

AGENDA
NEWMAN PLANNING COMMISSION
REGULAR MEETING OF JANUARY 20, 2011
CITY COUNCIL CHAMBERS, 7:00 P.M., 1200 MAIN STREET

1. Call To Order.
2. Pledge Of Allegiance.
3. Roll Call.
4. Approval Of The Agenda.
5. Approval Of Minutes From The October 21, 2010 Meeting.
6. Items From The Public.
7. New Business
 - a. Public Hearing
 - Ordinance Amendment No. 11-01
 - Applicant: SCM Hearthstone, LLC
 - Description: Approve The Proposed Changes To The Sherman Ranch Development Agreement.
 - Location: The Subject Property Is Located In Northeast Newman, More Specifically Described As Assessor's Parcel Book 049, Pages 054 Through 063.
8. Items From Commissioners.
9. Items From Director And Staff.
10. Adjournment.

MINUTES
NEWMAN PLANNING COMMISSION
REGULAR MEETING OF OCTOBER 21, 2010
CITY COUNCIL CHAMBERS, 7:00 P.M., 1200 MAIN STREET

1. Call To Order - 7:02 P.M.
2. Pledge Of Allegiance.
3. Roll Call **PRESENT:** Sloan, Maurer, Allan and Applegate (Arrived At 7:20 P.M.)
ABSENT: None

City Attorney Hallinan Administered The Oath Of Office To New Commissioner Leland Coleman.

4. Approval Of The Agenda.

ACTION: On Motion By Allan Seconded By Sloan And Unanimously Carried, The Agenda Was Approved.

5. Approval Of Minutes From The August 19, 2010 Meeting.

ACTION: On Motion By Sloan Seconded By Allan And Carried By The Following Roll Call Vote, The Minutes From The August 19, 2010 Meeting Were Approved. **AYES:** Allan, Sloan And Maurer **NOES:** None **ABSENT:** Applegate **NOT PARTICIPATING:** Coleman

6. Items From The Public - None.

7. New Business

- a. Public Hearing

Variance No. 10-02

Applicant: Mario Taa

Description: Allow a 12' x 50' (600 square foot) accessory building that would exceed lot coverage standards.

Location: 749 Orestimba Peak Drive, approximately 130 feet west of Cedar Mountain Drive; more specifically described as Assessor's Parcel Number 026-060-018

Assistant Planner Ocasio Reviewed And Presented Variance No. 10-02.

Commissioner Maurer Opened The Public Hearing At 7:11P.M.

There Being No Public Comment, Commissioner Maurer Closed The Public Hearing At 7:12P.M.

ACTION: On Motion By Allan Seconded By Coleman And Carried By The Following Roll Call Vote, Variance No. 10-02 Was Denied. **AYES:** Allan, Coleman, Sloan And Maurer **NOES:** None **ABSENT:** Applegate **NOT PARTICIPATING:** None.

b. Public Hearing

Conditional Use Permit No. 10-01

Applicant Benriya, Inc. DBA Sunny Recycling

Description: Allow a Recycling Center in the "I" District.

Location: The subject property is located at 2126 L Street, Suite C, approximately 200 feet south of Industrial Way; more specifically described as Assessor's Parcel Number 026-016-045.

Assistant Planner Ocasio Reviewed And Presented Conditional Use Permit No. 10-01.

Commissioner Maurer Opened The Public Hearing At 7:17 P.M.

Commissioner Applegate Arrived And Apologized For Being Late.

Sunny Brawley, Manager Of Sunny Recycling, Spoke To The Commission About Her Business And Noted That She May Want To Use One Of The Other Buildings On The Same Property Instead Of Suite C.

City Manger Holland Noted That The Change Of Buildings Could Be Approved At Staff Level If The Proposed Conditional Use Permit Is Approved By The Commission.

There Being No Further Public Comment The Hearing Was Closed At 7:26 P.M.

ACTION: On Motion By Coleman Seconded By Sloan And Unanimously Carried, Conditional Use Permit No. 10-01 Was Approved.

c. Public Hearing

Conditional Use Permit No. 10-02

Applicant: SCM Sierra Creek, LLC

Description: Allow a one-year extension for the SCM Modular Sales Office.

Location: The subject property is located at 220 Red Lion Way, on the corner of Red Lion Way and Cinnamon Teal Way; more specifically described as Assessor's Parcel Number 049-056-030.

Assistant Planner Ocasio Reviewed And Presented Conditional Use Permit No. 10-02.

Chairperson Applegate Opened The Public Hearing At 7:28 P.M.

There Being No Public Comment The Hearing Was Closed At 7:29 P.M.

ACTION: On Motion By Coleman Seconded By Sloan And Unanimously Carried, Conditional Use Permit No. 10-02 Was Approved.

8. Items From Commissioners.

Commissioner Allan Asked About The Status Of The Landscaping Project At The Museum And Noted That She Was Frustrated By People Renting Out Garages As Residences.

Commissioner Applegate Apologized For Being Late.

Commissioner Maurer Asked About The Property At The Corner Of Highway 33 And Kern Street, The Status Of The Aquatic Center Grant Application And The Progress Of The Newman Family Apartments Project.

Commissioner Coleman Asked For A Copy of the General Plan.

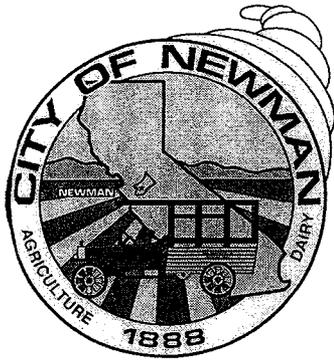
Commissioner Sloan Asked About Signage In The Windows Of Business In The Downtown And Mentioned That She Thought There May Be Too Much Window Coverage.

9. Items From Director And Staff.

Assistant Planner Ocasio Reported That The City Still Had NSP Properties For Sale, That The Park Per Capita Project Is Progressing Quickly And That Second Phase Of The P, Q, R, S, T Project Funded By CDBG Is Getting Underway. Ocasio Noted That One First Time Home Buyer Application Had Recently Been Received. She Mentioned That The City Wide Rezone Process Has Started And That The City Would Be A Hosting A Second Public Meeting Within The Next Week.

10. Adjournment.

ACTION: On Motion By Allan Seconded By Coleman And Unanimously Carried, The Meeting Was Adjourned At 7:53 P.M.



**City of Newman
Community Development Department
Memorandum**

Date: January 12, 2011
To: Planning Commission
From: Michael E. Holland, Director

Subject: Item No. 7.a. - Sherman Ranch Development Agreement Amendment ^{P73N}

In September 2004, the Planning Commission reviewed a proposed Development Agreement for the Sherman Ranch subdivision. (The original project was approved by the Planning Commission in 1999.) Following the recommendation of the Planning Commission, the City County adopted Ordinance No. 2004-03 approving the Sherman Ranch Development Agreement in October 2004. Subsequent to these actions, the City adopted a Substitute Reimbursement and Settlement Agreement (SRSA) to settle 'complete and full satisfaction of ... the total amounts for which Developer remains eligible to receive reimbursement...'

In January 2010, the Developer filed a lawsuit in Stanislaus County Superior Court alleging Breach of Contract, Unjust Enrichment, Common Counts, Conversion and Breach of Fiduciary Duty. While the City remained confident in its legal position, settlement talks to end the lawsuit were initiated. Through diligent work and mutual cooperation, both sides agreed to a settlement agreement in December 2010. Final execution of the Settlement agreement requires approval of the attached changes to the Development Agreement.

Staff recommends the Planning Commission (1) Conduct a Public Hearing regarding the proposed changes to the Sherman Ranch Development Agreement, and (2) Recommend approval of said changes to the City Council.

**EXHIBIT D
AMENDMENT OF DEVELOPMENT AGREEMENT**

FIRST AMENDMENT TO SHERMAN RANCH DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT ("First Amendment") is made and entered into this ____ day of _____, 2011, by and between SCM Hearthstone, LLC, a California limited liability company ("Developer"), and the City of Newman, a municipal corporation ("City"), pursuant to the authority of section 65864 et seq. of the Government Code of the State of California.

RECITALS

A. To ensure the timely, efficient, orderly, and proper development of the Project known as Sherman Ranch, on November 12, 2004, Developer and City entered into that certain Development Agreement for Sherman Ranch ("Development Agreement") pursuant to which City granted Developer a vested right to develop the Project.

B. The parties wish to extend the term of the Development Agreement for a period of three (3) years.

C. The parties wish to add additional provisions to the Development Agreement which clarify and specify certain rights of Developer associated with the Project.

NOW THEREFORE, BE IT ORDAINED, by the City Council of the City of Newman as follows:

1. The recitals above are true and correct and hereby made a part of this First Amendment.
2. All capitalized terms not defined herein shall have the meanings ascribed to them in the Development Agreement.
3. Section 3.04 of the Development Agreement is hereby amended to read as follows:

3.04. Term. The term of this Agreement shall commence upon the Effective Date and shall extend ~~10~~ 13 years from the Effective Date or until the "Project Buildout" as hereinafter defined, whichever is earlier, unless said term is otherwise modified by circumstances set forth in this Agreement or by the mutual consent of the parties hereto. For purposes of this Agreement, "Project Buildout" shall mean the date on which a Certificate of Occupancy (or comparable instrument) is issued for the last Project improvement or residential home or other structure to be constructed pursuant to the Development Plan as it may be amended pursuant to this Agreement. Following the expiration of said term, this Agreement shall be deemed terminated and of no further force and effect, except as may be specified otherwise herein. The term

of the Vesting Tentative Subdivision Map shall be no less than the term of the Agreement as described in this Section.

4. A new Section 8.03 is hereby added to read as follows:

8.03 Fee Offsets. City agrees that it shall establish a Fee Offset Fund, as set forth herein.

A. **Fee Offset Fund.** City agrees that it shall reserve an amount equal to TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) ("Fee Offset Fund") to be used to pay for a portion of certain City fees, as specified in **Exhibit A**, attached hereto and incorporated herein by reference, for the Sherman Ranch Development, and as such fees may be adjusted for inflation by City. ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000) of the Fee Offset Fund shall consist of federal HOME funds allocated to City (the "HOME Fee Offset Fund") and ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000) of the Fee Offset Fund (the "Agency Fee Offset Fund") shall consist of funds from the Low and Moderate-Income Housing Fund of the Redevelopment Agency of the City of Newman (the "Agency"). The sole purpose of the Fee Offset Fund is to pay for City fees due at the time of final inspection for those housing units (the "Affordable Units") being sold to Qualified Buyers, as defined below.

The Sherman Ranch Development consists of three models of housing development: (i) the "Classics" homes are low-density units; (ii) the "Heritage" homes are medium-density units; and (iii) the "Villas" homes are high-density units. The HOME Fee Offset Fund shall only be used to pay the fees for up to twelve (12) units within the Villas development. The Agency Fee Offset Fund may be used to pay the fees for units within either the Classics or Heritage developments. The City's obligation to maintain the Fee Offset Fund, in whole or in part, for the uses specified in this Section 2.1 shall terminate upon the earlier of (i) the use of all monies in the Fee Offset Fund; or (ii) December 31, 2013. The City may, in its sole discretion, request that the Agency provide additional funds to be deposited in the Agency Fee Offset Fund, prior to December 31, 2013, so that additional Affordable Units may be sold to Qualified Buyers.

B. **Qualified Buyers.** A Qualified Buyer shall be a person or family of low or moderate income, as defined in Health and Safety Code section 50093, as may be adjusted by the California Department of Housing and Community Development ("HCD"). For purposes of this Settlement Agreement, "area median income" shall mean the median income for households in Stanislaus County, California, as published from time to time by the United States Department of Housing and Urban Development ("HUD"). A 2010 schedule of low and moderate income limits for Stanislaus County is attached hereto as **Exhibit B** and incorporated herein by this reference.

The City's obligation to use the Fee Offset Fund shall be expressly conditioned upon the City receiving from Developer evidence reasonably satisfactory to City certifying the income level of any proposed Qualified Buyer, and that the proposed sales price of any Affordable Unit does not exceed the affordable housing

cost, as defined by Health and Safety Code section 50052.5, for such Qualified Buyer. The maximum sales prices of any Affordable Unit to a Qualified Buyer must comply with the regulations promulgated by HCD.

C. Payment of Fees. City shall pay to Developer, upon the sale of each Affordable Unit to a Qualified Buyer, the amount of fees attributable to such Affordable Unit from either the HOME Fee Offset Fund or the Agency Fee Offset Fund, as the case may be. Such payment may be made either directly to Developer, upon the close of escrow, or through escrow, as the parties may determine.

5. A new Section 10.05 is hereby added to read as follows:

10.05. Building Permits.

A. Applications. For all building permit applications submitted by Developer to the City on or prior to December 31, 2010, for any of the lots identified on Exhibit C, (Sections A-D), attached hereto and incorporated herein by this reference, the City hereby agrees that such application shall be valid for two years. For purposes of applying building standards, conditions, and/or regulations, and/or permit fees, a building permit shall be deemed effective upon the application date. Any failure of Developer to pursue an application shall not be grounds for revocation by abandonment under the California Building Code.

B. Timing of Payment of Fees. For purposes of applying permit fees for the lots identified on Exhibit C, all fees identified on Exhibit F of the Development Agreement that are due and payable at the time a building permit is issued shall be due and payable as stated on Exhibit D, attached hereto and incorporated herein by reference.

C. Indemnity. Developer agrees to defend, indemnify, and hold City harmless from any and all claims, costs and liabilities as a result of any legal action or proceeding brought against the City arising from, or in anyway relating to, this Section 10.05.

6. A new Section 10.06 is hereby added to read as follows:

10.06. Sales Office Use Permit. The City agrees to process in good faith, at Developer's request and expense, three consecutive extensions of one year each of the use permit for the Sherman Ranch sales office.

7. Section 6.10 of the Development Agreement is hereby amended to read as follows:

~~A. Developer shall submit Improvement Plans and Engineering Estimates for the cost of improvements. Developer shall be reimbursed for up-front construction costs of "Backbone Infrastructure" improvements, beyond Developer's pro-rata fair share, as set forth in the Reimbursement Schedule, Exhibit "G". The Reimbursement schedule may be revised from time to time to reflect actual cost of improvements. Said revisions shall be approved by staff and shall not require City Council review.~~

~~To the maximum extent possible, reimbursement shall be in the form of fee credits. Reimbursement amounts over and above fee credits will be paid on a quarterly basis to Developer and shall be paid from the Capital Facilities Funds as Capital Facility Fees are collected from future developments within the area of benefit. In no event shall City General Funds be used to reimburse the Developer. City has no further obligations under this Development Agreement to provide any reimbursements or credits to Developer. All reimbursement matters have been settled under a separate agreement between the Developer and City titled "The Substitute Reimbursement and Settlement Agreement" and subsequent amendment thereto.~~

8. Except as modified by this Amendment, the Development Agreement shall remain unchanged and is in full force and effect.

9. This Amendment may be executed in any number of counterparts with the same effect as if the parties had all signed the same document, and which together shall constitute one and the same instrument.

10. Facsimile, electronically scanned, and photocopied signatures shall be as valid as original signatures only for purposes of demonstrating execution of the Amendment until such time as originally executed documents can be circulated. Said originally executed documents shall be binding and shall constitute evidence of the execution of this Amendment for all purposes.

IN WITNESS WHEREOF, the parties have hereunder set their hand the day and year first written above.

Approved as to Form:

Exhibit "D"
City Attorney

CITY

CITY OF NEWMAN, a municipal corporation

By **Exhibit "D"**
City Manager

By **Exhibit "D"**
City Clerk

Approved as to Form:

NEUMILLER & BEARDSLEE

By: **Exhibit "D"**
Clifford W. Stevens
Attorneys for Developer

DEVELOPER

SCM Hearthstone, LLC

By: **Exhibit "D"**
Steve C. Mothersell, Sr.
President