

**CLOVIS PLANNING COMMISSION MINUTES**  
July 23, 2020

A modified meeting of the Clovis Planning Commission was called to order at 6:00 p.m. by Chair Hatcher in the Clovis Council Chamber.

Flag salute led by Chair Hatcher

Present: Commissioners Antuna, Bedsted (via Webex), Cunningham, Hinkle, Chair Hatcher

Absent: None

Staff: Dave Merchen, City Planner  
Ricky Caperton, Senior Planner  
Lily Cha, Assistant Planner  
Maria Spera, Planning Technician II  
Sean Smith, Supervising Civil Engineer  
Michael Linden, Assistant City Attorney

**MINUTES**

1. The Commission approved the June 25, 2020, minutes by a vote of 5-0.

**COMMISSION SECRETARY**

City Planner Dave Merchen informed that correspondence received recently is in relation to the Butterfly Gardens project, providing background information on the project.

**PLANNING COMMISSION MEMBERS COMMENTS**

Commissioner Hinkle expressed gratitude to the City for the retirement celebration in honor of Dwight Kroll.

**COMMUNICATIONS AND REFERRALS**

None.

**BUSINESS FROM THE FLOOR**

Correspondence from Katie Work in opposition to the Butterfly Gardens project was read and then placed into the record.

Correspondence from Nathan and Heather Tucker in opposition to the Butterfly Gardens project was read and then placed into the record.

Correspondence from Makita Rivera in opposition to the Butterfly Gardens project was read and then placed into the record.

Correspondence from Susan Oliver in opposition to the Butterfly Gardens project was read and then placed into the record.

Correspondence from Kelly Devlin in opposition to the Butterfly Gardens project was read and then placed into the record.

Correspondence from Rebecca Devlin in opposition to the Butterfly Gardens project was read and then placed into the record.

Correspondence from Stacey Kristman in opposition to the Butterfly Gardens project was read and then placed into the record.

David Dench of 834 W. Holland Avenue spoke in opposition to the Butterfly Gardens project due to the proximity to both a daycare and a liquor store, existing traffic hazards, existing crime and nuisance issues, reduction in home values.

### CONSENT CALENDAR

None.

### PUBLIC HEARINGS

2. Consider Approval - **Res. 20-31, TM6161**, A request to approve a one-year extension to approved tentative tract map TM6161, located at the southeast area of Ashlan and Thompson Avenues. Stone Valley Communities, LLC, owner/applicant.

City Planner Dave Merchen presented the staff report.

At this point, the Chair opened the floor to the applicant.

The applicant chose not to make any statements.

At this point, the Chair opened the floor to those in favor.

There being none, the Chair opened the floor to those in opposition.

There being none, the Chair closed the public portion.

At this point, a motion was made by Commissioner Antuna and seconded by Commissioner Hinkle to approve TM6161. The motion was approved by a vote of 5-0.

3. Consider Approval - **Res. 20-32, SPR2020-002**, A request to consider an appeal of the Site Plan Review (SPR) approval for an industrial development located at 561 N. DeWitt within the Dry Creek Business Park (Project). Palm Bluffs Real Estate Inc., property owner; Partners 425 LLC, Bear Claw Investments LLC, Dan and Joey Properties LLC, appellants; Dowling Aaron Incorporated – Andrew Slater, representative.

Assistant Planner Lily Cha presented the staff report.

At this point, the Chair opened the floor to the applicant.

Harry Pascuzzi, on behalf of the applicant, provided the applicant's argument against the appeal.

At this point, the Chair opened the floor to the appellants.

Andy Slater, representing the appellants, provided some rebuttal to the applicant and offered to answer questions following his clients' addresses of the Planning Commission.

Kim Bethel provided argument for the appeal.

Daniel Bond provided argument for the appeal.

Robert L. Davidson provided argument for the appeal.

Mr. Slater provided a close to the arguments for the appeal and offered to answer any questions.

At this point, the Chair reopened the floor to the applicant for rebuttal.

Mr. Pascuzzi provided a rebuttal to the appellants' arguments.

At this point, the Chair opened the floor to those in favor.

There being none, the Chair opened the floor to those in opposition.

There being none, the Chair closed the public portion.

Commissioner Hinkle inquired as to when the project was approved. Assistant Planner Cha provided the date.

Commissioner Hinkle then sought and received confirmation that the project is on an M-1 zoned lot rather than a C-M zoned lot, and that therefore it falls under different design rules from the appellants' projects.

Commissioner Hinkle sought and received confirmation of the timeframe of review and approval for this project, then inquired as to when the lot was purchased by the applicant, as he was wondering if there had been changes in plans between the initial purchase and the project approval. Assistant Planner Cha did not have that information.

Commissioner Antuna inquired as to whether there had been any appeals to other projects the appellants mentioned as being opposed to. Assistant Planner Cha responded that this was the first appeal in this area.

Mr. Davidson stated that though the appellants had built on C-M zoned properties versus M-1 zoned properties, there is no such distinction to the Dry Creek Business Park as defined in the Herndon Shepherd Specific Plan. As such, all the properties in the business park fall under the same design guidelines and should be more in line with the appellants' building designs.

Mr. Slater stated that until his clients entered an agreement with the City Attorney to be notified of any development proposed in this area before approval, there was no opportunity for appeal except to do so to the developers. This was the first project for which they received notice at this

stage, making this their first opportunity to appeal. To clarify Mr. Davidson's remarks, he informed that when speaking of zoning, the appellants are referring to aesthetic rather than use.

Mr. Davidson stated that though this is their first appeal, they had performed the necessary outreach when they contacted City staff and had several meetings regarding this issue. They had been assured that further projects of this type would not be approved, but that several projects were allowed to move forward during the nine-to-ten month period during which these meetings took place. He claimed that these projects were not of a quality that either the appellants or the City of Clovis wanted. They want to be good neighbors but feel that they are being taken advantage of.

Chair Hatcher inquired as to when the meeting took place in which Mr. Davidson states that staff and the City Council promised to address this issue. Mr. Davidson responded, after some consultation with Mr. Bond, that the final meeting took place in the summer of 2019, having started in early 2019 or late 2018, before many of the now-existing projects were approved. He explained that the reason they did not appeal anything previously was that they thought they were making progress in these meetings. He also stated that there was a huge chasm between their good efforts and action at the planning level as well as the passage of information to other city council members and the new mayor.

Commissioner Hinkle sought and received confirmation that they were of the belief that just because the mayor told them there would be change, such would happen.

Commissioner Hinkle pointed out that people can say anything, opinions can be expressed regarding what someone would like to see being done differently, but that it is the City Council that is the agent of such change. He also pointed out that it appeared that the appellants are trying to enforce the type of buildings in the C-M development onto the M-1 development, which has different types of businesses.

Mr. Davidson expressed objection to Commissioner Hinkle's characterization of the appellants' intent. He reiterated that the language of the Herndon Shepherd Specific Plan is specific and provides staff with guidelines they should be bound to but haven't adhered to after the approval of Mr. Bethel's building. He expressed that staff is trying to change the language to give them the ability to do whatever they want, invalidating the reason for having the specific plan or even the Planning Commission.

Mr. Davidson stated that the City Council had already made their decision for both the Herndon Shepherd Specific Plan and the business park tract map and therefore they didn't need to be involved again. Rather, they need staff to do as they had been directed and follow the guidelines set forth by the City Council.

Chair Hatcher inquired as to whether this would automatically go to the City Council for consideration. City Planner Merchen responded in the negative; the project would only go forward to the City Council if one of the parties appealed the Commission's decision.

Chair Hatcher sought clarification regarding the reason for this being the first time the appellants had the opportunity to appeal any of these projects. City Planner Merchen expressed disagreement with the appellants' terminology, as the Municipal Code has always allowed for such appeals, though they may not have been aware that approvals had occurred and their appeal periods were underway. To his knowledge, the appellants had not previously requested notification of such approvals.

Commissioner Hinkle sought and received confirmation that the Herndon Shepherd Specific Plan provides fairly open, subjective guidelines that grant staff the power to interpret and implement them as they feel will work within the plan. City Planner Merchen further pointed out that because the guidelines are vague statements, each member of staff may interpret and implement them differently, leading to considerations of what the original intent was and different results.

Commissioner Antuna referred to the appellants' statements regarding this being the first time receiving notification before a building is approved and inquired as to the actual notification process for this type of entitlement. City Planner Merchen explained that for nonresidential projects, the site plan review process does not require neighborhood notification. The notification the appellants received is specific to this area due to request by the appellants.

Chair Hatcher expressed bewilderment and disturbance regarding this becoming an issue for Planning Commission consideration with this final building when so many others were approved using the Herndon Shepherd Specific Plan. She personally had always viewed it as a guiding direction open to interpretation rather than an absolute. In all of her years serving on the Commission, this is the first time she has seen a commercial/light industrial project appeal like this. She expressed sympathy for the appellants going so long with no apparent resolution for them but points out that this issue was never brought before the Commission before this. Though the proposed building does not match the appellants' few buildings, it does match the rest of the buildings in the area; she does not feel that it would be fair to rescind the approval just because their building is the last one to go there.

Commissioner Cunningham expressed appreciation for the aesthetics of the appellants' buildings, informing that he has driven through the business park several times, including prior to any construction at all. He expressed disagreement with the appellants' description of the manufacture side of the park as ugly and not compatible with this site, pointing out that he has seen other industrial sites with fewer amenities than this one. Having read both the General Plan and the Herndon Shepherd Specific Plan, he feels that the language is permissive rather than mandatory and that deciding in favor of the appellants would mean going back to the other industrial projects approved and built and informing them that they have to change their design, an unfair action.

Commissioner Bedsted expressed agreement with Commissioner Cunningham's take on the permissive nature of the specific plan's language, which has resulted in some disparity in building designs. However, the building design under appeal conforms more to the majority of buildings more recently built rather than with the original three or four buildings. After listening to the appellants' descriptions of various meetings, he finds it disappointing that the vehicle for appeal

was not utilized much earlier in the process. As the zoning and language allow for some subjectivity and discretion for staff to exercise in the site plan review process, he sees this project as conforming and supports it moving forward.

At this point, a motion was made by Commissioner Cunningham and seconded by Commissioner Hinkle to deny appeal and uphold approval of SPR2020-002. The motion was approved by a vote of 5-0.

4. Consider Approval - **Res. 20-33, SPR2018-005A2**, A request to consider an appeal of the site plan review denial for an additional access point on Willow Avenue for a previously approved commercial center located at the northeast corner of Willow and Alluvial Avenues. El Centro Corner Petroleum LLC, owner/applicant.

Assistant Planner Lily Cha and Supervising Civil Engineer Sean Smith presented the staff report.

Commissioner Bedsted, referring to the mention of recent denied access requests, inquired as to how many requests were approved as variances, as the accumulation of such over time can impede traffic flow. Supervising Civil Engineer Sean Smith responded that he does not have the total count but the applicant's report did correctly point out several access points that varied from such requirements as spacing from a signal. He also informed about a misplaced arrow on the graphic.

Commissioner Bedsted followed up with an inquiry as to whether any of those variances have been problematic. Supervising Civil Engineer Smith responded in the negative.

Commissioner Bested inquired as to whether any of those variances had been similarly evaluated with traffic studies indicating that the impact of said variances would be negligible or if instead they were overwhelmingly evaluated as having no impact. Supervising Civil Engineer Smith responded that he does not have the specifics, but that he assumes a fair amount of work went into each to evaluate different issues.

Commissioner Bedsted stated for the record that he is not convinced that precedent, something done in the past, is necessarily something that should be done in the future. He wished to evaluate those precedents objectively, hence the request for data.

At this point, the Chair opened the floor to the applicant.

Toni Merrihew, CFO of property owner, provided background on the request.

Fred Minegar, traffic engineer and consultant for the applicant, provided further background on the request.

Mrs. Merrihew provided closing statements on the request.

Commissioner Cunningham inquired as to whether the applicant was aware of the access restrictions when they purchased the property from the previous developer. Mrs. Merrihew responded that they did see the site plan before purchase but had not driven the site or visited the area.

Commissioner Cunningham inquired as to whether City staff had contacted City of Fresno, whether they wanted to modify the access recently, and what the City of Fresno's response was. Supervising Civil Engineer Smith responded that staff had done so with this application, as the practice is to do so with each and every application that comes in for this corridor, and their response has consistently been to uphold the 2001 agreement.

Commissioner Antuna sought and received confirmation, for the record, that the applicant was notified by City staff of the limitations regarding access on Willow Avenue and decided to move forward with the project anyway.

Commissioner Hinkle inquired as to how many times Mr. Minegar had been to the subject site. Mr. Minegar responded that he personally had never been to the site but that his registered civil engineers had visited and physical visits are no longer necessary with the technologies currently available.

Commissioner Hinkle followed up by enquiring as to the number and duration of visits by Mr. Minegar's technicians. Mr. Minegar responded with information regarding his engineers' visits, reiterating that several existing drive accesses are not in compliance or conformance with the City's municipal code or the policy while the applicant's proposal is in compliance with traffic impact requirements.

At this point, the Chair opened the floor to those in favor.

There being none, the Chair opened the floor to those in opposition.

There being none, the Chair closed the public portion.

Commissioner Antuna expressed that she felt the commercial development was aware that access on the Willow Avenue corridor was not an option for them due to the City of Fresno wanting the City of Clovis to uphold the agreement and the City Engineer stating that it does not justify having another access. It may have been initially zoned residential, but even when rezoned, it seems that it was decided that the current agreement adopted between the two cities would be functional. Therefore, she has no issue supporting this denial.

Commissioner Cunningham expressed full agreement with Commissioner Antuna. He informed that he had read the traffic study, and that though it was very thorough, but the issue boils down to two things for him: our agreement with the City of Fresno and the fact that the current developer went into this knowing there was a Willow Avenue access restriction. He will support the denial as well.

Commissioner Bedsted echoed the previous comments, emphasizing that we need to honor our agreements. When someone sets precedents, he understands the frustrations that can ensue later. Projects have to be considered on a case by case basis, and sometimes variances are warranted. In this instance, however, the property was planned for this specific development and so he would support leaving it as it stands.

Commissioner Hinkle informed that he has driven through this particular intersection as many as ten times a week for many years, longer than the agreement with our neighbor city has been in effect. He has noticed that traffic is increasing with development on the west side of Willow Avenue. He has also noticed that many drivers making a right turn off Alluvial Avenue tend to run the yellow light, turning onto Willow Avenue while going 50 miles per hour, which would create problems for people pulling out onto Willow Avenue from the proposed second access. He suggests widening the shared access point with Derrel's Mini Storage, as that business has light traffic. In conclusion, he has difficulty accepting this appeal because of these considerations and the fact that the applicant know what the approved site design was when they purchased the property.

Chair Hatcher expressed agreement with the other commissioners' comments. When the land was purchased, there was already an approved site plan with limited access to Willow Avenue, which has limited access points because it is a busy arterial street. The applicant put emphasis on what other things were approved or denied but when considering the project on its own merits, it is well designed. She does not believe that there will be as much vehicle stacking as the applicant believes there will be, and sees no reason to deviate from how the particular site and Willow Avenue were designed. Therefore, she agrees with the rest of the Commission in denying the appeal.

Commissioner Hinkle informed that the development of the Heritage Grove area will see traffic increasing even more.

At this point, a motion was made by Commissioner Hinkle and seconded by Commissioner Antuna to deny appeal and uphold denial of SPR2018-005A2. The motion was approved by a vote of 5-0.

OLD BUSINESS

None.

NEW BUSINESS

None.

ADJOURNMENT AT 8:22 P.M. UNTIL the Planning Commission meeting on August 27, 2020.



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Amy Hatcher, Chair