

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
NOVEMBER 18, 2009
(APPROVED DECEMBER 16, 2009)

The Regular Meeting was held at the hour of 1:30 p.m. in the Alameda County Building, 224 West Winton Avenue, Hayward, California 94544.

REGULAR MEETING: 1:30 p.m.

MEMBERS PRESENT: Chair, Dawn Clark-Montenegro; Vice Chair, Kathy Gil; Members, Jewell Spalding, Frank Peixoto and Ineda Adesanya.

MEMBERS EXCUSED: None

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; County Counsel, William Fleishhacker; Code Enforcement staff; and Yvonne Bea Grundy, Recording Secretary.

There were approximately 6 people in the audience.

CALL TO ORDER: The meeting was called to order by the Chair at 1:35 p.m.

ANNOUNCEMENTS BY THE CHAIR: The Chair made no special announcements.

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.

Neighborhood Preservation Ordinance Abatement Hearing

- 1. Deutsche Bank National Trust Co., Somerset Ave., Castro Valley CA 94546**
In violation of the Alameda County Ordinance 6.65.030 A (1,8,9,10,11) and B (6).
 1. Overgrown vegetation & weeds in front, side and rear yards
 2. Debris in front & rear yards, and porch
 3. Side gate in disrepair

The Vice Chair motioned to adopt the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. Member Spalding seconded the motion. Motion carried 4/0.

- 2. Rupinder S. Gill, Karina Street, Hayward, CA 94542**
In violation of Alameda County Ordinance 6.65.030 A (8), A (9) and A (10).
 1. Weeds

Member Peixoto motioned to adopt the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. The Vice Chair seconded the motion. Motion carried 4/0.

- 3. Ravi & Lalita Chitlangia, Karina Street, Hayward, CA 94542**
In violation of the Alameda County Ordinance 6.65.030 A (8), A (9) and A (10).
 1. Weeds.

The Vice Chair motioned to adopt the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. Member Peixoto seconded the motion. Motion carried 4/0.

Member Spalding arrived at 1:48p.m.

4. **Jagdip Sekhon, Karina Street, Hayward, CA 94542**
In violation of the Alameda County Ordinance 6.65.030 A (8), A (9) and A (10).
 1. Weeds.

Member Adesanya motioned to adopt the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. The Vice Chair seconded the motion. Motion carried 4/0/0. Member Spalding abstained.

5. **Gurdev S. Dhillon, Karina Street, Hayward, CA 94542**
In violation of the Alameda County Ordinance 6.65.030 A (8), A (9) and A (10).
 1. Weeds.

Member Spalding motioned to adopt the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. The Vice Chair seconded the motion. Motion carried 5/0.

CONSENT CALENDAR:

1. **T MOBILE USA / CHRIS COONES - CONDITIONAL USE PERMIT, PERMIT PLN-2009-00085** - Conditional Use Application to allow a telecommunications facility (Antenna Array) in a PD (Planned Development, 1591st Zoning Unit, allowing single family residential uses with additional conditions) District, located at 17228 San Franciscan Drive, west side approximately 150 feet south of Bellingham Drive (PG&E Easement), unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 0085-6312-054-00. (Continued from September 23 and October 28, 2009; to be continued to a future date). **Staff Planner: Andy Young.**
2. **T MOBILE USA / CHRIS COONES - CONDITIONAL USE PERMIT, PLN-2009-00090** - Application to allow a telecommunications facility (Antenna Array) in a PD (Planned Development, 1268th Zoning Unit) District, located at 18832 W. Cavendish Place, approximately 500 feet from the intersection of Troost Court, Castro Valley area of unincorporated Alameda County, designated Assessor's Parcel Number: 0085-1510-013-00. (Continued from September 23 and October 14, 2009; to be continued to December 16, 2009). **Staff Planner: Richard Tarbell.**

Member Peixoto motioned to accept the Consent Calendar as proposed. The Vice Chair seconded the motion. Motion carried 5/0.

REGULAR CALENDAR

1. **T MOBILE CORPORATION / AMY MILLION / THE NEIGHBORHOOD CHURCH, PERMIT PLN-2009-00048** – 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 R-1-CSU-RV (Single Family Residential, Conditional Secondary Unit, Recreation Vehicle Parking Regulations) District,

located at 20600 John Drive, north side, approximately 300 feet northwest of Castro Valley Boulevard, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Numbers: 084A-0228-001-03; 084A-0235-001-007-00; 084A-0230-001-02; 084A-0230-003-03; 084A-0230-004-00; and 084A-0240-004-02. **Staff Planner: Shahreen Basunia.**

Staff reviewed the application. The recommendation was approval with the following correction: Condition of Approval #18 shall now state, expiration in 10 years on November 18, 2019, as opposed to October 28, 2019. The Castro Valley Municipal Advisory Committee also recommended approval, via the Consent Calendar. Board questions were as follows:

- Is the equipment cabinet currently in existence
- Is the Sheriff still experiencing issues with static on the emergency frequency
- What version of the General Plan was used to compile the staff report, the draft or existing Plan
- Will the project impact any neighboring views
- Will the equipment cabinets be camouflaged
- Will the cabinets be placed above the church and other structures on the property

Staff confirmed the equipment cabinet was not yet in place. Both the existing and draft General Plan were used. There is discussion under the auspices of the Draft General Plan. However the photo simulations show the view is not completely blocked. The equipment cabinets will be placed on the roof, and will not be visible. The location is above the church and other buildings. Although the Sheriff's Department was experiencing issues with radio frequency interference a few years ago, the issues have been resolved. Public testimony was opened.

The Applicant, Ms. Amy Million was present. She was in agreement with the staff recommendation of approval, as well as proposed Conditions of Approval. There were no questions of Ms. Million. Public testimony was closed.

The Vice Chair motioned to uphold the staff recommendation of approval as modified. The permit will expire on November 18, 2019. Member Adesanya seconded the motion. Motion carried 5/0.

2. **HAYWARD AREA RECREATION & PARK DISTRICT / T MOBILE/ CHRIS COONES , PERMIT PLN 2009-00089** – Conditional Use Application to allow the installation of a wireless telecommunications facility (monopine), in an "A" (Agricultural) District, located at 6132 Greenridge Road, west side, approximately 1,000 feet north of Mesa Verde Way, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 085-1600-003-02. **Staff Planner: Christine Greene.**

Staff reviewed the application, and recommended approval. The Castro Valley Municipal Advisory Committee also recommended approval with the following modification: Condition #6 shall now include the installation of five, 25 gallon trees at the site. Initial Board questions were as follows:

- What determines which sections of Castro Valley are rural vs. urban

- What is the specified density for the rural zoning at the location
- How did CVMAC determine the number of trees
- What type of trees will be installed

Staff told the Board the General Plan describes rural as containing large lots. Although the location is close to town, the site address borders Measure D area, and Agricultural zoning that begins into the eastern portion of the County. The urban area is closer in proximity to development. The CVMAC did not express how the determination regarding the number of trees was reached. However they have instructed the Applicant to obtain approval of the landscaping plan from the Planning Department. Public testimony was opened.

The Applicant Mr. Chris Coones was in agreement with the Conditions of Approval. The trees installed will most likely be Ponderosa Pines. A Representative from Hayward Area Recreation Department was also present to answer questions. Board questions for the Applicant were as follows:

- What is the average frequency that will be emitted from the monopine
- What material does the monopine tower contain
- Will the trees be allowed to reach, and be maintained at a particular height
- Who will purchase the trees, and install the trees
- Who will be responsible for maintaining the trees

Mr. Coones confirmed T Mobile will be responsible for the cost of purchasing the trees. They will also pay the costs for HARD to install the trees. The trees will be maintained by HARD. On average a Ponderosa Pine will reach 52 feet in height when mature. Typically you do not place a tree directly in front of an antenna. The average frequency emitted is 1,800 megahertz. This type of antenna has been known to reach a higher frequency. However with the newer technology conversion from analog to digital signals, the average has been 1,800 mega hertz. The antenna will be made of fiberglass. This new material has eliminated interference that was a problem before.

Mr. Larry Lepore from Hayward Area Recreation said there are many telecom poles on HARD property. This is the first monopine installation. The design will provide better camouflage than the standard pole design. Board questions for Mr. Lepore were as follows:

- What type of tree did the CVMAC recommend
- Is there a replacement plan in the event trees die due to drought or disease
- Is there a caretaker at the site
- What is the expected life span of the specified tree type
- Will surrounding trees interfere with the radio frequency signals

Mr. Lepore told the Board CVMAC did not specify a particular type of tree. A pine variety will most likely be selected. The final decision will be made by the HARD Arborist. The monopine tower will be

60 feet high. It will take many years for the 25 gallon trees to reach that height. The life span on average is 40 years. After the initial installation, pine trees take more care. Once they are established they are very hardy. There is a caretaker present at this particular HARD site. The trees will be monitored. Mr. Coones interjected from the audience to confirm T Mobile would replace the trees in the event they die or become diseased. The RFC signal should not experience interference. Public testimony was closed.

The Chair asked Mr. Coones to return to the podium to inquire about the possibility of co-location. Mr. Coones confirmed co-location was possible. The monopine design was designed with this in mind, and can accept additional antennas. The 60 foot pole has movable branches that are designed to accommodate additional antennas. T Mobile has the first right of refusal as to the placement on top of the pole. A second carrier's antennas would most likely be mounted below the T Mobile equipment. All antennas will be camouflaged. The antennas are designed to be directional, as opposed to Omni directional. Even if the trees grow tall they should not interfere with the Radio Frequency Signal. T Mobile will let HARD take the lead as to placement of the trees since they are familiar with the location. Public testimony was closed.

Member Spalding motioned to uphold the staff recommendation of approval. Condition #6 shall now include the following additional language: the installation of five, 25 gallon trees at the site. T Mobile will be responsible for purchase, and the costs of installation. T Mobile shall also be responsible for replacement if the trees become diseased or die within the permit length of 10 years. The landscaping plan shall also be reviewed, and approved by HARD. Member Peixoto seconded the motion. The Vice Chair asked if the time limit for tree replacement should be limited to 5 or 6 years. Public testimony was reopened to speak with the Applicant.

Mr. Coones said T Mobile would visit the site in 1 year and again in 2 years to verify the health of the trees. If the owner does not water the trees that could affect their health, however T Mobile does not anticipate any problems. T Mobile will replace the 5 trees in the containers during the 10 year permit period. Public testimony was closed.

Member Spalding re-stated her motion to uphold the staff recommendation of approval with the fore mentioned modifications. Member Peixoto seconded the motion. The motion to approve Conditional Use Permit, HARD / T Mobile PLN 2009-00089 carried 5/0.

3. **EDEN HOUSING, PERMIT PLN-2009-00131** – Variance Application to allow a nine foot tall fence where six feet is the maximum height allowed, and to allow an eight foot concrete wall where six feet is the maximum height allowed, in a PD-(Planned Development, ZU-1537th Zoning Unit) District, located at 1300 Kentwood Lane, east side, southwest of 165th Avenue in the unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080B-0300-002-05. **Staff Planner: Christine Greene.**

The staff recommendation was approval with one modification. The request is now for a fence, 7 feet in height. The Alameda County Sheriff's Department had issue with a 9 foot fence. The Chair referred to a letter submitted by the Sheriff's Department. The increased fence height is requested to control crime issues. However there are no crime statistics available in the staff report.

Initial Board questions were as follows:

- Does the fence height allow the Sheriff to scale the fence

- Will the fence be placed in the same location
- Will the section of fence along Kentwood Avenue be replaced
- What type of housing will be available at the Apartments, senior, Low Cost, Market Rate etc.
- Does the PD Zoning allow high density
- What portion of the site will be affected by the project
- What type of plants and landscaping will be added to the site
- Will added landscaping allow visibility through the fencing

Staff told the Board the fence along Kentwood Avenue will be replaced. The location of the fence will remain unchanged. The Sheriff's Department may have to access the property over the fence, however the Sheriff's main goal is to access to the site. The PD District usually applies to a specific use. The PD Zoning allows the multi-family housing. Member Peixoto noted that when the PD zoning was originally designated, crime in the area was not a consideration. This site is designed for high density use. The Chair said staff reports had not been consistent in the reference to projects and the General Plan. Some Planners use the existing Plan that was written in 1985. Some Planners use the current Draft that is in circulation, and other Planners make a reference to both. Staff told the BZA it is often a function of who reviews the staff report. Board Members told staff they prefer Planners use both the existing General Plan, and the Draft Plan. Staff will follow up. Staff was unsure of the housing type that was to be specified. The application is conditioned as such to allow visibility through the fence. The East 14th side of the property will be affected by the project. Public testimony was opened.

Mr. Mike Rogers was present, representing Eden Housing. Ashland Village Apartments is an Eden Housing Project. Housing will be provided for families on Section Eight. The fence is part of an 8 million dollar rehab of the site that began 1 year ago. Most of the improvements are on the portion of the site that faces East 14th Street. Although crime has been reduced over time, there are no security measures on that side. Originally Eden Housing talked with the Sheriff's Department and was told an 8 foot fence would be okay. As the discussion within the Sheriff's Department became more formal, it was felt a shorter fence would be more appropriate. Official approval of height was sought through the Department, however thus far Eden Housing and the Sheriff's Department have been playing phone tag. Planning staff has facilitated some communication. At this juncture Deputy Luckett has communicated a 7 foot fence would be acceptable. The project must be complete by the end of the year to meet funding criteria. Board questions for the Applicant were as follows:

- Did the Alameda County Redevelopment Agency contribute to the rehab project
- Does Eden Housing have crime statistics that relate to the site available
- How was the final fence design chosen
- Does the design provide some inherent security
- What is the average size of a living unit
- Will the Sheriff's Department scale the fence to access the site

- Does the Sheriff's Department have keys and/or a security access code to the site
- What type of lighting is currently available at the site
- What type of landscaping will be added to the site

Mr. Rogers told the Board the Redevelopment Agency did provide a portion of the funding. Eden Housing had been working in conjunction with a private owner for the past 3 years. Eden bought the property one year ago. One of the goals of remodeling was to provide a more family oriented environment. A social room with a learning center will be added to create a heart for the Apartment Community. Computer classes will be taught. The average unit is 800 square feet. Remodeling will be complete at the end of December. This will allow Eden Housing to set, and enforce new standards. Areas on the site that provide hiding places along Kent Avenue have been eliminated. The site will now be monitored. Many people have been evicted from the property. Mr. Rogers said Deputy Luckett was off today, therefore not available to attend the hearing with crime statistics. The design selected is a black wrought iron style called the, Aristocrat. Originally a 9 foot curved fence was considered. However the height conveyed an institutional appearance. The curves might also provide additional unwanted access. A 6 foot height with a non curved design seemed more appropriate. The design includes finials interspersed throughout the length. The fence is also an open design which allows the Sheriff to look through. Landscaping will be kept low to ensure visibility. The Fire Department has the emergency access code to the site. The Sheriff should have the code as well. In the event they do not, the code can be provided. There is also a hard key available for emergency access in the Manager's Office. Mr. Rogers said a tall pole lighting exist at the site. He is unsure if is slated to be replaced.

Member Spalding pointed out the one of the Conditions of Approval require the Applicant to work with the Sheriff's Department. However there now appears to be some disagreement. The Chair believed further information is required. It would be difficult to set a correlation of fence height to required findings without crime statistics. Perhaps a continuation is appropriate.

Member Adesanya said sufficient information had not been provided thus far to justify that non compliance with the zoning ordinance would make the site more secure. Perhaps the Sheriff wanted a more secure fence. Mechanisms such as fence design may have already provided more security. Member Peixoto agreed. The fence could be 6 feet, which would provide sufficient crime deterrence. The Chair agreed further methods of crime deterrence may also be available at the site. For example certain plants may reduce access. There is a variety with prickly thorns she would be willing to donate. Mr. Rogers confirmed he did not have actual crime statistics. The letter stating the lukewarm response received from the Sheriff was recent. Perhaps because of the recent reduction in crime, the Sheriff is no longer committed. Although he would like to get further input from the Sheriff, as the request for increased height was initiated per their request. He would not like to delay the decision and jeopardize project funding. County Counsel said it appears based on testimony the Applicant is willing to work with the Sheriff. The BZA can approve the permit, and condition it as such the final height is subject to approval by the Sheriff.

The Chair called a brief recess at 2:45 p.m. to contact the Sheriff's Department. The Hearing was reconvened at 3:00 p.m.

The Chair was able to speak with Sergeant Scheuller. He said the Department prefers a higher fence but they support whatever the Applicant proposes. The Sheriff needs an access code to the gate. The Vice Chair spoke with Deputy Luckett. The Deputy conducted the initial assessment, and confirmed a higher fence is preferred but the Sheriff's Department will support the Applicant's decision. The most important component is the security access code, and key to the gate. This is most critical. Often the Sheriff is

pursuing people from the inside, and outside of the complex. In the past when the Sheriff has been on site and attempted to get keys from the Manager, the manager was not available.

Member Adesanya said she still did not understand the difference between a 6 foot height and, 7 foot height. She could not see justification to grant a variance, to prevent crime. The goal can be accomplished by changing the fence style. The Chair agreed the fence style could have an impact. However from a psychological perspective it can make a difference. Member Peixoto said the present chain link fence is easy to climb over. A change will have an impact. Member Adesanya said if that were the case, justification for an 8 or 9 foot fence would seem to more easily support the findings. The Vice Chair responded the Sheriff now did not want a 9 foot fence. Member Peixoto was unsure the application made sense. He did not believe the Applicant had made the required findings for Tentative Finding #1 and #2. If the variance is granted it could set precedence for future requests. Member Spalding pointed out the BZA had granted other variances where crime was one of the concerns. Member Peixoto responded a variance is for the property itself. The property is not creating the crime. Member Adesanya said the intent seems to be to prevent people from jumping the fence. Again this can be achieved by changing the style. She agreed with Member Peixoto. The findings cannot be made.

Member Spalding said the BZA could grant the variance for 8 feet, the Applicant could then install a fence at a height of 7 feet. The Sheriff can also be given an access code to the site. This may make it easier to achieve the findings. It is unusual at this location, crime is occurring both inside, and outside of the property. The Vice Chair acknowledged the area has a high incidence of crime. Member Peixoto pointed out there are many areas that experience a high rate of crime. All persons in a high crime area may expect to have fence variances granted; or persons living on corner lots may want a variance to keep garbage out. This is not sufficient. The Chair said next to Mills Liquors there is a 6 foot masonry wall. The Redevelopment Zoning allows a fence up to 12 feet in height. In this case the recreation center has been approved by the Planning Commission. The fence is at the rear of the property. In addition there are no other properties with the same PD Zoning in the vicinity. This may establish a special circumstance. The zoning is not consistent with surrounding properties. Also regarding Tentative Finding #2, most of the issues at the site occur at the rear of the property. Member Peixoto again stated a variance cannot be supported based on environment. Now that new Management has been assigned, problems should be reduced. The Applicant is willing to accept a 6 foot fence. The Chair said she believed findings could be supported for #2 and #3. A variance had been granted on a property on Kelly Street for security purposes. The Vice Chair said she is familiar with the area. The fence will be on the street side on just a small portion of the site, as opposed to the entire property. The type of fencing proposed will improve the property. Things have improved, but a lot of issues still occur. The area still has a high incidence of crime. She had no problem approving the variance. Community development is attempting to make the site more family oriented. Ultimately some people will jump the fence no matter what.

Member Spalding motioned to uphold the staff recommendation of approval with the following modifications:

The permit will allow a fence of eight feet where six feet is the maximum allowed in height based on special circumstances. Tentative Finding #1 shall now include the following additional language; the PD (Planned Development) zoning of the property is unusual for the area. Member Peixoto pointed out there were other apartments in the immediate area. Staff did not believe other apartment complexes in the area had PD Zoning. PD Zoning allows modification of Ordinance if applicable. The Applicant could install the fence proposed based on submitted Exhibit "B". County Counsel suggested the language state; up to an 8 foot fence.

A Condition shall be added requiring the submission and final approval of a landscaping plan by the Planning Director. Landscaping shall not exceed 4 feet, and shall remain in good condition.

A Condition shall be added requiring the fence be maintained, and kept free of graffiti.

A Condition shall be added requiring the Applicant to deliver an Emergency Access Plan to the Sheriff's Department, in addition to access codes and keys to the site.

The Vice Chair seconded the motion.

The Chair requested Condition #2 be modified to state the Safety Contingency Plan and landscaping be geared toward security. Member Peixoto requested a modification to Condition #1. The fence height should be no less than 6 feet, and no more than 7 feet. Member Adesanya said although she did not believe that sufficient information was available to warrant non compliance with the Ordinance. She did intend to vote no on the motion. However if the Board was inclined to pass a motion, an 8 foot rather than a 6 foot fence may be more appropriate. She did not want to hold up the process. *The balance of the Board Members voted 4/1 to accept Member Peixoto's recommendation of a fence height of not less than 6 feet, and no more than 7 feet.* Member Peixoto then asked for a further amendment to Tentative Findings #1 and #2. At the time of institution of the PD (Planned Development) Zoning, crime as it relates to security was not a consideration for the immediate area. The entire area shall also remain free of trash, and graffiti. The black wrought iron fence installed shall be the Aristocrat model as shown in Exhibit "B". The requested modifications were accepted.

The motion to approve, Variance, PLN-2009-00131 carried 4/1. Member Adesanya was not in favor of approval.

APPROVAL OF MINUTES: The Minutes of October 28, and November 4, 2009 were continued to December 9, 2009.

STAFF COMMENTS & CORRESPONDENCE: The BZA decision to uphold the staff recommendation of approval of application, **MILLER / CRAWFORD – CONDITIONAL USE PERMIT, PLN-2009-00098** –to allow a community facility (outdoor recreational facility – batting cages) was appealed to the Board of Supervisor's.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: The Chair said staff reports were not consistency regarding project references to the General Plan. Some Planners use the existing Plan that was written in 1985. Some Planners use the current Draft that is in circulation, and other Planners make a reference to both. Staff told the BZA it is often a function of who reviews the staff report. Board Members told staff they prefer Planners use both the existing General Plan and the Draft Plan. Staff will follow up.

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

ALBERT LOPEZ - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS