

**MINUTES OF MEETING**  
**EAST COUNTY BOARD OF ZONING ADJUSTMENTS**  
**JUNE 29, 2006**  
(APPROVED AUGUST 28, 2006)

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

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

**MEMBERS PRESENT:** Members Larry Gosselin and Jim Goff.

**MEMBERS ABSENT:** Chair Jon Harvey

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

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

1. **RICARDO ESQUIVEL, VARIANCE, V-12011** ~ Application to approve as a building site one parcel reduced in area from the required 100 acres to 10.98 acres and without frontage on an approved County road, in an "A" (Agricultural) District, located at 20124 Grant Line Road, west side, approximately 600 feet southwest of San Joaquin County Line, Tracy area of unincorporated Alameda County, Assessor's Parcel Number: 099B-7650011-00.

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

**MEMBERS PRESENT:** Members Jon Harvey, Chair; Larry Gosselin and Jim Goff.

**OTHERS PRESENT:** Chris Bazar, Planning Director; L. Darryl Gray, Assistant Planning Director; Brian Washington, County Counsel; Bruce Jensen, Senior Planner; Nilma Singh, Recording Secretary

There were approximately forty-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 welcomed the new Board member, Jim Goff and announced that Consent Calendar #1 will be moved to the Regular Calendar.

**CONSENT CALENDAR:**

1. **NICA METALS, CONDITIONAL USE PERMIT, C-8398** ~ Application to allow continued operation of a metal recycling facility, in a M-2 (Heavy Industrial) District, located at 101 N. Greenville Road, east side, approximately 712 feet south of Front Road, Livermore area of unincorporated Alameda County, bearing County Assessor's Parcel Number: 099B-5100-001-33.

(Continued from March 30, April 27 and May 25, 2006, to be continued without discussion to July 27, 2006).

2. **RICHLAND TOWERS, LLC., CONDITIONAL USE PERMIT, C-8459** ~ Application to allow the construction and operation of a new television antenna and tower (450 feet in height) on Mt. Allison, west side terminus Mill Creek Road, Sunol area of unincorporated Alameda County, bearing County Assessor's Parcel Number: 096-0090-005-07. (Continued from March 30, April 27, 2006; to be continued without discussion to August 24, 2006).
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 (Planned Development) 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 from September 29 2005 and March 30, 2006; to be continued without discussion to August 24, 2006). **This item was moved to the Regular Calendar.**

**REGULAR CALENDAR:**

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 (Planned Development) 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 from September 29 2005 and March 30, 2006; to be continued without discussion to August 24, 2006).

**This item was moved from the Consent Calendar.** Mr. Gray announced that staff has received an email on June 26th from the Applicant requesting withdrawal of his application. As such, the matter has been dropped.

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 County Assessor's Parcel Number: 099A-2340-002-00. (Continued from September 29, October 27, December 15, 2005; January 12, February 22, March 30 and May 25, 2006).

Mr. Gray presented the staff report adding that although the staff report is recommending a denial, staff has had email and phone contacts with the applicant. Even though the applicant is moving forward, some concerns still exist. Staff is now recommending a continuance.

Public testimony was called for. Steve Powell, applicant, explained that he has hired his original engineer who is working on a new roof. Plans have been redlined and submitted to the plan checker today. He

further requested either an approval or a continuance but urged an approval as all the three findings can be made in the affirmative and his request was for a similar operation as the others in the area.

Judy McPherson, 5167 Tesla Road, urged a denial based on the many different significant reasons provided by her. Although Mr. Powell has indicated frequently at all meetings that he has complied with all the requirements and has hired a professional, he had not done so. The Minutes also reflect this. The operational hours have changed. Ms. McPherson further described an incident concerning a child that had occurred on Saturday night. Cars were parked in front of her house and the subject property even though there is only a bike lane with 'No Parking' signs. One of her concerns is safety for children. There is a trailer in the rear on jacks for a month and Ms. McPherson submitted related photographs. She felt that the applicant has been given more than adequate time to comply and the privileges have been extended for too long. Since Code Enforcement is unable to take action, she urged a denial.

Michael Tuuri, attorney representing Mr. Powell, in response to the Saturday night incident, pointed out that Mr. Powell is not responsible for any children on his property. He said that Mr. Powell has been doing all to meet the requirements, staff has been delaying and changing the conditions. He has seen the trailer which is not dangerous. Mr. Powell has the right to use his property as long as no one gets hurt. He was not sure why staff is against Mr. Powell pointing out that Ms. McPherson is not in favor of any of the wineries in this area.

Mr. Powell, in rebuttal, explained that he has grandchildren and, as such, has installed a fence with a gate for the front yard; the trailer which has a 'FREE' sign will eventually be removed.

Public testimony was closed. Member Gosselin announced that he had visited the McPherson's property and the subject property and had noted the affects of all activities including the sound of the band. In response of the prior suggestion of a concave wall by Member Sblendorio, he requested staff, time permitting, to work on this during the continuance period. Mr. Gray replied that it could be a condition of approval if the application is to be approved. Member Gosselin further recommended a property clean-up program and perhaps a security officer for parking.

Member Gosselin made the motion for a continuance and the Chair seconded. Motion carried unanimously.

2. **GARCIA EVENTS CENTER/AUGUSTINE and JUDI GARCIA, CONDITIONAL USE PERMIT, C-8450** ~ Application to allow an events center, in an A-CA (Agricultural, Cultivated Agricultural) District, located at 3721 Mines Road, west side, approximately 560 feet southeast of Tesla Road, Livermore area of unincorporated Alameda County, bearing County Assessor's Parcel Number: 099A-2340-012-00. (Continued from April 27 and May 25, 2006).

Mr. Jensen presented the staff report and recommended modifying Condition #34 to reflect expiration in ten years with a full review in five years. At the request of Member Gosselin, he pointed out that Condition #28 was related to traffic/parking which could be re-worded. The Chair noted that the Board had visited the site last month.

Public testimony was called for. Carol Frydenal, 3949 Mines Road, said she was the neighbor on the south and had submitted a letter in opposition. She disagreed with the findings. The facility does not fit with the neighborhood and complained of noise (music) at night. She urged a denial.

Judi Garcia, applicant, clarified that she has held three occasions which were family weddings. After the first occasion, the speakers have been relocated. She did not want to create a party atmosphere but hold spiritual weddings. Regarding parking, the plan is to keep all cars inside and, in addition, the adjacent neighbor is offering space for additional parking. In response to Member Gosselin, she confirmed that the proposal has been simplified to gardening and ministry which includes spiritual weddings in a beautiful garden. Although she agreed with the conditions of approval, she was not quite sure of some. Mr. Gray explained that an Administrative CUP will be required for large events. The Chair said he had concerns regarding the neighbor's issues and recommended a cap on the number of people on site per event and the operational hours noting that Wente closes at 5pm. Member Gosselin said his concerns were parking, traffic, water contamination, sight distance issue existing out of the driveway and compatibility of the use with the other uses on Mines Road. Mr. Gray noted that, as such, the 2<sup>nd</sup> and 3<sup>rd</sup> Finding could not be made in the affirmative. The Chair recommended modifying Condition 21 (1) and (2) to read: 'Any events.....' instead of 'All events...' and (2) to reflect 100 people. Member Gosselin recommended a short and trail period because of the traffic and sight distance issue. A discussion followed and Mr. Jensen pointed out Condition #11.

Member Gosselin made the motion to approve the application with changes to Condition #21 as discussed above and Condition #11 to ensure that concerns are addressed and Condition #32 to reflect ten years with a review period at 2 years, 3 and 3 years. The Chair seconded and the motion carried unanimously.

3. **ALTAMONT MOTORSPORTS PARK LLC., CONDITIONAL USE PERMIT, C-8471** ~ Application to continue operation of an existing outdoor recreation facility (motor vehicle raceway), and to allow: a) construction of required safety and general facility upgrades; b) construction of a 50,000 square foot previously approved grandstand cover; c) construction of the previously approved facility identification sign; and d) reconfiguration of the track to accommodate general racing operations in an 'A' (Agricultural) District, located at 101 Midway Road, east side, approximately 0.5 mile south of I-580, Tracy area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099B-7675-005-07. (Continued from March 30, April 27 and May 25, 2006).

Mr. Gray summarized the staff report adding that he has received a revised site plan and the noise issue has to be evaluated. As such, staff is recommending a continuance. The Chair acknowledged receipt of correspondence from Mr. Cohen, attorney representing the adjacent neighbor and asked if staff was in receipt of the same table from Mr. Cohen. He also requested that the applicant and staff to respond. Mr. Gray replied that he had received the table but had not prepared a response. As such, the continuance request. Member Gosselin recommended that Mr. Bazar, the Planning Director and County Counsel be available at the next hearing. He further asked if there was significance to the discussion of whether or not the track may be an outdoor recreational facility; and how the use has been characterized over the years. A discussion followed regarding the A District, whether or not the use fits within the definition of outdoor recreation; if the use is included as a CUP in other districts and noise levels. Mr. Bazar added that staff has been working with Environmental Health. Member Gosselin re-stated that he had visited the facility and Mr. Rivard's property which has a louder noise affect due to the contour of the land. In comparison, he asked how much noise was produced by other things such as the freeway.

Public testimony was called for. John Condren, representing Altamont Motorsports Park, pointed out that the use has been in existence for the last 40 years regardless of the name. The facility provides primary and secondary incomes for the 40 employees, entertainment and community services. The use is compatible with the General Plan and Measure D. Although the use was approved as a recreational use, the word 'racetrack' was not used initially. As requested by the Board in April, Mr. Condren presented a

comparison chart of the 1996 and 2006 use. Noise audits have been provided to staff. All Saturday night events end at 10:30 pm with an exception of one Saturday and Sunday. Their approach is different from the prior use as it is more organized, restrictive, supportive of the community and profitable.

Kenny Shepherd, Manager, stated that two community meetings have been held and he will be submitting a report. These meetings have been positive and he further invited the board members to attend the next meeting. He expressed concerns regarding any restrictions that the other operation did not have but which would be placed on them and the new dwelling under construction in the area. They were offering a cleaner and quieter facility. Drifting plans have been postponed. Mr. Shepherd said he was also concerned with the offer of support in the form of cash. Mr. Gray asked if they were still entertaining youth programs. Mr. Shepherd replied yes adding that they encourage involvement with Highway Patrol and the Sheriff Department youth groups. The Sheriff Department does not have a concern and a written response has been obtained. Member Gosselin asked if the organization is receptive to the development of a community fund. Mr. Shepherd said that it has been discussed at the community meeting with a positive response. The options are to charge for RV parking and 100% proceed to go into a general fund for a program or to increase the ticket base to generate funds. Member Gosselin said he was interested in sound mitigation and Mr. Shepherd, in response, expressed a concern with the usage of the word 'mitigate', which he felt should be used when there is a change in operation. And no change is being proposed. A discussion followed on the 1993 court ruling. Mr. Washington clarified that the BOS had requested an EIR but the Court of Appeals had ruled that an EIR was not required.

Mark Cohen, representing Mark Rivard, the adjacent property owner and 20-30 other property owners, stated that his response was not complete. This is a very complicated matter, there is history but uncertainty as to what has occurred, chronological events that are factual; this is not the same use that was permitted 35 years ago with a gap of 15 years. Mr. Cohen confirmed that Mr. Gray had received the email. This proposal is inconsistent with the General Plan, Measure D and ECAP. Every request is an expansion and the intensity has increased to make up for the profit/investment. The tracks have been increased, extended hours; grading has occurred and the area for drifting has already been black-topped. A petition has been signed and submitted in opposition by 25 property owners. The Sheriff's Department has not taken a position of objection because they are still investigating. Mr. Cohen thought the applicants have 'played down' their events by saying that about 125 people per event. In that case, he suggested adding a condition of approval reflecting 125 people per event. He also indicated that he will submit information that indicates an EIR is required.

Scott Clough, President and GM of USAC/CASA, stated that the concerns were being based on the past problems. He felt that the organization was running better than any other promoters that he has been working with. This is a recreational facility that provides community services and he urged for the Commission for look at the contributions made towards public safety. At the request of Member Gosselin, Mr. Clough further clarified that this facility provides for on-site in-service training.

Ken Benhamon said he has been taking part in racing for ten years. He did not have any traffic concerns in this area. There is a public need and the new management is reaching out to the neighborhood. The operation has not gone out of scope and he requested an approval with conditions recommended by the Applicants.

Jim Becker stated that he is the Concession Stand Manager with twelve employees, some of who are working to supplement their income. He confirmed that no expansion will occur on the concession stands.

Michael Snider said he has been involved with racing at this site since 1974 and currently volunteers at

the facility.

Tina Kollmann stated that the new management family-oriented and the facility is an addition to the neighborhood.

Ken Clapp said that he was familiar with the history of the facility. The facility is an asset to the County and the revenue is substantial to the community. He urged an approval.

Richard Ruzbarsky also spoke in support. The operators are professional, and the facility is quieter and pro-active to the community, racers and owners. The tracks have been in this location for a long time and, as such, the property owners had been aware of its existence. Many similar tracks have shut down hence there is a definite need. The Carnegie track is located in an isolate area with no neighbors. The facility should not be judged by its history.

Jamie McNeely, 499 N. Midway Road, said her property is about ½ mile away. She discussed the word 'community'. The racing community has a need; the County needs the facility as a tax revenue and her community would like a great quality of life, agriculture for horses and cattle without the additional traffic, trash, pollution and lights. The roads in this area are not built for this increase as there is no asphalt, shoulders, stop lights and traffic monitoring/regulations. She asked why the community was not getting improvements similar to Mountain House and why the staff report did not reflect that 10-12 speakers had spoken against the proposal. She did not understand why concerts would be held on the same days as races as it will double the traffic and other concerns. There is a lot of opposition to the racetrack. James McNeely felt that the staff report is biased. The survey did not include all those property owners who are affected. He was not in support of future problems and his concerns were drifting, noise, traffic and any other negative effects. In order to be profitable, big concerts and races will be scheduled. Safety is another concern. Mr. McNeely pointed out that Cal Trans has purchased property on the north side of the freeway for kit fox mitigation.

Robert Valencio, property owner at 16777 Midway Road, felt that such a facility will change their life styles. Although this area does not have utilities, owners chose to live here because of peace. He recommended that one of the operators live in this area to experience the effects.

Rob Gould, 16903 Midway Road, pointed out that the first six speakers in support do not live on Midway Road. He agreed that the tracks were in existence before Mr. Rivard built his house. Although he did not want to close down the racetracks, he was not in support of an expansion which will worsen the situation. Some expansion has occurred already compared to what existed two years ago.

Marie Frates, property owner at 485 N. Midway Road, indicated that she was not representing any neighborhood groups. She stated the following in support: the tracks are closed on Monday and Tuesdays; there has been no increase in vandalism and the racetrack should not be blamed for any; property values have increased; and the facility is clean. She felt that the racetrack does not have to give contributions but had a choice.

Karin Rivard, property owner at 17011 Midway Road, pointed out that this is not a continued use as it has been closed more often than in operation. Eighty-five residents have signed a petition in favor of a denial and 25 out of the 30 residents within a one mile radius are against this expansion. She submitted a map of the area outlining the location of the property owners. An approval would not be in support of agriculture and while the tracks are in operation, the area is useless for an agricultural use. The staff report neglects the 5,000 square feet house. She also noted that the Cargenie State Park does not have residences in the vicinity and it has a monitoring process. Her biggest concern is lack of code enforcement as she has made

complaints with no response. Other concerns include public safety, noise, drinking, increased traffic, live music for three consecutive days, and buffer zones. Over-night camping was denied on her property and she asked how and why would it be approved on the subject property. She had witnessed 16 motor-homes at 6:30 am on May 12<sup>th</sup> and submitted photographs in support.

Connie Jess, 15850 Jess Ranch Road, read and submitted her written testimony. She has lived in this area for 46 years. Although zoned for agriculture, this is the perfect location for a racetrack and from the use of tractors and trucks came the sports of Tractor Pulls/Horse Pulling contests followed by racetracks. The new owners have shown a willingness to work on problems before arising. Requests by neighbors have been met with quick responses. Most of the complainants are the newest residents on Midway Road. Ms. Jess pointed out that the track was already in existence when these residents bought their properties and urged an approval.

In rebuttal, Mr. Shepherd confirmed that all events have ended at 10:30 p.m. and in response to Mr. Cohen, confirmed that no paving has been installed. At the request of Member Gosselin, he further explained the drifting event/process. Currently, he was working with eight youths.

Mr. Cohen, in rebuttal, pointed out that the present facility is different from the prior use and hence his client's opposition to the application.

Vicky Corona, speaking on behalf of her father, Samuel Corona, property owner at 16965 Midway Road, who opposed the increase, stated that his biggest concern is safety.

Public testimony was closed. Member Gosselin noted the significance of the facility's existence, expiration of permit, legal nonconforming use status, prior history, and whether a recreational use or not. The Chair requested a response to Mr. Cohen's responses and made a motion for a continuance to the next meeting, July 27<sup>th</sup>. Member Gosselin seconded and the motion carried unanimously.

The Chair announced a break.

4. **RICARDO ESQUIVEL, VARIANCE, V-12011** ~ Application to approve as a building site one parcel reduced in area from the required 100 acres to 10.98 acres and without frontage on an approved County road, in an "A" (Agricultural) District, located at 20124 Grant Line Road, west side, approximately 600 feet southwest of San Joaquin County Line, Tracy area of unincorporated Alameda County, Assessor's Parcel Number: 099B-7650011-00.

Mr. Gray summarized the staff report.

Public testimony was called for. Ricardo Esquivel, applicant, further described his proposal which included construction of a 6,000 square foot dwelling with a shop and garage and a vineyard.

Public testimony was closed. Member Gosselin made the motion to approve the application and Member Goff seconded. Motion carried 3/0.

**APPROVAL OF MINUTES** – Approval of May 25<sup>th</sup> Minutes was continued to the next meeting.

**STAFF COMMENTS & CORRESPONDENCE:** Mr. Gray noted the presence of a West County Board member, Dawn Clark.

**CHAIR'S REPORT:** None.

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

**ADJOURNMENT:** There being no further business, the hearing was adjourned at 5:50 p.m.

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