

MINUTES OF MEETING
ALAMEDA COUNTY PLANNING COMMISSION
MAY 7, 2007
(Approved June 4, 2007)

FIELD TRIP: *Cancelled.*

REGULAR MEETING: 6:00 p.m.

MEMBERS PRESENT: Commissioners Ken Carbone, Vice-Chair; Richard Hancocks; Frank Imhof; Mike Jacob; Glenn Kirby, Chair; Alane Loisel and Kathie Ready.

OTHERS PRESENT: Chris Bazar, Planning Director; Steven Buckley, Assistant Planning Director; Karen Borrman, Public Works Agency Liaison; Brian Washington, County Counsel's Office; and Nilma Singh, Recording Secretary.

There were approximately nineteen people in the audience.

CALL TO ORDER: The Chair called the meeting to order at 6:00 p.m.

ANNOUNCEMENTS BY THE CHAIR: None.

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. Howard Beckman said that he had submitted his letter, to be included in the Commission package, discussing his concerns on the SDR process. This is an administrative process with no public oversight. There is an urgent need to review the process and it's purpose.

CONSENT CALENDAR:

1. **APPROVAL OF PLANNING COMMISSION MINUTES** ~ April 2 and 16, 2007. *Approval of Minutes was continued to June 4, 2007.*
2. **TENTATIVE PARCEL MAP, PM-9408 – PALOMARES CATTLE COMPANY** ~ Application to subdivide one parcel containing approximately 666 acres into six lots, in an 'A' (Agricultural) District, located at 31253 Palomares Road, east side, approximately 3.7 miles south of Palo Verde Road, Castro Valley area of unincorporated Alameda County, bearing Assessor's Parcel Number: 085A-3701-008-00. (Continued from March 5, April 2 and 16; to be continued to June 4, 2007).

3. **PUBLIC HEARING ON THE FINAL DRAFT EDEN AREA GENERAL PLAN AND FINAL DRAFT ENVIRONMENTAL IMPACT REPORT** ~ Staff and consultant will review these documents, outstanding issues, and proposed new policies for recommendation to the BOS for adoption. Public comments will be taken. This will be the final Planning Commission hearing on this project. (Continued from April 16, 2007; to be continued to a future date).

4. **PUBLIC HEARING ON THE DRAFT CASTRO VALLEY GENERAL PLAN AND DRAFT ENVIRONMENTAL IMPACT REPORT** ~ Staff and consultant will review these documents, outstanding issues, and proposed new policies for recommendation to the BOS for adoption. Public comments will be taken. (To be continued to June 4, 2007; to be continued to a future date).

Commissioner Hancocks made the motion to approve the Consent Calendar and Commissioner Ready seconded. Motion carried unanimously.

REGULAR CALENDAR:

1. **TENTATIVE TRACT MAP, TR-7663 - GOULART** ~ Petition to merge two parcels, demolish one house, construct four townhome units and convert thirteen existing apartments into condominiums, all located on one parcel containing approximately 45,370 square feet, located at 384 and 399 Sunset Way, north side, approximately 662 feet southwest of Western Boulevard, Cherryland area of unincorporated Alameda County, bearing Assessor's Parcel Numbers: 429-0055-016-00 and 429-0055-0017-00. (Continued from February 5 and April 16, 2007).

Mr. Buckley presented the staff report.

Public testimony was called for. John Guterrez, representative, pointed out that Commission comments from the last meeting have been incorporated into the redesign and any new comments will be welcomed. If requested, a budget report could be submitted after an approval. On such projects, the homeowners' dues usually run from \$250-350 per month.

Tony Goulart, applicant, stated that he had started this project in 2004 in memory of his daughter and the project will benefit the community. The Chair thanked him for responding to the Commission comments but noted that some areas such as floor area ratio and the size of the yards were still falling short. The density is high due to the rear concentration. Mr. Goulart explained that the finished units will be very nice and the current six tenants are interested in the purchase plans. In response to the Commission, he

further explained the setback for units 1-4, location of new 14-17 units on the west; and provided clarification on the new and existing units.

Public testimony was closed. *Commissioner Jacob made the motion to move staff recommendation for an approval and Commissioner Imhof seconded. Motion carried unanimously.*

Commissioner Hancocks recommended changing the Condo Guidelines into ordinance language. Mr. Bazar agreed.

2. **ZONING UNIT, ZU-2241 and TENTATIVE TRACT MAP, TR-7834- PAK** ~ Petition to reclassify from the R-S-D-25 (Suburban Residence, 2,500 square feet Minimum Building Site Area per Dwelling Unit) District, to a PD (Planned Development) District, so as to allow fourteen townhouse units with attached garages on a site of 44, 568 square feet (1.02 acres) and site-specific development standards, located at 1630 – 159th Avenue, northwest side, approximately 400 feet northeast of E. 14th Street, Ashland area of unincorporated Alameda County, bearing Assessor's Parcel Number: 080-0040-071-00. (Continued from November 20 and December 18, 2006, February 20 and March 19, 2007).

Mr. Buckley presented the staff report. The Chair pointed out that a 20 feet setback requirement would result in the elimination of one building (two units). Commissioner Carbone discussed his concerns regarding the location of the trash enclosures and, ingress and egress of waste management trucks. In respect to the bank preservation and erosion, Commissioner Hancocks discussed the different setbacks from the channel. Mr. Buckley explained that 20 feet is the standard. Ms. Borrmann added that the immediate concern is the loading on the side of the channel which will require a soils report. Commissioner Ready said she had ingress and egress concerns relating to the 20 feet wide street and the lack of driveway aprons. Although 40 feet is the standard street width, often they are less. Commissioner Carbone reiterated his concern for the garbage trucks and felt that a solution is needed.

Public testimony was called for. Howard Beckman said that the comments made so far warrants a continuance which he supported. Two significant issues are watercourse setback and the moratorium. Under the Watercourse Protection Plan, the standard setback is 20 feet minimum measured. He felt that there is a need for a seminar on water and creek setbacks. The moratorium has an exception for multi-family housing. He had submitted a letter addressed to Mr. Bazar, to be made part of this record. Government Code 65858 defines multi family housing as a structure divided into two or more dwellings which this application is not. As such, he asked how a subdivision application such as this could be considered a multi-family housing project as County Counsel indicates. He felt that this project needs to be redesigned as it is not exempt from the

moratorium. The elevation plan does not reflect what the project will look from the street level.

In response to Mr. Beckman, County Counsel pointed out, also reflected in the staff report, that the moratorium has an exemption for multi-family housing that defines a structure with two or more units, similar to the definition of this application. Mr. Buckley explained the different setback measurement methodology noting that the 2:1 slope does not apply in this case due to the lack of a steep bank. Ms. Borrmann added that the Watercourse Ordinance applies to a privately owned and maintained creek and if there is an easement but does not to a Flood Control District facility. Instead, a recommended setback is required to address the structural issue.

Myong Pak, applicant, explained that before his purchase of the property, he had discussed the project with various Planning staff. John Rogers, Engineering Department, confirmed this morning that a 20 feet setback is not required.

Katrina Hemenez-Moretti, Ashland Community Association, requested a continuance as they had not received a referral.

Ron Perner, Project architect, stated the following: the project has been redesigned and improved; building heights have been reduced, both for the front and rear units; required setbacks are provided, 15 feet front, 10 feet side and 20 feet in rear; the channel is an Alameda District engineered channel and, as such, there is no required setback; and, a depression in the rear will contain all water with only an emergency release in the channel. In response to Commissioner Jacob, he confirmed that each unit has only one water heater. Commissioner Ready said she appreciated the redesigned project.

Erica Campisi, Cherryland Homeowner's Association, said that she had received the referral package in error.

Public testimony was closed. Commissioner Hancocks said his concern was the conflicting information provided by Public Works Agency. Ms. Borrmann pointed out the Grading Department's response as reflected on page 3 of the staff report. However, if a lesser setback is proposed, an engineering report should be prepared in support.

Regarding the garbage issue, the Chair felt that this is a new issue which should be looked at in the future. Commissioner Jacob asked if a play area and guest parking in the rear 50 feet would be in violation of the moratorium. Staff replied yes. Commissioners Loisel noted that the proposal was initially for 15 units, then 13 and now for 14 units. Eliminating one unit would provide adequate parking and setback.

Commissioner Hancocks made the motion to approve the project for 13 units with a minimum 20 feet rear setback and Commissioner Loisel seconded.

The Chair asked the applicant if he would like a continuance or an approval for 13 units. Public testimony was re-opened. Mr. Pak opted for an approval. Commissioner Jacob

suggested switching units 108 and 109 with the guest parking area with a 20 feet setback. County Counsel confirmed that a single structure would not qualify an exemption from the moratorium. Commissioner Hancock amended his motion for an approval to include that units 108 and 109 be switched with guest parking spaces which will be located in the required rear setback. Commissioner Loisel seconded. At the request of Commissioner Jacob, the motion was re-amended to include that guest parking spaces be provided on-site. Staff pointed out that the definition of development precludes paving within the 20 feet setback. A discussion followed.

Commissioner Hancock withdrew his amended motion. *He moved to approve the application for 13 units, with the removal of one unit to provide on-site guest parking. Commissioner Loisel seconded. Motion carried unanimously.*

2. **ZONING UNIT, ZU-2246 – MOLINARO/GARRE WINERY**
~ Petition to amend the General Ordinance of the County of Alameda, California, by reclassifying from the PD (Planned Development) District to another PD (Planned Development) District to allow expansion of the allowed building envelope, the property generally described as one site containing approximately 20.79 acres, located at 7986 Tesla Road, north side, corner northeast of Greenville Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099A-1602-013-02. (Continued from February 20, March 19 and April 16, 2007).

Mr. Buckley presented the staff report adding that Condition #31 be modified to read 10 acres instead of 15.6 acres to allow for this expansion. Commissioner Jacob requested clarification on the acreage calculations, the conservation/agricultural easements, the riparian corridor, Condition #31 and planting requirements.

Public testimony was called for. Gordon Galvan, representative, pointed out that with an approval, the temporary event center (tent), which has been very popular for the last few years, will become permanent. The demand proves the strong market to support the facility which is an enhancement to the winery and an asset to the Livermore valley. He introduced Mr. Larson, project architect; Tom Lewis, and a simulation of the completed structure.

Gail Shearer, on behalf of John Fletcher, read his written testimony. Mr. Fletcher's concerns included precedent setting which would lead to an erosion of the protection given by the regulations to open space and agriculture and that the proposal neither conforms to relevant ordinances nor to agreements made when the property acquired its present zoning.

Speaking for herself, Ms. Shearer discussed three main points: 1) lack of monitoring measures for dust control, noise control during construction and noise requirements during events; 2) an EIR should be required as the following categories, listed in the Neg

Dec, show deficiencies: hydrology/water quality, waste water, noise, public service and transportation/traffic; and 3) land use and Planning. She believed that the original building envelope should be maintained with its required vineyard plantings in accordance with the provisions of the South Livermore Valley area.

Harry Galles, 3640 Jerrold Road, on behalf of Scott Burkhart, 3663 Jerrold Road, read his letter in opposition. His main concern is noise. If the music is moved indoors and at a lower level, area lighting is muted, he would not have a concern with the construction, building or event traffic. But, he noted that the applicants have not lived up to the requirements of the original agreement and have not provided a phone number to neighbors and, as such, he was concerned that additional/future promises will not be kept. He felt that the County needs to protect the rural residents from such invasive and disruptive developments. Speaking for himself, Mr. Galles stated that he has direct line of sight to the subject property. His concern included the following: the facility is huge for this area and the completed building will not be the same as projected; his quality of life will be affected; the applicants are poor neighbors; it continues to be a problem for neighbors; there is no enforcement of the operation hours which exceeds beyond 10 p.m. and events are held from Wednesday through Sunday and other similar sites, though smaller, produce the same amount of wine and hold similar events. He agreed with Mr. Burkhart regarding noise and the lack of contact information.

Bob Baltzer, 944 El Caminito, discussed his concerns regarding 10% building envelope limit in relation to the South Livermore Specific Plan. The six acre site is not a specific building envelope. The proposal is for an event center, not a vineyard, and is in violation of the Plan.

Public testimony was closed. Commissioner Imhof felt that perhaps the coloring and/or the design was not aesthetically compatible; and the extension above the roof did not architecturally fit with the area also and requested justification for its inclusion. Regarding the noise and visual impact concerns, he recommended tree planting around the property perimeter. Mr. Larson explained that it is a tower element which defines the entrance (primary reason) and to provide light for the wine tasting and to the barrel room. Thick walls and recessed windows and doors will keep the noise inside and the thick walls to give a 'wine growing and making' atmosphere. The event center is no larger than the 6,000 square feet current tent and the additional area includes the wine and barrel room, kitchen and underground storage area. Staff pointed out Condition #32 and Commissioner Carbone recommended raising the wall around the edge. Commissioner Loisel requested clarification on the 10% building envelope and recommended that all amplified music be limited to indoors.

At the request of Mr. Bazar, staff explained the calculations for 10% building envelope. This project is not requesting a density bonus, hence, the 10% limit does not apply. The Commission discussed the development and building envelopes, the agricultural easement, amplified music, precedence setting, enforcement, noise issues, mitigation measures and recommended conditions and the amount of acreage dedicated to viticulture. Mr. Buckley explained that although there is some new planting before the

riparian area, additional expansion is still needed, and some vines will be removed to install driveway and walkway as shown on easement map. The Chair felt that the use benefits agriculture on both the parcel and the region. Per Condition #31, the Chair noted that the actual land available for vineyards will be 10 instead 15.6 acres. He recommended that the entire acreage of required vineyard be produced, perhaps off-site and a condition requiring a percentage of wine or produce to be served at this facility. County Counsel, in response, stated that he would have to look into the second recommendation. Commissioner Jacob said his calculations indicate 9.277 acres and further recommended that Condition #31 be modified to reflect: "Prior to the approval and occupancy of the event center, 9.2 acres of vineyards shall be planted and irrigated or a bond shall be posted as a guarantee." And MM #5 to clearly reflect that a ACUP is required. Commissioner Ready expressed enforcement concerns. The Commission further discussed Code Enforcement procedures, precedent setting, the need to look at such facilities broadly, the need to revisit of the South Livermore Plan, supporting commercial uses on agricultural land and, building and development envelope for commercial use. Regarding Commissioner Loisel's concern for amplified noise, Mr. Buckley suggested modifying Condition #4b to read "No outdoor amplified sound systems shall be allowed except as provided in ACUP (MM#5). The 10 pm time limit is part of the Noise Ordinance. Commissioner Jacob pointed out that if Condition 4b is also part of the PD provisions, an ACUP is not needed as only indoor amplified music is allowed. Commissioner Carbone felt that the sound decibel could be tested upon completion.

Commissioner Imhof made the motion for a continuance to allow the applicant time to provide an improved photo simulation with landscaping. Commissioner Ready seconded. Commissioner Jacob stated his support for a continuance adding that language for Condition #31 and MM#5 be modified as discussed above. The Chair did not support the motion and Commissioner Loisel agreed. Although Commissioner Carbone did not support a continuance, he felt that a better design would be more appropriate. Motion for a continuance was withdrawn. The Chair re-stated his recommendation that the amount of planted acreage originally approved before the split be provided either on-site or off-site and to work with Tri-Valley Conservancy on a conservation easement. Commissioner Jacob discussed the possibility of in-lieu fees in the event the acreage could not be provided on site. Mr. Bazar recommended keeping the acreage within the planned area.

Commissioner Loisel made the motion for an approval per Commission comments as above, seconded by Commissioner Hancocks, subject to the following recommendations:

- 1) Provide original cultivated acreage on or off-site, within the planned area, accompanied with a contract for a conservation easement with Tri-Valley Conservancy.
- 2) Keep all windows and doors closed with inside amplified noise.
- 3) No outdoor amplified sound system shall be allowed.
- 4) Upon project completion, a sound study shall be conducted.

- 5) Amendment to #31 to indicate 9.2 acres onsite and 10 acres off-site, and a bond be posted with Tri-Valley Conservancy.
- 6) Additional condition to require planting of additional trees.

Motion carried 6/1 with Commissioner Ready dissenting.

STAFF COMMENTS & CORRESPONDENCE: Mr. Bazar apologized for the late packages and announced Mr. Buckley's resignation.

CHAIRS REPORT: The Chair requested a discussion on the possibility of a future condition requiring a percentage of local products be used on site and agendaizing SDR review under open forum. Commissioner Imhof suggested a review of the SMPs.

COMMISSION ANNOUNCEMENT, COMMENTS AND REPORTS: *None.*

ADJOURNMENT: There being no further business, Commissioner Imhof moved to adjourn the meeting at 9:20 p.m. Commissioner Loisel seconded the motion. The motion was carried 7/0.

CHRIS BAZAR, SECRETARY
COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY