

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF MARCH 24, 2010

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of March 24, 2010, 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 9:05 a.m., on March 24, 2010, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

II. ROLL CALL OF COMMISSIONERS

Commissioners Present: Chairman Lynn Tanner
Commissioner Mark Erreca
Commissioner Cindy Lashbrook

Staff Present: Robert Lewis, Development Services Director
William Nicholson, Assistant Development Services Director
Jeff Fugelsang, Planner II
Kim Anderson, Recording Secretary
Evie Gassaway, Recording Secretary

Legal Staff: Marianne Greene, Deputy County Counsel

Commissioners Absent: Commissioner Rudy Buendia
Commissioner Jack Mobley

III. APPROVAL OF MINUTES

None

IV. CITIZEN COMMUNICATIONS

Judy of the League of Women Voters states that she is attending the Planning Commission meeting as an observer. She says she is not permitted to speak in regards to anything. As a non-political party, they are making sure the government in the City and County of Merced are running appropriately.

V. PUBLIC HEARINGS

A. MINOR SUBDIVISION No. MS09-012 - Roberts & Roberts - To subdivide three legal lots involving 39.28 acres into four lots of 9.37, 9.50, 9.78, and 10.63 acres for the purpose of estate planning. The project site is located at the southeast corner of Cardella Road and Hatch Road in the Merced Rural Residential Center (RRC) #1. The property is designated Agricultural-Residential land use in the General Plan and zoned A-R (Agricultural Residential). **Continued from the February 24, 2010 hearing. JF**

Recommendation: The actions requested are to:

- 1) Determine the project is categorically exempt from CEQA; and
- 2) Approve Minor Subdivision Application No. MS09-012 based on the project findings, and subject to the conditions of approval presented in the Staff Report.

Planner Jeff Fugelsang presented the Staff Report and recommendations of approval dated March 24, 2010.

The public hearing opened at 9:14 a.m.

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Janice and Tom Jones, co-owners of the property in question, say it is anticipated they will receive parcel one in the proposed subdivision. Parcel one is divided by Merced Irrigation District Canal-Yosemite lateral, running north and south of the property making it legally landlocked. Janice says it is essentially impossible to gain access to the eastern portion of this landlocked parcel without an easement. They respectfully request that the Planning Commission add as an additional condition of approval, an easement that allows the property owners of parcel one access to eastern portion of the parcel. She would appreciate the Planning Commission's consideration of this request.

Larry Bowers of Bedesen and Cardoza, states the applicant is in agreement with all the conditions stated. He says they do not have a problem with the access easement because all the various parties will be required to sign the recorded map anyway; all property owners will have to be in agreement. He is available for questions.

The public hearing closed at 9:16 a.m.

Commissioner Lashbrook requests to add the condition of approval for easement.

County Counsel Marianne Greene states that the parties involved will have to work the easement issue out. The project will require the Jones' signature; therefore, it is up to the parties to handle the issue regarding the easement.

Chairman Tanner says he thought the easement had to be in place. He believes that by law, a landlocked parcel can't be subdivided.

Bill Nicholson, Assistant Development Services Director, states that parcel one and two on the south end are long skinny parcels. They have frontage on a County road; it's only the back portion of the lot that is split by the Yosemite lateral of MID. He believes that what the Jones' are requesting is access to the back of the lot. The lot has frontage so it doesn't need an easement, but they are requesting an easement to get to the back of the property without having to get a bridge over the canal. If it was a landlocked parcel without frontage on a public street, it would need an easement. In this case, they have frontage on a public street; it's the major canal cutting through the middle of the parcel that is blocking access to the back portion of it. He says that without a bridge, the Jones' can't go over it. If they want access to the back portion of the lot for whatever reason, they need to get an easement from MID to put a bridge in to get over the canal. The lot has legal frontage access therefore it is not considered landlocked under the Subdivision Map Act.

Chairman Tanner wants to clarify that since a signed parcel map is required from all parties involved; if the Jones' are not satisfied with the easement, they don't have to sign. He asks if the result would be no change to the tentative map.

Bill Nicholson, Assistant Development Services Director, says Chairman Tanner is correct.

County Counsel Marianne Greene states their office issued a letter to the Jones' attorney in January regarding this issue. They will have leverage to negotiate an easement by fact that the map sign off will require their signature, and if they do have frontage, which they do; there is no landlocked parcel. She says it can't be a requirement of the Planning Commission.

Commissioner Lashbrook asks if the Planning Commission could at least give direction in favor of the easement.

County Counsel Marianne Greene says it is not direction the Planning Commission would give because it's within the rights of the parties to negotiate at the time their signature will be required to finalize the map.

Kevin Collins, representative for the Jones', says there are laws regarding the upkeep of weeds, disking and everything like that. He is confused as to why the Planning Commission can't determine that an easement should be granted. Where it would be located would be up to the Jones' and Roberts' to work out. He says there are several alternatives. After speaking

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with MID, from his understanding, they defined that it wouldn't be difficult to add a ten foot easement around the Lateral. He says there is a bridge over the canal just to the north of the new property line that will be created. Maybe the Roberts' would agree to allow a tractor to get over the canal in the meantime for the necessary upkeep required. While waiting for a defined easement to be worked out, he doesn't understand why the Planning Commission cannot make the determination. He states the Staff Report describes the property as a legally landlocked parcel. Given that it has frontage, he is confused as to why the report would label it as a legally landlocked parcel without the requirement that there be access to it from a public right-of-way. He says the Jones' are not demanding anything to be done right now, and he is unaware of the relationship between the parties. However, he explains to the Planning Commission that he does understand that it is not always easy to get permission to be on another person's land which is why this additional request is being made.

County Counsel Marianne Greene asks staff to please respond to the technical issue of there being a description of a legally landlocked parcel in the Staff Report. She says the parcel does have frontage access and asks if a brief recess is needed to look at the issue more closely. She states she might request that the Planning Commission do so.

Bill Nicholson, Assistant Development Services Director, explains the term "landlocked" came from a letter from Merced Irrigation District. He says they had recommended conditions of approval and described their interest in ownership of the Yosemite Lateral connected to the property. In their letter, they use the term "legally landlocked". He says that in the first Staff Report two weeks ago, we inserted their language into the findings and conditions in which stated the word "legally landlocked". Over the past two weeks the Planning staff, have been working on the dedications requested by the City of Merced on all sides of the property. He says they came to the conclusion that only one dedication was needed along Cardella Road on the north, but as they were going through the easements and dedication requirements they realized that the word "legally landlocked" was not a legal provision under either Merced County's zoning or subdivision law. It's an issue for MID that they are not just going to let anyone build a bridge over their canals without a permit. He says it is legal for MID to use "legally landlocked", but not for Merced County, in terms of zoning and subdivisions. The County requires all lots to have frontage to a public street and in this case it does. The back portion of the lot is a special issue between MID and the property owners to work out; it is not a legal issue for the County of Merced. He says the word was removed from the report that the Planning Commission has before them dated March 24, 2010. It is only stated in the attachment letter from MID which is attached to the staff report.

County Counsel Marianne Greene says in the July 6, 2009 letter from Merced Irrigation District, they use the term "legally landlocked", but that is just in respect to the issues they are having regarding the Yosemite Lateral. "Legally landlocked" is not described in any of the property descriptions that are in the Planning Commission's possession. She states the Planning Commission cannot tell the applicant that they should work it out or they should have an easement. The Planning Commission is deciding only the terms and conditions of the project today.

Commissioner Lashbrook says it looks to her like there is access on the one road, but the backside of the lateral looks virtually landlocked. She doesn't understand why the Planning Commission cannot add practical direction for an easement in the conditions of approval. She states that when the applicants were here the last time, it seemed to her the property owners weren't communicating very well. She believes if the Commission added direction, it could prevent possible feuding and farming could continue.

County Counsel Marianne Greene states that this is really a legal matter which has to be worked out between the parties if there is a definite conflict.

MOTION: M/S ERRECA - LASHBROOK, AND CARRIED BY A VOTE OF 3 - 0, THE PLANNING COMMISSION EXEMPTS MINOR SUBDIVISION No. MS09-012, FROM CEQA.

MOTION: M/S ERRECA - LASHBROOK, AND CARRIED BY A VOTE OF 3 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND

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RECOMMENDATIONS DATED MARCH 24, 2010, AND MAKES THE 13 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 13 FINDINGS, APPROVES MINOR SUBDIVISION No. MS09-012 SUBJECT TO THE 13 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning & Community Development Department

1. A parcel map, including all parcels involved, shall be recorded within two (2) years of the tentative parcel map approval date, 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.
3. The project shall comply with the standard conditions of approval as adopted in Planning Commission Resolution No. 97-1.

Department of Public Works/Roads Division

4. The property owner/ applicant shall satisfy Improvement Level 1 according to Chapter 16.080.040 of the Merced County Code for the Hatch Road and Cardella Avenue frontage of the property. Improvement Level 1 may be satisfied at this time by the owner entering into a Deferment of Construction Agreement with the Department of Public Works. The deferment shall include formation of a drainage zone of benefit. This shall be recorded prior to recordation of the parcel map and noted on the parcel map. The applicant shall pay necessary fees for processing the Deferment of Construction Agreement. The current processing fee is \$228.00.
5. The property owner(s) shall dedicate notated on the parcel map 59 feet of right-of-way, measured from centerline on Cardella Road, completing the property owners half of a 118 foot ultimate right-of-way according to the City of Merced General Plan.
6. The property owner shall dedicate to the County of Merced, a 10-foot Public Utility Easement (PUE) along the entire frontage of Hatch Road and Cardella Road.
7. Prior to the recordation of the parcel map, the property owner shall satisfy local recreational park land space/or fee obligation.

Department of Public Health/ Environmental Health Division

8. A structure and the water and sewer systems that serve it must be located on the same parcel (i.e. the services cannot cross parcel lines). If a proposed parcel line crosses an existing service, then the service must be relocated to the appropriate parcel.

Merced Irrigation District

9. MID irrigation water delivery shall be ensured to all new parcels and an irrigation easement be provided from the existing irrigation delivery gate currently serving the while property if there is not an MID irrigation delivery located within each new parcel.
10. The rear (east) portions of new Lots 1 and 2 are land locked; therefore, the property owner must obtain an appropriate crossing agreement for all new and existing crossings over or under any MID facility, including driveways, utilities, and pipelines.
11. No storm water runoff or agricultural drainage is to be discharged into MID facilities.

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12. The Yosemite Lateral and the Yosemite Lateral “A” be placed in an underground pipeline assembly to MID standards or a “Deferment of Construction Agreement” be executed for same, triggered upon further division.

County Counsel

13. Rhonda and Kenneth Roberts must indemnify, defend and hold harmless, the County of Merced, its Board of Supervisors, commissions, officers, employees, agents and assigns (hereinafter “County”) from and against any and all claims, petitions, demands, liability, judgments, awards, interest, attorney’s fees, expert witness and consultant fees and other costs and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the approval, modification, denial, or the exhaustion of administrative appeals associated with Minor Subdivision Application No. MS09-012 (“project”) 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 Rhonda and Kenneth Roberts. The liability of Rhonda and Kenneth Roberts for indemnity under this term and condition shall apply, regardless of fault, to any acts or omissions, willful misconduct, or negligent conduct of any kind, on the part of Rhonda and Kenneth Roberts, their employees, subcontractors, agents, and officers. The duty shall extend to any allegation or 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 notice of filing a lawsuit, claim, petition, or allegation of liability against County. Rhonda and Kenneth Roberts will on request and at their expense, defend any action suit or proceeding arising hereunder. This term and condition shall not be limited to any claim, petition, demand, liability, judgment, award, interest, attorney’s fees, expert or consultant witness fees, legal research fees, staff and administrative costs, administrative record costs, materials, and costs and expenses of whatsoever kind or nature, that may arise at the time of project approval, modification, or denial, but shall also apply to all such claims and the like, after project approval, modification, denial, or the exercise or exhaustion of administrative appeals, including but not limited to actions arising from public interest, land use and environmental legal actions. Attorney’s fees shall include any and all attorneys’ fees but not be limited to attorneys’ fees and staff time incurred by the offices of County counsel. County shall have full discretion to select legal counsel of its own choosing to represent County, at a cost not exceeding the prevailing and reasonable rates for counsel practicing environmental and land use law in the State of California, or practicing any other area of law that the County determines the claim may reasonably require. This term and condition for indemnification shall be interpreted to the broadest extent permitted by law.

VI. CORRESPONDENCE

None

VII. GENERAL BUSINESS

Robert Lewis, Development Services Director, says there will not be a Planning Commission meeting on April 14, 2010. The next meeting will be on April 28, 2010.

Commissioner Lashbrook says that she attended three of the Spring Planning Commissioners Conferences, and she believes they are worth attending. You get to see other Commissions and how they do things regarding their issues, and how they handle subdivisions as well as General Plan Updates. She believes it is great thing and hopes that more of the Planning Commissioners would attend.

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County Counsel Marianne Greene says she provided a quick reference sheet of the Rosenberg Rules or Order to the Planning Commission as requested. It goes through the basic meeting format, the three basic motions, handling multiple motions, types of motions that can be made, and courtesy and decorum points of order. She says it is for the Commission's convenience, and hopefully it will help transition into the Rosenberg Rules of Order more clearly. She says the reference sheet is to be added to the minutes of today's meeting.

ROSENBERG'S RULES OF ORDER

QUICK REFERENCE

A. BASIC MEETING FORMAT

1. Chair announces agenda ITEM AND SUBJECT NO.
2. Chair announces DISCUSSION FORMAT (as follows).
3. Chair invites REPORT AND RECOMMENDATION.
4. Chair invites TECHNICAL QUESTIONS BY BODY.
5. Chair invites PUBLIC COMMENT.
6. Chair announces when PUBLIC HRG CLOSED.
7. Chair invites MOTION – then states WHO MADE IT.
8. Chair invites a 2ND - then states WHO SECONDED.
9. Chair makes sure everyone UNDERSTANDS MOTION.
10. Chair invites DISCUSSION OF MOTION.
11. Chair handles SUBSEQUENT MOTIONS.
12. Chair takes VOTE.
13. Chair announces RESULT & NAMES of the minority.

B. THREE BASIC MOTIONS

1. BASIC MOTION
2. MOTION TO AMEND (effect: modifies basic motion)
3. SUBSTITUTE MOTION (effect: discards basic motion)

C. HANDLING MULTIPLE MOTIONS

1. UP TO THREE ON FLOOR AT ONCE
2. PROCEED FIRST ON THE LAST MOTION

D. TYPES OF MOTIONS-Majority vote unless stated otherwise.

1. MOTION TO ADJOURN
2. MOTION TO RECESS
3. MOTION TO FIX TIME TO ADJOURN
4. MOTION TO TABLE (TO CONTINUE)
5. MOTION TO LIMIT DEBATE – 2/3 VOTES
6. MOTION TO CLOSE NOMINATIONS – 2/3 VOTES

E. COURTESY AND DECORUM – How to interrupt.

1. POINT OF PRIVILEGE – Sound, lighting, temperature
2. POINT OF ORDER – To correct the process
3. POINT OF APPEAL – To appeal ruling of the chair
4. CALL FOR ORDERS OF THE DAY – Let's return to the agenda
5. WITHDRAW A MOTION – Maker withdraws motion

VIII. DIRECTOR'S REPORT

None

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IX. ADJOURNMENT

There being no further business, the meeting adjourned at 9:27 a.m.