

**MINUTES OF MEETING**  
**EAST COUNTY BOARD OF ZONING ADJUSTMENTS**  
**SEPTEMBER 16, 2010**  
**(APPROVED NOVEMBER 18, 2010)**

The meeting was held at the hour of 1:30 p.m. in the City of Livermore Council Chambers, 3575 Pacific Avenue, Livermore.

**FIELD TRIP:** The Board visited the following property individually:

1. **PEREZ and R & L PAINTBALL DISTRIBUTION, INC/ALVIAR, CONDITIONAL USE PERMIT, PLN2009-00132** ~ Application to allow continued operation of an outdoor recreation facility (paintball), in a P-D (Planned Development, 2212<sup>th</sup> Zoning Unit) District, located at 7900 Vallecitos Road, south side, approximately one mile east of I-680, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 096-0365-002-05. **Staff Planner: Damien Curry**

**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 nine 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:** *None*

**NEIGHBORHOOD PRESERVATION AND ZONING ORDINANCE ABATEMENT**

1. **BERNIE SHANKLIN, 1824 ALMOND AVENUE, LIVERMORE, ASSESSOR'S PARCEL NUMBER 99-1150-018-00:**
  - 1) Operating an auto repair business on the property; and 2) Cargo/storage containers stored on the property in violation of Alameda County Ordinance, Sections 17.08, 17.52.210, 17.52.290, 6.65.030 A, B, E, G and Junk Vehicle Ordinance 6.48.

Ms. Starling presented the staff report. Member Harvey requested clarification on the recommendation action and the Chair asked if it is normal to receive board packets immediately before the meeting. Ms. Henninger explained the BOS's action and said "yes" to the Chair.

Public testimony was called for. Peter MacDonald, attorney representing the applicant, asked if the Board had received his packet and stated his disagreement with the Chair's Opening Statement -- "that the owner did not comply ..." and suggested the use of the word 'allege' that the owner did not comply" The

staff report provides no evidence that Mr. Shanklin is either operating an auto business or storing junk vehicles on his property. He further stated the following: Mr. Shanklin has spent the last four months complying with County Enforcement; has complied all that is physically possible until the garage is allowed to be built for his classic cars; the three 'junk' cars are 1940's vintage Hudson cars, part of Mr. Shanklin's hobby (picture #12); the business has been closed down and no customer cars are accepted; business license has lapsed and Automotive Bureau Repair license has expired; has no employees; is making no money; no website; and hobby activities (occasional use of grinders) are not noisy, not frequent and conducted within an enclosed garage. In reference to cargo containers, Mr. MacDonald felt that it is a 'bad' County policy and ethics to enforce the container prohibition. Instead, it has to be evenly-handed. He requested that this portion of the hearing be continued until staff provides accurate locations of all containers in the Buena Vista/Almond Avenue areas and have a uniform policy. Staff was provided with a list and photographs of twenty-five visible cargo containers from a windshield survey of the neighborhood --.2252 Buena Vista to be stricken off the list. One of the following three options would be appropriate: property owners be given specific dates of removal; define criteria to allow properly screened cargo containers; re-write the Ordinance which currently prohibits barns in this neighborhood; or have a meeting with neighbors for their input. He further noted photograph #9 and pointed out that Mr. Shanklin has been trying to build a garage for over three years to work on classic cars and have a display place.

Bernie Shanklin, property owner, stated that he started his business in 1965 with all proper licenses, has no issues with his neighbors except his adjacent neighbor; his entire property has been cleaned; he does not make noise or generate any smell/dust but work on the cars when he wants to. Member Harvey requested clarification regarding the size of the garage. Mr. MacDonald replied that this Board had reduced the size and upon his appeal, the BOS approved the 40 foot height with several conditions which was rejected by Mr. Shanklin. New barn plans have been submitted to the Building Department. In response to the Chair, Mr. Shanklin provided a construction timeline – two weeks to pour cement, two weeks to cure, six weeks to build and ship the steel building from the East coast followed by another month.

David Huff, 715 Catalina Drive, explained that he is not an employee but works on his own car in Mr. Shanklin's booth.

Denise Moreda, adjacent property owner, said that two days ago she received a call after 10 pm that Mr. Shanklin was working on his cars. Cars are brought in during the day and he works at night with loud music to cover the noises. She expressed concerns with the proposed barn and that Mr. Shanklin will always run a business. There should be provisions for monitoring and perhaps Mr. Shanklin should pay for the monitoring since he is in the abatement process. She also requested a phone number to call upon receipt of complaints and periodic checks. Neighbors are intimidated by Mr. Shanklin hence do not appear at these hearings. If approved, she recommended set hours and a contact person/number. In response to the Board, she confirmed that yes, she does receive calls from her tenant and cars did come in 2-3 days followed by his working on them after hours.

Ron Edwards, 5682 Tesla Road, confirmed that the applicant is not doing any body work for customers but does work on his cars at nights in his hobby shop and allows his friends too, and the property has been cleaned up. He felt that Mr. Shanklin be allowed to have containers similar to all his neighbors.

Bill Sheehan, 5682 Tesla Road, provided the history of the property and violations, and pointed out that the use was not grandfathered in and five years to abate is unprecedented. Removal of the containers was part of the 5-year abatement process. There is a fine line between customers and friends cars and, if approved, the new building should be limited only to vehicles registered to him. Noise is audible since the

door of the garage is open due to the hot weather. Mr. Sheehan recommended some guidelines and conditions for re-enforcement.

Mr. MacDonald, in rebuttal, noted that the removal of the containers was not part of the abatement. Since the County has a Noise Ordinance, he suggested the use of a decibel reader by the neighbor. Having a barn will also help the situation.

Public testimony was closed. In response to the Board, Ms. Henninger stated the following: containers were part of the 5-year abatement plan; containers are not allowed on residential properties; Planning staff is awaiting revised plans from Mr. Shanklin; the matter before this Board is the illegal business and containers on site; although there is one junk vehicle on site, it is not included in today's hearing; all other violations have been cleared; vehicles stored on site needs to be in enclosed buildings and registered to owner or to persons living on-site; there have been other cases regarding containers; the Ordinance allows a maximum of 60 days to abate containers; after an abatement order, fines will be assessed which starts at \$200.00. Member Harvey said he was unsure if there is a business and Member Goff noted that no proof has been submitted. But there are containers on site. Member Harvey added that the two options would be to require Mr. Shanklin to get rid of the containers or provide an opportunity, perhaps 60 days. He further requested clarification on the different Ordinance Sections as reflected in the staff report. Ms. Henninger explained and added that staff has not provided ownership evidence of the cars on-site nor has followed up on the expired business license. The Chair requested clarification on barns and engineered structures (photograph #14). He said that since he has not had a chance to read the package, a recess or a continuance would be appropriate, preferably a continuance. *He made the motion for a continuance and Member Harvey seconded. Motion carried unanimously.*

**CONSENT CALENDAR:**

1. **ADAPTIVE MANAGEMENT PROGRAM FOR WINDWORKS, INC., AND ALTAMONT INFRASTRUCTURE COMPANY, INC., CONDITIONAL USE PERMITS** (*To be continued to October 28, 2010*).  
Staff: Sandra Rivera

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

**REGULAR CALENDAR:**

1. **PEREZ and R & L PAINTBALL DISTRIBUTION, INC/ALVIAR, CONDITIONAL USE PERMIT, PLN2009-00132** ~ Application to allow continued operation of an outdoor recreation facility (paintball), in a P-D (Planned Development, 2212<sup>th</sup> Zoning Unit) District, located at 7900 Vallecitos Road, south side, approximately one mile east of I-680, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 096-0365-002-05. **Staff Planner: Damien Curry**

Ms. Beatty presented the staff report adding that the only change from the previous approval is the recommendation for a ten year permit based on the lack of any complaints and compliance to the conditions of approval.

Public testimony was called for. Robert Alviar, applicant, said he was available for questions. *Member Goff made the motion for an approval per staff recommendation and Member Harvey seconded. Motion carried unanimously, 3/0.*

**APPROVAL OF MINUTES ~ July 8, 2010.** *The Chair recommended re-wording the third line to read “...and employee shifting will occur when the office person is not on site.” With this correction, he made a motion to approve the July 8<sup>th</sup> Minutes and Member Harvey seconded. Motion carried unanimously, 3/0*

**STAFF COMMENTS & CORRESPONDENCE:** *Staff thanked the Board for accommodating to the hearing schedule changes.*

**CHAIR’S REPORT:** *The Chair announced that he had visited Mr. Shanklin’s property and confirmed that it has been greatly cleaned up.*

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

**ADJOURNMENT:** *There being no further business, the hearing was adjourned at 2:45 p.m.*

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**ALBERT LOPEZ - SECRETARY**  
**EAST COUNTY BOARD OF ZONING ADJUSTMENTS**