

**MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
OCTOBER 23, 2002
(Approved November 13, 2002)**

The meeting was held at the hour of 1:30 p.m. in the Auditorium of the Public Works Building, 399 Elmhurst Street, Hayward, California.

CALL TO ORDER:

The meeting was called to order by the Board Secretary at 1:40 p.m.

MEMBERS PRESENT: Dennis Botelho; Sharon Callahan; Ron Palmeri; Frank Peixoto; Jewell Spalding.

MEMBERS EXCUSED: None

OTHERS PRESENT: L. Darryl Gray, Assistant Planning Director & Board Secretary, Nilma Singh, Recording Secretary,

There were about 18 members of the public in the audience.

Announcements by the Chair: None

A. Work Session (12: 00 - 1:00 pm)

A. Consent Calendar

1. **DOMINICK and LINDA CUEVAS, CONDITIONAL USE PERMIT, C-7780** - Application to allow operation of a commercial horse boarding facility for up to 20 horses, in an "A" (Agricultural, 100 acres minimum building site area per dwelling unit) District, located at 1151 Calhoun Street, approximately 0.5 miles east of Mission Blvd, unincorporated South Hayward area of Alameda County, Assessor's Parcel No: 83-100-1-3. (Continued from January 23rd, February 27th, March 27th, May 8th, July 24th & September 25th, to be continued without discussion to November 20, 2002).
2. **JAN CLARKE, CONDITIONAL USE PERMIT, C-7986** - Application to allow continued operation of a horse boarding facility for 80 horses and occupancy of two mobile homes for caretakers with the addition of special events and equine demonstrations to occur on weekends in an "A" (Agricultural) District, located at 7324 Crow Canyon Road, west side, approximately one mile north of Coldwater Drive, unincorporated Castro Valley area of Alameda County, Assessor's No: 85-1700-1. (Continued from May 22nd, June 26th, July 24th & September 11th, to be continued without discussion to November 13, 2002).
3. **JOHN T. ARKEDER, CONDITIONAL USE PERMIT, C-8014** - Application to allow construction of a secondary unit in a R-1-CSU-RV (Single Family Residential, Conditional Secondary Unit, Recreation Vehicle) District, located at 18975 Parsons Ave, west side, approximately 150' south of Link Court, unincorporated Castro Valley area of Alameda County, Assessor's Parcel No: 84D-1328-7-1. (To be continued without discussion to January 22, 2003).

4. **NAVICO, INC., VARIANCE, V-11511** - Application to approve as a building site a 4 acres parcel where 5 acres is the minimum required, in a R-1-L-B-E (Single Family Residence, Limited Agricultural Uses, 5 Acre MBSA, 300' Median Lot Width, 30' Front Yard Setback, 20' Side Yard Setback) District, located on China Court, southwest side, approximately 0.2 miles west of the intersection with Fairview Ave, Fairview area of Unincorporated Hayward, Assessor's Parcel Number: 425-260-001. (Continued from May 22nd, June 26th & October 9th; to be continued without discussion to December 11, 2002).
5. **NAVICO, INC., VARIANCE, V-11512** - Application to approve: 1) as a building site a parcel without frontage on a county road and 2) as a building site a 4 acre parcel where 5 acres is the minimum required, in a R-1-L-B-E (Single Family Residence, Limited Agricultural Uses, 5 Acre MBSA, 300' Median Lot Width, 30' Front Yard Setback, 20' Side Yard Setback) District, located on China Court, southwest side, 0.2 miles west of the intersection with Fairview Avenue, Fairview area of Unincorporated Hayward, Assessor's Parcel No: 425-260-002. (Continued from May 22nd, June 26th & October 9th; to be continued without discussion to December 11, 2002).
6. **NAVICO, INC., VARIANCE, V-11513** - Application to approve as a building site a 4 acre parcel where 5 acres is the minimum required, in a R-1-L-B-E (Single Family Residence, Limited Agricultural Uses, 5 Acre MBSA, 300' Median Lot Width, 30' FY Setback, 20' SY Setback) District, located on China Ct, southwest side, 0.2 miles west of the intersection with Fairview Ave, Fairview area of Unincorporated Hayward, Assessor's Parcel No: 425-270-. (Continued from May 22nd, June 26th & October 9th; to be continued without discussion to December 11, 2002).
7. **SANTE FE SPECIAL EVENTS, VARIANCE, V-11637** - Application to expand a non-conforming use (commercial assembly hall and catering business in a residential district) by the addition of a patio cover and interior remodeling in a R-1 (Single Family Residence) District, located at 18310 Ricardo Ave, east side, corner of Hacienda Avenue, unincorporated Hayward area of Alameda County, Assessor's Parcel No: (Continued from August 14th and September 11th; to be continued without discussion to November 13, 2002).
8. **TUCKER HOFFMAN, VARIANCE, V-11641** - Application to subdivide one parcel into three lots thereby providing a 3,644 sq.ft. Minimum Building Site Area where 5,000 sq.ft. is required (parcel 2) and a 6.5' rear yard where 20' is required, in a R-S-SU (Suburban Residence, Secondary Unit) District, located at 18347 Standish Ave, west side, approximately 300' north of Alden Road, Cherryland area, unincorporated Hayward area of Alameda County, Assessor's Number: 413-0047-40. (Continued from September 11th; to be continued without discussion to November 20, 2002).
9. **ZEPHYR CORPORATION, VARIANCE, V-11671** - Application to allow construction of a residence having a building height of 30' - 6" where 25' is the maximum in a R-1-RV (Single Family Residence, Recreational Vehicle) District, located at 2139 - 167th Ave, north side, approximately 300' east of the intersection with Robey Drive, unincorporated San Leandro area of Alameda County, Assessor's Parcel No: 80A-0215-012. (To be continued without discussion to November 20, 2002).
10. **ZEPHYR CORPORATION, VARIANCE, V-11672** - Application to allow construction of a residence having a building height of 30' - 6" where 25' is the maximum in a R-1-RV (Single Family Residence, Recreational Vehicle) District, located at 2149 - 167th Avenue, north side,

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approximately 300' east of the intersection with Robey Dr, unincorporated San Leandro area of Alameda County, Assessor's Parcel No: 80A-216-16. (To be continued without discussion to November 20, 2002).

11. **DAVID and DENISE HUERTA, VARIANCE, V-11678** - Application to affect a Boundary Adjustment (BA-11-02) and thereby approve as building sites two parcels reduced in area from 40,000 sq.ft. to 21,416 and 21,417 sq.ft. respectively, in a PD (Planned Development, 1489th Zoning Unit) District, located at 5178 Jensen Road, southwest side, approximately 1000' northeast of I-580, unincorporated Castro Valley area of Alameda County, Assessor's Parcel No: 085-5475-001-04. (Continued from October 9th; to be continued without discussion to November 20, 2002).
12. **STEVEN PHILLIPS, VARIANCE, V-11683** - Application to grant Building Site Status on a lot without frontage on a County-maintained road, in a R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Rec Vehicle) District, located at 3120 Huntington Ct, west side, approximately 480' west of Carlton Ave, unincorporated Castro Valley area of Alameda County, Assessor's Parcel No: 84B-400-10-1. (To be continued without discussion to November 13, 2002).
13. **DAVID WILKERSON, VARIANCE, V-11687** - Application to allow construction of anew single family dwelling with a 34' building height where a maximum 25' height is permitted in a R-1-B-E-CSU-RV (Single Family Residence, 10,000 sq.ft. MBSA, Conditional Secondary Unit, Recreational Vehicle) District, located at 4924 A Proctor Road, north side, approximately 680' west of Redwood Road, unincorporated Castro Valley area of Alameda County, Assessor's Parcel No: 084D-1275-29. (To be continued without discussion to November 13, 2001).

Member Palmeri moved the Consent Calendar per staff's recommendations with the exception of Item #13 which was moved to the end of Regular Calendar. Motion seconded by Member Callahan, carried 5/0.

C. Regular Calendar

1. **ST. ANTONIUS COPTIC ORTHODOX CHURCH, CONDITIONAL USE PERMIT, C-6783** - Consideration of Revocation of Conditional Use Permit which conditionally approved the expansion of an existing church facility by the addition of a two-story classroom building and a single-story church resource center, in a R-1 (Single Family Residence) District, located at 2500 Hansen Road, west side, approximately 400' north of East Ave, Fairview area, unincorporated Hayward area of Alameda County, Assessor's Parcel Number: 426-130-72. (Continued from March 13th, May 22nd, June 12th, July 10th & September 25th).
2. **ST. ANTONIUS COPTIC ORTHODOX CHURCH, CONDITIONAL USE PERMIT, C-7978 & VARIANCE, V-11623** - Application to allow: 1) expansion of an existing church facility by construction of an existing church facility by construction of an enclosed addition below the parking structure to provide one guest room with bathroom and shower, five storage areas, and two work rooms with bathrooms; and 2) to retain two freestanding signs 9'-3" in height where 4' is the maximum permitted, in a R-1 (Single Family Res) District, located at 2500 Hansen road, west side, approximately 400' north of East Ave, Fairview area, unincorporated Hayward, Assessor's Parcel No: 426-130-72. (Continued from May 8th & 22nd, July 10th & September 25th).

Mr. Gray asked if items 1 and 2 could be discussed together noting that the letter from the Applicant's attorney did not include the revocation application. Members Spalding and Peixoto felt that both should be discussed together. Member Callaham felt that the matter should be continued for more than two weeks since the attorney had just been hired. Member Spalding thought a continuance to December would provide sufficient time. The Chair added that this would be a final continuance. Mr. Gray read the project descriptions.

Public testimony was called for. Mary Lou Vincent, Oak Creek resident, pointed out that although at the last hearing, the Board had asked for the removal of the trailer, it was still on the property. She requested an evening meeting. Ms. Vincent also pointed out that at the last hearing, the Board had indicated that the last continuance would be the final continuance.

Public testimony was closed. The Chair recommended a continuance to December 11th, an evening hearing. Member Palmeri agreed that the matter has been continued too many times and Member Peixoto felt that considerable testimony has been received from the neighbors. Member Callaham's concern was the trailer and felt that the Church was not in a hurry to resolve this issue. Member Spalding wanted the minutes to reflect that a continuance was not only to accommodate the community but also to provide the attorney more than adequate time to review the records, especially concerning the trailer. She moved motion to continue the matter to December 11th, 2002. Member Callaham seconded the motion which carried 5/0.

3. **DAVID JUSTICE, CONDITIONAL USE PERMIT, C-7907** - Application to allow continued operation of an automobile storage facility on a parcel with an existing non-conforming use (a single family residence), in a M-1 (Light Industrial) District, located at 2432 Dunn Road, south side, approximately 0.03 miles west of the intersection with Clawiter Road, Mt. Eden area, Unincorporated Hayward area of Alameda County, Assessor's Parcel No: 439-0013-021-00. (Continued from April 24th & July 24; Denial).

Mr. Gray read the project description.

Public testimony was called for. Mr. Justice indicated that he did not wish to withdraw his application but that all the remaining vehicles would be removed by next Wednesday.

Public testimony was closed. A discussion followed regarding alternatives which were a denial action followed by zoning enforcement proceedings or a withdrawal. Public testimony was re-opened. The Chair asked Mr. Justice if he would like to withdraw. Mr. Justice then requested clarification on the alternatives. Mr. Gray described his alternatives again. Mr. Justice did not indicate his preference.

Public testimony was closed. Member Peixoto moved the motion to deny the application as recommended by staff. Member Palmeri seconded the motion, which carried 5/0.

4. **TAMI TAVAKE, CONDITIONAL USE PERMIT, C-7918** - Application to allow a new commercial horse boarding facility for 15 horses and occupancy of eight mobile homes for agricultural caretaker units, in an "A" (Agricultural) District, located at 28812 Mission Blvd, east side, southeast terminus of Calhoun Street, unincorporated South Hayward area of Alameda County, Assessor's Parcel No: 83-100-1-1. (Continued from January 23rd, February 13th & 27th, March 27th, May 8th, July 24th & September 11th; Denial).

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Mr. Gray read the project description adding that the Applicant's attorney has requested for a continuance to January 22, 2003. Member Botelho asked for reasons. Mr. Gray replied that the although reasons were unclear, perhaps more time was needed.

Public testimony was called for. No testimony was submitted. Public testimony was closed. Member Palmeri moved the motion to continue the application to January 22, 2003. Member Callahan seconded the motion, which carried 5/0.

5. **SUSAN REGAL, CONDITIONAL USE PERMIT, C-7989** - Application to allow continued operation of a maximum 25 bed residential care facility in a R-S-SU (Suburban Residential, Secondary Unit) District, located at 629 Hampton Ave, south side, approximately 260 southeast of Western Blvd, unincorporated Hayward area of Alameda County, Assessor's Parcel No: 414-36-6. (Continued from May 8th, July 24th, August 28th, September 25th; Approval subject to 15 conditions).

Mr. Gray read the project description.

Public testimony was called for. Susan Regal thought her application was approved at the last hearing. The Chair replied that it had not been approved but continued in order to obtain written responses from the Sheriff's Department and Social services. Member Spalding read September 25th Addendum. Ms. Regal said she had nothing new to add.

Public testimony was closed. Member Palmeri said his concern was the substantial problem with the Sheriff's Department, such as the high level of incidents/complaints. As such, he agreed with staff that Finding #3 could not be made in the affirmative based on testimony submitted at last hearing. It would have an adverse effect. Another concern was the lack of written response from the Sheriff's Department. He supported a denial. Mr. Gray explained that staff had made the third finding in the affirmative. A written response would have received if the Sheriff's Department had any serious concerns with the facility. Unfounded complaints to the Sheriff's Department were typical of residential care facilities. Member Spalding questioned Condition #10. Mr. Gray said he was not sure if the Applicant could enforce the condition as the residents, under Fair Housing issue, could leave the facility without supervision. Member Botelho requested clarification regarding "non-medical facility". Regarding Condition #12, Member Spalding felt that the word 'shall' could be more clearer.

Public testimony was re-opened. Ms. Regal explained that the Sheriff's Department notifies her if there is a problem. Regarding Condition #10, the facility has always supervised the clients, in and outside the facility. She has a van and three cars with two drivers to transport clients. Although Licensing requires one staff per six clients, there were a total of 10 staff members. Ms. Regal pointed out there were other such facilities in her neighborhood. Member Callahan asked for the current number of residents. Ms. Regal replied that she had 23 clients. Member Spalding pointed out the second sentence of Condition #10. Ms. Regal said that this was a traumatic head injury residential home with no psych patients.

Public testimony was closed. Member Peixoto moved staff's recommendation for a conditional approval. Member Callahan seconded the motion which carried 3/2. Member Palmeri and the Chair voted no.

6. **KI JIN SONG, CONDITIONAL USE PERMIT, C-8053 & VARIANCE, V-11697** - Application to retain an existing secondary unit, 679 sq.ft. in area where 640 sq.ft. is the maximum and allow a 6' side yard setback where 8' is required, in a R-1-CSU-RV (Single Family Res, Cond Sec Unit, Rec Vehicle) District, located at 19515 Alana Ave, west side, approximately

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220' north of Sargent Ave, unincorporated Castro Valley area of Alameda County, Assessor's Parcel No: 84C-705-5.(Denial).

Mr. Gray read the project description adding that a faxed letter was received today from a neighbor.

Public testimony was called for. Ki Jin Song, Applicant, said under the zoning classification, a secondary unit would be allowed and he was not sure why CVMAC denied his application. The garage conversion had been installed by the previous owner and he had only done the remodeling. If his proposal was denied today, he asked what this space could be used for.

Al Kaady, property owner at 19553 Alana Road, said he opposed the proposal. This building has always been a metal shop. The Applicant has dug up the front yard and he was not sure if a permit had been obtained. He asked if the Applicant lived on site.

Albert King, Architect, outlined the history adding that the Applicant was willing to do all to comply, such as obtaining permits and reducing the square footage. Mr. King discussed the three findings. There was adequate space in the rear for parking. If required, he could provide a parking plan. The property has been taken care of and the Applicant has applied for a permit for the roof work.

The Chair asked the Applicant when he had bought the property, when the accessory building become a secondary unit and if he lived on the property. Mr. Song replied that he had bought the property five months ago and had remodeled by adding a bathroom and a kitchen. He was not living on the property but will be in the future. He had not been aware of permit requirements but now was in the process of obtaining the necessary permits. Mr. Song pointed out the previous owner had obtained a permit and he not sure why his permit was denied. Member Botelho explained that the previous owner had a permit for an accessory structure and not a secondary unit.

Public testimony was closed. Mr. Gray explained that CV Advisory Council had denied the proposal to deter others from building first and then applying for a permit. In the past, the County has imposed a monetary land use penalty. The recommendation for action within 15 days of permit denial would be dealt with as an enforcement action. Member Spalding said she supported a denial as none of the findings could be made in the affirmative. Member Callahan said she had a safety concern in reference to the width of the driveway. Members Botelho and Palmeri both agreed that the findings could not be made in the affirmative. Member Spalding moved the motion to deny the application. Member Palmeri seconded the motion, which carried 5/0.

7. **SAN LORENZO UNIFIED SCHOOL DISTRICT/SUSAN SUNG, CONDITIONAL USE PERMIT, C-8068** - Application to allow the continued operation of a before and after school childcare facility for 60 children, grades K through 5 at an existing school site (Del Rey Elementary School) in a R-1 (Single Family Residence) District, located at 1510 Via Sonya, west side, approximately 100' west of Via Del Rey, unincorporated San Lorenzo area of Alameda County, Assessor's Parcel No: 411-72-39. (Approval subject to 7 conditions).

Mr. Gray read the project description.

Public testimony was called for. The Chair noted that in 1992 a permit was approved for 80 children and asked why this permit was for 60 children only. Susan Sung, Applicant, explained that the need for additional school space resulted in a decrease in the number of children.

Public testimony was closed. Member Peixoto moved the motion to approve the application per staff

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recommendations. Member Callahan seconded the motion, which carried 5/0.

A 10 minute recess was taken.

8. **RUTH CANADY, VARIANCE, V-11680** - Application to allow construction of a seventh apartment unit providing twelve (12) parking spaces where fourteen (14) are required and construction of 6' high and 10' high fencing where 4' and 6' are the maximum allowed in a R-S-D-20 (Suburban Residence, 2,000 square feet per dwelling unit density) District located at 205 Smalley Ave, southeast side, approximately 450' east of the intersection with Meekland Ave, unincorporated Cherryland area of Alameda County, Assessor's Parcel No: 431-0016-054. (Denial).

Mr. Gray announced that the Applicant, Agency Director and the Director of Housing & Community Development have requested a continuance of this application. Staff's new recommendation was for a continuance to November 20th at the Applicant's request. The Chair noted that he was in receipt of a continuance letter from the Applicant. A discussion followed on the future agendas at Member Palmeri's request. Member Palmeri asked for the reasons of the continuance request by HCD. Mr. Gray replied that HCD would like to discuss the proposal with Planning staff in order to move this project forward with a favorable recommendation, if possible.

Public testimony was called for. No testimony was submitted. Public testimony was closed. Member Callahan moved the motion to continue the matter to November 20, 2002. Member Peixoto seconded the motion which carried 4/1. Member Palmeri voted no.

9. **RONALD BABILONIA, VARIANCE, V-11688** - Application to construct a new attached single car garage with a garage door setback 8'-6" from side property line where 20' is required in a "R-S-SU" (Suburban Residence, Secondary Dwelling Unit) District, located 709 Medford Ave, southeast corner of Morva Drive, unincorporated Cherryland area of Alameda County, Assessor's Parcel No: 414-66-34. (Approval subject to 5 conditions).

Mr. Gray read the project description.

Public testimony was called for. Ronald Babilonia, Applicant, urged for an approval.

Cristofer Aben, 659 Morva Ct, said she was also representing several other home owners of the area. Their concern was parking. This was a very narrow street and driveway egress and ingress was very difficult. She has now been informed by the Applicant that another off-street parking space will be provided.

Public testimony was closed. Mr. Gray confirmed that two off-street parking spaces will be provided on-site. Member Peixoto asked if Morva Court was a private road. Mr. Gray replied yes. The Chair noted Condition #4 which addresses the parking concern. Member Spalding asked for the location of the second parking space. Member Palmeri asked if open space was an issue with this construction. Mr. Gray replied that there was adequate open space. Member Spalding moved the motion for an approval per staff recommendations. Member Callahan seconded the motion, which carried 5/0.

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10. **DAVID WILKERSON, VARIANCE, V-11687** - Application to allow construction of anew single family dwelling with a 34' building height where a maximum 25' height is permitted in a R-1-B-E-CSU-RV (Single Family Residence, 10,000 sq.ft. MBSA, Conditional Secondary Unit, Recreational Vehicle) District, located at 4924 A Proctor Road, north side, approximately 680' west of Redwood Road, unincorporated Castro Valley area of Alameda County, Assessor's Parcel No: 084D-1275-29. (To be continued without discussion to November 13, 2001).

This item was moved from the Consent Calendar. Mr. Gray read the project description.

Public testimony was called for. John Bercovitz, property owner at 4968 Proctor Road, said he opposed infill construction, especially since this proposal would obstruct his view. An approval would also set a precedence. Member Peixoto noted that staff's recommendation was for a continuance to allow revised plans to be submitted reflecting reduced building height. Member Spalding noted the lack of view ordinance.

Public testimony was closed. The matter was continued to November 13, 2002.

C. Discussion on Administrative Rules

Mr. Gray stated that County Counsel would like to ensure that the Administrative Rules do not conflict with the County's Administrative Code and/or Robert's Rule of Words and would be adopted as part of the BZA

Member Palmeri noted the last paragraph on Page 1. Mr. Gray thought that perhaps he could also respond to Board's discussion before a motion is moved. Member Palmeri suggested adding language to reflect that the Chair would ask staff for his comments after public testimony and after Board discussion. Member Palmeri further explained the last sentence under A (c). Members Peixoto and Spalding felt that the sentence should be re-worded. Member Spalding also added that it was redundant and could be deleted as the first and second sentences stated the same. A discussion followed. Member Peixoto felt that any Board member could move a motion to have an item continued. Member Palmeri pointed out that in the past, there has been a tendency not to follow rules and things have not gone through the chair.

A discussion followed on bullet 4 under Speakers regarding the time limit for oral presentation by the Secretary of the Board.

Members Peixoto and Spalding both had concerns with the first bullet under Procedure/Length of Meetings. Member Palmeri explained the reasons for this procedure. The Chair asked for the possibility of a third hearing for the month of November and December to reduce the length of the agenda. Member Callaham suggested including a time limit on the agenda for public awareness. A discussion followed regarding placing of items on the agenda, usage of the timer, continuing items after 10 pm, making an announcement at breaks and a time frame for the hearing. Member Peixoto felt that a 4-hour meeting was sufficient, either day or evening.

Future hearing dates including the possibility of an additional 3rd hearing was also discussed. Mr. Gray stated that the November hearing dates were the 13th and the 20th and December dates were the 11th and 18th, with the 4th as a tentative date. Member Callaham said December 4th was not convenient and Member Spalding indicated that she was not available on December 18th. The Chair suggested three meetings in November and December. Member Spalding pointed out that there was a budget to be considered. January dates were 8th, 15th and 22nd. February, 2003 dates were 5th and 19th.

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Mr. Gray indicated that perhaps 'Holiday events' could be discussed at the next hearing.

Mr. Gray asked for suggestions for the next workshop. Member Palmeri suggested having one in November followed by one in December, if necessary.

Regarding the agenda, Mr. Gray suggested placing Administrative Rules after the public hearing. The Board agreed. The Chair asked how the Zoning Enforcement hearings would affect the Zoning hearings. A discussion followed. Mr. Gray indicated that Zoning Enforcement Manager would be providing details on the Abatement hearings.

C. Conflict of Interest Code

Mr. Gray provided an explanation. Member Spalding requested clarification. A discussion followed with Mr. Gray suggesting that she would make an appointment with County Counsel for specific clarification. Member Peixoto moved the motion to recommend approval to the Board of Supervisors. Member Callahan seconded the motion, which carried 4/1. Member Spalding abstained.

D. **Approval of Minutes** - September 25 and October 9, 2002. Approval of minutes were moved to the next hearing, November 13, 2002.

E. **Next Hearing Date** - November 13 , 2002

There being no further business, the hearing was adjourned at 4:45 p.m.

JAMES E. SORENSEN - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS