

MINUTES OF MEETING
ALAMEDA COUNTY PLANNING COMMISSION
JUNE 15, 2009
(Approved August 3, 2009)

REGULAR MEETING: 1:30 p.m.

MEMBERS PRESENT: Commissioners Ken Carbone, Chair; Glenn Kirby; Alane Loisel; Kathie Ready and Richard Rhodes (arrived late).

MEMBERS EXCUSED: Commissioner Mike Jacob, Vice-Chair

MEMBERS ABSENT: Commissioner Frank Imhof

OTHERS PRESENT: Albert Lopez, Planning Director; Tona Henninger Assistant Planning Director; Rodrigo Orduña, Senior Planner; Allen Lang, Building Official; Brian Washington, County Counsel's Office; Nilma Singh, Recording Secretary.

There were approximately seven people in the audience.

CALL TO ORDER: The Chair called the meeting to order at 1:30 p.m.

ANNOUNCEMENTS BY THE CHAIR: *None*

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.*

CONSENT CALENDAR:

1. **APPROVAL OF COMMISSION MINUTES** – June 1, 2009.

Commissioner Kirby made the motion to approve the June 1st Minutes as submitted and Commissioner Ready seconded. Motion carried unanimously, 4/0.

REGULAR CALENDAR:

1. **GENERAL PLAN CONFORMANCE REPORT, GPC2009-00067 ~**
To consider a determination of General Plan Conformance request by the City of Livermore under Government Code Section 65402 to purchase a parcel identified by County Assessor's Parcel Numbers: 905-0008-001-15, immediately adjacent to the Livermore City Boundary and North Livermore Urban Growth Boundary, North Livermore area of unincorporated Alameda County. **Staff Planner: Howard Lee.**

Mr. Orduña presented the staff report.

Public testimony was called for. Steve Stewart, representing the City of Livermore Planning Department, provided background information and explained the acquisition process. This parcel is strategic for Livermore as it will secure open space adjacent to the Urban Growth Boundary and it also has some biological value. The City of Livermore Planning Commission will be considering the General Plan consistency determination on July 23rd and a presentation to the Altamont Open Space Committee on Friday, July 19th for funding. Commissioner Kirby asked of the possibility of a trail on this property and where it would connect; if there is any consideration for a conservation easement with the Land Trust and if there are any restrictions on easements for public holdings. Mr. Stewart explained that in the City's Bikeways and Trails Plan, LARPD and also EBRPD Master Plans, there is a trail concept that would link North Canyon Parkway into Dolan Canyon. A conservation easement is one option for the property but no decision will be made until the long range vision for the canyon is evident. Tri-Valley Conservancy is an option along with the County's PLCS for property management.

Public testimony was closed. Commissioner Kirby said he would like the City to consider putting this property under conservation easement. *Commissioner Loisel made the motion to move staff recommendation that the use is consistent with East County Area Plan. Commissioner Ready seconded and the motion carried unanimously, 4/0, with Commissioners Rhodes and Jacob excused and Commissioner Imhof absent.*

Commissioner Rhodes arrived.

2. **AN ORDINANCE OF THE BOARD OF SUPERVISORS OF ALAMEDA COUNTY, ADDING SECTION 470 "CONSTRUCTION AND DEMOLITION DEBRIS MANAGEMENT" TO THE ALAMEDA COUNTY GENERAL ORDINANCE CODE CHAPTER 15.08, BUILDING CODE.** (Continued from June 1, 2009)
Presented by Allen Lang, Building Official.

Mr. Lang noted that this item was continued from June 1st. Minor changes have been proposed regarding the second bullet on page 3 which are reflected in the Draft Ordinance under Sections 470.3.a. and 470.9. The Chair stated that he was not supportive of any fees at all and did not think any other jurisdictions charged fees. Mr. Lang said he has a document of surrounding jurisdictions and Union City does charge a fee for staff time. *Commissioner Kirby made a motion to approve the Ordinance with the elimination of the fee. Commissioner Ready expressed her concern with the '1,000 square feet' under 470.3, which should be increased to 1,500 square feet. Mr. Lang pointed out that 1,000 square feet is consistent with the Green Building Ordinance. Commissioner Loisel seconded and the motion carried 5/0, with Commissioner Imhof absent and Commissioner Jacob excused.*

3. **PROPOSED ZONING ORDINANCE AMENDMENTS RELATING TO TENTS AND CANOPIES IN UNINCORPORATED EAST COUNTY AREAS AND IN RURAL AREAS** (Continued from March 2, 2009) **Staff Planner: Rodrigo Orduña**

Mr. Lopez said this item was continued from January 20th. Staff has worked closely with the Winegrowers Association and at the last South Livermore Valley Area Plan town hall meeting, some concerns were raised regarding the fairness of businesses keeping a tent/canopy type tasting room vs. other businesses constructing a permanent tasting room. Mr. Orduña presented the staff report.

Public testimony was called for. Chris Chandler, Executive Director, Livermore Valley Winegrowers Association, said that some of the existing ordinances (CUP, Noise Ordinance, Fire Department, etc) would suffice instead of additional regulations. Events and tasting rooms are very important to wineries. The Association agrees that the aesthetics of the South Livermore area is important and that it should not be limited to wineries; and further submitted photographs of two residential properties, 4734 and 4720 Tesla Avenue, with torn tent structures.

Matt Ford, also representing the Association, stated that this Ordinance is unnecessary as enforcements could be made under the existing Building codes, Fire Department regulations, and Noise Ordinance. Although it should not apply to agricultural purposes, the Ordinance makes several references to events which are already regulated by CUPs. Similarly, tents and canopies can also be regulated by CUPs for events already regulated by CUPs. Mr. Ford requested a definition of an 'event'; asked why the prior grace period of one year was modified to six months; how an ACUP will apply; the difference between the East and West County Ordinances -- the language of the West County Ordinance; and the specific need of this Ordinance. Mr. Ford also submitted a photograph of the Migliore property. Although there is a problem because existing rules are not enforced, this Ordinance would be an 'over-kill'. Staff stated that the Migliore property has a Conditional Use Permit [upon subsequent review, staff informs the Planning Commission that the property is in fact zoned in a Planned Development Zoning District (1568th ZU – allowing Agriculture uses with that district's regulations and an indoor and outdoor RV / contractor's storage yard subject to Site Development Review)]. Mr. Ford asked if this Ordinance will affect the Migliore property. County Counsel stated that there is a CUP [in actuality, it is a PD Zoning District] for the Migliore property. The storage facility would need to apply for a discretionary permit in order to allow the tents, which were not part of the original applications for review of the storage yard use. The grace period for compliance with this ordinance (one-year or six-month) would also apply. A discussion followed regarding the use of a tent/canopy for financial purposes vs. a permanent structure; use of different types and sizes of tents/canopies; use of tents/canopies for temporary uses and special events; the maintenance of tents/canopies; and the impacts of this Ordinance.

Public testimony was called for. Steve Powell, Tesla Vineyards at 5143 Tesla Road, described the existing tents at some of the wineries noting that he may be the only one

who will be impacted by this Ordinance even though his \$75,000 and 4,000 square foot tent has been approved by the Fire and Building Departments, meets the State engineering requirements, and is in the process of obtaining a CUP. The tent is also used for agricultural purposes -- storage of equipment and barrels. Mr. Powell stressed that this Ordinance is related to him only and is unfair. He has submitted a package outlining his history with the County which is also related to the next agenda item.

James Ryan, Estate Manager at Concannon Vineyards, stated that they view this ordinance as 'over-regulation' as there are other existing regulations in place, such as Fire Department and Conditional Use Permit.

Public testimony was closed. In reference to the above comments, Mr. Lopez explained that given the nature of temporary canopies, the six month amortization period is reasonable. Although events are regulated by CUPs, permitted activities such as winery tasting rooms and cold food pairing, which generate the use of tents, need to be regulated for use and aesthetic purposes, since the Fire Department is mainly concerned with health and safety issues and allows tents to remain on site for 180 days in one year with a size limit (per the attached Fire Code Requirements). Staff pointed out that the Ordinance would not apply to residential or agricultural uses but for commercial activities not requiring a Conditional Use Permit, as outlined on Page 3 of staff report, Section 17.52.1130, first paragraph. This Ordinance would fill the gap between CUPs and the permitted activities. Commissioner Loisel noted that she has asked for a separation between the tent and canopy regulations between East and West county areas, since there is no issue in the East County and there are adequate existing regulations. She felt that there was no need for such an Ordinance and she would not support it. Commissioner Ready agreed that a separation is needed but felt that a problem exists in the East County residential areas and also the over-use of canopies for semi-permanent commercial purposes, especially since many of them are not maintained. In response to the Chair, staff confirmed that there is an ordinance for blighted structures. Commissioner Kirby felt that a clear definition of an event was needed. A discussion followed regarding the definition of "event", types of tents in the market, and technology for long-term temporary structure versus more temporary structures. Commissioner Rhodes said he would not support an Ordinance that is not up-to-date with the technology. Commissioner Loisel reiterated that such an Ordinance is not needed as there are existing guidelines for maintenance. In response to the Chair, Ms. Henninger, Code Enforcement Manager, explained that in reference to maintenance of dilapidated canopies, both temporary and permanent, there is the existing Neighborhood Preservation Ordinance. She agreed that a definition of "events" would be helpful. Mr. Lopez explained the different events that are covered under a CUP that would require a tent (winery related uses) but the wine tasting and cold food pairing are also uses requiring tents which, although allowed uses, do not require a CUP.

Commissioner Loisel made a motion to put this item to 'rest' and staff to not spend any additional time on this issue. Commissioner Rhodes seconded adding that there is a need to address the technology. Commissioner Kirby felt that there is need for some regulation in the East County and a need to separate the uses from events. As such, he

was not in support of the motion nor would he support the motion to move this forward to the Board. Commissioner Rhodes asked if different kinds of semi-permanent structures could be regulated distinctively from the temporary tents/canopies.

Public testimony was re-opened. Mr. Ford felt that staff is concerned with the permitted uses of a tasting room in a tent/canopy which he thought was a very narrow issue. Perhaps, some time in future, the Association could have discussions with staff on this issue. He also requested that the records reflect his reason for submitting a photograph of the Migliore property was only to show the impact of this Ordinance.

Ms. Chandler felt that the efforts have not been in vain and the issue of a permanent tasting room versus a temporary structure could be further explored.

Public testimony was closed. Commissioner Kirby noted that there is a distinction between temporary and highly engineered fabric structures and recommended looking at a temporary use (an event) vs. a transitory use (semi-permanent). Commissioner Rhodes added that there is a need to look at the definition of the longer term, semi-permanent engineered structures. Commissioner Loisel rescinded her motion and recommended that staff look at tents as a semi-permanent structure because of the size in the agricultural areas. Commissioner Rhodes pointed out that definitions were needed for the three main issues: permanent buildings, temporary tents/canopies, and engineered semi-permanent structures followed by perhaps an ordinance, if needed. Commissioner Kirby summarized that temporary structures would be for temporary uses and fabric-covered structures for other uses. *Commissioner Loisel made a motion for a continuance to allow time for staff for further review and Commissioner Rhodes seconded. Mr. Lopez recommended a continuance to September. Motion carried unanimously.*

4. **PROPOSED ORDINANCE AMENDMENTS TO THE JUNK VEHICLE, NEIGHBORHOOD PRESERVATION AND ZONING ORDINANCES AND THE GENERAL ORDINANCE REGULATING VACANT FORECLOSED RESIDENTIAL PROPERTIES**
Presentation by Tona Henninger, Assistant Deputy Director, Code Enforcement Division

Ms. Henninger requested a continuance to July 6th since the item has not been presented to West County Board of Zoning Adjustments for their comments. Commissioner Kirby requested clarification on notification process requiring banks/lenders to identify the foreclosed properties under their possession. Ms. Henninger said that this has not been an issue to-date. Mr. Washington pointed out that this may be pre-empted by State law. *Commissioner Kirby made the motion for a continuance to next month and Commissioner Ready seconded. Motion carried unanimously, 5/0.*

Staff Comments & Correspondence - *None*

Chair's Report - *None*

Commission Announcement, Comments & Reports - *None*

Housing Element Subcommittee

(The Planning Commission sitting as a Committee of the Whole)

1. **2009 HOUSING ELEMENT UP-DATE**

ADJOURNMENT: *There being no further business, Commissioner Kirby moved to adjourn the meeting at 5:15 p.m. Commissioner Ready seconded the motion. The motion was carried 5/0.*

ALBERT LOPEZ, SECRETARY
COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY