

## **CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL**

### **Minutes for October 13, 2008**

(Approved as amended November 10, 2008)

**A. CALL TO ORDER:** The Chair called the meeting to order at 6:04 p.m. Council members present: Jeff Moore, Chair; Cheryl Miraglia, Vice Chair. Council members: Dean Nielsen, Dave Sadoff, Andy Frank, Sheila Cunha and John Ryzanych. Council members excused: None. Staff present: Tona Henninger, Sonia Urzua, Bob Swanson and Maria Elena Marquez. There were approximately 25 people in the audience.

**B. Approval of Minutes of September 22, 2008**

**Council member Cunha moved to approve the minutes of September 22, 2008. Council member Miraglia seconded. Council members Sadoff and Nielsen abstained. Motion carried 5/2/0.**

**C. PUBLIC ANNOUNCEMENTS / Open Forum**

Ken Kremer distributed a copy of a letter dated June 12, 2008 to the council members in reference to his appeal of Variance, V-12080. A copy of the letter was entered into the record.

Mr. Moore told Ms. Urzua that there have been a lot of questions regarding the actions of the MAC and an individual MAC member and it has been forwarded to the County. He asked her if she happens to have a comment and if it is forthcoming now as far as a statement on this issue. Ms. Urzua said that she spoke to County Counsel regarding the concern that a MAC member recuse himself in this matter and County Counsel said that as long as council members have an open mind and are open to consideration of the facts there is no reason why the council member should recuse himself.

Mr. Moore asked Mr. Nielsen to give his comments since the matter involves him. Mr. Nielsen explained that from time to time MAC members have appeared before the Board of Supervisors, at least 3 have been there. They try their best to reflect the MAC's feeling on a particular issue and that is exactly what he did at this meeting. Mr. Kremer has his point of view and he respects that. The neighbors that have opposed this they have their specific point of view. He noted that he was not opposed to the option of having resolution adopted before a MAC member appears before the Board of Supervisors although timing of the Resolution and the meeting of the Board of Supervisors might be an issue. Mr. Moore said that the Council will not have a rebuttal on this issue.

Ms. Miraglia thanked Mr. Nielsen for taking the time to go to the Board to urge them to uphold the Council's recommendation. She said that Mr. Nielsen informed the Council that he was going to the meeting in front of this Council. As far as she is concerned, Mr. Nielsen does not need a resolution, he didn't get up and give his personal opinion, he went and reported what this Council decided and why.

**D. Consent Calendar – None**

**E. Regular Calendar**

- 1. CONDITIONAL USE PERMIT, C-8478 – T-MOBILE/CHURCH OF THE NAZARENE** Re-hearing of an application to install and operate a wireless telecommunication facility in an R-1-CSU-RV (Single Family Residential, Conditional Secondary Unit, with Recreational Vehicle) District, located at 2301 Miramar Avenue, north side, 100 feet west of Crest Avenue, unincorporated Castro Valley, and designated Assessor's Parcel Numbers: 080A-0191-034-04. **(Continued from September 22, 2008). Staff Planner: Sonia Urzua**

Ms. Urzua summarized the staff report. She stated that this item was before the MAC in February of 2006, and on March of 2006 the WBZA approved the installation and operation of a telecommunication facility to be operated by T-Mobile. Due to a technicality, some members of the Miramar Village Homeowners Association didn't receive notice of the project considered in March 2006. For that reason, County staff considered that the previous approval was invalid.

Paul Albritton, counsel for T-Mobile, distributed a copy of a letter dated October 10, 2008 to the council members asking the Council to re-affirm the Council's approval of the proposed facility, direct staff to lift the current stop work notice for the site and allow construction of this needed facility to proceed. A copy of the letter was entered into the record.

Greg Guerrazzi, representing the applicant, stated that this facility was approved several years ago and that T-Mobile has worked extensively to be able to place a telecommunication antenna within a cross structure on property owned by the Church of Nazarene. He asked the Council to approve this project.

Mr. Sadoff asked Mr. Guerrazzi if he reached out to Metro PCS to attempt to co-locate. Mr. Guerrazzi said that T-Mobile was approved prior to Metro PCS coming to the property so their facility was installed while their building permit was pending, so it is not possible for T-Mobile to co-locate on their facility as their (T-Mobile) facility has already being designed and approved in advance of theirs. Mr. Sadoff asked Mr. Guerrazzi if he was choosing not to co-locate. Mr. Guerrazzi said that it is not possible to co-locate with them (Metro PCS) at that location.

Paul Albritton, counsel for T-Mobile, said they were proposing a shorter, thinner design, the equipment has been moved to the south. Since they received the letter from the home owners association, they have been trying to address their concerns. They provided an updated survey a radio frequency emissions analysis and acoustic study as well as holding a community meeting at the site. The information developed by T-Mobile confirms that the proposed facility will be located entirely within the church property and complies with all state, federal and County requirements for approval. Mr. Guerrazzi said that the proposed facility will be camouflaged as a new 67' tall 30" in diameter cross with three antennas hidden inside the top vertical member of the cross. The new cross replaces the existing 80' tall cross structure that includes a 42' tall 6' to 9' wide concrete base. He said that if we were to collocate with Metro PCS in this facility, our antennas would be blocked by their antenna, which is why Metro PCS built their facility. With respect to noise standards, they (T-Mobile) did a noise study and an ambient test. The noise from their facility will not be measurable, it will be imperceptible in terms of noise. Mr. Guerrazzi referred to the contents of the letter dated October 10, 2008 with regards to

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federal law regulations regarding telecommunication facilities. He encouraged the Council to approve it.

Council member Nielsen commented on the neighbors' concerns about the safety of the cross itself and that T-Mobile hired professional engineers to make sure that the base meets all earthquake and wind standards. Mr. Paul Albritton said yes.

Public testimony was called for.

Chandra Fortenberry, resident at 16275 Miramar Place and HOA member, expressed concern that the installation of the T-mobile antenna possibly will decrease the cost for homeowners for buyers. She also mentioned that many of the residents didn't receive the notice about the hearing in 2006. Residents are concerned about safety and noise level. She asked to keep the structure updated.

Gerald Alves, resident at 16312 Miramar Place, said that he is concerned for the place where the cross sits now, the base is large. With the new cross is quite the opposite, it looks like it is looming over the neighborhood. He asked why T-Mobile and Metro PCS did not co-locate. He is also concerned that 2 cell sites are up there already and how many other carriers will come in the future and also concerned about the cumulative noise. He said that the church receives income from these units.

Public testimony was closed.

Paul Albritton said that in terms of property values, as stated in his letter dated October 10, 2008, "concern over the decrease in property values may not be considered as substantial evidence if the fear of property value depreciation is based on concern over the health effects caused by RF emissions". In other words, fear over property values declining is insufficient grounds for denial of a site under federal law.

Council member Miraglia asked Mr. Albritton how many carriers can T-Mobile accommodate if this is approved. Mr. Albritton said that the cross will accommodate one more carrier. Council member Miraglia asked Mr. Albritton to be able to set it back at all any farther from the fence how many feet are needed whatever is backed away from that fence. Mr. Albritton said that Metro PCS ended up putting their equipment immediately south of the cross. He said that T-Mobile is coming in as a replacement of an existing structure.

Public testimony was closed.

Council member Sadoff asked staff if presence of a telecommunications facility would be subject to disclosure. He said that he never heard of that particular item being required to being disclosed in real estate transactions.

Council member Miraglia said that her main concern is safety and she thinks that T-Mobile has addressed all of those concerns. She would like to see in the motion to condition T-Mobile to replace the existing property line fence with consistent materials as indicated that they would and to pay for the relocation of the Association's mail box.

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Council member Nielsen said he is glad to see that they provided for an additional antenna site. The particular location and the proximity to a dead zone make it a desirable site for antennas.

Council member Miraglia said that if this is approved and Metro PCS has a CUP when theirs comes up again, that could be looked at it at the time.

Council member Moore asked council members if they are going to take advantage of the motion to ask the applicant to move their mail box.

Council member Frank said that the intent here is a good one; the association can get a bid for relocation of the mail box. They are not getting a new one, for the council to get into the fine details of costs and bids is not the purpose of the MAC.

Mr. Guerazzi stated that they would like to place some limits on the amount to be expended on the relocation of the mailbox.

**Council member Frank made a motion to approve Conditional Use Permit, C-8478 with Planning considerations and also that T-Mobile will pay for the relocation of the existing mail boxes and will also pay for the new fencing as needed and the replacing of whatever is taken out in terms of the existing fencing and replace and repair. Council member Nielsen seconded. Motion carried 7/0.**

2. **CONDITIONAL USE PERMIT, C-8766 – WOOD** Application to allow a hand and foot spa (beauty shop) business, with concurrent sign review, in the CVCBD Specific Plan – Sub 10 (Castro Valley Central Business District Specific Plan – Sub-area 10) District, located at 3726 Castro Valley Boulevard, north side, approximately 100 feet east of Yeandle Avenue, unincorporated Castro Valley area of Alameda County, bearing Alameda County Assessor's designation: 084C-0724-123-00. **Staff Planner: Damien Curry**

Ms. Urzua summarized the staff report.

Council member Miraglia asked staff if there were no comments from Redevelopment. Ms. Urzua said no.

Council member Sadoff asked staff about parking requirements

Deanna Wood, applicant, said that she is a licensed manicurist. She said that there are currently approximately 22 nail salons in Castro Valley. She has visited them as a customer and what she saw while she was there was unsafe and unsanitary practices. She will offer upscale nail services and pedicures specials and also will have a retail area. She is State Board approved for safety and sanitation regulations. She will be using copper bowls which are very sanitary. She also will be using a specialized cleaning mechanism. In this particular area there are no nail salons available.

Council member Nielsen asked Ms. Wood about the number of customers at one time. Ms. Wood said 10 at a time. Council member Nielsen asked Ms. Wood how many stations in the salon. Ms. Wood said 5 stations for manicure and pedicure. Council member Nielsen is concerned about the number of parking spaces.

Deanna Greer, resident at 2506 Grove Way, said that the sanitation ideas are phenomenal and that customers need this type of American style care salon in Castro Valley.

DiAnn Squaglia, resident at 18642 Pepper Street, spoke in support of the project. It will be an asset to the Castro Valley community. If customers are not satisfied with the services, they will get their money back. She thinks this will be a good venture in Castro Valley.

Public testimony was closed.

Council member Sadoff asked staff if there will be a time limit on the CUP so the Council can review down the road this issue for discussion. Ms. Urzua said that certainly from time to time schedule we can set the time just to revisit.

Ms. Urzua said that based on the staff report, elaborated on the parking requirements based on the ordinance and the site plan in the file. Based on the gross square feet, the ordinance will require 4.8 parking spaces. Council members discussed parking demands for the site.

Council member Miraglia referred to the pre-hearing recommendation # 2 of the staff report. She said that she would assume that that means that the residential development counts on that parking and perhaps that was part of the original conditions for that development. Ms. Urzua said she didn't see anything in the file to elaborate on that.

Ms. Wood said that the residents in the back they are allowed to use the parking after 5 p.m. She does not intend to have her business open much past that hour. Her intent is to stay open until 6:30 or 7 p.m.

Council member Nielsen asked Ms. Wood the meaning of joint use. Ms. Wood said that it allows those individuals in the back to park after 5 p.m. At 6 a.m. and 10 p.m. There are 2 to 3 spaces used by those residents. Council member Nielsen said that as a condition of approval we verify the fact that it is after 5 p.m. because if they park there at any other time there will be a parking problem.

Council member Frank said that he has not seen any conflict with the prior occupants.

Council member Miraglia suggested to review the application in one year. Council member Moore said to bring it back in 3 years.

Council member Nielsen said that if approval is conditioned on verifying that the parking spots are not available during normal business hours he does not see a problem.

**Council member Nielsen moved to approve Conditional Use Permit, C-8766 with the condition that the operating hours of the beauty salon does not interfere with the parking spot occupancy hours of the residential tenants. Council member Moore made an amendment by saying that there is no conflict between the use of the adjacent residential subdivision to use the spaces after normal operating business hours. Council member Cunha seconded. Motion carried 7/0.**

3. **VARIANCE, V-12123 – MANGRUM** - Application to reduce the front yard setback from 30 feet to 20 feet for the construction of a new single family dwelling, in an “A”, Agricultural District, approximately 4.60 acres, property located at on Palomares Road, southwest side, 4.7 miles south of Palo Verde Road, Castro Valley area of unincorporated Alameda County, bearing Assessor’s Parcel Numbers: 085A-4100-009-28 add 085A-4100-009-30 – **Staff Planner: Donna Vingo. Continued to a date to be determined.**
  
4. **Appeal of VESTING TENTATIVE MAP, PARCEL MAP, PM-9566 – KREMER** Application to subdivide one parcel containing 0.41 acres (18,062 square feet) into two parcels, in a R-1-CSU-RV (Single Family Residence, Secondary Unit, Recreational Vehicle Parking) 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 designation: 0416-0130-001-00 – **Staff Planner: Phil Sawrey-Kubicek**

Ms. Urzua summarized the staff report. She stated that this project was considered by the MAC with recommendation and denied by the Planning Director. The Board of Supervisors recommended that the appeal of the Parcel Map first be heard by the MAC before going to the Board of Supervisors. She reviewed the zoning history.

Mr. Kremer, applicant, made comments to the staff report, pages 2, 4, 6, 7, stating that there are inaccuracies and misinformation. Mr. Kremer said that as staff suggested, he did meet with neighbors. Supervisor Miley’s office facilitated the meeting. Mr. Kremer distributed copies to council members of a letter he addressed to Seth Kaplan and to Council member Moore; also, a copy of a letter dated October 6, 2008 addressed to Phil Sawrey-Kubicek was distributed to council members; a third copy of a recap from Mr. Kremer’s attempt to address Charlene Way property owners concerns was also distributed among council members. A copy of each of these documents was entered into the record.

Mr. Moore asked Mr. Kremer if there were any changes since the last time that this item was heard. Mr. Kremer said no. Mr. Moore asked Mr. Kremer if he had another meeting with neighbors. Mr. Kremer described his efforts to engage the community.

Mr. Moore said that the Council has heard a lot of testimony but it is still the same basic project.

Public testimony was called for.

Bridget Paquette, resident at 22465 Charlene Way, spoke against the project. She is concerned that her property and her neighbors’ property will be changed without their approval.

Brad Lucas, resident at 22440 Charlene Way, he is also a co-owner along with his wife and Mr. Kremer of the subject property, spoke in favor of the project. He said that the property was run down when they took over and believes that this plan once approved will improve property values. Once this house is built, it will not be seen from the street. He asked for the Council’s support.

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Barbara Johnson, resident at 66783 Crow Canyon Road, spoke in favor of the project. She said that a home on that site should be approved, it would have little if any affect in the residential area it is compatible of the existing neighborhood since the back and the side is commercial and more appealing to the existing neighborhood. She said that in her opinion, the neighbors have been hostile to Mr. Kremer.

James Faulkner, representing Mrs. Lillian Barrett and himself as it relates to the use of the easement said that there is a 16 foot easement that runs from Grove Way along the eastern side from Mr. Kremer's property and runs all the way down to the street. That roadway is unpaved. It has underground water and gas lines. He said that he has been concerned from the beginning about the use of that roadway because of the potential of damage to the underground utilities. He said that he has spoken with Mr. Kremer and he (Mr. Kremer) gave him a letter saying he will not be using the 16 feet roadway during construction or any other time. Mr. Faulkner asked the Council that in its consideration and recommendation to the Board of Supervisors that it include a provision that a permanent fence be installed prior to the issuance of a building permit if in fact the lot split is approved.

Gail Moore, resident at 22499 Charlene Way, spoke in opposition and requested the Council to deny Mr. Kremer's application.

Jean Lester, Castro Valley resident, said that this is a beautiful neighborhood and would like to keep it that way. She said that this community has rules, plans and procedures for lot splits. Governmental bodies are set up to administer these procedures. In her opinion, it is an insult to governmental bodies when recommendations are not noted and appreciated. Why keep pushing it.

Public testimony was closed.

Mr. Kremer responded to the speakers' concerns. He said that the proposed subdivision is compatible and allowed by the Castro Valley General Plan and is consistent with the principles and policies included in the general plan. He urged the Council to approve his project.

Council member Moore said that in his opinion this project is a lot size consistency policy issue. He said that the lot adjacent to Mr. Kremer although it has been approved as a tentative map, it is not a legal lot. In his opinion, even though it is smaller, that would not be accountable. Even if you took out some of the larger lots in consistence of what we did, he got a new calculation of a lot size of 10,100 that dropped the average a couple of 100 feet. He is trying to be consistent which is good for the neighborhood and the developer, you want to know what the reasonable policy might be for subdivisions is also part of this Council and according to his math, this still does not make a material difference.

A discussion ensued among council members regarding the size of the lots, minimum zoning requirements and number of lots that have been subdivided. Council member Nielsen said that approving this subdivision would set a precedent that would interfere with the quality of life in Castro Valley. The denial by the Planning Director is appropriate.

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**Council member Miraglia made a motion to deny Parcel Map, PM-9566. Council member Sadoff seconded. Motion carried 7/0.**

**F. Chair's Report – None.**

**G. Committee Reports**

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

Council member Miraglia said that the Ordinance Review Committee met last week and talked about fencing. The recommendation before was that fencing on front yard right now it is on the corners it is 2 feet and there are a lot of people who wanted to be 4 feet but the suggested compromise at this point is 3 feet on corners because of visibility. Council member Ryzanych said that there are also elements with regards to the transparency of fencing materials and set backs in regards to key lots and fencing positions in key lots. The design guidelines task force had a meeting right after that and met with the consultant. They had a very extensive presentation and they are starting their work. The Eden Area Livability Committee had a governance meeting at Supervisor Miley's office last week which she attended. There is a lot of discussion about possible scenarios for more accountability. There was a group of citizens that wanted 3 Planning Commissions. Next time that there is a governance committee meeting, she encouraged all council members to go and listen. There was also discussion about more accountability from the Board of Supervisors when they make a decision that turns over this Council recommendation, or WBZA, that they meet findings and that they specifically say what those findings are.

- **Eden Area Livability Initiative**

**H. Staff Announcements, Comments and Reports**

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

**J. Adjourn**

The meeting was adjourned at 8:22 p.m.

**Next Hearing Date: Monday, October 27, 2008**