

PLANNING COMMISSION

Agenda Item No.: _____
Date: September 27, 2011

CASE NUMBERS: PHG 09-0021, PHG 09-0022, ENV 11-0002

APPLICANT: The Young Family Trust

LOCATION: Along the east side of Bernardo Avenue, just south of the intersection of Bernardo Avenue and Vereda Callada, addressed as 2950 Bernardo Avenue (APN 238-400-3200), 1029 Vereda Callada (APN 238-400-1100) and a third unaddressed lot on Bernardo to the west (APN 238-400-1200).

TYPE OF PROJECT: Proposed Prezone and Annexation

PROJECT DESCRIPTION: The project involves a proposed Prezone and Annexation to the City of Escondido of three properties totaling approximately 3.42 acres. The three lots would also be detached from County Service Area No. 135 and the Rincon Del Diablo Fire Protection District. The 1.04 acre lot addressed as 2950 Bernardo Avenue (APN 238-400-3200) is vacant. The 1.28 acre lot addressed as 1029 Vereda Callada (APN 238-400-1100) is fully developed with a residence and the adjacent 1.1 acre lot directly to the west (APN 238-400-1200) is vacant except for two outbuildings. Prezoning designation for this area will be PZ-RE-40 (40,000 SF minimum lot size).

STAFF RECOMMENDATION: Approval

GENERAL PLAN DESIGNATION/TIER: Estate I (single-family residential, maximum 1 du/ac) / Felicita Tier 2A

ZONING: *Currently under County Zoning of A-70 (Limited Agriculture, Single-Family Residential Development, 1 dwelling unit per acre, 1 acre minimum lot size).*
Proposed Prezone: RE-40 (Single-Family Residential, 40,000 SF minimum lot size).

BACKGROUND/SUMMARY OF ISSUES: Annexation Policy D6.1 (page VII-14) states that the City will not actively seek to annex unincorporated lands, except those owned by the City, and will rely on applications from property owners for proposed annexation to the City. On September 23, 2009, the City Council approved the applicant's request for initiation of an Annexation/Prezoning of an existing residence together with two adjacent unimproved residential lots also owned by the applicant. This decision was based on information provided at the time. After further study, staff found the two vacant properties fronting Bernardo would be problematic to bring into the City due to a number of issues raised by Engineering, Planning and Utilities regarding access, available sewer capacity, required improvements and the impacts of future development. The applicant then submitted a letter from the County's Department of Environmental Health dated November 18, 2009, documenting eminent failure of the existing Vereda Callada residence's septic system and suggested connecting to the City's sewer line in Bernardo Avenue. On March 10, 2010 the City Council approved a contractual service agreement to provide sewer service and on April 5, 2010 San Diego LAFCO granted an Out-of-Agency Service Agreement allowing the existing residence to receive the required sewer service. As part of that approval, the property owner signed an Irrevocable Offer of Annexation for the Vereda Callada property.

On July 27, 2010 the applicant paid the remaining fees and submitted a renewed application to annex all three lots. Their revised development plans for the two vacant lots required by LAFCO, show two single family residences and associated grading. The plan proposes to close the existing Vereda Callada driveway from the residence at 1029 Vereda Callada and provide a new driveway out to Bernardo Road running between the two vacant lots. The two vacant lots would be graded to create pads high enough to allow gravity flow to sewer service in Bernardo Road. The pads would be located to avoid detrimental impacts to the most sensitive oaks on site. The segment of Bernardo Avenue fronting along the subject site would also be annexed into the City. No other properties are involved in the current Annexation or Prezone applications.

This project was placed on the July 26, 2011 Planning Commission agenda. Prior to that meeting a number of neighbors contacted the City with concerns regarding the project's potential impacts to the neighborhood. The applicant then asked that the item be continued so they could modify the project. The project was ultimately not changed and the item currently being considered is the project as originally proposed. The applicant submitted a letter dated 9/1/11 requesting changes to the Conditions of Approval, which staff feels are not appropriate. (See discussion under section D.)

Staff believes that the remaining issues are as follows:

1. Whether the proposed RE-40 zoning is appropriate and adequately reflects the development character of the properties and those adjacent.
2. Whether the conceptual access and grading designs are appropriate for the site.
3. Whether the proposed prezone should be extended to include surrounding properties.

REASONS FOR STAFF RECOMMENDATION:

1. The proposed prezone establishes the appropriate zoning designation (RE-40) for the subject parcels, which is consistent with the Estate I General Plan Use designation and is consistent with development patterns of the area within the same General Plan designation.
2. The conceptual access and grading design in the most recent revised plans avoids impacts to the most sensitive naturally occurring plant species and mitigation will be required for those less sensitive plants species that may be removed or impacted by future development.
3. Four properties were initially contacted by the applicant regarding annexation and showed no interest. The City has subsequently sent notices to surrounding properties within 500 feet. While this has generated comments from neighbors, none has expressed interest in joining the annexation. As a result, no additional properties have been included in this annexation and prezone request. San Diego LAFCO staff has reviewed the current proposed boundary and has indicated their support; therefore, staff feels that support for this proposal is warranted.

Respectfully submitted,

Paul K. Bingham
Assistant Planner II

ANALYSIS

A. LAND-USE COMPATIBILITY/SURROUNDING ZONING

- NORTH:** Across Vereda Callada, a rural street, the properties are County zoned A-70 (limited agriculture, 1 du/acre). One-story single-family residential homes and small orchards on lots ranging in size from approximately 1.05 to 1.69 acres are located north of the three properties proposed for annexation.
- SOUTH:** County zoned A-70 (limited agriculture, 1 du/acre) properties that have one and two-story single-family residential homes on lots ranging in size from approximately 0.95 to 1.06 acres are located south of the three properties proposed for annexation.
- EAST:** County zoned A-70 (limited agriculture, 1 du/acre) and have single-family dwellings on 1-acre or larger lots. One- and two-story single-family residential homes on lots ranging in size from approximately 1.07 to 1.15 acres are located east of the three properties proposed for annexation.
- WEST:** Across Bernardo Avenue (a Local Collector roadway) are two ornamentally landscaped Open Space parcels which serve as detention basins for the Planned Development (PD-R) known as "The Reserve". The detention basins and subdivision are within the City of Escondido and the zoning is PD-R-1.22 (single-family residential – 1.22 du/acre on lots between ½-acre to 1-acre in size). The development's residential lots closest to Bernardo Avenue range in size from 0.53 to 0.81 acre. The General Plan designation for The Reserve development and other surrounding properties west of Bernardo Avenue is EII (Estate II) single family residential with a maximum density of 2 du/acre.

B. AVAILABILITY OF PUBLIC SERVICES

1. Effect on Police Service – The County parcels currently are served by the County Sheriff's Department. Upon annexation, the parcels and future homes would be served by the City of Escondido Police Department. Development of the site would result in an incremental increase in demand for Police Services. However, the Escondido Police Department indicated their ability to adequately serve the proposed project and no significant impacts to police services are anticipated.
2. Effect on Fire Service – The City Fire Department has indicated their ability to adequately serve the proposed project. The area currently is served by the City's Fire Station No 5 located at 2317 Felicita Road. The county parcels are within the Rincon Del Diablo Municipal Water District (MWD) Fire Department (Improvement District "E"). The subject county parcels would detach from the MWD and annex into the City Fire District. Since by agreement the City of Escondido already provides fire protection services to residents within this area of Improvement District "E," there would effectively be no change in service. Detachment from County Communications District # 135 would also occur. Water service is provided by Rincon Water and the three properties would continue to receive service from Rincon after annexation.
3. Traffic – Two of the three lots front onto and take access from Bernardo Avenue (a Local Collector), the third lot with the existing residence currently takes access from Vereda Callada (a privately maintained road). The Engineering Department indicated the proposed project would not result in a significant direct impact to the existing levels of service on the adjacent streets since a stable flow of traffic is maintained along the street segments. The Engineering Department also indicated the proposed project is not anticipated to have any significant individual or cumulative impacts to the circulation system or degrade the levels of service on any of the adjacent roadways or intersections since the project would not add 200 additional trips to a circulation element street with a service level below the mid-range of LOS D, and the

v/c ratio would not increase more than 0.02. The annexed portion of Bernardo Avenue (approximately 485 linear feet) can be adequately maintained by the City of Escondido.

4. Utilities & Drainage – Water service for the subject site is currently provided by Rincon Water. The applicant has entered into an agreement with the Water District to provide water service to the project. This will continue after annexation. The lot addressed off Vereda Callada is already connected to City sewer. It was granted an emergency Out of Agency Sewer Service Agreement in 2010 by San Diego LAFCO. Service to the remaining two properties would be provided by connecting to the existing sewer main in Bernardo Avenue. Prior to the two vacant properties developing, a capacity study would need to be submitted to our Utilities Division for review. The development of the site would not cause any diversion to or from the existing watershed. The project would be required to comply with National Pollution Discharge Elimination System (NPDES) standards and standard BMPs would be implemented during construction to adequately control erosion and siltation.

C. ENVIRONMENTAL STATUS

1. In compliance with CEQA, a Mitigated Negative Declaration (MND, case no.: ENV11-0002) was issued for the project on May 19, 2011.
2. The mailing of the MND Public Review Notice prompted neighbors with questions and concerns to contact Planning, but no additional environmental issues were identified. With the future development of a single family residence on each of the vacant lots, a pad would have to be created at an elevation that would allow the sewer lateral to gravity flow to the City's sewer main in Bernardo Avenue. The grading for the pads would potentially impact Coast Live Oak trees. The project will be required to plant replacement trees for the Oaks removed and to maintain existing grades and drainage flow around the remaining Oaks.
3. It is staff's opinion that with the implementation of the mitigation measures and conditions of approval, the project is not expected to have any significant impacts.

D. CONFORMANCE WITH CITY POLICY

General Plan – The three properties (totaling 3.42 acres) which are proposed for prezone and annexation have a General Plan land-use designation of Estate I, which would allow up to 1 du/ac. Each of the existing lots is over 1 acre in size and one of the subject properties is already developed with a single-family residence. The two remaining lots are largely undeveloped and vacant. The future construction of a single family residence on each of these lots would be consistent with the Estate I designation. Many of the surrounding lots, which were legally established, are 1 acre or larger in size and are County zoned A-70 (limited agriculture, 1 du/acre). The City of Escondido's General Plan designates these properties as Estate I (40,000 SF min. lot size, 1 du/acre). Essentially the status of these three properties as 1-acre single family residential lots would not change after annexation and no increase in density would be allowed and none of the lots could be split.

Care Facilities – The applicant recently submitted an application to the State of California's Department of Social Service's Community Care Licensing Division for a 6-bed residential care facility at the existing house. The State mandates that all jurisdictions within California allow care facilities in residential neighborhoods of 6 beds or less by right. The City's zoning code stipulates that requests for facilities of more than 6 beds must apply for a Conditional Use Permit which requires a public hearing and notices sent to property owners within 500 feet of the site. The owner could potentially build single family homes on the two vacant properties and establish 6-bed facilities in each. Each permit would be subject only to the approval of the State Community Care Licensing agency. If the lots are annexed into the City, any applications for a care facility of more than 6 beds would require a Conditional Use Permit.

Annexation of Roadway Segments – This discusses the applicant’s request to change the Conditions of Approval pursuant to the letter dated 9/1/11. When the City Reviews properties requesting to annex, often the logical boundary to be drawn must also include adjacent roadway segments. These are necessary to create contiguity and to provide access to the properties being annexed. Upon annexation, the roadway segment becomes part of the City’s jurisdiction and thus it is responsible for maintenance, repair and providing City services along that roadway. In this case, the adjacent section of Bernardo Avenue will be annexed to provide the contiguity to the existing City boundary. The road segment adjacent to the two vacant subject properties is already improved to City standards from the western edge to 10 feet easterly of the center line. Once the easterly edge is improved, this segment can provide access to all three of the properties being annexed without impacts to other roadways and intersections. Improvements along Bernardo Avenue would be the responsibility of the owner(s) at the time either of the vacant lots develops. In the case of Vereda Callada, this is currently a privately maintained rural country road. The roadway is far below the City’s street standards and improving this segment to meet City standards would involve expensive construction impacting a wide swath of adjacent county properties. These would include both the two subject properties fronting Vereda Callada and those across the street due to the existing topography. These impacts have not been assessed environmentally. For these reasons, and the fact that annexing Vereda Callada would not create any additional contiguity to existing City boundaries, the City does not want to be responsible for Vereda Callada and has asked the applicant’s engineer to provide a plan for access to the three subject lots from Bernardo Avenue and to relinquish access to Vereda Callada. When the annexation goes forward to San Diego LAFCO, it is possible that that commission could insist on the City accepting Vereda Callada as part of this annexation. In that event, a condition has been added to those in Exhibit B (see attached), which stipulates that Vereda Callada be improved to City Standards. Staff recommends maintaining the Conditions of Approval as currently drafted and shown in Exhibit B.

Conditions of Approval/Acceptance of Prior Built Structures, Roadways and Infrastructure – This discusses the applicant’s request to change the Conditions of Approval pursuant to the letter dated 9/1/11. It has been the long-standing policy of the City not to accept illegal uses or structures as part of any annexation. Existing structures being annexed must always provide documentary proof that they were legally constructed in the County or be removed prior to annexation. Since LAFCO determines the boundaries of annexations as it relates to streets, and the City does not yet have the final determination from LAFCO, the City’s conditions must reflect the need for improvements to roadways, closures or reconstruction of existing driveways, future dedications and access restrictions. The Conditions of Approval for this project related to the timing and extent of improvements along Bernardo Avenue and Vereda Callada have been crafted to provide for a better coordinated design and construction of improvements overall with less impact on traffic safety and the surrounding neighborhood. Staff recommends maintaining the Conditions of Approval as currently drafted and shown in Exhibit B.

E. ANALYSIS

Whether the proposed RE-40 zoning is appropriate and adequately reflects the development character of the properties and those adjacent.

The rezoning designation would be RE-40 (Residential Estate, 40,000 SF minimum lot size), a change from the County zoning of A-70 (limited agriculture, 1 du/acre minimum). The RE-40 zoning is consistent with the area’s General Plan designation of Estate I as it exists east of Bernardo Avenue. The proposed project would not alter the residential land use in the area and the property owners could develop, make further improvements, and/or additions to their existing single-family residence provided they are in compliance with the City’s RE-40 zone standards. All three properties are greater in size than one acre and thus larger than the 40,000 SF minimum lot size under the proposed RE-40 prezone designation. They would therefore all be conforming. None of the properties are large enough to split and no increase in the number of lots is possible. The project is consistent with the development character of the area, which is single family homes on large lots generally over 1 acre in size. Surrounding properties within the County also are designated Estate I in the City’s General Plan, there-

fore annexation of adjacent properties in the future would result in consistent zoning and land use designation.

Whether the conceptual access and grading designs are appropriate for the site.

No permits to develop are part of this current request. However, the project's applicant, engineer and biologist have worked with City Staff to revise and refine a conceptual development plan that minimizes impacts to species on the three subject properties as well as impacts to adjacent properties if and when future development occurs. The driveway connecting the existing residence at 1029 Vereda Callada will be abandoned and a new access drive from Bernardo Avenue will replace it prior to recordation of the annexation. By shifting future residential building pads away from Oak woodland and incorporating retaining walls on the properties closest to Bernardo Avenue, impact to the most sensitive species, the Mesa Oaks, will be avoided. Overall tree loss would be limited to smaller Coastal Live Oaks and non-native ornamentals according to the latest plan. As a Mitigation Measure, these Oaks will have to be replaced by specimen stock of the same variety at a 1:1 or 2:1 ratio depending on the caliper of each tree lost. Grading will be below heights requiring a Grading Exemption. All development will be required to meet the most current Stormwater standards at the time of permit issuance.

Whether the proposed rezoning and annexation should be extended to include surrounding properties.

As suggested by San Diego LAFCO, a survey was conducted of four properties immediately to the south to gauge property owner interest in the annexation. None were interested in joining the request. San Diego LAFCO reviewed the original 3-lot annexation request and stated that they were supportive of the configuration. Various City and County departments have also received the proposed prezone and annexation request for review and concur that the subject properties are within the Escondido Sphere of Influence and can be adequately supplied services by the City. Utilities Department did, however, say that the existing sewer capacity in this area is limited and additional properties annexing now may require costly infrastructure upgrades. LAFCO agrees that bringing additional properties in at this time may be premature. Therefore, staff feels the proposed boundary for the prezone and annexation of three lots is appropriate as currently envisioned.

SUPPLEMENT TO STAFF REPORT/DETAILS OF REQUEST

A. PHYSICAL CHARACTERISTICS

The properties range in size from 1.04 to 1.28 acres. Vegetation on the 3.42 acres consists of an Urban/Developed vegetation community (ornamental landscaping and areas of non-native vegetation which is mowed periodically to prevent weed growth and fire danger to adjacent residences) as well as Coastal Live Oak Woodland with the understory removed. No existing landscaping is proposed for removal under this Annexation/Prezone request.

C. GENERAL PLAN COMPLIANCE

1. Land Use Element Designation: The proposed prezone to RE-40 (Residential Estate, 40,000 SF minimum lot size) from the current County A-70 (limited agriculture, 1 du/acre) zone is consistent with the current Estate I General Plan land-use designation.
2. Circulation Element: The properties are presently located near the intersection of Bernardo Avenue and Vereda Callada. Bernardo Avenue is currently classified as a Local Collector (66'/42') in the Circulation Element. Vereda Callada is not a Circulation Element street, but a County-owned, privately maintained rural road. The conceptual design accompanying this annexation request abandons the existing driveway off Vereda Callada and proposes that all three properties gain future access off of Bernardo Avenue. This would not significantly impact levels-of-service to the adjacent streets or intersections.
3. Noise Element: None of the properties proposing to annex are located within a projected noise contour.
4. Trails: The City's Master Plan for Parks, Trails and Open Space does not identify any proposed trails that would affect the properties proposing to annex.
5. Hillside/Ridgeline: There are no skyline or intermediate ridges within the proposed prezone area.

EXHIBIT "A"

FINDINGS OF FACT/ FACTORS TO BE CONSIDERED PHG 09-0021 PHG 09-0022

Prezone/Annexation

1. The public health, safety and welfare will not be adversely affected by the proposed change since the zoning will be consistent with the existing Estate I General Plan designation on the subject properties and the primary use of the properties will remain residential.
2. The properties involved are suitable for the uses permitted by the proposed zone since the permitted use will be the same single-family residential use permitted by the previous County zoning. In addition, the proposed density is consistent with surrounding residential development.
3. Annexation will result in jurisdictional detachment from County Service Area (CSA) No. 135 (San Diego Regional Communications System). Fire protection which is currently provided by the City of Escondido through an agreement with the County will continue, but come under the City of Escondido Fire Department jurisdiction. Police protection will change from County Sherriff to the City of Escondido Police Department jurisdiction.
4. All three properties are greater in size than one acre and thus larger than the 40,000 SF minimum lot size under the proposed RE-40 prezone designation. They would therefore all be conforming. None of the properties are large enough to split and no increase in the number of lots is possible.
5. The proposed prezone designation of RE-40 is consistent with the Estate I designations of the General Plan which allows up to 1 du/acre and a minimum lot size of 40,000 SF. The combined total of the three properties involved in this request is 3.42 acres or 148,975 SF, making the average lot size 49,658 SF.
6. The proposed rezoning will not conflict with any specific development plans for the properties, since none are being requested. The conceptual development plan is only to satisfy a San Diego LAFCO requirement. Any future development will be subject to the provisions of the Escondido General Plan and Zoning Code upon annexation.
7. If and when tree removal to accommodate grading on these properties is to be done, the current property owner will be required to mitigate for the removal of the more sensitive tree species according to the Mitigation Measures as detailed in the Mitigated Negative Declaration (MND case ENV 11-0002) and per the MND's signed Enforceable Commitment.

EXHIBIT “B”

CONDITIONS OF APPROVAL

PHG 09-00021, PHG 09-0022

General

1. All construction shall comply with all applicable requirements of the Escondido Zoning Code and requirements of the Planning Division, Director of Building, and the Fire Chief.
2. The legal description attached to the application has been provided by the applicant and neither the City of Escondido nor any of its employees, commissioners, or board members assume responsibility for the accuracy of said legal description.
3. The City of Escondido hereby notifies the applicant that State Law (SB 1535) effective January 1, 2007, requires certain projects to pay fees for purposes of funding the California Department of Fish and Game. If the project is found to have a significant impact to wildlife resources and/or sensitive habitat, in accordance with state law, the applicant should remit to the City of Escondido Planning Division, within two (2) working days of the effective date of this approval (the “effective date” being the end of the appeal period, if applicable), a certified check payable to “County Clerk”, in the current amount required for a project with a Mitigated Negative Declaration. These fees must also include the current authorized County administrative handling fee. Failure to remit the required fees in full within the time specified above will result in County notification to the State that a fee was required but not paid, and could result in State imposed penalties and recovery under the provisions of the Revenue and Taxation code. Commencing January 1, 2007, the State Clearinghouse and/or County Clerk will not accept or post a Notice of Determination filed by a lead agency unless it is accompanied by one of the following: 1) a check with the correct Fish and Game filing fee payment, 2) a receipt or other proof of payment showing previous payment of the filing fee for the same project, or 3) a completed form from the Department of Fish and Game documenting the Department’s determination that the project will have no effect on fish and wildlife. If the required filing fee is not paid for a project, the project will not be operative, vested or final and any local permits issued for the project will be invalid (Section 711.4(c)(3) of the Fish and Game Code).

Planning

1. Documentation or findings pursuant to Section 33-1241 shall be submitted to the Planning Division for any accessory structures, or additions to existing structures on the three lots being annexed, demonstrating that each was constructed legally in the County. Each structure without supporting documentation or findings must be removed prior to final annexation recordation.
2. Any improvements proposed for the subject lots will be evaluated for conformance with the mitigation measures identified in the Mitigated Negative Declaration (City log no. ENV11-0002) prepared for this project (see the Mitigation Monitoring’s Attachment “A”).

Utilities

1. The two vacant properties fronting Bernardo Avenue (APNs 238-400-1200 and 238-400-3200) will be required to submit a capacity study to the City’s Utilities Division prior to development, which must demonstrate that enough remaining capacity exists to adequately serve these properties.

Engineering

STREET IMPROVEMENTS AND TRAFFIC

1. All required street improvements shall be provided with adequate right-of-way and improved in accordance with the City of Escondido's Design Standards and SUSMP.
2. Prior to recordation of the annexation, an Irrevocable Offer of Dedication to the City of Escondido for 11 feet of right-of-way along Vereda Callada along the frontages of the two northerly lots, APNs 238-400-1100 and 238-400-1200, shall be executed by the owner.
3. Bernardo Avenue shall be improved to Local Collector Street standards along the frontages of APNs 238-400-1200 and 238-400-3200, as a condition of the first building permit for either lot. Improvement plans shall be approved by the City Engineer and all improvements bonded for, prior to the issuance of a building permit. All improvements shall be completed prior to the issuance of an occupancy permit for either lot.

The City of Escondido intends to approve the annexation request with its new jurisdictional boundary to include the adjacent portion of Bernardo Avenue but not Vereda Callada. The following conditions would apply to this situation:

Engineering

1. Prior to recordation of the annexation, documents shall be submitted to and approved by the Engineering Department for the relinquishment of access rights to Vereda Callada along the frontages of the two northerly lots, APNs 238-400-1100 and 1200, to be recorded concurrently with the annexation.
2. Upon final LAFCO approval of the annexation, grading plans for the new driveway access from Bernardo Avenue to the existing house on APN 238-400-1100 shall be submitted to and approved by the City's Engineering Department, and the driveway shall be constructed or a bond for the construction shall be provided, prior to the recordation of the annexation. These driveway improvements shall be designed to accommodate the future Bernardo Avenue street improvements.

Fire

1. The applicant's conceptual development plan includes closing the existing driveway currently connecting APN 238-400-1100 with Vereda Callada and creating a new access driveway for this lot from Bernardo Avenue and extending over a utility easement between APNs 238-400-1200 and 238-400-3200. The new driveway shall be to City Standards including a minimum 16' width with no parking, the grade not to exceed 20%, and shall include a fire turn-around acceptable to the City's Fire Department. Driveways with grades over 15% must be of Portland cement with a rough broom finish.

In the event that Vereda Callada is included in the annexation, the Engineering conditions #1 & #2 and Fire condition #1 (see above) shall be omitted and the following Engineering condition will be added:

1. Vereda Callada shall be improved to Residential Street standards (half street +12') along APN 238-400-1100 and 238-400-1200 as a condition of annexation. Improvement plans shall be approved by the City Engineer and all improvements bonded for prior to completion of annexation. Improvements to Vereda Callada would also necessitate further environmental review.