

The Planning Commission of the County of Amador met at the County Administration Center, 810 Court Street, Jackson, California. The meeting was called to order at 7:00 p.m. by Chairman Lindstrom.

THOSE PRESENT WERE:

Planning Commissioners: Ray Lindstrom, District I, Chairman
Dave Wardall, District II
Caryl Callsen, District III
Andy Byrne, District IV
Ray Ryan, District V

Staff: Grace Pak, Deputy County Counsel
Chuck Beatty, Planner
Heidi Jacobs, Recording Secretary

NOTE: The Staff Report packet prepared for the Planning Commission is hereby incorporated into these minutes by reference as though set forth in full. Any Staff Report, recommended findings, mitigation measures, conditions or recommendations which are referred to by Commissioners in their action motions on project decisions which are contained in the Staff Reports are part of these minutes. Any written material, petitions, packets, or comments received at the hearing also become a part of these minutes. The recording tapes of this meeting are hereby incorporated into these minutes by reference and are stored in the Amador County Planning Department.

A. Pledge of Allegiance

B. Approval of Agenda

MOTION: It was moved by Commissioner Byrne, seconded by Commissioner Ryan and unanimously carried to approve the agenda as presented.

C. Minutes:

MOTION: It was moved by Commissioner Callsen seconded by Commissioner Byrne and unanimously carried to approve the October 11, 2016 Planning Commission minutes as presented.

D. Correspondence: None.

E. Public Matters Not on the Agenda: None.

F. Recent Board Actions: Chuck Beatty, Planner, reported the Board of Supervisors approved the scenic highway corridor ordinance and the Posey zone change in conjunction with a boundary line adjustment.

AGENDA ITEMS

Item 1 - Request for a one-year Extension of Time for Tentative Subdivision Map No. 143 (Palisades Unit 6) submitted by Mountain Springs-Kirkwood, LLC.

Applicant: Mountain Springs-Kirkwood, LLC
Supervisorial District III

Location: on the west side of Kirkwood Meadows Drive just south of Loop Road in the "Ski-In/Ski-Out South" area as delineated on the 2003 Kirkwood Specific Plan (APN 026-020-046).

Chuck Beatty, Planner, summarized the staff report which is hereby incorporated by reference into these minutes as though set forth in full. Mr. Beatty clarified for the record the property owner is KP VI, LLC.

In response to a question from Commissioner Ryan, Mr. Beatty stated the map approval will expire in one year if the Commission grants the extension unless there is state legislative action that provides further extensions.

MOTION: It was moved by Commissioner Ryan, seconded by Commissioner Wardall and unanimously carried to grant a one-year extension of Tentative Subdivision Map No. 143 Palisades Unit 6.

NOTE: Mr. Beatty advised the Planning Commission approved a one year extension of Tentative Subdivision Map Number 143, Palisades Unit 6. If anyone wishes to appeal the decision of the Commission they can do so by submitting in writing to the Board of Supervisors a request for appeal prior to November 18, 2016, at 5:00 p.m. along with the appropriate appeal fee.

PUBLIC HEARINGS

Item 2 - Environmental document determination and possible project decision for Tentative Parcel Map No. 2860, proposing the division of 62.2+/- acres into three parcels of 18.82+/- acres, 18.82+/- acres, and 24.58+/- acres.

Applicants: Plasse Family Trust

Supervisorial District: 3

Location: 31009 Plasse Road, approximately 0.6 miles east of Highway 88 adjacent to Silver Lake (APN 026-040-069).

Chuck Beatty, Planner, summarized the staff report which is hereby incorporated by reference into these minutes as though set forth in full.

Commissioner Ryan asked for the proposed source of water and sewage disposal to be clarified. Mr. Beatty stated there are existing septic systems and water available for a single family dwelling on each proposed parcel.

Chairman Lindstrom opened the public hearing.

John Plasse stated he is here as a private citizen and the executor of the Plasse Family Trust and speaking on behalf of that entity. He thanked the Commissioners for the opportunity to appear and provided handouts as additional information to back-up his request; the handouts were Ordinance Number 1676, the Amador Fire Protection District Capital Improvement Plan, and CA Government Codes 53311.5 through 53314.9. Mr. Plasse stated he is asking for approval of the application and for consideration regarding Condition No. 12 which states "To mitigate the impact on fire protection services, in accordance with Amador County Ordinance No. 1640, the project proponent shall participate in the annexation to the County's Community Facilities District No. 2006-1 (Fire Protection Services). THE AMADOR FIRE PROTECTION DISTRICT SHALL MONITOR THIS CONDITION." He stated he has researched the condition and came to realize the creation of the two additional parcels results in an increase of a special tax assessment from about \$35 per year to \$660 per year. This prompted him to research the details of the community facilities district (CFD) and found the CFD was developed in 2006 under the provisions of the Mello Roos Act, which is the overarching act that allows jurisdictions to approve community facilities districts. Mr. Plasse stated "At the time, again 2006, the timing must be taken in context, part of Amador's reaction to the rapid growth rate we were experiencing in the early 2000s was born out in a number of decisions and I think this was one of them. There were projections that type of growth rate would continue in Amador County. The Mello Roos Act, see highlighted sections in the handout, is a method of providing alternative financing of capital facilities and services, especially in developing areas and areas undergoing rehabilitation. I will say it is very applicable in those situations where you have a large subdivision being proposed that needs the extension of community services to that subdivision, not only fire services but police protection service, water extension and sewer extensions; all those types of public services. It is very applicable in those situations to have an election process that enables the subdividor to elect to annex into that special district and then pass the special assessment onto the purchasers of those various lots in a large subdivision that has availed itself of all those services and funded with a bond financing." Mr. Plasse stated he does not feel it is an applicable methodology in this instance where there are no community services provided to that area of the county with regards to water extension, sewer extension, and other types of services Mello Roos bonds typically provide funding for. The method that has been used to create this special district in Amador County is

rather unique in that each time an application such as this comes before the Commission an island is created in the special district that has the dubious distinction of having their tax rate expanded from \$35 per year to \$660 per year. Mr. Plasse reiterated it is applicable in situations where the extension of those services will benefit the subdivision. He stated in this situation there is very little in the way of response times for fire services, this CFD was created specifically for fire services, and the Mello Roos Act says it cannot be used for the supplanting of services that are in existence and as Measure M is the funding mechanism for paid firefighters, this fee is supplanting those fees. Also because it is a facilities district there is nothing in the Capital Facilities Plan for AFPD to extend of facilities or services up into that far-reaching area of Amador County. We are left with no additional services in that territory above and beyond what was there when the CFD was created; that is one of the specific provisions in the Mello Roos Act that states that services can be financed by this method only to the extent that they are in addition to those provided in the territory of the district before the district was created and additional services shall not supplant services already available (see page 3 of 14 of the Mello Roos Act handout). We are in a situation where we are not receiving additional services than what existed already; we only receive services about four months out of the year because the County actually locks the access road to our private property eight months out of the year with a County gate and lock, the road is not plowed so fire services would be unable to get to us if we were residing there but we are locked out and can't reside there. Again, the Capital Facilities Plan has no intention or expectation to expand services in that area. Mr. Plasse stated it comes down to a situation of being double and triple taxed for subpar response times; responses will be from Kirkwood volunteer fire department based on a mutual aid agreement or from AFPD that is 30-40 minutes away. We do pay property taxes, and a bit of unfairness is we pay a full year of property taxes for property that the entity charging the taxes also locks us out of for eight months of the year – that is beside the point and the argument was lost years ago. We pay property taxes, a fire assessment tax, and the State CalFire SRA fee – there are three levels of taxation for fire service that is not too available in that area and certainly not available for two-thirds of the year. Mr. Plasse requested the Commission approve the application and requested that Condition No. 12 requiring the annexation to the CFD be removed because we derive no benefit, the taxes would be exponentially higher than any other parcel in that area; or prorate the fee based on the time the County makes the property is available to us.

Commissioner Wardall asked which fire departments would respond to the area. Mr. Plasse stated it would first be the Kirkwood volunteer fire department, then CalFire Dew Drop station when it is staffed, then the AFPD station near Mace Meadows. Commissioner Wardall stated he felt it was just short of legalized extortion and disagreed with Condition No. 14 requiring the Parks and Recreation fees because the project is in a major recreation area. Commissioner Wardall stated there is no benefit to the property owners to pay the Parks and Recreation fee and come down to use the park facilities; he stated he is disappointed with the Board of Supervisors for passing that. Commissioner Wardall agreed with Mr. Plasse that he is being taxed without receiving services; the property is not accessible in the winter; the primary response for fire is from the Kirkwood volunteer fire department. Mr. Plasse agreed it is a disappointment in how the CFD was created in 2006, before his time as a Supervisor and probably before the Commissioners' time. Mr. Plasse felt it was a hasty decision and unfortunately the boundaries of the district are the entire County and the far eastern portion of the County has little to no services available.

Mr. Plasse stated the Mello Roos provisions allow for an election of the property owners into the district; he read from page 10 of 14 "if the qualified electors of the district do not approve the proposed special tax the local agency shall return the funds which have not been committed for any authorized purpose by the time of the election to the person or entity advancing the funds." The way the County has structured this, there is no election but you are required to sign a waiver and consent form which grants your voting rights to the County to vote on your behalf or you will not have your application for a parcel split approved. Mr. Plasse stated Commissioner Wardall's use of "extortion" gets very close to the truth when an applicant is entitled to split their property in all other aspects but unless you grant your right to vote to the County and the County votes on your behalf the application will not be approved; it is very questionable. Mr. Plasse stated he is not challenging the entirety of the Ordinance because it is applicable to certain areas of the County but does not believe it is applicable to the far eastern reaches that are blocked off from use for two-thirds of the year.

Mr. Plasse asked if there were any other questions that he could answer. He stated the original report from when the CFD was formed stated the intention was to annex new residential and nonresidential developments as they are approved to provide for fire protection services in the new growth areas of the County. Mr. Plasse stated he did not think Silver Lake constituted a new growth area of the County. Also, the rate of the tax was calculated on having 3-0 staffing (three firefighters on duty, 24 hours per day, 365 days per year); AFD has not yet achieved 2-0 staffing yet the special tax rate is calculated on costs for 3-0 staffing.

Chairman Lindstrom asked Mr. Plasse if he was asking the Commission to eliminate Condition No. 12 for the CFD fee. Mr. Plasse stated yes, to drop that as a condition of approval.

Commissioner Ryan asked Deputy County Counsel what the Commission has the ability to do. Grace Pak, Deputy County Counsel, stated she has reviewed the materials Mr. Plasse submitted at the beginning of the meeting but has not been able to formulate an opinion yet. Ms. Pak stated further review would be required. Commissioner Ryan asked what would happen if the Commission revised the condition to prorate the tax based on access to the property. Mr. Plasse stated he felt if the Commission was to change the condition to either remove or prorate the tax; the Commission should recommend the Board of Supervisors review and revise the applicable ordinance. Commissioner Ryan asked if this tax is in addition to the tax the State implemented. Mr. Plasse stated yes it is. Commissioner Ryan stated he is dumbfounded that the same tax rate is applied to properties when it is not accessible all year.

MOTION: It was moved by Commissioner Callsen, seconded by Commissioner Byrne and unanimously carried to close the public hearing.

Chairman Lindstrom was concerned about making a decision without having County Counsel's opinion. Commissioner Ryan stated he does not agree with taxation but out of fairness to others who pay this tax he would consider a pro-rated tax based on the availability of access to the property rather than waiving the tax. Commissioner Ryan would recommend approval of a pro-rated tax and also recommend the Supervisors revisit this ordinance to make it fair for property owners. Commissioner Ryan stated it would then be up to Counsel to determine if the Commission's action was legal and, if not, taking it to the Board of Supervisors for their approval.

Commissioner Byrne asked if this is an isolated incidence or if there are other areas of the County that would have similar issues so we wouldn't be granting a special privilege to one applicant; he wouldn't be comfortable reducing or waiving the tax unless he knew it was not granting a special privilege.

Commissioner Wardall asked if any of the properties in Kirkwood pay the tax. Ms. Pak stated she reviewed County Code Section 17.14.20 which states each new subdivision is required to participate in the formation of or annexation to the County's proposed community facilities district which is for fire protection services as a condition of approval of any tentative subdivision or parcel map. Commissioner Byrne stated Kirkwood has its own fire district. Commissioner Wardall stated he does not have a problem with a fair tax for a fair service but as he already stated the closest fire department is Kirkwood, then CalFire, and then AFD.

Commissioner Ryan reiterated his suggestion to prorate the tax so it still meets County Code requirements.

Commissioner Wardall believed it should be further reduced because AFD does not have a station within 30-40 miles of that property. Commissioner Ryan agreed but did not feel it was an action the Commission would be able to take; an amicable solution would be to adjust the rate based on access and let the Supervisors make a determination. Commissioner Wardall added the Supervisors would also need to consider what services would actually be provided by AFD when making a consideration on how to pro-rate the tax. Commissioner Ryan added the Commission needs to make a recommendation to the Board to review and amend the ordinance.

Commissioner Ryan felt a pro-rate of the tax based on the available access to the property would be a fair solution that would not be granting a special privilege.

Commissioner Wardall reiterated they are being taxed with no service and that the closest AFPD station is 30-40 miles away and that needs to be considered.

Commissioner Ryan asked what the tax is. Mr. Beatty stated it is applied at the time of a building permit and it is currently \$628 per year and can be increased up to 2% per year per house. Commissioner Ryan asked if the tax stays with the property when it is sold. Mr. Beatty stated the fee is perpetual. Commissioner Ryan reiterated his belief the amicable solution is for the tax to be pro-rated and it would be up to County Counsel to determine if it is consistent with County Code. Commissioner Ryan suggested the Commission make a recommendation to the Board to revisit the ordinance and consider the concerns he and Commissioner Wardall have discussed.

Chairman Lindstrom allowed Mr. Plasse to address the Commission since the public hearing was closed. Mr. Plasse stated the payments are for services in addition to services that already exist. The services, such as they are, already exist but simply by creating two new parcels there is a new tax. Commissioner Byrne stated the creation of the parcels also allows for the creation of up to five more houses; that's the nature of the process. Commissioner Byrne stated land division is not a right but a privilege.

Commissioner Ryan stated it would be fair and equitable to receive something when you pay something; because the way the ordinance is worded it cannot be waived but believed it could be pro-rated based on access to the property and recommended the Board revisit the ordinance. Commissioner Byrne asked how the condition would go to the Board if the Commission made a change to it. Mr. Beatty stated the Commission has the ability to approve the conditions but not to waive or reduce the rate.

Chairman Lindstrom recommended continuing the item so County Counsel can make a recommendation on what the Commission can do. Commissioner Byrne stated the only way the conditions can go to the Board is for the Commission to either approve or deny the application and the decision can be appealed to the Board. Commissioner Byrne suggested approving the project as it is and Mr. Plasse can appeal the decision to the Board of Supervisors. Commissioner Ryan stated the Commission can also make a recommendation to the Board regarding the CFD in Condition No. 12. Commissioner Ryan asked for County Counsel's opinion for approving the map with conditions and makes a recommendation for the Board to revisit the ordinance. Ms. Pak stated the Commission can continue the matter and direct staff to research options and make it cleaner so an appeal does not need to be filed or make a decision on the map and allow Mr. Plasse to appeal the decision.

Mr. Plasse asked for the Commission to enunciate the reasoning behind their recommendation that the Board revisit the ordinance based on geographic proximity to services, availability and the limited time use of the year and that is the reason for the request for a reduced or waived tax rate. Commissioner Ryan agreed and added that in the process the Board consider waiving the appeal fee because the Commission did not have the authority to change the condition.

Commissioner Wardall asked if the Commission could eliminate Condition No. 12 and have the Planning Department appeal the decision. Commissioner Byrne stated he is opposed to that. Commissioner Wardall stated this condition does not provide any benefit to this property or any property above Dew Drop and if the Commission removes Condition No. 12 it will get the attention of the Board of Supervisors and AFPD. Mr. Beatty stated if the Commission removed Condition No. 12 it will still apply because it is a County Code.

MOTION: It was moved by Commissioner Byrne, seconded by Commissioner Ryan and unanimously carried to find the Mitigated Negative Declaration is the appropriate environmental document for Tentative Parcel Map No. 2860.

Commissioner Byrne moved to approve Tentative Parcel Map No. 2860 subject to the conditions and findings contained in the staff report. Commissioner Wardall asked for the motion to be amended to

include that the Planning Commission has concerns about the lack of availability of AFPD fire protection service at that location and fees being charged in perpetuity on the parcels for lack of services being taxed. Commissioner Byrne was not agreeable to amending the motion. Commissioner Wardall asked for it to be put to a vote. Commissioner Ryan suggested Commissioner Wardall make a separate motion so there are three motions for the Commission to consider. Commissioner Ryan stated he would second Commissioner Byrne's original motion based on the understanding Commissioner Wardall's motion would be considered separately.

MOTION: It was moved by Commissioner Byrne, seconded by Commissioner Ryan and carried to approve Tentative Parcel Map No. 2860 subject to the conditions and findings contained in the staff report.

Ayes: Commissioner Byrne, Commissioner Ryan, Commissioner Callsen and Chairman Lindstrom

No: Commissioner Wardall

NOTE: *Mr. Beatty advised the Planning Commission approved Tentative Parcel Map Number 2860. If anyone wishes to appeal the decision of the Commission they can do so by submitting in writing to the Board of Supervisors a request for appeal prior to November 18, 2016, at 5:00 p.m. along with the appropriate appeal fee.*

MOTION:

It was moved by Commissioner Wardall, seconded by Commissioner Ryan and carried to make a recommendation from the Amador County Planning Commission to the Board of Supervisors that we have concerns for the condition 12 in the proposed project (Tentative Parcel Map No. 2860) which subjects the property to a perpetual tax for services that cannot be furnished. More specifically, for having a perpetual fire protection tax from the Amador Fire Protection District (AFPD); the closest station is more than 30 miles from the subject property; the closest fire protection service is the Kirkwood volunteer fire department; the next closest fire station is the CalFire station at Dew Drop and finally you get down the road to the Amador Fire Protection District station at Mace Meadows. Accordingly, there's no valuable service being provided for the taxes being collected on this property and we request the Board of Supervisors give due consideration to omitting the fire tax for properties above the Dew Drop Station area; all the area that is up near Kirkwood in that general location. The ordinance needs to be amended to apply the tax fairly and those properties that have no fire service from AFPD, i.e. Kirkwood-Silver Lake area, should not be taxed.

Under discussion prior to the vote Commissioner Byrne stated he is not opposed to having the ordinance revisited but the wording of the motion is not something he is comfortable with. Commissioner Ryan stated he understood.

Commissioner Callsen stated she would like the motion to be revised to prorated rather than omitted. Commissioner Wardall was not agreeable to having his motion amended to prorate the fee.

Chairman Lindstrom stated he would like to see a recommendation to waive the appeal fee included in the motion. Commissioner Wardall and Commissioner Ryan agreed to amend the motion as requested by Chairman Lindstrom.

AMENDED MOTION: It was moved by Commissioner Wardall, seconded by Commissioner Ryan and carried to make a recommendation from the Amador County Planning Commission to the Board of Supervisors that we have concerns for the condition 12 in the proposed project (Tentative Parcel Map No. 2860) which subjects the property to a perpetual tax for services that cannot be furnished. More specifically, for having a perpetual fire protection tax from the Amador Fire Protection District (AFPD); the closest station is more than 30 miles from the subject property; the closest fire protection service is the Kirkwood volunteer fire department; the next closest fire station is the CalFire station at Dew Drop and finally you get down the road to the Amador Fire Protection District station at Mace Meadows. Accordingly, there's no valuable service being provided for the taxes being collected on this property and we request the Board of Supervisors give due consideration to omitting the fire tax for properties above

AMADOR COUNTY PLANNING COMMISSION MINUTES
 SUMMARY MINUTES OF TAPE RECORDED MEETING
 NOVEMBER 8, 2016 – 7:00 P.M.

the Dew Drop Station area; all the area that is up near Kirkwood in that general location. The ordinance needs to be amended to apply the tax fairly and those properties that have no fire service from AFPD, i.e. Kirkwood-Silver Lake area, should not be taxed. In addition, the Commission recommends the Board of Supervisors waive the appeal fee.

Ayes: Commissioner Wardall, Commissioner Ryan, Chairman Lindstrom
 Noes: Commissioner Byrne and Commissioner Callsen

Adjournment: At 8:05 p.m. Chairman Lindstrom adjourned this meeting of the Planning Commission, to meet again on December 13, 2016 or thereafter.

_____/s/_____
 Ray Lindstrom, Chairman
 Amador County Planning Commission

_____/s/_____
 Heidi Jacobs, Recording Secretary
 Amador County Planning Department

_____/s/_____
 Susan C. Grijalva, Planning Director
 Amador County Planning Department