

**CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL**  
**Minutes for October 8, 2007**

(Approved as corrected November 13, 2007)

**A. CALL TO ORDER:** The Chair called the meeting to order at 6:35 p.m. Council members present: Jeff Moore, Chair. Council members: Cheryl Miraglia, Vice Chair. Andy Frank, Dean Nielsen. Council members excused: Carol Sugimura and 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 September 10 and September 24, 2007**

**Ms. Miraglia submitted corrections to the minutes of September 10, 2007. Ms. Miraglia moved to approve this minutes. Mr. Nielsen seconded. Motion carried 4/0/2 with Mr. Sadoff and Ms. Sugimura excused.**

**The minutes of September 24 will be continued to the next meeting.**

**C. PUBLIC ANNOUNCEMENTS – None.**

**D. CONSENT CALENDAR**

**CONDITIONAL USE PERMIT, C-8646 - AMERICAN TOWER CORP.** Application to allow continued operation of a radio transmission facility (cell site), in a "A" (Agricultural) District, located at 23205 Eden Canyon Road, east side 1000 feet north of I-580, in the unincorporated Castro Valley area of Alameda County, bearing County Assessor's Parcel Number: 085A-1200-001-10.

**Mr. Nielsen moved to approve Conditional Use Permit, C-8646. Mr. Frank seconded. Motion carried 4/0/2 with Mr. Sadoff and Ms. Sugimura excused.**

**E. REGULAR CALENDAR**

**1. CONDITIONAL USE PRMIT, C-8562 , NOVAK -** Application to allow operation of a telecommunications facility, in the R-1-RV (Single Family Residence, Recreational Vehicle) District, located at 2301 Miramar Avenue, north side of west of Crest Avenue, unincorporated San Leandro area of Alameda County, bearing Assessor's Parcel Number: 080A-0191-034-04.

Ms. Beatty presented the staff report. Staff is recommending approval subject to the proposed conditions.

Maryann Miller Novak, applicant, representing Metro PCS, said she is available for any questions from the Council. Mr. Nielsen commented that he looked at the design and it is innovative.

Public testimony was called for.

Mark Wurtzel, resident at 2201 Prosperity Way, San Leandro, asked what permits have been granted up to this point. A temporary tower was constructed, the permit expired in November 2006 and it appears that the tower has been operated since then without permit. He said that the tower is an eye sore and is not something that is needed in the neighborhood. He is concerned about potential health hazard.

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The Chair asked Mr. Wurtzel what did he think about the aesthetics of the proposed design. Mr. Wurtzel said it certainly looks more appealing than the antenna on the photograph, although he thinks it is going to be protruding.

Sue Comunelli, resident at 2219 Prosperity Way, San Leandro, said that as a Christian she is offended that they want to put a microwave antenna on a church, she thinks it is a poor idea.

Public testimony was closed.

Ms. Miller Novak said that the existing structure is another carrier's structure. Also, in response to the RF concerns, a report was prepared by a qualified engineer, he measures the ambient levels in the area and projects what the potential emissions are, according to their studies the potential emission from their proposal is .10% of the allowable federal standard.

Ms. Miraglia inquired about the current crosses on the building. Ms. Miller Novak if the new proposal is for another cross section that is underneath the second cross. Ms. Miller said they are proposing to put something on the sanctuary which is six feet tall. The Chair asked for clarification if the small cross on the peak of the gable roof and two flanking antennas are yours. Ms. Miller answered yes.

Mr. Nielsen asked Ms. Beatty about a permanent and temporary tower and if the temporary tower is the one to the left on the building on the photograph. Ms. Beatty said yes. Mr. Nielsen said that they are talking about 3 towers on this property. Ms. Beatty said that two were approved last year. Mr. Nielsen asked staff if they could find out the status of the approval surrounding the one on the right. He expressed his concern with having three towers being located on one piece of property.

The Chair asked councilmembers if it would be acceptable to approve the application and have Code Enforcement check on the current status of the other ones. Mr. Nielsen expressed his opposition to have three towers on one building.

Ms. Miller said that the tower approved by T-Mobile never got built. The building permit expired on that one. It seems that they got a temporary permit to operate which also expired, this cross is not there, this is a photo simulation, there is nothing on the property right now except for a temporary structure. There is only being only one other approval on that parcel. Ms. Miraglia asked if the "ugly" one on the photo is still there. Ms. Miller answered yes.

The Chair reopened the public testimony. Mr. Nielsen asked Mr. Wurtzel if he agreed that the cross on the left in the photo is not there. He said he believed there is a tall cross. The Chair said the structure is there but not the antenna. Ms. Miraglia asked if it was possible to make a motion to approve this pending the removal of the temporary one on the right hand side.

**Mr. Frank moved to continue the matter until such time as they can provide clarification as to what does or does not exist on the site. Mr. Nielsen seconded. Motion carried 4/0.**

2. **SITE DEVELOPMENT REVIEW, S-2129 –PAPIERNIAK** - Application to allow the remodel of an existing building located within the CVCBD-SUB7 (Castro Valley Central Business District Specific Plan, Sub Area 7) District, located at 3295 Castro Valley Boulevard, south side, 300 feet east of Chester Street, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 084A-0040-018-04.

Ms. Beatty presented the staff report. This site was previously a department store. The staff report reflects some discussion regarding the parking situation on the site. The planner

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submitted an addendum about the parking. At this point, it is unknown what types of tenants will be coming to this building. Jaimie Benson, from the Redevelopment Agency, has been working closely with the applicant and she that is in attendance to answer any questions. Staff recommends approval.

The Chair said that as a matter of disclosure, his company has worked in the past on this building but it was for a previous tenant, not for the building owner who has nothing to do with the project in question. This was many years ago.

Ms. Miraglia said she sent a list of questions to the planner of the project and did not receive a response. One of them had to do with the parking requirements. In addition, she had questions regarding the color pallet. She expressed her concern with the signage part of the application. At this time she would not feel comfortable approving it as submitted.

James Heilbronner, architect for the project, gave a quick overview of the same. He said they are trying to put the building back into business. The leasing strategy for this building is to infuse smaller retailers with a store front of the street and downtown oriented. The second floor will be for individual offices and tenants. It is the same square footage as before. He did some code upgrades. He talked about color tones. They will be warm tone colors. He said they are very flexible about colors. The designed plan sign was done based on the County's sign code and ordinance. They don't know who the tenants are yet because the building will not be finished and ready for tenants until this time next year. They have had lot of conversations with tenants but no signed deals yet. The tenants will have to get their own sign approval from the County. As far as parking is concerned, parking is what it is, it is extremely tight, it does not meet today's standards. Redevelopment came up with the idea of shared parking to facilitate ups and downs, and demands of parking in and around the neighborhood. We can not make more parking.

Mr. Nielsen asked Mr. Heilbronner if he has talked to the neighbor who has parking on the other side. Mr. Heilbronner said that the owner has had extensive conversations with the neighbors about the future of shared parking and the implications of that. He said there is no mutual agreement.

Ms. Miraglia asked Mr. Heilbronner about the signage monument. He said that he submitted a drawing to the County. The monument sign is simple, 4 x 4, with the numbers for the street address, 3695 only. There will not be any names on the sign, this sign will help people find the building. Mr. Frank agreed that it is difficult for people to find the numbers on the buildings.

Ms. Miraglia said that she liked the idea about the warm tone colors. Additionally, she wanted to be clear in regards to the parking because at this point it is not known who the tenants will be. If the uses exceeds the parking requirements, it might come back to this Council and the Council might say sorry, there is not enough parking. Mr. Heilbronner said that he did not receive the amendment about this issue on parking. The staff report says that the building's grandfathered for parking for the uses proposed. There was no language or discussion that called for more parking based on the tenant. Mr. Nielsen said that this is a change of use, from retail store to a split. Mr. Heilbronner said the use is retail on the first floor and offices on the second floor. Mr. Frank in the past it was all retail. Discussion ensued on parking requirements for different businesses.

Ms. Miraglia said that parking is going to change. She asked staff to provide with the ordinance that relates to the grandfathered use that relates to parking. There is no agreement for shared parking. She mentioned the possibility of putting a parking structure in the back of this

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property. Redevelopment spent a lot of money in this project, a forgivable loan, it is quite of an investment in County funds. Ms. Beatty said it is not grandfathered in.

Jaimie Benson said Redevelopment is working on the shared parking program between property owners, it has not been formalized yet. That is the focus of the Redevelopment Agency, to work on that block some sort of agreement for improvements to the parking area to help alleviate some of the parking concerns.

The Chair said that everybody would like to see that building enhanced and parking has been a concern. Ms. Benson said that Ms. Miraglia spoke well to the funds that have been invested by the Redevelopment Agency. They are in favor of the project. They are aware of the parking deficit. They see this as a compromise to leaving the building empty. Mr. Nielsen asked Ms. Benson if she had met individually with the property owners. Ms. Benson said no. Her understanding is that there have been conversations between the property owner and Mr. Bigelow and he is definitely in support of the shared parking. Bob Swanson said that Mr. Bigelow, who is the property owner next door, came to him two years ago with a shared parking plan. He is supportive of the plan.

Public testimony was called for.

Ken Kremer said that he is a resident of the community since 1972 and he had a business here for 18 years. He is a broker and developer in the area. He said that the applicant has a beautiful plan to enhance this building. He strongly suggested that the Council look at the big picture and approve the project.

Ms. Benson said that having the signage approved by the Planning Department is important to the tenants, it gives them an idea of the parameters. The applicant is taking a big risk for the Castro Valley area.

Public testimony was closed.

Ms. Miraglia said that the parking requirements need to be met. She would like to see the building redone, but parking is a major issue. The signage could be worked on, but cant support the project with parking as it stands now. Mr. Frank appreciates Ms. Miraglia's concerns but agrees with Redevelopment, this needs to be done, to leave it to deterioration is not acceptable. He is dealing with generics right now until he gets tenants in. Mr. Nielsen said he is looking forward to have this site redeveloped for a long time. He likes the project. As far as the signage is concerned, they need to conform with County requirements. He is concerned about parking and the over all use of the building. The important thing is to move forward with an attractive building in the center of downtown Castro Valley.

The Chair said he fully supports this project. It is a great project. Parking is important but it is what it is but it can be worked around. Ms. Miraglia said she wanted to be clear, she realizes that Mr. Nielsen is on the Redevelopment CAC, and if he is being supportive of the project even though it does not meet the parking requirements. Mr. Nielsen said the point he was making is that we use good sense in terms of the tenants that we put in there, that the tenants that they get don't exceed the County's analysis of what is available. The Council can approve this with guidance to the owner not to put the type of tenants that exceed the parking spaces available.

Ms. Benson said that any site development review within that area falls under the business district plan. Mr. Papierniak agrees to shared parking and to work with other property owners. Mr. Frank said that we have parking requirements that are generic, if they can open it up to shared parking it gives more flexibility and potential for more parking in the area. Castro

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Valley Blvd. is a strip, what other communities have done all throughout the area with the access and use of facilitators like Redevelopment, is to get other property owners to share parking get people to park in the back because it generates more revenue for people on the property. Let's move forward with the site development review as it is right now.

The Chair said that the updated memo regarding parking says that they are allowed up to 70 unless a variance or shared parking agreement is in place. He fully acknowledges the parking issue but seems like it is addressed to be able to deal that.

**Mr. Frank moved to approve Site Development Review, S-2129 with Planning considerations. Mr. Nielsen made an amendment to say that the property owner is to strive to not rent/lease space to tenants that require large numbers of parking stalls, in relationship to the square footage leased, like barber/beauty saloons or orthodontia/dental/medical offices to best utilize the 82 available parking stalls. Mr. Frank said: "whatever is on the books right now that govern the use of parking as the amendment reflects 82 parking spaces." Mr. Nielsen seconded. Motion amended. Motion carried 4/0/2 with Mr. Sadoff and Ms. Sugimura excused.**

3. **SITE DEVELOPMENT REVIEW, S-2133 – LEE'S SIGNS/FINK** Application to allow new signage for a restaurant, in the Castro Valley Central Business District Specific Plan Sub-area 10 (CVCBDSP-SUB 10) District located at 3774 Castro Valley Boulevard, north side, approximately 250 feet west of Forest Avenue, Unincorporated Castro Valley Area of Alameda County, designated Assessor's Parcel Number 084C-0724-068-00.

Ms. Beatty presented the staff report. Staff feels that the sign is in compliance with the Specific Plan, no major changes at the existing building are proposed at this time. Redevelopment Agency is not in favor, they disagree with staff on the type of sign. The Redevelopment Agency feels that the building itself is in need of major exterior renovation, so they recommend denial of the sign. Also, they encourage the property owner to do upgrades to the building. Mr. Frank asked Ms. Beatty if it is in the Redevelopment corridor. Ms. Beatty said yes.

Ms. Miraglia referred to comments on pages 2 and 3 of the staff report saying that it says on page 2 that it is non-conforming to the Castro Valley Specific Plan and page 3 under Planning Considerations. Discussion ensued on Redevelopment's opinion that this building needs a renovation but it does not qualify under the Façade Improvement Program. Ms. Beatty the report states Redevelopment comments on the project.

Jaimie Benson said that as far as this project, it is a house that has been converted to commercial use, it is very deteriorated, she looked at the property herself, is not necessarily the best way to approach this property. She can not speak as to why it was not eligible to participate in the program. Perhaps the concern is that it is so deteriorated, it is a house conversion. The sign does not offer any benefit to the property.

Mr. Frank told Ms. Benson if she could talk to Redevelopment and find out what their policy approach is and how they view properties. Ms. Benson said that as far as the façade improvement program, they have very specific criteria that has been approved by the Board. Commercial structures and closer to the hub score higher than others. Dilapidated properties does not score high. Ms. Benson said that in this case the roof does not support the sign. Mr. Frank said that this site has been a restaurant for more than 30 years and that Redevelopment should keep an open mind to these type of businesses. Ms. Benson said the property owners might be interested in applying for the program. Mr. Nielsen asked Ms. Benson if she thought that a monument sign in the front would be more appropriate than a sign on the roof. Ms. Benson said she does not know the specifics and what the options are. Mr. Nielsen said that the

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roof sign appears to be out of the question according to Redevelopment sign policy, but signage is important for the property owner to advertise his business.

The Chair asked staff if the use was in question and if the Council had the ability to discuss that as part of the sign permit. Ms. Beatty said that staff is recommending that if the Council decide to approve the sign and the conditions of approval stating specific upgrades to the building.

Mr. Lee, applicant, said that this building was a residence. He recognizes that a roof top sign is not allowed. This building does not have enough space for a wall sign that is why they came up with a roof type sign. The structure is not strong enough but behind the structure he found a good place to put the sign. This sign is not heavy. Previously, there was a monument sign. He knows that a monument sign is not allowed in this area. A roof type sign is much cheaper than a monument sign. Also, this is a wooden sign, it is nature friendly and does not look like a commercial sign.

The Chair asked Mr. Lee if he was aware of the concern for painting and landscape improvements. Mr. Lee said that he is just the contractor for the sign.

John L., a business broker, said that he put this transaction together, with the buyers and the sellers of the existing restaurant that is there. He said that the property owner is an older gentleman and he is very stubborn. He will not spend any money on that property. However, he rolled inside the restaurant and the current owner of the business made some substantial renovations to the kitchen and dining area, he has an ABC license. He is not speaking or representing the owner, he is only saying that he has been inside the building. The outside is old and dumpy. If the restaurant owners starts making money, maybe they will end up buying the property. Some cosmetic improvements will be required to give that building more sex appeal. It is a mixed use building. There are some residences behind it.

Public testimony was called for. No public testimony submitted.

Ms. Miraglia said that this is tough because the restaurant owner is not the same as the building owner. Because the building is in major disrepair, she would not approve the sign, unless improvements are done to the building. She suggested to continue this item to allow the restaurant owner to speak with the property owner and see if there is something that he is willing to do.

Mr. Frank asked Ms. Beatty what type of improvements we are talking about. Ms. Beatty said that the building should be brought up to current building code standards and some façade improvements. Mr. Frank said that the advantage of the sign is that it covers the air conditioning. There are a lot of limitations in terms of signage, he can go along with the sign and he would also like to see the place painted with some landscape improvements. Mr. Nielsen said that he can agree with the motion to approve the signage providing that the front of the building be improved and landscaped.

The Chair said that he fully supports council members' request for façade improvements.

Ms. Miraglia said to add a condition that the applicant needs to contact Redevelopment and see if they can participate in the façade improvement program. Ms. Miraglia made a motion to continue the item to allow the applicant to put together a façade and landscape improvement program and work with Redevelopment to see if funds will be available and then bring it back to council. Mr. Nielsen seconded the motion to continue so the operator can work with the owner of the building.

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The Chair asked for applicant to return to the podium, and said that Council is considering the motion to continue it to allow somebody to ask the owner for some improvements. John L. said that the property owner received a copy of the Redevelopment letter. He tried to call the owner unsuccessfully. He does not know exactly what the owner will say. He suggested that council approve the sign and include some conditions so the owner works on upgrades to be made over a period of time. Mr. Nielsen told Mr. John L. that the building is an eye sore and that he and the tenants need some time to discuss this with the landlord. Ms. Henninger said that if the building is deteriorated or fences are dilapidated, it falls under the Preservation Ordinance.

Mr. Frank said the Council can direct Code Enforcement to review it and if necessary bring it back for MAC. Ms. Henninger said that if it is continued, she can check and see what the issues are.

**Mr. Frank made a motion to continue the item for two weeks to October 22, for clarification from the owner, the tenant and from the County to make a determination on that date. Motion carried for continuance 4/0.**

4. **TENTATIVE PARCEL MAP, PM-9566 & VARIANCE, V-12080 – KREMER** - Application to subdivide one parcel containing 0.40 acres into two lots and to retain an existing secondary unit as a legal non-conforming use where not otherwise allowed, limited to ordinary maintenance and minor repair only, two stories in height where one story is the maximum, and with a 2.5' side yard where 7' is the minimum for a residential use, in a R-1 (Single Family Residence) District, located at 22440 Charlene Way, east side, approximately 200 feet southeast of Redwood Road, Castro Valley area of unincorporated Alameda County, bearing County Assessor's Parcel No.: 416-0130-001-00.

Ms. Beatty presented the staff report. She stated that the staff planner has recently received quite a bit of correspondence from the neighborhood in opposition of this project.

Mr. Kremer, applicant and co-owner of the property, stated that he got a copy of the minutes of the previous meeting. He referred to the comments by Gail Moore, Larry Kuzni, Bridget Paquette and Jennie Lester. He has consulted with his own engineer on the retaining wall next to the driveway to address of the neighbor on the traffic impact on his wall by addressing the driveway design. He actually designed the proposed house in which he plans to live. He also talked to Bob Bohman, with the Fire Department about the several different options for access. He said that the County is not happy about taking the old tree out. He said we can make the proposed 16 feet driveway with 1.5 foot swale. The Fire Department is okay with this as long as we sprinkle the back property. He said that for parcel 1 staff recommended at least 3 parking spaces. The third parking space would be parallel to Charlene Way and perpendicular to the existing gravel driveway. Staff is recommending that we improve the existing gravel driveway to concrete. The plan for the house calls for several storm water retention features. Also, we are suggesting that we go with the driveway of impervious material as long as we get the approval from the engineer of the Fire Department. One issue that staff says that while there are 5 lots of similar size in the same street, 24 houses, there are 2 right across the street. Page 6 of the staff report says that the proposed lots would not conflict with prevailing lots. In overall terms, staff considers this proposal in conformance with the Castro Valley lot size consistency policy. He showed council members some color pictures of the project explaining the type of businesses surrounding the property to the west, east and rear of the property. He stated that there is not complaint about traffic from this care facility; however he said that it might be better signage to identify that property. Some comments from the neighbors were that it is a tight corner and that is correct. He called John Bates, the traffic engineer to see if there can be additional signage to slow down around that corner. Mr. Kremer continued explaining in detail his project to council members.

Mr. Nielsen told Mr. Kremer that one of the obvious concerns that the neighbors had the last time was run off not only to the parcel next door but also to the street and he has not seen any provisions for grading off the driveway to the street in order to handle the run off for parcel # 2. He asked Mr. Kremer if the concrete retaining wall is the neighbor's or is his. Mr. Kremer said it belongs to the neighbor. Mr. Kremer said that all drainage issues will be addressed.

Public testimony was called for.

Linda Ramsay, resident at 1729 Dahill Lane, Hayward, concerned about riparian area, drainage and any kind of structure that Mr. Kremer is building on that property that goes along San Lorenzo Creek.

Bridget Paquette, resident at 22465 Charlene Way, presented a copy of the property owners and residents of Charlene Way's protest of the lot split and building of this new home on their street. She spent some time looking over the staff report and she really wanted to address a few things that are in the staff report and some others that are not. There is no mention of the dental office. Parking is a problem in their street. The report mentions the turning movements between Charlene Way and Redwood Road/A Street can be challenging due to the high volume of traffic. She also referred to the possible re-movement of the tree. There is a whole lot of negative to this. She asked the Council to give some thought and review the staff report.

Mr. Nielsen asked Ms. Paquette why the neighbors oppose the project and why they signed the petition. Ms. Paquette said they do not see a benefit to the residents or to Castro Valley, only to the property owner.

Larry Kuzni, resident at 22450 Charlene Way, next to Mr. Kremer. He read a letter with all his concerns about the split. The letter was entered into the record.

Richard Moniz, resident at 2435 Grove Way, said that his driveway borders the eastern of Mr. Kremer's property, it is a driveway for 3 homes that are in the back and it is the only way out. The first house was built in 1927, the second house was built in 1934 and the third house was built in 1960. That driveway is only 16 feet by 12. There are two elderly people living back there. The Fire Department and the ambulance have to come there and that is the only way in and out. Mr. Kremer approached him when he first bought the property and wanted to know if he could put an entrance on the back of this property and use their private driveway. He told him no at the time. He approached him yesterday and asked permission to put a fence. If Mr. Kremer is going to put a house there and if it is approved, he wants to put a fence that has no gate in there, he can not use that driveway, it is a private driveway. He also approached him and wanted to use the driveway while under construction for the cement pumpers and trucks. He said no way, he has 73 year old water pipes running under that road. He has a big lot next door, he can ask that neighbor if he can use it. There are plenty of ways to get the building trucks in there, not using their private driveway. Another reason he wants to have the fence up is because Mr. Kremer has tenants in there, a while back, young kids with 4 wheel drives that use the back of the hill to come up on their driveway, they go in the middle of the night making turns, he has seen them more than once. He has told Mr. Kremer that this is a private road. Mr. Kremer replied that they are just kids. The road has been there since 1927, it is a private road and he is opposed to the project.

Mr. Moore asked Mr. Moniz if he has a problem with a subdivision in the area. Mr. Moniz said no.

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Gail Moore, resident at 22499 Charlene Way, said that it is unusual the way the road comes in and makes a right angle. She asked the Council for notices of any other meetings. Also, she is very concerned about the drainage, it affects her property. Her street is very narrow. When there is a delivery truck or cars parked on both sides of the street, some of the houses there the prunings come out into the street, you can not park close. They would like to keep the lovely family oriented street, without congestion.

James Faulkner, resident at 22506 Charlene Way, referred to page 4 of the staff report, and clarified that he was not representing 3 property owners. He referred to the lot size consistency analysis and discussed what was reflected in the staff report regarding the easements. Mr. Kremer said that he would put a fence prior to the construction and that there would be no construction activity on that private road at all. On page 6 of the staff report, it mentions that also does not include a privately owned parcel that is in the same ownership as one of the large parcels to the east, because it is used as a driveway for that parcel, and is indicated to be in reserve as a future right-of-way. It does concern the property because of that easement.

Mr. Frank asked Mr. Faulkner regarding the easement in question, he said he has shallow sewer line, water line, PG&E line. He said he can only speak for his mother-in-law. Her sewer line runs to the cul-de-sac on Charlene Way.

Candy April, a Charlene Way resident, said she is concerned about the sewage piping that has not been upgraded in the past 60 years, if they put more piping on old pipe they are going to have more issues than they already have on the street.

Mr. Frank told Mr. Faulkner that it looks like the Peterson property, was that the one that shows 7100, 7100, 10,000 Mr. Faulkner said the 10,000 was the old Peterson property that happens to be theirs. Mr. Frank asked Mr. Faulkner if he went through a lot split. Mr. Faulkner said he did not know. Mr. Frank asked Mr. Faulkner if there were any improvements in the last 20 years.

Charles Terry, resident at 22417 Charlene Way, right across the street from the proposed project, said that the house above the garage has always being a dump for about 22 years. It is the worst property on the street, he came in little while ago, took all the trees, little and big, leaving branches in the wires, there is no landscaping at all, the house is not completed. The trucks that go to the convalescent hospital have to back in, the front cab extends all the way to the proposed entrance of his property and they back in, the fire department pull in and the ambulance follows every time. Now they do not even go in there. They park on Charlene Way and walk in. As far as the posting signs to get people to slow down, for years he has tried to get people to slow down, there's still drivers that fly by there. There is not enough parking on the lot. He is opposed to the project.

Public testimony closed.

Mr. Kremer, said he is happy to have a solid fence in the back, he will not go ahead and place the fence prior to construction because it is not practical. Some other benefits to the neighborhood is that because he owns half of the property now, he will live in the house for 2 years to satisfy the neighbors' concerns, he will be happy to do that, he plans to be in the neighborhood, by remodeling the existing house and landscaping and implementing some of the storm water retention features, by him doing this project, he will enhance that property also, benefit to neighbors and owners more attractive home, aesthetics to the neighborhood. The fence will enhance the security of the neighborhood. The new landscaping design and the enhancements to the existing property will benefit everybody. Drainage and water run off issues will be addressed and the storm water control features will minimize any run off.

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Mr. Nielsen said that the traffic problem on Charlene Way is absolutely intolerable. The street is not wide enough to accommodate additional traffic. He does not know if the Council would ever consider that Charlene Way would have to be widened because the practice of the Council in the past has been to take into consideration lot sizes to protect the value of the homes. He is opposed to additional lot splits on Charlene Way.

Ms. Miraglia and Mr. Frank both agreed with Mr. Nielsen. The biggest issue is the lot size consistency and it is not consistent with the rest of the neighborhood. Therefore, they are opposed to it.

The Chair said that he is concerned about categorical statements on the adequacy of the streets. He said he would like to hear from the traffic engineer if it is common on subdivisions if it were to be approved to require dedications for widening, same thing regarding utility designs. His opinion boils down to size lot consistency. Council reviews in the past on lots size issues have been "loosy goosy". He said that the vote would place a burden on Mr. Kremer and could preclude subdivisions on other properties. Ms. Beatty said that in the past applicant situation in this case planner took note of that situation and did include the typical size lots for the area rather than assuming that they would be subdivided in the future. However, looking at the really large lots, personally she would exclude those in her calculation. Mr. Nielsen said he thinks it is consistent with the policy that the average lot size in the neighborhood should be the prevailing interest. Mr. Moore said he recalled projects in the past where we had a 10,000 lot size minimum and the average was less, we totally reversed ourselves. We are just trying to get to a fair application of a policy in the County that can be applied for the mutual benefit of all.

**Mr. Nielsen moved for denial of Tentative Parcel Map, PM-9566 & Variance, V-12080. Ms. Miraglia seconded. Motion carried 3/0/1 with Mr. Moore opposed.**

5. **VARIANCE, V-12061 – SEAD SISIC** Application to allow a 6' high fence where 4' is the maximum and to allow an accessory structure in the front half of the lot in an "R-1-CSU-RV" (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 18658 Crest Avenue, northeast side, 440 feet northwest of Titan Way, in the unincorporated Castro Valley area of Alameda County, and designated Assessor's Parcel Number: 084B-0370-007-13 **(to be continued to October 22, 2007)**.
6. **VARIANCE, V-12086 – KIM** - Application to allow construction of an attached garage with a 3-foot side yard setback where 5-feet is required in a "R-S-CSU-RV" (Suburban Residential, Conditional Secondary Unit, Recreational Vehicle Regulations) District, located at 4663 Heyer Avenue, south side, 830-feet west of Center Street, in unincorporated Castro Valley Area of Alameda County, Designated Assessor's Parcel Number: 84C-0701-004-04.

Ms. Beatty presented the staff report. Staff is recommending approval of the variance. Mr. Frank asked Ms. Beatty if she recalled where other variances were provided. Ms. Beatty said no.

John Kim, property owner, read a statement, which was entered into the record.

Mr. Frank asked Mr. Kim why he could not just extend the driveway and build the garage in the back. Mr. Kim said because he has a storage building in the back. Mr. Frank asked if the storage is a wood frame construction and what is the depth of the storage. Mr. Kim said it is wood frame with concrete slab. It was built three years ago and is 20 feet depth. Mr. Nielsen asked Mr. Kim if he has talked to his neighbor on the other side about where his fence is in relation to the property line and if he is in agreement to move the fence. Ms. Miraglia asked Mr. Kim if the

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neighbor is not within 5 feet of the property line. Mr. Kim said no. The concern is that there are future plans to convert that into condominiums and they want to make sure that emergency vehicles can go through.

Public testimony was called for.

Cheryl Olson stated that her father purchased this property in 1960. The fence has been there forever. She said she does not want to lose any driveway space.

Nuysoliafaifuina, Nuy, resident of the neighboring property, said they have a very specific concern. The adjacent property in question has been with the Olson family for almost half a century. He said that their property is very tight, there are 8 apartments, are very exclusively developed and maintained. They tried to maintain a very aesthetically feature for those families that are there, there are senior citizens to families as well. If you look at the plot map, there are two proposed boundary lines. One is the boundary line where it is proposed to redressing the fence is located, it is 3 feet because of the trapezoid angularity. If you look closely the driveway from the opening is like 15 feet to the proposed new boundary. If they draw the boundaries, they object to that. He said the house does not have a garage. They don't want the property boundaries changed.

Ms. Miraglia asked Nuy if he is in favor of the variance that Mr. Kim is requesting. Nuy said that not for the boundary adjustment. If this garage is approved, he understands that the boundaries will not change. There are also other concerns. They have very shallow lines, right on the edge of that fence, they spent \$30,000 about 2 years ago improving the whole driveway, each one has 2 parking areas, car port and open space improving areas \$15,000 for all the complex. Also, they spent \$ 10,000 for insulating the walls.

Mr. Kim said he was not asking for a boundary adjustment, he is only asking for a variance.

Public testimony closed.

Ms. Miraglia made a motion to approve Variance, V-12086. Mr. Frank seconded. Discussion ensued on making the findings for the variance.

**Mr. Nielsen made a motion to deny Variance, V-12086 because of the question on the findings. Mr. Frank seconded. Motion carried 3/1 with Ms. Miraglia opposed.**

**F. Open Forum – None.**

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

**H. Committee Reports**

- **Eden Area Alcohol Policy Committee**

Ms. Miraglia referred to the last MAC General Purpose meeting where the alcohol fee was discussed. She suggested an alternative approach where Supervisor Miley facilitated a meeting with 6 or 7 people. At the meeting, there were 5 representatives from the Sheriff's Department and 3 from CommPre and herself. She said that the Sheriff's Department was very adamant that's how much money they need. The California Restaurant Association really tried to make a similar effort in talking to the fact that it does penalize businesses. The only thing they were successful in getting was the ridiculous requirement to have every employee trained, which was not even properly being monitored or enforced, to have the owner or manager from each business that person is responsible for training, it is much like food safety.

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She heard that this is going to come back in front of the MAC next Monday night. She will be out of town, so will not be able to attend. She did send a letter to the editor and she understands that it will be published. She also sent a statement for the meeting.

Mr. Frank asked if the Council could get County Counsel's opinion. Ms. Miraglia said County Counsel came with a document in hand, they tried to move forward. It was very frustrating.

The Chair asked Ms. Miraglia if there was a person you can speak to.

Mr. Frank said there were two issues: one of them is if County Counsel thinks it can be done. Ms. Miraglia said it can be done. The second issue: if it can be done, what is the economic result of the action taken, it does not change the feasibility of whether or not the Sheriff can engage in an action economically to fund itself to do it.

Ms. Henninger said that it was based on the current program. The funding was not enough to implement the program. Ms. Miraglia was concerned with the cost to small businesses. There was no movement from the Sheriff's Department or Commpre. Ms. Henninger said that it has to be done thru education and enforcement, anything less would not be successful. Ms. Miraglia said that County Counsel actually agreed with the sliding scale. The sliding scale that she proposed was higher so there would be different levels for a number of employees. The idea was to raise what the fee would be, to reduce it if they have all their employees trained. Now we have eliminated that need because we have gone to just managers and we are still trying to retain that fee. Ms. Henninger said that we ended up with the same fee, \$ 800.00 with some changes as to the education portion of it.

- **Redevelopment Citizens Advisory Committee**
- **Ordinance Review Committee**
- **Eden Area Livability Committee**
- I. Staff Announcements, Comments and Reports**
- J. Council Announcements, Comments and Reports**
- K. Adjourn**

**The meeting was adjourned at 9:55 p.m.**

**Next Hearing Date: Monday, October 22, 2007**