

<p style="text-align:center"><b>SAN BENITO COUNTY PLANNING COMMISSION</b> <b>Minutes of April 19, 2006</b></p>
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PRESENT: Bettencourt, DeVries, Machado, Smith (who arrived at 7:06 p.m. and was seated with the Commissioners), Tognazzini

ABSENT: None

STAFF: Director of Planning (DoP) Henriques, Principal Planner (PP) Byron Turner, Assistant Planner (AP) Michael Kelly; Deputy County Counsel (DCC) Shirley Murphy; and Clerk Trish Maderis.

Chair DeVries called the meeting to order at 7:04 p.m., with the pledge of allegiance being recited in unison, and reiteration of the standing rules of order.

**PUBLIC COMMENT:**

Chair DeVries opened the floor to opportunity for public comment. With no indicated speakers, the public comment period was closed.

**DIRECTOR'S REPORT:**

DoP Henriques reported:

- Board of Supervisors meeting on April 11, 2006 with the following noted:
  - o introduction of Senior Planner and Chief Building Official
- discussion of Drainage Ordinance: fees on small projects (sometimes higher than cost of construction, e.g., tool sheds, etc. [asked Planning to look at whole drainage issue – will bring back update to Commissioners]

**CONSENT AGENDA:**

- Roll noted and listed above
- Acknowledge Public Hearing Notice
- Acknowledge Certificate of Posting
- Minutes of April 5, 2006

**COMMISSIONERS MACHADO/TOGNAZZINI MOTIONED TO APPROVE CONSENT AGENDA; PASSED UNANIMOUSLY WITH NO COMMISSIONERS ABSENT.**

**CONTINUED ITEMS:**

**USE PERMIT NO. 891-04: 1 Year Review** – APPLICANT: Mike/Leticia Montuy.  
LOCATION: 1533 Shore Road, Hollister USE: Operation of paintball facility including paintball games in ten netted fields, state of paintball related equipment and clothing and the same of pre-packaged foods.

Staff report by AP Kelly: Item continued from 2-15-06 due to new information received and lack of contact with the applicant. Current data included:

- violation notations
- code enforcement actions
- meeting with applicants/address by applicant of conditions-of-approval
- information that progress being made
- findings noted
- recommendation: review following six months of operation and annually thereafter

Commission questions/concerns to staff tree plantings/visual screening/number of trees required

Public hearing opened.

Mike Montuy, Sr., applicant advised

- he has worked with staff
- progress achieved on project
  - o 19 employees
  - o relationships with youth groups
  - o work with high risk youth
- business is beneficial to local economy
- of the physical aspects of business (netting, transition zones, etc.)
- different kinds of fields (history simulation, etc.)
- safety aspects of employee training
- safety rules for participants

Commissioners asked the applicant questions regarding:

- ◇ timely removal of equipment and closure of facility (to have been completed by December 31, 2005); February and March equipment in place; April events scheduled
- ◇ other permit conditions in violation
  - Environmental Health issues
  - safety
  - road conditions/traffic patterns (Commissioner Bettencourt had visited the area and told of numerous of concerns)
  - applicant obligation to adhere to Conditions
- ◇ other paintball operations, the applicant has [this is his first] no others

Mr. Montuy said in the future he would hold fast to all conditions listed and work with Planning Department if there are any questions. He spoke at length of the volunteers he has working with him in the business. Mr. Montuy also complained that he was not able to work on the property due to the weather and the 'red tag' on the property.

Commissioner Machado recalled that the applicant is a retired firefighter and stated, "You should be well aware of the need to follow rules."

Al Valles, 3380 Montebello Ct., told the Commissioners that he owns property next door to the facility and protested:

- the many problems which have been generated as a result of this business
- the myriad of conditions of the use permit not met
- lack of responsiveness by the applicant
- safety concerns
- noise issues
- garbage on fields (from applicant's property)
- excessive noise levels

Chair DeVries asked if the hours of operation were acceptable. Mr. Valles said the main concern is traffic and the lack of improvements required of the applicant - and having the applicant follow the rules.

Public hearing closed.

Commissioners discussed:

- traffic issues (including prior discussion of turn lane pocket);
  - o DCC Murphy advised that improvements are based on objective criteria; the burden is on the County to justify need for conditions or make changes to same
  - o AP Kelly advised Public Works has not required pocket turn
- inclination to have 6-month review of use permit due to continuing problems
  - o DCC Murphy reminded that the Conditions of a Use Permit can be revisited at any time
- types of driveways (commercial versus residential)
- potential imposition of fine for non-compliance
- code enforcement issues
- need for specific information of compliance to staff
- times of operations
- possible revocation if continuing violations
- widening of road for ingress/egress of emergency services
- dismay of repeated non-compliance

**COMMISSIONERS MACHADO/TOGNAZZINI MOTIONED TO APPROVE USE PERMIT NO. 891-04 WITH THE CONTINGENCY OF ALL CONDITIONS (INCLUDING TREE PLACEMENT FOR VISUAL SCREENING – following staff review and approval) BEING MET BEFORE RESUMPTION/REOPENING OF THE BUSINESS; AND FURTHER DIRECTION THAT STAFF IS TO REEVALUATE TRAFFIC CONDITIONS ASSOCIATED WITH THE BUSINESS FOR POTENTIAL ADDITIONAL CONDITION(S) OF USE; TOGETHER WITH THE FINDINGS AND CONDITIONS CONTAINED THEREIN, TOGETHER WITH THE NOTED MODIFICATIONS IN THE MOTION WITH A REVIEW OF THE USE PERMIT TO BE HEARD BY THE COMMISSIONERS FOLLOWING SIX MONTHS. THE MOTION PASSED WITH THE FOLLOWING VOTE: AYES: BETTENCOURT, DEVRIES, MACHADO, SMITH, TOGNAZZINI; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

**Conditions of Approval**

- 1. 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 Use Permit and applicable proceedings. [Planning]
- 2. Conformity with Plan:** The development and use of the site shall conform substantially to the proposed site plan and conditions of approval as approved by the Planning Commission and filed with the Planning Department. Any change in the locations and/or dimensions of the structure or any increase in the nature or intensity of land use on the site shall be subject to further Planning Commission review and approval. [Planning, Building]
- 3. Compliance Documentation:** Prior to issuance of any other permits on the property, the property owner shall submit a summary response in writing to these conditions of approval documenting compliance with each condition, including dates of compliance and referencing documents or other evidence of compliance. [Planning]
- 4. Improvement Plans:** Prior to the issuance of a building permit, the applicant shall submit building and improvement plans to the County Building Department for their approval. [Public Works, Planning]
- 5. Water/Sewer:** The proposed paintball facility shall be served by a domestic water and septic system that has been approved by County Environmental Health Division prior to issuance of a building permit. [Building, Planning, Environmental Health]
- 6. Lighting:** Any exterior lighting for the proposed paintball facility shall comply with the requirements of County Ordinance No. 748 (Dark Sky) [Building, Planning]
- 7. Fire:** The project shall meet the standards set forth in the latest adopted editions of the Uniform Fire Code, the Uniform Building Code, Chapter 17 of the San Benito County Code, the Public Resources Code sections 4290 and 4291, and other related codes as they apply to a project of this type and size. All tents shall be State Fire Marshal approved.
- 8. Grading:** Any grading in excess of fifty (50) cubic yards shall require that the applicant shall obtain a grading permit from the County Building and Planning Department.
- 9. Hours of Operation:** The facility shall be open from 8:30 a.m. to 6 p.m. on Saturday and Sunday and weekdays by appointment only from 8:30 a.m. to 6 p.m. The paintball facility shall be closed for business from January 1 to March 31 of each calendar year. All temporary facility buildings, tents, netting, etc., shall be dismantled during the January-to-March closure period.

- 10. Permit Review:** The Use Permit shall be reviewed by the Planning Commission for compliance with the conditions of approval at a Planning Commission meeting six months following the April 19, 2006, meeting and annually thereafter. The permit review, if conditions remain unfulfilled, shall be conducted at a noticed public hearing, and the terms and conditions of the Use Permit may be modified in whole or in part at the public hearing.
- 11. Mitigation Measures:** The applicant shall comply with following mitigation measures prior to the paintball facility becoming operational and open for use by the general public:
- a. The applicant shall control dust from the driveway and parking area by applying water during periods of high traffic use and on windy days.
  - b. Prior to issuance of any building, public works, or health department permits, the applicant shall pay the Habitat Conservation Plan mitigation fees as required by County Ordinance No. 541.
  - c. Prior to commencement of any work on the paintball facility, a pre-construction survey shall be conducted by a qualified biologist to determine the presence of any burrowing owls, Kit fox, or California red legged frogs on the subject site. The finding and recommendations of the biologist shall be submitted to the planning department prior to commencement of any work.
  - d. Prior to excavation to a depth greater than two and one-half (2 ½) feet, an archaeologist shall be hired by the applicant to determine whether significant archaeological resources could be located on the site. The recommendations of the archaeologist shall be submitted to the Planning Director and the applicant shall comply with said recommendations. If significant resources are found, an alternative design avoiding the significant find shall be submitted for approval by the Planning Department.
  - e. Any construction or building activity related to the preparation or disassembly of the paintball facility shall be limited to between the hours of 7 a.m. and 7 p.m., except Sundays and federal holidays, when no work shall take place.
  - f. All paintball facility activities shall take place during normal business hours (8:30 a.m. to 6 p.m.).
  - g. The project driveway shall meet the minimum County Fire standards for driveways (six inches compacted aggregate base surface, 20 feet width, and an adequate turnaround facility at the driveway terminus).
  - h. Prior to any work being performed with County road right-of-way, the applicant shall obtain a County Encroachment Permit.
  - i. Chemical toilets shall be used under the following conditions:
    - 1) The applicant shall obtain necessary permits and clearances from all other agencies and jurisdictions.
    - 2) The applicant shall not erect any permanent and/or habitable structures (including tents), used in conjunction with the paintball operation.
    - 3) Paintball patrons shall be prohibited from using the lavatory located in the existing dwelling.
    - 4) The applicant shall maintain a written service contract with a septage pumper, licensed by the San Benito County Division of Environmental Health. The applicant shall maintain a current copy of the contract at the Division of Environmental Health office at all times.
    - 5) The applicant shall submit monthly pumping reports to the Division of Environmental Health.
    - 6) The applicant shall ensure that under no circumstances, sewage spills onto the land surfaces.
    - 7) Septage shall be disposed of at a facility licensed to accept septage material. No septage shall be transported to the City of Hollister POTW until the moratorium is lifted.
    - 8) Handwashing facilities equipped with liquid soap and paper towels, shall be provided along with the chemical toilets.
    - 9) The applicant shall be aware that installation of permanent structures shall nullify coverage by this policy. The applicant would then be required to install permanent sewage disposal facilities, whose design conforms to the provisions of the Central Coast Basin Plan.

- j. The applicant may sell pre-packaged, non-potentially hazardous foods only, provided that the applicant first obtains a food facility permit from the Division of Environmental Health. Food storage inside any storage (shipping) container shall include any non-potentially hazardous, pre-packaged food that is stored on pallets at least six (6) inches above the floor. Food storage in the container may be prohibited should the container fail to adequately exclude vermin or present an unsanitary condition.

**12. Public Works:**

- a. Prior to commencement of any improvements associated with this project, applicant shall obtain a Public Works Encroachment Permit for any work being performed within the County road right-of-way.
- b. The applicant shall ensure that the project driveway meets the minimum County Fire Standard for driveways as such. This includes, but is not limited to, the following: Six (6) inches compacted aggregate base surface, 20 feet width, and an adequate turnaround facility at the driveway terminus.

**13. Visual Screening:** The applicant shall plant trees surrounding existing and future paintball fields in order to screen views of the site and its use. The applicant shall submit a landscape plan describing the species, size, spacing, and number of trees used for this purpose, and the planning department shall approve said plan prior to business operation.

**14. Compliance:** The facility shall remain closed until the applicant has complied with all conditions of approval.

DCC Murphy advised of the appeal process (to the Board of Supervisors).

Commissioner Tognazzini stressed the need for a staff report (to the Commissioners) upon resumption of operations of the business.

**Discuss revisions of the ranking system** of the San Benito County Growth Ordinance for Preliminary Allocation ranking ~ **Major Subdivisions**

PP Turner reported and called attention to the draft matrix [**Major Subdivision Ranking**] which had been distributed for perusal by the Commissioners:

- ✦ Part I: Mandatory Water Supply
- ✦ Part 2: Heavily Weighted Categories (60% of total points)
- ✦ Part 3: Components of requirements of various aspects (40% of total points; many points are 'difficult to get', e.g., 40% affordable housing or 50% agricultural conservation)
- ✦ 250 points total possible for all parts
- ✦ plan for returning with completed recommendations at the next Commission meeting

Correspondence from a local engineer was noted.

Issues discussed with staff included the need for approval(s) of testing by County Environmental Health Department.

Public hearing opened.

Dan Lima, Mission Vineyard Road, San Juan Bautista, asked for a minor subdivision ranking matrix. Mr. Lima asked if there was a reason the minor and major subdivision rankings were interlinked with the minors being expedited. [Staff and Commissioners explained that a specific portion of the Ordinance was being addressed which reflected work on both types of subdivisions and therefore separation of the issues was not viable and that the updated Ordinance needs to be considered as a whole]

Brad Sullivan, attorney, said that, as far as points are concerned, there seems to be emphasis on a 'beauty contest' on waste disposal points and suggested variation on the points within the parts as presented. He spoke strongly in favor of attachment to public wastewater systems.

Commissioners and staff concurred with Mr. Sullivan's statements and staff was directed to review the weighting system for this area.

Public hearing closed.

Discussion ensued regarding the plan to bring the matter to the Commissioners at the next meeting for recommendation to the Board of Supervisors. Further discussion revolved around inclusion of Transfer Development Credit (TDCs) into the discussion(s) and point awards. PP Turner reminded that TDCs are mentioned in the conservation areas but have not been given weight.

Commissioner Machado asked for clarification of input from others: local engineers, applicants, etc. (have considered all communication from public; plans to contact media). He also asked about adding items such as the TDCs following adoption, which DoP Henriques addressed. Commissioner Bettencourt reminded that TDCs are addressed in the General Plan but lacks standardization. Commissioner Smith said he was opposed to inclusion of any discussion/inclusion of TDCs as it has only been presented as a concept. DoP Henriques said he would share with the Board's subcommittee the discussion on TDCs.

**Discussion** of San Benito County Code §30, Resolution No. 98-30 and General Plan Amendment No. 97-16 establishing **POTENTIAL RESIDENTIAL GROWTH INCREASE DESIGNATION (PRGI)**, including the history, usage, and procedures involved in potential residential growth increase PRGI applications.

Chair DeVries reminded this agenda item was not specific to any project but just for Commission discussion of the issue.

DoP Henriques presented a 'general summary' of the PRGI with a PowerPoint presentation, emphasizing the following process for PRGI designation (interim process for projects over 100 units) with the following steps:

- applicant must file a completed application and submit the appropriate fees specified in Chapter 30 of the General and Specific Plans – Local Procedures [with drawings presented normally a one-year clock would begin for permit streamlining]
- application to Board of Supervisors for determination of requirements being met for PRGI [if application meets requirements, Board shall not approve the application, but shall place the matter before the County voters at an election called for that purpose or at a regularly scheduled election (the election is a matter to be studied; or the applicant can request and pay for all costs associated with the election)]
- if the application is approved by the voters, then the application will proceed through the normal planning process as specified in Section 30-3.4 >> 30-3.8 (intermediate process)
- application submittal process: zone change, possibly a Specific Plan/General Plan amendment, environmental assessment issues and fees

- CEQA review (flow chart noted)
- Public noticing, hearing, decision to approve/deny/continue

DoP Henriques stressed this process is for projects of more than 100 units.

DCC Murphy noted that if the project is approved by the voters, the applicant would be eligible for applying for General Plan Amendment. She offered the opinion that if denial is given by the voters, the applicant could re-apply, but that it was unclear. DCC Murphy cautioned that only four General Plan Amendments are allowed per year (law). DCC Murphy also noted the necessity of cleaning the General Plan and Ordinance of typos and/or minor errors.

Discussion between staff and the Commissioners included:

- ◆ zone change, what does “complete” mean?
- ◆ what triggers the public vote, e.g., 100 units or more?
- ◆ if exceptions in the application, e.g., affordable units, reduce the numbers to less than 100 how would that be treated? [Staff has discussed and believes the remainder would be required to go through the regular application process]
- ◆ 30 day review for CEQA: different from public comment period?
- ◆ need for specific numbers on specific applications; public opinion would be solicited by vote; potential impacts not noted
- ◆ who has the final say of designation approval; what happens if public vote rejects application
- ◆ initiatives on ballot circulated by citizens not CEQA review but if by Board of Supervisors, must have CEQA review
- ◆ if application process not completed within a year following vote, then negated
- ◆ would conceptual vote require zoning – final General Plan would have to undergo usual process
- ◆ conversation re: wording of – and language in - Resolution approving PRGI
- ◆ potential wording of ballot measure – how can voters make informed decision – need to delve into issues of current measures
- ◆ public vote does not guarantee approval(s)
- ◆ public vote given but developer comes in with a ‘different plan’ [Staff would report as such]
- ◆ developers could be required to adhere to concept plans/conditions plans submitted/agreed to
- ◆ effects on 1% growth mandate
- ◆ why County decision makers decided the order of the vote (stated: would like to have people to have general idea before developer got in ‘too deep’); seems need for additional research of original actions

- ♦ Resolution No. 98-30 - need for clarification
- ♦ ‘bargaining power’ by the County if voter approval given (DCC Murphy noted that without voter approval the ‘developer would be dead in the water’)
- ♦ Overcoming extreme negative environmental assessment

Members of the audience were invited to join the discussion and make comments.

- Ray Becker, representative of DMB, stressed he is not a lawyer but said the laws should be clear; PRGI is confusing and almost impossible to discern; for example: what is a complete application (he provided several scenarios of same). Mr. Becker said his request would be modification of the Ordinance – and that any votes be taken at the end of the process, which would provide for informed choice. Responding to a question, Mr. Becker said the upfront vote of the people would not result in decision making [but a ‘gold star’ for the developer]; however if the vote were at the end of the process (developer’s option), then the public would be better informed and could make intelligent choice of vote.

Public comment period closed.

DoP Henriques addressed comments regarding up-front costs of development. He also commented on the way the Ordinance is written regarding recommended implementation by the County. If the applicant has done a good job of presentation and there are not a great number of environmental concerns, the developers may have increased their chances of completing the process. DoP Henriques noted that the Commissioners and the Board of Supervisors have the ultimate responsibility of decision making in land use issues. He also explained the concept of a temporary, interim General Plan which would be the result of a public vote.

Chair DeVries stated that he felt the Ordinance is unclear, and there is need further analysis to have clarity. He also indicated a preference at this time for having the vote occur at the end of the process. Chair DeVries reiterated the salient points of the discussions.

Commissioner Smith asked if there were other templates or examples to build on for better clarity. He said that it appears the intent of the Ordinance would be to discourage large developments. Discussion ensued regarding the potential of abandoning the current Ordinance and crafting a new Ordinance. There was speculation as to the intent of the Board of Supervisors to have a ballot measure regarding such matters.

Commissioner Tognazzini said that if the vote occurred at the end there might not be a need to have a public vote. He also asked if the public vote would be a simple yes / no? [Yes] It was clarified that the only issue before the voters would be the General Plan interim map change [*land use only*], not a zoning change and would require the developer to make the change within a one-year time period. DCC Murphy clarified the differences in the Elements (text) of the General Plan and the land use designation of the General Plan map.

DoP Henriques said a big question is: if the public rejects the measure, can the developer return/continue with the proposal?

DoP Henriques explained he would make a presentation to the Board next week then return to the Commissioners with comments and possible recommendations. He also commented on the timelines of a vote and the requirements of CEQA, etc. DCC Murphy said there might not be the need for a total General Plan Amendment when the vote went to the public (upfront). Responding to a question, DCC Murphy explained the initiative process.

Commissioners discussed the application process and the resultant confusion by the public.

Commissioner Machado stressed the need for DoP Henriques to express to the Board of Supervisors the concerns raised as to the ambiguity in the Ordinance (and whether it is the 'right' Ordinance, and further to inform the Board that the Commissioners was having difficulty in dealing with the contents of the Ordinance. "I think the Board should be informed of the questions at this meeting," Commissioner Machado stated. Other Commissioners concurred. "I think it is interesting that a large developer stated a concern quite different from what was expressed by developers at the time of adoption of the Ordinance," Commissioner Machado said.

Responding to a question, DoP Henriques said that he had only worked on a project which did not exceed 2,200 units but said that was a very complex project and required major amounts of staff time. He noted that the project was in a different area – giving the logistics of the location, etc. - and therefore the conditions were different. DoP Henriques spoke on the possibilities of contacting other local government agencies regarding similar Ordinances and consequential issues.

Commissioners commented on the need:

- ✓ clarity of concern to the Board
- ✓ value of an advisory vote of the people

**Announcements:** Ethics Training for Commissioners on May 3, 2006. Board of Supervisors members are expected to attend, as well.

**Adjournment:** 10:05 p.m.

*Minutes prepared by:*

*Judi Johnson*

*Attest:*

*Byron Turner, Principal Planner*