

**CITY OF LOS BANOS
PLANNING COMMISSION MEETING MINUTES
JULY 22, 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. Vice Chairperson Toscano 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 Todd Baker John Cates, Arkady Faktorovich, Palmer McCoy, and Susan Toscano; Stephen Hammond and Tom Spada absent.

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

CONSIDERATION OF APPROVAL OF AGENDA. 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, Hammond and Spada absent.

CONSIDERATION OF APPROVAL OF THE ACTION MINUTES FOR THE REGULAR PLANNING COMMISSION MEETING OF JULY 8, 2015. Motion by McCoy, seconded by Cates to approve the agenda as submitted. The motion carried by the affirmative action of all Planning Commission Members present, Hammond and Spada 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. Vice

Chairperson Toscano opened the public forum. GREG HOSTETLER, 923 E. Pacheco Boulevard, spoke of improving the World's Fair building that was in disrepair and housing homeless, how he had reached an agreement with the Solgaard family, having cleaned up the property, ultimately it will be along the lines of creating jobs and cleaning up the entrance of the City, has been getting support of that, been focusing on cleaning up the entrances of town over the past ten years, people have been wondering about the wide gap between the trees and highway off of Mercey Springs Road, explained that he has planted grapes there so you can still see over the top of those trees, how he has

found enough water for those sites out there, being in a due diligence period on the east of town for 86 acres which was an old salination plant, how there has been issues out there with vandalism, and his hope to resolve these issues as a landowner who cares about the City.

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

Commissioner Baker recused himself at 7:07 p.m. from the dais because he owns property within 500 feet of the project site for the next item.

PUBLIC HEARING – TO CONSIDER A CONDITIONAL USE PERMIT TO ALLOW THE USE OF A TYPE 41 ALCOHOL LICENSE FOR THE ON-SALE OF BEER AND WINE IN CONJUNCTION WITH AN EATING ESTABLISHMENT FOR HOOK AND LADDER HOT WINGS LOCATED AT 245 W. PACHECO BLVD., SUITES A & B, MORE SPECIFICALLY IDENTIFIED AS ASSESSOR’S PARCEL NUMBER: 027-161-042. Assistant Planner II Elms presented the staff report, which included a PowerPoint presentation and noted that the applicant was present to answer any questions.

Vice Chairperson Toscano opened the public hearing. KATHY BALLARD, Los Banos, inquired if the sleep center in the plaza would be considered as being near sleeping quarters and causing a disruption of sleep; UNKNOWN, audience member spoke from his seat, stating that the sleeping center has been closed for a while.

Assistant Planner II Elms stated that her response would have been that the sleep center was located within a Highway Commercial zoning district.

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

Motion by McCoy, seconded by Cates to adopt Planning Commission Resolution No. 2015-21 – Recommending Approval of Conditional Use Permit #2015-08 to the Los Banos City Council for the On-sale of Beer and Wine for Hook & Ladder Hot Wings Located at 245 W. Pacheco Boulevard, Suites A & B. The motion carried by the affirmative action of all Planning Commission Members present; Baker, Hammond, and Spada absent.

Commissioner Baker returned to the dais at 7:22 p.m.

City Attorney Vaughn recused himself at 7:22 p.m. because he owns property within 500 feet of the project site for the next item.

PUBLIC HEARING – TO CONSIDER ANNEXATION AND PRE-ZONE #2014-01, PRE-ANNEXATION DEVELOPMENT AGREEMENT, AND ASSOCIATED MITIGATED NEGATIVE DECLARATION (SCH #2015061056) FOR THE PRESIDENTIAL ESTATES EAST AREA PLAN AND ANNEXATION OF APPROXIMATELY 106 ACRES OF UNINCORPORATED LANDS LYING NORTH OF PIONEER ROAD, WEST OF MERCED SPRINGS ROAD (SR 165), AND EAST OF ELEVENTH STREET,

MORE PRECISELY IDENTIFIED AS ASSESSOR'S PARCEL NUMBERS: 026-290-001, 002, 003, 004, 005, 083-120-012, 013, 014, 015, 016, 017, 018, 019, 020, 021, 022, 023, 024, 027, AND 028. Assistant Planner II Elms presented the staff report, noting that she received written comments from Caltrans, Central California Irrigation District (CCID), Merced County Local Area Formation Commission (LAFCo), and California Department of Fish & Wildlife, how staff needs ample time to have discussions with LAFCo and make adjustments according to the comments, asked to open the public hearing then continue it to the Planning Commission meeting on August 26th to work out any issues with LAFCo prior to bringing the item back to the Planning Commission.

Vice Chairperson Toscano opened the public hearing. ROSALIE GILARDI, 1524 Eleventh Street, spoke of how her backyard faces the property that would be part of the annexation and asked if this would allow the Dairymen's building to purchase the property and expand their operations as they are already expanding in main area; NATHAN LEON, Los Banos, read from a prepared letter in which he spoke of difficult economic times, the extreme drought, how people all over are struggling to make mortgage payments and conserve water, how there are people are running out of water, relying on ground water as the drought continues, how groundwater levels have decreased, fears that we are on a slippery slope, how the water supply is in question, the need for careful planning and controlled progress, asked Planning Commission to control growth not just because of water but how this takes away valuable farmland that we use to feed and clothe our country, how abandoned homes do not pay property taxes, how the 2013 Merced County Report on Agriculture states that overall revenues and primary industry was agriculture, the need to preserve, how the land proposed for annexation is prime agricultural land, and how this would be diluting value of existing homes; GREG HOSTETLER, 923 E. Pacheco Boulevard, spoke of how this annexation would be consistent with good planning his agreement with previous comments, how studies will have to take place, how annexation is the first step in the right direction of good planning of an infill area in town, how this will help with traffic circulation, how a Fire station would be built, asked Planning Commission to move forward with annexation, and how he will address the water and other important things along with tentative map and final map.

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

Motion by McCoy, seconded by Cates to continue the public hearing to Consider Annexation and Pre-zone #2014-01, Pre-Annexation Development Agreement, and associated Mitigated Negative Declaration (SCH #2015061056) for the Presidential Estates East Area Plan and Annexation of Approximately 106 Acres of Unincorporated Lands Lying North of Pioneer Road, West of Merced Springs Road (SR 165), and East of Eleventh Street, More Precisely Identified as Assessor's Parcel Numbers: 026-290-001, 002, 003, 004, 005, 083-120-012, 013, 014, 015, 016, 017, 018, 019, 020, 021, 022, 023, 024, 027, and 028 to the Planning Commission meeting on August 26, 2015. The motion carried by the affirmative action of all Planning Commission Members present; Hammond, and Spada absent.

Assistant Planner II Elms addressed Mrs. Gilardi's comments regarding Dairyman's in which she spoke of uses, zoning, how Dairyman's hasn't approached the City in regards to expansion, and how land use issues would have to be addressed.

City Attorney Vaughn returned to his seat at 7:35 p.m.

PUBLIC HEARING – TO CONSIDER VESTING TENTATIVE PARCEL MAP NO. 2015-03 TO SUBDIVIDE APPROXIMATELY 0.34 ACRES INTO TWO (2) PARCELS IN THE LOW DENSITY RESIDENTIAL ZONING DISTRICT LOCATED AT 1621 S. SIXTH STREET, MORE SPECIFICALLY IDENTIFIED AS ASSESSOR'S PARCEL NUMBER: 026-073-022. Assistant Planner II Elms presented the staff report, noting that she received a request to withdraw the item from the applicant due to comments received prior to the meeting.

Vice Chairperson Toscano opened the public hearing. GREG HOSTETLER, 923 E. Pacheco Boulevard, spoke of how there was not enough information disseminated to the neighborhood regarding his plans for that area, how his intent was to clean up infill, how this would have been better off if he informed the neighborhood of what he was doing first although it is in conformance with City code, confusion about what type of home was going to be built, apologized to the neighborhood for not being as informative and forward in getting things done to their liking, how he will pull this item from the agenda until he can get a consensus from the neighborhood of their understanding of his intent and what they would like to see there, and thanked them for their passion and educational insight.

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

No action was taken.

PUBLIC HEARING – TO CONSIDER AND MAKE A RECOMMENDATION TO THE LOS BANOS CITY COUNCIL TO ADOPT A NEW UPDATE TO THE SPECIAL EVENTS ORDINANCE LOCATED IN TITLE 9, CHAPTER 3, ARTICLE 38 OF THE LOS BANOS MUNICIPAL CODE (CONTINUED FROM JULY 8, 2015). Assistant Planner II Elms presented the staff report, which included a PowerPoint presentation.

City Attorney Vaughn spoke of how this is geared toward public property and events not events occurring on private property, our own pool insurance requires more formality like indemnity agreement and insurance, if we do not require those then the City's investment doubles, the important of bringing this ordinance forward, the need to follow rules of our own insurance, tried to cover as many types of activities as possible, not trying to prohibit activities from occurring, permitting costs is staff time to review the application and deal with any conditions of approval, providing ancillary services like street closure and public safety, how special events in essence pull public safety away from their regular jobs like protecting the public, this being a fairly standard ordinance,

how it will go in conjunction with a couple other ordinances coming forward like block parties and farmers' markets, how we would be redoing special uses on private property like Christmas tree sales, cleaning up the code and making this permit process more user friendly, looking to protect the City as well as the public, there being case law on free speech and expressive speech, how spontaneous events aren't required to get a permit because they can't wait to get a permit, the need to be mindful of not curtailing freedom of expression, and how virtually all cities have this type of ordinance.

Commissioner Cates spoke of the workshop a while ago in which his concern was fees, inquired when the Community & Economic Development Department Director would get involved, and asked if that who determines the fee schedule.

City Attorney Vaughn spoke of this being a processing fee, includes time spent on reviewing the application, the cost of public services that could be expensive and varies on the type of event being put on, how the permitted will know what the cost will be beforehand, this being determined on a case by case basis, driven by type of event being put on, and how this is essentially the cost of staff time.

Commissioner Cates inquired how applicant appeals would work.

City Attorney Vaughn stated that the appeal goes to the City Manager who has discretion to grant the appeal or change conditions, and is the final say.

Vice Chairperson Toscano opened the continued public hearing. KATHY BALLARD, Los Banos, raised the issue of the timeframe required to submit the application prior to the event, how the City would run into a problem with Mother's Day in the Park with vendors who are booked a year in advance, and inquired if farmers' markets require a separate permit.

City Attorney Vaughn responded that the thirty day requirement was designed to have a short turn around so people planning the event would know if they were approved and how this is a short amount of time in the planning world based on workload.

City Attorney Vaughn stated that staff isn't married to a 180 day requirement and it can be changed, how the City should not get in business of defining an annual event, the Planning Commission can change the number of days in advance to turn in applications if they so choose, doesn't know why people are assuming the fees are new, and how fees will change if event changes.

Commissioner Baker spoke of his worry about creating fees and how we want these events in our town.

City Attorney Vaughn spoke of a scenario in which someone wants to put on an event that costs City \$20,000 but wants to waive fees, how would staff determine who can get their fees waived and who doesn't, how the City has a policy on almost everything it does, simply going to pay for the cost of the services, if someone wants to put on a

huge event then price it out so it works, and how the City has the option to co-sponsor event in which fees may be different.

Ms. Ballard spoke of how the unknown about the fees is what bothers some people, how the City's standing in regards to liability should be covered, and her hope that anyone putting on a special event would put out their own cones or blockades.

Assistant Planner II Elms stated that would have to be discussed with the Police Department.

Ms. Ballard spoke of her concern regarding some events when you separate farmers' market from those events.

City Attorney Vaughn stated that a farmers' market would be a weekly event for a certain amount of time and is different than a one-time special event and how staff didn't want to craft an ordinance that's one size fits all.

Ms. Ballard questioned the process for a combined farmers' market and car show.

City Attorney Vaughn responded that having a farmers' market is one permit and a side by side car show is a separate permit and clarified that farmers' markets are supervised by Merced County Ag Commissioner and the City just allows the event to take place.

Commissioner Cates inquired if there is a way the City can provide hourly costs on certain services so the applicant can see the costs.

City Attorney Vaughn responded that the normal services people ask for could be categorized and how this would be a living document.

Assistant Planner II Elms spoke of how she received written comments from Chair Spada saying he apologized for being away and his desire to waive fees for nonprofit groups.

Vice Chairperson Toscano inquired if they could specify in the language to waive fees for non profits, change the wording from "no more than 180 days" to "no more than 14 months".

City Attorney Vaughn responded that staff can do the days portion but the part about nonprofits can be a slippery slope, virtually all events are put on by nonprofits and therefore the City would be required to pay for all events, how staff isn't talking about a fee that the City is profiting from, how these are expenses that the City would be incurring, and how he thinks the time issue isn't big but waiver of fees is a very big issue.

JERRY KNOESTER, Los Banos Chamber of Commerce, inquired if the drafting of an ordinance when applicant signs or submits written application is the application in a

paper form or will an online form be available, if there would be guidelines to follow, if the application fee would be variable, and if the applicant would know costs at the time of submission.

City Attorney Vaughn responded that he envisions City Council would adopt a processing fee which would have separate levels depending on the complexity of the event, depending on the type of event and number of people, it could be variable, some events are simple and small and others are more complex, most people are concerned about City service costs but those are calculated based on needs of event, and a deposit towards those costs.

Mr. Knoester stated that applicants would like to know that way it can be passed on to vendors ahead of time.

City Attorney Vaughn stated that the City would calculate the best estimate, if its underestimated they would get a bill, and if its overestimated they would get a refund.

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

Commissioner McCoy spoke of being conflicted, how the City shouldn't have to burden the cost but it's overwhelming that people don't know the fees, feels the appeal should go to Planning Commission, and inquired if a special meeting be called to hear an appeal.

City Attorney Vaughn stated that appealing to the City Manager would be a quicker resolution, how it takes longer for staff to put together an agenda packet, and how it would be no sooner than a month after appeal is made for the appropriate body to hear the appeal.

Commissioner McCoy inquired if he could have an idea of what that looks like, his biggest concern being a nonrefundable fee, how it is not within their scope to recommend fees, and asked if staff could let them know what the fees would be prior to City Council approval.

City Attorney Vaughn responded that staff can re-craft that wording if that's what the Planning Commission wishes.

Commissioner McCoy stated that if Planning Commission can't waive a fee then those decisions should go to City Council.

City Attorney Vaughn stated that appealing a decision and waiving a fee are two separate things, how being unhappy doesn't give grounds for an appeal, how every activity that the City undertakes has a cost associated with it, for example Mr. Hostetler's item that came forward tonight still has costs associated with it even though he pulled the item from the agenda.

Assistant Planner II Elms spoke of the current \$250 administrative permit fee isn't realistic of her time because it may only take an hour.

City Attorney Vaughn spoke of the process including verifying application completeness, sending out to other departments, those are activities involved in permitting fees, not huge expenses, saw a lot of these categorized as minor events and major events in which the cutoff was the number of people and type of event.

Commissioner McCoy stated that Planning Commission would be passing something that affects everyone and applicant should be able to come to a board to appeal their decision.

Commissioner Cates stated that there has to be a happy medium to recover costs whether public or private, the community and City are a part of each other with no separation, trying to see what they can do that's fair for the City's financial position and accommodate nonprofits or otherwise to make this community a better place.

Vice Chairperson Toscano stated that maybe there is a need to table this again and rewrite it.

City Attorney Vaughn spoke of how the Planning Commission had a workshop on this specific ordinance and nothing tonight came across to staff as big important items, how staff is happy to do what they want but the point of the workshops is to go over what is being discussed tonight, how there will be duplication of work now, and how staff wants clear direction from the Planning Commission on exactly what they would like to see.

Commissioner McCoy spoke of discussing fees last time and maybe they could have been clearer about appeals.

City Attorney Vaughn stated that staff would feel more comfortable with the Planning Commission seeing the language, wants clear direction on changes they expect to see next time, and how we don't want to get in a situation where a nonprofit who can clearly afford to put on an event can get a fee waived for another group.

Commissioner Faktorovich spoke of how he doesn't believe there should be waivers and how rules should be across the board.

Commissioner Baker spoke of being okay the 14 months, doesn't think we should waive fees, his worry about churches having to pay, and being in favor of coming up with a fee schedule.

Commissioner Cates spoke of how we have received input between the workshop and now and how we can make these determinations based on staff findings.

City Attorney Vaughn welcomed these discussions because we don't want to write what we want to see, how it becomes problematic when we think it's a big issue but nobody

is in the audience saying it's a big issue, and wanting to come up with a process that's fair.

Commissioner McCoy inquired if everyone was okay with changing appeals from City Manager to City Council.

City Attorney Vaughn suggested that Planning Commission hear the appeal, how staff can come up with fee examples, the 14 month time being easy, how staff can figure out approval versus issuing nomenclature, and how he can twirl around fee thing.

Commissioner McCoy spoke of not being concerned with City recouping fees and being more concerned with the nonrefundable deposit.

City Attorney Vaughn stated that one issue is that not all events are being charged and this is why we are here, how this will be a tough learning curve for some people, and how Planning Commission will need to continue the public hearing to August 12th.

Motion by McCoy, seconded by Cates to continue the Public Hearing to Consider and Make a Recommendation to the Los Banos City Council to Adopt a New Update to the Special Events Ordinance Located in Title 9, Chapter 3, Article 38 of the Los Banos Municipal Code (Continued from July 8, 2015) to the Planning Commission meeting on August 12, 2015. The motion carried by the affirmative action of all Planning Commission Members present; Hammond, and Spada absent.

COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT REPORT. No report.

PLANNING COMMISSION MEMBER REPORTS.

BAKER: No report.

CATES: No report.

FAKTOROVICH: No report.

HAMMOND: Absent.

McCOY: Inquired if staff could add a large arrow that points to project site on maps because he has a hard time seeing the colored boundaries.

Assistant Planner II Elms responded that staff could accommodate that request.

Commissioner McCoy also inquired if the Planning Commission could get their agenda packets earlier than Fridays.

City Attorney Vaughn explained that staff is always in a cycle and has to get ready for City Council immediately following the Planning Commission meetings.

Assistant Planner II Elms explained that she is the lone department that has public hearings every Wednesday so the turnaround time is already very tight.

Commissioner McCoy inquired if staff would normally give the Planning Commission updates if an applicant runs into any issues.

Assistant Planner II Elms responded that she usually gives updates on upcoming projects but doesn't have any new info for the Commission at the moment and let him know that the Planning Commission can call her to ask her anything at any time if they ever have that need.

SPADA: Absent.

TOSCANO: Spoke of starting a grassroots campaign called My Job Depends on Ag and asked everyone to contact her with any questions.

ADJOURNMENT. The meeting was adjourned at the hour of 9:08 p.m.

APPROVED:

/s/ Tom Spada
Tom Spada, Chairperson

ATTEST:

/s/ Sandra Benetti
Sandra Benetti, Planning Technician