

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

503 B



FROM: TLMA - Planning Department

SUBMITTAL DATE:
December 3, 2004

SUBJECT: CONSIDERATION RECOMMENDATION - FOUNDATION COMPONENT
GENERAL PLAN AMENDMENT REQUEST

- Office of the Third District Supervisor (Jim Venable), for Ravi Bhola – Third Supervisorial District – Southwest Area Plan – Rancho California Zoning Area – 5 acres – Location: Easterly of De Portola Road, southerly of Vista Dawn Court and Camino Sierra Road, northwesterly of the westerly terminus of Geisbauer Road. Portions of Section 15 and 16 of Township 7 South, Range 1 West, S.B.B. and M. REQUEST: Amend the Southwest Area Plan designation of the properties within the project area from Rural Residential (one dwelling unit per five acres) within the Rural Foundation Component to Estate Density Residential (one dwelling unit per two acres) within the Rural Community Foundation Component. (Property owner recommends or is willing to accept a restriction to one dwelling unit per 2½ acres.)

CONTROVERSIAL ISSUES:

Surrounding property owners have indicated a desire to maintain rural five-acre lot sizes in this area.

RECOMMENDED MOTION:

The Planning Department recommends that the Board of Supervisors open the public hearing, consider public testimony, and direct staff not to accept an amendment to the Foundation Component designation until the initiation of the five-year General Plan review cycle, on the basis that the required findings for a Foundation Component Amendment are not met in this instance.

Robert C. Johnson
Planning Director

RCJ:JJGJG

(Continued On Attached Pages)

REVIEWED BY EXECUTIVE OFFICE
Robert C. Johnson
DATE 12/9/04

Departmental Concurrence

Policy

Consent

Dep't Recomm.:
Per Exec. Ofc.:

COUNTY OF RIVERSIDE
07 DEC -3 AM 3:01
00 DEC -3 AM 3:28 OFFICE
EXECUTIVE

Prev. Agn. Ref.

District: 3rd

Agenda Number:

16.8

FINDINGS:

1. There is no written evidence to indicate that the designation of these properties within the Rural Foundation Component was in error.
2. There are no new conditions or circumstances justifying a modification to the General Plan Foundation Component assigned to these properties.
3. No unusually compelling condition exists that can only be rectified by making changes that would affect the Riverside County Vision, Principles, or Policies.
4. The decision not to process or approve this request will not result in the unconstitutional taking of property.

BACKGROUND:

Earlier this year, the Office of Third District Supervisor Jim Venable initiated a proposal to change the designation of 15.12 acres of property located easterly of De Portola Road, southerly of its intersection with Camino Sierra Road, from Rural Residential to Estate Density Residential – Rural Community. This proposal was included in General Plan Amendment No. 717 as Exhibit E, Site B.

Site B was comprised of nine Assessor's parcels whose boundaries are affected by a tax rate area boundary that coincides with the section line separating Sections 15 and 16 of Township 7 South, Range 1 West. The change in designation was actually requested by the owner of the two center properties (Assessor's Parcel Numbers 924-150-013 and 924-150-014), Mr. Ravi Bhola. Planning staff suggested adding the properties on either side of Mr. Bhola's properties to the County-initiated proposal, as a means of addressing the situation for any other properties affected by this situation in this neighborhood. These other property owners were not a party to the request. One of them, John Mueller, specifically requested to be excluded, while another, Gary Kerr, verbally expressed opposition to the proposal.

Mr. Bhola, who has decided to pursue this matter for his parcels, is faced with an unusual situation. Assessor's Parcel Numbers 924-150-013 and 924-150-014 are actually part of the same legal five-acre lot. The Assessor's Office depicts the parcels as separate Assessor's parcels because the legal lot is split by a tax rate area boundary that follows the section line bisecting the property. It is Mr. Bhola's intent to build a home on each parcel. However, the two Assessor's parcels are not separate buildable parcels. Mr. Bhola would need to apply for, receive approval of, and record a parcel map in order to establish the two Assessor's parcels as separate legally buildable lots. (The property does not qualify for a Certificate of Land Division Compliance, as there are no deeds recorded prior to 1971 describing these as separate parcels.)

Prior to the adoption of the new General Plan in 2003, land division would have been possible, as the 1989 Southwest Area Plan had designated this area as 2½ Acre Minimum. However, the new General Plan designates the site as Rural Residential, prohibiting further land division of five-acre parcels – hence the need to pursue a Foundation Component Amendment.

The Honorable Board of Supervisors

RE: CONSIDERATION RECOMMENDATION - FOUNDATION COMPONENT GENERAL
PLAN AMENDMENT REQUEST

December 3, 2004

Page 3 of 6

In its review of this proposal, the Riverside County Planning Department determined that the proposed amendment on these properties, including those owned by Mr. Bhola, did not meet the criteria for technical amendments and would constitute a foundation change. Such changes may only be further processed with prior official authorization from the Board of Supervisors. On November 9, 2004, the Board of Supervisors approved a procedure for processing of requests for consideration of Foundation Component General Plan Amendments. Pursuant to this procedure, requests for Foundation Component Amendments must include a completed General Plan Amendment application form and a written justification for the proposed amendment. Since this request was initiated by the Office of the Third District Supervisor, no fee is being charged for the processing of this request.

The process requires the Planning Department to review each such request to determine whether the required findings for a Foundation Component Amendment can be made and whether the request has a degree of urgency that merits prompt consideration of the proposal. The Department then makes a recommendation concerning the request, called a Consideration Recommendation (either for or against), which is to be submitted to the Board of Supervisors for consideration. The Board of Supervisors will then make a determination as to whether to allow the general plan amendment to be processed in the normal manner. If the Board determines that consideration of a Foundation Component Amendment is not appropriate (generally because the required findings cannot be met), the Planning Department may not accept the application until the County initiates its five-year General Plan review cycle.

GENERAL PLAN CERTAINTY SYSTEM:

A fundamental basis of the Riverside County General Plan, as adopted in 2003, is the General Plan Certainty System. The key operational factor here is that, with specified exceptions, amendments to the Foundation Component designations of any property shall be limited to five-year General Plan review cycles. The General Plan Certainty System is intended to maintain the integrity of, and confidence level in, the new Riverside County General Plan, to promote coordinated long-range planning and implementation between the cities and the County, and to avoid erosion of the Foundation Components upon which the General Plan is structured by requiring consideration of any changes to be conducted in a comprehensive manner.

Under the General Plan Certainty system, all land use designations in the General Plan are grouped into five foundation components: Community Development, Rural Community, Rural, Agriculture, and Open Space. Except under extraordinary circumstances, or where particular findings can be made, or, in the case of Agriculture, where a separate set of amendment rules apply, amendments from one land use designation to another within the same foundation component may be adopted on a quarterly basis, but amendments between designations in different foundation components may only be made on a five-year cycle basis unless extraordinary findings are made. The purpose of the extraordinary findings requirement is to preserve the integrity of the General Plan Certainty System. .

FOUNDATION AMENDMENT FINDINGS:

In order to approve an Extraordinary Foundation Amendment (that is, to approve an amendment to the Foundation Component of a property, other than as correction of an error or omission), the County must make the following findings:

- a. The Foundation change is based on ample evidence that new conditions or circumstances disclosed during the review process justify modifying the General Plan, that the modifications do not conflict with the overall Riverside County Vision, and that they would not create an internal inconsistency among the elements of the General Plan; and,
- b. A condition exists or an event has occurred that is unusually compelling and can only be rectified by making changes in the current Riverside County Vision, Principles, or Policies.

Additionally, the County must make one or more of the following findings:

- c. An unconstitutional taking of property would occur without the amendment, and the amendment alters the General Plan Foundation Component designation only to the extent necessary to avoid the taking.
- d. A natural or man-made disaster or public emergency has occurred that warrants a change in General Plan Foundation Component designations in order to protect the public health, safety, and welfare.
- e. A Foundation Component amendment is required to conform to changes in State or Federal law, or applicable findings of a court of law.
- f. A component change is required to comply with an update of the Housing Element or change in State Housing Element law.
- g. A Foundation Component amendment is required to significantly expand basic structural employment (such as industrial, agricultural processing, and research and development), excluding retail, service commercial, warehousing, and residential uses not ancillary to the primary employment use.
- h. A Foundation Component amendment is necessary to facilitate implementation of open space or transportation corridor designations arising from the MSHCP and CETAP programs, and that could not be accomplished by a lesser change in the General Plan.

THE PROPONENT'S REQUEST:

Mr. Bhola asserts that the Rural Residential designation now applied to his land resulted from a mapping omission, namely a failure of the final adopted map to reflect the designation that he believes that the Planning Commission had intended to recommend for his land. Basically, he believes that Mr. Paul Bhola, representing the Bhola family, was assured in a public hearing that the Planning Commission had committed to a higher density, but that either the Planning Commissioner (Mr. John Petty) or Planning staff had failed to follow through, resulting in the Rural Residential designation as depicted on the draft maps being retained.

Staff is aware that Paul Bhola actively participated in the General Plan public hearing process. He requested a 2½ acre designation in several letters and testified at one or more Planning

The Honorable Board of Supervisors

RE: CONSIDERATION RECOMMENDATION - FOUNDATION COMPONENT GENERAL
PLAN AMENDMENT REQUEST

December 3, 2004

Page 5 of 6

Commission public hearings, including the October 10, 2002 hearing at the Simpson Center in Hemet.

Mr. Ravi Bhola requests that the Board of Supervisors allow the processing of his proposal to designate the property within the Rural Community Foundation Component and asks the Board to consider his situation in relation to the third and ninth criteria utilized by Planning staff in its review of General Plan corrections. The third criterion is intended to apply to technical mapping errors whereby properties were designated in a manner that did not reflect intentional policy decisions of the Planning Commission, the Board of Supervisors, or TLMA and Planning staff. Generally, these are errors on the final version of the Land Use Maps that were not present on the editions reviewed by staff prior to the September 2003 Board hearing. The ninth criterion was accepted through the Board's tentative approval of Exhibit MV-5 of General Plan Amendment No. 716 on November 30, 2004. In that circumstance, the Board determined that the Rural Residential designation of a 10-acre property located on Santa Rosa Mine Road in the Mead Valley Area Plan was applied in error because "a parcel map proposing a density not exceeding one dwelling unit per 2½ acres had been submitted prior to the adoption of the General Plan and was consistent with the site's designation on the previously adopted Community Plan."

Mr. Bhola proposes a density not exceeding one dwelling unit per 2½ acres, and the proposed density is consistent with the site's designation on the previously adopted Community Plan. However, the Planning Department determined that this proposal does not meet the ninth criterion for a technical amendment because a parcel map had not been submitted prior to General Plan adoption.

Mr. Bhola asserts that he had been variously advised in 2002 that he either did not need to file a parcel map because he already had two parcels or that he could not file a map because the property had been designated Rural Residential. Neither of these responses would have been correct at that time. Separate Assessor's parcels are not necessarily separate legal lots, and the new General Plan was not yet adopted, so his property's official designation until October 7, 2003 would have been 2½ Acre Minimum. However, he has included this information to explain why he did not file a tentative parcel map prior to General Plan adoption.

In regard to the findings for Foundation Component Amendments, Mr. Bhola cites as evidence of an "unusually compelling condition" the facts that he had requested a 2½ acre designation during the Planning Commission public hearing process and that he was given conflicting information when attempting to submit a parcel map application.

ANALYSIS:

The Southwest Area Plan has been designed in a manner that provides a clear boundary between areas easterly and westerly of De Portola Road. Properties easterly of De Portola Road are entirely within the Rural, Agriculture, and Open Space Foundation Components, while the Rural Community Foundation Component applies to some properties westerly of De Portola Road. There is a real issue as to whether the County should approve higher densities of development in this area at any time in the future, including the 2007-2008 General Plan review cycle. On a general basis, Planning staff is of the opinion that the Rural Residential designation is the appropriate long-term designation easterly of De Portola Road.

The Honorable Board of Supervisors

RE: CONSIDERATION RECOMMENDATION - FOUNDATION COMPONENT GENERAL
PLAN AMENDMENT REQUEST

December 3, 2004

Page 6 of 6

A number of areas easterly of De Portola Road that had been designated 2½ Acre Minimum on the 1989 Southwest Area Plan were designated Rural Residential (5 acre average lot size) on the 2003 Plan. This property was depicted as Rural Residential on the draft Area Plan Land Use Map originally presented at the Planning Commission hearings in the spring of 2002, and the designation never changed in the course of the process.

Granting this request would result in a variation in the otherwise consistent location of this boundary. Nevertheless, Riverside County has been agreeable to the establishment of such "spot" designations in situations where projects had been submitted prior to adoption of the General Plan, albeit in different areas of the County.

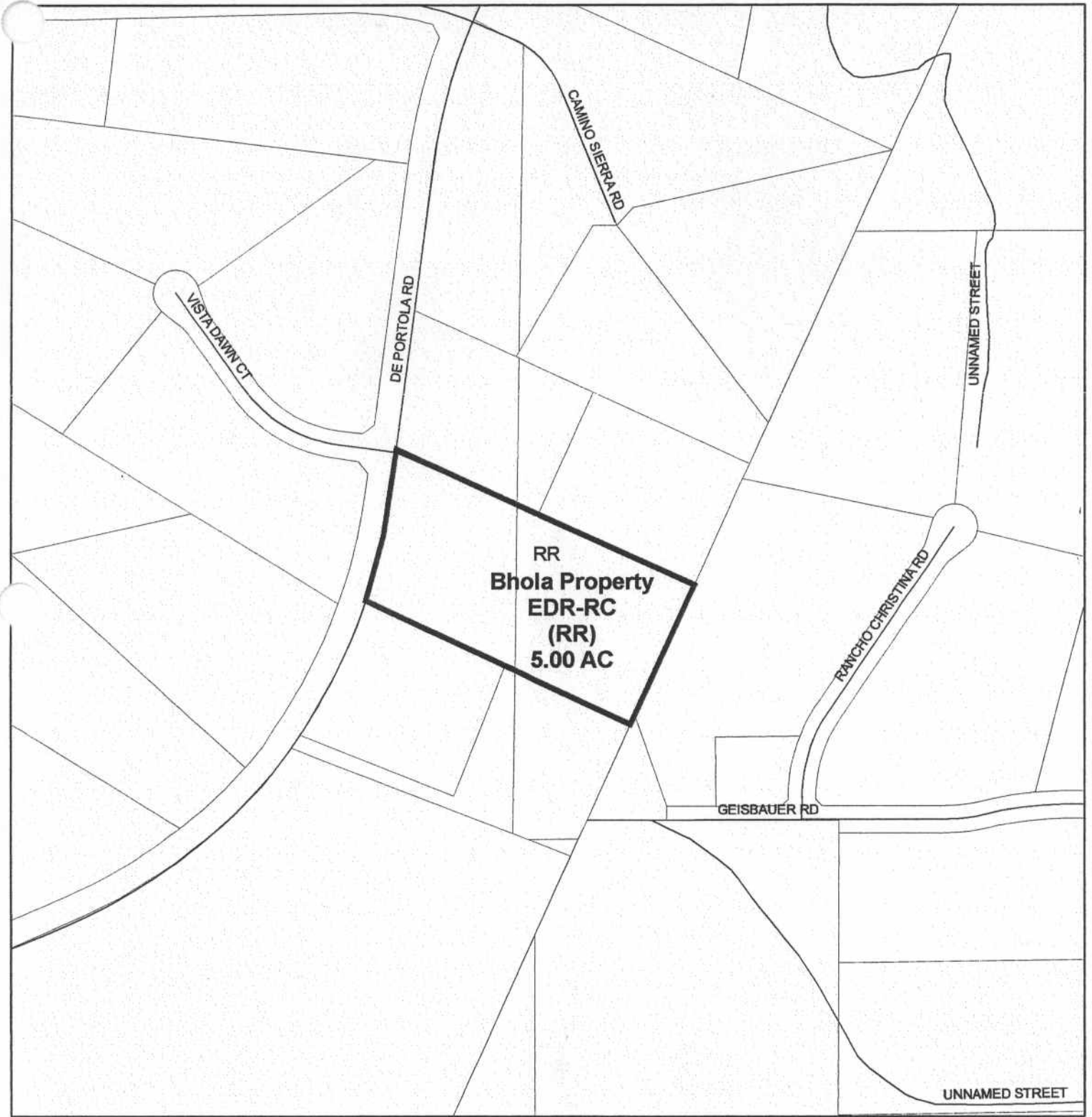
In this case, the proponent asserts that an omission has occurred; however, neither the proponent nor the Office of the Third District Supervisor has supplied documentation to demonstrate that the Planning Commission, the Board of Supervisors, or the Office of the Third District Supervisor had directed staff to amend the proposed designation of these properties prior to issuing its directive in September 2003 to make no further changes to the General Plan land use designations. (Staff suggested that Mr. Ravi Bhola obtain a copy of, or listen to, the tapes of the October 10, 2002 Planning Commission hearing and any other hearings where the Commission may have considered or commented on testimony from Paul Bhola regarding these parcels.) In the absence of such documentation, staff has no basis for considering this request as meeting the technical amendment criteria as established.

On November 9, 2004, in a discussion regarding the process for considering requests for Foundation Component Amendments, Supervisor Buster expressed concern with the potential that approval of requests to consider such amendments could set a precedent for consideration of future requests. The Board received hundreds of letters in opposition to the changes proposed by General Plan Amendment No. 717, Exhibit E. While most of the concerns related to the proposal for a medical/educational campus, opponents were also concerned that "there is no infrastructure in place to support an increase in residential density" above the General Plan standard of one primary dwelling unit per five acres and that "an amendment which permits variances to the five-year limitation...constitutes a significant change from the General Plan and would expose Wine Country and other rural areas to exploitation by developers."

The proponent has not produced or disclosed any evidence regarding new conditions or circumstances that would justify a modification to the General Plan. While the proposed amendment is sufficiently minor in scale (potential for one additional dwelling unit) as to have little effect on the achievement of the Riverside County Vision, the authorization for processing of any Foundation Component Amendment request could set a precedent that would conflict with the Vision by constituting an unanticipated exception to the Certainty System. In staff's opinion, there is no "unusually compelling" condition or event that would require a change to the Riverside County Vision, Principles, or Policies. None of Foundation Component Amendment findings c. through h. apply to this situation.

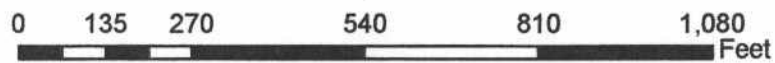
Therefore, staff concludes that the required findings for a Foundation Component Amendment (Extraordinary Amendment) cannot be met. Staff recommends that the properties remain in the Rural Residential designation at least until the adoption of the General Plan review cycle in 2008.

Foundation Component Amendment Consideration Request



Township/Range: T7SR1W

Section: 15 & 16



Assessors
Bk. 924
Pg. 150

Date: 12/06/2004