

**CITY OF LOS BANOS  
PLANNING COMMISSION MEETING MINUTES  
DECEMBER 9, 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 Hammond.

**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:** Senior Planner Stacy Elms, Planning Technician Sandra Benetti, Police Chief Gary Brizzee, and City Attorney William Vaughn.

**CONSIDERATION OF APPROVAL OF AGENDA.** Motion by Cates, 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 REGULAR PLANNING COMMISSION MEETING OF NOVEMBER 12, 2015.** Motion by McCoy, seconded by Cates to approve the minutes 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 VESTING TENTATIVE TRACT MAP #2015-01, FINAL DEVELOPMENT PLAN #2015-01, AND ASSOCIATED DEVELOPMENT AGREEMENT FOR SOUTHPOINTE AT REGENCY PARK, CONSISTING OF SUBDIVIDING 109 ACRES INTO 510 SINGLE-FAMILY RESIDENTIAL LOTS, OPEN SPACE, AND A DETENTION BASIN LOCATED EAST OF PLACE ROAD AND**

**OVERLAND AVENUE, NORTH OF VERONA ESTATES, AND WEST OF WARD ROAD, MORE SPECIFICALLY IDENTIFIED AS ASSESSOR'S PARCEL NUMBERS: 424-120-009 AND 073-220-015 (CONTINUE TO A DATE UNCERTAIN).** Senior Planner Elms stated that the applicant will bring the projects forward at a later date because staff is still currently negotiating the development agreement and would like to continue the item to a date uncertain.

Commissioner McCoy inquired why we are asking for public comment in a public hearing if no report was provided and was going to be removed from the agenda and noted that he felt it was a waste of time and money.

Senior Planner Elms stated that this is a standard procedure and following law and the item will come forward with complete staff report when it is ready.

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

Motion by Toscano, seconded by Cates to continue the consideration of Vesting Tentative Tract Map #2015-01, Final Development Plan #2015-01, and Associated Development Agreement for Southpointe at Regency Park, Consisting of Subdividing 109 Acres into 510 Single-Family Residential Lots, Open Space, and a Detention Basin Located East of Place Road and Overland Avenue, North of Verona Estates, and West of Ward Road, More Specifically Identified as Assessor's Parcel Numbers: 424-120-009 and 073-220-015 to a date uncertain. The motion carried by the affirmative action of all Planning Commission Members present, Baker absent.

**PUBLIC HEARING – TO CONSIDER VESTING TENTATIVE TRACT MAP #2015-02, FINAL DEVELOPMENT PLAN #2015-02, AND ASSOCIATED DEVELOPMENT AGREEMENT FOR NORTHPOINTE AT REGENCY PARK, CONSISTING OF SUBDIVIDING 111 ACRES INTO 596 SINGLE-FAMILY RESIDENTIAL LOTS LOCATED EAST OF WESTMINSTER WAY, SOUTH OF SAN SIMEONE WAY, AND WEST OF THE SAN LUIS CANAL, MORE SPECIFICALLY IDENTIFIED AS ASSESSOR'S PARCEL NUMBERS: 424-010-002, 005, AND 006 (CONTINUE TO A DATE UNCERTAIN).** Senior Planner Elms stated that the applicant will bring the projects forward at a later date because staff is still currently negotiating the development agreement and would like to continue the item to a date uncertain.

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

Motion by Hammond, seconded by Cates to continue the consideration of Vesting Tentative Tract Map #2015-02, Final Development Plan #2015-02, and Associated Development Agreement for Northpointe at Regency Park, Consisting of Subdividing 111 Acres into 596 Single-Family Residential Lots Located East of Westminster Way, South of San Simeone Way, and West of the San Luis Canal, More Specifically Identified as Assessor's Parcel Numbers: 424-010-002, 005, and 006 to a date

uncertain. The motion carried by the affirmative action of all Planning Commission Members present, Baker absent.

**PUBLIC HEARING – TO CONSIDER AND MAKE A RECOMMENDATION TO THE LOS BANOS CITY COUNCIL TO ADOPT A PROPOSED ORDINANCE IMPOSING AN EXPRESS BAN ON MARIJUANA CULTIVATION, MARIJUANA PROCESSING, MARIJUANA DELIVERY, AND MARIJUANA DISPENSARIES IN THE CITY OF LOS BANOS.** City Attorney Vaughn presented the staff report, which included a PowerPoint presentation, noting that Police Chief Brizzee was present to address the Planning Commission as well.

Commissioner Faktorovich spoke of understanding there were some glaring inconsistencies, questioned the validity of item, and inquired why staff was looking at this if it's already addressed in code.

City Attorney Vaughn responded that the current ordinance only deals with dispensaries, not cultivation/delivery/processing, advised that if staff does nothing as he suggested then only dispensaries are regulated and the City will be subject to state guidelines for those three, and how staff chose to rewrite the entire section and make the dispensary language tighter than it was ten years ago.

Commissioner Faktorovich spoke of how it would be less time consuming to expand the zoning code in front of City Council, he doesn't recall that the Planning Commission was ever confronted with state or federal issues, and how they are wasting their time because Planning Commission shouldn't be involved.

City Attorney Vaughn clarified that the bills themselves give local government the authority to do exactly what staff is asking them to do tonight, how it allows City that discretion and excludes the state from administering this in the City.

Chairperson Spada inquired if the City is using the zoning code to prohibit and not criminalizing medicinal marijuana.

City Attorney Vaughn confirmed that was correct because those bills allow those activities.

Commissioner Faktorovich spoke of how this paperwork says Department of Food and Agriculture and asked why staff is so leery about the state if the City doesn't have to be involved at all.

City Attorney Vaughn responded that's for the Planning Commission to consider and staff's consensus is that the City doesn't want to be in the marijuana business in regards to entitlement.

Commissioner Faktorovich spoke of his confusion, how he cannot understand it and sees glaring holes, how he cannot vote on it, and won't disrespect attorney opinion.

City Attorney Vaughn stated that the ordinance is boiled down the last five lines of the presentation slide, that's what the ordinance does, how staff can legislate the uses in the zoning code and would not be criminalizing, how staff is determining what activities can occur in the zoning districts, this being one of those activities, and how if the City does nothing then these activities will occur without City regulation and input.

Commissioner Toscano asked to clarify if someone is a cancer patient and has a medicinal marijuana card, does that fall under delivery if that patient goes out of town and brings it back to himself.

City Attorney Vaughn responded that it would not be subject to this ordinance.

Commissioner McCoy pointed out that the wording says marijuana and what is being discussed is medical marijuana and asked if this is in anticipation of Gavin Newsom's possible legalization of recreational marijuana in the future.

City Attorney Vaughn responded that it's possible, how terms are confusing as it is sometimes referred to as cannabis or medicinal cannabis, how staff anticipates that they would be legislating recreational use in a similar way as medicinal use in regards to how it is cultivated and dispensaries, how staff is thinking that there would be a similar setup but just looking at medical marijuana right now and using the all encompassing term as marijuana.

Chairperson Spada spoke of his concern being the way the state is setting this up so the City has to do it this way, unfortunate that the City is so secluded from major metropolitan areas so this is sad, but how he sees the point and has to support it.

Commissioner McCoy spoke of his concern that he would be regulating something that's already illegal.

City Attorney Vaughn stated that recreational marijuana use is still illegal and a federal offense, how he could not find any clear answer in how these bills deal with that, how this drafting was easy because there was a clear consensus from staff, how staff didn't want to regulate it through a permitting process, and this would prohibit any processing, cultivation, delivery, and dispensaries.

Police Chief Brizzee presented a PowerPoint presentation regarding the impacts of allowing cultivation, processing, delivery, and dispensaries for medicinal marijuana to the community and region.

Commissioner Faktorovich thanked Police Chief Brizzee, stated that this is tough to deal with and inquired if this ordinance was adopted if he was certain these concerns would go away.

Police Chief Brizzee stated that was not the case, spoke of how his task on this is to provide that best foot forward and best tools he can to his staff, how this creates an unsafe environment for the community, how he will do whatever he can do to keep residents safe, and bringing local control to this issue is the best process staff can do.

Chairperson Spada opened up the public hearing. ERIK LIMON, Los Banos, agreed with Police Chief Brizzee, spoke of an incident in which someone was smoking marijuana in front of his kids and having to explain that to them, and encouraged the Planning Commission to adopt the ordinance. LUKE DILLARD, Los Banos, spoke in opposition of the ordinance, asked if prohibition ever fixed any issues, how this would cause the activities to go to the street, and how this seems lazy to him. No one else came forward to speak, and the public hearing was closed.

Chairperson Spada spoke of how he thinks somewhere down the road there will be a vote to legalize this, how that will put the City in a position to have to do something, that will be a tough task, his agreement with the Police Chief at this point and City Attorney's research.

Motion by Hammond, seconded by Cates to adopt Planning Commission Resolution No. 2015-50 – Recommending to the City Council Adoption of an Ordinance Imposing an Express Ban on Marijuana Cultivation, Marijuana Processing, Marijuana Delivery, and Marijuana Dispensaries in the City of Los Banos. The motion carried by the affirmative action of a majority of Planning Commission Members present, Faktorovich dissenting, and Baker absent.

**PUBLIC HEARING – TO CONSIDER A CONDITIONAL USE PERMIT AND SITE PLAN REVIEW FOR THE DEVELOPMENT OF A 1,914 SQUARE FOOT TELECOMMUNICATION HEADEND FACILITY FOR COMCAST LOCATED IN THE PROFESSIONAL OFFICE ZONING DISTRICT AT 604 TEXAS AVENUE, MORE SPECIFICALLY IDENTIFIED AS ASSESSOR'S PARCEL NUMBER: 027-211-001.**

City Attorney Vaughn presented the staff report, which included a PowerPoint presentation, noting that there will be a deferred improvement agreement at the request of the PW Director that was conditioned for this project that will go forward to the City Council for approval, and noted that the applicant was present to answer any questions.

Chairperson Spada stated that he previously had asked the applicant to upgrade the enclosure for the sound of the generator at the Design Review study session and wants to see it in the paperwork in order to move forward with this project.

Chairperson Spada opened up the public hearing. KEVIN FATTAL, Com/Net Systems, spoke of the existing generator that was submitted measuring at 72 decibels at the property line and stated that the Planning Commission asked him to go to a level 3 enclosure which would bring it to a 65 decibel level at the property line.

Chairperson Spada stated that he would like to amend Site Plan Review #2015-07 Resolution No. 2015-48 for Condition of Approval #28 to state that the sound

attenuation cabinet shall effect 65 decibels at the property line, taking the decibels from 72 to 65 at the property line, and stated that he wanted to make sure equipment on the roof won't be visible.

Mr. Fattal stated that the parapet will take care of equipment on the roof, how the general will also be screened, how this started as a \$2.2 million project but with improvements and give back of land his client is looking at \$800,000 in additional costs, how there is pushback from Comcast and they are talking about involving attorneys.

Chairperson Spada stated that there are responsibilities by a public utilities provider to do the right thing and this is the right thing, how the City has always partnered with Comcast, the bottom line being that the public frontage has to be taken care of and how this has always been done by the developer doing improvements.

Mr. Fattal stated that there is a substantial amount of real estate his client would have to give up.

Chairperson Spada stated that staff's offering is very fair and he would be siding with their recommendations.

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

Motion by Faktorovich, seconded by Cates to adopt Planning Commission Resolution No. 2015-46 – Approving Conditional Use Permit #2015-13 to Allow the Operation of a Headend Facility at 604 Texas Avenue, More Specifically Identified as Assessor's Parcel Number: 027-211-001. The motion carried by the affirmative action of all Planning Commission Members present, Baker absent.

Motion by Toscano, seconded by Cates to adopt Planning Commission Resolution No. 2015-47 – Approving Site Plan #2015-07 for the Replacement and Construction of a 1,914 Square Foot Headend Facility Located at 604 Texas Avenue, More Specifically Identified as Assessor's Parcel Number: 027-211-001 with the amendment to Condition of Approval #28 to add that the sound attenuation cabinet for the generator shall effect 65 decibels at the property line. The motion carried by the affirmative action of all Planning Commission Members present, Baker absent.

**PUBLIC HEARING – TO CONSIDER A CONDITIONAL USE PERMIT TO ALLOW THE USE OF A TYPE 86 ALCOHOL LICENSE FOR THE INSTRUCTIONAL TASTING OF ALCOHOLIC BEVERAGES ONSITE FOR WAL-MART STORES, INC. LOCATED AT 1575 W. PACHECO BOULEVARD, MORE SPECIFICALLY IDENTIFIED AS ASSESSOR'S PARCEL NUMBER: 430-010-012.** Senior Planner Elms presented the staff report, which included a PowerPoint presentation, noting that a representative for the applicant was present to answer any questions.

Commissioner Faktorovich inquired how many drinks are allowed per person.

Senior Planner Elms stated that it is listed in the staff report under the Conditions of Approval and responded that the applicant would like to amend Condition of Approval #22 to add “or have a sign in sheet”.

Chairperson Spada opened up the public hearing. MIRIAM MONTESINOS, Wal-Mart representative, spoke of Wal-Mart being proud of the community and very involved, how wine/beer/alcohol tastings are becoming very common, and how a third party vendor conducts the tastings and Wal-Mart is just providing the venue.

Commissioner Cates inquired if the local Wal-Mart as spearheading this item.

Ms. Montesinos responded that there are third party vendors that are so far leading these efforts.

Chairperson Spada inquired which winemakers would be part of this.

Ms. Montesinos stated that Shopper Events and Sunflower Group are third party vendors that are doing these tastings but the actual winemakers are not known at this time.

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

Motion by Faktorovich, seconded by Cates to adopt Planning Commission Resolution No. 2015-48 – Recommending Approval of Conditional Use Permit #2015-10 to the Los Banos City Council for the Use of a Type 86 Alcohol License, “Instructional Tasting”, for Wal-Mart Located at 1575 West Pacheco Boulevard. The motion carried by the affirmative action of all Planning Commission Members present, Baker absent.

Motion by Cates, seconded by Hammond to amend the previous motion to adopt Planning Commission Resolution No. 2015-48 – Recommending Approval of Conditional Use Permit #2015-10 to the Los Banos City Council for the Use of a Type 86 Alcohol License, “Instructional Tasting”, for Wal-Mart Located at 1575 West Pacheco Boulevard with the amendment of Condition of Approval #22 to allow the vendor to use a sign-in sheet to ensure the customer has not received more than the allowed limit. The motion carried by the affirmative action of all Planning Commission Members present, Baker absent.

**PUBLIC HEARING – TO CONSIDER A CONDITIONAL USE PERMIT TO ALLOW THE USE OF A TYPE 40 ALCOHOL LICENSE FOR THE ON-SALE OF BEER IN CONJUNCTION WITH THE AVAILABILITY OF SNACKS FOR AQUA ENTERTAINMENT CENTER LOCATED AT 923 W. PACHECO BOULEVARD, MORE SPECIFICALLY IDENTIFIED AS ASSESSOR’S PARCEL NUMBER: 431-020-002.**

Senior Planner Elms presented the staff report, which included a PowerPoint presentation, noting that the applicant was present to answer any questions.

Commissioner McCoy inquired if being on the board of the church would preclude him from voting.

City Attorney Vaughn responded that it would not preclude him from voting.

Commissioner McCoy inquired about the operational hours.

Senior Planner Elms stated that one of the conditions require the business to stop serving alcohol an hour before closing, how weekday hours are different than weekend hours, and this would be due to close proximity to residential uses and within 70 feet of Star of David Church.

Commissioner Hammond inquired if this permit is for just beer.

Senior Planner Elms responded that it is for beer only, no wine or general alcohol.

Commissioner Hammond clarified that the activities in this facility are geared towards children and they are serving beer, inquired if beer can be brought to the arcade areas, and spoke of how he wants to see this project go forward.

Senior Planner Elms stated that Condition of Approval #14 prohibits alcoholic beverages from being brought into laser tag and arcade areas, but customers can bring the alcoholic beverages to the bowling lanes, stated that Planning Commission can revisit these conditions in the future, and the conditions are also given to the Department of Alcoholic Beverage Control.

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

Motion by Faktorovich, seconded by Cates to adopt Planning Commission Resolution No. 2015-49 – Recommending Approval of Conditional Use Permit #2015-11 to the Los Banos City Council for the On-sale of Beer for Aqua Entertainment Center Located at 923 West Pacheco Boulevard. The motion carried by the affirmative action of all Planning Commission Members present, Baker absent.

**COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT REPORT.** Senior Planner Elms spoke of being glad to be back, thanked City Attorney Vaughn & Planning Technician Benetti for their work in her absence, spoke of seeing good economic development coming through the pipeline, how residential development has gone well this year, how 114 residential building permits were issued so far this year, how rooftops equal retail, spoke of a Planning Commission workshop in the past done by the League of California Cities, how staff will be bringing more information in January to peruse the Commission to see who may be interested in participating so that a budget adjustment could be done, thanked Commissioner Hammond for his service to the City as a Planning Commissioner, and noted that Erik Limon in the audience will be sworn in as a

new Planning Commissioner on January 13<sup>th</sup> along with Refugio Llamas and John Cates' reappointment to the Planning Commission.

**PLANNING COMMISSION MEMBER REPORTS.**

**BAKER:** Absent.

**CATES:** No report.

**FAKTOROVICH:** Stated that he was happy to see Elms back.

**HAMMOND:** Spoke of how this was his last meeting, how it has been a pleasure to work with everyone, the City having great staff, wished everyone the best and a very Merry Christmas, gospel group performing at 6:00 p.m. on Sunday at Bethel Community Church, children's' Christmas program on December 20<sup>th</sup>, prophetic conference event at the end of the year, how Wal-Mart has been such a great partner in the Food Pantry ministry at Bethel Community Church, and how the Food Pantry is looking to serve a total of about 30,000 meals this year.

**McCOY:** No report.

**SPADA:** Wished all a Merry Christmas, thanked Commissioner Hammond for his service, welcomed Erik Limon to the Commission, and spoke of how it was nice to have Senior Planner Elms back.

**TOSCANO:** Wished all a Merry Christmas.

**ADJOURNMENT.** The meeting was adjourned at the hour of 9:20 p.m.

APPROVED:

*/s/ Tom Spada*  
Tom Spada, Chairperson

ATTEST:

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