

MINUTES OF MEETING
EAST COUNTY BOARD OF ZONING ADJUSTMENTS
SEPTEMBER 17, 2009
(APPROVED OCTOBER 22, 2009)

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: *Cancelled*

REGULAR MEETING: 1:30 p.m.

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

OTHERS PRESENT:, Albert Lopez, Planning Director; Sandra Rivera, Assistant Planning Director; Jana Beatty, Senior Planner; Andrew Young, Planner; Brian Washington, County Counsel's Office; and Nilma Singh, Recording Secretary

There were approximately sixteen 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*

CONSENT CALENDAR:

1. **T-MOBILE/KDI, CONDITIONAL USE PERMIT, PLN2009-00050** ~ Application to allow continued operation of a telecommunication facility on a parcel containing 1.03 acres, located in a R-1-L-B-E (Single Family Residential, Limited Agricultural, 5 acre Minimum Building Site Area) District, located at 1100 Lambeth Road, west side, approximately 500 feet southwest of intersection of Lambeth and Las Positas Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 096-0015-02-08. (Continued from July 23, 2009; to be continued to October 22, 2009) **Staff Planner: Damien Curry**

Member Goff made the motion to approve the Consent Calendar as recommended by staff and Member Harvey seconded. Motion carried unanimously, 3/0.

REGULAR CALENDAR:

1. **ALAN ANDRESS, CONDITIONAL USE PERMIT, PLN2009-00034** ~ Application to allow an electronic testing facility, storage for associated equipment and a security trailer, in an "A" (Agricultural) District, located at 3001 Morrison Canyon Road, north terminus, Fremont area of unincorporated Alameda County, bearing Assessor's Parcel Number: 096-0056-002. (Continued from July 23, 2009; to be continued to a date yet to be determined) **Staff Planner: Shahreen Basunia**

Ms. Beatty presented the staff report. Member Harvey asked why staff was recommending a 10-year permit. Staff replied that perhaps it was at the request of the Applicant and/or it was based on the history of the permit without any violations and similar to cell site application.

Public testimony was called for. Alan Andress, CRJ Architects representing the Applicant, confirmed that although he had not requested a ten year permit, he was in support. The operation has been in existence for over 23 years without any problems and/or concerns.

Member Harvey recused himself. No other testimony was submitted. Member Goff made the motion to approve the application as recommended by staff and the Chair seconded. Motion carried 2/0 with Member Harvey recused.

2. **3RD YEAR REVIEW OF CONDITIONAL USE PERMITS, C-8233**, Altamont Infrastructure Company/Elliott, APN: 099B-6125-004-00; **C-8235**, Altamont Infrastructure Company/Corbett, APNs: 099A-1785-001-14 and 099B-5650-001-04; **C-8236**, Altamont Infrastructure Company/Dunton, APN: 099B-5680-001-00; **C-8237**, Altamont Infrastructure Company/Valhalla Enterprises, APNs: 099B-5610-001-00 and 099B-6075-003-00; **C-8238**, Altamont Infrastructure Company/Ralph Properties II, APNs: 099B-7375-001-07, 099B-7300-001-05 and 099B-6325-001-03; **C-8241**, Altamont Infrastructure Company/Walker Family Trust, APNs: 099B-6100-002-10, 099B-6100-002-11, 099B-6100-003-10, 099B-6100-003-11, and 099B-6100-003-13; **C-8242**, Altamont Infrastructure Company/Marie Gomes Farms, APNs: 099B-6150-002-07, 099B-6150-003-00 and 099B-6150-004-10; **C-8244**, Altamont Infrastructure Company/Marie Gomes Farms, APNs: 099A-1795-001-00, 099A-1790-002-00 and 099B-6425-002-03; **C-8036**, Altamont Infrastructure Company/Frick, APN: 099B-5680-015-00; **C-8037**, Altamont Infrastructure Company/Pombo, APNs: 099B-6300-002-01, 099B-6300-002-02, 099B-6325-002-03, 099B-6325-002-04 and 099B-6425-001-06; **C-8134**, Altamont Infrastructure Company/Rooney, APN: 099B-6125-002-00; **C-8137**, Altamont Infrastructure Company/ Mulqueeny, APNs: 099A-1800-002-03, 99A-1800-002-04, 99b 7890-002-04, 99B-7890-002-05, 99B-7900-001-05, 99B-7900-001-07, 99B-7910-001-01, 99B-7925-001-03, 99B-7925-001-04, 99B-7925-002-04, 99B-7925-002-05, 99B-7975-001-00, 99B-7980-001-00, 99B-7985-001-03, 99B-7985-001-04, 99B-7985-001-05, 99B-7985-001-06 and 99B-8050-001-00; **C-8191**, Windworks Inc./Mulqueeny, APN: 099B-7910-001-01; **C-8232**, Altamont Infrastructure Company/Egan, APN: 099B-6125-003-00; **C-8216**, Windworks Inc./Alameda County Waste Management Authority, APN: 099A-1810-001-00; and **C-8243**, Altamont Infrastructure Co./Alameda County Waste Management Authority: APNs: 099A-1770-002-01, 099A-1770-002-02, 099A-1770-002-03, 099A-1780-001-04, 099A-1790-003-00 and 099A-1810-001-00.

Staff Planner: Andrew Young

Ms. Rivera presented the staff report adding that comments have been received from Golden Gate Audubon who has requested a continuance along with others. They have also suggested that a system of fines for non-compliance should be discussed and that the applicants be subject to the Compliance Monitor because of concerns that the removal of turbines may not occur as promised. Although AWI has submitted Repowering Reports as required, they have indicated that it is not possible due to many reasons. Scientific Review Committee (SRC) has almost completed one of the Avian Monitoring Reports and will be meeting next week to discuss the methodologies and analysis. It will report back to the Settling Companies and the East BZA regarding AWI's claim of a large reduction in bird deaths. AWI

has also recommended a few changes to the Exhibits and if agreed by the East BZA, they can be incorporated as part of their action today. The Chair asked if any of the evaluations can be completed by Zoning Enforcement instead of hiring a compliance monitor. Ms. Rivera explained that although hiring process is through the County, the expense of hiring will be paid by the companies.

Public testimony was called for. Rick Koebbe, Altamont Winds, provided background information and a powerpoint presentation on the following: AWI operation in context; human health, wildlife & climate benefits of wind energy; Altamont avian perspective; AWI management actions to decrease avian fatalities; costs (\$6 million) and results of 85% in reduction of avian focal fatalities; and conclusion. In response to the Board, Mr. Koebbe explained that the \$6 million cost was incurred in the last three years, 2006-2009; they own 19% of the turbines; and avian fatalities have decreased. Chair Gosselin said he was interested in looking at the figures and requested that Mr. Koebbe submit a list of problems for this process. Mr. Koebbe replied that a 3-page report, containing graphs and numbers were submitted to staff; SRC has not reviewed the materials submitted and requested that the matter not be continued. Ms. Rivera added that SRC will be meeting next week but mainly to discuss data base and methodology.

Bill Damon, Altamont Winds, Inc., stated that he did not support a continuance but was looking for certainty as how to proceed with their business. They have signed a MOU with the County that AWI will participate in the NCCP ACP program which would relieve their 10% shutdown requirement of all turbines this month for the repowering. AWI has also agreed to do more than what is required by the MOU. Mr. Damon strongly urged for an action instead of a continuance. If the Board is looking for additional information regarding their compliance, AWI has submitted a letter and he pointed out that SRC will not be able to confirm the shutdown.

The Chair explained that the Board has been receiving information up till the hearing which they and staff have not had a chance to review and process.

Roy Cornwell, representing Mulqueeney Ranch, noted that all involved parties agree on the need for repowering. There are 240 turbines on his property and replacing seven 100 kilowatt turbine with one 750 kilowatt turbine, slower rotating turbine will use less land, kill fewer birds and use less gas. He submitted copies of an article "A Mathematical Model of Bird Collisions with Wind Turbine Rotors" graph on bird flight levels, collision rates and gas usage.

Michael Boyd, President of CARE, explained that the reason for Superior Court case was the lack of EIR. The 2005 permit required the completion of an EIR by 2008 but, to-date, there is no EIR. He would like to see evidence and/or schedule of compliance, to be reviewed by the SRC. He did not think the matter should be approved or continued due to non-compliance but instead denied. At his September 30th appointment with Judge Sabraw (Ex Parte Hearing Request), he will request that the operation is shut down a month early and not re-open until an EIR is completed, evidence of compliance, a schedule of compliance and a restoration bond which should have been set up in 2005, are completed. The Chair requested that Mr. Boyd submit a list of specific problems and Mr. Boyd replied that they are listed on page 7 of his response. The Chair explained that the SRC is an advisory committee and not a decision-making body. Mr. Boyd noted that they are subject to the Brown Act. If the Monitoring Team reports to the SRC, it would eliminate some barriers to progress.

The Chair noted that at the initial approval of the CUPs, this Board had been interested in receiving progress reports on the SRC, the concerns of the stakeholders as well as the applicants but the matter had been appealed to the Board of Supervisors. Any BZA action on these AWI permits may provide a framework for the future. Mr. Boyd replied that he did not want to change any of the words but wanted the Conditions of Approval to be enforced by this Board. He would prefer not to go back to the Board of

Supervisors.

Public testimony was closed. Member Goff requested clarification regarding Mr. Boyd's questions. Ms. Rivera explained that there is still an EIR requirement for the Settling Companies; the EIR and the Conservation Plan is linked; the Notice of Preparation and scoping will occur by the end of the year; staff has made site visits to confirm compliance of removal of the turbines; and, in reference to seasonal shutdown, information has been submitted to the Monitoring Team and is available; staff will also present a compliance report to SRC which will also be made available to this Board; and regarding the schedule compliance, the removal of the derelict turbines will be completed by the end of seasonal shutdown; and although the issue of a restoration bond has not been addressed yet, we are awaiting proposal from the companies which will be submitted to SRC. And, in response to the Chair, she confirmed that there was no deadline for this bond.

The Chair thought that a continuance was warranted as he would like to receive information from the SRC and also have to time to review all the information submitted in the last few days. He expressed concern that a lot of information will again be submitted just prior to the next meeting and, as such, recommended an electronic packet/file of all the documents submitted up to a specific time (a deadline date). Any information submitted after the deadline will be treated similar to being submitted at the hearing. Member Harvey agreed adding that the Friday before the next Board hearing should be the deadline, a Table of Contents for all documents; and thought that it would be helpful to have a representative from the SRC at the next meeting to answer questions, provide a presentation of their work to-date, the time line, shed some light on their concerns/problems and perhaps provide statistics on the fatality reduction. Ms. Rivera said that the upcoming meeting should resolve some issues and the data will be reviewed during the workshop next week.

The Chair agreed with Member Harvey that it would be helpful to have a representative from SRC. *Member Harvey made the motion for a continuance, and that a representative(s) from SRC be available at the next hearing to address questions and report on the process of assessing progress on reducing avian mortality and the state of their progress, a deadline be established, preferably Friday prior to the hearing, to allow time for the Board to review all the information. The continuance date to be determined by staff and depending on the availability of SRC members; and any information submitted after the deadline will be considered only as verbal testimony submitted at the hearing. Member Goff seconded and the motion carried unanimously.*

APPROVAL OF MINUTES ~ *Member Harvey made the motion to approve the July 23rd Minutes as submitted and Member Goff seconded. Motion carried 3/0.*

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 3:10 p.m.

ALBERT LOPEZ - SECRETARY
EAST COUNTY BOARD OF ZONING ADJUSTMENTS