

CLOVIS CITY COUNCIL MEETING

July 19, 2021

6:00 P.M.

Council Chamber

Meeting called to order by Mayor Flores
Flag Salute led by Councilmember Mouanoutoua

Roll Call: Present: Councilmembers Ashbeck, Bessinger, Mouanoutoua, Whalen
Mayor Flores

Absent: None

PUBLIC COMMENTS – 6:03

CONSENT CALENDAR – 6:05

Motion by Councilmember Ashbeck, seconded by Councilmember Bessinger, that the items on the Consent Calendar, except item number 8, be approved. Motion carried by unanimous vote.

1. Administration - Approved - Minutes from the July 12, 2021 Council Meeting.
2. Administration - Approved – FY 2021-22 Agreement between the City of Clovis and the Economic Development Corporation Serving Fresno County.
3. Finance – Received and Filed – Investment Report for the Month of April 2021.
4. Finance – Received and Filed – Treasurer’s Report for the Month of April 2021.
5. Finance – Received and Filed – Investment Report for the Month of May 2021.
6. Finance – Received and Filed – Treasurer’s Report for the Month of May 2021.
7. Finance – Received and Filed – Update to Investment Strategy.
9. General Services - Approved – Authorize the City Manager to Execute a 36-Month HVAC Service Contract.
10. General Services – Approved – **Res. 21-75**, Authorizing the Use of California Senate Bill 1 (SB1) State Transit Assistance – State of Good Repair (SGR) Funds for Transit Operations
11. General Services - Approved – Authorize the City Manager to Execute a 36-Month Janitorial Service Contract.
12. Planning and Development Services - Approved – **Res. 21-76**, Final Map Tract 6182, located on the north side of Shaw Avenue, between Leonard and Highland Avenues (Bonadelle Homes).
13. Planning and Development Services – Approved – **Res. 21-77**, Annexation of Proposed Tract 6182, located on the north side of Shaw Avenue, between Leonard and Highland Avenues (Bonadelle Homes).
14. Planning and Development Services - Approved – **Res. 21-78**, Final Map Tract 6123, located on the north side of Shaw Avenue, west of Highland Avenue (BN 6123 LP (Bonadelle Homes)).
15. Planning and Development Services – Approved – **Res. 21-79**, Annexation of Proposed Tract 6123, located on the north side of Shaw Avenue, west of Highland Avenue, to the Landscape Maintenance District No. 1 of the City of Clovis (BN 6123 LP (Bonadelle Homes)).
16. Planning and Development Services - Approved – **Res. 21-80**, Final Map Tract 6304, located in the southeast area of Leonard and Barstow Avenues (Bonadelle Homes).

17. Planning and Development Services – Approved – **Res. 21-81**, Annexation of Proposed Tract 6304, located in the southeast area of Leonard and Barstow Avenues, to the Landscape Maintenance District No. 1 of the City of Clovis (Bonadelle Homes).

6:08 CONSENT CALENDAR ITEM 8 - GENERAL SERVICES - APPROVED – CLAIM REJECTION OF THE GENERAL LIABILITY CLAIM FOR HERMANDEEP NAGRA.

Motion by Councilmember Bessinger, seconded by Councilmember Whalen, that Consent Calendar Item 8 be approved. **Motion carried 3-0-0-2 with Council Members Ashbeck and Mouanoutoua abstaining.**

PUBLIC HEARINGS

6:16 – **ITEM 20A** - CONTINUED - **RES. 21-XX**, GPA2018-003, A REQUEST TO AMEND THE GENERAL PLAN TO RE-DESIGNATE FROM THE MEDIUM DENSITY RESIDENTIAL (4.1 TO 7.0 DU/AC) TO THE VERY HIGH DENSITY RESIDENTIAL (25.1 TO 43.0 DU/AC) CLASSIFICATION FOR FUTURE DEVELOPMENT; AND **ITEM 20B** - APPROVED INTRODUCTION - **ORD. 21-XX**, R2018-009, A REQUEST TO APPROVE A REZONE FROM THE R-1 (SINGLE FAMILY RESIDENTIAL - 6,000 SQ. FT.) TO THE R-4 (VERY HIGH DENSITY MULTIPLE FAMILY RESIDENTIAL) ZONE DISTRICT.

Motion for approval by Councilmember Whalen, seconded by Councilmember Bessinger for the Council to continue GPA201-003 and R2018-009 to the September 7, 2021 City Council Meeting. Motion carried by unanimous vote.

6:31 – **ITEM 18A** - APPROVED - **RES. 21-82**, GPA2021-001, AMENDING THE GENERAL PLAN TO RE-DESIGNATE APPROXIMATELY 2.71 ACRES FROM THE OFFICE (O) PLANNED LAND USE CLASSIFICATION TO THE GENERAL COMMERCIAL (GC) PLANNED LAND USE CLASSIFICATION; AND **ITEM 18B** - APPROVED INTRODUCTION - **ORD. 21-04**, R2021-004, A REQUEST TO REZONE APPROXIMATELY 2.71 ACRES FROM THE C-P (ADMINISTRATIVE/PROFESSIONAL OFFICE) ZONE DISTRICT TO THE C-2 (COMMERCIAL COMMUNITY) ZONE DISTRICT.

Motion for approval by Councilmember Whalen seconded by Councilmember Mouanoutoua for the Council to approve Resolution 21-82, GPA2021-001, amending the General Plan to re-designate approximately 2.71 acres from the Office (O) planned land use classification to the General Commercial (GC) planned land use classification and approve Introduction - Ordinance 21-04, R2021-004, rezoning approximately 2.71 acres from the C-P (Administrative/Professional Office) Zone District to the C-2 (Commercial Community) Zone District. Motion carried by unanimous vote.

6:43 – **ITEM 19A** - APPROVED – **RES. 21-83**, GPA2021-002, AMENDING THE GENERAL PLAN TO RE-DESIGNATE APPROXIMATELY 3.54 ACRES OF LAND LOCATED NEAR THE NORTHEAST CORNER OF SHAW AND LOCAN AVENUES FROM THE PUBLIC/QUASI-PUBLIC FACILITIES CLASSIFICATION TO THE MEDIUM DENSITY RESIDENTIAL (4.1 TO 7.0 DU/AC) CLASSIFICATION; AND **ITEM 19B** - APPROVED INTRODUCTION – **ORD. 21-05**, R2021-005, A REQUEST TO REZONE APPROXIMATELY 3.54 ACRES FROM THE P-F (PUBLIC FACILITIES) ZONE DISTRICT TO THE R-1 (SINGLE-FAMILY RESIDENTIAL

6,000 SF) ZONE DISTRICT; **ITEM 19C - APPROVED – RES. 21- 84**, TM6349, A REQUEST TO APPROVE A VESTING TENTATIVE TRACT MAP FOR A 17-LOT SINGLE-FAMILY SUBDIVISION ON APPROXIMATELY 3.54 ACRES OF LAND.

Mayor Flores indicated that he would abstain from consideration of this item due to property he owns near the project and left the dais at 6:43.

Motion for approval by Councilmember Ashbeck, seconded by Councilmember Bessinger for the Council to approve – **Res. 21-83**, GPA2021-002, amending the General Plan to re-designate approximately 3.54 acres from the Public/Quasi-Public Facilities classification to the Medium Density Residential (4.1 to 7.0 DU/Ac) classification. **Motion carried 4-0-0-1 with Mayor Flores abstaining.**

Motion for approval by Councilmember Ashbeck, seconded by Councilmember Bessinger for the Council to approve Introduction – **Ord. 21-05**, R2021-005, rezoning approximately 3.54 acres from the P-F (Public Facilities) Zone District to the R-1 (Single-Family Residential 6,000 SF) Zone District. **Motion carried 4-0-0-1 with Mayor Flores abstaining.**

Motion for approval by Councilmember Ashbeck, seconded by Councilmember Bessinger for the Council to approve **Res. 21- 84**, TM6349, approving a vesting tentative tract map for a 17-lot single-family subdivision on approximately 3.54 acres of land. **Motion carried 4-0-0-1 with Mayor Flores abstaining.**

Mayor Flores returned to the dais at 7:08.

7:08 – **ITEM 21 - APPROVED – RES. 21-85**, ADOPTION OF THE CITY OF CLOVIS 2021-2025 CONSOLIDATED PLAN AND 2021-2022 ANNUAL ACTION PLAN FOR EXPENDITURE OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS.

Motion for approval by Councilmember Bessinger, seconded by Councilmember Mouanoutoua to approve **Res. 21-85**, Adoption of the City of Clovis 2021-2025 Consolidated Plan and 2021-2022 Annual Action Plan for expenditure of Community Development Block Grant Funds. Motion carried by unanimous vote.

CITY MANAGER COMMENTS – 7:19

City Manager Luke Serpa commented on a public meeting regarding the Shaw Avenue widening project to be held August 5th, 2021 to be held at Clovis East High School.

COUNCIL COMMENTS – 7:20

Council Member Lynne Ashbeck provided updates on the Measure C steering committee, asked for clarity on rules for parking on streets to be provided to the citizens, include previous votes and the principles of the development if an LLC is listed as the applicant.

Councilmember Bessinger commented on the benefits of the community service work program restarting.

Mayor Flores commented on two Clovis residents being in the Olympics, Jenna Prandini and Bryson DeChambeau and wished them the best of luck at the games.

22. CLOSED SESSION – 7:24

Motion by Councilmember Whalen, seconded by Councilmember Mouanoutoua, for the Council to ratify the City Manager’s waiver of potential conflict of interest and consent to dual representation of the City and various City employees by David Overstreet in the Lisa De Gunya v. City of Clovis, et al. case. Motion carried by unanimous vote.

Government Code Section 54956.9(d)(1)
CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Case Name: Lisa De Gunya v. City of Clovis, et al.

Mayor Flores adjourned the meeting of the Council to August 2, 2021

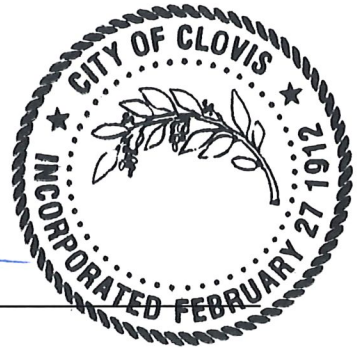
Meeting adjourned: 7:35 p.m.



Mayor



City Clerk



Item 8

Karey Cha

From: Public Comments <email@cityofclovis.com>
Sent: Monday, July 19, 2021 4:02 PM
To: John Holt; Karey Cha
Subject: [External] Public Comment for City Council

Council Meeting Date: 2021-07-19

Item Number (put "0" if your comment is regarding an item not on the agenda): 8

Full Name: Rachel Youdelman

Email: rachel27@berkeley.edu

Comment: Herman Nagra is a young Clovis man who faces a year in jail for removing Vong Mouanoutoua's improperly placed campaign signs during the most recent City election in March, an election for which not even a quarter of registered Clovis voters participated in. For this "crime," at least 10 SWAT-team officers showed up early in the morning Jan 28 at Nagra's family home, pounded on the door, ransacked the place, and handcuffed Herman. Mouanoutoua and the City of Clovis persist in prosecuting Nagra as though he were a dangerous criminal.

Mouanoutoua is the reporting party--he is responsible for the unwarranted arrest and maltreatment of Nagra.

Why is Mouanoutoua not held to account for offering prizes for votes? For this far more serious offense, he got off with a mere reprimand from the County Clerk.

With the permission of property owners Nagra removed Vong's signs, which were not placed per the city code. Should he have removed the signs himself? No. But I know from experience that calling city hall to remove improperly placed campaign signs typically yields no action. I called myself repeatedly about school-board candidates' signs posted illegally on public property, and to my knowledge they were never removed. Still, removing improperly placed campaign signs is not a crime that warrants a visit from a SWAT-team, arrest, and criminal prosecution.

The pursuit of this treatment of Nagra by Mouanoutoua smacks of the petty vindictiveness of a relatively powerful but small-minded man with a glorified sense of his public position, and it confirms that he is in no way fit to serve the public.
Supporting Files (2 Max.):

Date: July 19, 2021

Time: 4:01 pm

Remote IP: 73.220.235.169

Public Comment
July 19, 2021

Item 19

Karey Cha

From: Public Comments <email@cityofclovis.com>
Sent: Monday, July 19, 2021 11:56 AM
To: John Holt; Karey Cha
Subject: [External] Public Comment for City Council

Council Meeting Date: 2021-07-19

Item Number (put "0" if your comment is regarding an item not on the agenda): 19

Full Name: Shannon Wise

Email: swise@centralcallegal.org

Comment: Please see the attached letter.

Supporting Files (2 Max.): <https://cityofclovis.com/wp-content/uploads/elementor/forms/60f5cab85722e.pdf>

Date: July 19, 2021

Time: 11:55 am

Remote IP: 73.185.89.181



**CENTRAL CALIFORNIA
LEGAL SERVICES**
JUSTICE. EQUITY. POWER.

July 19, 2021

SENT VIA EMAIL: cityofclovis.com/government/city-council/city-council-agendas/

Clovis City Council
1033 Fifth Street
Clovis, CA. 93612

RE: Agenda Item #19 Rezone 3.54 acres from P-F Zone District to R-1 Zone District

Dear Mayor Flores, Mayor Pro Tem Ashbeck, and City Council Members:

Agenda item #19 proposes to amend the General Plan to re-designate a 3.54-acre parcel from Public/Quasi-Public Facilities to Medium Density Residential and re-zone that same parcel from Public Facilities (P-F) Zone District to the Single-Family Residential 6,000 SF (R-1) Zone District. This parcel was included in the City's Housing Element's amended inventory to accommodate a portion of the Regional Housing Needs Allocation (RHNA) for lower income households and the City will be in violation of Government Code section 65863 if it approves the requested actions.

The 3.54-acre parcel at issue is identified in the City's Housing Element to accommodate 120 units of the City's lower income RHNA. See Site 7 of the Housing Element P-F Sites Inventory. The parcel is a portion of a larger 9.36-acre parcel located at 5188 North Locan, Clovis, California, Assessor's Parcel Number 554-040-20¹, where the Clovis Christian Church is currently located. The City cannot reduce the residential density of any parcel without

¹ Notably, the APN for the relevant site was not included in the staff report nor was the fact that the site was identified in the housing element to accommodate the City's lower income RHNA.

CCLS is a non-profit corporation, tax exempt under section 501(c)(3) of the Internal Revenue Code. CCLS spends all funds in accordance with the LSC Act of 1974, as amended, and its implementing regulations.



2115 Kern Street, Suite 200, Fresno, CA 93721 • Phone: (559) 570-1200 • Toll Free: (800) 675-8001
1640 "N" Street, Suite 200, Merced, CA 95340 • Phone: (209) 210-4390 • Toll Free: (800) 675-8001
2025 W. Fecmster Avenuc. Visalia, CA 93277 • Phone: (559) 802-1130 • Toll Free: (800) 675-8001
www.centralcallegal.org

Clovis City Council
July 19, 2021
Page 2

making written findings supported by substantial evidence that the reduction is consistent with the City's General Plan, including its Housing Element. (Gov. Code § 65863, subd. (b)(1).)

As the Housing Element has identified a surplus of sites to accommodate its moderate and above-moderate income housing needs and includes programs to facilitate affordable housing to meet its lower income housing needs it is impossible for the City to make a finding that this action to decrease the density permitted on a site identified to accommodate the City's lower income housing needs is consistent with its Housing Element.²

Further, the City identified that site in its Housing Element to accommodate 120 units to meet the housing needs of lower-income households. If the City allows development on that parcel for less units and for a different income level, the City will have to make written findings "supported by substantial evidence as to whether or not remaining sites identified in the housing element are adequate to meet the requirements of Government Code section 65583.2 and to accommodate the jurisdiction's share" of the RHNA. (Gov. Code § 65863, subd. (b)(2).)

The Staff Report for Agenda item #19 does not contain these written findings, nor the findings to comply with Government Code section 65863, subdivision (b), therefore the City cannot approve the requested General Plan amendment or rezoning.

² Also, the City cannot make a finding of consistency with its Housing Element as the Fresno County Superior Court has found that the Housing Element is inadequate and does not comply with state law.

Clovis City Council
July 19, 2021
Page 3

Finally—since the Fresno Superior Court has now ruled that the sites identified in Clovis’ housing element are *not* adequate to meet Section 65583.2’s requirements to accommodate the city’s share of the RHNA—removal of even 120 units from that already-inadequate inventory is at best a high-risk proposal. We respectfully propose the City rethink.

Sincerely,

Jesse J. Avila

Jesse Avila
Consumer Team Lead Attorney
Central California Legal Services

cc: Mike Linden (mlinden@lozanosmith.com); Shannan West (Shannan.West@hcd.ca.gov), Robin Huntley (Robin.Huntley@hcd.ca.gov), Melinda Coy (Melinda.Coy@hcd.ca.gov), Jose Flores (josef@cityofclovis.com); Lynne Ashbeck (lynnea@cityofclovis.com); Drew Bessinger (drewb@cityofclovis.com); Vong Mouanoutoua (vongm@cityofclovis.com); Bob Whalen (bobw@cityofclovis.com).

Item 20

Karey Cha

From: Public Comments <email@cityofclovis.com>
Sent: Friday, July 16, 2021 3:54 PM
To: John Holt; Karey Cha
Subject: [External] Public Comment for City Council

Council Meeting Date: 2021-07-19

Item Number (put "0" if your comment is regarding an item not on the agenda): 20

Full Name: John P. Kinsey

Email: jkinsey@wjhattorneys.com

Comment: Comments on Agenda Item No. 20: GPA2018-03 and R2018-09, July 19, 2021, City Council Meeting. Should you have any questions regarding the attachment, please contact Mr. Kinsey directly at 559-233-4800 ext 216 or via email at jkinsey@wjhattorneys.com

Supporting Files (2 Max.): <https://cityofclovis.com/wp-content/uploads/elementor/forms/60f20e0a61d1a.pdf>

Date: July 16, 2021

Time: 3:54 pm

Remote IP: 209.218.208.62

WANGER JONES HELSLEY PC
ATTORNEYS

OLIVER W. WANGER
TIMOTHY JONES*
MICHAEL S. HELSLEY
RILEY C. WALTER
PATRICK D. TOOLE
SCOTT D. LAIRD
JOHN P. KINSEY
KURT F. VOTE
TROY T. EWELL
JAY A. CHRISTOFFERSON
MARISA L. BALCH
AMANDA G. HEBESHA**
PETER M. JONES†
MICHAEL L. WILHELM†
STEVEN M. CRASS†
JEFFREY B. PAPER†
DEBORAH K. BOYETT
STEVEN K. VOTE
GIULIO A. SANCHEZ
CHRISTOPHER A. LISIESKI***
BENJAMIN C. WEST
HUNTER C. CASTRO
STEPHANIE M. HOSMAN
DANIELLE M. PATTERSON
AMBER N. LES
GARRETT R. LEATHAM††
HEIDI G. WEINRICH

265 E. RIVER PARK CIRCLE, SUITE 310
FRESNO, CALIFORNIA 93720

MAILING ADDRESS
POST OFFICE BOX 28340
FRESNO, CALIFORNIA 93729

TELEPHONE
(559) 233-4800

FAX
(559) 233-9330



CLOVIS OFFICE:
642 Pollasky Avenue
Suite 100
Clovis, California 93612

OFFICE ADMINISTRATOR
LYNN M. HOFFMAN

Writer's E-Mail Address:
jkinsey@wjhallorneys.com

Website:
www.wjhallorneys.com

* Also admitted in Washington
** Also admitted in Idaho
*** Also admitted in Virginia
† Also admitted in Utah
† Of Counsel

July 16, 2021

VIA EMAIL jacquiep@cityofclovis.com & OVERNIGHT MAIL

Members of the City Council
CITY OF CLOVIS
1033 Fifth Street
Clovis, CA 93612

**Re: Comments on Agenda Item No. 20: GPA2018-03 and R2018-09,
July 19, 2021, City Council Meeting**

Dear Honorable Members of the City Council:

My law firm represents Jeff and Dineen Pace. Jeff and Dineen are long-time residents of Clovis, and I am submitting these comments concerning Agenda Item No. 20 on their behalf. This agenda item concerns a proposed General Plan Amendment and Rezone to change the land use of 1.6 acres near downtown Clovis from medium/single family residential to Very High Density residential to accommodate a three-story, 40-unit multi-family development (collectively, the "Project"). The Staff Report asserts the Project is exempt from the California Environmental Quality Act, Pub. Resources Code, § 21000, *et seq.* ("CEQA") under a Class 32 Exemption for Infill Development Projects. (See CEQA Guidelines, § 15332.)

The Paces and their neighbors object to the Project as currently envisioned. While Mr. and Mrs. Pace understand the need for additional housing inventory in Clovis, the applicants seek to construct a three-story, "very high density" multi-family development adjacent to a neighborhood consisting of single family homes and one-story multi-family dwellings. To

WANGER JONES HELSLEY PC

Clovis City Council
July 16, 2021
Page 2

avoid adverse impacts to the community, and to promote development consistent with the surrounding land uses, the Paces and their neighbors strongly urge the applicant to work with neighboring homeowners to reach consensus regarding the scope and scale of the project. If the applicants are unwilling to reduce the scale of the Project, the Project should be denied.

A. The Infill Exemption is Facially Inapplicable to the Project

According to the Staff Report, the City intends to rely upon a Class 32 exemption from CEQA for infill projects. (CEQA Guidelines, § 15332.) To rely on a Class 32 exemption, substantial evidence must support each of the following conditions:

- (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- (c) The project site has no value, as habitat for endangered, rare or threatened species.
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- (e) The site can be adequately served by all required utilities and public services.

(CEQA Guidelines, § 15332.)

Substantial evidence does not support these findings. First, the Class 32 exemption is only available where “[t]he project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.” (*Id.*, subd. (a).) Here, the Project is not consistent with the current general plan designation. Indeed, the purpose of the General Plan Amendment is to *change* the general plan designation from environmental baseline conditions (*i.e.*, medium density residential) to a far more intensive land use designation (*i.e.*, very high density residential). The Project is likewise inconsistent with the current zoning, as the Project contemplates a change in zoning from the environmental baseline of R-1 (Single Family Residential) to R-4 (Very High Density Multiple Family Residential). Because the Project seeks to change the zoning and the land use designation from existing (baseline) conditions, the City cannot meet the finding required under subdivision (a).

WANGER JONES HELSLEY PC

Clovis City Council
July 16, 2021
Page 3

The City also cannot make the finding required under Subdivision (a) because the Project is inconsistent with several General Plan policies, as explained *infra* § C.

Further, the record lacks the evidence necessary for the City to determine the Project would not result in significant noise impacts, as required under Section 15332(d). The Staff Report's conclusions regarding noise impacts are not supported by any evidence. Rather, the Staff Report's analysis is based on the assertion that "the Project is residential within existing residential uses," and "would not result in significant impacts to the noise levels that already exist in the area." (Staff Report at 565.) While the Project is residential in nature, the noise analysis does not address the fact that the Project will significantly increase the *intensity* of the development by changing the density from "medium" to "very high." Because a three-story multi-family building is completely different in character from the existing single family residential uses, the fact that the Project and the neighboring community are both technically "residential" does not support the conclusion that the Project will have no significant noise impacts.

The evidence also suggests significant noise impacts would occur. For example, correspondence from the County of Fresno states the "proposed construction project has the potential to expose nearby residents to elevated noise levels." (Agenda Packet at 522.)

Moreover, the applicant proposes that the trash enclosure is located adjacent to the residence located at 90 Phillip Avenue. This is inconsistent with Section 9.24.110(C)(1) of the City's Municipal Code, which requires that such enclosures are "compatible with the surrounding structures and land uses." The location of the trash enclosure is also problematic from a noise perspective because it is adjacent to existing sensitive receptors. To access the trash enclosure, the collection vehicle will need to make reverse movements. These vehicles are required to have vehicle motion alarms when traveling in reverse, which include single tones with a typical volume of 97-112 decibels (dB) at the source. (Holzman, *Vehicle Motion Alarms: Necessary, Noise Pollution, or Both?*, Environmental Health Perspectives, 2011 Jan.; 119(1): A30-A33, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3018517/>.) The rear windows of the residence at 90 Phillip Avenue directly face the trash enclosure, and are only approximately 30 feet away. At this distance, a vehicle motion alarm with a volume of only 97 dB would result in 73.5 dB at the windows. At the higher end of the range, a vehicle motion alarm with a volume of 112 dB would result in a volume of 88.5 dB at the windows.¹ These levels of noise are not permissible under Section 9.22.080 of the City's Municipal Code, and would create a significant environmental effect. As such, the Project does not meet the standards under Section 15332(d) of the CEQA Guidelines to rely upon a Class 32 exemption.

¹ Sound at distance can be expressed through the equation: $L_p(R2) = L_p(R1) - 20 * \log_{10}(R2/R1)$, in which $L_p(R1)$ equals sound pressure level at one location, such as the point source, and $R1$ equals the distance of that location from the point source). $R2$, in turn, equals the distance from the point source to the new location, while $L_p(R2)$ equals sound pressure level the second location. (See <http://www.wkcgroup.com/tools-room/inverse-square-law-sound-calculator/>.)

WANGER JONES HELSLEY PC

Clovis City Council
July 16, 2021
Page 4

In short, the City cannot rely upon a Class 32 exemption because it is inapplicable on its face.

B. Various Exceptions to the Application of Categorical Exemptions Would also Preclude the Use of a Class 32 Exemption Here

Even if facially applicable, categorical exemptions are not absolute. Rather, where an exemption applies, there are several exceptions to the applicability of categorical exemptions. (See CEQA Guidelines, § 15300.2.) Specifically, Section 15300.2(c) of the CEQA Guidelines prohibits agencies from relying upon categorical exemptions “where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.” Indeed, courts have repeatedly declined to allow agencies to rely upon categorical exemptions for projects where the evidence shows a *possibility* that a potentially significant impact could result. (See *Calif. Unions for Reliable Energy v. Mojave Desert Air Quality Mgmt. Dist.* (2009) 178 Cal.App.4th 1225, 1246-47 [use of Class 8 exemption for regulation requiring roadway paving to offset air quality emissions was inapplicable because there was no evidence supporting the agency’s claim that no significant adverse impacts associated with road paving would occur]; *Dunn-Edwards Corp. v. Bay Area Air Quality Mgmt. Dist.* (1992) 9 Cal.App.4th 644, 656-58 [finding agency could not rely on Class 8 exemption for action tightening standards for volatile organic carbon (VOC) architectural coatings where industry groups provided evidence VOCs would increase due to the need for increased coatings of paint]; see also *Save Our Big Trees v. City of Santa Cruz* (2015) 241 Cal.App.4th 694, 710-12 [invalidating ordinance designed to protect heritage trees where aspects of ordinance could result in greater impacts to tree resources].)

The Project is unusual in its scope and scale. While all of the other structures adjacent to the Project are only one-story in height, the Project contemplates a three-story building. The Project is also unusual for the area because it is “very high” density as opposed to the low and/or medium density adjacent land uses. There is a fair argument these unusual features would result in potentially significant environmental effects. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1115 [assessment of whether there is a “reasonable possibility of a significant effect on the environment due to unusual circumstances” is subject to the non-deferential “fair argument” test].)

- **Noise.** CEQA recognizes that noise can create a significant environmental effect where a project generates “a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance” (CEQA Guidelines, App. G, § XIII(a).) As explained above, there is a “fair argument” the Project would result in significant noise impacts to adjacent residential properties.

- **Aesthetic Impacts.** CEQA requires analysis of a project’s impacts on “view and other features of beauty.” (*Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 401.) On this topic, “the opinions of area residents, if based

WANGER JONES HELSLEY PC

Clovis City Council
July 16, 2021
Page 5

on direct observation, may be relevant as to aesthetic impact and may constitute substantial evidence in support of a fair argument; no special expertise is required on this topic.” (*The Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 908, 937 [requiring EIR, rather than Initial Study, in part to address neighbors' concerns regarding aesthetic impacts of project].) The record already contains several letters and oral comments regarding the potential aesthetic impacts of the Project. (Staff Report at 530-47, 553-54.) The Project is located in a low/medium density residential area of historic Old Town Clovis that includes primarily one-story buildings. A modern three-story building is of an entirely different character than the surrounding historic neighborhood, and will limit the view shed currently enjoyed by area residents. The building likewise has the potential to adversely affect view sheds in the vicinity of the adjacent storage basin. (See City of Clovis, Central Clovis Specific Plan at 3.15 [“Water Retention Basins can provide a view shed and wildlife viewing opportunities,” and specifically noting Basin 6D is a “viewable basin” that provides such opportunities].)²

- **Land Use.** A potentially significant environmental impact occurs where a project would “[c]onflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.” (CEQA Guidelines, App. G, § XI(b).) As explained below, *infra* § C, aspects of the Project are inconsistent with the City’s General Plan.

In sum, even if Class 32 were facially applicable to the Project—and it is not—the existence of multiple exceptions to the exemption prohibits the City from relying on the exemption. As such, the City must perform environmental review of the Project under CEQA.

C. The Project Is Inconsistent with the City’s General Plan

State planning and zoning law requires that all land-use decisions of general law cities must be consistent with the City’s General Plan. (Govt. Code, § 65860, subd. (a); see also *Corona-Norco Unif. Sch. Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 994.) A “project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.” (*Corona-Norco, supra*, 17 Cal.App.4th at 994.) While perfect conformity may not be required, “a project *must* be compatible with the objectives and policies of the general plan.” (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782 [emphasis added] [citing *Families Unafraid to Uphold Rural etc. County v. Board of Supers.* (1998) 62 Cal.App.4th 1332, 1336].) “A project is inconsistent if it conflicts with a general plan policy that is fundamental, mandatory, and clear.” (*Endangered Habitats, supra*, 131 Cal.App.4th at 782 [citing *Families Unafraid, supra*, 62 Cal.App.4th at 1341-42].) The Project is inconsistent with the City’s plan-level documents in several respects.

² Available at <https://cityofclovis.com/wp-content/uploads/2018/09/Central-Clovis-Specific-Plan.pdf>

WANGER JONES HELSLEY PC

Clovis City Council
July 16, 2021
Page 6

- As a result of the potential noise impacts associated with the Project, (see *supra*, §§ A, B), the Project is inconsistent with Policies 3.1, 3.2, 3.5, 3.6, and 3.14 of the Environmental Safety Element of the City's General Plan.

- The Project is also inconsistent with Policy 3.4 of the Environmental Safety Element of the City's General Plan because no Acoustic Study has been obtained for the Project.

- The Central Clovis Specific Plan at 3.15 states that Basin 6D, which is adjacent to the Project is a "viewable basin" that "provide[s] a view shed and wildlife viewing opportunities." (City of Clovis, Central Clovis Specific Plan at 3.15.) The Project will disrupt and interfere with this view shed, particularly given that there will be two modern, three-story structures.

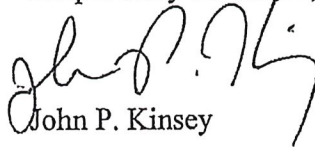
- For similar reasons, the Project is inconsistent with Policy 2.3 of the Open Space and Conservation Element of the City's General Plan.

The Project is inconsistent with the City's plan-level documents. As a result, it cannot be approved as currently envisioned.

D. Conclusion

For each of the following reasons, the City should defer a decision on the Project in order to allow the applicants to meet and confer with the surrounding community regarding the scope and scale of the Project. If the applicants are not inclined to postpone the City's consideration of the Project to accommodate these discussions, the Project should be denied.

Respectfully submitted,



John P. Kinsey

Item 20

Karey Cha

From: Public Comments <email@cityofclovis.com>
Sent: Monday, July 19, 2021 12:11 PM
To: John Holt; Karey Cha
Subject: [External] Public Comment for City Council

Council Meeting Date: 2021-07-19

Item Number (put "0" if your comment is regarding an item not on the agenda): -20

Full Name: Sam Quillen

Email: samq695@gmail.com

Comment: This is outrageous and insulting, the gall with which you attempt to push through this re-zoning ignoring your own regulations and rules surrounding the decision. To ignore the traffic and parking implications for the residents and force in low-income apartments into a residential area. While ignoring all current residents resistance and complaints is mind blowing. The increase in traffic alone on already maxed streets such as Sierra and 3rd will be undue stress on residents. The extreme overflow of parking will take up all current residents curb space and is a danger around the curve on Baron to 1st st. I can guarantee no one who is suggesting this to pass or voting for this to pass would want an apartment complex right next door to their house. The damage to property value alone is extreme. Don't punish the current residents because someone miles away in Sacramento is attempting to force your hand on this. This isn't right.
Supporting Files (2 Max.):

Date: July 19, 2021

Time: 12:10 pm

Remote IP: 50.234.77.254

Karey Cha

From: Public Comments <email@cityofclovis.com>
Sent: Monday, July 19, 2021 3:42 PM
To: John Holt; Karey Cha
Subject: [External] Public Comment for City Council

Council Meeting Date: 2021-07-19

Item Number (put "0" if your comment is regarding an item not on the agenda): 20

Full Name: DiFalco, Robin and Michael

Email: robindifalco@gmail.com

Comment: Please accept my written comments attached in opposition of rezoning to Very High Density and in opposition of the Osmun/Baron project as proposed. Please consider alternative.

Thank you,

Robin DiFalco

Supporting Files (2 Max.): <https://cityofclovis.com/wp-content/uploads/elementor/forms/60f5ffa6c4e66.pdf>

Date: July 19, 2021

Time: 3:41 pm

Remote IP: 98.239.66.57

Robin DiFalco
227 Baron Ave. Clovis CA 93612
robindifalco@gmail.com, 5599402288

7.16.21

City of Clovis Council Members,
Attn: George Gonzalez, MPA, Senior Planner
City of Clovis 1033 Fifth Street, Clovis CA 93612

RE: Opposition for the consideration of the Osumn/Baron property.

- Oppose- Res. 21-___, GPA2018-003, A request to amend the General Plan to re-designate from the Medium Density Residential (4.1 to 7.0 DU/Ac) to the Very High Density Residential (25.1 to 43.0 DU/Ac) classification for future development.
- Oppose - Ord. 21-___, R2018-009, A request to approve a rezone from the R-1 (Single Family Residential - 6,000 Sq. Ft.) to the R-4 (Very High Density Multiple Family Residential) Zone District.

Dear Mr. Gonzalez and City Council Members,

As a homeowner in Old Town Clovis (OTC), I would like to offer my written comments as requested regarding above named proposed project, proposed amendment, and proposed rezoning. I live on Baron Ave in a little over a 100-year-old home and have spent years finding a small old home in OTC. Nowhere else in Clovis can you find old historic homes/buildings. I respectfully ask for no zoning change and no change to the general plan for the Osmun/Baron Property noted above or alternatives to the original proposed project.

Preservation of the authenticity of Old Town is a focus and a 3 or 4-story project which changes zoning from R1-R4 seems in direct conflict with that and sets precedent. A 4 or 3 story apartment complex would take away from Old Town. Old Town prioritizes the preservation of the historic character and resources of Old Town. There is a difference in a "Downtown", "City" and "Old Town". I feel a 3 to 4 story apartment project is in line with a "Downtown" or "City" experience but not in alignment with "Old Town" Clovis. I believe in infilling vacant lots and growth in our community in the context of preservation and ensuring each project not only meets a need on paper, but it also blends well in the neighborhood/community.

There is a lot of change in our little neighborhood in a short amount of time. Great changes and additions with the Senior Center, Library, and Transit. The proposed project is on the cusp of some apartments, ponding basin, and neighborhood homes. I ask the Council to pause and consider all the changes and consider modifying the project or consider alternatives. Modify the current proposed project to 2 stories with the same amount of parking. I also ask the Council to consider moving the proposed trash placement. It is currently on Baron next to a home and propose it to be moved to inside the project. Other alternatives: A Cottage Community, Senior/Veteran Housing, or modifying the current project to 2 stories, etc. Any of these would be a much more suitable solution to infill the area between Osmun and Baron.

I believe development and infilling the vacant lots in town is a positive change. There are other infill projects in the community that align with the existing neighborhood. In this case the proposed project would stick out significantly and would alter the current neighborhood drastically. In closing, I would ask that these items for zoning change and the very high-density project be dropped, and other alternatives be considered.

Thank you for providing an opportunity for residents to express their serious concerns over this proposed project.

Sincerely,

Michael and Robin DiFalco