

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF SEPTEMBER 11, 2019

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of September 11, 2019, are available online at www.co.merced.ca.us/planning/plancomarchive.html.

I. CALL MEETING TO ORDER

The regularly scheduled meeting of the Merced County Planning Commission was called to order at 9:00 a.m., on September 11, 2019, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL OF COMMISSIONERS

Commissioners Present: Commissioner Mark Erreca - Chairman
 Commissioner Jack Mobley
 Commissioner Robert Acheson
 Commissioner Kurt Spycher
 Commissioner Fernando Aguilera

Staff Present: Mark Hendrickson, Director
 Steve Maxey, Deputy Director
 Kim Zinke, Recording Secretary
 Kristin McHaney, Recording Secretary
 Tiffany Ho, Planner II
 Pam Navares, Planner II
 Jimena Olaguez, Code Compliance Technician

Legal Staff: Jeff Grant, Deputy County Counsel

Commissioners Absent: None

IV. APPROVAL OF MINUTES

MOTION: M/S ACHESON – SPYCHER, AND CARRIED BY A VOTE OF 5 – 0, THE COMMISSION APPROVES THE MINUTES FROM THE AUGUST 14, 2019 MEETING.

V. CITIZEN COMMUNICATIONS

None

VI. PUBLIC HEARINGS

A. CONDITIONAL USE PERMIT No. CUP19-005 – AT&T Wireless – A request to build a new 176-foot lattice tower communications facility with a standby power generator. The project site is located in the southwest quadrant of a property, on the north side of West Rahilly Road, 2.5 miles west of South Highway 59 in the Merced area, identified as Assessor's Parcel Number (APN) 065-110-033. The land is designated Agricultural land use in the General Plan and is zoned A-1 (General Agricultural). CEQA: Staff recommends that the Planning Commission find the project exempt from environmental review pursuant to Section 15303 of the CEQA Guidelines – "New Construction or Conversion of Small Structures". **TSH**

RECOMMENDATION(S):

- 1) Open/close Public Hearing;
- 2) Determine the project can be found exempt from environmental review pursuant to Section 15303 - “New Construction or Conversion of Small Structures” of the CEQA guidelines; and,
- 3) Approve Conditional Use Permit No. CUP19-005 based on the findings included in the staff report and subject to the recommended conditions of approval.

Planner Tiffany Ho presented the Staff Report and recommendations of approval dated September 11, 2019.

The public hearing opened at 9:09 a.m.

Maria Kim with Complete Wireless Consulting, said this tower will be a high speed broadband service with better access for customers on Rahilly Road.

Commissioner Mobley asked if the tower could be moved to the back of the lot.

Julie Tone, ATT Consultant, said it could be moved, but only 500 ft to the north in the parcel and it wouldn't affect coverage. Crops would have to be taken out if moved further.

The public hearing closed at 9:11 a.m.

MOTION: M/S MOBLEY – SPYCHER, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION DETERMINES THE PROJECT CAN BE FOUND EXEMPT FROM ENVIRONMENTAL REVIEW PURSUANT TO SECTION 15303 – “NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES”.

MOTION: M/S MOBLEY - SPYCHER, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED SEPTEMBER 11, 2019, AND MAKES THE PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES CONDITIONAL USE PERMIT NO. CUP19-005 SUBJECT TO THE 13 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Merced County Community and Economic Development Department

1. Conditional Use Permit No. CUP19-005 is granted to construct a 176 foot lattice tower communication facility within a 2,500 square foot lease area. Minor Modifications may be approved by the Director upon submittal of an acceptable application.
2. For the purpose of conditions monitoring an inspection in the amount of **\$162.00** shall be required. This fee shall be paid with 30 days of the approval date. Should additional inspections be required, inspection time shall be billed to the applicant at the established hourly rate at the time of inspection.

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3. The tower communication facility shall be designed as a windmill in compliance with the Merced County General Plan. Sample(s) of the exterior coating color and texture shall be submitted to the Community and Economic Development Department for review and approval prior to building permit issuance. Once approved, any changes to the color or texture shall not be made unless approved by the Director.
4. The tower communication facility shall not exceed the overall height of 176 feet. This provision is inclusive of all antennas and windmill blades to be mounted onto the tower.
5. All exterior lighting shall be designed and maintained in a manner so that glare and reflections are contained within the boundaries of the parcel, and shall be hooded and directed downward away from adjoining properties and public rights-of-way as contained in Merced County Zoning Code (MCZC) Section 18.41.060.
6. The tower communication facility shall be surrounded by a six-foot tall chain link fence with slats to screen the facility from public view, in compliance with the Merced County General Plan.
7. The project and project site shall be maintained in a good condition, including ensuring the facilities are reasonably free of:
 - a. General dirt and grease;
 - b. Chipped, faded peeling, and cracked paint;
 - c. Rust and corrosion;
 - d. Cracks, dents, and discoloration;
 - e. Missing, discolored, or damaged blades or other camouflage;
 - f. Graffiti, bills, stickers, advertisements, litter, weeds, and debris;
 - g. Broken and misshapen structural parts;
 - h. Any damage from any cause.
8. The applicant shall not place any facilities that will deny access to, or otherwise interfere with, any public utility, easement, or right-of-way located on the site without written permission from the applicable owner or easement holder. The applicant shall allow the County reasonable access to, and maintenance of, all utilities and existing public improvements within or adjacent to the site, including, but not limited to, pavement, trees, public utilities, lighting and public signage.
9. The property owner or applicant shall be responsible for the removal of the communication tower facility, including all associated costs, within 180 days following the conclusion of the project's service life.
10. The communication tower facility shall allow co-location to other service providers upon request.
11. The project shall comply with all standard conditions contained in Planning Commission Resolution No. 97-1.
12. The applicant shall comply with all applicable Federal, State, and local regulations. These regulations shall include, but not be limited to standards administered by the County Fire, Health, and Public Works Departments.

County Counsel

13. **INDEMNITY AND HOLD HARMLESS AGREEMENT:**

AT&T MOBILITY has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, County, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the performance of this Agreement, whether in tort, contract, writ of mandamus, or otherwise. This duty shall include, but not be limited to, claims, petitions, or the like for bodily injury, property damage, personal injury, contractual damages, writ of mandamus, or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents, commissions, boards, and officers of AT&T MOBILITY.

AT&T MOBILITY liability for indemnity under this Agreement shall apply, regardless of fault, to any acts or omissions, willful misconduct or negligent conduct of any kind, on the part of AT&T MOBILITY, his agents, subcontractors, employees, boards, and commissions. The duty shall extend to any allegation, claim of liability, or petition, except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of County. This duty shall arise at the first claim, petition, or allegation of liability against County. AT&T MOBILITY will on request and at its expense, defend any action or suit or proceeding arising hereunder. This clause and shall not be limited to any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, that may arise during the term of this Agreement but shall also apply to all such claims and the like after the term of this contract, for example, arising from land use and environmental law actions, or meeting notice law actions, brought against the County following permit approval, modification, or denial.

This clause for indemnification shall be interpreted to the broadest extent permitted by law.

- B. 2nd EXTENSION APPLICATION No. EXT. 19-008, TO MINOR SUBDIVISION APPLICATION NO. MS16-005 – Leopoldo Mendoza** – A request to extend the expiration date of the tentative map for Minor Subdivision MS16-005 by one year from July 13, 2019 to July 13, 2020. The project site is located on the west side of North Feather Way, 450 feet south of West South Avenue in the Delhi area, identified as Assessor's Parcel Number (APN) 046-271-007. The property is designated Delhi Urban Community - Agricultural Residential land use in the General Plan and is zoned as A-R (Agricultural-Residential). CEQA: Staff recommends that the Planning Commission find that the project requires no further review under CEQA Section 15315 – "Minor Land Divisions" of the CEQA Guidelines. **JO**

RECOMMENDATION(S):

- 1) Open/close public hearing;
- 2) Determine the application requires no further review under CEQA Section 15315 – "Minor Land Divisions" of the CEQA Guidelines; and,
- 3) Approve Extension Application No. EXT19-008 based on the findings included in the staff report and subject to the proposed conditions of approval.

Code Compliance Technician Jimena Olaguez presented the Staff Report and recommendations of approval dated September 11, 2019.

The public hearing opened at 9:17 a.m.

No one spoke in favor or opposition to this application.

The public hearing closed at 9:18 a.m.

MOTION: M/S SPYCHER - ACHESON, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION DETERMINES THE APPLICATION REQUIRES NO FURTHER REVIEW UNDER CEQA SECTION 15315 – “MINOR LAND DIVISIONS” OF THE CEQA GUIDELINES.

MOTION: M/S SPYCHER - ACHESON, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED SEPTEMBER 11, 2019, AND MAKES THE PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND, APPROVES 2nd EXTENSION APPLICATION No. EXT. 19-008, TO MINOR SUBDIVISION APPLICATION NO. MS16-005 SUBJECT TO THE 5 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Community and Economic Development Department

1. A parcel map, including all parcels involved, shall be recorded by July 13, 2020, as required by the Subdivision Map Act and Merced County Subdivision Code.
2. The applicant shall comply with all applicable County, State and Federal regulations.
 - a. The project shall comply with all standard conditions contained in Planning Commission Resolution No. 97-1.
 - b. Prior to the recordation of the parcel map, the property owner shall satisfy local recreational park land space/or fee obligation (Chapter 17.44)

Department of Public Health

3. Prior to recording the parcel map, the owner shall record a permanent water easement approved by Merced County Division of Building & Safety which guarantees Parcel 1 full access to the domestic well on parcel 2, or install a new domestic well on proposed Parcel 1.

Public Works Road Division

4. The project site is subject to Level 2 Improvements that require items such as dedicating required right-of-way easements, and other improvements (County Code Ch. 16-08-040). Applicant shall enter into a Deferment of Construction Agreement to install the improvements at a later date.

- a. Right-of-Way dedication is required to fulfill the property owner's half of a 60' ultimate right-of-way on Feather Way. As a result, the owners shall dedicate 10' right-of-way along the property frontage plus an additional 10' public utility easement (PUE).

County Counsel

5. **INDEMNITY AND HOLD HARMLESS AGREEMENT:** “LEOPOLDO MENDOZA, has the contracted duty (hereinafter "the duty") to defend, indemnify and hold harmless the County of Merced, its Board of Supervisors, commissions, officers, employees, agents, and assigns (hereinafter “COUNTY”) from any claim, action, or proceeding arising out of, or in connection with the COUNTY’s approval of the project including, but not limited to, COUNTY’s actions regarding related environmental determinations. This obligation shall extend to any such claim, action, or proceeding against COUNTY to attack, set aside, void, or annul, an approval by COUNTY. In the event that a claim, action, or proceeding is brought, COUNTY shall promptly notify the applicant and cooperate fully in the defense. This clause for indemnification shall be interpreted to the broadest extent permitted by law.”

- C. **ZONE CHANGE APPLICATION ZC19-001 - Larry and Natalie Pires -** A request to change the zoning designation on one parcel totaling 0.16 acres from R-1(Single-Family Residential) to C-2 (General Commercial) to accommodate the expansion of an existing business on an adjacent parcel. The project site is located on the east side Lander Avenue, 100 feet north of Dayton Avenue in the Hilmar area, identified as Assessor’s Parcel Numbers (APN) 017-140-015. The property is designated Hilmar Urban Community Mixed Use in the General Plan and Zoned R-1 (Single Family Residential). CEQA: Recommend to the Board of Supervisors to determine the project is exempt from environmental review pursuant to Section 15183 – “Projects Consistent with a Community Plan or Zoning.” **PN**

RECOMMENDATION(S):

- 1) Open / close public hearing;
- 2) Recommend to the Board of Supervisors to determine the project exempt from environmental review pursuant to Section 15183- “Projects Consistent with a General Plan or Zoning” of the CEQA Guidelines; and,
- 3) Recommend to the Board of Supervisors approval of Zone Change ZC19-001 based on the findings in the Staff Report.

Planner Pam Navares presented the Staff Report and recommendations of approval dated September 11, 2019.

The public hearing opened at 9:38 a.m.

Natalie Pires, applicant, asked for approval of this application and wants to purchase the alley way so she can get it cleaned up. The other owner does not want to sell his portion of the alley way.

The public hearing closed at 9:39 a.m.

The Planning Commission provided direction to staff regarding analysis of a rezone to the alley way and possible future action by the Commission.

MOTION: M/S MOBLEY - SPYCHER, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION RECOMMENDS THE BOARD OF SUPERVISORS TO DETERMINE THE PROJECT EXEMPT FROM ENVIRONMENTAL REVIEW PURSUANT TO SECTION 15183 – “PROJECTS CONSISTENT WITH A GENERAL PLAN OR ZONING” OF THE CEQA GUIDELINES.

MOTION: M/S MOBLEY - SPYCHER, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION RECOMMENDS THE BOARD OF SUPERVISORS APPROVE ZONE CHANGE NO. ZC19-001 BASED ON THE FINDINGS IN THE STAFF REPORT.

VII. COMMISSION ACTION ITEM (S)

None

VIII. DIRECTOR'S REPORT

Planning Director Mark Hendrickson let Commissioners know at the Planning Commission on September 25th, there will be discussion and nomination of rotation for Chairperson and Vice Chairperson.

IX. COMMISSIONERS COMMENTS

None

X. ADJOURNMENT

There being no further business, the meeting adjourned at 9:42 a.m.