

# ***MINUTES OF THE SOLANO COUNTY PLANNING COMMISSION***

---

## **Meeting of July 5, 2007**

The regular meeting of the Solano County Planning Commission was called to order at 7:00 p.m. in the Board of Supervisors' Chambers, Fairfield, California.

PRESENT: Commissioners Moore, Barnes, Barton and Chairperson McAndrew

EXCUSED: Commissioner Mahoney

STAFF PRESENT: Mike Yankovich, Planning Program Manager; Carly Aubrey, Senior Planner; Jim Laughlin, Deputy County Counsel; Stan Schram, Public Works; Kristine Letterman, Planning Commission Clerk

Items from the floor - none

1. **PUBLIC HEARING** to consider Architectural Review Application No. AR-07-04 of **Antonio Rodriguez** for review of a 336 square foot (14' X 24') storage shed with attached 816 square foot (24' X 34') 2 car garage. The property is located at 1146 Bush Avenue, Vallejo, in an "RE- 1/4" Residential Estate Zoning District, APN: 0075-080-260. This consideration has been determined not to have a significant effect on the environment and is categorically exempt from the California Environmental Quality Act. (Project Planner: Carly Aubrey)  
**Staff Recommendation:** Approval

Carly Aubrey gave a brief presentation of staff's written report. She stated that the applicant is proposing to upgrade an existing 336 square foot shed by replacing the roof and siding, framing in three windows and a door and adding two new doors. The applicant is also proposing to construct a new 816 square foot two car garage that would be attached to the north wall of the existing shed. The colors of the shed/garage would match the existing residence, which are white with brown trim. The existing driveway would be extended approximately 50 feet to reach the shed/garage. The proposed use of the shed/garage would be for personal storage and parking of personal vehicles. Staff recommended approval of the project.

Commissioner Barnes inquired if the roof line of the house and the garage would have the same pitch. The applicant, Antonio Rodriguez, stated that the roof pitch is 4:12 and will match the house.

Commissioner Moore inquired if there would be any grading required for the project, since there is an elevation difference between the existing shed and the new garage.

Mike Yankovich stated that typically a building foundation does not require a grading permit, but if there is some other grading that takes place in terms of the slope, it may trigger a permit.

Mr. Rodriguez stated that the grading is pretty much what is already existing. He explained that there is a 6 inch slope from the end of the shed to the end of the garage. He indicated that the shed is currently higher, but once the garage is built, the foundation will be dropped down 6 inches.

Chairperson McAndrew opened the public hearing. Since there were no speakers either for or against this matter, the public hearing was closed.

A motion was made by Commissioner Moore and seconded by Commissioner Barnes to adopt the suggested findings and approve the architectural review application subject to the recommended conditions of approval. The motion passed 4-0 with Commissioner Mahoney being absent. (Resolution No. 4473)

2. **PUBLIC HEARING** to consider Marsh Development Permit Application No. MD-07-01 of **Zentner & Zentner (Dittmer property)** for wetland restoration located on a gravel/dirt road off of Potrero Hills Lane, just north of the entrance to the Potrero Hills Landfill in an "AL-160" Exclusive Agricultural Zoning District, 3 miles southeast of the City of Suisun City, APN: 0046-130-300. This project is determined to be categorically exempt from the provisions of the California Environmental Quality Act. (Project Planner: Carly Aubrey) **Staff Recommendation:** Approval

Carly Aubrey briefly reviewed staff's written report. She stated that the project is located in the Potrero Hills area on a 293 acre parcel that is part of the Dittmer Ranch and owned by Jeff Dittmer. She stated that the applicant is requesting approval of a marsh development permit for the creation of 2.4 acres of seasonal wetlands and the enhancement of 1.6 acres of adjacent grasslands with native grasses on this site. She indicated that the purpose of the project is to fulfill a condition of the San Francisco Regional Water Quality Control Board (SFRWQCB) that mitigation be provided for impacts resulting from a project involving filling of wetlands at the Mariner's Walk development in Pittsburg, California. Staff recommended approval of the project.

Commissioner Moore inquired as to why the work has already begun, and why someone in Contra Costa County would take part in a project in Solano County without proceeding through the normal process of seeking permits from the necessary agencies.

The applicant, John Zentner, stated that they did not realize that a small part of the project was located within the primary management area of the marsh. He explained that the electronic maps they obtained from the Bay Conservation & Development Commission

(BCDC) seemed to show that they were outside the primary area, but after looking at the large scale paper maps, it became clear that one small corner of the project was within the primary area. He stated that they entered into the project thinking that they did not need a grading permit because of the exemption in the grading ordinance for wetland restoration, and the fact they thought they were outside the BCDC primary marsh zone. He noted that the original project has been through extensive review by the Regional Water Quality Control Board (RWQCB), Corps of Engineers, as well as other agencies.

Mr. Zentner stated that one of the subjects that has been talked about regionally is how the northern Contra Costa County shoreline is actually more similar to the area around the Suisun Marsh, so there has been regional direction that, if doing restoration, to also look at Solano County. Mr. Zentner explained that they had a project for the City of Pittsburg which was an old dredge material disposal site that had become a wetland. The RWQCB and the Corps of Engineers both agreed that it would need to be mitigated before it could be filled. He noted that at that point there was nothing nearby on the Contra Costa shoreline. In the meantime, a landowner from Solano County who owns land off Shiloh Road approached him and offered the use of her land. He stated that they proceeded to apply for the permits and at the last minute the landowner backed out. At that same time, Mr. Jeff Dittmer offered a portion of his ranch. Mr. Zentner commented that the Dittmer Ranch and surrounding area is ecologically better for seasonal wetland restoration than most of the other areas they were examining. He stated that they went back to the RWQCB with the new plan and were given an okay to proceed. He stated that they began grading the site, and he did not check specifically with Solano County with regard to a grading permit because he relied on his interpretation of the grading ordinance.

Commissioner Moore spoke to the evaluation of the project with respect to hydrology. He asked if when the project is complete, during the heaviest of wet seasons, has anyone decided or determined whether the normal runoff in that area toward the slough will increase, decrease, or be about the same. Mr. Zentner stated that with very small storms there will be less water going into the marsh. He noted that what makes seasonal wetlands unique is that they are very shallow so they do not hold a lot of water. What also happens is that water that moves through the soil will have a longer period of groundwater moving into the marsh, which is a positive thing. He indicated that with the larger storms the water will flow through the existing culvert and into the marsh. Mr. Zentner stated that the existing culverts are sufficient to handle the amount of water anticipated.

Chairperson McAndrew inquired if there are concerns in terms of environmental disturbances with regard to construction and traffic. Carly Aubrey stated that there will be minor traffic during the construction period, but after that, it will consist of monitoring which will be very limited. She stated that there is an existing access road that would handle this traffic. Ms. Aubrey indicated that according to the CEQA Categorical Exemption Class 33 it is exempt because it is less than 5 acres in size. She noted that staff has received letters from the RWQCB indicating that they did not believe there would be a substantial impact on the hydrology of the area, and a letter from the Department of Fish & Game stating that they did

not believe there would be a substantial adverse impact on tidal marsh species.

Nick Burton, grading engineer, stated that the county does not require grading permits for seasonal wetlands restoration projects. He noted that there was a bit of confusion in the ordinances that handled grading; Chapter 31, which has been amended, stated that wetland restoration projects were exempt. However in Chapter 9, which also dealt with drainage and erosion on the Suisun Marsh, had a section that stated that if a project had a substantial possibility of eroding and causing sediment laden runoff into the primary marsh, it would require a permit. When staff went out to the site and saw that part of the project was in the primary marsh, they decided this was a reason to require a permit because it could easily run off into the marsh.

Chairperson McAndrew referred to page 3 of the staff report regarding the proposed plants and wanted to know if any of them are of special status or endangered. Mr. Zentner stated that they are not. He said that he has looked at possibly trying to restore a couple of populations on the site. Most of the seasonal wetlands that use to occur in this area have been wiped out. He said that they have only found a couple of sites in the entire region that actually still have some of these habitats. Mr. Zentner stated that although they have not proposed it at this point, this site would be a good candidate for that kind of restoration. He said that since there has not been this type of work done in the area, their first goal is to demonstrate that this works. Mr. Zentner stated that their second goal is the potential in terms of grazing management, and of enhancing perennial grasslands and perennial plants in an area that is now annual grasslands. He stated that it has tremendous benefits for both farming and carbon sequestration.

Chairperson McAndrew pointed out that the word *each* in the second sentence of paragraph two on page 2 of the Final Wetland Restoration and Upland Enhancement Plan should be changed to the word *reach*.

Chairperson McAndrew referred to page 2 of the Plan where it states that this will also provide useful information on stock exclusion of local vegetation. She wanted to know what that statement means. Mr. Zentner explained that they are going to wait somewhere between 3 to 4 years for the plants to become established. He stated that Mr. Dittmer plans to start running cattle through the area. There will be two gates at either end of the enclosure, and as the cattle are being run through, it will be noted as to how long it takes before the cattle graze the plants down to a relatively low level. Once they have done that, the cattle will be moved back out through the area. He indicated that they are also going to do some plantings outside the fenced area to see what happens.

Chairperson McAndrew referred to page 8 of the Plan regarding the water budget where it assumes 28 inches of precipitation per year, but that there will be 47 inches of evapotranspiration per year. She stated that this seems like a negative loss of moisture. Mr. Zentner agreed. He explained that what makes seasonal wetlands and vernal pools so interesting is that the area gets its rainfall concentrated within 5 months. Once March

approaches, the evapotranspiration rate goes up. He stated that the way the water budget is set up is in looking at when those basins are going to dry out. He said they will fill up by late January early February in a typical year, but then be dry by May.

Chairperson McAndrew referred to page 9, Table 3 of the Plan and stated that it would be helpful to have a glossary of terms, as well as an explanation of what the table means and how it works. Mr. Zentner noted that the X's in the table refer to the fact that it is both a wetland plant and a native perennial. He stated that unfortunately the heading for that column was left out.

Chairperson McAndrew noted a similar concern on page 14, Table 7 of the Plan, and how it also needs explanation. Mr. Zentner stated that this table assigns a particular plant to a cover class in a particular site.

Chairperson McAndrew referred to the discussion in the Plan for the ecological monitor, and wanted to know what qualifications this person would be required to have. Mr. Zentner indicated that it would be someone with at least 3 years of experience in doing and overseeing restoration projects.

Chairperson McAndrew referred to a reference made in the Plan that a report will be submitted to the RWQCB, and wanted to know what type of a report that would be. Mr. Zentner explained that it is a construction log which would be a day-by-day accounting of activity and any problems occurring at the site.

Chairperson McAndrew referred to page 1 of Appendix B of the Plan with regard to the conservation easement and noted that it is not listed as to who the grantee is for the easement deed. Mr. Zentner stated that this has not yet been determined, but that the Solano Land Trust is the most likely entity.

Chairperson McAndrew made a correction to page 5 of Appendix B, item 7. Regarding Fence Installation and Maintenance. She stated that the word *with* should be changed to *without* in the last sentence.

Chairperson McAndrew noted that the table in Appendix D is missing the page showing years 9 through 18. Mr. Zentner stated that he would email that page to the commission.

Chairperson McAndrew inquired as to when the 5 year window would begin. Ms. Aubrey stated that the timetable begins once the applicant starts new construction.

Commissioner Moore commented regarding the endowment. He stated that the project runs 25 years and the endowment is reduced to less than 3 or 4 years of cost. He wanted to know if there are plans beyond the 25 years. Mr. Zentner stated that mother nature should pretty much be taking over after the 5<sup>th</sup> year. He stated that it is difficult to predict after 25 years because the long term plan is that the area would continue to be grazed.

Mr. Zentner presented a slide show to the commission showing the property and providing a more detailed description of the project.

Chairperson McAndrew opened the public hearing.

June Guidotti, 3703 Scally Road, Suisun, stated that she recognizes that Mr. Dittmer has an easement on his property off of Potrero Hills Lane. She requested that Mr. Dittmer provide proof that the road does not widen onto the Guidotti parcel. She wanted this added as a condition of the permit. She referred to grant deed #1993-0019858, Exhibit C, relating to Station 9. She said the sidelines of the easement are to lengthen and shorten to meet the right-of-way filed in the March 8, 1993 agreement between Solano Garbage Company and Potrero Hills. She stated that Mr. Dittmer needs to show where all his grading permits are prior to the planning commission issuing the permit. Ms. Guidotti requested that if she has to sue Mr. Dittmer over easements for Potrero Hills Landfill or Solano Garbage or anyone else regarding this right-of-way, that Mr. Dittmer be required to pay for the lawsuit and to make this part of his permit. She stated that for 23 years she has been trying to put the swamp and overflow back to its natural drain and what is happening here does not help.

Ms. Guidotti stated that the planning commission should not approve this application because of the repeated violations of the Suisun Marsh Local Protection Plan and misrepresentations of the application. She stated that the application repeatedly ignores requirements for obtaining approval of environmental permits for the Mariner's Walk mitigation project as required in Order #R2-2006-0058. She provided a packet of information to the commission. Ms. Guidotti stated that the ranch project varies in size, location, potential impacts, and did not receive environmental review. She said that much of the RWQCB order describes the finding and requirements of the discharge of the Olson Company and Zentner and they must comply. Also, the project may have significant impacts on water quality on the drainage along with other projects in the vicinity such as the Potrero Hills Landfill, Solano Garbage Company and Tonnesen's pet cemetery, and it may have a cumulative impact to the marsh.

George Guynn, Jr., 1109 Pheasant Drive, Suisun, read from a letter written by Dwight Acey, spokesperson for the Suisun Citizens League. The concerns contained in the letter were that the RWQCB appears to have approved a creation project specifically for the Gun ranch, which differs from the project the county is considering for the Dittmer ranch. If the Water Board project description and location have changed, Mr. Acey wanted to know if there is documentation of the change. The letter asked if the CEQA exemption is for restoration or for recreation. If it is for restoration then that raises questions about the Water Board order for the creation at Gun Ranch. He wanted to know if this is the same project. The letter also stated that it is their understanding that heavy equipment was used for this mitigation and asked if that is a violation of CEQA.

Stan Schram, county surveyor, spoke with regard to the access issue. He stated that he has reviewed the documents and easements for the Dittmer property located across from the

Potrero Hills Landfill, and he did not discover any encroachment.

John Zentner stated that when they were issued the Stop Work Order they stopped work immediately. He indicated that any work they did after that was for erosion control and they cleared it with the Public Works division beforehand. He stated that they should be receiving the RWQCB's approval letter within the next few days, noting that the Board had sent an email letting the applicant know that they will be issuing the letter. Mr. Zentner stated that he has called and visited Ms. Guidott to try and explain to her that this project has nothing to do with the Potrero Hills Landfill. He hoped that Ms. Guidotti could see that this is a positive project for the local environment.

Chairperson McAndrew closed the public hearing.

A motion was made by Commissioner Barnes and seconded by Commissioner Barton to adopt the suggested findings and approve the marsh development permit subject to the recommended conditions of approval. The motion passed 4-0 with Commissioner Mahoney being absent. (Resolution No. 4474)

3. **RESOLUTION** approving procedures for the processing of Development Agreements.

Mike Yankovich stated that staff has incorporated the comments that the commission had at their last meeting into the current document, and hopefully addressed the concerns sufficiently. He indicated that the issue involved the process that an applicant must follow if the Director determines that the application request is inconsistent with the General Plan, and the applicant disagrees with that determination. The comments from the commission indicated that the process should follow the existing process, whereby the applicant has the ability to appeal the Director's decision, first to the planning commission followed by the Board of Supervisors. Given that direction, staff has proposed to delete section 2.2 B. and split 2.2 C. into two parts with the first part being renumbered as 2.2 B.

Commissioner Moore referred to page 2, Section 1.4 and stated that paragraph D describes the definition of "county", but noted that on page 3, paragraph E spells out the Director separately. He wanted to know the reasoning behind this. He felt it to be redundant. Mr. Yankovich stated that in different areas of the Rules and Procedures it actually mentions the Director.

Commissioner Moore referred to page 4, Acceptance of Application, paragraph D. He stated that while he felt this to be acceptable, he did not like the fact that it is making a decision that means nothing. Mr. Yankovich stated that county counsel has indicated that from a legal standpoint, the applicant could take legal procedures if it was deemed to be a final decision. Staff wanted to make sure that this language states that it is not a final decision because it is at the beginning of the development agreement procedure in terms of negotiations, and there is still a number of issues that need to be addressed, so there is no finality, just a determination of consistency. Mr. Yankovich stated that counsel is looking at

it from a legal standpoint and the fact that an applicant does not have to come back and use the court system at this juncture.

Commissioner Moore indicated that he would agree if the language it plainly states that a determination by the Board of Supervisors to accept the application at initial preparation of the development agreement on the basis of consistency shall not be considered as an indication that the development agreement will be approved. Mr. Yankovich stated that the language could be amended to reflect this.

Commissioner Moore referred to page 7, section 3.3, and asked for an example as to why there would be a failure of the commission to report back to the Board within a 45 day time period. Mr. Yankovich stated that the only time this would possibly occur would be due to scheduling problems. He said this is a Permit Streamlining Act type of situation where you want to make sure the application goes through the proper procedures in a timely manner.

Commissioner Moore referred to page 8, section 4.1, and inquired about the time period for the bond. Mr. Yankovich stated that the clock does not start until the financial agreement is actually obtained.

Commissioner Moore referred to page 11, section 5.2, where it states that an amendment to a development agreement shall be subject to the same public notice and hearing process as adoption of the agreement. He wanted some clarification on that statement. Mr. Yankovich explained that the statement is referring to public notification of adjacent landowners of the amendment request, and the Board would be considering an amendment to that development agreement. Commissioner Moore wanted to know if it is all inclusive when it speaks to the hearing process which would include the planning commission and Board of Supervisors. He noted that the succeeding paragraphs only mention the Board of Supervisors. Mr. Yankovich stated that an amendment would only go before the Board. Commissioner Moore stated that it would then not be subject to the same processes that are associated with this agreement. Mr. Yankovich stated that if the commission would like it to go to the planning commission and then on to the Board, the language could be changed to reflect that. Commissioner Moore indicated that the document needs to be consistent.

Commissioner Barton stated that it is her understanding that the county is doing this because the applicant of the Rockville Trails Estates project has asked for an agreement, and by law the county needs to honor that request. She commented to a recent reference made by staff that the applicant no longer wishes to pursue the agreement. Mr. Yankovich explained that the applicant of the Rockville Trails Estates has indicated that they may come back and ask for a development agreement at a later time, but it would be after the project entitlements have been before the planning commission and the Board. He indicated that at this point, because the negotiation process would take some time which the applicant does not have, the applicant has elected to proceed without a development agreement even though they requested it.



A motion was made by Commissioner Moore and seconded by Commissioner Barton to approve the resolution as modified. The motion passed 4-0 with Commissioner Mahoney being absent. (Resolution No. 4475)

**4. ADDITIONAL ITEM ADDED TO AGENDA: Rockville Trails Estate**

Mr. Yankovich indicated that the applicant of the Rockville Trails Estates project has requested a continuance from the special meeting on July 12, 2007 to a special meeting on July 26, 2007. Knowing that the commission would be meeting tonight, the applicant asked Steve Ingram, deputy county counsel on his ruling as to whether or not this can be put on the agenda and action taken, and if agreed, re-notice the meeting rather than having the commission show up for just the consideration of a continuance.

Mr. Ingram indicated to the applicant that in looking at the Exceptions for the Brown Act, the commission would need to make a finding that there is a need for immediate action which cannot reasonably wait for the next regularly scheduled meeting. Mr. Yankovich stated that staff is requesting the commission consider putting this item on the agenda and then acting on the continuance request by the applicant.

A motion was made by Commissioner Moore and seconded by Commissioner Barton to place this item on the agenda and continue it to a special meeting on July 26, 2007 at 7:00 p.m.

**5. ANNOUNCEMENTS and REPORTS**

6. Since there was no further business, the meeting was **adjourned**.