

Fresno County Regional Transportation Mitigation Fee Agency

Executive Minutes

Date: Thursday, May 28, 2015

Time: 5:30 PM

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

Members Attending:

Mayor Nathan Magsig, City of Clovis
Mayor Ron Ramsey, City of Coalinga
Mayor Craig Knight, City of Firebaugh
Mayor David Cardenas, City of Fowler
Councilmember Clinton Olivier, City of Fresno
Mayor Sylvia Chavez, City of Huron
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

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

Others Attending:

Tom Eastman, BBK
Dave Paynter, Clovis Herndon LLC
Bob Hillson, Caldwell, Bell & Hillison
Kimberley Mayhew, Caldwell, Bell & Hillison
Moses Stites, FCRTA
Kris Balaji, AECOM
Toni Tinoco, Fresno County

COG Staff:

Mike Bitner
Melissa Garza
Rob Terry
Lindsey Chargin
Lauren Dawson
Jeff Long - COG/FAX
Brenda Veenendaal
Kai Han
Angela Yang
Marla Day

QUORUM: At the start of the meeting there were 16 members present representing 100% of the population and there was a quorum to conduct business. (Clovis, Coalinga, Firebaugh, Fowler, Fresno, Huron, Kerman, Kingsburg, Mendota, Orange Cove, Parlier, Reedley, San Joaquin, Sanger, Selma and Fresno County)

Mayor Dhaliwal (San Joaquin) Chair, called the meeting to order at 5:30 p.m.

- I. **Minutes of April 30, 2015 [APPROVE]**
- II. **Hearing**
 - A. **Clovis- Herndon LLC RTMF Appeal**

Les Beshears, Finance Director opened the meeting. 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 February 26, 2015 the board held another hearing and was again deadlocked. On March 26, 2015 the board directed staff to hold another hearing to attempt to break the deadlock.

Bob Hillison, Legal Counsel for Clovis-Herndon LLC presented the appeal with a powerpoint presentation.

Mr. Beshears then presented his rebuttal.

Tom Eastman, outside legal counsel, BBK, commented on judicial deference saying the staff interpretation of the Resolution was plausible.

Mr. Hillison commented on the agency interpretation of the manual and disagreed with the staff interpretation.

Mayor Magsig (Clovis) commented on the definition of new development and timing of the approval and permits, asking if Clovis Herndon had gotten permits for off site improvements prior to 2010.

Mr. Paynter, Clovis-Herndon LLC commented that they had done some off site improvements.

Mr. Beshears pointed out the permits to begin offsite improvements did not qualify as a building permit.

There was more discussion by the Board members about appeal.

Mr. Beshears recommended the appeal be denied.

Following the discussion and opportunity for public comment, a motion was made by Councilmember Olivier (Fresno) and seconded by Mayor Magsig (Clovis) to approve the appeal.

Mayor Pro Tem Yep (Kerman) expressed his concerns that the permits weren't secured timely and Mayor Magsig (Clovis) gave more explanation of how the project was delayed by lawsuit. Mayor Reilly (Kingsburg) explained his original vote to approve the appeal but after hearing the appeal again is satisfied with staff recommendation.

Mayor Pro Tem Yep (Kerman) asked to call for the vote.

A roll call vote was called with 3 votes (66.83%) in favor of granting the appeal and 13 votes (33.17%) to deny the appeal. The vote did not pass due to double weighted voting rule.

A second motion was made by Mayor Pro Tem Yep (Kerman) and seconded by Mayor Chavez (Huron) to deny the appeal. A roll call vote was called with 13 votes (33.17%) denying the appeal and 3 votes (66.83%) not to deny appeal. The vote did not pass due to double weighted voting rule.

Mr. Wille, Legal Counsel explained that a Return to Writ was to be presented to the Courts on May 29, 2015, reflecting the inability of the Board to make a determination and adopt findings. An extension has been requested.

Mayor Pro Tem Yep (Kerman) asked if there another alternative to settle the appeal.

The Board adjourned to Closed Session.

~~B. Resolution 2015-02 Findings of Fact~~

~~Summary:~~ Per the court order, County Counsel recommends in the event the Board denies the appeal, they adopt Findings of Fact consistent with the Board determination.

~~Recommendation:~~ Staff recommends adoption of Resolution 2015-02.

- III. Public Presentations Related To Closed Session Only And Then Retire To Closed Session**
 - a. Conference with legal counsel - Existing Litigation; Government Code section 54956.9(d)(1): *Clovis-Herndon, LLC v. Fresno County Regional Transportation Mitigation Fee Agency, Fresno County Superior Court, Case No. 13 CECG 0048***

Board ended Closed Session and opened the meeting to the public.

Mr. Wille, Legal Counsel, advised there was nothing to report from closed session.

IV. Election of Chair and Vice Chair

The nominations for Chair were opened. Mayor Chavez (Huron) nominated Mayor Dhaliwal (San Joaquin) to continue as Chair. The motion was seconded and passed unanimously. Mayor Chavez (Huron) nominated Mayor Cardenas (Fowler) to continue as Vice Chair. The motion was seconded and passed unanimously.

V. OTHER BUSINESS

A. Items from Staff

None

B. Items from Members

None

VI. 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.

There were no public presentations.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Tony Boren, Executive Director

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