

**PLANNING COMMISSION MEETING**

In compliance with Americans with Disabilities Act, If you need special assistance to participate in this meeting, please contact the Planning Secretary at (805) 524-1500 ext. 113, 48 hours prior to the meeting in order for the City to make reasonable arrangements to ensure accessibility to this meeting (28 CFR 35.102-35.104 ADA Title II).

No New Business will be Considered by the Planning Commission after the Hour of 11:00 p.m. unless a Majority of the Planning Commission Determines to Continue beyond that Hour.

Memorandums: Memorandums relating to agenda items are on file in the Planning Department. If you have questions regarding the agenda, you may call the Planning Dept. (805) 524-1500 ext. 113 or visit the Planning Dept. in City Hall for information. Materials related to an item on this agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection in the Planning Dept. in City Hall during normal business hours.

**AGENDA**

**ITEM**

**REFERENCE**

**1. CALL TO ORDER**

**2. PLEDGE OF ALLEGIANCE**

**3. ELECTIONS**

- 3a. Chair
- 3b. Vice Chair

**4. ORAL COMMUNICATIONS**

4a. This is the opportunity for citizen presentations or comments not related to agenda items, but within responsibility of the Planning Commission (please do not exceed 5 minutes per topic).

**5. CONSENT CALENDAR**

- 5a. Minutes of the April 20, 2011 Regular Planning Commission Meeting.

**Copy**

**6. PUBLIC HEARING**

- 6a. Termination of Development Agreement for Tract 5474-2, for lots 36 - 69.

**Memo**

**Location:** Heritage Valley Parks Specific Plan, Phase 1A, Tract 5474-2, Lots 36 - 69.

**Zoning:** Heritage Valley Specific Plan.

**Applicant:** Griffin Home Building Group.

**Purpose:** Review the item and receive public testimony.

**Reso**

**Recommendation:** Adopt Planning Commission Resolution 11-866 Recommending the City Council terminate the Development Agreement for Tract 5474-2 for lots 36 through 69.

**7. BUSINESS ITEM**

**7a.** Compliance Review, Development Permit 07-08, Auto Repair/Impound Yard. **Memo**

**Location:** 1515 Ventura St. **Zoning:** Commercial Highway.

**Applicant:** United Shah Corp.

**Purpose:** Planning Commission to review business operations to determine compliance or noncompliance with Conditions of Approval.

**7b.** Screening 11-02 (SCR 11-02), Proposal for Commercial Uses Within an Existing Vacant Building. **Memo**

**Location:** 955 Ventura St. **Zoning:** Commercial Highway

**Applicant:** Cardiff Realty  
2225 Glastonbury Rd.  
Westlake Village, CA

**Purpose:** Review project proposal and provide direction to Applicant.

**8. REPORTS and COMMUNICATIONS**

**8a.** Community Development Director

**Oral**

**8b.** Planning Commission

**Oral**

**9. ADJOURNMENT**

**9a.** The Planning Commission adjourns to the next regular Planning Commission meeting scheduled for June 22, 2011, 6:30 p.m., in the City Council Chambers, 250 Central Ave., Fillmore, CA 93015.

**Next Regular City Council Meeting  
May 31, 2011**

PLEASE NOTE: If you challenge the actions of the Planning Commission in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in the public notice, or in written correspondence delivered to the Planning Commission at, or prior to, the public hearing (Calif. Gov't Code § 65009).

Any legal action by an applicant seeking to obtain judicial review of the Planning Commission's decision on a hearing listed on this agenda may be subject to the 90-day filing period of, and governed by, Code of Civil Procedure Section 1094.6.

**PLANNING COMMISSION  
CITY OF FILLMORE  
250 CENTRAL AVENUE  
FILLMORE, CA 93015**

**APRIL 20, 2011  
REGULAR MEETING  
6:30 PM**

## **MINUTES**

### **CALL TO ORDER**

6:32 p.m., Acting Chair, Commissioner Johnson, called the Planning Commission meeting to order and led the assembly in the Pledge of Allegiance. Planning Commissioners present were: Vice Chair Tom Fennell, Mark Austin, and Vance Johnson. Staff present were: Community Development Director Kevin McSweeney, City Attorney Theodore Schneider, Assistant Planner Manuel Minjares, City Engineer Tom Scott and Planning Secretary Denise Beauduy. Absent: Commissioner Douglas Tucker.

### **ORAL COMMUNICATIONS**

There were no comments.

### **CONSENT CALENDAR - Approved**

The Consent Calendar consisted minutes of the March 16, 2011 regular scheduled Planning Commission meeting. It was moved and seconded to approve the minutes as submitted. Motion: Austin; Second: Fennell. Ayes: Austin, Fennell, Johnson, McCall and Tucker. Noes: None. Abstain: None. Absent: Tucker. Motion Carried 4:0.

### **PUBLIC HEARING**

*Modification #1 to Development Permit 03-09 (Mod #1 to DP 03-09), Request to change approved floor plans and architectural elevations of residential units in the Heritage Valley Parks Specific Plan Phase 1A ( Tentative Tract Map 5474) and Conditional Use Permit 11-4 (CUP11-04), installation of a temporary construction office trailer.*

6:34 p.m., Commissioner Johnson opened the public hearing, and Mr. McSweeney presented the report. Mr. McSweeney stated the project is located in Phase 1A of the Heritage Valley Parks Specific Plan. Phase 1A consists of 125 residential units; 78 of those units have been constructed. Mr. McSweeney said the Applicant, Capital Pacific, would like to construct seven units in Phase 1A, and they are proposing a modification to the house plans that have been approved for those lots. Mr. McSweeney said the lots range in size from 8,000 square feet to 10,000 square feet and the housing plans that were approved for those lots were called "Estates" and the Applicant would like to replace those floor plans with floor plans that were approved for 6000 square foot lots. Mr. McSweeney gave a grief power point presentation and explained the Heritage Valley Parks Specific Plan land use map while showing the types of a house/floor plans approved for each of the seven lots, and the proposed modified plans for each lot. Mr. McSweeney stated the proposed housing types and landscaping plans are consistent with the Heritage Valley Parks Specific Plan that was approved by the City Council. The proposed units will meet the setbacks and design criteria of the Specific Plan. The proposed units will have porches, balconies and outdoor spaces that will encourage neighbors to get to know one another.

Commissioner Austin clarified the lot dimensions and lot area will remain same. Mr. McSweeney said Commissioner Austin was correct and the only the floor plans have changed.

Commissioner Johnson clarified that the porches and outdoor amenities remain. Mr. McSweeney said the porches are deeper and all of the amenities would remain. Mr. McSweeney concluded his presentation and said the Applicant was present in the audience.

Mark Mullin, representing the Applicant: Capital Pacific Homes. Mr. Mullin said Capital Pacific has been in the home building business for 35 years, they have built 1800 homes per year and the company has locations in five states. Mr. Mullin said Capital Pacific was commissioned by Bank of America to help manage and complete the units that were partially finished and to sell the project for them. Half way through the process, Bank of America decided to dispose of the project so Capital Pacific bought the remaining 6 homes and 15 lots, and the plan is to pull permits upon approval and complete the project. Mr. Mullin displayed photos of the existing community and said there is one unit left to sell; Capital Pacific is proposing homes that are almost identical to what was already built. There have been positive comments from the buyers and there is a waiting list for the homes. Mr. Mullin said the homes will have the same architecture, they have added some enhancements, and the porches will be deeper. The street scene will be consistent with the existing development and will be in everyone's favor.

6:44 p.m., Chair Johnson invited public comment; there were no comments. Chair Johnson closed the public hearing and entertained a motion.

Commissioner Austin commented the resolution number on page 11 was incorrect and the number should be 11-863.

#### **ACTION**

##### **Planning Commission Resolution No. 11-862 was Adopted, Approving CUP 11-04, Temporary Construction Trailer.**

It was moved and seconded to adopt Planning Commissioner Resolution No. 11-862, Approving CUP 11-04 for the purpose of installing a temporary construction office trailer. Motion: Austin; Second: Fennell. Ayes: Austin, Fennell, Holmgren and Johnson. Noes: None. Abstain: None. Absent: Tucker. Motion Carried 4:0.

#### **ACTION**

##### **Planning Commissioner Resolution No. 11-863 was Adopted Approving Mod #1 to DP 03-09.**

It was moved and seconded to adopt Planning Commission Resolution No. 11-863, Approving Mod #1 to DP 03-09, subject to Conditions of Approval. Motion: Austin; Second: Fennell. Ayes: Austin, Fennell, Holmgren and Johnson. Noes: None. Abstain: None. Absent: Tucker. Motion Carried 4:0

#### **PUBLIC HEARING**

*Heritage Valley Parks Specific Plan Development Agreement Amendment consisting of the following: 1) Designating Hearthstone as a party to the Development Agreement; 2) Method of*

*rate calculation for collection of Sewer DIF's for Phase 1B and Phase 2; 3) Provide for \$2000,000 prepayment from Hearthstone for Sewer DIF; 4) Procedures for modification of Tract Maps to Phase 1B and Phase 2; 5) Extend term of the Agreement for Phase 1B and Phase 2 to the year 2020; 6) Advance the timeline for construction of a temporary rear access road into El Dorado Mobile Home Park.*

6:45 p.m., Commissioner Johnson opened the public hearing and Mr. Schneider presented the report. Mr. Schneider stated the City entered into a Development Agreement with Griffin Home Builders in 2002 to develop the Heritage Valley Parks Specific Plan which consisted of approximately 300 acres of land and 750 residential units. The amendment to the Developer Agreement is between the City of Fillmore and Hearthstone for Phase 1B and Phase 2. Mr. Schneider said Griffin sold Phase 1B and Phase 2 of the project to Hearthstone in 2007, but Griffin did not notify the City of the change in ownership. There were several disputes concerning the agreement and mediation began in December of 2009. Mr. Schneider said attorneys for the City and attorneys for Hearthstone were negotiating for eighteen months to resolve the disputes. Mr. Schneider said the Planning Commission will consider an amendment to the Development Agreement tonight and make a recommendation to the City Council. There is a settlement agreement but only the City Council will review the settlement agreement. Mr. Schneider said the amendment to the Development Agreement is described in detail in the staff report, but he wanted to talk about the main provisions of the amendment.

Mr. Schneider said Hearthstone will now be added to the Development Agreement as an owner.

**Development Impact Fees.** Mr. Schneider said there was a dispute over the Development Impact Fees for sewer connections, which were based on projections prior to the construction of the new water recycling plant. In the original agreement the fees were \$13000 per unit, but Griffin thought the figure was closer to \$3000 per unit. Hearthstone has agreed to pay \$6200 per unit and the fee will be adjusted yearly with inflation. Hearthstone has also agreed to pay the City \$2,000,000 for prepayment of sewer DIF's; \$1,000,000 once the amendment is signed, and \$1,000,000 over the course of the next several years based on development progress. Mr. Schneider said the City could use the fees for any purpose that is related to the DIF program, but the fees will be credited back to Hearthstone once they have developed 475 units.

**Term of the Development Agreement.** Mr. Schneider said the Development Agreement for Phase 1B and Phase 2 was to expire in 2012 but has been extended to 2020. Mr. Schneider said the original agreement stated the elementary school had to be constructed by 2008 or the term of the agreement would be reduced by five years.

**Access to El Dorado.** Mr. Schneider said Hearthstone has agreed to provide access to the rear of El Dorado Mobile Home Park providing the residents with another path of travel to or from the park.

Hearthstone has agreed to continue with the clean up of a small amount of gray dirt that was found on the project site. The clean-up was Griffin's responsibility and it was required by the Ventura County Environmental Health Department. Mr. Schneider spoke briefly about the settlement agreement and said units were lost in Phase 1B when the Ventura County Water Shed Protection District required the Pole Creek Debris Basin to be expanded. The City agreed that Hearthstone

will be able to move approximately 47 lots from Phase 1B to Phase 2. The overall maximum number of units is still 750 units for the entire project.

Mr. Schneider concluded his presentation and asked if there were any questions from the commissioners.

Commissioner Austin, referring to the prepayment of the Sewer DIF, commented the City could use that money for infrastructure or to pay down the loan for the water treatment plant but not to balance the general fund. Mr. Schneider acknowledged that Commissioner Austin was correct.

6:55 p.m., Commissioner Johnson invited public comment. There were no comments and the public hearing was closed.

### **ACTION**

#### **Planning Commission Resolution 11-864 was Adopted, Recommending the City Council Approve Amendment to Development Agreement.**

It was moved and seconded to adopt Planning Commission Resolution No. 11-864 recommending the City Council approve the amendment to the Development Agreement as proposed. Motion: Fennell; Second: Johnson. Ayes: Austin, Fennell, Holmgren and Johnson. Noes: None. Abstain: None. Absent: Tucker. Motion Carried 4:0

### **PUBLIC HEARING**

*General Plan Amendment 11-01 (GPA 11-01), Amend the General Plan Land Use Element for Consistency with the Heritage Valley Parks Specific Plan (approved in 2002 for 750 units maximum), and with Ballot Measure I (reducing the number of units in the North Fillmore Specific Plan).*

6:55 p.m., Commissioner Johnson opened the public hearing and Mr. McSweeney presented the report. Mr. McSweeney said Council Member Walker noticed our General Plan was inconsistent with Heritage Valley Parks Specific Plan area and the North Fillmore Master Plan area. Mr. McSweeney said the purpose of the public hearing was to amend the Land Use Element of the General Plan with regard to the maximum number of housing units designated for the Heritage Valley Parks Specific Plan area and the North Fillmore Specific Plan area. Mr. McSweeney explained prior to the Heritage Valley Parks development approval, the property abutting that site, known as the Becerra Property was included in the Land Use Element of the General Plan Update. The General Plan designated 1000 units for the area which included the Heritage Valley Parks Specific Plan and the Becerra Ranch. When the Heritage Valley Parks Specific Plan was approved, the Becerra Property was removed from the area, to create a larger buffer between the Heritage Valley Parks Specific Plan and the Fish Hatchery, and the City Council approved 750 units as the maximum number of units for Heritage Valley Parks Specific Plan. Mr. McSweeney said the Land Use Element will be amended to state 750 units as the maximum number of units for the Heritage Valley Parks Specific Plan.

Mr. McSweeney stated the North Fillmore Specific Plan area was originally designated as a master plan area and was designated for 894 units. The City Council approved the North Fillmore Specific Plan, but for a maximum of 700 units. Mr. McSweeney said ballot Measure I was approved by a

majority vote of the citizens of Fillmore, and Measure I reduced the number of units to 350 and it called for a specific plan similar to the Heritage Valley Parks Specific Plan. The city lost 544 units in the North Fillmore Specific Plan and 250 units were lost in the Heritage Valley Specific Plan. The buildout figure in the General Plan is 5816 units and there are currently 4417 residential units in the city. Mr. McSweeney stated the City received a letter from the State Housing and Community Development Dept., in reference to the City's submittal of Housing Element drafts, stating that although the voters approved a lower density, the City cannot reduce the number of units in the General Plan buildout, and those units that were lost through ballot Measure I will have to be relocated else where in the city. The State said that the City planned for those units, prepared for them and must continue to include them in our General Plan. Mr. McSweeney concluded his report.

Commissioner Johnson invited public comment.

Eileen McCarthy, 338 So. "A" Street, Oxnard, CA 93030, Attorney with California Rural Legal Assistance. Ms. McCarthy stated she was speaking on behalf of a client in need of affordable housing. Ms. McCarthy stated she reviewed the staff report and was pleased to hear Mr. McSweeney tell the Planning Commission that while there have been changes to the North Fillmore plan. The area was to be rezoned to accommodate low income housing in the in the previous Housing Element. Ms. McCarthy spoke briefly about Housing Element Law, SCAG and the Regional Housing Needs Assessment in reference to the number of housing units assigned to each jurisdiction. Ms. McCarthy stated the City of Fillmore Housing Element is out of compliance with State Law. Ms. McCarthy said the City must plan for those units and the process has already begun for the next planning period. Ms. McCarthy said she looks forward to reviewing another draft housing element and hopes the City will continue to move forward and accommodate low income affordable housing. Ms. McCarthy said there is a low income project that was built on Main Street which came as a result of a settlement agreement over the Heritage Valley Parks Plan, and it is a beautiful project that provides safe, sanitary and affordable housing for people that will make a difference in their lives.

There were no other comments.

7:09 p.m., Commissioner Johnson closed the public hearing.

**ACTION**

**Planning Commission Resolution No. 11-865 was Adopted Recommending the City Council Approve GPA 11-01.**

It was moved and seconded to adopt Planning Commission Resolution No. 11-865, recommending the City Council approve GPA 11-01, amending the General Plan Land Use Element to reflect the actual number of units approved for the Heritage Valley Parks Specific Plan area and the North Fillmore Specific Plan area. Motion: Austin; Second: Johnson. Ayes: Austin, Fennell, Holmgren and Johnson. Noes: None. Abstain: None. Absent: Tucker. Motion Carried 4:0.

**BUSINESS ITEM**

*Screening 11-01, Proposal for a 3-Story mixed use project, the architectural design proposed for the building is Art Deco.*

7:10 p.m., Mr. McSweeney presented the report. Mr. McSweeney said the purpose of the item is to provide an opinion to an applicant. Mr. McSweeney said the Applicant, Mr. Thom Kestley is seeking the Planning Commission’s opinion so that he could decide if he should move forward with a formal application. Mr. McSweeney said the Applicant is proposing a project located on the NE corner of Central and Sespe Avenues which is also the former site of the Masonic Temple building. The project proposal consists of a 3-story mixed use, residential/commercial building. Mr. McSweeney said there was an approved mixed use project for this site that was approved for residential and retail uses with parking in the back. The project did not go forward and it expired. Mr. McSweeney said the current proposal is a 3-story mixed use, residential/commercial building and the architectural design is Art Deco. The downtown is also regulated by a specific plan, and the Downtown Specific Plan requires the first floor to have commercial retail fronting the sidewalk. Retail is proposed for the first floor on Central Avenue only, and residential units are proposed on the first floor along Sespe Avenue. Mr.; McSweeney stated the units along Sespe will not comply with the Specific Plan. The second and third floors are for residential units. Mr. McSweeney said this is a prominent corner and there are design requirements in the Downtown Specific Plan. Art Deco is permitted downtown; there are 4 or 5 architectural styles for the downtown. Mr. McSweeney displayed the criteria from the Downtown Specific Plan and said the Planning Commissioner should consider if the project is compatible with the surrounding neighborhood; if it is pedestrian oriented; if the project is inviting to the public; special architectural details; building massing. Mr. McSweeney said the Planning Commission has the ability to give opinions about color, material and architectural design and style.

Thom Kestley, Managing Member, Fillmore Central LLC, Applicant. Mr. Kestley stated he owns the property and the original desire was to build a mixed use project, but the economy does not support it, and he would rather have a hundred percent apartments because there is a need for them. Mr. Kestley said he would like to have retail on the first floor of Central Avenue and two apartment units on the first floor on Sespe Avenue. Regarding the apartments along Sespe, Mr. Kestley said there has been no interest from retailers. Mr. Kestley said he realized the project is not consistent with the Specific Plan, but he wanted to know if the project is in line with the Specific Plan before any more money is spent on the project.

Commissioner Fennell, referring to the elevation of the building, asked if the photo was taken in Ventura. Commissioner Fennell said the building in the photo looks exactly like a building on Ventura Ave near Stanley and the building is monolithic; it is huge. Mr. Kestley responded his project was not the same building or designed by the same architect.

Commissioner Holmgren questioned if there is sufficient parking for the project; there are 19 spaces for 20 units. Mr. Kestley responded the onsite parking is for the principal residents, and he will pay for the use of parking lot across the street. Mr. McSweeney said the Zoning Ordinance requires 1 space for every residential unit and 1 space for every 500 sq. ft. of gross floor area for commercial units. The project must include the parking for the residential units, but the Applicant will be required to pay a fee for parking spaces off site if parking cannot be provided for the commercial units.

Commissioner Austin commented the staff report refers to 18 parking spaces and asked Mr. McSweeney explain the process for a Variance. Mr. McSweeney responded there are issues to consider for a Variance such as a physical hardship on a property: the property is too small or oddly shaped and it cannot meet the standards, and an applicant will have to prove there is a hardship and findings will have to be made by the Commission or Council to support approval of the variance. Mr. McSweeney said if there is a physical hardship the Planning Commission has the ability, through the Development Permit, to weigh the development standards against the public need. The need for this project outweighs the parking standards.

Commissioner Johnson asked if financial hardship would be a sufficient finding to grant a Variance. Mr. McSweeney responded no, financial hardship is not sufficient for a variance or to be considered for a Development Permit.

Commissioner Austin stated he agreed with Commissioner Fennell in that the building was massive and it is located at an intersection and will give the appearance of a walled fortress. Commissioner Austin stated the Art Deco design does not fit in that location. Commissioner Austin said if the architecture is stellar then the Commission could make a finding for a variance to reduce the parking standard. Commissioner Austin said he preferred the original architectural design of the project that was approved for the site. It was a better looking building with architectural details.

Commissioner Fennel said he looks at this building almost every day in Ventura, and he agrees that it does look like a fortress, and it is out of place for that corner.

Commissioner Johnson concurred that the building looks massive. Commissioner Johnson said the building does not look Art Deco but more noir Mediterranean, which we try to minimize in Fillmore. Commissioner Johnson said the Masonic building was massive but it was a unique looking building. The lot is important to the community; it is a corner stone of the downtown. Commissioner Johnson said he did not support 18 parking spaces for 20 residential units and suggested scaling back the residential units to 18 and put commercial units on the street frontage. Commissioner Johnson said not having enough parking will always be a problem.

Mr. Kestley said if he is forced to follow specific plan and lose two units then maybe it is better to wait until the economy turns around.

Commissioner Austin commented that the Planning Commission understands the economy is down, but the Commission does not have to approve a project because of the economy. The Commission is looking long term for the downtown. Commissioner Austin said when the Downtown Specific Plan drafted 3-story buildings were permitted on corners and mid block.

Mr. McSweeney said he had clear direction for the architecture and that the Commission would support a project on that site.

Commissioner Johnson said the Commission has always held fast to the Specific Plan, projects have come and gone, they are not singling Mr. Kestley out. Commissioner Austin said if Mr. Kestley was still interested in pursuing the project, a subcommittee of two commissioners could meet with Mr. Kestley, as they have done with other applicants, and work with him to improve the project.

**REPORTS and COMMUNICATIONS**

7:33 p.m., Community Development Director Kevin McSweeney said the Planning Commission went through a lot of items on the agenda tonight, it took him two months to pull those items together.

Auto repair business, west side of town – Mr. McSweeney said he followed up on complaints with auto repair business and will set a compliance review before the Commission on May 18th.

Housing Element – Mr. McSweeney said staff is proceeding with the Housing Element; there is another draft that no one has seen yet, and staff is wrapping it up.

Commissioner Johnson said the Commission appoints a Chair and Vice Chair every year and would like to see it on the next agenda.

**ADJOURNMENT 7:33 PM**

There being no further business to come before the Planning Commission Chair Johnson adjourned the Planning Commission meeting to the next regular meeting scheduled for May 18, 2011, at 6:30 p.m., in the City Council Chambers, City of Fillmore, 250 Central Avenue, Fillmore, CA, 93015.

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Denise Beauduy  
Planning Secretary



**CITY OF FILLMORE**  
CENTRAL PARK PLAZA  
250 Central Avenue  
Fillmore, California 93015-1907  
(805) 524-3701 • FAX (805) 524-5707

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TO: Chairman and Planning Commission      DATE: May 18, 2011  
FROM: Theodore J. Schneider, City Attorney  
SUBJECT: **Termination of that Portion of the Development Agreement for Heritage Valley Parks Project Encompassing Lots 36-69 of Tract Map 5474-2**

**RECOMMENDATION:**

Adopt Resolution 11-866, Recommending the City Council Adopt Ordinance No. 11-830, "An Ordinance of the City Of Fillmore, California Terminating that Portion of the Development Agreement for the Heritage Valley Parks Project Encompassing Lots 36-69 of Tract Map 5474-2."

**BACKGROUND AND ANALYSIS:**

In 2002, the City entered into a Development Agreement with Griffin Homebuilding Group, LLC (GHG), for the development of Heritage Valley Parks in the City. Heritage Valley is a multi-phase project for the development of just over 300-acres of land, into 750-residential units, including single-family and paired homes, community-park land, an elementary school, a fire station, a flood levee, and flood control facility. Due to a variety of factors, including GHG's financial difficulties, GHG sold a portion of the project (Phases 1B and 2) to Hearthstone Multi-Asset Entity C, L.P. sometime in 2007, after having built only a small percentage of the 750 homes, but did not notify the City of the transfer and sale. The City did not learn of GHG's transfer of the project and property to Hearthstone, until after it sought to remedy some ground contamination discovered on the job site.

GHG filed for bankruptcy relief under Chapter 7 on or about June 18, 2010. Little if anything has happened in the bankruptcy since that time. It has not been completed and no obligations have been discharged.

Phase 1A was split into two projects. Bank of America foreclosed last spring (2010) on the larger project called Iron Horse Estates. Comerica Bank commenced foreclosure proceedings against what remains unsold of the other project in Phase 1A called Oak Haven (detached condos), but has not concluded that foreclosure with a sale.

On April 26, 2011, the City Council directed staff to begin the process of terminating the Development Agreement as to that portion of the Property still owned by GHG and/or its affiliates (i.e., the portion of the project over which Comerica holds a note, but has not foreclosed).

*Applicability of Development Agreement to New Owners.*

The Agreement contains specific provisions that apply to the current situation – that is, where a mortgagee of the Project comes into possession of the Project through foreclosure. Section 6.C.3 provides that “[a]ny Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust...shall take the Property, or part thereof, subject to the terms of this Agreement.” Consequently, if a mortgagee, such as Bank of America, forecloses on the portion of the property over which it holds a note, that bank is entitled to the benefits, and is subject to the obligations, of the Development Agreement.

I am informed that Bank of America has foreclosed and taken possession of lots in Phase 1A. Therefore, pursuant to Section 6.C.3, Bank of America is entitled to the benefits of the Development Agreement, including the Development Impact Fee rates, discussed below under “Fiscal Impact”. It is my understanding that Comerica Bank commenced foreclosure proceedings, but has not yet sold the property. Because Comerica Bank has not consummated its foreclosure sale, and GHG (or an affiliate) still owns those lots in Phase 1A, the City may terminate the Development Agreement as to those lots owned by GHG (and affiliates).

*The Agreement Sets Forth Permissible Grounds for Termination.*

Section 6.E of the Agreement provides that a party must provide 30-days’ notice of default prior to commencing any litigation, the purpose of which is to provide the defaulting party with an opportunity to cure. If there is no cure, the other party may sue or give notice of intent to terminate the Agreement, which triggers the need for a public hearing before the City Council under Government Code section 65868.

As relevant here, the circumstances under which the City may terminate the Agreement are set forth in the Agreement at Sections 6.B, 6.E and 6.F. Under Section 6.B, the City may terminate or suspend the Agreement when, upon assignment, the City determines “the proposed transferee does not have the financial resources to complete the Project. . . .” Under Section 6.E, the City may terminate the Agreement, following compliance with Government Code sections 65867 and 65868, if the Developers fail “to perform any term or provision of th[e] Agreement for a period of thirty (30) days from the receipt of written notice thereof . . . [that] detail[s] the nature of the alleged default and the manner in which said default may be satisfactorily cured.” The City may terminate the Agreement under Section 6.F upon review if the “City reasonably determines, on the basis of substantial evidence presented at such meeting, that Owner has not complied in good faith with the terms and conditions hereof. . . .” Finally, the City may terminate or suspend the Agreement under Section 6.B.3 if the Owner files for bankruptcy.

*GHG's Defaults and Disregard of the Agreement Amounted to a Material Breach of the Agreement.*

On July 19, 2007, GHG transferred a portion of the Project property, and assigned its rights under the Agreement to Hearthstone without the City's knowledge or prior approval. In doing so, the Developers violated Section 6.B.1 of the Agreement, which requires the Developers to provide the City with 30-days' prior notice of the transfer and assignment, along with financial information sufficient to establish that Hearthstone has the "financial resources to complete the Project." The notice period and financial information provides the City with time and information to decide whether to consent to the transfer or terminate the Agreement. It was not until late 2008 or early 2009, however, that the Developers even informed the City that such a transfer had occurred. The Developers' breach in this regard is incurable and material; the City has a right to know the identity and financial status of the party to whom it is contractually obligated. In addition to the grounds for termination set forth under Section 6.B, the Developers' conduct in this regard also gives rise to grounds for termination under Sections 6.E and 6.F.

The City provided GHG and Hearthstone with a Notice of Default on July 23, 2009. The City supplemented its Notice of Default in an August 17, 2009 letter, in which it further outlined the City's basis for providing the Notice.

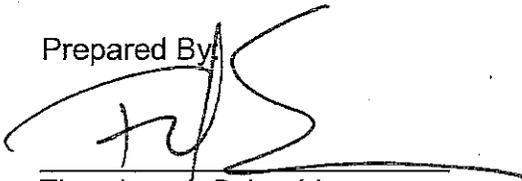
*GHG's Bankruptcy Filing Provides Further Grounds for Termination.*

Section 6.B.3. of the Agreement provides that, "[i]n the event Owner, or its assignee, file for bankruptcy, City shall have the right to suspend or terminate this Agreement." GHG filed for bankruptcy on June 18, 2010.

**FISCAL IMPACT:**

The most significant import of the Development Agreement for Phase 1A is with respect to the amount of development impact fees that a developer must pay to obtain a building permit in Phase 1A. The development impact fees payable under the Development Agreement in Phase 1A equal \$26,977.12 per housing unit. "Standard" development impact fees citywide (i.e., without the benefit of a development agreement), equal \$34,577.12 per housing unit. Please see the attached spreadsheets for a breakdown of the various fees. Once terminated, developers building in the portion of Phase 1A over which the Development Agreement is no longer effective will pay the full development impact fees.

Prepared By:



Theodore J. Schneider  
City Attorney

Attachment 1: Ordinance No. 11-830

Attachment 2: Development Impact Fees *with* Development Agreement

Attachment 3: Development Impact Fees *without* Development Agreement

**ORDINANCE NO. 11-830**

**AN ORDINANCE OF THE CITY OF FILLMORE, CALIFORNIA  
TERMINATING THAT PORTION OF THE DEVELOPMENT  
AGREEMENT FOR THE HERITAGE VALLEY PARKS PROJECT  
ENCOMPASSING LOTS 36-69 of TRACT MAP 5474-2**

**WHEREAS**, the “Heritage Valley Parks Project” (the “Project”) is comprised of approximately 301 acres, including 170 acres that will contain a maximum of 750 residential units located south of Highway 126 in the eastern portion of the City limits (the “Property”);

**WHEREAS**, on October 15, 2002, the City Council entered into a Development Agreement with Griffin Homebuilding Group, LLC (“GHG”), which Agreement is dated November 26, 2002 and was recorded on January 8, 2003 as Document No. 2003-0006367-00;

**WHEREAS**, with respect to that portion of the Property identified as Tract Map 5474-2, lots 36-69 consisting of 34 condominium lots of approximately 4,000 sq.ft. each known as Oak Haven, generally located on the east side of Mountain View St. between River St. and Highway 126 (the “Terminated Portion”), GHG is in default of the Development Agreement by transferring the Property to another developer without notifying the City, and by declaring bankruptcy, and it is hereby found and determined that GHG was and remains in default;

**WHEREAS**, Section 6.B.1. of the Development Agreement provides that the Owner (GHG) may only assign or transfer the Property, or any portion thereof, after giving notice to the City, and providing the City with an opportunity to review the prospective transferee’s financial resources to complete the Project;

**WHEREAS**, GHG transferred the Terminated Portion without providing notice to the City or providing the City with evidence of the prospective transferee’s financial resources;

**WHEREAS**, on July 23, 2009, the City sent a notice of default to GHG, which default remains uncured as of the date of this Ordinance;

**WHEREAS**, Section 6.E. of the Development Agreement provides that, after notice and thirty (30) days without cure of the default, the City may terminate the Development Agreement pursuant to Government Code section 65858;

**WHEREAS**, the City Council reasonably determines, on the basis of substantial evidence presented, including GHG’s failure to construct housing units in accordance with time schedules set forth in the Development Agreement, GHG’s adverse financial condition and multiple unpermitted transfers of the Property, that Owner has not complied in good faith with the terms and conditions of the Development Agreement;

**WHEREAS**, Section 6.B.3. of the Development Agreement provides that, in the event Owner (GHG) files for bankruptcy, the City has the right to terminate the Development Agreement;

**WHEREAS**, on or about June 18, 2010, GHG filed for Chapter 7 bankruptcy relief;

**WHEREAS**, the City now wishes to terminate that portion of the Development Agreement applicable to the Terminated Property. Nothing in the termination of the Development Agreement shall affect the remaining portions of the Property;

**WHEREAS**, a duly noticed public hearing was held by the Planning Commission on May 18, 2011. Notice was given of the right to submit comments thereon and of the date of the public hearing on the proposed Partial Termination of the Development Agreement by publication in the Fillmore Gazette on May 12, 2011. Notice was mailed on May 4, 2011 as required by law. In accordance with that Notice, the public hearing was held by the Planning Commission to consider the proposed Partial Termination of the Development Agreement on May 18, 2011; and

**WHEREAS**, evidence was heard and presented from all persons in favor of the termination, from all persons opposed to the termination and from members of the City staff; and that the Planning Commission heard and received all of said evidence; testimony and statements and was fully informed in the application;

**WHEREAS**, on May 18, 2011, the Planning Commission adopted Resolution 11-866 recommending to the City Council approval of the proposed Partial Termination of the Development Agreement; and

**WHEREAS**, a duly noticed public hearing was held by the City Council on June 14, 2011. Notice was given of the right to submit comments thereon and of the date of the public hearing on the proposed Partial Termination of the Development Agreement by publication in the Fillmore Gazette on May 12, 2011. Notice was mailed on May 4, 2011, as required by law. In accordance with that Notice, the public hearing was held by the City Council to consider the proposed Partial Termination of the Development Agreement.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FILLMORE, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council finds that all of the facts set forth in the recitals of this Ordinance are true and correct.

**SECTION 2.** Based on this analysis, there is no evidence that the proposed partial termination of the Development Agreement requires changes to the FEIR. Pursuant to Section 15061(b)(3) of the State Guidelines to implement the California Environmental Quality Act (CEQA), there is no possibility the proposed termination will have a significant effect upon the environment and, therefore, it is exempt from CEQA.

**SECTION 3.** The City Council finds that the partial termination of the Development Agreement is consistent with the objectives, policies, land uses and programs specified in the General Plan and the Heritage Valley Parks Specific Plan, and complies with the other standards and criteria required in Section 6.04.76 "Development Agreements" of the Fillmore Municipal Code.

**SECTION 4.** Based on all the evidence in the record and the findings contained in Sections 1 through 3 of this Ordinance, the City Council hereby approves termination of the Development Agreement dated November 26, 2002 for that portion of the Property identified as Tract Map 5474-2, lots 36-69 consisting of 34 condominium lots of approximately 4,000 sq.ft. each, known as Oak Haven, generally located on the east side of Mountain View St. between River St. and Highway 126.

**SECTION 5.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases or portions might be declared invalid or unconstitutional.

**SECTION 6.** The City Clerk shall cause this Ordinance to be published once, within fifteen (15) calendar days after its passage, in the Fillmore Gazette, a newspaper of general circulation, printed, published and circulated in the City, and shall cause a copy of this Ordinance and its certification, together with proof of publication, to be entered in the Book of Ordinances of the City.

**CITY OF FILLMORE, CALIFORNIA**

By \_\_\_\_\_  
Gayle Washburn, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Theodore J. Schneider, City Attorney

STATE OF CALIFORNIA )  
COUNTY OF VENTURA )  
CITY OF FILLMORE )

I, Clay Westling, City Clerk of the City of Fillmore, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Fillmore held on June 14, 2011 and adopted at a regular meeting held on June 28, 2011, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Clay Westling, City Clerk

# ATTACHMENT 2



## CITY OF FILLMORE DEVELOPMENT IMPACT FEE WORKSHEET

Effective February 12, 2010

This Adjustment is for Inflation per Resolution 09-3217

### PROJECT DESCRIPTION:

#### EXAMPLE OF CURRENT DIF WITH THE FOLLOWING MODIFICATIONS

#### LOT IN HERITAGE VALLEY PARK PHASE 1A

#### ASSUMED 4,000 SF LOT - PARK FEE PAID PER ORIGINAL DEVELOPMENT AGREEMENT

No.	DESCRIPTION	FEE	UNIT	# UNITS or SQ. FT.	TOTAL FEE	
1	Public Facilities: (Resolution 02-2599)					
	402-303-192 (City) (48%) =	\$1,563.08				
	402-303-193 (Fire) (23%) =	\$781.54				
	402-303-194 (Police) (10%) =	\$339.80				
	402-303-195 (Library) (21%) =	\$713.58				
	a) residential development project	\$2,680.00	D.U.	1.00	\$2,680.00	
b)	residential development project	\$718.00	D.U.	1.00	\$718.00	
	within Fire Substation Zone:					
c)	non-residential development project:	\$0.420	BLD. S.F.			
	(except projects undertaken by City, State, or Federal agencies, school district, or other public entities)					
2	Transportation Improvement Fee: (Resolution 06-2965, 02-2599 & 97-2208)					
	403-303-195 (Transportation Improvement)					
	a) residential development project; (single family)	\$2,091.00	D.U.	1.00	\$2,091.00	
	b) residential development project; (multi-family)	\$1,527.00	D.U.			
	c) commercial development project;	\$5,580	BLD. S.F.			
d) industrial development project;	\$1,770	BLD. S.F.				
3	Park and Recreation, Land Dedication and In-Lieu Fee: (Resolution 05-2805)					
	a) in-lieu fee (land dedication) of .011 acres / D.U.	\$5,200.00	D.U.	0.00		
	404-303-196 (Park Acquisition)					
	b) in-lieu fee, (improvement)	\$2,400.00	D.U.	0.00		
404-303-196 (Park Acquisition)						
4	Water Improvements Fee: (Resolution 08-3159)					
		<u>Meter Size</u>				
	a) water service connection fee:	5/8"	\$4,445.00	EA		
	405-303-197 (Water Improvement)	3/4"	\$6,222.00	EA	1.00	
		1"	\$9,778.00	EA		
		1-1/2"	\$21,336.00	EA		
		2"	\$30,226.00	EA		
		3"	\$97,787.00	EA		
	For Water Meter Sizes Not Shown See Resolution					
	b)	water fire service fee, (commercial & industrial)	\$0.461	BLD. S.F.		
405-303-197 (Fire Service)						

**EXAMPLE OF CURRENT DIF WITH THE FOLLOWING MODIFICATIONS  
 LOT IN HERITAGE VALLEY PARK PHASE 1A  
 ASSUMED 4,000 SF LOT - PARK FEE PAID PER ORIGINAL DEVELOPMENT AGREEMENT**

No.	DESCRIPTION	FEE	UNIT	# UNITS or SQ. FT.	TOTAL FEE
5	Sewer Improvements Fee: (Resolution 06-2987) 406-303-198 (Sewer Improvement)				
	a) residential development project:	\$12,377.00	D.U.	1.00	\$12,377.00
	b) commercial development project:	\$12.96	BLD. S.F.		
	c) industrial development project:	\$5.75	BLD. S.F.		
6	Storm Drain Improvements Fee: (Resolution 02-2599 & 97-2184) 407-303-199 (Storm Drain Improvement)				
	<u>Zone One</u> (see attached zone map)				
	a) residential development project:				
	rural	\$0.05720	LOT S.F.		
	single family	\$0.53078	LOT S.F.	4,000.00	\$2,123.12
	multi-family	\$0.77688	LOT S.F.		
	b) commercial development project:	\$0.96044	LOT S.F.		
	c) industrial development project:	\$1.05090	LOT S.F.		
	<u>Zone Two</u> (see attached zone map)				
	n/a				
7	Ventura County Reciprocal Traffic Agreement (County Ordinance 4246 & City Agreement) 601-0000-2105-000 (Ventura County Reciprocal Traffic Agreement) - Last Update December 3, 2008				
	a) residential single family:	\$766.00	D.U.	1.00	\$766.00
	b) residential senior housing	\$230.00	D.U.		
	c) residential other housing	\$536.00	D.U.		
	d) general commercial / retail	\$1,021.00	TSF		
	e) general industrial	\$204.00	TSF		
	f) general office	\$817.00	TSF		
	g) gas station	\$1,916.00	VFS		
	h) automatic car wash	\$5,106.00	SITE		
	i) self serve car wash	\$2,553.00	STALL		
	j) hotel	\$574.00	ROOM		
	k) quality restaurant	\$3,957.00	TSF		
	l) high turn over / sit down restaurant	\$8,298.00	TSF		
	j) fast food restaurant	\$11,617.00	TSF		
	k) hospital general	\$9,575.00	TSF		
	m) convalescent care	\$128.00	BED		
	n) day care	\$96.00	PERSON		
	o) traffic study - case by case	\$63.83	ADT		
<b>TOTAL DEVELOPMENT IMPACT FEES (Items 1 - 7) =</b>					<b>\$26,977.12</b>

Prepared by: \_\_\_\_\_  
 Name, Title

\_\_\_\_\_ Date

Signed by: \_\_\_\_\_  
 Signature

\_\_\_\_\_ Date

**Notes:** This example calculation assumes a 4,000 sq ft lot & Payment of Park Fee Current per Development Agreement in Heritage Valley Park Tract 5474 Phase 1A. This example calculation is based on the date of this calculation and may change based on City Council actions for updated fees and inflationary adjustments. The actual fee shall be calculated per Ordinance 613 § 1 (part), 1989 which states "The calculation of impact fees due shall be based on the fee schedule in effect at the time of application for a building permit." and shall be in accordance with other section of the ordinance.



**CITY OF FILLMORE  
DEVELOPMENT IMPACT FEE WORKSHEET**

Effective February 12, 2010

This Adjustment is for Inflation per Resolution 09-3217

**PROJECT DESCRIPTION:**

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No.	DESCRIPTION	FEE	UNIT	# UNITS or SQ. FT.	TOTAL FEE
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	a) residential development project:	\$2,680.00	D.U.	1.00	\$2,680.00
	b) residential development project within Fire Substation Zone:	\$718.00	D.U.	1.00	\$718.00
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	d) industrial development project;	\$1.770	BLD. S.F.		
3	Park and Recreation, Land Dedication and In-Lieu Fee: (Resolution 05-2805)				
	a) in-lieu fee (land dedication) of .011 acres / D.U. 404-303-196 (Park Acquisition)	\$5,200.00	D.U.	1.00	\$5,200.00
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		<u>Meter Size</u>			
	a) water service connection fee:		EA		
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	k) hospital general	\$9,575.00	TSF		
	m) convalescent care	\$128.00	BED		
	n) day care	\$96.00	PERSON		
	o) traffic study - case by case	\$63.83	ADT		

**TOTAL DEVELOPMENT IMPACT FEES (Items 1 - 7) = \$34,577.12**

Prepared by: \_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Date

Signed by: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Notes:

**CITY OF FILLMORE  
PLANNING COMMISSION  
RESOLUTION NO. 11-866**

**RECOMMENDING CITY COUNCIL  
APPROVE  
TERMINATION OF PORTION OF  
DEVELOPMENT AGREEMENT FOR  
HERITAGE VALLEY PARKS PROJECT ENCOMPASSING  
LOTS 36-69 OF TRACT MAP 5474-2**

*WHEREAS*, the City Council has requested that the Planning Commission review and make a recommendation to the City Council regarding the termination of that portion of the Heritage Valley Parks Project Development Agreement encompassing Lots 36-69 of Tract Map 5474-2, consisting of 34 condominium lots of approximately 4,000 square feet each, known as Oak Haven, generally located on the east side of Mountain View St. between River St. and Highway 126 (the "Terminated Portion");

*WHEREAS*, the Community Development Director caused a notice of date, hour and place for public hearing May 18, 2011 before the Planning Commission to be published in the Fillmore Gazette and mailed to all property owners within 300 feet of the exterior boundaries of the subject property in accordance with Section 6.04.8025 of the Fillmore Zoning Ordinance;

*WHEREAS*, the Project has been reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA") in that an environmental impact report was certified on October 15, 2002 per City Council Resolution No. 02-2606;

*WHEREAS*, there is no evidence that the proposed partial termination of the Development Agreement requires changes to the FEIR. Pursuant to Section 15061(b)(3) of the State Guidelines to CEQA, there is no possibility the proposed termination will have a significant effect upon the environment and, therefore, it is exempt from CEQA.

*WHEREAS*, a duly noticed public hearing was held before the Planning Commission on May 18, 2011, for the purpose of considering the Partial Termination of the Development Agreement and all interested persons were given an opportunity to be heard on the matter;

*WHEREAS*, the Planning Commission reviewed and considered all oral and written testimony received on the Partial Termination; and

*WHEREAS*, based on the evidence presented, the Planning Commission makes the finding of fact listed below:

1. The Terminated Portion is found within the boundaries of Phase 1A of the Heritage Valley Parks Specific Plan.
2. Termination of the Development Agreement over the Terminated Portions is consistent with the General Plan (1988) and General Plan Land Use Element (2005) and the Heritage Valley Parks Specific Plan (2002).

***NOW, THEREFORE***, the Planning Commission does hereby recommend the City Council approve the termination of the Development Agreement over the Terminated Portion.

***PASSED AND ADOPTED***, this 18th day of May, 2011 by the following votes:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

Doug Tucker, Planning Commission Chairman

***ATTEST:***

---

Denise Beauduy, Planning Secretary



**CITY OF FILLMORE**  
CENTRAL PARK PLAZA  
250 Central Avenue  
Fillmore, California 93015-1907  
(805) 524-3701 • FAX (805) 524-5707

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TO: Planning Commission May 18, 2011

FROM: Kevin McSweeney, Community Development Director

**SUBJECT: Business Item: Compliance Review of Development Permit 07-08,  
1515 Ventura Street**

**RECOMMENDATION:**

The Planning Department staff recommends the Planning Commission take the following action:

1. Determine that the project is Complaint to the Conditions of Approval as approved by the City Council.
2. Direct the applicant to remove the construction trailer within 3 months (August 18, 2011).
3. Conduct a compliance review for September 2011.

**BACKGROUND**

The Planning Department received questions from the Planning Commission regarding the status of the project located at 1515 Ventura St. on the west end of the City and the Code Enforcement Department also received code enforcement complaints within the last 3 months regarding the lack of construction progress.

The issue of construction progress was researched and determined by the Building Official that the project continues to request building inspections and therefore the building permit is still active. The property owner also has asked and received building permit extensions.

Because the project is still under construction, the project has not received Temporary or Final Certificate of Occupancy. Certificate of Occupancy is the threshold in the Conditions of Approval to the project that requires project completion.

While the project is under construction, the property owner has been permitted to operate his towing yard from the construction trailer and stores vehicles in the rear of the project site.

**ANALYSIS:**

The City Council approved the project subject to Conditions of Approval. There are many conditions that pertain to items that must be completed prior to Certificate of Occupancy. Certificate of Occupancy is the final inspection conducted by every City Department to ensure the project is complete.

Conditions of Approval #83-87 pertain to the timing of completion (underline added for emphases);

83. The proposed project is approved for 5 years from the date of Certificate of Occupancy issuance for Phase II. After 5 years, the applicant shall abandon the site or submit a full application for Planning Commission approval for a new Conditional Use Permit.
84. The applicant shall join the sewer subscription program.
85. The applicant is permitted to temporarily operate a vehicle impounding/storage yard as Phase I for one year subject to building permit issuance to any proposed temporary structure. The one year period will begin at the time of Temporary Certificate of Occupancy for Phase I.
86. The applicant shall complete the construction of Phase II within one year after Temporary Certificate of Occupancy is issued for Phase I.
87. The Planning Commission shall conduct a Compliance Review of the project 6 months after Temporary Certificate of Occupancy for Phase I.

The project has not requested a Temporary or Final Certificate of Occupancy until the construction is complete and the site is far from complete.

The site is incomplete because the applicant is waiting for Edison to approve his plans to bring electricity to this site. This was delayed because the applicant presented to City staff in October 2010 a modification to demolish the existing house and expand the building that is under construction. The applicant has not progressed with this concept but it caused Edison to stop reviewing the plans until it is determined the amount of electricity the site will demand.

The Building Official spoke with Edison and verified that plans were resubmitted for Edison's review about 3 weeks ago.

The applicant understands the community has anxiety for a site that has been incomplete for a few years. The applicant is suggesting that he can remove the temporary construction trailers within 3 months and temporarily move into one office inside the building that is under construction.

## CONDITIONS OF APPROVAL

### DEVELOPMENT PERMIT 07-08 CONDITIONAL USE PERMIT 07-10

#### ZAHID SHAH, APPLICANT

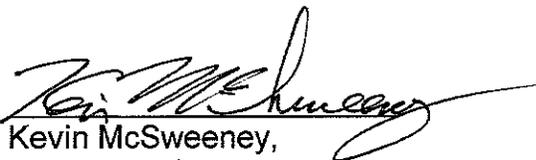
*The following conditions are the responsibility of the Applicant, or any of their successors or assigns. The property and business operations located at 1515 Ventura St., Assessor Parcel Number 046-0-020-140, are subject to the following conditions.*

1. This permit is granted for the land as described in the application and as shown on Exhibit "S" (Site Plan), **November 25, 2008** and shall not be transferable to any other property.
2. The construction of the project, the location of all buildings, structures, driveways, landscaping and other features, shall substantially conform to Exhibit "S" (Site Plan), **November 25, 2008**.
3. The elevations and architectural features of all buildings and structures shall conform to Exhibit "E", (Elevations) **November 25, 2008**. Final building plans submitted for purposes of obtaining a building permit shall clearly indicate all building materials and colors to be used in construction.
4. This permit shall become null and void within twenty four (24) months from the date of its issuance, unless building permits are applied for, or proposed development or use has in the sole discretion of the City been diligently pursued.
5. This development consists of one phase. All conditions of this permit are applicable upon implementation of phase one unless so specified in the following conditions.
6. These Conditions of Approval shall prevail over all omissions, conflicting notations, specifications, dimensions, typical sections and the like, which may or may not be shown on the improvements.
7. The Applicant shall comply with and satisfy all conditions of this permit prior to the issuance of a Certificate of Occupancy for any proposed structures.
8. No premises may be occupied until: 1) an Administrative Clearance is obtained from the Community Development Department, with all required signatures, 2) an occupancy inspection is conducted by the Building Inspector and Fire Chief, 3) a Certificate of Occupancy is granted by the Building Inspector and 4) the public improvements are completed to the satisfaction of the City Engineer.
9. Prior to Certificate of Occupancy the Applicant shall pay the most current Development

The applicant assures City staff that once Edison approves the plans, he can finish the front in a matter of 2 weeks.

However, this statement should be reviewed with skepticism. The applicant may not appreciate the tremendous amount of work to completing the site. City staff circled the attached conditions that need to be completed prior to Certificate of Occupancy.

City staff is requesting that staff be permitted to work with the applicant until September 2011 to make progress on construction beginning with the removal of the construction trailer.



Kevin McSweeney,  
Community Development Director

Attachment:  
Conditions of Approval

Impact Fees as required by the current Fillmore City Council Resolution regarding Development Impact Fees.

10. The development, or use by the Applicant, or any activity or structure authorized by this permit shall constitute acceptance of all conditions and obligations imposed by the City on this permit. The Applicant, by said acceptance, waives any challenges as to the validity of these conditions.
11. Prior to the issuance of a grading/building permit, the Applicant shall acknowledge, in writing, an understanding that the provisions of this resolution govern the future use and development of the property covered by the application for this permit. The Applicant by said acceptance waives any challenges as to the validity of these conditions.
12. The Applicant agrees as a condition of approval of this permit, to defend, at the sole expense of the Applicant, any action brought against the City based upon approval of this permit. The applicant shall reimburse the City for any costs and attorney's fees that the City may be required to pay as a result of any such action. The City may, as its sole discretion, participate in the defense of such action, but such participation shall not relieve the permittee of the obligations under this condition.
13. Separate public improvement plans for this property shall be prepared by a registered California Civil Engineer and shall be subject to review and approval by the City Engineer. The plans shall be submitted concurrently with building drawings and shall include, but not be limited to, grading, landscaping/irrigation, street, drainage, sewer, water and appurtenant improvements. The plan submittal shall also include construction cost estimates, plan check fees, a soil report and all pertinent engineering design calculations.
14. Prior to occupancy of the new buildings, the public improvements as shown on the approved public improvement plans shall be completed and construction acceptable and approved by the City Engineer. The Applicant prior to occupancy of the new buildings the Applicant shall obtain approval of the as-built plans from the City Engineer.
- 14A. Construction plans drafting shall conform to the City of Fillmore drafting quality to the satisfaction of the City Engineer. Certified as-builts shall be submitted to the City for review and approval by the City. Applicant's engineers shall be responsible for collection of all data due to changed conditions and shall submit notes and data to the City to verify the as-builts. As-builts shall be submitted on mylar and electronic AutoCAD format. No details shall be image files in the electronic as-built files. All details shall be drafted in AutoCAD to the satisfaction of the City Engineer.
15. No construction and/or grading shall begin prior to obtaining all required signatures on

the Administrative Clearance for the project. In addition to other required plans, an approved grading plan shall be required prior to obtaining Administrative Clearance.

16. A registered California Civil Engineer shall be retained by the applicant to: 1) assure that the construction work conforms to the approved public improvement plans and specifications and, 2) to provide certified as-built plans after project completion.
17. The Applicant shall indemnify, exonerate and hold harmless, the City of Fillmore and all officers and employees thereof, against all claims, demands and causes of action arising out of improvements constructed within the project.
18. The cost of all plan-checking and inspections related to on- and off-site public improvements, shall be borne by the applicant.
19. The Applicant shall irrevocably offer all necessary onsite easements and grants in fee for public streets, highways, sidewalks, breezeways, parkways, landscaping, alleys, sewers, water facilities, utilities, drainage facilities and other facilities as required by the City Engineer. These grants and easements shall be provided by Grant or Easement Deeds prepared by the Applicant and reviewed by the City Attorney. The cost of review by the City Attorney shall be paid by the applicant.
20. The Applicant shall be responsible for all actions of his contractors and subcontractors until such time as the improvements have been accepted by the City of Fillmore
- 20A. The Applicant shall not commence any construction until a pre-construction conference has been held between the Applicant, the Applicant's engineer, contractor and subcontractors, and the City Engineer or City staff appointed by him.
21. Before starting any work, the Applicant shall designate in writing, an authorized representative who shall have complete authority to represent and act for the applicant. Such written authorized shall be submitted to the Community Development Department. Said authorized representative shall be present at the site of work at all times while work is actually in process on the development. During periods when work is suspended, arrangements acceptable to the City shall be made for any emergency work which may be required.

**URGENT WORK** - Whenever orders by the City to the applicant's representative, Superintendent, or Foreman, to do work required for the convenience and safety of the general public because of inclement weather or any other dangerous condition, and said orders are not immediately acted upon by such person, the City may do, or have such work done, by others at the applicant's expense.

**NUSIANCE WORK** - When the project causes a nuisance to the public and the City notifies the Applicant in writing of the nuisance, the Applicant shall resolve the problem causing the nuisance within 36 hours. If the Applicant fails to correct the

nuisance in a timely manner the City may do or have such work done by others at the Applicant's expense.

22. The Applicant shall pay the cost of revising the Water and Sewer Master Plan and City utilities atlas to reflect the new improvements constructed by this project and pay for the cost of scanning as-builts electronically in tiff format.
23. If any hazardous waste is encountered during the construction of this project, all work shall be immediately stopped and Ventura County Environmental Health Department, the Fire Department, the Sheriff's Department and the City Inspector shall be notified immediately. Work shall not proceed until the clearance has been issued by all these agencies.

#### LANDSCAPING

24. Continuous maintenance of all landscaped areas dedicated to the City shall be in the Landscaping Maintenance District. The Applicant shall initiate annexation proceedings prior to Certificate of Occupancy.
25. Landscaping and automatic irrigation shall be installed in all landscaped areas, per an approved landscaping and irrigation plan which shall be prepared by a registered landscape architect, licensed to work in California. Building permits will not be issued, and no landscaping is to be installed until the City's landscape architect approves the subject landscaping plans. All landscaping shall be installed, and its installation inspected by the Building Inspector and City Landscape Architect, prior to the issuance of a certificate of occupancy
26. All trees shall be 24-inch box size (minimum), all shrubs and vines shall be 5-gallon size (minimum) except as specified by the Community Development Director. All plant materials shall remain tagged with the species type until inspection of landscaping occurs. Root barrier shall be installed by all curb and gutter and sidewalk within 10 feet of a tree.
27. The Applicant shall provide for the construction of streetscape treatments in accordance with a streetscaping plan prepared by the applicant and approved by the Public Works Director and Community Development. Such plan shall include, but not be limited to, landscape materials, wall treatments and irrigation plans.
28. The Applicant shall post a bond for landscaping improvements. The amount shall be established by an estimate to be prepared by the applicant's landscape architect and reviewed by the City.
29. Outdoor storage shall only be permitted as indicated on Exhibit "S", (Site Plan) **November 25, 2008**. Storage shall be screened from adjacent properties and streets by a fence, wall or other method deemed acceptable by the Community development Director.

#### FIRE PREVENTION

30. On site and/or boundary water mains, fire hydrants and services shall be installed according to City of Fillmore Public Works Department specification.
31. The Applicant shall obtain two certified fire flow test at the Applicant's expense to determine and check for compliance with fire flow requirements. The first test shall be conducted prior to approval of improvement plans and the second test after construction of the subject improvements but prior to issuance of a certificate of occupancy. The tests must be certified by a Fire Protection Engineer. A minimum fire flow of 1,500 gallons per minute shall be provided at the subject site.
32. Fire hydrants shall be installed and be in service prior to any combustible construction and shall conform to the minimum standards of the Ventura County Water Works Manual and the City of Fillmore Public Works Department Standards.  
  
Each hydrant shall be a Clow model 950, or equivalent, with two, 2 1/2 inch outlets and one, 4-inch outlet. Required flow shall be achieved at no less than 20 psi (pounds per square inch) residual pressure. Fire Hydrants shall be spaced 500 feet on center, and so located that no structure will be farther than 250 feet from one hydrant. Hydrants shall be located no less than three (3) feet nor more than five (5) feet from any curb.
33. All roof covering materials shall consist of State Fire Marshall-approved, noncombustible, fire retardant materials.
34. Address numbers, a minimum of six (6) inches in height shall be installed prior to occupancy and shall be of contrasting color to the background (building, wall, door, etc.), and readily visible at night. For industrial development, the address numbers shall be illuminated. The Fire Chief shall approve the method of illumination.
35. All required street signs shall be installed prior to the City's acceptance of the development and public improvements.
36. The applicant shall provide on-site fire protection, as determined by the Fire Chief. Adequate fire protection shall be installed and be in service, prior to obtaining any building permits. The Applicant shall maintain passable vehicular access to all buildings and fire hydrants as required by the Fire Chief.
37. Smoke detectors, approved by the State Fire Marshall, shall be installed in all areas leading to sleeping rooms.
38. Automatic fire sprinklers shall be provided as required by the Fillmore Fire Chief.
39. All brush and grass determined to be a fire hazard by the Fire Chief, shall be cleaned be cleared to a minimum distance of 100 feet from all proposed structures, prior to beginning framing of any combustible construction.

40. In accordance with the California Administrative Code, Title 24, Section B1419, an approved spark arrester shall be installed on the chimney of any structure.
41. Fire hydrant valves shall be maintained free of all obstructions in a manner deemed satisfactory by the Fire Chief.
42. All driveways and canopies shall have a minimum vertical clearance of 13 feet, 6 inches.
42. No burning of combustible refuse material shall be permitted the subject property.
43. A permit shall be obtained from the Fillmore Fire Chief and the Ventura County Air Pollution Control District (APCD) for the handling, storage and use of all flammable, combustible and hazardous materials.
- 43A. Prior to submission of building plans, the Applicant shall file with the Building Official a soils report prepared by a Geotechnical Engineer, who is registered in the State of California. The recommendations contained within the report shall be made part of these conditions.
- 43B. The soils report shall include at a minimum geotechnical investigation of liquefaction, expansive soils, and seismic safety. The grading plan shall incorporate the recommendations of the approved soils report.

#### GRADING

44. All grading shall be done per the approved grading plan, Exhibit "G", **November 25, 2008** and conform to Appendix J of the California Uniform Building Code and/or as recommended by the Soils Report submitted for the project, with the prior approval by the City.
45. All abandoned irrigation lines, and other obstructions on the project site, shall be removed and properly disposed of from the site. Proper backfill and compaction of voids shall be subsequently accomplished to provide protection against settlement.
46. It is the contractor's responsibility to use watering, dust fences or other methods as directed by the City Engineer to control dust throughout the construction operation.
47. All grading/construction debris shall be removed from the project site and disposed into a dump site prior to any exaction or fill operations and/or as directed by the City Engineer. The Applicant, his agents or employees shall be responsible for the removal and clean-up of any spill of materials or debris on public streets during the entire grading operation.
48. Soil reports, "R" value, and compaction tests will be required on all proposed streets or portions of streets requiring repair. Determination of actual structural sections to be constructed shall be based on State Highway design procedure, with the specified traffic index in the current Ventura County Road Standards. In addition, at least the top twelve

(12) inch portions (more if necessary) of the subgrade material shall be reworked and recompact to the required densities indicated in the soil report at the optimum moisture content shown in the R-value test.

#### **SEWER**

49. The method of sewage and waste disposal shall be by means of a community disposal system. All sewer system improvements shall meet or exceed the City's standards, and the necessary separations between water mains and sanitary sewers shall be maintained as required by the State Department of Health and as directed by the City Engineer.

#### **WATER**

50. All on-site wells shall be filled, capped and abandoned in conformance with Public Works Department requirements and specifications.
51. The Applicant shall install adequately sized water services and water meters per current City of Fillmore Public Works standards. This will require that the Applicant provide fixture unit counts and supply water service line size calculation prepared by a qualified plumber or engineer. These calculations shall be per the methodology of the Uniform Building Codes.
52. A backflow prevention device shall be installed per the Superintendent of Public Works and the Ventura County Cross-Connected Control Inspector.
53. The locations of water services shall be marked on the curb face in conformance with the City of Fillmore Public Works requirements.

#### **DRAINAGE**

54. On-site and off-site drainage facilities, compatible with the adopted City of Fillmore Drainage Master Plan, shall be provided and constructed as directed by the City Engineer.
55. The Applicant shall install the required drainage facilities concurrently with rough grading operations or provide an interim drainage and erosion control plan, and construct interim improvements with prior approval from the City Engineer, for mitigating any potential flooding and erosion adversely affecting adjacent properties and public rights of way. Erosion control measures shall be in place and maintained for the period of November 15 and April 15.
56. On-site and off-site drainage plans, all pertinent engineering analysis and design calculations shall be prepared in accordance with the City's current engineering design criteria and shall be submitted by the Applicant to the City Engineer for review and approval.
57. The Applicant shall submit to the City for review and approval, drainage plans, hydrologic and hydraulic calculations prepared by registered civil engineer. All catch

basins shall intercept a 50-year flow. The 10-year hydraulic for the storm drain system shall be a minimum of two feet below the gutter flow line.

58. Each building pad shall be protected from a 100-year frequency storm and 16 foot dry access shall be provided on all interior streets during a 10-year frequency storm. Collector streets shall have 24 feet of dry access during a 10-year frequency storm.
59. Each parcel shall be designed to drain into a street, alley or approved drain in such a manner that there will not be any undrained depressions of land within the development.
60. The Applicant shall procure easements or consents from all affected landowners for any diversion of historical flows, changes in drainage conditions or acceptance of any additional water flowing over the subject party.
61. Drainage gradients for all building pad areas shall not be less than 1% percent nor greater than 1.5% percent.
- 61A. The Applicant shall submit as required a NOI with the Los Angeles Regional Water Quality Control Board for the construction of the project and shall provide a copy of the NOI to the City of Fillmore prior to construction.
- 61B. The Applicant's Civil Engineer shall prepare the required Storm Water Pollution Control Plan (SWPCP) or Storm Water Pollution Prevention Plan (SWPCP). Design and construction shall meet the requirements of the Stormwater Quality Management Program (SQUIMP) as necessary.

#### STREETS

62. Any street, alley, sidewalk, or curb that is damaged by the Applicant or the applicants' agent(s)/employees, shall be repaired by the applicant.
63. Curb cuts, widths and design, shall conform to the currently adopted Fillmore City Standards.
64. The Applicant shall offer to dedicate in fee, and improve to City standards, all sidewalks, parkways, streets and alleys.
65. Prior to occupancy the Applicant shall annex this project into the City's Street Light and Landscape Maintenance Assessment District and shall reimburse the City all costs associated with the annexation.
- 65A. All streets, alleys, sidewalks, curbs, and gutters adjacent the development shall be improved per Exhibit "S", (Site Plan) and Exhibit "G", (Grading Plan), if required by the City Engineer, or as necessary to provide safe vertical and horizontal transitions which connect improvements constructed within this project to existing improvements, as directed by the City Engineer.

- 65B. Sidewalks shall be widened around obstructions in accordance with Ventura County Standard plate D-10. The Applicant shall offer to dedicate right-of-way as necessary to accommodate the sidewalk widening around obstructions.
- 65C. The Applicant shall pay for and install, street name signs, traffic regulatory and warning signs, and any necessary street striping and markings as required by the City Engineer. All signs shall conform to the Public Works Department requirements and shall be purchased by the Applicant. Striping and signing plans shall be prepared for the applicant by a Registered Traffic Engineer for the Cads review and approval, and shall be made a part of the improvement plans.

### **GAS, ELECTRIC, UTILITIES**

66. All water, natural gas, sewer, underground electrical power, CATV or telephone line, or conduits or underground drain lines shall be installed prior to paving any street or portion of a street. Utility stub connections to property boundaries of each lot may be omitted only with the expressed written permission of the City Engineer. The applicant shall underground all overhead utilities that service the property.
- 66A. Prior to recordation, the Applicant shall pay all energy costs associated with street lighting for a period of one year after the initial energizing of the street lights.
- 66B. Street lights shall be installed in accordance with a street lighting plan prepared by the Applicant and approved by the City Engineer. The Street Lighting plan shall be made a part of the Master Utility Plan.
- 66C. All water, natural gas, sewer, underground electrical power, CATV or telephone line, or conduits or underground drain lines shall be installed prior to paving any street or portion of a street. Utility stub connections to property boundaries of each lot may be omitted only with the expressed written permission of the City Engineer.
- 66D. Applicant shall install 22,500 lumen, 208 volts and 150 watt streetlights mounted on a thirty-foot marbolite pole adjacent to Ventura Street beginning at the West End and at 150 foot intervals. At a minimum a light shall also be placed at the intersection of "E" and Ventura Street. Marbolite poles shall also be used along "E" Street and at a minimum placed at the intersection of "E" Street and Cottonwood. The street light plan and spacing is typically 150 feet maximum and shall be reviewed and approved by the City Engineer.
- 66E. The Applicant shall remove Pole Number 4375878E on the west side of "E" Street that is located generally at the extension of the centerline of Cottonwood Lane shall be removed along with the overhead wire. The Applicant shall also remove the utility pole on the west side of "E" Street between Ventura Street and Cottonwood land shall also be removed.

~~66F. The Applicant shall underground overhead wires along the north side of Ventura Street beginning at Pole No. 2323556E located north east corner of "E" Street and Ventura Street and continue west to Pole Number 4096816E. In lieu of this undergrounding the Applicant may pay the fair share cost determined to be the amount of \$75,000. The Applicant fair share may also be determined by Applicant payment for the design of this undergrounding with Edison and obtaining the actual cost of undergrounding. The fair share shall be half the cost of the undergrounding construction as reported by Edison.~~

~~66G. The Applicant shall underground the overhead telephone wires from the unmarked pole located at the north west corner of "E" Street and Ventura Street south across Ventura Street to the pole located on the south side of Ventura Street. In lieu of this undergrounding, the Applicant shall pay the fair share cost determined to be the amount of \$31,325. The Applicant fair share may also be determined by Applicant payment for the design of this undergrounding with At&T and obtaining the actual cost of undergrounding. The fair share shall be half the cost of the undergrounding construction as reported by At&T.~~

#### **LIGHTING, SCREENING, FENCES and WALLS**

67. No lighting shall be of the type or in location, such that it will constitute a hazard to vehicular traffic, on either private or public streets. To prevent damage from automobiles, light standards shall be mounted on reinforced concrete pedestals or be otherwise protected.
68. The Applicant shall hire a licensed engineer to prepare a photometric plan for the project. The plan shall be submitted with construction drawings for the project. The plan shall show the location, type, and intensity of light sources. Light spill onto

#### **SPECIAL CONDITIONS**

69. This project and all of its components is subject to the Ventura Street Design Guidelines. All components of the project must be consistent with these Guidelines as determined by the Community Development Director at all times. A plan shall be submitted for Staff Review Committee (SRC) review and approval, identifying the proposed architecture.
70. All roof equipment shall be screened per the Ventura Street Design Guidelines.
71. Prior to issuance of a building permit and prior to City approval of construction plans, the Applicant shall obtain a Caltrans encroachment permit for any work within the State right-of-way.
72. If any hazardous waste is encountered during the construction of this project, all work shall be immediately stopped and Ventura County Environmental Health Department, the City Fire Department, the Sheriff's Department and the City Inspector shall be notified immediately. Work shall not proceed until clearance has been issued by all these agencies.

73. No pole sign will be permitted on the subject property. A sign Program shall be submitted with final construction drawings to the Community Development Department and must conform to the C-1 zone (section 6.04.900 of the Zoning Code) and Ventura Street Design Guidelines.
74. No Alcohol shall be consumed on premises.
75. The applicant shall provide a hydraulic study confirming that all building pads shall be above a 100-year flood plain. Bank protection required to protect this development from river flooding shall be in accordance with the requirements of the Ventura County Flood Control District and the Federal Emergency Management Agency (FEMA). A 20 foot wide access area shall be provided at the top of the bank protection.
76. The applicant shall connect to storm drain on property.
77. The Applicant shall upgrade existing water meters to the current City standards. SQUIMP irrigation area shall have a separate water meter and irrigation system.
78. The applicant shall upgrade the existing fire hydrant on the southeast corner of "E" St. and Cottonwood Lane.
79. The applicant shall connect the existing housing unit to the City sewer system and properly abandon the septic tank.
80. The Applicant shall install a stormwater treatment area per SQUIMP.
81. The Applicant shall participate in the established City of Fillmore Interim Sewer Subscription Program (ISSP). Any ISSP fees for participation are in addition to the usual Sewer Development Impact Fee (DIF). The applicant shall pay the cash subscription fee for all Equivalent Residential Units (ERUs) in the project in the amount of \$4,664 per ERU within 60 days of project approval. Delay in posting the guarantee(s) beyond that date will not obligate the City to provide sewer service and void the approval of this application. This fee will be estimated within this 60 day period and reviewed at time of approval of building and tenant improvements and shall be adjusted for the actual installations.
82. The applicant shall join the sewer subscription program.
83. The applicant is permitted to temporarily operate a vehicle impounding/storage yard as Phase I for one year subject to building permit issuance to any proposed temporary structure. The one year period will begin at the time of Temporary Certificate of Occupancy for Phase I.
84. The applicant shall complete the construction of Phase II within one year after Temporary Certificate of Occupancy is issued for Phase I.

85. The Planning Commission shall conduct a Compliance Review of the project 6 months after Temporary Certificate of Occupancy for Phase I.
- ~~86. The applicant shall install sign at the driveway along Highway 126 that indicates right-hand turns only.~~
87. The applicant shall pave with asphalt the rear portion of the property for 20 parking spaces and driveway aisle.
88. The applicant shall install an 8' in height green vinyl coated chain link fence on the north and easterly property line and planted with vines every 10 feet.
89. The applicant shall install 24" box pepper trees at 40' o.c. along the westerly property line.
90. Ventura Street shall be improved to include curb, gutter and sidewalk along the west side of "E" St. and landscaping. The curb and gutter shall be set at a minimum a distance from the Ventura Street centerline consistent with the curb and gutter located east of the "E" Street. The driveways shall be per Greenbook public works construction standards. The curb return radius of Ventura Street and "E" Street shall be a minimum of 35 feet. The Applicant shall be responsible for maintenance of the landscaping. Should the Applicant not maintain the landscaping per Caltrans and City standards the landscape maintenance will be completed by the City through the Lighting and Landscape Assessment District. The landscaping shall be irrigated with an automatic irrigation system and provided with a smart controller.
91. "E" Street shall be improved to include a curb and gutter and widened to 36 feet from face of curb to face of curb. A Ventura County standard knuckle shall be used to connect "E" Street to Cottonwood Street. Alignment and layout shall be reviewed and approved by the City and to the satisfaction of the City Engineer. Sidewalk from Cotton wood Lane shall be continued and Applicant shall install a new accessibility ramp to direct pedestrians to the sidewalk on the east side of "E" Street. The sidewalk from Cottonwood Lane shall also be extended to the bike path with a locking gate. The conform and gate shall be to the satisfaction of the City Engineer. The driveways shall be per Greenbook public works construction standards. The existing cross gutter at the west end of Cottonwood Lane shall be eliminated. The Applicant shall if feasible design "E" Street to have a standard crown section. The drainage on the north and west side of the new "E" Street pavement shall be collected and directed to the existing storm drain system with a standard catch basin at the point of collection and a standard manhole at the junction point with the existing storm drain. "E" Street shall also be designed with a five foot parkway as measured from the face of the curb and shall be planted with sod and irrigated with an automatic irrigation system and provided with a smart controller.
92. ~~Prior to occupaney, the Applicant shall irrevocably offer to dedicate in fee an additional~~

~~14 feet of right of way along the south side of the property along Ventura Street for future Highway Widening.~~

93. Prior to occupancy, the Applicant shall dedicate in fee the additional right of way along "E" Street to Cottonwood for all public improvements required by these conditions of approval.
94. There shall be no used car sales in front of the building and all used cars shall be behind the building.
95. The applicant shall install a sidewalk along the westerly side of the "E" St. The applicant is not required sidewalks along Ventura Street.
96. The applicant shall be notified on the building permit that the property is within a flood zone.
97. The applicant shall not permit any off-loading of vehicles along Hwy 126 or within it's median. All off-loading of vehicles shall occur on the subject project site.
98. Pneumatic drills are only permitted to be used within the building. Pnuematic drills are not permitted to be used outside.
99. The applicant shall install a 15' in height "Fillmore signs" made of concrete and exposed neon tubing as shown in the exhibit of the Fillmore Business Park Master Plan page 4-31 (dated March 11, 2008).

  
\_\_\_\_\_  
Steve Conaway,  
Mayor

  
\_\_\_\_\_  
Zahid Shah  
Property Owner

**END OF CONDITIONS**



**CITY OF FILLMORE**  
CENTRAL PARK PLAZA  
250 Central Avenue  
Fillmore, California 93015-1907  
(805) 524-3701 • FAX (805) 524-5707

May 18, 2011

TO: Planning Commission

FROM: Kevin McSweeney,  
Community Development Director

SUBJECT: Business Item: Screening 11-02, Cardiff Realty request for alleviation from grass parkway at 955 W. Ventura proposed reconstruction.

**RECOMMENDATION:**

The Planning Department staff recommends the Planning Commission take the following action:

- Provide direction to City staff in determining if a 5' wide grass parkway should be required when an application is made to develop 955 Ventura St.

**BACKGROUND:**

The applicant, Cardoff Realty Holdings, is considering submitting a formal application for a Tentative Parcel Map for the former Dodge Dealership at 955 Ventura St. in order to create 4 new parcels for potentially 2 fast food restaurants and 2 retail spaces.

The applicant does not own the property at this time and desires to get an understanding of City requirements prior to pursuing a development.

One of the comments from the Engineering Department is that the City has been requiring a grass parkway along Ventura St with queen palms since about the year 2000 to create a landscape design theme along Ventura St.

The Engineering Department is also stating that a "driveway-throat" of 50' is needed at the entrance and exits to improve access safety.

The applicant is concerned that these requirements are not financially feasible and will prevent the project from being proposed.

**ANALYSIS:**

**Project Description:**

The proposed project consists of dividing one parcel into 4 separate parcels and demolishing the existing service bay while keeping the existing 4,000 sq.ft. showroom and office. The proposed project also consists of constructing a 2,756 sq.ft fast food and 2 retail spaces.

City staff reviewed the concept and made the following requirements;

1. A new fire hydrant on-site may need to be required.
2. Reciprocal access will be required across all parcels.
3. Reciprocal access will be required to the adjacent property to the east.
4. The project will need to be reviewed for fire loading.
5. The parking lot design will need to be reviewed in order to allow for the Quint Fire Truck to have access.
6. The loading for the retail space will need to be reviewed.
7. The project will need to comply with the Ventura Street Design Guidelines.
8. The project will need to comply with the Zoning Ordinance for setbacks, parking, signage, lot size, landscaping and etc.
9. Noise from the menu board will need to be reviewed.
10. A full and complete application for a Development Permit, Conditional Use Permit, Tentative Parcel Map and environmental review will need to be submitted.
11. Ventura St. has an informal design theme of grass parkway with queen palms planted in the parkway.
12. The driveway throat should be lengthened to 50' or safety purposes.

The City Engineering Department made an additional comment that is supported by the Planning Department. The comment is that in recent years, the City has made an attempt to create a design theme along Ventura Street consisting of a grass parkway and planted with Queen Palms. This design theme is not codified in the Ventura Street Design Guidelines or the Zoning Ordinance but is instead project's along Ventura Street has been conditioned to meet this design theme.

The applicant advised City staff that he can address all the above comments in the design of the project but requiring a parkway and increase driveway throat is too expensive for the project.

Therefore, the applicant is requesting the Planning Commission provide an opinion on the design.

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Kevin McSweeney,  
Community Development Director

Attachment:  
1. Site Plan