

CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL
Draft Minutes for May 22, 2006
(Approved as corrected July 24, 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: Cheryl Miraglia, Karla Goodbody, Ineda Adesanya and Carol Sugimura. Council members excused: Andy Frank. Staff present: Andy Young, Tona Henninger, Bob Swanson and Maria Elena Marquez. There were approximately 40 people in the audience.

B. Approval of Minutes of April 24 and May 8, 2006.

The minutes were continued to the next meeting.

C. PUBLIC ANNOUNCEMENTS – None.

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. CONDITIONAL USE PERMIT, C-8487 – T-MOBILE USA - application to allow continued operation of a wireless communication facility (T-Mobile) in an A (Agricultural) District located at 6390 Grassland Drive, north east side, 1200 feet southeast of Sunnyslope Avenue in the unincorporated Castro Valley area of Alameda County, and designated Assessor's parcel numbers: 085A-1400-001-10 and 085A-1400-001-07. **(Continued to June 12, 2006).**

E. Regular Calendar

1. VARIANCE, V-12010 – GURDEEP S. MAHAL - Application to construct a single family dwelling 30 feet in height where 25 feet is the maximum, in a P-D (ZU-1451) (Planned Development, 1451st Zoning Unit) District, located at 2850 Eugene Terrace, north east side 3000 feet north west of Carlton Avenue, unincorporated Castro Valley area of Alameda County, bearing Assessor's designation: 084B-0405-030-00.

Mr. Young presented the staff report. He indicated that the house would have a floor area ratio of approximately 1:1.75 (total building floor area to lot area).

Michael Carilli, representing the applicant, stated that the house was permitted to be about 27 or 26 feet in height, but that because there were some problems with grading, the actual average house height was 30 feet. He said that he had been involved with other houses in the area, and this one did not noticeably conflict with the height of all the surrounding houses, and it would still be landscaped very well.

Public testimony was called for. No public testimony was submitted.

Mr. Moore made motion to approve Variance, V-12010 with staff recommendations, with a second by Ms. Miraglia. Motion carried 6/0/1 with Mr. Frank excused.

2. **CONDITIONAL USE PERMIT, C-8499 – JAVIER PENA** – Application to allow the operation of an alcohol outlet in conjunction with a supermarket (El Rancho Supermercado), in a C-N (Neighborhood Business) District, located at 22291 Redwood Road, west side corner north of Grove Way, unincorporated Castro Valley area of Alameda County, bearing Assessor's designation: 415-0100-054-00. **(Continued to June 12, 2006).**

3. **2234th ZONING UNIT AND TENTATIVE PARCEL MAP, PM-8853 – TERESA NAZARETH** – Petition to reclassify from an R-S-D-35 (Suburban Residence, 3,500 square feet building site area per dwelling unit) District to a PD (Planned Development) District, to allow subdivision of one site containing approximately 0.96 acres into three parcels, respectively containing two existing detached single family residences and one existing nine-unit apartment building, and allowing site-specific development standards, located at 22565, 22567 and 22569 Center Street, west side, 400 feet north of B Street/Kelly Street, unincorporated Castro Valley area of Alameda County, bearing County Assessor's designation: 0416-0110-005-03.

Mr. Young presented the staff report. He said that the project appears to meet the requirements of a PD, but that there were numerous deviations from the underlying standards of the R-S (Residential Suburban) District that were required.

Ms. Adesanya asked staff if the proposed single family home lot sizes meet the minimum lot size guidelines for a single family home. Mr. Young indicated that lot sizes did not appear to be an issue for this proposal.

Teresa Nazareth, applicant, stated that each of the units have their own yards. She said that the existing single family home in the front is a large home with 3 garages behind and a second home. The garage and carport in Parcel B will be demolished as part of the project. They are nice homes that will provide ownership to prospective buyers. The single family houses would have more land area added to their respective parcels.

Public testimony was called for. No public testimony was submitted.

Ms. Miraglia said that based on her site visit, she had similar concerns as the Fire Department, about the very narrow access to the single family residences. She said that if this was being proposed with the two homes demolished and just split into two lots to provide more parking for the apartment units in the back and giving better sidewalk access, then she would support the subdivision. But to provide two substandard lots, she said she would be opposed.

Ms. Goodbody asked when the other agencies would respond to the referrals, because she had noted that the Hayward Fire Department has jurisdiction over this property. Mr. Young said that they should reply by May 30th. He said it was accidentally referred to the Alameda County Fire Department.

Mr. Moore asked why the PD was being proposed. Mr. Young replied that the alternative would be multiple variances. However, to some degree, the Subdivision Map Act allows exceptions to the Ordinance requirements to a "reasonable extent", but this might be pushing the envelope a little bit, he said.

Mr. Moore said that he had a similar concern, and though it is a pre-existing, non-conforming condition, the proposal to create a substandard for-sale lot out of rental stock, which couldn't be built with all those deficiencies. He said it is a common problem with PD zoning, it being just a way to get around variances.

Mr. Nielsen said that if this property were to be built now, it would not be approved. In his opinion, if the PD process is being used to circumvent the zoning requirements, this is not a good project.

Mr. Moore said there has to be a net tangible gain, and he just wasn't aware of anything here. He said he had concerns.

Ms. Adesanya said that the only benefit that she can draw out of this proposal to allow the planned development with these reduced requirements, is changing the rental units to for-sale houses. The staff report does not address that as a particular need that would benefit the public at large. She said also if they get burned down, it would be hard to reconstruct.

Mr. Young said that one benefit with the subdivision the County would have the ability to impose some conditions that would possibly enhance the project such as improving the parking situation, improving walkways, and having the garage removed.

Mr. Moore asked staff to confirm that the underlying zone requirement is for 5,000 sq. ft. lots, and that it is not the size of the lot, or lot size consistency issues that we are dealing with; Mr. Young confirmed this. Mr. Moore continued, asking how many variances are required for each lot. Parcel A has adequate front yard area, and sides, but the garage in the rear yard and its setback is a problem.

Mr. Young said that probably there were about 10 or 12 variances, but that, for example, on Parcel B, the reduced rear yard setback would be equivalent to the setback provided with compensating open space, although that is not specifically a provision in the RS Zone District.

Mr. Moore said that 10 or 12 individual variances for this project is a lot. Ms. Adesanya said for Parcel B is difficult because it is a square parcel, the square nature of the rear parcel is also unusual because it's a square parcel, which, when it is close to 5,000 square feet, may be difficult to build on. She said she thought the lot size consistency policies speak to irregularly-shaped parcels. If it were just one parcel being created – which was why she asked about the size of the units [on Parcels A and B] – it could make sense for the units, a granny unit for example if it meets the qualifications, but it sounds as if they are about the same size, so that may not be a viable alternative. Mr. Young noted that under the RS zoning, there would be no maximum size for a secondary unit.

Ms. Adesanya said if they were creating just one parcel there could be more compensating open space, as opposed to the little that is provided on each of these lots. If they were to burn down, then you could definitely build a new house on a single lot [combining Parcels

A and B], but not with the two lots. Ms. Sugimura said that according to the summary on pages 4 and 5 of the staff report, there are so many of the standards that are not met. She said it is too many.

Teresa Nazareth said that she understood the concern with the reduction in square footage, but stated that the overall lot is much larger. While one lot is smaller, she said she walked the site with Mr. Buckley and he indicated that this portion does compensate because it is way over the required set back. So, she said, it is a sort of compensatory factor, and is not unreasonable, it is a real way of providing people with homes, that need homes.

Mr. Moore said that there is a need for the homes but it is just too many requests for deviations. It is difficult to be fair to other developers who want to come in, the Council may say "you can not have one, two or three", and then, in this case to consider granting ten variances, is what everyone is struggling with. He noted again that there were ten different reductions from the required standards that are proposed for the subdivision. He said if it were one or two, that would be different, but ten is a lot. It appears to be why the PD application was submitted, but it is a lot of deviations.

Ms. Nazareth said the deviations would not take away from anything. It is just because of the way the homes were built, that this application will accommodate them. You can also see that with a lot of the standards the homes provide more than what is required. The lots are larger than the 5,000 square feet that are required.

Mr. Nielsen said that appeared to be the only standard that was met. When you have one or two variances, that may not be a problem, but ten variances [is a lot]. Mr. Moore told Ms. Nazareth that he understood the logic, that these are existing improvements, but that now she is creating individual lots for sale that have to be consistent with any other person that may come in [with a proposed subdivision] and are subject to this design guidelines. The difficulty he has is under what circumstances would the Council allow her to have 10 deviations on these two parcels that the Council would allow someone else to have. To his knowledge, he said, he was not aware of any such approval.

Ms. Nazareth said that it is a different situation, with existing conditions. Granted, she said, the house is closer on one side, but it provides more space on the other. It is not going to take away from anything. Mr. Moore told Ms. Nazareth that is why we have development standards, that we can apply evenly and equally to everybody. You could make this conform by removing buildings and making various changes, and reduce the number of encroachments. That is a possibility.

Ms. Nazareth said she will take down one garage. Mr. Nielsen told Ms. Nazareth that took care of one of the variances, but you still have ten. But with as many variances as she has, she has to make a choice, to look at the design of the project and try to comply with the current zoning, for us to make a decision this evening. He said the reaction of the Council is not favorable [to the request], and so if she would like to go back and redesign the project in order to conform, then that is fine, but if not, we will make a negative decision tonight.

Ms. Nazareth said she would do a redesign, and therefore requested an extension. Mr. Nielsen told her that the Council is in a position that is not favorable to her and told her to

go back and redesign the project. Ms. Nazareth agreed to redesign the project and come back.

Mr. Moore told Ms. Nazareth that to ensure that she does not waste time, that coming back with only one or two of the items resolved probably will not change the Council's position. She needs to show that she did a real substantial effort and needs to be much closer to the design guidelines.

Mr. Nielsen told Ms. Nazareth that to have 10 variances on the project is not acceptable. The Council will continue the item to give Ms. Nazareth an opportunity to eliminate as many of the variances as possible. Ms. Miraglia said that she thought the only way to get down to one or two variances is to make that one lot [out of Parcels A and B]. She said she could try to keep both lots, but that she does not see how it will be possible.

4. **TRACT MAP, TR-7747 AND SITE DEVELOPMENT REVIEW, S-2048 – K&Z HOMES** – Application to construct eight condominium units on one parcel containing 0.46 acres, in a R-S-D-15 (Suburban Residence, 1,500 sf Minimum Building Site Area per Dwelling) District, located at 20378 Stanton Avenue, east side, approximately 187 feet south of Denning Court, Castro Valley area of unincorporated Alameda County, bearing County Assessor's designation: 084A-0181-014-00 and the rear portion of 084A-0181-015-00. **(Continued from March 27, 2006 and April 24, 2006).**

Mr. Young presented the staff report, with a description of the site plan. He added that what may not have been clear from the grading plan is that the intent is to raise the rear of the property by approximately five feet, and by two or three feet at the rear of the adjacent property within the L-shape.

He stated that the MAC heard this project at the April 24, 2006 meeting. The changes in the proposal to reduce the FAR from 1:1.78 to 1:1.85 which is moving up closer to 3 but not by a substantial amount – a reduction of 368 square feet. The density of the proposal is roughly 17.7 units per acre, about in the middle of the [range for the] area, which the prior report indicated was between 13 and 17 units per acre for some of the apartments across the street. The density is as high as 22 to 28 units per acre for some nearby buildings, and between 7 and 11 units per acre for the duplexes and single family residences in the area. The parking and circulation plan has changed so that the handicapped parking is closer to the building, and the trash enclosure is closer to the street. A change in the parking to provide parking to the rear of the house that will remain off-site was not preferred by the applicant, because that configuration would result in losing one unit and reducing it to seven units. Other changes include the trash enclosure and also play areas are added at each side of the property – about 200 square feet in two spaces. They also modified the tree planting program to address some of the neighbors' concerns. An updated letter from the neighbor-owner of the adjacent property is attached to the staff report, in support of the proposal. As you can see, some of the issues have been addressed. Covered parking has also been added for four spaces. The main issue of number of parking spaces, the configuration and the proximity of parking to the units has not been addressed or changed.

Ms. Adesanya asked where are the play areas located. Mr. Young said it is in the front corners of the proposed building. The staff planner assigned to this project was in attendance to answer any questions.

Mr. Joe Hasnain, the applicant, said he was there to demonstrate that they made an effort to make changes to accommodate as many of the requirements as they could without compromising the economic feasibility of the project. He said they did everything they could except deal with the floor area ratio. They reduced the square footage but not significantly. They wanted to avoid applying for the variance. They moved the trash enclosure and added a picnic and a play area.

Mr. Hasnain stated that the only issue remaining was the floor area ratio, based on our last meeting. In regards to parking, he said that the property is very close to Castro Valley Blvd., and there are three guest parking places nearby on the street, which is a busy street and very close to public transportation.

Mr. Moore asked staff if only 3 guest parking spaces were needed on site to make it conforming. Mr. Young said yes. Mr. Hasnain said that there are at least 2 spaces on Stanton Avenue right in front of the two houses and he does not see parking as a problem.

Mr. Nielsen asked staff if open space was addressed. Mr. Young believes that the staff planner addressed that in detail in the previous staff report.

Mr. Moore asked the applicant about where, at the front of the units where the sidewalk is, the sidewalks are planned 13'-3" away from the units that just bisects the largest potential open space area. It might be more advantageous to move the sidewalk closer to the units to have a small planter in front of them, at least have a large grass open area. These play areas on the side are not really practical. Mr. Hasnain said that they can make those changes. The architect spoke, and agreed, but that the idea was to position the play areas away from the existing residence and also away so they would not interfere with windows and doors of the units themselves.

Mr. Moore said he recalled that last time the question really was if there should be any deviation from parking [requirements] on new development.

Ms. Miraglia asked how many parking spaces there were. John Spaur, project architect, said there are 2 spaces per unit which is 16 spaces plus 8 guest [parking spaces]; two off-site can be counted, so they are deficient just 3 in guest parking only. A mitigating factor could be the proximity to the Castro Valley Blvd.

Mr. Moore said that the Council had in the past considered proximity to mass transportation as a mitigating factor. Mr. Spaur said that there was only one neighbor that originally objected had pointed out that they are near transit, at a fairly easy walking distance. He said now there were not any negative comments from other neighbors, just supportive ones.

Mr. Moore asked staff if the project does not require a variance because it meets the underlying parking requirements, not the condominium guidelines. Mr. Young said that the parking requirements are guidelines and the County subdivision guidelines require one visitor parking space per unit for a lot subdivision, but because this is a condominium, the important phrase is that "in the exercise of reasonable judgment" specific requirements can be waived, such as parking requirements. Mr. Spaur said that they meet all the zoning requirements.

Public testimony. No public testimony submitted.

Ms. Miraglia noted that many of the Council's concerns were addressed, but said that she is concerned about parking. She would not support this project without adequate parking.

Ms. Sugimura said that she is also concerned about adequate parking. If you have a multiple-unit [project], you will have guests, and to assume there will be adequate parking for guests with three on-site and two off-site, she said she was very concerned. Mr. Moore said that what he would like to hear from the Council is, that, knowing the area and knowing new development in the area, while we do need parking, is the development an overall benefit to the area. And the proximity to Castro Valley Blvd. is definitely something we should consider. If it were five spaces deficient, he might have stronger concerns, but at two to three spaces, he is uncertain [on why the project should not be approved].

Ms. Goodbody said she is thinking along the same lines as Mr. Moore, that the applicant has made some changes to address some of the Council's recommendations, such as adding the three parking spaces. She said she didn't know what the parking situation would be once the Eden Hospital is redone. The parking garage might free up some spaces. She said she liked that it was near public transportation, near a pre-school. And from a bigger land use and transportation livability view she likes it, and would be willing to support it, although it is deficient by three parking spaces.

Ms. Miraglia said that with regard to the use of the proximity to transit as a factor for the parking deficiency, one would have to assume that the people using transit would be the guests, because it is deficient in guest parking. She did not think the Council could make that assumption. She said all the County can require are the minimums, but often even the minimums are not enough. You see that all over the place. That is why she is opposed to the project because of the parking deficiency. Ms. Adesanya said that if it is reduced by one unit it can meet the parking requirement and increase the open space as well. And, she added, she was not sure if this would set a negative precedent for future condominium projects. So, she said, she was not ready to support the project.

Mr. Nielsen said that he tended to agree that eliminating one unit would solve these problems. He recognized that making numbers work is difficult and everyone here appreciates that. The applicant has gone a long way to meet the requirements of the County, but everyone is expected to meet the County requirements, and the Council would be remiss to approve this project with these problems.

Mr. Moore said that one unit is a big issue. He asked Mr. Hasnain if he were to eliminate one unit and make the other units slightly bigger, to try to offset that [financial issue] somewhat, had that been evaluated. Mr. Spaur said that they started with 10 units. They tried to design a quality project. They reduced the square footage to a certain level, and he recognized that eliminating units would always solve parking problems. Mr. Hasnain said that with the new hospital, these units will satisfy the needs for housing.

Ms. Adesanya said she was not sure that answer dealt with Councilmember Moore's inquiry. She asked if it would 'pencil out' if they had larger units or the market in terms of townhomes [preventing such flexibility in economics]. Mr. Hasnain replied that by

reducing one unit the problem cannot be resolved. He said for the market segment they are in, it doesn't make much difference for a buyer to buy 1,100 versus 1,300 square feet. This is at the low end of the market. Ms. Goodbody asked if this was in a redevelopment area; other Council members indicated it was not.

Ms. Goodbody moved to approve Tentative Tract Map, TR-7747 and Site Development Review, S-2048 with Planning recommendations with a second by Mr. Moore. Ms. Sugimura and Ms. Miraglia opposed. Motion denied 4/2 with Mr. Frank excused.

5. **2200th ZONING UNIT AND TRACT MAP TR-7709 – FOREST CIRCLE, LLC.** Petition to reclassify three parcels (and portions of two adjacent parcels) from the R-S-D-20 (Suburban Residence, 2,000 square foot Minimum Building Site Area/Dwelling Unit) District to a P-D (Planned Development) District, so as to construct 35 townhouse units, located at 20560 Forest Avenue, east side, approximately 550 feet north of Castro Valley Boulevard, Castro Valley area of unincorporated Alameda County, bearing Assessor's Parcel Numbers: 084C-0713-013-00, 084C-0716-001-05 and 084C-0716-001-06 (and associated Assessor's Parcel Numbers: 084C-0723-007-03 and 084C-0713-012-01). **(Continued from May 8, 2006).**

Mr. Young presented the staff report, including a site description, a summary of the surroundings, the proposed PD, the lot sizes, development standards, circulation, entries, building characteristics and architecture, traffic analysis, and parking supply. The parking would provide two spaces per unit, plus a total of 11 guest parking spaces, most of which would be located near Forest Avenue, near the project entry. The Subdivision Ordinance does require one guest parking space per unit on a subdivision such as this. Mr. Young indicated that the staff planner for the project wished to express strongly to the Council that the requirement could be waived "in the interest of reasonable judgment" and that the Council is advised to consider the proximity of the site to a considerable amount of public transportation, because it is just 550 feet north Castro Valley Blvd. and approximately half a mile from the BART Station entry. The Council should also view this as a transit-oriented development. Staff's recommendation to the Council, and to the Planning Commission is that the project would improve the area, add needed infill housing development, re-use and redevelop an underutilized site, thereby serving the Housing Element. Staff also believes the reduced amount of visitor parking is reasonable. He also stated that the project involves use of the rear yards of two adjacent lots with very deep yards, involving two boundary adjustments.

Mr. Moore asked if this was coming to them only as a variance and would come back as a site development review. Mr. Young said that there are two staff reports with Forest Circle as a heading. This is the 2200th Zoning Unit. Also, there is a separate variance which is for Forest Circle-slash-Mary Todd, that is a separate item. Mr. Moore asked if the project had a request for a 25% reduction in the amount of visitor parking; Mr. Young indicated that it was a 66% reduction, or 11 out of 35 normally required parking spaces. Mr. Moore asked if the County has looked at the Clean Water Act requirements, because of the large amount of paving proposed. Mr. Young said that the response to the referrals indicated it must meet Clean Water Act requirements, and that some grassy swales around the perimeter would most likely be required. He asked the Council if they had seen a graphic

that illustrates a water quality [treatment] area near Forest Avenue. Mr. Moore also asked about the heights of the units – 27 to 37 feet – and if the taller units were near the perimeter.

Scott Andrews, applicant, stated that this property was a mobile home park, and had suffered from deteriorating conditions. They first became involved in the property in October 2004 and their first step was to address the relocation of existing tenants, in order to develop this site in accord with the Housing Element, which identifies it as an opportunity site. They went above and beyond the call with the tenants to develop private agreements with each and every one of them by March 2005 to help them relocate, including money and six-month extensions of their tenancy. The last of the tenants stayed and the caretaker departed in October 2005. They (Forest Circle) bought the property at the end of March of 2005 and began a series of workshops with the Planning Department and Supervisor Miley's office to try to see what could be done to maximize the opportunity for a transit-oriented [project] that is very close to the downtown core, the downtown retail, and major transportation services such as BART, which is a third of a mile away as the crow flies.

He said they went through a number of site plans, including one for 24 single family detached homes, but the Supervisor's office indicated that was far below what they wanted to see on this property. They did density studies to see how adjacent properties were also underutilized. There were two property owners who were willing to sell their portion of their properties to them. In the back of their property there is an apartment property parallel to Forest Avenue that the neighbor wants to sell 12,000 square feet of land to them, but in order for that owner to maintain his zoning consistency, they could only buy about 5,000 square feet. However, they were able to designate the remainder with a perpetual non-exclusive easement for a pocket-park for the use by the project residents and the apartment residents.

After seven months of workshops, it resulted in this project, with acquisition of two adjacent parcels, and this seems to satisfy everybody that has been working on this project. He said he just heard about the subdivision guidelines about a week and a half ago from Steve Buckley, which primarily were guidelines relating to the subdivision of single family type developments, where you have more land, driveways, etc. He said those guidelines are not really designed to look at transit-oriented, high-density townhouse type projects. He said he has done this before, and they normally have limited guest parking because of the nature of the proximity to public transportation, in particular BART, and where you have the opportunity of parking on the street. He said the Council could see from the aerial view that there is a lot of visitor parking on Forest Avenue. He showed an overhead view of another town house project near the Walnut Creek BART Station in Contra Costa County, a project that his company completed in July of 2004. That site plan has 16 town homes on half an acre, at much greater density – 29 units per acre – whereas in the Castro Valley project, it is about 19 units per acre. He said for the Contra Costa County project there was no on-site visitor parking. It is located about the same distance from the Pleasant Hill BART station as the current project is from the Castro Valley BART station. They went through the same kind of process, where Contra Costa County pushed them up from 10 single family homes that they originally proposed to 16 townhomes.

He summarized his presentation, saying that what the Council sees before them is a result of a great deal of time, effort and thought process. He said what he thought they had provided was a terrific project on a very underutilized site targeted by the Housing Element. It will be a transit-oriented project which will operate almost like a little village. He said the Council should notice that the first building is offset more than 90 feet from the street, and so it has very low impact in terms of street presence, and is mostly internal. The view from most adjacent properties would be as shown on the elevation drawings. He said the parking is internal and no parking garage would be visible from the external property, including the street. This is putting its best foot forward and facing out towards the neighbors.

Mr. Moore asked if a traffic study was done, to justify the parking deficiency. Mr. Andrews said the traffic engineer had looked at the Zoning Ordinance, which does not require any visitor parking unless you are leasing out one of your rooms. He did not see the Subdivision Ordinance guidelines. It was less than two weeks ago that he heard about the guidelines. Also, as he discussed it with Mr. Buckley, it is typical within a PD zoning to develop the best project and take all the various things into consideration. We believe that with the proximity of parking on the street and public transportation, and the two-car garages that each unit would have, that the eleven stalls that are provided on the site would be adequate. Mr. Nielsen asked Mr. Andrews if there was public transportation on Forest Avenue itself. Mr. Andrews replied no, but that it is available about 500 feet down, on Castro Valley Boulevard, and is about a 12-minute walk to BART. Mr. Nielsen asked how many parking spaces he is short now. Mr. Andrews said if it is supposed to be one per unit they would be short by 24. He said that the Contra Costa County project has zero visitor parking spaces, and there has never been a problem there.

Public testimony was called for.

Pete Radovich, contractor, said that he had heard the item before this, and was curious about the thought process that was going on, and said that if the Council approves this, they should call the other applicant back, and approve his application.

Public testimony was closed.

Mr. Moore said that this is a great potential project and a good use, but that Mr. Radovich put his finger exactly on the issue, which is how can we look at something with more deficiencies, when with the previous project we said we should strictly adhere to the guidelines, and that is something that the Council need to discuss.

Ms. Adesanya said that the key difference is that this is a Planned Development, and it has definite benefits that she didn't see with the other one, while the previous one was a straight Tract Map, straight subdivision, not a Planned Development, that is why the obvious difference. Mr. Moore responded, saying he recognized that distinction, but that in the spirit of having consistent review, he said he had to struggle, even though Ms. Adesanya was technically right.

Ms. Miraglia said that the overall project looks good but the biggest concern is parking. Mr. Andrews asked to interject a comment, that for an adjacent apartment building, with 19 dwelling units, the Code requirement there was just one stall per unit and no guest parking.

He said these are not Ordinance requirements but guidelines which apply to neighborhood subdivisions on the urban fringe where there is sprawl, and standard [single-family detached] houses on lots. In those areas these guidelines would make sense, but for urban-oriented, infill development, as in this case, to provide that type of guest parking on site completely defeats the ability to have a project like the one you are looking here and that the County is so anxious to have at this location. Ms. Miraglia said that part of the problem is that Castro Valley is not urban, but suburban, which is a little different. It goes back to the fact that even though it is transit-oriented, all those guests are not taking BART or bus and we run into this problem all the time, on lots of projects. She said she commended the applicant on dealing with the closure of the mobile home park. But, she said, if Mr. Andrews had been made aware of the parking subdivision guideline, this might have been designed a little bit differently.

Mr. Nielsen asked staff why the applicant had not been informed of the guidelines earlier. Mr. Young replied that he did not know what discussions had been on this issue. Mr. Andrews said that it was an unfortunate quirk of fate that the Senior Planner he had been working with for a year and a half, Jana Beatty, has recently been on maternity leave, and couldn't be here, so there has been discontinuity. However, he said there has never been a moment thinking that the proposed PD would result in this conflict, at a location like this which has so much on-street parking on Forest Avenue. He said he would like to reiterate that it is not an Ordinance that is being discussed, but a guideline for subdivisions, that can be set aside in favor of the other benefits, especially when there is lot of on-street parking, in addition to nearby public transit.

Mr. Nielsen asked Mr. Andrews when he found out about the parking requirements and if he could mitigate the 24 parking spaces. Mr. Andrews said he heard just a week ago this past Friday, but that to mitigate the issue, given where they were in the review process, would be a huge hardship. Mr. Nielsen said that something could be done in order to eliminate large part of the parking deficiency. Mr. Andrews said he could not think of anything other than reducing the number of units. He said the push on them was to increase the count of units, and that is why they ended up buying properties to try to increase the number of units. He said they actually had much better parking ratios when they had a lower unit count. But a reduced number of dwelling units was not what was wanted here. There is only so much land, and some had to be kept aside for clean water treatment.

Mr. Moore asked staff what the Council should do, since there is a substantial reduction in parking spaces and for us to be consistent this is a tough situation. He said he understands that the County wants these numbers of units, but with 66% deficient in [visitor] parking, he wanted to know what the policy approach should be. He asked Bob Swanson, from Supervisor Miley's office, to reply. Mr. Swanson said that Mr. Andrews had meetings with Supervisor Miley and Seth Kaplan and they did look closely at this when it came in at a lower density, and indicated that their office had requested the higher density because of the location relative to BART and its location near bus service on Castro Valley Blvd.

Ms. Miraglia said that since this is an advisory council, Supervisor Miley's office should have come before the Council asking for advice. Mr. Swanson said he certainly was getting the advice now.

Mr. Nielsen said he had sat in on one of the meetings, and that no one at those meetings indicated that the parking supply might be deficient. Mr. Swanson concurred. Mr. Nielsen said it is a real concern to him for the applicant to find out about the parking issue two weeks before the expected approval. Mr. Andrews said that it seems to not make sense on the face of it, because the guidelines' requirements are so different from what is required for apartments. If they were building 39 apartment units, they could comply with just 39 parking spaces and no guest parking spaces, just one per unit. He said they have 81 parking spaces.

Mr. Young indicated that there is a Subdivision Ordinance, and Condominium Guidelines, and they are two different things. He said the Subdivision Ordinance is written in a mandatory frame. Mr. Andrews stated that the way Steve Buckley had explained it to him, although he had gasped when he heard the guidelines, within PD Zoning the applicant can set their own parameters. Mr. Andrews said the guidelines can be set aside in favor of what works for the project, and this resonated with him, because that is what he experienced with the project near the Pleasant Hill BART station. In that case, the Zoning Ordinance required guest parking and the PD zoning that was approved and the project as built there, there is no guest parking because the goal there was to have higher density per unit and they could not have both. And it is the same here on Forest Avenue.

Ms. Adesanya said that she agrees, because she is a city planner herself, that where there are a few minor variances, that is where a PD can be useful and appropriate. In this case where there is substantial difference, and because there have been some negotiations with senior county staff, she thinks that a development agreement would be appropriate to bring this forward with a substantial variation in the requirements as a planned development. She said she was concerned that this is a huge precedent we are setting. However, she suggested that if Mr. Andrews negotiated a development agreement with the County, that would be very clear what the give and take was, and what exactly they are going to do, and then come back to the various hearing bodies, that might have a remedy for this situation. The project certainly looks like a development needed in this area. However, she said she would not want to set any precedent for future developers. Since Jana Beatty is on maternity leave, Steve Buckley who is more familiar with the project should have come to give the Council a presentation from the staff point of view as to why the Council should seriously consider this major variance in parking. If there is a very strong opinion by senior staff, that should happen at a future meeting.

Mr. Young said that the developers would like to move forward. He is representing the staff planner assigned to this project and said that he does not have a high level of experience with the Ordinance, but it his understanding that the Ordinance is mandatory. He cited a phrase that is in the Ordinance, that "in the exercise of reasonable judgment", various standards and requirements can be waived. It has been used by the County in an extremely liberal manner in the past. He said that appears to be the case here, that it is meant to be applied in a liberal manner for this PD, with reduced parking standards. Ms. Adesanya said that at a minimum this should have come with a recommendation from staff, with some reasoning from staff.

Mr. Moore said he agreed that the applicants are in a tough spot with information gleaned at the last minute. It is, he said, a policy problem from his standpoint. Overall, there are a

lot of positive benefits from this project, and it really looks nice. He asked staff if the required parking spaces are mandatory or discretionary. Mr. Young said that in the Subdivision Ordinance it is mandatory. The Zoning Ordinance does not require guest parking, but does require two parking spaces per dwelling unit. The Condominium Guidelines recommend one visitor parking space per unit.

Mr. Moore said that Mr. Andrews meets the mandatory minimum requirements for parking, but that the visitor parking space requirements are discretionary under the Guidelines. He said he is just trying to understand the applicant's argument. He said from his standpoint when you look at a PD, you look at what is the benefit to the community, and he is seeing the large pocket park, quality development, great use of the land, smaller units, and he sees a lot of positive things here. The proximity to BART is compelling, and it is on a major street that has a lot of off-street parking, and there are a lot of reasonable things to support this project. His problem is, is the number reasonable.

Ms. Adesanya asked Mr. Moore about his confusion of the Guidelines versus the Ordinance. She asked if they were talking about the Subdivision Ordinance. Mr. Young said that the Subdivision Ordinance does use the word "shall". Ms. Adesanya noted that the Ordinance has the mandatory requirement, but that it does also say that in the exercise of reasonable judgment, that certain sections of the Ordinance – not the Guidelines – can be waived. So the question is, are we willing to recommend to the Planning Commission that it waive the requirements for these 24 parking spaces.

Mr. Moore said when he asked if the applicant had done a traffic study, he should have asked did he do a parking study. And the applicant has shown us another similar project [without visitor parking]. Mr. Andrews said that when you do a town house project – which is always a PD project – you will never see one [visitor] parking stall per unit, never, ever, anywhere. One guest parking space per unit on a PD town house has never been seen. He said he has three other examples besides the illustration that he passed around, from Hayward, Livermore and Pleasant Hill. They all have parking ratios along the lines of what he is proposing here, or less. The one he passed around has none. And it has parking along Forest Avenue.

Based on what Steve Buckley told him, he said he believes the Council has enough [information] to make a judgment call that in this particular case, and with what has transpired over the last year and a half. He was mortified, he said, to hear about the requirements, because they bought this property 14 months ago, and the 'carry' on this is \$30,000 a month alone. Ms. Adesanya asked Mr. Andrews if he know how many parking spaces there are in the street on the frontage of the development. Mr. Nielsen indicated it was about six.

Mr. Nielsen said that planners created the problem. He did not think there is a question about the intent of the development for higher density in the downtown area. Nobody was made aware that Mr. Andrews did not meet the parking requirements. It has put him in "a heckuva position" and put us in a worse position. It is the Planning Department staff that needs to sit down with the developer to work this out. He said the Council was put in the position where we cannot make an equitable decision, because the development guidelines that were given to the developer were incorrect.

Mr. Moore said he would like to go back to what Ms. Adesanya said, is whether we can make a recommendation that we think the design as is has merit and the Council can move forward. Mr. Andrews said that something that was written in the staff report speaks to that and it says gives the Council the ability to go ahead and approve the project with its current parking, for the reasons you are describing.

Ms. Goodbody said that the request is to waive the parking requirement, in the interest of reasonable judgment. Mr. Nielsen repeated his statement that the Planning Department created the problem. He said for the Council to approve this project would jeopardize the decisions we make in the future. He said the parking requirements were not disclosed to Mr. Andrews early enough, and it puts the Council in a Catch-22 position. He said he thinks the ones who created the problem should help resolve the problem, rather than forcing the Council to make a decision that is going to set a bad precedent. It is going to take a meeting of minds higher up than the Council, which is only advisory. The process needs to be reviewed in the Planning Department so this does not happen in the future. He said this is not a simple project – it is costing the applicant \$30,000 a month. This is a major, major financial disaster for Mr. Andrews. Mr. Nielsen said that the Board of Supervisors and the Planning Director should help resolve this situation instead of putting the burden on the Council. He said he feels that the Council is in a no-win situation and can not make a decision, and be fair to the developer and fair to the community. The Council did not create the problem, and the developer did not create the problem. So the Council has to look at this and ask what do we do now. If it takes a decision from the Board of Supervisors or the Planning Director, he said they should come back to us with advice on how to deal with this major problem.

Ms. Adesanya said that just like with variances and other types of applications where the Council does get a formal recommendation from staff, whereas with site development review and tract maps we usually do not get a recommendation, it is just a presentation of the facts, and the Council can make a recommendation either for or against. She said she thinks this application warrants a more formal recommendation particularly because the developer has been working with County staff, so the Council can make a more informed decision. She said that she does not have enough justification or background [information], given what has happened, to make that recommendation right now for – for lack of a better word – the variance.

Mr. Moore said that presuming that Mr. Buckley will come back and a report will say that staff recommends approval with the parking deficiency, that will be two, perhaps four weeks from now. He asked the Council if it was just a policy matter of us being consistent on why the Council can justify [the exception]. Ms. Adesanya that was absolutely correct. She said that she would rather wait two weeks and see this wonderful development with a recommendation, and together with that recommendation, reasons A, B, C and D as to why the Council should approve the application, because that is what is going to go on the record. That record is what we can pull out and show to the next developer when the next developer comes with 30 units and no parking. The Council could then have that as background, as to why this particular project warrants that approval.

Mr. Nielsen said that the point is that this should be done in a timely fashion because of carrying costs. Mr. Andrews said he is desperate for the same answers that they are

looking for. He said he is looking at 2 or 3 other projects that would be similar in Castro Valley, that will have a huge impact, one way or the other, based on the guidance that we're going to get. Right or wrong, the way that we moved this project through the conceptual stages, to what the Council is looking at tonight was a long and drawn out process, where the end product was one that everyone was happy with and proud of. To find out that something like this, at this late stage, is obviously very shocking. It needs the clarification, not just for this project, but for any project in Castro Valley, and he has at least two other ones where the answer is huge. And for this project, it is really huge because we have already bought the land and spent the time, and are this far down the line.

Mr. Andrews agreed that [the follow-up analysis] should be done, and he does not want to rush it, because they have waited a long time so far, and then maybe we can get the clarification we need to all feel good about it.

Mr. Nielsen said the item would be continued to give the Applicant time to get together with the County staff and get it resolved. Mr. Andrews asked if the Council wanted to continue the other related item. Staff indicated it should continue that item as well.

Mr. Moore asked if the Council handled the previous applicant correctly and if it was the same policy issue. He asked if the Council could act retroactively, because it seemed to be the same issue, only smaller. He said he wanted to be sure the Council wants to make sure the Council is applying [the requirements] equally and fairly to everybody. Mr. Young said that the only one difference is that this is a PD and the previous one was a Site Development Review and a Tract Map.

Mr. Nielsen said he had made an error on Tract Map 7747, that after the vote to approve it failed, he needed another motion to deny it. He asked if there could be a motion to deny that project. Ms. Henninger said no, there could not be a motion because the applicant had left. Ms. Adesanya said she would also like to point out that a big difference for her was that this [Forest Circle] project had a much higher level of scrutiny and participation by County staff, as a development that they think is going to help further the General Plan. And so it is needed for staff to come back and make that argument, whereas she felt she did not get any such arguments on the smaller, previous item.

The Council continued this item to the next meeting to give the applicant an opportunity to meet with County staff.

4. **VARIANCE, V-11993 – FOREST CIRCLE, LLC/HARRY & MARY TODD -** Application to allow construction of a new detached secondary unit two stories, 26 feet in height where one story and 15 feet in height is the maximum allowed; and providing three-and-half feet side and rear yard where five and 20 feet are required, in an R-S-D-20 (Suburban Residence, 5,000 square foot Minimum Building Site Area) District, located at 20554 Forest Avenue, east side 350 feet, north from the intersection with Vincent Court, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number 84C-0713-012-01.(Continued from May 8, 2006). **This item will be continued to the next meeting.**
5. **SITE DEVELOPMENT REVIEW, S-2037 – GETTLER-RYAN, INC. –** Application for the installation of signs on an existing building in CVCBD-Sub7 (Castro Valley

Central Business District Specific Plan – Sub Area 7) District, located at 3519 Castro Valley Boulevard, south side, corner southeast of Redwood Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 84C-0618-001-04.

Mr. Young presented the staff report for the price sign and re-signage, including site characteristics, uses, and that the project is due to conversion of the site from a Chevron station to a Shell station, and to deal with a new monument size that conforms to the reduced lot size that resulted from adjacent roadway improvements. He stated that according to the staff report analysis, the proposal is consistent with the limits of the Zoning Ordinance and the sign controls that apply. As proposed, the replacement signage meets with the overall intent and policies of the Castro Valley Central Business District Specific Plan for Subarea 7.

Ms. Sugimura asked if the monument sign would be the same height as the current sign, or taller.

Eric Janzen, representing the applicant, said that the original Chevron sign 'stuck up' a little higher than the brick columns that are currently on the site, and which had an overall height of ten feet, right to the limit of the previous variance, and we intend to do the same. However, traffic engineering required that it be a minimum of three feet above grade. The planter that the sign is placed within is slightly crowned so we needed the extra height to make sure we had 3 feet clear at the center. If you measured from the grade at the supports on either side, it would be about 4 ½ feet above grade, and with the sign attached, it is ten feet high. He also described the location of the secondary price sign, which is required by state law on Castro Valley Blvd. and would indicate pricing only, with 24 square feet of total area.

Public testimony was called for. No public testimony submitted.

Ms. Adesanya moved to approve Site Development Review, S-2037 with Planning considerations with a second by Ms. Goodbody. Motion carried 6/0/1 with Mr. Frank excused.

- 6. SITE DEVELOPMENT REVIEW, S-2028 – LARSON/SAIDIAN** – Application to allow the construction of a two story, 9000 square foot retail and office building in the CVCBD, Sub 7 (Castro Valley Central Business District Specific Plan, Sub Area 7) located at 3226 Castro Valley Boulevard, north side, approximately 200 feet west of Santa Maria Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 84A-0112-011-00.

Ms. Sugimura recused herself. Mr. Young presented the staff report, including the site description, existing uses, frontage on Castro Valley Boulevard, planned reconfiguration of a turning lane in the median, County traffic engineering review, parking supply and proposed project land use and other features. Staff recommends approval with attached conditions of approval.

Mr. Richard Larson, project architect, stated that the application that was just described by staff was the original project submitted in October 2005. At that time it was a catalyst for the Redevelopment Agency to review shared parking in the area. After seven months,

many hearings and negotiations, the Council has another project before it, which is shown at the back of the staff report. The first project was a building placed on the east side, but after review, the building has been changed to be on the west side, with no parking on the side, just parking to the rear, and a larger building.

Ms. Adesanya asked if it was correct that the existing buildings would be demolished; the applicant indicated that was correct. The existing store is the "Carry-Outee".

Mr. Moore asked about the elevations, and the 38-foot height of one of the elements. Mr. Larson said it was for the stairway. The building would be 32 feet high in the front and 38 feet in the rear, but only for the stairway, that goes from the first to the second story and up to the roof deck.

Mr. Nielsen said this is an interesting project in that it was brought before the Redevelopment Agency, and Redevelopment has worked with Mr. Saidian in obtaining shared parking in the rear, which is one of the objectives that Redevelopment staff has been working on for some time. It has allowed Mr. Saidian to build a larger building, which is what the Council was looking for. It will give an opportunity, once the shared parking arrangement is worked out, to put in a pedestrian walkway to the back when an agreement is reached.

Ms. Goodbody asked if this project included the "Worleys" property; Mr. Nielsen replied that that property is where the shared parking would be. Ms. Adesanya asked if it would close the driveway; Mr. Nielsen responded and said it would not, until the shared parking was established, and then the driveway would become a pedestrian walkway.

Ms. Miraglia asked how far back the building is compared to the buildings on either side. She said she did not think it was as close to the street as the Remax building. Mr. Larson replied and said that it is not as close as the Remax building, but is closer than the restaurant to the east of his project. Ms. Miraglia asked Mr. Larson about the color of the building trim, as it is apparently a different shade of moss green. Mr. Larson said that the building itself will be a light moss-green color. The trellis, the brackets and all the other trim that the graphics show would be a natural, light wood color. Not painted, just stained.

Mr. Moore asked what type of metal would be used on the horizontal canopy; Mr. Larson replied it would be corrugated metal with a channel surround. Square, and not round.

Public testimony was called for.

Matt Mitchell stated that it was a much different environment than what he experienced two years ago. He said he had participated in the shared parking agreement, and was in total support of it, but it did not help him. He said he had some comments, but wanted to see the building built. He said he did not want the Council to put Mr. Saidian through the same process that he experienced. He said there are some design deficiencies in the project that he would not have been allowed to have. He said his parking lot had to be designed as if it were tied into the El Rancho restaurant. They had agreed to shared parking, and had to design it to tie into the existing parking lot of the restaurant. Furthermore, he said, he understood from Alex Amoroso and staff that Mr. Saidian would be receiving future credit for parking spaces that could be parallel spaces on the side of his building, although that is

to be changed to a pedestrian walkway. That entrance is going to be a walkway, so people will drive in by his building, which is a school. He said that is just not acceptable. He said that if that is the plan to make his driveway the all-purpose driveway for everybody, he will not cooperate with shared parking. So that vehicular access has to be maintained. These parking spaces along the back [of the lot] will have to be deleted in order to accommodate the future shared parking lot traffic flow into the El Rancho Steakhouse parking lot, because that is what he had to do. Furthermore, he said, he was not sure if there was a separate landscape plan. He said he had to landscape everywhere, including all sides, front and back of his parking lot and along one side of his building, but he did not see any landscaping on the back of this. He said he wants to see rules applied equally or else he wants [approval] to build a second story on his building. He said he designed his building to accommodate the loads [of a second story]. He said it was not what he really wanted to do, because his building was fine the way it is. But, he said, he thought the rules are to be applied equally. But if they were not, then he wanted to do "Plan B".

Ms. Goodbody (or Miraglia?) asked Mr. Mitchell to clarify his involvement as to which property he owned; he explained that he developed the Sylvan Learning Center building. He said he was interested that people who appeared to oppose his project two years ago with unfounded allegations about his proposal were not present this evening to express similar concerns with the subject property. Ms. Adesanya asked for clarification of where his parking was; he replied that it was in the back. He also described how the El Rancho restaurant parking "wraps" around Mr. Larson's property, and provides a lot of parking. He said his lot was relatively tiny, and he had to design his parking to be coordinated with the El Rancho restaurant parking. Although he had argued at the time that the El Rancho parking could be re-stripped, he was told "no, you have to redesign to match", which cost him at least one if not two parking spaces.

Mr. Nielsen told Mr. Mitchell that the important element was that the shared parking concept had not got to the point where it could be applied to Mr. Mitchell's property. Mr. Mitchell said he had signed an agreement to do it. Mr. Nielsen replied that the Redevelopment Agency was not to the point to be able to do that. He continued and said the Council is trying to apply the rules with what the Council is provided with. Mr. Mitchell said that [on his site] there is landscaping in all four sides, and he asked how the current project could be approved without a landscaping plan. Mr. Nielsen told Mr. Mitchell that the Council is not finished with the project yet. Mr. Mitchell said that if one looks at the front of the building, which is nice, and he said he does want to see it built, it is almost identical to his original plan. Previously, he had a picture of what his building would look like, and everyone hated it. He said this was another inconsistency.

Ms. Adesanya asked about the primary access drives, as shown on the "Shared Parking Reconfiguration Draft" plan, in the staff report that shows potential primary access drives and potential pedestrian walkways, with one between Remax and Worleys and one between the proposed development and El Rancho. She asked how close, through the Redevelopment Agency, is this to being a reality. She asked if it is going to require the concurrence of all the property owners along that frontage to make it happen. The reason she asked, is that when the Council acts on the application currently before it, what is the likelihood that this pedestrian walkway will actually [be constructed], or if she should assume it will continue to be a driveway to provide egress and ingress. Mr. Nielsen said

that they are in the process right now of negotiating and getting agreements of property owners who have shared parking agreements. He said he can not give a 100 percent likelihood of it being built, but that the objective is to turn that into a pedestrian walkway. If they can not get the agreement of all the property owners that are a party to the parking agreement, then that may change slightly. That is why they put in a proviso, that if the agreement can be reached, that is the object to put in the walkway; if not, they provided for a driveway to reach the parking in the rear. The agreement has not been signed by every one, but they are asking for the Council's indulgence in the mean time.

Douglas Home, Mr. Mitchell's partner, said that is the conundrum. The issue, he said, is how they look at this from the design standpoint, does one design for the possible "pie-in-the-sky" shared parking scenario that may or may not happen, or does one design for the here and now. He said he is caught in between. He absolutely wants to see this built, but he has a couple of concerns. He thinks it needs to go back to the drawing board one more time, although as a developer, he hates to see that happen. He said the building seems to him to be overwhelming, because is closer to the street than theirs is, they are limiting the view down the street of the signage of their tenants – Highland Mortgage and Sylvan Learning Center. By simply pushing the front back a couple of feet, 2 or 3 feet, and align it with the furthest extension of their building, you can make a lot of those issues go away. It is going to be taller than theirs, but that is a fact that he can live with. He thinks more landscaping is needed. They were required to put a considerable amount of landscaping which decreased the rentable square footage on their property, and the profitability of their building, so he would expect the same thing here. He said the last strip of landscaping up against the back of their building should be extended out of it. It is not a hammer head but a turnout, the last two cars are going to need to back out towards their building in order to get out, and it is a great spot to put it. But mostly, the "Elephant in the Living Room" comes down to the shared parking. Now, he said, he knows the applicant is completely committed to shared parking, as is he and his partner Mr. Mitchell. But here, there is a way here to confirm it, to put it in concrete. If he is held to the same standards as they are, if you make him design his parking lot to accommodate shared parking as they did, the choice would be eliminated. Then you have another fan of shared parking. The rest of them have to sell [the concept to] the adjacent property owners. It would not be an easy sell, but it would be there. The result is that the building is going to have to be a little bit smaller without a variance on the square-footage to parking ratio. He is going to maybe lose two, three, maybe four parking spaces. In fact the Council's own survey says four. In the equation, it is four per 1,000; office – three per 1,000; or three per 900 square feet for commercial space. The building would end up probably 8,000 square feet. He said he did not do the math, but that is the bottom line. He said if those things area done, and everyone gets along, hopefully we will get shared parking, and a nice downtown.

Mr. Larson said that the parking on the side of the driveway had never being proposed, they are not including that in their parking calculations, and he was not sure where that idea came from. The second item, the building stands as it is now with the correct number of parking spaces, they are not asking for any variances. He said that when shared parking is established, they will lose 4 parking spaces, that is correct, as will other projects around there. But that is the intent of shared parking. You are going to have to lose spaces to have access to all the parking, but if you see the calculations, the consultant has worked that out,

and there should be adequate parking back there. He also said the parking has been laid out for future shared parking and that is why the landscape is as it is in the drawing.

Mr. Moore asked Mr. Larson when all the parking spaces are filled, as the gentleman said, one parking stall might need to be a turn-out. He asked if staff had talked [to him] about that. He said it seemed odd to have the parking dead end without a way to turn around when all the parking spaces are filled up. With a building of this size, it is a high probability that it could occur. Mr. Larson said he agreed, but that once the shared parking is in place, that would not happen. Mr. Moore said that was correct, but that it may not happen anytime soon. Mr. Moore said that he was looking at the configuration with a little extra buffer around the temporary trash enclosure, and wondered if it could not be rearranged to provide another compact space, and leave some area as a turn-around. Mr. Larson said that was possible to use more compact spaces and gain a turn-around. Mr. Moore continued, and said he wanted to respond to the issue of what was required on an adjacent development, we just got new information. The Council is trying to be consistent, but since then [when the adjacent lot was being reviewed] a lot of things have changed. He said the most they could offer was to allow the owner to come back and request relief, if something has changed, and can be made to fit within the guidelines. He said he understood that the current applicant had been asked to do more; Mr. Larson said yes, and said they had been asked to make more of a downtown atmosphere, more pedestrian-oriented, which means moving the building forward, and put parking in the rear, as opposed to the old strip mall [approach].

Mr. Moore said that as far as the location of the building and proximity to the adjacent buildings, it is pretty close to where the Remax building is, probably within three feet. He asked Mr. Larson if he could move the building back, and the rear exit doors, and the inset inside the tenants' space so they are not projecting over the sidewalk and move the front of the building back a little. He said he did not know if Redevelopment staff had asked you about that. Mr. Larson said the building is now 40 feet wide, which is about as narrow as you want in a commercial building. If we start moving the building back, then we are not accomplishing what the Redevelopment Agency wants, which is a larger building, and the building towards the street.

Mr. Nielsen asked, in relationship to the line of sight down the street, if there was enough width in the parking lot to just move it back. Mr. Moore said he is not suggesting changing the building size but if Mr. Larson recess the rear exit door so it can swing outwards, then you could move the building back and still have the walkway at the back. Mr. Larson said that would only gain them one foot, and that they are required by ADA [(Americans with Disabilities Act)] to have a minimum five-foot wide walkway, when that door swings out, and if the door swings in, then we still need four feet of walkway. It is only five feet now, with the overhang of the cars. There literally is no wiggle-room there. We would have to make the building smaller, but 40 feet is the minimum for a commercial building. Mr. Mitchell, in the audience, stated that they had made their building smaller, four different times, with four different iterations. Ms. Adesanya asked for clarification that when Mr. Larson speaks of a 40-foot width, he really means the depth of the retail unit; Mr. Larson affirmed that was correct.

Mr. Moore asked about landscaping, saying that it is normal that we would typically require more landscaping on a commercial development. Mr. Larson said he understood, but that when the driveway becomes a pedestrian walkway, that area will all be landscaped. Hopefully, there will be a restaurant there, with outdoor seating. This is something that the Redevelopment Agency had asked for. For our first submittal, Mr. Larson said, they had a lot of landscaping. Mr. Nielsen said typically for the front of the building there is not any landscaping at all; Mr. Larson agreed that that is typical of a downtown development – they do not have landscaping behind the sidewalk, in front of the building. Mr. Nielsen said it might soften the appearance. Mr. Larson stated that they would have large planters on the front.

Ms. Adesanya said the County's shared parking reconfiguration plan also shows street trees. Ms. Miraglia asked about the dimensions of the planters; Mr. Larson replied that they would be about 2-½ feet deep by 4 feet wide. Ms. Miraglia continued, saying that the building needs to be set back, even though Redevelopment wants it closer to the street. She also said there needs to be that turn-around. She said perhaps either the applicant or another person on the Council could explain, that when it is said to be 'configured for shared parking, how different is that from what it is now. (the explanation to Ms. Miraglia was inaudible).

Ms. Adesanya said the issue of turnaround remained, except that it would be eliminated with shared parking. Mr. Nielsen said that the Council can condition approval on that.

Mr. Moore made a motion for approval of Site Development Review, S-2028 with staff considerations and the following modifications subject to Council, he thinks the building needs to move back. He said he understands the issue as far as the building size, that 40 feet is optimal, but it needs to be pushed back a couple of feet, to be in line with [the adjacent building]. Ms. Adesanya said that she is advocate for downtown development, she likes it when is closer, however since this is a new building it does not make sense to have another new building projecting out in front of it, so in this instance she agrees that it should be aligned with the other building, particularly with the one that we just approved.

Mr. Moore amended the motion for approval of Site Development Review, S-2028 with staff considerations and the following modifications: that the front of the building setback be aligned to the adjacent pop-out of the Sylvan Learning Center building and that provisions for a turnaround be made somewhere in the rear, with a second by Ms. Miraglia. Ms. Adesanya stated for the record that she did not feel that the landscaping issue had been fully addressed, and that, for the Site Development Review, this was the appropriate venue for discussing it. She also stated for the record that she understood that the reason additional landscaping is not being proposed in the rear parking area is because of the intent for the shared parking. (No amendment to the motion was put forth). Motion carried 5/1/1 with Ms. Sugimura not voting and Mr. Frank excused.

- 7. MODIFICATION OF SITE DEVELOPMENT REVIEW, MS-1985 – HUGHES –** Application to modify S-1985 with the extension of a block wall to screen roof-top equipment and to remove an existing carport canopy in the 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 Valley Boulevard, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 84C-0724-063-00.

Mr. Nielsen recused himself. Mr. Moore acted as Chair for this portion of the meeting. Mr. Young presented the staff report. He said that the property is the Capers' Restaurant, which is mostly deconstructed at the present time. The canopy and the frame of the restaurant is still in place. The new restaurant, which was approved by Site Development Review in August of 2005, provided for 19 parking spaces, trash enclosure, and landscaping. He described adjacent land uses, access, original project definition, details, parking supply, etc. He said that to meet Building Department regulations, various changes were made to the site plan. The northwest corner of the building was added to allow access to the bathrooms from the interior of the restaurant, and raised the roof over the trash enclosure for various reasons. The current proposal is to eliminate the carport [because] it was decided that would improve the appearance. The carport related to the old drive-in nature of the restaurant, but did not contribute to the design. The changes to the west façade are the main area of changes. The "to-go" counter on the outside, on the west side of the building was eliminated. It was replaced with the outdoor seating. A new sit-down counter was added to the inside, in the same area as the exterior counter. He also described the architectural details, and the shortened extent of the fascia to the rear of the building, and the raised height of the wall to screen mechanical equipment, instead of metal screen on the roof itself, which would provide for better access to the equipment and drainage of the roof. He said all other aspects of the restaurant would remain the same as approved last August.

Ms. Miraglia asked if staff was ever advised by the applicant of the change from a remodel to a tear down. Mr. Young said that it is not in the staff report. He introduced Staff planner Elizabeth Greene, who said that in going through all the documentation she did not find anything that said when it was discussed, how much of the building would have been removed or not. What staff has in the file is what the Council approved last time, which states that it is a remodel of the interior and the exterior. That is all that staff was able to find on this project.

The contractor, Pete Radovich, representing the applicant said that the project is to extend the wall 4 feet on the east side and take the canopy down. Mr. Moore said the question was whether this was a remodel or a teardown, and that this is at least a substantial tear down. Ms. Miraglia said that to the Council it was presented as a remodel. With all of the walls taken down, and the carport is removed – which she said, by the way, is a substantial improvement – is a totally different scenario. Originally, when it was her first night on the Council, she was the only person who opposed the project. Having gone to all the Redevelopment meetings, [she felt that] aluminum siding and that kind of style was not what Castro Valley residents say they want. Now, she said, she is quite sure that concrete block is not part of what they are envisioning either. The reason that she felt this was an important – the issue of the tear down versus the remodel, [has to do with] Redevelopment. She said that when this came before the Council, the original staff report, staff comment quoted Section 2.1 of the Guidelines for Redevelopment, which had to do with where that building should be situated. The staff comment was that because it was primarily an

exterior remodel, addition and interior remodeling of an existing structure, staff felt that moving the building to the corner was not a reasonable request. Now, in light of the fact that virtually everything has been taken down, she said, [she felt another design should be required]. She said she did not know if the applicant knowingly presented this as a remodel knowing that it was going to be torn down, or if circumstances evolved into a tear down. She said she frankly felt that it should be oriented to the corner.

Mr. Moore asked staff if this is in the preview discuss at this meeting as far as reopening of the previously approved design review based on potentially new circumstances or is the Council only able to comment on the proposed changes.

Mr. Young said that Ms. Henninger spent some time researching the building approvals and there have been a number of building approval sign offs and the permit sign off including zoning counter approvals. We do not know the exact nature of those approvals. It was indicated from Steve Buckley that given the current status of the development those plans do not appear to be a long way from the substantial completion from the previously approved SDR.

The contractor said he is ready to pour the foundations, and is “ready to roll”.

Ms. Henninger said that it was noticed as a modification, and so the Council’s action needs to be in regards to the modification. She said the Council could add other comments, but the vote needs to be with regards to the modification.

Ms. Goodbody said she felt the Council was looking at an entirely different project now, and not what the Council had agreed to, and to what she hoped to see developed. Mr. Radovich asked her why she felt it was different; she replied that it is not much different except for the materials and height. Mr. Radovich said that it is the same project, and that all they are doing is that the rear wall is being built out of block, and on the property line because they cannot access the wall from the other side, because they do not have permission from the neighbor. The only way they can build that wall is on our side, out of block. He said they are not doing it for any other reason.

Ms. Goodbody said that the way it was presented to us could have been a little more clear. Mr. Radovich said the need was because we did not have access, and so the only way to build on property line was to build with block.

Mr. Moore said that if the Council had known it was going to be tear down or remodel, it might have been a substantial modification, and other comments would have come up, and it could have been a better project. Mr. Radovich said that they had the OK from Planning and Building Departments to build the 12-foot wall. They just need the next four feet. That was all they were trying to accomplish.

Ms. Miraglia told Mr. Radovich that he did not have the approval to build the 12-foot wall out of concrete block. Mr. Radovich replied that was not correct, and that they did have that [approval] from the Planning and Building Departments. They are going for 4 feet more in height to hide the equipment. Ms. Goodbody asked how come the 12-foot wall did not come before the Council first.

Ms. Greene, staff planner, said that when the Council is talking about the 12-foot high wall, it is a wall that was approved at the last meeting. When one looks at either the original plans or the new plans, one will see there is a storage building along the property line. So the 12-foot high wall is the back wall of that building. She clarified that it is not a separate wall. One of the things that they are requesting is that the wall be increased from 12 feet, on the property line, to 16 feet. So, she said, the roof of building stays the same height, but basically there will be a parapet of 4 feet on the back of the building, on the property line, an overall 16-foot wall.

Ms. Adesanya asked what is in the 4 foot space. Mr. Radovich indicated it was an equipment screen. Ms. Greene explained the way the roof and the mechanical equipment on that roof is. The screen was in line with a part of the building that was set back from the side property line. As a result instead of having it 5 feet in from the property line and on the roof, somewhat in the middle of the roof, what they are asking is not to have that screen but instead just use the wall that is on the property line, raised by four feet to screen the mechanical equipment.

Public testimony was called for.

Rose and Andy Giustino, residents at 18734 Crane Avenue, spoke together. Ms. Giustino said she and her husband do not know what is going on. They did not receive notice of anything. They attended one meeting at the beginning but two were cancelled. She said that Mrs. Hughes called her and asked to have access for construction, in their back lot, which is a 12-space vehicle parking lot for their title company. She said cars come in and come out, all day long and she did not want any trucks back there, bothering her tenants. They have very good tenants, and she just did not want that. Mrs. Hughes never explained to them how high this wall was going to be. According to the plans they looked at, it looks like about 8 feet. She said they were about 2 feet below, so the difference would be 10 feet. And now, she continued, saying they want to go up to 16 feet. That would be 18 feet in total, as a block wall. She said they have nice trees and plants in their back, and she asked if that would cast a lot more shade on her plants. She said she thinks that a 16 foot wall is way too high. She (Mrs. Giustino) tried to call Mr. Larson four times but he never returned any of her calls. Mr. Giustino said all she wanted to ask him was what was the height of this wall. Mr. Larson never answered one of my phone calls, and wondered if there was something they were hiding about this wall. Mr. and Ms. Giustino said that the plans they reviewed indicated it was a six- or seven-foot high wall, and not part of a building. When she approached the contractor, he told her that she should see an attorney, and saw off [part of the existing retaining wall]. She said that [retaining wall] has been there for 25 years. And, she said they have a 6-foot high fence and they do not want to tear it down.

Mr. Pete Radovich said that they have an encroachment issue. He said the neighbors were encroaching on their property, but that that was a separate issue. He said that their [building on their] property is 20 feet high and built on the property line.

Mr. Moore reclosed the public hearing. Ms. Miraglia said Mr. Radovich had said that what was approved before was a concrete wall, but what the staff report says is that the original plan was approved with stucco. Mr. Radovich said they original plan was approved with

stucco. We knew we had to change because we could not work on their side of the property. And then, he said, about two weeks ago they got approval for a block wall 12 feet high. He said this is strictly a building issue, and unless he is on the outside of the wall, he can not provide the stucco.

Mr. Moore asked Mr. Radovich what type of block is he proposing. Mr. Radovich said it was just regular 8" by 16". Ms. Miraglia said she considers that to be a substantial change. Mr. Moore asked Mr. Larson to address the issue of the height. Mr. Larson stated that he was not at the initial approval of this project, it was an exterior remodel and they were tearing down the unsightly structure that was there and rebuilding it. He said it has been postponed two times because he was out of town. As far as the wall is concerned, he said he had a conversation [with the neighbor] and tried to explain that if they could not have access to stucco the wall, they would have to find an alternative material. The neighbors were not going to allow us the access. While he was out of town, the applicant, or the owner made these revisions, and he did not have a chance to look at them. That was why he did not call back, because it was already approved.

Mr. Moore asked Mr. Larson what was the height of the original wall. Mr. Larson said it was 10 feet high, on the underside of the studs, plus another 12 inches for roof, so that would have been 11 feet, plus the equipment that was on top which 4 feet, so that would be 15 feet high. The equipment screen would have been set back 5 feet, in line with the other wall. What we are asking for now is to raise the height of the property line wall and have that act as the equipment screen.

Mr. Moore reopened the public hearing, and asked Mrs. Giustino to come to the podium. She said according to the architect's plans, it says here, 6-foot high wall. And that was why she called, to ask why is the wall now going to be 16 feet high. Ms. Adesanya pointed out that that 6-foot wall is actually their fence, not the wall. Ms. Greene indicated that there is a reference to a number 17 on the plans, but nothing is actually shown, except in later plans it is indicated as 'not used.'

Mr. Moore said that the building wall itself, not the one behind the trash enclosure, is the one that is proposed to be 16 foot tall. The wall behind the trash enclosure is 6 foot high. wall is just an enclosure. Mr. Larson said that has to be raised 8 feet because the Health Department now requires that all trash enclosures be covered. All trash enclosures will be covered.

Mrs. Giustino said that their property is two feet below the Hughes property, and so it is an 18 foot wall. Mr. Giustino said he had a suggestion, that because there is a five-foot partial setback to provide access to the [electrical] meters. He said there will be a door or gate about 10 feet behind the front which will be exposed. He said street walkers would do all kinds of stuff back there, and so the gate should be moved up to the front.

Mr. Moore reclosed the public hearing. Ms. Miraglia asked the Council if they could consider a continuance in order to get some specific answers from staff, whether or not this is a substantial change. Ms. Goodbody agreed to continue it, and seconded the motion. Ms. Adesanya said she was satisfied with the continuance, but wanted to go on the record that based on the information and elevations that have been presented, she would not be in

favor of the 16 feet wall. She said she would rather see the 4 foot screen, recessed from the wall, for the mechanical equipment.

Mr. Moore asked Mr. Radovich to discuss it with the Council further. Mr. Moore said that the issue was whether it should be continued to get more analysis of the issue of the substantial difference from what the intent was. Mr. Radovich said they were here for two things, trying to get the 4-foot extension, and to take the canopy down. He said they wanted to play by the rules, but he did not even know if it was an issue. He said they just thought they would come here and say they are taking the canopy down – everybody here seems to think that is a good idea. He said they could have just proceeded and built it out. He said he thought it was kind of odd that the Council wants to interrupt the project and make them rebuild some other thing. Ms. Adesanya asked if they would have just built the 16-foot high wall; Mr. Radovich replied that no, they would have built the 12 foot wall that they already had approval for. We wanted to build it different. They got the OK from the Building Department. He said they just wanted to move it out to make it a better project for them. Design-wise, equipment-wise, it was a better situation. Like the guy before and the news about his parking requirements, we just got hit by Grading, that we are going to have to do a seismic test. So that is going to slow us up for a while. But, he said, he thought is was credulous that the Council would think about changing the whole project at this point, because they are well into the project.

Mr. Moore told the Council that it can only take action on what they have before them. If we want to bring it back for some other reason in the motion, [it may be a problem]. Ms. Adesanya said that she did not believe the Council had said as a body that it wanted to change the project totally. She said that Ms. Miraglia had indicated her preference, if she could, to relocate the building, but that is not what is before us. It is the wall, which she said she is personally opposed to, tearing down the canopy, but there is also a modification to the façade that the Council has not discussed. Mr. Moore said that the materials have changed too. Mr. Radovich said they were already approved for that. All they were here for, he said, was the canopy removal and raising the wall by four feet.

Ms. Greene said she thought that if the material change was the only change, because they did not have access to the rear of the wall, it would have just been approved as a minor change, and not held up the project just because of that, and approved by staff. But because there were other changes, such as to the façade, the carport, and the changes to the wall, then staff would like the Council to know about that as well.

Mr. Moore asked if the Council was ready again for a motion. Ms. Adesanya said no, she still is unclear on what the other façade changes were, and could not tell from the plans. Ms. Greene said the façade changes relate to the removal of the walk-up window, and then if one looks to the right, the windows are different in this proposal. They would take away the walk-up window, they changed the windows to be more like floor to ceiling, or about that height. Also, some changes relate to the left hand corner of the façade, where they are enclosing more of the building to allow access bathrooms on the inside of the building. Before, as it was approved, you would have to go outside and back into the building. That may have been an ADA issue. Now you could walk behind the sit down counter to go to the restrooms and you would not have to exit the building.

Ms. Miraglia asked if staff felt these were minor changes. Ms. Henninger said that if it is continued we can bring back [more information]. Ms. Adesanya asked for a reason the carport canopy was removed; Ms. Hughes said it was just for aesthetics, that it would look better without it. Mr. Larson (or Radovich?) said that they thought all the changes were much better than the old A & W that was there. Ms. Adesanya also asked if the applicant was opposed to bringing that side gate forward. Mrs. Hughes said she has no problem moving that gate forward. Mrs. Hughes said they are here for two reasons – to raise the block wall to hide the equipment, and we removed the carport because they have all kind of neighbors say, could they take it down, and why don't they take it down. Ms. Miraglia said that was not all, and that there was much more. Ms. Giustino said it would be 18 feet; Ms. Hughes said the adjacent property is two stories when you look at it.

Ms. Henninger said she would like to read the summary of the staff report, which lists the changes as removal of the carport, changes to the façade, changes to the building materials, and raising the height of the wall on the property line. So, she said, that is more than two [changes]. She said the planner **did not (DID ??)** provide the Council in greater detail what the façade changes were, specifically in the staff report. Ms. Ms. Goodbody said the Council supports removal of the carport, and asked if it would be possible to just make a recommendation on that, and continue the other items.

Mr. Moore asked Mr. Larson to address the Council; Mr. Larson said that the minor modification were taking away the pick-up window, making those larger windows. That was granted when they went in for the building permit, the Planning Department did approve that at that time. That should not be a part of this application.

Mr. Moore said that we have something before the Council, and if we could get a motion to take action on it, we should do that. Ms. Adesanya indicated that because the item includes four different things, if a motion can be proposed to approve one or more but not all of them.

Ms. Adesanya moved to approve Modification of Site Development Review, MS-1985 as submitted with the following exceptions: 1) that the increase in height from 12 feet to 16 feet be denied; 2) that the side entrance gate on the east side of the building be brought forward to the Castro Valley Blvd. façade; and 3) that the screening of the roof top equipment remain as previously approved. The motion was seconded by Ms. Goodbody, and it was clarified that the carport can be eliminated as requested, and that the other changes would remain because the motion only identifies exceptions to the approval, including the 12-foot high block wall which was already approved. Motion carried 4/1/1/1 with Ms. Miraglia opposed, Mr. Nielsen recused, and Mr. Frank excused.

F. **Open Forum** - None.

G. **Chair's Report** - None.

H. **Committee Reports**

- **Eden Area Alcohol Policy Committee** – None.

- **Redevelopment Citizens Advisory Committee** –None.
- **Castro Valley Parkland Committee.**

Mr. Nielsen informed that there will be a park meeting on June 12 to support the park.

- **Ordinance Review Committee** – None.

I. Staff Announcements, Comments and Reports

Mr. Swanson indicated that the Farmer's Market opened two weeks ago, but it was a cold day with moderate turnout. Last week it was the Rowell Ranch Parade, and he had hoped there would be people go over from there, but there was so much congestion, the Market did not do well. Last week was moderately well-attended, but the vendors are complaining it is not being supported, so, he said, it is important to get the word out in order to continue we have to support it.

J. Council Announcements, Comments and Reports

Ms. Goodbody announced that this was her last meeting. She resigned from the Council.

K. Adjourn

The meeting was adjourned at 9:50 p.m.

Next Hearing Date: June 12, 2006

note from transcriptionist: question marks on speakers on pages 16, 18 and 27.