

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF FEBRUARY 27, 2013

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of February 27, 2013, 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 9:00 a.m., on February 27, 2013, 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 Rich Ford
 Commissioner Jack Mobley
 Commissioner Greg Thompson
 Commissioner Mark Erreca

Staff Present: William Nicholson, Assistant Development Services Director
 Malinda Farias, Recording Secretary
 Oksana Newmen, Planner III
 David Gilbert, Planner III

Legal Staff: Marianne Greene, Deputy County Counsel

Commissioners Absent: None

III. CITIZEN COMMUNICATIONS

None

IV. APPROVAL OF MINUTES

MOTION: MOBLEY – ERRECA AND CARRIED BY A VOTE OF 5 – 0, THE COMMISSION APPROVED THE MINUTES FROM JANUARY 23, 2013.

V. PUBLIC HEARINGS

A. ZONE CHANGE No. ZC13-001 - WILLIAM MATTOS (owner & applicant) - To change the zoning on a 9,100 square foot parcel from R-1 (Single Family Residential) to C-2 (General Commercial). The property is located on the east side of Lander Avenue, 175 Feet north of Dayton Avenue in the Hilmar area. The parcel is presently designated Hilmar Community Plan - Mixed Use land use. **ON**

Recommendation: The actions requested are to:

- 1) Determine that ZC13-001 is exempt from CEQA review under Section 15183, Projects Consistent with a Community Plan or Zoning, of the CEQA Guidelines and that the project does not require additional environmental review, and;
- 2) Approve Zone Change No. ZC13-001 based on the project findings and subject to the conditions of approval presented in the staff report.

Planner Oksana Newmen presented the Staff Report and recommendations of approval dated February 27, 2013.

The public hearing opened at 9:07 a.m.

No comments were received.

The public hearing closed at 9:07 a.m.

MOTION: M/S MOBLEY – ERRECA AND CARRIED BY A VOTE OF 5 – 0, THE PLANNING COMMISSION EXEMPTS ZONE CHANGE No. ZC13-001 FROM CEQA.

MOTION: M/S MOBLEY – ERRECA AND CARRIED BY A VOTE OF 5 – 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED FEBRUARY 27, 2013, MAKES THE 7 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES ZONE CHANGE No. ZC13-001.

- B. MINOR SUBDIVISION No. MS12-004 – KATHLEEN PETERSON (Owner & Applicant) - To divide a 9.32 acre parcel into two parcels : Parcel 1 = 1.14 acre parcel and a Remainder Parcel = 8.18 acres. The project is located at the northeast corner of Los Olivos Road and Cardella Road. The project site is located in the Merced Rural Residential Center and is designated Agricultural Residential and zoned A-R (Agricultural-Residential). **DG****

Recommendation: The actions requested are to:

- 1) Make the determination that the project is categorically exempt from CEQA review under Section 15315, Minor Land Divisions, of the CEQA Guidelines; and,
- 2) Approve the project 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 27, 2013. David stated the applicant's representative would like to make two modifications to the staff report.

- 1) Department of Public Works/Road Division conditions of approval #3 (The property owner/ applicant shall satisfy Level 1 Improvements for Parcel 1 according to Chapter 16.08 of the Merced County Code)

Modify to: The property owner/ applicant shall satisfy Level 1 Improvements for Parcel 1 according to Chapter 16.08 of the Merced County Code, or an alternative as approved by the Public Works Director.

- 2) The applicant's representative would like to delete The City of Merced conditions of approval #5: (The applicant shall dedicate additional right-of-way where Parcel 1 fronts onto Los Olivos Road per City of Merced standards.)

The public hearing opened at 9:15 a.m.

Duane Andrews with Golden Valley Engineers representing Ms. Peterson would like to discuss the two issues he has with the staff report. 1) Department of Public Works/Road Division condition of approval #3 as he does not believe any improvements should be repaired and wants to work it out with the Public Works Director: and 2) The applicant's representative would like to delete The City of Merced condition of approval #5 because the existing Los Olivos right-of-way is 60 feet which is more than enough in the RRC.

The public hearing closed at 9:17 a.m.

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MOTION: M/S MOBLEY – ERRECA AND CARRIED BY A VOTE OF 5 – 0, THE PLANNING COMMISSION EXEMPTS MINOR SUBDIVISION No. MS12-004 FROM CEQA.

MOTION: M/S MOBLEY – ERRECA AND CARRIED BY A VOTE OF 5 – 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED FEBRUARY 27, 2013, MAKES THE 9 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES MINOR SUBDIVISION No. MS12-004 SUBJECT TO THE 5 CONDITIONS SET FORTH IN THE STAFF REPORT AS MODIFIED BY MODIFYING CONDITION #3 AND DELETING #5 AS FOLLOWS:

Planning & Community Development Department

1. A parcel map, including all parcels involved, shall be recorded within two (2) years of the tentative parcel map approval date, as required by the Subdivision Map Act and Merced County Subdivision Code.
2. The applicant shall comply with all applicable Local, State and Federal laws and regulations.

Department of Public Works/Roads Division

3. The property owner/ applicant shall satisfy Level 1 Improvements for Parcel 1 according to Chapter 16.08 of the Merced County Code, or an alternative as approved by the Public Works Director.

County Counsel

4. INDEMNITY AND HOLD HARMLESS AGREEMENT:

Kathleen Peterson has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, County, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees 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 Kathleen Peterson.

Kathleen Peterson's 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 Kathleen Peterson, her agents, subcontractors, employees, boards, and commissions. The duty shall extend to any allegation, 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 claim, petition, or allegation of liability against County. Kathleen Peterson will on request and at its expense, defend any action or suit or proceeding arising hereunder. This clause and shall not be limited to any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees 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, for example, arising from land use and environmental law actions, or meeting notice law actions, brought against the County following MAJOR SUBDIVISION APPLICATION NO. MS12-004 approval, modification, or denial.

This clause for indemnification shall be interpreted to the broadest extent permitted by law.

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- C. MAJOR SUBDIVISION APPLICATION No. MAS13-001 – K. HOVNANIAN HOMES** - To merge and re-subdivide a 15 lot residential subdivision on 4.3 acres resulting in a new 12 lot subdivision. The project is located on the east side of Luis Avenue, 200 feet north of Centinella Drive in the Santa Nella area. The property is located in the Santa Nella SUDP, is designated Low Density Residential land use in the General Plan and zoned R-1 (Single Family Residential). **DG**

Recommendation: The actions requested are to:

- 1) Determine that the project is exempt from CEQA review under Section 15183, Projects Consistent with a Community Plan or Zoning, of the CEQA Guidelines; and
- 2) Approve the project based on the project findings, and the condition of approval presented in the Staff Report.

Planner David Gilbert presented the Staff Report and recommendations of approval dated February 27, 2013. He mentioned that he has received late correspondence that has been presented to all in attendance. David mentioned that the correspondence came from a women from Santa Nella who is attempting to improve the community and who circulated a petition. Her correspondence stated that the residents would like to see K. Hovnanian Homes address the following:

- a. address public safety
- b. build a 12 foot sound wall & maintain it
- c. Hold a public meeting in Santa Nella with the residents

The public hearing opened at 9:27 a.m.

No comments were received.

The public hearing closed at 9:27 a.m.

MOTION: M/S MOBLEY – THOMPSON AND CARRIED BY A VOTE OF 5 – 0, The Commissioner's to discussed:

The petition from the community regarding issues that is in the correspondence with 56 signatures on it. The developer K. Hovnanion Homes could hold a town hall meeting to discuss resident's concerns with the Supervisor with the community and with County departments, with parks and roads. However, since the subdivision was previously approved and is actually getting reduced in size it should not be held up based on Community wide issues.

MOTION: M/S MOBLEY – ERRECA AND CARRIED BY A VOTE OF 5 – 0, THE PLANNING COMMISSION EXEMPTS MAJOR SUBDIVISION APPLICATION No. MAS13-001 FROM CEQA.

MOTION: M/S MOBLEY – ERRECA AND CARRIED BY A VOTE OF 5 – 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED FEBRUARY 27, 2013, MAKES THE 10 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES MAJOR SUBDIVISION APPLICATION No. MAS13-001 SUBJECT TO THE 6 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Planning & Community Development Department

1. A Final Map shall be recorded within two years of the Planning Commission approval date as required by the Merced County Subdivision Code.
2. The applicant shall comply with any outstanding conditions contained within the Staff Report for General Plan Amendment No. 02-009, Zone Change No. 02-004 and Major Subdivision Application No. 02-003 – Luis Estates, dated February 26, 2002 (attached).

County Counsel

3. INDEMNITY AND HOLD HARMLESS AGREEMENT:

K Hovnanian Homes has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, County, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees 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 K Hovnanian Homes.

K Hovnanian Home's 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 Applicant, its agents, subcontractors, employees, boards, and commissions. The duty shall extend to any allegation, 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 claim, petition, or allegation of liability against County. K Hovnanian Homes will on request and at its expense, defend any action or suit or proceeding arising hereunder. This clause and shall not be limited to any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees 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, for example, arising from land use and environmental law actions, or meeting notice law actions, brought against the County following Project approval, modification, or denial of Major Subdivision Application No. MAS13-001.

This clause for indemnification shall be interpreted to the broadest extent permitted by law.

Santa Nella County Water District

4. The applicant shall be required to ensure that the unused water and sewer hook-ups, due to the reduction in the number of lots, are properly dismantled to eliminate the risk of illegal hook-ups to the water and sewer system in the future.
5. The applicant shall be required to advance funds in the amount of \$10,000 to be held on deposit, to cover District's engineering and administrative costs.
6. A new agreement may also need to be drafted concerning service to the lots as the current agreement specifically names 15 lots, and there are 20% sewer connection fees paid on all 15 lots.

VI. COMMISSION ACTION ITEM (S)

None

VII. DIRECTOR'S REPORT

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None

VIII. COMMISSIONERS COMMENTS

None

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 9:31 a.m.