

CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL

Minutes for March 13, 2006

(Approved as presented May 27, 2006)

A. CALL TO ORDER: The Chair called the meeting to order at 6:35 p.m. Council members present: Dean Nielsen, Chair; Jeff Moore, Vice Chair. Council members: Andy Frank, Carol Sugimura, Karla Goodbody, Cheryl Miraglia and Ineda Adesanya. Council members excused. Staff present: Tona Henninger, Sonia Urzua, Bob Swanson and Maria Elena Marquez. There were approximately 15 people in the audience.

B. Approval of Minutes of February 27, 2006.

The approval of the February 27, 2006 was continued to the next meeting.

C. PUBLIC ANNOUNCEMENTS.

D. Consent Calendar

The purpose of the Consent Calendar is to group routine items that may be approved by one motion, unless a request for removal for discussion or explanation is received from a member of the Council or a member of the public. If discussion is desired, that item will be removed and considered separately before Regular Calendar items on the agenda.

1. VARIANCE, V-11982 – PATRICK A. LOVE – Application to allow a garage conversion with on-site parking in the side yard, in a R-1-CSU-RV (Single family Residence, Secondary Unit, Recreational Vehicle) District, located at 3773 Cottage Court, north side 284 feet west of Parsons Avenue, Castro Valley area of unincorporated Alameda County, bearing County's Assessor's designation: 084D-1329 -017-00. **(To be continued to March 27, 2006).**

2. SITE DEVELOPMENT REVIEW, S-2036, GRINDLEY –

Application to allow relocation of a secondary unit from Redwood Road to the rear yard of 3840 Wilson Avenue in a R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit) District, north side 450 feet east of Parsons Avenue, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 084D-1342-055-01.

Mr. Moore moved to approve without discussion Site Development Review, S-2036, with a second by Ms. Miraglia. Motion carried 5/0. Council members Adesanya and Goodbody arrived after the motion was made.

3. **SITE DEVELOPMENT REVIEW, S-2049 – BRUCE BAXTER** – Application for the construction of a new single family home in a P-D (Planned Development, allowing Single Family Residence, Limited Agricultural Uses, with 40,000 square foot Minimum Building Site Area) District, located at Jensen Road, northwest side, 9/10 mile northeast of Castro Valley Boulevard, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 85-5200-006-00. **(Continued to March 27, 2006).**

E. Regular Calendar

1. **EBMUD Steering Committee Park Progress Report**

Mr. Nielsen presented a brief summary of the last meeting. There were 418 people in attendance. Marc Crawford and Mr. Nielsen met with HARD representatives and the contractor, Evans/McDonough. The contractor will put together the questionnaire itself.

Mr. Nielsen asked if anyone in the audience wanted to have a particular question included in the questionnaire. There was no response. Mr. Nielsen requested the Council to give input. He proposed two parts:

Part one: A limited committee to review the questions and results. The committee would be made up of 11 people. The intent is to have a cross section of opinions and community efforts regarding voting on the bond issue. The suggested composition include people from the following entities: one person from HARD, one person from Supervisor Miley's office, one person from the Planning Department, two MAC members, Mr. Marc Crawford, one person from Sports Teams, one person from the Castro Valley Preservation Group, two Carlton Avenue neighborhood residents and one person from Five Canyons.

Public testimony was called for.

Susan Hersch, representing the Castro Valley Historic Preservation Group, asked how the two Carlton Avenue residents could be selected. Mr. Nielsen responded that a notice will be placed in the newspaper and that interested persons could also contact him. Ms. Hersch also asked for clarification of the two parts. Mr. Nielsen responded by stating that one question will be how many open space projects should be included in the questionnaire. The issue is centered on the EBMUD site and maybe other sites will be added to determine the cost involved. Ms. Hersch asked if there will be a steering committee chair. Mr. Nielsen responded that there will be no committee chair. He and Ms. Adesanya will help organize it.

Mr. Moore moved to accept Mr. Nielsen's recommendations with a second by Ms. Miraglia. Motion carried 7/0.

Mr. Nielsen added that he and Marc Crawford met with HARD to set a timeline and discuss the cost of the EBMUD site. They will meet again on March 14, 2006 onsite with HARD's architect to determine the amenities for the 24 acres. On March 20, 2006, the pollster will obtain phone lists. By March 23, 2006, we need a finalized questionnaire for the pollster. On March 26, 2006, the phone interview will begin. By March 31, 2006, the phone survey will be completed. On April 7, 2006, a presentation will be made to HARD staff. On April 12, 2006, a final report is due. On April 14, 2006, the committee will find out if the community is willing to fund the project or go to Plan B. If Plan B is selected, the measure could be placed on the ballot if enough signatures are collected by August.

2. **CONDITIONAL USE PERMIT, C-8469, - SON X. HOANG -**

Application to allow operation of an alcohol outlet (Tony and Ted's Liquor) in conjunction with a convenience store in a CVCBDSP-SUB3 (Castro Valley Central Business District Specific Plan – Consumer/Medical Oriented Retail/Service/High Density Residential) District, located at 2688 Castro Valley Boulevard, north side, corner of Park Way, unincorporated Castro Valley area of Alameda County, and designated Assessor's Parcel Numbers: 084A-0181-057-03 and 058-03. **(Continued from January 9 & 23, and February 27, 2006)**

Ms. Urzua presented the staff report.

Mr. Alan West spoke on behalf of the applicant. He is an attorney that has been practicing in Castro Valley for 22 years. He stated that Tony and Ted's has been in business for about 50 years. The business was forced to close in 2004 after the Building Inspection Department condemned the building. At that time, the applicant was the operator of the business but not the property owner. Mr. West stated that although the applicant has a "surrendered" license issued by ABC, it is still valid. He just needs a place to operate the business. Between July 2004 and December 15, 2005, the building was not used as a business. On December 15, 2005, the building received the okay to reopen. The applicant purchased the building on December 20, 2005. A Conditional Use Permit is required because of the six months lapse. Otherwise, it is an ongoing business. Mr. West also stated that the Sheriff's presentation given at the previous meeting was inflammatory because he stated that the applicant was arrested twice but he did not state that the charges of selling alcohol to minors were dismissed by the District Attorney in the interest of justice. Mr. West also stated that they were not at this hearing to discuss the applicant's character. He also stated that the Quick Stop had three citations in the last five years for violations of selling to minors. He stated that these were probably in response to the Sheriff's sting operation. Census tract information to determine over concentration is irrelevant.

Regarding CommPRE's presentation, Mr. West argued the Quick Stop and AM/PM businesses were not "similar uses" as discussed in the County's Alcohol Policy. He stated that the Quick Stop sells gas, snacks, beer and wine. He argued

that Chabot Liquors was a similar use and was more than 500 feet away from Tony & Ted's. He stated that the AM/PM was 600 feet away and that Chabot Liquors was 900-1000 feet away. He also stated that the miniature golf course described in the staff report was not within 500 feet of Tony & Ted's.

Mr. West stated that Tony & Ted's has been there a long time. Smaller convenience stores moved in afterwards. There have been no complaints regarding loitering and crime. It is an old well established business. This is about being able to earn a livelihood.

Sergeant Jukich clarified that he clearly stated in his previous presentations that the applicant was not convicted of the charges for which he was arrested. ABC took administrative action. ABC suspended the license for selling to minors.

Public testimony was called for.

Mr. Ruben Massa, representing CommPre, restated the points set forth in CommPre's referral response dated January 5, 2006. He said that Golfland was right across Castro Valley Boulevard. The area has an over concentration of alcohol outlets and that granting the CUP would be in violation of the County's alcohol policy. Tony & Ted's is adjacent to Quick Stop. They both have a Type 21 license. Tony & Ted's is located in census tract 4309. ABC bases its over concentration analysis on tract information. In this tract, six off-site licenses have been issued where 4 are allowed.

Public testimony was closed.

Mr. Moore said he found it compelling that the business has been there for so long.

Ms. Miraglia stated that the past violations were of concern. She asked staff if the document describing alcohol policy was included as part of the staff report. Staff stated that the planner quoted the relevant parts in the staff report.

Ms. Sugimura agreed that only Chabot Liquors was a "similar use." She also remarked that Tony & Ted's has been there for such a long time. She suggested that perhaps a renewal period of one year would be appropriate.

Ms. Miraglia suggested that the outside of the building should be brought up to snuff and that perhaps the applicant can work with the Redevelopment Agency. She asked staff what the Type 21 license issued by ABC allowed. Mr. Massa (CommPre) answered that the Type 21 license included beer, wine and spirits sold off-site.

Ms. Adesanya was concerned about over concentration. Chabot Liquors at 900 feet was still too close. When operating a business, it is important that the

applicant agree not to be problematic. This particular applicant needs strict oversight. She stated that she would support a six month term.

Mr. Nielsen was concerned about the allegations of sales to minors. Three times in three years was noteworthy. It is affecting the community. He stated that the operation bothered him. He recommended taking small steps.

Mr. Moore stated that there are a lot of allegations. Therefore, the concern is the perception. This is an opportunity to show effort that they are moving forward.

Ms. Goodbody stated that she would support a six month term. Perhaps site visits and establishing guidelines in the form of a check list would be necessary.

Mr. Nielsen raised the issue of other violations during the proposed six months period. Ms. Henninger stated that a current building code violation was being processed by the building department for a partition wall installed by the applicant illegally. This violation was included in the staff report.

Mr. Swanson told the Council members of a current requirement for alcohol outlet operators to attend certain training sessions regarding responsible beverage service.

Discussion followed regarding the wall violation. Mr. West stated that the applicant will tear down the wall.

Mr. Nielsen asked for a motion.

Ms. Adesanya moved to approve Conditional Use Permit, C-8469, with three conditions. The term would be only for six months. After the six months, a new CUP would be required. The applicant must remove the wall. The six month period will not commence until the partition wall is removed. The applicant is encouraged to look at façade improvements. If there are any further violations, the revocation clause will be exercised. No violations are expected. Ms. Sugimura seconded. Motion carried 7/0.

E. Open Forum.

F. Chair's Report

Mr. Nielsen mentioned two items: the Council denied a lot split on Vannoy Court that was also denied by the Board of Supervisors. Also, last year, the Council voted to approve the conversion of houses to condominiums. It was denied by the Planning Commission and staff recommended denial. The Board of Supervisors approved if reasonable conversion requirements were implemented, property owners return to a Tenancy in Common (TIC) which is a legal partnership rather than splitting the lot. Also, Supervisor Miley was very explicit in requesting

conditions that buildings be in good shape and that they be inspected by the Fire Department. The Supervisors were very specific on condominium type buildings, two story yes but function like condominiums, not motel types. They were very thorough in their analysis. He indicated that he would like to get a copy of the resolution so the Council can see it.

Mr. Swanson said that Mr. Ted Polyzos is here for a pre-hearing recommendation.

Mr. Ted Polyzos, resident at 3015 Todd Court, said that he is interested in buying a property located on Heyer Avenue. The previous proposal was to split the lot into three parcels. It was denied by the MAC, county staff and the Board of Supervisors. He stated that a two lot subdivision was approved on January 2001 and has now expired. He is proposing a three lot subdivision. He talked to Mr. Sawrey-Kubicek and to Bob Bohman, from the Fire Department. Mr. Polyzos asked the Council for an opinion. The Council expressed concern about the driveway and the lot sizes. Mr. Neilsen stated that Mr. Polyzos goes ahead with this, the square footage of the lots is in the median, the Council did not have a problem with that. The other thing is the set back for the homes, the Council has not looked favorably on variances.

Shawn Alikian, Castro Valley resident, stated that he owns a commercial property on Castro Valley Blvd. There is a barber shop and a computer repair shop. He is working with the Redevelopment Agency to update his building. He wants to change the façade and awning, replacing it with a Spanish style design, including tile roof and columns. He asked if MAC has any objections or any recommendations.

Mr. Moore asked Mr. Alikian about the ongoing relationship with the Redevelopment Agency. Mr. Alikian said that initially there was an aesthetics conflict, particularly regarding updating the awning. At this point they are over that, they are conforming to the policy to complete façade improvement. His question is why he has to use their (Redevelopment) architects instead of using his own architect. He said this probably was not an issue for MAC and that technically they are not using their architect.

Mr. Nielsen asked Mr. Alikian if he wanted to put a Spanish style front on the building. Mr. Alikian said that it is just an update on what they have now. Mr. Alikian asked if they would need MAC approval. The exterior will be stucco, same color, light tan red tile; the roof will have tile Spanish style.

Mr. Moore asked Mr. Alikian why he came to this hearing. Mr. Alikian said just to see if the MAC has any recommendations or objections to them doing that and that he wanted to cover all bases. Mr. Moore told Mr. Alikian that the Council would like to take a look at that.

Ms. Adesanya asked if the business owner must use County selected architects in order to take advantage of this Redevelopment Agency Façade Improvement program. Mr. Nielsen said yes.

H. Staff Announcements, Comments and Report

Mr. Swanson said that the Farmers Market will start the first Saturday in May.

I. Council Announcements, Comments and Reports

Ms. Sugimura asked if there will be a General Purpose meeting this month. Mr. Nielsen said yes.

A member of the audience spoke regarding the EBMUD park issue and said that he is concerned that the proposed park is only accommodating a few people. There are not so many people on Seven Hills Road. He would be reluctant to vote for a bond issue if neighborhood parks are included. He said parks should be developed in those areas that can be also developed for other uses.

J. Adjourn

The meeting was adjourned at 8:00 p.m.

NEXT HEARING DATE: MONDAY, March 27, 2006