

ATTACHMENT A

**BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF FRESNO
STATE OF CALIFORNIA**

In the Matter of)

PLANNING, ZONING, AND)
SUBDIVISION HEARINGS BEFORE)
THE BOARD OF SUPERVISORS,)
PLANNING COMMISSION, AND)
BOARD OF REVIEW)

**RESOLUTION REVISING
PROCEDURAL RULES
GOVERNING THE CONDUCT
OF SUCH HEARINGS**

WHEREAS, on October 5, 1982, the Board of Supervisors adopted Resolution R-82-402 adopting uniform procedural rules for the conduct of hearings before the Board of Supervisors, Planning Commission, and Board of Review on planning, zoning, and subdivision matters in order to assure uniformity of procedure, public access to such hearings, fairness to interested parties, and compliance with the law with respect thereto; and

WHEREAS, in October, 2005 the Board of Supervisors adopted a resolution, amending Resolution R-82-402, to allow a process by which letters in support of or in opposition to a planning, zoning, or subdivision matter can be made available to the members of the Board or Commission, whichever body is to hear the matter, as well as members of the public prior to the hearing on the matter; and

WHEREAS, the Board of Supervisors desires to revise the procedural rules to rescind the policy prohibiting verbal ex parte communications with members of the

1 Board and Commission and require disclosure of any ex parte communications at the
2 hearing on the matter.

3 NOW, THEREFORE, BE IT RESOLVED that the following procedural rules shall
4 govern all hearings before the Board of Supervisors, Planning Commission, and Board
5 of Review with respect to all designated planning, zoning, and subdivision matters.
6

7 Such rules shall be printed and made available without charge at the office of the Clerk
8 to the Board. Such rules shall be in the following form and content:
9

10 **PROCEDURAL RULES GOVERNING HEARINGS**
11 **BEFORE THE FRESNO COUNTY BOARD OF SUPERVISORS,**
12 **PLANNING COMMISSION, AND BOARD OF REVIEW**
13 **IN PLANNING, ZONING, AND SUBDIVISION MATTERS**

14 I. **Purpose:**

15 It is the intent and purpose of these rules to insure uniformity of procedure, public
16 access to hearings, fairness to the public and interested parties, and compliance with
17 legal rules in all designated planning, zoning, and subdivision matters coming on for
18 hearing before the Board of Supervisors, Planning Commission and the Board of
19 Review.

20 II. **Application:**

21 These rules shall apply to all planning, zoning, and subdivision matters of a
22 quasi-judicial nature (or like judicial matters) and are such as are required to be heard
23 before said Board or Commission upon prescribed public notice given, upon which each
24 side must be afforded an opportunity to be heard, upon which factual determinations
25 must be made on evidence presented, decision made in accordance with prescribed
26 legislative standard and subject to review by the courts. Such matters include zoning
27 variances, conditional use permits, applications for subdivision, including parcel and
28

1 final maps, Director Review and Approval and site plan appeals, and proceedings to
2 revoke variance and conditional use permits. These rules shall also apply to those
3 quasi-legislative general plan and zoning reclassification proceedings which pertain to a
4 limited area and are non-broadscale in nature.
5

6 The rules do not apply to matters of a broad legislative policy character, those for
7 which noticed public hearings are not required, matters committed to the sound
8 discretion of the Board or Commission without legislative standards, including
9 amendments to the text of the zoning ordinance, broadscale general plans, precise
10 plans of streets and highways, broadscale zoning reclassification and other matters of
11 policy which are purely administrative or legislative in nature.
12

13 **III. Pre-Hearing Requirements:**

14 (A) When a matter is contested and a request is made in writing to the Secretary
15 to the Planning Commission or Board of Review or Clerk to the Board of Supervisors,
16 as the case may be, prior to the date of the hearing, the Secretary or Clerk shall insure
17 that a record of all hearings be made and duly preserved, a copy of which shall be
18 available at cost. In the event other than the normal tape recording device is requested,
19 a deposit for costs may be required of the person making the request.
20

21 (B) When a staff written report exists, such report shall be filed with the
22 Secretary or the Clerk and included in the record of the hearing.
23

24 (C) Prior to the beginning of all Board of Supervisors' planning, zoning, and
25 subdivision hearings, copies of the Board of Supervisors' Agenda shall be available at
26 the office of the Clerk to the Board.
27
28

1 **IV. Written Correspondence:**

2 All correspondence regarding a planning, zoning or subdivision matter set for
3 hearing before the Planning Commission shall be submitted to the Commission
4 Secretary and all correspondence regarding such a matter set for hearing before the
5 Board of Supervisors shall be submitted to the Clerk to the Board. Copies of all
6 correspondence received by the Secretary of the Planning Commission by noon
7 Thursday, the week before the Thursday Planning Commission meeting, shall be
8 distributed to each Commission member and posted on the County's web-site for
9 access by the public no later than 5 p.m. Friday. Copies of all correspondence received
10 by the Clerk to the Board by noon on the Friday just prior to the Tuesday Board meeting
11 shall be distributed to each Board member and posted on the County's web-site for
12 access by the Public no later than 5 p.m. Friday. Correspondence received by the
13 Secretary or the Clerk after such deadline shall be distributed to each Commissioner or
14 Board member at the Commission or Board meeting on the matter and a copy shall be
15 on file with the Secretary or the Clerk and available for public inspection.

16 This provision in no way affects the responsibilities of Planning Commission and
17 Board members regarding correspondence they receive directly from the author.
18 Commission or Board members that receive correspondence directly from the author,
19 upon realizing its content and purpose, shall place it on file with the Secretary or Clerk
20 in accordance with Section VIII below.

21 **V. Order Of Evidence:**

22 Evidence at the hearing shall be presented in the following order unless the
23 Chairman, for good cause, permits a departure therefrom:
24

- 1 (A) Staff report including prior Planning Commission action.
2 (B) Report of Commission or Board members as to site visitation or ex parte
3 communications occurring prior to the hearing.
4
5 (C) Testimony of persons in favor of proposals.
6 (D) Testimony of persons in opposition to proposal.
7 (E) Rebuttal testimony by proponents.
8 (F) Sur-rebuttal testimony by opponents.

9 (Note – In rebuttal and sur-rebuttal, no new matter not directly rebutting or
10 sur-rebutting, as the case may be, shall be admitted except that the Chairman may, for
11 good cause in the interest of justice, allow a party to re-open; in which event, the other
12 side shall be allowed to rebutt or sur-rebutt, as the case may be.)
13

14 (G) When both sides are represented by counsel, closing arguments may, in
15 the discretion of the Chairman, be allowed but not otherwise.
16

17 (H) Close the hearing, after which no further evidence may be received or
18 questions asked, except questions for the purpose of clarifying testimony and no new
19 issue may be injected thereby.

20 (I) Discussion among members and decisions.
21

22 **VI. Rules Of Evidence:**

23 Unless the presiding officer, in his discretion, shall direct otherwise, the following
24 rules shall apply:

25 (A) The hearing need not be conducted according to technical judicial rules of
26 evidence.
27
28

1 (B) Any relevant evidence may be admitted if it is the sort of evidence on
2 which responsible persons are accustomed to rely in the conduct of serious affairs.

3 (C) Witnesses will not ordinarily be sworn unless a specific request therefore
4 is made prior to the hearing. Failure to so request is a waiver thereof.
5

6 (D) Any person wishing to direct questions to an opposing witness shall
7 submit such questions to the Chairman, who will in turn ask the questions of the
8 witness.

9 (E) When both sides are represented by counsel, the Chairman may, at his
10 discretion, allow direct cross-examination of witnesses but such will not be permitted
11 otherwise.
12

13 (F) Petitions or letters for or against proposal will not be considered unless the
14 reasons are stated therein. Where reasons are stated, such petitions or letters, or a
15 digest of such contents, will be read into the record at the appropriate time of receiving
16 evidence by proponents or opponents, as the case may be.
17

18 (G) No audience voting by show of hands or other demonstration will be
19 permitted.

20 **VII. Site Visitation:**

21 The following rules shall apply to the Commission or Board members visiting the
22 site for which a matter is pending:
23

24 (A) If the visit to the site is prior to the hearing, then at the appropriate time
25 during the hearing, the members making the visit shall publicly report such fact.

26 (B) After the hearing is closed and before final decision is made, a visit shall
27 not be made to the site by the Commission, Board, or any member thereof unless the
28

1 hearing was closed subject to visitation to the site before decision, in which event (A)
2 above as to reporting to the Commission or Board will apply.

3 (C) Upon a visit to the site by the Commission, Board, or individual members,
4 they may be accompanied by a staff member for the purpose of pointing out material,
5 physical characteristics only. No other evidence or argument shall be received.
6

7 **VIII. Ex Parte Communications:**

8 Ex parte communications are personal or telephone contacts by individuals,
9 County staff members, or other agency representatives with Commission or Board
10 members outside of the hearing, where representations or arguments are made upon
11 the specific proposal. Verbal ex parte communications shall be disclosed by each
12 Commission or Board member at the hearing on the project, including the substance of
13 the information obtained through the ex parte communication and the source of such
14 information. Written communications shall not be considered by the Board or
15 Commission prior to the hearing, except for the written staff report and correspondence
16 provided to the Board or Commission by the Clerk or the Secretary as set forth in
17 Section IV above. A member receiving a written communication not included within said
18 packet will, upon realizing its content and purpose, place it on file with the Secretary or
19 Clerk. The prohibitions set forth above do not apply to consultation with legal counsel or
20 on a purely legal matter.
21

22 **IX. Continuance:**

23 The Commission or Board may grant a continuance for good cause upon
24 application duly made by an interested person showing that for reasons beyond his
25 control, it would cause undue hardship or create an injustice to proceed at the
26
27
28

1 scheduled time. A party knowing in advance of the scheduled hearing that a request for
2 continuance will be made, shall advise the Secretary to the Commission or the Clerk to
3 the Board thereof at the earliest possible time so that staff and interested parties can be
4 notified in advance. The continuance, if granted, will be ordered at the time scheduled
5 for hearing, and a new time certain fixed and publicly announced. No further notices will
6 be given except that the Secretary or Clerk will give notification of continuance to any
7 person who, prior to such continuance, has filed with the Secretary or Clerk a written
8 request for such special notice.
9

10
11 **X. Decision:**

12 Following completion of the hearing, the Commission or Board, as the case may
13 be, shall make its decision. In the event the Board of Supervisors takes no action
14 because a motion on the item failed to carry by the affirmative vote of a majority of the
15 entire membership, the matter shall be re-heard at the request of any party or any
16 Board member made within two weeks of the date the first motion failed to carry,
17 otherwise the matter shall be deemed denied.
18

19 **XI. Other Rules Of Procedure:**

20 Except as herein otherwise provided, the procedure of the Board of Supervisors,
21 Planning Commission, and the Board of Review governing the ordinary proceedings of
22 the respective bodies shall be followed, and Roberts Rules of Order as last revised shall
23 govern where applicable.
24

25 ///

26 ///

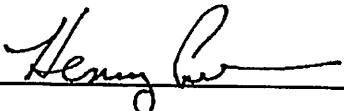
27 ///

1 THE FOREGOING was passed and adopted by the following vote of the
2 Board of Supervisors of the County of Fresno this 22nd day of April, 2008, to-wit:

3 AYES: Supervisors Waterston, Anderson, Perea

4 NOES: Supervisors Case, Larson


5 ABSENT: None

6
7
8 
9 _____
10 CHAIRMAN, Board of Supervisors

11
12 ATTEST:

13 BERNICE E. SEIDEL

14 Clerk, Board of Supervisors

15
16
17 By  _____

18 Deputy

19
20 AGENDA #: 8

21 RESOLUTION NO. 08- 158