

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF FEBRUARY 9, 2011

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of February 9, 2011, are available online at 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 9:02 a.m., on February 9, 2011, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

II. ROLL CALL OF COMMISSIONERS

Commissioners Present: Commissioner Lynn Tanner - Chairman
Commissioner Jack Mobley - Vice Chairman
Commissioner Mark Erreca
Commissioner Rich Ford
Commissioner Greg Thompson

Staff Present: Paul A. Fillebrown, Interim Development Services Director
William Nicholson, Assistant Development Services Director
Kim Anderson, Recording Secretary
David Gilbert, Senior Planner

Legal Staff: Marianne Greene, Deputy County Counsel

Commissioners Absent: None

III. APPROVAL OF MINUTES

M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION APPROVED THE MINUTES OF JANUARY 26, 2011.

IV. CITIZEN COMMUNICATIONS

None

V. PUBLIC HEARINGS

A. ADMINISTRATIVE APPLICATION No. AA10-052 - Rumualdo Castaneda - To allow the operation of a semi-mobile food vendor. The project site is located at the northwest corner of Santa Fe Drive and Newport Road in the Ballico area. The property is designated Ballico SUDP - Industrial land use and zoned C-2 (General Commercial.) DG

Recommendation: The requested actions are to:

- 1) Determine that the application is exempt from CEQA review under Section 15061(b)(3) of the CEQA Guidelines, and;
- 2) Approved Administrative Application No. AA10-052 based on the project findings and subject to the conditions of approval presented in the Staff Report.

Planner David Gilbert presented the Staff Report and recommendations of approval dated February 9, 2011.

Commissioner Mobley says it seems there is a safe distance from the mobile food vendor and the street.

Planner David Gilbert said there is about a 10 feet distance.

Commissioner Thompson asked if there were any ADA concerns with the restrooms inside the structure.

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Planner David Gilbert said that since this is more of an outdoor setting and take out of food, the Building Department determined that the ADA requirements weren't necessary.

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

Kevin Jeffries, Ballico resident, says he lives across the street from the proposed mobile food vendor site. He says the applicant had asked him if he could place the mobile food vendor on his property and he did some research on it and decided not to have the food vendor on his property, but never gave the applicant, Mr. Castaneda, an answer. He said there would be too much trash near the site and doesn't want the food vendor near his land or across the street from his property. The food vendor truck would be located right next to the road and there is no parking available. He is opposed to this application and provided a list with several signatures from nearby neighbors in opposition since this would be in a residential neighborhood. He asked that this mobile food vendor be moved to another location. He also submitted a letter to the Commissioners from Fred De Jong, a nearby neighbor, stating his opposition to this application. He showed on the property map where he lives and the land he owns, and showed where Mr. De Jong lives and how the parking will affect their properties.

Norman Passadori, owner of the property, said the fence where the truck would be parking will be moved back as far as the Fire Department will let them. The property will be kept clean or he will not have the mobile food vendor there.

Shirley Machado, neighbor next door to the proposed mobile food vendor, said pulling into her property is very difficult now and doesn't see how cars pulling in to the mobile food vendor site will work. The traffic is a problem already. She has no objections to the food vendor, but is concerned with the traffic on Santa Fe. The parking lot is small and moving the fence back would affect her property. There has to be a safer place for the mobile food vendor.

Dalayla Shelton, neighbor to Shirley Machado, also said she is not against the mobile food vendor, but would like to see it placed in a different location. There are not adequate parking spaces and during the busy times there would be a problem with the traffic and trucks driving along Santa Fe. The fence would have to be moved even further back for there to be any room for the mobile food vendor.

Rumualdo Castaneda, applicant and owner of the mobile food vendor, asked Mr. Jeffries if he could park his truck on his property and Mr. Jeffries said he could park it there. But he didn't want to park there because he wants to go along with all County regulations. He submitted applications, paid all fees and he is waiting to get the approval. He understands there is traffic. The business survives because of the traffic. There is not much business in Ballico currently so the mobile food vendor would benefit in the area.

Commissioner Mobley understood that Mr. Castaneda asked Mr. Jeffries if he could place the mobile food vendor on his property and he said yes to the request, but Mr. Castaneda then requested the truck be placed across the street due to County regulations. Mr. Castaneda said yes.

Commissioner Thompson asked if the mobile food vendor will stay on the site or be moved after the day is over.

Mr. Castaneda said it will be moved off the site and will be taken to his residence.

Mr. Passadori added that Ballico needs this mobile food vendor since there are not a lot of businesses in the area.

Mr. Jeffries addressed the Commission again and said he was thinking about putting the mobile food vendor on his land, but never said yes to Mr. Castaneda. He says there is a taco truck about seven miles away in Winton and about the same distance in Denair.

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The public hearing closed at 9:32 a.m.

MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION EXEMPTS ADMINISTRATIVE APPLICATION No. AA10-052 FROM CEQA.

Commissioner Ford said he isn't sure about making a Motion first to exempt a project, before any discussion takes place. He understands the Rosenberg's Rules of order. He says it is not mandatory to have the motion before the discussion.

Deputy County Counsel said the Planning Commission adopted the method of making the motion first, but it could be agendized for possible modification.

MOTION: M/S ERRECA - THOMPSON, AND UNANIMOUSLY CARRIED BY A VOTE OF 5 – 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED FEBRUARY 9, 2011, AND MAKES THE 10 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND, APPROVES ADMINISTRATIVE APPLICATION No. AA10-052 SUBJECT TO THE 15 CONDITIONS.

Commissioner Thompson said he is concerned with the fact that the mobile food vendor is near an intersection. He said the taco trucks are about twelve feet tall. There are two types of traffic, vehicular and pedestrian traffic, so this will be a visual obstacle. He asked what the standard setback is off of Santa Fe.

Mr. Gilbert said the setback in the C-2 zone is six feet. In this case, the taco truck is considered the building. So there is nine feet of clearance, there is about ten feet between the taco truck and Santa Fe Drive. The fence could be moved back about five feet for more room. The building is taller than the taco truck so it could shield it.

Commissioner Mobley asked if the Road Division is satisfied with the safety at the intersection there.

Mr. Gilbert said the Public Works/Road Division commented on the project and wanted to make sure there was one driveway approach so customers aren't coming in from all directions. Some of the parking spaces shown in the photographs at the far end of the building, especially towards the west, there is about two parking spaces that don't have enough space from the parking space and the road, so those parking spaces were deleted from the plot plan. There is enough back up distance between the parking and Santa Fe and the Road Division didn't have a problem with that.

Paul Fillebrown, Interim Planning Director and Public Works Director, said he is comfortable with moving the fence back. There is a clear intent not to have people backing out onto Santa Fe. There will be review to make sure the driveway and roads are accessed properly and there is adequate site distance.

Commissioner Mobley said that the trash is a concern and he would like there to be adequate trash receptacles.

MOTION: M/S ERRECA - THOMPSON, AND UNANIMOUSLY CARRIED BY A VOTE OF 5 – 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED FEBRUARY 9, 2011, AND MAKES THE 10 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND, APPROVES ADMINISTRATIVE APPLICATION No. AA10-052 SUBJECT TO THE 15 CONDITIONS WITH THE MODIFICATION TO CONDITION #1 AS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning & Community Development Department

1. Administrative Permit No. AA10-052 is granted to allow Rumualdo Castaneda (applicant) to operate a semi-mobile food vendor (catering truck) next to a vacant building that was used as an agricultural equipment storage facility located at 11312 Santa Fe Drive in the community of Ballico. The semi mobile food vendor will be setback so that it is the same distance from Santa Fe Drive as the existing building.
2. The project shall operate in a manner that is consistent with the approved Plot Plan and the applicant's Operational Statement. Minor Modifications may be approved by the Development Services Director upon submittal of an acceptable application.
3. If the Administrative Permit is not implemented within one year, it shall expire and become null and void. The Development Services Director may extend the Permit if a request is filed by the applicant prior to its expiration.
4. The applicant shall comply with the Merced County Zoning Code Development Standards required for semi-mobile food vendors (Section 18.47.280.D) including, but not limited to the following:
 - a. The operating hours shall be limited to 10:00 a.m. to 8:00 p.m., every day of the week.
 - b. There shall be adequate covered trash receptacles adjacent to the semi-mobile food vendor.
 - c. The site shall be kept clean and free of litter at all times. Trash and garbage shall be removed from the site at the end of each day.
 - d. Waste water generated by this use shall not be released on-site or into any storm drainage or irrigation system.
 - e. Grease shall be disposed per requirement of the Division of Environmental Health.
 - f. No additional advertising sign except a sign attached to the semi-mobile food vendor shall be utilized and any sign shall be reviewed and approved by the Development Services Director.
 - g. A copy of the administrative permit shall be kept with the operator at all times and shall not be transferable to another operator.
5. For the purpose of conditions monitoring, an inspection fee in the amount of **\$324.00** shall be required. This fee shall be paid within 30 days of the approval date. Should additional inspections be required, inspection time shall be billed to the applicant at the established hourly rate at the time of the inspection.

6. **INDEMNITY AND HOLD HARMLESS AGREEMENT:**

Rumualdo Castaneda has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, County, its Board of Supervisors, commissions, officers, employees, agents and assigns (hereinafter "COUNTY") from and against any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, expert witness and consultant fees and other costs and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the performance of this Agreement, whether in tort, contract, writ of mandamus, or otherwise. This duty shall include, but not be limited to, claims, petitions, or the like for bodily injury, property damage, personal injury, contractual damages, writ of mandamus, or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents, commissions, boards, and officers of Rumualdo Castaneda. Rumualdo Castaneda liability for indemnity under this Agreement shall apply, regardless of fault, to any acts or omissions, willful misconduct, or negligent conduct of any kind, on the part of the Rumualdo Castaneda, their employees, subcontractors, agents, and officers. The duty shall extend to any allegation or claim of liability, or petition, except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of COUNTY. This duty shall arise at the first notice of filing a lawsuit, claim, petition, or allegation of liability against COUNTY. Rumualdo Castaneda will on request and at its expense, defend any action suit or proceeding arising hereunder. This clause and shall not be limited to any claim, petition, demand, liability, judgment, award, interest, attorney's fees, expert or consultant witness fees, legal research fees, staff and administrative costs, administrative record costs, materials, and costs and expenses of whatsoever kind or nature, that may arise during the term of this Agreement, but shall also apply to all such claims and the like, after the term of this contract, including but not limited to actions arising from public interest, land use and environmental legal actions, brought against the COUNTY following Conditional Use Permit No. AA10-052 approval, modification, denial, or the exercise or exhaustion of administrative appeals. Attorney's fees shall include any and all attorneys fees but not be limited to attorneys fees and staff time incurred by the offices of COUNTY counsel. COUNTY shall have full discretion to select legal counsel of its own choosing to represent COUNTY, at a cost not exceeding the prevailing and reasonable rates for counsel practicing environmental and land use law in the State of California, or practicing any other area of law that the COUNTY determines the Claim may reasonably require. This clause for indemnification shall be interpreted to the broadest extent permitted by law.

Department of Public Health/ Environmental Health Division

7. A stationary mobile food preparation unit (aka semi-mobile food vendor) must be operated within 200 feet travel distance of an approved, readily available, permanent toilet and hand washing facility for use by facility employees. If a permanent structure where food is stored, prepared, served or consumed is provided for customers at the site, then a permanent restroom must be available for customer use. In either case, written permission from the restroom owner should be provided indicating who has permission to use the restrooms and the days and times the restrooms are available. The food vehicle cannot operate unless the restrooms are available. The restrooms must be inspected and approved by MCDEH.
8. A food facility shall have a permit from MCDEH to operate in Merced County.

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Call MCDEH at 381-1100 to get a vehicle inspection appointment. Bring a completed form to the inspection. Unless the vehicle also has an AA permit from the Planning Department for a semi-mobile food vendor business, the vehicle is not allowed to be stationary. Call Mary Coakley at (209) 710-6096.

9. The water supply to the restroom must be bacteriologically safe and not exceed the maximum contaminant level of 45 mg/L for nitrate. The wellhead must be inspected by MCDEH and a water sampling collected by a qualified person and tested by a certified laboratory. MCDEH offers a water sampling service. Contact Brent Cronk at (209) 381-1100.

Public Works/Road Division

10. The applicant shall construct a single driveway approach into the existing parking area and restricting other access by constructing an asphalt dike (barrier) along the remaining frontage of the parking are.

Commerce Aviation and Economic Development Department

11. If the applicant/owner does not currently have a Business License Permit, they shall obtain one from the Commerce Aviation and Economic Development Department. The property owner/applicant shall pay all required fees for the Business license. The property owner/applicant shall annually renew the Business License and pay all required fees.

Public Works/Building & Safety Division

12. The restrooms inside the vacant building shall be handicap accessable.
13. The applicant shall provide a plot plan showing the distance from the cooking area to surrounding buildings.

Merced County Fire Department

14. The applicant shall call for an inspection to determine what fire code requirements will be needed for the operation.
15. The applicant shall comply with all applicable requirements contained in the Fire Department letter dated January 10, 2011.

VI. COMMISSION ACTION ITEM (S)

None

VII. DIRECTOR'S REPORT

Bill Nicholson, Assistant Development Services Director, said there will be a Planning Commissioners conference on March 5, 2011 at the City of Modesto.

The Focus Groups for the General Plan update may take place the first week of March and any dates will be posted on the Planning Department website. After input is received from the Focus Groups, there will be a Joint Study Session between the Board of Supervisors and the Planning Commission.

VIII. COMMISSIONERS COMMENTS

Commissioner Ford requested a change in the motions for each project application. He would like there to be comments from the Commissioners before a motion is made.

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Deputy County Counsel said this modification to the Rosenberg's Rules of Order can be agendaized on the February 23, 2011 agenda for discussion and possible modification.

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 9:46 a.m.