

CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL
Minutes for July 25, 2005
(To be approved)

- A. CALL TO ORDER:** The Chair called the meeting to order at 6:45 p.m. Council members present: Dean Nielsen, Chair; Jeff Moore, Vice Chair. Council members: Andy Frank and Carol Sugimura. Council members excused: Karla Goodbody and Ineda Adesanya. Staff present: Chris Bazar, Jana Beatty, Bob Swanson and Maria Elena Marquez. There were approximately 3 people in the audience.
- B. APPROVAL OF MINUTES OF July 11, 2005**
Because of the lack of quorum, no action was taken at this meeting.
- C. PUBLIC ANNOUNCEMENTS – None**
- D. REGULAR CALENDAR**
- 1. SITE DEVELOPMENT REVIEW, S-1985 – HUGHES -** Application to remodel and addition of an existing **restaurant** and reconfigure parking and landscape areas in a CVCBD, Sub 10 (Castro Valley Central Business District Specific Plan, Sub Area 10) District, located at 3714 Castro Valley Boulevard, northeast corner of the intersection of Yeandle Avenue and Castro Valley6 Boulevard, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 84C-0724-063-00. **Continued from June 27, 2005 and July 11, 2005. Continued to August 8, 2005.**
- 2. Update on progress regarding workshop discussion items.**

Chris Bazar gave an update on the workshop discussion held July 11, 2005. The discussion was about variance applications and about the practical way to respond to the MAC's desire to hear most or all of them. Some of the things that were discussed were practical aspects, such as the 10 day notice, postcards, posting requirements that need to be done 3 weeks ahead of any meeting. Basically, there were two options that came out of that workshop: the first concept was that all variances coming before MAC defaults to the consent calendar. He would very much like to follow up on that idea. We strongly encourage the MAC, whenever possible, to try to dispose of those items within one meeting because there are so many hearing bodies in the County. Mr. Bazar thinks we can get that into a formal staff report well in advance, something to consider for Option 1.

Mr. Nielsen said that the sequence that seems to make sense is that if we take up an item on Monday and we approve it, in order for consistency, that item would appear at the BZA the following Wednesday, not the same week that it appears before the MAC. That way the BZA would have a fully documented opinion

from the MAC. There is not a problem as far as any favoritism on either hearing an item or not hearing it. Mr. Nielsen asked how it will be determined what goes in the consent calendar. Mr. Bazar said that goes to Option 2, but in terms of timing, we would make it clear that currently the MAC and the BZA are on the same week meeting schedule.

Mr. Frank said that based on logistics and mathematics, the scheduling should be two weeks. Mr. Nielsen said that does not mean that the Council can not approve the minutes. Mr. Frank said that the Council has the land use meetings on the second and fourth Mondays. The third Monday is the general meeting which is a different function. There is a methodology, regardless of function of meeting of the MAC, but the methodology needs to be changed, otherwise it has to be a two week delay arrangement.

Mr. Bazar said that he would be concerned about the two week delay in the sense that all council members recognized that that would start to push the timeframe for items to such an extent that it would be a little bit difficult.

Mr. Frank said that since the methodology will be changed regardless of the type of meeting, MAC is going to approve the previous minutes. Mr. Bazar said that a potential problem that he is concerned with is about noticing conflict.

Mr. Frank said that before there was a BZA, there was the MAC and the Planning Commission, there was no dysfunction. The other thing that is important is that in trying to get the information, there will be a very cumbersome arrangement on the County to get the minutes collected, put together and in two days get them out. It is not fair in terms of people power. You have to rely more on representation than on actual minutes being presented. Mr. Bazar said that if we had action items, we can record action minutes and we can turn around in 24 or 36 hours. That is possible, if the basic action minutes that the MAC recommended are codified.

Mr. Frank said that if you were able to give focus on those issues and give the full representation of the MAC, there is no problem. He suggested to try for one or two months and see what happens.

Mr. Bazar said he is concerned about the extra resources of the notices and posting and thinks that it is very tough on staff. He suggested to set a method where the day after the MAC meeting, Tuesday, Ms. Beatty and Ms. Marquez very quickly assemble action item minutes for the items in question run by the Chair and that we can turn around for a Wednesday BZA meeting.

Mr. Moore said that re-noticing is unreasonable. Typically the problems come when there is disagreement. If the Council disagrees with a variance for set back and give the reasons for denial, the Council does not have to go back and re-do anything. Mr. Bazar said he agrees with Mr. Moore and that he would include him in taking this additional responsibility. One way to clear them off your docket in

one meeting is to focus in terms of being very specific in the recommendations and giving the reasons for the denial. Mr. Nielsen suggested that the MAC try to limit its dissertations.

Mr. Frank said that in terms of any item on the agenda, one thing that would be helpful and would make the decision process easier, if you have a variance before you and you know other variances have been approved, there is no reason why not to provide us with its historical content. Mr. Bazar said that as Planning Department, we are shifting, we are getting a lot tighter about how we address this. The BZA is tending to be tighter. We should provide that information.

Mr. Nielsen said that he went back over the BZA agendas for the last three months and found that there are not that many variances that the Council would be looking at. If the Council looks at everything, the majority of the variances that are on the BZA's agenda are going to be consent calendar items because there are secondary units. Initially, if the Council would like to put them all on, we short cycle this by checking what report goes to BZA, even for the first couple of meetings just to be there to support the new process. We would not be in a position to call something back because we do not have to.

Council members agreed to go for Option 1. Mr. Bazar said that we will try very hard to make that method work with the turnaround from Monday and Wednesday. We will check after a few months and if it is not working as expected, we will look at other alternatives.

Mr. Moore said that he finds that the consent calendar confuses people and audiences do not seem to understand it.

Mr. Bazar said that should staff be checking with the Chair in advance to identify items that seem to be regular calendar items, certain things that presumably the Council would just want on the regular calendar. Mr. Frank said that the County is pretty good to brings things up.

Mr. Moore said that if you find an item that is controversial, you simply schedule it in the regular calendar. Mr. Frank said that it is the obligation of the applicant first to be there.

Mr. Nielsen said that since Mr. Carbone and the new council member, Cheryl Miraglia, were at the workshop, he asked if it was all right with the Council to open up for comments from both of them.

Mr. Carbone asked what happens if you have an item that falls in the consent calendar and it looks like something is not going to be discussed in MAC, it is going to be passed on and it is a controversial item, is that something that the Council would consider to put on the calendar. Mr. Nielsen said that they would

just do roll call and if anyone in the Council or the audience wants to discuss it, we will pull it from the consent calendar. Mr. Bazar said that they do that at the Board of Supervisors and the Planning Commission.

Mr. Nielsen said that the Council is not going to go back row by row asking if anybody has a comment. People have to turn in the speaker cards, as we go through this, because we have more items. We have to be more judicious about our time.

Mr. Carbone asked if an item is automatically pulled off from the consent calendar. Mr. Nielsen said that the Council will vote and move to the next item.

Mr. Bazar said that it is the main reason why he wrote up Option 2. It is very unlikely that there is going to be a big discussion, but initially people will be worried about it, they may show up and they will fill the speaker slip. He thinks the Council will have some heavier meetings initially for that reason.

Mr. Moore asked if there is a script with an explanation about the consent calendar. Ms. Miraglia asked if items on the consent calendar get automatically approved. Mr. Bazar said that basically those items moved forward without any further discussion or approval. Mr. Nielsen said that generally they are not controversial items that are going to be approved anyway. Mr. Bazar said that maybe there are 20 items, 18 of those are not controversial and if there is no public speaker, the Council will make a mass motion for those 18 items to adopt the staff recommendations without any further discussion.

Ms. Miraglia asked what happens if what staff recommends is denied. Mr. Nielsen responded that the Council adapts the recommendation. Mr. Moore said he has not seen an item on the consent calendar that has been denied. All denials are automatically scheduled in the regular calendar. Mr. Bazar said that we should ask County Counsel if that is a formal requirement or just the nature of it. Denial upset controversy, approvals are less controversial.

Mr. Frank agreed with Mr. Moore. He thinks that people feel that they should have an opportunity to present their thoughts. Mr. Nielsen said that if you think that the item is going to be denied, it should be put on the regular calendar. Mr. Moore asked whether it is recommended or not, there are advantages and disadvantages from the staff. Mr. Bazar said that we are generally before any of the bodies expected to make recommendations. People come with different conclusions.

Ms. Sugimura said that she sees it from a different point of view. She appreciates when staff takes a look at the issue and they tell the reason why it is denied or approved and looks to see if the information she is receiving substantiates her concurrence with the recommendation.

Mr. Frank said that you do not want to delude it to the point that it does not have any meaning; he wants an opinion, at least an opinion that you have the basis to start from. The biggest complaint the Council has gotten in the years that he has been on the MAC is that they want an opinion from the planners and they want something that is realistic. The reason to have the open forum was to assist the County in one aspect. It is very narrowly focused. Was it feasible by what you are talking about, moving ahead before you have an architect and an engineer involved and before you spend thousand of dollars if historically and by the book it is just not going to go.

Mr. Nielsen said that people can come and talk in general terms to the Council after the meeting. He does not see any problem with recommending approval.

Mr. Moore asked how would you handle a situation where one item of the use permit that the Council absolutely will not agree with. It does not matter if it is a use permit or a variance. They as consultants would like to go before the Planning Commission and discuss the item without a negative recommendation because they do not want a stigma. If the Council is going to adopt a policy of recommendations, at least the Council has to look at the extremes here.

Mr. Bazar said he would like to be able to give to both the same set of recommendations before the BZA.

Mr. Nielsen said that the Council is going to hear all variances, and he will work with staff on the consent calendar. The other items will go on the regular calendar. Staff will make a recommendation in the report for BZA. That will be for all items, not just for variances. Ms. Sugimura asked about those items that staff recommends for denial and automatically get on the agenda.

Mr. Frank said that he would like to see County Counsel whether is consent or otherwise. If something is going to be moved for denial, he just wants to be sure that the Council is not limiting the right of a person to have the opportunity to talk. Mr. Nielsen said that initially the Council has to discuss it, clarify the types of the force that generated an item not to be on the regular agenda. Mr. Bazar said that the reality of the denial is that you always have a guaranteed person who disagrees with the Council, whereas with an approval you might have all the neighbors comfortable with it.

Mr. Moore asked Mr. Bazar if he will provide the Council with a draft of the reading of the consent calendar to explain to the public. Mr. Moore said that the Council will try to be succinct and summarizing at the end, typically against for the following very specific reasons for the BZA. In writing the recommendations, the staff will be looked at and say other than these two items, if there is controversy and explain that in some detail.

Mr. Frank said if you can get to the public comment, you go directly to the recommendation. It makes it easier on staff, and if they are able on time to provide for the public comment, but if they can't, at least take out the recommendation as the reasons as to why.

Mr. Bazar asked Mr. Nielsen when he thought we could get this in place. He said we might be able to start at the next meeting unless Council is not ready. As a reminder, we will have staff reporting back to the Council on applications that have moved up through the system.

Mr. Bazar talked about the design issues that the Council wanted to talk about be a discussion point for future meetings. It seems that at a minimum, we talked to the General Plan consultant and budget for them to have special session just for the MAC, so we try to make it just fundamental with the MAC and if the public wants to listen, they can. That will give you an initial hand on it and you might want to think further about some of the ideas that were expressed about the subcommittee, special way of thinking about design issues. He suggested that the Council as an advisory body, if you want to cut that out in advance, how that works in the context of moving items for an expeditious rate that is the challenge. If you have a sub group that you refer to initially, you have to think about the process question.

Mr. Nielsen said that once the guidelines are established, the staff report would indicate whether the project needs those guidelines or not. That would be part of the process. He would think that would be done before the guidelines are established.

Mr. Frank said that the Council has a time limit for the general public when they talk for 3 minutes but historically there is not enough time for the presentation for the applicant. He would like to see some type of limit there so they can organize their thoughts.

Mr. Moore said that his understanding is what the Council is trying to do is to have at least a flyer. The goal of this flyer, their design is not guidelines, it is points of MAC interest. There is no force behind it other than it lessens the probability of denial on key issues and potential delays coming through MAC.

Mr. Nielsen said that on a large development, how long it takes in order to present the project. Mr. Bazar said that to have a general rule of thumb, the Chair or the Council as a whole can decide to modify, particularly complicated items and often there will be specific groups that wish to have certain allotments of time as well. Mr. Bazar asked the Council if we should codify that or we just say 10 minutes general, they can be modified as necessary by the Chair.

Mr. Moore suggested 10 minute presentation by the applicant, 3 minutes for public comment and 5 minutes rebuttal by the applicant.

Mr. Nielsen said that the Council can ask the applicant how long the presentation is going to be. Mr. Bazar said that after the design session with the General Plan consultant, we will get some more guides, it sounds like the focus primarily was getting design guidelines established. That is the most important fundamental implementation measure that would come up from the General Plan process. It will be a little while before we have formal design guidelines.

Ms. Miraglia said that what bothers her is that the applicant always gets time, there is never a wrap up for the other side and often times she has been on the other side. Lot of things said by the applicant to the governing body are a lie and no one is able to speak to her after that. Mr. Nielsen told her that part of the problem in allowing is that you have to have a leader of the opposition so to speak and that is not the case neighbors will come in people would come in. That is why they rely on you and they rely on the Council in order to sort through what is the truth and what is not.

Mr. Moore said that personally he thinks that what is fair for an applicant whether you agree or not with their position, applicants pay the money so they have the last word. Giving the applicant the last word is the fair thing to do.

Ms. Sugimura said that part of the responsibility of the Council is supposed to be listening to comments put forward and if there is an issue that has not been addressed, then one of the Council members should be speaking up and asking that question again on their behalf so the Council is clear where it stands.

Mr. Nielsen said that the Council is an advisory body, they do take the Council's opinion in consideration, but there is the appeal process at the next level. What the Council does here is not the final word. Mr. Frank said that when you seat on the Council, you know when someone is not telling the truth.

Mr. Moore talked about general time policies, if the Council is going to get lot more items, 3 or 4 consent calendar items and a couple of things get pulled off. He would like to ask the Council what they feel is appropriate. One thing that is frustrating is that you get one side or the other saying the same thing over and over again.

Mr. Bazar said he does not know how formal you can enforce that as opposed to ground rules. The Chair may ask people to refrain from making the same comment over and over. Mr. Frank said that you can try to get consolidation, but part of the issue is when you come to the podium if you don't like what they have to say, they have a right to say it.

Mr. Nielsen said that the Chair can ask how many people are concerned about traffic so the Council can have an impression.

Mr. Moore suggested that since the Council is going through establishing the guidelines, to try to get the meetings smoother in these controversial issues

- E. Open Forum** – None.
- F. Chair’s Report** – None.
- G. Committee Report** - None
- H. Staff Announcements, Comments and Reports** – None.
- I. Council Announcements, Comments and Reports** – None.

Mr. Moore asked if staff can call Council members to make sure that they will attend the meeting and that there will be a quorum. Ms. Sugimura said it is Council members’ responsibility to call and say whether they are coming or not.

J. Adjourn

The meeting was adjourned at 7:40 p.m.

Next Hearing Date: Monday, August 8, 2005