

**CITY OF CERES
PLANNING COMMISSION
MEETING MINUTES
March 2, 2020**

MEETING CALLED TO ORDER: 6:00 p.m.

PLEDGE OF ALLEGIANCE:

The Pledge of Allegiance was led by Chairperson Smith.

ROLL CALL:

PRESENT: Commissioners: Del Nero, Johnson, Kachel, Silveira, Chairperson Smith

ABSENT: None

ALSO PRESENT: Director of Community Development Tom Westbrook, City Manager Toby Wells, Senior Planner James Michaels, City Attorney Nubia Goldstein, Administrative Secretary Ann Montgomery

CONFLICT OF INTEREST DECLARATION:

None

CITIZEN COMMUNICATIONS:

None

CONSENT CALENDAR:

1. Clerk's Report of Posting. The Agenda for the regular meeting of the Planning Commission of March 2, 2020 was posted on February 27, 2020.
2. Approval of Minutes
 - a. February 3, 2020 (all present)
 - b. February 18, 2020 (Smith absent)

ACTION: It was moved by Commissioner Kachel; seconded by Commissioner Johnson to approve Items 1 and 2.a. on the Consent Calendar. Motion passed by the following vote:

AYES: Commissioners Del Nero, Johnson, Kachel, Silveira, Chairperson Smith
NOES: None
ABSENT: None

ACTION: It was moved by Commissioner Kachel; seconded by Commissioner Del Nero to approve Item 2.b. on the Consent Calendar. Motion passed by the following vote:

AYES: Commissioners Del Nero, Johnson, Kachel, Silveira
NOES: None
ABSENT: None
ABSTAIN: Chairperson Smith

CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT CALENDAR

None

PUBLIC HEARINGS:

3. Rezone (RZ) 18-09; Vesting Tentative Parcel Map (VTPM) 18-10, & Specific Plan Site Plan (SPSP) 18-11; proposal to subdivide 2.16-acre site into 3 commercial zoned parcels with a new commercial building proposed for each parcel located at the northeast corner of Hatch Road and Golf Links Drive. Surgit Singh, applicant.

Senior Planner, James Michaels presented the staff report.

Director of Community Development, Tom Westbrook added that staff received some email correspondence from a neighboring property owner, protesting the project, which he provided copies of on the dais. In addition to that, a petition was submitted, which was actually directed towards the City Council and provided to the Planning Commission. It contained approximately 325 signatures.

Chairperson Smith asked Mr. Westbrook to read the verbiage of the petition.

The Public Hearing was opened at 6:12 p.m.

- Max Garcia, GDR Engineering, Ceres, CA

Mr. Garcia stated he is representing Mr. Surgit Singh, the property owner and applicant for the project.

Mr. Garcia provided a brief history of his business, this project and the issues they've addressed, explaining the postponement in presenting this project. He went on to explain that when he met with the owners of River Oaks Golf Course, they asked that these four issues be met:

- Access Easement (leave their access alone)
- Gate for property owners
- Liability Insurance
- Net

Mr. Garcia stated he believes they've got all of these items covered adequately and is more than happy to answer any questions the Commission may have.

Brief Commission discussion ensued.

Mr. Garcia requested the right to rebuttal if there's anything that comes up that is said that he feels needs to be answered.

- Ken Thornberry, Co-Owner, River Oaks Golf Course, Ceres, CA

Mr. Thornberry expressed his concerns with the requested zoning change, the liability insurance, reciprocal access easement, PUE maintenance, potential land locking and money for the net.

- Robert Hall, Co-Owner, River Oaks Golf Course, Ceres, CA

Mr. Hall inquired if Mr. Singh were to sell that parcel, will the next owner assume liability; will that condition continue to be required.

Mr. Hall commented that he is a co-owner of the golf course, noting that he and his family purchased it 4-1/2 years ago. He provided a brief history of the golf course and included a listing of improvements made to the property along with activities and added services that have been offered at the golf course. He went on to explain that prior to their original purchase of this property, they practiced due diligence, evaluating what may affect them in the future, including a perimeter search of the property. Tonight, they find themselves standing in protest of the proposed change and a zoning ordinance, the very one they researched and based their purchase decision on 4-1/2 years ago. He went on to explain, should this change be approved, it will seriously restrict vehicle access in and out of their business, due to roadway islands planned for the intersection's change for this development. The proposed project will put buildings and people just feet away from the safety netting at the end of the driving range and in harm's way. Any injury or damage caused by an errant golf ball will test the liability coverages of the golf course, the proposed property development and the City of Ceres, who could be named at fault for approving these zoning changes. His other concerns included increased traffic on Golf Links Road, disruption of the privacy of residences who have homes bordering the course, and the presence of "riff raff," along with increased trespassing and damage and theft of those properties. He presented the Commission copies of pictures of Mr. Singh's other development on Central Avenue, which he felt is poorly maintained, and also the Richland Shopping Center, which is professionally and properly maintained, to compare. Mr. Hall feels rezoning this parcel is a bad idea and has a strong feeling it will end up being a "black eye" for the City of Ceres.

- Ryan Thornberry – Modesto, CA

Mr. Thornberry introduced himself as the son of Ken and Pam Thornberry and nephew of Robert and Gloria Hall, owners of River Oaks Golf Course.

Mr. Thornberry also spoke briefly about the affect this proposed development will have on this long-standing golf course, noting that they're putting a development at the end of a driving range. He also pointed out that Modesto Muni golf course is going to be closing at

the end of the year and that other golf courses in this area have been closing down, as golf is waning.

Mr. Thornberry also spoke about liability and stated that if this development goes into effect, the liability of the golf course needs to be completely relinquished.

- Greg Silva – Turlock citizen

Mr. Silva stated he is a current PGA professional at River Oaks Golf Course and has been there since 1991.

Mr. Silva relayed that he was the person who submitted letters to the editor and the one who started the petition for a lot of different reasons. He pointed out that this decision that's being made affects our children, grandchildren and our great grandchildren. He stated that Ceres has an incredible regional park and a great golf course that's for every walk of life and he's hoping that the Commission will take into consideration that there are people from low-income families that play at River Oaks Golf Course.

- Candice Fernandes – Ceres Citizen

Mrs. Fernandes stated she and her husband live on Golf Links Road, inside River Oaks Golf Course. They understood the CC&R's and that they would not be impacted by anything that's now happening. They are very concerned about losing the beautiful golf course, and that putting in that strip mall is going to affect their way of life and their property values and wonders if those things are being considered.

- Dineshwar Ram, Ceres resident

Mr. Ram commented that he lives on Golf Links Road, inside the Golf Course. He complimented the work the Thornberry's have put into the golf course and stated that he hopes to teach his new grandson how to golf right there on River Oaks. He suggested that Mr. Singh take on the liability for the project he wants to build, and everything will be okay; simple as that.

Responses to comments and questions

Chairperson Smith asked Mr. Westbrook, in coordination with the City Attorney and perhaps the applicant's representative, to provide some responses to any of the comments that had been made:

1) Ken Thornberry – his first concern was regarding the reciprocal easement access and its extension across Golf Links Road into the western property.

Mr. Westbrook provided an explanation, stating that as part of a standard Condition of Approval for any commercial project, the City requires reciprocal parking and access. Because the application creates three commercial parcels, staff wants to make sure that someone coming to parcel 1 is able to get to parcel 3. He pointed out a gate on the illustration, noting that it's going to restrict access for people moving from this commercial center onto that easement. He referenced what Mr. Garcia had indicated in his remarks; the homeowners on the golf course, and presumably the golf course as well, would have a little clicker, perhaps like a garage door opener, so they'll be able to access and open that gate. He doesn't envision that people irrespective of the reciprocal parking and

access easement will be recorded on the commercial map; those folks going to that commercial center won't have direct access to the private easement unless they get back to Hatch Road and go around.

2) The next question Mr. Thornberry had was regarding the PUE of the eastern side of the property.

Mr. Westbrook explained that Turlock Irrigation District was routed the project as part of the Conditions of Approval, and the applicant is required to meet the provisions of the Turlock Irrigation District, which he believes Mr. Thornberry "hit the nail on the head." It talks about an easement along that side, and they have to stay a certain distance away from the lines so that it can be inspected. TID has that in their comments back to us and it's included as a Condition.

3) Mr. Thornberry also made a comment regarding the property being "landlocked."

City Manager, Toby Wells remarked this is the first we've heard of the "landlocked" piece. He went on to explain that typically in a development, when you go to subdivide or do something different on the driving range area, you have the ability to move lot lines to provide whatever access necessary. The original concept or one of the concepts that was explored was Boothe Road extending straight through. It would be right on or near that lot line concept, but that was rejected. There are several solutions to that potential for landlocked, but it's relatively easy on their side of things to change. Without development, there's really no landlocked parcel because they use the driving range and that parcel doesn't have a need for access to any particular road. It would be subject to any subdivision or future development where we would have that requirement.

4) There were some questions regarding the additional insured and it being a part of condition of any future ownership.

Mr. Westbrook replied that it doesn't currently suggest that. If it's the Commission's prevue, a Condition could be considered that would suggest that that is transferred based upon whoever owns the commercial piece to ensure that both the City and River Oaks Golf Course and Event Center were continued with the liability insurance in the event of an ownership change. He thinks that's a pretty easy thing to add to a Condition and asked if the City Attorney had anything to add to that.

City Attorney, Nubia Goldstein responded, the only thing would be the life of this commercial business existing, based off of these conditions; it would have to maintain that condition intact. But, to Mr. Westbrook's point, there are ways to add language to the condition to make it a little clearer.

Mr. Wells asked if a deed restriction could be recorded against the property, so that it shows up on the title report; it shows up on the condition. That might be an easier way to do that.

Mrs. Goldstein continued, and so what that would do is that for any potential purchaser in the future, that would appear in the title search, and they would be subject to notification that that exists.

Chairperson Smith clarified, it's a restriction on the ownership.

5) Another thing Mr. Hall brought up, was “road islands.” He talked about there being “road islands” within that intersection, restricting...and she doesn’t see any “road islands.”

Mr. Wells explained that this exhibit was prepared by the applicant before the City wrote the Conditions of Approval. And, in the Conditions of Approval, the median is a requirement of the project, but we need a little more information and study to determine when it’s triggered for that particular location. He also noted that Hatch Road is a six-lane expressway in the City’s General Plan, and we don’t like to put medians in unless we can put them in their ultimate location. The conditions of approval are written around that flexibility to make sure that it’s in the right location for the vehicular traffic and safety.

Mr. Westbrook added and essentially based upon the report, it doesn’t necessarily mean that it’ll be built right away.

6) Ryan Thornberry brought up something about relinquishing the liability of the golf course, but Chairperson Smith thought that was implied with the requirement of the additional insured of both the City and the Golf Course.

Mr. Westbrook remarked that this is one thing that honestly, he can’t technically answer. The reason being is because he hasn’t seen a liability insurance policy. And so, while Mr. Garcia and the project proponent suggest that they’ll do an additional insured, he thinks at this point, since the project proponent has inquired about providing that insurance, that he can actually obtain it. But since Mr. Westbrook hasn’t seen what the policy provisions of an insurance policy would look like, he can’t say if it’s going to adequately cover the golf course or the City.

Chairperson Smith stated that those are the notes that she made from the speakers and asked if there were any others that staff wanted to respond to before she asked Mr. Garcia if he had any additional statements. (There were none at this time.)

Discussion with the Applicant’s Representative

- Max Garcia commented that he’s heard several things here tonight that are puzzling. Everyone is concerned about closing the golf course and he’s as concerned as anybody. He helped Mr. Jim Phipps way back, get this golf course approved. He doesn’t want to see anything ever happen to this golf course. He thinks it’s a great course. He pointed out if this golf course closes, it’s not because of this center. Safety will probably be the first thing that closes it; not on the balls, but traffic, because as the traffic increases on Hatch Road, it will become almost impossible to make a left turn out of that road.

Chairperson Smith asked Mr. Garcia if there was any light he could shed on the insurance that he has indicated that his client will be providing.

- Mr. Garcia replied that they can’t get the insurance until the project gets built. But what he’s been told is that the same insurance that they get on the project, by listing them as an additional insured, they will have the same policy we have. Maybe their attorney will know that. Mr. Garcia said he’s not an insurance broker nor an attorney, but he was told that the client is going to have to get the insurance himself. So, whatever

insurance coverage he has, that's what the golf course will have; that's his understanding.

Chairperson Smith asked the City Attorney one question; does the condition of this project and at what point in the project would that be required to be provided to the City?

- Mrs. Goldstein responded that we can put that into the language; that currently doesn't exist. We can make a reasonable time frame based off of maybe some triggers, so, maybe occupancy permits or whatever staff thinks is appropriate. That's something that we can put into the language of the condition. Mrs. Goldstein commented, to address the liability indemnification a little bit more, liability for golf course incidents can be tricky because technically as an entity that invites people on, the liability of safety and conditions on the golf course itself is inherently indicative or incumbent on the operator. However, if operators and guests/invitees of the golf course, which would be the golfers, accidentally, inadvertently or intentionally hit a golf ball too far and it goes over the fence, that liability isn't automatically on the golf course, and in litigations, facts change, circumstances change, so shifting that liability to one or another party including what some members of the public said the City should take on that liability, is not something that we (the attorneys) would recommend putting in a condition. That is not a condition of approval that would really be appropriate. What has happened and what we have today is really the applicant trying to work with the golf course owner and staff to figure out an appropriate way to address this issue. And so, to Mr. Garcia's point, normally the way the insurance works, is that any additional named insured is covered by the limits for the primary insured party. In this case, when Mr. Singh gets the insurance for this project all teed-up, the additional named insureds will be covered in the same amount on this policy. To be clear, the City is not taking on liability or responsibility.

Mr. Wells added, the timing staff would recommend, and it's not in the condition right now, would be with the issuance of a building permit. That way there'd be some coverage during construction.

Mrs. Goldstein remarked, and what that would mean then is, it's incumbent then on the applicant, to ensure that an insurance policy is in place.

Mr. Wells suggested that we could also condition it on the map because there's a map that needs to be recorded to create these parcels. There are two layers or multiple layers. So, timing wise, the recording of the map, issuing some building permits, or occupancy. Primarily the three triggers that you would have of conditions and timing: map, permit and occupancy.

- Mr. Garcia reviewed the following important things:
 - The Turlock Irrigation District (TID) was brought up. That's a condition of the project. It's Condition 6 on the Tentative Map, that's based on the letter from TID. So, that's being well taken care of.
 - The net again. We are using PGA Standards and their design people to help us. He doesn't know what else they can do. The problem is now, the net that's out there, he thinks it's either 34 or 35 feet high and it hasn't been maintained, and most of those balls are going through that net, not over the net. Besides

that, if the balls are going over to Hatch Road now, he thinks the problem already exists. So, they're trying to stop that from happening by putting up an adequate net. He thinks it sounds like the liability is already there.

- The last thing is that they've already got zoning on this site, to build a building. It's just that they're trying to come up with some better uses.

Commissioner Johnson asked Mr. Garcia, what exactly is a PGA Standard net.

- Mr. Garcia explained there are guidelines that the PGA provides, on how to, so that you can lay out golf courses, design the net heights, distances and whatever, and that they've got professional designers that will help you, noting these are engineers; they're not golfers that provide this information/assistance.

Commissioner Johnson asked, at this point what height does PGA recommend for this net.

- Mr. Garcia explained that they have not gone to that expense to get their people involved. That's what will determine the height of the net. They won't try to guess the height of the net because they're not the experts.

Chairperson Smith advised Mr. Thornberry that she will allow him one more comment if he will come to the podium.

- Ken Thornberry stated that we have an admission that the conditions have not been met, so therefore we can not vote.

Chairperson Smith explained that this item has not been approved so therefore no conditions have been adopted; therefore, there are no requirements for any conditions to have been met. At this point we're considering the land use application request; and that then will determine whether or not the conditions are adopted.

- Mr. Thornberry reiterated that the lot line is here, and we danced around that a little.

Chairperson Smith informed Mr. Thornberry that we already addressed that.

- Mr. Thornberry stated that there will be a landlocked there, although there was denial that the landlocked situation would occur.

Chairperson Smith reminded Mr. Thornberry that we already addressed that issue and asked if he had something new, he'd like to share.

- Merle Jacobs – Ceres resident

Mr. Jacobs stated that he lives on Golf Links Drive inside River Oaks. He asked for clarification about the access points.

Mr. Westbrook explained that the existing access remains. If you were leaving the golf course, and wanted to get to the signal, you could open the gate and come through. He believes the gate would have a "clicker" to allow travel in either direction.

Commissioner Smith commented, and that's optional for homeowners; it's not required.

Mr. Westbrook stated that it's going to be provided by the proponent.

Commissioner Smith agreed and noted that it's optional for the homeowners to use. She also clarified that the residents can go to the end of Golf Links and turn right on Hatch or if they want to try to make the left, they can do that.

The Public Hearing was closed at 7:09 p.m.

Commission discussion ensued, explaining their concerns with questions that were raised this evening and asking for clarification on zoning and permitted uses, and that whatever is decided tonight will be a recommendation to the City Council. This is a land use issue and that is the Planning Commission's responsibility. Given the concerns about safety and the liability, it was suggested that assurance that that protection will be in place is provided.

Mr. Westbrook asked the Chair, if she would like, he tried to take a shot at drafting some language regarding that deed restriction. His recommendation is that it would go with the Parcel Map application. That condition would read the following:

"The applicant shall record a deed restriction on these parcels when the map is created that would ensure that current and future property owners of River Oaks Plaza shall provide, as an additional insured, the River Oaks Golf Course and the City of Ceres on the River Oaks Plaza liability insurance."

Mr. Westbrook asked the City Attorney if that is adequate.

Mrs. Goldstein replied that Mr. Westbrook should've gone to law school.

Mr. Westbrook continued, and the beauty about the final map component is when that gets recorded, that will be prior to issuance of building permits, and so the timing would be in the front.

Commissioner Kachel asked if there were any other adjustments necessary to the condition based on our conversation tonight.

Mr. Wells responded, the timing of the insurance. You've got the deed restriction, so you could add at the same time.

Commissioner Kachel added, when people start building out there, it should probably be in place.

ACTION: It was moved by Commissioner Kachel; seconded by Commissioner Del Nero that the Planning Commission recommend the City Council adopt the Mitigated Negative Declaration prepared for this project per PC Resolution 20-09, recommend the City Council approve the Rezone per findings and conditions listed in PC Resolution 20-10 and the discussion which took place this evening, approval of 18-10 VTPM, subject to City Council adopting Negative Declaration and approving the Rezone per the findings and conditions listed in PC Resolution 20-11 and approval of 18-11 SPSP, subject to the City Council adopting Mitigated Negative Declaration and approving the Specific Site Plan,

per the findings and conditions contained in PC Resolution 20-12, as amended. Motion passed by the following vote:

AYES: Commissioners Del Nero, Kachel, Silveira, Chairperson Smith,
NOES: Commissioner Johnson
ABSENT: None

NEW BUSINESS:

None

PUBLIC MEETING(S):

None

UNFINISHED BUSINESS:

None

MATTERS INITIATED BY PLANNING COMMISSION AND STAFF

None

REPORTS:

Commissioner Kachel thanked staff for reaching out to the Commissioners, on the lead up to this project. A couple of emails and discussion with staff have been helpful to keep focused on it. Thank you very much.

Chairperson Smith agreed.

Director of Community Development, Tom Westbrook announced:

- Lions Club Crab Feed is this Saturday night. Tickets are available from Lions Club members.
- Aegis Treatment Center will be having an Open House at their facility on Mitchell Road on Wednesday March 4th, from 3:30 p.m. to 6:30 p.m. They're inviting people to see the facility and will answer any questions.

ADJOURNMENT:

The Commission adjourned at 7:24 p.m. to the next regularly scheduled meeting of Monday, March 16, 2020.

APPROVED:



Laurie Smith, Chairperson

ATTEST:



Tom Westbrook, Secretary

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