

Fresno County Regional Transportation Mitigation Fee Agency

Date: Thursday, February 26, 2015

Time: 5:30 PM

**Place: COG Sequoia Conference Room
2035 Tulare St., Suite 201, Fresno, CA**

PRIOR TO THE FRESNO COG POLICY BOARD MEETING - ALL POLICY BOARD MEMBERS

Members Attending:

- Mayor Lynne Ashbeck, City of Clovis
- Mayor Ron Ramsey, City of Coalinga
- Mayor Craig Knight, City of Firebaugh
- Mayor David Cardenas, City of Fowler
- Mayor Ashley Swearengin, City of Fresno
- Mayor Pro Tem Gary Yep, City of Kerman
- Mayor Chet Reilly, City of Kingsburg
- Mayor Robert Silva, City of Mendota
- Mayor Victor Lopez, City of Orange Cove
- Mayor Pro Tem Raul Villanueva, City of Parlier
- Councilmember Robert Beck, City of Reedley
- Mayor Amarpreet Dhaliwal, City of San Joaquin
- Mayor Joshua Mitchell, City of Sanger
- Mayor Scott Robertson, City of Selma
- Supervisor Henry Perea, County of Fresno

Arthur Wille, Legal Counsel
Tony Boren, Executive Director
Les Beshears, Finance Director

Absent: Mayor Sylvia Chavez, City of Huron

Others Attending: (see attached)

QUORUM: At the start of the meeting there were 12 members present representing 41.51% of the population and there was a quorum to conduct business. (Clovis, Firebaugh, Fowler, Huron, Kerman, Kingsburg, Mendota, Parlier, Reedley, San Joaquin, Selma and Fresno County)

Mayor Dhaliwal (San Joaquin) Chair, called the meeting to order at 5:30 pm, prior to the Fresno COG Policy Board at the request of the City of Fresno.

FRESNO COUNTY RTMF AGENCY AGENDA

I. Minutes of January 29, 2015 Special Meeting and Regular Meeting [APPROVE]

Following an expressed opportunity for public comment, a motion was made by Mayor Silva (Mendota) and seconded by Mayor Yep (Kerman) to approve the Executive Minutes of January 29, 2015 as presented. A vote was called for and the motion carried.

Mr. Wille, County Counsel, requested that the meeting be delayed until the City of Fresno arrived, due to the fact that Mayor Swearingin should be present for the entire appeal hearing. The meeting was adjourned at 5:36 pm to the Fresno County Rural Transit Agency meeting while waiting on the Mayor's arrival.

QUORUM – 5:40 pm: City of Coalinga, City of Fresno and City of Sanger arrived. There were 15 members present representing 99.28% of the population.

Meeting resumed at 5:41 pm.

II. Clovis Herndon LLC Appeal

Clovis-Herndon LLC is appealing a staff determination their project is subject to the fee. The project is the shopping center development on the northeast corner of Herndon and Clovis Blvd (Clovis Crossing). Appellant represents there is approximately 238,337 sq. ft. of commercial retail in this development owned by Clovis-Herndon Center, LLC subject to this appeal resulting in \$479,468.04 paid in fees. The appeal includes only property owned by Clovis-Herndon, LLC and not property for other owners in the shopping center subject to the fee.

On October 25, 2012, the board denied the appeal and Clovis-Herndon LLC filed suit. On May 29, 2014 the court ordered the RTMF Agency to hold another hearing, make a new determination, and adopt findings to support that determination. In June and July 2014 the RTMF Board held hearings, listened to testimony and voted 12-3 to deny the appeal. That motion failed because the dual weighted voting system requires 40% of the population to agree and the vote only secured 32.91% of the population. On January 28, 2015 the court once again ordered the Fresno County Regional Transportation Mitigation Agency to hold a hearing, make a determination, and adopt findings regarding the Clovis Herndon appeal. On January 29, 2015 the Board directed staff to schedule a hearing on February 26, 2015.

For links to the documentation for this appeal, please see the February 26, 2015 Annotated Agenda.

Mr. Hillson, Caldwell Bell & Hillison presented the appeal on behalf of Clovis Herndon LLC. A powerpoint presentation was given stating the reasons for the appeal. This presentation was handed out to the Board.

Mr. Hillison pointed out he felt the fee was not applicable to the project because Section 4.E of Resolution 2009-01 explicitly states the fee is not applicable to development approved prior to January 1, 2010. Mr. Hillison also explained that under the doctrine of Equal Protection commercial developments should have similar rights of waiver as vesting rights for residential development.

Mayor Dhaliwal (San Joaquin), Chair, questioned if the Board determines applicability or staff. Mr. Hillison responded that the board does.

Mayor Reilly (Kingsburg) asked if there was a conflict between the resolution and the Administrative manual regarding the definition of "new development". Mr. Hillison stated there was no conflict and reiterated his argument regarding the applicability of the fee.

Mayor Swearingen (Fresno) asked Mr. Hillison to comment on his interpretation of the difference between development approval and issuance of building permits. Mr. Hillison explained that issuance of a building permit is a ministerial function that does not require discretion by the Clovis City Council whereas the development approval did.

Mayor Pro Tem Yep (Kerman) asked questions regarding the Court Order prohibiting the City of Clovis from issuing building permits and voiced concerns regarding setting a precedent and having to go back and look at all developments.

Following Mr. Hillison's presentation, Mr. Beshears, FCOG Finance Director, made a presentation explaining the Measure C ballot mandated the imposition of the fee and the process by which the RTMF JPA and subsequent policy was formed. He then showed a calendar of events demonstrating that even if the development was given equal protection rights similar to residential development, the rights would have expired prior to getting a building permit. He then proceeded to explain three key points supporting denial of the appeal. 1. The development has no vesting rights. 2. Section 4.E of Resolution 2009-01 does not say that the fee is not applicable to developments approved prior to January 1, 2010. 3. The development agreement approved by the City of Clovis in 2009 stated explicitly in the document that additional fees could be charge by outside agencies.

Mayor Swearingin (Fresno) commented that the definition of development is not as clear to outsiders as it is to staff and there is a due process issue that is unique to this project.

Mayor Mitchell (Sanger) endorsed the appeal and commented the board should not base their decision on fear of opening a can of worms.

Mayor Riley (Kingsburg) and Mayor Swearingin (Fresno) disagreed with staff's interpretation of Section 4.E. stating it was a question on when the fee started.

There was discussion regarding the difference between the start date of the program and the applicability of the fee to developments approved prior to January 1, 2010.

Mayor Pro Tem Yep (Kerman) pointed out that if an exemption is made for this one project after collecting the fee for five years on the basis of adopted policy it would open the door for numerous potential litigations.

In response to Supervisor Perea (County) , Mr Beshears explained that during the JPA formation process, when RTMF policy was developed by a committee of city and county officials, the issue of granting exemption for commercial developments approved per conditional use permits or site plan reviews was discussed and rejected.

Supervisor Perea (County) stated the only question was did staff act appropriately and implement Board policy as approved ? Sounds like they did, and unless county counsel says staff interpretation is wrong he supports staff recommendation.

Mr. Wille pointed out that ultimately it was the duty of the Board to interpret the resolution.

Mayor Cardenas (Fowler) commented on the time line saying it was no body's fault the project was delayed but it was clear time had expired.

Mayor Dhaliwal, Chair, ended the discussion.

Supervisor Perea (county) made a motion seconded by Mayor Lopez (Orange Cove) to deny the appeal and direct staff to prepare findings.

A roll call vote was held and received 11 votes in favor representing 31.41% of the population, 4 opposed representing 67.87% of the population. Motion failed.

County Counsel advised proponents of the appeal should make a counter motion to grant the appeal to demonstrate the board was truly deadlocked.

Motion by Mayor Mitchell (Sanger) seconded by Mayor Riley (Kingsburg) to grant the appeal by Clovis Herndon LLC.

A roll call vote was held and received 4 votes in favor representing 67.87% of the population, 11 opposed representing 31.41% of the population. Motion failed.

County Counsel advised that most agencies had policy on how to resolve appeals when the vote is deadlocked, however the RTMF agency does not.

Supervisor Perea (County) suggested directing staff to bring back a policy to break the deadlock.

Mayor Ashbeck (Clovis) was not comfortable changing the rules on how this appeal would be determined.

Mayor Yep (Kerman) suggested the policy would be forward.

Mayor Swearingin (Fresno) asked if the option of referring the issue to administrative hearing was still on the table.

A general discussion followed that concluded with the Chairman directing staff to develop a policy on deadlock and bring it back in March.

III. OTHER BUSINESS

A. Items from Staff

None

B. Items from Members

None

IV. PRESENTATIONS

A. Public Presentations

This portion of the meeting is reserved for persons wishing to address the Board on items within its jurisdiction but not on this agenda.

None.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Tony Boren, Executive Director

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Others Attending:

Heather Dumais, American Lung
Jeff Roberts, Granville Homes
Bob Hillison, Caldwell Bell & Hillison
Moses Stites, FCRTA

Kimberly Mayher, Caldwell Bell & Hillison
Toni Tinoco, Supervisor Perea's office
Kris Balaji, AECOM

COG Staff:

Les Beshears
Melissa Garza
Rob Terry
Kristine Cai
Lauren Dawson
Clark Thompson
Suzanne Martinez
Laural Fawcett
Peggy Arnest
Brenda Veenendaal
Kai Han
Angela Yang
Toni Graham
Marla Day

