

**CITY OF LOS BANOS
PLANNING COMMISSION MEETING MINUTES
MAY 11, 2011**

***ACTION MINUTES** – These minutes are prepared to depict action taken for agenda items presented to the City Council. For greater detail of this meeting refer to the electronic media (CD and/or audio) kept as a permanent record.*

CALL TO ORDER: Chairman Mello called the Planning Commission Meeting to order at the hour of 7:00 p.m.

PLEDGE OF ALLEGIANCE. Planning Commissioner Hixson led the Pledge of Allegiance.

ROLL CALL – MEMBERS OF THE PLANNING COMMISSION PRESENT: Arkady Faktorovich, Vern Hixson, Chandra Lee, Deborah Lewis, and Tom Mello. Absent: Tracey Rosin and Susan Toscano.

Commissioner Rosin and Commissioner Toscano arrived at 7:01 p.m.

STAFF MEMBERS PRESENT: Assistant Planner Souza, City Attorney Vaughn, Planning Director Fitzgerald and Planning Secretary Fuentes.

CONSIDERATION OF APPROVAL OF AGENDA: Motion by Faktorovich, seconded by Lewis to approve the agenda as submitted. The motion carried by the affirmative action of all Commission Members present.

CONSIDERATION OF APPROVAL OF ACTION MINUTES FOR THE REGULAR MEETING OF APRIL 13, 2011: Motion by Lee, seconded by Hixson to approve the minutes as submitted. The motion carried by the affirmative action of all Commission Members present.

CONSIDERATION OF APPROVAL OF ACTION MINUTES FOR THE ADJOURNED MEETING OF MAY 3, 2011: Motion by Lee, seconded by Toscano to approve the minutes as submitted. The motion carried by the affirmative action of all Commission Members present.

PUBLIC FORUM: MEMBERS OF THE PUBLIC MAY ADDRESS THE COMMISSION ON ANY ITEM OF PUBLIC INTEREST THAT IS WITHIN THE JURISDICTION OF THE COMMISSION; INCLUDES AGENDA AND NON-AGENDA ITEMS. NO ACTION WILL BE TAKEN ON NON-AGENDA ITEMS. SPEAKERS ARE LIMITED TO A FIVE (5) MINUTE PRESENTATION. No one came forward and the public forum was closed.

PUBLIC HEARING – CONSIDER APPROVAL OF VENDOR PERMIT #2011-01 FOR THE OPERATION OF ONE ICE CREAM TRUCK IN THE RESIDENTIAL ZONING DISTRICTS OF THE CITY OF LOS BANOS. Planning Director Fitzgerald presented the staff report.

Commissioner Lewis; regarding Conditions of Approval, letter M, can decibel level be changed or is it at a fixed level; is it stationary or can the operator change it; Planning Director Fitzgerald; it is at a fixed level; if there are complaints the police dept can be notified; Commissioner Lewis; is the operating mechanism capable of being changed; Jeffrey Lewis, Applicant; it is a fixed mechanism; there are only 3 selectable songs; music boxes are pretty standard.

Chairman Mello; is applicant aware of the decibel level; Jeffrey Lewis, Applicant; yes; music boxes are standardized.

Commissioner Lewis; spoke with applicant with regard to Conditions of Approval, letter Q, which states that a no loitering sign shall be posted on the vehicle in a visible location; applicant has agreed to post such signage at the rear of the vehicle; Jeffrey Lewis, Applicant; will post sign wherever the commission would like; Commissioner Lewis; would like to know if there is a standard of where the sign needs to be located and the size of the letters; Planning Director Fitzgerald; there is no standard of size or location.

Commissioner Toscano; would like to know if the applicant has been fingerprinted; Applicant Jeffrey Lewis; yes.

Chairman Mello; noticed vendors violating the ordinance by parking in the areas that they are not supposed to be at, i.e. parks; Planning Director Fitzgerald; staff will send out another reminder letter to all mobile vendors.

Commissioner Rosin; is this the first vendor permit for 2011; Fitzgerald; correct; Commissioner Rosin; previous vendors are already permitted to vend; Fitzgerald; correct, subsequent approvals are through the Planning Department.

Chairman Mello opened up the public hearing; no one came forward and the public hearing was closed.

Motion by Lee, seconded by Faktorovich to adopt Planning Commission Resolution No. 2011-06 – Approving Vendor Permit #2011-01 for the operation of one ice cream truck in the residential zoning districts. The motion carried by the affirmative action of all Commission Members present.

PUBLIC HEARING – CONSIDERATION OF THE PROPOSED STONECREEK NORTH ANNEXATION INTO THE CITY OF LOS BANOS, (INCLUDING PRE-ZONING, AREA PLAN, AND A GENERAL PLAN AMENDMENT) CONSISTING OF APPROXIMATELY 362 ACRES OF LAND GENERALLY LOCATED AT THE NORTHWEST CORNER OF SR 152 AND BADGER FLAT ROAD, MORE SPECIFICALLY ASSESSOR'S PARCEL NUMBERS: 081-120-003, 081-140-002, 081-140-003, 081-140-004, 081-140-005, 081-140-006, 081-140-007, 081-140-008, 081-140-009, 081-140-010, 081-140-011, 081-140-012, 081-140-013, 081-140-015, 081-140-016, 081-140-017, 081-140-018, 081-140-019, 081-140-020, 081-140-024, 081-140-027, 081-140-028, 081-140-029, 081-140-030, 081-140-031, 081-140-033, 081-140-036, 081-140-037, 081-140-038, 081-140-045, 081-140-046 AND 081-140-049. Planning Director Fitzgerald presented the staff report which included a power point presentation.

Commissioner Lewis; on the Urban Decay Analysis, was applicant given a choice as to what agency to use; Planning Director Fitzgerald; staff chose Goodwin Group due to their good standing with the Building and Industry Association (BIA) and past working relationship with the City; Commissioner Lewis; feels it would have been fair if the applicant had a choice as to what agency to use; in the presentation, it indicates that Merced County gets the bulk of the taxes even though the City has to provide the services; explain the split between the agreement with the City; Planning Director Fitzgerald; agreement has been in place since 1997; it was originally prepared to allow the establishment of RDAs; City Attorney Vaughn; State of California law requires before an annexation can be approved, that a revenue sharing agreement/ tax sharing agreement must be in place; purpose is because the County is receiving 100% of taxes to go to special districts, i.e. school districts; an agreement must be approved to divide how the City is to resume those services the county was responsible for, i.e. public safety services; the existing agreement is currently being renegotiated; it is not uncommon for the City to pick the consultants for particular studies as they reflect the City; Commissioner Lewis; what is the split; has there been any negotiation at all that has happened or was in the works prior to this current one that is going on in terms of the tax sharing revenue; City Attorney Vaughn; the agreement has been in place for a long time; the new General Plan is what triggered the negotiation of the existing agreement; negotiations have been very slow; Commissioner Lewis; negotiations have been done since 2006 but are at a stand still right now; City Attorney Vaughn; would have started around 2008; a consultant has been hired due to the complexity of the agreement to make sure the City is getting the appropriate amount of taxes due to the services provided; Commissioner Lewis; will this benefit the City with regard to future commercial development; City Attorney Vaughn; will be on a case by case basis, based on land uses and size of land and the burden on the City to provide those services; Commissioner Lewis; the consulting agency is one that was looked at by the City to sort out these issues; Planning Director Fitzgerald and City Attorney Vaughn; Consultant has not been hired yet; City Attorney Vaughn; there is a high level of confidence in this particular company; Commissioner Lewis; Goodwin Group and the company doing the analysis on the fee split between the County and the City, is there any similarity in the work that is being done; City Attorney Vaughn; the consultant hired for the tax sharing agreement is very complex and has nothing to do with the Urban Decay Analysis; it is a very different analysis than what is being asked by Goodwin Consulting Group; Commissioner Lewis; on the various area plan maps attached to the packet, referring to the 800 + acres, was this area plan part of the 2030 General Plan; Planning Director Fitzgerald; that area plan was proposed in 2007; the new General Plan was approved in 2009; staff met with the applicant around the end of 2008, beginning of 2009; applicant was contemplating changes; worked together with applicant to come up with something that would work for everybody; Commissioner Lewis; of the three maps provided in the packet, which map was included in the new General Plan; Planning Director Fitzgerald; the 2010 proposed area plan was the

closest; Commissioner Lewis; what would have been included/excluded on the General Plan; Planning Director Fitzgerald; in the General Plan it has Low Density Residential as opposed to Medium Density Residential and the Medical Campus; Commissioner Lewis; the blue area is the medical campus; Planning Director Fitzgerald; correct; Commissioner Lewis; yellow is the senior housing; but staff stated it was Medium Density Residential; Planning Director Fitzgerald; on the General Plan it is Low Density; from a planning perspective this is a good plan, just probably not the right time.

Commissioner Faktorovich; since the project has been going on for so long, can the property be developed in the County or does it have to be annexed into the City; City Attorney Vaughn; because the development would be within the City's Sphere of Influence, the County would not allow significant development differ from the Ag zoning that is currently out there; does not believe development through the County would be a viable option.

Ray DeSa, applicant; the County recently is looking for development around the Cities; it would not make sense to build in the County; better to build within City limits; Commissioner Faktorovich; if land is left vacant, what would it cost to maintain land if left vacant; Ray DeSa, applicant; if the land is annexed into the City the only additional cost would be public safety cost; until the property is developed, there is no infrastructure to maintain; Commissioner Faktorovich; due to the economic standings, what happens if there are a lot of vacancies and you cannot rent the property out; Ray DeSa, applicant; with the economy the way it is, no one is going to build anything unless it is set for occupancy; without entitlements the large retailers will not look to enter into a contract.

Commissioner Lewis; do you have tenants to occupy these proposed uses; Ray DeSa, applicant; there are potential tenants, especially for the medical campus; the need for senior housing will be huge; looking towards the future, what is the city going to need; removed single family residential because there is plenty of existing inventory currently within the City; need to do things that will generate revenue for the City; once it has been annexed, get the site plans approved; prepare improvement plans so that when a potential tenant comes in they are ready to go; it takes a while to begin building.

City Attorney Vaughn; applicant only controls 9 parcels listed on the agenda; applicant controls less than 50% of the property proposed for annexation; small parcels already developed on Badger Flat and Pacheco would require City services immediately; this is not just a vacant piece of property with one owner, this is a large piece of property with multiple owners that the applicant does not have a majority control over; there are issues here the City is concerned with regarding providing services; that is why the study is being requested; how is the commercial development going to effect the vacant properties already existing within the City; these studies would answer some unknown questions that the City is asking the applicant; Commissioner Lewis; why haven't we required these studies before; City Attorney Vaughn; circumstances were different before; Lewis; why is the City asking the applicant to study downtown for these 300+ acres annexed across the street from Wal-Mart; why was Wal-Mart not required to provide an Urban Decay Study; City Attorney Vaughn; Wal-Mart did provide an Urban Decay Analysis that focused on retail like services similar to their project; this applicant's project is much more complicated than Wal-Mart's; Planning Director Fitzgerald; this proposal deals with multiple land uses and different users; the displacement alone would be large; Commissioner Lewis; to the downtown area; Planning Director Fitzgerald; it could potentially affect the downtown and other areas as well; City Attorney Vaughn; the City wants an analysis on all the vacant commercial property before we annex an additional 300 acres that could be at any time once it is in the City; Commissioner Lewis; if annexed in, based on multiple residence/businesses on Highway 152 and Badger Flat, is staff indicating that area will be patrolled by CHP and/or sheriff, they are the only ones that will respond; Planning Director Fitzgerald; they are not the only ones, we have a Memorandum of Understanding set that we will assist; it is the County's responsibility first and foremost; Commissioner Lewis; for the applicant, is senior housing the same as the one currently in the City, single family residential; Ray DeSa, Applicant; looking at single family, but different types; not currently similar to anything in town; similar to a senior community in Manteca; upscale homes, but built well and smart; Commissioner Lewis; so they will be single family homes; Ray DeSa, Applicant; correct; we would also like to do an assisted living as well.

Commissioner Lee; addressing the need for senior housing, doesn't feel we need another senior housing facility; does not feel there is a need for such housing now; feels we need to look at vacant areas that need to be developed first before annexing 300+ acres; Ray DeSa, Applicant; feels the senior housing currently in the city will be full by the time development is completed; the senior housing being built by the applicant will also be full and there will be a need for additional housing because of all the baby boomers;

Commissioner Lee; what is the benefit to the City since there is so much vacant property not built; Ray DeSa, Applicant; initial benefit would be additional property taxes; other advantage is having property ready when tenants come in; there is not a large user that will fit in other areas in town; large users want to be with their "support" stores; Commissioner Lee; wondering when the need will be there; DeSa; feels if the property is complete, when the need is there the property will be ready.

Commissioner Rosin; referring to the studies done in California for the need of senior housing, there is much unrest and need to be careful to think about the economy today; Ray DeSa, Applicant; seeing a pick-up of building in other Cities; use other Cities as a barometer for Los Banos, which always trails behind due to location; Rosin; spoke about anchor stores, what stores has the applicant spoken to; Ray DeSa, Applicant; not at liberty to say what tenants they are talking to; they are major chains; Commissioner Rosin; satellite office in Los Banos closed; why the move; DeSa; consolidate resources due to tough economy; most of the construction is in Hollister; Rosin; does Stonecreek control other developments in town; buildings that are vacant; Ray DeSa, Applicant; no; we have single family homes that are vacant; Commissioner Rosin; all of your other commercial buildings have been passed on to other developers; Ray DeSa, Applicant; correct; Commissioner Rosin; why would you want to do this project now; Ray DeSa, Applicant; because of how long it takes to go through the process; would like to be ahead of the game; feels the timing is right; Commissioner Rosin; would annexation be done for all land at once; Ray DeSa, Applicant; correct; Commissioner Rosin; would the existing Ag land cease to be Ag land; Ray DeSa, Applicant; the existing Ag land would remain as such until developed; has spoken to CCID regarding de-annexing from the district; Commissioner Rosin; there could be a potential loss in economy to the local Ag area.

Commissioner Hixson; asked staff how project relates to the City's General Plan; Planning Director Fitzgerald; land uses for the most part fit in except for the Medium Density Residential and the Medical Campus; Commissioner Hixson; on public services, would it require hiring new personnel; Planning Director Fitzgerald; that is what the studies would show us; additional services will probably be required.

Chairman Mello; if building a senior housing and medial center why not try rezoning Stonecreek South so farmers are not affected now; don't need highway frontage for seniors; Ray DeSa, Applicant; the infrastructure to the south is already designed to serve the north; this plan goes back to when Stonecreek South was designed; senior housing and medical facility will be off of Badger Flat, not the highway; Chairman Mello; senior housing could be located anywhere; Ray DeSa, Applicant; infrastructure would need to be redesigned to serve the south; the infrastructure in the south was built based on conditions that were put before the applicant.

Commissioner Lee; wants clarification that the Tractor Supply area is not the applicant's property; DeSa; no it is not.

Commissioner Rosin; 362 acres of developed ground requires a lot of domestic water; feels water should be addressed; Ray DeSa, Applicant; water has been looked at in the environmental document and in the City's Water Master Plan; Commissioner Rosin; if you drill more wells to service new property, you are taking away from someone who is already using it; Ray DeSa, Applicant; does have plans for recycled water and recharge along the creek; putting storm basins along the creek to retain water rather than needing to pump it out.

Chairman Mello opened up the public hearing; **George Allen, Merced County resident**; owns property along Highway 152, how will this annexation affect him; would be happy to see it annexed and zoned commercial; if annexed, at this time, he has an existing sign and doesn't have the funds to change signage; would like to keep it the way it is and have it grandfathered in; Assistant Planner Souza; the signage would be grandfathered; at time of development or intensification of use, the property owner would be required to meet City standards; Chairman Mello; would the homeowner be required to pay for the cost of connecting to the City's utilities; Assistant Planner Souza; the property owner can continue to use the existing well and septic system until those systems are no longer operable; at that time the property owner would need to connect to City services; **George Allen, Merced County resident**; referring to public safety, has requested the City respond to issues, but only the County responds; Chairman Mello; City and County do have a mutual agreement with regard to going out to public safety calls.

Ron Nunes – Nunes Brothers, Inc. / County resident; read statement for the record (obtained a copy of the letter from the business owner/resident as well as from the employees for public record); residents company feels that the proposal should be denied.

Deborah Brown, County resident; owns property along Badger Flat Road; would like to see studies done to see what is going to happen to the existing properties; would like to know if Badger Flat is going to be widened and how that will affect property owners; would like to know what medical campus use means, and the affect it will have on traffic; Planning Director Fitzgerald; the medical campus cannot be a hospital due to the Airport Land Use Compatibility Plan; it can be medical offices and uses like that; Ray DeSa, Applicant; the General Plan does provide for the relocation of the airport; in the case of relocation we would like to reserve space for a hospital; the initial thoughts for now are an urgent care center and specialized doctors offices, i.e. dermatologist.

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

Chairman Mello; referring to the houses existing in the area plan, if they don't want to sell, will eminent domain be done; Planning Director Fitzgerald; the City would not go in and condemn anything; the developer may offer to buy the property.

City Attorney Vaughn; the area plan proposed would change the zoning to those existing properties and could potentially affect those ranchettes from further expansion; there would be a widening of Badger Flat Road; no one will be forced out of their house so that a private company can develop.

Commissioner Faktorovich; if the property is rezoned and is now a non-conforming use, will the property owner be able to rebuild if there is a fire; City Attorney Vaughn; yes, but there are restrictions that state the use cannot be intensified or expanded from its use at the time;

Motion by Rosin, seconded by Toscano to adopt Planning Commission Resolution No. 2011-07 – recommending denial of the annexation and general plan amendment for the project known as Stonecreek North which is approximately 362 acres located north of Pacheco Blvd. and west of Badger Flat Road extending past the Merced Community College.

Roll Call Vote: Faktorovich: yes, Hixson: yes, Lee: yes, Lewis: no, Mello: yes, Rosin: yes, Toscano: yes

Motion carried by the affirmative action.

PLANNING DEPARTMENT REPORT. Update on the Wal-Mart project.

PLANNING COMMISSION MEMBER REPORTS.

ARKADY FAKTOROVICH: nothing to report.

VERN HIXSON: nothing to report.

CHANDRA LEE: update on Relay for Life fundraiser

DEBORAH LEWIS: update on the Merced County Fair

TOM MELLO: nothing to report

TRACEY ROSIN: nothing to report.

SUSAN TOSCANO: nothing to report.

ADJOURNMENT. The meeting was adjourned at the hour of 8:50 p.m.

APPROVED:

/s/ Tom Mello
Tom Mello, Chairman

ATTEST:

/s/ Stacy Souza
Stacy Souza, Planning Commission Secretary