



COMMUNITY RESOURCES AGENCY

BEV SHANE, AICP
Director

Administration - Building - County Surveyor - Engineering - Environmental Health - Fleet Services - GIS - Housing - Planning - Roads - Solid Waste

August 19, 2015

FILED

SEP 08 2015

Superior Court of California
County of Tuolumne

By:  Clerk

48 W. Yaney Avenue, Sonora
Mailing: 2 S. Green Street
Sonora, CA 95370
(209) 533-5633
(209) 536-1622 (Fleet)
(209) 533-5616 (fax)
(209) 533-5909 (fax - BHD)
(209) 588-9064 (fax - Fleet)
(209) 533-5698 (fax - Roads)
www.tuolumnecounty.ca.gov

The Honorable Donald Segerstrom
Tuolumne County Superior Court
60 North Washington Street
Sonora, CA 95370



RE: Response to 2014-2015 Grand Jury Report – Tuolumne County Planning Commission

Dear Judge Segerstrom:

The Grand Jury reviewed the Tuolumne County Planning Commission in fiscal year 2014-2015. The Grand Jury provided the following findings and recommendations, responses to which have been provided by Bev Shane, Community Resources Agency Director, and the Tuolumne County Planning Commission. The Planning Commission voted to submit the following responses at its meeting on August 19, 2015:

General Response

Many of the Grand Jury's findings relate to a lack of public participation in the Planning Commission's meetings and the Grand Jury has made several recommendations to encourage increased public participation. The Planning Commission certainly supports increased public participation but wishes to clarify to the Grand Jury that the role of the Planning Commission is the same regardless if there is one member of the public present at a meeting or hundreds. The role of the Planning Commission, and its individual members, is to welcome the members of the public who do attend their meetings, to listen intently and with an open mind to all of those who present oral testimony, to carefully review and consider any written comments or materials that are submitted, and to make an informed decision with the goal of balancing individual rights with the public welfare. The members of the Planning Commission understand that their decisions affect individuals and the future of a neighborhood or a community. The Planning Commissioners have accepted the challenge of making these important decisions and they will continue to welcome the members of the public who attend their meetings, treat them with respect, and sincerely consider their comments.

Grand Jury Findings

F1. The Grand Jury finds that the elimination of the Southern County Planning Commission especially disenfranchises the Southern County area from the decision making process.

Response: The majority of the Planning Commissioners do not agree with this finding. Disbanding the Southern Tuolumne County Planning Commission effective July 1, 2013, modified the planning process but did not eliminate any opportunity for an interested party to provide comments on a development project. The planning process in California emphasizes public participation. When a land development project is submitted to the Community Resources Agency (CRA), the Planning Staff conducts an early consultation process in which a notice requesting comments on the project is mailed to adjoining property owners and anyone who has asked to be notified of certain projects.

If a project is subject to review under the California Environmental Quality Act (CEQA), a second notice is mailed advising of the opportunity to comment on the environmental document prepared for the project. Another notice is mailed advising of the date and time of the Planning Commission hearing. For most projects, the Planning Commission makes a recommendation to the Board of Supervisors. When the Commission is the decision making body for a project, the decision is appealable to the Board of Supervisors. A notice of the Board of Supervisors hearing on a project is also mailed to adjoining property owners and other interested parties. Notices of these opportunities to comment on a project are also published in the Union Democrat newspaper and posted on the County's website. Interested persons may submit written comments in response to each of these notices and also attend the public hearings. Pursuant to State law, the Planning Commission and Board of Supervisors must consider all written comments and materials that have been submitted prior to making a decision regarding a land development project. As such, if an interested person cannot attend the Planning Commission meeting or Board of Supervisors meeting, his/her written comments will still be considered.

The Tuolumne County Planning Commission is comprised of seven members, five of whom represent the five supervisorial districts. The Fourth District includes the area that was previously under the jurisdiction of the Southern Tuolumne County Planning Commission. Residents and owners of property in the Fourth District are represented in the land use decision making process by County Supervisor John Gray and Planning Commissioner Jerry Baker, both of whom live in the Groveland area.

As noted above, residents and owners of property in the South County still have a voice in the land use decision making process even if they are not able to attend the Tuolumne County Planning Commission meetings. The Tuolumne County Planning Commission is authorized to meet anywhere within its geographic boundary, which is the entire County. As such, when a large or controversial project is proposed in the South County, the Planning Commission will conduct its public hearing on the project in the community in which the project is located, either Lake Don Pedro or Groveland, just as the Southern Tuolumne County Planning Commission previously did. Since the Southern Tuolumne County Planning Commission was disbanded in 2013, there have only been six (6) small projects in the South County that have been heard by the Tuolumne County Planning Commission; consequently, there has been no need for the Planning Commission to conduct a meeting in the South County at this time.

- F2. The Grand Jury finds that delayed broadcasts of Planning Commission meetings, only on cable Channel 8, does not adequately encourage public participation.

Response: We do not agree with this finding. Because the Planning Commission's jurisdiction is limited to land use issues, public interest and participation are based on the type of a development project and its location. People tend to be interested in projects that are located in their neighborhoods or otherwise may directly affect them. Because interest in land use planning is focused on specific projects and is not broad based, streaming of the Planning Commission meetings is anticipated to have limited effect in encouraging additional public participation.

- F3. The Grand Jury finds that not having archived meetings available for the public to view on the County website results in less public participation.

Response: We do not agree with this finding. Audio recordings of the Planning Commission meetings are currently available to interested parties upon request and written minutes of the meetings are available on the County's website. These materials have been available for many years. There has been little demonstrated interest in these materials so it is anticipated that there would be limited interest in posting videos of the past Planning Commission meetings on the County's website.

- F4. The Grand Jury finds that interactive Planning Commission meetings may have a positive effect on public participation.

Response: We agree with this finding.

- F5. The Grand Jury finds that the procedures currently used by the Planning Commission for giving notice of upcoming meetings is the minimum required by the Brown Act.

Response: We do not agree with this finding. Under the Brown Act, notice of a regular meeting must be posted a minimum of 72 hours (3 days) prior to the meeting. A 24-hour (1 day) notice is required for a special meeting. Items considered by the Tuolumne County Planning Commission are subject to the notice requirements of Section 65090 et seq. of the California Government Code and Chapter 17.68 of the Tuolumne County Ordinance Code. Under those requirements, notification must be provided a minimum of 10 days prior to a meeting. Section 17.68.130 of the Tuolumne County Ordinance Code establishes the minimum distance for notifying the owners of property adjoining the site of a project to be considered by the Planning Commission. Those minimum distances meet or exceed the requirements of the California Government Code.

- F6. The Grand Jury finds that, at the three meetings it attended, there were insufficient numbers of agendas available to the public.

Response: We do not agree with this finding. Copies of the agendas and reports are mailed to applicants prior to the Planning Commission meeting and are posted on the County's website for public review and downloading. In order to reduce photocopying costs, a minimum number of copies of agendas and back-up materials are provided at each Planning Commission meeting for the public on the table near the entrance to the Board of Supervisors Chambers. The number of copies provided varies depending on the number of projects to be considered and the amount of input the Planning Staff has received regarding the projects during the review process. A photocopy machine is available and Staff makes additional copies of the materials if more members of the public attend than anticipated or if people request additional copies.

- F7. The Grand Jury finds that asking persons wishing to offer public comment to identify themselves in any manner is a violation of the Brown Act.

Response: We do not agree with this finding. The right to anonymous speech at public meetings is not found in the Brown Act, rather it is found in the First Amendment to the United States Constitution. The Brown Act prohibits a legislative body from requiring a member of the public to identify him or herself in order to attend a public meeting. The First Amendment allows members of the public to speak anonymously at public meetings and, therefore, the Planning Commission may ask a person to identify themselves but should inform the individual he/she is not required to do so prior to speaking at a public meeting.

- F8. The Grand Jury finds that all public officials are required to attend ethics training and the Brown Act is part of the curriculum.

Response: We agree with this finding.

- F9. The Grand Jury finds that a three-minute time limit for public comment, although legal, is sometimes unreasonable and reflects neither the intent of the Brown Act nor the opinion of the California Attorney General.

Response: We agree that a three-minute time limit may be unreasonable for some development projects but that it may be reasonable for others. The Tuolumne County Planning Commission takes into account the number of items on an agenda to be considered, the number of people who wish to address the Commission for each item, and the nature of the item itself in determining whether to limit the time given to each speaker and the amount of that time. Through its adopted Procedural Rules for the Conduct of Public Hearings, the Planning Commission has not established a minimum time limit, such as three minutes, but does provide a reasonable amount of time for each speaker based on these factors.

- F10. The Grand Jury finds that having someone sit near the lectern and wave a sign indicating the time remaining for public comment is unreasonable.

Response: We do not agree with this finding. This is a practice that is used by the Board of Supervisors as well as the Planning Commission. Three signs are typically used in this process. The first notifies the speaker that there is one minute remaining and the second provides a 30 second notice. The third sign indicates that the allotted time for speaking has expired. Although this practice is more basic than the green, yellow and red light system recommended by the Grand Jury, the speaker is given the same notice so it has the same practical effect.

Grand Jury Recommendations

- R1. The Grand Jury recommends that, no later than December 31, 2016, the Board reinstate the Southern County Planning Commission, at a cost of approximately \$17,000 per year, with 5 members instead of 7, to serve as an advisory body for the Planning Commission.

Response: This recommendation has not been implemented. The Board of Supervisors could reinstate the Southern Tuolumne County Planning Commission (STCPC); however, the STCPC would not be an advisory body to the Tuolumne County Planning Commission. Pursuant to Section 65101 (a) of the California Government Code, the Board of Supervisors may create "one or more planning commissions each of which shall report directly to" the Board of Supervisors. As such, the reinstated STCPC would have the same authority as it previously had within its geographic jurisdiction. Its authority would be the same as that of the Tuolumne County Planning Commission.

- R2. The Grand Jury recommends that by December 31, 2016 the Planning Commission broadcast its meetings live on the Internet.

Response: This recommendation has not been implemented. Currently, the Board of Supervisors is the County's only body that broadcasts its meetings live on the Internet. That broadcast utilizes the Granicus program. There would be an additional cost for the Planning Commission meetings to be broadcast. Upon authorization by the Board of Supervisors, Community Resources Agency Staff would work with the County's Information Technology Division and Board Clerk to establish the process for broadcasting Planning Commission meetings.

- R3. The Grand Jury recommends that by December 31, 2016 the Board of Supervisors direct the Planning Commission to have video of past meetings posted on the County website.

Response: This recommendation has not been implemented. As stated in the response to F3, there has been little demonstrated interest in the written minutes and audio recordings of past Planning Commission meetings so it is anticipated that there would be limited interest in posting videos of those meetings. A feature of the Granicus program is that it archives meetings. If the Board of Supervisors authorizes use of the Granicus program for broadcasting Planning Commission meetings, all future meetings would be archived and available for public review on the County's website.

- R4. The Grand Jury recommends that by December 31, 2016 Planning Commission meetings be broadcast with interactive capability.

Response: This recommendation has not been implemented. At this time, the Board of Supervisors meetings are broadcast live through the Granicus program but interactivity is not provided. The public policy of providing interactivity would need to be studied as well as the technical aspects of how to implement it. The cost associated with implementing an interactive system would also need to be addressed. If the Board of Supervisors implements an interactive meeting program, the Planning Commission could incorporate it into its procedural rules.

- R5. The Grand Jury recommends that by December 31, 2015, the Planning Commission post notice in the community calendar section of the local newspaper, public libraries, all County post offices, by mail to local senior centers, and on its live broadcasts when they become available.

Response: This recommendation has been partially implemented. Notices of the Planning Commission meetings are included in the community calendar section of the Union Democrat newspaper and are otherwise posted and mailed to individual property owners in accordance with the California Government Code and Tuolumne County Ordinance Code which exceed the requirements for posting under the Brown Act.

- R6. The Grand Jury recommends that, beginning with the next meeting, the Planning Commission makes sure that there are a sufficient number of agendas available to the public before each meeting starts.

Response: This recommendation has been implemented. A minimum of five (5) copies of the agenda and back-up materials are provided at the table near the entrance to the Board of Supervisors Chambers for each Planning Commission meeting. The Planning Staff is continuing to provide additional copies for projects that have generated public interest during the application review process. The Planning Staff is also making additional copies of the materials if more members of the public are in attendance than anticipated. After opening the meeting, the Commission Chair is asking if anyone in the audience would like a copy of any of the agenda materials. Staff then makes and distributes copies of the materials.

- R7. The Grand Jury recommends that the Planning Commission immediately and permanently stop this practice and adhere to the Brown Act.

Response: This recommendation has been implemented. On August 26, 2013, County Administrator Craig Pedro received a cease and desist letter from a member of the public alleging that the open meeting provisions of the Ralph M. Brown Act were violated during the Planning Commission's meeting of August 21, 2013. The specific allegation was that speakers were advised that they were required to provide their names on the sign-in sheet at the podium when such sign-in forms are voluntary pursuant to the Brown Act. In accordance with Section 54960.2 of the California Government Code, on September 18, 2013, without admitting any violation of the Brown Act, the Planning Commission approved an unconditional commitment to cease, desist from, and not repeat the past action that was alleged in the complaint. The sign-in sheet for Planning Commission meetings has been modified to clearly state that speakers are not required to provide their names. As a point of clarification, this is not a Brown Act violation as explained in the response to F7 above but, in order to comply with the anonymous speech rights of the First Amendment to the United States Constitution, the Planning Commission has modified its practice to ensure members of the public are not required to identify themselves prior to speaking during a meeting.

- R8. The Grand Jury recommends that all Planning Commission members complete the required ethics training, which includes the Brown Act as part of the curriculum, and each planning commissioner provide the Board of Supervisors with a copy of the training certificate.

Response: This recommendation has been implemented. The AB1234 Ethics Training is required to be taken every two (2) years. The training is traditionally provided by County Counsel in November of each year and is also provided on-line by the California Fair Political Practices Commission. Planning Commissioners Pland, LaTorre, Baker and Frazer took the required training in 2014 and their Certificates of Completion have been submitted to the Board of Supervisors. Commissioners Rei and Przybla were appointed in January 2015 and will attend the County Counsel sponsored training in November 2015 or complete the training on-line at that time. Copies of their Certificates of Completion will be submitted to the Board of Supervisors.

- R9. The Grand Jury recommends that time limits for public comment must be reasonable and thus adjusted upwards to five minutes or more when necessary to respect the intent of the Brown Act, based on criteria including but not limited to, the number of agenda items, the complexity of each item, the number of persons wishing to address each item, and the ability of the Planning Commission to end the meeting by 10:00 p.m.

Response: This recommendation has been implemented. The Planning Commission does take into account the number of items on an agenda to be considered, the number of people who wish to address the Commission for each item, and the nature of the item itself in determining whether to limit the time given to each speaker and the amount of that time. Through its adopted Procedural Rules for the Conduct of Public Hearings, the Planning Commission has not established a minimum time limit, such as five minutes, but does provide a reasonable amount of time for each speaker based on these factors.


R10. The Grand Jury recommends that the Planning Commission immediately stop this procedure and instead use the green, yellow and red light system as a tool to help speakers realize the time remaining for their public comment.

Response: This recommendation has not been implemented. The Planning Commission regularly meets in the Board of Supervisors Chambers which is not currently equipped with the recommended light system. If the Board of Supervisors directs the installation of the light system, the Planning Commission will utilize it.

Thank you for providing the opportunity to respond to the above findings and recommendations. Please do not hesitate to contact Community Resources Director Bev Shane if you have any questions regarding our responses.

Respectfully,


Richard Pland, Chair
Tuolumne County Planning Commission


Bev Shane, AICP
Community Resources Director

RD:bjs

cc: Tuolumne County Board of Supervisors
Craig Pedro, County Administrator
Sarah Carrillo, County Counsel