



AGENDA
NEWMAN PLANNING COMMISSION
REGULAR MEETING OF MAY 15, 2014
CITY COUNCIL CHAMBERS, 7:00 P.M., 938 FRESNO STREET

1. Call To Order.
2. Pledge Of Allegiance.
3. Roll Call.
4. Approval Of The Agenda.
5. Approval Of Minutes From The March 20, 2014 Meeting. ([View Minutes](#))
6. Items From The Public.
7. New Business
 - a. Public Hearing ([View Report](#))

Recommend Approval of Ordinance No. 2014- ,Amending the Sherman Ranch Development Agreement
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.
 - b. Public Hearing ([View Report](#))

Site Plan Review No. 2014-01
Conditional Use Permit No. 2014-01
Applicant: Teter Architects and Engineers on behalf of Saputo Cheese USA, Inc.
Description: Conduct a Site Plan Review and Variance for the construction/installation of a 25' x 40' Equalization Tank along their **western** property line within the required 20' setback area.
Location: The Property Is Located On The Corner Of Inyo Avenue And "L" Street At 691 Inyo Avenue, Approximately 300 Feet South Of Merced Street.
8. Items From Commissioners.
9. Items From Director And Staff.
10. Adjournment.



MINUTES
NEWMAN PLANNING COMMISSION
REGULAR MEETING OF MARCH 20, 2014
CITY COUNCIL CHAMBERS, 7:00 P.M., 938 FRESNO STREET

1. **Call To Order - 7:01 P.M.**
2. **Pledge Of Allegiance.**
3. **Roll Call PRESENT:** Sloan, Maurer And Allan.
ABSENT: Coleman.
4. **Oath of Office - New Commissioner.**

City Attorney Hallinan Administered The Oath Of Office To New Commissioner Murray Day.

5. Approval Of The Agenda.

ACTION: On Motion By Sloan Seconded By Maurer, The Agenda Was Approved By The Following Vote: AYES: Sloan, Day, Maurer And Allan; NOES: None; ABSENT: Coleman; NOT PARTICIPATING: None.

6. Approval Of Minutes From The August 15, 2013 Meeting.

ACTION: On Motion By Sloan Seconded By Maurer, The Minutes From The August 15, 2013 Meeting Were Approved By The Following Vote: AYES: Sloan, Maurer And Allan; NOES: None; ABSENT: Coleman; NOT PARTICIPATING: Day.

7. Items From The Public.

8. New Business

a. Public Hearing

Vesting Tentative Tract Map No. 13-02

Applicant: The Villas, LLC

Description: Consider Approval Of A Tentative Map Revising The Finaled VTTM No. 05-01 For The Villas At Sherman Ranch In Conjunction With Zone Change No. 13-01.

Location: The Subject Properties Are Located North Of Hills Ferry Road, West Of Sherman Parkway And South Of Cinnamon Teal Way; More Specifically Described As Park Villas At Sherman Ranch.

City Planner Ocasio Presented And Reviewed Vesting Tentative Tract Map No. 2013-02.

Planning Commissioner Maurer Asked About Lot No. 66.

Ryan Carrell, Project Engineer For The Park Villas Project, Noted That The Lots Had Been Renumbered And Mentioned That The Lot In Question Was Problematic But Stated That They Have Determined That They Can Provide Services To The Lot.

Commissioner Day Asked If The Alleys Would Be Too Narrow.

City Planner Ocasio Noted That Staff Will Be Working With The Developer To Ensure Proper Turning Movements In All The Alleys During The Improvement Plan Process Which Would Take Place After Receiving The Commission's Approval Of Vesting Tentative Tract Map No. 13-02.

Commissioner Day Asked About The Potential For Renting Out The Lofts Over The Garages.

City Planner Ocasio Sated That The Home Owners Association Would Be Regulating The Renting Of The Lofts But Noted That There Are No Restroom Or Shower Facilities In Any Of The Proposed Lofts. Ocasio Noted That The Lofts Were Designed To Discourage That Type Of Activity.

Commissioner Day Inquired About The Landscaping Plan.

City Planner Ocasio Noted That The Staff Would Be Working With The Developer On The Landscaping Plan During The Improvement Plan Process.

Commissioner Day Inquired About Sound.

City Planner Ocasio Pointed Out That The Developer Had Agreed To Sound Mitigation Measures, Increased Setbacks As Well As Road Striping And Tree Planting.

Commissioner Maurer Inquired About Potential For Sewer Issues.

City Planner Ocasio Noted That During The Improvement Plan Process, That The Applicant Will Be Required To Submit A Detailed Plan With Calculations.

Chairperson Allan Opened The Public Hearing At 7:22 P.M.

Ryan Carrell, Project Engineer For The Park Villas Project, Noted That He Had Already Begun Working On The Improvement Plans. Carrell Stated That He Agreed With The Staff Report And Findings. He Noted That He Would Ensure That The Alleys Would Be Wide Enough. Carrel Mentioned That The Landscape Plans Were Currently In Process. He Assured The Commission That The Sewer Lateral Extensions Would Be Addressed And Noted That The Sewer Laterals Are More Than Accurately Sized For This Type Of Project.

Commissioner Maurer Inquired About The One Foot Access Easement To Discourage Through Lots And Driveways.

City Planner Ocasio Noted That This Was To Discourage Additional Driveway Curb Cuts Along Hills Ferry Road And Additional Curb Cuts Throughout The Project.

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

ACTION: On Motion By Sloan Seconded By Day And Carried By The Following Roll Call Vote, The Planning Commission Approved Vesting Tentative Tract Map No. 13-02. . Ayes: Sloan, Day, Maurer And Allan; Noes: None; Absent: Coleman; Not Participating: None;

9. Items From Commissioners.

Commissioner Sloan Inquired About Caltrans Work On Canal School Road.

Commissioner Day Stated That He Was Pleased To Be A Part Of The Commission And Looks Forward To Working With Everyone.

Commissioner Maurer Asked For Updates On The Patchett Building, Storm Water Land Purchase And Proposed Pool Funding Opportunities.

Commissioner Allan Asked For A Brown Act Update And Inquired About Road Repaving Projects.

10. Items From Director And Staff.

City Planner Ocasio Reported That Mr. Tony Fraga Would Like To Start The Little Free Library Movement In Newman By Placing A Book Box Near His Residence At Main And Mariposa Streets. Ocasio Mentioned That Dollar General Would Be Open By Early April. She Welcomed Commissioner Day. Ocasio Noted That The L.J. Newman Center Elevations Had Been Approved And Specified That The Building Would Be Under Construction From September Of 2014 Until Spring 2015. She Informed Everyone That The City Had Applied For Additional Grant Funds For The Skate Plaza. Ocasio Explained That The CDBG Tulare Street Project Between "P" And "S" Streets Providing Sidewalk And Storm Improvements Would Begin Sometime In April. She Indicated That The Northwest Master Plan Was Progressing And That It Would Be Brought Before The Planning Commission Sometime Later In The Year. Ocasio Reminded The Commissioners That The Countywide Planning Commissioners Workshop Would Be Held On May 10th. Ocasio Mentioned That The Citywide Spring Clean Up Week Would Be April 7th-12th. She Concluded By Notifying The Commission That The City's 2014 G.I.S Internship Was In Progress.

11. Adjournment.

ACTION: On Motion By Day Seconded By Sloan, The Meeting Was Adjourned At 8:10 P.M. By The Following Vote: AYES: Sloan, Maurer And Allan; NOES: None; ABSENT: Coleman; NOT PARTICIPATING: None.



City of Newman
Community Development Department
Memorandum

Date: May 9, 2014
To: Planning Commission
From: Michael E. Holland, Director

Subject: Consider recommending approval of Ordinance No. 2014- , approving a second amendment to the Sherman Ranch Development Agreement.

In October 2004, the City Council agreed with a Planning Commission recommendation and approved the initial Development Agreement for the Sherman Ranch project. This project encompasses low, medium and high density residential products on a 106 acre site. In 2011, the City Council approved an amendment to the Development Agreement pursuant to a settlement agreement with the Developer. The settlement agreement resolved a dispute over inspection and plan check fees for the Sherman Ranch project.

Based upon some changes to the high density product previously approved by the Planning Commission, the need to modify a reimbursement program for which the Developer is entitled and to extend a fee off-set program; a second Amendment to the Development Agreement is being proposed. The Planning Commission shall be charged with reviewing said amendment and making a recommendation to the City Council.

Fee Credits: Based upon the changes to the high density product, the total number of housing units in this portion of the project has been reduced. Due to this decrease in lot count, the City and Developer have agreed that the City will reimburse the Developer for any unpaid fee credit amounts that may remain at project build out.

Building Permits: The first amendment included a clause that allowed building permits that were submitted on or before a specified date to be valid for a period of two years. This section is being proposed again for all permits submitted on or before December 31, 2013. This clause provides the developer stability from a changing building code. The City's Building Official has reviewed the language and does not object to its inclusion.

Fee Offset Fund: Again, the section is carried forward from the first amendment. The City will utilize federal HOME funds (\$125,000) to help offset City fees for Qualified Buyers. The goal of the program is to assist in making the homes affordable to buyers who may not otherwise be able to purchase a home.

Aquatic Center Financing: The developer agrees not to object or protest the creation of a financing program for a community aquatic center and/or recreation district. This is an option the City is currently exploring in an effort to move forward with the project.

Landscaping: The developer is agreeing to purchase and donate 100 fifteen (15) gallon trees so the City can replant trees within Sherman Park and/or along Sherman Parkway.

Overall, the proposed second Amendment to the Sherman Ranch Development Agreement contains provisions that support both parties. Staff recommends that (1) the Planning Commission conducts a Public Hearing on the matter and consider all comments made during said hearing, and (2) without any significant comments arising during the public hearing, recommend approval to the City Council.

AGREEMENT

This Agreement is made and entered into this ____ day of _____, 201__ (the "Effective Date"), by and between THE VILLA COMMUNITIES, LLC, a California limited liability company (hereafter "Developer") and the CITY OF NEWMAN, a municipal corporation (hereafter "City"). Developer and City are sometimes collectively referred to herein as the "Parties" or singularly as a "Party."

RECITALS

A. The City and SCM HEARTHSTONE, LLC, a California limited liability company ("SCM Hearthstone"), have entered into several agreements pertaining to the development of a project commonly referred to as Sherman Ranch and those agreements are identified in the following recitals.

B. SCM HEARTHSTONE, LLC, subsequently transferred its ownership interest in the "Villas" to THE VILLA COMMUNITIES, LLC and due to such transfer is the party to this Agreement. The Villa Communities, LLC succeeded to all of SCM Hearthstone, LLC's rights and obligations under the Development Agreement and assumed all obligations of SCM Hearthstone, LLC, past, present, and future related to the transferred property.

C. The Sherman Ranch project consists of three models of housing development: (i) the "Classics" homes are low density units; (ii) the "Heritage" homes are medium density units; and the "Villas" homes are high density units.

D. SCM Hearthstone and City entered into that Development Agreement by and between the City of Newman and SCM Hearthstone, LLC Homes Relating to the Development known as Sherman Ranch, dated November 12, 2004, and recorded with the Stanislaus County Recorder on January 7, 2005 as Document Number 2005-0003184-00 (the "**Development Agreement**").

E. The City and SCM Hearthstone entered into that Substitute Reimbursement and Settlement Agreement by and between the City of Newman and SCM Hearthstone, LLC, effective as of May 1, 2007, and recorded with the Stanislaus County Recorder on February 25, 2008 as Document Number 2008-0018677-00 (the "**Substitute Reimbursement Agreement**"). This Substitute Reimbursement Agreement superceded all outstanding prior reimbursement agreements related to the development projects known as Sherman Ranch and Hearthstone Ranch.

F. The City and SCM Hearthstone entered into that Settlement Agreement by and between SCM Hearthstone, LLC and the City of Newman, effective as of December 16, 2010 (the "**Settlement Agreement**"). This Settlement Agreement settled and resolved all claims and disputes regarding inspection and plan check fees for the Sherman Ranch project.

G. Pursuant to Section 2 of the Settlement Agreement, the City and SCM Hearthstone entered into an Amendment to the Development Agreement, which was approved and adopted by the City as Ordinance No. 2011-2 at a regularly scheduled meeting of the Newman City Council held on April 12, 2011 (the “**Amendment to Development Agreement**”). Although the Amendment to the Development Agreement was approved by the parties, they failed to execute and record the document in the Official Records of Stanislaus County. The parties executed the Amendment to Development Agreement on May 13, 2011 which was recorded with the Stanislaus County Recorder on April 10, 2014 as Document Number 2014-0022077-00.

H. Pursuant to Section 6 of the Substitute Reimbursement Agreement, the City and SCM Hearthstone were to execute and enter into an Amendment to Substitute Reimbursement and Settlement Agreement, which was approved by the City of Newman by adoption of Resolution No. 2011-32 at a regularly scheduled meeting of the City Council held on April 12, 2011 (the “**Amendment to Substitute Reimbursement Agreement**”). Although the Amendment to Substitute Reimbursement Agreement was approved by the parties, they failed to execute and record the document in the Official Records of Stanislaus County. The parties executed the Amendment to Substitute Reimbursement Agreement on April 12, 2011 which was recorded with the Stanislaus County Recorder on April 10, 2014 as Document Number 2014-0022078-00.

I. In August 2013, the Developer made an application with the City to rezone the Villas from R-3 (Multiple Residential) to P-D. The requested zone change will allow the Developer to revise the layout, create wider lots and reduce the density (elimination of 18 lots) within the Villas.

J. Developer and City desire to set forth all agreements and obligations arising out of or concerning the Villa’s within the Sherman Ranch project in this agreement.

NOW, THEREFORE, the Parties to this agreement hereby agree as follows:

1. Prior Agreements. All agreements and obligations of the Parties arising out of or concerning the Villa’s lots within the Sherman Ranch project, which shall be identified as those lots listed on the attached Exhibit “A” and identified on the map attached as Exhibit “B”, are set forth in this Agreement. To the extent that any of the agreements referenced in the Recitals contain agreements or obligations of the Parties, including successors and predecessors in interest, pertaining to the Villa’s lots, those provisions pertaining only to the Villa’s lots are hereby superceded and this Agreement shall control and all other provisions shall remain unchanged and in full force and effect.

2. Assignment and Acceptance by City. SCM Hearthstone, LLC transferred its interest in the Villa’s homes portion of the Sherman Ranch project to The Villa Communities, LLC, a successor entity under common control with SCM Hearthstone, LLC. The Development Agreement states that SCM Hearthstone, LLC has the right to assign or transfer all or any portion of its interests, rights or obligations under the Development Agreement upon City’s written consent. By executing this Agreement, City acknowledges and consents to the transfer of SCM Hearthstone, LLC interest in the Villa’s portion of the Sherman Ranch project to The Villa Communities, LLC.

3. Fee Credits.

a. City agrees to issue to Developer the specified CWSMP Water, CWSMT Traffic, CWSMP Storm, CWSMP Sewer, Park in-lieu, Water Connection and Sewer Connection fee credits, for the lots and in the amounts as provided on Exhibit "C", attached hereto and incorporated by reference, (the "**Villa's Fee Credits**"). The Villa's Fee Credits shall be issued to Developer at the time of final inspection, which is the same time the fees would otherwise be due and payable.

b. City may retain an administrative fee equal to three percent (3.00%) of the Villa's Fee Credits issued, to offset City's administrative and other costs and expenses incurred in the accounting, collection, and remittance of such fee credits.

c. In the event Developer has Villa's Fee Credits remaining after the credits have been applied toward the lots identified on Exhibit C, then those credits will be used to cover any annual increases to the fees by way of annual inflation adjustment, index, etc., as applied to each identified fee, until the fee credits have been exhausted. If upon full build-out of the Villa's, fee credits remain, then at Developer's request, City shall issue to Developer a cash payment equal to the fee credits remaining.

4. Building Permits. For all building permit applications submitted by Developer to the City on or prior to December 31, 2013, including those that have been submitted prior to the execution of this agreement, for any of the lots identified on Exhibit C, the City agrees that such application shall be valid for two years. Developer shall be required to pay the building permit fee in effect at the time of issuance. For purposes of applying building standards, conditions, and/or regulations, (but excluding building permit fees), a building permit shall be deemed effective upon the application date.

5. Fee Offset Fund. In the Amendment to Development Agreement, City and Developer established a Fee Offset Fund which requires City to pay to Developer, upon the sale of an Affordable Unit to a Qualified Buyer, the amount of fees attributable to such Affordable Unit from the Fee Offset Fund. City hereby agrees to keep this fund and program in place through June 30, 2015 as set forth in Exhibit "D." The Parties hereby acknowledge that any funds of the Fee Offset Fund that were earmarked to come from the Redevelopment Agency of the City of Newman are no longer available as the Redevelopment Agency of the City of Newman has ceased to exist.

6. Development Agreement Contingency. The Agreement is conditioned upon the effectiveness of an amendment to the Development Agreement, in the form attached hereto as Exhibit "E", approved concurrently herewith. Developer shall bear the application fee related to the amendment of the Development Agreement.

7. Aquatic Center Financing. The City has expressed a desire to create a city wide community facilities district to finance the construction of an aquatic center or to support formation of a recreation district for this purpose. Developer agrees that while Developer owns the lots identified on Exhibit A, it will not object to or protest the creation of the community facilities district, recreation district (or similar entity) or the imposition of the proposed tax, fee, charge or assessment, provided that the charge does not exceed \$150 per lot per year. City acknowledges that once a lot identified on Exhibit A is sold by Developer to a third party, Developer no longer has the ability to vote in favor of the creation of the community facilities district or the imposition of the tax as it pertains to the lot(s) sold.

8. Landscaping of Sherman Ranch Park and Sherman Parkway. Developer agrees to donate 100 15 gallon trees (species to be approved by the City) for purposes of re-landscaping Sherman Ranch Park and Sherman Parkway. The City shall provide all labor for installation. The Developer shall either (1) deliver the trees to a location in the City and on a schedule as approved by the City to permit replacement of existing landscaping in an orderly manner, or (2) acquire the trees at a nursery located in the City of Newman. The City shall notify Developer in writing at least thirty (30) days prior to the date City desires to install the trees, but in no event shall Developer be required to donate the trees prior to the issuance of the first building permit pulled for the Villas.

9. Zoning Contingency. A condition precedent to the effectiveness of this Agreement is the approval of the pending Zone Change No. 2013-01 request by Developer. This Agreement shall automatically terminate in 180 days from the Effective Date unless pending rezoning takes effect. The developer shall bear the application fee cost for the Zoning Change.

10. Attorney's Fees and Costs. Within 10 days following execution of this Agreement, the Developer shall reimburse the City for its costs, including staff time and attorney's fees up to \$3,500.

11. Severability. In the event that any provisions of this Agreement, or any portion thereof, is held by a court of competent jurisdiction to be unenforceable or invalid, the validity and enforceability of the enforceable portions of any such provisions and of remaining provisions shall not be adversely affected.

12. Exhibits. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A: Lots Subject to Agreement

Exhibit B: Map

Exhibit C: Villa's Fee Credits

Exhibit D: Fee Offset Fund

Exhibit E: Amendment to Development Agreement (without exhibits)

13. Miscellaneous.

13.1 The persons executing this Agreement on behalf of each party hereby represent and warrant that they have been duly authorized to do so.

13.2 This Agreement shall inure to the benefit of the Parties and each of them, and their agents, representatives, heirs, partners, directors, officers, attorneys, employees, servants, affiliates, subsidiaries, stockholders, predecessors, successors and assigns, if any.

13.3 This Agreement and any other documents referred to herein shall in all respects be interpreted, enforced and governed by and under the internal laws of the State of California. The language of this Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties.

13.4 If any judicial or quasi-judicial proceeding is brought to enforce this Agreement or any provision hereof, the successful or prevailing Party in such proceeding shall be entitled to reasonable costs and attorneys' fees. Any claim for relief shall be limited to specific performance.

13.5 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, agreements or correspondence, whether written or oral. This Agreement may not be altered or amended except by an instrument in writing executed by all of the Parties hereto.

13.6 This Agreement may be executed in counterpart which when so executed shall be deemed an original, and this Agreement and all its signed counterparts shall constitute one in the same instrument.

WHEREFORE, the undersigned have executed this Agreement.

Approved as to Form:

DEVELOPER

NEUMILLER & BEARDSLEE

The Villa Communities, LLC

By: _____
Rod A. Attebery
Attorneys for Developer

By: _____
Steve C. Mothersell, Sr.
President

Approved as to Form:

CITY

City Attorney

CITY OF NEWMAN, a municipal
corporation

By _____
City Manager

By _____
City Clerk

EXHIBIT A
LOTS SUBJECT TO AGREEMENT

EXHIBIT A
LOTS SUBJECT TO AGREEMENT

SHERMAN RANCH Unit #5 (High Density) Lot Numbers

13	86
14	87
15	88
16	89
17	90
18	91
19	92
20	93
21	94
22	95
23	96
24	97
25	98
26	99
27	100
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EXHIBIT B
MAP

EXHIBIT C
VILLA'S FEE CREDITS

Exhibit C: Villa's Fee Credits

	<u>CWSMPWater</u>	<u>CWSMPTraffic</u>	<u>CWSMPStorm</u>	<u>CWSMPSewer</u>	<u>Park in Lieu</u>	<u>Water Conn</u>	<u>Sewer Conn</u>	<u>Total</u>
SHERMAN RANCH Unit #5 (High Density)								
13	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
14	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
15	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
16	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
17	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
18	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
19	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
20	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
21	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
22	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
23	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
24	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
25	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
26	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
27	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
28	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
29	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
30	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
31	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
32	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
33	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
34	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
35	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
36	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
37	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
38	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
39	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
40	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
41	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
42	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
43	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
44	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
45	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
46	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
47	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
48	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
49	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
50	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
51	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
52	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
53	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
54	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
55	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
56	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
57	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
58	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
59	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
60	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
61	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
62	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
63	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
64	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
85	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63
86	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63

Exhibit C: Villa's Fee Credits

87	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
88	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
89	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
90	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
91	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
92	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
93	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
94	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
95	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
96	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
97	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
98	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
99	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
100	331.15	X	550.51	224.97	4,549.00	1,035.00	X	6,690.63		
Total Reallocated per Lot Building Permit Credits			22,518.20	0.00	37,434.68	15,297.96	309,332.00	70,380.00	0.00	454,962.84
Remaining Building Permit Fee Credits			24,621.10	0.00	40,931.70	16,727.00	338,223.38	89,010.00	0.00	509,513.18
Unallocated Building Permit Fee Credits			2,102.90	0.00	3,497.02	1,429.04	28,891.38	18,630.00	0.00	54,550.34

**EXHIBIT D
FEE OFFSET FUND**

EXHIBIT D

FEE OFFSET FUND

**Villas
Exhibit F
Section D
High Density**

**City HOME
Fee
Offset
Fund**

Paid at time of Issuance of Final Inspection

CWSMP – Impact Fee	
Water	24.62
Traffic	2,598.92
Storm	40.93
Sewer	16.73
Park In Lieu Fee	338.26
Supplemental Sewer Fee	1,500.00
Municipal Service Fees	
Community Buildings	0.00
Police	731.64
Fire	384.30
City Hall – Gov Blgs	983.45
Corp Yard	0.00
Wildlife Habitat	36.62
General Plan	168.95
Downtown Plaza Streetscaping	250.00
General Plan Expansion Fund	220.00
Water Connection	
Sewer Connection	2,330.00
Total Paid at Final Inspection	<u>9,624.42</u>

EXHIBIT E
AMENDMENT TO DEVELOPMENT AGREEMENT

RECORDING REQUESTED BY, AND
WHEN RECORDED MAIL TO:

Neumiller & Beardslee
PO Box 20
Stockton, CA 95201-3020
Attention: Rod A. Attebery, Esq.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SECOND AMENDMENT TO SHERMAN RANCH DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT ("Second Amendment") is made and entered into this ____ day of _____, 201__, by and between The Villa Communities, 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, SCM Hearthstone, LLC 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 entered into a First Amendment to Sherman Ranch Development, dated _____, 201__, ("First Amendment"), recorded with the Stanislaus County Recorder on _____, as Document Number _____, in which the parties extended the term of the Development Agreement and added additional provisions to the Development Agreement which clarified and specified certain rights of Developer associated with the Project.

C. SCM Hearthstone, LLC subsequently transferred its ownership interest in the "Villas" to The Villa Communities, LLC and due to such transfer is the party to this Second Amendment.

D. The parties desire again to clarify the additional provisions added in the First Amendment.

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 Second Amendment.

2. All capitalized terms not defined herein shall have the meanings ascribed to them in the Development Agreement and the First Amendment.

3. Section 8.03 of the First Amendment is hereby amended 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 ~~TWOONE HUNDRED FIFTY TWENTY-FIVE THOUSAND DOLLARS~~ (\$250125,000) ("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~~ June 30, 2015. ~~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~~ Second Amendment, "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.

4. Section 10.05A of the First Amendment is hereby amended 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-C), 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.

For all building permit applications submitted by Developer to the City on or prior to December 31, 2013, including those that have been submitted prior to the execution of this Second Amendment, for any of the lots identified on Exhibit C, (Section D), the City agrees that such application shall be valid for two years. Developer shall be required to pay the building permit fee in effect at the time of issuance. For purposes of applying building standards, conditions, and/or regulations, (but excluding building permit fees), a building permit shall be deemed effective upon the application date.

5. Except as modified by this Second Amendment, the Development Agreement and the First Amendment shall remain unchanged and in full force and effect.

6. This Second 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.

7. Facsimile, electronically scanned, and photocopied signatures shall be as valid as original signatures only for purposes of demonstrating execution of the Second 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 Second Amendment for all purposes.

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///

///

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

Approved as to Form:

Exhibit
City Attorney

CITY

CITY OF NEWMAN, a municipal corporation

By Exhibit
City Manager

By Exhibit
City Clerk

Approved as to Form:

NEUMILLER & BEARDSLEE

By: Exhibit
Rod A. Attebery
Attorneys for Developer

DEVELOPER

The Villa Communities, LLC

By: Exhibit
Steve C. Mothersell, Sr.
President

State of California)
)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

State of California)
)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

State of California)
)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

State of California)
)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

EXHIBIT A
FEE OFFSET FUND

EXHIBIT B
2010 STANISLAUS COUNTY INCOME LIMITS

EXHIBIT C
LOTS SUBJECT TO AGREEMENT

**CITY OF NEWMAN
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

PLANNING COMMISSION MEETING DATE: May 15, 2014

AGENDA ITEM: 7.b.

SPR #14-01	VA #14-01
Allow the construction/installation of a 25' wide x 40' tall Equalization Tank within the required 20' setback area	
APN: 128-022-023	Applicant: Teter Architects & Engineers on behalf of Saputo Cheese, USA, Inc.
CEQA : Exempt Under Class 1, Article 19	

REQUEST:

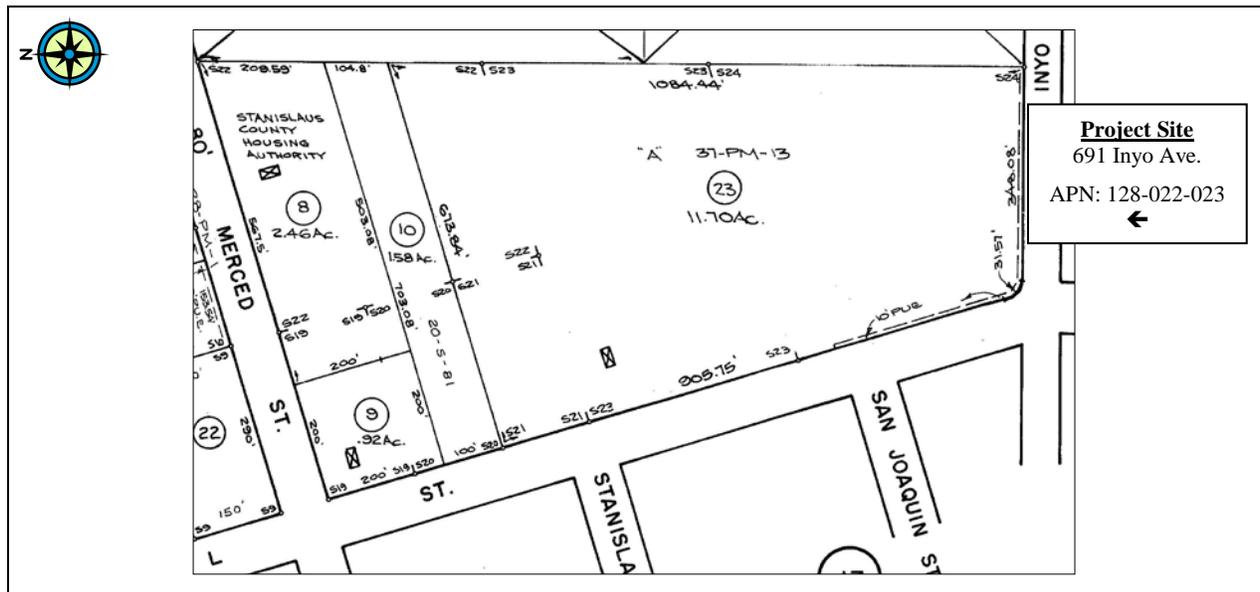
Conduct a Site Plan Review and Variance for the construction/installation of a 25' wide x 40' tall Equalization Tank along the western property line within the required 20' setback area.

LOCATION:

The property is located on the corner of Inyo Avenue and "L" Street at 691 Inyo Avenue, approximately 300 feet south of Merced Street.

ENVIRONMENTAL ASSESSMENT:

Pursuant to the California Environmental Quality Act (CEQA) and the City of Newman Environmental Quality Guidelines, it has been determined that this project is categorically exempt under Article 19, Class 1.



LAND USE:

<u>Property</u>	<u>Land Use</u>	<u>Zone</u>	<u>General Plan</u>
Subject site	Manufacturing/Cold Storage	I	HI
North	Vacant	R-2	MD
South	Industrial	M	LI
East	Residential/Industrial	R-1/M	LD/LI
West	Industrial	M	HI

I = Controlled Manufacturing
R-1 = Single Family Residential
HI = Heavy Industrial
LD = Low Density Residential
M = Industrial
R-2 = Duplex Residential
LI = Light Industrial
MD = Medium Density Residential

SIZE OF PROPERTY: 11.7 Acres (Project Site)
62,823 Square Feet (Existing Buildings)

ACCESS: Inyo Avenue (Primary)
L Street (Shipping and Receiving)

ORDINANCES:

NMC 5.10.060: [I Controlled Manufacturing District] Property development standards.
NMC 5.25.040: Architectural and Site Plan Review
NCC 5.25.030: Variances

PROJECT DESCRIPTION:

The submitted site plan and accompanying statement propose the addition of a 152,800 gallon stainless steel 25' 6" wide by 40' tall Equalization tank along the western property line just south of the shipping and receiving entrance adjacent to an existing equipment pad and landscaping area. The tank would be placed on a 30' x 30' x 2' foundation, resulting in a total height of 42 feet.

BACKGROUND:

On April 8, 2014, the applicant contacted the Community Development Department to inquire about the addition of an Equalization Tank (along the western property line) and eight foot tall CMU wall (along the eastern property line). Given the nature of the proposal and resulting change to the existing site, the applicant was notified that the tank would require a Site Plan review while the wall can be processed ministerially (as prescribed in the Code). The applicant submitted their Site Plan Review application on April 28, 2014.

PROJECT ANALYSIS:

Land Use: The subject site is zoned "I" (Controlled Manufacturing), the parcel to the north is zoned "R-2" (Duplex Residential), parcels to the east parcels are zoned "R-1" / "M" (Single Family Residential/Industrial) and parcels to the south and west are zoned "M" (Industrial). The "I" zone identifies Manufacturing/Cold Storage as an approved use, the proposed equalization tank is ancillary to this use and therefore consistent with the Newman 2030 General Plan and zoning district.

Development Standards: Policy LU-5.2 of the Newman 2030 General Plan states that The City shall promote the establishment, maintenance and expansion of businesses in Newman that

generate high retail sales as important contributors to the local economy. The Applicant has been a part of the City's economy since the mid-1980's and continues to be a valuable economic force within the City. The proposed addition will assist the applicant in its business activities.

Parking: A Variance allowing the existing parking lot with 66 spaces (where the Municipal Code requires 109 spaces) was approved by the Planning Commission on July 16, 2009. Given that the proposed addition will not increase the plant's number of employees, the applicant remains consistent with the Variance approval and is not required to provide additional parking.

Access: Currently, the plant's primary access is via Inyo Avenue with shipping and receiving access being from L Street. The proposed addition will not affect these access points.

Architectural Review Committee: Given the tank's lack of design/aesthetic options and that Silos/Tanks are usually exempt; Architectural Review was not initiated for this project.

Site Plan Review

Elevations

The tank's location and size (25' 6" wide with a total height of 42') will be a visible impact on the site and surrounding areas. No information has been provided regarding the tank's color and/or finish.

Building Location:

The location of all the proposed buildings, structures, facilities and open spaces; The existing site will remain the same (as was approved in 1985). The applicant desires the proposed equalization tank to be placed within the required 20' side setback area along their western property line ("L" Street). They assert that the proposed Equalization Silo location allows the interception of the total Whey Plant effluent from the north and the Cheese Plant effluent from the east. This combined interception of effluent, would then be gravity flowed to the pump lift station. The controlled discharge of the neutralized effluent is then monitored for gpm-pH and solids for total control to the City. The applicant has expressed that the tank's proposed location is critical due to existing underground sewer lines that connect to the discharge mag meter, current truck traffic and space available.

If approved, the tank would be approximately 4'8" from the western property line. Additionally, the General Plan and municipal code allow a maximum FAR of 0.40; the addition of the tank and foundation will add approximately 900 square feet, resulting with a total FAR of 12.5% - well below the maximum.

The intent of building setbacks are to:

- secure safety from fire, panic, and other dangers
- promote health and general welfare
- provide adequate light and air
- prevent overcrowding of land
- avoid undue concentrations of population
- facilitate the provision of adequate open space

The proposed tank is not anticipated to create a hazard for the public. Per the applicant, its use will actually benefit the City's wastewater system. Given the current FAR of 12.5%,

overcrowding of land is not expected. Open space (including airspace) in the immediate area will be impacted however.

Landscaping/Open Space: The municipal code requires that all required setbacks and yard areas, (with the exception of driveways and pedestrian walkways) be landscaped in addition to a minimum five-foot wide landscaped planter in front of buildings facing public streets; these must be permanently landscaped and maintained in a neat and weed-free condition. The existing site meets these requirements. However, approximately 144 square feet of landscaped area along the western property line would be removed for construction of the proposed tank.

Improvements: The site has already been improved in accordance to the original site plan review in 1985. The proposed addition is to be located within the site, approximately 4'8" away from the public right of way (within the required 20' setback). The equalization project was initiated by Saputo Cheese and will provide control over variable wastewater discharge flows and pH spikes. Per the applicant, retention time of sufficient volume of wastewater in an equalization tank is needed to equalize variable characteristics of discharge to comply with terms of discharge permit pH limits and avoid spikes to the City from high and low pH of waste water discharge. The retention time in the proposed equalization tank will control the high and low levels of solids in the waste water effluent being discharged to the City's Waste Water Treatment system.

Variance

NMC §5.10.060.F requires that the exterior side setback (on a corner lot) for an industrial building is 20 feet; the proposed Equalization Tank qualifies as such. The applicant is requesting a variance based on their desire to equalize their wastewater discharge into the City's system and that the proposed location is critical based on existing infrastructure and space available.

The applicant desires to control its waste water discharge and keep all discharges in compliance with wastewater discharge permit limits. They contend that control of the plant's wastewater, will greatly help the City of Newman's Wastewater ponds in processing their neutral type of effluent and that the project would be of a great benefit to the City for the control of its process ponds.

NCC 5.25.030 (F) states "Neither personal, family, or financial difficulties; the loss of perspective profits; or the existing of neighboring violations shall constitute justification for a variance."

Environmental Review: All potentially significant effects have been analyzed adequately in the Newman 2030 General Plan EIR. Pursuant to applicable standards, the California Environmental Quality Act (CEQA) and the City of Newman Environmental Quality Guidelines, it has been determined that this project is categorically exempt under Article 19, Class 1 (Existing Facilities).

FINDINGS:

In order to grant approval of a site plan review and variance, the Planning Commission must find the following:

Site Plan Review

1. Does the architectural and general appearance of the structures and grounds have architectural unity and are in keeping with the character of the neighborhood as not to be detrimental to the orderly and harmonious development of the City, or to the desirability of investment or occupation in the neighborhood?

Pro: Given that the facility already contains 33 silos, that other facilities in the immediate area utilize buildings that exceed 40 feet in height and that the plant has been in existence for over 20 years; approval of the proposed equalization tank will be compatible with the surrounding neighborhood and should not be detrimental to the community.

Con: The proposed tank's location is approximately 4'8" away from the public right of way; well within the required 20' setback as mandated by the Municipal Code. This may put the facility at increased risk of potential collisions should trucks/vehicles veer off the road towards the tank. Additionally, its close proximity to the truck loading bay may create a bottleneck effect in the shipping and receiving area.

2. Is the site plan consistent with all adopted City plans, documents, ordinances, included but not limited to the Newman Municipal Code, any applicable specific and/or master plans, any adopted development standards and design guidelines, and the general plan?

Pro: The General Plan identifies the project site as Heavy Industrial, this designation "provides for manufacturing, processing...and similar and compatible uses" (GP LU-19). Given that the zoning code directly identifies creameries and dairy product plants as a permitted use and the proposed additions are for said use, it can also be identified as a compatible use per the General Plan.

Con: The site plan would not be technically consistent with code mandated setback requirements.

Variance

1. The variance does not form a grant of special privilege inconsistent with the limitations on other properties in the same zoning district and the vicinity.

Pro: Given that the subject property is located in an industrial area and that neighboring properties may also lack adequate side setbacks, approval of the variance will not constitute a granting of special privilege.

Con: Given that other properties within the immediate area meet minimum setback requirements, approval of this request will constitute a granting of special privilege.

2. The variance will not be detrimental to the public health, safety and general welfare.

Pro: No detrimental impacts to public health and safety as a result of the project are anticipated.

Con: The close proximity of the tank to the right-of-way may increase the risk of potential vehicular collisions. Also, no mention of the tank's color or finish was submitted. Potential glares from the tank may also impact public health and safety.

3. The variance will not substantially impair the purposes of this title or the General Plan.

Pro: Although inadequate by code standards, the proposed tank's use is permitted within the zone district and approval of the request does not authorize a use that is inconsistent

with the general plan, approval of the variance will not substantially impair the purposes of this Title or the General Plan.

Con: Given that the zoning code requires a minimum setback of 20 feet and that finances and personal/family difficulties shall not constitute justification when approving variances, approval of the request will set a precedent for approving setback variances and thereby impair the purpose of the code. The tank can potentially be located elsewhere in the plant.

4. The subject property has special circumstances or conditions whereby the strict application of the zoning ordinance standards would deprive the property of privileges enjoyed by other properties in the same zoning district and the vicinity.

Pro: The proposed tank's placement is a result of existing infrastructure and available space. The Municipal Code does allow for a variance to be granted where the literal enforcement of the requirements of the title would involve practical difficulties or cause undue hardship that would necessarily deprive the property owner of reasonable use of the land or buildings involved by reason of existing improvements or other extraordinary situation or physical conditions."

Con: Given that other properties within the vicinity and same zone district comply with the development standards identified within the municipal code, the subject property is not deprived of privileges enjoyed by other properties in the same zoning district and the vicinity.

5. The variance will be compatible with the neighborhood.

Pro: Given that other facilities in the immediate area do not meet setback requirements, the proposed variance does partially address code standards and will be compatible with the current neighborhood.

Con: Given that other facilities in the immediate area meet setback requirements, the proposed variance will not be compatible with the current neighborhood.

Public Comment

A Public Notice was published in The West Side Index on May 1, 2014; however a typographical error was discovered on the notice. An additional corrected notice was published in the Modesto Bee on May 5, 2014. Similarly, Public Notices were mailed out to surrounding property owners within a 300' radius on April 29, 2014 and corrected notices on May 2, 2014. As of this date (5-8-14), two inquiries have been received.

CONCLUSION:

The proposed project is to add a 900 square foot foundation (that measures two feet in height) with a 152,800 gallon stainless steel 25'6" wide by 40' tall equalization tank along the western property line just south of the shipping and receiving entrance adjacent to an existing equipment pad and landscaping area. The proposed addition is compatible with the immediate neighborhood however it will create a visual and spatial disturbance. The addition is ancillary to the existing use and will support current economic activity for the applicant and the City. The equalization tank is consistent with the approved Site Plan.

Newman Municipal Code section 5.25.030 states that “The purpose of granting a variance is to allow, in certain cases, deviation from the strict application of the setback, building height, lot coverage, usable floor area, usable open space, floor area ratio, off-street parking or landscaped area requirements of the title, when appropriate. A variance may be granted only where the literal enforcement of the requirements of the title would involve practical difficulties or cause undue hardship that would necessarily deprive the property owner of reasonable use of the land or buildings involved by reason of the exceptional narrowness, shallowness or unusual shape of a parcel of property [and the] exceptional topographic conditions, natural features, existing improvements or other extraordinary situation or physical conditions.” The proposed variance is a permitted use within the zoning district; however, section 5.10.060 of the municipal code (I Property Development Standards) requires a minimum industrial building setback of 20 feet for an exterior corner. Because of existing infrastructure and available space, the applicant asserts that there are exceptional conditions at the project site that would justify the need for a variance. As stated in the code, the Planning Commission may grant the variance on the basis of “extraordinary situation”.

The submitted Site Plan Review and Variance applications are interrelated due to the fact that they are both a direct result of the same proposal – the equalization tank. Therefore, the Commission’s decision must correspond for both (i.e. either approval of both or denial of both). Given that the proposed equalization tank could be located elsewhere in the plant and that enforcement of code requirements would not cause undue hardship that would necessarily deprive the property owner of reasonable use of the land, staff recommends that the Commission deny both the Site Plan Review and Variance requests. Staff has provided the Commission findings supporting both approval and denial of the project.

CONDITIONS OF APPROVAL:

Should the Planning Commission grant the applicant’s Site Plan Review and Variance request, staff has recommended the following conditions of approval:

Community Development

1. To prevent glare or similar nuisances, the applicant shall submit the equalization tank’s finish and color palate to staff for City approval.
2. Landscaping consistent with property frontage shall be installed adjacent to the fence line along “L” Street from the Shipping and Receiving gate to Inyo Avenue.
3. It is the developer’s responsibility that the proposed development complies with handicap and Americans with Disabilities Act (ADA) requirements in the design and maintenance of this project.
4. The developer shall develop the site in accordance with the site plan and all changes required by the Planning Commission.
5. The development shall also exceed the state standards for energy efficiency (Title 24) by at least 15 percent (Newman 2030 General Plan Policy NR-5.1).
6. A variance granted pursuant to the provisions of the title shall run with the land and shall be valid for the original purpose for the successors in interest of the original grantee.

Standard Conditions

1. This application shall become null and void if the project is not initiated within one year from the date of approval.
2. All plans shall be consistent with the site plan, reflecting amendments as approved.

3. Any proposed modifications of a significant and/or permanent nature to the approved site plan or elevations, involving building exteriors or square footage, fence/walls, or major landscaping modifications, may require approval of a new site plan review application.
4. All night lighting shall be hooded and/or fitted with prismatic directional lenses to prevent illumination onto adjoining properties and glare into on-coming traffic.
5. It shall be the responsibility of the developer to convey copies of the conditions of approval to all contractors and sub-contractors.
6. During Construction, and for safety purposes, the developer and assigned contractors shall keep the public right-of-way clear of obstructions, and provide for clean-up on a daily basis.
7. For safety purposes, the construction area shall be fenced off with a chain link or another type of acceptable fencing as determined by the planning department.
8. All contractors performing work relative to this project shall obtain City of Newman Business Licenses, prior to start of work on the project. All work performed on the project shall comply with the requirements of the State and Professions Code.
9. The site shall be kept in a dust-free condition during construction in compliance with the San Joaquin Valley Air Pollution Control District (SJVAPCD).

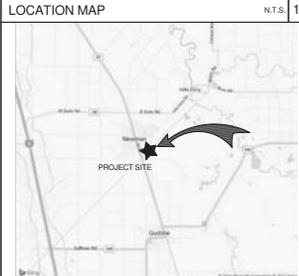
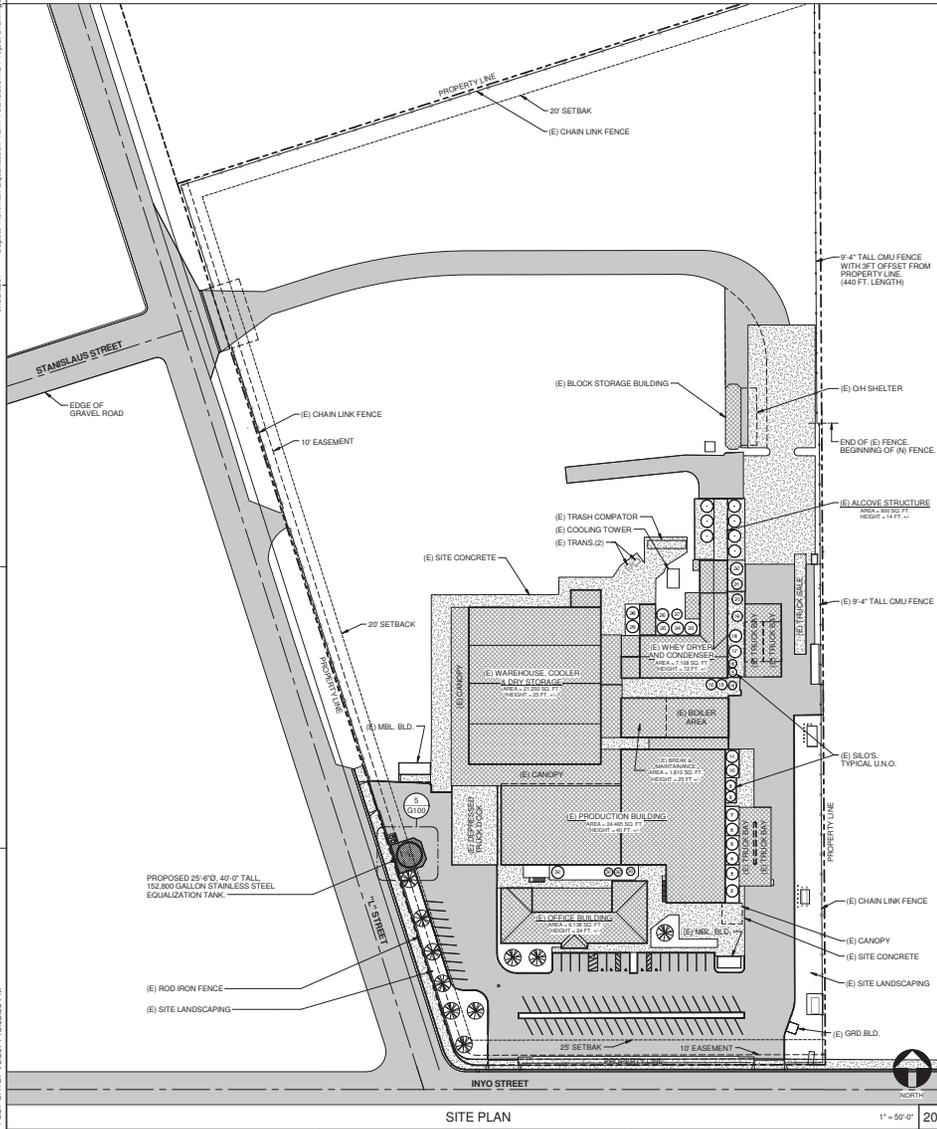
ATTACHMENTS:

1. Exhibit A, Site Plan/Exterior Elevations
2. Exhibit B, Operational/Environmental Statement Checklist
3. Exhibit C, Applicant's Statement
4. Exhibit D, Photographs

EQUALIZATION TANK SITE PLAN REVIEW



NEWMAN, CALIFORNIA



GENERAL

OWNER: SAPUTO CHEESE USA
891 INYO AVENUE
NEWMAN, CA 95360

SITE ADDRESS: 891 INYO AVENUE
NEWMAN, CA 95360

USE: CHEESE FACILITY

APN #: 128-022-023

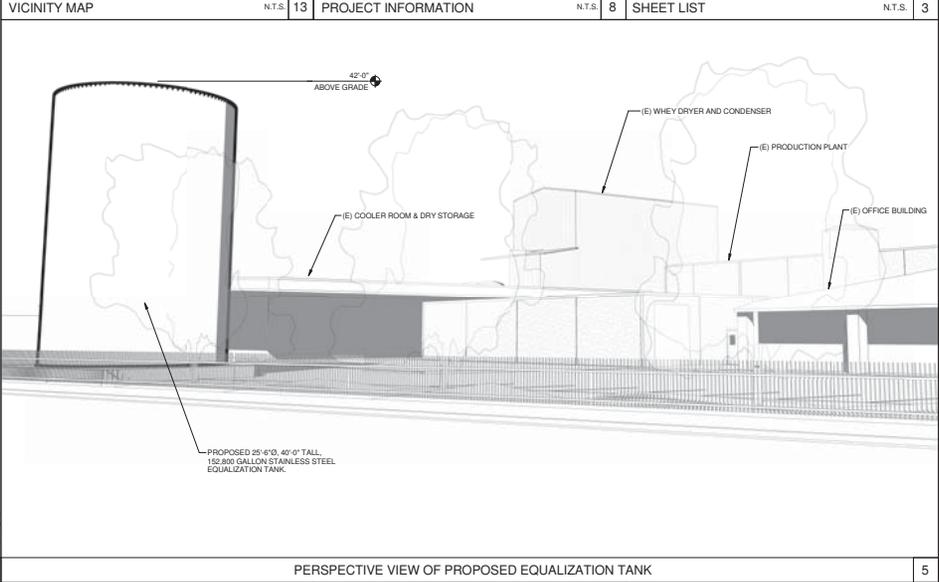
ENFORCING AGENCY
CITY OF NEWMAN

PROJECT DESCRIPTION
THIS PROJECT CONSISTS OF THE ADDITION OF A PROPOSED 152,800 GALLON STAINLESS STEEL EQUALIZATION TANK LOCATED ALONG 12" STREET AND A CMU FENCE ALONG THE EAST PROPERTY LINE.

CONSTRUCTION FOR THE EQUALIZATION TANK CONSISTS OF A NEW FOUNDATION PAD TO SUPPORT THE PROPOSED TANK AT THE LOCATION NOTED ON THE SITE PLAN.

CONSTRUCTION FOR THE CMU FENCE WILL BEGIN WHERE THE EXISTING FENCE IS DISCONTINUED. THE HEIGHT OF THE FENCE WILL BE APPROXIMATELY 9'-4" ABOVE GRADE AND WILL BE LOCATED 3 FEET AWAY FROM THE PROPERTY LINE.

GENERAL	
G000	COVER SHEET
STRUCTURAL	
G100	FOUNDATION PLAN



THIS IS A PRELIMINARY DRAWING AND NOT TO BE USED FOR CONSTRUCTION. THE DRAWING IS THE PROPERTY OF TETER, LLP AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF TETER, LLP.

MARK	DATE	DESCRIPTION
A	4/20/14	SITE PLAN REVIEW



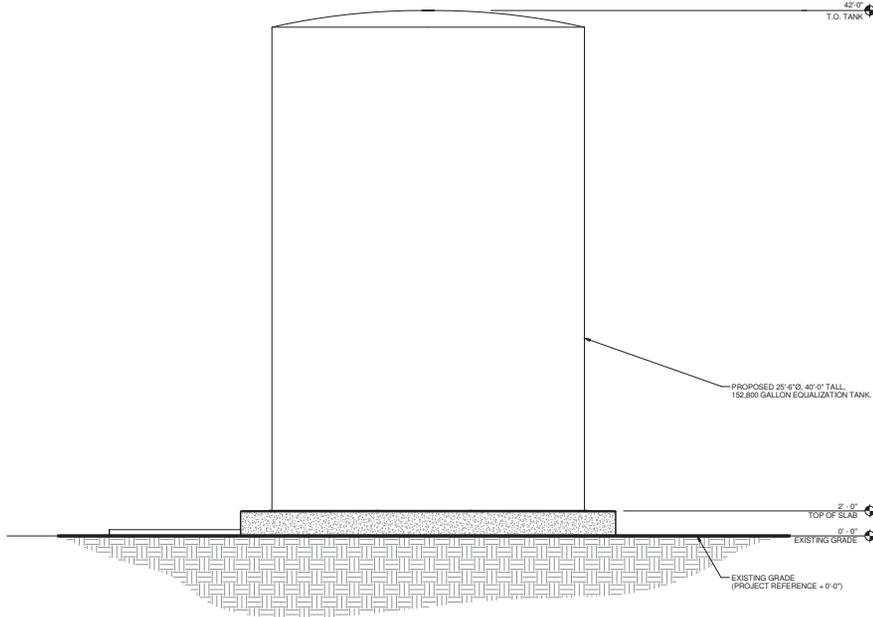
TETER, LLP
ARCHITECTS ENGINEERS CONNECTED

1000 N. PALM AVE. 10TH FLOOR, CA 95761
1000 N. PALM AVE. 10TH FLOOR, CA 95761
1000 N. PALM AVE. 10TH FLOOR, CA 95761



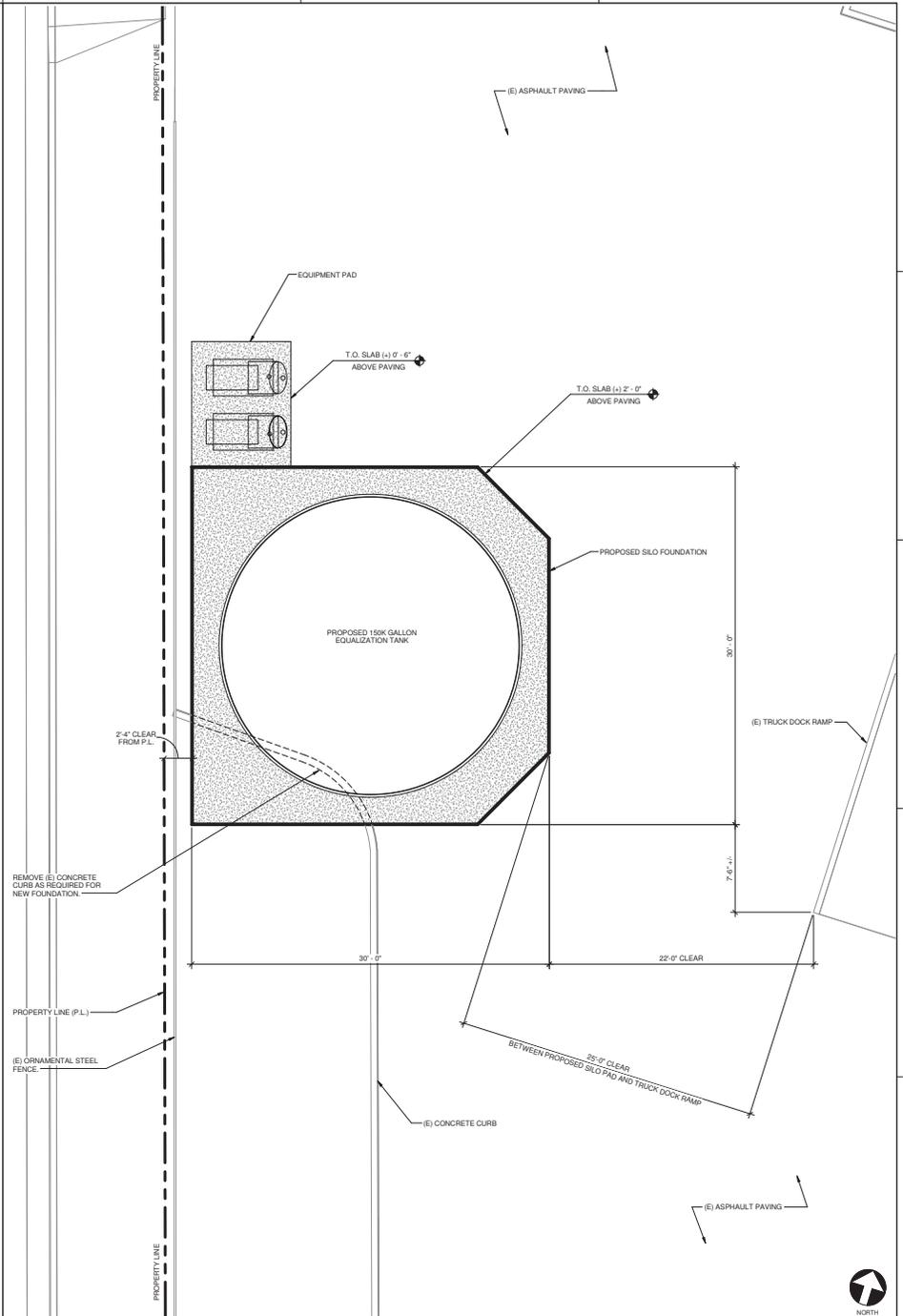
EQUALIZATION TANK SITE PLAN REVIEW
SAPUTO CHEESE USA - NEWMAN, CALIFORNIA
891 INYO AVENUE, NEWMAN, CA 95360

PROJECT NO. 14-9297
DRAWING G000



EAST TANK ELEVATION VIEW

1/4" = 1'-0" 20



PARTIAL PLAN

1/4" = 1'-0" 5

THIS PLAN APPROVES THE PROPOSED FOUNDATION FOR THE EQUALIZATION TANK. THE ARCHITECT HAS CONDUCTED VISUAL VERIFICATION OF THE PROPOSED FOUNDATION. THE ARCHITECT HAS NOT CONDUCTED A VISUAL VERIFICATION OF THE PROPOSED FOUNDATION. THE ARCHITECT HAS NOT CONDUCTED A VISUAL VERIFICATION OF THE PROPOSED FOUNDATION.

MARK	DATE	DESCRIPTION
A	4/8/2014	SITE PLAN REVIEW



TETER, LLP
ARCHITECTS ENGINEERS CONNECTED

1000 B. BALBOA AVE. 10TH FLOOR, SAN ANTONIO, TX 78205
1000 S. STREET 10TH FLOOR, SAN ANTONIO, TX 78205
1000 S. STREET 10TH FLOOR, SAN ANTONIO, TX 78205



EQUALIZATION TANK SITE PLAN REVIEW
SAPUTO CHEESE USA - NEWMAN, CALIFORNIA
691 INYO AVENUE, NEWMAN, CA 95360
NEWMAN SITE
FOUNDATION PLAN

PROJECT NO. 14-9297
DRAWING G100



Cheese Division (USA)

317 Rosera Street
P.O. Box 198
Lena, WI 54139
920-829-5251

April 25, 2014

Saputo (Newman) Equalization Tank
Operational Statement

1. Site Information:
 - a. Owner: Saputo Cheese, USA
 - b. Address: 691 Inyo Avenue, Newman, CA 95360
 - c. APN: 128-022-023
2. Nature of Project:
 - a. Installation of 150,000 gallon, above ground water tank (approximately 25' diameter and 40' in height). Tank will be part of Saputo's process waste water system. Prior to discharge into City of Newman system, the water tank will help in "equalization" of the system. See attached letter with further information.
3. Existing Use: project will not change/alter current use.
4. Products produced: project will not change/alter products produced.
5. Operational periods: project will not change/alter operational periods.
6. Special activities/events: project will not create special events/activities.
7. Customers/Visitors: project will not change/alter current customers/visitors.
8. Employees: project will not change/alter current employee count.
9. Equipment/materials: project will include a water tank and associated pumps, piping and valving.
10. Service/delivery vehicles: project will not change/alter current service/delivery vehicles.
11. Parking spaces: project will not alter current parking space count.
12. Property access: project will not change/alter current access to property.
13. Vehicle trips/day: project will not change/alter current vehicle trips.
14. Advertising: project does not include advertising/signage.
15. Existing/new buildings: no proposed buildings for proposed project. Project consists of above ground water tank.
16. Landscaping/fencing: no additional landscaping/fencing proposed.
17. Surrounding land uses (north, south, east and west): project will not change/alter current land uses on all sides.
18. Noise: proposed project will not increase noise.
19. Water use: project will not change/alter current water use.
20. Wastewater: project will not change/alter current wastewater generated.
21. Solid waste: project will not change/alter current solid waste generated.
22. Grading/tree removal: no trees will be removed.
23. Archeological considerations: none
24. On site water: no on site bodies of water.
25. Existing topographic features: project will not change/alter current topographic features.
26. Hazardous material: project does not include hazardous materials
27. Use of public services or facilities: project will not change/alter current use.
28. Impact on surrounding area: visual impact with height of tank.
29. Impacting schools, parks, etc.: no impact
30. See attached site plan for silo/tank height



April 25, 2014

RE: Equalization Tank Construction-Fabrication & Installation Request

Saputo strives to be a good neighbor in every aspect of operation and this includes the control of waste water discharge and keeping all discharges in compliance with the wastewater discharge permit limits.

The equalization project was initiated by Saputo Cheese and will provide control over variable discharge flows and pH spikes. Retention time of sufficient volume of wastewater in an equalization tank is needed to equalize variable characteristics of discharge to comply with terms of discharge permit pH limits and avoid spikes to the City of Newman from high and low pH of waste water discharge. Another advantage of the retention time in this equalization tank will be the control of the high and low levels of the solids in the waste water effluent being discharged to the City of Newman Waste Water Process facility.

Control of the Saputo plant waste water, will greatly help the City of Newman's Waste Water ponds in processing this neutral type of effluent.

The attached partial site plan shows the underground, gravity flow-sewer mains, located at the discharge point of the west "L" street property line. The proposed Equalization Silo location shows the interception of the total Whey Plant effluent from the north and the Cheese Plant effluent from the east. This combined interception of effluent, is then gravity flowed to the pump lift station.

The controlled discharge of the neutralized effluent is then monitored for gpm-pH & solids for total control to the City.

This tank location is critical because of the underground sewer lines going to the discharge mag meter, truck traffic and space available.

Staff from the City of Newman's Waste Water department has indicated to Saputo that this project would be of a great benefit for the control of the process ponds.



