

**MINUTES OF MEETING**  
**EAST COUNTY BOARD OF ZONING ADJUSTMENTS**  
**JANUARY 12, 2006**  
**(APPROVED MARCH 30, 2006)**

The meeting was held at the hour of 1:30 p.m. in the Council Chambers, City of Pleasanton, 200 Old Bernal Road, Pleasanton, California.

**FIELD TRIP: 9:00 p.m.**

**MEMBERS PRESENT:** Members Jon Harvey, Chair; Larry Gosselin and Sblend Sblendorio

**OTHERS PRESENT:** Brett Lucas, Planner

**FIELD TRIP:** The meeting adjourned to the field and the following property was visited:

1. **STEVE POWELL/ALFRED RHEINHEIMER, CONDITIONAL USE PERMIT, C-8291** ~ Application to allow a winery with tasting room, art and event center and 38 parking spaces, in an "A" (Agricultural) District, located at 5143 Tesla Road, south side, approximately 330 feet east of Mines Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099A-2340-002-00. (Continued from September 29, October 27 and December 15, 2005).
2. **DONALD & LISA ARNOLD, CONDITIONAL USE PERMIT, C-8467** ~ Application to allow continued operation of an on-site office trailer, in a P-D-ZU-1391 (Planned Development, 1391<sup>st</sup> Zoning Unit) District, located at 9950 Calaveras Road, southwest side, corner south of I-680, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 096-0335-002-07.
3. **TERRI PERSONS, VARIANCE, V-11973** ~ Application to approve as a building site a parcel reduced in area from the required 100 acres to 34 acres, in an "A" (Agricultural) District, located at 8875 Dublin Canyon Road, south side, approximately 1.75 mile east of Palo Verde Road, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 085A-0800-006-14.

**REGULAR MEETING: 1:30 p.m.**

**MEMBERS PRESENT:** Members Jon Harvey, Chair; Larry Gosselin and Sblend Sblendorio

**OTHERS PRESENT:** L. Darryl Gray, Assistant Planning Director; Brian Washington, County Counsel; and Nilma Singh, Recording Secretary.

There were approximately twenty-two people in the audience.

**CALL TO ORDER:** The meeting was called to order by the Chair at 1:35 p.m.

**OPEN FORUM:** Open forum is provided for any members of the public wishing to speak on an item not listed on the agenda. Each speaker is limited to three (3) minutes. No one requested to be heard under open forum.

**ANNOUNCEMENTS BY THE CHAIR:** The Chair announced that Regular Calendar items 4 and 5 be moved to the Consent Calendar, to be continued per staff recommendation to February 23; and Regular Calendar item #9 be heard as the first item.

**CONSENT CALENDAR:**

1. **MICHAEL GBADEBO, CONDITIONAL USE PERMIT, C-8430** ~ Application to allow continued operation of an engineering testing facility, in a PD-ZU-1751 (Planned Development, 1751<sup>st</sup> Zoning Unit) District, located at 9959 Calaveras Road, north side corner, northeast of I-680, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 096-0335-002-08 and 096-0335-002-09. (Continued from December 15, 2005; to be continued without discussion to February 23, 2006).
  
4. **ROBERT & CAROL MOLINARO, CONDITIONAL USE PERMIT, C-8418** ~ Application to expand an existing winery with winery related use by the construction of a new 15,000 square foot event center in a PD (Planned Development) District, located at 7986 Tesla Road, north side corner, northeast of Greenville Road, Livermore area of unincorporated Alameda County, designated Assessor's Parcel Number: 099A-1602-013-02. (Continued from July 28, September 29, October 27 and December 15, 2005) – **Moved from the Regular Calendar.**
  
5. **DONALD & LISA ARNOLD, CONDITIONAL USE PERMIT, C-8467** ~ Application to allow continued operation of an on-site office trailer, in a P-D-ZU-1391 (Planned Development, 1391<sup>st</sup> Zoning Unit) District, located at 9950 Calaveras Road, southwest side, corner south of I-680, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 096-0335-002-07 – **Moved from the Regular Calendar.**

Member Gosselin made the motion to approve the Consent Calendar per staff recommendations and with the above modifications. Member Sblendorio seconded and motion carried 3/0.

**REGULAR CALENDAR:**

1. **TERRI PERSONS, VARIANCE, V-11973** ~ Application to approve as a building site a parcel reduced in area from the required 100 acres to 34 acres, in an "A" (Agricultural) District, located at 8875 Dublin Canyon Road, south side, approximately 1.75 miles east of Palo Verde Road, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 085A-0800-006-14 – **moved as the first item on Regular Calendar.**

This item was moved to the beginning of the Regular Calendar as item #1. Mr. Gray summarized the staff report. Member Sblendorio asked if there would be an issue with lighting. Mr. Gray explained that issues such as lighting, appearance and location of the house will be covered under the Site Development Review process. Terri Persons, applicant, was available for any questions. No other public testimony was submitted. Member Sblendorio made the motion to approve the application subject to the two recommended conditions and Member Gosselin seconded. Motion carried 3/0.

1. **WINDWORKS, INC., CONDITIONAL USE PERMIT, C-8216** ~ Application to allow continued operation of an existing wind generation facility, in an "A-B-E" (Agricultural, 160 acres Minimum Building Site Area) District, located at 12251 North Flynn Road, east side of South Flynn Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099A-1810-001-00. (Continued from November 13, December 11, 2003; January 29, February 19, March 25, April 29, July 29, August 12, September 23, October 28 and November 18, 2004, January 27, February 10 and 24, 2005, March 24, April 28, June 23, August 25, September 29, October 27 and December 15, 2005).
  
2. **ALTAMONT INFRASTRUCTURE COMPANY/ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY, CONDITIONAL USE PERMIT, C-8243** ~ Application to allow continued operation of an existing wind generation facility consisting of 404 turbines, in an "A-B-E" (Agricultural, 160 acre Minimum Building Site Area) District, located at 11700 and 11701 North Flynn Road, east corner, southwest of South Flynn Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Numbers: 099A-1770-002-01, 099A-1770-002-02, 099A-1770-002-03, 099A-1780-001-04, 099A-1790-003-00 and 099A-1810-001-00. (Continued from August 12, September 23, October 28, November 18, 2004, January 27, February 10 and 24, March 24, April 28, June 23, August 25, September 29, October 27 and December 15, 2005).

Mr. Gray recommended that items 1 (C-8216) and 2 (C-8243) both be acted simultaneously and the Board concurred. He further summarized the staff report adding that staff is recommending the same twenty-nine conditions as previously approved by the Board of Supervisors. Establishing the Scientific Review Committee (SRC) is moving forward with progress on the committee selection process. The Board requested clarification on the exhibits, language, revisions and the conditions of approval adopted by the Board of Supervisors (BOS).

The Chair announced a five-minute recess at the request from Mr. Gray.

The meeting reconvened. Mr. Gray clarified that the Board's action of an approval would be subject to the exhibits contained in the EBZA packet in addition to those revisions in Board Resolution 2005-463 dated September 22, 2005. Member Gosselin stated that he concurred with the conclusion as contained in the report of the California Energy Commission published in August, 2004. As such, he requested that this report be entered into the record for future use. He had noticed politicalization in the Working Group and, as such, was concerned with the same in the Scientific Review Committee. Thus, he suggested that the Board consider conditioning some of the terms of the interactions with the Committee to ensure that it did not repeat. Mr. Washington, County Counsel, suggested that the Board request Planning Director's input on the terms. The Board of Supervisors Land Use and Planning Committee met last Monday for discussion on the Review Committee and these discussions will be continued at the next meeting on February 24<sup>th</sup> which would provide an opportunity for interactions. A discussion followed. Member Gosselin also expressed concerns with the time frame.

Nicki Carlsen, Attorney representing the Applicants, stated that mitigation measures have been on-going and some turbines have been shut down. Nominees for the Scientific Review Committee have been submitted to the Board of Supervisors and a hearing by the subcommittee has been scheduled for

February 7<sup>th</sup> which will be followed by the full Board of Supervisors in March. The only missing nominee is from the County. She agreed that the Administrator of records of the entire BOS be included and explained that a process exists for this Board's participation in the SRC as outlined in Exhibit B, page 2. In response to Member Gosselin regarding SRC participants, Ms. Carlsen stated that there is a Federal and State agency nominee and agreed that it would be helpful to have this Board's participation. There is a list of agenda items and the RSC will prioritize. Member Gosselin asked if models have been identified and Ms. Carlsen replied no. This will also be the work of the Committee and she further suggested that perhaps this Board could provide topics. Mr. Gray pointed out the issue of conflict of interest.

William Damon, representing Windworks, Inc., said he was available to answer any questions and urged an approval. He confirmed that all turbines under consideration under these two permits have been shut down. Member Sblendorio requested information on renewable energy. Mr. Gray suggested a field trip and the Chair agreed. Mr. Damon, in response to Member Gosselin, said he had no concerns with the BZA's involvement with the SRC and in response to the Chair, added that he was comfortable with the changes and supported the formation of the SRC.

Roy Cornwell stated that the reason for the shutdown is the report which he thought was in error and strongly questioned the assumption of the bird deaths. There were too many assumptions. He concurred with the Energy Commission Report. Repowering is needed and, as such, urged approval of the permits.

Public testimony was closed. The Chair stated that he viewed the SRC differently from the Working Group since the SRC has a narrower scope. He was interested in the number of bird deaths and the progress of SRC in future. The only correspondence received on these applications has been from the Audubon Society. Member Gosselin felt that although the move was in the right direction, he hoped for a shorter time frame in future. The Chair requested clarification on Condition #9 from September 29<sup>th</sup> staff report. A discussion followed on the time frame of the monitoring program. Mr. Gray recommended that the Board's motion include, in reference to Condition #9, as modified by Board of Supervisors on September 22, 2005. Due to the same correction in numerous conditions, the Chair suggested deleting the words Condition #9. Mr. Gray also suggested agendizing the matter next month for an up-date and perhaps periodically after that. The Chair said he was interested in the funding mechanism. Ms. Carlsen replied that the Applicants were the primary source although there were still a lot of open issues.

The Chair made the motion to move staff recommendation and approve the two applications with the Conditions of Approval as contained in December 15<sup>th</sup> staff report as modified by BOS September 22<sup>nd</sup> Summary Minute Action. Member Gosselin seconded the motion which carried 3/0.

3. **STEVE POWELL/ALFRED RHEINHEIMER, CONDITIONAL USE PERMIT, C-8291** ~ Application to allow a winery with tasting room, art and event center and 38 parking spaces, in an "A" (Agricultural) District, located at 5143 Tesla Road, south side, approximately 330 feet east of Mines Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099A-2340-002-00. (Continued from September 29, October 27 and December 15, 2005).

Mr. Gray summarized the staff report. Two letters have been received from Donald Maroney, property owner at 2677 Decker Lane dated December 8<sup>th</sup>, 2005, and Warren and Judy Mcpherson, property owner at 5167 Tesla Road dated January 7, 2006. Building Department confirmed yesterday, that no permit has been issued to-date and recommended no action until the Building Department is satisfied and environmental work is complete although the permit could be denied. The Chair confirmed that the Board had made a site visit.

Steve Powell, Applicant, stated that all information requested from him had been submitted about seven months ago. His business provides for the public benefit and is compatible to the Livermore Valley Plan. Member Sblendorio asked if his operation was similar to others in the neighborhood. In response, Mr. Powell said though similar, there are differences which included a smaller lot with outdoor venue (tent) for weddings, without a septic system but with a portable potty; about two functions weekly with wine-tasting, with about 75 attendees, and approximately 10-20 week-end functions with about 100-120 attendees. He uses off-site catering services and is committed to purchasing a potty-trailer. The southwest corner will include trees, a vineyard, bees/honey and olive trees. Member Sblendorio asked if he has had contact with Livermore Valley Winegrowers and Tri-Valley Conservancy and if there as a storm water management plan. Mr. Powell replied that he had contacted the Conservancy but since his property was very small in comparison at only 4.77 acres, there were not many options available. There was no storm water management plan. Regarding the public benefit issue, most of the neighboring facilities were booked for the next two years and, as such, his facility can provide the additional services.

Michael Tuuri, Attorney, stated that he has received an email from the Building Department that one of the specifications requested in August was in error. He concurred with the continuance.

Warren and Judy McPherson spoke in opposition. Mr. McPherson's concerns/issues included the following: tanks and piping installed were for what purpose, a septic or water treatment system; containment or leach system; permit for the wine tasting and retail business; lack of building permit for existing structures and final inspection for the handicapped bathroom; future buildings on site; maximum number for caretakers units; violation enforcement; lack of a detailed event map; and lack of response from county agencies regarding his concerns. The Board responded that Mr. McPherson could contact individual departments, violations/enforcement will be handled by the Code Enforcement, no permit is required for a caretaker's unit but for a secondary unit and the tanks/pipes were for an engineered water treatment. In response to the Board, Mr. McPherson said he has no objection to the wine or tasting room but opposed the event center and the two weekly events. He also had traffic concerns.

Judy McPherson requested clarification on the number of comment letter received as stated in the staff report on page 3 and the first paragraph on page 6 regarding percentages and square footage. Her concerns included the vagueness of event plan, flood, lack of permits for the last five years and outside events. She requested an alternative contact number, perhaps a boardmember. She did not support an event center.

Mr. Powell, in rebuttal, said that there were several event centers in the area and he requested to receive a fair opportunity.

Public testimony was closed. Member Gosselin noted the need for a greater input from the community and involved agencies as there is a regional impact. Mr. Gray suggested a workshop and if the Board's finding is that there is an impact on a County policy, the matter could be referred to the Planning Commission. Member Sblendorio requested information of other existing neighboring event centers for the next hearing. He felt that it was important for the applicant to know that the operation is not the sole problem. The Chair felt that the intent of South Livermore Valley Plan is in question. This is not a continued operation but a new one and suggested perhaps a short-term permit. Member Gosselin agreed adding he was also concerned with spill-over on Mines Road and Buena Vista. He made the motion to continue the matter to February 23<sup>rd</sup> during which time staff will provide future guidance and Member Sblendorio seconded. Mr. Gray indicated a workshop adding that the Neg Dec will be mailed to the involved agencies for a formal response.

4. **ROBERT & CAROL MOLINARO, CONDITIONAL USE PERMIT, C-**

**8418** ~ Application to expand an existing winery with winery related use by the construction of a new 15,000 square foot event center in a PD (Planned Development) District, located at 7986 Tesla Road, north side corner, northeast of Greenville Road, Livermore area of unincorporated Alameda County, designated Assessor's Parcel Number: 099A-1602-013-02. (Continued from July 28, September 29, October 27 and December 15, 2005). **Moved to the Consent Calendar; to be continued to a future date.**

5. **DONALD & LISA ARNOLD, CONDITIONAL USE PERMIT, C-8467** ~ Application to allow continued operation of an on-site office trailer, in a P-D-ZU-1391 (Planned Development, 1391<sup>st</sup> Zoning Unit) District, located at 9950 Calaveras Road, southwest side, corner south of I-680, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 096-0335-002-07. **Moved to the Consent Calendar; to be continued without discussion, to allow renoticing.**
6. **DELWYN LOUNSBURY, VARIANCE, V-11895** ~ Application to approve as a building site one parcel reduced in size from 100 acres to 40.82 acres without frontage on an approved county road, in an A-CA (Cultivated Agriculture) District, located on Mines Road, west side, approximately 686 feet west of Del Valle Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099A-2420-006-03. (Continued from February 10 and 24, April 28, June 23, July 28, August 25 and September 29, 2005).

Mr. Gray presented the staff report. There is sufficient history and evidence in field to meet criteria of an access as the road does go up to the property. In response to Member Gosselin, he outlined the requirements of a private street which included access, width, surfacing, turnouts and grading.

Public testimony was called for. Mick Lamb, project surveyor, concurred with staff, and pointed out the location of the 35 foot easement which provides established legal right for egress and ingress, and the neighboring parcels with dwellings, on the map. The road will be up-graded before the lot is developed. He also submitted photographs of the area, the road and the property adding that the owner was not interested in operating a winery or windfarm on his property.

Public testimony was closed. Member Gosselin noted that the East County is facing a shortage of rural landowners, and the conflict of open space and the desire to participate in agricultural activities. The Chair indicated that he was not leaning towards an approval without making a site visit. He asked Mr. Lamb if a continuance would be a hardship. Mr. West, a potential buyer, said the oak trees had been looked at by staff who had no concerns. Member Sblendorio said he was concerned with the removal of the oak trees on site and supported a site visit. Staff replied that an additional condition could be included to preserve the oak trees. Member Gosselin made the motion for a continuance to February 23<sup>rd</sup> for a site visit and Member Sblendorio seconded. Motion carried 3/0.

7. **DAN DEL ARROZ/LAMB SURVEYING, INC., VARIANCE, V-11932** ~ Application to adjust two lot lines between two existing parcels and to approve as a building site a parcel with no frontage on an approved county road containing 10 acres where 100 acres are minimum, in an "A" (Agricultural) District, located at 9745 Santos Ranch Road, west side, approximately 0.80 miles west of Foothill Road, Pleasanton area of unincorporated Alameda County, bearing Assessor's

Parcel Number: 0941-2300-002-09. (Continued from June 23, July 28, August 25, September 29 and December 15, 2005).

Member Sblendorio recused himself from consideration of this application. Mr. Gray noted that the matter is being recommended for a continuance to February 23, 2006.

Public testimony was called for. Mr. Del Arroz requested the reasons for the continuance recommendation. Mr. Gray replied that staff had not received a copy of the grant deed.

Mick Lamb, project surveyor, stated that a Certificate of Compliance has been completed for this property.

Public testimony was closed. The Chair made the motion for a continuance to February 23<sup>rd</sup> and Member Gosselin seconded. Motion carried 2/1 with Member Sblendorio recused.

Member Sblendorio re-joined the hearing.

8. **M. SILLS, JR., VARIANCE, V-11940** ~ Application to approve as a building site a parcel reduced in area from the required 320 acres to 40 acres and without frontage on an approved County road, in a A-B-E (Agricultural, 320 acres Minimum Building Site Area) District, located at 19600 Mines Road, west side, approximately 150 feet north of Vine Avenue, Pleasanton area of unincorporated Alameda County, bearing Assessor's Parcel Number: 99A-2605-007-00. (Continued from July 28, September 29 and December 15, 2005).

Mr. Gray summarized the staff report. Although staff has recommended an approval subject to two conditions, the Applicants were not available and since the other two similar variances on the agenda have been continued, Mr. Gray suggested a continuance. No public testimony was submitted. Member Gosselin made the motion to continue the matter to February 23<sup>rd</sup> and Member Sblendorio seconded. Motion carried 3/0.

9. **TERRI PERSONS, VARIANCE, V-11973** ~ Application to approve as a building site a parcel reduced in area from the required 100 acres to 34 acres, in an "A" (Agricultural) District, located at 8875 Dublin Canyon Road, south side, approximately 1.75 miles east of Palo Verde Road, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 085A-0800-006-14 – **moved as the first item on Regular Calendar.**

This item was moved to the beginning of the Regular Calendar as item #1. Mr. Gray summarized the staff report. Member Sblendorio asked if there would be an issue with lighting. Mr. Gray explained that these issues would be covered by the Site Development Review process. No public testimony was submitted although the Applicant, Ms. Persons was available to answer any questions. In response to the Chair, Mr. Gray indicated that the adjacent neighbor was located on the east side of the property. Member Sblendorio made the motion for an approval and Member Gosselin seconded. Motion carried 3/0.

**Approval of Minutes** – December 15, 2005. Approval of the December 15<sup>th</sup> Minutes was continued to the next meeting on February 23, 2006.

**STAFF COMMENTS & CORRESPONDENCE:** Staff welcomed Member Sblendorio.

**CHAIR'S REPORT:** None.

**BOARD ANNOUNCEMENTS, COMMENTS AND REPORTS:** None.

**ADJOURNMENT:** There being no further business, the hearing was adjourned at 5:35 p.m.

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**CHRIS BAZAR - SECRETARY**  
**EAST COUNTY BOARD OF ZONING ADJUSTMENTS**