

**CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL**

**Minutes for April 9, 2007**

(Approved April 23, 2007 as corrected)

**A. CALL TO ORDER:** The Chair called the meeting to order at 6:35 p.m. Council members present: Dean Nielsen, Chair. Council members: Jeff Moore, Cheryl Miraglia, Carol Sugimura and Dave Sadoff. Council members excused: Ineda Adesanya, Vice Chair and Andy Frank. Staff present: Tona Henninger, Sonia Urzua, Bob Swanson and Maria Elena Marquez. There were approximately 50 people in the audience.

**B. Approval of Minutes of March 26, 2007**

**Ms. Sugimura submitted minor corrections. Mr. Moore moved to approve the Minutes of March 26, 2007 as corrected. Ms. Miraglia seconded. Motion carried 5/0/2 with Mr. Frank and Ms. Adesanya excused.**

**C. PUBLIC ANNOUNCEMENTS – None.**

**D. Consent Calendar**

**1. CONDITIONAL USE PERMIT, C-8570 – ELIZABETH PENNINGTON/T-MOBILE** - Application to allow continued operation of a wireless communication facility (T-Mobile) in an P-D Planned Development, (ZU-1449<sup>th</sup>) Zoning Unit, located at 19179 Center Street, west side, corner north of Heyer Avenue, in the unincorporated Castro Valley area of Alameda County, and designated Assessor's parcel number: 084C-0775-006-07.

**Mr. Sadoff moved to approve Conditional Use Permit, C-8570. Ms. Miraglia seconded. Motion carried 5/0/2 with Mr. Frank and Ms. Adesanya excused.**

**2. CONDITIONAL USE PERMIT, C-8571 – ELIZABETH PENNINGTON/T-MOBILE** - Application to allow continued operation of a wireless communication facility (T-Mobile) in a P-D Planned Development, (ZU-1566<sup>th</sup>) Zoning Unit, located at 4169 High Ridge Place, south east side, approximately, 200 feet, east of Chaparral Lane, in the unincorporated Castro Valley area of Alameda County, and designated Assessor's parcel number: 085-6301-020-01.

Mr. Sadoff requested to pull this item to the Regular Calendar. After receiving staff's clarification on the camouflage policy, he conceded to returning the item to the Consent Calendar.

The Applicant was not present.

Public testimony was called for. No public testimony submitted.

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**Ms. Miraglia moved to approve Conditional Use Permit, C-8571. Mr. Moore seconded. Motion carried 5/0/2 with Mr. Frank and Ms. Adesanya excused.**

**E. Regular calendar**

**1. Social Host Ordinance Proposal – Kevin Dowling, Supervisor Alice Lai-Bitker’s Office/Staff.**

Kevin Dowling, Supervisor Lai-Bitker’s office staff, explained the contents of the proposed ordinance and described how other jurisdictions are using a similar tool.

A question and answer sheet was made available.

Ms. Sugimura and Mr. Nielsen asked about the scope of the ordinance in terms of private or public property and in terms of the types of substances covered.

Traci Cross, prevention coordinator for the CVUSD, spoke in favor of the ordinance. She provided information about teenage drinking.

Rachel Bayuk, Castro Valley High School student, spoke in favor of the ordinance and expressed her concerns about accessibility of alcohol to other students.

Linda Pratt, representing Commpre, spoke in favor of the ordinance. She described the County Strategic plan prepared by Behavioral Care Services for alcohol and other drug primary prevention services.

Mr. Nielsen suggested that illegal substances such as methamphetamine must be added to the ordinance. Ms. Miraglia asked if it can be clearer since it appears that noise levels trigger enforcement. Mr. Dowling said that he would double check the language. Ms. Miraglia asked how parents will be notified of the ordinance. Mr. Dowling said that it will be done in May since a lot of communities will have graduation parties. Ms. Miraglia commended student, Rachel B. for testifying.

Ms. Miraglia supported making a recommendation that night with a note that the Council recommend including drug use in the ordinance. Ms. Sugimura and Mr. Sadoff concurred with Mr. Nielsen to have this item back on the next MAC meeting, April 23.

**2. Public Works Agency – Presentation regarding the I-580 interchange project, including retaining wall design treatments and effects on the Spencer Mortuary property – Art Dao, ACTIA & Richard Tanaka, Mark Thomas & Co.**

Art Dao, from the Alameda County Transportation Improvement Authority, gave an update on the Redwood Road-I-580 Interchange Construction Project. They

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presented some of the aesthetic options for the retaining wall. Design consultant Richard Tanaka, principal at Mark Thomas, made a power point presentation and briefly explained the project process. Mr. Tanaka said that they are looking at 18 months in construction.

Public testimony was called for.

Ms. Miraglia expressed concerns about graffiti appearing on the walls. Mr. Dao made some suggestions. Mr. Nielsen asked Mr. Tanaka about the possibility of not closing the off ramp down until the project is concluded. Mr. Tanaka said they plan to keep it open as long as they can.

**3. VARIANCES, V-12051, V-12057**

**SITE DEVELOPMENT REVIEW, S-2098, S-2110, S-2111 – DE LA CADENA & AUFDERMAUER** Application to build three houses, one on each of three, contiguous, vacant parcels located approximately 1200 feet north of Seaview Avenue on Common Road, east side of Castro Valley Creek, all parcels in the R-1-B-40-CSU-RV (Single Family Residence, 40,000 square feet M.B.S.A., 150' MLW, 30' FY, Conditional Secondary Unit) zoning district and located within the Madison Area Specific Plan, Castro Valley area of unincorporated Alameda County, and requiring the following planning actions:

- 4.A.** On Assessor's Parcel Number 084C-0895-039-00, S-2098, application to build one house, SDR required by the Madison Area Specific Plan;
- 4.B.** On Assessor's Parcel Number 084C-0895-040-00, S-2110, application to build one house, SDR required by the Madison Area Specific Plan; and **V-12051**, application to allow construction of a structure approximately 250' back from the front property line in an area between 25% and 30% slope where a 70' maximum setback is required by the Madison Area Specific Plan;
- 4.C.** On Assessor's Parcel Number 084C-0895-041-00, S-2111, application to build one house, SDR required by the Madison Area Specific Plan; and **V-12057**, application to allow construction of a structure within an area that is 30% or greater in slope, where no structures are allowed on such slopes by the Madison Area Specific Plan. **(Continued from March 26, 2007)**

**NOTE: Lot 39 = A**  
**Lot 40 = B**  
**Lot 41 = C**

Lou Andrade presented the staff report. He described the recent update of the Madison Avenue Specific Plan (MASP). The biggest issue is development on the 30% slope area. The Specific plan allows a variance application where the slope is 30% or greater.

Mr. Nielsen asked Mr. Andrade if the MASP Plan's intent is that buildings and improvements should avoid the 30% slope. Mr. Andrade said it applied to buildings and that the other intent is to minimize grading.

Mr. Moore asked Mr. Andrade about the legal ramifications to give the building site status. Mr. Andrade explained that the MASP allows for variance petitions.

Mr. Nielsen said that the lot does not guarantee that a house can be built on it. Mr. Andrade said that the lot has building site status.

Ms. Miraglia did not believe that findings could be made. In her opinion, the granting of the application would constitute granting special privileges because the other properties in the vicinity have the same limitation placed by the plan. Mr. Andrade said that the intent is to save the 30% slopes. Mr. Sadoff asked about alternate configurations for the proposed homes. Mr. Andrade said that likely it would be more like a condominium arrangement.

John Aufdermauer, the co-applicant and owner of 2 of the subject lots, and resident of the same street, spoke to support his application. He described and submitted proof of neighborhood support. He described his involvement in the process to update the MASP. Mr. Aufdermauer requested the Council to approve these applications.

Public testimony was called for.

Brian Matsumra, resident at 17624 Madison Avenue, spoke in support of the application but raised an issue on the size of the three lots. Staff noted the zoning history.

Gerry Thompson, resident at 17764 Madison Avenue, spoke in support of the application for property 39.

Connie Deets, resident at 18413 Madison Avenue, spoke in support of the application and noted the possibility of reducing the footprint of the building.

Christine Sarantakis, resident at 17627 Madison Avenue, spoke in opposition of the application and spoke about the significance of observing the 30% slope limitation. Informational materials were provided.

Roxane Lewis, resident at 17750 Madison Avenue, spoke in opposition of the application. She reminded the Council that the MASP clearly states "NO" building on 30% or greater slope. Ms. Lewis read a comment letter that was entered into the record.

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Ed Copra spoke in opposition of the application and presented a package including pictures and letters from neighbors.

Nancy Churchill, resident at 17823 Madison Avenue, spoke in opposition of the application based on the 30% slope limitation.

Laurie Childers, resident at 17875 Madison Avenue, expressed concerns about water run off with the creek regulations.

Bob Peterson, resident at 5294 Canyon Hill Court, spoke about the history of the area.

Todd Stinn, resident at 17961 Madison Avenue, spoke in favor of the three proposed houses. He supports people's right to build.

Lyle Bogue, resident at 17800 Madison Avenue, spoke in opposition of the application. He stated that the current property owner is aware of the provisions of the plan. He described the process which updated the MASP.

Silvia and Silray de la Cadena, petitioners and property owners of Lot C. She expressed willingness to work with the neighbors. She requested the Council to approve the 3 lots for the variance.

Ken Ibarra, architect for De la Cadena, spoke about the appropriateness of placing the building.

Mr. Aufdermauer answered some of the residents' concerns. He spoke about the legal status of the sites, the sizes of the houses, interactions with the fire department, the most current survey, and the concern about blocking views. The other alternative was to build at the maximum height and go 30% above grade.

Public testimony was closed.

Ms. Miraglia asked staff about the CEQA review. Mr. Andrade explained why the in-fill exemption applied in this case. Ms. Urzua elaborated and explained that the assumption would be that there are no other CEQA environmental impacts.

Mr. Sadoff asked Mr. Andrade if a referral was received from Fish and Game. Mr. Andrade said no. Mr. Moore said that Fish and Game would be a requirement if any final conditions of approval.

Mr. Nielsen distinguished between a legal lot and a buildable lot. Mr. Andrade further explained the distinction.

Mr. Nielsen said that within the MASP parameters nothing could be built in an area over 30% grade. Mr. Moore believes that these are buildable lots, they have

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the right to go ahead and proceed with the request for development. He recognized all of the efforts by all parties related to this application. These sites are virtually impossible to develop, unless you have a variance. The applicant has some merit in his application.

Mr. Sadoff said that it appears that the applicant was aware of the restrictions at the time he purchased the property. He recognized the applicant's efforts to reach out to the community and attempt to mitigate the negative impacts.

Ms. Miraglia said that this particular project is referred to this Council because a lot has gone to the MASP. She leaned toward approval of S-2098 and denial of the variances.

Ms. Sugimura commended the applicants' efforts in reaching out to the community to really make this work for them. She opined that parcel 39 should be approved, however, parcels 40 and 41 are problematic and she was undecided.

Mr. Moore appreciated the concerns of the neighborhood. If this were a new subdivision proposing these lots, in his opinion he would have a radical different opinion. His opinion of pre existing lots and the right to be able to build in your property is also important. He agreed with the issue about the placement of the house on parcel 40 is on top of the hill versus bottom of the hill. Given the fact that people do not want it on 30%, he puts it where he can to keep things from hanging on the sides. He thinks that findings can be made on these lots.

Mr. Nielsen said that due to the severity of the variances on lots 40 and 41, he could not support them. These are serious building situations, and variances would open the door to bigger problems in the Madison area.

Mr. Moore said he would like to see a revised floor plan for lot number 41 if the Council is going to consider this at all. Given the concerns regarding the slope, the issues of grading, he asked if the applicant or the Council would feel differently if the middle lot of the house were located at the front, the other option to minimize the grading. Ms. Miraglia said no because it would have to be on a 30% slope.

Ms. Sadoff said that as far as lot 40, he would prefer to see some other design such as smaller footprint to try to mitigate the yard soil. He would like to see a revised plan for lot 40. For lot 41, it really flies in the face of the MASP.

Council members deliberated on a revised floor plan for lot 40 and lot 41.

Mr. Nielsen asked Mr. Aufdermauer if he wants to revise lot 40 and bring it back. Mr. Aufdermauer asked what concepts would be revised. Mr. Nielsen said that size of the house is a concern.

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Mr. Sadoff asked about amount of soil to be removed for lot 40.

**Ms. Miraglia moved to approve Site Development Review, S-2098. Mr. Moore seconded. Motion carried 5/0/2**

**Mr. Moore moved to approve Site Development Review, S-2110 and Variance, V-12051 with Planning considerations. Ms. Miraglia seconded. Motion denied 3/2/2 with Mr. Sadoff, Ms. Sugimura and Ms. Miraglia opposed and Mr. Frank and Ms. Adesanya excused.**

**Ms. Miraglia moved to deny Site Development Review, S-2111 and Variance, V-12057. Mr. Sadoff seconded. Motion approved 4/1/2 with Mr. Moore opposed and Mr. Frank and Ms. Adesanya excused.**

- 4. SITE DEVELOPMENT REVIEW, S-2107 – ZOU/HOANG** Application to allow the remodel of an existing building to be used as a restaurant in the CVCBD, Sub 3 (Castro Valley Central Business District Specific Plan, Sub Area 3) located at 2688 Castro Valley Boulevard, north side, west of Lake Chabot Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 84A-0181-057-03. **(Continued from February 26 and March 26, 2007).**

Ms. Urzua presented the staff report. She explained that the applicant requested to bring it before this Council in order to get direction.

Mr. Sadoff said that the plans looked attractive but the plan should reflect the Strategic Plan for the boulevard.

Mr. Nielsen expressed concern about the impact on the parking configuration if sidewalks are widened. Ms. Urzua said that more information is needed.

Mr. Moore asked if they have contacted Redevelopment as far as taking advantage of the façade improvement. Ms. Urzua said we received some feedback from Redevelopment regarding sidewalk and configuration of the driveway access.

Tommy Hue appeared for the applicant. He is responsible for the interior design of the restaurant.

Mr. Nielsen reiterated his concerns about parking requirements. He stated that until that can be determined, the Council does not have enough information to make a decision if a site review is concerned.

Mark Woodburn, architect for the project, described the current landscaping and driveway proposal.

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Ms. Miraglia suggested that Mr. Woodburn and the applicant meet with Redevelopment. She would like to see a vast improvement for that piece of property.

Mr. Moore expressed concerns about the parking configuration. Mr. Moore also encouraged the applicant to meet with Redevelopment.

Mr. Nielsen said that the recommendation from the Council is to continue it until the Council has more details.

Public testimony was called for.

Brian Morrison, resident at 2544 Castro Valley Blvd., spoke in support of the application.

Mr. Moore distinguished between the trash enclosure on the subject property and the one across the street.

James E. Davisson, resident at 2688 Castro Valley Blvd., spoke in support of the application and discussed the proposed restaurant use.

Mr. Moore clarified that the use is not in question since it is a permitted use. The Council is talking about the details of his proposal.

Public portion of the meeting is closed.

Mr. Sadoff raised a question regarding parking what alternatives might be available since a restaurant previously occupied the space. Ms. Urzua described the history of the site. The applicant is willing to provide shared parking with the liquor store. Mr. Sadoff asked if there were parking issues when it was Tony and Ted's. Ms. Urzua said she does not have any reports on parking.

- D. MODIFICATION OF TENTATIVE MAP, PARCEL MAP, PM-8204 – WINKLER** Application to consider the request of the Applicant to eliminate condition of approval No. 25 (to install a masonry wall along the eastern property line) which allowed the subdivision of one site into two parcels, containing approximately 0.89 acre in a R-1-B-E-CSU-RV (Single Family Residence, 10,000 square foot MBSA, Conditional Secondary Unit, Recreational Vehicle Regulations) District, located at 4868 Proctor Road, north side, 840 feet northwest of Redwood Road, unincorporated Castro Valley area of Alameda County, bearing County Assessor's designation: 084D-1275-004.

Ms. Urzua presented the staff report. A letter was received from the law offices of Joseph Felson on behalf of the adjacent neighbors requesting the continuance for 30 days in order to meet with the applicant.



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Mr. Winkler, property owner, stated that he received a copy of the same letter and that he disagreed with Mr. Felson. The transcription of the decision does not reflect what was discussed and acted upon three years ago. He described the previous hearing before the Council. He described an attempt to construct a fence. He believed that there was a transcription error between what was said over the hearing process three years ago and what was reduced to writing and became condition # 25. He was concerned about the cost of the fence. He wants to have his fence conform to all those lot split fences, all wood, country fences. He wants to continue to cooperate with his neighbors.

Public testimony was called for.

Marc Crawford, resident at 3832 Somerset Avenue, spoke in support of the applicant and described the potential cost of the required fence.

Ray Weaver, resident at 18187 Reamer Road, spoke on behalf of his in-laws, the Andrade's. He summarized the previous hearing. They asked for a sound wall, a pre-cast fence. He is not opposed to developing the land. He made some observations about the Winklers' place of residence.

Cheryle Weaver said that Mr. Winkler said that he would put the fence up, and he was supposed to install the sound wall. She noted the potential for noise from vehicles.

Audra Andrade said that Mr. Winkler has not discussed his fence plans with her. When she talked about the sound wall with Mr. Winkler and her son, it was going as far as the old barn, which is alongside his barn.

Mr. Winkler said that he and his wife moved from Columbia after their marriage and the subject property is where they reside.

Mr. William Andrade spoke against the petition. He said that three years ago when the presentation on the lot split was made, they had no objection to a sound wall. Sound walls come in masonry or concrete. The Andrade first proposed the sound wall. They are five feet from that driveway, with their house running on that side with 4 bedrooms in it. Mr. Winkler has a 7-foot wood fence falling down towards Mr. Andrade's house. What was discussed three years ago was a sound fence, masonry wall or concrete.

Karen B., Mr. Winkler's wife, asked the Council's cooperation to reconsider the minutes from three years ago. They said they would help with some kind of sound barrier type fencing, that was agreeable by both parties where their house was, but to expect them to have a sound barrier wall 500 feet all the way down, nobody else in Castro Valley has a sound barrier wall.

Public testimony was closed.

Mr. Moore said that he believes the Council never required masonry walls for sound attenuation. The Council will routinely accept pre-cast concrete fences. He can think of many projects where neighbors come up and they have a concern with a subdivision for more than one lot, and usually is against a neighbors' property. Mr. Nielsen asked Mr. Winkler three years ago if he was sure he wanted to do this. Mr. Winkler said that he was trying to accommodate the neighbor. The Council has never required a sound wall in a residential area.

Ms. Sugimura asked Ms. Urzua if staff can initiate discussion between the two parties. Ms. Urzua said that according to the letter received, attempts have already been made. Ms. Sugimura said that since it was a 5 foot distance, one issue was to mitigate the noise as well as privacy for the Andrade's, not over 500 feet in length.

Ms. Miraglia noted that the applicant had an appeal period during which the condition could have been challenged. As Mr. Moore said, 3 ½ years later is a long time. Secondly, if there was an intention to construct a sound wall, why has it not been constructed. Had that been done, we would not be here at this hearing. In her opinion, some type of sound wall, masonry or concrete, needs to go up. The Council needs to discuss the length of that wall. A wood fence is not a sound wall.

Mr. Moore said the problem is that the Council has a condition 3 ½ years old that says the entire property line, though he never intended to go 500 feet.

**Mr. Moore made a motion for approval of Modification of Parcel Map, MPM-8204 that the wording and modification of condition of approval #25 a masonry wall or a pre-cast wall attenuated to be extended from the back of the property to a minimum of 25 feet past to the rear of the adjacent lot (the Andrade's). Mr. Sadoff seconded and expressed concerns about proper noticing. Mr. Moore amended the motion. Mr. Moore made a motion to approve the of Modification of Parcel Map, MPM-8204, changing the wording of condition of approval No. 25 to state that "either a masonry wall or pre-cast concrete sound attenuating wall to be extended from the property line to the rear of lot one and a wooden privacy fence beyond that". Mr. Sadoff seconded the amended motion. Motion carried 5/0/2 with Mr. Frank and Ms. Adesanya excused.**

6. **ZONING UNIT, ZU-2244 – WALLACE** Preliminary review of application to reclassify from the R-1-CSU-RV (Single Family Residential, Conditional Secondary Unit, Recreational Vehicle, 5,000 square feet Minimum Building Site Area) District to a PD (Planned Development) District so as to allow 6 townhouse units with attached garages on a site of 22,514 square feet (0.52 acre) and site-specific development standards, to replace a single-family home and duplex, located at 3232-3236 Somerset Avenue, north side, 750 feet east of Lake Chabot Road, unincorporated Castro Valley area of Alameda County, bearing Assessor's

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Parcel Number 084B-0546-012-03.

Ms. Urzua presented the staff report.

Peter Petruzzi, architect for the owner of the property, described the project.

Mr. Moore expressed concerns about the guest parking.

Mr. Petruzzi described alternate driveway and parking configurations.

Ms. Miraglia said there is adequate open space. She is in agreement with the draft of the new general plan, which changes the land designation. The street width should be increased and the driveway apron should be increased as well. It is a really nice looking project.

Ms. Urzua noted a correction to the staff report by stating that an 18 feet driveway would be okay.

Mr. Nielsen emphasized on-site parking.

Mr. Moore made a suggestion regarding parking. He asked Mr. Petruzzi about fencing and children's' play area.

Council members discussed open space and parking spaces.

Public testimony was called for.

June and Ray Fernandez emphasized the importance of parking.

Robert Porta, owner of the property, stated that they expect to do something really nice for the neighborhood. It will be an enhancement to Somerset Avenue.

**F. Open Forum – None.**

**G. Chair's Report – None.**

**H. Committee Reports**

- **Eden Area Alcohol Policy Committee**
- **Redevelopment Citizens Advisory Committee**
- **Ordinance Review Committee**

**I. Staff Announcements, Comments and Reports –**

**J. Council Announcements, Comments and Reports**

**K. Adjourn**

The meeting was adjourned at 10:30 p.m.

**Next Hearing Date: Monday, April 23, 2007**