

JT. CITY COUNCIL/CRA MINUTES

May 23, 2011

Mayor Vierra called the joint City Council/CRA meeting to order at 5:30 p.m. with the following in attendance:

ROLL CALL Council Members Durossette, Lane, Ochoa, Mayor Vierra

INVOCATION by Lew Sims, American Legion 12th District Chaplin

PRESENTATIONS OF THE COLORS THE AMERICAN LEGION POST NO. 471

PLEDGE OF ALLEGIANCE

A. Outstanding Public Safety Personnel Recognition.

Acting City Manager/Chief of Police/Public Safety Director, art de Werk, Mayor Vierra along with the American Legion presented the following awards in recognition of outstanding service:

- Police Officer of the Year, Detective Derek Perry
- Reserve Officer of the Year, Brittany England
- Firefighter of the Year, Joseph Spani
- Intern Firefighter of the Year, Tony Nascimento
- Support Person of the Year, Sarah Whittle

B. Presentation to Christian Ochoa, CYC President.

Christian Ochoa thanked the City Council and City staff for their Support of his service for the last three years on the Ceres Youth Commission.

C. Recognition of Street Faire Committee.

Mayor Vierra presented certificates to the members of the Street Faire Committee and thanked them for their volunteerism and service.

D. Proclamation Declaring the Week of June 11 – 17, 2011 United States Army Week.

E. Declaring June 2011 as Disability Awareness Month in Stanislaus County.

APPROVAL OF THE MINUTES of the regular meeting of April 25, 2001. (Vice Mayor Lane excused)

MOTION: Approval the minutes of the regular meeting of April 25, 2001. (Vice Mayor Lane excused)

MOVED: Moved by Durossette/seconded by Ochoa

VOTE: **Motion passed with Vice Mayor Lane abstaining (3/0)**

CITIZEN COMMUNICATIONS

- Len Shepherd , resident encouraged those in attendance to come to every City Council meeting. Additionally Mr. Shepherd congratulated all of the recipients of the Public Safety awards.
- Shawna Marshal, resident, thanked everyone who accepted a poppy in honor of soldiers who have given the ultimate sacrifice while serving our country.
- Charles Duvall, Ceres Library Branch Manager, spoke about the Libraries current summer program “Stanislaus Reads” and encouraged all to participate.

APPROVAL OF AGENDA AS POSTED (OR AMENDED) AND CERTIFICATION OF POSTING

MOTION: Approval the agenda as posted and certification of posting.

MOVED: Moved by Lane/seconded by Durossette

VOTE: Motion passed unanimously (4/0)

APPOINTMENTS TO BOARDS/COMMISSIONS – None.

CONFLICT OF INTEREST DECLARATION – None.

Mayor Vierra reviewed the Rules of Order for the meeting and requested that everyone be respectful.

CONSENT CALENDAR

1. General Correspondence – **Information Only**
 - a. Public Works Monthly Report for April, 2011.
 - b. April 2011 Construction Activity and Revenue Generation Report.
2. Register of Audited Demands for period covering May 2 – 12, 2011.
3. Cancellation of the June 13, 2011, City Council Meeting.
4. Authorize the Mayor to Sign Letter Opposing SB 474 (Evans) Commercial Construction Contracts: Indemnity.
5. **Resolution No. 2011- 60** calling and giving notice of the holding of a general municipal election to be held on Tuesday, November 8, 2011, for the election of certain officers as required by the provisions of the laws of the State of California relating to general law cities.
6. **Resolution No. 2011-61** approving Amendment #1 to the Maintenance Contract with Howard Training Center to perform landscape maintenance services to City Right of Ways, Center Medians, Roundabouts, Planter Strips and other City Property in Downtown.
7. Setting a Public Hearing for June 27, 2011 to consider a proposal for an Annexation, Prezoning, General Plan Amendment, Specific Plan and Finance Plan for the proposed West Landing Specific Plan project along with the certification of an Environmental Impact Report. The proposal includes the annexation and development of an area comprising about 960 +/-acres bound by Whitmore Avenue on the north, Ustick Road on the west, Service Road on the south and the Union Pacific Railroad tracks on the east.
8. **Waive Second Reading and Adopt Ordinance No. 2011-1000** approving the Prezone (PZ 10-03) involving seven parcels at the northwest corner of Hatch Road and Central Avenue to change the zone designation from Prezone – Single Family Residential (P, R-1) to Neighborhood Commercial (C-1) for two of the seven parcels that total 1.74 acres with the remaining parcels retaining a Single Family Residential (R-1) designation.
9. **Resolution No. 2011-62** authorizing Staff to Submit an Application to the U.S. Department of Justice for a three-year COPS Grant beginning July 1, 2011.

MOTION: Approval Consent Calendar Items No. 1a, 1b, 2-9 as recommended by staff.

MOVED: Moved by Lane/seconded by Ochoa

VOTE: Motion passed unanimously (4/0)

UNFINISHED BUSINESS

10. Review of current Redevelopment Agency projects, consideration and approval of additional Redevelopment Agency projects, commitment of funds for said projects, and adoption of all resolutions necessary for Agency approval and implementation.

Nothing to Report.

PUBLIC HEARING

11. Public Hearing – to consideration an appeal from Citizens for Ceres regarding the Planning Commission approval of a Conditional Use Permit (07-31 CUP) and Vesting Tentative Subdivision Map (VTSM 07-32) for the Mitchell Ranch Center project located at the northwest corner of Mitchell and Service Roads.

Mayor Vierra reviewed the rules and procedures for the Public Hearing.

Tom Westbrook, Planning/Building and Housing Division Manager, presented a staff report to Council.

On April 14, 2011, the City received an appeal from the “Citizens of Ceres” . The appeal was in response to various Planning Commission actions including an Environmental Impact Report, an approved Conditional Use Permit, a Vesting Tentative Subdivision Map and their associated resolutions as they relate to the Mitchell Ranch Project.

The Planning Commission met twice on this project at which time there was extensive public comment received at both Planning Commission meetings; the first being on February 22, 2011 and the second being on April 4, 2011. Public testimony included those speaking both in support and against the project.

After considering all public testimony the Planning Commission considered the project and took action by a 3-1 vote (Commissioner Kline – No, Commissioner Smith – absent) in favor of approving the Conditional Use Permit and Vesting Tentative Subdivision Map and certifying the Environmental Impact Report for the project. The Commission’s action was based on complete review of the merits of the project and the full record of testimony and materials, and specifically included the following reasons for override of significant environmental impacts:

- The project would generate sales tax revenue for the City.
- The project would increase the City’s employment base and create diverse employment opportunities for City residents.
- The project would provide buffers and transitions between commercial uses and adjacent residential uses.
- The project would provide an attractive gateway development to the City.
- The project would feature numerous energy conserving measures.
- The project would provide attractive landscaping providing amenities onsite and as viewed from adjacent streets.
- The project would fill a General Plan goal of creating a regional commercial center that provides quality goods and services.
- The project would increase retail activity in the project area.
- The project would be a good member of the community.

- The project would contribute to the physical identity of the area and result in improvements to a major corridor.

The Commission noted that the General Plan and Mitchell Road Corridor Specific Plan designations for this project site are Regional Commercial. The proposed project is a regional commercial project and is consistent with the General Plan and Mitchell Road Corridor Specific Plan land use designations.

Staff is recommending that Council deny the appeal and uphold the Planning Commission decision.

7:22 The Public Hearing was opened

Mark Teague, Environmental Consultant for PMC, addressed Council regarding the Environmental Impact Report (EIR) and the process by which the EIR is developed. The EIR highlights impacts a project will have on a community and possible mitigation measures to address those impacts. The Statement of Overriding Conditions which is the statement that outlines impacts which Council needs to consider and decide if they feel that the benefits of the project outweigh the impacts.

Emilia Newfield, Senior Manager for Wal-Mart Public Affairs, addressed Council. Ms. Newfield outlined the benefits the project will bring to the community, highlighting jobs and sales tax revenue. She further discussed Wal-Mart’s plan for re-tenanting the existing store and provided a list of possible tenants that would be a good fit for the old building.

Howard Harden, Project Engineer, discussed the site plan in detail. Mr. Harden stated that the Wal-Mart Supercenter plan calls for 10 other retail shops totaling 114,162 square feet, including three other major tenants and four smaller shops as well as a stand-alone retail building and two to three new restaurants. The entire project will include 304,000 square feet of retail and the parking lot would accommodate 1,200 vehicles and include pedestrian pathways as well. Mr. Harden stated that the center would not be a shopping center but rather a lifestyle center.

Sherry Jacobson, representing “Citizens For Ceres”, addressed Council stating that Wal-Mart does not provide an unfilled need in Ceres. Moving the store will not mitigate our retail leakage problem. The site should be improved with retail that does not currently exist in town. Ms. Jacobson continued, rebutting several statements made by Ms. Newfield. Ms. Jacobson urged Council to approve the appeal and deny the project.

THOSE SPEAKING OR SUBMITTING IN WRITING THEIR SUPPORT OF THE APPEAL TO THE PROJECT:

- | | | |
|--------------------|-------------------|---------------------|
| ○ Domingo Irazarri | ○ Gary Rambaran | ○ Marsha Harris |
| ○ Joshua Kain | ○ Billy Parmer | ○ Florence Cardenas |
| ○ Bob Guitierrez | ○ James Vineyard | ○ Tony Cardenas |
| ○ Jeremiah Parrott | ○ Lee Brittell | ○ Geri Ottersbach |
| ○ Rick Rushton | ○ Chris Designori | ○ Andy Azevedo |
| ○ Jim Bergamashi | ○ Don Donaldson | |

The concerns include:

- Traffic issues including freeway on and off ramps as well as surface streets.
- Issues relating to the potential negative economic effects of the project, including the potential for job loss, store closure, and the effect of the current Wal-Mart building if it remains vacant.

- Issues relating to the effect of the project on the neighborhood to the north, across Don Pedro Road, particularly including noise and truck traffic issues.
- Request for redesign of the project to reorient Major 1 (Wal-Mart) toward Mitchell Road and Service Road and remove access from Don Pedro Road, separating the neighborhood to the north from the project with a solid wall and landscaping.

THOSE SPEAKING OR SUBMITTING IN WRITING THEIR OPPOSITION OF THE APPEAL:

- | | | |
|---------------------|----------------------|--------------------|
| ○ Lampon Sengsoury | ○ Barbara Cunningham | ○ Armando Ramierez |
| ○ Marla Caulkins | ○ James Casey | ○ Matt Bence |
| ○ David Paz | ○ Arturo Lopez | ○ Julie Norton |
| ○ Richard Mangueros | ○ Maria Aguilar- | ○ Karen Mosser |
| ○ Jo Mangueros | Mondragon | ○ Gladys Boland |
| ○ Blendine Ashour | ○ Richard Wardwell | ○ James Wysong |
| ○ Maria del Carmen | ○ Len Shepherd | ○ Charlie Gross |
| Dorantes | ○ Bertie Plante | ○ Mary Alton |
| ○ John Tomlin | ○ Mike Lowe | ○ Julia Fatheree |

Among the reasons stated were:

- The contributions that Wal-Mart made to community organizations.
- The desirability for additional shopping/eating opportunities in the city, including the one-stop shopping that the Wal-Mart store would provide.
- Issues relating to potential positive economic effects of the project including the potential for additional sales tax dollars and jobs that could accrue to the City.

9:13 p.m. There being no one else wishing to speak, the Public Hearing was closed.

Elizabeth Anderson, Sheppard Mullin, representing Wal-Mart, requested that Council remove the condition of approval regarding the limitation on the hours of deliveries. If Council should not agree to remove the condition of approval Wal-Mart would like to propose a compromise that will limit delivery hours from 11:00 p.m. – 5:00 a.m.

Ms. Anderson then discussed many of the allegations made by the “Citizens For Ceres” including the accusation that the old store will remain vacant and become an eyesore. Ms Anderson stated that one of the Conditions of Approval requires Wal-Mart to have a Sales Strategy Plan for the old building. She further clarified that Wal-Mart does not own any vacant buildings in California.

Ms. Anderson also discussed the Urban Decay analysis with regard to blight which had also been raised by the “Citizens For Ceres”. Ms Anderson stated that CEQA is not concerned with blight for Redevelopment Purposes and that this issue has already addressed by the City Attorney.

Bret Jolley, representing “Citizens For Ceres” stated that his clients are not opposed to Wal-Mart only opposed to the Wal-Mart project on this site. Mr. Jolley restated concerns regarding the impact on traffic, air quality, and agricultural land. He argued that he did not feel the City can make the findings to approve the Conditional Use Permit.

Mr. Jolley then presented additional information to staff which staff requested time to review so that could make comments.

City Attorney, Mike Lyons, stated that the meeting needed to be continued to future date and time to give staff the additional time required to review Mr. Jolley's new documentation.

In addition to the new documentation submitted by Mr. Jolley, Council also requested additional information on the following:

With regard to the new proposed site:

- Can the project be modified to limit truck access from Service Road instead of Don Pedro Road?
- A more thorough study/update of the EIR's Economic Impact Study. The price per square foot in the EIR is based on the 2006 Nation Average.
- When will the additional pads be sold? Will Wal-Mart restrict who moves into the development?
- One left turn lane is insufficient for the northbound Mitchell Road approach to the Service/Mitchell interchange. Need to make improvements.
- Of the 85 new jobs created by the new Super Wal-Mart Store, how many will be full-time/part-time employees. Will the employees have benefits?

With regard to the existing store site:

- Requiring Wal-Mart to do a sales strategy plan for the re-tenanting of the existing building is not enough. Can we impose date/deadlines/penalties? Provide bullet points of what will be included in the strategy plan and what would the alternatives be if the plan is unsuccessful.

Staff stated that they feel confident in the EIR and the information contained therein.

The Mayor briefly discussed the Development Agreement which was originally drafted however Wal-Mart did not want to enter into the Agreement. He requested an explanation from Wal-Mart staff as to why they did not move forward with the Development Agreement.

Wal-Mart staff responded that they felt some of the conditions imposed by the City were not legal so they did not want to enter into the Agreement; however, all of the conditions in the original Development Agreement are now either part of the Conditions of Approval, or mitigation requirements in the EIR.

9:40 p.m. Council took a short recess to allow staff time to discuss the amount of time necessary to respond to Mr. Jolley's document and Council's additional request.

9:46 p.m. Mayor Vierra reconvened the meeting.

Staff requested a continuance to the meeting of July 11, 2011 at 5:30 p.m.

MOTION: Continue to July 11, 2011, Item 11 – Public Hearing to consider an appeal from Citizens for Ceres regarding the Planning Commission approval of a Conditional Use Permit (07-31 CUP) and Vesting Tentative Subdivision Map (VTSM 07-32) for the Mitchell Ranch Center project located at the northwest corner of Mitchell and Service Roads based on the new information received at this meeting and additional information requests from Council.

MOVED: Moved by Lane/seconded by Ochoa

VOTE: **Motion passed unanimously (4/0)**

NEW BUSINESS – None.

COUNCILMEMBER REFERRALS - None

REPORTS – Nothing to Report.

There being no further business, Mayor Vierra adjourned the meeting at 10:05 p.m.

Chris Vierra, Mayor

Cindy Heidorn, CMC, City Clerk