

MINUTES OF MEETING
EAST COUNTY BOARD OF ZONING ADJUSTMENTS
JULY 8, 2010
(APPROVED SEPTEMBER 16, 2010)

The meeting was held at the hour of 1:30 p.m. in the City of Livermore Council Chambers, 3573 Pacific Avenue, Livermore.

FIELD TRIP: 9:00 a.m.

FIELD TRIP: The following property was visited by the Boardmembers individually:

1. **MATHEWS/ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY, CONDITIONAL USE PERMIT, PLN2009-00082** ~ Application to allow continued operation of an existing telecommunication facility and the addition of a meteorological equipment trailer to monitor and collect air sample for BAAQMD, in an 'A-B-E' (Agricultural, 160 acres Minimum Building Site Area) District, located at 13000 Patterson Pass Road, north side, approximately 1.7 miles east of Cross Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099A-1820-002-00.
Staff Planner: Shahreen Basunia

REGULAR MEETING: 1:30 p.m.

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

OTHERS PRESENT: Jana Beatty, Senior Planner; Tona Henninger, Code Enforcement Manager; Lacy Starling, Zoning Investigator; and Nilma Singh, Recording Secretary

There were approximately twenty-four people in the audience.

CALL TO ORDER: *The meeting was called to order by the Chair at 1:40 p.m.*

ELECTION OF OFFICERS FOR THE YEAR 2010-2011~ *Member Goff nominated Member Gosselin as the Chair for the year 2010-2011 and Member Harvey seconded. Member Goff nominated Member Harvey as the Vice-Chair and Member Gosselin seconded. Both motions carried.*

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*

NEIGHBORHOOD PRESERVATION AND ZONING ORDINANCE ABATEMENT

1. **BERNIE SHANKLIN, 1824 ALMOND AVENUE, LIVERMORE, ASSESSOR'S PARCEL NUMBER 99-1150-018-00** ~ Accumulation of discarded or dilapidated objects including but not limited to broken or neglected equipment, machine parts, scrap material, vehicle parts, salvage materials, debris, tires, wood, buckets, window panes and miscellaneous items in violation of Alameda County Neighborhood Ordinance 6.65.030 A(1), A(3) and B(6).

Ms. Starling presented the staff report.

Peter McDonald, attorney representing the Applicant, asked if the Board had received his written request for a 30-days continuance and further read the letter.

Denise Moreda, adjacent property owner at 1848 Almond Avenue, said that she is the only neighbor with a view of Mr. Shanklin's property as the overgrown trees block the view from the street and she is also the only one affected by his business and the garbage. He has had four years to clean up but continues to ask for continuances. The property is partially cleaned just before an enforcement visit. This is an illegal business in an agricultural zoned area. Member Harvey asked if there has been a significant clean up in the past few weeks. Ms. Moreda replied yes, only because he has had to. And, in response to the Chair, confirmed that he is doing auto business and works till 11pm with noise, spraying, cutting etc.

Bill Sheehan said he is the real estate broker who had sold the property to Ms. Moreda and has also assisted her with code enforcement issues. He further outlined the six-year history--initially abated by the Zoning Administrator followed by a 5-year BOS abatement plan. He urged strict penalties, fines and conditions so that Mr. Shanklin does not continue although he is building a 5,000 sq.ft. shop and has one employee.

Mr. McDonald stated that he only became involved since this morning. In rebuttal, he noted that Mr. Shanklin has a legal non-conforming use as he has been at this location for 40 years; Ms. Moreda bought her property six years ago as an investment and filed complaints during the first month of purchase; all other neighbors had indicated at the BOS that they have no problems/impacts; much clean-up has already occurred; and Mr. Shanklin has no employees.

Ms. Henninger pointed out that the only item before the Board is the issue of miscellaneous debris. The business issue will be heard next Tuesday by the BOS. Mr. Shanklin has until March 2011 to cease his business.

Mr. McDonald continued. Some of the pictures relate to the existing business and sorting through the business debris and working with staff would take about 30 days.

Public testimony was closed. Member Goff requested clarification regarding fines, penalty, associated costs and what is allowed. Ms. Henninger provided clarification on fines and assessments (fines, re-inspection, and administrative fees) adding that if a clean-up is not complete, a private contractor is hired; confirmed that this is an illegal business and if legal, the abatement proceedings would still be the same; all inoperable cars/equipment/parts need to be stored inside; some areas were cleaned and debris was either removed or moved to another location on site. Member Harvey pointed out that the Board normally grants continuance requests and he would support a continuance but suggested perhaps some direction and a Board discussion on possible future steps if concrete actions are not taken to move forward. Member Goff agreed but also expressed concerns that the applicant has had ample time to clean. The Chair also concurred and requested a site inspection with Code Enforcement staff.

Public testimony was re-opened. Mr. McDonald said that he is newly involved with this matter and would like to consult with both Mr. Shanklin and Code Enforcement staff.

Public testimony was closed. Member Harvey asked if staff would continue with the abatement hearing based on the current condition of the property. Ms. Henninger replied yes, based on Tuesday's site visit. Member Goff reiterated that he would like to see concrete actions in 30 days. The Chair said that he would like to make a site visit today and a Board visit before the next hearing, and requested contact

information. *Member Harvey made the motion for a 30-days continuance and Member Goff seconded. Motion carried unanimously, 3/0.*

CONSENT CALENDAR:

1. **AT&T MOBILITY, CONDITIONAL USE PERMIT, PLN2009-00086** ~ Application to allow the construction and operation of a new telecommunications facility, in an 'A' (Agricultural) District, located at 1001 Goecken Road, east side, northeast of intersection with Altamont Pass Road, North Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099B-5680-015-00. *(To be continued to a date yet to be determined)* **Staff Planner: Richard Tarbell**

Member Goff made the motion to approve the Consent Calendar and Member Harvey seconded. Motion carried unanimously, 3/0.

REGULAR CALENDAR:

1. **MATHEWS/ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY, CONDITIONAL USE PERMIT, PLN2009-00082** ~ Application to allow continued operation of an existing telecommunication facility and the addition of a meteorological equipment trailer to monitor and collect air sample for BAAQMD, in an 'A-B-E' (Agricultural, 160 acres Minimum Building Site Area) District, located at 13000 Patterson Pass Road, north side, approximately 1.7 miles east of Cross Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099A-1820-002-00. **Staff Planner: Shahreen Basunia**

Ms. Beatty presented the staff report. Although a representative was available, no testimony was submitted. *Member Harvey made the motion to move staff recommendation for an approval and Member Goff seconded. Motion carried unanimously.*

2. **RUESGA, CONDITIONAL USE PERMIT, PLN2009-00077** ~ Application to allow a wholesale plant nursery in a R-1-L-B-E (Single Family Residence, Limited Agricultural Uses, 5 acre Minimum Building Site Area) District, located at 1780 Buena Vista Avenue, east side, approximately 0.25 mile south of East Avenue, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 99-1250-017-02. *(Continued from February 25th, March 26th and April 22nd, 2010).* **Staff Planner: Damien Curry**

Ms. Beatty presented the staff report adding that during discussions with the community, concerns were raised regarding Conditions 4 and 5 along with operational hours and number of employees on site. The Chair requested clarification on zoning enforcement process. Ms. Starling said she had been monitoring the site and had witnessed commercial vehicles making deliveries, men standing and playing basketball around parked Visionscape trucks and had met the secretary on site.

Public testimony was called for. Victor Ruesga, Applicant, said that since the last hearing, he has submitted plans for the home improvements; met and handed letters to fourteen neighbors -- ten responses in support and two in neutral were received; and had a barbeque for the neighbors. Mr. Ruesga stated a willingness to work with the Board and the neighbors. He further stated the following: the nursery is neither a wholesale nursery nor part of the Visionscape operation but has ornamental plants that he enjoys

and uses in his projects; employees of Visionscape do maintenance, landscape and construction/improvement work on his property; his business has been located on Rose Avenue, Pleasanton for the last nine years; and Mary Parsons, his bookkeeper, does work out of his home. A discussion followed regarding 'domestic servants'; employees on site; Home Business section of the Ordinance and wholesale plant nurseries which is allowed but on a limited scale. Staff noted that this is a R-1-L-B-E District where large businesses are not allowed. Mr. Ruesga stated that he needs his employees and suggested perhaps having definitions of different scopes of work i.e. landscaping on Saturdays, with set conditions, names and time cards.

Susan Johnston, resident at 2288 Buena Vista Avenue and a former Zone 7 staff, felt that the County needs to amend the Ordinance to allow green businesses in the rural areas.

Marlene Crobett, on behalf of her parents, Austin and Patricia Bates at 1743 Buena Vista Avenue, explained that although Patricia Bates had signed Mr. Ruesga's letter as 'neutral', she is now in opposition and they have expressed concerns regarding the status/growth of this business in future.

Owen Parker, 2027 Buena Vista Avenue, said he opposed an approval. Although he had spoken at the last hearing, he had not received the letter from staff. A check last week with the Building Department has confirmed that no permit has been issued for the addition. He urged a denial.

Don Hughes, 1732 Buena Vista Avenue, noted it has been established that the applicant is running a business from his home and has employees working on site. He also expressed concern that this has been pending for one year while the applicant has continued his business. Although 58 letters were mailed for input, responses received were less than 18%. At the initial hearing, a petition with 60 signatures was submitted in opposition. During the continuance period, trucks have been coming and going, compost has been piled in the rear and several loads of boxed trees have been delivered. This business is the expansion of the Visionscape nursery. Mr. Hughes urged a decision today.

Donna Smith, 2052 Buena Vista, said that she had been the listing agent for this property but had not informed the applicant that a running a business would be appropriate at this location. She further read her written letter regarding the dynamic of Buena Vista Avenue, nurseries are labor-intensive businesses, there are currently 13 nurseries in the Tri-Valley area and 22 retail nurseries/landscapers in Livermore, and traffic/pedestrian circulation. Ms. Smith urged for a denial and any others CUPs for a business in future.

Tim Scarano, 1912 Buena Vista Avenue, stated that with an assurance from Code Enforcement that these conditions will be enforced, he will be in support.

Emily Prusso, 2137 Buena Vista Avenue, in support, stated that since she is a 'stay-home mom', she has not noticed any negative traffic impacts and felt that this application is a reasonable request.

Norman Nather, 1442 Buena Vista Avenue, said that he had also signed the petition in opposition. But, since then, he has visited the nursery which is beautiful, well maintained and is not unreasonable at all.

Susan Ballinger said she lives with the applicant part-time and has met the neighbors personally. No concerns had been raised before nor was any raised at the barbeque. Hence, the activities are not disruptive, the property is impeccable, and is an asset to the community.

Public testimony was closed. Member Harvey pointed out that the concerns expressed by adjacent neighbors are legitimate. The Chair agreed, however, pointed out that most written responses are in support. Member Goff thought that the conditions were appropriate but expressed concerns regarding

compliance and enforcement. A discussion ensued regarding employees, type of business, operational hours, types/storage of equipment, and rezoning process. The Chair asked Ms. Starling if the business has increased since the initial complaint. Ms. Starling replied yes, the first complaint was in March, 2008. A discussion followed regarding the recommended conditions of approval with the following modifications -- Condition #3 to reflect ‘The generation of noise disturbance and business operations are prohibited between the hours of 8am-4pm on the weekdays (eliminating the weekends)...’; deletion of #4 and 5; #9 to reflect no more than two 10,000lb or less commercial vehicles as defined in State Vehicle Code; and #10 to read “Two employees of Visionscapes....”

Public testimony was re-opened. In response to the Chair, Mr. Ruesga confirmed that there are no expansion plans in the future and 40 man hours per week would be sufficient for the nursery, two employees for the grounds, and employee shifting will occur when the office person is not on site. He also suggested that perhaps the conditions could include that notification will be made for any additional landscaping improvements.

Public testimony was closed. *Member Goff made the motion for an approval with the above modifications and Member Harvey seconded. Motion carried unanimously. The Chair reminded all to contact staff for information and involvement in the rezoning process.*

3. **CHENG, CONDITIONAL USE PERMIT, PLN2010-00034** ~ Application to allow operation of a day care facility for up to 70 children on a former school site, in a R-1-L-B-E (Single Family Residence, Limited Agriculture, 20 acres Minimum Building Site Area) District, located at 2828 Marina Avenue, north side, Livermore area of unincorporated Alameda County, bearing Assessor’s Parcel Number: 099-0880-006-01. *(Continued from May 27, 2010).* **Staff Planner: Jeff Bonekemper**

Ms. Beatty presented the staff report adding that staff has included a memo regarding conformance with the Zoning Ordinance, Measure D and SLVAP as requested by the Board at the last hearing. Member Harvey asked if there is a definition of a nursery school. Staff replied no.

The applicant was available but did not offer any testimony and no public testimony was submitted. The Board discussed consistency, an increase of the vitality and life of the area, the number of students and State Licensing requirement, the existence of infrastructure and designation of the Resource Management District and not a high impact use in reference to traffic. Staff further explained the Resource Management designation and the R-1-L-B-E District. *Member Harvey made the motion to approve the application subject to the recommended conditions and Member Goff seconded. Motion carried unanimously.*

APPROVAL OF MINUTES - MAY 27, 2010 - *Member Harvey made the motion to approve the May 27th Minutes as submitted and Member Goff seconded. Motion carried unanimously.*

STAFF COMMENTS & CORRESPONDENCE: *None*

CHAIR’S REPORT: *None*

BOARD ANNOUNCEMENTS, COMMENTS AND REPORTS: *None*

ADJOURNMENT: There being no further business, the hearing was adjourned at 4:25 p.m.

ALBERT LOPEZ - SECRETARY
EAST COUNTY BOARD OF ZONING ADJUSTMENTS