

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

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## **Meeting of December 3, 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 Mahoney, Barton, Boschee, and Chairman Barnes

**STAFF PRESENT:** Jim Leland, Principal Planner; Karen Avery, Senior Planner; David Cliché, Building Official; Jeff Bell, Senior Environmental Health Specialist; Jim Laughlin, Deputy County Counsel; and Kristine Letterman, Planning Commission Clerk

Items from the floor - none

**The Minutes** of the regular meeting of July 16, and August 6, 2009 were approved as prepared.

1. **PUBLIC HEARING** to consider an appeal of the Department of Resource Management's decision to deny a building permit for **Chris and Joanne Lunardi** to construct a replacement dwelling on French Island in an "A-80" Exclusive Agricultural Zoning District, 7 miles north of the City of Rio Vista, APN: 0042-210-060. (Project Planner: Karen Avery)  
**Staff Recommendation:** Denial

Karen Avery briefly described the project. She explained that during the 1940's and 50's the island was developed with five single family dwellings. This was prior to building permits being required by Solano County and also prior to zoning being established in that portion of the County. The County Surveyor reviewed a Grant Deed for the parcel and confirmed that the parcel was legally created in compliance with, or exempt from, the California Subdivision Map Act, thus making these dwellings legal, non-conforming.

Ms. Avery stated that on August 16, 2009 one of the five dwellings, the one owned by the Lunardi's, was completely destroyed by fire. She noted that French Island is located in an area where there is no fire coverage by the local fire districts. The Lunardi's inquired about replacing the destroyed dwelling. The Department of Resource Management informed the Lunardi's that their application for a building permit to rebuild the dwelling would be denied because reconstruction of the fifth dwelling would be in violation of the Solano County Zoning Ordinance. Staff asked that the planning commission deny the appeal.

In response to Commissioner Mahoney's inquiry, David Cliché explained that the aerial photo that was presented in the staff report was taken during the winter. He stated that this area is within a flood zone and normally a lot of the island is in what is considered marsh land. He stated that the dwellings are on higher ground, but are still considered in a flood zone. He commented that there are no roads to the property, and the only way to reach the island is by boat. He also noted that there is no electrical power, and that the residents use generators for electricity. Mr. Cliché stated that both Cal Fire and the local fire districts have indicated that they have no resources in battling fire on the island.

Commissioner Mahoney wanted to know if the property is being farmed. Karen Avery stated that she did not believe so. She stated that the property is not under Williamson Act contract.

Commissioner Mahoney stated that it does not appear that this property is in agriculture and believed that it is one of those situations where it was not addressed in the General Plan update because the property should not be zoned agricultural if that is not what it is.

Ms. Avery noted that all of the surrounding properties are zoned agricultural.

David Cliché stated that the records show that many years ago this area was used as a hunting preserve. He stated that the county was out at the site several months ago regarding a code compliance issue and performed an inspection of the island. He stated that there was no agriculture taking place at that time.

Commissioner Mahoney stated that the hunting preserve would make sense. He commented that looking at the photo he did not see any tractor markings or a loading or off loading area for an agricultural enterprise.

The applicants, Chris and Joanne Lunardi appeared before the commission. Ms. Lunardi provided a history of how and when they obtained their home. She stated that they have been living in the home since 2006. Ms. Lunardi stated that when they purchased their house they were not aware that it was an illegal non-conforming structure, and that it was never brought to their attention. She stated that none of the residents living on the property were aware that these were non-conforming structures.

Chairperson Barnes opened the public hearing.

Murray Gardner, French Island, Rio Vista, 94571, stated that he is the principal landowner on the island and has been on the property for 12 years. He said that at the time he purchased his home it was never disclosed to him that it was an illegal non-conforming structure. He stated that the 5 residents on the property pay taxes on their homes. Mr. Gardner noted that back in 1906 mink and rabbits were raised on the property, but the property has not been farmed in the last 40 years.

Tab Stiles, #4 French Island, Rio Vista, 94571, stated that he lives on the island. He said the residents do travel to and from the island in boats. Mr. Stiles stated that the homeowners have access to a water pump to fight fires themselves. He explained that at the time of the Lunardi house fire on one was on the property, and by the time someone did show up it was too late. Mr. Stiles explained that each resident owns 20% of the property and own their home. He stated that the property was rezoned in 1977, but the landowners were not contacted or informed by anyone as to what was taking place. He stated that they do not want to build bigger houses they just want some security where if their homes are destroyed they have a chance to rebuild. Mr. Stiles stated that in all the years that the residents have been on the island, no one has ever asked for assistance from the county or any other government agency. He asked that the commission allow the residents to each have their own home, and if something were to happen in the future, not lose their investment.

Peter Jepsen, 2236 Clinton Avenue, Alameda, 94501, stated that he jumped at the chance to purchase his home on the island when it became available. He stated that he has a lot of money invested in his property and is very frustrated with this process. He stated that it would be a great help if something could be done to rectify this situation. Mr. Jepsen said that the existing homes have been on the island since the early 1950's.

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

Jim Laughlin stated that there are two types of problems that exist, one is the legal problem with zoning and the non-conforming use, and then the more practical problem of putting a habitable dwelling out there that meets current building codes. He stated that one possibility is to change the zoning to a Park designation. He stated that the more appropriate zoning would be Commercial Recreation since Park is reserved for publicly owned places under the new General Plan, but changing the designation from Agricultural to Park would be permissible under the orderly growth restrictions within the general plan. Mr. Laughlin stated that given what the property owners want to do by having five homes on a co-owned parcel might not be appropriate in the Park District. He stated that another option would be to re-designate it to Rural Residential. He stated that the orderly growth provisions of the general plan allows a re-designation from Agricultural to Rural Residential under tightly defined circumstances, and this might fit within those required findings since this is a very unique piece of property and probably what happens here would not be applicable anywhere else in the county. Mr. Laughlin stated that the county might also want to look at a Policy Plan Overlay District (PP) which is essentially site specific zoning that addresses a particular situation. Mr. Laughlin stated that this would get the matter past the legal problem, but then there are still building code issues.

David Cliché explained that there have been discussions of what some of the measures would be for a property owner to take to live on an island like this. He stated that there are other governmental agencies that would be involved in the rebuilding process such as the Army Corps of Engineers, Fish & Game, and FEMA. Mr. Cliché stated that originally this area was dubbed by FEMA as a no build zone, but believed this status may have changed and would need to verify this change. He stated that this property is located just outside of the levee area, so any area where levees were not certified could be no build zones. Mr. Cliché also noted that another issue would be sanitation. The homeowner would need to meet current standards for septic and potable water. Mr. Cliché noted that the elevation of the property is currently at 12 feet, and FEMA has placed a limit, if allowed to rebuild, at 16 feet (or above) the base flood elevation. Mr. Cliché stated that the situation is doable if it is deemed legal to move forward with rebuilding, but it is a matter of how much it is going to cost and how long it is going to take to get the approvals.

Jim Leland stated that if the commission would like some research done on what the solutions are then planning staff and county counsel would need an opportunity to meet and think this through. Mr. Leland asked for direction from the commission on how broad or narrow this should be addressed, since this remedy will apply to many structures in the county and not just the ones on this island. He stated that any structure in the county that is legal non-conforming that burns down is in the same situation.

Chairman Barnes stated that staff should look at the options provided by county counsel to see which would be the best option for the residents who live there.

Jim Leland stated that as a general rule staff would prefer to look either at the provision in the code itself with regard to legal non-conforming uses, or solve it with an amendment to the Agricultural District rather than try to rezone the property to some other district.

Mr. Leland stated that any zoning other than agricultural continues to be problematic. He stated that a Rural Residential designation requires a 5 acre minimum and only allows 2 structures on a single parcel. He said that the county has never used the Policy Plan Overlay District to give more lots than were otherwise allowed, and it has only been used to cluster homes. He stated that with the PP District the lots are smaller, and providing open space is a requirement. Mr. Leland stated that he did not believe that this matter could be worked out this evening in a way that addresses the concerns that have been raised, and he asked that the commission continue the matter to allow time for staff to address the issues.

Commissioner Mahoney stated that the PP District seems perfect for this parcel because it is 80 acres in size. He stated that it is not agricultural and commented that if it ever was planted in crop, he would be certain that it was not profitable. Mr. Mahoney stated that it appears to him that the property is zoned incorrectly, and he believed that the county needs to look at making it correct. He stated that if the homes are clustered like within the PP District it would allow for a great solution, and since this is such a unique site, he could envision making this work for the applicant.

Mr. Leland stated that it is possible to make it work, but he believed that the Department would caution that the Agricultural Zoning District has far more uses allowed or conditionally allowed than farming or grazing which include such things as hunting clubs, and therefore, it might be easier to define one of those non-agricultural uses that is crafted around this situation, require a use permit for it, and let it proceed in that way. Mr. Leland stated that this way the county is not up against anyone stating that this does not comply with the Orderly Growth Initiative. Mr. Leland said staff does not prefer to set a precedence of rezoning from agricultural to rural residential, but to solve the problem within the district that it is already in.

Commissioner Mahoney wanted to know if the land is kept in an agricultural designation if five homes would be allowed on the property.

Mr. Leland responded that five single-family residences would not be allowed, but noted that this is not what is occurring out there anyway. He stated that it is a type of common housing situation, as if the residents are a mini corporation owning a resort. Mr. Leland stated that the county might be able to define some type of a small waterfront resort where there is common ownership of all the buildings. He said if this is called a resort it is possible it could be looked at differently than if it were a single-family home which would not only have zoning issues, but other problems as well, since there is no fire protection, no water, no electricity, and no sanitary facilities. He stated that it would be an uphill battle trying to make it a true single-family residence.

Commissioner Barton expressed her sympathy to Mr. and Mrs. Lunardi for losing their home. She inquired as to what the residents are doing for sewer facilities.

David Cliché responded that currently the residents have a holding tank system with minimal leachline fields that do not meet current standards, and would not have met current standards back in the 1970's. He stated that currently the Department is not sure the extent of what systems are out there. He said it is known that some of the systems have been upgraded, but since the upgrades took place without benefit of permits, it is not known exactly what is out there. Mr. Cliché commented that he was sure if testing was done on the surrounding waterway that contamination would be found.

Commissioner Barton stated that she understands this property is not currently being farmed, but that it does not mean it cannot be farmed in the future. She stated that her caution to the homeowners would be that if they are going to go down this path of trying to figure out something else than what is out there, they may not be able to afford to do everything that is needed to make it a livable place. Ms. Barton stated that she believed the commission needs to support the rules that are currently in existence.

Commissioner Boschee stated that he would like to see staff pursue the ideas that were presented to see if there is some way to keep the current zoning, and build around that. He suggested that the property owner work with the county to determine what is going to be required to replace the home. Mr. Boschee stated that because of the location of the property, the requirements for replacing the home are going to be very expensive. He stated that the applicants need to be aware of this so that they have some idea of what it will cost to replace the home, and as the county looks at the options and this gets to the point of where a decision will be made, the applicants can determine whether or not it is going to be worthwhile for them to pursue. Mr. Boschee stated that in order to limit further development for whatever kind of exceptions are going to be made that maybe there could be some kind of open space easement required to protect the area. He commented that if the Lunardis do not pursue building their home, there are still four other homeowners out there and he believed that they would like to have some comfort into the future as to what their options would be should they have a catastrophe and lose their home and be faced with a similar situation.

Chairman Barnes stated that he believed the best thing would be to continue this matter to allow staff time to come back with another plan that would help the applicants.

Commissioner Mahoney mentioned that another looming fact is that residents who live in that area are concerned with what the State is planning with regard to the Delta Vision Plan. He explained that the state is looking at the whole water system, possibly buying out homeowners or condemning their property. Mr. Mahoney suggested that the area residents pay close attention to the Delta Vision Plan as it unfolds.

A motion was made by Commissioner Boschee and seconded by Commissioner Mahoney to continue this matter to a date uncertain. The motion passed 3-1 with Commissioner Barton dissenting.

## 2. **ANNOUNCEMENTS and REPORTS**

There were no announcements or reports.

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