

CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL

Minutes for November 9, 2009

(Approved as corrected January 25, 2010)

- A. CALL TO ORDER:** The Chair called the meeting to order at 6:02 p.m. Council Members present: Cheryl Miraglia, Chair; Dave Sadoff, Vice Chair, Sheila Cunha, Dean Nielsen, John Ryzanych, Jeff Moore and Andy Frank. Council Members excused: none. Staff present: Sonia Urzua, Brian Washington, Bob Swanson and Maria Elena Marquez. There were approximately 20 people in the audience.
- B. Approval of Minutes of October 26, 2009**
Council Member Cunha moved to approve the minutes of October 26, 2009 as presented. Council Member Nielsen seconded. Motion carried 7/0.
- C. PUBLIC ANNOUNCEMENTS / Open Forum – None.**
- D. Consent Calendar – None**
- E. Regular Calendar**
- 1.** Planning Commission initiated discussion of an exemption, applicable in Castro Valley, to the requirement in Section 17.52.270 of the Alameda County Zoning Ordinance that accessory buildings in any R district shall not be located within six feet of the side line of the front half of any abutting lot, or occupy the front half of a lot, or either front quarter of an interior lot abutting two streets. This exemption would be applicable to certain residentially zoned areas within Castro Valley which already contain a number of existing accessory buildings that do not meet these development standards. **Staff Planner: Rodrigo Orduña**
- Ms. Urzua summarized the staff report. She stated that the Planning Commission recommended that the issue of accessory structures in the front half of the lot in a residential zoning district be further investigated by staff. Staff recommends that the variance criteria and development standards for location of accessory structures remain as existing.
- Council Member Frank asked whether issuance of building permits would be a consideration.
- Council Member Sadoff asked about the pending Residential Design Guidelines.
- Public testimony was called for.
- Jim Silva, resident at 4235 Krolop Road, spoke about his past application for a variance which was denied. He described that process. He opined that the process is arbitrary. He would like to see more weight given to the opinion of the majority of the residents. He proposed setting a threshold of 89% of approval from the 10 or 20 neighbors that his project receives support from the neighborhood. Also, he would like to see a distinction between public and private roads. He said that it should not be easy to get a variance but it should not be impossible. He said that the process should be more user-friendly.
- David Silva, resident at 1883 Strobridge Avenue, suggested that private road and public roads should be distinguished when considering variances.
- Debra Pugh, resident at 1825 Strobridge Avenue, spoke against exempting this section 17.52.270.

William Burton, resident at 4182 Krolop Road, spoke in opposition to the change to the ordinance.

Council Member Frank said that it depends on what you have and that there are exemptions to any rule, and when you have an exemption you have to see if it makes sense.

Council Member Nielsen commented on locating garages in the front part of the property in general. He noted the concern with protecting property values and the actions of those who build without permits. The system that we have works very well and the Council has been very consistent in trying to make sure that we apply it consistently.

Council Member Miraglia agreed with Council Member Nielsen. She said that when the Planning Commission denied Mr. Silva's variance, they sent a challenge through the MAC to see if some exception should be considered to be written into the code. They did not say what the exception should be. Staff has done a really good job in presenting exactly what issues are. She said that the Council should uphold the staff recommendation.

Council Member Sadoff also added that that not only are mechanism for certain circumstances as the variances but also appeals so decisions can also be appealed.

Council Member Nielsen moved to approve the recommendation set forth by the Planning Department that the Zoning Ordinance should not be updated to allow for accessory structures to be located within the front half of a lot. Council Member Ryzanych seconded. Motion carried 7/0.

2. **SIGN REVIEW, PLN2009-00094 – NABHAN** - Application to allow repainting; repair existing neon sign; and replace awning with new standing seam metal awning at the Dell Café, for property within land use designation Sub-area 2 of the Castro Valley Central Business District Specific Plan (CVCBDSP, S-02), located at 2637 Castro Valley Blvd, south side, approximately 110 feet west of Park Way, Castro Valley area of unincorporated Alameda County, bearing County Assessor's Parcel Number: 084A-0012-002-01. **Continued from October 26, 2009. Staff Planner: Rodrigo Orduña.**

3. **CONDITIONAL USE PERMIT, PLNC-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 September 28, 2009.**

Ms. Urzua summarized the staff report. At the September 28, 2009 meeting the Council moved to continue the project in order for subcommittees to be formed to discuss the project's compliance

with Measure D, water availability and the proposed septic system; however, County Counsel advised staff that forming subcommittees was a violation of the Brown Act.

Ms. Urzua explained why kennels are indeed considered conditional uses in the Agricultural Districts.

Council Member Nielsen asked staff if any kennels have been approved in Measure D property. Ms. Urzua said that she only has that record of Fabianac. That one was established without permits; when it was before this Council in 2005 was for the expansion for 150 dogs. Council Member Nielsen said that no kennels have been approved under Measure D since its inception.

Council Member Frank asked Ms. Urzua what is the definition of a kennel. Ms. Urzua read the definition from the ordinance.

Brian Washington, County Counsel, referred to the general plan interpretation and said that generally speaking general plan provisions are wide policies subject to a lot of interpretation. He explained that the Board of Supervisors has very broad discretion in terms of interpreting general plan policies. He referred to the memo County Counsel sent the previous month that very briefly summarize the research on the Resource Management land use designation and concluded that a kennel could be considered as acceptable use under the Resource Management land use designation and Measure D. They focused on the language which says: "this designation permits agricultural and recreational uses" and then at the end says: "and similar and compatible uses". He was in receipt of Mr. Schneider's memo disagreeing with his interpretation. He agreed with a lot of what he said, but the only fundamental disagreement is essentially that he asserts that there is only one way to read this general plan and came to the conclusion that the kennel cannot be found to be compatible with an allow use under Measure D. There is a lot of room for interpretation.

Council Member Nielsen said that the basic intent of the Measure sometimes is overlooked when the legal system takes over and look at specific process. He noted that the basic intent of Measure D was to preserve open space and agricultural uses. He asked Mr. Washington how would he define that basic intent of Measure D. Council Member Nielsen said that the basic intent of Measure D was to protect open space agricultural uses and not intensive concentration of the business in an agricultural area.

Council Member Miraglia asked Mr. Washington if Resource Management does not fall under the Castro Valley General Plan and not to the East County General Plan. Mr. Washington said that he was referring to areas governed by Measure D.

Council Member Moore asked Mr. Washington to discuss the role of the drafter's intent. Mr. Washington said that when interpreting initiatives you don't look at the drafter's intent in interpreting initiatives but that it really matters if you look at the plain language.

Council Member Nielsen expressed concerns about County Counsel's meeting with the MAC Chair and Mr. Moore. Mr. Washington said that the meeting they had was primarily with the Chair to talk about the process.

Council Member Frank talked about rural areas versus suburban areas. The discussed the appropriateness in finding what is a permissible scale of a project as it impacts a rural area. Mr. Washington said rural or suburban does not sway what the conditions are one way or the other. That is part of the land use side of the project.

Bill Lepere, Public Works Agency, said that there is undocumented fill on the site but he could not find any staff notices that say when it occurred. The drainage line was installed prior to the fill or prior to when 580 went in. There is any work removal of the fill or engineering of the fill.

Council Member Nielsen said that the fill was put there two summers ago. Mr. Lepere said it was not engineered.

Council Member Miraglia asked if the Public Work Agency does not require that the fill be removed. Mr. Lepere said that it is required on every grading application. If it is not documented it needs to be removed or re-engineered. Council Member Miraglia said that the September 28, 2009 staff reports say that no comments were received from the Land Development Department. Mr. Lepere said that that was correct.

Council Member Frank asked Mr. Lepere if he was involved in the creek grading operations. Mr. Lepere said that any drainage facilities that are around there will have to be shown in the grading plan.

Council Member Sadoff referred to the production well and asked if the DPW did a well survey to identify nearby wells. Mr. Lepere said that it should be done by Environmental Health.

Ron Torres, Environmental Health, said that they do not issue well permits. Environmental Health would get involved when it comes to determining the quantity and quality of the water, His understanding is that there are two wells on the property producing a total of 22 gallons per minute. As far as permitting the water system itself, because of the size of the water system, it will probably be under state permit. The state office and drinking water has an agency that oversees small water systems of this type. They will be required to produce quality and quantity in order to secure that permit.

Council Member Sadoff said that his concern is that nearby water users could be impacted and if you (Environmental Health) have not done a survey of nearby wells, you are going to know if you are going to be adversely impacting neighbors.

Council Member Nielsen said that the 11 property owners from Norris Canyon have installed 10,000 storage tanks because of the amount of water that was taken from that property. That sort of investigation has not been done. Nobody has gone to the trouble of finding out if there is enough water to supply 4,000 gallons a day 365 days a year for a high water user in an agricultural area.

Mr. Torres said that he will have to go back and clarify the jurisdictional boundaries between Zone 7 and what information Zone 7 has about hydrology for that area and cross reference with Public Works. Council Member Nielsen said that there is no way that this body can make a recommendation to either approve or disapprove this project.

Council Member Miraglia said that what Mr. Torres was saying is that he does not know if it is in his jurisdiction. Ron Torres said that when it comes to permitting a local agency would have more information.

Council Member Moore said that he has not heard about a specific analysis being requested for any project.

Council Member Nielsen said that this is one of the reasons that the properties were restricted to 100 acres in the canyon areas because of the water drought, a single family dwelling obviously will have part of this impact than a business. We have an obligation to protect the land owners in the immediate area.

Public testimony was called for.

Dick Schneider, resident at 6867 Wilton Drive, Oakland, spoke about the actual language of Measure D. He agreed with County Counsel and said that the language shall not allow kennels in Resource Management land. He opined that the proposal was an urban kennel. This is going to be a commuter kennel. It is an urban use for a rural area. The Board of Supervisors denied the permit for Redwood Christian High School nearby for the same reason that they denied the permit for the Trinity Church in Sunnyslope nearby. They recognize that this was going to serve an urban population outside the urban growth boundary. In the case of the school and the church, they actually should be allowed in Resource Management land if they were designed to serve a local community even though potentially those things could be permitted in Resource Management land that exact same reason applies in this case. The Castro Valley Plan has other language defining the extent of urban uses and says that urban uses shall be located within the Castro Valley urban area and it says urban development outside the defined urban area should not be permitted except where it is required to be clearly demonstrated compelling social, economic and environment objectives and where no alternative locations are available. It is clear from that that this project does not meet the requirements of the Castro Valley Plan. There are alternative locations available within the urban area and certainly nobody suggested there is some compelling need to allow this kennel. The Castro Valley Plan also says that decisions are to be gathered by other elements of the general plan, the Open Space Element, the Scenic Route Element and the Specific Plan for areas of Environmental Significance and each of those other elements of the General Plan have policies that are on this decision. I-580 between Castro Valley and Pleasanton is designated in the Open Space Element as a corridor of outstanding scenic beauty; the Scenic Route Element has a policy that says except for emergency service facilities, no highway business commercial use shall be located in the corridor outstanding scenic beauty. Decision makers must apply these scenic group elements in making these decisions both for private and public projects.

John Aufdermauer, resident at 17580 Madison Avenue, spoke in support of the project, not in size but for the need of the project. The viable use should be allowed.

Marie Cronin, resident at 8989 Dublin Canyon Road, expressed concerns about traffic and said that it is a huge undertaking. She referred to location of the proposed septic tank and the leach field system. She is also concerned about the main entry road which is a family and private road.

Glenn Carlson, resident at 25359 Goldhills Drive, said that he is against the specific use of this property in Measure D land. This is not a low impact agricultural use. Also, he is concerned that if this business does not make it for any reason, what will be of the empty facility.

Bruce King, resident at 3127 Terry Court, spoke in opposition of the project. He opposes the fill of 30 feet of the seasonal creek; he seriously questions the validity of the proposed "creek restoration plan"; and the project is not in conformance with Measure D.

Diana Hanna, resident at 10142 Cull Canyon Road, said that 10 years ago voters voted in Measure D, she tried to get supporters to sign Measure D to save our canyons. It would be an injustice to all the people that voted for this to save to agriculture and open space. The voters need to be considered here. In the Castro Valley General Plan says that it is not allowed. The kennel should be located somewhere else not on Measure D land.

Matt Turner, resident at 2756 Grove Way, said that this project is in direct conflict with the letter and the spirit of Measure D which was passed to protect what remaining open space we have.

Howard Beckman, resident at Via Dolorosa, San Lorenzo, also with Friends of the San Lorenzo Creek, said that this parcel is in District 2 not 7, because Zone 7 is separately administered. He pointed out the last time that he spoke about the jurisdiction of this application. This will go to the EBZA for a decision and he asked why. This parcel is within a finger of land that belongs to District 1. The subject parcel is in the Castro Valley Plan District 1 and therefore goes to the EBZA. People in the valley will be making decisions about Castro Valley Plan. He urged the Council when the re-district comes in next year to get this land back. The central issue here is whether a seasonal stream as exist on this parcel should be treated in an inferior way as a second class stream. The initial study suggests that this is not a stream worth saving. Brian Wines, from the Regional Water Quality Control Board weighed in on this issue in written comments to the County. He said in part that in the Bay Area's Mediterranean climate most of our streams are seasonal; therefore is common for riparian vegetation to be similar in character to the vegetation that is found on this parcel. If you read the Initial Study, you will recall that much was made by the fact that there is no vegetation there and clearly does no animal life, nothing aesthetically or otherwise. He urged the Council to not treat the streams as inferior. The initial study and other documents provided by the Planning Department also suggest that both the Regional Water Quality Control Board and the Dept. of Fish and Game have given their blessing to this project. They have not. He spoke with Brian W. today and clarified that point. They have reviewed this, they have made some comments but their principal comment was a reaction that Mr. Haegeland's initial proposal which was to fill 180 linear feet of stream. Finally, he emphasized that this body's primary responsibility when it comes to land use issues, to see that the Castro Valley Plan is honored. He has not seen or heard much about how this project conforms to the Castro Valley Plan. This project is too big, it violates too many policies, it requires filling a stream only because the size of the project. He urged the Council to not recommend the project as it is.

Frank Haegeland said that he has worked with all of the county and in many cases state agencies on this project for over 3 years. The water issue did not come easy. He spent nine months redesigning the project. They have spent months to go through the chain of command. He said that the Measure D issue, people are seriously speaking about this issue. They are doing their share, they have done everything they could except that they did not come first before this Council. They did what the Planning Department told them to do to address this the proper way.

Council Member Frank asked Mr. Haegeland if he started this project 3 years ago and if nobody told him to come before MAC first. Mr. Haegeland said no. They started the whole process 5 years ago.

Council Member Moore said that the use relies at the discretion of the County, and the Council cannot just agree or disagree. He said that the actual use is appropriate. The applicant did everything that he was asked to do, the project was reanalyzed, there was nothing left to be done.

Council Member Ryzanych said that the County does recognize farming as being the primary agricultural use of land and Measure D is agricultural land as identified in the various ordinances, it identifies specifically cultivation, use of the land, harvesting fruits and vegetables, etc. what really is this application, it is an extension of the urbanization moving into Measure D land that is supposed to be open space, the applicant could put it anywhere else, it could work in the industrial part of town, Hayward, it could work in many other places, corridors exist to support consumer base so it does not have to be here.

Council Member Nielsen disagreed with Council Member Moore, this is an urban application in a protected rural area and it is outside the allowable area for urban development in Castro Valley. What really bothers him about the process is that the County did not advise the applicant that there is a process for saving all this money and all this time. The Council tries very hard in having transparency on how Castro Valley is developing what the Master Plan is all about. Measure D was created for a specific purpose to preserve canyon areas and protect them from urban uses. This is not an urban use and does not belong in Measure D property.

Council Member Frank agreed with Council Member Moore. He is correct when he said that the kennel can go there by definition as supplied by the County but the issue is scale and the scale is more of an urban nature. Council Members Moore and Nielsen are correct in their assessments. He said that the applicant should have come before the Council to give the applicant direction before spending a lot of money and the opportunity to make a decision. He expressed empathy for the applicant.

Council Member Moore said that the project is too big and that the size is an issue for him.

Council Member Sadoff empathized with the applicant and agreed with Council Members Nielsen and Frank about the applicant not coming first before MAC. There are too many issues and he cannot support the project.

Council Member Cunha agreed with Council Member Moore. The applicant didn't have clear guidance from the beginning, besides the Measure D issue needs to be resolved.

Council Member Miraglia said that at the last meeting she said that it was too big. She is not totally in disagreement with what County Counsel had said.

Council Member Nielsen made a motion to deny Conditional Use Permit, C-8686. Council Member Sadoff seconded. Council Member Moore asked if there was no consideration for discussion of a smaller project, if it could be designed to avoid the creek. Council Member

Miraglia said that it could be designed in such a way that it did not impact the character of the property.

Council Member Nielsen said that once you allow commercial development in Measure D property then you are opening it up to commercial development all up and down the canyons. Council Member Miraglia said that the Council needs to be careful with that because it is not commercial, it is an agricultural use.

A discussion ensued among Council Members regarding the use, size of the kennel, building codes, County Counsel interpretation and general language. Mr. Washington said that there is a difference between interpreting general plan and some of its codes. General plans have a lot of language that requires interpretation. Essentially, this Council as the advisory board to East County or the Board of Supervisors has the discretion to determine that this use complies with the General Plan requirements.

Council Members Miraglia, Nielsen, Sadoff and Cunha were in favor of the motion to deny it. Council Members Moore, Ryzanych and Frank were opposed to the motion to deny Conditional Use Permit C-8686. Motion carried 4/3.

4. **CONDITIONAL USE PERMIT, PLN2009-00089 – T-MOBILE USA/COONES – HARD** Application for installation and operation of a wireless telecommunication facility (monopine) in an “A” (Agricultural) District located at 6132 Greenridge Road, west side, 1,000 feet North of Mesa Verde Way, Castro Valley area of unincorporated Alameda County, bearing Assessor’s Parcel Numbers 085-1600-003-02. **Staff Planner: Christine Greene**

Ms. Urzua summarized the staff report.

Jeff Peters, represented T-Mobile.

Council Member Frank asked the applicant about the location of the proposed cell site. Mr. Peters said it is down the hill in a ridge between the EBMUD

Council Member Nielsen asked Mr. Peters about the cost of the monopine pole. Mr. Peters said approximately \$300,000 dollars more than a monopole.

Council Member Sadoff opined that it looks out of place and is a detriment to what is existing now. He asked Mr. Peters how much rent will T-Mobile will be paying to H.A.R.D. Mr. Peters said quite a bit and that this is a private matter. Council Member Sadoff said it is affecting Castro Valley residents. He expressed his displeasure to some H.A.R.D. board members.

Council Member Moore agreed with Council Member Sadoff.

Council Member Frank said that the big issue is the view from the other area. He expressed concern with the maintenance of proposed landscaping. He would like to see some trees in that area, for example pines are appropriate.

Council Member Miraglia said that the Council can certainly condition this. She told Mr. Peters that he can still put some trees and not hurt the signal. Mr. Peters noted the condition requiring

the landscape plan, which would address this. Condition 13, recommends that we come back and see them a year from now to make sure that those plans are flourishing, and then every five years we come back and make sure that these conditions are in compliance.

Council Member Moore asked Mr. Peters about the landscaping. Mr. Peters said that they are recommending putting trees that grow up to 50 feet. Council Member Sadoff asked Mr. Peters if there were any other locations considered. Mr. Peters said yes, the first of which was actually more preferable was lower down on the hill, at the EBMUD water treatment facility. Some ground mounted antennas about 20 feet height were considered at that point, but it was too high for visual impacts.

Public testimony was called for. No public testimony submitted.

Council Member Sadoff said that it would be nice if HARD were to give back a little bit, it is a detriment to the community.

Council Member Frank moved to approve PLN2009-00089 with Planning considerations and also with a landscape plan stating that it will be H.A.R.D.'s responsibility to maintain the landscape and H.A.R.D. is to replace what landscaping dies. The landscape plan should include a minimum of 5 trees or more, to provide a natural looking screen. The height should not be a detriment to the reception to be provided by T-Mobile, Trees should be a minimum of 25 gallons. Council Member Cunha seconded. Motion carried 6/1. Council Member Sadoff abstained.

5. **VARIANCE, PLN2009-00105 – CASTRO VALLEY UNIFIED SCHOOL DISTRICT – CASTRO VALLEY UNIFIED SCHOOL DISTRICT** – Application to allow an 8-foot high sign where 4-foot is the maximum height allowed, and 64-square feet in area where 56-square feet is the maximum, in a R-1-CSU-R-V (Single Family Residence, Conditional Secondary Unit) District, located at 19722 Center Street, east side southeast corner of Paradise Knoll Court, Castro Valley area of unincorporated Alameda County, bearing County Assessor's number: 084C-1063-001-02. **Continued to November 23, 2009. Staff Planner: Richard Tarbell**

F. Chair's Report – None.

Committee Reports

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

Council Member Moore reported that the CAC unanimously approved a vote to approve 1.8 million dollars from investment from the Redevelopment Agency to help facilitate the deal on the Daugherty building project. They decided to defer the interest payments for three years but they made him pay 50% of its net operating income back to the County. They are going to remodel the building, do exterior façade changes, the County has a lot of control on the actual uses that go in there, it is going to be a multi use tenant..

- **Ordinance Review Committee**

- **Eden Area Livability Initiative**

H. Staff Announcements, Comments and Reports

Council Members discussed and reached consensus about Members using the acgov.org email addresses in order to increase accessibility by the public.

I. Council Announcements, Comments and Reports – None.

J. Adjourn

The meeting was adjourned at 9:15 p.m.

Next Hearing Date: Monday, November 23, 2009