

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF NOVEMBER 4, 2009

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of November 4, 2009, 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 9:11a.m., on November 4, 2009, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

II. ROLL CALL OF COMMISSIONERS

Commissioners Present: Commissioner Lynn Tanner - Chairman
Commissioner Jack Mobley - Vice Chairman
Commissioner Mark Erreca
Commissioner Cindy Lashbrook

Staff Present: Robert Lewis, Development Services Director
William Nicholson, Assistant Development Services Director
Kim Anderson, Recording Secretary
James Holland, Senior Planner
Brian Guerrero, Planner II

Legal Staff: Marianne Greene, Deputy County Counsel

Commissioners Absent: Commissioner Rudy Buendia

III. APPROVAL OF MINUTES

None

IV. CITIZEN COMMUNICATIONS

Bryant Owens, 2683 S. Plainsburg Road Merced, CA 95341: He stated for the record he would 1st like to object to the first item on the agenda; he believes it was incorrectly directed to the Planning Commission for its review.

V. PUBLIC HEARINGS

- A. 2nd MINOR MODIFICATION No. MM09-011 OF THE 1st MINOR MODIFICATION NO. MM07-025 TO CONDITIONAL USE PERMIT No. CUP05-031 - Stanislaus County Office of Education** - To modify conditions of approval to allow operations for the Migrant and Seasonal Head Start Child Care Center prior to opening the Felix Torres Farm Worker Housing Center. The project site is located at 925 Plainsburg Road, 2000 feet North of Highway 140 in the Planada area. The property is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **THE ACTION REQUESTED IS TO MAKE A PROJECT REGULATORY DETERMINATION AND TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. JH**

Planner James Holland presented the Staff Report and recommendations of approval dated November 4, 2009.

The public hearing opened at 9:25 a.m.

Alicia Rodriguez, 11271 E. Childs Avenue Le Grand, says she is here to support the project. She says she is a very active resident of Planada and does a lot outreach to the many residents. She feels very confident in regards to what the residents of Planada need. Back in May of 2006 when they knew this project was in jeopardy; she went on foot from door to door

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receiving about 500-700 signatures for the Board of Supervisors to approve. Had she known this project was in jeopardy again; she would've been out there getting signatures believing the residents have not changed their minds. She is confident saying she is representing about 98% of the Planada community regarding this project. This community has working parents and they need help to continue putting food on their table, clothes on their children and a roof over their head. Child care is a necessity to have due to the challenges the children have with language barriers. She states that child care has proven to enrich children with education which benefit them when they start school. Another thing she wants to look at is a safe environment for these children, and she feels that the Planada community has confidence in this agency. We hear on the news about accidents happening to children when we leave them with our neighbors or relatives, so safety is a major concern. She says that in regards to the sidewalks, if you have been to Planada you will see that it doesn't have sidewalks anywhere. Kids are always walking on the streets to go to school, and there haven't been any problems. She hopes that the Commission will take into consideration these families because this project could help them tremendously.

Deborah Peguero Clipper, Executive Director of the Child Family Services Division for Stanislaus County Office of Education, 6073 East Keyes Road Turlock, states that several years ago they found a need to have more care with our Migrant Head Start Programs and we operate all these programs through out Merced County as well as Stanislaus County. They applied for funding, we received the funding but on a limited basis from federal dollars. This is ongoing money for services for children and families. There are about 21 jobs to be created by opening this center. There is a great need in Planada. In fact, there has been a waiting list for many years. She would implore the Planning Commission to please allow them to open the center to serve children. Early Childhood Education is a key for the foundation for success in elementary school so she hopes that the Commission would approve their appeal.

Reneese Ferrari, Executive Director of Merced County Housing Authority, would like to advise the Commission and give the current update that the funding is secure for the Felix Torres project. We are waiting for documents to be approved by Rural Development's legal counsel. The hope and intent is within the next 30 days we can begin construction. She states that we have a beautiful facility that is ready to go, and there is a competent agency with staff available. It would be a shame to see that facility to sit empty. She emphasizes that the Housing Authority is taking this serious, and we do anticipate construction to start within the next 30 days. She hopes that they can then move forward.

Ana Moreno, 9156 East Castle Street Planada, says not only has she been a resident of Planada for over 20 years; she is also a Supervisor for Central California Child Development Services which provide services at the Migrant Centers. She says she originally was a Migrant Supervisor for the Felix Torres Center when it was in a different location. Since the Center has been closed down, it has been a hardship to the families of Planada. She feels they provide excellent care and services for families and children from seven weeks to five years of age. It has been a pleasure for her to help provide these services to families that are hard working. We are working on providing a van for transportation. She asks the Commission to please consider this project and allow them to open the Center. There are about 30 children who have been unserved due to lack of space and the fact that everything is limited in Planada. These families are really in need of care so she pleads that the Commission provide the support they need to open this Center.

Dr. Bryant Owens, 2683 South Plainsburg Road Merced, says he is in favor of the Head Start Program but doesn't think this is the right location. He believes this is a way to get the Felix Torres Center opened. He says he has made written comments with regard to the process by which this is being reviewed. He thinks it is blatantly out of order to bring a request to a subordinate authority and request their relocation of conditions of approval which were imposed for the safety of the kids. The Board of Supervisors made that decision after careful deliberation and presentation of a lot of information which has been left out of this Staff Report. He states that there is so much left unsaid with regard to the permitting process that this has gone through and he doesn't think that the Planning Commission can seriously make a reasoned decision with regard to this being a CEQA Project. Making a finding that a Minor Modification of this nature isn't going to cause any significant impacts that haven't already been

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addressed. Staff says that the applicant has agreed to provide a van to drive kids to this facility, but the applicant can provide a van to drive these kids to facilities that already exist and are in operating. He says nothing has changed with regard to the Conditional Use Permit. Now the applicant is saying they are going to lose their funding again which they said to the Board of Supervisors prompting them to approve this Conditional Use Permit allowing them to put these portable buildings on foundations on Plainsburg Road last year but nothing has changed since that condition of approval was imposed. He says the applicant has accepted that they have built portable buildings on their property and put a fence around it. Now the applicant is coming back to you saying they are going to lose their funding again if they don't get to open. He states that he has some serious doubts as to the viability of the Felix Torres Project even though they received another \$500,000.00 from Joseph Serna last week. The Housing Authority Board of Commissioners is falling apart; he noticed on the board outside that there are two Commissioners that have resigned and after speaking with Supervisor Pedrozo this morning indicated that a third Commissioner has left the Housing Authority Board of Commissioner's. He says he is unsure if the Housing Authority Board of Commissioners is capable of acting on this Felix Torres Project; he thinks it is extremely naïve that Staff is assuming that it will be completed in a year and that this project will be surrounded by homes filled with kids that are supposed to be the students of this project. He feels the Commission can not make the findings that the Staff is asking them to legally with regard to the CEQA review of this project. He says it will be appropriate if the Planning Commission refers this item up to the Board of Supervisors for their independent review of the request to modify conditions of approval that they imposed. He also believes it would be in everyone's interest if that happened without the public having to foot the bill to appeal a decision from this body. He requests that the Commission deny this application outright and encourage the Stanislaus County Office of Education to move their portable buildings to some place that is closer to town.

Commissioner Jack Mobley says that he has to recuse himself due to conflict of interest because the Housing Authority is a big customer of his business Service Masters.

County Counsel Marianne Greene states Commissioner Mobley does not have to leave the room; he just can not vote.

The public hearing closed at 9:40 a.m.

Planning Director Robert Lewis states the Planning Department received a late notice today, a letter from Bryant Owens and requests the Commission take a brief recess for staff and legal counsel to go over some key points.

Chairman Tanner grants a brief recess at 9:40 a.m.

Meeting reconvened at 9:49 a.m.

Chairman Tanner explains to the public that when the Commission takes a recess like that; the legal and planning staff all sit down together to go over the information received. The Planning Commissioners are not involved in the discussion because it is a violation of the Brown Act. When information has been reviewed by the Legal and Planning staff, they then return to the meeting to report their findings to the Commissioners. The Planning Commissioners do not have any contact with the staff at all during that period of time.

Planning Director Robert Lewis says Planner James Holland is going to address each point that is relevant in Mr. Bryant Owens letter.

Planner James Holland says the first point he would like to address is the increase in traffic. He states the Planada Community did an extensive traffic study approximately three years ago which included both vehicle counts and projections looking at future road way use. This was done in part of the Community Plan update. One thing that was found is that most of the roads were operating with substantial excessive capacity, Plainsburg Road being one of them. The absolute maximum trip generation we would expect to see with this project would be a 50 vehicle trip a.m. peak and a 50 vehicle trip p.m. peak. We are looking at about two turning movements a minute which is of no significance when looking at the capacity of Plainsburg

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Road/Highway 140 intersection. If anyone needs further technical information, Mr. Rough, from Public Works, is available for questions.

Planner Mr. Holland continues with the next point brought up in Mr. Owens letter which is environmental impacts. The San Joaquin Valley Air Pollution Control District has a clear set of thresholds it establishes associated with development and land use. They start to show interest in a project at around 60 units. They do see a project of this size to be significant. In regard to parking, Mr. Holland states he would like to go back to the slide presentation. Parking is actually excessive due to state and federal guidelines for child care facilities. There is a wide driveway as well. This is not an issue at all. The next point Mr. Owens brings up is the Zoning Code and why this was brought to the Planning Commission. This is a Minor Modification and the Zoning Code says Major Modifications go directly to the decision making body. Since this a Minor Modification, we are not changing the physical development only a change in the timing of use. The decision for a Minor Modification can typically be made by the Planning Director without a hearing. The next point brought forth is why this was brought to the Planning Commission instead of the Board of Supervisors. The Planning Commission is the assigned hearing or review body by the Board of Supervisors. They have the authority to modify conditions or provide new conditions based upon a new permit or modification. In regard to the next point of CEQA, we can refer back to the fact that this is a minimal change. We also do not feel it is appropriate to discuss anything regarding the Housing Authority. In closing, we do not see any additional unstudied impacts or change in impacts associated with this application for the Planning Commission, and we believe it is appropriate to make the environmental determination that we have recommended. We also believe the findings and conditions effectively address the issues related to this application.

Mr. Bill Nicholson adds that the authority for the Commission to act on this is under 18.50.02 in subsection D. In Mr. Owens letter he referred to subsection C, but subsection D specifically talks about modifications, administrative permits, and conditional use permits. There are two categories which are major and minor. Major modifications are almost considered a new permit and require approval by the body that originally approved it which is the Board of Supervisors. However, this is a Minor Modification because we are just adjusting two conditions of approval, not changing the project. The effects of this project are all within the initial study which was already approved for this project. There are no new significant impacts or changes. It does qualify as a Minor Modification, and does not require going to the Board of Supervisors.

County Counsel Marianne Greene clarifies that Bill's comments were from 18.50.02c and he was working through the factors at C subsection D which is page 133 in the Zoning Code.

Commissioner Lashbrook asks what is the distance from the heart of town to this child care center.

Planner James Holland states that it is approximately one and a quarter miles.

Commissioner Lashbrook says when the Planning Commission originally denied this, it was due to concerns regarding the safety of children on that corner. She feels it is not a safe place for this site, and thinks that this should go back to the Board of Supervisors. She is having a hard time saying that these conditions are okay. It seems that there is a huge need for a Head Start program to be expanded within the city of Planada. Most of the kids served by this Center, if it is approved, won't be served once the conditions kicks back in which states over 75% of students must be residents of the Felix Torres Camp. Why don't you get something going in Planada until this gets built so we'll have a safe place for the children? Has the Planada MAC voted on this again? I know they have voted on it before but do they have any opinions at this point?

Mr. Holland states that in the staff report the Planada MAC held a special meeting on this project which was on October 8, 2009 and they unanimously expressed their support with concerns regarding child safety, the need to avoid pedestrian traffic, lack of facilities on Plainsburg Road, and preserving the long term focus of the Center on serving residents of the Felix Torres Housing facility.

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Commissioner Lashbrook feels that a road like this is too dangerous. She doesn't see the need for this right now, and there are more safety issues than we realize. She says that it should go back to the Board of Supervisors. We denied it based on those two concerns; the Board of Supervisors put them in strongly so I feel like they should have to vote to override those concerns.

Chairman Tanner states that as a Commission we need to understand that the Felix Torres Center site has been approved by the Board of Supervisors so we do not need to get into debate of rehashing the site location because that is not under our jurisdiction right now; it is already there. What the Planning Commission needs to decide is whether we open up the site and allow children to come to the site now as a temporary until the Felix Torres Center is built. Whether there have been past sins of the Housing Authority; that has nothing to do with this decision.

Commissioner Lashbrook states that the conditions they are asking us to approve are the major concerns we had back then. She says she would like to see some statistics on how many people will really be living there. What makes a real migrant worker? The requirements that 75% of the students once it's built, have to be from that migrant center means that Planada will still be underserved by Head Start. I'm sure there are empty buildings in Planada where this can be done right now. It is not safe for children to be on a construction site. She feels there isn't enough reason to override those two conditions at this point. If they are ready to build then they should build first but in the meantime they should get the kids a Head Start program within Planada.

Chairman Tanner states that we can not tell Stanislaus County Office of Education to go build a place in downtown Planada. We need to decide on whether we will allow children to be served for a year at this site while the Center is being built.

MOTION: M/S ERRECA - TANNER, AND FAILED ON A VOTE OF 2 - 1, THE PLANNING COMMISSION DETERMINES THE MINOR MODIFICATION MM09-025 TO CONDITIONAL USE PERMIT CUP05-031 FALLS WITHIN THE SCOPE OF THE INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION PREVIOUSLY CIRCULATED AND ADOPTED FOR THE FELIX TORRES HOUSING PROJECT BASED UPON OUR ABILITY TO MAKE THE 3 CEQA FINDINGS. (THIS MOTION FAILED SINCE THERE WAS A LACK OF THE MINIMUM REQUIRED THREE VOTES TO PASS A MOTION.)

- B. CONDITIONAL USE PERMIT No. CUP09-010 - Lonnie Koehn - To bring into conformance an existing agricultural irrigation installation business and to legalize an existing pole barn and second residence. The project site is located at the southeast corner of Stein Road and Fruitland Avenue in the Atwater area. The property is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **THE ACTION REQUESTED IS TO MAKE A PROJECT REGULATORY DETERMINATION AND TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. BG****

Planner Brian Guerrero presented the Staff Report and recommendations of approval dated November 4, 2009.

The public hearing opened at 10:23 a.m.

Lonnie Koehn, applicant says he is available for any questions and asks that this project be approved.

The public hearing closed at 10:24 a.m.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION EXEMPTS CONDITIONAL USE PERMIT NO. CUP09-010, FROM CEQA BASED ON THE 2 FINDINGS.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED

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NOVEMBER 4, 2009, AND MAKES THE 9 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 9 FINDINGS, APPROVES CONDITIONAL USE PERMIT No. CUP09-010 SUBJECT TO THE 16 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning and Community Development Department

1. Conditional Use Permit Application No. CUP09-010 is granted for an agricultural related irrigation installation business on a 7.12 acre parcel and to legalize an existing 600 square foot pole barn and 1,100 square foot second residence that shall be developed in a manner consistent with the submitted operational statement and approved plot plan. Minor modifications to this Conditional Use Permit may be approved by the Development Services Director.
2. Applicant/property owner shall comply with all Conditional Use Permit conditions as contained in the Planning Commission Resolution No. 97-1.
3. Applicant/property owner shall comply with all Federal, State, and Local agency regulations.
4. The hours of operation for the business shall be from 6:30 a.m. to 5:30 p.m. Monday thru Saturday.
5. For the purpose of condition monitoring, an inspection fee in the amount of **\$243** shall be required. This fee shall be paid within 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 the inspection.
6. The applicant/property owner shall obtain an Additional Dwelling Occupancy Monitoring Permit for the second residence through the Planning and Community Development Department prior to commencing operations on the site.
7. The applicant/owner shall obtain a Business License from the Commerce, Aviation and Economic Development Department. The Property Owner/Applicant shall pay all required fees for the Business license. The Property Owner/Applicant shall annually renew the Business License and pay all required fees.

Public Works/Building & Safety Division

8. The owner must hire a licensed engineer to review the shop building for handicap accessibility and the illegal pole barn to determine the best course of action on the structure. The owner may also choose to have our office conduct a special inspection as opposed to hiring an engineer, but the owner should be aware that he may still have to obtain the services of an engineer after the inspection is done based on the inspector's findings.
9. The inspection of the shop building will not be required until the owner has had this project approved. If he chooses to wait until then, the inspection and any necessary repairs must be done within 30 days of approval of the CUP.

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10. The pole barn is a structure that was built illegally and must be corrected immediately. If the owner chooses to legalize it the engineer can draw any necessary plans and they can submit for our review and a permit. If the owner chooses to demolish the structure, he must first obtain a demolition permit from our office. We must have substantial progress shown towards legalizing the structure prior to a Planning Commission vote or we would recommend against approval of the project.

Environmental Health Division

11. The applicant indicated at the September 24, 2009 PAR meeting that a portable restroom was provided for employee use. The shop does not have a restroom. MCDEH considers this adequate for the 6-12 employees to use at the beginning and end of the day.
12. The existing septic tanks and leach line areas (for the two dwellings and shop, if present) are to be unpaved, contain no structures and be protected from compaction (traffic, etc). The leach line replacement area (100% of required existing leach field) is to be unpaved and contain no structures. The applicant needs to provide a plot plan showing location of existing septic systems and replacement areas, and indicate how they are being protected from parking and traffic.
13. Any hazardous material *stored* on-site over threshold quantities (55 gallons, 200 cu. Ft. or 500 pounds) requires that a Hazardous Materials Business Plan (HMBP) be filed with the Division of Environmental Health. Any quantity of hazardous waste *generated* on-site also requires that an HMBP be filed.

Merced County Fire

14. The applicant shall provide fire Department Access as per the California Fire Code.
15. The applicant shall maintain fire flow requirements as per the California Fire Code for the structure that has to be legalized.
16. The applicant must adhere to the California Fire Code requirements for the building being permitted through the Building & Safety Division.

VI. CORRESPONDENCE

None

VII. GENERAL BUSINESS

Mr. Robert Lewis states that Bill is going to be passing out and giving the Commission a briefing on the upcoming Joint Study Session with the Board of Supervisors to go over the Revised Alternative Report. He also wants to let the Planning Commission know that during the last Commission meeting last week, Major Subdivision for Lucca Villas was appealed by Lydia Miller who represents the San Joaquin Raptor Rescue Center and Protect Our Water. She appealed the William Morris Subdivision as well.

Mr. Bill Nicholson states he would like to walk the Commission through this Alternatives Report so they can understand the format and content of it. Mintier Harnish will be giving the presentation to the Board and Commission at the Joint Study Session next Tuesday at 1:30 p.m. This is following some extensive discussion that the Board had following the last Joint Study Session in February. There was a lot of discussion about additional studies and additional information that the Board was requesting. It resulted in a contract amendment with Mintier Harnish which agreed to come up with alternatives D and E which

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are refined versions of the earlier A through C. You will see an explanation of D and E in here with a lot of statistics showing what the growth ramifications would be. They've also identified some guiding principles that will help the Commission and the Board determines which alternative might be the most preferable. You don't have to pick only one; you can pick components of these or go back to the earlier ones if you really like those. They filtered through all the input received and came up with the most important issues for the County and we can look at these alternatives based on those issues. On Page five they outlined the five primary guiding principles that have been filtered through the process which are agriculture, economic development, environmental quality, public facilities and services, and transportation. This is a projection of what kind of growth could come out of the policies associated with this. They will provide a draft of the General Plan according to the Alternative or Alternatives chosen. Alternative D is more city growth and Alternative E is more County growth.

VIII. DIRECTOR'S REPORT

None

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 10:36 a.m.