

CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL

Minutes for August 10, 2009

(Approved as written October 12, 2009)

A. CALL TO ORDER: The Chair called the meeting to order at 6:00 p.m. Council Members present: Cheryl Miraglia, Chair; Dave Sadoff, Vice Chair, Sheila Cunha, Dean Nielsen, Andy Frank and John Ryzanych. Council Members excused: Jeff Moore. Staff present: Sonia Urzua, Bob Swanson and Maria Elena Marquez. There were approximately 15 people in the audience.

B. Approval of Minutes of July 13, 2009 – The approval of the minutes was continued to the next meeting.

C. PUBLIC ANNOUNCEMENTS / Open Forum

Gilbert Ruff, resident at 2775 B Street, said that he is a mortgage broker and that he has had a signage permit for some months now; they just got back to him and indicated that if he wanted to put his signage on this brick structure this would have to come down because it does not meet code. He said that in the whole boulevard he did not notice any type of temperature digital display. He submitted that as part of his proposal as well. Staff will follow up.

D. Consent Calendar – No Items

E. Regular Calendar

1. PARCEL MAP (AGRICULTURAL SUBDIVISION), PLN2009-00024, PM-9866 MARTINELLI (DAVILLA/FIELDS/FERGUSON PROPERTIES) – Application to approve Vesting Tentative Parcel Map, PM-9866, to allow an agricultural subdivision to implement an Interlocutory Judgment of Partition, to create eight newly-configured 100- to 409 acre parcels out of seven existing parcels encompassing 1,274 acres, extending between Interstate I-580 and the Alameda-Contra Costa County line, including two parcels at 21717 and 21120 Eden Canyon Road, both sides and east of terminus of Eden Canyon Road approximately 1.5 miles northeast of Hollis Canyon Road, and other adjacent parcels including parcels on both sides of Hollis Canyon Road approximately 1.1 miles east of Eden Canyon Road, in the unincorporated Eden Canyon/Castro Valley area of Alameda County, with County Assessor's Parcel Numbers: 85A-1100-002-07, 85A-1900-003-00, 85A-2000-001-01, 85A-2000-002-01, 85A-2300-002-00, and 85A-2300-003-00. **Staff Planner: Jana Beatty**

Ms. Urzua summarized the staff report. She stated that the applicant is Adolph Martinelli on behalf of the Davilla and Fields Families. She said that this subdivision is put forward to implement an Interlocutory Judgment of Partition. Also, she said that it is not intended at this time that any new residential structure be developed on the property. The CEQA document is still in comment period.

Council Member Miraglia raised concerns about access through the proposed private street including its analysis in the CEQA document.

Ms. Urzua said that that street is requested on the site plan as part of the agricultural subdivision standard application. The applicant needs to show that potential for access is

possible but currently no development is proposed and no street is proposed to be constructed. As of this proposal, there should be no changes, that is why the CEQA review did not include that analysis. If that were to happen, than there would have to be a review. Council Member Miraglia said that as for the street there is no access on parcel 7. Also, she said that everybody received the letter from Mr. Morris' attorney. She was unclear as to the scope of the terms of the easement.

Council Members Frank and Nielsen expressed concerns about creating land locked parcels.

Adolph Martinelli, representing the applicant, said that this is an implementation of a court judgment to partition properties. No house construction is being proposed at this time. He described the current configuration of the parcels the terms of the existing easement. The property has been in use by this family for 70 years or so. They have been in the property since 1918. The map shows a new road to be constructed. It has been reviewed by the referral agencies. It meets the Fire Department's standards. A 60 foot easement acquired by the Schaefer Ranch is proposed to be constructed is being evaluated and improved now. Under the Subdivision Map Act improvements for partition that road has to be in place before any construction. He described an easement that goes across an existing farm road under Schaefer Lane Blvd. and extends just to the property line. Details and cross section are on a tentative map. There are no proposals to use Hollis Canyon Road for any construction.

Council Member Miraglia referred to page 34 of the CEQA document where it says that "no development plans are proposed at this time. Future development of individual lots, as well as any private street, will be subject to Site Development Review and CEQA review". Mr. Martinelli said that every house that is proposed requires a site development review before the Planning Commission and any access for that house needs to be evaluated as part of that. The road that is proposed at this time extends to the edge of the second parcel on the south side of the property. There still would be a road extended to any house that is proposed will be subject to site development review, but this is not the same thing as the road that is shown in the tentative map. The tentative map is being evaluated by the agencies at this time.

Council Members Nielsen and Frank reiterated their concern about creating land locked parcels. Mr. Martinelli stated that they will have access Eden Canyon Road.

Council Member Miraglia said that the subdivision map does not show the creek system and it really must. She understands that there is an ongoing discussion between Friends of the San Lorenzo Creek and the Planning Department and every subdivision map that comes to the Planning Department really should have the creek system on there. It appears that the proposed street is going to cut very close to the creek. The Water Protection Ordinance governs any and all developments not just buildings so it will also cover the street. She asked how far away from the creek the proposed street is right now. Mr. Martinelli said that part of the tentative map application, the creek that you are looking at is near the new road at the edge of a site swell that goes into Hollis Canyon Road.

Council Member Miraglia about the details, including timing, of the storm water management plan. Mr. Martinelli said that it happens before construction, impervious

surface requires retention at the end of it. It just needs some retention. It is really not an issue, it is a physical requirement. Council Member Miraglia disagreed with Mr. Martinelli and noted that she wanted to be very careful about what we do to further impact that area and the biological resources we have.

Public testimony was called for.

Russ Fields, resident at 21728 Eden Canyon Road, said that his grandfather was there since 1918 and that nothing is changing they are just getting ownership. He is a third generation rancher and just wants to divide this up.

Bart Schenone, attorney representing the Davilla family, one of the three owners of this property. The reason why this is before this Council is because after 86 years of joint ownership, the family concluded that they needed to agree to disagree that they needed to own their own piece of property and therefore the only avenue open in order to obtain this was through a court partition; therefore a judge actually ends up dividing up the property between the 3 families with the approval of the planning agency that the plan division of the property is in conformance with applicable codes. There is no application before the Council because this is really about dividing a property. At the present time there is no intention of changing the use of the property. Therefore, they would not know how to describe to you what kind of pervious surfaces, what kind of use permits, what kind of residence they have not even put up. Obviously, during the 5 years that we have been involved in this process, one of the discussions was requirement that everybody in that Hollis Canyon area be able to access the existing route out over the Schaefer Ranch. The reason for this is that the legal status of Hollis Canyon is at its use and there needed to be some certainty for the parties who will get these parcels that they will get away out of their property into Dublin. This has been a 5 year process that has been thought through. We have professional engineers that have helped Mr. Martinelli. The parties had to go back and revise the map so it would meet the County Planning ordinances in terms of subdivision and lot size in this area. What we are asking you to do is not to approve any development. Any development in the future is going to have to come back before this Council, more probably is going to come back before your successors somewhere down the road, any application for building permit and carefully weigh all of the requirements. He said he is sure that there are going to be a lot of requirements 15 years from now. So this is not going to be a process implement the court judgment to give each family what it was which they will really share since 1918.

Linda Fields Stiehr, resident at 19020 Creekview Drive, Lockeford, D., stated that she is representing her cousins and brothers, and said that all are cattlemen. This should have been done by her grandfather and they just want to put a face for the partition.

Kristy Peixoto, resident at 7401 Hollis Canyon Road, said that she totally agreed with what has been said as far as the family being able to divide. She expressed concern with the future maintenance of Hollis Canyon Road. It has always been agricultural and they want to keep it that way.

Council Member Miraglia asked Mr. Martinelli if the parties discussed a maintenance agreement for the use of their road. Mr. Martinelli said that they are aware of that issue that just came up today but they have not discussed it. Until and when any structures are built in the southern part of the ownership it is very little use of the road for cattle

operations but they are amenable to do their fair share of maintenance. Hollis Canyon Road is not suitable for residential access as it does not meet County Planning requirements.

Public testimony was closed.

Council Member Cunha asked if by doing the subdivision there will be increased traffic on Hollis Canyon Road. Council Members said no.

Council Member Sadoff asked staff that this project has gone to the County in more than one occasion, re-submitted and re-submitted again for certain issues that needed to be addressed, he asked what specifically those issues were. Ms. Urzua said that according to the file there were some modifications that were made based on the referral responses from the Fire Department; this is the only application that she can tell on this property.

Council Member Frank said that historically this is not uncommon with the old families that have areas that have large land.

Mr. Shenone described the interactions with the Planning Department with regard to the configuration of the proposed parcels.

Council Member Sadoff asked staff if there is any implications for the Williamson Act if this were to go through. Ms. Urzua said that the Williamson Act contract will have to be amended. Council Member Sadoff asked if this is a procedural issue. Ms. Urzua said yes.

Ms. Urzua clarified the state of the Williamson Act for Alameda County. The Williamson Act continues to exist since the contracts are with the property owner, we maintain that legal obligation.

Council Member Nielsen moved to approve Parcel Map, PM 9866, PLN2009-00024 with staff recommendations. Council Member Frank seconded. Motion carried 6/1/0 with Council Member Moore excused.

2. **CONDITIONAL USE PERMIT, PLN2009-00073 – HAUSER/LEON** Application to allow continued operation of a massage therapy establishment, located at 3045 Grove Way, south side, approximately 400 feet east of Center Street, Castro Valley area of unincorporated Alameda County, designated County Assessor's Parcel Number: 417-0010-020-02. **Staff Planner: Christine Greene**

Ms. Urzua summarized the staff report. Staff recommends approval for 5 years.

Council Member Sadoff referred, asked if staff has any issues with the cargo container located at the rear of the parking lot that is used for storage. Ms. Urzua said that not on this specific application. Typically it is related to residential uses.

Geri Leon, applicant, said that she has been doing this for a long time. She asked the Council for approval for 10 years. She said she is also under Sheriff's jurisdiction and they approve her every year. Her work space is professional and clean.

Public testimony was called for. No public testimony submitted.

A discussion ensued about the appropriate expiration period.

Council Member Nielsen moved to approve Conditional Use Permit, PLN2009-00073 for a period of 10 years. Council Member Sadoff seconded. Motion passed 5/1/1 with Council Member Ryzanych opposed and Council Member Moore excused.

F. Chair's Report

Council Member Miraglia said that she met with Supervisor Miley about setting the agenda for the September General Purpose meeting. In September they are going to try to have a report from CDA on the Caltrans property tour. The tour was very informative. Council Member Nielsen asked her if they discussed the school district coming back. She said no and said that Council Member Nielsen had asked to put the school district on the agenda to discuss use of bonds funds. She discussed this but she really thinks, as does Supervisor Miley, that this does not fall into our jurisdiction. If somebody has an issue with the school district, they need to go to the school district or to the governing body. The only reason the school district was able to come to us about that issue on the fence was because they violated County zoning ordinance. She also talked about trying to get some kind of a process for setting the agenda and get it out to public in an expedient manner so people know when and where we are meeting and it does not get send out to people and to this Council until the Friday before the meeting. Supervisor Miley needs to think about it and meet with the Clerk of the Board and see how that process should be handled. Also, she would like to have the General Purpose meeting posted on CDA's web site. Ms. Urzua said that CDA is willing to do that.

Council Member Frank said that during his two years as Chair what they did they met the first week of the month, determined the calendar, items were put on the agenda well in advance.

Council Member Miraglia said that she asked for a report on Caltrans from ACTIA regarding the freeway. She said that she is getting a lot of complaints and would like to know what they think what is going to happen in the future.

Council Member Nielsen said that if there is an item that concerns the community the Council has the obligation to bring it up. Now, we are getting "no, you can't question the school district", "no, you can't question this or that", if people come to these meetings and they bring it up, it is our obligation to follow through. We need clarification if an item is brought up as a community concern, can it be brought up regardless of who it is?

Council member Miraglia said that she understands about community concerns and she is for that but she does not know if it is silent or actually speaks to when other jurisdictions or special district get involved.

Council member Frank said that the intent of our supervisor was that he wanted a public forum, he wanted to extend the MAC in terms of the scope whether they are going to make a decision or not, to be a public forum and to be a sounding board for the community. That was the intent direction of Supervisor Miley wanted to have, it was not to be redefined. The biggest problem of the community and all the supervisors, existing

and prior, is the inability of the community to come, that is why they created the general meetings.

Council Member Miraglia told Council Members that she will e-mail them the other two items that the council will have in September. For October, Council Member Nielsen would like to have the post office issue because we need to have a post office and there is a piece of Caltrans property that they looked at. Staff is going to be contacting Barbara Lee's office and the post office to see if in October they can come in and present that issue.

Council Member Cunha asked if all the modifications have been made on the schools with regards to the fences. Council Member Miraglia said no and that this is something else that will be put on the agenda for an upcoming meeting.

G. Committee Reports

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

H. Staff Announcements, Comments and Reports

I. Council Announcements, Comments and Reports

J. Adjourn

The meeting was adjourned at 7:01 p.m.

Next Hearing Date: Monday, August 24, 2009