

MINUTES OF MEETING
ALAMEDA COUNTY PLANNING COMMISSION
NOVEMBER 20, 2006
(APPROVED DECEMBER 4, 2006)

REGULAR MEETING: 1:30 p.m.

MEMBERS PRESENT: Commissioners Ken Carbone, Vice-Chair; Richard Hancocks; Frank Imhof; Mike Jacob; Glenn Kirby, Chair.

MEMBERS ABSENT: Commissioners Alane Loisel and Kathie Ready.

OTHERS PRESENT: Chris Bazar, Planning Director, Steven Buckley, Assistant Planning Director; Bruce Jensen; Senior Planner; Arthur Valderrama, Public Works Agency Liaison; Brian Washington, 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 1:35 p.m.

Closed Session

- CONFERENCE WITH LEGAL COUNSEL – POSSIBLE LITIGATION
**Significant exposure to litigation pursuant to Subdivision
(b) of Government Code § 54956.9: (One Case).**

ANNOUNCEMENTS BY THE CHAIR: The Chair announced that there was no report from the Closed Session and that the first item on the Regular Calendar, ZU-2226 and TR-7703 will be discussed today but continued.

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** - November 6, 2006 ~ to be continued to December 4, 2006.
2. **ZONING UNIT, ZU-2199 and TENTATIVE TRACT MAP, TR-7584 –NEWPORT AVALON INVESTORS, LLC** ~ Petition to reclassify from a PD (Planned Development) District to another PD (Planned Development) District, to allow the subdivision of one site into 10 parcels, located at 255 Happy Valley road, south side, approximately 125 feet east

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of Pleasanton-Sunol Road, Pleasanton area of unincorporated Alameda County, bearing County Assessor's designation: 0949-0010-001-07. (Continued from December 20, 2004, February 7, May 2, July 18, October 3, December 19, 2005, February 6, April 3 and June 5, 2006; to be continued to April 16, 2007).

- 3. **ZONING UNIT, ZU-2240 and SITE DEVELOPMENT REVIEW, S-2078 - CHRISTENSEN** ~ Petition to reclassify one 5.73 acre parcel from the R-1-L-B-E (Single Family Residence, Limited Agriculture, 5 acre Minimum Building Site Area, 300 feet Median Lot Width, 30 feet Front Yard) District to the P-D (Planned Development) District, to allow construction of a secondary unit, located at 753 Kilkare Road, east side, approximately one mile north of Foothill Road, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 096-0210-002-04. (Continued from October 16 and November 6, 2006; to be continued to December 4, 2006).

Commissioner Jacob made the motion to approve the Consent Calendar per staff recommendations and Commissioner Carbone seconded. Motion carried 4/0.

REGULAR CALENDAR:

- 1. **ZONING UNIT, ZU-2226 and TENTATIVE TRACT MAP, TR-7703, HAMPTON ROAD DEVELOPMENT COMPANY/ANDRADE TRUST/SOARES TRUST** ~ Petition to reclassify five parcels from the R-S-SU (Suburban Residence, Secondary Unit) to a P-D (Planned Development) District, so as to subdivide the properties into seven single-family lots and develop detached single family dwelling on lots 1-5 and one single family dwelling with a secondary unit on lots 6 and 7, located at 876 through 924 Hampton Road, north side, approximately 300 feet west of Mission Blvd, Cherryland area of unincorporated Alameda County, bearing Assessor's Parcel Numbers: 414-0021-064-01, 414-0021-064-02, 414-0021-083-01, 414-0021-083-02 and 414-0021-084-00. (Continued from June 19, September 18 and November 6, 2006).

Commissioner Jacob made the motion for a continuance to December 18th and Commissioner Hancocks seconded. Motion carried 4/0.

Commissioner Imhof arrived.

- 2. **ZONING UNIT, ZU-2241 and TENTATIVE TRACT MAP, TR-7834-PAK - Preliminary Plan Review** ~ Petition to reclassify from the R-S-D-25 (Suburban Residence, 2,500 square feet Minimum Building Site Area per Dwelling Unit) District, to a PD (Planned Development) District, so as to allow fifteen townhouse units with attached garages on a site of 44, 568

square feet (1.02 acres) and site-specific development standards, located at 1630 – 159th Avenue, northwest side, approximately 400 feet northeast of E. 14th Street, Ashland area of unincorporated Alameda County, bearing Assessor’s Parcel Number: 080-0040-071-00.

Mr. Buckley presented the staff report. Commissioner Hancock asked if there was a creek or flood control channel at the rear of the property. Under Referral Agencies, he noted that this area is under San Lorenzo School District and not Hayward. He recommended that no action be taken until a response is received from Redevelopment Agency. Staff replied that it was a watercourse.

Public testimony was called for. Howard Beckman pointed out there is no image of the project from the street and that the building nearest to the street is not facing the street. All infill projects should have an image from the street. The Chair concurred.

Ronald Perner, Project Architect, apologized for the late presentation of the image. One concern had been the fire vehicle access and a one-way street would eliminate a lot of concerns. The proposal includes an 84-foot diameter and 22-foot radius driveway instead of the required 20 feet. He further described the project in detail noting the pedestrian walkway from the street is separate from the driveway, project compatibility to the neighborhood, and the additional decks and balconies to give a two-story appearance. He had been unaware of the 20 foot setback requirement from the water channel but was willing to provide additional open space by eliminating the last unit for a playground. The Chair noted that the separation of the bedrooms was unusual from a marketing/design aspect and voiced concern that it could be converted to a separate unit. Another concern was the close proximity to the adjacent properties due to the building orientation. Mr. Perner explained that the applicant wanted three-bedroom units and since the third floor is limited to 500 square feet which allows for two bedrooms and one bath, the master bedroom/bathroom is being proposed on the ground floor. There is a Marketing Program and a realtor involved. Regarding the close proximity, he pointed out that on the 5-foot sideyard, there is a small house with a long garage and on the other side is an apartment building with no windows on this side and, as such, there would be no impact. Commissioner Jacob noted the lack of sidewalks after the pedestrian walkway.

Public testimony was closed. Commissioner Carbone said he did not support any relaxation of the parking requirement and did not think that eliminating one unit would be sufficient. Eliminating building C for additional parking and play area and providing 160 feet front setback from E. 14th Street would be more appropriate. He also noted the lack of sidewalks and asked if there were other buildings over the 25-foot height limit. Mr. Buckley replied no. Commissioner Hancock urged that the project design not be based on the existing neighborhood but be of a higher standard with architectural facades.

The Chair announced that the Commission had made a site visit during the Field Trip. Although he supported the density, he had concerns with the impact of the four buildings on setbacks and parking. Since this is a channelized watercourse, perhaps a 20-foot setback could be considered. He requested correction on the engineering drawings and clarification on the storm water

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overflow release point. Mr. Buckley said that Public Works would prefer release through swales onto the private street.

Commissioner Jacob concurred with the Chair on the creek setback issue and density issues but did not agree with Commissioner Carbone's suggestion of elimination units to provide additional parking, especially in a major transit corridor. Livability, walkability, layout and site design are important issues. The lack of sidewalks, right radius turn around an island, isolation of car and pedestrian travels and pedestrian walkways ending onto the street makes it an unsafe project. Commissioner Carbone added that the appearance of multiple structures from the street would be more appealing than one apartment building and Commissioner Imhof recommended a change in the roof pitch and architecturally improved. Commissioner Hancock's reiterated that physical appearance is a key point and asked for the price range. Mr. Perner replied that it would be moderate.

Commissioner Jacob made the motion for a continuance to January 16, 2007, and Commissioner Imhof seconded. Motion carried unanimously.

3. **ZONING UNIT, ZU-2245 and TENTATIVE PARCEL MAP, PM-9285 – MOSS - Preliminary Plan Review** ~ Petition to reclassify from the R-1 (Single Family Residential, 5,000 square feet Minimum Building Site Area per Dwelling Unit) District to a P-D (Planned Development) District, to allow three existing single-family dwelling units with attached garages to be located on separate, legal lots, on a site approximately 14, 248 square feet (0.33 acre) and site-specific development standards, located at 1839, 1843 and 1847 Hill Avenue, south side, Fairview area of unincorporated Alameda County, bearing Assessor's Parcel Number: 416-0230-009-02.

Mr. Buckley presented the staff report noting the receipt of a comment letter from Fairview Community Club. The Chair requested clarification on future setbacks requirements for future additions. Mr. Buckley suggested that perhaps a building envelope could be established for future additions.

Public testimony was called for. Yev Philipovitch, project engineer, said that the total property width is about 150 feet. There is potential for future development and improvement. The owner is willing to clean up the property, provide landscaping and painting, and private ownership has more potential for improvements and up-keep than rentals.

Charles Snipes, President, Fairview Community Club, asked how a PD can be applied to these already-built units and be consistent with the Fairview Specific Plan and Zoning Ordinance. He also asked how three units could have been built on this lot and, as such, has requested a historical research on the property. If a variance was not approved, it should comply with the nonconforming status and any change should require the units be brought up to code.

Public testimony was closed. Commissioner Hancocks said he did not support using PDs to legalize nonconforming development and creating sub-standard lots. This proposal is a benefit to the owner and not to the community. Commissioner Carbone agreed adding that if the subdivision is recommended, the units be up-graded to meet current standards. Commissioner Jacob also agreed. He requested garbage enclosures with improved landscaping and fencing and using the Condo Conversion Guidelines. The Chair agreed that individual ownership would be a benefit to the neighborhood. His concern was using PD for 'spot zoning'.

Commissioner Hancocks made the motion for a continuance to December 18th and Commissioner Carbone seconded. Motion carried unanimously.

4. **DISCUSSION OF GARAGE CONVERSION ORDINANCE** - Discussion and recommendation for revisions to Zoning Regulations, Title 17, 52.955: Limitation -necessary findings for approval of conversion of garages to non-garage uses. The proposal would clarify the findings, including possible requirements that replacement garages, carports, or open parking spaces are provided, and that replacement storage be provided for other household goods often associated with garage space, and that the regulations may apply only to lots less than one acre in size. The Commission may further amend the proposed regulations as part of its recommendation to the Board of Supervisors. (Continued from October 16 and November 6, 2006).

Mr. Buckley presented the staff report. Commissioner Carbone requested clarification on replacement parking. Staff replied that replacement parking has to be conforming, outside of the front yard and cannot be tandem. The Chair indicated that he would not support exempting large parcels from complying with the fundamental requirements of conversion. Commissioner Carbone asked what area has the most complaints and if a garage is required. He thought that focus should not be on large parcels but dealt with case by case. Commissioner Hancocks felt that the 'A' District should be exempt and requiring another off-street parking on site should be a universal requirement. Staff replied that the garage requirement has been unregulated and suggested exemption of 'A' District unless less than an acre or perhaps limited street frontage. The Chair discussed 1:1 replacement.

Public testimony was called for. Harold Sullivant, 4740 Mira Vista Drive, said his concern is the definition. A conversion is only applicable to conversions provide living space. He felt that Condition A should not be deleted as it improves the neighborhood.

Public testimony was closed. The Commission agreed with the deletion of Condition A; Condition D to reflect replacement of a garage with a garage and if the zoning requires one car garage or two parking spaces, one parking space could be uncovered. Commissioner Imhof made the motion for a continuance to allow time for staff to make the above modifications. Commissioner Carbone seconded and the motion carried unanimously.



Set Matter

Time: 3:00 p.m.

1. **DETERMINATION, D-160 - CONCRETE SLURRY PONDS LOCATED ON PRIVATE PROPERTY IN THE ‘A’ (AGRICULTURAL) DISTRICT** ~ A Planning Commission-initiated determination on the appropriateness of activities on specific private property in the “A” – Agriculture zoning district, involving the construction and operation of settling ponds for ground concrete slurry, derived from highway grinding activities performed by contractors under the authorization of Caltrans or other agency. The activities potentially include the use, stockpiling and subsequent sale of up to several thousand tons of processed material on the site. The activities have been carried out by American Civil Constructors, Inc. (ACC) on property owned by Dr. Larry Gosselin, located at 6550 Collier Canyon Road, unincorporated Alameda County, Assessor’s Parcel Number: 905-0005-006-00. (Continued from November 6, 2006).

Mr. Bazar presented the staff report adding that initially there had been discussions with the property owner, Public Works and Darryl Gray. The Determination at this hearing is focused on the land use. Regional Water Quality Control Board (RWQCB) and Environmental Health staff are available for questions and clarifications.

Scott Seery, Environmental Health, provided a chronological list of events which started with a complaint from a Collier Canyon resident of night activities. Two days later he had made a site visit, taken photographs and emailed a summary of his visit to different agencies. Upon receipt of another complaint to his co-worker, he combined both reports and emailed another summary to all agencies. The Chair said that the Commission had not received a copy of his summaries. Mr. Seery further described the activities during his site visit which overall had appeared to be contained. In response to Commissioner Carbone, he confirmed that this is not a historical situation for Environmental Health.

Keith Lichten, RWQCB office, Oakland, said they were concerned with two main impacts, water quality (turbidity and pH level) and the slurry over-flow, and provided a summary of events. He first became aware of the situation in August, 2006 and made a site visit on October 20th. He agreed with Mr. Seery that activities, although not an appropriate product/use, seemed largely contained but was concerned with the lack of plan for disposing of the material appropriately. He had also visited the Greenville Road site and spoken with ACC staff. Both sites were visited again the prior Friday and he observed that, although the slurry material had been removed from the Collier Canyon site, some material still remained on the Greenville Road site. Documentation has been obtained from ACC on the removal. He confirmed that he has not seen a reclamation plan. Commissioner Imhof discussed the toxicity of the material and, in response,

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Mr. Lichten explained that although the material has not been analyzed, their concern was the detrimental affect to the water quality and erosion during rainy season.

Public testimony was called for. Ken Watt 7033 Collier Canyon Road, introduced and discussed photographs of trucks coming to the site in the morning pointing out the location of a well. If the final decision is to allow such a use and since there is another huge site on the Contra Costa side, he suggested that perhaps the owner should pay tonnage to the County which could be, in turn, used to repair the road. His main concern was well water.

Gary Cose, 6475 Collier Canyon Road, said the site has been cleaned up, but was still concerned about water quality due to possible remaining materials that may be buried. The rain water runs across his driveway into his well and creek and Mr. Cose asked who will pay for the testing and clean-up.

Allison Batteate, 5600 Collier Canyon Road, introduced a map showing the parcels in the vicinity and the location of the streams taken from ECAP EIR. She noted correspondence dated July between Darryl Gray and the applicant and she felt that some action should have been taken at that time. She further read the goal of ECAP and requested clarification on Page 2, paragraph 3. Ms. Batteate discussed paragraph 3 on Page 3 and expressed her concerns of water quality and testing, and the party responsible for the cost of well water testing.

Bob Blach, 5000 Collier Canyon Road, pointed out that no one knows the location of the aquifers. The subject site has been filled in. Water in the creek has been running constantly for two weeks. This site did not have erosion control and does not have one to-date. Mr. Blach asked why a grading permit was not issued.

Arthur Valderrama, Public Works Agency/Grading Department, explained that on August 31st, a Grading Inspector visited the site and noted that the surrounding berm was three feet high and 130 cubic yards; less than 150 yards does not warrant a permit. Mr. Blach indicated that according to his calculations, the berm was 550 cubic yards. His biggest concern was the water quality.

Commissioner Jacob requested clarification on the Best Management Practices, Notice of Violation, different layers of permitting, and coverage of the Caltrans Construction Permit. Mr. Lichten explained that the Notice of Violation was issued to the property owner and the contractor for storm water violations; there are two layers of permitting and further discussed the overlapping permitting processes. The Chair asked if the Reclamation Plan would include the Best Management Practices. Mr. Lichten replied yes.

Larry Gosselin, property owner, confirmed that County staff was notified before operation through phone messages, meetings and emails and added the following: he was informed that there was no permitting process; this is a very credible use and valuable as soil amendment; there are multiple layers of authority and all were aware of the project; in reference to toxicity, information had been forwarded on a study conducted in Washington State and a state-wide study done in California which reveals the lack of toxicity; the material has been checked and the

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contractor has completed a chain of controlled testing which also showed no toxicity; and the pH level has never exceeded 8.9 and grass growth had occurred wherever spillage had occurred. If any concern had been expressed, he would have stopped the process. He felt that the neighbors' opposition was based on him being an environmentalist and working on an agricultural rehabilitation program on his property and bringing up issues with his neighbors. All the neighbors who have spoken in opposition are using the creek for an industrial use. Mr. Lichten has indicated concerns because Caltrans has not considered this use in the past.

The Chair requested clarification on the reclamation plan. Mr. Gosselin replied that the plan is handled by the contractor and related agencies. He confirmed that the intention was for the product to be used on-site in its entirety. The initial estimate was 8,000 cubic yards of material but there is no current estimate as the product is in moist form. The Chair asked if he had had any concerns with the lack of lining seal and over-flow. Mr. Gosselin replied that the two-mile training trail is about ½ mile from the creek where the product could be used. The ponds are about 200 feet from the creek with heavy grass growth in between and the risk of run-off is small. This is also indicated by Mr. Lichten. The agencies during their site visits had not voiced any concerns nor had issued a work stop order. The contractor had also assured that the lining was adequate.

Oscar Reyes, Senior Construction Engineer for Caltrans, explained that an engineer's work is to monitor the contractors regarding specifications and public safety, adding that site inspections are beyond their jurisdictions. Disposing of materials is between the property owner and the contractor. Commissioner Jacob asked for the contents of a Caltrans contract and the Construction Permit and how they reflect on the Best Management Practices. Mr. Reyes explained that the provisions in their specifications provide locations approved for disposal. In this case, the contractor had a 'staging site' before disposal. ACC is the sub-contractor.

Khalid E., Resident Engineer, Caltrans, confirmed that although not required, he had made that extra random inspection of the Dublin Canyon and Greenville sites to confirm compliance.

Doug Silva, ACC contractor, stated that a plan to clean up has been submitted to Caltrans. He confirmed that 70 loads of material have been removed from the Collier Canyon site at an additional cost and not buried on-site. Originally, the original intention was to use the material on-site. Documents have been submitted to Caltrans indicating that this site had been designated as a temporary stock pile facility. He also confirmed that all material has now been removed to the Cemex Quarry site in Pleasanton.

Mr. Seery stated that the internal memo from Caltrans to resident engineers and the Regional Board permit both have language which indicates that Caltrans is responsible for all activities associated with their products. Secondly, he has provided staff a chronological summary of events which could provide some answers.

Ray Benetti, 5939 Collier Canyon Road, submitted a memo from Mr. Lichten to Mr. Gosselin dated September 11th noting the number of people who were aware of the situation.

Public testimony was closed. Commissioner Jacob made the motion to move staff recommendation and the attached resolution. Commissioner Carbone seconded. The Chair read staff's recommendation as contained in the staff report. Motion carried unanimously.

STAFF COMMENTS & CORRESPONDENCE: Mr. Bazar thanked the Chair for formalizing the motions as discussed and urged for a roll call for every motion. The Chair added that this would be more beneficial especially if the motion is not in support of staff recommendation.

CHAIR'S REPORT: None

COMMISSION ANNOUNCEMENTS, COMMENTS AND REPORTS: Commissioner Imhof requested an update on the Ethics Training. County Counsel indicated that he will provide more information.

ADJOURNMENT: There being no further business, Commissioner Hancocks moved to adjourn the meeting at 6:00 p.m. Commissioner Carbone seconded the motion. The motion was carried 5/0.

CHRIS BAZAR, SECRETARY
COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY