

SAN BENITO COUNTY PLANNING COMMISSION

May 2, 2007

Minutes

PRESENT: Bettencourt, DeVries, Machado, Smith, Tognazzini

LATE: None

ABSENT: None

STAFF: Director of Planning (DoP) Art Henriques; Principal Planner (PP) Byron Turner; Director of Public Works (DPW) Jerry Lo; Deputy Director of Public Works (DDPW) Arman Nazemi; Deputy County Counsel (DCC) Shirley Murphy (who arrived at 6:02 p.m.); and Clerk Trish Vieira-Maderis

Chair Tognazzini opened the meeting at 6:00 p.m. by leading the pledge of allegiance to the flag and reiterating the standing rules of order.

DIRECTOR'S REPORT:

DoP Henriques reported on items of interest from the Board of Supervisors (BoS) meetings:

April 24: discussed proposed Ordinance amendment (Chapter 19) to create a Code Enforcement Hearing Officer in the CAO's office, possibly to be on-call and similar to the City of Hollister; proposed Ordinance amendment to be heard at the next Board meeting , May 8

May 1: Commissioners (list read) were appointed to the newly-formed County-wide Parks and Recreation Commission; (Chair Tognazzini asked for details of which Supervisors named the Commissioners) - most co-terminus with Supervisorial terms; youth terms for one year

PUD Ordinance recommendations from the Commission were adopted
Initial discussion regarding County WiFi programs; Supervisors DeLaCruz and Loe have been working on this and gave an update

An appeal has been filed by the Silva decision (road) by the Planning Commission {Commissioner Bettencourt asked about the timeline for the appeal and the subsequent request for a continuation as the applicant was to be out of town)

PUBLIC COMMENT:

Chair Tognazzini opened the floor to public comment for items not appearing on the agenda.

Scott Fuller, 3825 Union Road, told the Commissioners he was appearing on behalf of the Business Council, which has identified four main goals for the next 12 – 18 months:

- Vision San Benito support for funding \$250,000 (2 years of operation, with emphasis on staff enhancement)
- Land Use and Development: Revenue generation
- Economic development: need for jobs creation emphasis
- Labor education programs develop career program planning, including high school and college programs to target students to job training

Mr. Fuller said he and the membership of the Business Council had hopes of working with local government, including the Planning Commission as they work toward achievement of the goals.

With no others to address matters not on the agenda, the public comment opportunity was closed.

CONSENT AGENDA

1. Acknowledge Public Hearing Notice
2. Acknowledge Certificate of Posting
3. Minutes of April 4, 2007
4. Minutes of April 18, 2007

COMMISSIONERS MACHADO/SMITH MOTIONED TO THE CONSENT AGENDA AS PRESENTED. THE MOTION PASSED (5-0) WITH THE FOLLOWING VOTE: AYES: BETTENCOURT, DEVREIS, MACHADO, SMITH, TOGNAZZINI; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

Note: following the decision by the Commissioners for each of the items listed on the Agenda, it was noted that an appeal process time period is set forth, with appeal possible to the Board of Supervisors. DoP Henriques stated that unless the appeal was filed, the decision by the Commissioners is final.

CONTINUED ITEMS ~~ COMMISSION ACTION ~~ PUBLIC HEARING ITEMS

CERTIFICATE OF COMPLIANCE NO. 06-68 – APPLICANT: Paul Kaneko. OWNER: Jerry Haney. LOCATION: San Juan Canyon Road. APN: 23-31-04. REQUEST: Recognition of 70-acre non-buildable remainder parcel as buildable legal parcel. ZONING: Rural (R). ENVIRONMENTAL EVALUATION: Negative Declaration.

PP Turner reported this item has been requested for continuation by the applicant, as he wished time to consult with the fire department. PP Turner said the continuance has been inadvertently requested to the May 2, 2007 Planning Commission meeting; however, the applicant had requested the continuation to the May 16, 2007 Planning Commission meeting.

COMMISSIONERS SMITH/MACHADO MOTIONED TO CONTINUE THE MATTER OF *CERTIFICATE OF COMPLIANCE NO. 06-68* TO THE MAY 16, 2007 COMMISSION MEETING. THE MOTION PASSED (5-0) WITH THE FOLLOWING VOTE: AYES: BETTENCOURT, DeVRIES, MACHADO, SMITH, TOGNAZZINI; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

TSM NO. 04-71 APPLICANT/OWNER: Ruben Rodriguez. LOCATION: Magladry Road. APN: 17-15-42. REQUEST: Discussion of Magladry Road Benefit Area and TSM 04-71 Conditions of Approval ZONING: Agricultural Productive (AP). ENVIRONMENTAL EVALUATION: None.

DDPW Nazemi presented the staff report regarding the road improvement agreements for TMS 04-71 and provided the background of the project, with a deferment of further road improvements and ‘fair share provisions’ until further development occurs.

During discussion with staff, Commissioners raised issues of:

- driveway frontage at Magladry Road (24 feet) [condition completed]
- deferred improvements for Fairview Road / ‘fair share conditions imposed
- issue: off site overlays
- need to pay for benefit area
- recordation of items placed on deed (applicant can be required to amend tentative map; initial study may be needed (question: why would this and CEQA requirements be needed if a condition is not changed, but delayed?)
- potential of having CSA cover the area
- partial improvement (CEQA requirements still must be met)
- traffic study and mitigations required by Public Works (through the CEQA documents)

Chair Tognazzini opened the public hearing.

Anne Hall, San Benito Engineering, told the Commissioners that the existing road wasn’t a good design and that the entire matter affected several driveways. She also expressed the opinion that the ‘County made out better’ in this matter. Responding to a question from Commissioner Bettencourt, Ms. Hall said it made more sense to overlay the road surface than to widen it. Ms. Hall then explained ‘fair share’ in relation to the project area as she replied to a question from the Chair and Commissioner Bettencourt.

With no others indicating a wish to speak to the matter, the public hearing was closed.

Lengthy discussion ensued regarding the necessity of continuation of the matter in order to have staff provide additional information needed (Public Works requirements with an amendment to a Condition [CEQA requirements needed] Planning Commission to make findings regarding the matter.

COMMISSIONERS DeVRIES/MACHADO MOTIONED TO CONTINUE THE MATTER OF TSM NO. 04-71 TO THE MAY 16, 2007 COMMISSION MEETING. THE MOTION PASSED (5-0) WITH THE FOLLOWING VOTE: AYES: BETTENCOURT, DeVRIES, MACHADO, SMITH, TOGNAZZINI; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

PUBLIC HEARING ITEMS: DISCUSSION ITEM

Variance No. 07-21: APPLICANT/OWNER: Ralph Vance. LOCATION: 6500 Cabernet Drive, Hollister APN: 025-50-008. REQUEST: A 45-foot setback variance in order to build an agricultural storage garage ZONING: Agricultural Productive (AP). ENVIRONMENTAL EVALUATION: Categorical exemption.

PP Turner presented the staff report, and said staff is requesting to have this matter continued in order to have Code enforcement issues at the site resolved.

Chair Tognazzini opened, and then closed, the public hearing as there were none in attendance to speak to the matter.

COMMISSIONERS SMITH/BETTENCOURT MOTIONED TO CONTINUE VARIANCE NO. 07-21, TO A DATE UNCERTAIN. THE MOTION PASSED (5-0) WITH THE FOLLOWING VOTE: AYES: BETTENCOURT, DEVREIS, MACHADO, SMITH, TOGNAZZINI; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

PUBLIC HEARING ITEM

Preliminary Allocation Revisions:

APPLICANT: San Benito County LOCATION: County-wide REQUEST: Finalize amendments to the Preliminary Allocation requirements and recommend changes to the Board of Supervisors.

PP Turner gave the staff report, noting the necessity of having a public hearing due to a previous posting error.

Chair Tognazzini clarified the reason for having to open the public hearing, which he then opened. No comments were received and the public hearing was closed.

PP Turner noted the Commissioners had previously made recommendations on the matter.

It was noted that no action was necessary as the Preliminary Allocation Revisions had been previously approved by the Commissioners.

DISCUSSION ITEMS

Crowing Fowl Ordinance Update ~ Enforcement

PP Turner reminded that the Commission had asked for an update of this matter and gave an overview of the Ordinance. As a result of the Ordinance, several legal challenges had been filed, with enforcement actions held in abeyance pending the outcome of the litigation. However, any new cases reported following the adoption of the Ordinance are being enforced.

Chair Tognazzini noted that (only) two of the parties to the lawsuit were in non-conformance. DCC Murphy said that now there were five parties to the law suit, explaining that there was some question of equal enforcement since the suit had been filed.

DoP Henriques noted that there were a ‘couple of places’ that came into operation following the adoption of the Ordinance, with the Ordinance being fully explained to those operators, and abatement was following. “We are not doing any Code Enforcement against operators in existence at the time of the Ordinance,” he said. Chair Tognazzini said there appears to have changes in the matter since the Ordinance was introduced and subsequently passed. DCC Murphy gave explanation of the legal proceedings as related to Code Enforcement and the subsequent policy decision of enforcement of the new on-line producers. DCC Murphy responded from memory in responding to Chair Tognazzini as to the parties to the lawsuit. She also provided an overview of the state of the suit at this time: discovery, summary motion, judgment, etc. and noting the Judge wants the matter resolved by October.

Commissioners discussed with staff:

- all new operators (3) of businesses under the Ordinance are subject to enforcement
- current conditions for compliance
- if the fowl were being raised for cock fighting; unknown as the Ordinance limits to counting of fowl only

PRGI (Potential Residential Growth Increase) Ordinance ~ Update

DoP Henriques gave the staff report, explaining the Committee and its' work to the audience at the request of Commissioner Smith. He then gave an overview of the history of the matter (including the growth caps put into place – which could result in having the residents of the County vote on the requests), and told of the application anticipated being brought in for action in September, and enumerated the changes being recommended for change. Chair Tognazzini reminded this item has been agendaized for discussion only, and stated that the Commissioners do not at this time have information for recommending any changes.

Commissioner DeVries, who has been active on the Committee, explained the basis of the work of the PRGI Ordinance subcommittee. “Now, instead of having all such matters go to a vote of the people, a traditional planning process is being considered for implementation,” Commissioner DeVries said. He compared the matter to a County sponsored referendum, culminating in a vote of the people.

Chair Tognazzini opened the public hearing.

Ray Pierce, 4140 Ashford Circle, reminded that any requests must go to LAFCo even if all want to see the application accepted. DCC Murphy stated that the requests would only go to a public vote if the Supervisors passed an amendment to the General Plan. Mr. Pierce said a project should be complete before going to a vote of the public and the Commission should have finished all work on the request before deeming it complete. Commissioner DeVries said he agreed, due simply to the magnitude.

Commissioner Bettencourt asked if the PRGI could be accomplished by initiative. [Yes]

Attorney Brad Sullivan, 1550 Prune St., spoke on exemptions: PUDs, TDCs and any bonus TDCs, such as affordable housing which he said should be included.

Several items were then discussed:

- level of completion
- methods of application (tentative map, vested maps, etc. or specific plans)
- Planning Commission recommendation is not required
- PRGI is not a zone change

Scott Fuller, 3825 Union Road, question specific points of review which may ‘trigger exemptions’. Mr. Fuller indicted agreement with statements made by Mr. Sullivan wherein exemptions should be retained. “PRGI should be made consistent with the TDC principles,” Mr. Fuller said. He also indicated thinking, “The more information given directly to the voters, the better.”

Crowing Fowl Ordinance Update ~ Enforcement

PP Turner reminded that the Commission had asked for an update of this matter and gave an overview of the Ordinance. As a result of the Ordinance, several legal challenges had been filed, with enforcement actions held in abeyance, pending outcome of the litigation. However, any new cases reported following the adoption of the Ordinance are being enforced.

Chair Tognazzini noted that (only) two of the parties to the lawsuit were in non-conformance. DCC Murphy said that now there were five parties to the law suit, explaining that there was some question of equal enforcement since the suit had been filed.

DoP Henriques noted that there were a ‘couple of places’ that came into operation following the adoption of the Ordinance, with the Ordinance being fully explained to those operators, and abatement was following. “We are not doing any Code Enforcement against operators in existence at the time of the Ordinance,” he said. Chair Tognazzini said there appears to have changes in the matter since the Ordinance was introduced and subsequently passed. DCC Murphy gave explanation of the legal proceedings as related to Code Enforcement and the subsequent policy decision of enforcement of the new on-line producers. DCC Murphy responded from memory in responding to Chair Tognazzini as to the parties to the lawsuit. She also provided an overview of the state of the suit at this time: discovery, summary motion, judgment, etc. and noting the Judge wants the matter resolved by October.

Commissioners discussed with staff:

- all new operators (3) of businesses under the Ordinance are subject to enforcement
- current conditions for compliance
- if the fowl were being raised for cock fighting; unknown as the Ordinance limits to counting of fowl only

PRGI (Potential Residential Growth Increase) Ordinance ~ Update

DoP Henriques gave the staff report, explaining the Committee and its’ work to the audience at the request of Commissioner Smith. He then gave an overview of the history of the matter (including the growth caps put into place – which could result in having the residents of the County vote on the requests), and told of the application anticipated being brought in for action in September, and enumerated the changes being recommended for change. Chair Tognazzini reminded this item has been agendaized for discussion only, and stated that the Commissioners do not at this time have information for recommending any changes.

Commissioner DeVries, who has been active on the Committee, explained the basis of the work of the PRGI Ordinance subcommittee. "Now, instead of having all such matters go to a vote of the people, a traditional planning process is being considered for implementation," Commissioner DeVries said. He compared the matter to a County sponsored referendum, culminating in a vote of the people.

Chair Tognazzini opened the public hearing.

Ray Pierce, 4140 Ashford Circle, reminded that any requests must go to LAFCo even if all want to see the application accepted. DCC Murphy stated that the requests would only go to a public vote if the Supervisors passed an amendment to the General Plan. Mr. Pierce said a project should be complete before going to a vote of the public and the Commission should have finished all work on the request before deeming it complete. Commissioner DeVries said he agreed, due simply to the magnitude.

Commissioner Bettencourt asked if the PRGI could be accomplished by initiative. [Yes]

Attorney Brad Sullivan, 1550 Prune St., spoke on exemptions: PUDs, TDCs and any bonus TDCs, such as affordable housing which he said should be included.

Several items were then discussed:

- level of completion
- methods of application (tentative map, vested maps, etc. or specific plans)
- Planning Commission recommendation is not required
- PRGI is not a zone change

Scott Fuller, 3825 Union Road, questioned specific points of review which may 'trigger exemptions'. Mr. Fuller indicted agreement with statements made by Mr. Sullivan wherein exemptions should be retained. "PRGI should be made consistent with the TDC principles," Mr. Fuller said. He also indicated thinking, "The more information given directly to the voters, the better."

With no other members of the public indicating a wish to speak to the matter, the public hearing was closed.

Commissioner Bettencourt asked, "How can the Planning Commission weigh in if an application is not before the Commission?" DoP Henriques responded that the issue is to have input into the Ordinance. He noted that staff will be providing additional information.

DCC Murphy explained the process as: staff>>Planning Commission>>Board of Supervisors>>vote of the people.

Commissioners discussed recent votes on General Plan Amendments.

Commissioner DeVries stressed that the Ordinance ‘will be built for all applicants – not just a select few’.

Responding to a question from Commissioner Machado, PP Turner explained that the public hearing has been valuable for staff, and the Commission is not required to make a recommendation. DoP Henriques said that the Commissioners could expect to see the Ordinance at least one more time before it goes to the Board.

Hillside Ordinance

PP Turner presented the staff report, giving a broad overview of the work completed.

Commissioners discussed:

- an apparent disappointment by Board members that paperwork for recession of the Ordinance was not ‘followed through’
- some of the Board members have disagreement with the direction and have indicated that as a result, they want retention of some parts of the current Ordinance; ‘don’t throw it away’ was reported as a sentiment
- potential amendment/modification of the existing Ordinance

DCC Murphy advised some portions of CEQA exemptions may not be available for recession. Commissioner Smith asked that such data be e-mailed to him directly. PP Turner reported he was unaware of such exemptions. DCC Murphy spoke to the proposed language for repealing the Hillside Ordinance and replacing that document – or portions thereof - with changes to the Zoning Ordinance.

Discussion continued with Commissioners noting:

- once an Ordinance is passed, measures of control may vary
- the perception of what the public wants/understands may fluctuate greatly

Commissioner DeVries stressed his belief that there are four areas of critical concern and warrant discussion:

- number of units subject to review
- location of construction/development
- level of review (administrative or perhaps Consent Agenda at Planning Commission)
- criteria/guidelines for review

PP Turner said he had understood from the discussion at the Board level that several Board members appear interested in having a ‘basic’ document/Ordinance, with flexibility written in. PP Turner also indicated that the Commissioners will have a look at a rough draft of the proposal at the May 16, 2007 Commission meeting.

Chair Tognazzini opened the floor to public comment.

Scott Fuller returned to the podium to speak of an Ordinance which Santa Clara County passed last year. Mr. Fuller explained the (Water Shed Protection) Ordinance expanded the Design/Review Guidelines, and developed language for the Zoning Ordinance to be inclusive of 'Design Review Standards'. DoP Henriques told of familiarity with this measure, and urged the Commissioners to check the web site for more information, which is quite extensive and includes a GIS Analysis.

With no others present indicating a wish to speak to the matter, the public hearing was closed.

PP Turner advised of the intent to 'have something (decisive and descriptive) in place for the General Plan'.

Commissioner Bettencourt referenced discussion with Supervisor Marcus who had concerns regarding grading on slopes that 15% is not a definitive number which can be justified for permitting work. DoP Henriques promised to clarify that subject with the Supervisor.

INFORMATIONAL-NON-ACTION ITEMS

Commissioner Announcements/Reports/Discussion

DoP Henriques said a report on the activity associated with the General Plan will be presented to the Board at the May 8, 2007 meeting.

COMMISSIONERS MACHADO/BETTENCOURT MOTIONED TO ADJOURN THE MEETING. THE MOTION CARRIED WITH THE UNANIMOUS AFFIRMATIVE VOTE (5-0) OF ALL COMMISSIONERS PRESENT; NONE WERE ABSENT. CONSEQUENTLY, CHAIR TOGNZZINI ADJOURNED THE MEETING AT 8:17 P.M.

*Minutes transcribed by:
Judi Johnson*

*Attest:
DoP Art Henriques*