

SUTTER COUNTY PLANNING COMMISSION

MINUTES

July 2, 2008
Supervisors Chambers
Hall of Records
466 Second Street, Yuba City

1. Call to Order

Chairperson Shannon called the meeting to order at 7:00 p.m.

2. Roll Call

Chairperson Shannon requested the clerk call the roll of the Commission. The following members were present and excused:

Members Present: Commissioners Diljit Bains, Paul Basi, Annette Bertolini, Jose Flores, J. R. Griffin, John Sanbrook, .and Chairperson Jana Shannon.

Members Excused: None.

Staff Present: Planning Division Chief Lisa Wilson, Principal Planner Steve Geiger, Assistant Planner Kevin Yount, Deputy County Counsel Janet Bender, Assistant Director Randy Cagle, Environmental Health Specialist Jan Hill, Public Works Staff Al Sawyer and James Walton, and Office Assistant Gail Gould

3. Pledge of Allegiance

Commissioner Griffin led the audience, staff and Commission in the Pledge of Allegiance.

4. Approval of Minutes

The minutes of the meeting of June 18, 2008 were approved as submitted on motion of Commissioner Sanbrook, seconded by Commissioner Bertolini and carried by a unanimous voice vote of the Commission.

5. Comments from the Public

None.

Public Hearings

6. Project #08-002 - A use permit to allow 1.38 acres of a 15 acre parcel to be used for an indoor/outdoor banquet and reception facility; AG (General Agricultural) District; located at 3017 Paseo Road, Live Oak; A. P. #09-260-021; applicants/property owners - Gary & Sara Smith

Assistant Planner Yount presented the request for a use permit to allow 1.38 acres of a 15 acre parcel to be used for an indoor/outdoor banquet and reception facility and stated staff recommends denial of the project.

Commissioner Bains asked if there was any designation for the property since it is in the Live Oak Sphere of Influence. Planning Division Chief Wilson said the City has not rezoned that property for annexation purposes.

Commissioner Sanbrook asked why staff even took in the application since it is neither a permitted use or one that is permitted with a use permit. Planning Division Chief Wilson replied staff will always advise an applicant there is no code allowance to approve the project, but staff must process the request.

Commissioner Basi asked why there were no conditions. Assistant Planner Yount explained there were no conditions because staff is recommending denial of the project.

Chairperson Shannon asked if this was applied for with the idea of a quick denial. Planning Division Chief Wilson said since this is a use permit application, it would not go before the Board of Supervisors. It would have to be appealed if the Commission denied the application.

Chairperson Shannon opened the public hearing.

The applicant's representative, Dennis Nelson, 950 Tharp Road, said the reason the application is for a use permit is because there is some historical precedent in Sutter County for this type of action. There is one facility in Sutter approved by use permit in 1999, which is on a similar type property. That is still in use today. The other one that was in existence was on Railroad Avenue. Although it was never permitted, the owner was in the process of bringing it into compliance but was killed in an accident before he could do so. There are no places in Sutter County that allow uses like this to take place. The applicant is asking for a rural and outdoor setting and that is what this is. Mr. Smith is trying to allow an opportunity for annual events to be permitted in the County. The applicant is asking for 12 events per year. Since we are not talking about a large usage, traffic should not be an issue on that road. Since this is only to be 12 events per year, the width of the street and parking improvements would not be an issue and the applicant should not have to pave. If the Commission wished to go forward with this, we would go back and have soils testing done and show there are existing areas where we can expand either the existing septic system or place a new system. Mr. Nelson said as far as restrooms are concerned, current style portable toilets are not the same as the old blue Ben. There are trailers set up for that.

Chairperson Shannon asked what the status was of the restrooms on the project approved in 1999. Mr. Nelson replied they did put in permanent restrooms. Chairperson Shannon asked if the project in Sutter was surrounded by crops. Mr. Nelson said there was orchard ground around it on at least two sides.

The applicant, Gary Smith, showed the Commission photographs of the property. Mr. Smith said they were in the middle of rehabilitating the property because it was once a dairy farm. They are also going to be part of the agricultural community. They have lavender and a vineyard. While they were rehabilitating this, they realized the setting and the structures were large enough to house several of their birthday parties of their families and friends. They also realized a need for a place like this. They are not looking to steal large events or hooliganism. The event they did have, Bistro in the Buttes, was very successful and they want to come back.

Jon Blevins, 2722 Paseo Avenue, Live Oak, stated he was not totally against the project, but he was concerned about the effect the added traffic to Paseo would have. Paseo Avenue, west of Larkin, is very narrow. There is already quite a bit of traffic. If two full size vehicles traveling in opposite directions meet, one sometimes has to stop and let the other one pass. Mr. Blevins said the road may not be able to handle the extra traffic this project would bring on, but also the local traffic.

Chairperson Shannon closed the public hearing.

Chairperson Shannon stated she was supportive of this project in theory. The Commission had this discussion a while ago when the Commission had an illegal expansion of a hall. This project is not complete without adequate bathrooms. The area in Sutter is not the same. Chairperson Shannon said she wanted to see a lot more information before she could address this.

Commissioner Basi stated he is in support of this type of project and he would like to see more of these types of projects in our community, and many people travel outside of our community to hold functions. Commissioner Basi would like to see the issues addressed as well.

Commissioner Bains said she concurs with the previous comments and would like to see more information.

Commissioner Bertolini agreed. She said she drives by it often and it is a beautiful property. She would like to see more information.

Commissioner Sanbrook stated this is a worthwhile project, but it doesn't belong in an agricultural zone.

Commissioner Griffin stated the road is extremely narrow and he cannot support it at this time.

Commissioner Sanbrook said Mr. Nelson referred to the project in Sutter, but a precedent does not make it right.

Planning Division Chief Wilson stated if the Commission wishes, staff can come back with an initial study and conditions.

Chairperson Shannon said one of the trends she sees is venues like this in an outdoor facility. She said she thought it would be worthwhile to look into a discussion with the Board of Supervisors and expanding the agricultural zoning. Chairperson Shannon said she would like to propose to continue this and see if staff can come up with some additional information to make this work.

Commissioner Bertolini concurred.

Commissioner Flores asked Mr. Smith if he would be buying more land if this is successful so there would be no land for ranchettes around there. Mr. Smith replied he could not see buying any more. It is hard to handle the 15 acres he does have. He has no intention of bringing in ranchettes. Commissioner Flores stated he like the project itself.

Chairperson Shannon moved to continue this to an open date for staff to prepare an initial study and other information pertinent to this as well as the applicant preparing more information. Commissioner Bertolini seconded the motion, which carried by a voice vote, with Commissioner Griffin voting in the negative.

Commissioner Sanbrook said the letter should be included. Chairperson Shannon directed staff to include the letter.

7. **Project #07-078 - A request to rezone the subject 8.59-acre property from AG (General Agricultural) to RAN (Ranchette) and a tentative parcel map to divide the subject property into two parcels, 3.00 and 5.59 acres in size; located at 1672 Starr Road; southwest corner of Starr Road and Walton Avenue; A. P. #23-022-082; applicants/property owners - Baldev S. & Harinder K. Johal**

Principal Planner Geiger presented the request to rezone the subject 8.59-acre property from AG (General Agricultural) to RAN (Ranchette) and a tentative parcel map to divide the subject property into two parcels, 3.00 and 5.59 acres in size and stated staff recommends approval of the project.

Chairperson Shannon opened and closed the public hearing with no testimony being received. The applicant, Baldev S. Johal, did indicate from the audience he would be happy to answer any questions.

Commissioner Bertolini moved to recommend approval of this project to the Board of Supervisors. Commissioner Sanbrook seconded the motion, which carried by a unanimous voice vote.

8. Project #08-016 - Appeal of the Community Services Director's determination that Use Permit #04-012 is null and void pursuant to Zoning Code Section 1500-8218(b) for non-activation of the Use Permit; AG (General Agricultural) District; located at 2760 Encinal Road; Live Oak; A. P. #10-153-001; appellants/property owners - Wendell & Judy Green

Principal Planner Geiger presented the appeal of the Community Services Director's determination that Use Permit #04-012 is null and void pursuant to Zoning Code Section 1500-8218(b) for non-activation of the use permit and stated staff recommends denial.

Commissioner Sanbrook stated he is confused regarding the terminology in terms of approval. This project was approved subject to 17 conditions which had to be complied with before the use permit could be activated. He asked if staff sends any communication to the applicant that the conditions are complied with and the use permit now activated. Principal Planner Geiger replied they did not. Planning Division Chief Wilson further noted staff does keep a checklist and checks off the conditions one by one when completed and confirmed by staff.

Commissioner Sanbrook stated in 2005 there was a review by staff to see if the conditions had been met. Planning Division Chief Wilson replied when the Planning Commission approved the permit, it was concerned because the project arose out of a complaint. There was a concern there might be an on-going disruption to the neighborhood. The Commission requested a one year review of the project, assuming the conditions would be complied with.

Commissioner Sanbrook asked why the Commission went ahead and granted an extension for another year if the use permit was not activated in the first year. Planning Division Chief Wilson replied the Commission was sympathetic with the applicant who was trying to comply, but had problems with the owner and the bankruptcy. Commissioner Sanbrook asked if the applicant was boarding horses during that time even though it was illegal. Planning Division Chief Wilson said he was.

Chairperson Shannon stated she was under the impression the use permit was activated and in place and the subsequent extensions were to extend it for the future. Planning Division Chief Wilson replied the permit has not been activated.

Discussion followed regarding approval of a use permit and activation of a use permit.

Commissioner Sanbrook referred to the September 21, 2005 minutes and asked why the use permit was approved for an extension. Chairperson Shannon said they were extending the approval.

There was further discussion regarding whether or not the bankruptcy legally interrupted the duration of the use permit approval.

Commissioner Bains stated that Section 8218(b) talks about the permittee, which if the permit went with the land, it would be the landowner prevented from using the use permit

due to litigation or other proceedings. Commissioner Bains said she interprets other proceedings as the bankruptcy because it affects the validity of the landowner to perform.

Deputy County Counsel Bender provided clarification on the Zoning Code section. It says litigation or other proceedings contesting or affecting the validity thereof, such as if the Commission approved the use permit, and someone challenges that approval.

Commissioner Griffin stated he was on the Commission when the original conditions were set. The use permit was the result of a complaint by a neighbor. The operator agreed to the conditions, but was unable to complete them and got an extension. The intent of the Commission at that time was to work with the operator. The applicant was not able to complete the conditions and then got another extension. He was unable to complete them then because of the change of ownership of the property.

Commissioner Sanbrook questioned the minutes of September 21, 2005, fourth paragraph, page 2, saying you cannot "revoke" something that has not been activated.

Chairperson Shannon stated at the time the current applicant/owner came to the property, based on the information here, you would think that he bought something with a use permit. If it goes with the land, she does not know. But, she would look at these Planning documents as if the intent was that there was a use permit. Mr. Dean had it and was operating. He had not complied 100 percent but he was still operating. Based on that, it was extended and the Commission said they were extending it pretty much for whomever the owner would end up being. Chairperson Shannon stated she was disturbed at the misleading way this has gone down.

Chairperson Shannon opened the public hearing.

The applicants' representative, Denis Cook, apologized for having to go through all this detail. Mr. Cook said the use permit was for Mr. Dean and not Mr. Spaich, although it does go with the property. Mr. Green had been trying to buy this property since 2005. Mr. Cook said he strongly disagreed with Counsel's opinion that this was not suspended due to the bankruptcy proceedings and read Section 1500-8218(b) of the Zoning Code. Mr. Cook said he has seen other entities use this for bankruptcies. Mr. and Mrs. Green tried to purchase this property for two and one-half years but were prevented from doing so because of the bankruptcy. It is obvious that bankruptcy prevented the Greens from purchasing the property. Mr. Cook asked the Commission to give the Greens a chance and give them another year to meet the conditions.

Commissioner Sanbrook asked Mr. Cook how the bankruptcy proceedings affected the validity of the permit. Mr. Cook said he could answer that from two standpoints. One is why would the original lessee, Mr. Dean, invest \$200,000 in a project when it is in bankruptcy and he does not even know if he would be there in a month or two. Why would anybody from a common sense standpoint spend money on a project when they don't know if they are going to be there in a month or six months? From Mr. Green's standpoint, we have the records showing that he had been trying to purchase the property since mid-2005, just eight or ten months after this use permit was originally approved. The courts

would not allow him to purchase the property because of the bankruptcy. Everything goes into suspension and you can't do any transactions. In the meantime the County said the permit expired. That affects the validity of the use permit. The permit was in suspension due to bankruptcy proceedings for two and one-half years, more or less. We are not asking for two and one-half years. We are saying a year is adequate for a time extension.

Commissioner Bains said if the current property owner did go back in the records, he would assume he had a valid permit.

The applicant, Wendell Green, read a statement he had prepared. Mr. Green said Community Services determined the use permit had run its course without being activated and therefore is null and void. Community Services would like to have us believe that since the use permit was approved, but never issued, that activation could not have been possible. On the other hand, Mr. Green said he would like to convince the Commission that since the use permit was approved, and the boarding of horses was allowed to continue under an annual compliance review by Planning, that the use permit was in fact activated.

Commissioner Bertolini asked Mr. Green if he would comply with all the conditions. Mr. Green replied he would. Commissioner Griffin asked Mr. Green how much time he would need. Mr. Green replied he could comply within a year. Mr. Green said he could probably comply in a shorter time, but he does have to meet with the Health Department and Fire Department and comply with their requirements.

Commissioner Sanbrook asked about the argument that by allowing the use to continue, the applicant was led into a false sense of security by thinking the permit was still alive. Staff's position is that without compliance with the conditions, the use was illegal. Planning Division Chief Wilson replied staff very often allows people to continue operating while they are in the process of complying with conditions, as long as there is progress toward compliance.

Community Services Assistant Director Randy Cagle stated when staff receives a complaint regarding a Zoning Code violation, it is the intent of the Board of Supervisors that the person, assuming they come in and apply for the proper permitting or zoning, be allowed to continue the use pending the final resolution. There is not a time limit placed on it. It could take in this case several years to resolve, and in some cases, it takes much less time. If the person does not come in and apply for the proper permit, then we do take more aggressive enforcement action to make them stop. But in this particular case, back in 2004 when we received the complaint, the previous applicant came in and started the permitting process.

Chairperson Shannon closed the public hearing.

Commissioner Griffin asked if the Commission is locked into not being able to continue or provide an additional time frame for compliance? Chairperson Shannon asked if that would take into consideration the time that the bankruptcy affected the property. Deputy County Counsel Bender replied if the Commission agrees with the applicant that the

running of the use permit approval period was suspended as a result of the bankruptcy action, then it could be extended for a period of time.

Commissioner Bains stated the applicants should be given a chance to satisfy the conditions. Commissioners Bertolini and Basi agreed.

Commissioner Griffin moved that the Planning Commission uphold the applicant's appeal and allow until July 30, 2009 for the applicant to satisfy the conditions and activate the use permit. Commissioner Bertolini seconded the motion, which carried by a unanimous roll call vote.

9. Miscellaneous Business from the Commission/Staff

A. Report on the Actions of the Board of Supervisors

Planning Division Chief Wilson commended the Commission for its detailed consideration of the complexities of the items tonight.

Planning Division Chief Wilson reported that the Board of Supervisors denied the appeal of the DeSilva Gates project and continued the Walnut Avenue Community Church to the end of July for a noise study to be prepared. Planning Division Chief Wilson also stated the Bains project was sent back to staff for preparation of an initial study and conditions.

B. Planning Commission/Board of Supervisors Discussion Topics

and

C. Other Business and Reports

Chairperson Shannon tabled Items B and C until the meeting of July 16, 2008.

10. Adjournment

There being no further business, Chairperson Shannon adjourned the meeting at 9:07 p.m.

Respectfully Submitted,

Lisa Wilson, Secretary
Sutter Country Planning Commission

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