



**PLANNING AND COMMUNITY  
DEVELOPMENT DEPARTMENT**

**William Nicholson**  
*Director*

2222 "M" Street  
Merced, CA 95340  
(209) 385-7654  
(209) 726-1710 Fax  
www.co.merced.ca.us

**PLANNING COMMISSION AGENDA  
REGULAR MEETING OF JUNE 23, 2004, 9:00 A.M.  
2222 "M" STREET, BOARD ROOM, THIRD FLOOR,  
MERCED, CALIFORNIA**

**I. CALL MEETING TO ORDER**

**II. ROLL CALL OF COMMISSIONERS**

Larry Whitney; Steve Sloan, Chairman; Lynn Tanner; Gloria Bettencourt

**III. APPROVAL OF MINUTES**

**IV. CITIZEN COMMUNICATIONS**

Public opportunity to address the Planning Commission on items of interest over which the Planning Commission has jurisdiction.

**SPEAKERS**

**If you would like to address the Planning Commission on any item on the agenda, please pick up a 3" x 5" card in the foyer, fill it out with your name, address, and item you wish to speak on, and give it to someone at the staff table (to the left of the podium) prior to speaking.**

**V. PUBLIC HEARING**

- A. ZONE VARIANCE APPLICATION No. 04004 and MINOR SUBDIVISION APPLICATION No. 04021 – Rick Gaestel - To vary from the minimum parcel size (6,000 Square Feet) in the R-1 zone and divide an 11,761 square foot parcel into two separate parcels. Parcel 1 = 3,049 sq. ft., and Parcel 2 = 8,712 sq. ft. The parcel is located on the north side of Green Street, and 70 feet east of Montgomery Street which is designated as Snelling Specific Urban Development Plan (SUDP) - Residential in the Merced County General Plan and zoned R-1 (Single-Family Residential). **TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. Continued from the June 9, 2004 meeting. Project Planner Dan Skidmore****
- B. ADMINISTRATIVE APPLICATION No. 04028 – Emanuel Belo - To waive the 1000' restriction by 950 feet to locate a residence near an existing animal confinement facility, and to allow a home for the property owner. The project site is located on east side of Bert Crane Road, and 1 1/4 mile south of Highway 140 in the Atwater area, which is designated as Agricultural land use in the General Plan and zoned A-1 (General Agricultural) (128.8 acres). **TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. Project Planner Dan Skidmore****

- C. **CONDITIONAL USE PERMIT APPLICATION No. 03016 - Tony & Carol Marcelino** - To place a 5<sup>th</sup> residence on the property for an agricultural employee, and to legalize an existing dairy. The property is located on the southeast corner of Franklin and Cardella Roads in the Merced area, which is designated as Agricultural Land Use in the Merced County General Plan. The zoning is A-1 (General Agricultural)(79 Acres). **TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. Project Planner Desmond Johnston.**
  
- D. **MINOR SUBDIVISION APPLICATION No. 04015 - Ronald Martella** - To divide a 52.9 acre parcel into two parcels. Parcel 1 = 20 acres and Parcel 2 = 32.9 acres. The property is located on north side of Shaw Road, ½ mile east of Buhach Road in the Winton area, designated Agricultural land use in the General Plan, and zoned A-1 (General Agricultural). **TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. Project Planner Mark Hamilton**
  
- E. **MINOR SUBDIVISION APPLICATION No. 04017 - Jeswina Rebeiro** - To divide a 41-acre parcel of land into two parcels, Parcel 1 = 20.5 acres and Parcel 2 = 20.5 acres. The property is located on the southwest corner of Mint Road and Julip Avenue, in the Dos Palos area. The parcel is designated as Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. Project Planner Mark Hamilton**
  
- F. **EXTENTION NO. 04007, 5<sup>th</sup> EXTENTION OF MAJOR SUBDIVISION No. 97006 VESTING TENTATIVE MAP FOR THE FOX HILLS SUBDIVISION – Fox Hills Management Group LLC** – To extend for one year the approval for the Fox Hills Major Subdivision of 402 residential building lots on 105.4 acres located at the south end of Volta Road near Los Banos. The property is designated Fox Hills Specific Urban Development Plan Low Density Residential in the General Plan and zoned R-1 and R-1-5000 (Single-Family Residential). **TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. Project Planner – James Holland**
  
- G. **GENERAL PLAN AMENDMENT No. 03002, ZONE CHANGE APPLICATION No. 03003 – Barnes and Nachtigal** – To amend the Merced County General Plan by redesignating property located on the north side of Gertrude Avenue and immediately southwest of the Burlington Northern and Santa Fe Railroad from Atwater Specific Urban Development Plan (SUDP) Agricultural-Residential to Atwater SUDP Commercial, and changing the zoning from A-R (Agricultural Residential) to C-2 (General Commercial). (9 acres). **TO RECOMMEND THE BOARD OF SUPERVISORS APPROVE THE NEGATIVE DECLARATION AND TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. Project Planner James Holland**

VI. **CORRESPONDENCE**

None

VII. **GENERAL BUSINESS**

None

VIII. **DIRECTOR’S REPORT**

None

IX. **ADJOURNMENT**



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**APPEALS**

Any person may appeal any action of the Planning Director or Planning Commission within five (5) calendar days after the day the action is made. [Within ten (10) calendar days of action on subdivisions]. The deadline for appeals of Planning Commission actions, excluding subdivisions, is 5:00 p.m. on the Monday following the Planning Commission meeting. Please note that appeals may not be submitted on days that the County is officially closed.

Appeals of Planning Director's actions may be filed with the Planning Department and appeals of Planning Commission actions may be filed with the Clerk of the Board of Supervisors. Appeals must state appellant's name, action appealed and reasons for appeal. A filing fee set by Resolution of the Board of Supervisors must be submitted with the written appeal.



**MERCED COUNTY PLANNING COMMISSION**

**Minutes – June 23, 2004**

**Page 2**

The public hearing opened at 9:12 a.m.

Rick Gaestal, applicant, stated that his interest is in improving the Parcel and bringing it up to Code. He asked for approval of this project.

Commissioner Tanner asked about the water on the property. Mr. Gaestal replied that there is currently one well right now and another one will be added.

The public hearing closed at 9:19 a.m.

**MOTION: M/S WHITNEY – TANNER, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION EXEMPTS ZONE VARIANCE APPLICATION No. 04004 and MINOR SUBDIVISION APPLICATION No. 04021, FROM CEQA.**

**MOTION: M/S WHITNEY - TANNER, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATION DATED JUNE 23, 2004, AND MAKES THE 11 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 11 FINDINGS, APPROVES ZONE VARIANCE APPLICATION No. 04004 and MINOR SUBDIVISION APPLICATION No. 04021 SUBJECT TO THE 3 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:**

**Conditions:**

1. The Zone Variance No. 04004 shall be valid as long as Minor Subdivision Application No. 04021 is valid.
2. A Parcel Map, including all parcels involved as identified in Alternative Plot Plan "B", shall be recorded within two (2) years of the Planning Commission approval date as required by the Subdivision Map Act and Merced County Subdivision Code.
3. The property owner shall satisfy Improvement Level 2 requirements of Chapter 16.08, IMPROVEMENT REQUIREMENTS, of the Merced County Code along the entire Green Street and Emma Street frontages of the property. For this, Owner may enter into Deferment of Construction Agreement with the Department of Public Works for future construction of these mandatory improvements and shall pay the current processing fee for the agreement. The improvements or agreement shall be provided prior to the recordation of parcel map.

- B. ADMINISTRATIVE APPLICATION No. 04028 – Emanuel Belo - To waive the 1000' restriction by 950 feet to locate a residence near an existing animal confinement facility, and to allow a home for the property owner. The project site is located on east side of Bert Crane Road, and 1 1/4 mile south of Highway 140 in the Atwater area, which is designated as Agricultural land use in the General Plan and zoned A-1 (General Agricultural) (128.8 acres). TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. Project Planner Dan Skidmore**

**This item had been determined not to be subject to discretionary review and was withdrawn from Planning Commission consideration.**

**MERCED COUNTY PLANNING COMMISSION**

**Minutes – June 23, 2004**

**Page 3**

- C. CONDITIONAL USE PERMIT APPLICATION No. 03016 - Tony & Carol Marcelino - To place a 5<sup>th</sup> residence on the property for an agricultural employee, and to legalize an existing dairy. The property is located on the southeast corner of Franklin and Cardella Roads in the Merced area, which is designated as Agricultural Land Use in the Merced County General Plan. The zoning is A-1 (General Agricultural)(79 Acres). **TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. Project Planner Desmond Johnston****

Planner Desmond Johnston presented the Staff Report and Recommendation dated June 23, 2004.

The public hearing opened at 9:26 a.m.

Mike Smith, CCPS, stated that he is concerned with Condition #13 on the 50% penalty requirement. He stated that he spoke with Leon Martinez in the Planning Department and he stated that this condition should not be in the Staff report. He also has a problem with Condition #6 regarding the Road Condition. He was informed by the applicant that he would like to continue this application to the next Planning Commission meeting so they can decide if they want to go forward based on Condition #6.

The Commissioners all agreed to continue this item.

**This item has been continued to the July 14, 2004 meeting.**

- D. MINOR SUBDIVISION APPLICATION No. 04015 - Ronald Martella - To divide a 52.9 acre parcel into two parcels. Parcel 1 = 20 acres and Parcel 2 = 32.9 acres. The property is located on north side of Shaw Road, ½ mile east of Buhach Road in the Winton area, designated Agricultural land use in the General Plan, and zoned A-1 (General Agricultural). **TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. Project Planner Mark Hamilton****

Planner Mark Hamilton presented the Staff Report and Recommendation dated June 23, 2004.

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

Kevin Gonzalves, surrounding property owner, stated that his access is through a dirt road on Shaw Road. His right-of-way is off Buhach Road. He stated that the County Road Department had proposed that Shaw Avenue dirt road be dedicated back to the property owner.

Chairman Sloan responded that Condition #3 requires an additional 10 foot easement along that right-of-way. Mr. Gonzales asked Chairman Sloan if the owner dedicates back to the County an additional ten foot, does that make the road 10 feet wide? Commissioner Tanner replied that the owner is giving the County an additional 10 feet. Chairman Sloan stated they the owner can apply for a Termination of Maintenance request with the County. It wouldn't delete the requirement for the 10 ft additional easement back to the County.

Steve Hamilton, Public Works/Road Division, stated that the request is if they want to keep it as a maintained road. They could take care of the maintenance, but the right of way remains there which the easement would remain there. Or they could terminate maintenance which would only take it out of the maintained system, but

**MERCED COUNTY PLANNING COMMISSION**

**Minutes – June 23, 2004**

**Page 4**

the right of way and his right to his access would remain also. Chairman Sloan asked if there was still a termination of maintenance, they don't want the extra 10 feet? Mr. Hamilton replied no. Mr. Gonzales stated that he has been maintaining the road for the last 7 years.

Garth Pechinnino, of Fremming, Parsons and Pechinnino, asked for approval of this project. He also asked for no deed restrictions.

The public hearing closed at 9:53 a.m.

**MOTION: M/S TANNER - BETTENCOURT, CARRIED BY A VOTE OF 3 – 2, NAY BY COMMISSIONER WHITNEY AND COMMISSIONER SLOAN, THE PLANNING COMMISSION DENIES MINOR SUBDIVISION APPLICATION No. 04015 DUE TO THE INABILITY TO MAKE THE LISTED FINDINGS AND CONDITIONS IN THE STAFF REPORT.**

- E. MINOR SUBDIVISION APPLICATION No. 04017 - Jeswina Rebeiro - To divide a 41-acre parcel of land into two parcels, Parcel 1 = 20.5 acres and Parcel 2 = 20.5 acres. The property is located on the southwest corner of Mint Road and Julip Avenue, in the Dos Palos area. The parcel is designated as Agricultural land use in the General Plan and zoned A-1 (General Agricultural). TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. Project Planner Mark Hamilton**

Planner Mark Hamilton presented the Staff Report and Recommendation dated June 23, 2004.

The public hearing opened at 9:59 a.m.

Larry Bowers, B.C.A, stated that the reason for this split is so the applicants granddaughter can build a home on the parcel. He stated that the land will stay in cotton.

The public hearing closed at 10:01 a.m.

**MOTION: M/S WHITNEY – TANNER, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION EXEMPTS MINOR SUBDIVISION APPLICATION No. 04017, FROM CEQA.**

**MOTION: M/S WHITNEY - TANNER, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATION DATED JUNE 23, 2004, AND MAKES THE 8 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 8 FINDINGS, APPROVES MINOR SUBDIVISION APPLICATION No. 04017 SUBJECT TO THE 4 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:**

**Conditions:**

1. A parcel map, including all parcels involved, shall be recorded within two (2) years of the Planning Commissions approval date as required by the Subdivision Map Act and Merced County Subdivision Code.

## MERCED COUNTY PLANNING COMMISSION

Minutes – June 23, 2004

Page 5

2. A Right-to-Farm Certificate shall be placed on the parcel map notifying the potential buyers of the resulting parcels that the property is in the vicinity of active farming operations and residents may be subject to inconveniences or discomforts resulting from the pursuit of agricultural operation, consistent with Ordinance No. 1213.
3. The owner shall dedicate to the County of Merced, annotated on the parcel map, 30-foot width of road right-of-way, along the entire frontage of Julip Avenue with a 50-foot radius fillet (curve) at the southwest corner of Mint Road and Julip Avenue intersection. As an option, the applicant may apply for "Termination of Maintenance of County Highways" that must included the entire portion of Julip Avenue from Mint Road to the southerly terminus at the County Line, following the procedures prescribed in Merced County Code Chapter 13.06. If successful, said dedication will not be required. However, if parcel map is to be recorded prior to officially terminating the maintenance of Julip Avenue, said dedication will be required.
4. The applicant shall provide for the delivery of irrigation water to each proposed parcel by providing easements that allow for the effective service of each parcel from the existing irrigation delivery gate or pipeline that serves the whole property such. Such easement shall be identified on the parcel map.

**F. EXTENSION NO. 04007, 5<sup>th</sup> EXTENSION OF MAJOR SUBDIVISION No. 97006 VESTING TENTATIVE MAP FOR THE FOX HILLS SUBDIVISION – Fox Hills Management Group LLC – To extend for one year the approval for the Fox Hills Major Subdivision of 402 residential building lots on 105.4 acres located at the south end of Volta Road near Los Banos. The property is designated Fox Hills Specific Urban Development Plan Low Density Residential in the General Plan and zoned R-1 and R-1-5000 (Single-Family Residential). **TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. Project Planner James Holland****

Planner James Holland presented the Staff Report and Recommendation dated June 23, 2004. He also hand out a letter from Delbert Herschbach with his concerns regarding this extension, however he approves of this extension.

The public hearing opened at 10:21 a.m.

Sally Williams, attorney representing Mrs. Herschbach, states that she is not opposing the extension. They are voicing their concern regarding the map showing the easement for the water treatment plant being on the other side of Highway 5. She just learned that the water treatment plant is close to Mrs. Herschbach's property.

William Nicholson, Planning Director, indicated that the subdivision had two steps. The first one was a Minor Subdivision to break off as a separate parcel. The sewer plant is part of the larger parcel. It's not a part of the subdivision. The San Luis Water District is the governing body to design and approve and operate that plant. There was no Conditional use permit for the sewer plant.

Chairman Sloan stated that the bottom line is the County doesn't have jurisdictional authority as far as the sighting of the water treatment sewer plant as long as it's on the project. Mr. Nicholson replied that is correct.



## MERCED COUNTY PLANNING COMMISSION

Minutes – June 23, 2004

Page 6

Ruben Castillo, County Counsel, asked Mr. Nicholson if there has been discussion with the water districts. Chairman Sloan asked Ms. Williams if she has talked to the water district about her concerns. Ms. Williams replied yes, however they sent the replies to their concerns to Planner James Holland, so she assumed Mr. Holland would deal with it.

Greg Bock, Fox Hills Management Group, agreed with Mr. Herschbach's letter and they will put in an all weather road on South Volta road for the winter time. He wants to work closely with the neighbors. The reason the water treatment was moved is because the County has requirements for water storage. That made it necessary for the west side that they have a tremendous amount of storage capacity and that was the only logical place.

Chairman Sloan stated that the County doesn't have any jurisdictional control over those treatments plants and that discussion is better to be held with the San Luis Water District.

David Gold, 1048 W. Main St. in Los Banos and of Fox Hills Management Group indicated that they are willing to work with Ms. Herschbach on their concerns.

Mr. Bauch also stated that he will work with Mr. Herschbach and protect the property.

The public hearing closed at 10:35 a.m.

**MOTION: M/S TANNER - WHITNEY, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION AGREES TO EXTEND EXTENSION NO. 04007, 5<sup>TH</sup> EXTENSION OF MAJOR SUBDIVISION NO. 97006 VESTING TENTATIVE MAP FOR THE FOX HILLS SUBDIVISION.**

- G. GENERAL PLAN AMENDMENT No. 03002, ZONE CHANGE APPLICATION No. 03003 – Barnes and Nachtigal** – To amend the Merced County General Plan by redesignating property located on the north side of Gertrude Avenue and immediately southwest of the Burlington Northern and Santa Fe Railroad from Atwater Specific Urban Development Plan (SUDP) Agricultural-Residential to Atwater SUDP Commercial, and changing the zoning from A-R (Agricultural Residential) to C-2 (General Commercial). (9 acres). **TO RECOMMEND THE BOARD OF SUPERVISORS APPROVE THE NEGATIVE DECLARATION AND TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. Project Planner James Holland**

Planner James Holland presented the Staff Report and Recommendation dated June 23, 2004.

The public hearing opened at 10:50 a.m.

Duane Andrews, Golden Valley Engineering, asked for approval of this project. There is light traffic in the area. This is a low key project with small contractors. He stated that there is a small portion of the property that was annexed into the city along with Gertrude Avenue. He has a problem with some of the conditions. There should be a condition that they have to deal with the City of Atwater for improvements along Gertrude Avenue. He stated that the County is asking for a ten foot right of way. He feels that 10 foot right of way should go to the City, not the County since it is a City street. The Public Works/Road Department has agreed with that.

# MERCED COUNTY PLANNING COMMISSION

Minutes – June 23, 2004

Page 7

William Nicholson, Planning Director, stated that typically conditions of approval are not put on a Zone Change or General Plan Amendment. He recommends no conditions on this application. Mr. Andrews asked to recommend approval to the Board of Supervisors.

The public hearing closed at 10:55 a.m.

**MOTION: M/S WHITNEY – TANNER, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION RECOMMENDS APPROVAL TO THE BOARD OF SUPERVISORS TO ADOPT THE CEQA NEGATIVE DECLARATION PREPARED FOR GENERAL PLAN AMENDMENT No. 03002, ZONE CHANGE APPLICATION No. 03003.**

**MOTION: M/S WHITNEY - TANNER, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION RECOMMENDS TO THE BOARD OF SUPERVISORS TO APPROVE GENERAL PLAN AMENDMENT No. 03002, ZONE CHANGE APPLICATION No. 03003 WITH THE DELETION OF THE CONDITIONS AS THEY DO NOT APPLY TO THIS APPLICATION.**

## VI. CORRESPONDENCE

None

## VII. GENERAL BUSINESS

None

## VIII. DIRECTOR'S REPORT

A Special Citizens General Plan Steering Committee will be held at 2 p.m. in Stevinson.

Two appeals were approved at the Board of Supervisors meeting. One was Minor Subdivision for Pete Bandoni and the other was the Zone Variance signage application. Both were denied by the Planning Commission.

## IX. ADJOURNMENT

There being no further business, the meeting adjourned at 11:05 a.m.