

**BUTTE COUNTY PLANNING COMMISSION MINUTES**  
**APRIL 13, 2006**

- I. PLEDGE OF ALLEGIANCE:** The Meeting convened at 9:00 a.m.
- II. ROLL CALL: PRESENT:** Commissioners Lambert, Marin, Leland, Wilson, and Chairman Nelson

**ALSO PRESENT:**

|                             |  |
|-----------------------------|--|
| <i>County Counsel</i>       | Felix Wannemacher, Deputy County Counsel |
| <i>Development Services</i> | Pete Calarco, Assistant Director         |
|                             | Chuck Thistlethwaite, Planning Manager   |
|                             | Dan Breedon, Principal Planner           |
|                             | Carl Durling, Associate Planner          |
|                             | Mark Michelena, Senior Planner           |
| <i>Public Works</i>         | Mike Mayes                               |
| <i>Environmental Health</i> | Doug Fogel                               |

Commissioner Marin was absent at this time.

- III. ACCEPTANCE OF AGENDA:** Commission members and staff may request additions, deletions, or changes in the Agenda order.

It was moved by Commissioner Lambert, seconded by Commissioner Wilson, and unanimously carried to accept the agenda as presented.

Commissioner Marin was present at this time.

- IV. BUSINESS FROM THE FLOOR ON ITEMS NOT ALREADY ON THE AGENDA:**

None

- V. PUBLIC HEARINGS:**

|   |   |
|---|---|
| <b>Name:</b> Doug and Denise Hopper   | <b>Project:</b> Legal Lot Determination     |
| <b>Planner:</b> Carl Durling  | <b>APN:</b> 027-060-039 <b>Zoning:</b> AR-5 |
| <b>Location:</b> on a private access easement, approximately 700 feet north of Oro Garden Ranch road, Oroville; |   |
| <b>Proposal:</b> Legal Lot Determination/Conditional Certificate of Compliance.                                 |   |

Mr. Durling gave a brief summary of the project. He said the property along the south boundary of this property is designated Orchard and Field Crop. He said there are no orchards or field crops in the area. He said the creation deed date was 1970 and that is why staff did not apply the 300-foot setback.

Commissioner Lambert asked Counsel how the Commission should deal with property that was created in 1970, and today there may be new rules.

Mr. Wannemacher said the statute relating to Certificates of Compliance indicates that the Commission can impose the conditions that were in affect at the time of creation or they can impose the conditions that are in affect at the time that the person's interest was acquired. He said in this case the property was acquired in 2005 and if the Commission wishes they could impose conditions based on the rules as of 2005.

Commissioner Lambert asked if the buffer was applied, could the property owner build a residence.

Mr. Durling said with a 300-foot buffer, the owner would have to put the house up at the north end of the property, but they could meet the setback.

Chairman Nelson asked if there was any history at all of any type of tree crops in this area.

Commissioner Wilson said there were no orchards even close to this parcel.

Mr. Calarco said the parcel in question is designated A-R and abuts Orchard and Field Crop.

Mr. Wannemacher explained the Legal Lot Determination process. He said the parcel was created illegally. He said the Commission is determining whether there are any conditions that need to be met.

Chairman Nelson asked if the zoning would do the same thing. He said once they determine this is a legal lot, the parcel would be subject to the present zoning and General Plan. He asked if they did not put any conditions on this, would the owner have to meet the 300-foot buffer in the Agricultural Element.

Mr. Wannemacher said at this point no. He said the Commission is not determining that this is a legal lot. He said their job is to put conditions on the parcel that say when the conditions are met, the lot will become legal.

Mr. Thistlethwaite said the position of staff has been that with the absence of an implementation ordinance for the Agricultural Element, to review building permits with codes and ordinances in place at the time of the application. He said staff would not review, at this time, a ministerial permit for the requirement for the setback in Program 2.2.

Commissioner Lambert asked about adding a condition that they must meet the requirements of the compatibility issue with the adjoining parcels.

Commissioner Leland asked about postponing this hearing until after the discussion later in the meeting on Program 2.2. He felt this application should be approved as if the applicant was coming in for a parcel map on the date the owner acquired interest in the property which would be after adoption of the Agricultural Element. He said he was not inclined to apply the 300-foot setback in this case. There is no agricultural activity around here.



Mr. Breedon gave a brief summary of the project. He noted that the old home and garage have been removed from the property.

Commissioner Leland asked what, if anything, the Commission should make of the fact that the City of Oroville did not comment.

Mr. Breedon answered, nothing, stating that the property is consistent with the City's prezone.

Mr. Fogel said the old well and septic on the property would have to be permitted by his office.

The hearing was opened to the public.

Ray Fernandez, representing Mr. Merrell, said the old house were on city water, sewer, and PG&E and the new house will be hooked back up to the same.

Commissioner Wilson asked about the type of septic system.

Mr. Fernandez said the septic was a gravity flow system.

The hearing was closed and comments confined to the Commission and staff.

It was moved by Commissioner Wilson, seconded by Commissioner Lambert, and unanimously carried to adopt Resolution 06-17 approving the Tentative Parcel Map for Brian Merrell, subject to the finding in the staff report and the conditions in Exhibit A.

There is a 10-day appeal period on all decisions with the Clerk of the Board

\* \* \* \* \*

**Name: Pam Jawad**                      **Project: Use Permit UP 05-15**  
**Planner: Mark Michelena**    **APN: 78-040-023 (036-840-023 old)**    **Zoning: M-1**  
**Location:** located on the southwest corner of Lincoln Boulevard and Nelsier Place, south of Oroville.  
**Proposal:** To establish a residential use and structures on a property zoned to allow light industrial uses on a parcel zoned Light Industrial.

Mr. Michelena gave a brief summary of the project. He said if the Commission wishes to approve this item, they can do so knowing there will be minor changes to the site plan or make a Motion of Intent to approve and bring the item back with a clean site plan.

Commissioner Leland said they could add a condition that the leach field be 50 feet away from the drainage way to the satisfaction of Environmental Health and Development Services.

Commissioner Wilson said this request changes the property from a light industrial use to a residential use.

Mr. Michelena said the owner can still have a light industrial use on the property, but he understands that the applicant wants this property for residential. He said the neighbors are concerned with traffic on the road.

Chairman Nelson commented that maybe they should consider making the distance between this property and Lincoln residential.

Commissioner Wilson asked where the swale was located.

Mr. Michelena said the swale was west from Lincoln, following the south boundary line of the property.

The hearing was opened to the public.

Norman Lord, representing the applicant, agreed with the conditions. He said they can accommodate the drainage ditch.

The hearing was closed and comments confined to the Commission and staff.

Commissioner Lambert said she would like a Motion of Intent to have staff come back with a clear map of what they are approving.

Mr. Lord said that would not be a problem.

It was moved by Commissioner Lambert, seconded by Commissioner Wilson, and unanimously carried to adopt a Motion of Intent to approve the Use Permit for Pam Jawad, and to bring this item back with changes to the plot map on April 27, 2006, for final approval.

**VI. GENERAL BUSINESS** *This section of the agenda is to be utilized by the Planning Commission and Director of Development Services on items of interest, general discussion, or items for which staff has been directed to do research and bring back to the Commission. Items A, B, & C may not always be addressed at every hearing, but will always be listed as part of the agenda.*

A. Directors' Report

B. General Plan/Zoning Ordinance Update

Mr. Calarco gave a brief summary. He said staff will bring this back with a more in depth analysis at a future meeting. He said everyone is interested in the intent of the program being clear. He said this is one of 48 programs in the Agricultural Element. He read Program 2.2 as follows: "The Zoning Ordinance shall require that a buffer be established on property proposed for residential development in order to protect existing agricultural uses from incompatible use conflicts. The desired standard shall be 300 feet, but may be adjusted to address unusual circumstances. Guidelines, as part of the General Plan's implementation, shall be developed illustrating buffer requirements for various situations." He said staff is recommending that the policies only apply to discretionary permits until the County adopts an Ordinance implementing the policies. He said this memo today is a starting point for discussion on this program.

Commissioner Leland agreed with the effort to start this discussion. He said that in his opinion staff is bound to follow the decisions of the Board of Supervisors, but staff could start a discussion of a new interpretation. He asked where this fits into the ordinance guidelines landscape. He said even though there are no guidelines, the County still has to apply the General Plan. He asked if this process was intended to be a first step toward coming up with actual guidelines.

Mr. Calarco explained that this approach is different than the way the program has been applied in the past. He said this would set out a sequence of how staff evaluates discretionary projects. This would be an opportunity for the County to get concurrence, disagreement, or direction by our hearing bodies so that staff is better prepared to write an ordinance that addresses the County's ultimate policy.

Chairman Nelson said the memo states that staff wants to be able to be flexible with the setback requirement from Orchard and Field Crop and Grazing and Open Land designations. He asked what the recommendation for a setback distance is when there is a conflict.

Mr. Calarco said the memo does not state a number for the setbacks. He said they need to see if this memo is applicable and the other part is whether there are unusual circumstances.

Chairman Nelson said that this memo would put the burden on Mr. Price to set the number for the setback.

Mr. Calarco said the department would consult with the Agricultural Commissioner for their expertise and then staff would make the recommendation to the Commission.

Commissioner Leland said in the absence of an Ordinance, the best guidelines that the staff has is what has happened in the last several years. He said that is very different than the proposal set out in this memorandum. He saw this as a proposal to come up with an ordinance and or guidelines. He felt that staff is bound to follow the past guidance which is that the 300-foot setback would be applied to other than urban boundaries.

Commissioner Lambert said she feels strongly about the Agricultural Element. She did not feel this memo today reflected the existing Agricultural Element. She did not believe the adopted element talks about only an urban fringe for the 300-foot setback. She disagreed with this approach, that it would erode the intent of the Agricultural Element. She discussed having a right-to-farm type of notice or disclosure that has more teeth in it.

Commissioner Leland agreed the setback should apply to boundaries all over, and not just near urban boundaries.

Commissioner Lambert asked how many of the Commissioners have a copy of the Agricultural Element, how many have read the element, and how many understand what is in the element.

Commissioner Leland said he has a copy of the element and has read it. He said he understands the element to a certain extent.

Commissioner Lambert said they need to have maps with parcels showing the acreages. She asked if the Commission is only going to deal with what exists today or with the potential of the soil, i.e.,

is it worth saving, what can be grown on the land. She said they need full scale maps with parcel sizes. She said staff may need to consult the people who wrote the Element.

Commissioner Marin said he has always thought the 300-foot setback was arbitrary. He said he met the man who suggested the 300-foot setback based on how far he had to stay away when spraying. He thought this was a very arbitrary way of arriving at the 300-foot setback. He said if the distance was a mistake in the past, it is time to correct it now.

Chairman Nelson said he thought that the plan was written and the problem they are dealing with now is the lack of an ordinance implementing the Agricultural Element.

Commissioner Leland said the question is that there is an ambiguity in the General Plan Agricultural Element of does this 300-foot buffer apply to just urban-agriculture boundaries or also to subdivisions out in the middle of Durham. He said that is not explicit in the Agricultural Element.

Commissioner Wilson said the 300-foot should be applied all over the County, but there still should be some discretion allowed.

Commissioner Lambert said if the urban area is the problem then you can apply a greenline type boundary all around the urban areas. She said that does not mean they will not apply the 300-foot setback on individual parcels outside the urban boundary.

Commissioner Leland said the cases he is thinking of are outside Durham, where someone has 40 acres and wants to split it into 10 acre parcels. He said the question is do they apply the 300-foot setback for the location of the new residence in agricultural areas. He said the Commission has said yes you do apply the setback and under this proposed memo they are saying it would not be applied in this instance.

Commissioner Marin felt the 300-foot setback was excessive.

Commissioner Lambert said there was reason and rules that came into applying the 300-foot setback.

Commissioner Leland asked about the applicability of this memo to ministerial permits. He said when he looked at this he felt the reason you cannot apply this to ministerial permits is because they do not have an ordinance. He believed that even at the ministerial level, they needed to comply with the General Plan.

Commissioner Lambert said she did not understand how they could do any ministerial approvals exempting the 300-foot setback.

Commissioner Leland said if you already have a parcel, the parcel is next to Orchard and Field Crop, the owner wants to build a house, does this Agricultural Element mean that the land owner has to build the house 300 feet away from the orchard and field crop activity. He said if staff has to decide where the house goes, the act is no longer ministerial.

Commissioner Lambert said if the County is going to make the determination that every lot is allowed, by right, to have a house on it, then it would be a special circumstance.

Mr. Wannemacher said there are times when setbacks vary and staff has to be able to recognize the factors and change the setback based on that. He did not think this would be considered a discretionary action.

Commissioner Leland said the issue on a project is approving the location that has the least impact on agriculture. He asked if that would be a discretionary determination.

Mr. Wannemacher said his understanding is when they made those decisions, it was said to maintain x number of feet from the boundary, the number changed. He said if the setback changes based on the circumstances, he did not believe that was a discretionary act.

Mr. Price said that up to a few months ago his office reviewed building permits where there was concern about interface with agricultural uses. He said he has been working closely with Development Services. He thinks they are heading in the right direction. He said there are other problems besides agriculture/urban interface. He said the 300-foot setback is in places where it is not appropriate and needs to be dealt with. He noted that agricultural practices are changing all the time. He said that planning practices in the past has created a situation where one size setback does not fit all.

Chairman Nelson said they need to start with where the 300-foot setback will work and where it won't.

Commissioner Leland asked if they, as a Commission, agree or disagree that the 300-foot setback should be applied to ministerial permits. Should the setback be applied in an agricultural zone on a 5 acre parcel.

Commissioner Lambert discussed the necessity of an acknowledgement of the dangers of farming next door to potential buyers. She said it was never the intent of the Agricultural Element to impact the farmer.

Mr. Calarco said this memo today was for information only. He said staff will do a more in depth analysis and bring this item back.

Commissioner Leland said a question is should the 300-foot setback apply to Grazing and Open land or not.

Mr. Price said some of the land is in the LCA and you have to look at that.

Commissioner Leland said the Agricultural Element loses its affect if the 300-foot setback is applied to inappropriate parcels. Brief discussion.

Commissioner Lambert asked if the 300-foot setback should be based on the size of the parcel, soil, potential of crops, current location or what criteria to be used.

Commissioner Leland did not feel all Orchard and Field Crop land should require a 300-foot setback.

Commissioner Lambert said if there is an LCA contract the County has to respect that.

Ed McLaughlin said the 300-foot setback is not arbitrary. He said he is a farmer. He said the 300-foot setback needs to be applied County-wide and not just on the fringe of the urban boundary. He said the County has to protect the neighbors as well as the agricultural workers. He discussed the new homes out past Mud Creek where a prune orchard was removed and the land split up. He felt the County should hold to the 300-foot setback. He said the 300-foot setback should be applied to Open and Grazing designation as well. He said the Butte County Farm Bureau is not anti-development, but is out to protect agricultural land. He said they need to discuss what is considered viable grazing and how much is used for open space.

Mr. Calarco said staff would put this item on the next agenda as an action item with a full staff report and recommendation.

Mr. Wannemacher asked if the Commission wanted specific examples from the past.

Commissioner Leland envisioned this process as starting with a clean slate. He said while staff is bound by what has happened in the past in lieu of direction from an ordinance or guidelines, the Planning Commission is not.

Commissioner Lambert said some of the past examples could be helpful.

Chairman Nelson said there was quite a bit of information submitted in the past by the Agricultural Commissioner, ie., Niderost, Parker, Sobero, etc.

Commissioner Lambert said on Page 3 of the memo under determination, regarding the portion that talks about ministerial projects, the last sentence states “This policy and procedure may be amended, modified, or rescinded in the future if additional information, court decision, state law or local ordinances require.” and asked why they don’t get it right the first time instead of having to do it over.

Chairman Nelson said his interpretation of this section is that if a new policy takes effect, the County would go with the new policy.

Mr. Calarco said the memo is not set in concrete. He said they need the ability to re-visit the ordinance in the future once it is adopted.

Commissioner Leland asked if staff was going to apply the Agricultural Element policy to ministerial projects before there is an ordinance.

Mr. Calarco said the General Plan says to adopt an ordinance which has not been done. There was a brief discussion on how to go about adopting the ordinance.

Mr. Price said he wants to have a clear direction on applying the Agricultural Element to ministerial permits.

Commissioner Marin discussed spraying on land next to freeways.

\* \* \*

Commissioner Leland noted that the conference put on Saturday by Commissioner Lambert was very good. He said it had good speakers, good location and good food.

Commissioner Lambert thanked Mr. Wannemacher and Commissioner Leland for their help with the conference.

- C. Legislative Case Law update
- D. Planning Commission Concerns

**VII. MINUTES – March 23, 2006**

The Commission had the following correction: Page 3, Line 39 change “convent” to “convenient”; Page 4, Line 23, change “applied” to “apply”; and Page 5, Line 26, change “it” to “the map notation”.

It was moved by Commissioner Lambert, seconded by Commissioner Wilson, and carried to approve the minutes as corrected by the following vote:

- AYES: Commissioners Leland, Lambert, Wilson, and Chairman Nelson
- NOES: No one
- ABSENT: No one
- ABSTAINED: Commissioner Marin

**VIII. Planning Commission Concerns**

**IX. COMMUNICATIONS:** *Communications received and referred. (Copies of all communications are available in the Planning Division Office.)*

*None*

**X. ADJOURNMENT**

*There being no further business, the Planning Commission adjourned at 11:40 a.m.*

---

**Chairman Nelson**

*J:\WPDOCS\PLANNING\MINUTES\PC0209.06.DOC*