

Tuolumne County
Administration Center
2 South Green Street
Sonora, CA 95370



Alicia L. Jamar
Chief Deputy Clerk
of the Board
Of Supervisors

Telephone: (209) 533-5521
Facsimile (209) 533-6549
www.tuolumnecounty.ca.gov

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August 18, 2015

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SEP 08 2015

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

Superior Court of California
County of Tuolumne

By: Clerk

Re: Response to Grand Jury Report – Planning Commission

Dear Judge Segerstrom:

The following is offered in response to the 2014-2015 Grand Jury Report as it pertains to the Planning Commission.

Grand Jury Findings

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

Response: Disagree. 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. For additional perspective, attached you will find a letter to the editor recently written on this topic by Planning Commissioner and South County resident and business owner Jerry Baker.

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. The six (6) small projects mentioned included things such as: a use permit for a sign; an open space rezone; a variance for a set-back for a garage; and an addition to an existing commercial building.

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

Response: Disagree. 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: Disagree. 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: Agree.

- 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: Disagree. 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.

- 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: Disagree. 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: Agree.

- 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: Agree. 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: Disagree. 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 \$17,000.00 per year, with 5 members instead of 7, to serve as an advisory body for the Planning Commission.

Response: The recommendation will not be implemented because it is not warranted for the reasons shared in the response to Finding #1. The decision to move back to a single, County-wide Planning Commission is accomplishing what the Board intended when it took action back in July 2013.

It is important to clarify that *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: The recommendation will not be implemented because it is not warranted for the reasons shared in response to Finding #2. Further, the potential of live streaming Planning Commission meetings was discussed when the Board authorized implementing Granicus for Board meetings. There would be an initial cost for set-up and training and additional monthly maintenance fees. This was not and still is not seen as a priority given the County’s limited funding.

- 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: The recommendation will not be implemented because it is not warranted for the reasons shared in response to Finding #3. Further, this would require implementation of the Granicus system for Planning Commission meetings and consistent with Response #2, this is not a priority given the County’s limited funding.

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

Response: This recommendation will not be implemented because it is not reasonable to pursue at this time given higher priorities for staff time and the County’s limited funding. By way of explanation, while the Board of Supervisors meetings are broadcast live through the Granicus program, 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.

- 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. Further, County staff will make arrangements for Planning Commission postings to be made at all of the County's libraries effective immediately.

- 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 Finding 7 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 commission 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 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 the address each item, and the ability of the Planning Commission to end the meeting by 10:00 p.m.

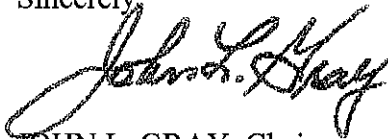
Response: This recommendation has been implemented. The Planning Commission does take into account the number of items on an agenda to be considered, the number of people who wish to address the Commission for each item, and the nature of the item itself in determining whether to limit the time given 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.

F10. 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: The recommendation has not yet been implemented, but will be researched for potential implementation during FY 2015-16.

Thank you for the opportunity to respond to the above findings and recommendations. Please feel free to contact the County Administrator Craig Pedro should you have any questions regarding same.

Sincerely,



JOHN L. GRAY, Chair
Board of Supervisors

cc: Beverly Shane, CRA Director

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

ALICIA L. JAMAR
Clerk of the Board

By: 

The Union Democrat – July 11, 2015 Letter to the Editor

Do We Need A South County Planning Commission?

To the Editor:

I represent the South County as the planning commissioner appointed by John Gray to Tuolumne County Planning Commission.

I philosophically have no problem with reinstating the South County Planning Commission. I agree that there is always the risk of under-representation.

However, while I understand this potential risk, in practice it just has not been a problem.

First, there currently are not that many local items requiring planning commission approval in the works.

Secondly, we have already discussed relocating meetings to Groveland whenever significant south county items were under consideration.

The Planning Commission is a judicial body.

We are required to make recommendations to the Board of Supervisors based on the legal merits of the proposals. It is difficult to stay technically current meeting only a few times a year.

I feel my perspective on North County proposals to be of value to the whole county and, to date, have felt that the judgment of my fellow planning commissioners just as valuable on the South County proposals.

We live in a small community with limited development activity and planning resources.

Even after the consolidation the central planning commission only meets 50 percent of the time due to the lack of actionable proposals.

Consolidating efforts like this are an effective way to control costs and streamline processes.

Jerry Baker

Groveland