

# **SAN BENITO COUNTY PLANNING COMMISSION**

**May 7, 2008**

**Minutes**

PRESENT: Bettencourt, DeVries, Machado, Scattini, Tognazzini

ABSENT: None

STAFF: Assistant Director of Planning (ADOP) Byron Turner; Associate Planner (AP) Lissette Knight; Public Works Engineer (PWE) Art Bliss; Deputy County Counsel (DCC) Shirley Murphy; and Clerk Trish Maderis.

Chair Machado called the regular meeting of the San Benito County Planning Commission to order at 6:03 p.m. as he led the pledge of allegiance to the flag and reiterated the standing rules of order. Clerk Maderis noted all Commissioners were present.

## ***DIRECTOR'S REPORT***

ADOP Turner reported information on the following items:

- Appeal of MS 1165-05A – Everett Grabeel, scheduled to be heard by the Board of Supervisors on May 27, 2008
- Appeal of UP 976-07 – Garcia, scheduled to be heard by the Board of Supervisors on May 13, 2008

Commissioner DeVries asked what grounds the appeals were based on. ADOP Turner advised that the Grabeel Subdivision was due to required improvements and the Use Permit applicant Garcia contends their due process rights were violated.

Commissioner Scattini asked for clarification on the Use Permit appeal. DCC Murphy advised the appellants believe they were penalized for violations on neighboring properties. ADOP Turner added they believed the Commission based their decision for denial on the testimony from neighbors about the neighboring property.

Clerk Maderis announced the recent promotion of Byron Turner to Assistant Director.

## ***PUBLIC COMMENT***

Chair Machado opened and closed the opportunity for public comment as there were no persons present to address matters not appearing on the Agenda.

## **CONSENT AGENDA**

- These items will be considered as a whole without discussion unless a particular item is requested by a member of the Commission, Staff or the public to be removed from the Consent Agenda. Approval of a consent item means approval of the recommended action as specified in the Staff Report.
- If any member of the public wishes to comment on a Consent Agenda Item please fill out a speaker card present it to the Clerk prior to consideration of the Consent Agenda and request the item be removed and considered separately.

1. Acknowledge Public Hearing Notice
2. Acknowledge Certificate of Posting
3. Minutes of April 16, 2008

Clerk Maderis advised the Commission a request for continuance on Consent Agenda No. 4, Addamo was requested. Commissioner Tognazzini moved to approve Consent Agenda Items 1, 2 and 3, Commissioner Scattini offered a second to the motion which passed unanimously by all Commissioners.

4. **LOT LINE ADJUSTMENT NO. 06-486** – APPLICANT: David Addamo. LOCATION: 797 Orchard Rd., Hollister. APN 016-09-009. REQUEST: The applicant is proposing to adjust the lot lines of three parcels determined to be legally created through the Certificate of Compliance process. ZONING: Agricultural Productive (AP). ENVIRONMENTAL EVALUATION: This alteration has been determined to be exempt from CEQA; listed under Section 15061(b) 3. Section 15305, Minor alterations in land use limitations. *PLANNER: Michael Krausie ([mkrausie@planning.co.san-benito.ca.us](mailto:mkrausie@planning.co.san-benito.ca.us))*

Commissioner DeVries moved to continue Consent Agenda Item #4 to a date uncertain based on request of staff, Commissioner Scattini offered a second to the motion which passed unanimously by all Commissioners

## **CONTINUED ITEM ~ COMMISSION ACTION**

### **PUBLIC HEARING ITEM**

5. **MINOR SUBDIVISION NO. 1195-06** – APPLICANT: Raul Prado. LOCATION: 4927 Fairview Road. APN: 017-150-002. REQUEST: A proposal to subdivide 20 acres into four parcels. Lot sizes of five acres have been proposed. ZONING: Agricultural Productive (AP). ENVIRONMENTAL EVALUATION: Mitigated Negative Declaration. *PLANNER: Chuck Ortwein ([cortwein@planning.co.san-benito.ca.us](mailto:cortwein@planning.co.san-benito.ca.us))*

ADOP Turner advised staff was requesting a continuance to a date uncertain. Chair Machado opened and closed the Public Hearing as there were no persons present to address the Commission.

Commissioner Tognazzini moved to continue Agenda Item #5 to a date uncertain based on request of staff, Commissioner Scattini offered a second to the motion which passed unanimously by all Commissioners.

## ***PUBLIC HEARING ITEMS ~ COMMISSION ACTION***

6. **MINOR SUBDIVISION 1198-06A** - APPLICANT: Gordon Wynn. LOCATION: 1275 Santa Ana Valley Road, Hollister. APN: 025-090-052. REQUEST: Revision of tentative map to change the location of the remainder parcel. ZONING: Agricultural Productive (AP). ENVIRONMENTAL EVALUATION: Mitigated Negative Declaration.  
*PLANNER: Lissette Knight ([lknight@planning.co.san-benito.ca.us](mailto:lknight@planning.co.san-benito.ca.us))*

AP Knight addressed the Commission advising that due to additional conditions as provided in hand out to the Commission and required conditions of approval, the applicant Gordon Wynn, has requested a continuance to a date uncertain.

Chair Machado opened and closed the Public Hearing as there were no persons present to address the Commission.

Commissioner Scattini moved to continue Agenda Item #5 to date uncertain based on request of staff, Commissioner Tognazzini offered a second to the motion which passed unanimously by all Commissioners.

7. **VARIANCE NO. 08-24 & NON-CONFORMING PARCEL REVIEW NO. 08-116**  
APPLICANT: Frankie Kalich/John Durden. LOCATION: 453 Carr Ave., Aromas.  
APN: 11-15-80. REQUEST: To construct a single-family dwelling encroaching 13 feet into the rear setback of a 0.29-acre (12,750-square-foot) non-conforming lot. ZONING: Rural Transitional (RT). ENVIRONMENTAL EVALUATION: Categorical Exemption.  
*PLANNER: Michael Kelly ([mkelly@planning.co.san-benito.ca.us](mailto:mkelly@planning.co.san-benito.ca.us))*

ADOP Turner presented the staff report explaining the application to the Commission. Commissioner Bettencourt clarified that a residence had been replaced on the property and that the item noted on the map as a well was in fact a pumping station. ADOP Turner confirmed the septic system was existing, the house pad was existing, the utilities are existing and the house was a replacement dwelling.

Commissioner DeVries confirmed that specific findings needing to be met and staff's opinion that a Variance was warranted. ADOP confirmed Commissioner DeVries' comments. Commissioner Scattini asked for clarification on the location of where the property was located on Carr Ave. ADOP Turner advised the site was approximately 1/3 of the way up Carr Ave. from Carpenteria Ave.

Chair Machado opened and closed the Public Hearing as there were no persons present to address the Commission.

Commissioner Bettencourt moved for approval based on findings and recommended conditions contained in the staff report, Commissioner DeVries offered a second to the motion which passed unanimously by all Commissioners.

## **Conditions of Approval:**

- 1. Conformity to Site Plan:** The development and use of the site shall conform substantially to the site plan and Conditions of Approval as approved by Planning Department. Any increase in the nature or intensity of land use on the site shall be subject to further Planning review and approval. [Building, Planning]
- 2. Hold Harmless:** The permittee shall defend, indemnify, and hold harmless San Benito County and its agents, officers, and employees from any claim, action, or proceeding against San Benito County or its agents, officers, or employees to attack, set aside, void, or annul the approval of this review and applicable proceedings. [Planning]
- 3. Fire Protection:** The project shall meet the standards set forth in the latest adopted editions of the Uniform Fire Code, California Fire Code, Uniform Building Code, Public Resource Codes 4290 and 4291, and other related codes as they apply to a project of this type and size.[Fire]
- 4. Public Works:** Prior to commencement of any work associated with this project, the applicant shall obtain a Public Works Encroachment Permit if any of this work will be performed within the County right-of-way. [Public Works]
- 5. Fire Hazard:** In accordance with San Benito County General Plan Open Space and Conservation Element Policy 37 Action 4, and in order to advise prospective buyers of fire hazard on the site, a deed restriction shall be recorded prior to issuance of a building permit. The deed restriction shall state: "This parcel includes areas designated by the California Department of Forestry and Fire Protection as having very high fire hazard." [Planning]

## **WORKSHOP**

### **8. San Benito County Subdivision Ordinance amendments**

ADOP Turner presented contents of the staff report pertaining to San Benito County Subdivision Ordinance, Section 17-63; Required Improvements. ADOP Turner explained a tentative draft amendment which explains scenarios where the Planning Commission may want to explore the deferment of improvements. ADOP Turner further explained the existing Ordinance states 'all improvements shall be required of all subdivisions, unless the Planning Commission finds that due to a particular circumstances of a subdivision, said improvements are not necessary, not desirable or that alternatives are desired for the public health, safety and welfare or are less damaging to the environment'. ADOP Turner further read into the record language of the existing Ordinance and explained that tentative language has been added for consideration and explained those additions which included findings for deferral of frontage improvements only. ADOP Turner added that Fire, Water, Drainage and other improvements could not be considered for deferment, only frontage improvements as described in Section 17-63.

ADOP Turner advised that staff was looking for direction and comments on amendments to the existing Ordinance and that this item has been scheduled for Public Hearing at the regular meeting on May 21, 2008.

Commissioner Bettencourt asked for clarification of the Family Exemption allowance for a subdivision. ADOP Turner explained the Family Exemption is allowed in the Growth Management Ordinance and exempts an applicant from the allocation process but has no bearing on the Subdivision Ordinance or the Subdivision Map Act.

DCC Murphy added that when new lots are created, those lots are subject to the requirements of the Subdivision Ordinance and Map Act, but frontage improvements may be deferred if the Subdivision Ordinance was amended to include that finding or others.

DCC Murphy further explained that the proposed revisions do not amend the Growth Management Ordinance, but allows for several factual situations in the Subdivision Ordinance for deferment during the project review.

Commissioner Bettencourt stated he was also concerned with road safety issues. ADOP Turner stated that staff does not recommend any deferments for frontage improvements when a road can be made safer based on County Engineer recommendations.

DCC Murphy added that the Board of Supervisors are the policy makers as how to spend the budget and when and how county roads are improved.

Chair Machado stated he was concerned with an option of no development proposed. ADOP Turner stated a deed restriction would be required until such time a building permit was applied for. ADOP Turner also stated that frontage improvements would be required prior to the issuance of a building permit along with a deferred improvement agreement and applicable bond to ensure that the improvements are completed.

Commissioner DeVries stated he felt there should not be a time restriction on improvements, that the building permit request should be the trigger.

Commissioner Tognazzini suggested that the building permit application be a requirement for required improvements on all subdivisions. DCC Murphy stated that could be an option of the Commission. DCC Murphy added if recommended to the Board of Supervisors, an amendment to the Subdivision Ordinance could be considered.

AP Knight pointed out that most developers create lots for sale. When those lots are sold, new owners would be liable for the improvements which would more complicated for the regulating agencies and may create improvements be completed in sections.

Commissioner DeVries confirmed that disclosure would be required at the time of the sale. AP Knight reminded the Commission that although development or sale may not be the intent at the time of subdivision, circumstances change and lots with deed restrictions may not be as attractive for purchase.

After some discussion of the options presented by staff, Commissioner DeVries stated the goal of the Commission was to have the ability to defer frontage improvements for estate purposes or other appropriate reasons that do not increase density or increase traffic. AP Knight stated the suggestion of the deed restriction seemed appropriate. PWE Bliss advised he had personal experience of a building permit application triggering improvements and would not recommend that option as incremental improvements were very hard to administer. Commissioner Tognazzini concurred with PWE Bliss and suggested that a one-lot subdivision may be more appropriate for that specific deferral.

ADOP Turner advised the Commission that a condition of approval on tentative maps for Family Exemption applications is a 10-year deed restriction which prohibits the sale of that lot. Commissioner Tognazzini stated he believed that the building permit application option should remain as an option and would probably apply only in a 1 lot split.

Commissioner Bettencourt asked about fire improvements and referred to a previous application. ADOP Turner he believed that application required a fire protection design, not installed improvements and reminded the Commission that the deferral options only pertained to frontage improvements and all other conditions of approval could not be deferred.

Commissioner DeVries suggested that improvement agreements specify each lot created has an obligation to participate in improvement requirements upon the application of a building permit and that all lots regardless of the owners would be notified of those requirements. AP Knight stated that such agreements would have to be very specific to ensure the improvements are made and that Public Works has difficulties in getting deferred improvement requirements met. DCC Murphy suggested property owners fund portions of the required improvements and when the final building permit is applied for the improvements are installed prior to issuance.

DCC Murphy stated there was no mechanism in place to bind property owners to their intent and that application for a building permit or the sale of the property could be regulated with deed restrictions. Commissioner Tognazzini stated he felt the building permit application option could probably only be considered as an option in a 1 lot subdivision and would like to keep that option in the revised Ordinance.

Commissioner Scattini commented that all improvements be installed by the developer and the developer recoups those costs from the sale of the lots. Commissioner DeVries confirmed that staff was looking for direction and input. ADOP Turner stated that staff included all viable options for discussion and requested moving forward as this was a priority item. ADOP Turner also advised the Commission this item was set for Public Hearing at the May 21, 2008 regular meeting.

After some additional discussion, the Commission concluded that the building permit application should be the trigger for required improvements, but should be the responsibility of the original applicant.

ADOP Turner recapped the Workshop by confirming the consensus of the Commission is the ability to defer frontage improvements, the mechanism to defer improvements would be a deferred improvement agreement, deferral on 1 lot subdivisions until a building permit application, more than 1 lot deferral until the sale of any lot.

Commissioner Tognazzini stated safeguards needed to be put in place for when the frontage is first impacted. Commissioner DeVries added that the Commission's goal is to find exceptions, not define the rules and the exception would be based upon impact.

Commissioner Bettencourt stated the County Engineer stated the road was unsafe in the previously discussed subdivision and asked how the Commission could defer improvements in those situations. PWE Bliss responded stating that the Commission had an opportunity to make the road safer by requiring the improvements and Public Works has an obligation to make roads safer at the expense of the subdivider.

Commissioner DeVries asked if the Commission's desire is the ability to defer improvements, if that would give away the authority or ability to waive improvements. DCC Murphy stated both options could remain in the Ordinance amendments. After some discussion, Commission Tognazzini stated he felt both options should be available to the Commission. Chair Machado added that the current inability to defer has been frustrating.

AP Knight added revisions to the existing Ordinance allow the opportunities to defer based on specific findings and control required improvements. ADOP Turner stated that frontage improvements would still be required, but exceptions could be found to allow exceptions to those requirements.

Commissioner DeVries stated the bar should be set high in the criteria to distinguish the developer from the estate planner in revising the Ordinance. DCC Murphy asked if there were any proposed options should be fine tuned. Commissioner DeVries if Option B specified that the County Engineer could trump exceptions. DCC Murphy stated the County Engineer has statutory obligations and is responsible for public health and safety and makes those decisions.

After some discussion regarding the language of the proposed amendments, DCC Murphy stated the language would be clarified as to the intent of the Commission and the requirements.

DCC Murphy confirmed with the Commission that the consensus was on a simple lot split, the trigger would be an application for a building permit, any other division would be triggered by either the application for a building permit or the first sale of any newly created parcel.

Chair Machado concluded the Workshop confirming staff had enough direction to return to the Public Hearing on May 21, 2008.

## **9. Set date and location for Planning Commission Retreat**

Clerk Maderis provided the Commission with a calendar showing available dates in May for a Retreat. After some discussion, the Commission selected Thursday, May 29, 2008 at 12:00 PM, lunch included. The Board Chambers was selected as the location for the Retreat but would be confirmed the next day with Administration.

***ADJOURNMENT***

Commissioner Scattini moved to adjourn the regular meeting of May 7, 2008, Commissioner Tognazzini offered a second to the motion which passed unanimously for adjournment at 7:33 PM.

***Minutes prepared by:***  
*Trish Maderis*  
*Planning Commission Clerk*

***Attest:***  
*Byron Turner*  
*Assistant Director of Planning*