

FROM THE PLANNING COMMISSION MINUTES OF FEBRUARY 9, 2012

Prior to the beginning of the Public Hearing portion of the meeting, Chair Pratt announced that they did not have a full Commission today, although they did have a quorum to make decisions. He stated that Commissioner Rain had significant health issues in his family and would not be present for today's hearing or the next hearing. Historically, the Commission, as a courtesy, has allowed applicants before the Commission to request their item be continued to be heard by a full Commission. That request must be made before the item is started. Once the hearing is started, the applicant may not request a continuance on the grounds of not having a full Commission. At this time, the earliest that there may be a full Commission would be at the March 8, 2012, hearing.

10. SPECIAL USE PERMIT

Prior to hearing the Special Use Permit items, Chair Pratt announced that the Commission would be hearing each item individually and requested the public focus their comments on the specific item being heard.

- a. Appeals submitted by DYANA ANDERLY and DON RICKETTS of the claim made by the applicant that the permit was "deemed approved" on December 30, 2011 due to the alleged failure of the County to meet statutory time limits pursuant to the California Permit Streamlining Act (Government Code Section 65920 et. seq.) of **Special Use Permit S11-0004/Sunset Lane Off-Premise Advertising Sign AND** to consider said Special Use Permit submitted by JOHN DAVID PEREIRA to construct a lighted 14 ft. by 48 ft. (672 sq. ft.) off-premises advertising sign on property identified by Assessor's Parcel Number 090-430-09, consisting of 1.22 acres, and is located on the north side of Sunset Lane, approximately 600 feet east of the intersection with Mother Lode Drive along the south side of U.S. Highway 50, in the Shingle Springs area, Supervisorial District 4. [*Project Planner: Aaron Mount*] (Negative Declaration prepared)*

Aaron Mount presented the item to the Commission and stated that staff was recommending the size of the sign be limited to 480 square feet (as shown in Condition #1) and that the permit be valid for 7 years (as shown in Condition #2).

John Pereira/applicant questioned whether the Commission was the appropriate jurisdictional authority for the appeal. He stated that his permit can only be approved by the Zoning Administrator or the Planning Commission and appeals on those hearing bodies go to the Board of Supervisors. He made reference to a letter he sent the previous day to County Counsel on this issue.

County Counsel Paula Frantz stated that the applicant had sent notice to the County regarding the permits being "deemed approved" due to Planning Services' failure to act. Although Special Use Permits are heard by either the Zoning Administrator or Planning Commission, these two bodies did not hear the Special Use Permits submitted by Mr. Pereira. Projects approved by the Planning Director or designee are appealed to the Planning Commission and the appellant has the right to then appeal to the Board of Supervisors. County Counsel Frantz also said that yesterday was the first time the applicant made the inquiry on jurisdictional authority. She also stated that

the Permit Streamlining Act is very clear that any approval has to be made by a decision-making body and, therefore, the hearing was on an appeal on an item that the Planning Commission was only allowed to hear.

Commissioner Mathews requested that they recess into Closed Session to confer with Legal Counsel on the issue of jurisdiction. County Counsel Frantz announced that that the request was appropriate and they would be recessing into Closed Session pursuant to Government Code Sections 54956.9(a) and (b). County Counsel Frantz reported out of Closed Session that Mr. Pereira's concerns on jurisdiction were discussed and while they acknowledged that the applicant challenges this body's jurisdiction to hold the appellate hearings today, it is the County's position that they do have the authority to hold these hearings and they also acknowledged that the applicant's appearance today did not remove his right to question the issue of jurisdiction in subsequent proceedings and that he did not need to raise it in the two subsequent applications.

Mr. Pereira proceeded with his presentation and stated that the permit was "deemed approved" by State law and it trumps any local jurisdiction. He made the additional comments:

- Provided a timeline regarding CEQA determination and stated that the County's website showed the CEQA determination being changed very recently;
- Was present only to discuss the sustenance of the signs as they were already "deemed approved";
- Only saw opposition letters displayed in the back of the room even though there were support letters submitted;
- CalTrans has approved the project;
- County staff has been in contact with CalTrans in the past week to discuss project;
- Three-fourths of the Staff Report contained General Plan elements that are not in the Land Use element;
- Staff Report did not identify any Ordinance or Resolution that limits sign size;
- Application complies with the General Plan;
- Did not support staff's recommended conditions and stated that the wrong codes were cited for Condition #2;
- Indicated that many of his comments applied to all three applications and would make additional site-specific comments for each one;
- Disagreed with downward signs as it was contrary to industry standards;
- Can't indemnify the County;
- Signs, as applied for and "deemed approved", are consistent with the General Plan as proposed and referred to a memo to the Commission from County staff Lillian MacLeod and a two-page analysis to the Commission from County staff Roger Trout stating that the sign regulations were unclear and encouraged the Commission to amend them.

Art Marinaccio made the following comments:

- Project is not Categorically Exempt;
- Ordinance has been in place since the 1960s requiring design review to resolve visual issues on any property adjacent to a State Highway;
- Proposed use requires a Special Use Permit which provides a right to regulate;
- Read into the record General Plan Policy 2.2.5.2;

- 15 years ago an Ad Hoc Committee made up of Shingle Springs residents agreed that downtown Shingle Springs would have a railroad concept and that there would be no more billboards on Hwy 50 in the Shingle Springs area;
- Planning Commission has the authority to deny the applicant's request;
- Scenic resources are not protected;
- If there is no screening, then project does not comply with the Ordinance; and
- Not enough environmental review and the Commission should uphold the appeal which would then be appealed to the Board of Supervisors, which is the hearing body that the applicant wants.

Dyana Anderly/appellant stated that she is a professional Planner and a member of the Cameron Park Design Review Committee and she appealed the project so their voice could be heard. She made the following comments:

- Applicant's notice was flawed as the project is not Categorically Exempt and the notice was not correct in how the size was stated;
- Negative Declaration doesn't adequately address the cumulative impacts of all three signs;
- If applicant insists on 672 square feet and staff's recommendation is a smaller size, then the Commission should deny the request; and
- Special Use Permit is used to assure compatibility.

Tim Costello, 18 year resident, lives off of Ponderosa Road and made the following comments:

- Sign is too big and is out of character with the community;
- Lighting component is significant as he will be able to see the lights from his house;
- Concerned on the subject matter the sign would advertise as it is near a high school and it would go to the highest bidder;
- According to applicant, signs will be focused on the "Bay Area to Tahoe" drivers but the local community is the one that has to live with them; and
- The scenic corridor, Crystal Range, would be significantly impacted.

[Clerk's Note: Tape recorder malfunctioned during Brad Pearson's testimony. An audible screeching noise was made and after the transfer of the audio tape from one tape deck to the next, the recorder button did not depress properly and, therefore, a total of approximately 1-2 minutes of Mr. Pearson's testimony was not recorded.]

Brad Pearson made the following comments:

- Building Permit is needed;
- Applicant is "bullying" the Commission when this really is discretionary by the Commission;
- There are already existing billboards in the area and applicant's requests would double the number of them;
- At the very least, the item should be continued to determine the legality issue;
- Crystal Range viewshed would be impacted;
- Significant public opposition; and
- EIR is needed due to the sensitive area and the applicant is requesting a lot in a small area that has an important viewshed.

Jane Layton spoke on viewshed issues.

Pat Dyer opposed the project and challenged the applicant's claim that the billboards would bring business to the County. She felt that approving this project would set a precedence.

Deb Jensen, El Dorado Arts Council, stated that a significant amount of time and money has been spent promoting El Dorado County as a destination due to the viewshed.

Ben Tresser stated they have a billboard and it would be hypocritical to oppose the project but the proposed signs are "monster boards". He also stated that his billboard promotes primarily local businesses.

Kathleen Newell, professional photographer, stated the area has incredible viewsheds and the signs would create a detrimental impact. She also felt that due to the internet, billboards are a trend that is slowly fading away.

Bob Smart indicated that he had sent an opposition letter and that the general consensus of the community is to oppose the sign.

Kirk Smith stated that the area has a special character and historical flavor that the proposed sign would destroy.

George Turnboo opposed the project and felt that approving the sign would then allow others to place signs in the area.

Mr. Pereira made the following rebuttal comments:

- Commended the public voicing their views and requested the same right;
- If the signs are not wanted, then staff needs to be directed to create a sign ordinance;
- Opposes a decrease in the size of the sign as his proposed size is allowed by the State and there is no basis for staff's recommendation; and
- Requests that the rules be applied fairly.

Commissioner Tolhurst stated that he couldn't support the project as presented after listening to public testimony. He also felt the Negative Declaration was flawed in regards to the aesthetics environmental impact and read into the record Scenic Vistas.

Commissioner Mathews felt that the environmental document did not address the scenic element and at a minimum should require an EIR. He also disagreed with staff in that the document in front of him didn't provide the evidence he needed to make their determination.

Commissioner Heflin agreed that the Staff Report was lacking and applauded the public for their testimony, which convinced him that an EIR would be needed for this site as it is inconsistent with the General Plan.

Chair Pratt referenced Staff Report Exhibit G which only showed an “after” picture and did not show what was being hidden by the placement of the sign and he spoke on a “rolling blockage” effect. He was not in favor of the size and height of the proposed sign. He also stated he was in support of an EIR due to the visual elements.

A motion by Commissioner Heflin, seconded by Commissioner Mathews was made to uphold the appeal and deny the project and Negative Declaration. Roger Trout, Development Services Director, stated that occasionally when the Commission reaches this point in the hearing they consider taking a conceptual action in order to allow staff to return with Findings. County Counsel Frantz concurred. The Commission agreed to change the motion to “conceptual” and informed staff that the Findings could not be made as the aesthetics environmental impact was more significant than what was stated in the environmental document.

Before taking final action of the motion, County Counsel requested that if they broke for lunch, to not close this item so she could ensure that the applicant would be aware of his rights to appeal.

No further discussion was presented.

Motion: Commissioner Heflin moved, seconded by Commissioner Mathews, and carried (4-0), to conceptually uphold the appeal and deny S11-0004 and the Negative Declaration.

AYES: Tolhurst, Mathews, Heflin, Pratt
NOES: None
ABSENT: Rain

[Clerk's Note: Item was not closed after the voting and Commission broke for lunch recess.]

County Counsel Frantz announced that Item 10.a was still open at her request. She announced that today's motion was conceptual and staff indicated that they would be able to return with Findings for the February 23, 2012 hearing for final action, which would be when the appeal period would begin. She also wanted to address Mr. Pereira's previous comment that he did not see the support letters in the back of the room. County Counsel Frantz indicated that the copies had been replenished and also verified that the support letters were in the Commission's agenda packets. She also stated that items submitted today were also available in the back of the room.

Chair Pratt closed Item 10.a.