

**MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
NOVEMBER 17, 2010
(APPROVED DECEMBER 8, 2010)**

The Regular Meeting was held at the hour of 1:30 p.m. in the Alameda County Building, 224 West Winton Avenue, Hayward, California, 94544.

SPECIAL MEETING: 12:00p.m.

Work Session of the West County Board of Zoning Adjustments to discuss Alcoholic Beverage Sales Regulations Administrative Hearings and Ordinances.

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

MEMBERS EXCUSED: None.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; Andrea Weddle, County Counsel; Bret Schueller; Sergeant Alameda County Sheriff's Department; Cherry Lemmon, Technician Alameda County Sheriff's Department.

REGULAR MEETING: 1:30 p.m.

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

MEMBERS EXCUSED: None.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; County Counsel, William Fleishhacker; Code Enforcement staff; and Yvonne Bea Grundy, Recording Secretary.

There were approximately 20 people in the audience.

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

ANNOUNCEMENTS BY THE CHAIR: The Chair announced that all items scheduled for the Alcoholic Beverage Sale Regulations Administrative Hearing will be continued to the December 8, 2010 Hearing.

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: There were no items on the Neighborhood Preservation Ordinance Hearing Calendar.

Alcoholic Beverage Sale Regulations Administrative Hearing: Items on the Alcoholic Beverage Sale Regulations Administrative Hearing Calendar were continued the December 8, 2010 Hearing.

CONSENT CALENDAR:

There were no items on the Consent Calendar.

REGULAR CALENDAR

1. **T MOBILE WEST / HARD, CONDITIONAL USE PERMIT, PLN-2010-00111** - Application to allow installation of a new cell site facility that includes a 60 foot monopole and a 10 by 28 foot equipment area, in the northwest corner of the Castro Valley Community Park, in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle Parking Regulations) District, located at 18988 Lake Chabot Road, east side approximately 300 feet, northeast of Keith Avenue, in the unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1305-003-02. **Staff Planner: Jeff Bonekemper.**

Staff reviewed the application to modify an existing use permit. The recommendation was approval. Public testimony was opened.

Ms. Lisa Nahmanson was present representing, T Mobile. The project has come before the BZA in the past. Ms. Nahmanson met several times with Planning and Board of Supervisors staffs. August 2009 the BZA approved a 35 foot facility in the parking lot in the northern corner of the parcel. The project was appealed to BOS. The appeal was continued by the Board of Supervisor's to allow the Applicant to speak with neighbors. The neighbors did not like the proposed location. Hayward Area Recreation and Parks Department explained to neighbors why other sites posed were not viable. An appointment was scheduled to meet with the appellant, Mr. Divine. Unfortunately he could not make it. T Mobile drew up plans for two design options discussed. A plan with a 28 foot by 28 foot equipment area was selected. The pole will be a stealth cypress tree. An arborist will confirm acceptable trees to be placed around the installation. Member Spalding commented the tree/pole design specified is far superior to those seen in the recent past. The Chair asked if coverage objectives can be met with the new proposed design. Ms. Nahmanson confirmed they can. The proposed location is down slope. The improved cypress pole design is now only 60 feet high, to accommodate the neighbors. Public testimony was closed.

Member Peixoto asked if the application would be referred to Castro Valley Municipal Advisory Committee. Staff said the decision would be made by the Board of Zoning Adjustments. The CVMAC was not opposed to the prior proposal. Presumably they would not have a problem with the current application.

Staff asked that Finding #4 be modified to correctly reflect Residential zoning, as opposed to Agricultural. Member Spalding asked that Condition #14 note that landscaping be maintained as well.

The Vice Chair motioned to uphold the staff recommendation of approval with the following modifications.

Finding #4 shall be modified to reflect zoning is *Residential* as opposed to Agricultural.

Condition #14 shall add the word *landscaping*.

The staff report and the resolution shall now state, T Mobile West

Member Spalding seconded the motion. The motion to approve, PLN 2010-0011, T Mobile West / HARD passed 4/0.

2. **WINGPORT BAR & GRILL, CONDITIONAL USE PERMIT, PLN-2010-00160** - Application to allow a restaurant (Wingport Grill & Bar) in conjunction with a full service bar. A "tavern" is a Conditional Use under the C-1 (Retail Business) Zoning District, located at 19510 Hesperian Boulevard, south east

from the corner of Bartlett Avenue, in the unincorporated Hayward Acres area of Alameda County, designated Assessor's Parcel Number: 432-0004-028-03.
Staff Planner: Jeff Bonekemper.

Staff recommended approval with the following modification. Condition #4 shall be omitted. Condition #5 shall be changed to 120 days. This should allow the Applicant sufficient time to comply. The Site Development Review can be conducted by the Planning Director. The Applicant will continue to work with the Redevelopment Agency throughout the process. Additional photographs of the site were then distributed to the Board. Public testimony was opened.

The property owner, Shilpa Gogri was present. The Board asked the following questions:

- What type of restaurant is proposed
- Will the façade be improved

Ms. Gogri said the restaurant will serve chicken wings. The theme will be Sports related. The Applicant Mr. Wilson will be adding landscaping to the building exterior.

The Applicant Mr. Jackie Wilson told the Board the restaurant will have a family friendly, sports atmosphere. By allowing a full service bar people can eat, drink and socialize. There will also be a large screen T.V. Multiple flavor Buffalo Wings will be served, lemon pepper, sweet, and atomic hot. Wingport will also serve specialty pizza and sandwiches, at an affordable price. The restaurant will provide excellent service. They hope to partner with Little Leagues, Pop Warner Football and the School District to provide team sponsorships. Regarding the exterior, Mr. Wilson is working with Planning to add a patio, more windows, and improved lighting. Mr. Wilson hoped the Board will see the positive impact of a full service restaurant and bar. Board questions for the Applicant were as follows:

- Is the proposed operation a franchise
- Why is the operation considering a full bar as opposed to wine and beer
- Will there be a wall between the restaurant and the bar
- What are the proposed Hours of Operation
- What type of entertainment will be offered
- What is the estimated ratio of food sales to alcohol sales
- What improvements are planned for the building

Mr. Wilson said the operation will be the first of its kind. Similar in format to food served at other places however not a franchise. The building has two existing windows and a door in front. The door on the side will be changed to a glass door. Three windows will be added to the side of the building. A patio with low rise railings will be added to the parking lot side of the building. Mr. Wilson believes a full bar will create the atmosphere he envisions. The interior design will be an open floor plan. At this time he does not have a specific idea for entertainment, possibly soft jazz on Friday or Saturday. The ratio of food to alcohol is probably going to be 51% food to 49% alcohol, although a full analysis has not been completed. The registers in the bar and restaurant will be separate items by category. Sales will be tabulated in each area. Alcohol will not be served if food is not available. The proposed Hours of Operation are 10:30 a.m. to 10 p.m., Monday through Thursday and 10:30 a.m. to Midnight or 1:00 a.m. on Friday and Saturday. The Vice Chair pointed out other local restaurants such as Elephant Bar and Applebee's have a bar design open to the entire room. Chevy's bar is off to one side however the design has an open floor plan.

Mr. Richard Hancocks told the Board, he was in favor of approval. The building in which the restaurant is proposed has a long history. It has been vacant for a long time, but once was a popular restaurant. A

new successful restaurant will attract people. In turn the business will generate revenue for the County. Mr. Hancocks acknowledged there is a concern regarding liquor retailers, and alcohol outlets. That is why the County established an Alcohol Policy. It is important to remember if business is an advantage to the community. The community should focus on that business, and the community overall. In his opinion, the proposed use is a good addition.

Mr. Tom Silva a long time local business owner echoed Mr. Hancock's comments. It is difficult in a recession to get families to invest money. This is how the community is re-built, one business at a time. Mr. Silva requested the Board approve the permit and wished Wingport Grille & Bar success.

Ms. Avani Desai, a Prevention Specialist with Comm Pre testified. Comm Pre supports success, and businesses that operate in a responsible manner. The staff report addresses landscaping but not alcohol sales. Comm Pre requests the margin of alcohol sales to food be increased. Ms. Desai asked staff if the Liquor License was transferred from another City or belonged to the former establishment. As there are six active alcohol outlets in the area. Ms. Desai canvassed the surrounding area and spoke with staff at the St. Francis Care Home. They are also concerned about possible noise generated from the establishment. Given there are two care homes, and two parks in the vicinity. Comm Pre requests that Happy Hour specials and promotions be prohibited. All servers should be over 21 years of age. Comm Pre is looking forward to a long standing relationship with the owners, but requests that alcohol not be served after 6:00 p.m. The neighborhood can be rough.

Ms. Erika Auten has lived in the area for 26 years. The restaurant has the potential to be positive, however she had concerns. Bartlett Avenue is a busy street. People drive fast. Speeding is a problem. Speed bumps may be appropriate, due to the high volume of traffic. Many children use this thoroughfare to get to school, also the elderly. The neighborhood is not the best. Ms. Auten hoped a bar would not stir up negative elements, such as vandalism. The community will have to deal with the violence and issues at night, not Wingport. The Olde Pizza Joint was a family restaurant. She would like the new business to be the same. It should not turn into a bar stop or jazz bar open until 1:00a.m. Years ago there was a nearby club. Neighbors heard noise until 1:00 a.m. They want to ensure the new venture is not going to attract riffraff. It should be safe for the surrounding neighborhood. Ms. Auten asked the following questions regarding the proposed restaurant:

- Will the alcohol served be limited to Beer & Wine
- What time is "Last Call"
- Will there be live entertainment and/or band
- Will there be a DJ
- Will this be a gateway for Monday Night Football entertainment
- Will the restaurant provide security

Member Spalding asked Ms. Auten if the Olde Pizza Joint served alcohol. Also what time it closed. Ms. Auten said hard alcohol was served. The Pizza Joint closed at 9:00 p.m. Saturdays it closed at 1:00a.m.

Kathy Martins, a Board Member of the San Lorenzo Homeowners Association was present. The HOA believes rules should be strict. The Alcohol Policy regarding restaurants is confusing. The goal is to increase economic development. As a result she would like to see the Ordinance improved. San Lorenzo has seen a lot of empty lots. Wingstop will help in the effort to revitalize. However the idea of alcohol in a family restaurant is a bad idea. If the restaurant will not serve food at 11:00 p.m., it may not be appropriate to serve alcohol. Ms. Martins lives in the area, and is raising a family. Many surrounding cities have restaurants and bars. She has to leave her area to go out. She would like the dollars to return to San Lorenzo. Perky's Pizza and the Englander are out of town. They are always full. Regarding

“Happy Hour” specials, Acapulco Restaurant has a special every Wednesday. Ms. Martins commented the ratio of food to alcohol is affected by the price of drinks. The ratio rises because alcohol costs more. For example Chevy’s has a ration of 55% alcohol to food ratio.

Nancy Van Huffel is in favor of more establishments in San Lorenzo. She is also a Member of the HOA. The Pizza Joint was there for more than 20 years. Now there is almost nothing local, which is a shame. Black Angus has been shut down for more than one year. Restaurants are put through a cup process, so there can be follow-up. The Applicants should be given a chance. Ms. Van Huffel is not opposed to Happy Hour. Typically there is also discount food during that time. Skywest Golf Course closes at 6:00 p.m. Regarding entertainment at Wingport, she would not mind jazz. However music should not go late. The Hours at the San Lorenzo HOA Social Hall end at 10:00 p.m. to respect neighbors. The San Lorenzo Homeowners Association sent a letter in support of a full service bar, and restaurant to the Board of Supervisor’s. The County can monitor the operation. The HOA did not receive the staff report until Monday. The proposition of a live band was not discussed, as they were unaware. The Board asked Ms. Van Huffel her assessment of traffic issues on Bartlett Avenue, also HOA recommendations for façade improvements. Ms. Van Huffel said Bartlett Avenue is beyond the jurisdiction of the HOA. Residents on Bartlett Avenue, if interested would need a petition to obtain a speed bump. Public Works requires signatures of 75% of the street’s residents. The exterior of the building could be spiffed up. Staff further explained the Planning Director reviews the Site Development Review applications submitted in conjunction with Conditional Use Permits. Façade improvements are considered at that time. The SDR would be processed if the project received BZA approval. Ms. Van Huffel asked if the HOA can appeal a Planning Director decision. Staff confirmed they can.

Ms. Kathy Martins returned to speak. She pointed out a full service restaurant and bar would be no different than Chevy’s or the Elephant Bar. The HOA unanimously supports a full service restaurant and bar.

Ms. Marita Cheng is a local business owner. She operates Cesar’s Chicken, and the bar at the Sky West Golf Course. Ms. Cheng is in favor of the application. Although she is concerned that school children go by the establishment during school hours. At the Skywest Bar, she insists bartenders ask for I.D. They have experienced problems with people that have had too much to drink.

Bill Lambert of the Alameda County Economic Development and Redevelopment Agency will be working with the Applicant on a fancy façade. If approval is obtained, work on the project will begin right away. Board questions for Mr. Lambert were as follows:

- What is the Development Agency’s position on serving wine & beer vs. hard alcohol
- What is the Development Agency’s recommendation regarding traffic
- What is the Development Agency’s recommendation regarding Hours of Operation

Mr. Lambert said determination of types of alcohol served is outside the realm of the Redevelopment Agency. However he believes in this economic environment, the Applicant will need all types of sales. Regarding traffic, Redevelopment has to defer to Public Works. Public Works does not have a problem since there was a business there before. There were no issues. Member Spalding pointed out that if traffic improvements are recommended, she did not believe funding was available. The Chair asked if funds could be allocated based on a recommendation of the San Lorenzo Redevelopment Committee. Mr. Lambert will contact Public Works for more specific information. Mr. Lambert said the Hours of Operation posed by the Applicant are acceptable. Food will be served until closing time. Staff believed signage directing a right hand turn only onto to Bartlett Avenue, would be helpful.

The Chair re-called, Applicant Jackie Wilson. He would like to open the establishment at 10:00 a.m. or 10:30 a.m. to serve lunch patrons. Alcohol can be served from Noon to 10:00 p.m. Monday through Thursday. Friday and Saturday the Hours of Operation can be 10:00 a.m. to 1:00 a.m. Further Board questions for the Applicant were as follows:

- How late will live entertainment take place
- How will the restaurant prevent noise from disturbing neighbors
- How close is the nearest residence

Mr. Wilson responded at this juncture live entertainment would be limited to Friday and Saturday night. It would probably go until Midnight. He is flexible, and open. He is unsure of the distance to the closest residence. The business will be a family owned and operated. Mr. Wilson is approachable, and has no problem working with people.

Staff then read Prohibited Noise Disturbances 6.60.050 #1 as listed in the Alameda County Ordinance. *Radio, Television Sets, Musical Instruments and Similar Devices. Operating, playing or permitting the operation or playing of any radio, stereo, television set, audio equipment, electronic equipment, drum, musical instrument, or device which produces or reproduces sound at any time of day plainly audible at a distance of 50 feet from such device. This section does not apply to places public of public entertainment or to events for which a lawful permit has been obtained, provided that the activities producing the sound are being conducted in compliance with the permit. This section does not apply to the operation of sound amplification systems in vehicles to the extent those systems are subject to California Vehicle Code Section 27007.*

Erika Auten returned to testify. She grew up around the corner on Via Manzanita. A few blocks from her present home on Bartlett Avenue. There used to be an old bar on Hesperian Boulevard, two doors from Cesar's Chicken. Music from the bar could be heard, at her home. Families live behind the proposed restaurant. Ms. Auten would like a neighborhood restaurant she can walk to. A family atmosphere would be nice, however she does not want it to become a bar scene full of single people that have been drinking. People drive down Bartlett Avenue at 5:00 p.m. to prevent using the main street. One young driver in a Mustang swiped two parked cars. The restaurant should provide security, and not be turned into a nightclub. Public testimony was closed.

Member Peixoto pointed out a business was at the location, prior. The application should be referred to Public Works again to obtain specific traffic recommendations. He asked staff if the Type 47 ABC License specified a ratio of food to alcohol. Perhaps it is appropriate for the BZA to place a restriction on alcohol sales. The Chair believes the alcohol to food calculation is based on floor space. She agreed a traffic recommendation would be helpful. There is no information area traffic is associated with business conducted at that location. Staff repeated signage placed in the parking lot indicating turn direction would be helpful. Member Spalding said the San Lorenzo Community Advisory Redevelopment Committee can also offer traffic suggestions. Staff should also place a request with Public Works for traffic mitigation. The Vice Chair asked what affect an entrance on Bartlett Avenue might have. In addition would the Site Development Review address traffic issues. The proposed Hours of Operation Sunday through Thursday 10:00 a.m. to 11:00 p.m. were acceptable to serve alcohol. Member Spalding believed Sunday through Thursday 10:00 a.m. to 10:00 p.m. and Friday and Saturday 10:00 a.m. to 1:00 a.m. were reasonable.

Public testimony was re-opened to discuss Hours of Operation with the Applicant.

The Applicant, Mr. Jackie Wilson returned to speak with the Board. The hours of food service are critical. Football games start on week-ends at 9:00 a.m. and 10:00 a.m. He would like to remain flexible,

but he can institute last call at 10:00 p.m. during the week, on week-ends at 1:00 a.m. Public testimony was closed.

Staff recommended Condition #4 be removed. The portion related to site improvement shall be combined with Condition #5. The Chair said Landscaping will be stated in the BZA Resolution, Landscape Design will be designated in the Site Development Review. Member Spalding thought a (1) one year review of the permit was in order. This can be added to Condition #12. Counsel reminded the BZA of a new State law regarding permit expiration. Any added Conditions should be compatible.

Mr. Bill Lambert pointed out that if a Conditional Use Permit has an expiration date there is no way for the tenant to get a lease. Case law supports Conditional Use Permits with no expiration dates. The Vice Chair asked that the BZA be notified when staff review of the permit takes place.

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

Condition #4 should be stricken up to the word, *improves the site*. The balance of the sentence shall be moved to Condition #5.

Condition #5, shall add the word *façade*.

Condition #11, shall add the words *remain graffiti and trash free*.

Condition #12, shall add the sentences *Planning staff to review the permit at the 1 year from the date of approval. The West County Board of Zoning Adjustments shall review the permit at the 3 years from the date of approval.*

The permit shall jointly be referred to the Redevelopment Agency San Lorenzo Community Advisory Committee and the Public Works Agency for the Site Development Review portion of the application to obtain traffic control recommendations.

The Vice Chair seconded the motion. The motion to approve PLN 2010-00160, Wingport Grill and Bar carried 4/0.

APPROVAL OF MINUTES: The Minutes of November 10, 2010 were continued to the December 8, 2010 Hearing.

STAFF COMMENTS & CORRESPONDENCE: Staff announced the denial decision regarding Variance, 12114 – Nazareth is likely to be appealed to the Board of Supervisor's.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: Member Spalding asked staff to retain the cypress tree transmission pole used in the application heard today as a reference. The pole had a realistic appearance. Landscaping around equipment cabinets improve site appearance. Staff will conduct a site visit when the pole is installed, and take photographs. The Chair asked if telecom companies request tree poles. Staff said not very often.

The Chair asked if new applications will no longer have expiration dates. Counsel confirmed that will most likely be the case. However permits will still be subject to review. The Chair asked if this process was common in other jurisdictions. Counsel responded there varied examples.

The Chair asked staff Conditional Use Permit, C-8271, Fulcher had submitted building plans, as required in conjunction with the CUP. She observed the mobile restaurant is still at the site, although they do not appear to be getting much business. The mobile restaurant tenant did comply with the Condition the site

be maintained. The property is very neat. Staff informed the Board required plans had not been submitted. Code Enforcement will notify the property owner to cease the mobile restaurant business, as the Conditions of Approval were not fulfilled

ADJOURNMENT: There being no further business, the hearing adjourned at 4:00 p.m.

ALBERT LOPEZ - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS