

MINUTES OF MEETING
EAST COUNTY BOARD OF ZONING ADJUSTMENTS
MARCH 13, 2008
(APPROVED MAY 22, 2008)

The meeting was held at the hour of 1:30 pm in the Conference Room of the Public Works Operations Building, 4825 Gleason Drive, Dublin, California.

FIELD TRIP: 9:00 a.m.

MEMBERS PRESENT: Members Larry Gosselin, Chair and Jana Beatty, Senior Planner

MEMBERS EXCUSED: Members Jon Harvey and Jim Goff.

FIELD TRIP: The meeting adjourned to the field and the following properties were visited:

1. **VERIZON WIRELESS/NSA WIRELESS, INC., MODIFIED CONDITIONAL USE PERMIT, MC-8221** ~ Application to modify C-8221 to allow the existing flag pole to be increased in height from 80 feet to 87 feet for co-location of the existing Verizon monopole, in an "A" (Agricultural) District, located at 16163 West Grant Line Road, south side, southeast of Altamont Pass Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099B-7700-004-00. **Staff Planner: Andrew Young. (canceled)**
2. **DENG/WANG, VARIANCE, V-12103** ~ Application to allow a new single family dwelling 33 feet in height where 30 feet is the maximum, in a R-1-B-E (Single Family Residence, 4 acre Minimum Building Site Area) District, located at 41552 Vargas Road, north side, approximately one mile east of Morrison Canyon Road, Fremont area of unincorporated Alameda County, bearing Assessor's Parcel Number: 513-0010-008-02. **Staff Planner: Howard Lee**
3. **WILLIAM COSTANZO, VARIANCE, V-12079** ~ Application to allow building site status on a 3.5 parcel where 5 acres is required, in an 'A' (Agricultural) District, located on Christiansen Road, east side, corner southeast of Bruns Avenue, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099B-7020-001-11. **Staff Planner: Jeff Bonekemper**

REGULAR MEETING: 1:30 p.m.

MEMBERS PRESENT: Members Larry Gosselin, Chair and Jim Goff.

MEMBERS EXCUSED: Member Jon Harvey

OTHERS PRESENT: Jana Beatty, Senior Planner; Ray MacKay, County Counsel; and Nilma Singh, Recording Secretary

There were eight people in the audience.

CALL TO ORDER: The meeting was called to order by the Chair at 1:30 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.

Craig Lewis, Vice-President of Government Relations, GreenVolts, introduced and explained their project and submitted a written copy of his presentation. The proposed site is located at the corner of Kelso and Mt House Roads in Byron. It is a low profile, high density solar energy environmentally-friendly project which is not visible with an un-intrusive fence. In response to the Chair, Mr. Lewis added that although the lease includes a 22 acre site, the project will only utilize eight acres which will be restored to its natural state at the completion of the project. This is a 20-year project with PG&E. The Chair felt that a fence could become a focus point and suggested landscaping instead. Mr. Lewis explained that the fence is intended to act as a barrier to keep visitors out but agreed to the recommendation of providing landscaping. He agreed to comply with any other conditions the Board would impose. A Conditional Use Permit application was submitted on February 4th and he hoped that the matter will be ready for action by the May hearing; construction to begin early June and going online by October, 2008. He was also available for any follow-up meetings to provide additional details and/or clarifications.

NEIGHBORHOOD PRESERVATION AND ZONING ORDINANCE ABATEMENT HEARING – *Canceled.*

ANNOUNCEMENTS BY THE CHAIR: The Chair discussed the Board's action to continue the cell site applications at the last meeting to allow staff to work on the possibility of grouping these applications to expire simultaneously. He pointed out that this action was also based on the status of Regular item #7, MC-8221--not to burden one applicant with the improvements. Staff explained that the Telecommunications Act prohibits such an action. Although permits cannot have an expiration date of less than ten years, they could have a longer permit. County Counsel concurred adding that the Board has some limited discretion to approve a permit less than ten years, based on 'case-by-case' basis. A discussion followed regarding State and nationwide regulations, co-location, multiple carriers and new stealth technology, and appropriate lengths of permits.

CONSENT CALENDAR:

1. **BOSCO and GERARDA STOCKING, WILLIAM SPEER, JR. and CLAUDE HENSLEY, VARIANCE, V-11924** – Application to modify a nonconforming use (commercial use in an area designated by the General Plan as WM) so as to operate an event center with on-site alcohol sales, in a Water Management (ECAP) District, located at 11984 and 11986 Main Street, south side, end of Kilkare Road, unincorporated Sunol area of Alameda County, bearing Assessor's Parcel Number: 0096-0140-002-07. (Continued from June 23, July 28, September 29 and December 15, 2005, May 25, August 24 and October 26, 2006, January 25, March 22, June 28, September 27, November 8, 2007 and January 24, 2008; to be continued to May 22, 2008). **Staff Planner: Shahreen Basunia**

The Board expressed concern regarding the numerous continuances. Staff suggested that the item could be 'dropped' from the agenda and re-noticed when ready for action. She also suggested that the head of Policy Planning could provide an up-date on the Sunol downtown issue at the next meeting. Instead, the Chair indicated that a written explanation from Policy Planning would be sufficient. He would also like to hear from the Applicant and requested that the project planner contact the Applicant. *Motion to approve the Consent Calendar was made by Member Goff and seconded by the Chair. Motion carried with Member Harvey excused.*

REGULAR CALENDAR:

1. **NSA WIRELESS, INC/OSBORNE, CONDITIONAL USE PERMIT, C-8641 ~**
Application to allow continued operation of a radio transmission facility in an "A" (Agricultural) District, located at 11705 North Flynn Road, west side, approximately ½ mile south of I-580, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099A-1785-001-08. (Continued from February 28, 2008).
Staff Planner: Pat Anekayuwat

Ms. Beatty presented the staff report. The Chair asked if staff considers technology/visual impacts and checks if the prior conditions have been met upon receipt of a renewal application. Staff replied that technology is not considered but only the prior Conditions of Approval. Member Goff asked if there is only carrier at this site.

Public testimony was called for. Jason Osborne, representing Nextel/NSA, confirmed that Nextel is the only carrier at this site. Stealth technology is not appropriate for all locations. They do check if all conditions have been met. The Chair expressed visual impact concerns noting the hillside location. He felt that perhaps stealth technology should be considered at this location. Member Goff said that he had no concerns as the facility is sitting with other wind turbines.

Public testimony was closed. *Member Goff made the motion to approve the application subject to the recommended conditions and the Chair seconded. Motion carried unanimously, 2/0/1 with Member Harvey excused.*

2. **CROWN CASTLE/DERKAS/Franco, CONDITIONAL USE PERMIT, C-8665 ~**
Application to allow continued operation of a telecommunications facility in an "A" (Agricultural) District, located at 7820 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. (Continued from February 28, 2008). **Staff Planner: Howard Lee**

Ms. Beatty presented the staff report. Member Goff asked if there is only one carrier at this site.

Public testimony was called for. Tom Derkas confirmed that there is only one carrier and agreed with the recommended Conditions of Approval. He further explained their procedure for filing renewal CUP applications and by whom. The Chair, noting that although not part of the renewal application, discussed the possibility of a redesign, perhaps a barn-type or rock-shaped antenna. A discussion followed regarding new technology/design review and options available. Mr. Derkas said that this facility is an existing one and currently there are no major changes in technology. Instead, he suggested that the carriers, property owners and staff discuss options and new designs, perhaps a workshop, for an up-date to the Policy. Staff said she would check into this.

The Chair made a motion for a continuance, to allow discussion/information on stealth technology for this site, to occur. Motion failed due to the lack of a second.

Jason Osborne explained that stealth improvements do not have to be high expensive technology. Instead, low technology improvements such as painted poles, can be utilized. Ms. Swanson agreed that lower technology improvements are possible and further gave examples, discussed co-location options and examples and procedures of other jurisdictions.

Member Goff pointed out the location--against the hills and not on the ridgeline. *He made a substitute motion for an approval subject to the recommended conditions. Substitute motion also failed due to the lack of a second.*

The Chair recommended an additional condition requiring the use of stealth technology, perhaps at the discretion of the Planning Director, and urged staff and representatives for a cooperative effort for a reasonable solution that can be obtained with circumstances that exist and consider options in future. He also pointed out the lack of photographs/exhibits with some of the staff reports. *He made the motion to approve the application subject to the recommended conditions with an additional condition to reflect that the Applicant provide stealth technology information for this site, to be developed and implemented at the discretion of the Planning Director. Member Goff seconded and the motion carried with Member Harvey excused.*

3. **CROWN CASTLE/DERKAS/KIMBRO, CONDITIONAL USE PERMIT, C-8666 ~** Application to allow continued operation of a telecommunications facility in an "A" (Agricultural) District, located at 5810 Mission Road, west side, approximately 1.2 miles north of Vargas Road, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 096-0056-008-12. (Continued from February 28, 2008). **Staff Planner: Howard Lee**

Ms. Beatty presented the staff report. Member Goff asked for the possibility of a 5-year permit, to expire concurrently in 2013 with the other permits on the same site.

Public testimony was called for. Tom Derkas, representative, said he would support a 5-year permit with a condition to reflect that if the streamlining does not work out, the permit will then expire in ten years. The Chair felt that there was a need to flush out the details: the distance between the towers, the number of towers...etc and, as such, suggested a continuance. Member Goff, using the scaled exhibit, estimated a distance of 1,000 feet between the towers. *He made the motion for an approval with the expiration date of 2013, to coincide with C-8194, with the addition of the similar condition on stealth information. The Chair seconded and the motion carried.*

4. **SPRINT-NEXTEL/TOM DERKAS, CONDITIONAL USE PERMIT, C-8667 ~** Application to allow continued operation of a telecommunications facility in an "A" (Agricultural) District, located at 4011 Vasco Road, north side, approximately 1.8 miles northeast of Dalton Avenue, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099B-4901-002-03. (Continued from February 28, 2008). **Staff Planner: Howard Lee**

Ms. Beatty presented the staff report.

Public testimony was called for. Tom Derkas confirmed that there are two carriers on one pole.

Public testimony was closed. *Member Goff made the motion to approve the application for ten years with the additional condition regarding stealth technology. The Chair seconded and the motion carried with Member Harvey excused.*

5. **SPRINT PCS/SWANSON, CONDITIONAL USE PERMIT, C-8689 ~** Application to allow continued operation of a telecommunication facility in an "A" (Agricultural)

District, located at 2980 Vallecitos Road, east side, one mile southwest of Vineyard Avenue, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 950-0007-005-09. (Continued from February 28, 2008). **Staff Planner: Jeff Bonekemper**

Ms. Beatty presented the staff report noting that this renewal is coming in early.

Public testimony was called for. Rochelle Swanson, representing Sprint PCS, pointed out that these towers are short and surrounded by trees. Although a 2018 expiration date would be appropriate and concurrent with the other carrier, she preferred an expiration date of 2020.

Public testimony was closed. *Member Gosselin made the motion to approve the application subject to the recommended conditions with a modified expiration date of 2018. Member Goff seconded and the motion carried with Member Harvey excused.*

6. **SPRINT PCS/SWANSON, CONDITIONAL USE PERMIT, C-8691** ~ Application to allow continued operation of a telecommunications facility in a R-1-L-B-E (Single Family Residence, Limited Agriculture, 5 acre Minimum Building Site Area) District, located at 1100 Lambeth Road, approximately 660 feet north of Farnsworth Drive, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099-0015-020-08. (Continued from February 28, 2008) **Staff Planner: Jeff Bonekemper**

Ms. Beatty presented the staff report.

Public testimony was called for. Rochelle Swanson pointed out that this is also an early renewal and agreed to the Board's suggestion of an expiration date of 2017, to coincide with the expiration date of the other co-locating carrier, Nextel.

Public testimony was closed. *Member Goff made the motion to approve the application, subject to the recommended conditions, for nine (9) years, 2017. The Chair seconded and the motion carried with Member Harvey excused.*

7. **VERIZON WIRELESS/NSA WIRELESS, INC., MODIFIED CONDITIONAL USE PERMIT, MC-8221** ~ Application to modify C-8221 to allow the existing flag pole to be increased in height from 80 feet to 87 feet for co-location of the existing Verizon monopole, in an "A" (Agricultural) District, located at 16163 West Grant Line Road, south side, southeast of Altamont Pass Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099B-7700-004-00. **Staff Planner: Andrew Young**

Ms. Beatty noted that this item is recommended for a continuance to April 24th. *The Chair made the motion for a continuance and Member Goff seconded. Motion carried with Member Harvey excused.*

8. **DENG/WANG, VARIANCE, V-12103** ~ Application to allow a new single family dwelling 33 feet in height where 30 feet is the maximum, in a R-1-B-E (Single Family Residence, 4 acre Minimum Building Site Area) District, located at 41552 Vargas Road, north side, approximately one mile east of Morrison Canyon Road, Fremont area of unincorporated Alameda County, bearing Assessor's Parcel Number: 513-0010-008-02.
Staff Planner: Howard Lee

Ms. Beatty presented the staff report.

Public testimony was called for. Ms. Deng, co-applicant, described the situation warranting this variance for one side of the dwelling. The increased height will not block any neighboring views.

Public testimony was closed. *Member Goff made the motion to approve the variance application subject to the recommended conditions and the Chair seconded. Motion carried with Member Harvey excused.*

9. **WILLIAM COSTANZO, VARIANCE, V-12079** ~ Application to allow building site status on a 3.5 parcel where 5 acres is required, in an 'A' (Agricultural) District, located on Christiansen Road, east side, corner southeast of Bruns Avenue, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099B-7020-001-11.
Staff Planner: Jeff Bonekemper

Ms. Beatty summarized the staff report.

Public testimony was called for. William Costanzo submitted a written copy of his statement. In support, he explained the following: this property was subdivided in 1857 and is the same except the installation of Bruns Road and Kelso Road which separated the north portion; it is a legal non-conforming lot; Assessor's office has combined the parcels for tax purposes; and he had bought this property individually in 2003 to build his house, which is a legal parcel (severed from the other parcel) and has a separate Assessor's Parcel number; a denial of this variance will deny him of any economic use of the property as the acreage is insufficient to support any other agricultural activity; Measure D (approved in 2000) does not apply as this lot was created in 1899; all the parcels abutting this property have less than 100 acres; a similar variance for an identical property has been approved in the past setting a precedent; the closest structure is approximately ½ mile away and, as such, will not negatively impact any neighbors; the roads have a very low traffic flow; a well on site has been approved by the Health Department and Findings in the affirmative have also been submitted. He has been working on this project for three years and a lot of money has been invested. In response to the Chair, he further explained that since the property does not have a building site status for a primary structure, an accessory structure (barn, etc) would not be allowed either. The only alternative would be grazing or agriculture which would not be economically viable. At the time of his purchase, Mr. Costanzo said that this parcel had a legal description. The property also has a topography problem. Apart from the building site areas (including three adjoining building site areas), the additional acreage including the City of Oakland and State owned land, will remain under State ownership as wildlife habitat. If denied, he would then apply for a refund, to be used as open space.

Public testimony was closed. Member Goff requested further clarification. Mr. Costanzo stated that he is currently only requesting approval of his variance. Staff pointed out that County Surveyor and County Counsel have determined that the lot was created in 2000. Although the 3.5 acre parcel had a legal description, it was not a legal parcel previously and per County Counsel, the parcel split by the installation of the road did not create a new parcel. The Chair thought that a barn could be built without

permits in Agricultural Districts with a Fire Department approval and with notification to the Building Department. Staff confirmed that although a single family home cannot be built without a building site status, other agricultural structures could be allowed. Jeff Bonekemper, Project Planner, submitted copies of the variance previously approved in the neighborhood and explained the Conditional Use Permits noted on Figure 2.

The Chair noted that this parcel is less than 5 acres in size and disagreed that it is stripped of all agricultural and economic uses. *Member Goff agreed and made the motion for a denial as recommended by staff and the Chair seconded. Motion carried with Member Harvey excused.*

Approval of Minutes – *January 24, 2008. Member Goff made the motion to approve the January 14th Minutes as submitted and the Chair seconded. Motion carried 2/0 with Member Harvey excused.*

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 4:40 p.m.

CHRIS BAZAR - SECRETARY
EAST COUNTY BOARD OF ZONING ADJUSTMENTS