

SAN BENITO COUNTY PLANNING COMMISSION

June 20, 2007

Minutes

PRESENT: Bettencourt, DeVries, Machado, Smith, Tognazzini

Late: None

ABSENT: None

STAFF: Director of Planning (DoP) Art Henriques; Principal Planner (PP) Byron Turner; Senior Planner (SP) Chuck Ortwein, Assistant Planner (AP) Michael Kelly, Assistant Planner (AP) Michael Krausie, Deputy Director of Public Works (DDPW) Arman Nazemi; Deputy County Counsel (DCC) Shirley Murphy; and Clerk Trish Vieira-Maderis.

Chair Tognazzini opened the meeting at 6:03 p.m. by leading the pledge of allegiance to the flag and then reiterating the standing rules of order.

DIRECTOR'S REPORT:

DoP Henriques reported recent Board of Supervisor's (BoS) meeting/actions:

- 2007-08 budget hearings will be heard Budget Hearings commencing August 7, 2007 at 1:30 p.m. and continuing day to day at 9:00 a.m. until concluded with requests tentatively granted pending adoption of the State budget
- adopted an Ordinance revising Chapter 31 (Growth Management Ordinance) of the County Code regarding the Preliminary Allocations Ranking System and tie breaking procedures
- approved contract with Bay Area Economics for economic/fiscal analysis services for the period June 12, 2007 through June 12, 2008 for work relating to San Juan Bautista and upcoming DMB project.
- accepted and passed a resolution for a grant of open space easement to San Benito County from Robert Enz and Tina Enz for TSM-03-69
- continued to the BoS meeting of June 26 the public hearing of an appeal of the Minor Subdivision No. 1194-06 at 4155 John Smith Road, Hollister, CA Appellant: Al Silva Jr.

PUBLIC COMMENT:

Chair Tognazzini opened, and then closed, the public hearing having ascertained there were no persons present wishing to address items not on the agenda.

CONSENT AGENDA:

1. Acknowledge Public Hearing Notice
2. Acknowledge Certificate of Posting
3. Minutes of May 16, 2007

4. **CERTIFICATE OF COMPLIANCE 07-69** – APPLICANT: Leona May Lewis and Roysten Lewis. LOCATION: Browns Valley Road, Paicines. REQUEST: To recognize two parcels across an approximately 413-acre site. ZONING: Agricultural Rangeland (AR). ENVIRONMENTAL EVALUATION: Statutory Exemption.

COMMISSIONERS BETTENCOURT/ MACHADO MOTIONED TO APPROVE THE CONSENT AGENDA(S) [ITEMS 1 – 4] AS PRESENTED. THE MOTION PASSED (5-0) WITH THE UNANIMOUS AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT; NONE WERE ABSENT.

Conditions of Approval

1. Recordation

DoP Henriques announced that any decision made by the Commissioners can be appealed and the appeal must be filed in writing within ten (10) calendar days to the Board of Supervisors and specifically indicating why the Commission's decision was inappropriate or unjustified.

CONTINUED PUBLIC HEARINGS ~ COMMISSION ACTION

5. **ZONE CHANGE NO. ZC 06-150 and COMMERCIAL DISTRICT REVIEW NO. CDR 59-06** APPLICANT/OWNER: John & Jae Eade. LOCATION: Northwest side of the intersection of State Highway 25 and Southside Road, Tres Pinos. APN: 22-20-09 and 22-20-10. REQUEST: FINDINGS FOR DENIAL OF Zone Change from Rural/Urban (R/URB) to Commercial Thoroughfare District (C-1) for the development of a commercial lodging facility. ZONING: Rural/Urban. ENVIRONMENTAL REVIEW: Mitigated Negative Declaration.

SP Ortwein presented the staff report, noting this matter had been continued from the June 6, 2007 meeting wherein the staff had been directed to prepare findings for denial following a lengthy and expressive public hearing. SP Ortwein then presented the findings which had been prepared and distributed.

Commissioner DeVries disclosed that he had discussions with staff this week regarding the General Plan and Zoning designation differences, which had concerned him. Commissioner DeVries restated information previously covered: the General Plan and Zoning designations for Tres Pinos is Rural Urban, with the exception being a few commercial sites which had been specifically designated previously. Commissioner DeVries said he was concerned of setting precedence by allowing further commercial use with the Rural Urban designations.

DoP Henriques called attention that the matter before the Commission was the findings of denial for the application previously heard by the Commissioners (at the last meeting).

DCC Murphy called attention to Policy 22 which was contained in the General Rule and identified methods of creating more commercial areas in conjunction with the General Plan Amendment. DCC Murphy clarified that specific areas can have a zone overlay, similar to a PUD or RPD.

Joining the explanation, PP Turner provided some examples of previous applications where commercial applications had been requested and granted following this practice:

- Pennington (at Enterprise Road and Airline Highway)
- Premier Cinemas (in the County but adjacent to the City)

Commissioners discussed with staff:

- clarification that both the General Plan and Zoning designations for Tres Pinos are Rural Urban, with the exception being a few commercial sites
- owners of property in the Rural Urban can apply for commercial use
- zoning changes can be included as General Plan amendments
- consideration of 'better definition' of R1, possibly discarding the Rural Urban designation (PP Turner explained the Land Use Design in the General Plan Land Use Element; DoP Henriques clarified the requirements for commercial uses)
- need for meeting County Code(s)
- whether 'system works or is broken' (Commissioner Smith indicated continued inclination to approve the application)
- the decision for denial had been declared in the last meeting
- anticipated receipt of new information on the General Plan Update
- clarification of two current requests: potential for Zoning change and General Plan amendment

Commissioner DeVries stated he felt the project could be completed at the current site, and that he would support having a General Plan amendment prepared for the site and returned to the Commission for action. DCC Murphy advised that, if approved, a General Plan amendment would achieve greater, easier consistency.

Commissioners then engaged in further discussion:

- concern that applicants will be discouraged and County will suffer fiscally
- obligation to protect areas from 'bad planning'
- similarities of presented findings

SP Ortwein reiterated the prepared findings for denial:

- the proposed use is not properly located in relation the district regulations, the general plan, and to the community as a whole, considering other land uses, transportation, service facilities, and utilities
- the proposed use will result in adverse effects to the environment

Chair Tognazzini opened the public hearing, advising that speakers should direct all comments only to the prepared findings. (See following list of speakers and concerns raised)

Ascertaining there were no others to speak to the matter, Chair Tognazzini closed the public hearing.

COMMISSIONERS SMITH/BETTENCOURT MOTIONED TO VOID PREPARED FINDINGS 1, 2, AND 3, BASED ON ‘FAULTY TESTING’ AND TO RESCIND RESOLUTION 2007-05 (DENIAL OF REQUEST).

Commissioners discussed:

- {with DCC Murphy} the prepared findings
- potential of reconsideration/recession of the previous vote (June 6, 2007 meeting)
- prospective for continuation
- mitigation of identified impacts
- concern for economic development
- {Commissioner Bettencourt advised of meetings with those opposed to the project}
- strength of findings for denial
- aerial map (presented for viewing)
- potential for other motions
- non-compliance of water district

COMMISSIONER SMITH REQUESTED SUSPENSION OF THE MOTION TO PERMIT FURTHER DISCUSSION.

Commissioner DeVries offered explanation as to his belief that the applicant should initiate the process of a General Plan amendment and work within that framework for making the hotel work.

DoP Henriques conferred with DCC Murphy when responding to Commissioner Bettencourt’s question regarding a General Plan amendment: length of time required (could be up to a year), and process involved (might trigger a complete EIR due to it being a larger project {with the amendment}). He also clarified that the final decision rests the Board of Supervisors.

Commissioners Smith clarified that the original staff recommendation had been for approval of the request. Commissioner Machado noted that the original staff recommendation had been *before* the public hearing at the June 6, 2007 meeting.

COMMISSIONER SMITH RETURNED THE MOTION [TO VOID PREPARED FINDINGS 1, 2, AND 3, BASED ON ‘FAULTY TESTING’ AND TO RESCIND RESOLUTION 2007-05 (DENIAL OF REQUEST)] TO THE FLOOR. COMMISSIONER BETTENCOURT AFFIRMED THE SECOND. THE MOTION DID NOT PASS WITH THE FOLLOWING VOTE: (2-3) AYES: BETTENCOURT, SMITH; NOES: DeVRIES, MACHADO, TOGNAZZINI; ABSTAIN: NONE; ABSENT: NONE.

Noting he disagreed with the findings as presented, **COMMISSIONER DeVRIES MOTIONED TO CONTINUE THE MATTER OF ZONE CHANGE NO. ZC 06-150 AND COMMERCIAL DISTRICT REVIEW NO. CDR 59-06 TO THE JULY 18, 2007 COMMISSION MEETING, THEREBY PROVIDING AN OPPORTUNITY FOR THE ‘ISSUES TO BE WORKED THROUGH’ AND HAVE THE ‘APPLICANT AND STAFF LOOK INTO A GENERAL PLAN AMENDMENT APPLICATION’. COMMISSIONER SMITH SECONDED THE MOTION WHICH PASSED (5-0) WITH THE UNANIMOUS AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT; NONE WERE ABSENT.**

List of Speakers ~ Spur Hotel:

Name/Address	Comment(s)
Paul Rovella, 415 Donna’s Lane, Hollister, Attorney for the applicant	Asked for reconsideration of denial at last Commission meeting Engaged in discussion with Commissioner DeVries
Pam Alvarado, PO Box 275, Tres Pinos	Disclosed she is an employee of the Water District, but insisted she was speaking as a private citizen. Chided Commissioners not to permit ‘drama’
Robert Frusetta, 6790 F. St., Tres Pinos, Tres Pinos Water District Director	Firmly stated disagreement with Attorney Rovella Addressed placement of bike path: divides area sections; not bordered by Highway 25 Concerns of deficit parking spaces
Theresa Martin, 161 Tierra del Sol, Hollister	Addressed (and disputed) Finding 22: Increased traffic Manages Marketing Management Company Asked for approval of application
Bobby Zaucha, 50 E. 4 th St., Tres Pinos	Read from prepared letter Stated he was self-expert Advised he lives next to Cantina restaurant
Annette Giacomazzi, 4770 Santa Ana Valley Rd, Hollister	Advised that with a degree in Public Economics, she has written tourism plans and research grants Urged approval of request as Tres Pinos is the ‘Gateway to the Wine Trail (provided history of area) Stated that, regarding finding 2, the Water District had self-imposed a moratorium
Frankie Valent-Arballo, San Benito St., Suite 130 {representing San Benito County Chamber of Commerce}	Reproached staff for finding #1, saying it was inaccurate and based only on testimony, not fact
Mike Howard, 6991 Airline Highway, Hollister	Disputed findings #1 and #3, said an affirmation was that the location was ‘great’ and the project would set a standard of benefit

Speakers continued:

Diana Hawks, Tres Pinos	Regarding finding #2, said there would be adverse effects, a sufficient water supply does not occur, and staff had erred with being 'way off in the findings'
Julianna Ottara, 310 Bonnie Lane, Hollister	Location is ideal for a hotel Project would be an asset and benefit to the County
Shannon Grissom, 1220 Tamara Ct., Hollister	Noted 'fear' to speak at last meeting 'Believes' in project: will keep revenues in County
Frank Leal, 300 Maranatha Dr., Hollister	Commented on benefit to community and County Owns winery; thinks hotel would enhance tourism
Al Guerra, 1157 Ridgemark Dr., Hollister	Finding #1: Commissioners and staff need to look at 'big picture' and determine what is best Finding #2: In comparison to Ridgemark hotel cottages, there would be no additional impacts.
Pat DeRose, 20 Franks Dr., Hollister	[declined to speak from podium, but indicated support for hotel construction]
Fred Flook, 1304 West St., Hollister	Questioned finding regarding funding, reiterated support for hotel; thanked staff
Jae Eade (applicant), 4760 Santa Ana Valley Road, Hollister	Implored the Commissioners to consider that she and the family were planning on 'doing something great for the County as a whole' by building the hotel and providing services to the community

SPUR HOTEL ~~ CONCERNS AND/OR ISSUES RAISED

Need to continue matter – rescind denial
Configuration of parking area (can be redone)
School district would be OK with re-routing of bike path
Impose curfew if noise is of concern (some discussion regarding current levels of noise)
Garbage pickup clarified (can be done 3 times per week)

PUBLIC HEARING ITEMS ~ COMMISSION ACTION

[Clerk Vieira-Maderis called attention that recently appointed AP Krausie would present the next agenda item]

6. **VARIANCE NO. 07-21/SPECIAL PLAN REVIEW NO. 06-65**: APPLICANT: Ralph Vance. LOCATION: 6500 Cabernet Dr. Hollister. APN: 025-50-008 REQUEST: Consideration of a Variance from inside the building envelope to within 45 feet of the rear property line. ENVIRONMENTAL FINDINGS: Categorical Exemption, Section 15305, Minor Alterations to Land Use Limitations.

AP Krausie gave the staff report, and advised that because there is inability to make the required findings listed in the San Benito County Code; staff had to recommend denial of the request; however, language had been formulated for approval, including findings and conditions, should the Commissioners so desire.

Commissioner Bettencourt disclosed he had visited the site and had observed 'no problems'.

Commissioners engaged AP Krausie in discussion of the following:

- removal of the building and foundation
- concrete slab installation
- why a variance had not been acted on before the building was constructed [it was not in a building envelope]
- berm not a violation

Chair Tognazzini opened the public hearing.

Ralph Vance, 6500 Cabernet Court, addressed the Commissioners as the applicant. Mr. Vance explained that the original owner had the building envelope established in order to ensure a visual buffer between the residence and Granite Rock mining operations.

Commissioners discussed with the applicant:

- recorded violation [applicant said the building permit application had been submitted in August, but because of concern of inclement weather, he had begun work and indeed had constructed much of the building before obtaining – or receiving the permit]
- no work had been done since December, 2006
- agreement with Conditions of Approval as presented
- * applicant objected to:
 - o need to remove leach lines – has a diverter valve for a dual septic system
 - o penalty (considerable explanation/discussion was had regarding this issue)
 - o surprise of impacts (Commissioner Smith suggested hiring an Engineer
- concerns of having the construction before receiving a permit
- {PP Turner advised} that accessory buildings are limited to 1,000 sf

Jim West was present to represent Granite Rock. Mr. West explained that the building envelopes are for quarry purposes, and the company does not object to the metal building. Responding to a question, Mr. West said the berm was required for viewshed protections.

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

Following discussion with DCC Murphy, and having received information from PP Turner regarding the provided alternative language in a prepared resolution wherein approval could be granted, **COMMISSIONERS BETTENCOURT/ SMITH MOTIONED TO APPROVE VARIANCE NO. 07-21 SPECIAL PLAN REVIEW NO. 06-65, INCLUSIVE OF FINDINGS 1, 2, 3, AND 4, TOGETHER WITH CONDITIONS 1, 2, 3, 4, 5, AND 6 INCLUDING A MODIFICATION TO CONDITION 6 AS FOLLOWS: (add) ...OR ALTERNATIVES SUBJECT TO THE APPROVAL OF THE SAN BENITO ENVIRONMENTAL HEALTH DEPARTMENT. THE MOTION CARRIED (5-0) BY THE FOLLOWING VOTE: AYES: BETTENCOURT, DeVRIES, MACHADO, SMITH, TOGNAZZINI; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

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. **Building Department:** Evidence must be shown that the building, both the structure and the foundation conforms to require building codes. Destructive inspection procedures may be necessary to determine code compliance to the satisfactory of the County Building Department. [Building]
5. **Building Department:** Applicant shall pay twice (2x) the original building permit fee for all non-permitted work on the subject property as determined by the County Building Department. [Building]
6. **Environmental Health:** Applicant shall relocate existing leach lines in order to comply with County Environmental Health recommendations or alternative subject to Environmental Health to be accompanied by written documentation. [Planning]
7. **MINOR SUBDIVISION NO. 1187-06** – APPLICANT: Chris Ferguson. LOCATION: 1946 Carr Ave., Aromas. APN: 11-08-58 REQUEST: To subdivide a 7.35 acre parcel into 2 parcels of 4.85 and 2.5. ZONING: Rural Transitional (RT). ENVIRONMENTAL EVALUATION: Mitigated Negative Declaration.

SP Ortwein presented the staff report, calling attention to the conditions of approval contained in the staff report.

DDPW Nazemi was present representing the Department of Public Works, and address Conditions 13 and 14, while seeming redundant, are requirements of the Department. Commissioner DeVries said there appears no basis for Condition 14, and it should be deleted. DDPW Nazemi advised he had visited the site and expressed concern at the narrowness of the roadway.

Commissioner Bettencourt advised he, too, had visited the site. Commissioner Bettencourt observed the site was ‘very steep’ and doubted that other buildings should be added there. SP Ortwein agreed, saying there were no other areas for development on the parcels. He also explained that a subdivision was required to place permanent foundations under modular and/or mobile homes. Commissioner Smith stated the matter needs clean, written explanation.

Commissioner DeVries and DCC Murphy discussed the issues and it was suggested that a Finding 9 be added, with the matter being placed on the next meeting’s agenda.

Chair Tognazzini opened the public hearing.

Engineer Anne Hall, San Benito Engineering told the Commissioners she was working with the applicant, who had agreed to all the Conditions presented, with the exception of Condition 16, which he found excessive and asked that this Condition be waived.

Commissioner Smith asked DCC Murphy to address the matter of having the money for the violation recovered. Discussion followed between staff and the engineer regarding the matter.

Commissioner Bettencourt raised the issue of the {second} water meter requirement (Condition 17) with the Engineer saying that there had not been a requirement for a ‘benefit area’ to be established for this project; however, the applicant, while requesting a waiver for the road improvement, will agree for a ‘contribution’. She stated that the Aromas Fire Department was ‘OK’ with the road, and the neighbors would object to having the road improved.

Commissioner Smith clarified that the applicant would agree to the following modifications to the requirements of Public Works: Conditions 13 and 16 (remove).

Heather Ferguson was present to answer questions.

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

COMMISSIONERS DeVRIES/MACHADO MOTIONED TO APPROVE MINOR SUBDIVISION NO. 1187-06 WITH THE AMENDMENTS, AS DISCUSSED.

Subsequently during discussion, **COMMISSIONER DeVRIES RESCINDED THE MOTION, CAUSING THE MOTION TO BE TAKEN FROM THE FLOOR, WITH THE FOLLOWING MOTION BEING SUBSTITUTED: THE MATTER OF MINOR SUBDIVISION NO. 1187-06 IS CONTINUED TO THE JULY 18, 2007 MEETING FOR FURTHER ACTION. COMMISSIONER MACHADO SECONDED THE MOTION, WHICH PASSED 5-0) BY THE FOLLOWING VOTE: AYES: BETTENCOURT, DeVRIES, MACHADO, SMITH, TOGNAZZINI; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

PP Turner reported that **Item No. 8. MINOR SUBDIVISION NO. 1203-07 (May)** and **Item No. 9 USE PERMIT NO. 969-07 (Earthbound Farms)** would not be heard at this meeting and continuances are requested to the regular meeting of July 18, 2007.

DoP Henriques then presented – for information only –

10. Pre-payment of property taxes; Section 66493(d) of the Subdivision Map Act allows Counties to adopt ordinances, waiving the requirement to secure the payment of estimated taxes.

DISCUSSION ITEMS

11. P.R.G.I. Update was presented by PP Turner.

Commissioner DeVries asked if TDCs were exempt from PRGI [yes]

Following the presentation, **THE COMMISSIONERS DIRECTED – BY CONSENSUS – THE UPDATE TO BE FORWARDED TO THE BOARD OF SUPERVISORS.**

12. General Plan Update status

DoP Henriques advised that public workshops will be announced following the survey of the General Plan Update when presented by the Consultants. He noted that an informational memo had been prepared and distributed.

13. Update on future Planning Commission discussion items

PP Turner suggested the Commissioners peruse the list and make recommendations to staff for prioritizing.

REGULAR AGENDA

14. Transaction of Business Annual Review

The document had been distributed to the Commissioners and was available to the public, DoP Henriques advised. This item was continued to the regular meeting of July 18, 2007.

15. Presentation to District 5 Planning Commissioner Michael G. Smith

Chair Tognazzini led the Commissioners in acknowledging the work and participation of Commissioner Smith who has accepted employment out of the County. All agreed his insight will be missed.

ADJOURNMENT

ON A MOTION BY COMMISSIONERS SMITH/BETTENCOURT, AND PASSED UNANIMOUSLY BY THE COMMISSIONERS PRESENT – WITH NONE ABSENT – CHAIR TOGNAZZINI ADJOURNED THE MEETING AT 9:35 P.M, NOTING THAT THE JULY 4, 2007 METING WAS CANCELLED; AND THAT THE NEXT MEETING OF THE PLANNING COMMISSION WOULD BE JULY 18, 2007.

*Minutes transcribed by:
Judi Johnson*

*Attest:
DOP Art Henriques*