENTAL REVIEW: Categorical Exemption

Noting this item had been continued from the Planning Commission meeting of April 6, 2005, AP Valdez gave the staff report, explaining the differences in the current use permit and what is being proposed. AP Valdez further reported that the matter had been originally appealed to an Administrative Decision of the Planning Director, and had been continued twice additionally to allow the applicant time to correct violations of the primary residence and several outbuildings. Most recently the continuation(s) had been granted to allow installation of wastewater systems which had been slowed by the inclement weather.

AP Valdez explained that Section 45.6 of the Zoning Ordinance permits conversion of a second unit to affordable housing when it can be shown that rental units are limited. He also explained that the violations remaining were linked to the unfinished wastewater systems installation. However, the environmental health department has indicated the septic tanks must be replaced no matter what the results of the appeal. AP Valdez reminded that even though the original application had been for a Senior Second, the application had been revised for an Affordable Housing, which would require findings and conditions by the Commissioners.

Commissioners discussed with staff the following:

- Maximum occupancy of current units on site
- what the rent is, how the rent is set, and how the income is monitored
- whether approval had been previously agreed/just waiting clearing up violation
- the fact that the project did not have to come before the Commission (the appeal brought it to the Commission meeting)

Chair Bettencourt opened the public hearing.

Luis Diaz, appeared for his parents (the applicants) saying he spoke on their behalf as they were non-English speaking. Mr. Diaz insisted that they have done what they were told to correct the violations and only the weather prevented completion of the septic installations. He also explained that Matt from Environmental Health wanted a map before the septic tanks are put in and that map has been checked. "We're just waiting for the septic tanks," Mr. Diaz stated.

Commissioner Araujo asked if everything that had been asked for was completed. Mr. Diaz responded it had been done, except for the septic tanks.

Gary Corlett, spoke to the Commissioners as a neighbor to the property 'immediately adjacent' and stated that he and five other neighbors were party to the appeal. Mr. Corlett said several had been filed complaints with the Planning Department in connection with the existing permits, noting that the appellants also object to the conversion of the unit. Mr. Corlett listed the concerns as accessibility issues and overcrowding of the unit. Mr. Corlett urged the Commissioners to take into consideration the feelings of the neighbors who are being affected by this conversion many of whom adamantly opposed the conversion. Mr. Corlett declared, "This applicant has continually committed violations including having transit workers housed in the unit," and reiterating concerns of accessibility to the property.

Dave Christensen, another resident of the immediate neighborhood, said there has been difficulty pulling all the data together. Mr. Christensen agreed some work had been done on the property, adding he thought the Commissioner needed to look closely at the septic/ leach field issue. As to other items, Mr. Christensen said several need to be reassessed including further effort for noise reduction as that seems to be seasonal, and noting that there are often appearances of more than four residents in the second unit.

Mr. Diaz returned to the podium to say the Fire Department had been on site to check and they did not express concern when they counted the number of cars. Mr. Diaz said, "The numbers have been addressed and all other issues as well have been done."

Mr. Corlett spoke to the Commissioners, noting that all County personnel visited the site during customary working hours and saying that activity on the site increased during the evening hours.

With no others present to address the matter, the public hearing was closed.

Responding to a question from Commissioner Machado regarding the requirements for ascertaining numbers of residents in affordable units, IDoP Bethke informed that the Uniform Housing Code sets the limits of residents per bedroom at two. This generated considerable discussion of residency limits for affordable and senior housing. Square footage of such units was also discussed. Closely tied to the discussion was the issue of enforcement.

DCC Murphy was asked to explain the order of having some agencies not giving a permit until the applicant obtains a use permit. With continued discussion, IDoP Bethke suggested an immediate solution might be to direct staff to remedy the septic installation required for the main dwelling while continuing working on the other violations. "In this way 'good faith effort' could be envisioned by the placement of the septic system for the main house, and Staff can also come back with specific data on Uniform Housing Code Issues," IDoP Bethke proposed.

Commissioner Araujo commented that basically the Diaz's were applying to turn the unit into affordable housing and they must do something with the septic before any further action can be completed, but the applicant is assuring that that it will be done. Discussion ensued regarding the work required by Environmental Health and the work already completed.

COMMISSIONER MACHADO MOTIONED TO CONTINUE THE MATTER TO THE AUGUST 3, 2005 MEETING OF THE COMMISSION DURING WHICH TIME THE APPLICANT SHALL COMPLETE THE WORK REQUIRED FOR CORRECTION OF THE SEPTIC SYSTEM AND ALL VIOLATIONS. COMMISSIONER DEVRIES SECONDED THE MOTION, NOTING THE DESIRE TO HAVE STAFF INVESTIGATE THE OCCUPANCY REQUIREMENTS UNDER STATE LAW, WHICH WAS AGREEABLE BY THE MAKER OF THE MOTION. THE MOTION PASSED WITH THE UNANIMOUS AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT; NONE WERE ABSENT.

HILLSIDE DEVELOPMENT ORDINANCE

SP Paxton presented the staff report, noting that the matter was continued to this meeting for discussion and action.

Noting that notices had been sent to all interested parties, Chair Bettencourt opened the public hearing.

The following speakers unanimously urged the Commissioners to recommend recession of the Ordinance:

- Paul Wattis, Paicines
- Former Planning Commissioner Denny Madigan
- Nnette Corotto
- Bill Hawkins

[All speakers indicated they had previously voiced objection to the Ordinance]

With no others presented to address the matter, the public hearing was closed.

Commissioners each commented on the matter as follows:

Commissioner Machado

- the Engineers who work with such matters had considerable input into the formation of the Ordinance
- the City of San Juan Bautista by official action had concurred such a vehicle was worthwhile
- the Ordinance should be retained as is

Commissioner DeVries

- the intent is admirable if the intent is an end to the best means of accomplishment
- the problem remains that the Ordinance only applies to five units
- highly ambiguous and subject to interpretation leading to confusion and perhaps a lack of consistency in enforcement
- not specific and fails to address all areas in same way
- need for more flexibility for designing better projects
- proposed the idea of a Design and Review procedure for development of hillsides in view corridor areas.(has worked well in San Juan Bautista especially on 3rd St.)

Commissioner Tognazzini

- in favor of intent to safeguard ridgeline
- suggested linking to a revision of the General Plan

Commissioner Araujo

- believes the General Plan to be a useful tool for Commission decision making
- not interested in retention of the Ordinance as currently written

Chair Bettencourt

- has worked extensively with the public on the matter
- the General Plan, with 'tweaking', could provide adequate regulation for control of the issues
- favored rescinding

Commissioner Machado commented that the Board of Supervisors provided a challenge to the Commission 'to come up with something better' if the Ordinance is rescinded. He indicated support for looking into a Design and Review Committee, while noting, "What scares me is that the Ordinance was implemented to protect and should we maintain what we have now as we are developing something better during the interim."

Commissioner DeVries said he did not think the General Plan is adequate for controlling development on the hillsides and ridge tops as there is not an adequate 'level of specificity'. Commissioner DeVries spoke strongly in favor of having the opportunity to 'vote for something else in its place if the Ordinance is rescinded'.

Chair Bettencourt spoke on the need for protection of the health, safety, and welfare of the public, as well as retention of the beauty of the County. Chair Bettencourt alluded to a possible vote of the people on the matter. Commissioner Machado questioned the assumption that it would go to vote of people.

SP Paxton, at the request of the Chair spoke on the matter, suggesting an opportunity may be open to look at the guidelines. Discussion ensued regarding specific subdivisions and the current General Plan.

IDO P Bethke commented that the General Plan needs a 'total overhaul'. IDOP Bethke explained the formulation of Ordinances. He said the General Plan may not have specific policies in place to provide protection, and suggesting that perhaps the Commissioners need to make a recommendation to staff to revisit both of the issues raised and look at visual and graphic guidelines for potential proposal of a Design and Review Committee.

Discussion continued regarding the background of the Hillside Ordinance and how Ordinances (in general) were established. DCC Murphy that requirements for updates to the General Plan are time consuming and require considerable staff work as well as public hearings and agreements between local agencies and local residents.

Chair Bettencourt asked about limiting conditions for subdivisions. DCC Murphy explained there has to be 'some nexus for a specific concern' and that conditions cannot be imposed 'at will' by the Commissioners.

Commissioner Machado suggested, "Perhaps we should consider pursuing the ideas brought up by the Commissioners, as well as staff, as we have heard new things during this evening."

Commissioner Araujo concurred, noting he felt that by getting the new information he had learned what can/can't be done, "I think a revision of the General Plan is in order," he declared.

Responding to questions, SP Paxton explained the limitations of the General Plan for 'triggering' the requirements for conditioning projects. With Chair Bettencourt having disagreed on the matter of conditioning maps, DCC Murphy explained the procedure: first, the Commissioners must prove a link between problem and condition, and stating, "You must show the relation of the two."

Chair Bettencourt spoke on the responsibility of the Commissioners to the public and adding that he 'still wanted to rescind the Hillside Ordinance'.

COMMISSIONER TOGNAZZINI MOTIONED TO RECOMMEND TO THE BOARD OF SUPERVISORS TO RESCIND THE HILLSIDE ORDINANCE AND INVESTIGATE SPECIFIC ELEMENTS OF THE GENERAL PLAN TO SAFEGUARD APPROPRIATE HILLSIDE DEVELOPMENT. COMMISSIONER ARAUJO PROVIDED THE SECOND TO THE MOTION.

Commissioner DeVries asked the motion be clarified that recession was being recommended, but that 'something else be put into place to ensure development is more clear and concise'. DCC Murphy advised that the proper method would be to have direct staff to return with a resolution making the recommendation indicated.

COMMISSIONER TOGNAZZINI AMENDED THE MOTION, NOTING A RECOMMENDATION ASKING STAFF TO 'PREPARE DATA CONDENSING TO REALLY DEFINITIVE CONDITIONS WHEN BUILDING ON RIDGELINES THE ELEMENTS OF A PLAN: LANDSCAPING, DRIVEWAYS, ROADS, HEIGHTS OF BUILDINGS AND HOW THE CONSTRUCTION WOULD BE LOOKED AT ON AN INDIVIDUAL BASIS '.

Commissioner DeVries suggested having the resolution not include specific data, but urging exploration of ideas for replacement of the Ordinance, revision to the General Plan and consideration of a Design And Review Committee.

Subsequently, following further discussion, **COMMISSIONER TOGNAZZINI WITHDREW BOTH THE ORIGINAL MOTION AND THE AMENDED MOTION, AND OFFERING A MOTION TO DIRECT STAFF TO PREPARE A RESOLUTION REFLECTING THE DISCUSSIONS (INCLUDING RECESSION OF THE HILLSIDE ORDINANCE AND CONTINUED WORK ON A REPLACEMENT) AND CONTINUING THE MATTER TO THE JUNE 15, 2005 COMMISSION MEETING. THE MOTION WAS SECONDED BY COMMISSIONER ARAUJO, AND PASSED BY THE FOLLOWING VOTE: AYES: ARAUJO, BETTENCOURT, BETTENCOURT, DEVRIES, TOGNAZZINI; NOES: MACHADO, who said his concern was to have the County protected and voicing concern a viable alternative might not be in place with the recession of the Hillside Ordinance; ABSTAIN: NONE; ABSENT: NONE.**

Minor Subdivision No. 1146-04 - Request: A request to subdivide an 8.6 acre parcel into two lots. Applicant/owner: Isamu Shingai. Location: 1460 Santa Ana Road. Zoning: Rural Residential. Environmental Review. Negative Declaration.

SP Paxton presented the staff report, explaining that the mailing list submitted by the applicant was not in compliance and therefore advising the matter should be continued until the June 15, 2005 Commission meeting.

Chair Bettencourt opened the public hearing.

With no one in attendance to address the matter, the public hearing was closed.

COMMISSIONERS DEVRIES/ MACHADO MOTIONED TO CONTINUE THE MATTER OF MINOR SUBDIVISION NO. 1146-04 TO THE JUNE 15, 2005 COMMISSION MEETING. THE MOTION PASSED WITH THE UNANIMOUS AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT; NONE WERE ABSENT.

General Plan Amendment 05-152, Zone Change 05-27. A request to change the Zoning and General Plan Designation from Agricultural Rangeland to Agricultural Productive on three contiguous parcels. Applicant: Jack Tyler. Location: North side of Santa Ana Valley Road. Zone: Agricultural Rangeland. Environmental Review: Mitigated Negative Declaration.

AP Valdez presented the staff report, explaining that the mailing list submitted by the applicant was not in compliance due to the 300-foot requirement and, as a result, advising the matter should be continued until the June 15, 2005 Commission meeting.

Chair Bettencourt opened the public hearing.

With no one in attendance indicating a desire to address the matter, the public hearing was closed.

COMMISSIONERS MACHADO/ TOGNAZZINI MOTIONED TO CONTINUE THE MATTER OF GENERAL PLAN AMENDMENT 05-152, ZONE CHANGE 05-27 TO THE JUNE 15, 2005 COMMISSION MEETING. THE MOTION PASSED WITH THE UNANIMOUS AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT; NONE WERE ABSENT.

WORKSHOP:

Planning Commission Procedures - Annual Review Workshop

Discussion / clarification items:

- requests of constituent who want to be heard and perceive difficulties with staff [DCC Murphy advised the necessity of using the appeal process and following adopted procedures; otherwise equal protection process objections or due process may be raised]
- IDoP Bethke spoke on operational concerns of the Commissioners, pledging open dialogue with the Commissioners through discussion with the chair
- change in policies from policy in past
- the Brown act, proper procedures, due process including notice of potential actions
- process/procedure issue for setting agenda items (IDoP Bethke invited Commissioners to visit with him regarding the agenda items)
- explanation of quorums and processes for continuations

Chair Bettencourt opened the public hearing.

Former Commissioner Dennis Madigan said he was responsible for the rules and procedures policies in place. He suggested consideration of language to encourage Commissioners to visit sites under discussion and stated he felt the rules, regulations, and procedures were somewhat cumbersome.

Discussion centered on election of the Commission officers, with Commissioner DeVries recommending having that action occur at the annual February meeting.

Brad Sullivan addressed the Commissioners, saying when he had been a City Attorney and when someone had a complaint, which was not on the agenda, they were encouraged to bring the matter to the attention of City officials during the open comment period. The issues could then be referred to staff and ultimately placed on future agendas this way.

With no others present to address the matter, the public hearing was closed.

DCC Murphy reminded this was a workshop for discussion, not an action item.

Commissioner DeVries requested the matter of Commission Officer elections be placed on the next meeting's agenda.

Discussion:

Definitions of Prime Ag Land and associated General Plan policies

SP Paxton presented the informational discussion questions from previous meetings as to 'what is prime land' by highlighting the following points:

- the General Plan contains seven mandated elements by state law; in San Benito County the open space and conservation elements combined
- explanation of the land use categories and policies in the General Plan relating to ag land (agriculture is still the leading industry in County)
- Land Use Element was updated in 1992 (prime ag land is predominately zoned 5 acres)
- maps referenced are from the State Department of Conservation; different maps and designations are used at different times
- lists of soils (1969) are shown on San Benito County area maps with different soil types broken down by designation
- State legislation definitions; effects of LAFCo

SP Paxton summarized policies from the 1992 Land Use Element Update including Williamson Act, agricultural buffers, land trusts, PUD cluster linking parcel size to soil suitability and transfer of development credits.

DCC Murphy clarified the ag uses and zoning restrictions within a PUD

Commissioner DeVries commented it seems ridiculous to say the County is protecting prime ag land while continuing to chop it up for housing.

Chair Bettencourt opened the public hearing.

Attorney Brad Sullivan spoke to the Commissioners saying he did not think many of the policies are clear. Mr. Sullivan said that both his ag and development clients want objectivity and consistency.

With no one else present to address the matter the public hearing was closed.

Staff will compile the results of the discussion and report to the Commissioners at a future date.

ANNOUNCEMENTS/COMMISSIONERS CONCERNS:

Commissioner Machado asked to have the concept of recreation amenities in planned unit development met with improvements to regional parks for the County agendaized.

Commissioner DeVries referenced a letter from Don Chapin regarding a compliance issue with the letter having been forwarded to staff. SP Paxton responded staff did receive the letter and anticipates a meeting with the City and Mr. Chapin's representatives.

Chair Bettencourt asked about the Leal Winery issues. DDPW Nazemi informed he had met with Engineer Dan Weatherly who is working on the project and there was no new information at this time.

With no further business to come before the Commissioners on this date, Chair Bettencourt adjourned the meeting at 9: 50 p.m.

*Minutes recorded and transcribed by:
Judi Johnson*