

SAN BENITO COUNTY PLANNING COMMISSION

February 17, 2010

Minutes

PRESENT: Machado, Culler, Bettencourt, Scattini & DeVries

ABSENT: None

STAFF: (DoP) Art Henriques, Assistant Director of Planning (ADoP) Byron Turner; Senior Planner (SP) Lissette Knight, Public Works Engineer (PWE) Art Bliss, (AP) Assistant Planner Laura Hall, (ACC) Assistant County Counsel Barbara Thompson and Clerk Janet Somavia.

Chair Bettencourt opened the Meeting at 6:02 p.m. as he led the pledge of allegiance to the flag and reiterated the standing rules of order.

DIRECTOR'S REPORT

February 9, 2010 Board of Supervisor meeting.

BLM Clear Creek Management Plan. Will be taking comments received thru 3/5/10 to the Board.

Budget for 2nd quarter was discussed and Fiscal Impact Report.

PUBLIC COMMENT

Chair Scattini opened the meeting to public comments. There being none Chair Scattini closed the public comments.

CONSENT AGENDA

1. Acknowledge Public Hearing Notice
2. Acknowledge Certificate of Posting
3. Minutes of February 3, 2009

CONSENT AGENDA continued.....

4. **Preliminary Allocations ~ 1 Year Time Extension Request**

PA 08-07	James Matthews	7 Allocations
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Commissioner Bettencourt moved to approved items 1 thru 4 of the consent agenda. With a second by Commissioner Culler, the motion carried with a **5-0 vote**.

PUBLIC HEARING ITEM ~ COMMISSION ACTION

5. **USE PERMIT NO. 1009-08:** OWNER/APPLICANT: Platinum Theaters Inc.
LOCATION: 500 John Smith Rd, Hollister REQUEST: Applicant requests an extension and amendment to existing Use Permit No. 1009-08. This request will add four (4) additional concert events to their calendar for a total of 18 Saturday events between the months of May through September. ZONING: Rural (R) ENVIRONMENTAL EVALUATION: Negative Declaration.
PLANNER: Lissette Knight (lknight@planning.co.san-benito.ca.us)

PROJECT DESCRIPTION:

The property owner/applicant is requesting an extension/amendment to their existing Use Permit Application. The existing Use Permit application allows the property owner/applicant to conduct 12 music concerts a year (* Saturday evening concerts during the months of May through September from 6pm to 10pm). The owner applicant is requesting that the Use Permit be amended to add four (4) more Saturday evening (6-10pm) concerts for a total of 16 Saturday music concerts a year between May - September. Primary access for the music events are from a private gravel driveway that is off of John Smith Road (Collector Road) from Fairview Road (Arterial Road).

On January 20, 2010 the Planning Commission approved four (4) additional events as well as extending the concerts series from May – August to May – September.

There was some discussion regarding expansion and when the project could return to the Commission. SP Knight explained that if there were to be further expansion it would then come back to the Commission, otherwise it would be monitored by Staff on a yearly basis.

Chair Scattini opened the discussion for public comment. There being no public comment Chair Scattini closed the public comment period.

Commissioner Machado moved to approve Use Permit No. 1009-08 (Extension/Amendment) based on the findings and conditions of approval. With a second by Commissioner Bettencourt the motion carried with a **5-0 vote**.

DoP Henriques stated that this decision would be final until the 10 day appeal period had expired.

CONDITIONS OF APPROVAL

Standard Conditions:

- 1. Hold Harmless:** Upon written notice by the County, 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 any applicable proceedings. San Benito County reserves the right to prepare its own defense. [Planning]
- 2. Conformity to 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. Any increase, change, or modification in the nature or intensity of the land use on the site shall be subject to further Planning Commission review and approval. [Planning]
- 3. Compliance:** All conditions of approval from previous project approvals (April 1, 2009 & January 20, 2010) shall continue to be met. [Planning]

INFORMATIONAL – NON-ACTION ITEM

- 6. DRAFT Habitat Conservation Plan Feasibility Report**
PLANNER: *Laura Hall* (lhall@planning.co.san-benito.ca.us)

PROJECT BACKGROUND/DESCRIPTION: On June 2, 2009, the Board of Supervisors approved a contract for TRA Environmental Sciences Incorporated to do a Habitat Conservation Plan Feasibility Study. This study updates and expands work previously done in the County in this area. Staff provided Planning Commission with a verbal update on the progress of the study on January 20, 2010. This study has been completed and on February 1, 2010, TRA provided staff with the ‘Draft Habitat Conservation Plan Feasibility Report’. On February 4th, staff forwarded electronic copies of this report to Planning Commission, and sent out hard copies to wildlife agencies, cities, water districts, and surrounding counties for comments.

On March 9, 2010, Staff will present the ‘Draft Habitat Conservation Plan Feasibility Report’ to the Board of Supervisors for comments. Staff will then incorporate comments and bring this item back to the Board on March 23, 2010. The Board will decide whether the County should do a Habitat Conservation Plan (HCP) or suggest some other alternative.

Staff is providing the Planning Commission with the ‘Draft Habitat Conservation Plan Feasibility Report’ for comments before presenting it to the Board.

Due to the power point being inoperable, AP Hall briefly went through the draft plan with the Commission. (A copy of this Plan is part of the permanent record on file at the Planning Department).

Chair Scattini asked if the Commission could have more time to digest all this information. DoP Henriques stated that tonight they give an introduction and if more time is needed it can be brought back at a later date.

There was a great deal of discussion regarding a regional plan versus individual study; high fees and location of the species. AP Hall stated that fees were based on the Natomas Basin, and handed out a new fee schedule that was more compatible with San Benito County. She also stated that areas indicated only represents where species have been found. Can clarify quantity when report is complete.

DoP Henriques indicated that Staff and TRA used existing data and the CNDD database to gather information. Field research is too costly at this time.

Chair Scattini opened the discussion to public comment.

Brian Curtis – Stone Creek Properties - This plan proposes to encompass the north county. The majority of this land is zoned 5 acre which is low density. He believes if you use certain planning tools you can develop and impact would be minimal because of the low density. At the fees suggested the cost would be prohibitive for an individual on a five acre lot.

Scott Fuller – San Juan Oaks – The public has not had a chance to access this. Could it be put on the website for public access. Individual projects have to go through a lot. They take decades not years to establish. HCP's require someone to run them. You cannot run an organization if you only have a small amount of money. If you only have a few developers paying this fee at \$12,000 you will not have enough funds to run an organization. He does not agree with the 50 acre threshold of having to pay a fee and dedicate land. He then questioned the developers having to pay a fee or dedicate land. In some instances the developers still need to do further study. Maybe the consultant should be asked if this is indeed the case. Further, San Juan Oaks has obtained Section 7 Federal Endangered Species Act authorization as part of the U.S. Army Corp of Engineer permit. This does allow San Juan Oaks to develop in a known endangered species area. He feels that anyone with this type of permit should be grand fathered.

Commissioner DeVries asked Mr. Fuller what it cost in time and fee for this permit. Mr. Fuller stated that it cost around \$40,000. However, they still have mitigation fees.

Al Guerra – Ridgemark - Human habitat is limited to 5% of the acreage of the County. It would seem unlikely that we would encroach on the southern 80% of our County. Maybe we should share these thoughts with State and Federal authorities that we are doing are share of saving these endangered species. We already have a habitat plan in place. It seems like odd timing when we have other more important issues.

Paul Rovella - Would like some additional time for review. Would like to see March 9th date pushed back. The habitat conservation plan would incorporate 23,000 acres in the north part of the county. Where is this located?

There being no further comment, Chair Scattini closed the public comment period.

The Commissioner DeVries asked Staff what is the Planning Commission to do? Do they just want comments and suggestions? DoP Henriques stated that they would like the Commission and public comments to take to the Board.

ADoP Turner stated that right now we are not following the ordinance. We are currently looking into whether this is feasible. That is what you are looking at right now.

Commissioner DeVries asked that since TRA established that this is feasible, it would help greatly if someone from TRA was available to answer questions.

The consensus of the Commission is that they need more time. Would like to further review on the 17th. Would also like to see that other organizations and the agricultural community have the time to review.

Staff will see that this draft is on the website.

Commissioner DeVries moved to bring the Draft Habitat Conservation Plan Feasibility Report back at the March 17th meeting. With a second by Commissioner Bettencourt, the motion carried with a **5-0 vote**.

DISCUSSION ITEM

7. Preliminary Allocations – Family Exemptions

PLANNER: Lissette Knight (lknight@planning.co.san-benito.ca.us)

Staff has received an inquiry regarding Family Member Exemptions from the Preliminary Allocations procedures and its method of implementation. Due to economic times, there have been multiple options provided to first time home buyers. This brings the discussion of family lots splits into a greater light.

The San Benito County Code, Section 21.07.004 lists the exemptions that are allowable from the Growth Management Ordinance. On December 16, 2009, this list was further expanded to consider expanded family exemptions.

Proposed Scenario

The inquiry received by staff was mainly regarding Section 21.07.004 (J) (4) which states:

“At the time of application for the land division, the property owner shall reside on the lot that is being subdivided.”

The particular scenario in question is this: What if the property owner did not reside on the property but instead, the children reside on the property and the land division is to provide the child or children of the property owner the opportunity to purchase the home on the property through the first time homebuyer program?

ACC Thompson explained that rather than a discussion, the Commission can direct the Planning Staff to amend the ordinance.

There was a discussion about the restrictions and what can be done to remove this restriction.

ADoP Turner explained that this ordinance has been redone in the last 30 days. We need to make just this change instead of trying to interrupt the whole ordinance. This section is not favorable with the current economy. ADoP Turner asked if the Commission is interested in pursuing this? If so Staff will bring it back with ways to accomplish the change.

Chair Scattini then opened the public comment period.

Don Marcus – Hollister – Mr. Marcus passed out a copy of the ordinance to the Commission. Mr. Marcus suggested that if you are going to make corrections then clean-up the complete ordinance. First, if you have a deed restriction is virtually impossible to get financing on a deed restrict property. In many cases the deed restriction does not show on the ownership papers. Instead of a deed restriction there could be other ways to penalize the owner if the property was sold before the 10 year restriction. Secondly, property owner should reside on the property. Why do you need to live on the property? You can keep a viable ordinance without this restriction. Thirdly, exemption granted only once. Why do you get to use this once? We need to get ride of the family exempt ordinance. The applicant just needs to go through the sub-division process. The only benefit is some cost savings. Timing is of the essence, since in July you can move forward with the sub-division process.

With there being no further public comment, Chair Scattini closed the public comment period.

The Commission had a brief discussion regarding the deed restriction and other changes recently made to the Growth Management Ordinance.

SP Knight suggested that Staff discuss with County Counsel regarding changes that can be done without triggering CEQA. Staff can then come back to the Commission with further information. Changing the property owner part would not be a problem. However, deleting the deed restrict would.

Commissioner DeVries suggested the Staff make this one change now and look at the other changes for the future.

Commissioner Scattini asked that this be brought back on the 17th of March. Staff agreed that they can report back at this date.

8. Commissioner Announcements/Reports/Discussions - None

ADJOURNMENT

There being no Commissioner announcements/reports or discussion, Chair Scattini asked for a motion of adjournment. Commissioner Bettencourt moved for adjournment. Commissioner Machado offered a second to the motion which carried with a **vote of 5-0**. Adjournment at 7:43 p.m. to March 3, 2010.

Minutes prepared by:
Janet Somavia
Planning Commission Clerk

Attest:
Byron Turner
Assistant Director of Planning