

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
SEPTEMBER 8, 2010
(APPROVED OCTOBER 13, 2010)

The Regular Meeting was held at the hour of 6:00 p.m. in the Alameda County Building, 224 West Winton Avenue, Hayward, California.

FIELD TRIP: 1:00 p.m.

MEMBERS PRESENT: None. The Field Trip was cancelled. Properties were visited on an individual basis.

MEMBERS EXCUSED: Chair; Dawn Clark-Montenegro; Vice Chair, Kathy Gil; Members, Jewell Spalding, Frank Peixoto and Ineda Adesanya.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner.

FIELD TRIP: The following properties were visited:

1. **CLEARWIRE LLC / JAMES CHARNEL, CONDITIONAL USE PERMIT, PLN-2010-00062** – Application to allow the installation of a cell site facility involving the replacement of 16 building-mounted antennas with nine new antennas consisting of three, four foot panel antennas, three one foot diameter microwave dishes and three, two foot diameter microwave dishes. The property contains 16 acres and is zoned R-1-CSU-RV (Residential Suburban, Secondary Units, Recreational Vehicle) District, located at 20600 John Drive, north side, approximately 300 feet, northwest of Castro Valley Boulevard, in the unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Numbers: 084A-0240-001-02; 084A-0228-001-03; 084A-0235-001-06; 084A-0230-003-03; 084A-0230-001-02 and 084A-0230-004-00. **Staff Planner: Jeff Bonekemper.**
2. **JOHN & ZAMBIA WENTWORTH, CONDITIONAL USE PERMIT, PLN-2010-00073** - Application to allow continued operation of a residential facility for the adult developmentally disabled in a R-S-SU (Suburban Residence, Secondary Unit) District, located at 177 Hampton Road, south side, approximately 175 feet east of Harvard Avenue, Cherryland area of unincorporated Alameda County, designated Assessor's Parcel Number: 413-0047-007-02. **Staff Planner: Damien Curry.**
3. **T MOBILE / LEAH HERNIKL, CONDITIONAL USE PERMIT, PLN-2010-00083** - Application to allow continued operation of a telecommunications facility (rooftop antennas) with modifications in an C-1 (Retail Business) District, located at 22596 Center Street, east side intersection northeast of Kelly Street, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 417-0030-014-05. **Staff Planner: Christine Greene.**
4. **CLEARWIRE LEGACY / JACQUELINE SMART STEINBERG, CONDITIONAL USE PERMIT, PLN-2010-00112** – Application to allow installation and operation of a telecommunications facility (roof-top) antennas in a TC (Transit Corridor) District, located at 21144 Mission Boulevard, north east side, approximately 200 feet, southeast of Cherry Way, in the Cherryland area of

unincorporated Alameda County, designated Assessor's Parcel Number: 414-0081-005-00. **Staff Planner: Christine Greene.**

5. **ADVENTURE TIME / SUSAN SUNG, CONDITIONAL USE PERMIT, PLN-2010-00079** - Application to allow continued operation of a childcare facility for 70 children in a PD-ZU-1529 (Planned Development, ZU-1529) 1529th Zoning Unit District, located at 19501 Carson Lane, south side, approximately 250 feet west of Kit Lane, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 085A-6402-028-00. **Staff Planner: Richard Tarbell.**

REGULAR MEETING: 6:00 p.m.

MEMBERS PRESENT: Chair, Dawn Clark-Montenegro; Vice Chair, Kathy Gil; Members, Jewell Spalding, and Frank Peixoto.

MEMBERS EXCUSED: Ineda Adesanya.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; County Counsel, William Fleishhacker; Code Enforcement staff.

There were approximately 7 people in the audience.

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

ANNOUNCEMENTS BY THE CHAIR: The Chair made no special announcements.

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.

Neighborhood Preservation Ordinance Abatement Hearing

1. Thomas S. Silva, 152nd Avenue, San Leandro CA 94578

In violation of Alameda County Ordinance 6.65.030 A (1, 3, 8, 9 & 10) and B (6)

1. Weeds and overgrown vegetation throughout the property;
2. Accumulation of debris, trash, garbage and miscellaneous items in driveway (near house); and
3. Inoperative vehicle (pickup truck) stored in driveway.

The Vice Chair motioned to uphold the staff recommendation . Declare the property a public nuisance, and require abatement to be complete within 10 days. Member Spalding seconded the motion. Motion carried 4/0.

2. Anne Bethel, Somerset Ave., Castro Valley, CA 94546

In violation of Alameda County Ordinance 6.65.030 A (1, 5, 8, 10) B(2, 3, 6)

1. Accumulation of rubbish, debris and miscellaneous items throughout the dwelling and property.
2. Property not kept clean and sanitary and free from all accumulation of offensive matter and odor.
3. Unsecured dwelling and overgrown vegetation and weeds in the rear yard.

Member Peixoto motioned to uphold the staff recommendation . Declare the property a public nuisance, and require abatement to be complete within 10 days. Member Spalding seconded the motion. Motion carried 4/0.

Alcoholic Beverage Sale Regulations Administrative Hearings: There were no Agenda items on the Alcoholic Beverage Sale Regulations Calendar.

CONSENT CALENDAR: There were no items on the Consent Calendar.

REGULAR CALENDAR

1. **CLEARWIRE LLC / JAMES CHARNEL, CONDITIONAL USE PERMIT, PLN-2010-00062** – Application to allow the installation of a cell site facility involving the replacement of 16 building-mounted antennas with nine new antennas consisting of three, four foot panel antennas, three one foot diameter microwave dishes and three, two foot diameter microwave dishes. The property contains 16 acres and is zoned R-1-CSU-RV (Residential Suburban, Secondary Units, Recreational Vehicle) District, located at 20600 John Drive, north side, approximately 300 feet, northwest of Castro Valley Boulevard, in the unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Numbers:084A-0240-001-02; 084A-0228-001-03; 084A-0235-001-06; 084A-0230-003-03; 084A-0230-001-02 and 084A-0230-004-00. **Staff Planner: Jeff Bonekemper.**

Staff reviewed the application. The recommendation was approval. The Castro Valley Municipal Advisory Committee recommended approval on a 7/0 vote. Public testimony was opened.

Ms. Charnel James was present representing the Applicant, Clearwire. Board questions were as follows:

- Does the church currently have antennas installed at the site
- Will this facility be co-located with another carrier
- Will the installation be façade mounted

Ms. Charnel said there are Clearwire antennas at the site. Twelve or 16 antennas will be removed when new antennas are installed. The facility will be a co-location with Metrocom, effectively taking over their space. Metrocom went bankrupt. Staff explained there are multiple carriers on the building façades. T Mobile, Conditional Use Permit, C-6685 was recently renewed. The permit expires in 2019. Conditional Use Permit, C-7454, Nextell, expires at the end of September, 2010. Ms. Charnel said the Clearwire antennas will be a flush mounted façade installation. Clearwire is different in that wireless internet services are supplied, as opposed to PCS cell phone service. Public testimony was closed.

Member Spalding asked why this application required cup review. Normally co-location is processed at the Permit Center. Staff explained co-location constitutes installation on the same mono pole or roof mount installation. This installation has separate mounts for antennas. The Chair recommended language be added to Conditions of Approval requiring antenna mountings be painted the same color as the façade.

Member Spalding motioned to uphold the staff recommendation of approval with the following modifications: Condition #1 shall add language stating the antenna color shall match the surrounding facade. **The Vice Chair seconded the motion. The motion to approve, Conditional Use Permit, PLN-2010-00062 carried 4/0.**

2. **JOHN & ZAMBIA WENTWORTH, CONDITIONAL USE PERMIT, PLN-2010-00073** - Application to allow continued operation of a residential facility for the adult developmentally disabled in a R-S-SU (Suburban Residence, Secondary Unit) District, located at 177 Hampton Road, south side, approximately 175 feet east of Harvard Avenue, Cherryland area of unincorporated Alameda County, designated Assessor's Parcel Number: 413-0047-007-02. **Staff Planner: Damien Curry.**

The staff recommendation was approval. An application addendum was distributed to the Board. The Cherryland Association Board expressed concerns. Currently the transportation bus drops residents in front which can potentially block the roadway. The bus could pick-up residents in the driveway however this may cause issues when backing out. The warning noise activated when in reverse, may disturb neighbors. Thus far, no complaints have been submitted to the Planning Department. The Board asked if the application was referred to the Cherryland Association. Staff said initially the Cherryland Association had no objections. A few days ago, the addendum was received. Public testimony was opened.

The owner / operator, Mr. John Wentworth was present. He was in agreement with the recommendations in the staff report. Board questions were as follows:

- How long does it take the bus to load and/or unload residents
- Will street improvements affect bus loading and/or unloading
- Will the lot accommodate an on-site turn around
- Were the deficiencies identified in the 2009 Social Services Inspection Report rectified
- How many clients are currently at the facility
- Is there live-in staff at the facility
- Does the Applicant own another facility near-by
- Are the residents ambulatory

Mr. Wentworth explained the loading process only took a few minutes. Residents are already outside. The bus drivers are instructed not to use a horn. He agreed with staff, backing out could be dangerous. Hampton Road is being altered. In the course of street improvements, he noticed parking spaces have been created across the street. Perhaps the bus could park there. Residents could then cross the street, escorted by staff. There is not much traffic activity during the time residents go out at 8:00 a.m. Mr. Wentworth said the main priority is the health and safety of the clients. Client appearance and behavior in public is also important. The facility is a Level 2 facility, staffed 24 hours per day with live-in staff. State regulations require one staff person for six clients. The facility has 2 live-in staff, and 2 other staff persons that monitor the facility. They try to be proactive, but may miss things if the entire site is not inspected. In the past some things like valid First Aid Certificates were inadvertently overlooked. It is difficult to control use of hand towels. The residents are developmentally disabled, and sometimes do not follow processes consistently. It is also difficult to maintain consistent water temperature. All of the facility residents are ambulatory. The State License they hold requires residents be ambulatory. Residents are allowed to leave the facility however they are instructed not to leave without assistance. Mr. Wentworth and his wife own another facility nearby. They administrate both facilities. They try to be good neighbors. Visits from neighbors are also welcome. If complaints are received by neighbors, they are handled right away. Mr. Wentworth attends Cherryland Association Meetings.

Ms. Ruth Baratta testified on behalf of herself, and as President of the Cherryland Association. She did not recall seeing Mr. Wentworth at meetings. Ms. Baratta said she spoke with the staff Planner multiple times. Initially there were no specific negative comments, however there were no positive comments

regarding the application. Ms. Baratta pointed out the bus departs and returns several times a day. She had been stopped in traffic at the other facility waiting for the bus to unload between 4:30 p.m. and 5:00 p.m. This causes a traffic jam. The staff Planner told her it is the responsibility of the owner to make arrangements to get buses off the street. The lot may need to be re-configured. The Board asked Ms. Baratta if she had suggestions to alleviate parking issues. Ms. Barrata said the lot is fairly large. This should allow their short bus to do a three point turn on the property.

Mr. Mike Baratta said there is school half block away. During the 8:00 a.m. hour. Hampton Road is very busy. Many people use it as a thoroughfare. When the street is narrowed, a dangerous hazard will be created by the bus stopping in traffic. The bus should stop on site, out of traffic. This will prevent residents from crossing the street, which could cause further danger. Most people are up in the morning. The warning beep activated when the bus is in reverse, should not cause much of a problem. Serious consideration should be given to an on-site solution.

Ms. Cindy Torres grew up across the street. The owners also own the properties at 161, 163, 139 and 140 Hampton Road. Since they purchased the homes, drug dealing has been on-going. A gang moved into one home, and there was a shooting. A marijuana growing operation was being run from another one of the houses. Not one night was quiet. It was said prostitution was being conducted at the 163 Hampton Road property. Recently some of the properties were foreclosed. Now her nightmare is over. However she now sees some of the people from 163 Hampton hanging out at 140 Hampton Road. Ms. Torres would like control to be taken of the situation. Attention should be paid to the issues. She is tired of living with the problems. Buses honk all the time. They are left running, which is not good for the environment. They also drop residents off on the wrong side of the street. This is unsafe. Ms. Torres raised the history of sites because since the foreclosures of 161, 163 and 139 Hampton Road. People associated with the problems are now congregating at the 140 Hampton Road facility. She would like the drug activity to stop. Ms. Torres has not witnessed any activity at 177 Hampton Road. However she is concerned for her neighborhood because the Wentworth's owned other properties where problems occurred.

Mr. John Wentworth returned to testify. This is the first time he has heard of the issues. The Sheriff has never come to any of the sites. The Hampton facility is inspected on a weekly drop-in basis by Department of Social Services, Developmental Services, and State Licensing Agencies. If these agencies saw anything illegal, they would notify him. If there is documentation, he can review it. None of the residents are drug addicts. Mr. Wentworth then said he did hear of some activities however none took place at his site. He does not have control over properties around his facility. He no longer owns the properties at 139, 161 and 163 Hampton Road. He understands neighbor's concerns. He would be concerned as well. People do not hang out at his at 143 Hampton Road facility. That facility is staffed. The Vice Chair said it may be beneficial to become more aware, now that neighbors have raised the issue. The Board has to be concerned, so problems don't migrate from the facility at 163 Hampton Road to the 177 Hampton Road facility. Mr. Wentworth must stop the bus from staging on the wrong side of the street. This is a safety concern. Live-in staff should have identified this. Mr. Wentworth said another option could be to have buses pick-up and drop off on Meekland Avenue. Member Peixoto responded the 80 foot lot can accommodate a turn around. Member Spalding agreed. There is room to re-configure bus parking. Another issue that needs to be addressed is the odd blue color of the home. The property is not well maintained, and is unattractive. The landscaping is worn and sparse. The lawn is not being watered.

Ms. Torres returned to testify. The Sheriff is well aware of the activity at his former property. The shooting at the home brought all the issues to a head. The Applicant's son was at that property daily, conducting the drug dealing. He is seen with the same individuals, although she is unsure of his connection with drug activities. Public testimony was closed.

Member Spalding asked if a continuance was appropriate to obtain further information about history and/or activities at other sites owned by the Applicant. Counsel said a nexus must be established between the application Conditions of Approval. In this case, a connection may be distant. It may be appropriate to have Code Enforcement address issues raised. The Chair acknowledged she was concerned. A sensible recommendation might be to prohibit loitering. However the Sheriff's Department had no objections to the use, if no opposition was expressed. The Vice Chair responded opposition was submitted today. After further discussion Board Members agreed upon modifications to Conditions of Approval.

Member Spalding motioned to adopt the staff recommendation of approval with the following modifications:

Condition #5 shall be modified to state the front and side yard fencing shall be maintained in a graffiti free manner.

Condition # 6 shall be modified to state: personnel shall ensure there is no loitering at the facility.

Condition # 8 shall be modified to state: the property shall be maintained in a graffiti free manner. The Applicant shall submit a Landscape Plan within 30 days of permit approval to the Planning Director for final approval.

Condition #9 should be modified to add: Residents shall not be picked up or dropped off in the street. The Applicant shall submit an on-site Parking, Pick-up and Drop-off Plan, to include no sounding of the bus horn. The Plan must address bus pick-up and drop-off onsite. The Plan shall be submitted to the Planning Director within 30 days for final approval.

The Vice Chair seconded the motion.

Member Peixoto asked if the requirement contained in Condition #8: *a professional contractor must conduct ground maintenance at the site* was a part of the previous permit. Staff was unsure. The Chair said retaining this Condition as a requirement in the current permit, will ensure added landscaping is maintained.

The motion to approve, Conditional Use Permit, PLN-2010-00073 carried 4/0.

3. **T MOBILE / LEAH HERNIKL, CONDITIONAL USE PERMIT, PLN-2010-00083** - Application to allow continued operation of a telecommunications facility (rooftop antennas) with modifications in an C-1 (Retail Business) District, located at 22596 Center Street, east side intersection northeast of Kelly Street, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 417-0030-014-05. **Staff Planner: Christine Greene.**

Staff recommended approval of the application. The Board asked if the site was located within jurisdiction of the Eden Plan update. Staff confirmed the site was not. It is located within the Fairview District. Public testimony was opened.

Ms. Hernikl was present representing T Mobile. Board questions for the Applicant were as follows:

- Where are the antennas located within the site
- Are changes proposed to the installation

Ms. Hernikl explained the antennas are located inside cylindrical housings screens, called raydomes. There are no proposed changes or modifications to the facility. Public testimony was closed.

Member Peixoto motioned to adopt the staff recommendation of approval with a modification. Condition #18 shall add the words, *and consistent with the façade color.*

The Vice Chair seconded the motion. The motion to approve Conditional Use Permit, PLN-2010-00083 carried 4/0.

4. **CLEARWIRE LEGACY / JACQUELINE SMART STEINBERG, CONDITIONAL USE PERMIT, PLN-2010-00112** – Application to allow installation and operation of a telecommunications facility (roof-top) antennas in a TC (Transit Corridor) District, located at 21144 Mission Boulevard, north east side, approximately 200 feet, southeast of Cherry Way, in the Cherryland area of unincorporated Alameda County, designated Assessor's Parcel Number: 414-0081-005-00. **Staff Planner: Christine Greene.**

Staff recommended approval. Public testimony was opened. Ms. Jacqueline Smart was present, representing Clearwire Legacy. Board questions for the Applicant were as follows:

- What will screening look like
- Why wasn't a façade mounted application recommended for this site
- Are less imposing mounting solutions available
- How high is the proposed enclosure
- What color is the proposed installation
- Where is the equipment cabinet located
- Is there a proposed maintenance plan for the cabinets

Ms. Smart explained the screen will have a chimney shape. Due to the height of the existing building, a façade mounted antenna would have the ability to propagate a communications signal. The antenna must be placed slightly higher than the building. The roof is pitched which does not allow construction of a parapet. As a result, a roof mounted solution will be used. The proposed enclosure will be 4 to 5 feet in height. The roof pitch hides the enclosure, which reduces visibility. Ms. Smart was in agreement with Condition of Approval #2. The color will be off-white to match with the existing building color. The cabinets are located at the rear of the site. Staff recommends a six foot high privacy fence be placed around the equipment. The equipment shall remain graffiti free. Public testimony was closed

Member Peixoto motioned to uphold the staff recommendation of approval with the following modifications:

Condition #1 shall add the words: *privacy slats shall be complimentary to the building façade.*

Condition #18 shall add the words: *equipment cabinets shall be maintained to match the color of the building façade.*

The Vice Chair seconded the motion. The motion to approve Conditional Use Permit, PLN-2010-00112 passed 4/0.

APPROVAL OF MINUTES: The Minutes of August 25, 2010 were continued to the September 22, 2010 Hearing.

STAFF COMMENTS & CORRESPONDENCE: A Conditional Use Permit application for the former Grocery Store on Luna Avenue was never filed. Apparently the structure has been converted into a residence. An additional structure has also been added to the rear. Code Enforcement will pursue violations at the site.

Thus far no recent BZA decisions have been appealed to the Board of Supervisor's.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: Member Spalding asked Counsel to review general rules for recusal. Counsel responded a Member should recuse if they have a bias against an applicant. Meaning the Member has made statements they have come to a conclusion prior to hearing evidence. A statement from an Applicant about a Member they do not like, may not necessarily meet the threshold of recusal. A Board Member can proactively make a statement on the record prior to hearing of an issue, they are prepared to hear the matter and make a decision based on the evidence.

The Chair asked if there are Code Enforcement rules regarding hoarding, also does the Social Services Agency interact with property owners. Member Spalding confirmed there is inter-agency cooperation and interaction. Code Enforcement does receive referrals from other agencies.

ADJOURNMENT: There being no further business, the hearing adjourned at 7:55 pm.

ALBERT LOPEZ - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS