

**SAN BENITO COUNTY  
BOARD OF SUPERVISORS  
REGULAR MEETING MINUTES  
JANUARY 13, 2004**

The Board of Supervisors of San Benito County met in the Board Chambers on the above date in regular session beginning at 9:30 a.m. Supervisors Loe; Scagliotti; Monaco, Kesler and Cruz were all present. Also present was County Administrative Officer Terrence May, County Counsel Karen R. Forcum and Assistant Clerk Sally Navarez. Chairman Bob Cruz presiding when the following was had to wit:

**CALL TO ORDER:**

- a) Pledge of allegiance.
- b) *Upon motion duly made, seconded and carried, acknowledged the Certificate of Posting.*
- c) **Public Comment.** There was no one wishing to address the Board under the Public Comment period.

Supervisor Kesler made the motion to approve Consent Agenda Items #1 through and including Item #13. Supervisor Monaco was second on the matter.

*Upon motion duly made, seconded and carried, approved Consent Agenda Item #1 through and including Item #13. Motion passed unanimously 5-0.*

**CONSENT AGENDA:**

- 1) Approved Certificates of Recognition honoring Chamber of Commerce Man and Woman of the Year for 2003. *(Board - file #156)*
- 2) Approved appointment of Terrence A. May as County Administrative Officer and employment agreement with a term of January 8, 2004 through March 1, 2005. *(Board - file #156)*
- 3) Approved Departmental Claims. *(Auditing)*
- 4) Approved Proofs of Publications. *(Clk of Bd - file #530)*
- 5) Approved bid documents for rehabilitation work of the Farm Labor Camp and authorize CSWD staff to issue an Invitation for Bid. *(cont. from 1/6/04 mtg) ((CSWD - file #750)*
- 6) Allowed claim of James H. Nordness, filed with the clerk of the board on December 9, 2003, as submitted, and directed clerk to notify claimant. *(Counsel - file #236)*
- 7) Approved **Resolution No. 2004-3 Approving Contract With The California Department Of Forestry And Fire Protection** for a Volunteer Fire Assistance Award and authorized Chair to sign said agreement and resolution. *(CDF - file #60)*
- 8) Approved agreement with the Governor's Office of Service and Volunteers for Community Emergency Response Team (CERT) Grant, authorized Chair to sign said agreement and approved augmentation of FY2003/2004 budget. *(OES - file #75.5)*
- 9) Approved agreement with Dana Bland and Associates re: biological monitoring and assessment services with a contract term of January 3, 2004 through January 2, 2006 and authorized Chair to sign. *(Public Works - file #105)*
- 10) Approved agreement with Republic Electric re: traffic signal maintenance services with a contract term of January 13, 2004 through January 12, 2006 and authorized Chair to sign. *(Public Works - file #105)*
- 11) Approved Statement Of Investment Policy for calendar year 2004. *(Treasurer - file 685.2)*
- 12) Approved **Resolution No. 2004-4 Resolution Confirming Treasurer Nomination Of Board of Supervisors Representative ( Reb Monaco) To The San Benito County Treasury Oversight Committee** beginning January, 2004 and authorized Chair to sign. *(Treasurer - tile #685.2)*
- 13) Approved **Resolution No. 2004-5 Resolution Delegating To The San Benito Treasurer The Authority To Invest Or Re-Invest County Funds And The Funds Of Other Depositors In The County Treasury, Or To Sell Or Exchange Securities So Purchased** and authorized Chair to sign. *(Treasurer - file #685.2)*
- d) **Department Heads' Announcements.** (Informational only)  
Chair Cruz noted he inadvertently omitted this matter at the beginning of the meeting. Chair asked if there were any Announcements.  
Administrative Officer May indicated there were no Department Head Announcements.

**9:30 a.m. PUBLIC HEARING (or as soon thereafter as the matter may be heard):**

- 14) **Consider ordinance to establish inclusionary housing regulations to provide in-lieu fee for affordable housing units or the construction of affordable housing units as part of new residential/subdivision development**

**projects. (cont from 12/16/03 mtg).** Chair Cruz noted before turning this matter over to staff and receive input from the public, he noted everyone would be afforded the opportunity to speak and would be allowed three (3) minutes.

Deputy Director of Planning Fred Goodrich came forward. He noted this item was important to everyone throughout the State of California and that was affordable housing.

Mr. Goodrich noted the Board would recall that after one of the last projects reviewed in the San Juan Bautista area, there was some concern as to the type of affordable housing, the amount of in-lieu fees that might be required, the size of the affordable units, and there was some discussion during that review that lead to your Board directing staff to prepare an ordinance that would establish an inclusionary housing regulation. It would provide for in-lieu fees. It would also provide for construction of affordable housing units as part of any future developments in the unincorporated areas of the county. It would also provide for the construction of units and the payment of the in-lieu fee.

Mr. Goodrich noted also as part of the ordinance, staff prepared an Administrative Manual that basically is the day-to-day, how we operate that provides for some of the definitions of how to implement the inclusionary housing ordinance.

Mr. Goodrich noted some may be aware, housing prices in California continue to skyrocket. Affordable housing has become a significant problem everywhere. San Benito County is no exception. It is located next to one of the richer counties with some of the highest home prices in the State of California. The average, median price for this county now hovers around \$380,000. To afford a median priced home in San Benito County, a family of four would now need an annual income of almost \$95,000. The California Department of Finance 2003 figures indicate that the median income for this county for a family of four, is only \$67,100, although San Benito County ranks among the top ten, the highest median income in California.

In looking at the 2000 U.S. Census, approximately 40% of all county households earn less than \$53,700 and that would classify those people as low or very low income. If you look at the Census in a little more detail, you will find that approximately 20% of all households are classified as moderate income, that is they make, no more than \$80,500. Therefore, when you add these together, approximately 60% of the county households cannot afford a current median priced home in this county.

Mr. Goodrich stated the current requirements under County Code, actually, there is no county code, we just have General Plan Policy. General Plan Policy designates a 20% affordability requirement for new residential development within the County. There are no other regulations; there are no specifics as to how large the units are, what type of units; what percentage fall within each income category. Therefore, what we are proposing with this ordinance is to come up with specific development requirements, fee payments, and things of that sort.

Mr. Goodrich indicated that the highlight of the ordinance that the Board has before them, first of all, is development requiring inclusionary housing. All development of three units or greater will be required to provide affordable housing and/or an affordable in-lieu fee. Projects that consist of three to twenty units will be required to pay in-lieu fees; however, at their option, they could build affordable units on the project site. Projects of twenty-one or more lots/units would be required to build the inclusionary units on the site. Things such as granny units, in-law quarters, senior citizen units would not be eligible to satisfy the requirements of the proposed ordinance.

Mr. Goodrich noted the inclusionary requirement being requested is 30%. We now have a 20% goal in the General Plan and are proposing 30% just based upon the figures that have been given, 60% of the people in this county cannot afford the median priced home in this county of \$380,000.

Mr. Goodrich stated that the levels of affordability, he would like to provide that of that 30%, and in the report it is indicated initially that 12% of those would be for moderate, 9% low and 9% for very low. We have had some discussions with affordable housing providers and they have indicated that the very-low income number is a little too high. It is more workable if 6% of the units be designated for the very low and increase the low income households number to 12% and retain 12% for moderate income households and would recommend that be modified.

Additionally, in the ordinance we had listed that 30% of families income could be used towards the purchase of the home. Again, talking with affordable housing providers, it is more appropriate now that 40% of the income be included in qualifying for loans for affordable housing. Staff would recommend that minor change as well.

Mr. Goodrich noted fee calculations is always a tough decision on how to best calculate fees. We have calculated ours, conservatively. Many of the counties and cities neighboring our county have very high fees ranging from \$35-45,000. Our fee calculation, we are looking at, if you paid an in-lieu fee, something just a little more than \$27,019.60 per lot. Those are for Major Subdivisions. If you have a Minor Subdivision, three or four lots, you would pay 4/5 of that or if you have three lots, 3/5 and so the fee would be much less. Mr. Goodrich explained that all of the fees collected by ordinance would be put into an Affordable Housing Fund. This would not be put into the General Fund and used to bail out the County during tough times. It would be for affordable housing projects only.

Mr. Goodrich indicated we were also requesting an affordable restriction, number of years. Staff would propose that the affordable units be price restricted for a period of thirty years. Homeowners profits, if someone maintains this and live there a number of years, they make improvements to it, add a room, etc. profits go to the homeowner. We would also provide that if the homeowner stays in that unit for thirty years, that the restriction goes away and can sell that unit at a market rate.

Mr. Goodrich noted it was also proposed that a Housing Advisory Committee be appointed by the Board. One member from each district that as we build up these housing funds, that they would review housing projects that would come forward, they would review those and make sure that they are what the County is needing/wanting and make recommendations to this Board for funding of those projects.

The program monitoring right now, Mr. Goodrich indicated staff has written into the ordinance that the Planning Department would be responsible for the daily operations of the program. The Board may at some future point, could transfer that authority to another County Department, a non-profit or something like the Housing Authority, but for now, the Planning Department would be responsible for the day-to-day operations.

Mr. Goodrich noted per the ordinance, staff would give preference to people who live and work in San Benito County. We need to take care of our own people first so that has been added to the inclusionary ordinance.

Mr. Goodrich noted that another issue that comes up with affordable housing, is that the units are cheap, all clustered in one place, "those people" live there, you can tell they are affordable units, one thing that has been built into the ordinance is there are specific design standards, size standards, location standards, etc. Staff is going to require that the units be compatible with the market rate units, they have to look the same on the outside. What the developer/builder does on the inside, is their business. They can cheapen it, put in lesser quality materials, reduce some of the sizes, but we have in the ordinance, initially indicated that a 1500 square foot unit would be appropriate, again after talking to some of the affordable housing providers, 1200 square feet would be inappropriate, minimum size and there needs to be some flexibility there as far as range of sizes.

Mr. Goodrich noted staff also affordable units should be built first. But, again, after talking with affordable housing providers, they have indicated you really need to blend the affordable units in with the market rate so that the market rates can help pay for the affordable units and that has been proposed as a change in the ordinance as well.

Mr. Goodrich noted he included an Administrative Manual in the packet. This is basically, the operating manual which will tell you the day-to-day operations and how they should work. Also, staff was recommending that be adopted by resolution. This way, it is much easier to change the yearly income figures, housing cost figures as there was no perfect ordinance and there will have to be some fine tuning. The Administrative Manual would be the best way that staff can address or define those hurdles that we are going to come up against in the future.

Mr. Goodrich noted regarding the ordinance, staff prepared an Initial Study and a Negative Declaration for this and those documents were circulated for public review back in October and November of 2003. If the Board were to move forward with this, the Board would be required to review the environmental document and to certify the Negative Declaration.

Regarding financial considerations, if the Board were to adopt this inclusionary ordinance, it would provide over time an undetermined amount of money for housing programs. These monies could be used to, in part, or wholly fund housing programs, home loan programs, a variety of things that you could do. The Board may also consider that sometime in the future, the Board may want to create a Housing Agency or turn this program over to a non-profit and there would be some administrative costs that would be incurred in the future for funding of that type of agency.

Mr. Goodrich noted staff was recommending that the Board review the draft ordinance, take comments from the public, review any written comments the Board has received. If the minor changes that staff recommends are acceptable, then the Board could move forward on the document. The Board would need to adopt the Negative Declaration and staff also recommends that the Board adopt the Inclusionary Housing Administrative Manual by resolution, all of which is included in the Boards' packet.

Mr. Goodrich noted that the few changes that he has made would require more fine tuning of the Administrative Manual, and the Board may want to act only on the Ordinance and then request that staff come back in a meeting or two with the finalized Manual. Mr. Goodrich noted this concluded his report and asked if there were any questions from the Board.

Chair Cruz asked Mr. Goodrich if the affordable homes would be built at the same time regular homes were built to which Mr. Goodrich indicated that was correct.

This being the duly noted time and location, Chair Cruz opened the public hearing. Chair Cruz indicated that each speaker would be allowed three minutes in order to give everybody the option to speak.

Richard Place, 89 Knight Lane, came forward. Mr. Place noted he would keep his comments brief and had reference to a number of parts of the Code, but those are all referenced in the act in itself. Mr. Place noted he wanted to bring to light in relation to Ordinance 709 and Measure G in that the Board was stacking three different ordinances on top of each other. He felt one couldn't be considered without the other until everything is brought into uniformity or conclusion. Mr. Place felt at this time it would be better to wait on this until such time as we see what happens with Measure G.

Mr. Place also stated he was under the understanding that 709 had not completed an environmental impact study that was requested by the Department of Housing. According to State Code, we have to comply with the regional housing needs. Mr. Place felt looking at a combination of, which he was glad to see an ordinance in and of itself because he would like see standardization of people when they come into the County and be able to be treated fairly, equally and everybody treated the same. We have an ordinance that gives everybody an understanding of where we are going. Till now, we have

had a variation of percentages and we actually have had inclusionary but there hasn't been any set policy. This is good and Mr. Place complemented the Board on that.

Mr. Place stated he would like to see this matter postponed until such time as the Board can really determine what the regional housing needs are by statute that you are required to have and COG, he felt, should be the responsible party for communicating that back to the Board. It is required by State law that you comply with regional growth needs within Santa Clara and Monterey and San Benito area.

Mr. Place noted he did have specific questions about the non-specificity of the in-lieu fee, the 30-year renewal clause is interesting because it creates perpetuity of the housing department that will be developed in the future. Some time in the future, you will have, as he understood this, it appears that eventually 30% of all the housing being built would be under control and under management by the government. That would be a huge department. Sometime in the future, you would have a department that is responsible for 11-12,000 homes. Mr. Place questioned if there were economic considerations being made about that.

Mr. Place noted this was the highest percentage in the State of California. 25% of Watsonville has brought that town pretty much to a halt. 20% is the standard throughout the State even in Palo Alto and East Palo Alto. 30% would be considered a taking and you would have to renew, or revisit, the Napa Experience because that was an attack on taking on a 10% level, which was found to not be so. But, 30% is very interesting. Mr. Place thanked the Board for the opportunity to speak.

Chair Cruz noted he one comment about Measure G. Chair indicated we weren't getting into Measure G. He just wanted to let the public and audience know that. Running the County is a business and this business cannot stop. Measure G is going before the voters and they will have an opportunity. But it cannot stop the County from doing business. This is an ordinance. We will have other ordinances and other situations. We cannot stop running our business to wait on Measure G - one way or the other. Chair noted he felt the people will decide on that.

Beverly Bryant, Ph.D., Executive Director of the Southern Division of Home Builders Association of Northern California, came forward. Dr. Bryant noted there were offices were located in San Jose, 675 N. First Street, San Jose.

Dr. Bryant noted that during the course of last week, she indicated she wrote a letter to each Board member and hoped, perhaps, that was included in the packet for this meeting. Most of her comments were considered in that correspondence, but she just wanted to talk a bit about the issues related to inclusionary zoning.

Dr. Bryant noted the Home Builders Association (HBA) represents homebuilders and related industry professionals. There were a 1,000 members in fifteen counties in Northern California, one of which is San Benito County. The problem with affordable housing is it is a state-wide problem. The last speaker spoke about it, and we all know about it. Those of us that live here know that it is actually for our own children to even build and have new homes in California.

Dr. Bryant noted it really relates to the questions and restrictions on how land use and the fact that there are so many restrictions in so many communities that our builders are simply not able to build the way that they would like to. The old law of supply and demand does really apply here and the more we can supply housing, the more houses will be built at lower costs.

Dr. Bryant stated when inclusionary zoning is implied, it really does become a form of price control. All housing units become less affordable and the fact that some of them are "at lower prices" really spreads the costs and costs more to build many of the other units. The 1990 Watsonville ordinance, which was referred to by the last speaker, effectively shut down development in that community for about a decade. Their ordinance was 25%. The Council then looked at that and said it was too high and reduced the requirements and building began again. That is something Dr. Bryant would commend to the Board.

Dr. Bryant asked what can you do to create an affordable housing fund? With county monies, and she stated they encouraged this in other counties, as it is being done and done effectively. We also ask that the Board adopt the results or in a housing plan, an action plan is really going to produce units in the county and establish some subdivisions design standards and fee reductions so that there is encouragement to build more housing on the part of our builders and many of the other builders.

Dr. Bryant stated this ordinance is extraordinary in terms of its size and she really wanted the Board to think about that and knew they had considered it, 5% higher than Watsonville and the highest in the State. All projects in many of these ordinances could be subjected to in-lieu fees. In your case, you are asking for construction of homes after 21-units in the developments themselves. She noted for the Board to consider granny units as affordable housing. In her town, they are considered that and encouraged. She was hopeful the Board would consider that.

Dr. Bryant noted the in-lieu fee is excessive in terms of the numbers of dollars requested for in-lieu fees compared with other ordinances she finds and has done research on this. This is very, very high. Also, what about waiving fees on affordable units, other kinds of impact fees that you might have. These are other suggestions that might happen in terms of looking at the question of trying to construct housing and we do understand this is a problem.

Dr. Bryant noted many small projects finally, will be killed if you ask for payment of fees at the time of recordation of the final map. Many times, the final map is put together but the houses are not built for many, many years after that just because of circumstances. This will kill small projects.

Dr. Bryant indicated other people have asked about age restrictive communities. Could they be exempt from this affordable housing project? In case she felt the Board might be asking, she was talking about senior developments and indeed, looking at the possibilities of those being not included.

Also, AB682 - California Code 1983, suggests that all affordable requirements could be met by rental housing. Please consider that when looking at this ordinance.

Dr. Bryant state there were lots of things that the Board had before them and thought if she were sitting in their position, she would want to look at it and carefully consider a lot of these issues and knew they have in the past. She noted they would like to be able to work with the Board, but they were very, very concerned about this as an organization and for the individual builders who are considering building here. She thanked the Board for the opportunity to speak.

Chair Cruz noted in November, 2003, he went to the CSAC Annual Meeting in Monterey. The Homeowners Association had a workshop and their guest speak, as he wrote a letter to CSAC voicing his opinion, the guest speaker who gave the workshop went on the record to say that if there is someone who can afford an \$800,000 home, why should they help somebody who can't afford that home. Why should that person even help - if you can't afford a home, and so on. Chair Cruz noted this was on record with CSAC. The speaker also went on record stating the Homeowners Association would like to see all impact stopped - period. They want it to come out of the General Fund. He also went on to say that in Orange County was \$125,000. Ours is only right now \$33,000. According to the speaker, those were the fees and Orange County wasn't going broke. Chair Cruz concluded by asking Dr. Bryant if she had any comments.

Dr. Bryant noted that the costs Supervisor Cruz was talking about was impact fees on building, various fees for various things. Different communities have a lot of many different fees - transportation fees, school fees, etc. These impact fees are just enormous and she couldn't give the Board precise statistics and was remiss to do that. She noted what they have found, frankly, was impact fees add so much to the cost of building a house, and you know what it costs to build a house, then you add the fees above that. What they were saying was in California, these impact fees have really gotten out of line. Dr. Bryant noted she couldn't speak for their speaker as she didn't know who he was nor the speaker for the organization, but she must say, she also couldn't speak for Orange County either. She would note that the cost of impact fees, which we really were concerned about all over the State, were extraordinarily high. That is what is driving up a lot of the housing costs for all of us.

Thomas A. King, 2161 Airline Hwy, came forward. Mr. King noted he was a rarity in San Benito County as he was a real estate developer, local real estate developer. He felt he and Richard Scagliotti were just about the last two here in the county. However, he felt the reason there was this problem, affordable housing problem, is not only do we have a huge demand, but we have huge restrictions in supply.

Mr. King noted that over the last twenty years, he and his partners, possibly even 30-40 years, have developed hundreds of lots and built hundreds of homes in this County most of which are in the City. At the beginning of those years, you could buy a home from some of their projects at Ridgemark for \$225-\$255,000. The people that bought those homes have done very well. They have done well because the supply of homes is severely restricted in this community, not only by the 1% we now have, but by the expensive, time consuming planning process that is in place in this County and in the City of Hollister.

Mr. King noted he has been forced to go out of state to make a living. He has learned a lot. Mr. King stated he went to a city in Arizona, Prescott, which has about 32,000 people in a County of about 50,000 within commuting distance of Phoenix. Sounds familiar - it sounds pretty much where we are. In Prescott, when we do a subdivision, we can process one in a year. When we do an environmental impact report, it is in the hundreds of dollars not the hundreds of thousands of dollars like we pay in this community. In Prescott, when we buy a building permit, we pay \$3,000 and not \$25,000 or \$30,000. If you have ever been to Prescott, it is a very nice town. It has good roads, sewer plants, good water and they also, at this point, you could go into that community and buy a new home on a city lot with utilities for under \$200,000. You could also go to Prescott and buy vacant developed lots, fully developed and ready to go for under \$50,000. Try and do that here, you can't buy a lot in this community for under \$100-150,000, if you can find one.

Mr. King noted subdividers can't buy land in this community because the development risk is so high that people aren't willing to take the risk. This has pretty much run all of the local subdividers out of town - we're gone because we can't do any business here.

Mr. King noted the 30% on top will pretty do much what happened in Watsonville. You only have a growth rate of 60-units a year any way. Do you think you will be able to get anybody to do anything in this community after they give up 30% of the action - you can't do it. Mr. King thanked the Board for the opportunity to speak as he has learned a lot by being run out of town. He found out that the free enterprise system is a lot better without governmental control.

Dennis Lalor, Executive Director of South County Housing a non-profit housing developer, came forward. Mr. Lalor noted he has been doing this for twenty-five years now and has been in San Benito County since 1988.

Mr. Lalor noted he also worked in Monterey, Santa Cruz and Santa Clara Counties. They have had the opportunity to work under and to participate in discussions about a number of inclusionary housing ordinances. Mr. Lalor noted this has been a very worthwhile experience as he would characterize it.

Mr. Lalor noted inclusionary housing has been a hot button, hot discussion button since he first started in San Benito County. There are 107 communities, cities and counties in the State that have inclusionary ordinances. 63% of

them have been created since in the decade of the 1990's and the last thirteen years since the experience of Watsonville. This is a reflection of the growing affordability crisis and grasping the concepts of what inclusionary housing can do. Mr. Lalor commended the Board on the leadership they were showing in trying to make this step to address the affordability crisis in San Benito County which is one of the hardest, hit areas by being so close to the Silicon Valley.

Mr. Lalor stated his organization has developed a 65-acre, 373 mixed income master plan community in Gilroy. It is completed now and it has homes that are affordable, homes and apartments that are affordable to very low income residents and goes all the way up to market rate homes of well over \$600,000 and that project is 60% affordable, that's median 120% or below. Was it easy to do - no. Could it be done every where in the same way they did it - maybe no. Did we learn a lot of things that could be put to good use here in San Benito County and the adjoining counties that we serve - we did. Mr. Lalor felt this was one thing that we have here is the resources that the building community doesn't have in order to do this alone - there are organizations like ours and CSDC that can aid in this. Mr. Lalor noted he wanted to be able to share what we have learned in our success and implement them into San Benito County.

Mr. Lalor note he would like to address the comments made by staff earlier. He agreed with them and he would like to add the requirement to do very low income first is very difficult to find a builder and there are other ways to ensure that they are done.

Mr. Lalor noted he would also like the Board of Supervisors to think about is the concept of work force housing which goes beyond 120% and just be able to take a look at the fact that there is a gap between moderate income people at 120% and the market. There is a need for that type of housing to have a full gamut of housing in San Benito County. Mr. Lalor thanked the Board for the opportunity to speak.

Chair Cruz noted that Mr. Lalor has been very successful in Hollister and in helping out. But, Chair stated, Mr. Lalor also needed help from the County and from the City also. Without getting help from the City or the County, Mr. Lalor wouldn't be able to come into San Benito County and help us.

Mr. Lalor stated he appreciated the lack of resources here. He noted he would add that the Los Arroyos project, 373 homes, was done without any money from the City of Gilroy because the City of Gilroy doesn't have a redevelopment agency and doesn't have items. He didn't say this was easy and he didn't say it was possible for all, but there are ways of doing it and he would like to investigate this.

Mr. Lalor noted he certainly was not recommending 60% but he was saying that things can be done. Things that seemed impossible, have been done. This is fully built out and fully occupied right now.

Sheri Damon, Lombardo & Gilles representing Home Builders and developers in San Benito County, Monterey and Santa Cruz Counties, came forward. Ms. Damon stated staff has done a great job in addressing the affordable issue. The ordinance is a fine step toward the actual production of affordable housing. However, it looks like there may still be some problems still in meeting that overall goal of producing the affordable housing. For example, there were previous speakers saying that the inclusionary housing rate set at 30% is too high too to not only produce the affordable unit that you want to produce, but to generate the revenues that staff believes you need to support other kinds of affordable housing programs out there. There is only one other city, and you heard it here before, is Watsonville. They set the rate too high, they found that they didn't get any housing at all and they had to reduce their rates substantially. Ms. Damon felt that the Board should direct staff to bring back some more information to you on other program out there that have this high of a rate so you can make an informed decision about whether or not you will actually get affordable housing.

Ms. Damon noted there was also an issue regarding the square footage and you heard staff set a minimum size of 1200 square feet for affordable housing at a minimum. Ms. Damon noted the question she had was whether or not a very low unit should be at 1200 square feet. There have also been comments about rental housing. She felt that issue needs to be closely examined to make sure that you can provide the full spectrum of affordable housing that you want to provide.

Ms. Damon noted likewise, she believed that the percentage of very low housing is too high and staff has recognized that 9% might be a little high and 6% is more likely to be a little more feasible way. But, other issues that you should consider when looking at that very low percentage are how the very low units get financed. In most cases, she noted you will learn that there are federal subsidies that are involved. Those subsidies take many years sometimes to get put in place. Not only is the square footage an issue, the for sale piece of it is an issue and the timing of the production on those very low units is an issue in terms of the grander scheme of being able to produce that kind of housing.

Ms. Damon noted she just received the Administrative Manual and agreed with staff as there were some issues that she believed still need to be worked out in that Manual. She noted for example, a quick look at the notes to the homeowners regarding the inclusionary program. She noticed there was no notice to them regarding limitations about return on investment. There was something in there about limitations on the resale price, but if there is a difference on the resale price and what they bought it for, who gets that difference and homeowners, she thought, needed to be well notified of what the intent is on that regard. Ms. Damon noted there was recent litigation in Monterey County regarding that issue because the notice wasn't clear.

Ms. Damon noted in the Administrative Manual, the calculation of the in lieu fees does not appear to match the language in the ordinance and staff should take another look at that. She believed that staff has made very good strides in addressing the affordable housing problem. However, she believed additional information and studies were necessary to

support the findings that this percentage in this ordinance will produce affordable housing. Ms. Damon thanked the Board for the opportunity to speak.

Jesus Jaime Rodriguez, 1221 El Cerro Court, came forward. Mr. Rodriguez noted he was in Construction Management by trade. He noted he had read some of the documents on what is being done over the past few years and in working with some of his co-workers, one of the issues that has become clear to him, concerning regulations that the Board is trying to proceed with today and as some of the other speakers have already mentioned, rather than bringing the number of homes available in the market to have a sale and reduce the prices, the Board is controlling the price of houses. Mr. Rodriguez noted that the majority of his co-workers have relocated to areas such as Los Banos, Madera, Merced and he had people who lived all the way in Fresno because of the affordable housing. They have lower prices of homes on their markets.

Mr. Rodriguez noted that the fees, according to the report, the fee of \$27,000, when he built his home in 1993, he had to pay \$28,000 just in fees to the City. Now, you are going to increase, if he used the same figure of what is going on today for the future now, that price has doubled just to obtain a building permit to have the right to build a home.

Mr. Rodriguez noted in reference to his co-workers, primarily being of Mexican background, the Board is making the market in Hollister almost impossible to afford homes. There were a number of studies that by implementing the 30% on affordable housing, you increase the price of the home by 5% and are automatically removing 30-40% of the Mexican community away from being able to afford a home in the City of Hollister.

Mr. Rodriguez noted the Board might want to think about what they are doing in implementing these fees, it is just making some of the comments heard in the past that the developer is the one paying for this stuff. Mr. Rodriguez noted that the true reality of it, was that the developers get to make money. He understood that. If you implement something, it is just going to be passed on to the actual buyer of the home. Mr. Rodriguez thanked the Board for the opportunity to speak.

Web Winans, Lovers Lane, came forward. Mr. Winans noted he found that the reading of that ordinance made it very difficult indeed. It was very complicated.

Mr. Winans noted he understood the need for the impact fees and knew some of the impact fees around the State, and San Benito County is certainly one of the highest ones. Modesto, which is probably closer, but has a \$50,000 impact fee, so he felt San Benito County didn't have to worry about that. But what did bother him on this was, because of the complicated administration of it, somebody is going to have to pay the cost of all the manpower that it is going to take to administer this. Mr. Winans noted he didn't know if anybody has figured that out, but it is going to need people, not just one person, before very long to keep track of this sort of thing. The Board will have to consider what that might mean in the way of what are you going to do with the funds or where are you going to get the funds. Are you going to apply for those funds? Mr. Winans felt the Board should consider that before moving into it so we don't damage the budget process as we go through it.

Mr. Winans noted he was concerned about the rest of the County paying for a very elaborate administration of this need. There is a need, there is no question about it, but somebody is going to have to withstand the cost and how that is going to be arranged he felt needed to be worked out. Mr. Winans thanked the Board for the opportunity to speak.

Rob Mendiola, County Director of Planning, came forward. Mr. Mendiola noted there has been some mention of State Housing Law and he wanted to clarify a couple of points.

Mr. Mendiola noted State Housing Law requires that the Housing Element address building for the cross section of our community. This was from the very low to the very high end. We, as you well know, had no restrictions whatsoever through the decade of the 1990's. Your first growth management ordinance in the County took place in the year 2000. Mr. Mendiola noted there was a fallacy that if you removed all restrictions, that the price of housing would moderate. The problem is that we have seen the problem of creating over 100,000 jobs in the Silicon Valley than here. Quite frankly, Mr. Mendiola noted we can't build 100,000 homes here quickly and easily under our current structure as it just won't work. We have major infrastructure problems today. Could you imagine adding another 100,000 homes? Mr. Mendiola noted that was an important thing to put on record.

Mr. Mendiola noted in the decade of the 1990's, we built the upper end. But, he was talking about the unincorporated San Benito County. We have become very good at building the upper end of the market. We have built a lot of homes that are selling for \$500,000 - \$800,000. We have not produced housing that is affordable. We simply haven't done it. Mr. Mendiola noted that the free market hasn't done it at all - there are millions. Mr. Mendiola stated if the County hadn't participated in Riverview, if we didn't demand second units to be built, if we didn't require some affordable units, none would be built. We do not have the housing industry coming to us and say we want to build a tract of 1200 square foot homes because we think we can get them to market at a reasonable rate and we think there is a need here. It just hasn't happened. The reality is that if we are not trying to build the cross section, it is that that puts us out of compliance with housing law.

Mr. Mendiola noted our numbers are fine. There was some statement about we are not going to meet our housing needs - our numbers are fine. We can meet the assigned 620 units to the County. What we aren't meeting, is the cross section that is necessary.

Mr. Mendiola noted if you reduce the impact fees, it would lower the cost of housing. He did want to say the reason we have impact fees is the structure, that we as Californians voted for, we voted for Prop 13 which changed the way

we tax. We can no longer tax the entire community to build a new bridge or a new highway, road or sewer plant. The reason we have impact fees is because we have limitation on property tax. In order to build the infrastructure necessary to build a community, we have to charge impact fees. Mr. Mendiola thanked the Board for the opportunity to speak.

Hearing no one else wishing to address the Board, Chair closed the public hearing.

Chair Cruz asked Mr. Goodrich if there was any rebuttal or address any questions of the Board.

Mr. Goodrich noted Mr. Mendiola covered a lot of the issues. There was a discussion about the City of Watsonville's failure. Mr. Goodrich noted he contacted the City of Watsonville and yes they had a 25% inclusionary. They also had it at a time when the economy and home building in California was in a downturn. They had investigated other cities in the United States and found that similar things were happening there. Construction was down and it was a tough economy in the 1990's.

Mr. Goodrich noted Watsonville changed it, the economy came back and home building and everybody stated, see you lowered it to 15%, therefore it works. Mr. Goodrich noted that could be weighed either way - was the glass half full or half empty.

Mr. Goodrich noted these costs add up so much and noted that the San Juan Vista Estates project - they were willing to pay the County \$6,000 a lot. But, what does that build? We finally arrived at a figure of \$35,000 per lot. They were talking about building homes that started at \$750,000 and go up to \$1-million. You are talking about 3 ½% of the cost for the house.

Mr. Goodrich noted there was a comment about Ridgemark homes a few years ago costing \$250,000. If you look through the paper now and they are half a million to ¾ of a million. Government didn't cause that to go up. Everybody wants to sell their land to a developer for \$1-million and the developer wants to make another \$1-million and everybody has their home but they want to make \$1-million when they sell their home too. It is just part of this vicious circle. It is not all government causing every evil in the lack of housing.

Mr. Goodrich noted there was discussion about using county funds. But, once again, county taxpayers paying for all the infrastructure so a developer can come in and build, there is a concern about the waste of tax dollars.

Mr. Goodrich noted a couple of people stated this was an impact fee. This is not an impact fee. We have an impact fee already for building permits. This be an affordable housing fee to be paid at the time of recordation of the map and he wanted to make that clear.

Mr. Goodrich noted it was said that 30% was too high, but he didn't hear anything that would lead him to believe that 30% wouldn't go a long ways in meeting. There were 60% of the people in this town that couldn't afford to own in this county. 30% is not that high.

Is it a taking. Mr. Goodrich noted he heard that comment. There would still be a viable use for the land. 30% is not a taking.

Rental housing, Mr. Goodrich noted he didn't see any developer offer to build rental housing for us. That is the big issue. We have not seen any developer come in and say, gee Planning Department, we can build you affordable housing. It is always five lot subdivisions with ¾ million dollar home on it or higher. We have seen the prices escalate. During 2000, we saw building permits, the price of construction, they were proposed to go on ½ million and by the time we'd made it through the building permit process, we looked at the paper and saw they were being sold for \$850,000. That isn't a government function - it is just profit and what happens.

Mr. Goodrich noted, yes, there are some minor changes that we think that we can make. Measure G really has no impact on this. We do inclusionary housing despite that as it is something that needs to be done. We could do studies as someone mentioned we need to do studies. We could always do more studies. We could always come up with a different figure. Someone said that our fees were too high at \$27,000. There are other communities around here in other counties that charge \$35,000, \$40,000 or more. We think we have been fairly conservative in our calculations. We think the Board should move forward on that and he would try to address any other questions that the Board may have.

Chair Cruz asked the Board if there were any questions.

Supervisor Monaco stated he was committed to managed growth in our county and he certainly strongly supported this ordinance. Supervisor Monaco felt we were moving in the right direction. Supervisor Monaco felt that maybe we needed to look, as Mr. Goodrich suggested, at some provisions in fine tuning this. His concern was that we keep our county at some competitive level with surrounding counties for having that growth managed. He felt if we moved hastily on this, that we could create a situation which would make our county not competitive in the housing market at any level, very low, low or affordable.

Supervisor Monaco noted we need to have a well thought out IHL that would provide clear guidelines that will help elevate the desperate need for affordable housing in our own community. There are some specific areas concerning it such as why is there 30%. We have heard the story of what occurred in Watsonville. He didn't have any answers for that and was concerned if we put the bar that high, are we going to create a situation where we are simply not going to be competitive.

Supervisor Monaco noted there were other provisions which staff discussed that could be worked out. But, he hoped that we could proceed very cautiously with this and make sure we aren't going to create something. Supervisor



Monaco noted there was a definite need and no one was questioning that. He was concerned about winding up in a situation where we were not competitive.

Supervisor Loe asked Supervisor Monaco how he saw the Board being able to move forward. Should there be a study session?

Supervisor Monaco felt we needed to look at this with a study session. Supervisor Monaco stated Supervisor Loe and Supervisor Cruz have had two sessions, but maybe we need to, as comment came out today, that there are other agencies that have concerns and maybe we need to address those concerns in a study session.

Supervisor Kesler noted there was a lot of time and effort on this. She thanked the Planning Department for all of their work on this.

Supervisor Scagliotti noted this has been an on-going issue. We have taken steps as staff has pointed out. Supervisor Scagliotti moved to adopt staff's recommendations and noted that was in the form of a motion.

Supervisor Kesler seconded the matter.

Chair Cruz noted before he would take the motion and second, he wanted to know if there were comments from the other supervisors and would then accept the motion as he would like to make comments and possibly so would Supervisor Loe.

Chair Cruz noted he and Supervisor Loe were working and going to meetings with staff on this matter.

Supervisor Loe noted in preparing for this meeting, she looked at the AMBAG studies, looked at CSAC studies, looked at the Department of Finance numbers and read the staff report. According to the AMBAG study, they studied Santa Cruz, Monterey, Santa Clara and San Benito County. Basically, the jobs to housing balance show that over 70% of the jobs are in the Santa Clara valley and felt all knew that.

Supervisor Loe stated that in the next twenty years in this four county area, it is predicted that there will be 311,016 new jobs. 61% of the housing will be built in Santa Clara County, 80% of the job will be there. That tells us where the housing is going to go. It is going to go the other three counties. We cannot continue to be a bedroom community. Supervisor Loe noted it was time to look at this seriously. Only less than 50% of our population right now that work here can afford to have a home here.

Supervisor Loe noted since we were the fastest growing county in the State of California, we know that just building houses does not ensure the people working here a home to live in. This is a serious issue that has to be addressed.

Supervisor Loe felt right now, the Board has two decisions: it can either ignore the problem, continue studying it looking for the perfect solution and can continue being a bedroom community, or we can demand that houses be built for the people that live and work here. Supervisor Loe stated she would also like to move forward.

Chair Cruz noted he also had a few comments. He hoped he addressed Mr. Places' comments as far as trying to bring Measure G here. Measure G has nothing to do here.

Chair Cruz noted as far as Mr. King's comments, Mr. King was right. Mr. King has build hundreds and hundreds of homes here, yet we don't have a youth center here, don't have a public swimming pool in Hollister or San Benito County.

Chair Cruz noted to Home Builders Association that he did send a letter to CSAC as he was at the convention. There was a guest speaker who did say why should I carry somebody who can't afford a house. If you can't afford a house, the speaker said it and it is on record, that that's tough. It shouldn't put the burden on us, the Home Builders Association. Chair noted after the meeting he talked with the speaker and also sent a letter to CSAC voicing his opinion that the workshop should have had someone else there for rebuttal. Chair noted he received letters from the Home Builders and CSAC that this year when we have our convention, that there will be someone available for rebuttal.

Chair Cruz noted that as far as what we are doing, 20-30%, we were setting the bar awfully high, but he has been here all his life. He knew that in 1958, his first hope was \$12,500. Twenty some years after, his son, who now teaches at Yerba Buena High School with starting wages of \$32-\$36,000, yet homes here are going for \$380,000. He isn't able to afford a home in Hollister so he is living in a condo in San Jose.

Chair Cruz noted he attended a meeting Watsonville not too long ago and did talk to the Mayor of Watsonville. Yes, there was trouble but it wasn't because of the 25%, but right now, they are building, but in building they are building affordable and low income homes where the developer is saying in order to build an \$800,000 home, we will do for the City of Watsonville. In looking what they are doing right now, they are above 25%.

Chair Cruz noted Supervisor Johnson in Monterey County is for affordable homes, took on the City of Seaside and Ft. Ord for new homes. But, those homes were supposed to be affordable. They started off as affordable. Congressman Farr actually went as far as trying to get 50% affordability there, but it didn't go through. Now, they are trying for 40% and are at a stalemate. Those homes are going for \$529,000. If a teacher, starting off at \$42,000 can afford \$529,000, they can't go to Monterey or Hollister.

Chair noted there was a lot of time in this ordinance. Chair noted he has been accused of just waking up to this. But, as a person who grew up in a migrant family, living in a tent on Buena Vista Road, he felt he really knew what it means to own his own house. What he was trying to do is help those who can't help themselves. Helping a single parent, or a teacher who has children, in helping out the fireman, policemen. Was he setting the bar high? Yes, but keep in mind, if it happens like Watsonville and we see a decline in building and no one wants them, it can be changed. We have to start

somewhere. When he hears that that will put us higher than our neighbor, neighboring counties, the neighbors are the ones who put us where we were right now.

Chair noted he was setting the bar high. He wanted to go on record saying he was setting the bar high. There were developers that will give close to 30%. This isn't out of the question.

Chair noted he would accept the motion.

Supervisor Scagliotti asked Mr. Goodrich exactly what would be the action that he would like the Board to take today.

Mr. Goodrich noted the Board would, and counsel could clarify it, based upon the changes that he read into the record, that the Board would first of all, adopt the Negative Declaration and second, move on the ordinance and direct that it be brought back in a final form at the next meeting for final approval.

Counsel Forcum noted that was correct. The action as identified in the agenda item transmittal is to adopt the Negative Declaration, pass and adopt the inclusionary housing ordinance and adopt the resolution approving the administrative manual. If there are changes that are required to be made, Board can direct staff to make those changes and adopt it as reflected with the changes or direct that it be brought back, which is probably the advisable way to go so that there can be a final review by the Board.

Mr. Goodrich noted the administrative manual, the verbal changes that he made on the ordinance, there were a number of places in the manual that he would have to go back in and change. There is a little more work to be done on that so he would recommend that the Board put that off for at least a meeting or two and bring that back as a separate resolution and action.

Counsel Forcum noted so the resolution would be deferred to which Mr. Goodrich noted that was correct, deferred to a date certain.

Supervisor Scagliotti stated the action would be to adopt the negative declaration, pass and adopt the inclusionary housing ordinance.

Mr. Goodrich noted that was correct and set a date certain for bringing back the administrative manual for consideration of the resolution.

Supervisor Scagliotti asked Mr. Goodrich if the next meeting was sufficient for Mr. Goodrich to which Mr. Goodrich noted the next meeting was good.

Supervisor Scagliotti made the motion to adopt the Negative Declaration, pass and adopt the inclusionary housing ordinance and direct staff to bring back amendments to the administrative manual to the last meeting in January, 2004.

Supervisor Kesler was second on the matter.

Counsel Forcum, under the question, asked Supervisor Scagliotti if the motion would include the changes reflected by staff and the ordinance would be brought back with the resolution.

Supervisor Scagliotti, as maker of the motion, noted that was correct.

Supervisor Kesler, as second on the motion, concurred.

*Upon motion duly made, seconded and carried:*

1. *Adopted the Negative Declaration; and*
2. *Directed staff make changes as reflected to the Administrative Manual; and*
3. *Directed staff bring back a resolution amending Administrative Manual and bring back proposed Inclusionary Housing Ordinance for consideration to the meeting of January 27, 2004.*

*Motion passed unanimously 5-0. (Planning - file #790)*

## **REGULAR AGENDA:**

15) **Consider agreement with Sequoia Pacific Systems re: printing of ballots and booklets for March 2, 2004 election.** County Clerk/Recorder John Hodges came forward. Mr. Hodges noted this was for approval of the contract with Sequoia Pacific Systems for the upcoming election, March 2004 which was a Presidential election for the printing of the ballots, booklets, addresses, mailing, service for the sample ballots, printing of the absentee envelopes and printing of the Spanish material and translation and authorize the Chair to sign.

Mr. Hodges noted Sequoia Pacific has been with the County for a number of years. San Benito County bought into the elections system that we now have which is data vote back in 1986. Since then, the system has worked very well. Sequoia furnishes the ballots that go through the card reader. Sequoia is what is called a "one stop shopping" which lays out the ballots for the County, prints the sample ballots and also work closely with the County. Sequoia has done an excellent job over the years. Luckily, we have had a flawless election due to their help and assistance.

Mr. Hodges stated Sequoias' record spoke for itself. Sequoia also has been approved by the State of California for performing and doing election material. We contacted, which is done every year, the Secretary of State and they give us a list of the different companies that do election services. Sequoia Pacific is the one within the State that does the manufacturing throughout to the finished product. Mr. Hodges noted he would like to continue with Sequoia.

Mr. Hodges stated next year in 2005, the County is going to have to be looking at a new voting system and at that time, we will be taking another look what the options are. But, for right now, Sequoia has done a good job for the County.

Chair Cruz asked Mr. Hodges when was the last time that he actually went out to bid. Chair stated we have been doing business with Sequoia since 1986. He asked if Sequoia is what was used by other counties in the whole State.

Mr. Hodges noted not for the whole State. He stated about ten counties that he knew of used Sequoia Pacific with the State of California certifying that company. There were other companies out there that will actually do the printing of the sample ballots. Then, you have to go to another company to do the printing of the ballot itself for the card reader. As far as the prices go, in talking and asking questions, our costs come out to about fifty cents per voter for this County. That includes the sample ballot along with the ballots - that is what the bottom line comes out to, roughly fifty cents per voter.

Chair Cruz asked if there was no one in San Benito, Monterey or Santa Cruz counties, closer to us that would be able to do this.

Mr. Hodges indicated no. He indicated that Sequoia Pacific did a number of counties up and down the State. There are a number of counties that have elections 2-3 months, so they are experts in the field. San Benito County only has an election every other year, two elections. We use their help and they are the experts.

Chair Cruz asked Mr. Hodges if he informed Sequoia Pacific what he wants or do they tell him what to do.

Mr. Hodges indicated he gave them a list of what is going to be coming on the ballot, i.e. San Juan wants to participate; City of Hollister is going to participate; Gavilan College is going to participate. They also participate in the costs, the other entities that use the elections process. We bill them on a voter opportunity cost. Whoever uses this process also participates in the billing and paying of the bill.

Supervisor Loe asked Mr. Hodges that if the City of Hollister participates financially, or Gavilan College, whoever has something on the ballot, do they participate only to the degree of what they have on the ballot or participate across the board.

Mr. Hodges indicated by voter opportunity which means if Gavilan College, they will sent out ballots to approximately 20,000 registered voters and they pay a portion of that cost on a voter opportunity breakdown.

Supervisor Loe asked about a state election and no other jurisdiction puts anything on the ballot, does the county pick up the full cost then?

Mr. Hodges indicated that was correct.

Supervisor Loe notes say Gavilan College wants to put a bond measure on. Do they pick up the cost?

Mr. Hodges noted they pick up their fair share based upon a voting opportunity.

Supervisor Loe notes the City of Hollister puts something on the ballot, they pay only for what they put on there and not picking up the cost for the people living in the City.

Mr. Hodges indicated they are picking up the their costs.

Supervisor Loe noted but not for the overall election but just for what they are putting on the ballot to which Mr. Hodges indicated that was correct.

Supervisor Kesler made the motion to approve the County Clerk's request and authorize the Chair to sign. Supervisor Loe was second on the motion.

*Upon motion duly made, seconded and carried, approved agreement with Sequoia Pacific Systems and authorized Chair to sign same. Motion passed unanimously 5-0. (Elections - file #285)*

Clerk Navarez reminded the Board that they must first adjourn as the Board of Supervisors and reconvene as the Public Authority of the IHSS.

Chair Cruz adjourned as the San Benito County Board of Supervisors and reconvened as the Public Authority for the In Home Supportive Services.

#### **SITTING AS THE PUBLIC AUTHORITY FOR IN HOME SUPPORTIVE SERVICES:**

**16) Consider Memorandum Of Understanding between the Public Authority for In Home Supportive Services and SEIU Local 817 re: employer-employee relationship with a contract term of January 1, 2004 through December 31, 2006.**

Human Resources Director Elizabeth Brown came forward. Ms. Brown indicated this item represents that the county's negotiating team reached an agreement with SEIU Local 817 representing In Home Supportive Services providers for a three-year Memorandum of Understanding. The term of the agreement, if approved, would be effective January 1, 2004 through December 31, 2006.

Ms. Brown indicated the Board was respectfully requested to approve and authorize the Chair to sign the attached MOU with the IHSS individual providers and authorize the implementation of the agreed upon actions within the MOU.

CAO Terrence May noted that the Governor's budget that was released on Friday proposes to reduce the level of state funding for the IHSS program which if approved by the Legislature as part of the 2004/2005 budget, could reduce the amount of state funding to support the cost of IHSS provider wages. Ms. Brown, Mr. Rick Bolanos and former CAO Gil Solorio were very important in including language in the body of that agreement that says that our commitment to follow through with the wage increases in this three year agreement is contingent upon the State maintaining the same level of support that we have now which includes the State ceiling of \$8.50 per hour now scheduled to increase to \$9.50.

Mr. May noted in the possibility that the Governor and the Legislature as part of the final budget element were to scale back the amount of State funding for IHSS service providers, those wage increases would be subject to a re-opener. Mr. May noted that protects the County interest in the event that we suffer a reduction of State funding and would not commit the County to have to absorb those increased costs. Mr. May indicated he wanted to point that out for the record that the possibility of a reduction in State funding as part of a solution of the State Legislature budget crisis has been built into this agreement.

Chair Cruz thanked Mr. May and believed that the MOU, will go ahead with the increases and believed SEIU has indicated that if everything goes to pot, the whole works, they will come back and will renegotiate in good faith. But, the Board will go forward with these raises and hopefully, with all the cuts in Sacramento, it is too bad that the ones who really need the money are the ones that get hurt and this was the reason he was putting the bar up high.

Supervisor Monaco made the motion to approve the MOU and authorize the Chair to sign. Supervisor Kesler was second on the matter.

*Upon motion duly made, seconded and carried, approved MOU between the Public Authority for In Home Supportive Services and SEIU Local 817 re: employer-employee relationship with a contract term of January 1, 2004 through December 31, 2006 and authorized Chair to sign. (IHSS - file #130.1)*

Clerk Navarez reminded the Chair that he needed to adjourn as the Public Authority and reconvene as the Board of Supervisors.

Chair Cruz adjourned as the Public Authority for In Home Supportive Services and reconvened as the San Benito County Board of Supervisors.

Chair Cruz noted the Board would take a short recess and would then adjourn into Closed Session.

Chair adjourned into Closed Session.

#### **CLOSED SESSION AGENDA:**

**17) Conference with Legal Counsel - Anticipated Litigation**

**a) Significant exposure to litigation pursuant to subdivision (b) of Government Code Section 54956.9.**

**Number of cases: 3**

Counsel reported there were two cases to hear and one case was withdrawn.

*Upon exiting Closed Session, Counsel reported that there was no action taken on the remaining two items. (file #235.6)*

**b) Initiation of litigation pursuant to subdivision (c) of Government code Section 54956.9. Number of**

**cases: 3**

Counsel reported there was one case to hear and two cases were withdrawn.

*Upon exiting Closed Session, Counsel reported that no action was taken on remaining case. (file #235.6)*

**18) Conference with Legal Counsel - Existing Litigation**

**a) Franscioni et al. vs. County of San Benito et al.**

*Upon exiting closed session, Counsel noted no action was taken. (file #235.6)*

**b) Sandman vs. County of San Benito**

*Upon exiting closed session, Counsel noted no action was taken. (file #235.6)*

**c) McGovern vs. San Benito County et al.**

*Upon exiting closed session, Counsel noted no action was taken. (file #235.6)*

**d) Monteon vs. Richard Scagliotti, San Benito County Board of Supervisors, San Benito County**

**Financing Corporation, et al.**

*Upon exiting closed session, Counsel noted no action was taken. (file #235.6)*

#### **1:30 p.m. PUBLIC HEARING (or as soon thereafter as the matter may be heard):**

**PLANNING DEPARTMENT - R. Mendiola:**

**19) Hold public hearing to consider an appeal of a San Benito County Planning Commission decision made on December 17, 2003 re: denial of an appeal of a Stop Activities Order. Appellant: San Benito Heating & Sheet Metal, Inc. (Robert Rodriguez). Property Owner: Ken Gimelli. Location: 1771 San Felipe Road, Hollister, CA .**

Planning Director Rob Mendiola came forward. Mr. Mendiola indicated this was an appeal which started as an Administrative Hearing. We issued a stop activities order and the procedure of Section 19 of our Code spells out that the appellant gets to make their case, we make our case and appellants are afforded a rebuttal time. Since that is the way we handled the Administrative Hearing, that is the way that the Planning Commission held their hearing and unless County Counsel indicates this needs to be done a different way, Mr. Mendiola recommended that we follow that same regulation as spelled out in the Code.

Doug Marshall, attorney representing Mr. Robert Rodriguez came forward. Mr. Marshall noted in the time he has, he would like to make a proposal to settle this matter and move forward. His focus was the future and not what occurred in the past. He noted he would be willing to discuss all that and preferred to make a proposal to solve the problem rather than dwell on what has occurred.

Mr. Marshall noted that the proposed resolution he had today is two parts. Mr. Marshall asked that the Board lift the stop work order subject to any and all fire department requirements, requirements that he had discussed with the Fire Department, although it seemed to be an ever changing story from them. The understanding he had would be that upon lifting the stop work order, that there would need to be sufficient water capacity on site to provide water suppression. Mr. Marshall noted there would need to be water truck on site. That was based on the discussion he had with the Fire Department last Friday. He noted that would be upon the lifting of the stop work order being lifted today in this proceeding.

Mr. Marshall noted secondly, his understanding was that Mr. Rodriguez would be able to proceed within one week to install a fire hydrant that would be located close to the road in front of the property. Thirdly, that Mr. Rodriguez would go ahead and install sprinklers in the buildings. There are no sprinklers in the building today, although there has been historically a commercial use on this site for over twenty years. There is also no hydrant in front of the property although, again, the property has been in use for commercial purposes for well over twenty years.

Mr. Marshall noted in going forward with this, there is also a second step. That was just the first step. The second step would be to have an expedited hearing. Mr. Marshall's thought would be that it would be before this Board so you would maintain control in that continued hearing over the stop work order, the lifting of that order today as well as the final determination of what conditions should or should not be imposed relative to the M-1 review. Mr. Marshall noted if this didn't sit well with the Board, then possibly, the Board could direct the hearing occur before the Planning Commission for that purpose.

Mr. Marshall noted the idea would be in that second step all the requirements of Planning for such things as landscaping and other things to beautify the site, Public Works requirements, any further requirements from the Fire Department, all of those would be placed on a timeline to be approved in connection with the M-1 approval.

Mr. Marshall noted this entire process would still leave the Board with the ability to reinstate the stop work order if anyone of these things is not proceeding as scheduled or to take any other legal action that you wish to take. The risk in all of this would sit on the shoulders of Mr. Robert Rodriguez. So, basically, a blank check he is writing to the Fire Department offering to do improvements which have never been done before even though the site has been used for twenty some years for commercial purposes. Mr. Marshall noted the Board would have the ability to use whatever enforcement powers they wanted if it is not proceeding. That would leave Mr. Rodriguez entirely at the mercy of the County as he is proceeding but it would allow him to continue his operation.

Mr. Marshall noted the thought was if he is to stop that operation and he is stopped right now, he is not in operation. The metal fabrication is not going on, but were that to continue this week, next week, the following week and wait until whenever the M-District Review occurs, that he may very well be out of business along with him, all of his employees. Mr. Marshall noted this therefore was a way to accommodate him staying in operation.

Mr. Marshall asked why should the Board do this? His point was, number one, the reason to do it is because Mr. Rodriguez is the first person that has offered to do actual improvements for fire suppression purposes on this site. It has never before been required and he is the first one. Mr. Rodriguez has demonstrated this by conduct. He has already installed part of a line that connects to the San Felipe blue line and he is prepared to go ahead with the completion of that line for the purposes of installing a fire hydrant. Similarly, Mr. Rodriguez is prepared to go forward with the sprinkling that would be required by the Fire Department. Again, that is something that has never been required.

Mr. Marshall noted as an offer of proof on this issue, he would like to present the following for Board consideration:

1. There was a Planning Department permit issued in 1983 on this site. He had a letter dated December 16, 1983. There are no fire department requirements for that permit.
2. The staff report further indicates commercial use prior to 1983. No fire department requirements, Mr. Rodriguez is the first one and introduced the letter dated December 16, 1983 and the staff report connected with that approval is attached - a three paged document.
3. The historical use of the site for commercial purposes is further underscored in evidence submitted in connection with the proceedings that have occurred before today, in a letter dated December 9th, signed by Ken Gimelli, owner of the property. Mr. Gimelli indicates uses going all the way back into the 1960's, and intense commercial use over the last twenty years and the individuals involved, entities involved, are listed in Mr. Gimelli's letter. Mr. Marshall handed that information to the clerk dated December 9th.

Mr. Marshall noted if there was any mystery about the site being in commercial use, it shouldn't be a surprise to enforcement staff. Mr. Marshall submitted a photograph, labeled Exhibit A to the clerk, showing a sign on the site in plain view, the commercial operation as Sierra Welding and Fabrication, a prior commercial use, virtually identical to the existing use on the basis for Mr. Rodriguez' claim of a vested right. Mr. Marshall noted he was not asserting that right, but

rather making an offer to try and resolve the matter. He believed these to be important documents for the Boards' consideration.

Mr. Marshall noted if the Board were to approve this, he wasn't asking them to approve it based on a promise but based on conduct. Not based upon by works, not based on Mr. Rodriguez' word, it would be based on the fact that Mr. Rodriguez does not meet the fire departments requirements that he would lose the opportunity to proceed. The Board could reinstate the stop work order and take whatever legal action the Board would wish to take. It is a proposal based upon conduct and not on a promise.

Mr. Marshall noted it is legally based on the Code. The Code states that you may lift a stop work order, the County may lift a stop work order subject to conditions. That is clearly stated in the County Code. The Board has the legal authority to do this. He understood in a prior proceeding, staff took the position of we can't give Mr. Rodriguez an interim permit. We are not asking for one. It is much like a prosecutor has discretion of when to prosecute, look at something like you see some problems but am not going to prosecute. Essentially, that is what Mr. Marshall is asking if lifting the stop work order. He wasn't asking the Board to give up their right, but to lift the stop work order subject to conditions.

Mr. Marshall noted were the Board to proceed this way, it would enable people to stay at work at the site which there was reasonable expectations that a commercial use was lawful and these people would be able to maintain their livelihood under circumstances where the public health and safety is provided for.

Mr. Marshall indicated he was available for questions. He understood the procedure today, but shouldn't look solely at the procedure and felt we need to look at the substance and see what we can do to solve the problem and figure out what is the best procedure to implement, the correct substance to the solution.

Supervisor Kesler noted to Mr. Marshall she understood he was an attorney representing Mr. Rodriguez. She asked him if he knew the full story? And, if he did, did Mr. Rodriguez know that he had to do things before it got to the Planning Department before it came before the Board? Did Mr. Rodriguez know all of these things had to be done?

Mr. Marshall indicated Mr. Rodriguez would have to explain that. Mr. Marshall noted all he knew was that Mr. Rodriguez believed since the property was in commercial use, that he similarly could engage in that commercial use. Mr. Rodriguez then retained an engineer for purposes of making the improvements to the site that he wanted to make and of going through whatever review processes were needed. Mr. Marshall indicated Mr. Rodriguez was not an attorney.

Supervisor Kesler noted Mr. Marshall was and Mr. Marshall represented Mr. Rodriguez.

Mr. Marshall indicated he did now, he was not part of this when Mr. Rodriguez became a lessee of the property. Mr. Marshall indicated he knew where Supervisor Kesler was going. Why didn't Mr. Rodriguez go through the regular process? Well, as other lawyers will tell you, there is such a thing as property rights that when somebody has been engaged in a use over a period of time and someone else is stepping into that persons shoes engaged in a similar use, they have a right to continue the operation. Mr. Marshall noted that is what Mr. Rodriguez has asserted all along. That is what is in the appeal that is before the Board. Mr. Rodriguez is asking to step into those shoes. That is a legal right that Mr. Rodriguez has. The use is similar to the prior use. Mr. Rodriguez has a metal fabrication use. Sierra Welding was a metal fabricator. There was also a truck repair use on site engaged in metal fabrication and welding.

Mr. Marshall noted Mr. Rodriguez had a right to succeed in that use. The M-District states that it has to be very similar to the prior use in order for a person to avoid needing the M-1 Review. That is something we could argue but he wasn't going to argue that today. Mr. Marshall felt it was a very similar one. Mr. Marshall agreed with Supervisor Kesler's thought that maybe more should have been done.

Supervisor Kesler asked if Mr. Rodriguez was a new person to this county? Has he never lived here, doesn't live here now or didn't know that he should check with somebody to find out what he should do before he bought the building, or leased it? Did he give those thoughts?

Mr. Marshall indicated he didn't know the particulars of those, but did know that Mr. Rodriguez did reside here.

Supervisor Kesler noted then Mr. Rodriguez should know there is a planning process, correct?

Mr. Marshall agreed with that.

Supervisor Loe asked Mr. Marshall how many employees Mr. Rodriguez had?

Mr. Marshall noted there were approximately 100 as he just checked on that today in speaking with Jesse Rodriguez whom he understood to be present today who is the foreman/supervisor on site.

Supervisor Loe asked if all the employees worked onsite.

Mr. Marshall indicated no, but a number of them do. Since it is a metal fabrication, for example, they make a gutter, somebody takes that gutter to a job site and actually installs it. Those people are not on site, they are employed directly with the company that Mr. Rodriguez owns which is San Benito Heating & Sheetmetal.

Supervisor Loe asked how many people worked onsite, did Mr. Marshall know?

Mr. Marshall believed that to be around eleven.

Supervisor Loe asked when did Mr. Rodriguez actually stop work at the site?

Mr. Marshall noted he knew Mr. Rodriguez wasn't working on Monday morning and was not working there today, that's what he could tell the Board.

Roger Grimsley, project engineer, came forward. Mr. Grimsley noted to answer Supervisor Kesler's question, Mr. Rodriguez is a local and is aware of the M-District Review. Application was made, to which Mr. Rodriguez could give the

exact date. We had made the application and were proceeding with the M-District Review. We were a little bit remiss in the dates and the response and that is what has lead to most of the stuff. Since the December 5th meeting, he thought we attempted to get as much information to Mr. Mendiola's office to which Mr. Mendiola and/or Ms. Lori Chase of his department could address. Mr. Grimsley noted we were aware of the M-District Review process. We were a little bit tardy in their responses.

Supervisor Kesler noted she has known Mr. Grimsley for a number of years. She noted if Mr. Grimsley knew there was a business going in and someone asked him a question, Mr. Grimsley would be able to tell them what they should have to do. If they didn't, Mr. Grimsley could say there is a Planning Director, Planning Commission, the whole thing, but Mr. Grimsley didn't do that. Must not have or we wouldn't be here today.

Mr. Grimsley stated we don't try hand feed the client in those matters. We figured they are responsible in this and they come to his office and prepare the site plan and building plans.

Supervisor Kesler noted but Mr. Grimsley was present speaking on behalf of Mr. Rodriguez today.

Mr. Grimsley stated that the client or the owner initiated the M-District Review before he got involved. He did the site plan and were doing all the technical work. Mr. Grimsley agreed, yes, he should have hand fed Mr. Rodriguez more to keep him abreast but Mr. Rodriguez knew of the procedures.

Supervisor Kesler noted maybe it wasn't a fair thing to say, but she would blame Mr. Grimsley before she would blame Mr. Rodriguez as Mr. Grimsley does know but Mr. Rodriguez may not have known.

Mr. Grimsley noted rightly so is that we were proceeding with it. Mr. Grimsley noted he was honest in saying he was a bit tardy in the response. In the mean time, Mr. Rodriguez was proceeding with working on the site.

Chair Cruz asked Mr. Grimsley as to what has happened from the December 5th meeting to date. What has been done.

Mr. Grimsley noted that was when we had the administrative review, Mr. Mendiola issued the stop work order and there were several items there. Mr. Mendiola dismissed a number of them and zeroed in on those that were most appropriate and centered around the health and safety aspect which is from fire. Since that meeting, we have made contact with the San Benito Water District, paid the fees and made a water connection tap, installed a 6-inch fire line out to a location close to the southeast corner of the property for the fire hydrants and are ready to install. We haven't installed it yet because we want to work with the Fire Department regarding the position and location. We have installed fire extinguishers, taken the doors off, put other things on. We submitted a landscaping plan to Ms. Chase for her review. He thought they had submitted a grading plan. We have done a number of things to resolve issues to get as much information to them so they can continue with their process of the M-District Review. To this date, we do not have fire supply water onsite at the location until such time we get with the Fire Department and find out where the location of the fire hydrant is. We will finish installing that and then bring bids for the sprinkler system.

Planning Director Rob Mendiola came forward. Mr. Mendiola stated he briefly wanted to go over some facts and address some issues. He wanted to briefly go over the response contained in the packet and the staff report. We believe we addressed each issue that was raised by the Appellant. Brief background, there was the December 5th meeting and then took this to the Planning Commission which heard the matter on December 17th. The Planning Commission upheld the administrative decision to stop work and the basis for that was in the staff report. They, the Planning Commission, found that we didn't error. There was admission both at the administrative hearing and at the hearing before the Planning Commission that they had no permit to operate. There was evidence presented at the Planning Commission hearing by the County Fire people of the eminent risk that is on the record. Once again, they felt there wasn't enough information that we abused or the Commission abused their discretion. They were operating without a permit. There was no abuse of discretion.

Mr. Mendiola stated the Appellant alleged that we didn't consider alternatives. There is no where in the ordinance that states we have to consider an alternative when we have an eminent risk to public safety. Mr. Mendiola stated those issues were all brought up.

Mr. Mendiola state the issue of vested right which seems to come up at each hearing. He explained we need to discuss that briefly. Mr. Gimelli owns this property. He received the letters noticing Mr. Rodriguez' is appealing it because he has an interest in this, it is his business that is there now. Mr. Rodriguez did not buy Mr. Gimelli's permit or business. Mr. Gimelli sold it to someone else and has moved on. There have been other businesses and in fact, it was testified just today that there were other businesses. The gap of time is one year. Substantially, the same business has to operate. That did not occur. There was recognition we believe, recognition of that fact by the July 7th, this year, application for an M-District Review for a sheetmetal shop - not Safety Storage, not welding and fabricating, not a truck company, not an auto repair company was also in there at one point. We believe that any vesting that they would have had had long evaporated. The testimony that there was never any fire requirements overlooks the fact that in 1994, Mr. Gimelli made an additional application, an additional M-District so he was well aware of the M-District requirements that did require fire suppression. Mr. Mendiola noted we believed that there is more information than the Board has received and we believe it is counter to some of what you have received.

Mr. Mendiola noted what is left? We have received an application in July of last year. We did not receive a completed application. We asked for additional information. Long story short, we now have what we believe we need to

process the application and bring it back to the Planning Commission. It is was his intent to hear it, notwithstanding some issue that would it would prevent it, it is our intent to hear the issue on February 4th. Mr. Marshall was aware of that and Mr. Mendiola appreciated what Mr. Marshall has tried to do. Tried to reach some kind of settlement not unlike what he has proposed and Mr. Mendiola would get to why we didn't feel we could quite go there.

Mr. Mendiola noted there is a hearing, although it is not published as of yet, at this point, we feel the lowest common denominator is we have to give the public notice. We have to go through the due process.

Mr. Mendiola stated the County's' position has been and it is well established here and the fire people are here if you would like to hear testimony regarding the eminent risk. The nature of these hearings is rather interesting. The purpose of the expedited hearing is when there is an eminent risk. You hold an expedited hearing so you give an opportunity for the people to tell you where you are wrong. That is why we issued the stop work on December 4th. We held the hearing on December 5th. We gave them the opportunity to appeal. We immediately put it on the Planning Commission agenda so they had the opportunity to appeal and now they appeal the Planning Commission decision to you.

Mr. Mendiola indicated what has brought us here was that eminent risk. The picture has continually changed. He wanted to testify to the Board that although he issued the stop work order on December 4th, and it was the second one, incidentally, the first one was partially ignored, it is the second time though that we issued a stop work and there has not been stopped. We have monitored it very closely right down to yesterday, when in fact, we would say that they did not work yesterday or today. Mr. Mendiola noted what Mr. Marshall was asking the Board to do was to issue some permit. This is not the first this has come up. We cannot tell the Board to on and issue an ad hoc permit because there is no process. There is no enabling legislation that allow the Board to remedy all problems, waive the wand, issue the permit here today. There is due process that you must go through, we must go through, and so it was our position that we cannot issue an ad hoc permit. You have to remember there is no permit. If you lift the stop work order, there is nothing underlying by which they can operate on. This is the sticking point that we could not get over. We can't say okay, fine, we don't want the liability for ourselves or the Planning Commission or the Board of Supervisors or for the County. We felt we need to get all matters in order first. That is where we are and that is how we have proceeded. Mr. Mendiola noted we feel there has been a risk and we addressed it.

Mr. Mendiola indicated he believed that pretty much summed up the issue. He didn't want to cut off staff. If there was something he left out and asked if there was something he left out or was germane. He felt the record spoke pretty clearly and was available for questions.

Supervisor Kesler stated Mendiola indicated they did not work yesterday or today, so maybe they know what a stop work order does mean. Would it be that they didn't think if they stayed that way, in that position, till the next meeting two weeks from today, if they have done everything that they know of regarding what they are supposed to do, Mr. Mendiola go out and check out the area, if that is all done, then go from there.

Mr. Mendiola indicated that has been suggested but here was the problem. The ordinance doesn't say the Board of Supervisors can seize the process at any point that they decide. Now, the Board does have great powers and he believed they could do that, but he believed in order to do that, you would have to change the ordinance first which is going to take a lot longer than two weeks.

Mr. Mendiola noted, Counsel could correct him if he was wrong and would like that to happen now rather than later, as much as that sounds attractive, we pursued many different avenues. Now, it is three weeks and a day until Planning Commission where we can hear this on. We can get it published and we can hear this. We have made no attempt to delay this matter, let me assure you. We are happy to do that and at this point, we do seem to have their attention and their cooperation.

Supervisor Kesler agreed.

Mr. Mendiola noted he was optimistic that on February 5th, they can have a valid permit or maybe even on the 4th. His point was what he was doing from the staff perspective, is recommending that we follow our regulations. It is what he was sworn to do and he would uphold what he is sworn to do.

Supervisor Kesler asked if everything was done that is supposed to be done and she had the gut feeling that they know what they have to do, and if they don't know, Mr. Grimsley could tell them. Supervisor Kesler stated when the 4th or 5th, whatever the next Planning Commission meeting, send it back there. But, if everything isn't done, don't waste the County's time, don't waste anybody's time.

Mr. Mendiola indicated it was his intent to take this to the Planning Commission because he believed that is where it should go and that is where he is taking it. With regards to what they know and what they don't know, he would like to testify that it may not be all of Mr. Grimsleys' fault. Mr. Rodriguez has been through the M-District Review process as recent in the last two years. As a matter of fact, Mr. Rodriguez is well aware of the process as he has been through it at least once that Mr. Mendiola was totally aware of. Mr. Mendiola indicated Mr. Gimelli has been through it a couple of times. All of the interested parties, as well as Mr. Grimsely, have been through it, so none of us are that naïve of this process.

Supervisor Kesler noted she wasn't thinking of Mr. Gimelli nor of Mr. Grimsley. She was thinking of the people, the number of which she didn't know.

Supervisor Loe noted there were eleven that work onsite.



Supervisor Kesler noted those were the people she was thinking about.

Mr. Mendiola noted he appreciated that. But, noted that weighed heavily on his mind on December 5th. It also weighed heavily on the minds of the Planning Commission on December 17th. There is no part of this that makes any of us happy. We are trying to follow the regulations and keep everyone safe and sane.

Supervisor Kesler noted she was sure that the attorney heard every word Mr. Mendiola said.

Mr. Mendiola indicated more than once.

Chair Cruz indicated we were talking about three weeks until the hearing. Food for thought, is it possible to give one week to finish off whatever he has to do in the shop.

Supervisor Kesler stated no.

Chair Cruz asked that he be able to finish. Chair continued regarding giving one week to finish off whatever it takes to keep the eighty nine people out in the field, even with the stop work order, those eighty nine people still can continue wherever they are working. This stop work order does not affect them. If they are working out of Gilroy, they are going to continue working. One week just to complete and that's it. Then, they would have to wait for February for the proper decision. Giving them one week because Chair indicated if he was in Mr. Rodriguez shoes, he would put in the overtime to make sure all the gutters, whatever are done to keep eighty nine people busy for the next two weeks. Was that possible?

Mr. Mendiola noted he understood the problem that we kept coming back to is we have no mechanism which empowers us administratively, Planning Commission wise or Board wise, to issue an ad hoc permit. You are then putting yourself in some level and he would yield to the legal counsel, some level of liability to say go work without a permit. We are not advising that - haven't and are not willing to start.

Chair Cruz realized that. All he was saying, was it possible to finish if they are half way through making down gutters, finish those down gutters and do that in one week and then keep the doors closed until everything else is taken care of?

Mr. Mendiola noted they operated for better than forty days against the stop work order and quite frankly, against the grain. We were not appreciative of that.

Chair Cruz noted when talking about the permit that was issued twenty-one years ago, the County and City has grown, but there are things that have to be done there, can we allow them to complete them or get the permits by February 4th? It could be possible that by the 4th or 5th they can get a permit.

Mr. Mendiola indicated the 4th is the first date they can get the permit. Upon successful completion, they can begin work. Mr. Mendiola stated it was his understanding that they are going to work diligently to get protection measures in place before that.

Supervisor Kesler noted we were talking about 7-10 people. So they didn't have a job for two or three weeks. That was better than not having a job at all and that is where they would be if we held this up.

Chair Cruz state if those 7-9 people can keep eighty nine people working...

Supervisor Kesler noted those eighty nine people were working already anyway.

Chair Cruz stated but they can't work unless it came out of the shop.

Mr. Mendiola indicated that the shop basically manufactured the parts to put into place.

Supervisor Monaco noted he realized this was an unfortunate situation and everyone is concerned about the hundred or so people working there. He gathered that significant improvements or modifications of this facility have been made and within a reasonable amount of time will be able to complete all of the safety issues, things they have to comply with in order to get the permit.

Mr. Mendiola indicated it was his understanding they, for example, cleared the path to a couple of exits and that they were working on other aspects like putting in a hydrant, putting in a sprinkler system, but for him to say yes they have been made, Mr. Mendiola stated he would not do that and wasn't quite sure anyone from the County could do that.

Supervisor Monaco asked Mr. Grimsley, it seemed to his statement they have done some things already to get to this point where they would be in compliance or be able to get this M-1.

Mr. Grimsley indicated Supervisor Monaco was correct. They have made some steps to implement what Mr. Mendiola has delineated as the things necessary in order to process the permit in terms of fire extinguishers, brining in the fire line, the hydrant hasn't been made yet, but the connection has been made and the valves have been put in. The exits have been marked off with signs.

Supervisor Monaco asked if they would be able to comply by the February 4th Planning Commission.

Mr. Grimsley noted he believed that it is reasonable to expect that if we can work with the Fire Department that the fire hydrant, then the berry and the press boxing be inspected and installed really depends on the availability of the sprinkler contractor so that he can get in there and install the detector checks and the valves.

Supervisor Monaco noted it would be reasonable as such on his part to be able to by the February 4th date to comply with all of this.

Chair Cruz asked if they were thinking about hooking up to City water.

Mr. Grimsley noted the discussion had been to make an application to LAFCO.

Chair Cruz noted if they were thinking to LAFCO, then you are talking about weeks or months.

Mr. Grimsley noted he had sat down with the City and Attorney Elaine Cass and they said they couldn't give permission. There was a twelve inch water main that the City put in all the way to the airport. But, we couldn't hook up a fire hydrant up to the building there until they made application to LAFCO and that process is being considered.

Supervisor Kesler stated as long as she's been in this county, about twenty five years, she has found that we are always "don't do that because it will hurt them" or "let's not do it this way because it will hurt that one" but at sometime we are going to have to put a stop to all of that. We can't continue feeling sorry for people. She said that was all she had to say, but she did feel sorry for them and we have to make people understand that if you build a house and you're not supposed to have a permit to build that house, tear it down. She couldn't say that to anybody but she was hoping that Mr. Mendiola could.

Mr. Mendiola indicated that is what he does and gets to have people tell the Board he was a donkey for doing that. Mr. Mendiola noted the Board was well aware that in the last few years, we have had more and more enforcement. We have shut down, thinking of at least another business or two. Within that period of time, we have had an increasing issue to follow up on our regulations. We see more and more of this happening and we will probably see more as we continue to populate and we have more and more people here, we have to make sure we all follow the same rules.

Supervisor Kesler noted it wasn't a popular way to go, but it was a good way to go.

Mr. Marshall stated he frankly didn't know if they would financially survive. It was his understanding that they probably won't. But, he understood the direction of the Board. He has been in front of judges and other boards before and he could take the hint. His concern was that if there is no permitable use in the interim and you couple that with these very expensive improvements which he would like to comment on, those improvements are improvements that quite frankly were quite applicable in the most recent past. Mr. Marshall indicated that those improvements were never required. This guy is willing to make those improvements. I you then say we are going to stop and keep the stop work order in place and you want sprinklers, the hydrant nonetheless installed, it is like pulling the taffy, keep pulling it and pulling it, it finally breaks.

Mr. Marshall stated the whole thing is for not. The notion was to allow the operation who brings in some money, he can do the improvements. Quite frankly, he's going to have to rely on the level of improvements and to what degree can we sprinkle. What buildings can be sprinkled. Mr. Marshall noted quite possibly, we are going to reach a point just where it's not going to work. Now, who wins? Well, we have the adage that we can't beat City Hall, might have a lot to that. In which case, they are out of business.

Mr. Marshall noted one of the things he was hoping for, and he saw the drift of where the Board was going, is to allow him to engage in not fabrication but in actual removal of materials from the site to be able to take to job sites. To the degree that they have materials that they can use on a job site rather than engage in fabrication, be able to move those items to where other employees are located so that they keep some aspect of the operation and keep some income so they have some wherewithal to put the money into the improvements that are now being called for that should have been called for a lot longer ago. There has to be some credit for that. It is not just a one-way street that he did wrong. Mr. Marshall asked what did the Board expect of their staff? They allowed the operations to continue for a long period of time long before his client arrived. There must be some balance and that is what he was asking for on behalf of his client - some continuance of the non-fabricating aspects with the welding. That is what triggers the fire regulations. That is what triggers the high occupancy code rating requires the sprinklers and the water trucks. The notion would be that he doesn't engage in that kind of activity and is able to remove from the site the materials that he has in place that would enable him to maintain some off site operations and bring in some income. Mr. Marshall noted that was his request, number one.

Mr. Marshall noted again, in the context of trying to reach a settlement that is going to work, put the money back into the property and truly provide for a use that doesn't raise health and safety concerns. Put the money where it is going to do some good.

Mr. Marshall noted the second thing would be, while being very receptive to appearing before the Planning Commission, as he has before, he thought the Planning Commission, while he wasn't at the last Planning Commission meeting, but his understanding was they were searching for a solution. They were just told they couldn't do it and they gave up because they were told there was no way they could do this. But, Mr. Marshall disagreed as it was in the Code. They could lift the stop work order subject to conditions. You don't need to be a prisoner of what has happened in prior proceedings. This proceeding today is a *de novo* proceeding which means that you go back to the beginning. You are not held captive from what has previously occurred whatever those determinations may have been. The Board is free to make their own.

Mr. Marshall asked the Board to take jurisdiction. That bringing this matter before this Board, we have been discussing this here today and he would like to continue with this body, their thoughts and concerns they had in mind and to be able to look them in the eye again, given what the Board told him today, be able to come back here and say, here is where we are two or three weeks from now, as soon as possible that a notice can be given.

Mr. Marshall possibly, we can save it. The main thought is that by doing it that way, allowing for some operations to continue, again non-fabrication, non-welding so it doesn't trigger the high fire safety concerns. Thereby, he doesn't bring in the water trucks immediately. He doesn't incur that expense, but he starts on the actual improvements. There is no need for water trucks if he's not engaged in actual fabrication.

Mr. Marshall noted he would amend his prior offer to do it this way. Then, it would be heard by the Board rather than the Planning Commission and hopefully, be able to wrap it up all in one proceeding. However, he still didn't know if that would save it but was hoping for some cooperation to accommodate that. Mr. Marshall thanked the Board for the opportunity to speak.

Supervisor Monaco asked Mr. Mendiola if it was possible to issue some kind of provisional permit.

Mr. Mendiola reiterated he knew of no provision of law that allow us, and yielded to Counsel as we have looked and we cannot issue that permit. Mr. Mendiola would agree with Mr. Marshall that the Planning Commission struggled with the same thing. We don't have such a mechanism.

Counsel Forcum stated that was correct. That has been reviewed by her office and there was no provision for that. In fact, the M-District process, it was her understanding, that was a Planning Commission level process to which Mr. Mendiola indicated that was correct.

Counsel Forcum noted as suggested by Mr. Marshall that this Board handle that is not proper nor possible.

Chair Cruz asked if it was possible within the next three weeks, not one week, be able to remove items from there without fabricating to keep eighty nine people going. Is that breaking the law?

Mr. Mendiola responded by asking what was occupancy and he didn't have that off the top of his head. If you spend a certain amount of time there, you are occupying. Here again, he didn't want to be in a position to create a liability for the County or himself or the fire people. Beyond that, he didn't have an answer.

Supervisor Kesler asked Mr. Mendiola how long it would be if we left this like it is, got back to the stop work order before they could come back to the Planning Commission, 30-60-90 days?

Mr. Mendiola noted that the soonest he could get it to the Planning Commission was February 4th, three weeks and a day.

Supervisor Kesler made the motion...

Chair Cruz noted before he would accept a motion, he needed to close the public hearing.

Mr. Marshall asked to again speak briefly. He emphasized he wasn't asking for an interim permit, not asking for that and that was the distinction in the Code that he felt has been missed. Mr. Marshall didn't disagree with what Counsel said. There is no provision for an interim permit in the Code, but what Code say though, is when you issue a stop work order, you may lift it with conditions. In essence, it provides you with a way of recognizing that there is an on-going review process but you simply aren't going to exercise your police power by saying stop. In the interim, you will be doing these things and that is provided for in the Code, Section 19 of the Code Enforcement section of the Code. You can do that. It is not permit so you don't carry liability by saying go ahead and do that, here is your permit, go ahead and do that, we are not saying that. You don't carry any liability.

Supervisor Kesler asked who, then is liable?

Mr. Marshall stated quite frankly, the property owner of those properties. If you fall short of the health and safety standards, it is considered negligence per se and you could be held liable.

Chair Cruz closed the public hearing and brought the matter back to Board level.

Supervisor Kesler noted because she felt the way she did about these working people and Mr. Rodriguez, and hoped the attorney would go back and tell him exactly what she said, Supervisor Kesler moved that we give them two weeks until this meeting, two weeks from today at 9:30 if everything has been accomplished that they have been told they should have done three months ago, two months ago, whatever, is completed, she wanted them to come to this podium and state everything is completed, then we will go from there. She reiterated that was in the form of a motion.

Motion died for lack of a second.

Chair Cruz asked that Supervisor Kesler elaborate a bit on what was meant by the two weeks in completing everything?

Supervisor Kesler stated the things that they have been told that they must do, that they should have done and haven't. Why was it before the Board? They went to the Planning Commission and were turned down - period, so they appealed to the Board of Supervisors. She was trying to give them a chance with the two weeks to bring that up like it should have been and they wouldn't have had to come to the Board. That was what she was trying to do, she was trying to save and not have Mr. Rodriguez to go in, build a lot of other things, but finish what they should have done. Supervisor Kesler indicated not parts to keep these other eighty nine people busy.

Supervisor Scagliotti noted as a point of order, the Chair called for a second on the motion, you cannot elaborate on a motion for this long. There is no second. Either withdraw the motion or move along, as a point of order.

Supervisor Kesler noted she did.

Supervisor Scagliotti noted Supervisor Kesler made a motion but didn't get a second and you cannot carry on a dialogue this long as a part of order. Either withdraw the motion and take dialogue of what Supervisor Kesler wants to do and get this thing right or we'll be here all afternoon.

Chair Cruz noted motion died for a lack of a second.

Supervisor Scagliotti noted we heard a lot here today, but what you didn't here is, there are rules and regulations for a reason. It has been pointed out to you that the rules, they knew what the rules were and chose not to go by them. How is this fair and equitable to the people that do go by the rules? What is fair and equitable to the people that do go

through the planning process, pay tens of thousands of dollars? What kind of example does this set? We know what an example means in San Benito County is, just go ahead and do it, go cry to the Planning Commission and the Board of Supervisors about jobs, jobs, this sets no example.

Supervisor Scagliotti agreed, yes, the people that get hurt are the working people and the employer, but you don't have those choices unless we amend some ordinance. We would be in dereliction of our elective responsibility to violate our own adopted County Code if we do not uphold the Planning Commission and the Planning Director on these issues. Everybody out there probably feels the same way about jobs, but again, as Supervisor Kesler pointed out, you have evidence on the record that these people knew, there is evidence on the record as early as 1996 that the property owner knew that an M-District Review was required. People that have lived here all their lives know what the use of that property was. It was agriculture in the beginning.

Therefore, Supervisor Scagliotti made the motion that we direct staff to prepare the necessary findings and a resolution to uphold the Planning Directors' decision and deny the appeal.

Supervisor Loe was second on the matter.

*Upon motion duly made, seconded and carried, directed staff to prepare the necessary findings and bring back a resolution upholding the Planning Directors' decision and denied appeal. Motion passed 4-1 with Supervisor Kesler voting no on the matter. (appeal file)*

Chair Cruz adjourned into Closed Session.

### **2:00 p.m. CLOSED SESSION AGENDA:**

20) Conference with Legal Counsel - Anticipated Litigation

a) Initiation of litigation pursuant to subdivision (c) of Government code Section 54956.9. Number of cases: 1

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: | P. Loe; R. Scagliotti; R. Monaco, R. Kesler & B. Cruz |
| NOES:   | SUPERVISORS: | None  |
| ABSENT: | SUPERVISORS: | None  |

There being no further business the Board adjourned to its next regularly scheduled meeting on Tuesday, January 27, 2004 at 9:30 a.m.

BOB CRUZ, CHAIR

San Benito County, Board of Supervisors

ATTEST:

BY:

John R. Hodges

Clerk of said Board

Sally Navarez

Assistant Clerk of said Board