

MINUTES OF MEETING
EAST COUNTY BOARD OF ZONING ADJUSTMENTS
MARCH 24, 2005
(APPROVED APRIL 28, 2005)

The meeting was held at the hour of 1:30 p.m. in the Conference Room of the Public Works Operations Building, 4825 Gleason Drive, Dublin, California.

FIELD TRIP: 9:00 p.m.

MEMBERS PRESENT: Members Jon Harvey, Chair; Donna Flavetta, Larry Gosselin

OTHERS PRESENT: L. Darryl Gray, Assistant Planning Director.

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

1. **ARIS KRIMETZ/WENTE BROTHERS, CONDITIONAL USE PERMIT, C-8370** – Application to allow continued operation of a winery with winery-related activities, in an A-CA (Agricultural – Cultivated Agriculture) District, located at 3005 Mines Road, west side, corner of Tesla Road, unincorporated Livermore area of Alameda County, bearing Assessor’s Parcel Number: 099A-2300-001-04.
2. **ROBERT G. HIBNER, DVM, CONDITIONAL USE PERMIT, C-8373** – Application to allow continued operation of a veterinary hospital, in an ‘A’ (Agricultural) District, located at 2110 Greenville Road, east side, corner of Patterson Pass Road, unincorporated Livermore area of Alameda County, bearing Assessor’s Parcel Number: 099A-1650-001-03.
3. **PAUL MASON, VARIANCE, V-11911** – Application to approve as a building site a parcel reduced in size from 1.90 acres to 1.088 acres and construction of a new single family home providing a seven foot front yard where 20 feet is required, in a PD-ZU-2078 and MZU-1767 (Planned Development, 2078th Zoning Unit and 1767th Modified Zoning Unit) District, located at 11825 Niles Canyon Road, south side, southeast corner of Western Pacific Railroad Tracks, unincorporated Sunol area of Alameda County, bearing Assessor’s Parcel Number: 0096-0140-021-00. **Continued.**
4. **THOMAS VARDELL/FRANK YAO, VARIANCE, V-11914** – Application to approve as a building site one parcel reduced in size from the minimum 5 acres to 1.97 acres, in an R-1-L-B-E (Single Family Residence, Limited Agricultural Use, 5 acre Minimum Building Site Area) District, located at 947 Sycamore Road, southwest corner of the intersection with Alisal Road, unincorporated Pleasanton area of Alameda County, bearing Assessor’s Parcel Number: 0949-0007-001-07.

REGULAR MEETING: 1:30 p.m.

MEMBERS PRESENT: Members Jon Harvey, Chair; Donna Flavetta, Larry Gosselin.

OTHERS PRESENT: L. Darryl Gray, Assistant Planning Director, 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 1:45 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: None.

CONSENT CALENDAR:

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, unincorporated Livermore area of 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; to be continued without discussion to April 28, 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, unincorporated Livermore area of 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, 2005; to be continued without discussion to April 28, 2005).
3. **BIOSOLIDS RECYCLING, CONDITIONAL USE PERMIT, C-8311** - Application to allow continued operation of a sanitary landfill (land spreading of biosolids/digested sewage sludge) in an "A" (Agriculture) District, located in Section 26, off of Jess Ranch Road, approximately 1.5 miles west of Grant Line Road, in Unincorporated Mountain House Area of Alameda County, Designated Assessor's Parcel Numbers: 99B-6400-2-6 and 99B-7800-9. (Continued from September 23, October 28, November 18, 2004, and January 27, 2005; to be continued without discussion to April 28, 2005).

Member Gosselin made the motion to approve the Consent Calendar as recommended by staff and Member Flavetta seconded. Motion carried 3/0.

REGULAR CALENDAR:

1. **MICHAEL J. ECKERT, CONDITIONAL USE PERMIT, C-8309** –

Application to allow operation of a small winery and tasting room, in a R-1-L-B-E (Single Family Residence, Limited Agricultural Uses, 5 Acre Minimum Building Site Area, 100 feet Minimum Lot Width, 30 feet Front Yard Setback) District, located at 2416 Marina Avenue, north side, approximately 0.263 miles east of Arroyo Road, unincorporated Livermore area of Alameda County, bearing Assessor's Parcel Number: 0099-0700-011-03. (Continued from August 12, September 23, November 18, 2004 and January 27, 2005).

Mr. Gray summarized the staff report adding that since staff has just received plans, a continuance has been recommended. Member Gosselin asked if Condition #2 could be deleted without CEQA consequences. Mr. Gray replied that staff has not completed a full review of the barn but an evaluation could be completed if the Board required. The Chair indicated that he preferred a rigorous historical research and Member Gosselin suggested that if the Applicant has time concerns, then perhaps he should not be handicapped.

Public testimony was called for. Michael Eckert described the barn in detail: an old substantially modified barn with termite and a timber roof. His initial aim had been to remove it but due to a historical significance, if any, has not done so although a full study would be costly. Mr. Young from Planning Department did take photographs of the inside and outside. He further submitted to the Board a photograph of the proposed alternative equestrian 40x60 barn. In reference to traffic concerns, Mr. Eckert said he did not intend to have regular shipments from this site and will be working from a warehouse if needed. In response to Member Flavetta, he confirmed that the crusher was located outside, fermentation occurred inside, the tasting room was already in place and no special events have been planned. City of Livermore has also expressed interest in the building design. A more attractive building could be installed but Mr. Eckert felt that with a 15 foot height, alternatives were limited but thought that he could apply for a variance.

Public testimony was closed. Member Gosselin expressed concern with delays. Member Flavetta made a motion for a continuance to April 28, 2005. Mr. Gray pointed out that options were available as the Applicant could file a variance. Member Gosselin seconded the motion, which carried 3/0.

2. **AT&T WIRELESS SERVICES, INC., CONDITIONAL USE PERMIT, C-8343** – Application to allow continued operation of a wireless communication facility, in an "A" (Agricultural) District, located at 38000 Palomares Road, east side, northeast corner of Niles Canyon Road, Fremont area of unincorporated Alameda County, bearing Assessor's Parcel Number: 085A-5500-001-16 (Continued from January 27 and February 24, 2005).

Mr. Gray presented the staff report and in response to the Chair, explained that excess is through the earth station access road off Palomares Road.

Public testimony was called for. Marsha Converse, representing Cingular Wireless, further explained that the site was inaccessible to the general public due to the remoteness of the site. Mr. Gray asked for the possibility of moving to higher ground to enhance their service. Ms. Converse replied that she would have to check with the project engineer. The current site is not visible and if relocated to higher ground, would become more prominent.

Public testimony was closed. Member Gosselin made the motion to approve the application subject to the eighteen recommended conditions. Member Flavetta seconded the motion, which carried 3/0.

3. **CLIFTON MATHEWS, CONDITIONAL USE PERMIT, C-8352** - Application to allow operation of an outdoor recreational facility (Paintball Park) in an "A" (Agricultural) District located at 3726 May School Road, north side, 0.35 miles west of the intersection with Dagnino Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 0902-0004-007-00. (Continued from January 27 and February 24, 2005).

Member Gosselin recused himself. Mr. Gray discussed the issues/concerns noted at the previous public hearing including liability insurance which the Applicant is providing now; locations of other similar sites which were not in close proximity to residential homes; noise, fencing, security and paintballs.

Public testimony was called for. Clifton Mathews, Applicant, submitted a copy of his liability insurance. He pointed out that only about 10% overlap will occur since the facility operates only in the weekends and cattle will not be fenced immediately next to the park. He also submitted a plan for the buffer zone adding that he would like to discuss different types of buffering instead of scaling down his business.

Michelle Schwarz, property owner, said she has lived on site for twenty-one years and valued her privacy and the quietness as other residents. She also had the same concerns with leasing the rear of her property. The facility, located in the rear of the property, would not be detrimental to her living on site and, as such, would not have an impact on other neighbors other than perhaps noise to the westerly neighbors.

Ron Raggo stated that he has been a resident of Bel Roma Road for twenty-six years, and could hear Ms. Schwarz' dog and the train. He was not against the park but this was not an appropriate location. Looking out of his backyard, he will see the netting and hear the noise.

Jackie Bowles, property owner at 4788 Bel Roma, read a letter of opposition from Mr. Bill Fields who was unable to attend. His main concerns included close proximity to the surrounding homes; biodegradability of the paintballs; and liability insurance which the Applicant is now providing. He also suggested a cash bond. Netting is being proposed only for the north side. Cattle would be less than 50 yards and, as such, they could be hit or they could eat the paintballs. The paintballs could also hit traffic. At the community meeting, the Applicant had indicated that these were not his concerns. She also read her written testimony and her concerns included noise, liability and trespassing.

Lona McCallister, property owner at 4700 Bel Roma Road, asked how the Board could consider such a facility that neither promotes nor enhances agriculture, and if an Overlaying Zoning District was created under Measure D and if yes, why. She requested written material in response.

Sendy Souza, also a Bel Roma resident, said that other than water and noise, she, as an American Indian, has a personal relationship with wildlife, especially birds. This area has a lot of trees with eagles which will be affected.

Gail Vardanega stated that she had difficulty locating similar sites on the internet and further outlined the result of her research. Some of these sites were closed down due to inappropriateness of their locations, environmental concerns; agricultural and wildlife concerns; loss of privacy; violent nature and security. All neighbors are against the facility. This is an inappropriate location. There is a lack of focus to the west side of the park. Since most of the existing similar facilities are running at a full capacity, she asked why another facility was needed.

Darlene Bettencourt, in opposition, stated that she has submitted copies of written materials from several prior operators and owners who all agree that such a facility will have noise impacts, especially when

located on a small acreage. She will be able to see the facility from her driveway and voiced traffic concerns and affect on the animals.

Lou Mathew, Applicant's father, in support, felt that building sixteen houses in this location has changed the area. He pointed out the existences of other uses: Rod and Gun Club which has 500 parking spaces compared to the Applicant's 50, the Club's operational hours of which he submitted a copy of the Club's signage; and the riding stable which is much larger with on-going activities. Although netting is required on the east only, it will be installed on the south and north. Driving along North Livermore Avenue, one could see a PGE substation, abandoned cars, rusty machinery and low-down barns.

Sandy Mendall said she had fire concerns especially during the summer months. This is an agricultural area and such a facility would not be appropriate. She disagreed that there were 'junk' places and felt that Mr. Mathew's comment was an insult.

Ms. Jackie re-stated that this was an inappropriate location and if approved, the neighbors will file an appeal. Mr. Raggo added that he had bought his property because of its safe and quiet location. An approval will reduce the value of the neighboring properties. All other structures, as noted by Mr. Lou Mathews, did not invade the privacy.

Mr. Clifton Mathews, in rebuttal, pointed out that the traffic study does not reflect any impacts for May School Road and audible noise from Rod and Gun Club. The facility will be partially visible only and submitted photographs of the site from different locations. Netting is required for insurance purposes.

Cameron Newton, 4742 Bel Roma, in opposition, stated that perhaps trees could provide a buffer.

Public testimony was closed. The Chair felt that the Applicant has acted in good faith and submitted a good project but agreed with the neighbors that this was an inappropriate location. As such, he made the motion to deny the project. Member Flavetta agreed that although a permitted use, there has been a lot of opposition. She seconded the motion, which carried 2/0.

The Chair announced a recess.

Meeting reconvened at 3:50 p.m. and Member Gosselin returned for the remainder of the meeting.

4. **NEXTEL COMMUNICATIONS, CONDITIONAL USE PERMIT, C-8366** – Application to allow continued operation of an unmanned wireless communications facility, in an "A" (Agricultural) District, located at 11600 Pleasanton-Sunol Road, east side, corner of Paloma Way, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 0096-0376-007-02. (Continued from February 24, 2005).

Mr. Gray summarized the staff report adding that the facility has been in operation before the telecommunication policy became effective.

Public testimony was called for. Richard Tang, Zoning Consultant for Nextel Communications, noted the inconsistencies with the dates on page 4, first paragraph and Condition #18 on Page 8. In response, Mr. Gray modified the expiration date to January 27, 2010. Mr. Tang further submitted a color montage.

Public testimony was closed. Member Flavetta made the motion to approve the application subject to the eighteen recommended conditions and the above modification. Member Gosselin seconded the motion,

which carried 3/0.

5. **ARIS KRIMETZ/WENTE BROTHERS, CONDITIONAL USE PERMIT, C-8370** – Application to allow continued operation of a winery with winery-related activities, in an A-CA (Agricultural – Cultivated Agriculture) District, located at 3005 Mines Road, west side, corner of Tesla Road, unincorporated Livermore area of Alameda County, bearing Assessor’s Parcel Number: 099A-2300-001-04.

Mr. Gray presented the staff report adding that he had not seen any fire access/approval signs on the bridge.

Public testimony was called for. Aris Krimetz, Applicant, said his only concern was Condition #4. It would be difficult to dedicate 30 parking stalls. Typically, there are only five cars daily and during big events, staff parks the cars. Mr. Gray explained that the spaces do not have to be delineated. Member Gosselin asked for the width of the bridge. Mr. Krimetz replied that it was a short bridge, about 10-15 feet wide, and located on the subject property. The first bridge belonged to PGE.

Public testimony was closed. Member Gosselin made the motion to adopt staff’s findings and approve the application as recommended by staff with Condition #4 modified to reflect that the capacity for 30 parking spaces be provided. Member Flavetta seconded the motion, which carried 3/0.

6. **ROBERT G. HIBNER, DVM, CONDITIONAL USE PERMIT, C-8373** – Application to allow continued operation of a veterinary hospital, in an ‘A’ (Agricultural) District, located at 2110 Greenville Road, east side, corner of Patterson Pass Road, unincorporated Livermore area of Alameda County, bearing Assessor’s Parcel Number: 099A-1650-001-03.

Mr. Gray presented the staff report and recommended an approval for ten years with a new expiration date of March 24, 2015. The Chair asked if any correspondence has been received from the adjacent neighbors. Mr. Gray replied no. No public testimony was submitted. Member Flavetta made the motion to approve the application subject to the seven recommended conditions with the above modification. Member Gosselin seconded the motion, which carried 3/0.

7. **PAUL MASON, VARIANCE, V-11911** – Application to approve as a building site a parcel reduced in size from 1.90 acres to 1.088 acres and construction of a new single family home providing a seven foot front yard where 20 feet is required, in a PD-ZU-2078 and MZU-1767 (Planned Development, 2078th Zoning Unit and 1767th Modified Zoning Unit) District, located at 11825 Niles Canyon Road, south side, southeast corner of Western Pacific Railroad Tracks, unincorporated Sunol area of Alameda County, bearing Assessor’s Parcel Number: 0096-0140-021-00.

Mr. Gray noted staff’s recommendation for a continuance to April 28, 2005, adding that there have been some discussions with Environmental Health. No public testimony was submitted. Member Gosselin made the motion for a continuance to April 28 and Member Flavetta seconded. Motion carried 3/0.

8. **THOMAS VARDELL/FRANK YAO, VARIANCE, V-11914** – Application to approve as a building site one parcel reduced in size from the minimum 5 acres to

1.97 acres, in an R-1-L-B-E (Single Family Residence, Limited Agricultural Use, 5 acre Minimum Building Site Area) District, located at 969 Sycamore Road, southwest corner of the intersection with Alisal Road, unincorporated Pleasanton area of Alameda County, bearing Assessor's Parcel Number: 0949-0007-001-07.

Mr. Gray summarized the staff report. This parcel consisted of two recorded lots, one of which now needs a building site status. Although five acres is the required minimum currently, it was 40,000 square feet when the lot was created. No public testimony was submitted. Member Flavetta made a motion to approve the application per staff recommendation and Member Gosselin seconded. Motion carried 3/0.

Member Flavetta requested to be excused for the remainder of the meeting.

Approval of Minutes – February 24, 2005. The Chair made the motion to approve the Minutes as submitted and Member Gosselin seconded. Motion carried 2/0. Member Flavetta was excused.

STAFF COMMENTS & CORRESPONDENCE: None.

CHAIR'S REPORT: The Chair reminded the Board that the Economic Interest Forms were due before April 1, 2005.

BOARD ANNOUNCEMENTS, COMMENTS AND REPORTS: Member Gosselin gave a brief report on the status of the windfarm working group. He indicated that the group discussed having a smaller subcommittee to work on more detailed conditions and long term public review options to be brought back to the large group for consideration.

ADJOURNMENT: There being no further business, the hearing was adjourned at 4:30 p.m.

CHRIS BAZAR - SECRETARY
EAST COUNTY BOARD OF ZONING ADJUSTMENTS