

# **SAN BENITO COUNTY PLANNING COMMISSION**

## **October 17, 2007**

### **Minutes**

PRESENT: Bettencourt, DeVries, Machado, Scattini

ABSENT: Tognazzini

STAFF: Art Henriques, Director of Planning (DoP); Principal Planner (PP) Byron Turner; Associate Planner (AP) Lissette Knight; Planning Technician Ann Dolmage; Deputy Director of Public Works (DDPW) Arman Nazemi; Deputy County Counsel (DCC) Shirley Murphy; and Clerk Trish Maderis.

Vice-Chair Machado opened the meeting at 6:02 p.m., led the pledge of allegiance to the flag and reiterated the standing rules of order.

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

DoP Henriques reported on recent Board of Supervisor meetings and included additional reports on the following items:

- Three General Plan community meetings completed
- AMBAG workshop, a new 20-year transportation plan being developed, participation is encouraged
- U S Census Bureau pre-census canvas underway
- Contract with General Plan consultant extended for 6 months for completion of Phase One
- Cal Trans draft EIR for Route 156 Improvement project underway
- GIS is now on line through the County website for public use of some of the layers
- Continued Public Hearing for the Eade Spur Hotel scheduled for October 23, 2007
- EOC training will be held on October 23 and 24, 2007

#### ***PUBLIC COMMENT***

Vice-Chair Machado opened and then closed, the opportunity for public comment as there were no persons present to address matters not appearing on the agenda.

**CONSENT AGENDA**

**COMMISSIONERS BETTENCOURT/SCATTINI MOTIONED TO APPROVE THE CONSENT AGENDA:**

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

**COMMISSIONER DEVRIES ABSTAINED FROM ITEM #3 AS HE WAS NOT PRESENT AT THE OCTOBER 3<sup>RD</sup> MEETING. COMMISSIONER SCATTINI ALSO ABSTAINED AS HE WAS NOT PRESENT AND WITHDREW HIS SECOND TO THE MOTION. COMMISSIONER DEVRIES MOTIONED TO APPROVE ITEMS #1 AND #2 AND TO CONTINUE ITEM #3, MINUTES OF OCTOBER 3, 2007, TO THE NEXT REGULAR MEETING, COMMISSIONER SCATTINI OFFERED A SECOND TO THE MOTION WHICH PASSED (4-0-1) WITH THE FOLLOWING VOTE: AYES: BETTENCOURT, DEVRIES, MACHADO, SCATTINI; NOES: NONE; ABSTAIN: NONE; ABSENT: TOGNAZZINI.**

**PUBLIC HEARING ITEM ~ COMMISSION ACTION**

4. **MINOR SUBDIVISION NO. 1203-07** – APPLICANT: Ken May. LOCATION: Chateau Drive, between Carr Road and Merrill Road. APN: 11-23-09 REQUEST: To subdivide 16.10 acres into three parcels of 5.5 acres, 5.51 acres and 5.09 acres. ZONING: Rural (R). ENVIRONMENTAL EVALUATION: Mitigated Negative Declaration.

AP Knight presented her staff report explaining the project had previously been presented to the Commission on June 20, July 18 and August 15, 2007 and the main items of discussion have been frontage improvements, applicant's proposed access off Alexander Lane and the access off of Chateau which was originally proposed during the preliminary allocation process, and concerns of water availability.

AP Knight reminded at their August 15, 2007 meeting the Commission determined the main access should come from Chateau Drive and directed staff to do any necessary investigation on the feasibility of the Chateau Drive access. AP Knight explained that her investigation included the County Engineer, the geotechnical report and the geological feasibility investigation report both prepared by Earth Systems, Inc. and other documents contained in the application packet. AP Knight provided a power point presentation explaining the project which included:

- Assessor's Parcel Map
- Proposed Subdivision Map with road access from Alexander Lane
- Description of parcel access between two neighbor's properties, showing existing ingress/egress easement, road construction and utilities (Attachments I & J)

- Aerial GIS view
- Proposed Subdivision Map with road access from Chateau Drive which was submitted during the preliminary allocation process
- Detail of roadway from Chateau Drive
- Amount of frontage improvements required
- Indication of how the parcel has a significant impact on connecting two roadways (detailed in color)

AP Knight explained that staff had determined based on the initial study process and incorporated mitigation measures, that either choice will have minimal effect on the environment if mitigation measures and conditions of approval are followed.

AP Knight further informed the Commission that during her investigation fire standards are very specific for dead end roads and fire protection and referred to Appendix B, Section 17-B.4I of the County Code and Chateau Drive is currently a dead end road.

Commissioner Scattini asked for clarification on Chateau Drive being a dead end road. AP Knight explained that Chateau comes off of Cannon Road, and she wanted to called attention to road requirements for public safety and fire protection and as the road now stands, Chateau is a dead end road.

AP Knight called attention to Condition No. 28 which referred to management and conservation of woodlands as described in Ordinance No. 757, Chapter 33 of the San Benito County Code. AP Knight explained that after discussions with the applicant's engineer and further review, Part C should be removed as this refers to clear cutting as there will not be significant canopy removal.

Commissioner DeVries asked if re-forestation could be tied to the conditions of approval. AP Knight explained that other portions of Chapter 33 would apply and conditions of approval includes that prior to recordation of the final map, the re-planting of trees or bonding would have to occur to comply with those conditions.

Commissioner DeVries suggested that Part C be modified rather than deleted. After discussion among the Commission, Counsel and staff, AP Knight clarified that Part C would be modified and contain the language "all re-forestations must be completed or bonded prior to recordation of final parcel map".

AP Knight advised the Commission that should the Commission approve the project with access off of Alexander Lane, that a condition of approval would need to be added;

*Prior to recordation of the parcel map, the applicant shall obtain a letter from Earth Systems Specific that the recommendations made in geotechnical engineering report File No. SH-10460-SB shall also be applicable to the new parcel map showing the roadway coming off Alexander.*

AP Knight explained that as the geotechnical engineering report exists with this project, it only has a map and only specifies the road access from Chateau. AP Knight also added that should be project be approved with either access that an additional condition would need to be added;

*Prior to recordation of the parcel map, the applicant shall obtain a letter from Earth Systems Specific that the recommendations made in geotechnical engineering report File No. SH-10460-SB shall or do also apply to Lot #1 and Lot #2.*

Further noting the geotechnical engineering report discusses only Lot #3. AP Knight stated that recommendations were based on specific items such as information in the application and site visits conducted. AP Knight added that additional information would be presented. The recommendation by staff is on actual information that was submitted and stated that staff recommends the Planning Commission adopt the Mitigated Negative Declaration and approval of MS 1203-07, based on the findings and subject to Conditions of Approval contained in the staff report and recommends the road access come off of Chateau Drive and not Alexander.

AP Knight also advised the Commission that staff does not have a map showing Chateau Drive; the project would have to be continued until that map is submitted. Should the Commission select Alexander Lane then in fact a final map has been submitted for consideration of approval.

Commissioner Scattini stated he recalled that direction was given at an earlier public hearing to submit a map with access off of Chateau. AP Knight stated she listened to the recordings of the previous meeting and that direction was in fact given by the Commission which staff requested and was not submitted by the applicant.

Commissioner DeVries asked for direction from Counsel. DCC Murphy stated procedurally that should the Commission consider access from Alexander, the added condition of a clearance letter from the geotechnical engineer, there would a CEQA issue and a post-hoc analysis of environmental impacts and recommended not to consider that option and instead continue the project for the additional work to be done for Alexander Lane. DCC Murphy stated she did recall that the Commission giving direction for access from Chateau Drive.

Vice-Chair Machado also recalled that the direction was given at a previous meeting. Commissioner DeVries asked for clarification on voting for access from Chateau. DCC Murphy reiterated that a final map for Chateau has not been submitted.

AP Knight advised the Commission that the project has previously been continued to a date uncertain and had been published as a public hearing item for this meeting and that through discussions with commenting departments only minor changes would have to be made in the conditions of approval for access from Chateau if a map is provided.

Commissioner Bettencourt advised he had conducted a site visit with the applicant and their engineer Anne Hall and counted 40 + trees that would have to be removed, that grading would be severe and concluded from his site visit that it would be a great impact on the environment if Chateau was the access. Commissioner Bettencourt then suggested that a vote should be taken.

AP Knight reminded the Commission that her presentation was given on the materials she was provided and that her recommendation was based on those submittals by the applicant.

DCC Murphy clarified to the Commission that staff had requested the information that the Commission had directed and the applicant refused to provide that so the situation would be that of the applicant's own making.

*NOTE: Commissioner DeVries excused himself briefly and left the room (6:50 PM)*

Commissioner Bettencourt noted that he spoke with DDPW Nazemi regarding the road and the removal of trees and that he understood the access from Alexander through the right-of-way would have to be dedicated to the County.

DCC Murphy added that the County standards allow for private access rights. AP Knight stated that an irrevocable offer of dedication is required by Public Works in the conditions of approval.

Vice-Chair Machado then opened the public hearing.

*NOTE: Commissioner DeVries returned and is seated on the dais (6:52 PM)*

Anne Hall, San Benito Engineering, representative and engineer for the applicant stated that she recalled the direction was given to research the access off of Chateau and the applicant is not interested in access off of Chateau, not interested in providing a map with access off of Chateau and requests access from Alexander Lane. Ms. Hall also stated that she provided information about a tree count and the information she was asked for.

Ms. Hall stated that the original map was put together by Roger Grimsley and the PA carried no CEQA analysis with it and could not be considered as submitted. Ms. Hall also provided her own power point presentation stating that the geotechnical report addressed building foundations, not roadway for either access. Ms. Hall also stated that both Chateau and Alexander were accepted by the County when the Alexander Lane subdivision was created.

Ms. Hall stated that the applicant is still requesting access come from Alexander which would create minimal cut and fill and minimal removal of oak trees and requested that the Commission vote on what is before the Commission tonight which is access from Alexander.

Ms. Hall also requested that Condition #12B be removed and use of the legal access through the easement to access the subdivision; Condition #13A be deferred as surrounding parcels have already been developed; and Condition #13B should also be removed. Ms. Hall asked the Commission to adopt the mitigated negative declaration, and vote for approval of the Minor Subdivision No 1203-07 based on finding and subject to the conditions of approval contained in the staff report before the Commission and make the changes as requested to remove Condition #12B, defer or waive Condition #13A and remove Condition #13B.

Commissioner Scattini asked Ms. Hall if she believed Chateau would eventually be connected. Ms. Hall stated that she believed it would and that the applicants are willing to sign a deferred improvement agreement for their share when it is connected.

DCC confirmed that staff had a copy of the power point presentation given by Ms. Hall. Clerk Maderis stated she did and it would be included in the permanent file.

Lora Hicks, 300 Chateau Drive addressed the Commission and stated that she owns the property across the street from the applicant and pointed it out on the map. Ms. Hicks stated that if a road goes through she would be able to see if from her front room deck and that her property was developed in the 1970's. Ms. Hicks stated she felt putting a road through would destroy an important habitat.

Joe Smith, 441 Alexander Lane stated he objected to using Alexander Lane and it would cause a great impact and favored Chateau and was willing to give up a corner of his property for access from Chateau as shown in the original map.

Commissioner Bettencourt asked Mr. Smith if there was a drainage pond on the corner of his property. Mr. Smith stated he knew of no pond on his property. AP Knight added that a pond or natural drainage could easily be moved.

Ms. Hall provided information that the detention pond is overgrown and probably not noticeable and shouldn't hold water very long.

Julie High, 550 Alexander addressed the Commission stating that using Alexander goes against the goals of the County Code and San Benito County Ordinance citing from Page 3; measures shall be taken to discourage inter-neighborhood and through traffic movement on non-arterial streets through street alignment and intersection design and that his was part of staff's recommendation not to make an existing cul-de-sac into an intersection between two neighborhoods. Ms. High stated she felt this would be dangerous as it would create a blind approach.

Bill Figini, 237 Chateau Drive asked the Commission who would maintain the dirt road. DDPW Nazemi explained the community would have to petition the County to take over the maintenance and until that time maintenance of the improvements rely on development. AP Knight went on to explain the process for the County to maintain roadways.

Amando Lopez, 444 Alexander Lane spoke against using Alexander Lane and requested the Commission approve the access from Chateau. Mr. Lopez stated he agreed with the staff recommendation.

Tony Stafford, the applicant for the subdivision, stated he was aware of the wildlife in the area and has a petition to keep the area rural and requested deferral of improvements in the conditions of approval.

With no other speakers wishing to address the Commission, Vice-Chair Machado closed the public hearing.

Commissioner DeVries reminded his fellow Commissioners where they were procedurally, that the issue of Alexander vs. Chateau had already been decided in favor of Chateau by the Commission, that staff had been directed to return with access from Chateau which was not provided and the applicant was not interested in pursuing access from Chateau.

Vice-Chair Machado stated he recalled that direction was given to staff for access from Chateau to be investigated.

After discussion between Commissioners DeVries and Machado, Commissioner Scattini stated he recalled that the direction was to have access through Chateau and the utilities through the Alexander Lane easement and that was what was decided on.

Commissioner Bettencourt stated he agreed with Commissioner Scattini. DCC Murphy clarified that if a vote of denial had been passed at the last meeting, the applicant would have had to wait one year to re-submit based on the requirements of the Subdivision Ordinance.

AP Knight advised the Commission that during preparation of her final staff report she listened to the meeting tapes and was able to confirm Commissioner Scattini's motion for the access road from Chateau Drive, the motion was seconded by Commissioner Bettencourt and the motion was very clear.

DCC Murphy advised the Commission that they could grant a continuance, deny the project, or condition that the access road come from Chateau prior to recordation of the final map.

PP Turner added that a Condition of Approval could be added that improvement plans show access off of Chateau. DCC Murphy added that several conditions could be revised in order to get the final map recorded.

DoP Henriques stated that if the applicant was not interested in what the Commission previously directed, the Commission would have to choose to approve or deny the project as presented.

DCC Murphy clarified that there was no previous approval. PP Turner added that there was no map showing access from Chateau, further analysis was required and there is still no map.

Vice-Chair Machado questioned why the project was back before the Commission DoP Henriques stated the public hearing may have been published as the applicant has been very clear that they were not interested in the Chateau access.

AP Knight clarified that the public hearing notice was requested by the applicant to come back before the Commission on this date to expedite the process.

After a lengthy discussion between staff and the Commission, Commissioner Bettencourt asked to again hear from the applicant.

Anne Hall, San Benito Engineering stated that the applicant was not 'thumbing their nose' at the Commission direction, they were not interested in access from Chateau.

Tony Stafford addressed the Commission requesting that a vote be taken to approve or deny his project.

DCC Murphy stated the project could be approved with improvement plans and conditions but highly recommended that staff return with a cleaned up staff report reflecting the conditions that were recommended for removal, added or revised before a vote is taken. PP Turner added that conditions for either option were available. DCC Murphy also added that if the access was substituted, a re-circulated document must be done or if the substitution was not deemed a significant enough change, CEQA findings must be prepared in writing to allow for substitution of mitigation measures.

**Commissioner Bettencourt motioned to deny MS 1203-07 based on the project as presented with access from Alexander Lane. Commissioner Scattini offered a second to the motion which passed (3-1-1) with the following vote: AYES: Bettencourt, DeVries, Scattini; NOES: Machado; ABSTAIN: None; ABSENT: Tognazzini**

DoP advised that any appeal must be filed within 10 days of this decision to the Board of Supervisors.

Vice-Chair Machado called for a brief recess at 7:58 PM. The meeting was reconvened at 8:07 PM.

***CONTINUED ITEM ~ COMMISSION ACTION***

***PUBLIC HEARING ITEM***

**5. Hillside Ordinance ~ Design Review guidelines**

PP Turner provided a power point presentation showing elevations and GIS map displays and summarized what had been previously presented in earlier public hearings. PP Turner explained this was a high priority of the Commission and the Board and hoped to expedite a recommendation to the Board.

PP Turner stated that applicable areas needed to be further identified and the Hillside Ordinance applied only to new major subdivisions. He noted the current Ordinance as written appeared to be too strict with regard to development requirements and too complicated. PP Turner explained that staff will provide solutions through design review and GIS determinations if in fact design review would be required and to ensure appropriate development, but not prohibit development.

One goal of the new Ordinance could be to balance the interest of the community and the property owners and be interpreted without imposing arbitrary limits on height, size or other design characteristics to ensure each lot is developed in accordance with it's unique location and topography and to incorporate reasonable hillside mitigation measures such as landscaping, building materials, color pallets and other materials which ensure the property owners reasonable use and enjoyment of the property while protecting the viewsheds

Referring to the power point displays, PP Turner explained to the Commission the various views from specific locations and how elevation view points were noted.

PP Turner explained that using the 200 ft. example from ground level would indicate the location up a hillside from the viewer's standpoint where design review would be required. PP Turner also reminded the Commissioners and the public that the old Ordinance was based on slope percentages, where the new ordinance is based on view and GIS overlays on the parcel maps. PP Turner stated what is still needed are visual analysis of the various heights, to choose the appropriate height level for design review; either one height or mixed heights; CEQA determinations are required and final language for the Ordinance to link design review to those areas. The Commission can then forward a recommendation to the Board of Supervisors.

Anne Hall, San Benito Engineering asked for clarification on elevations and view sheds. PP Turner explained that if the 200 ft. is chosen, anything under that 200 feet would not be subject to design review.

Commissioner Bettencourt asked if the view was level from a specific area. PP Turner stated the target would be the chosen level from the viewer points.

Vice-Chair Machado stated that all points were fairly flat and examples might be better if they were visual.

Commissioner DeVries asked if any of the presentation was new which PP Turner stated most of it was done before with the exception of Fairview Road being a new viewer's point as requested at the last Commission meeting and the number of parcels that would be affected.

Vice-Chair Machado stated he felt it would be better if the Commission could conduct site visits to the areas which would give a clearer picture. Commissioner DeVries concurred that field observations should be done by the Commission and that information be provided to staff.

Brad Sullivan, Attorney with Lombardo & Gilles stated that he didn't feel there would be any new lots created at the 200 ft. level.

DoP Henriques added that increased mitigations could be considered if houses were higher on a hill.

Commissioner Bettencourt asked if precise GIS maps could be provided for the lots that would be affected. PP Turner stated GIS maps could determine which lots would require design review and which lots would not and reminded that the new ordinance does not apply to lots of record. Commissioner DeVries added that construction of homes in sensitive areas may be subject to design review and also stated that he liked the intent and purpose of the new language in the draft Ordinance.

DoP Henriques asked the Commission to provide comments on the language in the draft Ordinance in their packet in order to move forward. Commissioner DeVries asked if the language had any significant changes, which PP Turner stated there was not, but wanted to come up with some simpler language that was not so technical which would tie maps to the Ordinance.

After further discussion, the Commission concluded that the new Ordinance was headed in the right direction and looked good.

## **WORKSHOP**

### **6. Potential Future Commercial Districts**

PP Turner advised that there has been interest from the Board, the public and the Commission to consider preparing a strategic plan to identify potential locations for future commercial uses in order to draw businesses to the County and generate additional revenue through sales tax.

PP Turner listed the current areas in the County stating that most of the commercial areas are historical and the only vacant commercial zone currently is Hwy 129 and Searle Road. PP Turner explained that there are current applications on file for the corner of Hwy 25 and Fairview Road and the corner of Union Road and San Benito Street, however both applications are deemed incomplete at this time.

PP Turner provided a power point presentation showing a variety of locations throughout the County that could be considered for commercial zones. PP explained that staff has been directed to pursue this plan ahead of the General Plan Update. DoP Henriques added that staff was looking into if it is appropriate to have an economic consultant do a county-wide economic analysis to parallel the Phase 2 work of the General Plan Update.

DoP also advised the Commission to keep in mind Cal Trans future road projects when identifying areas as this may affect future parcel designs.

Jim West, Granite Rock asked that industrial areas be added to the study zones which would generate additional revenue for the County. DoP noted not at this time.

Commissioner DeVries asked why this was being considered ahead of the General Plan Update. DoP Henriques explained that the Board has requested this be done now.

Commissioner Bettencourt asked if something could be done like a sphere of influence for commercial zones. PP Turner advised that a fiscal analysis could look at that scenario.

DoP Henriques stated that the process would include public hearings, community workshops and surveys before any decision is considered.

DCC Murphy added that public hearings before the Commission and the Board would be held before any zone changes or general plan amendments are finalized.

Commissioner Scattini stated he understood that a truck stop was being planned for Highway 25 and Highway 156. PP Turner advised there were no applications currently on file. Vice-Chair Machado asked how an analysis would be done for a specific project. PP Turner advised that a General Plan Amendment and subsequent Zone Change would have to occur.

DoP stated this study was in the preliminary stages. Commissioner DeVries stated he believed more direction is needed from the Board as to why this is being considered ahead of the General Plan Update.

PP Turner stated that he understood the Board did not want to wait for a final General Plan Update. Commissioner Bettencourt asked if it was possible if an area could be selected and then let a developer apply for the development. PP Turner stated that staff would be in favor of an application for a General Plan Amendment, Zone Change and C District Review in identified areas should there be an application.

Commissioner DeVries asked about an applicant who does apply for a commercial use and doesn't meet requirements such as CEQA or an EIR and if that applicant would have a legal issue with the County. DCC Murphy stated it would be very difficult to prove detrimental reliance against a governmental agency.

DoP Henriques stated that there is a lot of retail activities not being captured in San Benito County and there have been inquiries if the County would have any sites in the future.

Commissioner Bettencourt stated he concurred with Commissioner DeVries in regard to getting ahead of the General Plan Update, but felt this could act as a 'band aide'. Commissioner DeVries said he understood and was supportive of economic development but was concerned about adjacent property owners and their awareness of such planning.

DoP Henriques and PP Turner advised that newspaper notices, public hearing notices and other legal requirements would be generated. How far the Commission recommends to the Board and how far the Board wishes to go would be determined later. DCC Murphy stated that notification rights are identified by Courts in denying detrimental reliance claims.

Vice-Chair Machado stated that possibly an overlay could be placed until such time a project is planned, but the ultimate goal is to protect agriculture.

Commissioner DeVries summarized that he was not clear on what direction the Board wanted. DoP stated he would relay the Commission's request for further clarification and suggested that each Commissioner could speak with their respective Board member if they wished. DoP Henriques also reminded the Commission that staff was acting on direction of the Board through the CAO.

Commissioner Scattini asked about the time frame. DoP Henriques advised that the Board would like an update within the next couple of months.

**INFORMATIONAL – NON-ACTION ITEM**

**7. Ag Exempt Ordinance – final proposed Ordinance provided as updated information**

PP Turner advised the Commission that the proposed amended Ordinance has been forwarded to County Counsel for review. Clerk Maderis advised the Commission that the item was placed on the Agenda for review by Commissioner DeVries who was absent at the previous meeting.

Brad Sullivan, addressed the Commission suggesting that the allowed uses in agricultural zones be re-visited and possibly an intermediate step could be added to include noticing neighboring properties.

Commissioner Bettencourt suggested that Mr. Sullivan provide his input when the Ordinance is presented to the Board since it had already been voted on at the Commission level.

Clerk Maderis explained that the amounts included in the revised language were at the direction of Chair Tognazzini as he felt it necessary to have some type of trigger included. Clerk Maderis explained that the figure of \$3,500 is the amount required for a property owner to remain under contract in the Land Conservation Act and the documents providing proof are the same as those submitted annually to the Assessor's Office.

Commissioner DeVries stated he was extremely pleased with the final document.

**8. Materials for Commissioners Bettencourt, Scattini & Tognazzini for  
Annual California Counties Planning Commissioners Conference  
~~September~~ October 26-27, 2007**

Clerk Maderis advised that the Commissioners attending the Annual Conference have been provided with conference materials, business cards and related materials and would agendaize this item for the next meeting for a report through the Chair.

DCC Murphy reminded the Commissioners not to discuss County business amongst themselves while at the conference.

**ADJOURNMENT**

**ON A MOTION BY COMMISSIONERS BETTENCOURT/MACHADO, WHICH  
PASSED UNANIMOUSLY BY OF ALL COMMISSIONERS PRESENT THE MEETING  
WAS ADJOURNED AT 9:17 P.M.**

*Minutes prepared by:  
Trish Maderis*

*Attest:  
Art Henriques, DoP*