

TO: JAMES L. APP, CITY MANAGER

FROM: ROBERT A. LATA, COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: APPEAL OF PLANNED DEVELOPMENT 02-004 AND CONDITIONAL USE PERMIT 02-007 (DAVID KUDIJA)

DATE: APRIL 15, 2003

Needs: For the City Council to consider an appeal filed by David Kudija regarding the Planning Commission's approval of Planned Development 02-004 and Conditional Use Permit 02-007 on March 11, 2003. A copy of the appeal letter is attached.

Facts:

1. The project site is a vacant lot, located on the northwest corner of Golden Hill Road and Highway 46 East, within Subarea E of the Borkey Area Specific Plan (BASP). [Please see Attachment 1 - Location Map]
2. The General Plan Land Use designation for the parcel is CS (Commercial Service) and the zoning is C3/PD (Commercial/Light Industrial with a Planned Development Overlay).
3. On March 21, 2002 Pfeil Murrell applied for Planned Development and Conditional Use Permit to establish a gas station\commercial project as shown in Attachment 2 – Site Plan.
4. The BASP requires a 30-foot, heavily landscaped, setback from the Highway 46 right of way; that requirement applies to the subject property.
5. The project site is encumbered by a 60-foot wide, private access easement located on the southern portion of the property, adjacent to, and extending along the north side of the Highway 46 right of way (see Attachment 4 – Easement Area). There are no improvements at this time within the easement.
6. The project was first scheduled for Planning Commission consideration in November 2002 and was continued to January 14, 2003 in order to provide a more detailed evaluation of issues related to traffic, turning movements, and construction of a traffic median in Golden Hill Road.
7. On January 10, 2003 Staff received correspondence from Mr. Chris Iversen on behalf of David Kudija regarding the placement of landscaping and signage in the 60-foot, private easement area (see Attachment 5 – Attorney Letter attached). Mr. Kudija is the holder of the private easement. Staff requested a continuance of the public hearing at the January 14th meeting to allow time to adequately address the issues raised by Mr. Kudija. The public hearing was continued to the February 11, 2003 Planning Commission meeting.

8. Based on testimony from the applicant and Mr. Kudija, at the February 11th hearing, the Planning Commission continued the project for 30 more days to allow the Applicant and Mr. Kudija time to try to reach an agreement regarding the use of the easement area and to allow the Applicant time to address design issues that were raised during the public hearing.
9. The project was presented to the Planning Commission at the March 11, 2003 hearing. At that time, there was no evidence that an agreement had been reached between the Applicant and Mr. Kudija. In conjunction with assistance from the City Attorney, conditions of approval were developed that would allow for the placement of landscaping in the southern 30-feet of the 60-foot easement (adjacent to the Highway 46 right of way) as required by the BASP (see Attachment 6 – Landscaping Area). No other improvements were provided for within the easement area.

Analysis
and
Conclusion:

The proposed project, as conditioned, is consistent with the General Plan, zoning ordinance and the BASP. The BASP requires a 30-foot, heavily landscaped setback, along the Highway 46 right of way. This requirement would apply to any proposed development, including the potential development of a roadway by Mr. Kudija within the 60-foot private easement area.

During the course of project review, several alternatives were considered for placement of the landscaping, including the concept of placing the landscaping outside of the 60-foot easement area. However, since the 30 feet of landscaping is required to be along the highway, and since the landscaping would apply to either the property owner or the easement holder, it was concluded by the Planning Commission to require the landscaping within the southerly 30 feet of the 60-foot easement, consistent with the BASP (see Attachment 6 – Landscaping Area).

The Applicant has agreed to enter into an agreement, holding the City harmless, in the event there is any challenge to the use of the easement for landscaping that is required by the BASP.

The installation of landscaping in the easement does not appear to interfere with Mr. Kudija's right to develop an access way over the easement area, and there appears to be no grounds to overturn the Planning Commission's approval of the subject project based on the relationship of the landscaping and easement.

Policy
Reference:

General Plan, Municipal Code, Borkey Area Specific Plan

Fiscal
Impact:

None

Options:

After consideration of public testimony, that the City Council:

- a.** Adopt Resolution No. 03-xx denying the appeal, upholding the Planning Commission's approval of PD 02-004 and CUP 02-007, based on the Borkey Area Specific Plan's Project Design Standard SE-7, which states: "Notwithstanding any of the above requirements, any parcel or site located in this subarea shall be subject to a required landscape setback of thirty (30) feet from the right of way of State Highway 46."
- b.** Provide an alternative decision and direct Staff to return to the Council with a corresponding resolution.
- c.** Amend, modify or reject the above options.

Attachments:

1. Location Map
2. Preliminary Site Plan
3. Letter of Appeal
4. Easement Area
5. Attorney Letter
6. Landscaping Area

Draft Resolution

Mail and Newspaper Noticing Affidavits

RESOLUTION NO. 03-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
UPHOLDING THE DECISION OF THE PLANNING COMMISSION TO APPROVE
PLANNED DEVELOPMENT 02-004 and CONDITIONAL USE PERMIT 02-007
APN: 025-391-040 (DAVID KUDIJA)

WHEREAS, Sections 21.23B.030 and 21.23B.040 of the Municipal Code of the City of El Paso de Robles allocates authority to the Planning Commission for approval of all development within a planned development (overlay) district, and to require both onsite and offsite improvements as necessary; and

WHEREAS, on March 11, 2003, the Planning Commission granted approval of PD 02-004 and CUP 02-007 for construction and establishment of a gas station, mini-mart and ancillary uses, located on the northwest corner of Golden Hill Road and Highway 46 East, subject to standard and site specific conditions of approval; and

WHEREAS, on March 25, 2003, David Kudija, filed an appeal of the Planning Commission's approval of the Amendment; and

WHEREAS, the appeal is of the approval for placement of landscaping within the southern 30 feet of a 60-foot wide, private access easement adjacent to the Highway 46 right of way, as provided for in Site Specific Conditions of Approval No.'s 6 and 7 as written in Planning Commission Resolution 03-021; and

WHEREAS, Site Specific Condition of Approval No. 6 is necessary to ensure that the Applicant and the Easement Holder reach an agreement or the Applicant enters into an indemnification and hold harmless agreement protecting the City against potential lawsuits and ensuring adequate landscaping is provided in the event of a court order to remove the landscaping from the easement area; and

WHEREAS, Site Specific Condition of Approval No. 7 is necessary to ensure that any agreement reached by the Applicant and the Easement Holder is subject to review by the Community Development Department and/or the City Attorney and that any revisions to the landscaping placement are reviewed and approved by the Development Review Committee; and

WHEREAS, the City Council conducted a public hearing on April 15, 2003, to open the matter of the appeal for public hearing and to consider the facts as presented in the staff report, and

WHEREAS, based upon the facts and analysis presented in the staff report and public testimony received, the City Council finds:

1. The decisions of the Planning Commission granting approval of Planned Development 02-004 and Conditional Use Permit 02-007 are consistent with the General Plan, the Municipal Code and the Borkey Area Specific Plan of the City of El Paso de Robles.
2. Project Design Standard SE-7 of the Borkey area Specific Plan requires a thirty (30) foot landscaped setback along the Highway 46 right of way.
3. All development proposed within Subarea E of the Borkey Area Specific Plan is subject to Project Design Standard SE-7, including the development of an access road. Hence, the 30 feet of landscaping would be required where it has been required by the Planning

Commission, whether the property is developed by the property owner or the easement holder.

4. Site Specific Condition of Approval No. 6 as written in Planning Commission Resolution 03-021 is necessary to ensure that the Applicant and the Easement Holder reach an agreement or the Applicant enters into an indemnification and hold harmless agreement protecting the City against potential lawsuits and ensuring adequate landscaping is provided in the event of a court order to remove the landscaping from the easement area.
5. Site Specific Condition of Approval No. 7 as written in Planning Commission Resolution 03-021 is necessary to ensure that any agreement reached by the Applicant and the Easement Holder is subject to review by the Community Development Department and/or the City Attorney and that any revisions to the landscaping placement are reviewed and approved by the Development Review Committee.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of El Paso de Robles:

SECTION 1: The City Council hereby upholds the decisions of the Planning Commission granting approval to PD 02-004 and CUP 02-007 and affirms the necessity of Site Specific Conditions No. 6 and No. 7 as written in Planning Commission Resolution 03-021.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 15th day of April 2003, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk