

MINUTES OF MEETING
EAST COUNTY BOARD OF ZONING ADJUSTMENTS
NOVEMBER 19, 2009
(APPROVED FEBRUARY 25, 2010)

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

FIELD TRIP: 9:00 a.m.

FIELD TRIP: The Boardmembers visited the following properties on their own:

1. **RICHARD and DEBORAH KERRI, CONDITIONAL USE PERMIT, PLN2009-00030** ~ Application to allow an accessory building 22 feet in height where 15 feet is the maximum, in a R-1-L-B-E (Limited Agriculture, 5 acre Minimum Building Site Area) District, located at 1826 Buena Vista Avenue, east side, approximately 1,860 feet south of East Avenue, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 99-1250-017-03. **Staff Planner: Damien Curry**

2. **T-MOBILE/WEST CORPORATION, LOEVEN & ASSOCIATES, MILLION, CONDITIONAL USE PERMIT, PLN2009-00047** ~ Application to allow continued operation of an existing telecommunication facility with a change of service provider from T-Mobile to T-Mobile West Corporation and to legalize an additional equipment cabinet, in an "A" (Agricultural) District, located at 2980 East Vallecitos Road, 60 feet southwest of the intersection with Vineyard Avenue, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 950-0007-005-09. **Staff Planner: Shahreen Basunia (Continued)**

3. **T-MOBILE, CONDITIONAL USE PERMIT, PLN2009-00051** ~ Application to allow continued operation of a telecommunications site consisting of two panel antennas mounted on two 52-foot poles and equipment cabinets, in a P-D (Planned Development) 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: 096-365-002-05. **Staff Planner: Damien Curry**

REGULAR MEETING: 1:30 p.m.

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

OTHERS PRESENT: Jana Beatty, Senior Planner, Tona Henninger, Code Enforcement Manager; Lacy Starling, Code Enforcement Officer; and Nilma Singh, Recording Secretary

There were approximately nine people in the audience.

CALL TO ORDER: The meeting was called to order by the Chair at 1:35 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, Livermore, stated that at the last meeting, staff was directed to look into the issue of dust and report back. Although he has left voicemail messages with Lacy Starling and written a letter, no response has been received. He has written to Supervisor Haggerty with copies to this Board and discussed the issue with the Planning Director, Mr. Lopez and Aris Krimetz, Wentz Vineyards, who has indicated that he is busy with the harvest and has not had the time to bring in the water truck. The once-a-week spraying lasts 3-4 hours only due to the extensive work and type of driveway. There are health related concerns also. Mr. Sheehan submitted photographs in support and copies of related County Ordinances. Traffic is another concern. Ms. Beatty replied that she has not received a response from Public Works Agency regarding dust. Since Mr. Sheehan thought that the landscaping installed were not mature as approved in the Landscaping Plan, she had visited the site with Mr. Sheehan and Mr. Krimetz. Confirmation could not be made whether they were 15 gallon olive trees although Mr. Krimetz confirms that they were. Ms. Starling said she did receive Mr. Sheehan's emails and photographs and has forwarded the information to Ms. Henninger, Code Enforcement Manager. The Chair provided his contact information to Mr. Sheehan and asked to be contacted when the problem is severe. Ms. Henninger indicated that Code Enforcement is also working on the complaint.

C. Neighborhood Preservation and Zoning Ordinance Abatement

1. Appeal of Fines and Fees associated with operating an illegal business (Built-In Appliance Specialist) with storage of commercial vehicles and employees in violation of Alameda County Ordinance 17.06.030 and 17.52.210, located at 5868 Mines Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099A-2400-012-02.

Ms. Starling presented the staff report. In response to the Chair, she further explained that with businesses, it takes longer to verify the operation; and indicated that she was unsure if fines have been made as it is handled with the Finance Department.

Public testimony was called for. Michael Lavelle, Property Owner, said he thought he could run a business from his home similarly as others do on Mines Road. Relocation costs are very high and, as such, he has scaled down the business slowly and there are no employees. There is an office in the front house, he and his brother both live on the property, own two trucks which have the business name on the side, some repairs are done on site, fines have been paid except for last month, and the shop building is used for his car hobby. In response to the Chair, Ms. Starling explained the difference between small trucks and commercial trucks (10,000lbs); noted photographs of loading and unloading appliances; two large trucks in the far rear and smaller ones in the front seen on site this morning; and no health and safety concerns but a public nuisance. Mr. Lavelle confirmed that appliances are brought in on the backs of the trucks and the bigger trucks are on sale. The Chair noted the lack of legal commercial truck parking lots in the area and the use of trucks vs. cars in the rural areas. If the issue now is only the trucks, he felt that any fines would be a 'heavy action' and, as such, he would support a 30-day continuance to allow the sale of trucks. A discussion followed regarding the different Board actions and assessment of fines. Mr. Lavelle re-iterated that he is trying to sell the trucks.

Public testimony was closed. Member Harvey noted that business intensity is decreasing, this is not a good time to sell anything, Code Enforcement has provided as much relief as possible to-date; the Board can do the same and he would support a continuance. Ms. Henninger explained that the Ordinance allows 60 days for holds and the site re-assessed before the January hearing.

Public testimony was re-opened. In response to Member Harvey, Mr. Lavelle estimated that it would take him approximately three months to wind down.

Public testimony was re-closed. *Member Harvey made a motion for a continuance for 60 days, to January, 2010. The Chair suggested adding an inspection by Code Enforcement prior to the January hearing. Motion was modified to include the above. Member Goff seconded and the motion carried unanimously.*

ANNOUNCEMENTS BY THE CHAIR: *None*

CONSENT CALENDAR:

1. **T-MOBILE/WEST CORPORATION, LOEVEN & ASSOCIATES, MILLION, CONDITIONAL USE PERMIT, PLN2009-00047** ~ Application to allow continued operation of an existing telecommunication facility with a change of service provider from T-Mobile to T-Mobile West Corporation and to legalize an additional equipment cabinet, in an "A" (Agricultural) District, located at 2980 East Vallecitos Road, 60 feet southwest of the intersection with Vineyard Avenue, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 950-0007-005-09. **Staff Planner: Shahreen Basunia**

This item was moved from the Regular Calendar, to be continued to the next meeting without discussion. Member Harvey made the motion to approve the amended Consent Calendar and Member Goff seconded. Motion carried unanimously, 3/0.

REGULAR CALENDAR:

1. **RICHARD and DEBORAH KERRI, CONDITIONAL USE PERMIT, PLN2009-00030** ~ Application to allow an accessory building 22 feet in height where 15 feet is the maximum, in a R-1-L-B-E (Limited Agriculture, 5 acre Minimum Building Site Area) District, located at 1826 Buena Vista Avenue, east side, approximately 1,860 feet south of East Avenue, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 99-1250-017-03. **Staff Planner: Damien Curry**

Ms. Betty presented the staff report. Staff is recommending approval based on the fact that the Board had approved an accessory structure in excess of the required height. Although the County has special RV Districts (Recreational Vehicle District), this is not one of them. Member Harvey questioned the Findings, specifically Finding #1.

Public testimony was called for. Donna Smith, 2052 Buena Vista Avenue, said she has lived here for 35 years. The subject property is visible from her home. She was not opposed to an accessory building, the location or the reason but against the increased height as it would set a precedent, perhaps for other businesses although she was unsure if the applicant has a business. A lot of business trucks travel to and from the property along with storing and selling of building materials. Notification of the other variances approved on Almond Avenue had not been received by the residents of Buena Vista.

Owen Parker, 2027 Buena Vista, submitted photographs and stated that although he cannot see the building from his house, it was built without a permit; the applicant is a licensed contractor who should have known that a permit is required; the applicant's engineering package cover reads: "recommend

contacting your Building Official”; although the business truck trips have been reduced, there are still some trucks with the applicant’s business name on the side, travelling back and forth; page #5 is a photograph of the site with the accessory building and cars parked around; and although the variance on Almond Avenue was approved, the building has not been constructed and he recommended that Code Enforcement should make a site visit. Mr. Parker urged a denial and recommended a demolition. He also submitted a letter from other neighbors, Courtney Cook and John Henfield.

Todd Zaremba, 1969 Buena Vista Avenue, concurred with Mr. Parker. He was not opposed to the accessory building which is not visible from the road, but building without a permit especially since Mr. Kerri is a contractor who should have been aware of the process.

Mr. Kerri, in rebuttal, stated the following: the Board had visited his property this morning and noted that there were no trucks/trailers parked on site; there is no longer a business on site but only an office; trucks/trailers are parked on Greenville Road; confirmed that he is a landscape contractor and was aware that a permit is required; increased height is for RV/forklift storage; and the immediate neighbors are in support and have submitted letters. The increased height is to park his RV and forklift/equipment and the building has all the required setbacks and has a ‘barn-look’. In response to Member Harvey, he further described his initial discussions/responses with the Planning Department and confirmed that he was aware that a variance was required.

Tim Scarano, 1912 Buena Vista Avenue, said that his property is two houses away. He has seen the building which is a barn like style, adequate for the area and he has no concerns.

Member Goff requested clarification between accessory and agricultural buildings. Staff explained adding that this is not an Agricultural District but a residential, R-1-l-B-E District which has a height requirement. Member Harvey expressed concern with this variance application tool and, as a result, had researched zoning manuals and books. He distributed copies of materials to the Board and staff, and further read a section from the Zoning Board Manual. Although he does not have concerns with the building itself, there is a 15 feet height limit. He could not make the first Finding in the affirmative as there are no special circumstances relating to the property. The 50% height increase is desired by the property owner. Perhaps the building height should be higher in the Agriculture Districts. He thought a longer term solution could be that the building height limitations in this zoning district could be looked into in the future by the BOS. Member Goff noted the intent of the Ordinance--to keep structures single story only. The Chair pointed out that this Board had approved a similar variance for an increased height on Almond Avenue, but would possibly make a different decision if it were before them today. This approval is being used as precedent setting. Staff noted that that building on Almond Avenue has not been built and the variance will expire in six months.

Mr. Kerri explained that only the peak of the building is 22 feet which was added to provide aesthetics of a rural area.

Public testimony was closed. Member Harvey felt that the Ordinance is not a good one and although not a priority, he hoped that BOS will review this Ordinance. If this was an application for a new project, the Board would work with the applicant to bring into compliance. The difference is that the building is already constructed. In response to the Board, staff explained that there are other similar zoning districts in the East County. Since it is not an agricultural zoned property, an accessory building has specific requirements.

Member Harvey made the motion for a denial as he could not make the first Finding. Although Member Goff disagreed that the building is being used to store recreational vehicles, he noted that since there are

other similar structures with the same height in the area, some perhaps older, he could not second the motion. The Chair seconded and the motion carried 2/1 with Member Goff dissenting.

2. **T-MOBILE/WEST CORPORATION, LOEVEN & ASSOCIATES, MILLION, CONDITIONAL USE PERMIT, PLN2009-00047** ~ Application to allow continued operation of an existing telecommunication facility with a change of service provider from T-Mobile to T-Mobile West Corporation and to legalize an additional equipment cabinet, in an "A" (Agricultural) District, located at 2980 East Vallecitos Road, 60 feet southwest of the intersection with Vineyard Avenue, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 950-0007-005-09. **Staff Planner: Shahreen Basunia**

This item was moved to the Consent Calendar.

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Ms. Beatty presented the staff report adding that the attorney representing T-Mobile has submitted a letter regarding the shortened expiration date and has suggested an alternative. A discussion followed regarding possible expiration dates.

Public testimony was called for. Amy Millon, representing KDI for T-Mobile, requested a change in the Applicant name to T-Mobile West Corp. Although T-Mobile urges an approval for a full term, they have prepared a 'compromised condition of approval' marked Exhibit A as contained in their 4-page letter. She further described the clause – a full term approval with the possibility of co-location. The Chair noted the use of the words 'equitable co-location'. Ms. Millon replied that although she did not receive any direction, the word may be changed if the Board desires. She also requested that Condition #3 be modified to reflect 90 days. Member Goff felt that due to the absence of County Counsel, the Board could not consider the 'compromised condition of approval'. The Board concurred. *Member Harvey made the motion to approve the application with Condition 17 to reflect an expiration date of March 13, 2018, to coincide with an existing permit on site; the change in the Applicant's name and Condition #3 to reflect 90 days. Member Goff seconded and the motion carried unanimously, 3/0.*

APPROVAL OF MINUTES ~ October 22, 2009 – *Approval of Minutes was continued.*

STAFF COMMENTS & CORRESPONDENCE: Ms. Beatty announced that the SRC meeting has been postponed to January due to the delay of the monitoring report.

CHAIR'S REPORT: The Chair requested clarification on the required width of access roads. Staff replied that it is 20 feet which has become the reason for some continuances of cell site renewal applications.

BOARD ANNOUNCEMENTS, COMMENTS AND REPORTS: Member Harvey provided an update on the SRC Tuesday afternoon meeting he had attended.

ADJOURNMENT: There being no further business, the hearing was adjourned at 3:25 p.m.

ALBERT LOPEZ - SECRETARY
EAST COUNTY BOARD OF ZONING ADJUSTMENTS