

MINUTES OF MEETING
EAST COUNTY BOARD OF ZONING ADJUSTMENTS
JULY 17, 2008
(APPROVED OCTOBER 9, 2008)

The meeting was held at the hour of 1:30 p.m. in the City of Pleasanton Council Chambers, 200 Old Bernal Avenue, Pleasanton.

FIELD TRIP: 9:00 a.m.

MEMBERS PRESENT: Members Jon Harvey; Larry Gosselin, Chair, and Jim Goff

OTHERS PRESENT: Jana Beatty, Senior Planner

FIELD TRIP: The meeting adjourned to the field and the following property was visited:

1. **GREEN VOLTS, INC., CONDITIONAL USE PERMIT, C-8719** ~ Application to allow the installation of a utility-scale solar electricity production facility, in an "A" (Agricultural) District, located at 4378 Mountain House Road, west side, corner southwest of Kelso Road, Byron area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099B-7200-001-00. **Staff Planner: Andrew Young**
2. **COOLEARTH SOLAR, INC., CONDITIONAL USE PERMIT, C-8724** ~ Application to allow construction of a remote testing solar energy tracking device facility, in an "A" (Agricultural) District, located at 7900 Tesla Road, west side, south of Kelso Road, Byron area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099A-1602-014-00. **Staff Planner: Andrew Young**
3. **VERIZON WIRELESS, CONDITIONAL USE PERMIT, C-8745** ~Application to allow continued operation of a cellular telecommunication facility in an 'A' (Agricultural) District, located at 37000 Palomares Road, east side, approximately 1.3 miles north of Niles Canyon Road, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 096-0120-001-04. **Staff Planner: Damien Curry**
4. **LOWRY/GRADE WAY CONSTRUCTION, CONDITIONAL USE PERMIT, C-8749** ~ Application to allow continued occupancy of two mobile homes for security purposes for a contractor's storage yard, in a M-2 (Heavy Industrial) District, located at 550 Greenville Road, east side, approximately 0.80 mile north of Patterson Pass Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099B-5600-009-03. **Staff Planner: Donna Vingo**
5. **MANCINI, VARIANCE, V-12116** ~ Application to approve as a building site one parcel containing 1.94 acres where 5 acres is required, in a R-1-L-BE (Single Family Residence, Limited Agriculture Uses, 5 acre Minimum Building Site Area) District, located at 6352 Alisal Street, east side, approximately 0.26 mile south of Sycamore Road, Pleasanton area of unincorporated Alameda County, bearing Assessor's Parcel Number: 949-0015-005-01. **Staff Planner: Jeff Bonekemper**
6. **LAMB SURVEYING, INC./HIBNER, VARIANCE, V-12118** ~ Application to approve building site status for a 1.72 acre parcel where 100 acres is the minimum allowed, in an "A" (Agriculture) District, located at 2110 Greenville Road, east side, corner northeast of Lupin Way, Livermore area of unincorporated Alameda County,

bearing Assessor's Parcel Number: 099A-1650-001-07. **Staff Planner: Jeff Bonekemper**

7. **JO ANN SHANE, VARIANCE, V-12121** ~ Application to allow a single family residence having a 5.8 feet side yard setback where 10 feet is the minimum, in an "A" (Agricultural) District, located at 6261 Collier Canyon Road, east side, approximately 2.7 miles south of I-580, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 903-0001-004-00. **Staff Planner: Howard Lee**

REGULAR MEETING: 1:30 p.m.

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

OTHERS PRESENT: Jana Beatty, Senior Planner and Nilma Singh, Recording Secretary

There were approximately twelve 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. *No one requested to be heard under open forum.*

ANNOUNCEMENTS BY THE CHAIR: *None*

NEIGHBORHOOD PRESERVATION AND ZONING ORDINANCE ABATEMENT: *None*

CONSENT CALENDAR: *There were no items.*

REGULAR CALENDAR:

1. **GREEN VOLTS, INC., CONDITIONAL USE PERMIT, C-8719** ~ Application to allow the installation of a utility-scale solar electricity production facility, in an "A" (Agricultural) District, located at 4378 Mountain House Road, west side, corner southwest of Kelso Road, Byron area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099B-7200-001-00. **Staff Planner: Andrew Young**

Ms. Beatty presented the staff report, added that County Counsel has indicated that this use is consistent with ECAP, noted the 1:1 mitigation ratio and staff recommendation to adopt the Mitigated Negative Declaration, the Mitigation Monitoring and Reporting Program and approve the application. Member Harvey asked if the 1:1 mitigation ratio will be temporary since the use is such. Staff replied that the permit request is for 20 years and although the total lease acreage is 20 acres, the proposal is to use one half with the other half for mitigation easement.

Public testimony was called for. Craig Lewis, Vice President of Government Relations, Green Volts, Inc., thanked staff for their work, introduced Steven Smith, Director of Operations, and urged an approval. He confirmed that the leased site is little over 20 acres and the project site is 10.76 acres and, as such, the 1:1 ratio is slightly off. He requested flexibility with the ratio to avoid leasing of additional land

off-site. In response to Member Goff, Mr. Lewis replied that this is their first commercial power plant with off-site test locations and Mr. Smith explained the differences between wind and solar powers. In response to the Chair, Mr. Lewis confirmed that there are no plans for an expansion as they have a power agreement purchase with PG&E for a 2 megawatts size system. Mr. Smith added that 4-inch gravel will be laid on the 10-acre project footprint and parking area; and there is a weed abatement plan, the frequency and details of which will be worked out during the first year.

Public testimony was closed. Member Harvey noted that the 1:1 mitigation ratio is not included in the Conditions of Approval and asked who will hold the easement. The Chair agreed with Member Harvey regarding the mitigation adding the need to establish a land trust and fees as part of the COA, to monitor the success of the mitigation. Staff replied that details have not been worked out yet. The Board further discussed the 1:1 mitigation ratio and the possibility of a higher ratio; history of cultivation to which Mr. Smith replied that corn was harvested last summer; a temporary use with a permanent mitigation; self monitoring with perhaps a report every three years to which Mr. Smith noted that one the contractual responsibilities of their lease is to maintain the property. In response, Member Harvey suggested instead a condition to preserving and managing a 1:1 area of the developed site. The Chair pointed out and read the MM AG-1. In response to Member Goff, Mr. Smith explained that the 10.76 acres include project footprint with access road, emergency access per Fire Department requirement and the parking area. There is an existing two-acre Federal easement on the west side. Mr. Smith also noted that all numbers are an approximate.

Member Harvey noted that the MM AG-1 does read "...approximately 1:1 ratio..." and moved to approve the application as submitted by staff. Member Goff seconded and the motion carried unanimously. Member Goff made the motion to adopt the Mitigated Negative Declaration and Member Harvey seconded. Motion carried unanimously, 3/0.

2. **COOLEARTH SOLAR, INC., CONDITIONAL USE PERMIT, C-8724 ~**
Application to allow construction of a remote testing solar energy tracking device facility, in an "A" (Agricultural) District, located at 7900 Tesla Road, west side, south of Kelso Road, Byron area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099B-7200-001-00. **Staff Planner: Andrew Young**

Ms. Beatty presented the staff report.

Public testimony was called for. Tony Chen, Senior Manager, in response to the Board, explained the following: the work area is 70x300 feet under the power lines; a check has not been made with PG&E regarding easements but only with USA; there is an existing gas line on the property; Mylar balloons, inflated with air, will be used occasionally; and to maintain minimal environmental impacts, permanent concrete footings or gravel will not be used but only wooden posts.

Public testimony was closed. Member Goff expressed concerns regarding the use of Mylar balloons and the Chair agreed noting the proximity of the high-voltage transmission lines. His other concern was the lack of a response from PG&E. Staff pointed out that the project description does not include the use of balloons. The Chair expressed non-agricultural land use concerns although the site will be non-intrusive. Member Harvey agreed. Although his concern had decreased after seeing the site, size and the temporary 2-year term/use, he noted that this site is within the South Livermore Area Plan. Mr. Chen pointed out that all structures will be removed at the expiration of the permit and the site restored. The Chair reiterated his concern regarding the lack of response from PG&E. Staff, checking the file, confirmed that a referral had not been sent to PG&E. Member Goff did not share this concern as, he pointed out, there are no towers nearby. His only concern was the use of Mylar balloons.

Member Harvey made the motion to approve the application as recommended by staff with an additional condition that the Applicant request feedback from PG&E and PG&E to respond within 30 days. Public testimony was re-opened to obtain clarification on the use of Mylar balloons. Mr. Chen explained their use, the word 'Mylar' is used more to describe the brand and the balloons will be firmly fixed. Member Goff seconded. Staff pointed out that balloon usage is not part of the project description and, if allowing the use, the motion needs to reflect such a use. Member Harvey amended his motion to include approval of the application as per Applicant's project description and for both staff and applicant to contact PG&E and PG&E to respond within 30 days. The Chair seconded the amended motion which carried unanimously, 3/0.

3. **T-MOBILE, CONDITIONAL USE PERMIT, C-8731** ~ Application to increase the height of an existing 'tree pole' from 30 feet to 52 feet to allow for additional antennas, in an R-1-BE (Single Family Residence, one acre minimum Building Site Area) District, located at 3998 Foothill Road, west side, approximately 120 feet from Santos Ranch Road, Pleasanton area of unincorporated Alameda County, bearing Assessor's Parcel Number: 941-2100-002-06. **Staff Planner: Jeff Bonekemper**

Ms. Beatty presented the staff report noting that this matter was continued to allow time for City of Pleasanton to respond. The City has indicated that they will not officially respond as they own the property and will require their own conditions.

Public testimony was called for. Tiffany Scalia, representing T-Mobile, stated that she was available to answer any questions. They are leasing the property from the City and the lease agreement includes the requirement of an approval from the County Planning Department. The site is in compliance with County's requirement of co-location and stealthing; and coverage is needed in this area.

Public testimony was closed. *Member Harvey made the motion to approve the application subject to the recommended conditions and Member Goff seconded. Motion carried unanimously, 3/0.*

4. **T-MOBILE, CONDITIONAL USE PERMIT, C-8732** ~ Application to allow the creation of a cell phone site on an existing PG&E electrical tower in an A-CA (Agriculture, Cultivated-Agriculture) District, located at 3575 Greenville Road, west side, north of Tesla road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Numbers: 099A-1602-005-03 and 099A-1602-013-01. (Continued from May 22, 2008) **Staff Planner: Jeff Bonekemper.**

Staff announced that this application has been withdrawn.

5. **VERIZON WIRELESS, CONDITIONAL USE PERMIT, C-8745** ~Application to allow continued operation of a cellular telecommunication facility in an 'A' (Agricultural) District, located at 37000 Palomares Road, east side, approximately 1.3 miles north of Niles Canyon Road, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 096-0120-001-04. **Staff Planner: Damien Curry**

Ms. Beatty presented the staff report and a discussion followed regarding coordinating expiration dates of all the permits for this location.

Public testimony was called for. Charnel McCall representing NSA Wireless which represents ATC (owner of the tower) and Verizon Wireless (owner of the antennas), provided the following clarifications: two Watson Communication System dishes were bought by Verizon Wireless in 1999 and a notification letter was filed with the County; the other Watson dish (C-6263, 1993) was not bought by Verizon; ATC owns the two, 70 feet and 150 feet, towers; the two additional towers at this location are owned by the Fire Department for emergency services; and there are no panel antennas but satellite dishes only.

Public testimony was closed. The Chair noted that no changes are being proposed at this site. *Member Goff made the motion to approve the application subject to the recommended conditions and Member Harvey seconded. Motion carried unanimously, 3/0.*

6. **LOWRY/GRADE WAY CONSTRUCTION, CONDITIONAL USE PERMIT, C-8749** ~ Application to allow continued occupancy of two mobile homes for security purposes for a contractor's storage yard, in a M-2 (Heavy Industrial) District, located at 550 Greenville Road, east side, approximately 0.80 mile north of Patterson Pass Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099B-5600-009-03. **Staff Planner: Donna Vingo. This item was continued.**
7. **MANCINI, VARIANCE, V-12116** ~ Application to approve as a building site one parcel containing 1.94 acres where 5 acres is required, in a R-1-L-BE (Single Family Residence, Limited Agriculture Uses, 5 acre Minimum Building Site Area) District, located at 6352 Alisal Street, east side, approximately 0.26 mile south of Sycamore Road, Pleasanton area of unincorporated Alameda County, bearing Assessor's Parcel Number: 949-0015-005-01. **Staff Planner: Jeff Bonekemper**

Ms. Beatty presented the staff report and added that concurrent applications, a rezoning and a Site Development Review, have been filed. Findings for the Variance have been made in the affirmative and staff is recommending an approval. Member Harvey noted that the Board had visited the site today. Member Goff asked why Zone 7 was included in the Conditions of Approval since City of Pleasanton provides utility services in this area as indicated on page 2 of the staff report. Staff replied that Zone 7 would be involved with the permitting of the well.

Public testimony was called for. Brian Metcalf, Project Architect, representing William Wood Architects, thanked staff and was available for any questions/clarifications. The Chair asked if there have been any other developments in the area in the last five years. Mr. Metcalf replied no adding that Mr. Mancini bought this property in 2006, just after the expiration of the prior variance.

Public testimony was closed. *Member Harvey made the motion to approve the variance subject to the recommended conditions and Member Goff seconded. Motion carried unanimously, 3/0.*

8. **LAMB SURVEYING, INC./HIBNER, VARIANCE, V-12118** ~ Application to approve building site status for a 1.72 acre parcel where 100 acres is the minimum allowed, in an "A" (Agriculture) District, located at 2110 Greenville Road, east side, corner northeast of Lupin Way, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099A-1650-001-07. **Staff Planner: Jeff Bonekemper**

Ms. Beatty presented the staff report noting that staff is concerned with inconsistencies with Measure D and ECAP. She urged the board to consider that the veterinary clinic could perhaps go out of business resulting in a 2-acre parcel with limited usage. If approved, staff is requesting that no building site status

be granted.

Public testimony was called for. Mick Lamb, Lamb Surveying, Inc., representing the Applicant, made a correction that the clinic is not a modular unit. The intent for this variance is to allow the vet clinic to continue and agreed with staff's concerns regarding the building site status. The Chair asked if at any time, there has been any delineation of a separate lot. Mr. Lamb replied that it is under a 99-year lease which is transferable and has a separate tax parcel number.

Public testimony was closed. Member Harvey expressed concerns with creating new sub-parcels outside the growth boundary and, hence, was not in support of this application. Member Goff requested clarification regarding the tax parcel number. Staff explained that a having a separate tax parcel number does not qualify as a separate parcel. Measure D, the Chair noted, does not allow the creation of any new parcels in East County and if created, only for residential development. He also expressed precedent setting concerns. Staff further read and discussed a Measure D provision. In response to Member Harvey, she confirmed that a denial would not have any impact on the clinic as the use has a separate Conditional Use Permit. *Member Harvey said he also had precedent setting concerns and made the motion for a denial and Member Goff seconded. Motion carried unanimously, 3/0.*

9. **JO ANN SHANE, VARIANCE, V-12121** ~ Application to allow a single family residence having a 5.8 feet side yard setback where 10 feet is the minimum, in an "A" (Agricultural) District, located at 6261 Collier Canyon Road, east side, approximately 2.7 miles south of I-580, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 903-0001-004-00. **Staff Planner: Howard Lee**

Ms. Beatty presented the staff report. The Chair announced that his property is more than 500 feet from the subject property and, as such, there was no conflict of interest. Staff confirmed. Member Harvey asked for the status of the workshop after five years, if it could be converted into a secondary or caretaker's unit. Staff explained that such a conversion would not be easy as caretaker's unit on a concrete permanent slab will not be permitted in the future and the status would be subject to the conditions of a future Site Development Review application.

Public testimony was called for. Jo Ann Shane, applicant, submitted photographs and letters from the neighbors in support. She had bought the property in 2005. The Chair asked if the structure can be converted back into a workshop. Staff confirmed yes and suggested rewording Condition #1 to read: "...Variance shall expire in five years as dwelling unit, however, the structure itself can remain." Ms. Shane added that her intention was to retain the structure as a workshop after five years. Member Harvey expressed concern with the second sentence of Condition #1 and asked if the re-converted workshop would be subject to the current building codes. Staff replied yes.

Member Goff made the motion to approve the variance with Condition #1 modified to read: "The subject Variance shall expire in five years as a dwelling unit, however, the structure can remain. Upon expiration.....". Member Harvey seconded and the motion carried unanimously, 3/0.

APPROVAL OF MINUTES – MAY 22, 2008 ~Member Goff made a correction to Regular Calendar item #1--he had not seconded the motion for a continuance and made the motion to approve the modified Minutes. Member Harvey seconded and the motion carried unanimously, 3/0.

STAFF COMMENTS & CORRESPONDENCE: Ms. Beatty announced the new East County counter hours, Tuesday which she works, and Thursdays covered by Richard Tarbell from 10 am to 3 pm. Lacy Starling, Code Enforcement, is also available on Thursdays and Fridays.

CHAIR'S REPORT: Chair Gosselin noted that there are many caretaker units on permanent slabs with justified uses in the East County and, as such, monitoring is needed. Staff requested this in writing (email).

BOARD ANNOUNCEMENTS, COMMENTS AND REPORTS: The Board discussed the next abatement hearing. Member Harvey expressed appreciation of the staff reports, the inclusion of the photographs and the level of the reports.

ADJOURNMENT: There being no further business, the hearing was adjourned at 3:35 p.m.

ALBERT LOPEZ - SECRETARY
EAST COUNTY BOARD OF ZONING ADJUSTMENTS