

MINUTES

TOWN OF APPLE VALLEY PLANNING COMMISSION Regular Meeting Wednesday, December 18, 2013

CALL TO ORDER

At 6:04 p.m., the Regular Meeting of the Planning Commission of the Town of Apple Valley for December 18, 2013, was called to order by Chairman Lamoreaux.

ROLL CALL

Planning Commission

Roll call was taken with the following members present: Commissioner Doug Qualls, Commissioner Mark Shoup, Commissioner B.R. "Bob" Tinsley, Vice-Chairman Bruce Kallen and Chairman Jason Lamoreaux.

STAFF PRESENT

Lori Lamson, Community Development Director; Carol Miller, Senior Planner; Brad Miller, Town Engineer; Haviva Shane, Town Attorney; and Debra Thomas, Planning Commission Secretary.

PLEDGE OF ALLEGIANCE

Commissioner Tinsley led the Pledge of Allegiance.

1. APPROVAL OF MINUTES

- A. Minutes for the Regular Meeting of September 18, 2013 (*Continued from the October 2, 2013 meeting*).
- B. Minutes for the Regular Meeting of November 20, 2013

Motion by Commissioner Qualls, seconded by Commissioner Tinsley, to approve the Minutes for the Regular Meeting of September 18, 2013.

Motion carried by the following vote: Ayes: Commissioner Qualls, Commissioner Shoup, and Commissioner Tinsley. Noes: None. Absent: None. Abstain: Vice-Chairman Kallen and Chairman Lamoreaux.

Motion by Commissioner Tinsley, seconded by Commissioner Qualls, to approve the Minutes for the Regular Meeting of November 20, 2013.

Motion carried by the following vote: Ayes: Commissioner Qualls, Commissioner Shoup, Commissioner Tinsley, Vice-Chairman Kallen and Chairman Lamoreaux. Noes: None. Absent: None. Abstain: None.

PUBLIC HEARING ITEMS

- 2. Tract No. 14582, Amendment No. 3.** A request to amend Condition of Approval No. 35 of Tract Map No. 14582, requiring a 200-foot building setback from San Bernardino County Flood Control District right-of-way by allowing a seventy-five (75)-foot building setback.

Applicant: Gar Brewton representing Yeager Bros. LLC

Location: The lots are located south of Yucca Loma Road, on the westerly side of Kasanka Trail, adjacent to the Mojave River; APNs; 3088-571-16 & 17, 3088-581-15 thru 18, and 3088-591-08 thru 11.

Chairman Lamoreaux opened the public hearing at 6:07 p.m.

Ms. Carol Miller, Senior Planner, presented the staff report as filed by the Planning Division.

Mr. Brad Miller, Town Engineer, for the Town of Apple Valley had reviewed the geotechnical study and found it to be acceptable.

Ms. Miller presented to the Planning Commission changes that needed to be made to Conditions of Approval Nos. 23 and P82.

Ms. Haviva Shane, Town Attorney, wants to amend Condition No. 9 to make sure it referenced the approval and any Amendments.

Commissioner Shoup had concerns with the substantial changes to the Conditions of Approval that were being discussed. He had spent a lot of time reviewing the Conditions, would like to see those changes in writing, and would like the item continued allowing more time for review. Commissioner Shoup submitted a motion to continue the item to the next Planning Commission meeting scheduled in January, 2014.

Commissioner Tinsley seconded the motion.

Ms. Miller asked the Planning Commission to listen to the Applicant's presentation. The Applicant had brought expert consultants to answer all questions asked by the Planning Commission..

Vice-Chairman Kallen requested that the motion be tabled. It was the consensus of the Planning Commission to table the motion.

Gar Brewton representing Yeager Bros. LLC is a principle with GFB Friedrich and Associates, engineers for the tract. He explained that the driving force to modify the flood control Condition was to save the habitat. The environmental setting was critical to the project and through the Applicant's research, the existing habitat actually provided the flood protection to the property that was considered reasonable.

Mr. Marty Teal, one of Applicant's experts, had been an advisor to the San Bernardino County Flood Control District ("SBC Flood Control District"). He was a recognized authority on river drainage and erosion. Mr. Brewton stated that many of the changes being made were due to the Covenants, Conditions and Restrictions ("CC&Rs"). The

Applicant wanted to be sure that the CC&Rs disclosed everything to potential property owners regarding the conservation habitat and risks living next to a river.

Mr. Marty Teal, previous consultant. Brewton by SBC Flood Control District in the past and hired by Applicant was asked to provide a professional opinion on the stability of the riverbank under hydraulic loading. Based on hydraulics of the river dating back to 1938 to the present and looking at the behavior not only of the river against the bank, but also the reach in general, in his opinion, there was a low probability of the river bank intruding more than seventy-five (75) feet. With that said, he believed that would not create a catastrophic event nor endanger the public.

Discussion ensued regarding Mr. Teal's credentials, expertise, and the possibility of the SBC Flood Control District waiving the 200-foot setback. In addition, concern was expressed with respect to where liability lies if changes made to the Conditions of Approval were approved.

Additional discussion ensued regarding studies prepared on the Applicant's behalf, the river's behavior, slope erosion and the percentage of risk.

Mr. Brad Miller, Town Engineer, commented on the hydrology and hydraulic analysis performed by a consultant retained by the SBC Flood Control District, which Mr. Teal's firm was part of that team. The purpose for the study was to prepare a LOMR, Letter of Map Revision for the segments of the river from the Narrows to Tussing Ranch Road. The primary purpose was to address the certification of levies along both banks of the river. There were several areas along that reach of the river after the 2008 firm panels were released by FEMA that showed larger areas of potential flooding hazard than previous maps had shown. In response, the SBC Flood Control District retained the consultants to perform a hydraulic analysis along that stretch of the river to see what could be done about certifying the levies or how to determine certification was not necessary.

During the same period, Mr. Miller was approached in 2008 by several property owners on Kasanka Trail regarding their homes on the east side of Kasanka Trail. FEMA included those homes in the flood hazard zone and those property owners were confused and concerned. Mr. Miller sent several letters to Washington asking FEMA for an explanation why properties thirty (30) feet above the river and several hundred feet away from a vertical bank were included in a flood hazard zone. FEMA initiated their own analysis and concluded in October of 2013 that the properties had been removed from the flood hazard zone.

Mr. Miller went on to explain that the Town of Apple Valley ("Town") established a reasonable and tolerable level of risk in the Town's design criteria in the Development Code. FEMA determined that the 100-year flood would not over top the levies. Mr. Miller explained describes where the subject property was in conjunction to the slope and the 100-year flood.

Ms. Haviva Shane suggested the following language be included in the Amendment to Condition No. 9:

“The obligations herein apply to the approval of any Amendments to the original approval including, but not limited to, the approval and implementation of Amendment No. 3 to TTM No. 14582.”

Commissioner Shoup would like the proposed language for changes to Conditions No. 23 and P82 read into the record:

Condition No. 23 reads as follows:

“The area adjacent to the rear of the lots are within the San Bernardino County Flood Control right-of-way. Any work/disturbance within this area requires the approval of San Bernardino County Flood Control, U.S. Army Corps of Engineers and State Fish and Wildlife.”

Condition No. P82 reads as follows:

“Prior to the issuance of a building permit, Covenant, Conditions and Restrictions (CC&Rs) shall be reviewed and approved by the Town that set forth to the property owners their responsibility to properly maintain their lot up to the existing top of slope bank, but not on the slope face without obtaining the required approval and permits from the several regulatory agencies. The property owner shall be responsible to prevent erosion from occurring on his lot and will be responsible to properly inspect and maintain all drainage devices that will receive all of the lot drainage and dispose of said drainage into the Mojave River. The property owner will also be required to prevent the overflow of surface drainage over the top of the existing slope. In the event a major storm occurs and slope erosion results that extends into the property owners lot beyond the existing top of slope the owner will be responsible for the repair of flood damage to his property only after obtaining the approval and permits from the several regulatory agencies having jurisdiction over the Mojave River. The property owner shall be responsible for the maintenance of the wrought iron fencing at tope of slope.

Lengthy discussion ensued regarding liability the Town could incur if a 75-foot setback was approved, why the 200-foot setback requirement from the SBC Flood Control District was such a sticking point, who maintained authority for anything outside the property line into the river and its banks and additions the Planning Commission would like included in the CC&Rs.

PUBLIC COMMENTS

Jeff Bragg, Apple Valley, thanked the Planning Commission for their hard work, lengthy discussion and questions posed regarding this proposed project. He believed that the SBC Flood Control District was not going to budge on their 200-foot setback requirement unless evidence supporting a change was provided to them. In addition, Mr. Bragg disagreed with the lot depth measurement of 180 feet. He stated his own measurement showed 167 feet due to the erosion that had been occurring over the last three (3) years.

Arthur Pena, Apple Valley, stated he had nothing against the developer building at that location however, he had seen sink holes at the end of the street and patios dropped

approximately two (2) inches. He had taken pictures and provided them to the Planning Commission to view so they could see for themselves exactly what had happened to the bank. He believed the bank would undermine itself once any water was placed on the property. He described how water takes everything and only leaves behind smooth sand.

Mr. Brewton disagreed with Mr. Bragg's measurements and stated to the Planning Commission that the actual lot size depth was 180 feet. Mr. Brewton had not seen the photographs that Mr. Pena presented to the Planning Commission however stated CHJ Consultants had their geotechnical engineer out at the property many times to monitor the silt stability and walked the slope as part of their investigative process.

Chairman Lamoreaux recessed the Planning Commission Meeting at 7:55 p.m.

Chairman Lamoreaux reconvened the Planning Commission Meeting at 8:00 p.m.

Commissioner Shoup would like to continue the item to allow the Planning Commission time to review all Conditions of Approval in writing.

Commissioner Tinsley seconded the motion.

Ms. Haviva Shane would like a disclosure statement notifying owners that the Town of Apple Valley bears no liability regarding damage to the property located adjacent to the river and flooding. The suggested language would be:

Condition No. P84 reads as follows:

"The property owner is on notice and acknowledges that the property is located within 75 feet of the Mojave River and may be subject to damage or destruction due to flooding or erosion. The property owner is on notice that the technical studies on which the set back requirements were based are on file at the offices of the Town of Apple Valley and available for review. The Town of Apple Valley is not liable for and the property owner waives any claims against the Town of Apple Valley and agrees to hold harmless Town of Apple Valley for any damage or destruction to the property resulting from flooding or erosion."

Commissioner Qualls was more than satisfied with the project presented, as amended and would be in favor of moving the project along.

Commissioner Tinsley stated the modifications presented had cleared up any confusion he had and was in favor of moving the project along.

Commissioner Shoup stated after hearing the Conditions read by staff and by counsel, he withdrew his motion to continue and suggested the Planning Commission move to approve the project.

Commissioner Tinsley seconded the motion.

Vice-Chairman Kallen stated he did not want to go against the recommendations of the SBC Flood Control District and would vote against the project.

Chairman Lamoreaux stated he was comfortable with the project after the changes to the Conditions of Approval were clarified by Staff and the Town Attorney.

Chairman Lamoreaux asked the Applicant if he agreed to the Conditions of Approval as originally written and as amended.

The Applicant stated he has read them and agreed to all of them.

Chairman Lamoreaux closed the public hearing at 8:26 p.m.

MOTION:

Motion by Commissioner Shoup, seconded by Commissioner Tinsley, that the Planning Commission move to:

1. Determine that the Amendment is not anticipated to have any direct or indirect impact upon the environment, as it has been determined that the proposed request is Exempt from further environmental review.
2. Find the Facts presented in the staff report support the approval to revise Condition of Approval Nos. 9, 23, 24, and 35, and the addition of Condition of Approval Nos. P80, P81, P82, P83 and P84.
3. Approve Amendment No. 3 for Tract Map No. 14582 subject to revised Condition of Approval Nos. 9, 23, 24, and 35, and the addition of Condition of Approval Nos. P80, P81, P82, P83 and P84 as attached.

ROLL CALL VOTE

Ayes: Commissioner Qualls
Commissioner Shoup
Commissioner Tinsley
Chairman Lamoreaux

Noes: Vice-Chairman Kallen

Abstain: None

Absent: None.

The motion carried by a 4-1-0-0 vote.

Commissioner Lamoreaux informed the speakers at tonight's meeting, they had the option to appeal the Planning Commission's decision to the Town Council.

PUBLIC COMMENTS

Mr. Jeff Bragg expressed concern for the safety of children in the area of Kasanka Trail. He believed that once the Yucca Loma Bridge is built, it would increase traffic and he described how automobiles sped through the area. He asked if there was a way speed bumps could be installed.

Mr. Arthur Pena also expressed his concern regarding safety in the same area due to speeding cars.

PLANNING COMMISSION COMMENTS

Commissioner Qualls stated he enjoyed his first months serving on the Planning Commission. He stated it was educational and was learning a lot. He looked forward to 2014 and wished everyone a Merry Christmas and Happy New Year.

Vice-Chairman Kallen asked Ms. Lori Lamson, Community Development Director, for a full report on her new baby. He stated he enjoyed the group and believed everyone was conscientious and was pleased with the due diligence the Planning Commission displayed.

Commissioner Tinsley expressed his appreciation and complimented Commissioner Shoup when he caught items that need clarification. He was happy to work with a well rounded group. He congratulated Ms. Lamson on her new baby and requested information on the upcoming Planning Commission Academy.

Chairman Lamoreaux thanked staff for their hard work and understood the frustrations they were experiencing dealing with the County. He stated he was honored to work with the other four (4) Commissioners. He expressed his thanks and wished everyone a Merry Christmas and Happy New Year.

STAFF COMMENTS

Ms. Lori Lamson, Community Development Director provided the Planning Commission with some details about her new baby.

OTHER BUSINESS

None.

ADJOURNMENT

Motion by Commissioner Tinsley, seconded by Commissioner Qualls, and unanimously carried to adjourn the meeting of the Planning Commission at 8:39 p.m. to the Regular Meeting on January 15, 2014.

Respectfully Submitted by:

Debra Thomas
Planning Commission Secretary

Approved by:

Chairman