

**MINUTES OF MEETING**  
**EAST COUNTY BOARD OF ZONING ADJUSTMENTS**  
**OCTOBER 14, 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, Pleasanton.

**FIELD TRIP:** *Cancelled*

**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 nineteen people in the audience.

**CALL TO ORDER:** *The meeting was called to order by the Chair at 1:40 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. Open Forum was re-opened at the end of the hearing.*

**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. *(Continued from September 16, 2010)*

Ms. Henninger presented the staff report.

Public testimony was called for. Peter McDonald, attorney representing Mr. Shanklin, in reference to the junk vehicles, pointed out that both the State statute and the County Ordinance exempt classic cars/parts; confirmed that Mr. Shanklin no longer accepts cars for body work; Business and Automotive Repair Licenses have lapsed; the applicant has no website, employees and no income; and has cleaned up his property. Regarding the cargo containers, Mr. MacDonald recommended a uniform enforcement policy -- specified removal date to all container owners or provide reasonable removal time after the barn ordinance is adopted. Selective enforcement is discriminative and prohibited. Mr. Shanklin has been trying to build alternative storage since 2004 for his classic cars which are currently stored in cargo containers, 200 feet away from the street and not affecting public health and safety in any way. The County could perhaps invite all Buena Vista and Almond Avenue residents for a joint meeting on what they want for their neighborhood--a shared vision. Mr. MacDonald recommended a continuance until

staff outlines an option on how to deal with cargo containers. In response to Member Harvey, he confirmed that the applicant is not running an auto repair business.

The Chair asked County Counsel if the Board could discuss the cargo container issue. Ms. Weddle, County Counsel, replied that since the issue of cargo containers was not noticed, the matter could only be discussed under Open Forum. The Chair announced that Open Forum will be re-opened to hear all testimonies regarding cargo containers.

Mr. MacDonald felt that it was relevant adding that it is a legal issue. Ms. Weddle replied that discussions regarding changes to Zoning or Abatement Ordinances could not occur.

Mr. Shanklin, applicant, stated his support and agreement with Mr. MacDonald and fairness with and for all property owners on Buena Vista and Almond Avenue.

Denise Moreda, adjacent property owner, read her written testimony.

D. Crusso, in support, stated that he has known the applicant for ten years and was contracted by Mr. Shanklin to build and design his barn. He further provided background history regarding Mr. Shanklin's permit -- a permit had been issued but numerous conditions were added and discrepancies were found, last contact with Building Department was in May/June with Art Mateo followed by an appointment with the Building Official, Allen Lang.

Kerri Richards, property owner on Buena Vista, stated that he had similar issues with his barn and explained the differences between search engines and websites.

David Huff, 715 Catalina Drive, stated that the applicant, a friend, should first be allowed to build and then he can remove the containers. As such, an ordinance is important.

Edward Conner, 2732 Pickfair Lane, in support, felt that Mr. Shanklin was being 'singled out' when there were other violators and urged fairness.

Linda Cooper, 1824 Almond Avenue, in support, noted that Mr. Shanklin has worked very hard all his life, is trying to build a barn, has cleaned his property to retire and work on his cars.

Bill Sheehan, 1586 Tesla Road, pointed out that the two issues before this Board are the containers and the illegal body shop. He disagreed with Mr. McDonald's testimony that the applicant is no longer doing business. Instead, the applicant has been operating without a license and advertising under the County Board. Although Mr. MacDonald has turned in a list of properties with cargo containers, this is not a cargo container issue but a separate issue not related to the abatement order.

Norman Nather, 1442 Buena Vista, in support, said about 25% of neighbors have containers.

Ron Edwards, 429 Vista Court, also in support, noted the following: not all neighbors get along; applicant is doing all he can; there is not much testimony against Mr. Shanklin; and felt that there was a relationship between Ms. Henninger and the neighbor, Ms. Moreda and, as such, there is a conflict of interest.

In response to the Chair, Mr. MacDonald said that the Board could make a decision or continue the matter until such time when answers are received. The testimonies regarding cargo containers should be included

as it is a legitimate and critical issue and part of this hearing especially since about 30 out of 70 Buena Vista properties have cargo containers.

Public testimony was closed. In response to the Board, Ms. Weddle confirmed that the Board could continue the matter or make a decision, a variance could not be applied for a cargo container and she could not confirm if cargo containers were legal at one time, perhaps in the 1960s. A further research is needed. A discussion followed regarding the date of initial complaint, possible ordinance adoption dates, and possibility of a legal nonconforming use. Ms. Weddle noted that the resolution clearly states that there is a nuisance and illegal business but she was unsure of the ordinance adoption date.

Public testimony was re-opened. Mr. MacDonald pointed out that the July hearing was a review hearing and not an abatement hearing.

Public testimony was re-closed. Member Goff pointed out that although vague as to when containers were allowed initially, the rule now is no cargo containers; and the applicant does not appear to be in business. Member Harvey agreed adding that the matter of cargo containers should be dealt by the Board of Supervisors as this Board only enforces the zoning and their decision should be based on the BOS Resolution or the ordinance. County Counsel replied that since the BOS decision is final and not appealable, the BOS will not revisit the issue. In response to the Chair, Ms. Henninger explained that this hearing is not selective as this is not the first container complaint, Mr. MacDonald has submitted a list of properties on Buena Vista with cargo containers, and it is up to the applicant to submit evidence that the containers were on the property before the ordinance adoption in 1946.

*Member Harvey made the motion to uphold staff recommendation -- Declare the property a public nuisance and require that all business activity cease and the removal of cargo/storage containers within 15 days. The Chair felt that 15 days was insufficient for a container removal and instead suggested 60 days. The motion was amended to reflect 60 days. Member Goff seconded and the motion carried unanimously, 3/0.*

**OPEN FORUM RE-OPENED:** *The Chair re-opened Open Forum to allow the public to speak on the cargo container issue.*

Millie Evans, 1479 Buena Vista, stated that she has lived in this area since 1932 and the County had approved her cargo container. This is a rural agricultural area and she urged that no restrictions be added to this area as it would be a hardship on many residents. She felt that residents deserve storage on their properties.

Kenneth Nather, 739 Caliente Avenue, read his written testimony.

Tim Scarano, 1912 Buena Vista Avenue, pointed out that this is an unique area and there are inconsistencies in the regulations. This is a rural area and cargo containers should be allowed and perhaps regulate. And, there should be input from residents.

Richard Kerri, 1826 Buena Vista Avenue, stated his willingness to work with Planning Department, recommended a Buena Vista community meeting, and he was not concerned about cargo containers as they are part of the rural areas but perhaps screened and painted.

Norman Nather, 1442 Buena Vista Avenue, expressed his concerns as he has a container on his property.

Ron Edwards, 429 Vista Court, asked for the enforcement rules for containers on private properties. Ms.

Henninger replied that abatement process is complaint-based and Ms. Weddle explained that answers are not provided under Open Forum.

*Open Forum was closed.*

2. **MANUEL MARTIR, 1410 BUENA VISTA AVENUE, LIVERMORE,  
ASSESSOR'S PARCEL NUMBER 99-1250-001-06:**

- 1) Graffiti on wall/fence in violation of Alameda County Neighborhood Ordinance 6.65.030 A(7) and B(6).

*This item was continued without discussion.*

**CONSENT CALENDAR:** *None*

**REGULAR CALENDAR:** *None*

**APPROVAL OF MINUTES - September 16, 2010 – Continued.**

**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 3:00 p.m.

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