

CITY OF CERES  
PLANNING COMMISSION  
MINUTES

October 3, 2011

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

**ROLL CALL:**

**PRESENT:** Del Nero, Kachel, Kline, Molina, Smith

**ABSENT:** None

**ALSO PRESENT:** Deputy City Manager Sheila Cumberland, City Attorney Michael Lyions, Planning, Building & Housing Division Manager Tom Westbrook, Director/City Engineer Toby Wells, Associate Planner James Michaels, Secretary Sally Estrada

**PLEDGE OF ALLEGIANCE:**

The Pledge of Allegiance was led by Chairperson Kachel.

**APPROVAL OF MINUTES:**

1. It was moved by Commissioner Molina; seconded by Commissioner Kline, to approve the minutes from the September 19, 2011 meeting; Carried 4/0; Commissioner Smith abstained.

**CONFLICT OF INTEREST DECLARATION:**

None

**CITIZEN COMMUNICATION:**

None

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

It was moved by Commissioner Kline; seconded by Commissioner Molina, to approve the agenda as posted. Carried 5/0.

**CONSENT CALENDAR:**

None

**PUBLIC HEARING(S):**

Mr. Westbrook stated that staff recommends that the Commission address Agenda Item 3 first and then follow with Item 2.

It was moved by Commissioner Molina to modify the order of the agenda; seconded by Commissioner Kline. Carried 5/0.

3. Review of Conditional Use Permit Number 08-23 for the operation of a scrap metal recycling facility located at 1015 Montclair Drive.

Associate Planner, James Michaels presented the Staff Report.

**Commissioners Questions:**

- Commissioner Kline inquired if the applicant had Conditional Use Permits for two locations.

Mr. Michaels explained that the applicant only has one Conditional Use Permit for the facility on Montclair Drive. The other two locations, at Angie Avenue and Nicholas Way were sites that he occupied back in 2007.

Chairperson Kachel reminded the Commission that tonight is not a hearing to revoke the permit, but to consider whether there's enough evidence to put the item on a public hearing to consider revocation.

- Commissioner Del Nero asked if the Planning Commission decides that here or does it go to City Council.

Mr. Westbrook clarified that the direction to staff, if it were to proceed to revocation; we would bring it back to this body. It does not go to the City Council.

**The public hearing was opened at 6:07 p.m.**

- Michael Marchant - 1015 Montclair Drive, Ceres, CA

Mr. Marchant stated that under his understanding, there's a lot of confusion with not understanding permitting and not understanding any of the legal side.

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He explained that every time he's been asked to do something, he's done what has been requested. He doesn't understand that on one side in the same area, certain people are allowed certain things versus other people that are not. He has brought it to the attention of multiple people. Their response is that he's under a permit, and basically that's everyone's explanation.

To his understanding, there's only been one complaint, and that's from the people behind him, who actually live at their facility. That has been brought to the attention of the Planning Department, the Fire Chief, Mr. Nicholes and Code Enforcement for probably well over a year. He keeps hearing, "We'll address it." Nothing has been addressed.

He does agree that they've been non-compliant. At this point, they have downsized drastically. They went from 14 employees down to 3, to try to meet everyone's expectations. There's been a tremendous drop in revenue.

As far as the taxes being in compliance, he submitted a copy of his check dated December 31, 2010 to the Finance Department; they are looking into it. He has never received a letter from the City of Ceres, stating that they had not received anything. When he received the paperwork, this was the first to his knowledge.

Commissioner Kline asked if that check has cleared.

Mr. Marchant responded that he has his bookkeeper coming in tomorrow, to follow up on all of this. As soon as he heard, he made a copy of the check and dropped it off at the Finance Department. They said they were going to look into it as well.

Commissioner Smith asked when he found out that staff was taking action to revoke his Conditional Use Permit.

Mr. Marchant said he just found out last Wednesday. He reported that he made several calls to Mr. Michaels last week and finally got a call back from him Friday afternoon at 5:11 p.m.

Commissioner Smith asked for clarification from Mr. Marchant, that he has been paying his taxes on time.

Mr. Marchant responded that they might be behind this year, but last year's taxes have been taken care of. He also stated that he believes if he was that far behind (9 months), that someone would've notified him. He has not received any notification of it.

Commissioner Smith verified that Mr. Marchant has spoken with Sheila Cumberland about this and are working on it.

Mr. Marchant responded that he dropped a copy of the check off with Finance and are waiting for them to follow up. We are pulling all of our bank records to find out about

the check; make sure that it's cleared through our side.

Mr. Marchant stated that they've been trying and he feels right now that his facility is better than it's ever been, trying to be in compliance with everything. We've downsized and revenue is down 50%, trying to meet everybody's expectations. When you have a business, at some point you want to grow the business, not bring the business back down. He doesn't understand why they would have him move clear out there to say, well you're still not doing anything you're supposed to do.

Commissioner Smith reported that one of the concerns is that there is material being left outdoors after business hours. She clarified with Mr. Marchant that he has a copy of the Staff Report. The Staff Report says that on March 30, June 15 and July 22 of this year, staff conducted site visits, checking the applicant's progress, and noted the operation to be running smoothly, but there was still a concern of whether or not the applicant was able to ensure that no materials were being left outdoors after normal business hours. Then on September 19, 2011 staff visited the site after normal business hours and noticed there was still a substantial amount of scrap material being left outside the building, which suggests that the applicant is not meeting the terms of the CUP. She asked Mr. Marchant if he could help us understand what the problem is with securing the materials.

Mr. Marchant explained a lot of this is based on what the day brings. If we get hit hard at 4 o'clock and we're supposed to be out of there by 6 o'clock; he has guys there at 6 a.m. to unload a building, and up until 6 o'clock every night. If we get extremely busy, they're not supposed to be past that.

Commissioner Smith verified that Mr. Marchant understood when the Conditional Use Permit was issued, that it came with certain conditions. One of those conditions included the proper securing of materials after business hours. She understands what his limitations and concerns are, but this is a condition of the permit. The responsibility is on him to make sure that he complies. It appears that he has had a couple of opportunities to discuss this with staff. She stated that she's sure that his staffing issues are legitimate; there's still a Condition of the Permit for him to comply. There must be something he can do; perhaps adjust his staff time.

Mr. Marchant replied that's what we've done. We've downsized; we reject business every day now, in order to meet the terms.

Chairperson Kachel asked Mr. Marchant to perhaps summarize a day or a week at his operation; it terms of what happens, when deliveries come in.

Mr. Marchant explained basically we open up business at 8 a.m. We're open to the public from 8 a.m. to 4 p.m. It's just depends on what comes in at the end of the day, for us to be able to comply with everything. That's why we've gotten to the point where we're just turning away business, just to try to make everything work.

Commissioner Molina asked Mr. Marchant to explain what he means by what comes in at the end of the day; do you mean clients or vendors or third-party people?

Mr. Marchant responded, "Clients."

Commissioner Molina clarified that Mr. Marchant really has no control over who comes in as he's closing the doors. Commissioner Molina asked if this was something that was addressed with staff, because the way he sees this, is that the City has asked him several times, to please make sure by the end of the day, to have the area clear, to be in compliance with the CUP. Commissioner Molina stated that he's hearing that Mr. Marchant has clients coming in last minute, and depending on what types of items they bring in, is having difficulty with storing and putting away those items.

Mr. Marchant explained that because many of their clients are commercial, they bring in large items and the time they come in depends on where their job site is. We are trying to help the businesses; trying to help people. We were open 7 days per week, now we're down to 6 days. We're trying to help them not to have to go to the landfill with a lot of products. We're looking to make the future better. We are definitely trying to do our best to be within what we're supposed to be; that's why we've stopped a lot of stuff.

Commissioner Kline remarked that he can understand Mr. Marchant's thinking as far as helping his clients. But, as he reads the staff report, if his numbers are correct, since January of 2008, City Staff has done up to 21 visits with Mr. Marchant, compliance requests with him, notifications, and things to get him within his Conditional Use Permit. With being part of the Planning Commission, and him personally, if he's a business owner, if someone has to come to him 21 times in three years, it looks like there's a void in operational latitude, for lack of better words. To him, that's excessive. Commissioner Kline commented to Mr. Marchant that although he brought up business owners around him, we're not talking about them, we're talking about his business. With excluding the three visits because of the fire, that's 18; in a three year period, that's still excessive. That doesn't even include the issue with the taxes. He's leaving that out of the equation because there's some follow-up that needs to be done with the Finance department.

Chairperson Kachel asked Mr. Marchant what opportunities and actual meetings has he had with City staff to discuss this and what can be done. He asked if he's come in and met with the Planning Department or Code Enforcement.

Mr. Marchant replied that staff has been out at his location a few times, but since the permit was issued, he hasn't been back to the City.

Chairperson Kachel stated this is not a criticism, but a comment, that sometimes it can be beneficial to make an appointment, meet with staff and ask questions, and clarify procedures for governmental permits. Chairperson Kachel was curious to know if he'd had a chance to do that.

Mr. Marchant responded that he has asked multiple times, but never got any answers.

Mr. Westbrook stated that in order to address the chair's concern, Mr. Marchant is right that they've been out to the site a couple times. In terms of meetings to set up to discuss this, he was not aware of any. That doesn't necessarily mean that Mr. Marchant didn't make the request; it just didn't rise to his level.

Mr. Westbrook continued; one of the things that was presented by the applicant this evening, was something that he was unaware of. When we did research for this meeting, we went back and looked at the taxes and how many quarters had been paid or not been paid. The information that was given to us by our Finance Division, was that it was six quarters. Certainly, if Mr. Marchant has a check, then most likely those have been paid. That may take a component of that tax problem and can be put aside once it can be verified. We still have the issue of the taxes that have been in place for this year.

Also news to Mr. Westbrook this evening is the reduction in the number of employees at the operation. It sounds like when the economy was better, maybe there was more business. It appears that they are trying to take strides by reducing this to perhaps be able to meet the conditions of project approval.

As was mentioned by Mr. Michaels in the staff report, this is really to evaluate the Conditional Use Permit and give staff direction on how to move forward. By no means does Mr. Marchant's Use Permit expire, until we go through that review process and revocation process. Mr. Westbrook thinks that with discussions with the applicant, the City Staff can verify that indeed all four quarters of those taxes for 2010 have been paid, and if the applicant can come up with some idea of when we're going to get up to the current phase, perhaps this decision gets extended a little bit. If we do another trial period for another six months or so, where we sit down with the applicant and give him the expectations, granted the conditions of project approval wouldn't change, but perhaps giving a better example of what the City staff's expectations would be in terms of the operations of the business. And then we would revisit this at a future point. Obviously that would need to happen in conjunction with making sure we can verify that the taxes have been paid and that existing taxes that may be subject to the property are paid as well.

Chairperson Kachel asked hypothetically, where would you do that; would that have to be done as part of a public hearing, to modify the Conditional Use Permit?

Mr. Westbrook responded he doesn't think we would necessarily modify the Use Permit. He thinks that it's the expiration date that we can probably by action, extend that for some period of time, and then set the review date at a future date.

City Attorney Mr. Lyons stated, as far as this evening's determination is concerned; it is on tonight as indicated, for this body to make some kind of determination if they can, as

to whether or not staff should commence revocation proceedings. Revocation proceedings require special things be done, a special kind of notice given and published. The Planning Commission's options this evening are several:

- Is to say, from the facts that are presented, we believe there's enough to move forward with revocation proceedings.
- We're not totally convinced, but from the facts that are presented, and from the statements that are coming from the owner, perhaps there is a need to get additional information and to supervise the activities on the property for whatever period of time you may feel is appropriate, and extend the Conditional Use Permit for that period of time that the Planning Commission may feel is appropriate for further review by staff and the gathering of additional information.
- Make a determination that no, you don't believe the materials presented warrants a revocation proceeding and recommend against it.

Commissioner Molina asked Mr. Marchant about mentioning that he reduced his staff from 14 to 2; was that directly due to him wanting to comply with the requirements or that business went down.

Mr. Marchant replied because he was trying to be in compliance.

Commissioner Smith commented to Mr. Marchant that she doesn't understand the relationship between reducing his staff and complying.

Mr. Marchant explained that he can't keep people on with nothing for them to do. If the product isn't coming in and we're rejecting the product, he has no need for people.

Commissioner Smith wanted to be sure she understood this, and clarified that because Mr. Marchant had to turn away product, due to not having a place to store it, he had to reduce the number of staff, because he couldn't afford to keep them on.

Mr. Marchant confirmed that was correct.

Commissioner Molina asked Mr. Marchant if he had a ballpark timeframe of when he started taking steps.

Mr. Marchant responded that it was about eight months to a year ago. We were extremely busy; revenues are probably down fifty percent. We gave up plenty of commercial accounts; 25 to 30 of them, because we don't have the facilities to house the materials.

Commissioner Molina asked staff if it has been about eight months since he was last audited or had a visit, to see where we fall in with that statement?

Mr. Michaels responded that staff was not aware that he had reduced any employees.

When staff has gone on inspections and done some drive-by's, we look from the facility. Sometimes we go and talk with him directly; other times, we just happen to be in the area and look to see how things have been operating. So, tonight was the first that staff was aware that he had been reducing numbers to try to "meet our expectations."

Commissioner Molina asked as far you know, have the visits that the Ceres Police have given him, have they been within the last eight months?

Mr. Michaels responded that he believes that would be a fair statement.

Commissioner Del Nero asked Mr. Marchant how many letters has he received from the City.

Mr. Marchant replied, probably three.

Commissioner Smith stated that Mr. Briggs is our Economic Development Manager and she sees Ms. Hoogestraat from the Alliance in the audience. Commissioner Smith can see that she has been providing some assistance. She inquired if Mr. Briggs has been informed or was aware of all the businesses in the community that are struggling both with the compliance to the CUP and apparently having some economic issues as well.

Mr. Michaels responded that he doesn't believe that Mr. Briggs was aware of everything that was going on at this particular location.

Commissioner Smith verified that staff was dealing with this as a code enforcement issue.

Mr. Michaels stated that was correct. This all started back when the fire occurred and from the complaints we received back in 2009.

Commissioner Smith remarked that she is trying to find out what kind of economic development assistance he has. From what she is hearing, he's struggling both to comply and to keep his business open. That sounds like an economic development issue; although she will say that it appears that he has been in the business for quite some time and regardless of what type of assistance he has had, he has had ample time to try to figure out what the regulations are.

Chairperson Kachel asked Mr. Marchant if he has any response to Commissioner's Smith's inquiry about assistance.

Mr. Marchant said he has had none.

Commissioner Kline stated Mr. Marchant made a comment that he laid off some of his staff approximately 18 months ago, to downsize, in order to be in compliance. Over half of the complaints were from 2008 all the way through to October 2009. Then there was a year where there were no complaints and no notations made. Then in November 2010 he

had the other half of the complaints or compliance issues. He had half before the downsize and half after the downsize. Commissioner Kline remarked that he has never been in that situation because he does not own a business, and never had to deal with the City, other than he's on the Planning Commission.

Mr. Marchant stated he's probably received three letters, explaining these are things that we're looking at, and he's probably seen the staff three times. He knows that he hasn't received 21 letters, phone calls, e-mails; none of that.

Commissioner Kline proceeded to ask staff if the applicant or person with the Conditional Use Permit is ever notified of any finding.

Mr. Westbrook responded no.

Chairperson Kachel asked Ms. Hoogestraat to come forward to the podium.

- Lea Ann Hoogestraat, 1805 Stonehaven, Ceres, CA, Community Development Manager for the Alliance

Ms. Hoogestraat stated that she is here to listen in. She was contacted today by another businessman about Mr. Marchant's issue. She sat down with Mr. Marchant and visited with him, did a little research and had a nice discussion with Mr. Westbrook. She also revisited Mr. Marchant to see if there might be some additional services that the Alliance could provide from the economic development side or to help improve the business. She would need to have a confidential discussion with Mr. Marchant to see where he wants to go with that.

Commissioner Smith asked Ms. Hoogestraat if she could explain for the benefit of the Planning Commission what the Alliance is and what kinds of services are available.

Ms. Hoogestraat explained that the Alliance is a public private organization that provides economic development services to the County in Stanislaus, including all nine incorporated communities. Those services consist of attraction of businesses to the local area; we provide research assistance and workforce assistance. She specifically works in business assistance, and she is there as a "go-between" and an advocate for the local business community for problems such as this. Their goal is to try to bring everybody together and find a solution.

It's not an uncommon thing for businesses in any of our communities to have difficulty or a misunderstanding of this process because it is a process. When you're running a business, you'd probably much rather make sure that product is going out the door, so that you can get a check rather than wade through PC-50 codes and things like that. Sometimes she thinks what happens is that the businesses are not as quick to address those issues.

One thing Ms. Hoogestraat noticed when she visited Mr. Marchant's business, was he's bordered on three sides by vacant lots and is on the last street in this industrial development area. He can not be seen from the road. He has one, maybe two neighbors; it's very quiet out there. She suggested that the Commission take a drive around the county and look at other recycling operations in the area. Recycling is a dirty business, but it's a necessary business. Depending on where they are and the rules that are required of them, you're either going to see things stacked up or not. It just depends on where they're located and what they're dealing with. It is a business of very tight margins. Volume is key to making money or surviving in this business. Some of our most successful recyclers in this community, struggle. She's not saying to ignore the rules here, and believes that Mr. Marchant needs to make an effort to comply with them. She has also reviewed what's being required of him and from observing his business today, it's cleaner than some of them on Whitmore Avenue.

Commissioner Smith inquired as to the specific services that the Alliance will provide for Mr. Marchant. She asked if Ms. Hoogestraat plans to meet with him, identify, in addition to these challenges, whatever fiscal challenges he may have, discuss services the Alliance has available that might address them, and come up with a plan, a proposal, an option.

Ms. Hoogestraat stated that she'll see if she can get Mr. Marchant some intensive business assistance services, if he still wants to continue with that. She needs to find out what his plans are in a little bit more detail.

Commissioner Smith asked Ms. Hoogestraat if she will be working directly with the City; will she be specifically addressing some of these compliance issues.

Ms. Hoogestraat explained that normally she has an Economic Development contact with each city, and whenever she runs into a business in this community that's having an issue, normally the first thing she does, is contact Bryan Briggs. That's who should know if a company is having an issue; that's how we interface. And, if a company is having a problem and there is time, she will ask if they want her to bring Mr. Briggs in to sit down and meet with them. Then Mr. Briggs has entrée into Mr. Westbrook and the Planning Commission. He is, in effect and the other representative, "our bridge" to the rest of the staff to be tapping into.

Chairperson Smith asked Ms. Hoogestraat how long she needs to make this assessment, communicate with Mr. Briggs, and put together some recommendation for both the applicant and potentially the Commission about what the options are.

Ms. Hoogestraat replied that she would need to sit down tomorrow with Mr. Marchant and see how far they could go. She already placed a call into Mr. Briggs, notifying him that she had learned of this issue and had some concerns. Anytime she learns of something like this, the first thing she does is take what's been given her and then she vets that and finds out if there's any other issues that she doesn't know about, or if there's another side to the story, because it's always a little bit of both. The one thing she has

learned in economic development, businesses all struggle at some point or another with navigating the process of government and staying in compliance. That's not an usual thing; it really isn't.

Chairperson Kachel; what is the nature of the Alliance, is it private, public?

Ms. Hoogestraat explained that the Alliance is a 501C6; it's a public, private organization. We have an usual set up in that our board is comprised of the Workforce Investment Board. Every county has a Workforce Investment Board and they designate where federal training dollars go for the purposes of job training. That is one of their main purposes. When WIB's were created, they were created to implement the Workforce Investment Act. Prior to the Workforce Investment Act, then as we do now, as an employer, we pay taxes and many times we have said: "When are we going to get something back for these taxes?" "Why is it that everything is always in favor of the employee?" "We need good employees to run our businesses." So, the Workforce Investment Act came in and said, "Yes, the unemployed is a client, but the business, the employer, the taxpayer is also a client." "We must take care of the employers or we will not have jobs for people in the future." So, WIB's were formed; this began in '98 and our Workforce Investment Board is now the board of the Alliance.

Commissioner Smith further explained that all of the cities pay into the Alliance to receive economic development assistance. And many of the private industries contribute as well. So, the Alliance has a very well, experienced staff that provides quality services.

Ms. Hoogestraat remarked that the Stanislaus Stanislaus Campaign; you may have heard that on occasion. That is our private fund. The Federal funds are used for the WIB side, which is the job seeker training and also the training programs, which explains how we're public/private. It's about 60/40.

Chairperson Kachel thanked Ms. Hoogestraat for the explanation; that's exactly what he was looking for.

- Fred Miller – 3431 Millbrook Avenue, Modesto, CA – Commercial Broker with Coldwell Baker, Vinson Chase in Modesto.

Mr. Miller explained that his client, Don Baker, is the gentleman who largely funded and developed Morgan Road Industrial Park. We created 78 parcels there. We built the building, sold it to Mr. Marchant, where he's carrying a first Deed of Trust. Mr. Baker asked Mr. Miller to attend the meeting as his spokesperson.

Before he addresses this, he wanted to give kudos to the Alliance. They do provide quality service. They assisted him when they placed Merlin Plastics out of Canada into a 175,000 square foot series of buildings; that's 4 acres, which was in Turlock. They were also helpful with a lease, which was just started two days ago, with Repsco, which is a plastic extrusion firm, making slip sheets. This company is coming from Denver,

opening up a second office in Riverbank. The Alliance is a great source of help and information and proved to be the case with us.

Mr. Miller reported that Mr. Baker had built the building that Mr. Marchant is in, had sold him the building and is also carrying the paper, the First Note and Deed of Trust. Mr. Miller told the Commission that he is not certain what is in their power, but informed them that Mr. Marchant is not foreclosed, nor has started foreclosure process. For several months, Mr. Marchant is in arrears. With taxes and insurance, he's also in arrears. Particularly we're concerned with insurance, and he doesn't know if this is a parameter they can impose on him; a condition to keep adequate liability and fire insurance. We know there was a fire there at one point that destroyed a small corner of the building, which they repaired. We would ask if that's within the Planning Commission's power, that they impose that on Mr. Marchant. Other than that, we hope that he's successful. We'd like to see him continue to thrive and make the payments on the note and Deed of Trust. We're not confident that will happen, but we're hopeful it will.

- Dan Garcia - owner of property two acres directly in front of Mr. Marchant's business

Mr. Garcia stated that he doesn't like to be negative about another fellow businessman. His only concern is the appearance of the property. In front, where a lot of old trucks come in and while waiting, they park on our side of the road and leak oil. The area looks really used, and a lot of the junk has papers and things that fly off. One time, he went over and asked them to clean up. They kindly came over and did a fairly good job. Mr. Garcia is also concerned, if he were ever to put in a building that this problem might or could continue and pose depreciation of his property.

**The public hearing was closed at 6:50 p.m.**

#### Commission Discussion

Commissioner Smith stated that as a staff person for a city, she understands the limitations that staff experiences when we're going through significant staffing reductions and everyone is being asked to do more. She is concerned that in the City when we have a code enforcement or any issue for that matter, and specifically an enforcement issue that concerns the payment of tax, that we need to communicate with our Business Development department, so that they become aware, so they can either employ whatever services they have available or they can contact the Alliance and get them involved. Because, while there is a significant value to having compliance for Conditional Use Permits, or any kind of activity, there is also significant value to economic development in the community. Whether it be one employee or fourteen employees, we don't want to see anybody shut down.

Having said that, Commissioner Smith addressed Mr. Marchant about his business having been in operation a long time and has had many interactions with the City. He has a duty as a business owner and a citizen, to inquire about the process, to ask about the

issues that he is confused about or doesn't have an understanding about. Those questions can be answered. While the staff has a duty and responsibility to make sure he is aware of our services, he also has a duty and responsibility to inquire. She is concerned about the communication and the complete failure to meet, even though there have been some communications and Mr. Marchant was aware that there were some compliance issues. However, she can't say she is ready to start revocation process. She would like to see at least 30 days for the Alliance to conduct an assessment, find out what is really going on over there, both in terms of their fiscal health, as well as their ability to become compliant and implement some operational structure that will help them become compliant and maintain compliance with the conditions of the permit. She thinks there's enough concern to go around for everybody involved in this process that some improvement could take place. She'd like to see a little more time for Mr. Marchant to work with Ms. Hoogestraat, in coming up with some solutions.

Commissioner Kline stated that he has a degree of concern with the amount of code enforcement complaints, code enforcement going out there and investigating, and the lack of the Conditional Use Permit when Mr. Marchant moved from one location to another. He does have a lot of concerns; maybe it's a lack of knowing the due process. Those are things, that being a business owner, you would think that you would ask the questions or you would try to investigate to see where things go. Commissioner Kline also doesn't want to see a business go out, without giving an extension as far as correcting some of the violations, finding out if the taxes and everything else that is due, can be complied with. Knowing where Mr. Marchant stands now with the city, and how important it is to understand the direction that they have to go; this is not just one business that we can grandfather and say, well we're going to let him go this time because what does that do as far as opening the door for other businesses. He can endorse a continuance as far as looking into whether, one way or another, revoking the Conditional Use Permit or extending it for anywhere from 3 to 6 months. But after six months, to him, that would be the maximum, if they continue to have non-compliance and issues as well as issues with other local businesses around there, and just the lack of adequate facility maintenance and everything else. To him, it's almost like Mr. Marchant went to a location that was too small for his operation, because it grew and there was no way for him to expand, and he was caught in the middle of things, because you just can't pick up and move it to another location.

With that being said, Mr. Marchant has tried to downsize to a degree to make it operational at his location. But, there is a lack of concern with the staff and what they want him to comply. Commissioner Kline doesn't think this item needs to be tabled, but this item needs to be extended for a period of time, knowing the severity of these enforcement violations, and according to this, Mr. Marchant has had 18 chances to do this. It's now before this body, and Mr. Marchant has one more chance to comply. And, after that one more chance, he's exhausted everything. Commissioner Kline's recommendation is to go along with Commissioner Smith and go ahead and visit this in 3 months, 6 months at the maximum.

Commissioner Molina commented that he wished they had access to City of Modesto's complaint department, as far as their Modesto Junk place on 9<sup>th</sup> Street. It is not a pretty site when you drive by there. As was mentioned, it is a dirty business. Most of the complaints are: "He didn't put the stuff inside." (It's really not him, as the business owner, the ethics of himself, it's the business itself that's driving him) Mr. Kline stated that Mr. Marchant moved to that location, which turned out to be too small for him. Good for him, as his business did grow. Commissioner Molina echoes his fellow commissioners, a statement of giving him the opportunity of an extension because he's thinking of it as, we, as the Planning Commission have to make a decision on the issue that's being presented, but at the same time, we're also dealing with someone's life. If we decide to revoke his license, that will affect his income. He may have children that we don't know of. It's a big picture. We have the lender of the property saying, we hope that his business continues, because obviously they are expecting payment. It's a tough call, because we are here to decide on the issues that his business has raised, but at the same time, there's a lot more to it. Commissioner Molina is trying to be sympathetic to him as a person, and at the same time as a business, from the Planning Commission perspective. He will go ahead and echo Mr. Kline and say a six month window. He wanted to ask the Alliance if 30, 60 or 90 days will be enough time.

Ms. Hoogestraat said that she doesn't know; it's up to Mr. Marchant, as it's totally voluntary, if he wants to take advantage of the services provided by the Alliance. As you said, this is the last chance to do this. Issues like this do pop up on occasion with recycling businesses.

Commissioner Molina commented that he thinks part of the reason that Mr. Marchant moved to that area, was it was more about being in compliance with what the issues were at that time. So, at this point, if we were able to get him to comply with cleaning the place, we really wouldn't have this big of an issue. He feels that Mr. Marchant had to let go 12 people to accomplish what he has so far, and those people might still be unemployed. But at the same time, and he's not trying to tell him how to run his business, but he might suggest a management system that would help with that specific area, so as previously discussed, he can focus on generating more business. But on the other side, he should have someone who is taking care of making sure that all the City requirements and compliances are being taken care of. If he was in Mr. Marchant's position right now, and he knew that perhaps this extension may be granted, he would make sure that he follows up with Ms. Hoogestraat with the Alliance, and follow procedure. Perhaps this may what's going to help him make sure he does what he's supposed to be doing. With that said, Commissioner Molina supports the view of the other Commissioners, and suggested perhaps six months.

Commissioner Del Nero stated the Commission has a lot of empathy for people, especially a person running a business. He feels it's very appropriate in this case, and he doesn't know how long it should be, but he thinks that the Commission is on the right track, especially with the Economic department just coming into the picture today; they can help out.

Chairperson Kachel remarked that from his point of view, he doesn't need to echo the great statements all four of the Commissioners have made. He thinks that tonight's process has done what it's intended to do; is get the issues out on the table, so everyone can take a look at what's going on and what needs to take place. He thinks in this case, they've heard more than enough evidence that communication can be improved greatly, and that can be the key to wherever this ends up going. He would also support giving some additional time. Chairperson Kachel asked Mr. Westbrook, with knowing staffing issues and holidays and whatever the economics of the City are, if he had a thought on how long he would like to see this continued on, from his perspective.

Mr. Westbrook replied that he thinks there are two separate things that are happening. 1 - A determination of a date; allowing the business owner and the Alliance time to work, to get a plan together is a good thing. Thirty days may be a little tight. 2 - Quarters of taxes that we think have been paid. Mr. Michaels will verify with our Finance Division. But, also there are payments to be made. Perhaps if it's coincided with sometime after the first of the year, so we've given the business and the Alliance ample amount of time to work together, plus time to verify past payments, which will be easy to do. Then the property owner can make the necessary quarterly payments; one should be coming up and then one just after the first of the year. Without having a specific date in mind, he is hearing 3 months, 6 months, 30 days. Perhaps if we try to shoot to have this on the first agenda in February, which would be about 4 months or so from now; hopefully that will give everyone an opportunity to go their separate ways, continue to work, and then we come back. The format would probably be very similar to the one this evening, which would simply be presenting from October 3<sup>rd</sup> to February and getting direction from the Planning Commission at that time. As Commissioner Kline suggested, maybe there's modification of the Conditional Use Permit, maybe there's revocation of the Conditional Use Permit, maybe we'll grant this for another three years and just move on. Staff's recommendation would be to perhaps bring this back at your February meeting, noting that the verification of payments have been made for those business license taxes, in addition to the future payments and those that may have already been missed.

Commissioner Smith stated that she is okay with that. She was thinking three months for the first status update and then six months for full compliance, but is okay with the February report. She would like to see included in that, the requirement that the meetings with the Alliance continue and that the Economic Development Manager for the City is involved in both the meetings with the applicant and the Alliance. She would also like to see some discussion among staff about some way to have communication between Code Enforcement and Economic Development, so that when an issue of this magnitude takes place that has the potential for impacting a business, which would in this case, result in a complete shutdown of the business, that there is communication, so that Mr. Briggs can be made aware and either reach out himself or ask the Alliance to reach out. She's not trying to be critical, but thinks that's a missing piece here.

It was moved by Commissioner Smith; seconded by Commissioner Kline, to continue the

review of Conditional Use Permit 08-23 until the Planning Commission meeting of February 6, 2012, with the involvement of the Alliance as a requirement, as well as Economic Development staff. And then on the side, having Planning and Economic Development staff work on establishing a regular communication tool; Carried 5/0.

2. 11-04 PC-CC Determination – Provide a recommendation to City Council on proposed City of Ceres Agricultural Preservation Boundaries to year 2050 that will be included in a countywide effort that includes all nine Cities and Stanislaus County.

Planning, Building and Housing Division Manager, Tom Westbrook presented the Staff Report.

Mr. Westbrook explained three possible options:

Option 1 – Keep the boundaries of the Ceres General Plan Study Area

Option 2 – Extend the Ceres General Plan Study Area south to Keyes Road

Option 3 – Ceres General Plan Study Area pulled west a ¼ mile from Washington Road

Mr. Westbrook stated that the Planning Commission could also select its own option. The recommendation of staff, because we want to create that agricultural preservation boundary between City of Ceres and the City of Hughson, would be to go with Option 3.

Mr. Westbrook reported that since the creation of this report, the Hughson Planning Commission has moved forward; they are actually pulling their boundary back in the west by a mile. If Ceres' boundary on the east doesn't change, there'll be a mile buffer between the two cities. If it's elected by the Planning Commission to pull it back, then it would be 1-1/4 miles, which would be a very viable agricultural buffer between the two cities.

Mr. Westbrook explained that once the Planning Commission makes a recommendation, and once City Council takes action, then LAFCO will present a countywide map. The Ceres component will be placed on the larger map along with Riverbank, Oakdale, Waterford, Hughson, Patterson, Modesto, everyone. It'll show what all of those cities would envision their development potential to the year 2050. Outside of that area would be areas for preservation.

Mr. Westbrook further explained what the Planning Commission would need to do this evening, after he fields any questions, would be to make a motion with whatever recommendation the Planning Commission would like to forward to the City Council.

#### **Questions from Commissioners:**

- Commissioner Smith clarified with Mr. Westbrook that Option 3 is to pull back to the left from the General Plan line, but not include Option 2. She further inquired that Option 3 or Option 4, which is the hybrid yet to be determined, could be Option 3 and

Option 2.

Mr. Westbrook explained that conceivably, yes; if the Planning Commission so desired, could say we want to pull the eastern boundary back as included in Option 3, but then to also extend the boundary to the south, which is a bit of Option 2. He thinks the goal here and the message we were trying to convey to the Planning Commissions and City Councils was what does the Planning Commission think would be the reasonable amount of land that the City of Ceres could develop to the year 2050. As we move forward, this will be presented to LAFCO. It is likely that this countywide map would come to an initiative of the voters. Mr. Westbrook will certainly take whatever recommendation that the Planning Commission makes to the City Council; however, we want to keep in the back of our minds, reasonably, what can be developed in the next 30 years, to the year 2050.

- Commissioner Smith stated that Option 2 includes the area to the south to Keyes Road. She proceeded to ask if she is hearing Mr. Westbrook say, to make Option 4 be both the southern extension and then pull back from the western boarder, might be excessive.

Mr. Westbrook responded that if we look at the scope of things; let's assume that City of Ceres successfully obtained the West Landing annexation. That puts our city limits at roughly 6,000 acres. That means the area just inside the red, there's 8,000 more acres for development. He clarified that at the upper portion of the page, there's some existing development, so there wouldn't be development potential opportunities, but that still means that there's probably at least double of the city's size to develop in the next 38 years. The 100 or so years that we've been here already, we've gotten to 6,000 acres. The West Landing Specific Plan development, and a lot of this is driven by the economy, it's likely that the build out of that 1,000 acre project may take 20 years.

- Commissioner Smith clarified that the point is, by establishing the area with which we propose to develop, we then avoid mitigation.

Mr. Westbrook commented that's the part that is going to be forthcoming, as it's presented to LAFCO and whatever initiative language may be drafted and presented to the voters.

- Commissioner Smith replied that's why Oakdale did the border to border, because they wanted to avoid mitigation in all development.

Mr. Westbrook stated that would be his opinion, but obviously just because those boundaries are set, we still have to grow in an orderly and logical manner. All of our annexations still have to go to LAFCO. We still have to provide water and sewer infrastructure, roads and the like. So even though there may be a boundary beyond our city, it could be that area just wouldn't develop within that timeline. What Mr. Westbrook is hopeful for, is if we define the parameters in which someone can develop

and somebody can't, then when a project is presented to a LAFCO or a Planning Commission, City Council or a like, that there wouldn't have to be significant agricultural mitigation, because we've already done that.

- Commissioner Smith clarified that our General Plan is 14 years old. We've talked on a number of occasions about the hope to update it. There's been some review of it. She inquired if there is a proposal in the update of the General Plan to extend the Sphere of Influence or the boundaries.

Mr. Westbrook responded that certainly at the minimum, an analysis of the existing City's primary Sphere of Influence. It's too preliminary to say there would be an extension of that General Plan Study area.

- Commissioner Smith explained that her concern is that the General Plan area is 14 years old, and to say that, let's limit the agricultural mitigation area to the General Plan area, limits us to a document that is 14 years old.

Mr. Westbrook remarked on the flip side of that, to show both sides, or perhaps there were some forward thinking individuals on the Planning Commission and City Council at that time and actually created that boundary beyond what was reasonably necessary at the time.

- Commissioner Kline asked, with looking at the map; Herndon, 9<sup>th</sup> Street; is that all County.

Mr. Westbrook replied that it's currently under the County's jurisdiction; it's within the envelope of the Ceres General Plan Study area. There's an expectation that at some point that may be annexed to the City of Ceres.

- Commissioner Kline commented that the only problem he has on the East side is coming back ¼ mile to the west and splitting acreage. He explained that his part of the family farmed off Faith Home Road, in that area. None of that exists anymore; but knowing some of the people that live out that way, the problem he would have would be splitting acreage. Let's say these people agree to sell 150 of their 300 acres. Now it's developed. Then you run into issues, whether you can still farm this because it's so close to housing. He had relatives in Waterford run into this issue. They annexed part of their property next door; they went to farm it, couldn't spray, etc. Commissioner Kline is not in favor of bringing it back a ¼ mile to green line.

Mr. Westbrook stated he tried to make this clear in his presentation, and apologized if he didn't. The existing line at Washington Road already bisects parcels. Pulling it back to the green, did a little analysis of that segment of the line; it bisects two properties. So, it already bisects properties either way. The only way to get that around along the East side, would be to be pulling it all the way back to Faith Home Road; that's kind of a natural boundary. Mr. Westbrook understands the concern. He thinks when the General

Plan is updated, it'll be before 2050. That's a valid concern and that's what we would try to do, as we would get to the periphery, in terms of that kind of development, at the end, obviously transitioning that in perhaps larger lots. The City already has in place, agricultural easements that go on deeds, which state that Commissioner Kline is buying property next to Commissioner Smith, who farms peaches, that there's going to be spray. Because that's a deed restriction, sometimes folks lose sight of what that actually means.

- Commissioner Del Nero stated that looking at this, it's a little mind-boggling. We are talking about the future, and he thinks that's very important. He listened to what Mr. Westbrook said; there's about 6,000 acres that can be developed now. 100 years with Ceres, with 38 more to go, to him the red line makes sense. From what Mr. Westbrook said, and putting the numbers together, we really don't know, yet the red line sounds good to him.
- Chairperson Kachel commented that he looked at this. This issue is not a new one; it's been going off and on for years in the county. He's glad to see that there's a proactive push to try to make it come to fruition. It's almost been a decade or so ago, but there were cities that changed their mind. Now it seems like everyone is working together. In essence, what we're saying, is our existing city plus the development in the sphere, the current General Plan Study area would basically double it. Based on what we see there within that red line, let's say every city does the same thing; their General Plan area would double. Some of them are a little less than that, some are substantially more than that. He thinks that would provide ample opportunity for any and all kinds of development in this county as far ahead as anyone can see. He doesn't think we're going to run out of developable land from that perspective.
- Chairperson Kachel also had a concern about splitting the parcels. In fact, he actually sent an e-mail today to Mr. Westbrook, asking him the same question. The answer is, it splits them now; it'll split them then. He looked specifically at what the green line would do. There are only two parcels and they are substantially sized, which Chairperson Kachel thinks is important. He thinks the ones they split now are probably a pretty good size too. That is a valid concern and planners always like to look for lines. We call them natural boundaries, and roads aren't natural, but they tend to be nice boundary lines, but we don't have one of those out here. Pulling back all the way to Faith Home, wouldn't be necessarily in the best interest of the City. The existing line to the south doesn't really follow a road; it kind of goes below Grayson Road there. We're going through some parcels there already. Chairperson Kachel stated that he prefers Alternative C from his perspective. He doesn't see that we need to go all the way down, to surround Keyes on two sides, is really necessary to grow. He thinks the idea is for communities to maintain their own individuality, develop as they want. And at the same time, if/when this goes to voters, the county will get to look at an overall picture of what they can expect for their children in the future for this County for the next 40 years. He thinks that is an outstanding effort. He was kind of thinking to just leave it at Washington. If nothing else, it makes a statement to Hughson, the voters and the public, that we are looking

at long term interests of preservation of agricultural. With any and all industry jobs that come in here, this is still an agricultural county; overwhelmingly, that's our economy. He hopes that we can see that preserved. This is our opportunity to be, as Planning Commissioners; we get to be planners, to look ahead and try to anticipate. His personal preference would be Option 3.

- Commissioner Kline stated if we bring Option 2 line from Carpenter back down to Crows Landing Road, that would incorporate Bronco Winery, Albers Feed and all the industrial area down there from 99 heading west to Faith Home, including commercial buildings and incorporate Bronco Winery into part of the City Sphere.

Mr. Westbrook asked if Bronco Winery isn't south of Keyes Road and east of Crows Landing Road. So, it would not be included in this blue line.

- Commissioner Kline responded that Mr. Westbrook is correct; Bronco Winery would not be included.
- Chairperson Kachel commented that he was actually the Planner on Bronco Winery when it came to the county many years ago. He even knows where the name "Bronco" originated from; Brothers and the Cousins of the Franzia family.

Commissioner Smith made a motion to recommend Option 3; Commissioner Molina seconded; Carried 4/1 (Commissioner Del Nero, No).

**NEW BUSINESS:**

None

**PUBLIC MEETING(S):**

None

**UNFINISHED BUSINESS:**

None

**MATTER INITIATED BY PLANNING COMMISSION AND STAFF**

None

**REPORTS:**

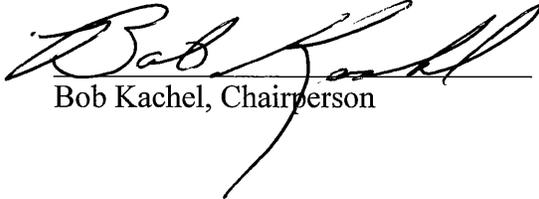
None

**ADJOURNMENT:**

Planning Commission Minutes  
October 3, 2011

The Commission adjourned at 7:35 p.m. to the next regularly scheduled meeting of Monday, November 7, 2011.

APPROVED:



Bob Kachel, Chairperson

ATTEST:



Tom Westbrook, Secretary