

MINUTES OF THE SOLANO COUNTY PLANNING COMMISSION

Meeting of January 15, 2009

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, Mahoney, McAndrew and Chairperson Barton

EXCUSED: _____

STAFF PRESENT: Birgitta Corsello, Director; Mike Yankovich, Planning Program Manager; Jim Leland, Principal Planner; Karen Avery, Senior Planner; Michael Profant, Assistant Planner; Jim Laughlin, Deputy County Counsel; Stan Schram, County Surveyor; Jeff Bell, Environmental Health Specialist; David Cliché, Building Official; Misty Kaltreider, Geologist; Matt Tuggle, Civil Engineer; Kristine Letterman, Planning Commission Clerk

Items from the floor - none

The Minutes of the regular meeting of December 4, 2008 were approved as prepared.

1. **DETERMINATION** of General Plan consistency for the vacation of the easterly portion of **Peterson Road** (old County Road No. 68) located adjacent to the lands of Travis Air Force Base in order to accommodate improvements planned to the south gate of the base. (Contact: Stan Schram) **Staff Recommendation:** *Approval*

Stan Schram gave a brief presentation of the written staff report. He stated that the Department of the Army has made application to the County requesting that the County vacate a portion of Petersen Road (County Road No. 68). The portion of the roadway to be vacated lies within the boundary of Travis Air Force Base. The Petersen Road entrance to the airbase is being redesigned and reconstructed to enhance security and accessibility. Mr. Scram stated that Public Works Engineering has reviewed the proposed vacation of Petersen Road and has no concerns with the elimination of the right of way.

Chairperson Barton 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 Barnes and seconded by Commissioner McAndrew that the Planning Commission, as per Section 65402(c) of the California Government Code, finds the proposed vacation of Petersen Road in conformance with the Solano County General Plan. The motion passed unanimously. (Resolution No. 4512)

2. **PUBLIC HEARING** to consider Rezoning Petition No. Z-08-03 of **QLC Management, LLC** to rezone property from the "A-20" Exclusive Agriculture to "MG-3" General Manufacturing Zoning District and the "MG-3" General Manufacturing to the "A-20" Exclusive Agricultural Zoning District.

The property is located northeast of the City of Fairfield, APN's: 0174-110-030, 050, 060, 110 and 120. This project is determined to be categorically exempt from the provisions of the California Environmental Quality Act. (Project Planner: Michael Profant) **Staff Recommendation:** *Approval*

Michael Profant gave a brief presentation of staff's written report. He stated that an auto dismantling business was originally established on Parcel B in the late 1950s. A recent survey of the property revealed that some of the improvements associated with the auto dismantling business are encroaching onto Parcel C. Therefore, the applicant previously applied for a lot line adjustment to match property boundaries to existing improvements on Parcel B. The applicant proposed to shift both side property lines of Parcel B in the range of thirty to fifty feet eastward to accomplish this objective. Mr. Profant noted that this lot line adjustment was approved by the Board of Supervisors on December 9, 2008.

Mr. Profant stated that the objective of this rezoning petition is to match zoning boundaries to the recently approved property lines of all three parcels. A strip of land of approximately 1.59 acres to be transferred from Parcel B to Parcel A will need to be rezoned from MG-3 to A-20 and a slightly smaller strip equaling approximately 1.55 acres to be transferred from Parcel C to Parcel B will need to be rezoned from MG-3 to A-20. He noted that staff is recommending approval of the project.

The applicant, John Dobles, stated that he is just correcting a condition that had been pre-existing since 1956. He noted that this discrepancy did not come to his attention until the actual surveys were performed. He discovered that the wrecking yard was encroaching 40 feet onto the adjacent parcel. Mr. Dobles noted that this application was the easiest solution to deal with this problem.

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

A motion was made by Commissioner McAndrew and seconded by Commissioner Barnes to recommend that the Board of Supervisors adopt the mandatory findings for the proposed rezoning and approve Rezoning Petition No. Z-08-03. The motion passed unanimously. (Resolution No. 4513)

3. **PUBLIC HEARING** to consider Use Permit Application No. U-08-15 of **Jose DeLaTorre** to establish a Rural Residential Enterprise which consists of a septic system construction and service business located at 7000 Leisure Town Road in the "RR-2.5" Rural Residential Zoning District, 0.1 mile east of the City of Vacaville, APN: 0133-040-010. The Planning Commission will also be considering adoption of a Negative Declaration of Environmental Impact as recommended by the Solano County Department of Resource Management. (Project Planner: Jim Leland) **Staff Recommendation:** *Deny the use permit*

Jim Leland gave a brief presentation of the written staff report. He stated that the applicant is seeking a use permit to legalize an existing septic system construction and service business established on the property. The business owner resides on the property. One employee travels to the site to pick up a truck for work off-site at project locations. Three large trucks and two trailers will be stored outside, immediately behind the main residence. Mr. Leland stated that the applicant's business is of a size that the entirety of the business can not fit on the property without exceeding

the 1,500 square foot limitation in the zoning ordinance. As a result, the applicant has located other portions of the business on other sites in the county.

Mr. Leland explained that the property is located within the Rural Residential zoning district, and within that district, rural resident enterprises are a conditionally permitted use. When staff analyzed this project they looked at both the intent of the regulations and the development standards contained therein. In terms of the intent of the regulations, rural resident enterprises are intended to be small scale home business activities which are clearly secondary to residential use of the property and do not conflict with the rural resident character of surrounding properties or create impacts associated with commercial and industrial uses. Rural resident enterprises are uses which clearly do not compete with commercially or industrially zoned properties and are not likely to expand. Staff was unable to make the finding that this operation complies with those intents for the principal reason that the applicant is using the property as a corporation yard. A corporation yard is a commercial use, and for the same reason staff felt that this did not meet the intent of a small scale home based business. Mr. Leland noted that the project has already grown beyond the maximum limit allowed in the zoning of 1,500 square feet for these types of businesses. Staff also looked at the development standards that were applied in this case, and the applicant failed to meet two of those standards.

Mr. Leland noted that staff received correspondence from the City of Vacaville voicing their concerns with an ambiguous project description, which has since been sorted out, and that they believe the industrial type uses are incompatible not only with the county general plan and zoning, but also with what their intent is upon annexation. The city also had concerns over the effects on Leisure Town Road.

Mr. Leland stated that there is a lot of rural residential land scattered throughout the county and staff felt that it was important to raise these policy concerns, and the concern to the department about the precedent that could set by this kind of use in the rural residential district. Staff recommended that the commission deny the use permit.

Commissioner McAndrew inquired as to why staff is asking the commission to adopt the negative declaration if they are recommending denial of the project. Mr. Leland explained that the applicant has the right, depending upon the outcome of this meeting, to pursue his remedies to the Board, and if the Board wants to accommodate the request, or the commission wants to entertain an action other than the staff's recommendation and approve the project, the negative declaration needs to be adopted.

Commissioner McAndrew commented that it would seem that the negative declaration is not in compliance because of the reasons that were pointed out by staff for denying the project. She believed that by approving the document it could leave an opportunity later for someone to come back with questions. Jim Laughlin stated that staff is recommending denial of this project for reasons other than purely environmental considerations, there are policy issues that go beyond CEQA and staff is under obligation to try and prepare a legally adequate negative declaration as part of the package. If the commission denies the application, they have no legal obligation to adopt the negative declaration.

Commissioner Moore wanted to know if the applicant is currently in compliance because of the relocation of his equipment which is stored off site. Mr. Leland stated that the applicant is not in

conformance at this time because too many vehicles are still stored on the site, and have been for more than a decade. Commissioner Moore asked if the applicant would still be in violation if he just drove his own personal automobile and did not store the additional vehicles. Mr. Leland noted that the county has taken the position that this would be acceptable, but it is not currently the case.

Commissioner Barnes stated that one of the options listed in the staff report is that the commission can refer the matter back to staff to prepare the project for approval. He wanted to know how this is possible if the project is in violation. He also wanted to know how long the applicant has been in violation. Mr. Leland noted that the applicant started his business in 1992, and he has been in violation since that time. It was noted that the applicant has been the subject of code compliance actions and a court case which has since been completed. The court ordered that the property be cleared of the violation.

Commissioner Barnes believed that something could be worked out, but he was unsure of what type of direction to provide staff.

Mike Yankovich explained that this has been a compliance issue for some time, and it is the 3rd time the case has gone through the court system. Currently there is a continuance at the court level dependent upon what happens at the county level. The judge is waiting to hear what the county will do. Staff has taken the position that this type of activity is not something that should be considered as a rural resident enterprise. If the commission feels differently, there would be policy issues that staff would have to deal with in regard to general plan and zoning, and they would also have to ask the commission to give some direction with regard to development standards for these types of uses in rural residential zones. This would not just apply to this area of the county, but throughout the county in all rural residential zones.

Chairperson Barton referred to the staff report under the heading of land use and planning which speaks to the rural residential zoning district, and inquired if this project would be considered an agricultural support function.

Jim Leland stated that the situation which exists is that the only portion of the business that is located on this property is the storage of heavy equipment and vehicles, so it is in essence a corporation yard type use. The business is too large to be entirely on the property. Staff's objections have more to do with the scope and scale of the operation.

Chairperson Barton wanted to know why the county would care if the business is piecemealed around the county. Mr. Leland stated that when the Board of Supervisors established rural resident enterprises as a conditionally permitted use in residential zoning districts, they explicitly said that they expect this to be secondary to the residential use at a small scale.

Mr. Yankovich stated that the county allows agricultural support businesses in agricultural zones, but not in rural residential zones.

Chairperson Barton asked about past projects in which the county has allowed diesel trucks or farm type equipment in this zone designation. Mr. Yankovich explained that farm equipment is allowed, or driving a large truck to and from the workplace, but staff feels this project has gone beyond these boundaries.

David Cliché, Building Official, made a clarification that the case which is currently before the courts pertain to the subject of unfair business practices and not for land use violations.

Commissioner Mahoney stated that it has to be recognized that there are very few houses in a town that would have septic tanks. He said that this operation provides for rural residential and ag support. He commented that he has observed large vehicles travelling up and down Leisure Town Road for a long time. He stated that he is trying to understand how the county views a business that will support rural residential areas which he believed this one clearly does.

Commissioner McAndrew stated that one of the main points of contention is the number of trucks parked on the property conflicts with the spirit of the fact that this is a rural residential area, and that the City of Vacaville at some point intends to annex the property. In looking to the future, she questioned if this facility is going to be in conflict with the City of Vacaville. Mr. Leland stated that the city has pointed out that this use would not be allowed in their residential zoning district upon annexation, and is a use they find inappropriate.

Jim Laughlin stated that if the county approves a use permit for the facility, it would be a good argument that the business would be grandfathered in upon annexation, and there is probably little the city could do to change the use on the property. If the permit is denied and the use remains on the property or starts up again after annexation, it would then be a zoning land use violation that the city could address.

The applicant, Jose DeLaTorre, 7000 Leisure Town Road, Vacaville, stated that his family has owned the property for over 20 years. His father currently farms the back portion of the property. Mr. DeLaTorre stated that he has run his septic service business since 1992, and to his knowledge the county made this an ag related septic business in 1996 when Frank's Septic Service was allowed to locate in the area as an ag related service. Mr. DeLaTorre stated that he works with farmers and ranchers in the rural residential area to provide them with his services. He commented that there is a PG&E substation around the corner whose employees that drive large trucks up and down Leisure Town Road on a daily basis. He said that farm trucks and garbage trucks regularly travel that road and he did not see why there would be an issue with his trucks travelling that road. He stated that both the county and City of Vacaville have used his services in the past. He explained that the two trucks that are stored off site is a back up pump truck and a service truck. He stated that his equipment is stored within the 1,500 square foot limit given by the county and that they are in compliance. He stated that he has a pump truck, a dump truck, and a large truck currently stored on the property. Each truck exits and enters the property one time each day.

Chairperson Barton opened the public hearing.

Brad Adie, 2156 Calder Place, Fairfield, stated that it is getting harder and harder for the small business owner to make it. He spoke in favor of the project. He asked the commission to take into consideration the economic factors.

Javier DeLaTorre, 8338 Tubbs Road, Winters, stated that their family started their septic business in 1966 and they have worked hard for many years. He stated that this is an agricultural related business, noting that Frank's Septic Service is located right down the street. Mr. DeLaTorre stated that they have provided services to the city in the past. He said that their neighbors do not complain and their property is very nicely landscaped.

Frances Murillo, 8251 Kobert Road, Winters, stated that she has known the applicant and his family for many years and they are hard working people. She noted that she is a small business owner herself and it is the small business owner who helps support the community and takes part in contributing to community activities. She supported the project.

Jerry Trammell, 107 Rolling Sage, Vacaville, stated that he is also a small business owner. He stated that he believes the applicant operates a small business and are helping the community. He believes that they are within the regulated square footage limit and are in compliance with county standards. He supported the project.

Since there were no further speakers, the public hearing was closed.

Jim Leland made one clarification with regard to Frank's Septic Service. He stated that while this business is located up the street on Leisure Town Road, the property is located within the agricultural zoning district and is not a rural resident enterprise. Mr. Leland explained that the commission found Frank's Septic Service was an acceptable agricultural service use in which a use permit can be obtained if in an agricultural zone.

David Cliché stated that one of the underlying issues on the DeLaTorre property has been that there have been multiple employees that come to the site.

Commissioner Moore stated that it appears the applicant believes he is in compliance since he is within the 1,500 square foot limitation. If that were the case, Commissioner Moore inquired about the need for a use permit. Mr. Yankovich stated that the regulations governing a rural resident enterprise requires that a business operator obtain a use permit. The use permit allows a maximum of 1500 square feet to be devoted to the business inside or out. Commissioner Moore inquired as to why the applicant is requesting the approval of a rural resident enterprise if all he needs is the ability to park his 3 trucks on his property. Mr. Yankovich stated that the storage of vehicles is not an allowed use in this zone district.

Jim Leland explained that a rural resident enterprise has many standards that apply, one of which is that it can be no larger than 1500 square feet. It also is not open to just anything someone would want to do within that 1500 square feet, there are other limitations.

Commissioner Moore inquired about the storage of equipment in a rural residential district. Mr. Leland stated that if the applicant were storing farm implements used on site for agriculture, which is an allowed use in that district, he could do that. Mr. Leland explained that the applicant has a business on the property that uses trucks as a part of that business. Commissioner Moore stated that he was under the understanding that the applicant does not operate the business from this site, he just stores his trucks there and conducts business elsewhere. Mr. Leland stated that this zoning district does not allow the storage of vehicles used in a business off site.

Jim Laughlin stated that the applicant is not just storing the trucks on his property he is operating the business from this property. Mr. Laughlin believed that part of the applicant's legal problems is that he is having trouble obtaining a business license.

Commissioner Moore stated that he thought all of the administrative support and supplies were located off site. Mr. Laughlin explained that the applicant has accountants who are located off site, but this is the applicant's business headquarters and wants to have his business license associated with this property.

Birgitta Corsello stated that neither the planning commission nor the Board has ever approved a rural residential enterprise that was split in multiple locations. The county also has never had a rural residential enterprise that was a trucking operation or some sort of service that merely housed their equipment and physically left the site each day. Most of the rural residential enterprises that have been approved in the past were occupations such as a plumbing operation, window repair installer, nursery supply, agricultural supply; small businesses with 1 employee and most of which is onsite.

Ms. Corsello stated that in examining this project, staff has had to rely on the current zoning regulations, and in reviewing those regulations against past history, the recommendation for this project was for denial. She explained that it is within the commission's authority to interpret the rules differently, and to direct staff to go back and bring changes to those rules, or to uphold the staff recommendation. She said that this has been a long time in process, partially because the property owner was not willing to come forward, and partially because it has been in the District Attorney's office who has been handling the unfair business practices component. Now it is at a point where the underlying land use needs to be decided.

Commissioner McAndrew stated that she feels the applicant's position and comments are very compelling, but the county has just spent two years creating and new land use plan and if the commission starts chipping away at what has just been created, what would that say about the commission as a body that has just tried to put together a comprehensive and creative way of regulating their land uses. She believed that if the commission were to grant this permit, it would go against the spirit of the general plan that was just completed.

Commissioner Barnes stated that the applicant's testimony is very compelling, but the county does have rules and regulations that need to be followed. He stated that he would like to see something worked out between staff and the applicant and recommended continuing this item.

Chairperson Barton stated that while a lot of time was spent on developing the general plan, she believed that the commission will also find that in the future the plan will need some small alterations and adjustments, and changes to things that work or are not working, and this may be a piece that fits such a change. She said that she would also like to see something worked out between staff and the applicant. She questioned if the 1500 square foot limitation is enough of an allowance in the rural district and suggested that maybe this could also be something that staff can review.

Commissioner McAndrew spoke with regard to the issue of annexation to the City of Vacaville and the grandfathering of the use. Commissioner McAndrew asked if there is some way the project can be contained so that it is specific to this applicant's purpose and scope, and does not impact the rest of the county and other possible requests for similar infringement on zoning uses.

Mr. Laughlin explained that staff cannot present standards that would apply only to this property, but if the commission feels this is an appropriate type of use either for this neighborhood or this zoning district, the commission could continue the current consideration and could direct staff to

come back and propose zoning amendments that would accommodate the commission's desires to bring the zoning to fit the use.

Commissioner McAndrew stated that she believed this relates to the specific nature of this business and how it serves the surrounding community, and if this is the case, it is a specific purpose and need in this area.

Mike Yankovich stated that changing the zoning regulations would be a difficult task. He stated that he understands the commission would like to see some type of consistency with regard to the standards. He said that staff can work with the applicant so that he knows he has to stay within the rules as they are currently defined, which includes a limit of 1500 square feet and 1 non-resident employee, and that he would have to keep the business down to that scale. Mr. Yankovich noted that staff would also meet with the City of Vacaville.

Mr. Yankovich commented that staff could prepare a report to be presented a later meeting that examines the standards for all rural resident enterprises throughout the county.

Commissioner Mahoney stated that 3 trucks is small scale for a septic tank business. He commented that Frank's Septic business was previously located in downtown Vacaville. He said he was not privy to the reasons as to why they moved, but he guessed that it was because they received complaints about their early morning and last night truck noises. He said that he definitely does not want to see the county drive a business that is helping agricultural and rural residential areas out of business. It would make no sense. He stated that the business is located in a rural residential area and that every one of those homes, unless they are hooked up to city services, is hooked up to a septic tank, and the county would be driving this operation away from the very people that they are suppose to be helping.

A motion was made by Commissioner Barnes and seconded by Commissioner McAndrew to continue this item to the regular meeting of February 19, 2009 to allow for sufficient time for staff and the applicant to work together. The motion passed unanimously.

4. **CONTINUED PUBLIC HEARING** to consider Minor Subdivision Application No. MS-07-05 of **Gordon and Marilyn Sweeney** to subdivide one parcel of approximately 8.5 acres of rural residential land into three parcels of 2.5± acres, 3±, and 3 acres respectively. The project is located at 4450 Glen Cannon Drive, Fairfield, in an "RR-2.5" Rural Residential Zoning District, APN: 0147-172-050. The Planning Commission will also be considering adoption of a mitigated Negative Declaration of Environmental Impact as recommended by the Solano County Department of Resource Management (Project Planner: Karen Avery) **Staff Recommendation: Approval**

Karen Avery gave a brief presentation of staff's written report. She stated that the 8.5 acre irregular shaped lot is surrounded by similar rural residential properties on all sides. The site is located on the east-facing side of a ridge. There is an existing single family residence on proposed Parcel A. The topography of the site consists of narrow previously disturbed terrace adjacent to the road, and a steep wooded area sloping east towards the rear of the property. Vegetation consists primarily of mixed oak woodland adjacent to the flatter upper area, and woodland dominated by California Bay and Madrone on the lower slopes. Two ephemeral channels drain the area. The property is bordered on the north by a creek (Cold Creek); an unnamed drainage traverses the property from southwest to northeast, where it merges with the creek. No wetland or aquatic vegetation

communities occur on the site. The upper terrace area is characterized by graded/barren land with sparse non-native annual forbs and grasses.

Ms. Avery noted that staff received comments from M.R. Wolfe and Associates, as well as adjacent neighbors who wanted their previous comments to stand with this re-circulated negative declaration. Some of the comments received included questions about aesthetics, views, removal of trees prior to construction, lack of water, low water pressure, fire service, roads, and violation of the area's Covenants, Codes and Restrictions (CC&R's). In response to those comments, Ms. Avery stated that staff has received a Will Serve letter from the City of Vallejo indicating that the applicant has two water connections available; the Public Works division reviewed the plans and have made no recommendations for road improvements; and the Cordelia fire district has said that they can provide service to the two additional homes.

With regard to the CC&R's, Ms. Avery noted that the county is not responsible for enforcing these regulations. She explained that in 1988 when a property owner subdivided their 5 acre parcel, which was a part of the original subdivision, the county included a condition that the applicant obtain approval from the Architectural Control Committee (ACC) that controlled the CC&R's for that neighborhood. It was noted that there was no ACC formed at that time. Ms. Avery stated that Condition No. 12.d. is included as part of this project approval to require the applicant, if an ACC is formed prior to submission of the final map, seek approval for the subdivision.

Ms. Avery stated that the comments made by M.R. Wolfe and Associates include their belief that the biological study is inadequate, and that there is a lack of visual resource analysis. They believe there would be water quality impacts, as well as improper piecemealing of CEQA because of the tree removal prior to subdivision, as well as an inadequacy in the geotechnical studies. Ms. Avery noted that a biological assessment was completed and amended based on comments by the California Department of Fish and Game (CDFG). She noted that the assessment was re-circulated twice, and no additional comments were received from CDFG. She indicated that the parcel is in an established neighborhood and is surrounded by other single family dwellings. It was said that the applicant has agreed to replace additional trees at a 1 to 1 ratio, and has also agreed to establish a conservation easement along the creek to further protect the habitat and the trees in the area. There are no permits required from the Bay Area Regional Water Quality Control Board for this project.

Ms. Avery noted that Solano County does not have a tree ordinance preventing a landowner from removing trees from his property, and there is no ministerial or discretionary permit required. A property owner is not subject to CEQA as an individual, and staff does not consider the project as piecemealed. Ms. Avery explained that two geotechnical studies were conducted, and staff included the recommended mitigation measures as conditions of project approval, as well as including them in the mitigation monitoring plan. Staff believes that the geotechnical study has covered the necessary items for a project of this scope.

Ms. Avery stated that staff finds the Sweeney project is consistent with the general plan and zoning ordinance, and that the appropriate environmental review has been conducted based on the scope of the project, and therefore is recommending approval of the subdivision.

Commissioner Barnes referred to page 4 of staff's report, Impact IV.1 & 2. He inquired about the ephemeral drainages and wanted to know what type of annual rainfall measurement was used. He

stated that rainfall in the hills would be generally higher and considering this a medium constraint might be a problem. Mr. Barnes referred to the statement that Cold Creek does not provide adequate breeding habitat, and noted that deer congregate up in that area all the time. He stated that even though the project is only proposing 3 homes, he believed it should be treated as a large development project.

With regard to ephemeral drainages, Mike Yankovich stated that when the biologists went out to the site and did their study, they looked at it from the reconnaissance stand point. They then examined it in terms of the water shed with regards to what kind of quantity of water would be expected, as well as the type of wildlife and plant life that would be expected to occur or potentially could occur in that area.

Commissioner Barnes stated that since it is going to rain more in the hills there should be extra drainage in that area. Mr. Yankovich indicated that the geotechnical report contains mitigation measures particularly addressing drainage.

Commissioner Barnes inquired about the tree removal. Mr. Yankovich explained that as part of the development, it was called for that 13 trees would be removed. The applicant has already removed some trees from the property, but it was noted that several trees were removed for fire safety reasons. Mr. Yankovich noted that the applicant has had an arborist come out to the property and do a study on the trees that have been removed, as well as the existing trees. Ms. Avery stated that the applicant does not require a permit from the county to remove trees.

Commissioner Barnes questioned if the county should require a permit for tree removal. He stated that the trees could soon disappear if it is left up to the homeowner to arbitrarily cut them down. Mr. Yankovich stated that the county does not have a standard with regard to tree removal, and this would not be a development standard that the commission would need to look at as part of this project.

Ms. Avery stated that the applicant has agreed to replace trees at a 1 to 1 ratio. The applicant has already replaced trees on the site, and has also agreed to replace them with the same species of trees that have been removed. This has been made a condition of approval for the project. Commissioner Barnes commented that he would like it if staff knew what trees are being removed so that it can be made certain that the same species are being replanted.

Commissioner Barnes referred to Mitigation IV.4 and wanted to know what happens if rare species are found in the housing footprint. Karen Avery stated that a pre-construction survey for rare plants and for raptor nests will be performed prior to the start of construction. If at that time anything is found, the applicant will be required to meet with the CDFG. It was noted that no rare species have been found on the site.

Commissioner Barnes inquired if a study has been done with regard to the location of plants. Ms. Avery stated that the recommendations will come from the CDFG, and through the applicant's biologist who prepared the study. The construction survey will be done 30 days prior to construction. Staff noted that this is a typical mitigation measure.

Commissioner Barnes referred to page 6, Impact VI.1 where it refers to a slab foundation and noted that on the following page there is discussion with regard to crawl spaces beneath the structures.

He wanted to know which type of foundation will be used. Mr. Avery stated that these are recommendations from KC Engineering based on their geotechnical study. Mike Yankovich stated that the engineer is calling for a pier and beam foundation. He said that there are other mitigation measures with regard to other types of construction techniques, but the main type of construction would be pier and beam.

Commissioner Barnes referred to page 7, VI.1 a. and wanted to know if there is an approved location for the cistern. Staff noted that there was an approved location. With regard to item g. on page 7 concerning over-irrigation of plants, Mr. Barnes wanted to know how these sources are going to be monitored. Ms. Avery stated that the landscape architect who designs the irrigation system for the landscape is required to formulate this into the design. This condition is also included in the mitigation monitoring plan.

Commissioner Barnes wanted to know what happens if ponding becomes an issue after the 3 homes are built. Ms. Avery stated that the county has no control over existing irrigation systems. She also clarified that only 2 homes are being proposed for construction.

Mike Yankovich stated that the design of the irrigation system would take into account the fact that ponding could occur, and the system would be designed so that there is adequate drainage, as well as the gallons per minute in terms of the types of emitters that one would use. It would be sized accordingly. At the point in time when occupancy is reviewed, Mr. Yankovich stated that the plans would have to show that the irrigation requirements meet the standards that were part of the mitigation measure. It would be up to the owners of the property after that time to maintain the system.

Commissioner Barnes referred to Mitigation VI.3 on page 8, and inquired about the location of the leachfields for each parcel. Ms. Avery Karen depicted the areas on the tentative map. Mr. Yankovich stated that with any new lot created in the county the septic system's preliminary location would have to be identified and soil samples would also have to be studied.

In reference to item e. on page 9, Commissioner Barnes stated that he has concerns with regard to the stability of the foundation. Mr. Yankovich explained that these are the engineer's recommendations. David Cliché, Building Official, elaborated further on the procedure of how the engineer conducts their analysis. Commissioner Barnes stated that he believed the spacing of contraction joints should be flexible in different areas where the slab thickness varies in inches. Mr. Cliché stated that the engineer found the three lots to be consistent.

Commissioner Barnes asked for an explanation of the CC&R's for this subdivision. Jim Laughlin explained that CC&R's are a private agreement between neighboring property owners. The county is not a party to this agreement. Mr. Laughlin stated that these particular CC&Rs were recorded in the late 1970's when this area was first subdivided. They state that the property shall not be subdivided except with the consent of the Corporation (subdivider), and the Architectural Control Committee (ACC). He explained that since the Corporation no longer exists, they cannot either approve or deny a proposed subdivision. The ACC was composed of the officers of the Corporation which no longer meets as a body, and those individuals have been impossible to track down.

Mr. Laughlin stated that the CC&R's govern the entire subdivision which is composed of 50 lots. The regulations run with the land, so if any of these 50 lots are subdivided, the rules and regulations

would continue to apply to the newly created lots. The CC&R's require approval of the Corporation and the ACC, both of which no longer exist. The rules do not prohibit subdivision, they just impose some conditions that would be impossible to comply with at this time.

Commissioner Barnes stated that even though this project only proposes 2 additional homes, he still viewed it as a small development. He inquired as to why an Environmental Impact Report (EIR) was not prepared. Jim Laughlin stated that the county has never required an EIR for this scale of subdivision. He stated that based on the land area involved, and the minimal additional people and traffic brought to the neighborhood, the impacts are at such a small level to the extent any impacts that would potentially be created could easily be mitigated through conditions imposed on the project. However, if the commission has questions or are still not sure what the environmental impacts will be, or the impacts cannot be mitigated based on the information provided, then the purpose of an EIR would be to get that additional information.

Commissioner Barnes referred to page 12 regarding the statement that the county does not have a tree ordinance. He asked if this would be something that staff could prepare and bring back to the commission. He said that he did not like the fact that numerous trees are being removed, especially if they are not being replaced with the same specie of tree.

Mr. Yankovich stated that when the county's general plan was updated and the commission reviewed some of the mitigation measures and policies and procedures for the plan, staff indicated that there would be some code refinements that would need to be made with regards to the county zoning ordinance, as well as other items such as a tree hillside ordinance. Those items would be a part of the implementation measures.

Commissioner Barnes inquired about the possible formation of a county architectural committee. Mr. Yankovich stated that this was not an item that was included as a part of the implementation measures, but the commission could make that recommendation to the Board of Supervisors.

Regarding the subject of tree removal, David Cliché noted that this area is located in a State Responsibility Area (SRA) for fire. This means the county's fire districts share fire fighting responsibility with the California Department of Forestry and Fire Protection (CALFIRE) and the Forestry Service. He said that there are some guidelines that the state has placed on SRA's because of the fires that have occurred throughout the state in the past year, which includes a clearance of 100 feet defensible space from any structure.

Commissioner Barnes stated that the staff report indicates the proposed subdivision is located in a Moderate Fire Hazard Area. He said that he views the Green Valley Highland area as one similar to the Oakland hills, and he did not believe this area should be categorized as Moderate.

Commissioner McAndrew referred to page 4, section c, of staff's report and inquired about the significance of the September 15th date. Karen Avery stated that the date was recommended by the project biologist. It was chosen to ensure that the plant roots would be established over the winter so that in the spring time the vegetation would grow.

Commissioner McAndrew pointed out that on page 11 the word map is left out of the 4th paragraph after the word tentative.

Commissioner McAndrew asked for an explanation of the use of the word limited on page 16, section 3.A.e. Ms. Avery noted that this condition was taken directly from the General Plan Mitigation Monitoring Plan. Commissioner McAndrew stated that while the Plan speaks in general terms, she believed that the commission could be more specific on individual projects. She suggested that the condition be amended to limit the hours of equipment operation from 7 a.m. to 6 p.m., Monday through Saturday. She also recommended the same change be made to Condition No. 3.E.f. on page 19.

Commissioner McAndrew asked for clarification with regard to the statement in 3.G. on page 20 that states preconstruction surveys shall be conducted at 15-day intervals unless construction activities have been initiated. Mike Yankovich explained that the intent is that once construction starts no more preconstruction surveys will take place. The idea is to see if there is any nesting taking place, which could happen within a matter of a week or two. Commissioner McAndrew suggested replacing the word unless with the word until.

Commissioner McAndrew referred to page 22 with regard to the irrigation of plants and the use of the word should in the recommendation, but then on page 380 she noted the recommendation uses the word shall. Ms. Avery stated that the language on page 22 was part of a mitigation measure provided by KC Engineering. The language on page 380 was provide by the county geologist which has also been included that as a condition of approval. Ms. Avery noted that the word shall would override the word should. Commissioner McAndrew stated that she just wanted to make sure that these were directives and not passive recommendations.

Chairperson Barton inquired about the reference on page 21, section 5, relating to the topographical feature referred to as a chimney. She wanted to know if there is other similar topography that has this chimney affect. Mr. Cliché explained that most of the land on the sloped areas of Glen Cannon are all chimney areas even those that are currently developed.

The applicant, Gordon Sweeney, stated that his intention when he bought this 8.5 acre lot was to remodel the existing home. He had several engineers and architects come out to look at the property, but due to cost constraints he decided to split the lot. He said that it is his objective to build one home on Lot C and keep Lot B vacant for another 10 to 20 years. Mr. Sweeney stated that he has an arborist report to verify what trees were removed from the property. He stated that there were a total of 12 oaks that were removed, 4 were decayed, and 4 were within 10 feet of his home. Mr. Sweeney noted that he has replanted 13 trees and has every intention of replanting another 5 to 10 oak trees.

Chairperson Barton opened the public hearing.

Judi Kannon, 4460 Glen Cannon Drive, Fairfield, stated that she enjoys the Green Valley area because it is not a cookie cutter community. She stated that when she and her family bought their home there was a homeowners association for the neighborhood. She said that a homeowner could not cut down a tree that was 18 feet tall or taller unless it was dead or sick. She said the developer had set it up so that the aesthetics and the nature of the neighborhood would remain the same. Ms. Kannon noted that it was not long after she moved to the area that the developers who wrote the CC&R's went bankrupt and relocated. She explained that anyone who purchases a home in this area signs an agreement to abide by the CC&R's.

Ms. Kannon stated that she is pleased to live in a neighborhood where landowners respect the oak woodlands, respect the space between their neighbors, and respect their property by keeping it aesthetically pleasing. She noted that she has a professional arborist come out to her property every year, and she keeps in contact with CALFIRE. She said that they keep their lot clear of all dead vegetation and keep a 100 foot clearance as well as a 6 foot canopy. Ms. Kannon stated that it was a shock to suddenly see live vegetation removed on the oak woodland strip between her house and the lot in question. She noted that 23 trees were removed. She said that she is very concerned about the wildlife and the raptors.

Lea Fisher, 4420 Glen Cannon Drive, Fairfield, stated that his concerns are related to the suitability of the site for onsite wastewater disposal. He noted that he has an extensive background and a great deal of experience in dealing with wastewater treatment. He indicated that the Highlands are very unique from a geological standpoint. He referred to the project's engineering report which indicates that there are 15 to 30 inches of soil overlying the bedrock, and commented that this is not enough soil to use for disposal of the affluent.

Mr. Fisher explained that to develop an onsite system there needs to be adequate separation between the trench and the rock or confining space underneath. There also needs to be space on top. He stated that when designing an onsite system the most critical period is during the winter when there are heavy rains. What happens is all of the rain percolates down and collects on top of the rock because it cannot penetrate any deeper. He referred to staff's report where it indicates that there has been, in the past, accumulation of groundwater at the interface between the soil and the rock. He commented that this is an ongoing problem, and adding waste water is going to make the problem worse. Mr. Fisher stated that once the water accumulates it has to go somewhere, and it will eventually travel down into the creek and pollute the creek.

Mr. Fisher referred to the engineering report where it identified two landslide areas that occurred in the past, and noted that these areas are located right below the proposed leachfield for Parcel C. He stated that adding more wastewater to a situation where in the past the landslide may have been caused by the runoff of the groundwater is going to exacerbate the problem. Mr. Fisher stated that this issue needs to be addressed more fully before this project is allowed to move forward.

Carolyn Roth, 120 Tartan Way, Fairfield, spoke with regard to the creek. She stated that there are numerous turkey and deer living down in the creek beds. She commented that the area is like a jungle, there are many ferns, vines, and wildflowers. Ms. Roth noted that some years ago trees were being cut down on a daily basis by the applicant. She stated that when she approached Mr. Sweeney and inquired about the tree removal, he told her that he could cut down as many trees as he wanted. She voiced her concern about rainfall and drainage. She noted that several years ago during a heavy rainfall, the creek bed rose to 15 feet. Ms. Roth stated that the lots that are being proposed for development are very steep and leaves little room for a structure because of the steep slopes. She commented that several fire agencies have used her property for practice drills because the area is similar to that of the Oakland hills. Ms. Roth stated that she was very concerned of what will happen to her property because it sits below the proposed project.

Barry Kannon, 4460 Glen Cannon, Fairfield, stated that the property owners who have voiced concerns about this project are not a group of surrounding neighbors that are disgruntled. He stated that they are concerned about the history of the flora and fauna, and about the applicants themselves. He stated that several landowners have tried to develop that property in the past and

were turned down. Mr. Kannon stated that all of the landowners, including the applicant, signed an agreement to abide by the CC&R's when they bought their property. He commented that it was not long after that until the applicant snubbed their nose to the flora and fauna, the permitting process, and to their neighbors. Mr. Kannon asked the commission not to allow this project to move forward. He said that he does not believe the applicant is the type of person who would abide by any mitigation or rules set by the county.

Mark Wolfe, Attorney, 49 Geary Street, Suite 200, San Francisco, stated that in reviewing the studies that were included for this project, it appears there was not sufficient information presented to support a confident conclusion that there are not going to be any significant unmitigated environmental impacts, particularly in the area of biological resources and geotechnical issues as they relate to potential seepage of affluent into Cold Creek. As an example, he stated that the biological resources survey was conducted on one day in December when nothing was in bloom and the birds were gone.

Mr. Wolfe stated that he knows from experience that oak woodlands, particularly on these types of slopes, are notoriously difficult for septic systems, and depending on slope stability issues and other geotechnical hazards, there is always a risk of the day lighting of affluent, and in this instance habitat in the ephemeral stream could be affected. Mr. Wolfe said that these concerns were brought to the attention of staff and at that time they asked staff to prepare an EIR which would answer many of the existing questions. He noted that an EIR was never prepared. He noted that a very minor change was made to the biological resources report and the report was then recirculated. He stated that more information is needed. Mr. Wolfe stated that there is clearly habitat that is suitable for several species including special status species, and this has not been adequately reviewed. With regard to the issue of the removal of the oak trees, Mr. Wolf did not believe that this is simply an issue because the county does not require a permit to remove trees. Any project can be divided into numerous separate components, any one of which does not require a permit, but if it has an environmental impact and is part of a larger project subject to CEQA, then the impacts and mitigation have to be examined before it can move forward.

Mr. Wolfe stated that they reviewed the revised geotechnical study, but there is still not enough information to base a sound conclusion on. He explained that they obtained a biological resource consulting firm and a geotechnical firm to conduct peer reviews of the studies included in the negative declaration. He stated that the geotechnical engineer also believes there is a strong likelihood of the day lighting of affluent based on the proposed design, and that it may affect the habitat in Cold Creek in a negative fashion. Mr. Wolfe pointed out that their biological consultant researched the California Natural Diversity data base and found that there is habitat in this area for the red legged frog, the north western pond turtle, and that potential impacts from this project have not been adequately addressed. He stated that if the project is built as proposed, it has a strong potential of negatively impacting these species. Mr. Wolfe stated that under CEQA, if there is any conflicting opinion about whether a project might have a negative impact, the commission must resolve that doubt in favor of more, not less environmental review, and must require an EIR. Mr. Wolfe stated that under the circumstances, the evidence before the commission shows that the project may affect the environment in a negative way. An EIR would provide an opportunity to answer many of the questions that have been brought forward.

Thomas Lampe, 4520 St. Andrews Court, Fairfield, stated that his residence sits at a higher elevation than that of the applicant's property. He spoke to his concern with possible impact on

water. He noted that on several occasions he has had to contact the Vallejo Water District because the water being delivered to his pump house stopped arriving. He noted that this occurred during the summer months. Mr. Lampe stated that this is an issue the commission needs to examine since the applicant is proposing an additional drain on the water system.

Charles Weakley, Mountain Pacific Surveys, 1505 W. Texas Street, Fairfield, stated that his firm prepared the tentative map for this project proposal. He stated that he believes the studies which were prepared by the project consultants are appropriate for the scale of the development. Mr. Weakley believed that the level of scrutiny that the opponents are asking the commission to put into this project and the level of scrutiny that is being applied to the prepared reports is disproportionate to the impacts, the scope, and the magnitude of the project.

In response to an earlier question by Commissioner Barnes with regard to rainfall, Mr. Weakley stated that the basis for the hydrology in that area was 31 inches per year. He said the impact of the preconstruction and the post construction drainage issues were analyzed as part of the report. He explained that the change is approximately 4% from the preconstruction run off to the post construction run off and is an insignificant impact. With regard to the cutting down of trees, Mr. Weakley stated that the applicant had an arborist report done. He indicated that in total there were 39 trees or bushes that were removed; 12 were oak trees and the remaining portion were Toyons and bay trees. Of the 12 oak trees, 4 of them were dead or diseased, and 4 of them were in the vicinity of the applicant's existing residence, and it was requested by the fire district that he remove them. Mr. Weakley stated that the applicant admits it was improper of him to cut down the remaining trees that were in conflict with the development, and he has agreed to incorporate the mitigation measures that have been placed on the project.

Mr. Weakley challenged the concept that this parcel was not originally developed because it is undevelopable. There were 4 parcels total in the subdivision that could have been subdivided, one 5+ and three 8+ acre parcels. The applicant owns one of the 8 acre parcels and the other two 8 acre parcels remain; one 5 acre parcel was split in 1988 into two 2.5 acre parcels. He stated that the engineering studies clearly demonstrate that the parcels are developable.

Gene Black, 101 Auld Court, Green Valley, spoke in support of the project. He did not believe that the addition of two homes would have a significant impact on the area. He said he favored the project as long as the trees are replaced on a 1 to 1 ratio, the sites have an approved septic system, and all building standards are met. He also commented that there is an abundance of trees in the area.

Since there were no further speakers, Chairperson closed the public hearing.

Commissioner McAndrew wanted to know if the CC&R's would still be legally viable if there is no committee or developer to enforce them. Jim Laughlin stated that if a property owner violates a provision of the CC&R's, neighboring property owners who are also subject to these rules and regulations could enforce this through a private action in court. Mr. Laughlin noted that some CC&R's call out specific items such as structures that shall not be built in certain places or with certain setbacks, or large animals such as horses are not allowed, or there is a prohibition on operating a commercial business. In that case, it might be something the commission might want to consider in the use permit process. Mr. Laughlin stated that the subdivision condition in these CC&R's do not state that one shall not subdivide, it just sets a procedure for subdivision that says

one shall not subdivide until the ACC has reviewed and approved the plans. He said it does not prevent someone from building a home. Mr. Laughlin noted that if a landowner wanted to build a new home in the area, the county would not stall their building permit just because there is no ACC to approve their plans. If a neighbor wanted to lodge a complaint, they would have to do that through a court action, and it would be between the neighbors in question. The county would not be involved in the action and would not hold up any permit approvals.

Commissioner Moore wanted to know what the end result would be if there were an ACC and they disapproved of the proposed project. Mr. Laughlin explained that if the committee disapproved of the proposal, the commission would want to consider that evidence as part of their decision making process.

Commissioner Moore stated that he understands this would be an issue of litigation between two property owners, but he wanted to know why staff is asking the commission to include reference to the CC&R's as a condition of approval.

Jim Laughlin stated that when one of the other large lots from the original subdivision was subdivided, the county imposed a similar condition on that project. He said there is no legal requirement to impose this condition, it was added for consistency.

Commissioner Moore wanted to know how a group of residents would go about forming an ACC. Mr. Laughlin stated that CC&R's put a lot of the decision making authority within the Corporation. The Corporation and their officers are identified with the Secretary of State. He noted that these CC&R's identify three individuals who served as the ACC, and lists their names and addresses. Mr. Laughlin stated that as far as these rules are concerned, it is those specific individuals, who were originally appointed in 1978, that will serve indefinitely as the ACC for this subdivision. He said it was not designed to be an ongoing entity where new people would come in over time. Commissioner Moore stated that in his opinion the inclusion of this kind of a requirement should not be made a part of the project approval.

Commissioner Barnes stated that he did not believe this to be a good project, both personally and environmentally. He noted that he was very upset that the oak trees were cut down. He also stated that he believed the county should have an architectural approval committee. Mr. Barnes stated that he agreed with a previous speaker who talked about the negative impacts the project would have on Cold Creek. Commissioner Barnes stated that he would not support the project.

A motion was made by Commissioner Moore and seconded by Commissioner Mahoney to adopt the mitigated Negative Declaration and recommended findings and approve Minor Subdivision Application No. MS-07-05 subject to the recommended conditions of approval, with the omission of Condition No. 12.d., and an addition to Condition Nos. 3.A.e. and 3.E.f. to include the days and hours of operation from 7 a.m. to 6 p.m. Monday through Saturday. The motion passed 3-2 with Commissioners Barnes and McAndrew dissenting. (Resolution No. 4514)

5. **ANNOUNCEMENTS and REPORTS**

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