

CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL

Minutes for July 10, 2006

(Approved as corrected July 24, 2006)

A. CALL TO ORDER: The Chair called the meeting to order at 6:30 p.m. Council members present: Dean Nielsen, Chair; Jeff Moore, Vice Chair. Council members: Andy Frank, Cheryl Miraglia, Ineda Adesanya and Carol Sugimura. Council members excused: None. Staff present: Sonia Urzua, Tona Henninger, Bob Swanson and Maria Elena Marquez. There were approximately 35 people in the audience.

B. Approval of Minutes of April 24, May 8, June 12 and June 26, 2006.

Ms. Sugimura submitted the correction to the minutes of April 24, May 8 and June 12, 2006. Mr. Nielsen made a correction to the June 26 minutes, page 4, under C-8499, Javier Pena, the motion paragraph, it should say that the vote was split 3 to 3, and not that the motion carried. Ms. Miraglia moved to approve the minutes as corrected. Ms. Sugimura seconded. Motion carried. 5/01 with Ms Adesanya excused.

C. PUBLIC ANNOUNCEMENTS – None.

D. Consent Calendar

No items.

E. REGULAR CALENDAR

1. SITE DEVELOPMENT REVIEW, S-2069 – ALFREDO & NANCY GONZALEZ – Application to allow the continued operation of a boarding stable for 80 horses, in a “A” (Agricultural) District, located at 22469 Eden Canyon Road, north west side 0.65 miles north east of Hollis Canyon Road, unincorporated Castro Valley area of Alameda County, bearing Assessor’s designation: 085A-0100-003-00. **(Continued from June 26, 2006).**

2. SITE DEVELOPMENT REVIEW, S-2070 – ALFREDO & NANCY GONZALEZ – Application to allow 3 mobile homes for on-site agricultural caretakers, in a “A” (Agricultural) District, located at 22469 Eden Canyon Road, north west side 0.65 miles north east of Hollis Canyon Road, unincorporated Castro Valley area of Alameda County, bearing Assessor’s designation: 085A-0100-003-00. **(Continued from -June 26, 2006).**

3. VARIANCE, V-12007 – ERIC & VERONICA YOOS – Application to allow an addition attached to an existing garage creating a 3 feet – 6 inches side yard where 5 feet is required, in a R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 4112 Omega Avenue,

north side 120 feet east of Forest Avenue, unincorporated Castro Valley area of Alameda County, bearing Assessor's designation: 084C-0707-010-05.

Ms. Urzua presented the staff report. Staff recommends the new family room addition be reduced in size to provide a minimum of 20-foot access to maintain the function of the existing two-car garage. Otherwise, staff notes that there are special circumstances in the location of the existing structures that limits the site plan alternatives.

Eric Yoos, applicant, noted a mistake in the site plan and offered an alternative. He showed a sketch to the council members.

Mr. Frank said that the County might want to review the drawing. Ms. Urzua said the staff planner should revise the analysis.

Mr. Yoos said that he was just notified two days ago that he needed 20 feet. He did not have enough time to get anything other than the footage. Mr. Nielsen suggested that he continue the item because staff and the council members did not have a chance to review the revised drawings.

Mr. Moore said take a look at it and to hear it and move it forward with a simple review.

Ms. Miraglia said that if the Council can approve it with the staff recommendation that the family room be reduced in size 20-foot access to the garage or if it works. Ms. Urzua said that it might be OK if it does not change the petition for the variance they are still asking for a variance for 3 foot side yard set back. Ms. Urzua said her concern is that when you refer back to planning considerations if recommending approval to the exhibit submitted this could cause problems. It will have to be set out correctly and a new exhibit.

Mr. Nielsen said that the real problem is that he has a 10,000 sq. ft. lot. He is asking for variance for his convenience. There is enough room on various points on the property. He thought it is not justifiable. Ms. Miraglia told Mr. Yoos it would be in his best interest to continue it. Mr. Nielsen told Mr. Yoos to work with County staff to try to resolve it. Mr. Nielsen said that this item would be continued to July 24.

4. **VARIANCE, V-12008 – LEE MASON** - Application to retain an existing secondary unit with a) side yard set back of 5 feet where 7 feet is required; b) a 5 feet rear yard where 20 feet is required; and c) 2 independent accessible parking spaces where 3 are required, in a R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 2546 Lessley Avenue, Castro Valley unincorporated area of Alameda County, bearing County Assessor's designation: 416-0020-064-00.

Ms. Urzua presented the staff report.

Lee Mason, applicant, said he is to make a wrong right. This building was built over 53 years ago as a single garage. The problem was that it turned out not to be a garage. Two weeks after he got the final on the building permit, he put a service panel, the day breakers, 13 outlets service that was provided for the house in front. He also plumbed it, so we had a full bath, a kitchenette and laundry room. Mr. Mason bought this property for his mother in 1969. At some point he had some other indications that the secondary unit was ok when he applied for an FHA loan. He learned of the Planning issue when he submitted for a building permit to install some upgrades. There are some issues with parking.

Mr. Frank asked Mr. Mason if he has the FHA letter that he was requested to submit. Mr. Mason said that this was 30 years ago. (Ms. Adesanya arrived at 6:55 p.m.) The FHA loan was made, they said they would not make it without the permit so he assumed go ahead and get permit and bring these items up to code. He was very specific in telling him that it was a non-conforming building, but it had been used in this capacity for a number of years. He has no record of the electrical permit ever signed off, no record of the plumbing permit ever being pulled.

No public testimony submitted.

Mr. Frank asked staff about the non-conforming status. Ms. Urzua said this is illegal non-conforming. It would be conforming as a garage, and illegal non-conforming as a converted secondary unit.

Ms. Miraglia asked staff if the Council were to approve this variance to become legal, could be built a secondary unit? Urzua said if this is granted a variance throughout the different bodies (this body and BZA) will change the character to legal non-conforming to conforming. There used to be a practice where variances were tied to a particular person and did not run with the land.

Mr. Nielsen said that the building has been consistent all these years. Ms. Urzua said that there were three parts of this variances; a side yard set back, front set back and the parking. When an accessory structure is approved, the set back of a dwelling unit might explain the location of the structure.

Mr. Nielsen asked about the information held by the Assessor's office and about the possibility of recommending conditions to the terms of the variance.

Ms. Miraglia asked Mr. Mason that when he bought the property was it already a secondary unit. Mr. Mason said that it was advertised as 3 bedroom one bath house with no garage and at the same lot one bedroom cottage. Ms. Miraglia asked about other structures with no building permits and whether Mr. Mason put them there. Mr. Mason said no.

Mr. Moore said that he has no problem with this variance. The property has been there for so long. The neighbors do not have a problem with it, council members might consider approving it he is trying to do the right thing. He has a lot of extra parking where it technically does not need it.

Ms. Miraglia said that she would like to see improvements to the outside. Mr. Mason said that planned to paint and install landscaping.

Mr. Moore said that he agreed with the recommendation and asked Mr. Mason if he would agree that the Council makes a condition of approval of the variance. Mr. Mason said yes.

Ms. Miraglia moved to approve Variance, V-12008, with staff recommendations requiring a landscape plan and no rebuild. Mr. Frank seconded. Motion carried 4/2 with Ms. Adesanya and Mr. Nielsen opposing.

5. **ZONING UNIT, ZU-2232 & TENTATIVE TRACT MAP, TR-7370 – CHRISTIAN RUTISHAUSER** Petition to reclassify one site containing approximately 1.28 acres from a PD (Planned Development, 1529th Zoning Unit) District, allowing neighborhood commercial uses to a PD District allowing ten residential units and parking for the adjacent community facility, located on Villarreal Drive, south side, approximately 75 feet west of Clement Drive, Castro Valley area of unincorporated Alameda County, bearing Assessor's Parcel Number: 085A-6405-166-00.

Mr. Moore recused himself. Ms. Urzua presented the staff report. She stated that she received several referral responses like the one received from the Castro Valley Unified School District stating some interest in the potential use of the school site but no other correspondence has been received. The Fire Department also reviewed this application and had no issues. The Clean Water Division gave some preliminary remarks about it. This project came before the MAC and the Planning Commission 3 years ago. There is a significant amount of community response that voice opposition to the project. A petition is being circulated and staff has received a large amount of e-mails in opposition. The Homeowners Association submitted a letter recommending denial based on the survey that was conducted independently. Those findings are similar to the findings of the survey that was conducted by the County. The concerns of the community are based on the location of the property, concerns about building, over crowding, concerns impacting the school.

Ms. Miraglia asked if there was a staff recommendation. Ms. Urzua said that staff recommends denial based on issues with general plan consistency, lot sizes and lot consistency.

Mr. Nielsen asked about potential changes with the new Castro Valley General Plan. Ms. Urzua said she thinks there will not be a change.

Frank Vaghn, representing the applicant, described the history of the parcel, the interaction with the community, and with the Planning process. He gave some background of how the current proposal evolved. There was opposition during the previous rezoning petition and during the current process as seen during an open house. We then finally had an open house. He noted that the applicants have spent a great deal of money and time. The project was completely blown out of the water by a group that we never heard before. The conclusion of these people was "we want no homes," no rezoning, refused to consider alternatives. Homeowners committee that was in place completely non-functional, basically the members of the committee had to resign all except one. He asked for some direction on how to work with the opposition from either MAC, the Planning Commission or the Board of Supervisors. They are willing to look into the possibility of doing something along the line like a smaller number of homes. The applicants are just looking for some solid plan with some degree of integrity so when we stick to it there will be people lining up to support it.

Mr. Nielsen asked Mr. Vaughn if the original group that he worked with were the current officers of the homeowners association. Mr. Vaughn said that one of them, Lee Peterson, was chair of the Palomares Hills Homeowners Association. The chair of the committee was Tracy Davenport. Mr. Nielsen asked if this committee was made up appointed elected. Mr. Vaghn said he did not get involved but they were officially sanctioned chartered body as designated by the Palomares Hills Board of Directors. Mr. Nielsen asked if at that point they were the voice of the homeowners association. Mr. Vaghn said yes.

Public testimony was called for.

Carol Ellis, resident at 20001 Clement Drive, appeared and stated her opposition. She noted concerns about the unique location of the property. She would like to see an extension of the community center. There is also a parking issue and with new homes there will be additional parking.

Tracy Davenport, resident at 20120 Summerglenn Place, appeared and testified in support of the application. He submitted a written statement that has been included in the record. He was the chair of the site committee. On March 28 he offered his resignation as chairman. On April 25 the Board of Directors accepted his resignation as chairman and a new chairman was appointed. He was subsequently removed from the committee. He explained that he disagreed with the opposition movement. He described the history of the parcel. He opined that the proposal fit the community, reset property values, increases common area, expands our parking, allows us to not reduce usage, and protects us from having to tear out the south lawn and all without cost to the membership or the taxpayers.

Brad Thompson, resident at Palomares Hills, stated that he is against the project because of the location. He discussed the two surveys that brought out the communities opposition to rezoning the subject property. He also had some involvement with the site committee. He also noted the concerns about over crowding at the local elementary school..

John Doeley, 21007 Sherman Drive, stated that his main concern is the over crowded school at Jensen Ranch.

James Pacheco, 18975 Edwin Markham Drive, stated and testified in opposition. In particular he discussed the current and potential traffic concerns with the intersection of Edwin Markahm and Villarreal Drive. He proposed buying the lot from Mr. Rutishauser and Mr. Vaghn.

John Falconer, 20031 Clement Drive, stated that he was glad to hear Mr. Vaghn willing to do something other than residential development. He said that the lot is the crown jewel of their community and to put residences is a wrong thing to do. This is the center and the heart of their community. There are compromises and there are solutions. He referred to a letter sent to Ms. Urzua dated March 2006. He truly believes that there are better uses for this vacant lot, for example a daycare center and a space for the Castro Valley Unified School District. These are just a few of the examples of what can be done with that lot.

Lora Lai, 18681 Clement Drive, stated that she has been a homeowner since 1985. She said that lot should be for the benefit of the community and that is not a right location for houses. Also, she spoke about the traffic issue. She opposes rezoning and supports commercial.

Stan Heimowitz, 19942 Jessee Court, stated that he has been part of the Palomares Hills community since 1986. When his family moved in, they were told that lot was zoned commercial. He noted the potential noise issues for homeowners on the subject property. He said that there are many other better ways to develop that land. They could make an extension of the school or a park.

Lee Petersen Jr., 6300 Boone Drive, stated that he is the president of the homeowners association and reiterated the position of the association's board of directors against the rezoning. The position was based on the overwhelming results of the survey done in 2004 by the County and the most recent survey by the homeowners association.

Richard Kung, 20986 Sherman Drive, stated that the park adjacent to this land is very small; it is under serving their community. His concerns were about the impacts on the local school and about traffic, and parking. He asked the Council to keep it commercial and not residential.

Vicki de Castro, 6901 Lariat Lane, appeared and testified against the proposal. She described the history of the parcel which started back when Mr. Baptista owned the property. She also described an earlier effort by the community to buy the subject's parcel. The community would like to help the school district. They are concerned about the fire season. The current homeowner purchased the property after knowing that it was commercial.

Tony Catrone, P.O. Box 623, spoke about the town hall meeting held to discuss the project. The people of Palomares Hills have done a very good job in organizing themselves and expressing their position making sure that the rezoning does not get approved.

Gary Kwan, 7967 Pineville Circle, stated that the lot owners purchased commercial not residential. There is no reason why MAC should approve this. There are other pieces of land available in Alameda County, 8 in Castro Valley alone. If the owners want to sell the land to them, they will buy it back. There are so many properties currently available in their community.

Mia Johnson, 18934 Masterson Place, stated that she is a homeowner and the newly appointed committee chairwoman. She said that it is completely incompatible to put 10 houses there. The history on this lot is sketchy. They had to get organized. Mr. Davenport was the chairman of the committee for over a year. She tried to get in the committee numerous times. She was forced to make a petition and walk the neighborhood. They do not want housing. We are not saying no to compromise. She is here to try to convince the Council to stop the rezoning.

Public testimony was closed.

Frank Vaughn, said that there was a survey, it was a response by Mr. Miley and Mr. Swanson. There have been sanctioned attempts to ask homeowners if they would like to buy the property. They never offered the property for sale. Their main concern now is they go to the next step. They realize taking this thing to the end as a home project is probably a losing battle. All they want either from this Council, the Planning Commission or the Board of Supervisors is that there will not be just another set of battles for all the reasons people against some reasonable commercial project that the people in this room happen to like but maybe 100 other people think it is the worst thing they have heard of. They may get a committee; they get a petition to knock it down. He said they are willing to talk and they are trying to be cooperative.

Ms. Adesanya said she is a Five Canyons resident and they have a commercial lot and many of the homeowners did not want the commercial but many others wanted it. There is the situation where someone has to own and develop the land. They need clear direction those property owners that will be the most impacted. She hopes that you do not limit yourselves to a small committee, or some faction that is 100% against any commercial going in the neighborhood.

Ms. Sugimura said that she is frustrated because of the fact that the property has been there for 23 years, it has been used by the homeowners as a flea market, parking and other local uses. Somebody owns the property. It is zoned as commercial, unless you can find somebody that wants to use the property for commercial purposes they need to get enough of the homeowners interested and willing to buy the property from the current owners, it is going to remain vacant. It seems like this issue keeps coming back without any resolution. You need to have broad based support and understanding on what the homeowners really want for that area.

Ms. Miraglia pointed out in relation to Ms. A comments that they did do a survey in Five Canyons and the overwhelming majority of the homeowners did not want commercial. The Five Canyons board supported what the residents wanted and supported the change to residential. Ms. Miraglia stated that in retrospect, she feel it would have been better to do the survey and decision at build out.

The Supervisor did a disservice in requiring the community which was adamantly opposed to housing at the time to try to reach a compromise. Now, a lot of time and money has been wasted.

Mr. Frank said that there should be a community arrangement. He would like to see some action.

Mr. Nielsen said that he is opposed to changing the zoning and supports maintaining the commercial zoning. He also recognized that the developer has to sit down with everyone. He offered the option of returning to the MAC and making it a formal process to hear everyone that is involved and see if the MAC can help resolve the problem. To leave the property vacant does not help the school situation. It is time now to resolve the question.

Mr. Frank told Mr. Vaughn that he has two choices: have the matter continued or go back to the association. Mr. Vaughn said that he would like to continue it.

Mr. Frank moved to deny Zoning Unit, ZU-2232 and Tentative Tract Map, TR-7370, with a second by Ms. Miraglia. Ms. Adesanya and Mr. Nielsen asked about options where the applicant could save on some of the permitting fees. Ms. Urzua said that it depended on the type of application. The fees are set forth by the General Ordinance code and planners do not have the authority to waive fees.
Motion for denial was carried 6/0.

Mr. Swanson offered to facilitate the process and told Council members and the applicant that they are welcomed to use Supervisor Miley's office.

Ms. Miraglia suggested that it will be helpful to outreach to the entire community. You also need to hear from people who would be concerned for commercial; they need to be very open.

F. Open Forum – None

G. Chair’s Report – None.

H. Committee Reports

Ms. Sugimura said that Nate Miley’s Blue Ribbon Steering Committee for Eden Area Livability Initiative met on June 29. They had a really good representation from people both from staff and the community. It includes Cherryland, Ashland and all the unincorporated areas. They are getting started. She is very pleased to see how things are progressing. As soon as she has a copy of the handouts, she will pass them on the council members. Their next meeting is at the end of July.

- **Eden Area Alcohol Policy Committee**

Ms. Henninger said that it was a very good meeting. ABC participated and was very open and communicative. Mr. Nielsen asked what the ABC action was.

- **Redevelopment Citizens Advisory Committee** – Mr. Nielsen said that will meet on July 12.

- **Castro Valley Parkland Committee-**

Mr. Nielsen said that another committee meeting start organizing groups, 19 people there. Nate Miley was enthusiastic.

Mr. Moore asked what the biggest issues were. Mr. Nielsen said that the issue was whether to buy the HARD property or to include other properties as well such as the Malabar property.

- **Ordinance Review Committee –**

I. Staff Announcements, Comments and Reports –

Ms. Henninger said that the next meeting would start at 5 p.m. for the workshop to examine the Draft Castro Valley General Plan.

J. Council Announcements, Comments and Reports

Ms. Miraglia asked about the May 22 minutes. Ms. Urzua said that this was the meeting that she missed and Andy Young, who replaced her, is still working on them. Ms. Miraglia also asked when Grimes and Baldwin would be back before MAC.

Ms. Sugimura asked if there is a 580-update meeting. Ms. Henninger said that it would be tomorrow.

Ms. Adesanya asked where the Redevelopment Citizens Advisory Committee Meeting is.

K. Adjourn

The meeting was adjourned at 8:25 p.m.

Next Hearing Date: July 24, 2006