

CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL

Minutes for September 10, 2007

(Approved as corrected October 8, 2007)

A. CALL TO ORDER: The Chair called the meeting to order at 6:35 p.m. Council members present: Ineda Adesanya, Chair; Jeff Moore, Vice Chair. Council members: Cheryl Miraglia, Carol Sugimura, Dean Nielsen and Andy Frank. Council members excused: Dave Sadoff. Staff present: Tona Henninger, Jana Beatty, Bob Swanson and Maria Elena Marquez. There were approximately 30 people in the audience.

B. Approval of Minutes of July 9 and August 27, 2007
Mr. Nielsen moved to approve the minutes of July 9, 2007 with minor corrections submitted by Mr. Nielsen. Mr. Frank seconded. Motion carried 6/0/1 with Mr. Sadoff excused.

Ms. Miraglia moved to approve the minutes of August 27, 2007 with minor corrections submitted by Mr. Frank and Ms. Sugimura. Ms. Sugimura seconded. Motion carried 6/0//1 with Mr. Sadoff excused.

C. PUBLIC ANNOUNCEMENTS – None.

D. Consent Calendar – None

E. Regular Calendar

1. Continued discussion and action related to an encroachment permit application for the property located at 4746 Ewing Road, Castro Valley, CA 94546 – Art Carrera, Public Works (Continued from August 27, 2007).

John Bates, with the Public Works Department, said this is regarding the property access on Mira Vista. Public Works is looking for a recommendation regarding the access on Mira Vista. What has been proposed is placing a gate in conjunction with the guardrail at the end of the road way. There is also an additional access on the side of the road. Along with this, there will be a lock box for emergency access. Public Works has contacted County Counsel in regards to the property access and traffic safety issue.

Mr. Nielsen said that the report says that the property owner does not have prescriptive rights for access. His understanding is that there is not written permission from the County for the property owner to access the property. Mr. Nielsen mentioned that he doubts anyone in the audience has written permission to access county roads from their property. County Counsel's opinion was that there is not anything in writing either denying or permitting the owner access to his property. Mr. Bates agreed with Mr. Nielsen's interpretation.

Mr. Frank said that County Counsel opinion is that there has to be a mechanism for emergency services. Mr. Bates agreed. The Fire department requested that they be allowed access so they can get to certain portions of this property. Mr.

Frank said that other than emergency access there is no access to the property for public use. Mr. Bates said the gate would be locked but the lock box would provide access to emergency response to the Fire Department.

Public testimony was called for.

Coralia Camacho, resident at 17305 Cardinal Court, said that she bought her property one year ago and she loves the view of the horses there. She asked that the horses be kept at the property.

Harold Sullivan, 4740 Mira Vista Dr., told council members that he wants the barrier to remain as it is today. It has been there for over 30 years. The problem started when the owner started boarding horses. In the beginning there were only one, two or no horses now there are four to six. The issue is the activity that has been generated from the horse boarding use and the fact that the owner uses Mira Vista for access instead of his own entrance on Ewing. There is good evidence in the letters addressed to County Counsel on why the barrier should remain intact.

Steve Talmadge, resident at 18843 Sandy Road, referred to a point made that by having a gate there, there will be 2 more additional vehicles going up and down the road. That is not true. The amount of traffic will not change, it is still twice a day to feed the horses. They have been doing that the whole time. The only thing that will change as far as traffic going up and down the road will be the horse shoe at the end of the guard rail, the loading of the hay which has been a complaint, will move on to the private property. They will not affect the neighbors anymore. He asked the Council for help. This is the shortest and easiest way to get to this property. He requested a decision to get this finalized.

Mr. Nielsen asked Mr. Talmadge if a pick-up with hay could get past the Crockett's residence down to the horses. Mr. Talmadge said no with a load of hay. He said it is complicated and difficult because of the location of the home and swimming pool. The truck will not fit. Mr. Nielsen asked Mr. Talmadge if he has taken hay that way. Mr. Talmadge said no. We need to go down twice a day to feed the horses. He is the caretaker of the horses.

Ms. Sugimura asked Mr. Talmadge about the manure and debris not regularly or removed timely. Mr. Talmadge said they had timely remove it until that extension came up. Ms. Adesanya asked Mr. Talmadge how long prior to that has he been using it. Mr. Talmadge said 4 years. With a gate I can get the trailer in to haul it out. I replaced the gate.

Mr. Nielsen asked Mr. Talmadge who owns the horses. Mr. Talmadge said he owns 3 and Mr. Crockett owns one. There was another horse but died.

Ms. Sugimura mentioned a letter sent by Kari Beringer where she complains about the property owner blocking her driveway for long periods of time without her consent. The letter was entered into the record.

Mr. Talmadge said that happened only on one occasion. If they have the gate, that problem goes away. Ms. Adesanya asked Mr. Talmadge if he has talked to the neighbors. Mr. Talmadge said yes, for over a year we have been having meetings in Supervisor Miley's office with the neighbors.

Nancy Villarreal, resident at 17060 High Pine Way, referred to a letter that she sent to council members stating her concerns regarding, secondary access to the property and traffic safety issues. The paved area behind the gate is not sufficient. The trucks drive beyond the paved area cause a lot of dust. The commercial trucks going into this property are used for the horse boarding activity. This is a residential area and the traffic generated in this area should be the residents of this area, not for commercial use. The letter was entered into the record. She asked the Council to deny the permit.

Jim Rosevear, resident at 17055 High Pine Way, reiterated the same concerns that the prior speaker had. He also called the attention of council members to a letter sent from John Canestro. His letter points out that this is a residential area and this type of use, horse boarding, does not fit into this area. He questioned if they have a conditional use permit. A copy of the letter was entered into the record.

Mr. Moore asked staff if the use was an issue at this meeting. Ms. Henninger said it was not an issue for 4 horses. Mr. Moore asked if the applicant was allowed to have the horses. Ms. Henninger said it was a question for the Sheriff's Department Animal Control. Mr. Rosevear said that he objects to the whole thing.

Barbara Bowman, with Alameda County Animal Control, said that Mr. Crockett has had a permit since 1990 for 6 horses and he has always been in compliance. They are in compliance with rules and regulations that the County has set forth in a residential area. Vector Control has also inspected the property for flies. There are no complaints or concerns.

Ms. Adesanya asked Ms. Bowman if her review includes how the caretaker accesses the site to care for horses from Mira Vista and if that access is taken away how it would affect their compliance. Ms. Bowman said that her only concern would be the removal of waste. Currently they are storing it properly in containers. It is virtually impossible to access this site from Ewing.

Ms. Miraglia inquired about the animal permit. Ms. Bowman said animal permit is required for live stock in a residential area for more than 2 domestic animals. Mr. Nielsen asked if the Animal permit requires that the owner of the property also own the animals in order to get the permit. Ms. Bowman said no.

Ms. Miraglia asked Mr. Crockett if there was enough room to have a longer paved area behind the gate. Mr. Crockett said yes. Ms. Adesanya asked Mr. Crockett what did he mean when he mentioned that he would like to keep this area as open space but if not possible he will have to look for other alternatives. Mr. Crockett said that if he can not maintain the horses than he will have to look at other development opportunities instead of keeping this property as open space. They

have always used Mira Vista for access for to this property. Ms. Adesanya asked Mr. Crockett how long the horses have been kept on the property. Mr. Crockett said for 36 years. Mr. Frank said the horses were there prior to the homes, now the subdivision has been developed and the issue has become more complicated.

Mr. Nielsen asked Mr. Crockett if the improvements in the back yard like the swimming pool and car port were there when he bought the home originally. Mr. Crockett said yes. Mr. Nielsen said that at the previous meeting it was mentioned restricted access to the back yard. Mr. Crockett said the backyard has existed as it is. The guardrail did not go up until 1984 or 1985.

Ms. Sugimura asked Mr. Crockett that from the point at which the guardrail would require access if he had a gate there, if it is a dirt road. Mr. Crockett said it has about 4 feet of County space behind it. Ms. Sugimura asked him if he was willing to make it a road path so there would be minimal dirt and debris into Mira Vista. Crockett said yes.

Ms. Adesanya said that if even though the permit is for six horses, asked if he intended to have more than 4 horses. Mr. Crockett said no.

Public portion of the meeting was closed.

Ms. Miraglia said regarding County Counsel's opinion, that the last time one of the concerns was that this access was only to be used for the horses and if there was a way to put such a condition as part of the encroachment permit to make it very clear that it is for horses only. Mr. Bates said no, because this permit only addresses property access and not the use. The use is beyond access only.

Mr. Nielsen asked if the Council can recommend conditions to the encroachment permit. Mr. Bates said he did not know how effective that would be. Council members ensued in a discussion regarding conditions to the encroachment permit. Ms. Miraglia wanted to know if the encroachment permit could have a time limit. Mr. Frank stated that if necessary the neighbors can always place a complaint. Mr. Moore said he was in favor of the access to the public road, the use is not in question tonight, the Council should grant the encroachment permit.

Mr. Nielsen said that his concern is about the horses, but Animal Control addressed his concerns in regards to the Crocketts not owning all of the animals. The neighbors voiced concerns about issues related to the horse boarding activity, but it looks like the Crocketts have complied with County regulations. He expressed concern with emergency services having access to the back of the property. Ms. Sugimura said she concurs with having the access to the road; however, she asked that if the applicant is going to block someone's driveway that they should ask permission or notify the neighbors. She is also concerned about the fire hazard issue and access to the back of the property. She said she wanted to make sure the neighborhood is safe. Ms. Miraglia concurred with the requirements for approval with the addition of the 40 foot long path area and the

County surface for the path. She is disturbed by the fact that the Council can not put any further conditions on this permit.

Mr. Nielsen moved to approve the road access with County improvements to include a 40 foot approved surface maneuvering area onto the property with a lock box and fire access. He also noted that he would like the property owner to be able to make the improvements without having to wait for Public Work's improvements. Mr. Frank seconded. Motion carried 6/0/1 with Mr. Sadoff excused.

2. **VARIANCE, V-11982 – PATRICK LOVE** - Application to allow a garage conversion thereby locating the required parking space encroaching 13 feet into the required front yard, in a R-1-CSU-RV (Single Family Residence, Secondary Unit, Recreational Vehicle) District, located at 3773 Cottage Court, north side 284 feet west of Parsons Avenue, in the unincorporated Castro Valley area of Alameda County and designated Assessor's parcel Number: 084D-1329-017-00. **(Continued from August 27, 2007).**

Ms. Beatty presented the staff report. She stated that the property owner changed the application to provide parking in front of the garage within the front set back. The parking space would encroach 7 feet into the required front yard setback. There is currently 33 feet in the front yard. Staff is recommending denial based upon the inability to make the findings. However, if the Council feels that the findings can be made, specifically finding # 1 (special circumstances applicable to the property), as it relates to moving the garage back or adding a second floor and how this would be a burden to the property owner, staff would be drafting a different set of standard conditions to be presented to WBZA.

Mr. Love reiterated what he said over and over again, he bought the property 25 years ago with a converted garage. He said that the garage has never been used as a bedroom. It is kind of a storage area. When he bought the house, he was told that everything was up to code. He has been trying to settle this issue for the last 3 years. Mr. Nielsen said one year ago that the easement could not be enforceable because it was not a recorded easement. Mr. Moore at the last meeting looked at the pictures and said that there was certainly enough parking space. When this house was built in 1951, the requirement was only for a one car garage. In 1955 or 1956 the ordinance was changed to two car garages. The staff report has been changed several times. He shared photos of his property with council members. He asked the Council to vote favorably on his variance so he can make this conversion legal.

Public testimony was called for. No public testimony submitted.

Mr. Nielsen asked Mr. Love if he had been able to secure an easement from his neighbor. Mr. Love said no. It is not a recorded permanent easement. Ms. Adesanya inquired if the only change to the original variance if the parking in the front yard. Mr. Love said yes. Mr. Moore said that normally he would oppose this type of variance, but considering that Mr. Love bought the house 25 years ago

with a converted garage, he is inclined to support the variance. Mr. Frank concurred with Mr. Moore. Ms. Miraglia said that he agreed with Mr. Frank in theory but from her point of view, the Council's responsibility is to the findings and whether or not the findings are met. Unfortunately, according to the ordinance update, financial burden is not a criteria for this. She would not be able to support this variance. Ms. Sugimura said that she supports this because Mr. Love bought the house 25 years ago and that is the way he purchased it.

Mr. Nielsen said it is a serious problem as far as garage conversions are concerned. The Council should stand behind the ordinance that requires on site parking and requires that this Council meet the findings. He opposed the variance. Ms. Adesanya said that her major concern is the precedent that it might set for the other 5 garage conversions on the same court, and also not being able to make the findings.

Mr. Frank said that Mr. Love had had County people at the property over the years and they had plenty of opportunity to raise the question about the permit and they did not. Mr. Love is trying to do things correctly. Mr. Moore said pre existing non conforming uses and set backs happens all the time, things change and it is not an issue, is granted pre existing non conforming status. He finds extenuating circumstances and he thinks the council can make the findings. Ms. Miraglia asked which findings. Mr. Moore asked Ms. Beatty which one was in question. Ms. Beatty said all 3.

Ms. Miraglia mentioned that there was another piece of property, at the end of the court and neighbors complained about the related problems with the lack of parking. She said that the 5 or 6 garage conversions has something to do with the parking problems in the neighborhood. Mr. Frank said this is not a standard driveway in length and in width. Ms. Miraglia said there is cumulative impact because so many are non-conforming. Mr. Moore said that there are special circumstances, Mr. Love has a deep lot, he can park two cars. There is room for parking.

Ms. Adesanya said that the findings are not discretionary and # 2 is very clear. She said that this Council is not giving Mr. Love any special privileges. Mr. Love said that there are 2 or 3 garage conversions in his street and the set back issue was not even in existence at the time these homes were built. Ms. Adesanya expressed her concern with the lack of findings.

Mr. Frank moved to approve Variance, V-11982. Mr. Moore seconded. Mr. Nielsen, Ms. Miraglia and Ms. Adesanya opposed. Motion failed. Ms. Miraglia made a motion to deny Variance, V-11982. Mr. Nielsen seconded. Mr. Moore, Mr. Frank and Ms. Sugimura opposed.

Ms. Henninger said the Council has two options: one is to move the item to the WBZA or continue the item to a meeting when you have an additional vote to break the tie. The item was continued to the next meeting on September 24, 2007.

3. **MODIFICATION OF SITE DEVELOPMENT REVIEW, MSD-1752-D, SAFEWAY, INC.** Application to modify on-site signage and allow exterior remodel of an existing building, in the Castro Valley Central Business District Specific Plan – Sub-area 7 (Central Castro Valley Boulevard/Redwood Road – Intensive Retail Core) District, located at 20629 Redwood Road, Suite 190, northwest corner of Castro Valley Boulevard and Redwood Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Numbers 084A-0080-011-011 and 084A-0080-011-012. **(Continued from August 13, 2007).**

Ms. Beatty presented the staff report. She gave a brief summary of the meeting of August 13, 2007. At the last meeting, council members expressed strong opposition to site amendments particularly the loading back area, the trash compactor and also the color scheme. Council members were also opposed to a monument sign, and outside displays. The applicant had complained that some of the conditions have nothing to do with the current application. In response to the applicant's complaint County Counsel stated that county staff is within its right to impose past conditions that were not adequately met or enforcing county ordinances. The applicant and the architect will be talking about those conditions at this meeting.

Todd Paradis, representing Safeway, stated that they have some updated packages to make sure that the color sign and the columns as being proposed are correct. There was some concern at the previous meeting about the colors not being correct. They are looking to change the exterior colors of the store. Reading through the general guidelines and policies, he understands that this Council would like to see no more than 3 colors. They can discuss removing one of those colors. The Dublin, San Ramon and Livermore stores have the same colors which are in very good taste in keeping with the upscale image that Safeway has been working for the last 3 or 4 years now. The letters on the signage are going to be black. The only change that they are proposing is the monument sign. There was also discussion regarding the displays on the exterior. He also talked about the trailer situation and the loading back area which is visible. This is a high volume store.

Mr. Nielsen said that one of the things the Council is objected to is the turkey trailer which has been on the site for several weeks. Mr. Paradise said that he will look into that further. They are trying to do the right thing. Safeway Corp. is spending millions of dollars in improvements to its stores. Mr. Nielsen said that Safeway is a prominent retailer in Castro Valley. There are some conditions that have not been met. Mr. Nielsen stated that the original approval had one condition which was to not park trailers on the site. Mr. Paradise said that the turkey trailer is parked there during their peak business times. He mentioned a few methods that could be used in order to solve the trailer situation; however, he recognized that it is a hard one to address.

Ms. Adesanya said that 5 years ago Safeway did the expansion inside and out. At that time a lot of effort and time was spent and it turned out a little different than the Council expected. She asked if that was the corporate identity at that time and how frequently does this happen. Mr. Paradise said that Safeway took a few years to develop the outside

colors. The new colors were well received by a broad spectrum of folks. The color scheme would fit into a number of shopping centers.

Ms. Miraglia said that at the previous meeting (August 13, 2007) there was disagreement among council members in regards to the colors but her recollection was that on one on the Council was overly thrilled with the colors that were being proposed. She said that also last time it sounded like Safeway was at least willing to go back and re-look at the colors at something in between. There is a part of the guidelines that speaks to the aesthetics of the surrounding community. Therefore, she was very surprised to see that we got the same exact colors back this time.

She also takes umbrage with Mr. Paradise' allegation that we are holding Safeway hostage by bringing up conditions that were not previously met as this is the place to address those.

She said she's not quite sure what is going on with the colors. She said that she got on line and found some beautiful Safeway stores in other locations such as Colorado which are obviously built to blend in with the landscape there. Obviously there is not this corporate stamped structure that looks the same no matter where you go. To her, the store should reflect the community, especially this store which is the fifth busiest Safeway which shows that the community definitely supports Safeway. She is not really OK with a rubber stamp version that does not really fit in with what the community wishes.

The architect for Safeway stated that the store wants to make sure there is representation and consistency within their stores. They are trying to find a common goal. He spoke about the different color that they intend to use. They expect that the work will be completed in a month or so. New lighting is also being proposed for the store as well. They will be introducing additional material.

Council members and the architect ensued in a discussion regarding the storage of the shopping carts as well as colors and materials that will be used.

Public testimony was called for. No public testimony submitted.

Mr. Moore said that he agrees that there are too many colors. Also, he mentioned that council members are addressing the issue of parking and loading and he said those are legitimate concerns; however, the Council might look at that separately. Discussion continued among council members regarding the type of colors that should be approved. Ms. Adesanya stated that the proposed colors are cool colors and she thinks Castro Valley downtown is really warm colors and that is her personal objection but it is not strong enough to stop her from approving it. Ms. Miraglia asked if there is this predominant feel that Castro Valley is warm tones then why we would not uphold that on the Council. Ms. Adesanya said she was looking for stronger language from the Redevelopment Agency in their response. Ms. Miraglia said they did say they like the colors the way they are now. Ms. Adesanya said that they are the agency that really could have helped the Council take a hard line on this but there is nothing we can really point to. Ms. Miraglia said she thinks H-4 in the guidelines give us a strong enough basis.

Mr. Moore said that in lieu of design guidelines and personal opinions, he does not dislike the colors enough to vote against it – although he actually likes the colors the way they are now. Mr. Frank agreed but he does not like the monument sign and would like the columns taken care of as Ms. Miraglia suggested.

Ms. Sugimura is not real excited about the colors but she agrees with Jeff in that she likes the colors that are on the store now. However, she would not know what to suggest if it were to be different. Ms. Miraglia said that she just does not want something to happen here which happened at her first Council meeting where the rest of the Council approved the Capers remodel. Once that was done, most everybody was kicking themselves because it does not reflect what was thought and what the community wants and what the community wants is the important thing.

Mr. Nielsen agrees with the Council that the colors are not objectionable enough to say no. He objects to the presentation and the Council not getting enough time to review it. He pointed out that there are several places within Safeway where the colors are different; the East Coast is not the same as the West Coast. He does not know if eventually all the stores are going to look alike is true or not but he thinks we need to move ahead with what we have.

Ms. Adesanya said that she saw the store in Orinda where Safeway has already made this change and she does not like the colors at all, but she does not feel that is a reason that we can use because we do not have something to point to say that this is what the community wants, but it better not look like that Orinda store.

Also, Ms. Sugimura said she is opposed to the monument sign favoring landscape instead. The architect proposed an alternate design that would say “Welcome to Castro Valley”.

Mr. Nielsen suggested that the item be continued to a future meeting. Mr. Moore said he would vote in favor of approving the application. Mr. Frank said in his opinion they do not need a monument sign. He has no objections to the color scheme. Mr. Nielsen said he agrees with the Council. He voiced his objection to the presentation but not to the point of not approving it; however, the Council needs to move ahead with what we have. The only real objection is the trailer situation.

Mr. Frank moved to approve the Modification of Site Development Review, MS-1752-D with the following exceptions: one is the removal of the monument sign; second would be to have ledger stone on all the columns. Everything else remains in affect as presented. Mr. Moore seconded. Motion carried 5/1/1 with Ms. Miraglia opposed and Mr. Sadoff excused.

4. **VARIANCE, V-12057 & SITE DEVELOPMENT REVIEW, S-2111 – DE LA CADENA** - Application to allow construction of a dwelling on 30% slope or greater where otherwise not permitted (Parcel C), on a R-1-B-40-CSU-RV (Single Family Residence, 40,000 square feet M.B.S.A., 150’mlw, 30’ front yard, 20’ side yard, Conditional Secondary Unit, Recreational Vehicle) District, located at Madison Avenue/Common, east side 650 feet north of Seaview Ave.,

in the unincorporated Castro Valley area of Alameda County, and designated Assessor's Parcel Numbers: 084C-0895-039-00 and 084C-0895-041-00.

Ms. Beatty presented the staff report. She stated that this application was heard by this council and denied in April, 2007. The Applicant agreed to modify the original application. Please refer to page 4 of the staff report for the original and current revised floor plans. Staff was unable to make findings and feels that this project needs CEQA work. Staff would like MAC's opinion on conducting an initial study for this project.

Ms. Miraglia asked how did staff make the findings? Ms. Beatty explained that the planner was trying to say that this site has building site status, but without a variance they can't build. Ms. Miraglia said that the statement could be used for finding # 1, but it does not speak to finding # 2 because it is a special privilege to build on 30% slope. She can not see how the council can make the findings.

Silvia de la Cadena, applicant, stated that they talked to County staff before purchasing the lot and to make sure that this was a buildable lot. The Madison Plan allows to build or make a request for a variance to build. There were other variances given to other people in the area. There are other lots and other houses built on the 30% slope. They have lived in Castro Valley since 1998. They love the community. They plan to build a small portion of the lot and not make drastic changes. They are not asking for anything special. They are willing to do anything they can.

Public testimony was called for.

Roxanne Lewis, resident at 17750 Madison Avenue, asked Council why do we have specific plans if they are not followed? The Plan was just revised a year ago to protect this fragile site from being overdeveloped. This parcel should have never been created. Page 12, # 5 of the Specific Plan says that no building in 30% slope or greater will be allowed. This project is prohibited by the plan from being developed. The buyer and seller knew that there could be no building. The house plan is roughly 4400 sq. ft. The average home size in the area is 2000 square feet. She is very disappointed with the staff report because the staff person did not read the plan. They could not make the tentative findings for special circumstances if they had read the plan. I urge you to deny their request for a variance.

Mr. Moore asked staff if there is a provision in the specific plan that provides a mechanism for a variance or is it absolutely prohibited, no wiggle room provision for the owners. Ms. Beatty stated that the variance process is like any other application process where staff has to make the findings.

Christine Sarantakis, resident at 17627 Madison Avenue, talked about the 30% slope. She did some research and found out that other cities have developed the same type of policy for hillside development. She shared with councilmembers policies from other municipalities that address hillside development. The studies talk about soil erosion, hazardous areas, and no grading. Petaluma did a big study

on hillside developments and talks about surface erosion, degradation of hillside, and increase public expenditures. She believes some of this wording applies to finding #3, where this type of development is detrimental to persons or properties in the neighborhood. She stated that cities such as Belmont, Orinda, Napa, Moraga and Lafayette all have the same type of restrictions on 30% slope or greater. She cited an example in Pittsburg where 7 homes built had to be evacuated because of the extreme grading. The report was entered into the record.

Gerald Thompson, resident at 17764 Madison Avenue, said that granting a variance on a 30% slope is a special privilege in this case. Natural erosion has caused this lot to have only about 400 square feet of buildable space. He and his wife urged the MAC to deny this application.

Ed Copra, resident at 5385 Elaine Court, is against the project.

Brian Murry, representing Mr. and Mrs. Copra, talked about the 30% restriction on the Specific Plan. This lot has presumably determined that this is a buildable lot. He said that the County may face legal issues in doing so. Basically this not in conformance with the nature and character of the community. The average building size in this area goes from 1800 to 2000; the proposal is for a home 4000 sq ft, which is not in conformance with the community. Supervisor Miley worked with the community to strengthen the Specific Plan for this area; this plan was finally adopted. Since then there have been no homes built on 30% slope. The Specific Plan, under Geology, states that there should be minimal grading. Grading will be evaluated and minimized to the greatest extent possible.

John Aufdermauer, resident at 17580 Madison Avenue and previous owner of the property, stated that he bought the property after the plan was done. The original specific plan was initially done in 1975, not building on 30% slope did not change between 1975 thru 2006. During all of these meetings he specifically asked if county staff, Louis Andrade and Alex Amoroso, if someone with a lot such as this could be built on; they all stated that we could ask for a variance. This is a legal building lot, approved by the Board of Supervisors. The variance process is still in place. The average square footage built since 1990 of living 3600 square feet, two in 1980 were 5000, before this plan was finished the De Limas built a house 3000+ square foot. He supports the house and hopes that the MAC approves it.

Diana Hanna, resident at 10142 Cull Canyon Road, stated she has been involved with different plans and the Specific Plan says no building in the 30% slope. This project should be denied.

Todd Stinn, resident at 17961 Madison Avenue, said that the plan should go forward. Alameda County has more homes built on 30% slope than any other city or county. The Madison Plan passed in 2006. There are two lots now and three on the other side of the road, there could only be another six homes built in the area. He is in favor of the variance.

Lyle Bogue, resident at 17800 Madison Avenue, lives across the street from parcel A, spoke in opposition of the 30% slope. He said this is his 11th meeting with public agencies on this very same subject. He will continue to come and speak on this issue. The owners should have been aware. They were notified that this piece of property had problems. The 30% slope for all the reasons that have been stated has to be restricted. The applicants have problems with staff misleading them, if they have problems with county staff they need to go to the Planning Commission and deal with it. This is the third or fourth planner who is dealing with this issue, no continuity. The biggest problem is that they are going to move 2600 cubic yards of dirt, that means 325 loaded trucks, 650 truck trips on a one lane road. It would take 40 days to take that much dirt out of this lot. He asked the council to deny it.

Namie Fukunaga, resident at 5378 Elaine Court, stated that she is concerned on where the property owner plans to build the home. She is worried about how construction will affect her property and home. She asked Council for denial of the project.

Ken Ibarra, architect for De La Cadena, stated that he was here last April 2007. He spoke about designing the house and removing not even substantial trees and replacing them with 6 trees. He talked about the steepness of the lot and calculation of slope. He said that he has built on various hillside areas. This house is nestled, sits within a grove. The concerns are with mud slides, the house being too big, intruding too much. Pure speculation that the lot has eroded, no one has produced a map. This property owner is building on a sensitive site, we are going thru county standards. This will be a very stable development. This is the best design for the site.

Public portion of the meeting was closed.

Ms. Adesanya clarified that this item is here tonight only for discussion. Ms. Beatty said yes.

Ms. Miraglia said that she does not think that the findings can be made. She is in disagreement with the planner that wrote the staff report. She is opposed to the project. Mr. Moore said that the variance has the proper methodology, it was classified as a buildable lot, the specific plan has provisions for a variance. He thinks that the special circumstances absolutely can be made.

Ms. Miraglia said she needed clarification on finding # 2 in regards to special privileges. Mr. Moore said it would not, legal lot. We can discuss the size of the house and the amount of grading but he thinks that the architect has some compelling statements, you have to go for a variance, no where else you can put it. The variance is very specific to this site. Ms. Miraglia said that at the time it was made a buildable site, there was a spot but now it has changed and it is no longer buildable.

Mr. Nielsen said that when the Madison Plan was adopted, no building on 30% slope. Approved by the Board of Supervisors. The overriding factor is the Madison plan, it is the regulation that the Council needs to adhere to. Mr. Frank said that either you have a plan or you don't have a plan. Why spend the time and effort to have a plan? Ms. Sugimura agreed with Mr. Frank. Ms. Adesanya said that the findings might be able to be met. She would want to see environmental and CEQA study to determine whether or not the lot is buildable.

Ms. Beatty said that CEQA does not require an initial study if a project is denied. If the Council wants to make a motion it's okay. Discussion ensued between council members in regards to the issue of legal building status and the Specific Plan limitations. Discussion also included making findings for the variance and also if anything should be built on this lot.

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

F. Open Forum

Suzanne Barba, resident at 5787 Highwood Road, and Diana Hanna, resident at 10142 Cull Canyon Road, both spoke about their concerns over the Russell City Energy Center and the East Shore Energy Center and its impacts on Castro Valley. There will be 40 tons of pollutants in the air from these plants. These pollutants can get into the lungs. The electricity will be going to other communities. Both plants will be about a mile from each other. They will ask residents to stop burning wood and use gas in order to mitigate these plants. The pollution will be generated and it will go all over the Bay Area.

G. Chair's Report

H. Committee Reports

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

Ms. Sugimura distributed a flier for two future Town Hall Forums that will take place next month, October 6 and 27, 2007 at the San Leandro Library and at the Eden United Church of Christ respectively.

I. Staff Announcements, Comments and Reports

Ms. Henninger asked council members to call her or county staff to let them know if they will be absent or late. She also informed them that county staff is looking into the MAC boundary issue. She will keep them updated on this issue.

J. Council Announcements, Comments and Reports

K. Adjourn

The meeting was adjourned at 10:05 p.m.

Next Hearing Date: Monday, September 24, 2007