

**MINUTES OF MEETING**  
**ALAMEDA COUNTY PLANNING COMMISSION**  
**AUGUST 17, 2009**  
**(Approved September 8, 2009)**

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

**MEMBERS PRESENT:** Commissioners Ken Carbone; Frank Imhof (arrived late); Mike Jacob, Chair; Glenn Kirby; Alane Loisel; Kathie Ready and Richard Rhodes, Vice-Chair.

**OTHERS PRESENT:** Albert Lopez, Planning Director; Rodrigo Orduña, Senior Planner; Andrea Weddle, County Counsel's Office; Nilma Singh, Recording Secretary.

There were approximately nine people in the audience.

**CALL TO ORDER:** *The Chair called the meeting to order at 1:35 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.

Steve Powell, 5143 Tesla Road, in reference to the Junk Vehicle Ordinance, stated that prior to adoption of the ordinance, he had submitted a letter of concern to the Planning Commission and requested a continuance to allow public comments, which was denied. Since his comments were thought to be not applicable, he would like to add to the record that there are some legitimate legal concerns. He felt that as written, the Ordinance is ambiguous in reference to enforceability.

**CONSENT CALENDAR:**

1. **APPROVAL OF COMMISSION MINUTES ~ August 3, 2009**  
*Commissioner Kirby made the motion to approve the August 3<sup>rd</sup> Minutes as submitted and Commissioner Loisel seconded. Motion carried 5/1/1 with Commissioner Ready abstaining and Commissioner Imhof absent.*
  
2. **CONDITIONAL USE PERMIT and MINOR MODIFICATION TO ZONING UNIT, ZU-1816, PLN2009-00041 - WRI GOLDEN STATE LLC/HART ~** Petition to modify the approved Planned Development (1816<sup>th</sup> Zoning Unit ) that allowed development of 10.21 acres into a neighborhood commercial development, to include financial and personal service uses as permitted uses. These services would include bank, credit unions, title companies, nail salons, beauty shops, karate classes, indoor recreation uses and tutoring centers, located at 3891 East Castro Valley Blvd, south side, approximately 90 feet west of the intersection with

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Chaparral Lane, Castro Valley area of unincorporated Alameda County, Assessor's Parcel Numbers 085-6300-013-05 and 085-6301-008-06.

(Continued from July 20 and August 3, 2009; to be continued to September 8, 2009) **Staff Planner: Christine Greene**

*Commissioner Kirby made the motion to approve the remainder of the Consent Calendar as commended by staff. Commissioner Loisel seconded and the motion carried unanimously, 6/0 with Commissioner Imhof absent.*

**REGULAR CALENDAR:**

1. **JAMES SILVA, VARIANCE, PLN-2009-00010** ~ Petition to allow a non-permitted garage located in the front half of the property where otherwise not allowed, and within six feet of the side property line of the front half of an abutting lot, in an R-1-B-E-CSU-RV (Single Family Residence, Minimum lot size 10,000 square feet, Median lot width 70 feet, Conditional Secondary Unit, Recreational Vehicle Parking Regulations) District, located at 4235 Krolop Road, south side, approximately 96 feet west of Vineyard Road, Castro Valley area of unincorporated Alameda County, designated County Assessor's Parcel Number: 084D-1140-009-20. **Staff Planner: Carole Kajita.**

Mr. Orduña presented the staff report. Commissioner Kirby noted that the Commission had visited the site at the last meeting. Although some of the conditions that are problematic to the subject and the adjacent properties may have been due to the parcel split, there is no mention of the split in the staff report. The pool also has setback issues. Staff replied that he had been unable to find any information on the split and the front property line begins at the landscaping. A discussion followed regarding the location of the property line, retaining wall, right-of-way, location of sewer drain and utility pole, and the neighboring properties as shown in the photographs. Staff stated that out of the six properties with garages submitted by the applicant, 17485 Parker has different issues concerning the granted Variance (the parcel is a corner lot, with an attached structure, limited access, location of retaining wall, etc). While the structure at 17485 Parker has a permit, the other structures, such as at 17537 Parker, do not have approved Variances.

Commissioner Imhof arrived.

Public testimony was called for. James Silva, applicant, submitted copies of the following: plot plan and building permits for the garage at 17485 Parker and noted that although located two feet from the house, the eaves hang within inch and a half and therefore the garage is not attached; a set of blueprints for another neighboring garage five feet from front property line. In that case, the property line is located three feet from the street. A variance was not required, but the garage door is only eight feet from the street, a safety issue. In comparison, his garage door is 7 to 8 feet from the front property line and 19 to 20 feet from the end of the driveway to the front of the garage. The concrete parking pad has been used for parking for the last 22 years. There are no safety issues as there is a retaining wall on both sides of the street, so that no sidewalk would

ever be built next to the street. Most of his neighbors are in favor and there is one property which has a similar garage and circumstances.

Eleanor Perry, 4178 Krolop Road, submitted her written comments in opposition. Her concerns included: no permit was obtained, obtrusive, inconsistent with the neighborhood, and the applicant is a building contractor who should have been aware that such a structure would not be allowed.

William Burton, 4182 Krolop Road, said that the Applicant had informed him initially that permit was not required as it was a carport. His objection was building a structure with no regards to the requirements, permits and neighborhood context. This garage is 7.5 feet from the front property line. He was not in support and requested a denial.

Ronald Proto, 4143 Krolop Road, Castro Valley, stated his appreciation for Mr. Silva's care and craftsmanship. He also felt that the structure adds to the property and to the neighborhood; and removing the garage would be a tremendous waste of resources. As such, he urged an approval.

Antonio Cervantes, 4194 Krolop Road, said that his property is directly across the street and he concurred with Mr. Proto. The garage is a vast improvement to what had existed previously, an old concrete parking slab; there will be no traffic impacts and it matches the existing house. He also urged an approval.

In response to Commissioner Loisel, Mr. Silva explained how and why he thought a permit was not required -- the planner-on-duty, looking at the original plans of the carport, had indicated that a Variance would not be required if built with a 20 feet front yard setback. But since it was located in the front half of the property, it was red-tagged. And since a permit and a variance were needed, he had modified the carport into a full garage.

Public testimony was closed. Commissioner Carbone, taking into consideration the supportive public testimony from the neighbors, stated that he was in support. Ms. Weddle, County Counsel, pointed out the three Findings that have to be made in the affirmative. Commissioner Kirby noted that the variance procedure (Findings) guides the Commission's action and, he hoped that CVMAC and the Board of Zoning Adjustments would have considered the ramifications of a denial. The Commission discussed the three Findings: Commissioner Carbone said he agreed with the first Finding but could not make the second Finding; Commissioner Rhodes said he could make the third Finding in the affirmative based on the majority neighborhood support and de-facto setbacks; Commissioner Loisel stated that she could make all the Findings and a denial would deprive the applicant of privileges enjoyed by other properties; and the Chair said he could make the third Finding and, as stated in public testimony, removing the structure would be a waste of resource. But, since the structure was red-tagged, it is not a compelling reason to move forward with this variance. He could not make the first Finding in the affirmative.

Commissioner Imhof made the motion to approve the Variance and Commissioner Rhodes seconded. County Counsel reminded the Commission that Findings need to be made in the affirmative to support of the motion. The motion was withdrawn. Mr. Lopez added that perhaps the Commission could take action today and staff will draft the resolution for approval at the next meeting. Commissioner Kirby felt that the variance process may not be the appropriate tool as the Findings are interpretive and agreed with the continuance. The Chair summarized that staff will prepare the draft resolution favoring an approval. *Commissioner Imhof made the motion for a continuance and Commissioner Rhodes seconded. Motion carried 5/1 with the Chair dissenting. Commissioner Imhof was excused.*

2. **PROPOSED ZONING ORDINANCE AMENDMENTS RELATING TO TENTS AND CANOPIES IN UNINCORPORATED EAST COUNTY AND RURAL AREAS. Staff Planner: Rodrigo Orduña**  
(Continued from June 15, 2009)

Mr. Lopez presented the staff report noting the Addendum to the report. Since the Winegrowers Association will be discussing the matter this afternoon, they have requested a continuance. Commissioner Loisel noted that at the last meeting, the Commission's concern was the semi-permanent structures and she asked how this would relate to the 15 feet height and 400 square feet requirement. There are 35 wineries in Livermore area. Mr. Lopez replied that although this would be the baseline, these numbers could vary under the ACUP. Those wineries that have a CUP will not be affected. A discussion followed regarding potential exceptions and engineered structures.

Public testimony was called for. Steve Powell, 5143 Tesla Road, said that only two uses impacted are the Migliore Storage Center and his winery. His tent is a \$75,000 engineered tent and is in compliance with all the codes. In response to Commissioner Imhof, he further explained that the initial plan was to have weddings with a CUP which he had been unable to obtain. He also stores equipment, tractors and wine barrels, all for agricultural use.

Chris Chandler representing the Livermore Valley Winegrowers Association, requested a continuance as their committee, who has been instrumental in moving this forward, will be reviewing the Ordinance this afternoon.

Public testimony was closed. Commissioner Imhof submitted a magazine on the 21<sup>st</sup> Century structures. A discussion followed regarding the regulations for agriculture buildings and structures, permitting process, definition of agriculture use, the intent/use of barns (occupancy) and compliance with Building, Fire, and Planning codes if used for commercial purposes; and the replacement of older barns with new engineered structures. *Commissioner Kirby made the motion for the continuance and Commissioner Ready seconded. Motion carried unanimously.*

### 3. REVIEW OF COMMISSION RULES OF PROCEDURES

The Chair announced that this item is for discussion only and the Commission can make recommendations for action at the next meeting. Commissioner Kirby thought that some sections are poorly written and difficult to understand. For example, there is no provision for acting on an agenda item in an emergency under Section 6, Conduct of Meeting. He suggested bullet points for each type of action. The Chair recommended a subcommittee and Commissioner Kirby volunteered.

*Commissioner Kirby asked to be excused for the remainder of the meeting.*

No public testimony was submitted.

Commissioner Carbone suggested that any continued item, especially complex projects, should be heard during the same time slot, i.e. an item continued from a 6pm meeting should be heard at the next 6pm meeting. Commissioner Loisel suggested that perhaps scheduling of hearing times should be based on the types of projects and attendees; and that every agenda should have at least two items. The Commission was in consensus. Commissioner Ready felt that different meeting times would allow different groups of the public to attend. The Chair noted that Continuances are not included in the Rules of Procedure and thought that the Commission could be more deliberate about timing in their motions. Commissioner Rhodes suggested that Section 1 be re-worded regarding the timing of Field Trips. The Chair agreed that although not clearly outlined and there is no Field Trip Report, the Field Trips are noticed and discussed in public. He also noted that general order of the agenda, which is different from other bodies, creates public confusion and there is no mention of the Pledge.

Commissioner Loisel felt that a subcommittee was perhaps not needed at this time. Instead, staff could prepare a draft for discussion at a future meeting.

**STAFF COMMENTS & CORRESPONDENCE:** *None*

**CHAIRS REPORT:** *The Chair noted the inclusion of the AB210 for Commission information.*

**COMMISSION ANNOUNCEMENT, COMMENTS AND REPORTS:** *None*

**ADJOURNMENT:** *There being no further business, Commissioner Carbone moved to adjourn the meeting at 3:25 p.m. Commissioner Imhof seconded the motion. The motion was carried 6/0.*

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**ALBERT LOPEZ, SECRETARY**  
**COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY**