



**COUNTY OF PLACER**  
**Community Development/Resource Agency**

Michael J. Johnson, AICP  
Agency Director

**PLANNING  
SERVICES DIVISION**  
Paul Thompson, Deputy Director

**MEMORANDUM**

**TO:** Honorable Board of Supervisors

**FROM:** Michael J. Johnson, AICP  
Agency Director

**DATE:** March 26, 2013

**SUBJECT:** GOLD HILL GARDENS (PM UP 20110228) – APPLICANT APPEAL

**ACTION REQUESTED**

1. Conduct a Public Hearing to consider an appeal filed by Mike and Cindy Carson.
2. Deny the appeal filed by Mike and Cindy Carson.
3. Uphold the Planning Commission's decision to deny the Minor Use Permit that would allow for the development of a Community Center on the subject property.
4. Uphold the Planning Commission's decision to deny the Variance that would allow for the construction of the approximately 5,250 square foot Community Center structure at approximately 50 feet from the centerline of the Nevada Irrigation District canal where 100 feet from centerline is normally required.

There is no net County cost associated with these actions.

**LOCATION**

Assessor's Parcel Number 031-050-046, comprises approximately 11.5 acres, and is located at 2325 Gold Hill Road in the Newcastle area.

**BACKGROUND**

The subject property is an 11.5-acre parcel within a larger 32.68-acre tract of land owned by the applicant. The property is currently utilized for a residence and for raising cattle. The property is zoned Farm, with a 10-acre minimum parcel size, and has a Placer County General Plan Designation of Agriculture/Timberland, with a 10-acre minimum parcel size.

The applicant originally applied for a Minor Use Permit to allow for the development of a Community Center, Bed-and-Breakfast lodging, a retail plant nursery and use of the property for garden tours. The applicants also requested the approval of Variances to allow for the construction of the five guest cottages 22.5 feet from the centerline of the Nevada Irrigation District Canal where 100 feet is normally required, 90 feet from the centerline of the Nevada Irrigation District overflow channel where 100 feet is normally required, and to allow the construction of the event center structure 50 feet from the centerline of the Nevada Irrigation District canal where 100 feet is normally required.

The project was taken to a Zoning Administrator hearing on August 18, 2011 with a recommendation that the project was exempt from Environmental Review. At that hearing, the Zoning Administrator found that the project was not exempt from Environmental Review, and deemed the project incomplete pending successful completion of Environmental Review. On November 25, 2011, the appellants submitted an Environmental Questionnaire, and thereafter, staff prepared a Mitigated Negative Declaration. On June 25, 2012, the Mitigated Negative Declaration was sent to the California Public Clearinghouse and the public review period for the environmental document began. The 30 day public review period was complete on July 24, 2012.

On June 12, 2012, the Planning Director issued a Planning Director's Determination regarding entitlement requests for Community Centers. As set forth in Section 17.58.120(D) of the Placer County Code (Referral to Planning Commission), the Planning Director has the ability to refer a Minor Use Permit to the Planning Commission for a public hearing when it is deemed necessary because of unique or unusual circumstances. Because of concerns raised at recent Board of Supervisors meetings related to Community Centers within the County, the Planning Director concluded that it was appropriate for the Planning Commission to act as the decision-making body on "Community Center" uses. This determination was made by the Planning Director to assure the highest level of public review for "Community Center" uses and because the community would be best served with the Planning Commission as the decision-making body on "Community Center" uses, as the Planning Commission represents broad community interests.

#### Rural Lincoln Municipal Advisory Council

On June 18, 2012, the project was presented before the Rural Lincoln Municipal Advisory Council as an Action Item. After a presentation and after hearing public comment, the Council unanimously voted to continue the item to the July 16, 2012 Municipal Advisory Council meeting, in order to afford the opportunity to the Council members and the public to review the environmental document.

Prior to the July 16, 2012 Rural Lincoln Municipal Advisory Council meeting, the Council members were given copies of the Mitigated Negative Declaration. At that meeting, the Council was presented with an overview of the Gold Hill Gardens project and had an open discussion about the merits of the proposal and the accompanying Mitigated Negative Declaration. After a question and answer session that involved the public, the appellants, Council members and County staff, the Council took action on the project. Council Member Lefty abstained from voting, and the remaining council voted 3-0 to deny the project, based on a concurrence among the council members that the Mitigated Negative Declaration was an inadequate environmental document for the project, that the project warranted the preparation of an Environmental Impact Report, and that there was a general lack of information about the project on the part of County staff. The Council made this determination based on their interpretation of the Mitigated Negative Declaration, finding that it did not properly address and mitigate for noise and traffic impacts.

#### Newcastle/Ophir Municipal Advisory Council

On June 21, 2012, the project was presented before the Newcastle/Ophir Municipal Advisory Council as an Action Item. After a presentation and after hearing public comment, the Council unanimously voted to continue the item to the July 19, 2012 Municipal Advisory Council meeting in order to afford the opportunity to review the environmental document to the Council members and the public.

At the July 19, 2012 Newcastle/Ophir Municipal Advisory Council meeting, the Council took action to approve a motion (three ayes, two noes, one abstain and one absent) to provide information on behalf of the MAC to the Planning Commission. This information is included in a letter to the Planning Commission Chairman (Attachment G) and is summarized as follows: 1) Traffic impacts on Gold Hill Road and Highway 193 should be carefully studied. In addition, the MAC recommended that a traffic turnout be constructed on the appellants' property to allow traffic driving on Gold Hill Road from the direction of Highway 193 to turn around; 2) A reasonable time limit should be set for evening events and noise from

events should be closely monitored; and 3) Placer County should review Commercial Centers proposed on properties zoned agricultural carefully.

Agricultural Commission

The Agricultural Commission requested and the project was subsequently presented to the Agricultural Commission on October 29, 2012 as an Action Item. The appellants were not made aware of this meeting and, as a result, the appellants were not present. After hearing a brief presentation from staff and comments from members of the public, the Agricultural Commission made a motion to deny the project, stating that “the project did not enhance the marketability of the agricultural use of the property” and that a Community Center in an agriculturally zoned area should be associated with an agricultural use on the property. The Commission unanimously voted to deny the project and approve the motion.

On February 6, 2013, the appellants attended an Agricultural Commission meeting and requested that the Gold Hill Gardens Minor Use Permit be heard a second time as an Action Item. The Commission granted the request in order to give the appellants an opportunity to present the project, and on March 11, 2013, the appellants returned. The appellants made their presentation and the Commission heard public comment on the project. At the conclusion of the public comment period, the Commission took action to forward to the Board of Supervisors its previous decision, as written in its letter to the Placer County Planning Commission on November 5, 2012 (Attachment H).

Planning Commission Hearings

**August 9, 2012 Hearing**

The project was presented to the Planning Commission on August 9, 2012. The appellants’ original proposal consisted of a three-phase development that included a Community Center, a Guest Ranch and a Retail Plant Nursery with garden tours. As originally proposed by the appellants, the project would include a nine-bedroom Guest Ranch (four bedrooms in the existing residence and five guest cottages) available for operation all days of the week on a year-round basis, a Community Center for up to 200 guests available for operation between the hours of 11:00 am and 10:00 pm all days of the week on a year-round basis, construction of an approximately 5,250 square foot event center structure, a 90-stall parking area, a 5,000 square foot retail nursery to operate during business hours Wednesday through Sunday with periodic garden tours, and construction of septic systems, a public water well, a paved driveway encroachment, paved circulation areas and paved drive aisles. The appellants also requested the approval of Variances to allow for the construction of the five guest cottages 22.5 feet from the centerline of the Nevada Irrigation District Canal where 100 feet is normally required, 90 feet from the centerline of the Nevada Irrigation District overflow channel where 100 feet is normally required, and to allow the construction of the event center structure 50 feet from the centerline of the Nevada Irrigation District canal where 100 feet is normally required.

After extensive analysis, staff initially recommended approval of the proposed project. As stated in the initial analysis, staff determined that the design and use of the project complied with the standards of the Farm zone district and the definition of “Community Center” as found in the Zoning Ordinance (Section 17.04.03 Definitions, Community Center). Further, staff determined that potentially significant environmental impacts identified during the environmental review process could be mitigated to a less than significant level, such that the proposed project would be compatible with the surrounding neighborhood.

The Planning Commission heard a brief presentation from staff, testimony from the appellants and from several members of the public. Concerns discussed by the Commission included traffic, noise, the number of guests (200) and the number of operational days per year. The Planning Commission expressed concerns that, as proposed, the project had the potential to impact the rural nature of the surrounding agricultural areas and neighboring properties. Because of this, the Planning Commission took action to continue the project and gave direction to the appellants to work with staff to reduce the overall scale of the project.

After working with staff, the appellants revised the project description to eliminate the phasing aspect of the project, reduced the maximum number of guests from 200 to 150, reduced the ultimate number of operational days for events from 365 to 59, reduced the necessary parking from 90 stalls to 60, and eliminated the need for a public water well. Additionally, staff determined that an increase in the number of guest ranch cottages to allow for a total of five was consistent with the proposed use and the intent of the Farm zone district. Based upon the revisions incorporated by the appellants, staff again recommended approval of the project based upon the direction provided by the Planning Commission.

### **November 8, 2012 Hearing**

The project was presented before the Planning Commission again on November 8, 2012. At that hearing, the Planning Commission heard a brief presentation from staff and considered testimony from the appellants and several members of the public. During its deliberations, the Planning Commission expressed concerns regarding enforcement of noise violations, whether there was a nexus between the Community Center and agricultural uses on the property (nursery, cow/calf operation), whether approval of the project would set a precedent for other projects in similar zone districts, and whether the project was appropriate in the proposed location and within an agricultural zone district (Farm).

At the conclusion of the Commission's discussion, a majority of the Commission determined that there was not a sufficient nexus between the agricultural use of the property and the proposed Community Center such that approval of the Community Center as a part, or an enhancement of, an agricultural use could be justified. Further, the Commission determined that the Community Center was largely a commercial use located in a rural area surrounded by agricultural and residential uses. Based on these determinations, the Commission concluded that the Community Center was not an appropriate use for the subject property. The Planning Commission adopted a motion (5:1:1:0 with Commissioner Johnson opposing and Commissioner Brentnall absent) to deny the Community Center portion of the project and the Variance to allow for the construction of the Community Center structure 50 feet from the centerline of the Nevada Irrigation District canal (which was subsequently appealed by the appellants), and to deny the Variance to allow for the construction of the Guest Ranch cottages 90 feet from the centerline of the Nevada Irrigation District overflow channel (which was not appealed by the appellants). The Planning Commission also took action to approve the remaining nursery, garden tours and guest ranch portions of the project, to approve the elimination of the Building Envelope delineated in Parcel Map book 30, page 89 and as required in Note 3 of that map and, to approve the request for a Variance to allow for the construction of the guest ranch cottages 22.5 feet from the centerline of the Nevada Irrigation District Canal. The Planning Commission requested that staff return to the Planning Commission with modified conditions of approval reflecting its decision.

### **December 20, 2012 Hearing**

The Conditions of Approval for the Gold Hill Gardens project were modified consistent with the direction given at the November 8, 2012 Planning Commission hearing. On December 20, 2012, the modified Conditions of Approval were presented as a Consent Item to the Planning Commission. The Planning Commission took action to approve of the modified Conditions of Approval for the Gold Hill Gardens Community Center project (6:0:0:1 with Commissioner Brentnall abstaining due to his absence at the November 8, 2012 hearing). This vote constituted final action on all portions of this application request.

### **APPEAL**

On December 31, 2012, Mike and Cindy Carson submitted an appeal (Attachment B) of the Planning Commission's decision to deny the Community Center portion of the project proposal and Variance to allow for the construction of the Community Center structure 50 feet from the centerline of the Nevada Irrigation District canal. The appellants did not appeal the Commission's denial of a Variance to allow for the construction of the Guest Ranch cottages 90 feet from the centerline of the Nevada Irrigation District overflow channel or the Commission's approval of the remaining portions of the Project. As a result, the approvals of the remaining portions of the Project were not stayed pending this appeal. Discussion of the remaining portions of the project is not part of this appeal other than as background information.

The appellants contend in their appeal that the Planning Commission did not properly apply the County Code for Community Centers in making their decision to deny the Community Center portion of the project. Additionally, the appellants contend that their due process rights were infringed upon by lack of timely notice to attend the October 29, 2012 Agricultural Commission meeting. The appellants state in their appeal that an adverse recommendation by the Agricultural Commission resulted from their absence at the meeting and that the recommendation was prejudicial to their application, significantly affecting the Planning Commission's decision on the project.

#### Planning Commission Application of County Code

The appellants contend that the Planning Commission did not properly apply County Code in their review of the Community Center aspect of the proposed project. However, the appeal submitted by the appellants did not include a discussion of how they came to this conclusion or any support for their determination. For this reason, staff's response to the appellants' claim is limited to a discussion of the information that was provided to the Planning Commission prior to the decision on the project.

#### Staff Response:

On June 12, 2012, the Community Development Resources Agency Director issued a Planning Director's Determination regarding entitlement requests for Community Centers. This Determination included an in-depth discussion of how and why the Planning Director determined that all "Community Center" applications be reviewed by the Planning Commission. This memorandum was forwarded to the Planning Commissioners via e-mail on June 22, 2012, and was also included in the staff report packets that the Planning Commission received prior to the August 9, 2012 hearing. The memorandum was provided to the Planning Commission to apprise the Planning Commission of the nature of Community Centers, Placer County Code applicable to Community Centers, and considerations to take into account when reviewing and analyzing the merits of Community Centers as Action Items. The memorandum specifically cited applicable code sections of the Placer County Zoning Ordinance and the Placer County General Plan. Therefore, it is clear that the Planning Commission was aware of and took into consideration the Placer County Code applicable to Community Centers at the time the Commission made its decision on the Gold Hill Gardens project.

In addition to the Planning Director's Determination, prior to each Planning Commission hearing, the Commission was provided with a staff report for the Gold Hill Gardens Community Center project. Each staff report included a discussion of the project proposal, appropriate findings, a discussion of the Development Review Committee's analysis of the project, and all pertinent sections of County Code. In addition, attached to each staff report were the recommended Conditions of Approval for the project, site plans, exhibits and the Mitigated Negative Declaration for the project. Essentially, the staff reports provided to the Planning Commission included all information necessary to apprise the Planning Commission of the details of the proposed project, staff's analysis of the project and the County Code applicable to the project. Based on this, in conjunction with presentations from staff, testimony by the appellants and the public and the information included in the Planning Director's Determination, the Planning Commission made the determination that the proposed Community Center was not an appropriate use for the property, considering the project's location and the surrounding area.

#### Due Process Rights Related to Agricultural Commission Meeting

The appellants contend that their Due Process rights were infringed upon when they did not receive timely notice to attend the October 29, 2012 Agricultural Commission meeting. The appellants further contend that their absence from the meeting resulted in an adverse determination by the Agricultural Commission for the Community Center, based on incomplete information. Finally the appellants assert the determination made by the Agricultural Commission was prejudicial to their application and significantly affected the outcome of the Planning Commission's review and determination.

Staff Response:

The Agricultural Commission is a separate advisory body established by this Board to “act and be an advisory body to and for the Board of Supervisors on all matters pertaining to agriculture.” (County Code Section 2.60.090.) While the Agricultural Commission is also authorized to “advise the board and county departments of the effect and utilization of county resources” including “land uses”, the Zoning Code does not require any land use project be heard and acted upon by the Agricultural Commission before coming before the approving hearing body (in this case, the Planning Commission).

The Planning Services Division does not provide nor is it required by law to provide notice of Agricultural Commission meetings. Staff members attend Agricultural Commission meetings when requested. While the appellants were not notified of the October 29, 2012 meeting by the Agricultural Commission, staff disagrees with appellants’ contentions that this resulted in a violation of their due process rights before the Planning Commission. The Planning Commission held two lengthy evidentiary hearings on the Gold Hill Gardens project. During the November 8<sup>th</sup> hearing, the appellants raised their concerns over the failure of notice of the Agricultural Commission meeting. The Agricultural Commissioner testified before the Planning Commission on the Agricultural Commission’s discussion of this project during its October 29<sup>th</sup> meeting and the appellants had the opportunity to respond to the same before the Planning Commission. After public testimony concluded, the Planning Commission deliberated at length on the merits of the Gold Hill Gardens project, and, pursuant to the law, considered the merits of the project in light of the testimony and evidence presented to it at its three hearings. Therefore, staff finds no merit in appellants’ contention that their due process rights were violated by the failure of the Agricultural Commission to notice appellants of its October 29, 2012 meeting.

In addition, this appeal before the Board is a “de novo” hearing during which the Board will weigh the evidence, facts and testimony related to the proposed Community Center. The appellants will have the opportunity to present testimony regarding the merits of their project, including issues related to the agricultural aspects of the same.

Prejudice to Minor Use Permit Application

The appellants contend that the determination made by the Agricultural Commission was prejudicial to their application and significantly affected the outcome of the Planning Commission’s review and determination. The rationale behind this contention is that, had the Agricultural Commission been presented the totality of the project, including insight from the appellants, the Agricultural Commission would have had sufficient information to support the project, and that support could have positively affected the Planning Commission’s decision on the project.

Staff Response:

As the appellants were not in attendance at the first Agricultural Commission hearing on this project, it is not possible to conjecture how their presence may or may not have impacted the vote on the project. The appellants presented their project to the Agricultural Commission at its March 11, 2013 meeting. After receiving public input, the Agricultural Commission again forwarded its previous recommendation to the Board of Supervisors.

**CONCLUSION**

In its analysis of the issues raised by the appellants, staff finds no merit in the issues raised. The Planning Commission, after conducting two separate public hearings and considering the oral and written testimony of the appellants, staff and the public, concluded that the Community Center (and associated variance) portion of the Gold Hill Gardens project was not appropriate for the subject property and the surrounding area. Staff recommends the Board deny the appeal and uphold the Planning Commission’s denial of the Community Center and variance to the NID canal setback

**RECOMMENDATION**

Staff recommends that the Board of Supervisors take the following action:

1. Deny the appeal filed by Mike and Cindy Carson.
2. Reaffirm the Planning Commission’s decision to deny the Community Center portion of the Gold Hill Gardens Minor Use Permit application and to deny the Variance that would allow for the construction of the Community Center structure 50 feet from the centerline of the Nevada Irrigation District Canal, based on the following findings:
  - A. The proposed use is inconsistent with all applicable provisions of Placer County Code, Chapter 17, Placer County Zoning Ordinance and any applicable provisions of other chapters in this code. The proposed project is inconsistent with the standards set forth by the Farm Zone district of the Placer County Zoning Ordinance.
  - B. The proposed use is inconsistent with applicable policies and requirements of the Placer County General Plan.
  - C. The establishment, maintenance or operation of the proposed uses will, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort and general welfare of people residing or working in the neighborhood of the proposed use, and it will be detrimental or injurious to property or improvements in the neighborhood or to the general welfare of the County.
  - D. The proposed use is inconsistent with the character of the immediate neighborhood and will be contrary to its orderly development.
  - E. The proposed use will generate a volume of traffic beyond the design capacity of all roads providing access to the parcel, inconsistent with the applicable requirements of the Placer County General Plan.
3. Find that the California Environmental Quality Act (“CEQA”) does not apply to a project (in this case a portion of the original project) that is rejected or disapproved. (CEQA Guidelines Section 15270(a).)

**ATTACHMENTS:**

- Attachment A: 1. Vicinity Map  
2. Site Plan
- Attachment B: Appeal from Mike and Cindy Carson
- Attachment C: Conditions of Approval – December 20, 2012 Planning Commission Hearing
- Attachment D: December 20, 2012 Planning Commission Staff Report
- Attachment E: November 8, 2012 Planning Commission Staff Report
- Attachment F: Mitigated Negative Declaration and Mitigation Monitoring Program
- Attachment G: Memorandum – Planning Director’s Determination – “Community Centers”
- Attachment H: November 5, 2012 Recommendation from Placer County Agricultural Commission

- cc: Mike and Cindy Carson – Appellants  
Michael Johnson – Community Development/Resources Agency Director  
Paul Thompson – Deputy Director, Planning Services  
Phil Frantz – Engineering and Surveying Department  
Laura Rath – Environmental Health Services  
Karin Schwab – County Counsel  
Joshua Huntsinger – Agricultural Commissioner