

**CITY OF LOS BANOS  
PLANNING COMMISSION MEETING MINUTES  
MARCH 25, 2015**

***ACTION MINUTES – These minutes are prepared to depict action taken for agenda items presented to the Planning Commission. For greater detail of this meeting refer to the electronic media (CD and/or audio) kept as a permanent record.***

**CALL TO ORDER.** Chairperson Spada called the Planning Commission Meeting to order at the hour of 7:00 p.m.

**PLEDGE OF ALLEGIANCE.** The pledge of allegiance was led by Commissioner Faktorovich.

**ROLL CALL – MEMBERS OF THE PLANNING COMMISSION PRESENT:** Planning Commission Members John Cates, Arkady Faktorovich, Stephen Hammond, Palmer McCoy, Tom Spada, and Susan Toscano; Todd Baker absent.

**STAFF MEMBERS PRESENT:** Assistant Planner II Stacy Elms, Planning Technician Sandra Benetti, City Attorney William Vaughn.

**CONSIDERATION OF APPROVAL OF AGENDA.** Motion by Cates seconded by McCoy to approve the agenda as submitted. The motion carried by the affirmative action of all Planning Commission Members present, Baker absent.

**CONSIDERATION OF APPROVAL OF THE ACTION MINUTES FOR THE REGULAR PLANNING COMMISSION MEETING OF MARCH 11, 2015.** Motion by McCoy seconded by Faktorovich to approve the agenda as submitted. The motion carried by the affirmative action of all Planning Commission Members present, Baker absent.

**CONSIDERATION OF APPROVAL OF THE ACTION MINUTES FOR THE ADJOURNED PLANNING COMMISSION MEETING OF MARCH 13, 2015.** Motion by Cates seconded by McCoy to approve the agenda as submitted. The motion carried by the affirmative action of all Planning Commission Members present, Baker absent.

**PUBLIC FORUM: MEMBERS OF THE PUBLIC MAY ADDRESS THE CITY COUNCIL MEMBERS ON ANY ITEM OF PUBLIC INTEREST THAT IS WITHIN THE JURISDICTION OF THE CITY; INCLUDES AGENDA AND NON-AGENDA ITEMS. NO ACTION WILL BE TAKEN ON NON-AGENDA ITEMS. SPEAKERS ARE LIMITED TO A FIVE (5) MINUTE PRESENTATION. DETAILED GUIDELINES ARE POSTED ON THE COUNCIL CHAMBER INFORMATIONAL TABLE.** Chairperson Spada opened the public forum. No one came forward to speak and the public forum was closed.

**PUBLIC HEARING – TO CONSIDER A CONDITIONAL USE PERMIT TO ALLOW THE OPERATION OF A LARGE FAMILY DAY CARE FACILITY FOR VERONICA’S FAMILY CHILD CARE OPERATED BY VERONICA LOPEZ. THE SUBJECT PROPERTY IS LOCATED IN THE LOW DENSITY RESIDENTIAL ZONING DISTRICT AT 627 VINE STREET, MORE SPECIFICALLY IDENTIFIED AS ASSESSOR’S PARCEL NUMBER: 082-616-005.** Assistant Planner II Elms presented the staff report, noting that the applicant was present to answer any questions.

Commissioner McCoy asked for clarification in regards to parking requirements.

Assistant Planner II Elms responded that the two spaces in the driveway will be utilized, as well as parking on the street directly in front of the residence.

Chairperson Spada opened the public hearing. No one came forward to speak and the public hearing was closed.

Motion by Faktorovich seconded by McCoy to adopt Planning Commission Resolution No. 2015-07 – Approving Use Permit 2015-03 to Operate a Large Family Daycare in the Low Density Residential Zoning District (R-1) Located at 627 Vine Street, More Specifically Identified as Assessor’s Parcel Number: 082-616-005. The motion carried by the affirmative action of all Planning Commission Members present, Baker absent.

**PUBLIC HEARING – TO CONSIDER SITE PLAN REVIEW #2014-01 FOR 99¢ ONLY STORE LOCATED WITHIN THE HIGHWAY COMMERCIAL ZONING DISTRICT ON THE SOUTHEAST CORNER OF ORTIGALITA ROAD AND PACHECO BOULEVARD, MORE SPECIFICALLY IDENTIFIED DESCRIBED AS ASSESSOR’S PARCEL NUMBER: 431-141-020.** Assistant Planner II Elms presented the staff report, which included a PowerPoint presentation, and noted that representatives for the applicant were present as well.

Commissioner McCoy spoke of how the Planning Commission had previously made a suggestion regarding not using the magenta color and inquired if other businesses have been given that kind of consideration in not making it a requirement.

Assistant Planner II Elms spoke of how other businesses have been given the consideration of incorporating their corporate branding into their design.

There was discussion among commissioners and staff regarding how at the end of the day we want to encourage businesses to come to Los Banos, the need to meet them halfway and budge a little, and how a corporate image makes the company.

Commissioner Toscano inquired if we had made businesses change from their corporate image in the past.

Assistant Planner II Elms responded that a previous Planning Commission didn’t want to see the colors yellow and blue on a conjoined restaurant with Taco Bell so that

particular business didn't come to town, and how this was an unsuccessful attempt at trying to make a business conform.

Commissioner Toscano spoke of how she doesn't want to discourage any business from coming to town nor discourage corporate imaging but has a concern regarding magenta mixing with red in the color palette.

Commissioner Hammond spoke of how it took several years because a previous Planning Commission had created a reputation by not being business friendly, how it took a long time to get away from that, how the 99 Cent Only Store has met us more than halfway, how the color change at the end of the day doesn't matter, the positive outweighing the negative, and how Merced County always lags economically in comparison to other counties.

Commissioner Faktorovich spoke of how it's not the Planning Commission job to barge into every single detail and congratulated the applicant on a job well done.

Chairperson Spada opened the public hearing. DOUG DIGGISON, 99 Cent Only Store representative, spoke regarding working on this project, how the company did not want a missionary style building but had worked hard with staff on the compromises, his appreciation for the comments on the corporate imaging, mission palette and corporate branding, how the colors will complement each other, and the importance of branding; Chairperson Spada inquired as to how Mr. Diggison felt about this process; Mr. Diggison spoke of how it was a long process but how they knew what was expected of them and worked well with staff to anticipate what the Planning Commission would want, how they had options to go into vacant buildings but this was a better draw for them, and how they are looking forward to joining our community; Commissioner Toscano stated that she was wanted to go on record for being hesitant on the color but being all for them coming to town; Mr. Diggison spoke of how they a lot to the community and how there is need here.

No one else came forward to speak and the public hearing was closed.

Motion by Faktorovich seconded by Hammond to adopt Planning Commission Resolution No. 2015-08 – Approving Site Plan #2014-01 for the Construction of a 16,452 Square Foot Discount Store for a 99¢ Only Store Located at the Southeast Corner of Ortigalita Road and Pacheco Boulevard, More Specifically Identified as Assessor's Parcel Number: 431-141-020. The motion carried by the affirmative action of all Planning Commission Members present, Baker absent.

Chairperson Spada called for a five minute recess at 7:51 p.m.

Commissioner McCoy recused himself from the dais at 7:58 p.m. due to living within 500 feet of the project site for the following agenda item.

**PUBLIC HEARING – TO CONSIDER EXTENDING THE DEVELOPMENT AGREEMENT FOR THE VILLAGES AT STONECREEK IV SUBDIVISION.** City Attorney Vaughn presented the staff report.

Chairperson Spada spoke of his concern regarding narrow streets like in Teal Landing and inquired if the streets were already laid out.

City Attorney Vaughn responded that the Tentative Tract Map (TTM) lays out the streets including the width of the streets, how the width would be addressed in the conditions of approval, and how if deny the application to extend the Development Agreement (DA) then the TTM would expire in a year and would have to start all over again.

Assistant Planner II Elms stated that Teal Landing meets City standards regarding minimum width and the standards would have to be changed.

Chairperson Spada opened the public hearing. Raymond DeSa, Stonecreek Properties, spoke regarding doing a ten year extension instead of a five year extension due to the size of the project, taking it in smaller bites and learning from the past economic downturn, how this doesn't lock them into any fees, clarified that the street widths will not be as narrow as Teal Landing; Commissioner Faktorovich inquired about traffic study; Mr. DeSa stated haven't looked at it in years, can get that info to him if he would like, and how it's a typical residential neighborhood; Chairperson Spada spoke of how ten years makes sense to him; Kay Sosa, Turquoise Court, asked for clarification regarding landscaping and lighting district taxes and stated that she is hypersensitive to taxes and increases due to an added a patio cover for which her taxes were based on a valuation of the entire project including labor costs; City Attorney Vaughn responded that the City capped the starting point for what a property would pay for lighting and landscaping district with a built in escalator, this came as a request of the development community to keep the prices of the homes lower, spoke of how historically that minimum amount even with the escalator wasn't enough to cover the expense of the pro rata share of the districts, the need for the lots to pay their pro rata share to cover the cost to maintain those public improvements that are benefitting those residents, and how new lots will have their costs to maintain those districts re-calculated.

No one else came forward to speak and the public hearing was closed.

Motion by Faktorovich seconded by Hammond to adopt Planning Commission Resolution No. 2015-09 – Recommending City Council Approval of First Amendment to Development Agreement Relative to the Development Known as "Villages at Stonecreek IV" with extension from five years to ten years. The motion carried by the affirmative action of all Planning Commission Members present; Baker and McCoy absent.

**PUBLIC HEARING – TO CONSIDER AND MAKE A RECOMMENDATION TO THE LOS BANOS CITY COUNCIL TO ADOPT A NEW UPDATE TO THE MOBILE VENDOR ORDINANCE LOCATED IN TITLE 9, CHAPTER 3, ARTICLE 36 OF THE**

**LOS BANOS MUNICIPAL CODE. (CONTINUED FROM MARCH 11, 2015).** Assistant Planner II Elms presented the staff report, which included a PowerPoint presentation, emphasizing the Planning Commission's duty to ensure public health, safety, and welfare.

Assistant Planner II Elms spoke of Issue #1 being the concentration of mobile vendors located on private property; the current ordinance does not allow mobile vending to be located less than 500 feet from similar business; there being unlawful restriction not related to public health, welfare, and safety; how there has been one successful legal challenge in which it was claimed that the restriction was intended to protect brick and mortar businesses; the limited locations for mobile vendors to operate; and how there are currently three mobile vendor food trucks currently operating. She presented the alternatives that included making no changes, repealing the concentration limitation and let the market dictate the total number, creating zones within the City and limit the number of mobile vendors in a particular zone without reference to similar business, limiting the total number of permits for vendors without reference to similar business, and/or allowing more than one mobile vendor per parcel depending on size.

There was discussion among Commissioners, staff, and counsel regarding distance limitation needing to be based on public health, welfare, and safety; concerns may be due to increased traffic, finding a better way to deal with the concentration issue, the suggestion to limit how far it is from a safe entrance/exit to where the mobile vendor is located, the suggestion to let the market dictate and restrict location depending on safe entrance/exit, how fireworks booths are different and based on population, the suggestion to have designated areas like in San Jose near the airport, how current vendors would have a time period to comply with the changes, how the ice cream push-carts and hot dog stand drove the adoption of the previous mobile vendor ordinance, how mobile vending is trending and different from the go around last time, removing the 500 foot restriction, commissioner concern regarding having three trucks in a row on one parcel, how most of the ordinance in place now is valuable, the need for planned controlled growth, the need to have a provision for special events, parking restrictions, and the need to be objective and not subjective.

Assistant Planner II Elms spoke of Issue #2 being that the City has no process/provision for a one day, occasional, pop up type mobile vending, and how it is not conducive to specialty type mobile vendors. She presented the alternatives that included making no changes, allowing for an over-the-counter same day Admin Permit process for a limited duration, designating a public area such as Pacheco Park or Henry Miller Plaza for limited duration or occasional vending through an over-the-counter same day Admin Permit with established criteria, and/or considering the same process for holiday flower and balloon sales.

There was discussion among Commissioners, staff, and counsel regarding the over-the-counter-process, designating public areas for mobile vending, and making it flexible for a two-day event.

Assistant Planner II Elms spoke of Issue #3 being that the City does not currently inspect mobile vending units for safety concerns and how the City relies on Merced County Environmental Health for inspection of mobile units. She presented the alternatives that included making no changes, amending the Ordinance to require fire inspection of each mobile vending unit using gas flame and charge appropriate fees, and/or consider possible restrictions of the use of a gas flame near other combustible materials.

There was discussion among Commissioners, staff, and counsel regarding charging a fee to do an inspection, adding restrictions of use of a gas flame near other combustible materials, those departments who would need to be involved in this process, and the suggestion to do surprise inspections.

Assistant Planner II Elms spoke of Issue #4 being that the City requires background checks on all mobile vendors regardless of vending type. She presented the alternatives that included making no changes or requiring criminal background checks on mobile vendors selling novelties and ice cream or other products directed towards children.

There was discussion among Commissioners, staff, and counsel regarding the different between the situations of a mobile vendor serving ice cream to children versus a fast food restaurant employee behind a counter serving food; the vulnerability placed on children and women when purchasing from a mobile vendor; supporting the livescan provision; concern for the safety of the consumers; how this may deter potential violators; how a background check doesn't necessarily prevent crime; and how the City currently performs background checks on massage therapists, taxi drivers, and mobile vendors.

Assistant Planner II Elms spoke of Issue #5 being that there is a 180 day limitation for mobile vendors in public-right-of-way in which they cannot vend more than 180 consecutive days during the calendar year. She presented the alternatives that included making no changes or repealing the 180 day limitation.

There was discussion among Commissioners, staff, and counsel regarding repealing this provision, changing the music and sound requirement, and the suggestion of allowing vending from sun up to sun down.

Assistant Planner II Elms spoke of Issue #6 being that the current ordinance allows for vending in the public-right-of-way and/or public property; it does not allow mobile vendors in the public right of way to stop or park longer than 10 minutes; and mobile vendors are prohibited stay at least 300' from public parks, schools, and churches. She presented the alternatives that included making no changes, designating a public area such as Pacheco Park or Henry Miller Plaza for limited duration thru an over-the-counter Admin Permit, allowing mobile vending under an umbrella of special event (Mother's Day in Park), and/or allowing mobile vending downtown on the weekends.

There was discussion among Commissioners, staff, and counsel regarding accommodating all three recommendations.

Chairperson Spada opened the continued public hearing. ISRAEL HERNANDEZ, Rainbow Ice Cream, spoke of the 180 day restriction, the need to change it, and thanked the Commission.

No one else came forward to speak and the public hearing was continued to April 22, 2015.

Motion by Cates seconded by Hammond to continue the public hearing to April 22, 2015. The motion carried by the affirmative action of all Planning Commission Members present, Baker absent.

**COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT REPORT.** No report.

**PLANNING COMMISSION MEMBER REPORTS.**

**BAKER:** Absent.

**CATES:** Rotary crab feed on Friday, March 27<sup>th</sup>, Men's Breakfast at Evangelical Free Church on Saturday, March 28<sup>th</sup> at 7:00 a.m.

**FAKTOROVICH:** No report.

**HAMMOND:** No report.

**McCOY:** Thanked staff for all their work.

**SPADA:** No report.

**TOSCANO:** No report.

**ADJOURNMENT.** The meeting was adjourned at the hour of 9:51 p.m.

APPROVED:

*/s/ Tom Spada*  
Tom Spada, Chairperson

ATTEST:

*/s/ Sandra Benetti*  
Sandra Benetti, Planning Technician