

**MINUTES OF MEETING
ALAMEDA COUNTY PLANNING COMMISSION
NOVEMBER 1, 2004
(APPROVED DECEMBER 6, 2004)**

The meeting was held at the hour of 6:00 p.m. at Public Works Auditorium, 399 Elmhurst Street, Hayward, California.

FIELD TRIP: 1:00 p.m.

FIELD TRIP:

1. **2196th ZONING UNIT – CIVIC PARTNERS** – Petition to reclassify from the C-1 and C-2 (Retail Commercial and General Commercial) Districts to a P-D (Planned Development) District, to allow reclassification of 30 parcels to implement the San Lorenzo Village Center Specific Plan, located at 15800 Hesperian Boulevard, east side corner of Nimitz Freeway, unincorporated San Lorenzo area of Alameda County, bearing County Assessor's designations: 412-039-001-03; 412-039-002-00; 412-039-003-00; 412-039-004-02; 412-042-112-00, -113-00; 412-031-092-00, -093-00; 412-034-002-05; 412-034-005-06; 412-034-006-06; 412-034-006-07; 412-034-008-07; 412-034-008-09; 412-034-009-06; 412-034-009-08; 412-034-010-04; 412-034-009-06; 412-034-009-08; 412-034-010-04; 412-039-011-02; 412-034-011-02; 412-034-012-00; 412-034-013-07; 412-034-013-09; 412-039-023-03; 412-039-024-03 and 412-039-026.

The Field Trip was cancelled.

REGULAR MEETING: 6:00 p.m.

MEMBERS PRESENT: Commissioners Ario Ysit; Compton Gault; Frank Imhof, Vice Chair; Glenn Kirby; Mike Jacob, Chair; and Richard Hancocks.

MEMBERS EXCUSED: Commissioner Lena Tam.

OTHERS PRESENT: Chris Bazar, Planning Director; Jana Beatty, Senior Planner; Bruce Jensen, Senior Planner; Eric Chambliss, County Counsel's Office; Nilma Singh, Recording Secretary

There were approximately twenty-seven people in the audience.

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

ANNOUNCEMENTS BY THE CHAIR: The Chair announced that Commissioner Tam was excused. He also thanked the Planning Director and staff for the conclusion of the Adams application, MZU-1557, which had been appealed to the Board of Supervisors.

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.

CONSENT CALENDAR:

1. **APPROVAL OF PLANNING COMMISSION MINUTES** - October 18, 2004 – Approval of Minutes was continued to the next meeting, November 15, 2004.

REGULAR CALENDAR:

1. **2193rd ZONING UNIT AND TENTATIVE TRACT MAP, TR-7530, ROBERTS/UTAL** –Petition to reclassify a site comprising approximately 8.25 acres from the R-1-SU-RV and R-1-B-E-SU-RV District to the PD (Planned Development) District, to allow subdivision of three parcels into 38 lots for development of single-family homes, located at 4524 Crow Canyon Place, approximately 500 feet south of Crow Canyon Road, Castro Valley area of unincorporated Alameda County, bearing Assessor's Parcel Numbers: 084C-1068-001, 084C-1068-007, and 084C-1068-008. (Continued from September 7 and October 18, 2004).

Ms. Beatty pointed out that this project was also known as the Boundary Creek Development and was first heard by this Commission in September during the DEIR comment period, which has ended. Staff felt that it would be beneficial to bring the matter back and get comments on the revised project. The Applicants have incorporated some of the mitigation measures. Ms. Beatty further presented the staff report. The Chair asked if the Commission had any further questions for staff, or if staff had anything additional to present. Staff said that perhaps the Applicant would.

Public testimony was called for. Diana Hanna read her submitted letter dated November 1, 2004, adding that the information was taken from the Specific Plan for Areas of Environmental Significance, a County document. Attached was also a copy of the letter from the Urban Creeks Council of CA. All the NOP letters in the DEIR with the exception of the Fire Department, recommend no bridge for various reasons. She felt that it was important for this Commission to take into consideration the comments made by all the organizations/departments. According to Fish & Game and Caltrans, there were 100 year old oak trees. Ms. Hanna said she did not oppose the project or the builder but urged that no bridge be built, the project be reduced and the riparian corridor be considered. The DEIR also states that the area is designated as red-legged frog habitat, which needs 300 feet on both sides of the creek. Trout was also on the endangered list and needed to be considered. She pointed out that Clean Water recommends 1,200 square feet filtration per acre. Road size was also a concern.

The Chair announced that Terry Preston has requested to speak at the November 15th hearing.

Arlene Utal, applicant, provided a brief history and discussed Ms. Hanna's concerns regarding

the bridge and the trees. With an aid of the over-view, she presented old photographs of the original bridge which was built thirty feet over Crow Creek adding that the proposed two-lane bridge will not have any impacts on the creek and per Fire Department, the project has to have two accesses; and the subject property which was taken in 1960, looking towards Veronica, had no trees. According to the owners, the property had been barren except for the orchard. As such, they had planted trees to preserve their privacy. Therefore, no trees were 100 years old, perhaps with the exception of the creek trees, which will not be removed. At CVMAC's suggestion, a comparison study was done with the other two recent developments in the area, Shadow Creek and Crow Creek. Ms. Utal further discussed the comparisons which included the number of units, average square feet of units, lot size, net acres, density, parking and open space. The new revisions included removal of all outside retaining walls and replacement with split pads; the creek will sit thirty feet below all the proposed homes, Lot 1 has been designated for a common green area instead of a dwelling which will be maintained by the Home Association; all run-off water will be collected and treated at the former Lot 1. Ms. Utal said she would appreciate any comments and/or directions on the Final EIR.

Commissioner Hancocks asked if the FEIR would present any different conclusions from the draft EIR.

Scott Gregory, EIR Consultant, confirmed that the Final EIR will include a chapter called the "Revised Project" which will include a full description of the new proposal with mitigated measures.

Public testimony was closed. The Chair asked that in the future, this application not be scheduled for a hearing before the Final EIR was available.

Commissioner Gault made the motion to continue the matter to November 15, 2004, and Commissioner Kirby seconded. Motion carried 6/0/1. Commissioner Tam was excused.

2. **2196th ZONING UNIT – CIVIC PARTNERS** – Petition to reclassify from the C-1 and C-2 (Retail Commercial and General Commercial) Districts to a P-D (Planned Development) District, to allow reclassification of 30 parcels to implement the San Lorenzo Village Center Specific Plan, located at 15800 Hesperian Boulevard, east side corner of Nimitz Freeway, unincorporated San Lorenzo area of Alameda County, bearing County Assessor's designations: 412-039-001-03; 412-039-002-00; 412-039-003-00; 412-039-004-02; 412-042-112-00, -113-00; 412-031-092-00, -093-00; 412-034-002-05; 412-034-005-06; 412- 034-006-06; 412-034-006-07; 412-034-008-07; 412-034-008-09; 412-034-009-06; 412-034-009-08; 412-034-010-04; 412-034-009-06; 412-034-009-08; 412-034-010-04; 412-039-011-02; 412-034-011-02; 412-034-012-00; 412-034-013-07; 412-034-013-09; 412-039-023-03; 412-039-024-03 and 412-039-026-00. (Continued from October 4, 2004).

The Chair announced that this item will be continued to February 7, 2004, as recommended by staff.

3. **TENTATIVE TRACT MAP, TR-7467 – ROMBOUGH/WRIGHT** – Petition to subdivide one parcel of approximately 3.52 acres (153,331 square feet) into 16 parcels intended for single-family dwellings, one lot with an existing single-family residence and 15 lots for new single-family residences, in an R-1 (Single-Family Residence) District, located at 23096 Mansfield Avenue, south side, approximately 670 feet south of Kelly Street, unincorporated Fairview area of Alameda County, designated County Assessor's designation: 0416-0200-005-00.

Ms. Beatty presented the staff report. Any comments from the Commission and public will be incorporated in the Final EIR.

Public testimony was called for. Mr. Rombough said he was available to answer any questions.

Public testimony was closed. The Chair noted the question/discussion on Page 29 of the Appendix on the environmental check list as to what is less than significant or what is potentially significant; and the mitigation measures which specifically address the removal of all the bushes at the intersection. Also, a site plan for the alternatives discussed in the document would be helpful, as the Boundary Creek project had. The Commission voted unanimously for a continuance.

4. **RMC PACIFIC MATERIALS/GRANITE CONSTRUCTION COMPANY** – To consider the matter of the asphalt batch plant recently constructed and operated by Granite Construction Company, located on the site of (and operated as accessory to) the existing Eliot Quarry operated by RMC Pacific Materials (Permittee), regulated under Alameda County Quarry Permit Q-1 and Surface Mining Permit and Reclamation Plan SMP-23. This asphalt batch plant is located on the Q-1/SMP-23 site in the Livermore-Amador Valley in unincorporated Alameda County, approximately 0.6 mile south of Stanley Boulevard, approximately 500 feet southeast of Shadow Cliffs Regional Recreation Area, and 1,800 feet northeast of the existing northwest-southeast portion of Vineyard Avenue in the City of Pleasanton. (Continued from September 2 and October 18, 2004).

Mr. Jensen summarized the staff report adding that a letter has been received from both City of Pleasanton dated October 29th and from the RMC Attorney dated October 26th, after the staff report was prepared. The Chair thanked staff for his work. He asked Commissioner Imhof to discuss the issues which he had submitted to staff.

Commissioner Imhof asked when the methane issue was first reported at the dump-site. Mr. Jensen explained that methane had been collected since the 1980's. About two years ago, there was a concern of methane underground migration towards the adjacent properties. Following legal proceedings, methane collection system was improved. Confirmation from the engineers have been received that there is no current leakage. Mr. Jensen also explained that methane is

odorless and has no effect on eyes or any other body parts. Commissioner Imhof described that during a site visit when the asphalt plant was not in operation, he had problems with his eyes but there was no odor. If the other residents were feeling the same effects, he was concerned that there was something else in the air. He asked if there was a department/company that could look into this issue, perhaps environmental health. Mr. Jensen said he would check into this adding that there was another landfill in the area but was only for construction materials.

The Chair requested the status of the peer-review. Mr. Jensen replied that it was in process.

Commissioner Gault suggested a continuance to allow time for staff to obtain all information. Commissioner Kirby agreed noting that each continuance means postponement of the installation of mitigation measures.

Public testimony was called for. Jerry Iserson, Planning Director, City of Pleasanton, thanked the Commission for attempting to resolve all the issues. His comments were based on the City's position from a land use perspective and he further identified the following issues for the record: the asphalt plant creates an impact with respect to odor, noise and visual quality to the existing residents in the Corridor; these impacts will be exacerbated with the proposed 189 new homes and school along with the perception issue. Despite the easement, locating the plant in close proximity to the Specific Plan area and the basis on which an approval was based on was an old permit and the decision did not consider the significant changed circumstances now existing which requires re-evaluation through a new public hearing process. Regarding the odor issue, the County has been monitoring the landfill site on a regular basis and the City has not received any complaints to-date. The City would like this Commission to take action requiring relocation of the plant through a public hearing process within the next two years. The Chair asked if any illegal dumping has occurred in the past on other sites. Mr. Iserson said that he was not aware of any. In response to the inconsistent land use, the Chair pointed out that although he had requested justification on land uses across the jurisdictional lines, no response has been received. Mr. Iserson indicated that it would not only depend on jurisdictional boundaries but good planning on both sides. The City was not requesting closure but relocation to another area of the property, increasing the separation distance and minimizing land use conflict. The Chair indicated that he would like to go beyond the nuisance justification and look at findings and compatibility of land use to the extent that a use is consistent with the General Plan and Variance process; and taking an action based on the compatibility of the City's General Plan process. Mr. Iserson explained that it would also be based on existing uses and also on a process through the Specific Plan. Findings for a use permit have to be made that the use will not impact adjacent uses or be detrimental to health and welfare. The Chair asked if the City felt that the asphalt was a new use and if the City was concerned with the easement language during the General Plan process. Mr. Iserson said that although it was a discontinued pre-existing use, it would be considered a new use that was not contemplated or disclosed/addressed during the Specific Plan process.

Commissioner Kirby requested clarification that the age of the permit should have triggered further evaluation of the process. Mr. Iserson pointed out that the use has not been a continuous one and the current location was never specified. Commissioner Hancock asked if the City felt that the quarry operation was a nonconforming use. Mr. Iserson said they were unclear whether the plant was a legal use because the plant location and duration had not been originally

specified. Mr. Jensen further explained that although the original maps submitted with the quarry permit showed generalized locations of the other uses, including an asphalt batch plant closer to Stanley Boulevard, the permit language did not link any of the uses to any specific locations on the site. It was not definitive that the plant could be located only in one place.

Michael Roush, City Attorney, felt that the Commission could make a finding that the permit was issued in error and based on this, begin the revocation proceedings. Although different interpretations could be applied to the 1957 permit, mistakes could have been made that needed to be corrected. There was adequate evidence showing that the asphalt plant does constitute a nuisance with much testimony from many residents complaining of disturbance. The City is willing to give two years for Granite Construction to find an alternative site. The Chair asked for the City's position regarding the proposal that was tied with the school and if the Council had any specific mitigation measures. Mr. Roush said that the concern with the school was the uncertainty of the timing of the construction especially with the current litigation. If Granite was willing to spend money on mitigation measures during this two year period, it would be appreciated.

Commissioner Hancocks asked if he thought that either the City and/or the residents could find a suitable location on-site. Mr. Roush replied yes since it was a large site and a location which was not visually intrusive with less odor and subject to a full public review process. Commissioner Kirby asked if there was a zone/area which would reduce the City's concerns. Mr. Roush said that it would have to be further away from the City limits and re-stated that any new site would be subject to a full public review. Commissioner Ysitt felt that ideally it could be in the reclaimed area but was not sure what areas were available for relocation. He also pointed out the wind direction, from east to the west, towards City of Livermore. Mr. Roush indicated that on a 500 acre parcel, there could be a site with reasonable access to Stanley Boulevard. It was not the City's interest to move the problem to Livermore but a compromise.

Geoff Boraston said he was available for any questions. The Chair thanked him for his responses to the Commission's questions from the last hearing.

Steve Brozosky, 1700 Vineyard Avenue, said he was speaking as a resident. There was a reclaimed area near Stanley Boulevard which was the same distance from both Livermore and Pleasanton, which would be a good relocation site per RMC. In 1999, City of Pleasanton had prepared a DEIR for the Vineyard Corridor Specific Plan which included comments from Geoffrey Etnire who had recommended granting of noise, dust and vibration easement for all parcels in the Specific Plan area. As a result of his comments, the Specific Plan was amended to include the above easements in the Recorded Deed of Sale. Mr. Brozosky pointed that the copy of the RMC easement does not reflect the above which was inconsistent with the Specific Plan. The April 1996 Bay Area Air Quality CEQA Guidelines has a section on evaluating odor impacts and Mr. Brozosky further read the section. He pointed out that if this project had gone through proper CEQA review, the Bay Area Air Quality District would have done more studies on the impacts on the residential homes and/or raised issues. But since they were not aware of the plant, no comments had been submitted. He submitted a copy of the related section of the Specific Plan.

The Chair asked staff for the timing of the Bay Area Air Quality CEQA process. Mr. Jensen explained that the District could prepare their own CEQA analysis if, as a responsible agency, they see it as appropriate for their own purposes or if the County does not do one. Mr. Brozovsky added that if the lead agency approves, the District can do this ministerially over the counter. He also pointed out that on the Granite's application to the District, two erroneous statements were made which were that a CEQA process was followed and that it was less than 1,000 feet from a school site.

Mary Roberts concurred with Mr. Brozovsky's testimony regarding the CEQA and Specific Plan. She also agreed that mistakes have been made and continuing to ignore does not help the situation. She asked for the importance of discussions on the landfill. She has lived in this area for 26 years and for the last 10-15 years, there has been a watchman living on site. As a result, there has been no illegal dumping and there has been no odor from this site. This property has been graded for 23 homes.

Public testimony was closed. Commissioner Hancocks re-stated his previous concern, whether or not nuisances exist. He asked how the Air Quality District defines a site, as an operation or an area included in the General Plan. Mr. Jensen said he was not sure but further explained the County's definition.

The Chair felt that the possible course of action would be finding of a nuisance for sound, noise, odor, visual control; there was a need for the Commission to discuss whether or not the asphalt plant is a new use; the issuance of the permit was an error; and the timeline for SMP-23 Periodic Review. Commissioner Imhof requested copies and/or clarifications on the City's Specific Plans and RMC's deed restriction language. From Mr. Roush's testimony, every parcel would have a recorded easement and, as such, he requested that a check be made if the records do show the school site.

Commissioner Ysitt requested that any information received by staff be forwarded to the Commissioners as soon as possible. He made a motion for a continuance to December 6, 2004 and Commissioner Kirby seconded the motion. Motion carried 6/0. Commissioner Tam was excused.

5. **D-157 – VARIANCE IMPLEMENTATION AND EXPIRATION -** Planning Director-initiated request for Planning Commission determination regarding interpretation and reconciliation of Zoning Ordinance provisions related to Variance applications that were approved prior to the adoption of an ordinance amendment requiring implementation within a three year period, and the meaning of “in effect” and “implemented”.

The Chair announced that this item will be continued to November 15, 2004, as recommended by staff.

STAFF COMMENTS & CORRESPONDENCE: Mr. Bazar announced the up-coming 21st Annual Planning Commissioner’s Seminar on Saturday, December 4, 2004 at Sonoma State University. Any Commissioners interested in attending to inform staff. Commissioner Ysitt indicated that he would not be attending.

CHAIR’S REPORT: None.

COMMISSION ANNOUNCEMENTS, COMMENTS AND REPORTS: Commissioner Kirby announced that he will be unavailable to attend the December 6th hearing. A discussion followed regarding the number of items on the December 6th agenda, Granite’s continuance date and the possibility of having a quorum. Mr. Bazar explained since the Granite application was continued to December 6th, it would have to be on the agenda and in the event it is not ready for action, the matter could be continued at the December 6th hearing.

Compton Gault provided an up-date on the up-coming conference. The number of attendees has increased significantly and the final count will be available on November 8th. The 125 binders have to be completed by Friday and further thanked staff for all their effort and time. A tour has been scheduled for Saturday and a Sheriff’s Department Honor Guard will be opening the ceremony on Saturday evening.

Commissioner Ysitt announced that the Greenville Ag Center has been renamed as Adolph Martinelli Event Center but has not been dedicated yet. Mr. Bazar stated that a tentative date has been set for December 3, 12:00 – 2:00 p.m.

Commissioner Gault thanked County Counsel, Mr. Chambliss for attending these hearings.

Commissioner Hancock asked if there would be a Closed Session on December 6th. The Chair replied yes.

ADJOURNMENT: There being no further business, Commissioner Kirby moved to adjourn the meeting at 7:35 p.m. Commissioner Gault seconded the motion. The motion was carried 6/0.

CHRIS BAZAR, SECRETARY
COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY