

# **MERCED COUNTY PLANNING COMMISSION**

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## **MINUTES FOR MEETING OF APRIL 9, 2008**

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of April 9, 2008, are available online at [www.co.merced.ca.us/planning/plancomarchive.html](http://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 9:15 a.m., on April 9, 2008, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

### **II. ROLL CALL OF COMMISSIONERS**

Commissioners Present:      Commissioner Jack Mobley  
   Commissioner Steve Sloan-Chairman  
   Commissioner Lynn Tanner  
   Commissioner Cindy Lashbrook  
   Commissioner Rudy Buendia

Staff Present:                      Robert Lewis, Development Services Director  
   William Nicholson, Assistant Development Services Director  
   Kim Anderson, Recording Secretary  
   Jeff Fugelsang, Planner I  
   Robert King, Senior Planner

Legal Staff:                        Bob Gabriele, Deputy County Counsel

Commissioners Absent:        None

### **III. APPROVAL OF MINUTES**

**M/S MOBLEY - BUENDIA, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION APPROVED THE MINUTES OF MARCH 12, 2008.**

### **IV. CITIZEN COMMUNICATIONS**

None

### **V. PUBLIC HEARINGS**

- A.      1<sup>st</sup> MODIFICATION No. MM07-025 TO CONDITIONAL USE PERMIT No. CUP05-031 AND MINOR DEVIATION No. MD08-004 - Merced County Housing Authority - To revise the approved site development plan for the Felix Torres Housing Center by allowing construction of the previously approved child care facility on the southeast corner of the site and to reduce the required front yard setback for three proposed buildings. The property is located on the west side of Plainsburg Road, approximately one quarter mile north of the Planada SUDP Boundary. It is designated Agricultural in the General Plan and zoned A-1 (General Agricultural). **THE ACTION REQUESTED IS TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. This item was continued from the March 26, 2008 meeting. JH****

Planner Jeff Fugelsang presented the Staff Report and recommendations of approval dated April 9, 2008.

## MERCED COUNTY PLANNING COMMISSION

Minutes – April 9, 2007

Page 2

Richard Graves, Building Division, submitted a letter to the Commissioners. The letter states that revised plans were submitted on Friday, April 4<sup>th</sup> at approximately 4pm by the Housing Authority and a cursory review was made of the plans to determine if they were complete; however a thorough plan check has not been made. The plans appeared to address most of the corrections except for the shade structures which will be submitted after review by the project engineer. The drinking fountain details are being revised for disabled access compliance. Site accessibility is being reviewed for full compliance. Fire access requirements are being coordinated with the Merced Co. Fire Department and any inspection requirements will be addressed as part of the Building Permit process.

Chairman Sloan asked the audience to give testimony only on any new evidence regarding this project and reminded the audience they have a 5 minute time limit for testimony.

The public hearing re-opened at 9:30 a.m.

Mary Furey, Planada MAC, asked the Commission not to approve this application until all the problems are solved and the Planada MAC has the opportunity to view the new information submitted.

Maureen McCorry, Valley Land Alliance, asked whether the Housing Authority is a public agency and also questioned why Commissioner Buendia and Commissioner Mobley excused themselves from the vote for this project. The public was not given copies of the new information submitted by the Building Department and the additional information submitted. She feels there have been serious violations. The structures were demolished in 2003 and it's five years later now and why hasn't the Housing Authority gotten it right. Regarding Mr. Graves letter, she feels that the complete plans are deplete and delivered outside the public review process last Friday. Even if this project is approved, the Housing Authority will have to rip up all the modulars and now are being told these are temporary units. She was told by Hal DeArmond that the lease on the portables is for 30 years. She asked if they are temporary or permanent. She doesn't feel this is efficient use of tax payer's dollars.

Deborah Peguero-Clipper, Orchard Way, Merced, stated that her family has farmed for 100 years in Merced County. Farm workers are needed to work on the crops and housing will be needed to support the workers and their children. A federal or state grant can take years to obtain. She asked for support for agriculture and approval of this application.

Hal DeArmond, Stanislaus Office of Education, stated that he has been working for many years with the Housing Authority and this project will provide a service for the children of farm workers. He explained that they went to the federal government to get funds for a temporary facility until they get the money to build a permanent facility. There is a lease agreement for 10 years, but the intent is that as soon as the permanent facility for the children is built, they will abandon the temporary facility. There was an accident involving a child in a farm field and he urges the Commission to allow this project to move forward for the benefit of the children.

Bryant Owens, resident on Plainsburg Rd., submitted six documents to the Commission for the record. He submitted a Grand Jury Report in which CEO Dee

## MERCED COUNTY PLANNING COMMISSION

Minutes – April 9, 2007

Page 3

Tatum was investigated for his involvement in purchasing the property that was swapped for this parcel of land.

He submitted a copy of the amendment to the property exchange which allows Holt Corporation to build model homes on the acres and having the option for 3 years to do that in exchange for \$255,000. Also included is the joint purchase agreement from Pacific Holt Corporation. A Can and Will Serve letter involving John Farnsworth was submitted. A letter shows a copy of \$10,000 checks showing former Supervisor Gloria Keene in the 2 months working for PHR Communities and a copy of correspondence between Des Johnston that was working for Pacific Holt Corporation. Even though the Geneva project was denied by the Board of Supervisors, they included the project into the County General Plan Update. The intent to urbanize around this project is a current issue as far as the Housing Authority going ahead and attaching to the sewer district. The sewer line was put in from an emergency exemption from CEQA. The Housing Authority has evaluated the Environmental Review and the situation with the sewer district has changed. The project is surrounded by land owned by the developers of the previously denied Villages of Geneva Project. Even though that project was denied the proponents have asked that their project be placed on the back burner and considered in the greater context of the update of the County General Plan. That process is still ongoing. The plan to urbanize the area around the Felix Torres Center is still very current in the mind of the owners of the land even if they have planted new almond orchards. This Commission recently refused to let those owners further subdivide the adjacent property because of the growth inducement that such a subdivision would have. Pacific Holt residential communities consortium worked closely with members of the Housing Authority, former supervisor Gloria Keene, County CEO Dee Tatum, Realtor Charlie Gagniani, and the land owners Kamangar and Wallace to put together a joint purchase agreement for the Villages of Geneva. The reason stated for their interest in having the Housing Authority project next to the Bear Creek Village, was to increase Holt's chances of approval of the Villages of Geneva project. Neither the Housing Authority nor either of the land owners have or had the ability at that time to grant approval of that project. Such approval could only have come from the Board of Supervisors. Supervisor Keene went directly to work for Holt Corp. upon leaving office in December 2004. CEO Tatum got a 24 acre parcel on which he built a mansion where he now lives. Holt bought that parcel from the Housing Authority for \$300K and in the same transaction sold it to Tatum for \$245K. This would seem a gift to CEO Tatum of \$55K.

Diana Westmoreland-Pedrozo, Merced County Farm Bureau, submitted a letter for the record. The letter states that there are new documents that were not made available to her organization, agencies and members of the public prior to the March 26, 2008 hearing. Secondly, Merced County's role as a "responsible agency" under CEQA is to monitor the lead agency. The staff report prepared for today's hearing reads as a justification for the violations and unlawful activities of the Housing Authority since construction began on the site on November 17, 2007. The Planning Department's role is not to mask, rationalize, minimize or provide excuses for these violations. Staff is recommending this project for approval with conditions. Why not have the Housing Authority meet the conditions and then get their project approval when and if all the conditions are met? The County has a responsibility in ensuring a legal and transparent public process and the efficient expenditure of taxpayer dollars. It is rewarding inexcusable behavior from an agency that has demonstrated disregard of state law and local permitting processes. Third, the Housing Authority

## MERCED COUNTY PLANNING COMMISSION

Minutes – April 9, 2007

Page 4

has had 5 years to build a new Felix Torres Center and the original center was demolished in 2003. The Housing Authority has had ample time to secure funding and follow federal, state, and local law and permitting procedures to re-build this facility.

The migrant farm workers, who occupied the former site, have long since re-located. The Merced County Farm Bureau is concerned about the partnership that the Housing Authority had with Pacific Holt and developers of the Village of Geneva to build model homes. This project is supposed to be about migrant housing, not a linchpin for affordable housing in a massive development scheme. This is supposed to be about farm workers and their families, not developers benefiting from our tax dollar. The Planada Community Services District has reached a settlement over a legal challenge involving its proposed Wastewater Treatment and Expansion project. This will impact capacity. LAFCo has not yet considered or approved the proposed annexation which will ultimately include not only the proposed Felix Torres Center, but land owned by private development interests and Bear Creek Village. There is no evidence to indicate that the PCSD can furnish sewer and water services to the Felix Torres Center and service its current clients and to residential and commercial developments which are within the Districts Sphere of Influence. Based on PCSD and LAFCo policy and requirements, any Can and Will Serve letter presented as evidence at this hearing is void. The Farm Bureau requests that the Commission continue this hearing until the Housing Authority has proven that they have met the requirements for the approval. Given the number of violations, the Housing Authority's actions do not merit retroactive approvals. Under CEQA, the Merced County has the authority and responsibility to withhold any further approvals until the Housing Authority has met all conditions.

Richard Graves, Building Division, stated that when plans are reviewed by the Planning Department, it is a discretionary action and subject to public review. When plans are submitted to the Building Department for a building permit, there is an administrative action and is not open for public review. So, building plans submitted by the Housing Authority are not open for public to review.

Maureen McCorry, Valley Land Alliance, again asked if the Housing Authority is a public agency. Why did Commissioner Buendia and Commissioner Mobley excuse themselves from voting on this project?

Don Borgwardt, Director of Building for the Housing Authority, explained that the Housing Authority is a public entity and Commissioner Buendia is a member of the Housing Authority board, so it would be a conflict of interest for Mr. Buendia to make a decision regarding this application. He is not sure of Commissioner Mobley's reason for excusing himself from the vote on this application.

The public hearing closed at 10:00 a.m.

**Chairman Sloan called for a 15 minute break to review new information submitted regarding this application.**

Chairman Sloan asked Commissioner Buendia and Commission Mobley to state why they excused themselves from voting on this application.

Commissioner Mobley stated that he owns the business Service Master in Merced and are affiliated with the Housing Authority so there would be a financial interest

## MERCED COUNTY PLANNING COMMISSION

Minutes – April 9, 2007

Page 5

and he spoke with County Counsel Bob Gabriele and Mr. Gabriele agreed that there would be a conflict.

Commissioner Buendia stated that he serves on the Commission for the Housing Authority and is involved in making decisions, so that would be his reason for excusing himself from the vote.

Commissioner Lashbrook felt the location change on the property was news to her and wasn't made clear at the last Planning Commission meeting. She doesn't agree with people starting projects without the proper process. This application should be sent back to the Planada MAC.

Commissioner Tanner states that this project is only about the temporary preschool today and is in favor because these children need a facility to be in.

Commissioner Lashbrook stated that there is a condition that states the Housing Authority can't utilize the facility until the housing is built, so what is the hurry?

Commissioner Tanner believes this is based on the funding. They may get the funding to build the 128 units but may not for the daycare facility.

Commissioner Lashbrook is also concerned that the daycare facility will be next to an almond ranch and will be near a high traffic area and feels the location is not a good area.

Bob Gabriele, County Counsel, stated that regarding the model housing, whatever arrangements the applicant may or may not have with any developer is not an issue that is controlling on the Commission. It is a personal matter, so if the presence of unrelated activity is a matter to the County, then this Commission has the authority to add any conditions to address those concerns. He asked for clarification of the 75% as to what that means in relationship to 100% as to who is eligible/not eligible to become a beneficiary of the preschool/Head Start program.

Bill Nicholson, Assistant Development Services Director, stated that a letter was received from Housing Authority addressed by Don Borgwardt, Director of Development clarifying that the childcare facility run by Stanislaus County Office of Education funding is for migrant worker's children so it's only for migrant workers and not open to the general public. The purpose of this daycare is so the migrant workers' children would not have to be bused anywhere else. The center doesn't need to open until the children are residents of this camp.

Commissioner Lashbrook asked what the status is of the 1 acre.

Mr. Nicholson responded that the 1 acre is a modification to the Conditional Use Permit and the acre will become a temporary childcare center if the Commission approves the modification. Any agreement between the private developer and the Housing Authority to put in model homes for a project that is not approved or being considered is moved. They still need to get building permits and come into County compliance and putting in residential homes on a 1 acre parcel is not legal.

Commissioner Lashbrook said it sounds like there is a new Can and Will Serve letter on the sewer. Are there still lawsuits pending?

**MERCED COUNTY PLANNING COMMISSION**

**Minutes – April 9, 2007**

**Page 6**

Mr. Nicholson stated that the new lawsuits and settlements had to do with the new sewer plant site and the Environmental Impact Report that the district did was for the sewer plant. They can't start construction yet until the EIR is done. The capacity now is for the current site. They closed up the old Felix Torres Center and moved them to the new site. At this point, they are relying on the district when they say they can serve the site and they modified their Can and Will Serve letter showing that it's for building permit issuance also. The old letter obtained did not allow building permits. They do not have to expand the SUDP for this, since it's an agriculture use zone.

The labor camp will operate like the Bear Creek facility to the north. They can annex an isolated parcel for a special district and you don't have to annex the land to the south. It's a special, unique use. They do not have to annex anything like the City would. It's a site specific annexation.

**MOTION: M/S LASHBROOK - \_\_\_\_\_, MOVED TO FORWARD THIS PROJECT BACK TO THE PLANADA MAC, DIED FOR A LACK OF A SECOND AYE.**

**MOTION: M/S TANNER - SLOAN, NAY BY COMMISSIONER LASHBROOK, THE MOTION TO APPROVE THE NEGATIVE DECLARATION PREPARED FOR 1<sup>ST</sup> MODIFICATION No. MM07-025 TO CONDITIONAL USE PERMIT No. CUP05-031 AND MINOR DEVIATION No. MD08-004, DIED FOR THE LACK OF A 3 – 0 VOTE.**

- B. MINOR SUBDIVISION APPLICATION No. MS08-002 - Alan Reis - To divide a 40 acre parcel into 2 parcels of 20 acres each on property located on the southeast corner Vincent Road and Harding Road in the Turlock area. The project site is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **THE ACTION REQUESTED IS TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. BK****

Planner Robert King presented the Staff Report and recommendations of approval dated April 9, 2008.

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

Duane Andrews, Golden Valley Engineering, stated that the applicant's goal is to farm about 100 acres of almonds on the property. This must be looked at as one big 40 acre almond orchard. He submitted photos of the property. He asked for approval of this application.

Commissioner Mobley asked if the reason for the split is for financial purposes. Mr. Andrews answered yes, the applicant's parents are helping him finance.

Jean Ferrari, resident of Turlock in Merced County limits, states that parcel splits are becoming a part of urban development on prime farmland throughout the central valley. The average developed ranchettes represent 27% of land in the Valley. A major concern of the parcel split is the impact that the rural development will have on agricultural land prices. Land prices are being driven above and beyond what commercial growers can afford because of proliferation of parcel splits. The most productive of farmland will slowly disappear if we disregard zoning laws. Parcel splits should not be allowed in agriculture parcel splits 40 acres or smaller. She feels that Environmental Review is needed for this project.

Maureen McCorry, Valley Land Alliance, stated that we are starting to see incursion of homes. With the farmers dividing their land, this will have an impact on increasing

## MERCED COUNTY PLANNING COMMISSION

Minutes – April 9, 2007

Page 7

land value, making it difficult for future farmers to afford agricultural land and will possibly allow the farmer to further expand the operation. This is not in the County's interest to continue splitting parcels. She received an excel file from the County Planning Department and there were 324 Minor Subdivisions on February 17<sup>th</sup>, she was told that there are 446. There have been approximately 1500 approvals that have never been analyzed and because of that, the General Plan is completely inconsistent with the Zoning Code when saying average parcel sizes are being looked at. There should be an enforceable condition on the applicant. CEQA is being ignored.

Mr. Andrews added that the applicants do not object to a condition of one home per parcel. The applications that he has handled have not come out of farming. He feels this is a real farm and they need help.

Ms. Ferrari added that the cumulative impacts of parcel splits is the loss of farmland. She has no objection to this property split because she feels the applicant will continue farming. If parcels continue to be split, then land will soon not be productive farmland.

Diana Westmoreland-Pedrozo, Merced County Farm Bureau, asked if the staff report includes a condition to restrict one home per parcel. Planner Bob King said that is not a condition in the staff report, but there could be an option to have it added. Ms. Pedrozo stated that applicant is willing to add the condition, so why not put it in the staff report.

Ms. McCorry stated that farmers can farm and build a home without dividing their land. 40 acres of land is the minimum and viable land and there is no evidence of continued farming.

Ken Rapp, Turlock, CA and Merced County resident, stated that his family is 3<sup>rd</sup> generation farmers in Merced County and they strongly object to allowing the break up of prime farmland into 20 acre home sites. This is not the way to preserve our prime Central Valley farmland. This drives up the price of farmland for people who want to remain in farming and breaking up farmland into 20 acre parcels makes it difficult for farmers for a multitude of reasons. We should help our farmers stay in business and not create homesites for people who want to move to the country. The applicant can move parents onto the property without splitting up the parcels. He opposes the "minor" subdivision application and asks the Planning Commission to disapprove the application.

The public hearing closed at 11:10 a.m.

Commissioner Lashbrook feels that property splits are not the only option for farmers to do financial planning for families. She feels that she is getting conflicting information on the General Plan policy in the staff report and the Board of Supervisors should make a clear policy. An initial study should be completed for this project. She will vote against this application unless a condition is added to allow only one home per 20 acres.

**MOTION: M/S TANNER - MOBLEY, AND CARRIED BY A VOTE OF 3 - 2, NAY BY COMMISSIONER LASHBROOK AND COMMISSIONER BUENDIA, THE PLANNING COMMISSION EXEMPTS MINOR SUBDIVISION APPLICATION No. MS08-002 FROM CEQA.**

**MERCED COUNTY PLANNING COMMISSION**

Minutes – April 9, 2007

Page 8

**MOTION: M/S TANNER - MOBLEY, AND CARRIED BY A VOTE OF 4 - 1, NAY BY COMMISSIONER LASHBROOK, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED APRIL 9, 2008, AND MAKES THE 11 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 11 FINDINGS, APPROVES MINOR SUBDIVISION APPLICATION No. MS08-002 SUBJECT TO THE 4 CONDITIONS WITH THE ADDITION OF CONDITION #5 TO READ AS FOLLOWS:**

**Conditions:**

Planning & Community Development Department

1. A parcel map, including all parcels involved, shall be recorded within two (2) years of the 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. A Right-to-Farm Certificate shall be recorded prior to issuance of any building permits to notify subsequent occupants of the inconveniences of farming operations and the priority to which Merced County places on such operations.

Public Works Department, Roads Division

4. The property owner shall dedicate an additional 5 feet along the Vincent Road and Harding Road frontages of the property. This will include a 50 foot radius curve (fillet) at the intersection of Vincent Road and Harding Road. The dedication shall be noted on the Parcel Map.
5. The Final Map shall have placed upon it the statement: "No more than one dwelling unit shall be allowed on each of the approved parcels."

**VI. CORRESPONDENCE**

None

**VII. GENERAL BUSINESS**

Robert Lewis, Development Services Director, said the County is in the process of a General Plan update and there will be a joint Board of Supervisors/Planning Commission meeting on May 13, 2008.

Bill Nicholson said there will be a presentation at the April 23, 2008 meeting from MCAG to give an update of the Blueprint, opportunities and challenges throughout the Valley and what positive changes can be made.

Commissioner Lashbrook suggested a motion to direct the Board of Supervisors to make clarifications on parcel splits. There was no second on the motion, so Commissioner Lashbrook's motion died for a lack of a second vote.

**VIII. DIRECTOR'S REPORT**

None

**IX. ADJOURNMENT**

There being no further business, the meeting adjourned at 11:25 a.m.