

TO: James L. App, City Manager
FROM: Ronald Whisenand, Community Development Director
SUBJECT: Golden Hill Rd. Rezone 2nd Reading (Ord. No. 938 N.S.)
DATE: October 16, 2007

Needs: Receive and file factual information on compliance with the California Environmental Quality Act (CEQA) and Read, by title only, and adopt Ordinance No. 938 N.S.

Facts:

1. The Council was scheduled on October 2nd to adopt Ordinance No. 938 N.S. changing the zoning at 1450 Golden Hill Road from Residential Single Family (RSF-2) to Residential Multiple Family (RMF-12). The Ordinance implemented an approved change in the General Plan that occurred on September 18th.
2. The matter was pulled by Michael Jencks, an attorney working for an adjacent land owner who has previously raised concerns with the land use change and proposed project for that property. Two letters dated October 1, 2007 and October 2, 2007 were provided in advance of the October 2nd Council meeting (attached).
3. Mr. Jencks' letters and testimony questioned whether the City had followed the requirements of CEQA with respect to the Mitigated Negative Declaration ("MND") for the project. He stated that he did not believe that the MND had been available for public review for the proper amount of time and that the Notice of Determination (NOD) had not been filed with the County Clerk within 5 days of the Council's action on September 18.
4. The Council continued action on the Ordinance for two weeks in order for staff to research Mr. Jencks' claims and advise the Council whether compliance with CEQA was properly attained.

Analysis &
Conclusion:

1. Proper Notice CEQA requires that the city provide a "notice of intent" to adopt a mitigated negative declaration, and that the MND be subject to a public review period of not less than 20 days. Action by the decision maker (in this case the City Council) can not occur until the end of the public review period. The MND for this project was completed on July 24, 2007. Notice as required by CEQA was published in the Tribune on July 24, 2007. (A copy is attached for ease of reference.) The notice specified the review period, the public meetings at which the MND would be considered, described the project and required approvals, and indicated where the MND was available for review (Public Resources Code 21092(b)(1)); 14 Cal. Code Regs. §§ 15072, 15073. . The review period ended on August 14th, 21 days after publication of the notice and 56 days before the Council's decision to adopt the MND.

Mr. Jencks indicated that the notice was only provided five days in advance of the Planning Commission hearing (August 9th). The above facts do not support this statement. We believe that Mr. Jencks may be confusing the date that the actual Planning Commission staff report was made available to his client for review. A copy of the MND was attached to that report. However, as indicated in the published notice, the MND itself was available well before the Planning Commission staff report. The notice clearly provided information on where the MND could be reviewed or purchased prior to the hearing.

2. Notice of Determination Mr. Jencks is correct that the City must file a Notice of Determination (NOD) with the County Clerk within five working days of the Council's decision to approve the project. CEQA does not however void the MND should the five-day filing not occur. It simply extends the statute of limitations for filing CEQA challenges.

City staff always strives to file the NOD within the time limits specified in the law. However, more recent changes to the State Fish and Game Code require that a Fish and Game Review Fee be paid at the time of the filing of the NOD. Staff contacted the applicant following the hearing requesting the fee. The City did not receive the applicant's payment of the Fish and Game fee until October 2nd.

3. Spot Zoning Mr. Jencks' letter makes reference to the Council's action being "spot zoning." While "spot zoning" is not prohibited by State law, in certain circumstances it can result in inappropriate land uses being in close proximity to each other. The issue of "spot zoning" was raised during the Planning Commission hearing. The Commission, in forming its recommendation to the City Council determined that this was not a case of "spot zoning" because the land use change was specifically limited with a PD Combining District to a church, day care, and senior housing development and that similar uses already existed in the neighborhood.

4. Constitutional Takings No factual information was provided that would indicate how the rezone would result in a "partial" or "complete" taking.

5. Brown Act Violations Mr. Jencks generally referred in his letter and statements at the hearing to procedural or Brown Act violations at the Planning Commission. However, no specific information has been provided for staff to evaluate or comment.

- Options:
- a. Read, by title only, and adopt Ordinance No. 938 N.S.
 - b. Amend, modify or reject the foregoing option.

Attachments:

- 1. Michael Jencks Letters
- 2. Published Notice of Intent to Adopt a Mitigated Negative Declaration

Attachment 1
Attorney Correspondence

LAW OFFICES OF
MICHAEL R. JE
ATTORNEYS AND COUNSELORS
4349 OLD SANTA FE ROAD, SUITE 200
SAN LUIS OBISPO, CALIFORNIA 93401
TELEPHONE 805.548.0600 FACSIMILE 805.548.0601

OCT 02 2007

CITY OF PASO ROBLES

Copy Council
J. App
R. Whisenand

October 1, 2007

By Facsimile

Mr. Dennis Fansler,
City Clerk
CITY OF EL PASO DE ROBLES
1000 Spring Street
Paso Robles, CA 93446

Re: 1450 Golden Hill Road (Ordinance 938 N.S.)
City Council Regular Meeting 10.02.07
Consent Calendar Item Number Six (6)
Request for Additional Time

Dear Mr. Fansler:

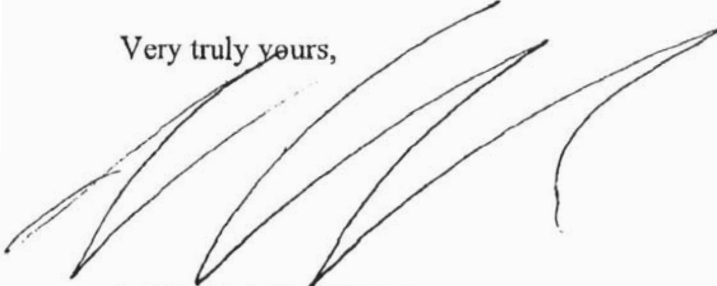
We respectfully request, on behalf of our client Mr. Steven Lopate and his representatives, additional time at tomorrow's Council Meeting to address issues raised by the proposed spot rezoning of 1450 Golden Hill Road and to address procedural and substantive deficiencies of the environmental determination for the proposed rezoning. Specifically, we request twenty (20) minutes on the agenda.

In support of this request, we direct your attention not only to the number of substantive issues raised by the zone change ordinance itself, but to due process and procedural issues, including but not limited to the circulation, public review, and approval of the project's mitigated negative declaration, which is serving as the environmental determination for the zone change as well as for the use permit for the project itself. The MND not only suffers from substantive incompleteness and errors but also has inherent and fatal procedural defects that we believe render it legally deficient to serve as the environmental determination for the proposed zone change. In addition, a review of the Planning Commission and prior Council hearing records disclose that while City staff and the project's developer were provided extensive time to speak in favor of the Project and change to more intensive zoning, the public and dissenters were accorded only three minutes each despite several of those who dissented to aspects of the project, use permit, zone change, and environmental determination, requesting more time to present testimony and evidence. Finally, a zone change is usually considered legislative in nature but here, where the change applies to a single property to accommodate a single

Mr. Dennis Fansler
City Clerk
Golden Hills Retirement Project Rezone
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project, we believe the law requires the hearing be conducted in accordance with the prerequisites of procedural due process.

Accordingly, we request item six on the Consent Calendar be removed from the consent calendar and that our office and client's representatives be allocated time not to exceed twenty (20) minutes to address and be heard on the subject of the ordinance and its proposed environmental determination. Thank you for your consideration.

Very truly yours,

MICHAEL R. JENCKS

LAW OFFICES OF
MICHAEL R. JENCKS
 ATTORNEYS AND COUNSELORS AT LAW
 4349 OLD SANTA FE ROAD, BOX 5
 SAN LUIS OBISPO, CALIFORNIA 93401
 TELEPHONE 805.548.0600 FACSIMILE 805.548.0601

RECEIVED
CITY CLERK'S OFFICE
OCT 02 2007

CITY OF PASO ROBLES

cc Council
 of App
 R. Whisenand

October 2, 2007

By Facsimile and Hand Delivery

Hon. Frank Mecham, Mayor
 Hon. Gary Nemeth, Mayor Pro Tem
 Hon. John Hamon, Council Member
 Hon. Duane Picano, Council Member
 Hon. Fred Strong, Council Member
 CITY OF EL PASO DE ROBLES
 1000 Spring Street
 Paso Robles, CA 93446

Re.: 1450 Golden Hill Road (Ordinance 938 N.S.)
 City Council Regular Meeting 10.02.07
 Consent Calendar Item Number Six (6)
 Proposed Zoning Change of 1450 Golden Hill Rd. from RSF-2 to RMF-12

Honorable Mayor and Council Members:

This office represents and is appearing this evening on behalf of Mr. Steven Lopate. Mr. Lopate owns property at 2904 Gilead Lane, immediately adjacent to the Golden Hills Retirement Project and to the parcel proposed to be rezoned from RSF-2 to RMF-12.

We have under separate cover and prior to today submitted requests to the City to be permitted to review the file on tonight's matter (09.28.07) and for additional time (10.01.07), and it our understanding that both those requests are still pending.

Executive Summary. The Project, as proposed and conditioned, including the zone change before the Council tonight and the Mitigated Negative Declaration, will, unless modified, have a destructive effect on the quality and quiet enjoyment of the surrounding single family residential neighborhood and impose an unnecessary and disproportionate burden on Mr. Lopate's and his neighbors' similarly situated parcels immediately adjacent to the Project parcel, and on their property rights, privacy, and safety. Oral assurances made to Mr. Lopate and to others by representatives of the developer and owner and which might mitigate some of the burdens have never been incorporated as enforceable conditions to the Project or the zone change and so remain illusory. The Mitigated Negative Declaration, as it pertains to and evaluates the impacts

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of the zone change, is incomplete and we submit deficient as a matter of law. Finally, the hearing and approval process for the Project's CUP, for the MND, and for the zone change, has been seriously flawed, ranging from procedural errors in public review time and circulation of the environmental document, to denials of due process and even Brown Act violations, which if corroborated could vitiate any approval of the zone change as well as possibly result in setting aside the prior CUP and MND approvals.

Illustrative Objections. Specific objections to the zone change as proposed to be implemented and conditioned in the proposed ordinance amendment and MND, include but are not limited to:

- **Land Use: Spot Zoning.** Spot zoning is defined as the "practice that...grants one parcel of land a designation that is incompatible with the rest of the neighborhood. (Fulton, Guide to California Planning). The RMF-12 zone in permitted uses, density, set backs and building height and coverage specifics is a substantially more intense use than the RSF-2 zone. Spot zoning is rarely if ever considered "good planning" but where it occurs it is usually addressed by including some sort of buffering between adjacent zones to reduce any incompatibility. This buffering may take the form of increased set backs along the margin between zones, building height limitations, landscaped visual and auditory barriers, limitations on hours, duration, and amplification of outdoor public congregations and events, and so forth. Here, no such buffering is included and the RMF-12 zone is rammed right up against existing RSF-2 homes and the initial study reports that the proposed new Church building would be less than 12 feet from the Gilead Lane properties and tower over them. The result is that the RSF-2 homes, many of whose backyards will now border the project, are encumbered with loss of visual and auditory privacy, light and view/skyscapes, loss of existing rights to build outbuildings (cabanas, even granny units) because the proximity of construction on the project parcel will effectively prevent the existing homes from having the required minimum setbacks from other construction.
- **Constitutional/Takings.** The deprivation of existing uses, rights, and privileges of the RSF-2 homes by the rezoning, and the effects of the loss of privacy, will result in a dramatic loss of property value and may well be found to constitute partial or, in the case of some of the most impacted homes, complete takings.

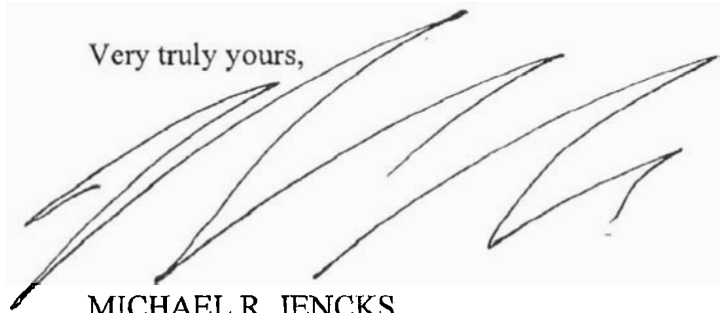
Land Use, Transportation, Biological, Noise, Water, Aesthetic, AB32/Air Quality, and Hazard Impacts. Mr. Lopate and others (e.g. Ms. Dunham) have previously identified shortcomings in these sections of the initial study during previous proceedings before the Planning Commission and this Council involving the MND and we refer to and incorporate that prior public and written testimony and evidence here.

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- **Mitigated Negative Declaration/Procedural Issues.** A truncated public review period and incomplete circulation of the MND are examples of prima facie flaws in the processing of the MND, ones in which the City did not proceed as prescribed by law.
- **Other Due Process and Procedural Issues.** There appear to be a number of potential gaffes in complying with the prerequisites of procedural due process, particularly at the planning commission level, but those flaws and at least one Brown Act issue, also at the PC level, may well be found to have tainted the process, including, with respect to tonight's actions, both the rezone and the legal sufficiency of the MND as the environmental determination upon which the rezone is predicated.

We request that the proposed rezoning adoption be denied until such time as the substantive and procedural problems are resolved or, alternatively, that consideration of adoption be continued to an early date certain, prior to the limitation date to appeal this Council's CUP and MND decisions, to permit time for discussions designed to try to resolve these problems. This is not a situation where, at least in Mr. Lopate's case, there is fundamental opposition to the project *if* it can be modified and conditioned to protect the RSF-2 zone. It would be a disappointment for many if reasonable minds and good faith could not combine so as to resolve these problems in a way that would allow the retirement project to proceed while preserving intact the integrity and quality of the surrounding single family residential community.

Very truly yours,

A handwritten signature in black ink, appearing to read "MICHAEL R. JENCKS". The signature is written in a cursive, somewhat stylized script with several long, sweeping strokes.

MICHAEL R. JENCKS

Cc: Mr. Dennis Fansler,
City Clerk

Attachment 2 Published MND Notice

PROOF OF PUBLICATION

LEGAL NEWSPAPER NOTICES

PLANNING COMMISSION/CITY COUNCIL PROJECT NOTICING

Newspaper: Tribune

Date of Publication: July 24, 2007

Meeting Date: August 14, 2007
(Planning Commission)
September 14, 2007
(City Council)

Project: Notice Of Intent to Adopt A Mitigated
Negative Declaration And General Plan
Amendment 07-002, Planned Development
06-024, CUP 06-011, Tent. Parcel Map
06-0272 And Rezone 06-004

I, Abigail Alvarado, employee of the Community
Development Department, Planning Division, of the City
of El Paso de Robles, do hereby certify that this notice is
a true copy of a published legal newspaper notice for the
above named project.

Signed: 
Abigail Alvarado

forms/newsaffi.691

CITY OF EL PASO DE ROBLES
NOTICE OF PUBLIC HEARINGS

NOTICE OF INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION AND GENERAL PLAN AMENDMENT 07-002, PLANNED DEVELOPMENT 06-024, CUP 06-011, TENT. PARCEL MAP 06-0272 AND REZONE 06-004

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of El Paso de Robles will hold a Public Hearing on Tuesday, August 14, 2007, and the City Council will hold a Public Hearing on Tuesday, September 18, 2007. Both meetings will be held at 7:30 p.m. at the City of El Paso de Robles, 1000 Spring Street, Paso Robles, California, in the City Council Chambers, to consider a Mitigated Negative Declaration in accordance with the provisions of the California Environmental Quality Act (CEQA) for the following project:

Applications filed by North Coast Engineering, on behalf of Golden Hill Development, LLC, propose to rezone and re-designate a 13.4-acre site located at 2450 Golden Hill Road (APN 025-366-012, See attached Location Map). The proposal includes the following:

- **General Plan Amendment 07-002:** a request to amend the land use designation from Residential Single Family (RSF 2) to Residential Multiple Family, 12 units per acre (RMF-12).
- **Rezone 06-004:** a request to change the zoning district from R-1B3, single-family residential, 2 units per acre to Multiple-Family Residential, 12 units per acre (R-3).
- **Planned Development 06-024 & Conditional Use Permit 06-011:** a request to construct a 124-unit senior retirement community.
- **Tentative Parcel Map PR 06-0272:** Request to subdivide the 13.4 acre site into two parcels, where Parcel 1 would be 1.6 acres. The existing church/pre-school would remain on Parcel 1 and would be expanded with the approval of PD 06-024. Parcel 2 would include the 11.8 acre site where the new senior retirement project would be built.

The public review period for the Mitigated Negative Declaration (MND) is through July 24, 2007 through August 14, 2007. The proposed MND may be reviewed at the Community Development Department, 1000 Spring Street, Paso Robles, California. Copies may be purchased for the cost of reproduction.

Written comments on the proposed Applications and corresponding MND may be mailed to the Community Development Department, 1000 Spring Street, Paso Robles, CA 93446, provided that the comments are received prior to the time of the public hearing.

Oral comments may be made at the hearing. Should you have any questions regarding this application, please call Darren Nash at (805) 237-3970.

If you challenge these applications in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Planning Commission at or prior to the public hearing.

Darren Nash
Associate Planner
July 24, 2007

6614137

ORDINANCE NO. 938 N.S.

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES
AMENDING TITLE 21, ZONING, OF THE MUNICIPAL CODE
REZONING PROPERTY TO MULTIPLE-FAMILY RESIDENTIAL WITH
PLANNED DEVELOPMENT OVERLAY (R-3-PD) FOR PROPERTY LOCATED
AT 1450 GOLDEN HILL ROAD, APN 025-366-012
APPLICANT – GOLDEN HILL DEVELOPMENT, LLC
ZONING MAP AMENDMENT 06-004

WHEREAS, the current Zoning of subject property is Single Family Residential (R-1 B-3); and

WHEREAS, this Zoning Map Amendment to change the zoning to R-3 with Planned Development (PD) Overlay, will allow multiple-family residential development of this property, with a maximum residential density of 12 dwelling units per acre, as shown in Exhibit A; and

WHEREAS, in accordance with Section 21.16A.030, Density and use limitations, the use of the subject site will be limited to senior retirement/residential care type facilities not to exceed 125 units; and

WHEREAS, at its meeting of August 14, 2007, the Planning Commission took the following actions regarding this ordinance:

- a. Considered the facts and analysis, as presented in the staff report prepared for this project;
- b. Conducted a public hearing to obtain public testimony on the proposed ordinance;
- c. Based on the information contained in the Initial Study prepared for the project, the Planning Commission found that there was no substantial evidence that approval of this portion of the amendment would have significant adverse effects on the environment and recommended that the City Council approve a Mitigated Negative Declaration for this amendment;
- d. Recommended that the City Council approve the proposed ordinance; and

WHEREAS, based on consideration of information received at its meeting of September 18, 2007, the City Council took the following actions regarding this ordinance:

- a. Considered the facts and analysis, as presented in the staff report prepared for this project;
- b. Conducted a public hearing to obtain public testimony on the proposed ordinance;
- c. Considered the Commission's recommendation from the Planning Commission's August 14, 2007 public meeting;

- d. Determine that the proposed rezoning to be consistent with the City's General Plan;
- e. Based on its independent judgment, found that there was no substantial evidence that this amendment would have significant adverse effect on the environment and approved a Mitigated Negative Declaration for this General Plan amendment in accordance with the California Environmental Quality Act;
- f. Introduced said ordinance for the first reading; and

WHEREAS, on October 2, 2007, the City Council held second reading of said ordinance.

NOW, THEREFORE, the City Council of the City of El Paso de Robles does hereby ordain as follows:

SECTION 1. The zoning map amendment is hereby established on the official Zoning Map as shown in Exhibit A.

SECTION 2. Section 21.13.030 of the Zoning Ordinance, Overlay District Regulations, is hereby amended to add the following language (**bold print**):

Each subsection set forth below contains conditions placed on the use and/or development of certain properties by the ordinances cited therein for zoning map amendments for such properties. The conditions listed below are additional to the primary zoning district regulations set forth in Chapter 21.20, and performance standards set forth in Chapter 21.21.

I. 2450 Golden Hill Road, a 11.88 acre site (Lot 2 of PR 06-0272) is conditioned by Ordinance No. XXX N.S. to require a conditional use permit to ensure that uses for the site are limited to senior retirement communities/residential care type uses, as shown on Figure 21.13-7.

SECTION 3. This Ordinance will not take effect until 31 days after the adoption of Ord.No.938 N. S.

SECTION 4. Publication. The City Clerk shall cause this ordinance to be published once within fifteen (15) days after its passage in a newspaper of general circulation, printed, published and circulated in the City in accordance with Section 36933 of the Government Code.

SECTION 5. Severability. If any section, subsection, sentence, clause, or phrase of the Ordinance is, for any reason, found to be invalid or unconstitutional, such finding shall not affect the remaining portions of this Ordinance.

The City Council hereby declares that it would have passed this Ordinance by section, subsection, sentence, clause, or phrase irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases are declared unconstitutional.

SECTION 6. Inconsistency. To the extent that the terms or provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance(s), motion, resolution, rule, or regulation governing the same subject matter thereof, such inconsistent and conflicting provisions of prior ordinances, motions, resolutions, rules, and regulations are hereby repealed.

Introduced at a regular meeting of the City Council held on September 18, 2007, and passed and adopted by the City Council of the City of El Paso de Robles on the 16th day of October, 2007 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Deborah Robinson, Deputy City Clerk

PROOF OF PUBLICATION

LEGAL NEWSPAPER NOTICES

CITY COUNCIL
PROJECT NOTICING

Newspaper: Paso Robles Press

Date of Publication: October 9, 2007

Meeting Date: October 16, 2007

Project:

Rezoning property to Multiple Family Residential with Planned Development overlay located at 1450 Golden Hill Road (GPA 07-002)

I, Deborah Robinson, employee of the of the City of El Paso de Robles do hereby certify that this notice is a true copy of a published legal newspaper notice for the above named project.

Signed 
Deborah Robinson

**ORDINANCE
SUMMARY**

An Ordinance Amending the City's Municipal Code, Title 21, Zoning, Rezoning property to Multiple-Family Residential with Planned Development overlay for property located at 1450 Golden Hill Road (General Plan Amendment 07-002 to Golden Hill Development, LLC)

Said ordinance changes the land use designation from Residential Single Family (RSF-2) to Residential Multiple Family, 12 units per acre (RFM-12) at property located at 1450 Golden Hill Road. The project site is a 13.4 acre parcel, and proposes to construct a multi-level, 125-unit senior retirement community for individuals aged 60 and over, which would include residential living units, assisted living units, and special care units. In conjunction with the retirement community is a request to construct a 6,330 sf expansion to the existing 4,340 sf church/pre-school.

I, Deborah D. Robinson, Deputy City Clerk of the City of El Paso de Robles, do hereby certify that the foregoing is a summary of an Ordinance, which was introduced at a regular meeting of the City Council of the City of El Paso de Robles on September 18, 2007, and will be introduced for second reading at the regular meeting of said Council on the 16th day of October 2007.

The above summary is a brief description of the subject matter contained in the text of the Ordinance, which has been prepared pursuant to Government Code Section 36933. This summary does not include or describe every provision of the ordinance and should not be relied upon as a substitute for the full text of the ordinance.

To obtain a copy of the full text of the ordinance, please contact the Office of the City Clerk 805-237-3960 between 8:00 AM and 5:00 PM, Monday through Friday. There is no charge for the copy.

Deborah D. Robinson,
Deputy City Clerk

PUBLICATION DATE: