

CITY COUNCIL MINUTES

September 12, 2011

Mayor Vierra called the September 12, 2011 City Council Meeting at 7:00 p.m. with the following in attendance:

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

INVOCATION by Pastor Mike Brinton, City of Ceres

PLEDGE OF ALLEGIANCE to the flag led by Mayor Vierra

APPROVAL OF THE MINUTES of the regular meetings of July 11, July 25 and August 8, 2011 and Study Session of July 25 and August 8, 2011.

MOTION: Approve the minutes of the regular meetings of July 11, July 25 and August 8, 2011 and Study Sessions of July 25 and August 8, 2011.

MOVED: Moved by Durossette/seconded by Lane

VOTE: **Motion passed Unanimously. (4/0)**

CITIZEN COMMUNICATIONS

Lou Toste, representing Ceres Youth Soccer commented on the beautiful new playground that just opened at Ceres River Bluff Regional Park. He further stated that there needs to be more parking at the facility and there are not enough fields to accommodate the number of children who would like to participate in the soccer program.

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

Mayor Vierra requested that Item No. 18 (NEW BUSINESS) be heard before the Public Hearings.

MOTION: Move Item No. 18 (NEW BUSINESS) ahead of Items No. 15, 16 and 17.

MOVED: Moved by Lane/seconded by Ochoa

VOTE: **Motion passed Unanimously. (4/0)**

MOTION: Approve the Agenda as amended and certification of posting

MOVED: Moved by Lane/seconded by Ochoa

VOTE: **Motion passed Unanimously. (4/0)**

APPOINTMENTS TO BOARDS/COMMISSIONS – None.

CONFLICT OF INTEREST DECLARATION – Mayor Vierra declared a conflict with Item #17. His employer, Stantec Consulting, has done work for the applicant in the past and is currently in discussion for new projects. While Mayor Vierra has not been directly involved in any of the past projects, in the future there is a likelihood that this may change. Mayor Vierra consulted both with City Attorney Lyons and with the FPPC on this matter and while they have not indicated that he has a conflict, they have recommended that it is prudent to err on the side of caution and suggested that the best course of action would be to remove himself from the vote on that item.

CONSENT CALENDAR

1. General Correspondence – **Information Only**
 - a. IT Monthly Report for July, 2011.
 - b. Public Works Dept. Monthly Report for July, 2011.
2. Register of Audited Demands for period covering August 15-24, 2011.
3. Set Public Hearing Date of September 26, 2011 to Accept Director of Public Safety Recommendation for 2011/12 Supplement Law Enforcement Services Fund Expenditures.
4. **Resolution No. 2011-117** rejecting the claim of Elvia Salas De Gonzalez.
5. **Resolution No. 2011-118** approving a FY 2011/12 Budget amendment to appropriate \$20,000 from Fund 273 StanCOG Local Transportation Reserves to repair sidewalks to be in compliance with the American with Disabilities Act (ADA).
6. **Resolution No. 2011-119** authorizing purchase, through the CMAS program, of a Groundsmaster Lawnmower from Turf Star for use by the Public Works Department.
7. **Resolution No. 2011-120** authorizing purchase, through the CMAS Program, of a John Deere Skid Steer Loader from Pape Machinery for use by the Public Works Department.
8. **Resolution No. 2011-121** authorizing the signing of the Master Agreement with Pacific Gas and Electric for the Energy Saving LED Street Light Project.
9. **Resolution No. 2011-122** authorizing an agreement designating Stanislaus County as the fiscal agent for administration of the Strategic Growth Council's Sustainable Communities Planning Grant and Incentives program Proposition 84 grant for the Stanislaus County Regional Sustainability Toolbox 2011.
10. **Resolution No. 2011-123** authorizing acceptance of a U.S. Department of Justice, Bureau of Justice Assistance – 2011 Edward Byrne Memorial Justice Assistance Grant (JAG) and approving a FY 2011/12 Budget Amendment to appropriate those funds.
11. **Resolution No. 2011-124** approving a consultant Agreement with Hawkins Associates Engineering, Inc. to design Hatch Road/T.I.D. Lateral #1 Bicycle & Pedestrian Pathway, Phase IV Project CML-5241(037) and authorizing the Acting City Manager to Execute the Agreement. PULLED FOR FURTHER DISCUSSION.
12. **Resolution No. 2011-125** awarding the Engineering and Design Services contract for the Well 32 Chemical Feed and Solids Handling Facility Upgrade project to Water Works Engineers.
13. **Resolution No. 2011-126** authorizing payment to Pacific Design Associates for the additional architectural services performed during the Costa Ball Fields Renovations Project.
14. **Resolution No. 2011-127** adopting Administrative Regulations, Setting Fees and Establishing other regulations applicable to the Costa Ball Field Complex.

MOTION: Approve Consent Calendar Items 1-10, and 11-14 as recommended by staff.

MOVED: Moved by Lane/seconded by Ochoa

VOTE: **Motion passed Unanimously. (4/0)**

CONSIDERATION OF ITEM(S) REMOVED FROM THE CONSENT CALENDAR

- 11. Resolution No. 2011-124** approving a Consultant Agreement with Hawkins Associates Engineering, Inc. to design Hatch Road/T.I.D. Lateral #1 Bicycle & Pedestrian Pathway, Phase IV Project CML-5241(037) and authorizing the Acting City Manager to Execute the Agreement.

Councilmember Durossette asked if Hawkins Associates Engineering Inc., are a local firm.

Staff confirmed that they are a local firm

MOTION: Approve **Resolution No. 2011-124** as recommended by staff.

MOVED: Moved by Durossette/seconded by Ochoa

VOTE: **Motion passed Unanimously. (4/0)**

- 18. Resolution No. 2011-130** approving a Retainer Consultant Services Agreement with O'Dell Engineering, Delamare-Fultz Engineering and GDR Engineering Inc. for General Engineering Services for a term of one year, and authorizing the Acting City Manager to execute the agreement. (T. Wells)

Toby Wells, Engineering Director/City Engineer, presented the staff report to Council stating that the City currently has approximately eight to ten CIP projects in the next year that will require General Engineering Services. In order to be more efficient and respond more quickly to the large number of projects, it is recommended to contract with several Consultants on a retainer basis in order to expedite the process. This will allow staff to react more quickly to the required timing of the planned projects and to conduct the RFP process one time for approximately ten projects, rather than repeating the same process ten times.

The Requests for Proposals (RFP) was sent to a total of ten local engineering firms. Eight proposals were received on August 25, 2011. The proposals were thoroughly reviewed and a ranking was completed using the categories of professional qualifications, local agency experience, staff competence/abilities, accessibility, responsiveness and RFP quality. Based on the number of projects upcoming, it is recommended to contract with the top three firms of GDR, Delamare-Fultz and O'Dell.

For each project, a preliminary scope will be sent to the three firms selected. The individual firm would then submit a scope, schedule, and price for the individual project and the City Engineer will make the final determination for each project and execute an amendment to the Retainer agreement to include the specific project.

The agreements are for a term of one year, with options to extend for two additional one year terms.

MOTION: Approve **Resolution No. 2011-130** as recommended by staff.

MOVED: Moved by Lane/seconded by

VOTE: **Motion passed Unanimously. (4/0)**

UNFINISHED BUSINESS – None.

PUBLIC HEARING

15. Public Hearing to consider **Resolution No. 2011-128** recommending that the Stanislaus County Board of Supervisors Approve the FY 2010/11 Community Development Block Grant (CDBG) and Emergency Shelter Grant (ESG) Consolidated Annual Performance and Evaluation Report (CAPER).

Bryan Briggs, Economic Development/Redevelopment Manager, introduced the item to Council stating that the Stanislaus County Consortium, consisting of the cities of Oakdale, Patterson, Newman, Ceres, Waterford and the County receive annual allocations of funds for CDBG and Emergency Shelter Grant (ESG) activities.

A requirement of the program is for the administering jurisdiction, in this case Stanislaus County, to prepare a Consolidated Annual Performance Evaluation Report (CAPER), make it available for a fifteen -day public review period, conduct a public hearing and submit the CAPER to the Department of Housing and Urban Development (HUD) for review.

The City has allocated \$472,942.20 for infrastructure improvements including, curb, gutter and sidewalks along Fourth Street from Whitmore Avenue to the Ceres High School property, Fifth Street from Whitmore Avenue to Caswell Avenue, Sixth Street from Whitmore Avenue to Caswell Avenue, Ninth Street from Roeding Road to Lawrence Street and Lawrence Street from Ninth Street to Tenth Street.

Countywide, the CAPER program has been very effective in providing programs and services for low- income persons in Stanislaus County. In Ceres the program has been used over the last few years to provide infrastructure improvements such as curbs, gutters and sidewalks in predominantly low-income census tracts.

8:23 p.m. Mayor Vierra opened the Public Hearing

8:23 p.m. There being no one wishing to speak the Public Hearing was closed.

MOTION: Approve **Resolution No. 2011-128** as recommended by staff.

MOVED: Moved by Durossette/seconded by Ochoa

VOTE: Motion passed Unanimously. (4/0)

16. Public Hearing to consider **Resolution No. 2011-129** amending Resolution No. 2002-83 Schedule of Fees and Services Section III, Leisure and Cultural Services to adopt a new schedule of Fees and Charges for City Facility and Park Rental Rates.

Traci Farris, Recreation Supervisor, gave a brief overview of the Fees and Charges for City Facilities and Park Rentals Rates.

8:25 p.m. Mayor Vierra opened the Public Hearing

8:25 p.m. There being no one wishing to speak, the Public Hearing was closed.

MOTION: Approve **Resolution No. 2011-129** as recommended by staff.

MOVED: Moved by Durossette/seconded by Lane

VOTE: Motion passed Unanimously. (4/0)

8:26 p.m. Mayor Vierra excused himself from the meeting due to a conflict with the final item on the agenda.

17. 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.) *Continued from 8/22/11.*

Tom Westbrook, Planning/Building and Housing Division Manager, introduced the item. Mr. Westbrook stated that at the meeting of August 22, 2011 the City Council continued consideration of the appeal to the Planning Commission's decision approving the Mitchell Ranch Center to September 12, 2011. This continuance was for the purpose of further discussion between the City's team and the applicant regarding the proposed Reuse Strategic Plan.

The conditions of approval provided with the Planning Commission action regarding the Mitchell Ranch Center provide that prior to development of the center, a plan for the sale and reuse of the existing Wal-Mart store on Hatch Road must be submitted and approved by the Council. The City Team consisting of Vice Mayor Lane and staff requested modifications to the proposed Reuse Strategic Plan. In response, the applicant has provided a modified proposal. The applicant requests, and the staff recommends that the Council approve the modified proposal in lieu of requiring future consideration and approval of such a plan.

The current proposal modifies the previous version to accomplish three purposes:

1. Make explicit the mitigation requirement that the supplemental maintenance agreement will apply to any subsequent owners of the existing 1670 Mitchell Road Wal-mart property. This modification will also be reflected in a minor modification to CUP condition B.17 as follows:
 17. "The project Developer and any subsequent owner will be subject to the Vacant Building Monitoring Fee (Ceres Municipal Code Section 9.40) once the existing Wal-Mart building at 1670 Mitchell Road has been vacated. Prior to the earlier of the issuance of the building permit or within thirty (30) days of the existing Wal-mart building at 1670 Mitchell Road being vacated, the Developer shall enter into a supplemental maintenance agreement with the City regarding the existing Wal-mart site at 1670 Mitchell Road to ensure property maintenance until the site is reoccupied, providing that the Developer will maintain said site free of visual indications of blight and that the City will be compensated for abatement of visual indications of blight on the property if and when the Developer fails to adequately maintain the property in good condition and abate elements of deterioration pursuant to receiving notice from the City, including:
 - Removal of graffiti and all signage from the building and site
 - Repair broken windows and exterior structural elements
 - Maintenance of existing landscaping
 - Frequent clean up of litter on the property
 - The supplemental maintenance agreement will include provisions securing performance and shall be accompanied by security in a form acceptable to the City Attorney in the amount of \$25,000.
2. Provide more definition to the types of businesses that Wal-Mart might restrict from use of the existing 1670 Mitchell Road Wal-Mart property.
3. Provide, as a goal, that the City and Wal-Mart will seek an anchor tenant as a part of future reuse of the site.

Also, if Council would like to implement the Reuse Strategic Plan as requested by Applicant and Staff, this would include the revision of CUP condition B.18 as follows:

18. "The applicant shall implement the Reuse Strategic Plan dated September 12, 2011, attached hereto as Exhibit "A"."

APPELLANT:

Sherri Jacobson, Representing Citizens for Ceres, stated that her organization opposes the project. She requested that the re-use plan be made part of the EIR and CEQA mitigation measures. Ms. Jacobson stated that by doing so, she feels the City will be better protected. She further stated that Wal-Mart should pay a fee to the Redevelopment Agency citing the new Super Wal-Mart project in Lodi as an example.

Brett Jolley, Representing Citizens for Ceres, discussed a letter he submitted today to staff regarding a failed motion from the meeting of August 22, 2011. Mr. Jolley stated that in his opinion, because the motion to approve the project failed to pass by a majority vote, the project was effectively denied and the Council lacks jurisdiction to hold any further proceedings on the Mitchell Ranch Project.

Mr. Jolley also discussed the aspect of the re-use plan being incorporated as a part of the mitigation measures of this project.

Lastly Mr. Jolley stated that he has been approached by environmental groups to provide money to cover the City's costs should they be sued by Wal-Mart for denying the project.

City Attorney Mike Lyons made the following statement:

“The City has received correspondence from Attorney Brett Jolley dated September 12, 2011, contending that the City Council lacked authority to continue this matter from the August 22nd hearing to tonight's meeting.

Mr. Jolley contends that since the motion at the last meeting to approve the project failed by a vote of two in favor/one opposed, that the action was a denial of the EIR Certification and thus a denial of the Project, and the Council lacked authority to continue the matter thereafter.

It is my opinion that no action was taken by the City Council to approve or deny the project at the meeting of August 22, 2011.

California Gov't Code §36936 requires that all Council Resolutions must be approved by a majority vote of the total membership of the Council. Since the Council only has four members at this time and one member is disqualified with a conflict, all three remaining members must vote for or against a resolution. No action is taken on any resolution without the required three affirmative votes.

At the meeting of August 22nd a vote was taken on one of two resolutions required to approve the project. The vote taken on the resolution resulted in no action on the matter for a lack of the three votes.

It appeared that there would not be sufficient votes to either approve or deny the project. In effect, no action was taken on the project to approve or deny.

The Council further discussed the matter and it appeared that if changes were made to the proposed re-use plan for the existing Wal-Mart site, such changes might facilitate a decision regarding the project.

The Council therefore exercised its authority to continue the matter to tonight's meeting for further consideration of the re-use plan and project approval or denial.

The cases cited by Attorney Jolley address only the CEQA requirement that recertification of an EIR and project approval upon appeal from a Planning Commission Action requires an affirmative vote of the Council.

The issue here is whether action was taken on the project and the answer is no.”

8:58 p.m. Vice Mayor Lane Opened the Public Hearing

Those Speaking in Favor of the Re-Use Plan

Mary Alton, Resident
Gary Rambaran, Ceres Business Owner
Karen Mosser, Resident
Charles Hendrickson, Resident
Julie Norton, Resident
Nina Rameron

Those Speaking Opposed to the Re-Use Plan

Geri Otterbach, Resident
Marsha Harris, Resident
Albert Puentes, Resident
Dan Thatcher, Resident
Stewart Kline, Resident
Floren Bau, Resident
Joshua Kane, Resident

9:22 p.m. There being no one else wishing to speak, the Public Hearing was closed.

Council discussed the re-use plan which has been proposed by staff.

Councilmember Durossette suggested that the Citizens for Ceres and Wal-Mart and Staff work together to get the old building re-tenanted as soon as possible. He further stated that he felt we need to move forward on the project.

Councilmember Ochoa stated that he felt that the new super center will bring economic vitality to Ceres by attracting new businesses to Ceres. Unfortunately, we cannot please everyone. He further commented that he would like Staff to continue working for solutions to decrease traffic on Don Pedro Road.

Vice Mayor Lane stated that at the last meeting he felt the language in the re-use agreement was not strong enough. The re-tenanting and maintenance language now, is right out of the EIR. Wal-Mart has shown that they want to be a good neighbor. We don't want to kick them off that corner, we want Wal-Mart to help us market that property and find good tenants. Perhaps Staff could plan a future Study Session with Wal-Mart and Community members to help plan that corner.

MOTION: Approve **Resolution No. 2011-131** certifying an Environmental Impact Report and Adopting Findings Concerning Mitigation Measures, Findings Concerning Alternatives, A Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program for the Mitchell Ranch Center Project with the following changes:

- a. The fourth (4th) paragraph on page 2 is amended to reflect that the matter was duly considered at the public hearing held on May 23, 2011, which public hearing was continued to July 11, 2011, August 22, 2011, and September 12, 2011.

MOVED: Moved by Durossette/seconded by Ochoa

VOTE: Motion passed with Mayor Vierra abstaining. (3/0/1)

MOTION: Approve **Resolution No. 2011-132** Denying an appeal by “Citizens for Ceres” to the action of the Planning Commission Certifying an Environmental Impact Report and Approving a Conditional Use Permit and Vesting Tentative Subdivision Map for the Mitchell Ranch Center Located on the West Side of Mitchell Road From Service Road to Don Pedro Road with the following changes:

- a. The sixth (6th) paragraph on the first page is amended to reflect that the matter was duly considered at a public hearing on May 23, 2011, which public hearing was continued to July 11, 2011, August 22, 2011, and September 12, 2011.
- b. On page 2 add new paragraphs 3, 4, and 5 to read as follows:
 3. “Condition number B.17 in Exhibit A to Planning Commission Resolution No. 2011-04 approving the Conditional Use Permit is modified to change the first phrase of the first sentence to read: “The project developer and any subsequent owner will be subject to the Vacant Building Monitoring Fee...”. The Condition is further amended to add the following sentence to the end of the Condition: “The project Developer shall provide in any transfer or sale of property that the buyer will assume the supplemental maintenance agreement, which shall run with the land.”
 4. “Condition number B.18 in Exhibit A to Planning Commission Resolution 2011-04 approving the Conditional Use Permit is replaced to state: “The applicant shall implement the Reuse Strategic Plan date September 12, 2011, attached hereto as Exhibit “A”.
 5. “Condition C.7 in Exhibit A to Planning Commission Resolution 2011-04 approving the Conditional Use Permit is replaced to state: “The Developer shall provide elevations for Majors 2, 3, and 4 and all Shops buildings consistent with the plans submitted by Greenberg Farrow dated November 22, 2010 for Majors 2, 3, 4 and all Shops. Development of Major 1 shall be consistent with elevations for Major 1 submitted by BRR Architects dated July 15, 2011.

MOVED: Moved by Ochoa/seconded by Durossette

VOTE: Motion passed with Mayor Vierra abstaining. (3/0/1)

COUNCILMEMBER REFERRALS

REPORTS – None.

9:45 p.m. There being no further business, Vice Mayor Lane adjourned the meeting.

/s/ Chris Vierra, Mayor

/s/ Cindy Heidorn, CMC, City Clerk