

CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL

Minutes for September 28, 2009

(Approved as presented October 26, 2009)

A. CALL TO ORDER: The Chair called the meeting to order at 6:07 p.m. Council members present: Cheryl Miraglia, Chair; Dave Sadoff, Vice Chair. Council members: Jeff Moore, Andy Frank, Sheila Cunha, Dean Nielsen and John Ryzanych. Council members excused: None. Staff present: Jana Beatty, Rodrigo Orduna, and Maria Elena Marquez. There were approximately 10 people in the audience.

B. Approval of Minutes of August 10 and 24, 2009

The minutes were continued to the next meeting.

C. PUBLIC ANNOUNCEMENTS / Open Forum – None.

D. Consent Calendar –

Council member Moore made a motion that item # 1 in the Regular Calendar be moved to the Consent Calendar. Council member Nielsen seconded. Council member Sadoff made a motion to approve the Consent Calendar. Council member Cunha seconded. Motion carried 7/0.

1. CONDITIONAL USE PERMIT, PLN2009-00081 - T-MOBILE USA/CHRIS COONES (AGENT; PUBLIC STORAGE//PSA INSTITUTIONAL PARTNERS, LP, PROPERTY OWNER) ~ Petition to allow installation and operation of a new wireless telecommunications facility (antenna array), in an M-1-B-40 (Light Industrial, 40,000 Square Feet Minimum Building Site Area) District, located at 2497 Grove Way, south side, 800-feet east of Redwood Road, Castro Valley area of unincorporated Alameda County, bearing County Assessor's Parcel Number: 416-0080-001-03. **Staff Planner: Richard Tarbell Continued from September 14, 2009 to October 12, 2009.**

2. CONDITIONAL USE PERMIT, PLN2009-00085 - T-MOBILE USA/CHRIS COONES (AGENT; COLUMBIA COMMUNITY ASSOCIATION, PROPERTY OWNER; PG&E, TOWER OWNER) ~ Petition to allow installation of a new wireless telecommunications facility (antenna array) using an 11'-6"-high framework extension to the top of a 100'-high PG&E high-voltage transmission tower, with ground equipment, in a PD (Planned Development, 1591st Zoning Unit) District, located on San Franciscan Drive, west side, 150 feet south of Bellingham Drive (PG&E Easement) Castro Valley area of unincorporated Alameda County, bearing County Assessor's Parcel Number: 85-6312-054-00. **Staff Planner: Andrew Young – Continued from September 14, 2009 to October 26, 2009.**

E. Regular Calendar

1. SITE DEVELOPMENT REVIEW, PLN-2009-00093 J. P. MORGAN//CHASE//S. PETERSON, AGT.: Petition to allow new signage and site circulation signs for a property in the Castro Valley Central Business District Specific Plan, Sub-area 7 (CVCBDSP-SUB 7) District, located at 3449 Castro Valley Boulevard, south side, 260-feet west of Redwood Road, Castro Valley area of unincorporated Alameda County,

Assessor's Parcel Number: 084A-0064-001-00. **Staff Planner: Richard Tarbell – Continued from September 14, 2009**

Moved to the Consent Calendar.

2. **REDEVELOPMENT AGENCY** – Discussion of proposal for a shared parking implementation policy related to the Site Design Guidelines for surface parking as described in the *Castro Valley Business District Specific Plan*.

Rodrigo Orduña summarized the staff report. He mentioned that at the January 14, 2008 Council meeting, the council members' concerns were centered on substantiation of the possible 3.3 parking ratio. Council members requested that the details of the related studies be provided and that they have the opportunity to further discuss the matter. However, the general inclination was toward acceptance of some kind of shared parking agreement and modified parking standards if the right project-specific conditions presented themselves. The recommendation to the Council is to listen to the presentation by the transportation consultant Nelson Nygaard on potential for shared parking agreements and alternative parking standards within the 1993 *Castro Valley Central Business District Specific Plan* area and discuss Parking Policy 3.1 within the *Specific Plan*, which states that parking standards in terms of both size and number of spaces shall reflect actual need, and Parking Policy 3.3, which encourages the creation of common, aggregated of-street areas for surface parking.

Marita Hawryluk with the Redevelopment Agency stated that the Agency has been working with shared parking since 2006 and one of the many strategies is to make downtown core in Castro Valley more accessible and more walkable. Nelson Nygaard worked with the Agency back in 2006 to develop a core direction and set principles to identify two of the particular areas to focus this project on. These two areas were: 1) on the south side of Castro Valley Blvd. on the block with the ice creamery; and 2) on the north side of the block where Remax Title Company is located. She met with both sets of property owners and it was determined after discussions with both sets of property owners that the south side was more ready to go forward. One of the first steps was to work with the property owners from the corner to the Daughtry's building. The Redevelopment Agency purchased a duplex on Wilbeam to allow better access from Wilbeam to those back parking lots. The Agency got the commitment for property owners to participate in this particular project. The Agency has been working with those property owners along with the Planning Department, the Building Department, and the engineering and landscape design teams to identify what can work on the site and what can work for the property owners. An agreement will have to be signed by all the property owners. The Redevelopment Agency thought that it was time to come back before this Council to show what they have done and this is where the Agency is in the process.

Jeffrey Tumlin, with Nelson/Nygaard Consulting Associates, made a Power Point presentation.

Council member Miraglia asked Mr. Tumlin if he has some pictures of the other cities. He said yes and made some comparisons with other cities' downtown areas.

Council member Moore told Mr. Tumlin that most people are going to agree with what he said about the liability and asked what is the County's proposed solution as they go forward with Zoning and Building permits. Ms. Hawryluk said that all those issues that Mr. Tumlin referred to like liability, maintenance, exit strategies, were talked-through with the property owners in regards to finding solutions and in regards specifically to liability. There have been discussions with the County and it is looking to the County that it actually makes sense for the County to be responsible, so Risk Management has looked at that as has County Counsel. In consultation with the property owners, Risk Management, and County Counsel, the Agency is working to identify what can work and what can not.

Council member Frank said that one of the things that shared parking does is that it makes money because it gives you more exposure, more patronage, it's better for the community. It is a very important aspect in that direction.

Council member Moore asked Ms. Hawryluk where does this go from here and what is the time frame. Ms. Hawryluk said that they wanted to bring as much information as they could to identify what questions the Council have from the land use perspective in order to move in the direction as Mr. Orduña explained. They are really focused on this one particular block for the first project. They discussed with property owners about 95% of everything so it coagulated to a draft agreement that is just about to be ready to be sent to the property owners. She is waiting to finalize what options were on the insurance. Literally, that piece is going to go out to the property owners within the next two weeks. They are working through a site plan and design options. The project is working through these final details. They still need planning, building and fire approvals. Once they have final buy-in from the property owners, that will come before this Council as a Site Development Review application. She said it is a 3-month construction project.

Council member Sadoff said he is assuming this is integrated as far as design landscaping and streetscape. Ms. Hawryluk said yes.

Council member Nielsen said he is concerned about having the County take liability for an aspect that is contributing to businesses. The businesses need to step up to the plate, the parking lot is theirs now. They should continue to be involved in the liability, it is their customers using the parking lot.

Council member Frank said that with shared parking, you can generate more sales tax, and whatever works, do it. Ms. Hawryluk said that they are moving toward that direction.

Council member Miraglia said that the shared parking for that property makes sense. However, Figure 6 shows that at the peak time there will be 83 parking spaces for Daughtry's where there are 137 for the Ice Creamery. She asked Ms. Hawryluk if she is thinking that the Daughtry's building will be retail and if there will be any restrictions on what type of business can go into the buildings because the specific uses really change parking demand calculations. Ms. Hawryluk said that the Daughtry's building is focusing in retail tenants, but that things can change in the future. The shared parking project is moving forward with uses existing and foreseeable projected. It is kind of an experiment in the process.

Council member Frank said that if you have a proper design from the vendor's standpoint, that will result in a level of quality tenants and the shared parking will find a way so as to work things out; because if the owner of the property does not generate a proper environment they are not going to get the tenants. Ms. Hawryluk said that property owners don't want to put restrictions on this the types of businesses going in based on shared parking counts.

Council member Ryzanych asked for an update on the north side. Ms. Hawryluk said nothing yet because tenants are not ready yet.

Council member Miraglia referred to the letter from Nelson/Nygaard dated July 20, 2007 where an alternative approach is suggested where you would look at comparable developments. Mr. Tumlin said that the Institute for Transportation Engineer's produces a Parking Generation Handbook and updates it periodically. However, data is collected from isolated, single-use sites with little or no transit, and which have no access other than by a car. So, an alternative approach is to make adjustments since this parcel is adjacent to downtown uses. Specifically referenced is the Urban Land Institute shared parking approach, which is what we are focused on. If we were building next to a BART station, some people would ride via transit, there would be opportunities for sharing, so we used the ITE number as a starting point and then adjusted based upon the ULI description, accounting for different times a day that the different uses have peak demands.

Council member Miraglia asked staff if, when the Daughtry and the ice creamery shared parking agreement comes before this Council, at that point would the Council not need to globally decide on 3.3 parking spaces for the rest of Castro Valley? Mr. Orduña said at this meeting we are focusing on the 3.3 ratio for the Daughtry's project and staff will pursue that and continue working with the ratios to make sure that the Council is comfortable. Staff would come back in the future and make sure the Council is comfortable with the ratio for smaller sub-zones.

Council member Frank made some comparison with other cities and suggested that council members be flexible.

Council members thanked Mr. Tumlin for the presentation.

3. **CONDITIONAL USE PERMIT, PLN C-8686/HAEGELAND** – Application to construct a 19,950 square foot kennel facility, which will include exercise areas, a walking trail and a pet drop off area. The kennel will have the capacity to accommodate up to 400 dogs and 50 cats and will offer a full-range of services, including grooming and training but no veterinarian services are proposed at this time. The facility would employ up to 40 staff in three shifts, with a maximum of 18 staff on duty during peak business hours. A mitigated negative declaration was prepared for this project pursuant to the California Environmental Quality Act. The subject property contains 37 acres, is zoned A (Agriculture) and is located on the south side of Dublin Canyon Road, 1.75 miles east of Palo Verde Road, in the unincorporated area of Castro Valley bearing assessor's parcel number: 85A-0800-006-20. **Staff Planner: Jeff Bonekemper - Continued from August 24, 2009.**

Ms. Beatty summarized the staff report. She said that this project was before this Council last month. There were some questions about the property most of them related to Measure D. Council members requested some clarification from County Counsel for the property since this is designated resource management whether the kennel was a compatible use with the resource management designation. She passed around the memo that County Counsel produced confirming that kennels are a permitted use under the resource management designation. She said that there has been some confusion since the Zoning Ordinance was changed in 1988. Back in 1988 animal hospitals and kennels were listed as allowable conditional uses and that was changed, unfortunately an error occurred and animal hospital and kennels were left out of the allowable conditional uses. No one noticed this error for a few years. Finally it was noticed. We are working on correcting some other errors that we also caught. This is one of the errors that we will be correcting and kennels will be going back into conditional uses. In the staff report we have included some other policies related to Measure D and how the kennel complies with these policies.

Council member Miraglia said that should this project ultimately be approved and if the business itself should fail, will there be any other use for this huge building that would be in conformance with Measure D. Ms. Beatty said that the building is almost 20,000 square feet and if you look at the Zoning Ordinance as far as permitted uses and conditional uses that can be approved by the Board of Zoning Adjustments and the Planning Commission, in agricultural districts there are not many allowable uses that would be able to go into that building.

Frank Haegeland, applicant, said that one question that came up about the height of the building, he printed out new pictures to show the height in comparison with neighboring buildings. The issue of what else the building could be used for if that question was asked because council members are concerned about his ability to stay in business.

Council member Miraglia said that is not the issue, the issue is the state of the economy and he is going for a kennel for 500 animals. In her opinion, boarding kennels are a luxury for a lot of people. Mr. Haegeland said that the statistics are showing that kennels are doing good; however, the worst thing that could happen if they go out of business is that they would sell it to somebody else that wants to have a kennel. With the areas of entry to be able to build a kennel in this area, it is virtually impossible to build kennels in the Bay Area, they would have plenty of buyers. They have absolutely no problem staying in business.

Council member Frank asked Mr. Haegeland if the internal design was modular. Mr. Haegeland said that there are four main modules and they also have a separate area for small dogs. Council member Frank told Mr. Haegeland that the secret to building facilities if it is modular it allows you to get and then open it to proper uses allowable under the zoning. Where you don't have modular design then you have structural obsolescence. Mr. Haegeland said that some nursery people have been asking about the possibility of leasing some of the land as well.

Council member Nielsen said he is concerned about the water supply. He told Mr. Haegeland that he indicated that the facility was going to generate 4,000 gallons of sewage a day. The wells would not generate the amount of water required. The other thing is the impact that if you have wells that were to bring that much water it would

actually devastate the property owners in the adjacent areas because there is not much water. He objects to a facility of this type. Mr. Haegeland said that they actually have 23 gallons per minute that is being generated and that is constant, the water has been tested by the state and county laboratories. As far as comparing Palomares Canyon with where they are it really does not work because just moving over a very short distance will change the whole thing. He said that the BART facility generates 25 gallons per minute and that has been operating for years. Council member Nielsen said that they don't use 25 gallons per minute, the point is that he is relying on rain water, Palomares Canyon, Eden Canyon and Crow Canyon relies on rain water and somebody is going to pull 4,000 gallons of water out of that area when the rain is restricted for a lot of years it is impossible. Mr. Haegeland said that they live in a ranch themselves and that was a range that was set to be a horse ranch with no water. The president of the California Ground Water Association has a consulting company in Palo Alto has some new technology for finding water, it is technology that was developed originally for the oil industry, that is how they found their well. The same technology can be used to find out how much water there is available. Council member Nielsen told Mr. Haegeland that Crow Canyon has water problems right now and that is part of the reasons that there are not businesses being developed there because their rainfall is the same as where he is. He said it is a real concern. Mr. Haegeland said it will be for them too and they will make sure that there is enough water. The Lock Away Storage next to them they have virtually no water, their well produces half a gallon a minute, their wells produce 22 gallons per minute. Council member Nielsen asked Mr. Haegeland if there is a possibility of alternate water supply for the facility if a problem occurs. Mr. Haegeland said that they certainly have the ability to trap any water if needed.

Public testimony was called for.

Marie Cronin, resident at 8989 Dublin Canyon Road, asked if this is in Measure D area and if a commercial endeavor is permissible. Council member Miraglia said yes according to County Counsel. Ms. Cronin said that there are other kennels that have not been approved. Ms. Beatty said that we have noticed the error but staff has not have the ability or time to go back and fix it. She said that the kennel on Crow Canyon is also under the Resource Management designation. Ms. Cronin asked about the total acreage the facility is on, she said it is totally wrong for the area because of the noise, traffic, many more people all day long, very dangerous. She is also concerned about the amount of water they will be using. They need 4,000 gallon of water a day just to take care of the waste. Also, she said that their ranch road will be used as an entrance to go up above 2,000 feet and then turn west and then approach the project. She said that their ranch road is a deed easement for the Cronin family, it is not available for these people to go the 2,000 feet and go around to the west. There are more people involved in this project that appear here, they can not use their easement. She is strongly opposed to the project.

Diana Hanna, resident at 10142 Cull Canyon Road, said that some of the kennels were already established before Measure D. Under Measure D, Resource Management land use is agricultural, parks and recreation, open space, environmental sensitive areas, it does not say kennels, kennels is a business whether it's a day care center, it is still a business. The staff report says, under Findings, that several kennels have opened within the past few years in the Castro Valley/Dublin/Pleasanton area. The second finding says that this facility is compatible with the rural and agricultural uses in the area. She disagrees with Finding # 3, she feels it is a very important issue about health and safety.

The canyons are dry and she has a real issue with the water. As for Finding # 4, she also disagrees. She feels that we have an obligation to the voters; the intent was to save open space and agricultural land. The County needs to represent what the voters voted for.

Dick Schneider, resident at 6867 Wilton Avenue, Oakland, said that he is the co- author of Measure D, and co-chair of the Measure D Committee, he worked with the County after Measure D passed to defend Measure D in Court. It will be useful to explain how Measure D came about and particularly the restrictions that were put on uses in the Castro Valley area; he was responsible for those decisions. Most of the people that were involved in the Measure D committee lived in East County, Livermore, Pleasanton and Dublin. A West county resident, he was concerned about the canyon land area because he read the canyon land issue paper, it was prepared when the Castro Valley area plan was going to be updated back in the 1990's. That didn't happen but this issue clearly outlines the sensitive nature to the canyon lands and the damage that has been done to them and the need to provide some significant protection. He met with perhaps 100 people in the Castro Valley area, Palomares Canyon, Greenridge, Columbia, Five Canyons and the developed area as well and asked people what they felt about the canyons whether they wanted protected or allow to develop and it was an unanimous opinion that these areas were very valuable for the Castro Valley community and people wanted to see them protected, they did not want to see them developed. When they designed Measure D they put into Measure D the more restrictive land use designation called Resource Management that was applicable to the East County Area Plan. In the East County there are three general land use designations: there is water parcel agriculture, resource management and water management. Resource Management is one of the most restrictive of what can be done and is restrictive to very narrow uses: agricultural, recreation, habitat protection water management, but what the resource management designation says is that this designation is intended mainly for land designated for zoned preservation of open space but may include low intensity agriculture, grazing and very low density residential use, does not talk about commercial facilities other than perhaps recreation facilities such as equestrian uses. This kennel is not intended for recreational use, the county staff report says that kennels are treated as if they were boarding stables, there is no way for a kennel for people to put their animals when they go on vacation that they consider recreational use, in the same way people who own horses need to board and ride their horses in the open areas. This is plainly a commercial facility that the zoning ordinance has commercial designations where kennels are allowed. He understands that there is a critical error in the agricultural zoning ordinance, but it is hard to believe that it has taken 21 years to have this corrected. He was on the county's web site today, these things can be changed daily; certainly, it does not take a whole lot of staff time to update what is a clerical error up to date, he has his doubts about simply being a clerical error. More important than that however, is that the agricultural zoning is one zoning district, there are three primary land use designations as mentioned before, there are considered agricultural zoning. The County at one point after Measure D passed, was going to customize the agricultural zoning districts to conform to each of these three land use designations, so the things that would be permitted in large parcels agricultural but wouldn't be permitted in resource management would be reflected in the zoning ordinance, that has not happened. That is certainly a more ambitious effort than fixing a clerical error but that is the kind of thing that needs to be done but even if we were going to say that yes it conforms to the agricultural zoning you still have to look what does the Resource Management designation instruct and then say all things that might be available in the agricultural zoning is that something that is allowed under the Resource

Management. He said that he disagrees with County Counsel interpretation. If you look at the words if you actually look at the language in the designation the uses have to be similar and compatible with the other uses that are allowed. The commercial kennel is not similar and compatible and does not conform with Measure D.

Howard Beckman, member of Friends of San Lorenzo Creek, said that Friends of San Lorenzo Creek is interested in the organic creek system in San Lorenzo watershed not just San Lorenzo Creek per say so they take an interest in all tributaries fall ahead of water area in the Castro Valley hills because is the most pristine and most natural, they track all creek related projects to see how the county is handling them and how the public discussion goes forward on what values decisions have been made. This matter is going to the EBZA for decision because this parcel lies within EBZA jurisdiction, because it is in Mr. Haggerty's district, nothing escapes his district. This may present problems. He is concerned because this Council and the WBZA have heard from them (Friends of San Lorenzo Creek) from time to time, EBZA although by reputation a great conservationist, are not familiar with this area. He is here to recommend continuation until certain issues are resolved before it goes to EBZA. Notably, the necessity for the field, they provided some written comments on the initial study but not on the project because they got a late notice. For your information, there is a pile of dirt at 100 feet long 25 feet high. Reportedly, this dirt came from the Lock Away site, something has to be done with that, is in the way of the proposed construction. The proposal is to fill the stream, a sizeable area and he suspects that the 100 by 25 feet pile of dirt is the fill that is going into the stream rather than having a truck away at a greater cost. The question and the issue is the necessity of the fill. They (FSLC) certainly question and in this case are opposed to the filling of the stream. A culver is not the same as an open stream. The second issue is that it is oddly being called creek restoration. When he looks at the plans he sees landscaping but he does not see creek restoration and that needs to be explained and resolved as well. He does not have the answers to those before tonight but he certainly would like to have those answers before it goes to a decision making body. The landscaping area shows the landscaping being done on top of the fill, it certainly escapes his imagination how that is creek restoration. Those are the two issues: the necessity for the fill and the creek restoration. He also added that the question of the fill or deposition of large amounts of construction materials or soil is a persistent and unresolved problem. The Public Works Agency is in the process of revising its Grading Ordinance largely because of this ongoing problem. The Grading Ordinance will have great effect on the land use in Castro Valley.

Council member Nielsen said that the fill that is on that property was brought from outside, it's not the fill that came from next door. He complained to the County because truckloads of fill were brought down the freeway and dumped on that property. After several complaints to the County they finally stopped the property owner from dumping any more fill on the site.

Public testimony was closed.

Mr. Haegeland said that after the last meeting when the news about this meeting was in the local Castro Valley Forum, they actually have received between 40 or 50 telephone calls from people who are seeking jobs. There are 700,000 dogs in Alameda and Contra Costa counties, 500,000 in Alameda County. 80% of those people take their dogs to boarding and for those people that need the service, and is the same as they care for their

kids, their dogs and cats are like their kids, there really is not an easy way to build a kennel here, which is why all the kennels we have in the Bay Area and especially in the East Bay are overwhelmingly old and that is why coming forward with the proposal like this, as he mentioned before, they have spent about 1.2 million of their retirement money so far. Before they did any of this, they made completely sure all the way to the Supervisor level that it was an allowed use within Measure D for them and County Counsel confirms that is absolutely an allowed use. The reasoning behind this is that is commercial and therefore it should not be allowed, if it had not been put on that ballot that Measure D intended to restrict what the land owner could do with his land. If we start to limit what the farmer can do with his land as part of that, he is sure that Measure D would have passed and kennels is just another one of those. There is not zoning available for kennels other than agricultural. They tried in Contra Costa County, there are some other cities that would allow it in industrial zone land but the problem is that nobody wants a kennel in an industrial zone land; to find a land owner that would actually allow it is impossible. For five years they kept track of 3 sites that are available for kennels in the entire county of Contra Costa; they finally found one that was available in May; after they spent a significant amount of money, the land owner said that they didn't want a kennel there because they have to consider other tenants and the industrial neighbors. This is a perfect site for the kennel, it is allowed under Measure D. The stream fill and restoration is something that they had long discussions for 6 months with California Department of Fish and Game and with the Regional Quality Control Board, they looked at the site and came back with suggestions and discussions going back and forth, in the end they approved what they wanted to do. In return for that, they have to do restoration, they only have to do 90 feet of restoration; however, they offered to do 200 feet, so they were very happy with them. They engaged LSC Associates which is a highly authority biology in the Bay Area, their biologists came out and surveyed the site and told them what they needed to do, proper restoration of the creek. Their landscape architect did the final design of that, he is actually an award winning landscape architect. Everyone of the experts that they have used on this project are tops within their field. When it comes to the technicalities, they have done everything that they should be doing and more. To come to an applicant like them and say 3 years after they submitted their first inquiries about the project and after they have spent 1.2 million dollars and go basically broke if this project does not happen and then come back and hear: "we really didn't mean what we said in Measure D to begin with, we have must missed something or somebody must have misinterpreted what we really meant, so therefore we need to impose new restrictions on you and you can't build it anymore because you are not allowed under Measure D anymore". That is not how democracy works in this country. They were told from the beginning that they were OK before they even bought the land, they went all the way to Supervisor level to get that provision, County Counsel backing it up, now we hear somebody is and wants to convince County Counsel.

Council member Moore asked Mr. Haegeland about the access road. Mr. Haegeland told council member Moore that if he looks at the plan right next to Dublin Canyon Road, they do not need access for anything in order for this facility, as part of the project donating a portion of their land back to the county because they have to widen Dublin Canyon Road, they are not using her road at all. They have in their deed, guaranteed by their title company, they have deeded access through the same road that she does if they want to get to their upper part of that parcel, that is a legal deed that would give them the same access that she has for her ranch. In addition to that, they also have a legal deed from the property owner on that side which is different from Mrs. Cronin who owns both

the road and the hillside. They have a legal deed also to build a driveway that goes up the hillside and ends up at the top, they can choose to do so at any time or they can choose not to and as long they don't do that they will have the access to the same driveway that she uses.

Council member Frank asked where the septic is located and if it is a leach system or if it a self contained tank. Mr. Haegeland said that it is in the top of the hill and it is a tank that does all the pre-processing, it has an aerator and all that.

Council member Moore said that what they are proposing here is a pretty advanced system.

Council member Ryzanych asked if the treatment facility is for human waste. Mr. Haegeland said that is for both, human and dogs except for cat feces. They were specifically asked by Fish and Game not to do cat feces until they have verified certain things about cat feces. There have been some seals that have turned off in the San Francisco Bay with certain deficiencies and one of the theories is that there are cat feces that floats into the bay from various municipal and other facilities that is causing that. Until they figure that out for sure they want to try to limit any cat feces. Council member Ryzanych asked if staff will be trained to do that. Mr. Haegeland said that as far as training, they actually have an organization, the Pet Care Services Associaton, they have certification procedures for staff and for the facility itself. All staff will be certified before they have anything to do with the animals.

Council member Moore said that certainly Measure D is on the top of the list, whether you agree with the intent or not. He is looking at a letter from County Counsel who interprets this and says it is an approved use. There is a host of technical issues they went with these project in the way of making the findings, the sanitary sewer issue is of great concern but what is being proposed is a superior system, also a technical report that has been approved by Environmental Health. He is satisfied that this is technically acceptable. The fact that Mr. Haegeland has a water well and is producing what is required. The traffic and other issues have been satisfactorily addressed. The findings can be made. By far, this is the best location for the kennel. The applicant has made the findings and has done everything that he needs to do so he supports the project.

Council member Nielsen said that County Counsel is incorrect. When we talk about uses, County Counsel has taken a very narrow point of view, this use is not anywhere similar to the intent of Measure D. Measure D never intended that a commercial use like this would be put in agricultural land, the problem is that this type of project is going to set a precedent for putting it in any portion of the canyons in Castro Valley, violates Measure D because the stipulation of Resource Management areas prevents this. What bothers him is that the applicant has spent a lot of money and has spent a huge amount of time in doing this and they have been mislead because the voters in Alameda County voted to restrict the uses of agricultural property to the point where they can be very specific and prevent to be mislead. The County should be open to litigation. The water is a serious problem and needs to be protected. He can not support the project being in Measure D property.

Council member Sadoff said that he is concerned about the CEQA process, this is a project that has a road reconfiguration, production water potential supply issues, a leach

field which is drained into 32 inches of soil over fractured rock, potentially loosing 32 coast live oaks; there is stream alteration, all this together means that a full EIR should have been done, a mitigated negative declaration is not appropriate for the site in his opinion. As far as Measure D issue, states that: "agriculture is the science business of cultivating the soil, producing crops and raising live stock, farming" he does not see anything about a dog kennel. He can not support it

Council member Frank said that historically water has always been an issue. He said that kennels are needed but the problem is that is a massive commercial energy. He has an issue with the water and he finds it confusing what the County Counsel said, it does not make sense to him, so he is inclined to say no.

Council member Ryzanych said that he also has a problem with the definition as brought forward by the County Counsel. County Counsel identifies a permanent part of the definition of Resource Management designation; however, definition is not a problem preservation of open space as the primary purpose and they missed that point there; also, looking at the findings, he thinks that this kennel at this point the project is not complete enough to go forward.

Council member Cunha said that the findings are supportive and she is actually in favor of the project. If County Counsel said that it is allowed in Measure D then it should be allowed.

Council member Miraglia said that she personally thinks that the project should have not been in the agenda tonight until the Council has certain things cleared out like the things that Mr. Beckman brought forward tonight but particularly what County Counsel thinks. His opinion was written today last minute while in fact the Council asked for at the last meeting and should have had it before this meeting and to her it just adds to the frustration certainly in her part and in Mr. Haegeland's part that he even had had to come to another meeting. She still can not support the project as big as it is because Measure D is still in question. She would like to have it continued or will have to vote no tonight.

A discussion ensued among council members whether to continue the project or deny it.

Ms. Beatty said that if a continuation is on the table she would ask a member of Environmental Health to be here to clarify that. That Agency would be responsible for working over the wells reporting addition to the Fire Department. She would go to those two agencies.

Council member Miraglia asked Mr. Haegeland if he wanted his project to be continued. He agreed to continuation.

Council member Frank made a motion to continue the project to a date to be determined. Council member Ryzanych seconded. Motion carried 7/0. Council member Moore volunteered to be in the committee if the Council agrees. Council members Miraglia and Nielsen will be volunteers also. Council member will coordinate the committee.

F. Chair's Report

Council member Miraglia said that she received a flier in the mail regarding a foreclosure workshop that the Redevelopment Agency is putting on October 3rd from 9 to 12 at the Ashland Community Center.

G. Committee Reports

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

Council member Moore said that there will be a CAC meeting next week.

- **Ordinance Review committee**
- **Eden Area Livability Initiative**

H. Staff Announcements, Comments and Reports

I. Council Announcements, Comments and Reports

Council member Moore said that there was a letter to the editor in the Forum about BZA approved the antenna over the community park. Ms. Beatty said she was not there but she heard about it, the vote was 3 to 2 and it was appealed by a neighbor across the street so it will go the next Board of Supervisors meeting.

Council member Moore said that he attended Friday the ground breaking ceremony for the new Youth Ashland Center.

J. Adjourn

The meeting was adjourned at 8:21 p.m.

Next Hearing Date: Monday, October 12, 2009