

**MINUTES OF MEETING**  
**EAST COUNTY BOARD OF ZONING ADJUSTMENTS**  
**OCTOBER 22, 2009**  
(APPROVED FEBRUARY 25, 2010)

The meeting was held at the hour of 1:30 pm 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. **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 and September 17, 2009) **Staff Planner: Damien Curry**
  
2. **KTVU TV/EAST BAY REGIONAL PARKS DISTRICT, CONDITIONAL USE PERMIT, PLN2009-00068** ~ Application to allow for the continued operation of a communications facility (antenna and antenna complex), in an "A" (Agricultural, 100 acre Minimum Building Site Area) District, located at 9530 Weller Avenue, atop Monument Peak, approximately 4.5 miles northeast of the City of Fremont, unincorporated Ridgeland area of southwest Alameda County, bearing Assessor's Parcel Number: 096-0100-021-00.  
**Staff Planner: Damien Curry**

**REGULAR MEETING: 1:30 p.m.**

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

**OTHERS PRESENT:** Albert Lopez, Planning Director; Sandi Rivera, Assistant Planning Director; Tona Henninger, Code Enforcement Manager; Jana Betty, Senior Planner; Lacy Starling, Zoning Investigator; Brian Washington, County Counsel's Office, and Nilma Singh, Recording Secretary

There were approximately twenty-nine 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.

Bill Sheehan, 5682 Tesla Road, said that his testimony was a follow up on the previously approved variance application for Wentle. One of the Conditions of Approval was to extend the landscaping to the east gate which has not been done yet and Mr. Sheehan felt that it will not be installed even after four months as required. Instead of a 20-foot tree, a 2-foot olive bush was planted; and with the closing of the main gate, the dust problem has increased. Mr. Sheehan presented photographs in support. Approximately three weeks ago, he filed a complaint with Lacy Starling, Code Enforcement, who had informed him that she would have to do a research but no action has been taken to-date. Mr. Sheehan also submitted a copy of his written testimony.

The Chair asked if Ms. Starling could research into the complaint, both the landscaping and dust concerns, and report back to the Board. Ms. Beatty agreed adding that the Landscape Plan was approved about a month ago. Member Harvey explained that the Board cannot comment on the issue as this matter is not agendaized but is under Open Forum.

**ANNOUNCEMENTS BY THE CHAIR:** *The Chair announced that the Abatement hearings have been moved to the end of the Regular Calendar.*

**NEIGHBORHOOD PRESERVATION AND ZONING ORDINANCE ABATEMENT:**

1. **ALFRED & SOPHIE RHEINHEIMER TRS, 5143 TESLA ROAD, UNINCORPORATED LIVERMORE, ASSESSOR'S PARCEL NUMBER: 099A-2340-002-00** ~ Conducting special cultural and/or social events without an approved Conditional Use Permit in violation of Alameda County Ordinance Section 17.06 Permitted Uses for Agricultural "A" District.
2. **JAWID SIDDIQ, LINDEMANN ROAD, UNINCORPORATED LIVERMORE, ASSESSOR'S PARCEL NUMBERS: 099B-7150-010-05, 099B-7150-010-07 and 099B-7150-010-08** ~ 1) Illegal, dilapidated and/or unsafe units, structures and/or platforms (docks) in violation of Section 110, 503, 505 and 508 of the 2007 California Fire Code; Chapter 15.18, Section 8 of the Alameda County Onsite Wastewater Treatment System and Individual/Small Water System Regulations; Chapter 6.65.030, Sections (A), (B) and (C) of the Alameda County Neighborhood Preservation Ordinance; and Chapter 17.06 of the Alameda County Zoning Ordinance; 2) Junk, garbage, trash, debris, furniture and miscellaneous items in violation of Alameda County Neighborhood Preservation Ordinance 6.65.030 A and B(6); and 3) Several inoperative vehicles stored on unpaved surface and/or on the property in violation of Alameda County Neighborhood Preservation Ordinance 6.65.030 A(3), B(6) and Junk Vehicle Ordinance 6.48.

*These items were moved to the end of the Regular Calendar.*

**CONSENT CALENDAR:** *There were no items.*

**REGULAR CALENDAR:**

1. **3<sup>RD</sup> 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. (Continued from September 17, 2009, and continued to a date to be determined). *Request* to amend approved motion continuing the item to have a member of the BZA attend a meeting of the Altamont Pass Wind Resource Area Scientific Review Committee (SRC) instead of having a representative of the SRC report to the BZA at its next hearing on the Third-Year Review (as provided by the approved motion). **Staff Planner: Andrew Young**

Ms. Rivera presented the staff report adding that Member Harvey had attended the last SRC meeting on October 20<sup>th</sup> as a public member and SRC has selected a representative to attend a BZA meeting. Member Harvey indicated that he plans to attend the next SRC meeting depending upon his availability adding that it would be useful for a SRC member to attend a BZA meeting for questions. The Chair thought that it would be useful for a Boardmember to attend a SRC meeting specially since he has a specific question relating to baseline data used to determine mortality percentage that could have value to this Board. Ms. Rivera noted that the next SRC meeting will be largely directed towards baseline data. A discussion followed regarding modification to the previous motion; the layout and process of the SRC meetings. Member Harvey stated that the SRC meetings are structured informal meetings.

Bill Damon, representing Altamont Winds, Inc., said he was available to answer any questions. He had also attended the October 20<sup>th</sup> SRC meeting and agreed that these meetings are structured but informal with open forum after each agenda items.

Ryan McGraw, also representing Altamont Winds, Inc., stated that although initially he thought that the motion could be dealt away entirely since Member Harvey has already attended a SRC meeting, he agreed that it would be useful to have a SRC member at the BZA meeting. As such, he was not taking a position either way at this time. He introduced Steve Mullin who was available to answer any baseline data questions.

Steve Mullin, Wildlife Biologist with Altamont Winds, Inc., said he was available for any questions.

Public testimony was closed. *Member Harvey made a motion to amend the September 17<sup>th</sup> motion to include that a member of the BZA attend the December 2<sup>nd</sup> SRC meeting and other meetings as needed. Member Goff seconded and the motion carried unanimously, 3/0*

2. **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 and September 17, 2009) **Staff Planner: Damien Curry**

Ms. Beatty presented the staff report. Member Goff asked if the other carriers at this location are aligned with similar expiration dates. Staff noted that there are several expiration dates for existing CUPS at this location outlined on page 2. A discussion followed regarding different date options.

Public testimony was called for. Amy Million, KDI representing T-Mobile, asked what for the substantial land use reason to align this permit with the other permit expiration dates and the reason for a permit less than ten years. This facility is a lot less intrusive than the others--13-foot mounts and, as such, she was not in support of randomly linking the expiration date to another CUP. Otherwise, she was in favor of the recommended conditions. The Chair explained that consolidating expiration dates prevents burdening one applicant with the cost of mitigation measures. Ms. Million felt that if linking to another expiration date is necessary, then it would be appropriate to match an expiration date of another site that offers the possibility of a merger in future.

Public testimony was closed. Mr. Washington pointed out that T-Mobile had appealed the Board's last decision for an approval less than ten years. Another option, which T-Mobile is agreeable to, would be a ten-year approval with the option to re-open the permit earlier if another renewal is filed that offers the possibility of a co-location. A discussion followed regarding different options and expiration dates. Member Harvey felt that after the alignment, a ten-year permit could be granted. Member Goff said he supported a 2017 expiration date and staff noted the March 17<sup>th</sup> date. *Member Harvey made the motion to approve the application with modified Condition #16 to reflect an expiration date of March 13, 2017. Member Goff seconded and the motion carried unanimously, 3/0.*

3. **KTVU TV/EAST BAY REGIONAL PARKS DISTRICT, CONDITIONAL USE PERMIT, PLN2009-00068** ~ Application to allow for the continued operation of a communications facility (antenna and antenna complex), in an "A" (Agricultural, 100 acre Minimum Building Site Area) District, located at 9530 Weller Avenue, atop Monument Peak, approximately 4.5 miles northeast of the City of Fremont, unincorporated Ridgeland area of southwest Alameda County, bearing Assessor's Parcel Number: 096-0100-021-00. **Staff Planner: Damien Curry**

Ms. Beatty presented the staff report.

Public testimony was called for. Member Goff asked if there are other sites at this location. A discussion followed regarding other TV stations on the adjacent properties; co-location and synchronizing expiration dates similar to cell sites; and the response from East Bay Regional Park District for site on the adjacent

property.

Lee McPherson, representing KTVU TV, in response to staff confirmed that they were the only carrier on the site.

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

**NEIGHBORHOOD PRESERVATION AND ZONING ORDINANCE ABATEMENT:** *(Moved from the beginning of the agenda)*

1. **ALFRED & SOPHIE RHEINHEIMER TRS, 5143 TESLA ROAD, UNINCORPORATED LIVERMORE, ASSESSOR'S PARCEL NUMBER: 099A-2340-002-00** ~ Conducting special cultural and/or social events without an approved Conditional Use Permit in violation of Alameda County Ordinance Section 17.06 Permitted Uses for Agricultural "A" District.

Ms. Starling presented the staff report.

Public testimony was called for. Steve Powell stated that he would voluntarily submit a Conditional Use Permit application and this has been his goal from the beginning. Since he has travel plans and will not be able to do so in the next 30 days, he asked if he would be given time until the end of the year. He has held one wine pairing event and one event/party this year, and further outlined each event that has been categorized as a violation:

- September 19<sup>th</sup> – a family wedding (niece).
- Website advertising – RJs Popi Lounge is a club in Pleasanton and he, the Singing Winemaker, performs Wednesday nights throughout the months of July and August. He further explained that the corporate events as listed on his website include wine pairing which is part of a winery function.
- July 25<sup>th</sup> event with live music and admission fee (as advertised in the local newspaper) – marketing and pairing of his wine, also a winery function and similar to other wineries; and the \$5 admission fee was to cover costs.
- June 6<sup>th</sup> – a wine release event/party.
- Live music – he is the only singing winemaker from a total of 5,400 wineries in the State. He also plays music with wine tasting every Saturday and Sunday.
- January 11<sup>th</sup> – this was a private party.
- April 11<sup>th</sup> – this was the 4<sup>th</sup> annual Tesla Vineyard's Easter Egg hunt; he has a egg hunt on his property for kids.

Mr. Powell said he has not violated any laws, has not had any loud events and has not been a 'public nuisance'. He has tried to comply with all regulations and conditions and re-stated that he will voluntarily apply for a permit. In response to the Chair, Mr. Powell confirmed that his prior Conditional Use Permit had been denied.

Frank Acuña, Trustee of Rheinheimer Trust, explained that the Trust is the owner of the property and Mr. Powell is the tenant. The Trust has demanded that all unpermitted activities cease, served a 3-day notice to quit all activities and filed an unlawful detainer lawsuit to remove Mr. Powell from the property. The Trust is in agreement with staff's findings and the only request is that any fines/fees not be made against the landowner since we have tried and will continue to try to abate the nuisances. In response to the Chair, he noted Mr. Powell's intent to hold commercial activities in the future as advertized on his

website.

Public testimony was closed. Member Harvey noted that the prior denial was due to outstanding Building Department issues. And, if they still exist, this could be again a one year process. Ms. Henninger explained that once a CUP is filed, the application will be referred to different agencies for their input followed by a site visit for confirmation. If an application is not filed, then fines will be assessed against the property owner and not the applicant. These fines are appealable to this Board. The Chair asked if the unlawful detainer lawsuit should be considered. Mr. Washington replied that it should not affect the Board's decision. The Chair also asked if staff has any comments regarding Mr. Powell's testimony that his events were either winery-related or family events. Mr. Lopez said that although Mr. Powell has the right to market his winery products, it is the cultural social events that require a CUP. A discussion followed regarding the two options.

Public testimony was re-opened. Mr. Powell re-iterated that he had been unaware that his events were in violation and his willingness to apply for a CUP. He had not been aware of this option earlier. There is one more planned party for this year and, as such, all other events will be winery related. Building code issues were related to the tower building which were finalized on November 11, 2006.

Judy McPherson, adjacent property owner at 5167 Tesla Road, pointed out that the CUP process started in September, 2005 and was denied in November, 2006. Since the matter was on appeal, the operation continued. Although the BOS denied the appeal in March, 2007, activities did not cease and Mr. Powell continued to advertise. And now the process could re-start which would be a huge disservice to the County and she has a right to be safe on her property. Ms. McPherson further described incidents that occurred at the September 9<sup>th</sup> event. The January 17<sup>th</sup> event is fundraiser with tickets being sold online. This is not a private event. She urged staff to proceed with the abatement and, if possible, not to consider another CUP process.

Public testimony was closed. In response to the Chair, Mr. Lopez explained that the January 17<sup>th</sup> event could be considered a cultural social event based on the ad and, as such, a ACUP would be required and any abatement action today will not preclude him from obtaining such a permit. A discussion followed regarding the Ordinance language, the differences between winery-related uses, cultural and social events and tasting room events. The Chair indicated that he did not want to be responsible for putting any children in jeopardy. The egg hunts are not family events and the advertisements on the website also show intent for commercial activities. Member Goff said he also recognizes the intent. Member Harvey thought that the Applicant considers social and cultural events part of a winery-related permitted use. Chair indicated that he did not want to be responsible for putting any children in jeopardy. The egg hunts are not family events and the advertisements on the website also show intent for commercial activities. Member Goff said he also recognizes this same intent. Further discussion followed regarding staff recommendation. Mr. Lopez recommended adding the following sentence to the paragraph under Staff Recommendation: "In addition, all cultural and/or social events shall cease during the Conditional Use Permit process. *Member Goff made the motion to move staff recommendation with the above modification and Member Harvey seconded. Motion carried unanimously, 3/0.*

2. **JAWID SIDDIQ, LINDEMANN ROAD, UNINCORPORATED LIVERMORE, ASSESSOR'S PARCEL NUMBERS: 099B-7150-010-05, 099B-7150-010-07 and 099B-7150-010-08** ~ 1) Illegal, dilapidated and/or unsafe units, structures and/or platforms (docks) in violation of Section 110, 503, 505 and 508 of the 2007 California Fire Code; Chapter 15.18, Section 8 of the Alameda County Onsite Wastewater Treatment System and



Individual/Small Water System Regulations; Chapter 6.65.030, Sections (A), (B) and (C) of the Alameda County Neighborhood Preservation Ordinance; and Chapter 17.06 of the Alameda County Zoning Ordinance; 2) Junk, garbage, trash, debris, furniture and miscellaneous items in violation of Alameda County Neighborhood Preservation Ordinance 6.65.030 A and B(6); and 3) Several inoperative vehicles stored on unpaved surface and/or on the property in violation of Alameda County Neighborhood Preservation Ordinance 6.65.030 A(3), B(6) and Junk Vehicle Ordinance 6.48.

Ms. Henninger presented the staff report adding that there have been numerous public nuisance type issues such as fights, fires and tenants.

Public testimony was called for. Ron Mize, 6020 Lindemann Road, resident of Livermore Yacht Club, noted that the boat in the photograph has now sunk and items are being thrown in the Delta.

Robert Harper, 6020 Lindemann Road, Vice-Commodore for Livermore Yacht Club, said that the Club concurs with staff recommendation. He described the series of events that occurred before he had made the call to the Fire Department. Other concerns have been screams at night, water hazards at different tide levels, burning of trash and domestic disturbances resulting in numerous arrests.

Dave Singer, 6220 Lindeman Road, stated that he owns one of the houses and after the lease change, the house has been rented. He agreed that there have been changes in the last two years – numerous service calls for domestic violence, attacks on his wife, trash/garbage, and the unwillingness to change.

Bill Pease stated that he is a part-owner at the Marina also and he thought that this has been an on-going issue. He urged an approval of staff recommendation. He expressed fire hazard concerns.

Amos Picker, property manager, pointed out that the Yacht Club had been the landlord for the last twenty years. The lease has expired and a new lease denied. The lease obligation was to rehab the homes or clean up and neither was completed. He agreed that the houses are uninhabitable but there are no funds/loans for repair and if demolished, will probably be lost and tenants will be homeless. As such, additional time is requested. To-date, he has not received the entitlement rights to the homes. In response to the Chair, he confirmed that owner bought the property six years ago.

Jawid Siddiq, property owner, confirmed the Club had control of these homes for the last twenty years. These units are 40-50 years old. During the initial meeting with the Planning Director, Mr. Lopez, he was informed that he could demolish and build eleven new units. But later he was informed that once demolished, he would lose the rights although he can remodel them.

Another board member (prior Club President) explained that the Club has not held a lease for the property. A Manuel Costa was the previous owner and his family had the control.

Public testimony was closed. Ms. Henninger explained that they are working with the property owner regarding the nonconforming status. Although neither the owner nor staff has found any information to-date, staff's recommendation is to secure these units to allow additional time. As such, demolition of all units is not recommended at this time but to alleviate and eliminate some of the issues, especially evidence of sewage in water which is used, in some cases without filtration, for hygiene purposes. If the units deteriorate quickly, the matter will be brought before this Board with a recommendation for a demolition. The Chair requested clarification on the entitlement issue. Mr. Lopez explained he and staff have been working with Mr. Siddiq on legalization if possible but records are spotty. Currently, there are short and long term plans. Per Environmental Health, there are no water supply or sanitation systems. In

response to Member Harvey, Ms. Henninger said that CEQA and possible water concerns were discussed with Senior Planning staff. It was agreed no additional measures needed at this time given what was to be removed.

Sgt Schueller, Sheriff's Department, explained that the Department has become involved due to the service calls. These units are built on stilts, over the river and he further described the condition of the structures.

Ariu Levi, Director of Environmental Health, concurred with staff recommendation.

In response to Member Harvey regarding the status of the tenants, Ms. Henninger said they have been in discussions with the tenants. If agreed, referrals will be made to non-profit agencies and County Social Services, and 30 days to re-locate. *Member Goff made the motion to move staff recommendation for abatement and Member Harvey seconded. Motion carried unanimously, 3/0.*

**APPROVAL OF MINUTES** ~ *Member Harvey made the motion to approve the September 17<sup>th</sup> Minutes as submitted and Member Goff seconded. Motion carried 3/0.*

**STAFF COMMENTS & CORRESPONDENCE:** Staff announced the upcoming South Livermore Valley Area Plan meeting scheduled for Tuesday, November 10<sup>th</sup> at 6:30 pm at the Martinelli Center.

**CHAIR'S REPORT:** The Chair submitted materials submitted by Mr. Sheehan to Code Enforcement staff. Ms. Henninger added that staff will provide an up-date at the next meeting.

**BOARD ANNOUNCEMENTS, COMMENTS AND REPORTS:** Member Harvey, in reference to the first item (windfarms item), requested that due to the Brown Act, questions from the Chair to be presented to SRC, be submitted to staff first.

**ADJOURNMENT:** There being no further business, the hearing was adjourned at 4:16 p.m.

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**ALBERT LOPEZ - SECRETARY**  
**EAST COUNTY BOARD OF ZONING ADJUSTMENTS**