



SAN BENITO COUNTY BOARD OF SUPERVISORS

Don Marcus
District No. 1

Anthony Botelho
District No. 2
Vice-Chair

Pat Loe
District No. 3

Reb Monaco
District No. 4

Jaime De La Cruz
District No. 5
Chair

County Administration Building – Board of Supervisors Chambers, 481 Fourth Street, Hollister, California

REGULAR MEETING MARCH 4, 2008 ACTION MINUTES

The Board of Supervisors of San Benito County met in the Board Chambers on the above date *in regular session*. Supervisors Monaco, Loe, Botelho, Marcus and De La Cruz were all present. Also present was County Administrative Officer Susan Thompson, County Counsel Dennis Le Clere, Clerk of the Board Linda Churchill, morning session and Assistant Clerk Janet Slibsager, afternoon session. Chairman Jaime De La Cruz presided.

9:30 a.m. CALL TO ORDER:

- a) Supervisor Loe led the Pledge of Allegiance.
- b) *Upon motion duly made, seconded and carried, acknowledged Certificate of Posting.*
- c) **Public Comment:** Kathleen Ruiz, Chair of the Homeless Task Force of San Benito County, addressed the Board with regards to the need for transitional housing here in San Benito County.
David Huboi, Architect and City of Hollister Planning Commissioner, stated that he was an advocate for transitional housing. Mr. Huboi expressed his concern regarding the possible closure of our public beaches and parks that is being proposed by Governor Schwarzenegger. Mr. Huboi stated that citizens can contact the California State Parks Foundation for additional information and write to our state legislative representatives to express our concerns.
Joe Thompson, local resident, stated that he would like to see an item on a future Board agenda pertaining to the way COG (Council of Governments) was formulated which he feels is unconstitutional.
Doug Emerson, Hollister City Council Member, invited Supervisor Loe and other supervisors to attend a forum to be held at the Veterans' Memorial Building on Thursday, March 6, 2008 at 6:30 p.m. to share with the community the actions that the City has taken pertaining to the foreclosure issues we are experiencing and secondly the City has endorsed a pilot program for foreclosure prevention which will be discussed.
- d) **Department Head Announcements:** Planning Director Art Henriques announced that a Joint Board of Supervisors / Planning Commission General Plan Update Workshop would be held in the Board Chambers on Thursday, March 6, 2008 at 1:30 p.m.

e) **Board Announcements, Introductions and Presentations:**

Supervisor Marcus expressed his opinion regarding the potential new courthouse location stating that the good news is we are getting a new courthouse. Supervisor Marcus stated that the locations were evaluated by the State and the proposed location near the Jail has become a huge debatable decision. Supervisor Marcus stated that he hopes that we can make this happen.

Supervisor Marcus further stated that it was refreshing to see our Mayor present at today's meeting and also he hoped that Cal Fire does not get removed from the airport.

Supervisor Botelho stated that he was also concerned that the Fremont School Site was not selected for the new courthouse facility but it is important that the county qualifies for construction funds and that we are going to get a new courthouse. Supervisor Botelho stated that there are other potential possibilities for the Fremont School site and he hoped the community was not narrow minded about the site selection.

Supervisor Botelho further reported that the City of San Juan Bautista has finished the Community Hall project noting it was done ahead of schedule and well below budget and it was a job well done.

Supervisor Monaco announced that money was spent wisely on improvements at the Historical and Veterans Memorial Parks by installing state of the art playground equipment. Supervisor Monaco reported that he and Supervisor De La Cruz attended the Veterans Memorial Park Commission meeting last night and lengthy discussion was held pertaining to the traffic in and out of the Vet's Park noting that we need to look into other sites for parks to relieve some of the congestion at Vets Park.

Presentations and Recognitions:
--

- 1) *Upon motion made by Supervisor Loe and seconded by Supervisor Monaco, adopted **Resolution No. 2008-18** recognizing the Emmaus House and supporting its efforts to obtain grants and funding. (Unanimous)*
Chairman De La Cruz presented resolution to Dale Yarmouth of the Emmaus House.
- 2) *Upon motion made by Supervisor Loe and seconded by Supervisor Monaco, adopted **Resolution No. 2008-19** recognizing the San Benito County Homeless Task Force and supporting its efforts to obtain grants and funding. (Unanimous)*
Chairman De La Cruz presented the resolution to David Huboi accepting on behalf of the Homeless Task Force.

CONSENT AGENDA:

Upon motion made by Supervisor Monaco and seconded by Supervisor Botelho, approved Consent Agenda Items 1 through 15, with the exception of Items 4 and 11, which were pulled for discussion. (Unanimous)

ADMINISTRATIVE BUSINESS:

- 3) **Approved** a budget transfer in the amount of \$11,200 from Non-Departmental Expense to budget unit 1001-203, Grand Jury. *File #605*

AGRICULTURAL COMMISSIONER – P. Matulich:

- 4) **Approve out of state travel for one employee to attend annual meeting of the American Mosquito Control Association in Sparks, Nevada from March 2-6, 2008; and approve request to pay for the employees' meals and gas with funds to come from the Mosquito Abatement budget.**

Marty Richman, local resident, stated that he hopes the person attending this meeting is not using money from the Mosquito Abatement taxes.

Paul Matulich, Agricultural Commissioner, explained that the employee is willing to pay for the travel expense himself and the county would be paying for meals and gas with money budgeted.

BOARD ACTION: *Upon motion made by Supervisor Marcus and seconded by Supervisor Botelho, approved out of state travel as requested. File #1.1*

BEHAVIORAL HEALTH – A. Yamamoto:

- 5) **Approved** contract with Merced County to utilize their Psychiatric Health Facility for the period of March 4, 2008 to June 30, 2008 for a maximum amount of \$75,000. *File #1.1*
- 6) **Approved** appointment of Diana Lynn Carr, Supervisorial District 2, to the Mental Health Board effective March 11, 2008 to March 11, 2011, as a Public Interest Representative. *File #810*

CLERK OF THE BOARD – L. Churchill:

- 7) **Approved** the minutes of the February 22, 2008 special meeting.

HEALTH & HUMAN SERVICES – K. Flores:

- 8) **Approved** and **authorized** the Director of Health & Human Services Agency to hire a Physical Therapist (PT) II at Step F of the range for that classification effective March 5, 2008. *File #130*
- 9) **Approved** Amendment #3 to the lease between the County and the Farm Labor Association to extend the term until March 31, 2009 and **made findings** that extending the lease term serves the public interest because it ensures continuity and availability of safe and affordable housing for unaccompanied farm workers. *File #130*
- 10) **Approved** agreement with the Dept. of Health Services (DHS) for the Public Health Emergency Preparedness CDC/Plan Flu in the amount of \$293,810. for the period of August 31, 2007 to August 9, 2008 and **authorized** the H & HSA Director to sign said agreement. *File #130*

PLANNING DEPARTMENT – A. Henriques:

- 11) **Approve attached Letter of Support for appropriations for the Pajaro River Flood Control Project and forward letters to California State Senators and Representatives.**

Lengthy discussion ensued with regards to the content of the letter with the consensus that the letter be modified to include a statement that the County is not in a position to provide funding and also to include any issues that the San Benito County Water District may have.

BOARD ACTION: *Upon motion made by Supervisor Monaco and seconded by Supervisor Botelho, moved to have Supervisor Marcus work with the Planning Director and the San Benito County Water District to modify letter for Board of Supervisor's Chairman signature.*

Supervisor Marcus indicated that he could hand deliver the letter to the Pajaro River Watershed Authority meeting on Friday, March 7, 2008. *File #695.2*

PUBLIC WORKS – J. Lo:

- 12) **Approved** appointment of the Engineering Technician I at Step F of Range 19.0, effective March 10, 2008. *File #105*

SHERIFF'S DEPARTMENT - C. Hill:

- 13) **Approved** Deputy Sheriff hire at Range 22.7, Step F based on training and experience. *File #110*
- 14) **Authorized** the applicant agent (Emergency Services Manager) to accept the FEMA-1646-DR-CA Hazard Mitigation grant on behalf of the County Operational Area. *File #110*
- 15) **Approved** contract for Multi Year lease with GE Capital Corporation for lease on copy machine and printers and **authorized** Sheriff to sign. *File #110*

REGULAR AGENDA:

BOARD OF SUPERVISORS:

- 16) **Consider approval of a Resolution supporting the retention of a Post Office in the Aromas area. (Supervisor Botelho)**

Supervisor Botelho reported that he attended a town hall meeting in Aromas on Sunday, March 2nd where there was a huge turnout of people who are supporting the retention of a Post Office in their area.

BOARD ACTION: *Upon motion made by Supervisor Botelho and seconded by Supervisor Loe, adopted **Resolution 2008-20** expressing the Board of Supervisor's opposition to the elimination of an Aromas branch post office facility and encouraging the acquisition of a replacement facility in the Aromas area allowing continued local service to mutual constituents. (Unanimous) File #156*

BEHAVIORAL HEALTH – A. Yamamoto:

- 17) **Receive information on FY 2006/07 Mental Health Board Annual Report.**

Supervisor Loe noted that she is a member of the Mental Health Board and she helped to put this report together.

Director of Behavioral Health Alan Yamamoto introduced Marian Cruz who is a public interest member of the Mental Health Board representing Supervisorial 5.

Ms. Cruz addressed Page 6 of the report pertaining to Review and Evaluation of Recommendations 2006-2007.

Mr. Yamamoto reported that California Welfare and Institution Code 5604.2 requires that the local Mental Health Board annually submits a report to the governing body on the needs and performance of the County's mental health system.

Mr. Yamamoto outlined the report and handed out a brochure titled "CMHDA 2008, San Benito County, Transforming Local Mental Health Systems".

Mr. Yamamoto answered questions posed by the Board.

Marty Richman, local resident, addressed the Board stating that there were a lot of issues that pertain to mental health such as an aging population and drug abuse problems. Mr. Richman stated he was very happy to see the Esperanza House in Hollister.

Accepted report. File #810

PUBLIC WORKS – J. Lo:

- 18) **Receive the FY 2007/08 Capital Improvement Program Mid Year Status Report; provide direction as appropriate; and approve budget adjustment reducing revenue and expenditures for the Farm Worker Housing project.**
(Continued from 2/26/08 meeting)

Public Works Director Jerry Lo introduced Management Analyst Janelle Cox who provided a Power Point Presentation summarizing the status of the implementation of the FY 2007-2008 Capital Improvement Program. The report was divided into four sections: Bridge Projects, Road Improvements, Facility Improvements and Equipment.

Board members provided input and comments and questions were answered by Ms. Cox.

Accepted report. File #105

SHERIFF DEPARTMENT – C. Hill:

- 19) **Review of draft AB900 grant application and supporting resolution and provide direction to staff.**

Sheriff Curtis Hill provided an update of the draft AB900 grant application reporting that upon review by the Board of Supervisors today a final grant application and supporting resolution would be submitted for final Board approval and adoption on March 11, 2008.

Sheriff Hill answered questions posed by the Board.

The Board of Supervisors supported moving forward with the grant application.
File #120.5

AGRICULTURAL COMMISSIONER – P. Matulich:

- 20) **Accept report on Santa Clara County Rodeo/Circus Ban proposal and direct staff as necessary.**

Agricultural Commissioner Paul Matulich provided background information stating that on February 12, 2008 the Board of Supervisors directed him to update them on results of the Santa Clara County Board of Supervisors consideration of an ordinance to promote the humane treatment of wild, exotic and rodeo animals. Mr. Matulich reported that the Santa Clara County Counsel stated that Santa Clara County could not ban something that was permissible under State of California Law.

Mr. Matulich was directed to monitor this issue and report back to the Board of Supervisors periodically because this could adversely affect San Benito County. File #1.1

CLOSED SESSION:

Matters discussed during Closed Session include existing and pending litigation, personnel matters and real property negotiations. Reportable actions taken by the Board during Closed Session will be announced during open session. (Gov. Code Section 54957.1(a) & (b), Ralph M. Brown Act.)

The Board adjourned into Closed Session and reconvened into Regular Session at 2 p.m. re:

21) Conference with Legal Counsel – Existing Litigation – (Subdivision(a) of Section 54856.9) Name of Cases(s)

1. Frank Del Carlo, et al. vs. COSB (Case No. CU-06-00079)
2. Michael Pekin & Amanda Hernandez vs. COSB, et al, (Case No. C05-05402)
3. Friends of Tres Pinos vs. COSB, et al (Case No. CU-07-00186)

County reported that Item 2 would not be considered or discussed.

No reportable actions on Items 1 and 3. File #235.6

22) Public Employee performance evaluation: Title County Counsel (Government Code Section 54957)

No reportable action. File #235.6

22.1) Addendum. Conference with Legal Counsel – Existing Litigation – (Subdivision (a) of Government Code Section 54856.9

Name of Case:

1. Pekin v. Scagliotti, et al. (Case No. CU-03-00150)

No reportable action. File #235.6

PUBLIC HEARING: (or as soon thereafter as the mater may be heard)

2:00 p.m.

PLANNING DEPARTMENT – A. Henriques:

- 23) Hold a public hearing to consider an ordinance amending San Benito County Ordinance No. 501, Chapter 5, Article VII of the San Benito County Code, Sections 5-32, 5-33, 5-34, 5-35, 5-36, 5-37, 5-37.1, 5-37.2 establishing Agricultural Building Exemption, revising exemption definitions and requirements and qualifications. CEQA Determination: Categorically Exempt. (Continued from Feb. 5, 2008)**

Planning Director Art Henriques provided progress report on the proposed Ag Exempt Ordinance revisions stating that local Farm Bureau and Cattlemen's Association have revised the ordinance and would now like to meet and have the two organizations provide a consistent written response to the Board of Supervisors. Mr. Henriques stated that he hoped to get the letters in a timely manner and return to the Board of Supervisors for consideration.

Supervisor Marcus stated that he and Supervisor Botelho met with Planning staff and members of the Farm Bureau and Cattlemen's Association regarding this proposed ordinance. Supervisor Marcus asked if he and Supervisor Botelho would be involved in the preparation of the draft ordinance prior to it coming before the entire Board of Supervisors.

Mr. Henriques answered yes they would then have a workshop format.

Supervisor Botelho understood that the two organizations would solidify their response during the month of March and it would be brought back to the Board of Supervisors after April 1, 2008 for consideration.

Chairman De La Cruz opened the public hearing. There was no one from the public who wished to address the Board. Chairman De La Cruz closed the public hearing. *File #790*

- 24) **Held a public hearing to consider introduction of an ordinance rescinding Ordinance No. 820 in its entirety, which allowed the zoning designation of Assessor's Parcel Numbers 22-20-09 and 22-20-10 zoning to be changed from R-1 (Single-Family Residential) to C-1 (Commercial Thoroughfare District) as long as certain conditions were met. Location: Northwest corner of State Highway 25 and Southside Road in the unincorporated area of Tres Pinos, San Benito County, CA. General Plan: Rural/Urban. CEQA Determination: Categorically Exempt. Proposed ordinance to be considered for final adoption on March 11, 2008. (Continued from Feb. 5, 2008)**

Planning Director Art Henriques spoke in regards to the approved zone change petition on the Tres Pinos Hotel property by the recommendation from the Planning Commission. Mr. Henriques stated that the Planning staff and County Counsel have since had further discussion and they have a concern that it is better not to split those decisions because you have to have a commercial district review related to the zoning. Mr. Henriques stated he is recommending that the Board rescind the prior ordinance on this matter and refer it back to the Planning Commission with direction that the Planning Commission complete commercial district review and rezoning recommendation at the same time.

County Counsel Dennis LeClere stated that at this point the Board is being requested to introduce and waive reading of the ordinance and it will be brought back on March 11, 2008 for adoption and any other action such as the return to the Planning Commission.

Chairman De La Cruz opened the public hearing. There was no one from the public who wished to address the Board. Chairman De La Cruz closed the public hearing.

BOARD ACTION: *Upon motion made by Supervisor Marcus and seconded by Supervisor Monaco, moved to introduce ordinance rescinding Ordinance 820, waive the reading of said ordinance and continue to the March 11, 2008 meeting for adoption of said ordinance. (Unanimous) File #790*

REGULAR AGENDA (Continued):

PLANNING DEPARTMENT – A. Henriques:

- 25) **Review options pertaining to current Hillside Ordinance No. 781 and direct staff accordingly.**

Planning Director Art Henriques provided background information and provided options prepared by Planning Staff.

Paul Rovella, Attorney for Lombardo & Gilles, requested that the Board take action to rescind Ordinance 781 and adopt the negative declaration that was prepared for action today and return to the language included in Ordinance 479 originally. Mr. Rovella stated based on research ordinance 781 when originally adopted, might have been based on a recommendation by staff that is no longer with the county and the project was considered categorically exempt because of the protection of the environmental Class 7 or Class 8 exemptions under CEQA regulations. Mr. Rovella stated since the categorical exemption was misapplied in the beginning the ordinance was adopted erroneously and therefore can be rescinded without an environmental impact report.

Ted Thoeny, Civil Engineer, stated he would hate to see the hillsides covered with houses and condos noting that is not San Benito County.

Al Guerra, county resident, stated he would like to encourage the Board to stay with their original decision.

Marty Richman, local resident, stated he would not like to see the hillsides full of major subdivisions and does not understand what the Hillside Ordinance really does that the primary CEQA regulations don't do.

Supervisor Monaco stated he would like an opinion from County Counsel due to the information that Paul Rovella from Lombardo & Gilles brought to the board.

Supervisor Botelho stated he would like to propose to his fellow Board members to keep something in place for the major subdivisions.

Supervisor Marcus asked if there was a need to do an EIR if we go through the exercise of modifying the document.

Supervisor Monaco indicated he would like to make a motion to continue this item due to the information that Paul Rovella has presented and would like to have the opportunity to discuss it with County Counsel.

County Counsel Dennis Le Clere stated that Mr. Rovella's argument is that this ordinance was improperly adopted in the first place using the wrong categorical exemption. Mr. Le Clere stated that at this time it is a valid ordinance adopted by the board beyond the statute of limitations. It wasn't challenged therefore makes it a valid ordinance until the court says it is not a valid ordinance. Mr. Le Clere noted in order to nullify this ordinance you need another ordinance.

Mr. Le Clere responded in regards to Supervisor Marcus' question regarding a word change stating you do not have to do an EIR. If the Board changes one word that is a discretionary decision therefore CEQA still applies.

Supervisor Marcus stated he would like to see the following changes to the current Hillside Ordinance: In the applicability clause 34.50.2 under new uses of buildings and additions he would like to see the 15% slope changed to 30% slope to be consistent with the current ordinance that is currently in place referring to slope which is 30% and in the same paragraph after "any agricultural" insert or residential and after "use permitted" insert by Williamson Act contract, or agricultural conservation easement pursuant to Civil Code §815. et.seq . and also add to the same paragraph any land use subject to existing Williamson Act contract or agricultural conservation use. Supervisor Marcus would like to see these changes in light of having the current general plan amended.

Supervisor Monaco asked if these changes could be made without and EIR.

County Counsel Dennis Le Clere indicated it is a discretionary decision and would go back to the experts and they would do an initial study.

Planning Director Art Henriques said they could get started on the initial study fairly quickly. Mr. Henriques stated he would like to come back to Board one more time with the changes and then go through the normal process with the Planning Commission and the noticing, etc.

CAO Susan Thompson suggested taking the literal wording as presented if the Board chooses, and begin the next step, which is the initial study.

BOARD ACTION: *Upon motion made by Supervisor Marcus and seconded by Supervisor Monaco, moved to amend existing Ordinance No. 781 regulating hillside development to change the slope from 15% to 30% and amend the applicability clause as earlier noted. (Unanimous) File #790*

The vote of each member of the Board of Supervisors upon each matter at the foregoing meeting, unless otherwise stated, was as follows:

AYES: SUPERVISORS: Monaco, Loe, Botelho, Marcus, De La Cruz

NOES: SUPERVISORS: None

ABSENT: SUPERVISORS: None

There being no further business the Board adjourned to March 6 at 1:30 p.m. for a special meeting.

JAIME DE LA CRUZ, CHAIRMAN

San Benito County Board of Supervisors

ATTEST:

Linda Churchill, Clerk of the Board
Morning Session

Janet Slibsager, Asst. Board Clerk
Afternoon Session