

**CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL**

**Minutes for June 14, 2010**

(Approved as submitted June 28, 2010)

- A. CALL TO ORDER:** The Chair called the meeting to order at 6:04 p.m. Council members present: Cheryl Miraglia, Chair. Dave Sadoff, Vice Chair. Council members: Sheila Cunha, Dean Nielsen, John Ryzanych, Jeff Moore and Andy Frank. Council members excused: none. Staff present: Rodrigo Orduña, Bob Swanson and Maria Elena Marquez. There were approximately 10 people in the audience.

**B. Approval of Minutes of April 12, 26, and May 24, 2010**

Council members Miraglia, Nielsen, and Cunha requested that staff planner Sonia Urzua review the minutes of April 12 to include comments made regarding the Climate Action Plan. The approval of these minutes will be continued to the next meeting.

Council member Moore made a motion to approve the minutes of April 26 as submitted. Council member Cunha seconded. Motion passed 6/1 with council member Frank abstained.

The approval of the minutes of May 24, 2010 will be continued to the next meeting.

**C. PUBLIC ANNOUNCEMENTS / Open Forum**

Harold Klobukowski, resident at 5216 Crane Avenue, said that T-Mobile installed an antenna a few days ago along Crane Avenue location and said that residents were not notified, and he asked if this was legal. Bob Swanson told Mr. Klobukowski that he reported that to the phone company and the information that he got was that they were not legal. Mr. Klobukowski said that there are petitions across the country to ban the T-Mobile antennas because of the potential hazard to health. Also, he reported that there are 40 to 50 million songbirds killed every year, he is also concerned about that, and he would like to see what can be done to have them removed or find an appropriate place away from residents.

**D. Consent Calendar**

**Council member Moore proposed to move items 3 and 4 to the Consent Calendar. Council member Nielsen said he has a couple of questions on item 3. Council member Moore made a motion to move item 4 to the Consent Calendar. Council member Cunha seconded. Motion passed 7/0. Council member Moore made a motion to approve the Consent Calendar. Council member Cunha seconded. Motion passed 7/0.**

**E. Regular Calendar**

- 1. CONDITIONAL USE PERMIT, PLN2009-000154 – EBMUD/AT&T MOBILITY - KELLY** – Application to allow installation and operation of a wireless telecommunication facility (45 feet tall mono pine), in a R-1-SU-RV (Single Family Residence, Secondary unit is permitted, Recreational vehicle parking is permitted) District, located at the end of Brookdale Boulevard, Castro Valley area of unincorporated Alameda County, bearing assessor's Parcel Numbers: 084D-1100-001-16 and 084D-1103-070-04. **Staff Planner: Christine Greene**

Mr. Orduña summarized the staff report. He stated that the use of telecommunications facilities is not specifically addressed in the Zoning Ordinance so staff looks to the telecommunications policies in order to determine where telecommunications and antennas should be located. This

proposed site is not among the favored telecommunication locations in the policy. For example, the policy would rather have them located in industrial or commercial areas, and located on buildings instead of on poles. Also, he referred to whether or not the neighbors at Hackleberry, Sugarbush, Brookdale, and Kingston were notified, and according to the mailing list that was produced, yes, they were. Staff did require the applicant to provide coverage maps to show that this was actually needed and that is included in the staff report packet. Staff is recommending approval as the best location for the coverage gap. Although wireless telecommunications facilities involve the emission of radio frequency fields, the Federal Communications Commission has established strict standards to ensure safety of persons and property within close proximity to such fields. An application may not be denied by a local jurisdiction solely based on concerns for the health risks that RF emissions may pose. We can make decisions at the local level based on other considerations, such as aesthetics, or whether or not the facility would constitute a land use nuisance with the adjoining properties in residential neighborhoods. Staff is recommending approval for a 10 year period.

Council member Sadoff said that there are two coverage maps, the second one is depicting the forecast coverage after the installation. He asked Mr. Orduña to explain the difference. Mr. Orduña referred to the two maps at the end of the staff report and gave a brief explanation of what these two maps show in the blue and green areas.

Council member Miraglia said that her concern is about the people on Hackleberry Ct. and Sugarbush Lane and asked if they were noticed by mail. Mr. Orduña said yes.

Council member Cunha referred to the Sheriff's Office letter regarding interference with their radio communications. She asked if there are any other cell towers that are interfering with their radio communications. Mr. Orduña replied that in general the Sheriff's Office has stated in the past that sometimes depending on the frequency of the equipment that the Sheriff's Office uses, AT&T and other telecommunications facilities do interfere. In this case, the County has the right to notify the carrier to adjust the carrier's systems. It is a growing concern from law enforcement and from emergency personnel since we are getting more and more telecommunication facilities. It is the responsibility of the carrier to change the frequency to no longer adversely impact the sheriff or other emergency equipment. The Sheriff's Office includes this condition and every single application needs to have that condition of approval.

Council member Frank asked if the different telecommunication facilities share the information as far as coverage with each other. Mr. Orduña said that they share a pole and many times the pole is a third party and the antennas are owned by AT&T, sometimes they co-locate. Council member Frank said that if there are no share arrangements as far as compatibility, there is going to be more and more and there is going to be excess of coverage in an area where it can be easily limited and be less visible, more effective, and less intrusive to the emergency telecommunications systems. Mr. Orduña said that it is hard because we have seen in the past ten years very aggressive private purchasing of one company to another, the companies themselves will often merge equipment for business reasons. He mentioned Clear Wire as such an example of new carriers moving into the area, and staff is directing them to first look at existing poles. Our co-location policies provide that incentive for the business. Our policies are to encourage co-locations as much as possible. For example, it is a faster review process to co-locate. Council member Frank said that if there is no co-location and there isn't any poles in the area that can be utilized to accomplish the coverage they need to accomplish by sharing arrangement. He asked if

this is the only viable alternative they have in terms of putting something up. Mr. Orduña said that that is what they present to us.

Pat Kelly, agent for AT&T Mobility, said that they have spent some time to make this work. They tried to keep that mono pine as low as they could. They also take into consideration to stay away from homes, they exhausted the area around there. They would want to co-locate for economic reasons and for time constraints, but this is the location that would close their coverage gap.

Council member Frank referred to the old military installation where they already have telecommunication equipment there, and asked Ms. Kelly if she considered this site versus the proposed site. Ms. Kelly said that they cannot overlap on these sites in the vicinity. They are limited to where they can go and then finding a property owner that is willing to work with them under a lease negotiation. Council member Frank said that EBMUD owns the former military site so it should not be a problem so the issue would be engineering and reception. He asked Ms. Kelly if she keeps a history of sites that she looks at. Ms. Kelly said she does not and hopes that AT&T does. Council member Frank asked if those history sites are disclosed to the County. Ms. Kelly said they can disclose the sites that they have considered and why they didn't work. Council member Frank asked if this is a standard procedure with all projects. Ms. Kelly said no, it is an individual thing. Council member Frank asked Ms. Kelly if AT&T volunteered that information to the County. Ms. Kelly said she didn't know because she didn't do the original application. This project has been with the County over a year, but she thinks that the original applicant did.

Council member Nielsen asked Ms. Kelly if she talked to any of the neighbors before this proposal was submitted to the County. Ms. Kelly said no. Council member Nielsen said that it would be helpful to let the neighbors know that this site is coming in because he talked to a few neighbors and asked them if they received the card (notice) and they said no. The proposal is very good, but it will help the council and will help her (Kelly) if she let the neighborhood know about the proposal. This would shorten the process. Ms. Kelly said that aesthetically they are trying to make it work for the area residents.

Public testimony was called for. No public testimony submitted.

Council member Moore said that he has no problem with it, is a fairly common project.

Council member Nielsen made a motion to approve Conditional Use Permit, PLN2009-00154 with staff considerations. Council member Miraglia abstained to vote only because she did not see the information that she would have liked to have seen which was whether or not any alternative sites were looked at. Council member Frank concurred with council member Miraglia. He said that the County should have a complete list of all the sites they have looked at. Since the County is involved in this process, the County has the right to have that information. Council member Miraglia told Mr. Orduña that the Planning Department can certainly add a co-location question to the application. Mr. Orduña said yes.

Council member Sadoff said that he is concerned about the fact that there are no neighbors present and he would prefer to hear what the neighbors think [*there were 3 neighbors present, but none spoke*]. Council member Miraglia said that the motion is to approve. Council members Moore and Nielsen were in favor. Council members Sadoff and Frank were opposed and council

member Miraglia abstained. Council member Moore asked whether the Council is going to penalize the applicant on one issue for a potential policy change. The process needs to be enhanced. Council member Miraglia asked Mr. Orduña if it would be appropriate or not allowed to be continued at this point for the applicant to come back or automatically goes on the WBZA. Mr. Orduña said that it could come back or the Council can make a recommendation to the WBZA. The neighbors were notified, but will be notified again, and staff will get the information rejected alternative sites from the applicant so this Council feels comfortable.

Council member Frank made a motion that this item be continued to return before the Council after additional notification goes out to the neighborhood, and information regarding alternative sites be disclosed to the County. Council member Moore seconded. Council member Nielsen agreed with council member Moore that the neighbors should again be notified before these towers are put in. Council member Sadoff asked Mr. Orduña when were the neighbors notified. Mr. Orduña said 10 days before the hearing. Council member Miraglia said she didn't feel comfortable voting yes or no on this until she hears about the alternatives.

Pat Kelly said that they would rather co-locate because that is the economically more feasible alternative. There were quite a few candidates (sites) that they looked at. This is the last viable site to go in.

**Motion to continue this item to the next meeting on June 28, 2010. Motion passed 6/1 with council member Nielsen opposed.**

2. **CONDITIONAL USE PERMIT, PLN2010-00049 - AAHL/ABC PRE-SCHOOL AND DAY CARE – LAM** – Application to allow expansion of a child care facility from 41 to 56 children in an R-S-D-3 (Suburban Residence, 2,500 square feet minimum building site area) District, located at 20135 San Miguel Avenue, west side 350 feet north of Jeanine Way, Castro Valley area of unincorporated Alameda County, bearing Assessor's Parcel Number 084A-0124-001-04. **Staff Planner: Christine Greene**

Mr. Orduña summarized the staff report and gave a brief history of this site. He stated that the Fire Department does not recommend a discretionary approval be given until several issues and conditions are issued. Applicant knows that this application will not be taken to the WBZA hearing until the Fire Department concerns are resolved. Another issue is parking. Staff feels that 3 parking spaces are not enough for 56 students.

Council member Moore said that it is all about the parking in his opinion and asked if the applicant is proposing something. Mr. Orduña said that the staff planner for this project mentioned in the staff report that there were some potential solutions for locating parking perhaps in front of the building. There is a 7 feet wide space to allow parking in the rear, but 7 feet wide is really narrow. Usually, Planning would like to see at the very least 12 feet when the driveway serves 4 vehicles or fewer and 20 feet when the driveway serves 5 vehicles or more. It is a really tight situation.

Council member Nielsen said that the application is incomplete, there are no drawings of the restrooms and it is not possible to have 16 children using just one restroom in the building in the back.

Maggie Lam, applicant, said that they were thinking in using the rear yard, there is one exterior parking spot in the side that they can update. Also, the drop off and pick up time varies throughout the day so there is always parking available. Council member Miraglia asked Ms. Lam how many staff people she has. Ms. Lam said that she has 5 right now and she is planning to have one more.

Council member Nielsen referred to the wide range of ages (18 months to 11 years). Mrs. Lam said that is incorrect, the ages are 3 years old to 11 years old. Council member Nielsen said that without having a layout he asked Ms. Lam how she plans on serving the children. Ms. Lam said that the 3 years old to first grade, then kinder garden up to fourth grade. Council member Nielsen said that he needs to see in the final proposal how she plans to separate them because having an 11 year old playing in the same area as a 3 year old is difficult. Ms. Lam said they have created a schedule for this not to happen. Council member Nielsen said he needs to see a drawing of the front building. He said that one restroom for 16 children is not enough. Ms. Lam said that the Social Services Department requires one restroom and one sink for 15 children. Council member Nielsen asked Ms. Lam to verify that for the Council. She also said that there is a restroom for staff only in the main building.

Council member Moore referred to the parking situation and asked if the Planning Department supports it and if it would support with more driveway curb cuts. Mr. Orduña said that Staff does not support more curb cuts in the frontage, and that parking must be kept beyond the front 20 feet, and keep paving in the front of the building to 50% maximum to allow for landscaping. Council member Moore said that two on-site parking stalls he thinks would be reasonable, one for each of the new staff persons. Mr. Orduña said that the required on-site parking is parking beyond the first 20 feet. The idea is that the driveway apron is not wider than 25 feet and gives the opportunity to provide landscaping in the front, while allowing flaring out for the two additional parking spaces.

Council member Cunha asked Ms. Lam if she still can utilize the back of the house on the left hand side. Ms. Lam said no. Mr. Orduña made a point of clarification on the confusion with the floor plans, he said that this application was renewed just last year, so last year they did bring the floor plans for the front building and yes, there are floor plans as recent as last year.

Council member Sadoff told the applicant that one of the conditions of approval of the previous CUP of March 2009 that the operator was to keep a record of persons violating the drop-off and pick-up schedule and also persons blocking driveways for County staff to review at any time, he asked Ms. Lam if she was currently in compliance for that requirement. Ms. Lam said yes.

Council member Nielsen referred to page 6, under Conclusions, condition # 1 states that the age of the children is from 18 months to 11 years old, he said that this needs to be corrected to reflect the age that is 3 years old to 11 years old.

Council member Frank asked Ms. Lam if she has a specific schedule of drop-off and pick-up timing. She said no, timing varies. There are no consistent pick-up times during public school hours.

Mr. Orduña asked Ms. Lam if during summer recess all children from 3 years to 11 years old be there all day. Ms. Lam said yes, most of them will be there.

Public testimony was called for. No public testimony submitted.

Council member Moore said that he passes by this site frequently and has never seen a problem with parking congestion there. Council member Miraglia said that she has no problem with the total 56 children as long as they add two more parking spaces. Council member Moore agreed and said that it is important that they fully comply with all aspects without a variance.

**Council member Moore made a motion to approve Conditional Use Permit, PLN2010-00049 with staff conditions and the clarification that the applicant will provide two fully conforming parking stalls. Council member Miraglia amended the motion about a detailed new landscape plan. Council member Moore agreed. Council member Cunha seconded. Motion passed 4/3 with council members Sadoff, Nielsen and Frank opposed.**

- 3. CONDITIONAL USE PERMIT, PLN2010-069/CORMIER** - Application to renew Conditional Use Permit, C-8368 to allow continued operation of a dog daycare, training, and overnight boarding facility for up to 20 dogs. The subject property is zoned R-1-L-B-E-CSU-RV (Single-family, Limited Agricultural, Secondary Unit, Recreational Vehicle) District, is located at 6776 Crow Canyon Road, west side, south of Norris Canyon Road, in the unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel No. 85-1700-003-06. **Staff Planner: Jeff Bonekemper**

Mr. Orduña summarized the staff report. Staff is recommending a 10 year permit based on the history of no complaints. Also, he referred to condition 8 on page 4 of the staff report and said that this conditional of approval was removed at the last go around as part of resolution Z-05-30 for C-8368. This condition was imposed at the last go around but the WBZA removed it since the WBZA did not consider the nature of the operation to have a traffic impact to merit the land dedication. The Public Works Agency required it again this time because County staff would like to see as conditions of approval on discretionary permits that the land be dedicated for potential widening of Crow Canyon Road. On streets slated for widening or realigning, every time that a discretionary permit is issued, the condition for dedication is included by Staff. It is up to the decision makers, such as the WBZA, to decide whether or not the dedication would be imposed upon the applicant based on potential impacts that the property has on traffic, parking, intensity of land use, etc.

Council member Nielsen said that there is more than 1% of the property covered with buildings and is zoned limited agricultural. The dilemma that the Council is going to face is that we are applying the restriction about 1% coverage on Ag property yet this parcel covers more than 1% and it is an agricultural compatible use. He asked if the Planning Department looked at that percentage to see how it is applied to this piece of property. Mr. Orduña said that that percentage is 1% floor area ratio with 20,000 square feet minimum that is allowed to be covered per Measure D. Council member Nielsen said that he thinks this is not in Measure D. Mr. Orduña said that the current general plan is suburban residential [*correct designation is Resource Management*] for the Castro Valley Plan

Alan Cormier, applicant, clarified the issue about the late hours. He also referred to condition # 8 and said that they are willing to do their fair share.

Public testimony was called for. No public testimony submitted.

**Council member Moore moved to approve Conditional Use Permit, PLN2010-00069 with staff considerations. Council member Nielsen seconded. Council member Frank said that except for condition 8, which should be deleted. The motion was amended by council member Moore and seconded by council member Nielsen. Motion passed 7/0.**

4. **SIGN REVIEW, PLN2010-00030 – ALL SIGN SERVICES//FORD, DAVID** - Application to allow new signage in the *Castro Valley Central Business District Specific Plan, Subarea 1 (CVCBDSP-SUB 1)* District located at 2492 Castro Valley Boulevard, north side, corner northwest of Stanton Avenue, Castro Valley area of unincorporated Alameda County, bearing County's Assessor's Parcel Number: 084A-0224-002-05. **Staff Planner: Richard Tarbell**

**Moved to the Consent Calendar.**

5. **SITE DEVELOPMENT REVIEW, PLN 2010-00056 – FANG/SENTY** - Application to allow repainting of the building exterior, install new ATM & safe deposit night drop including required lighting, provide accessible ramp to new ATM, new awning, and exterior door modifications in the Subarea 10 (S10- Castro Valley Central Business District Specific Plan) District, on a site measuring 7,461 square feet (0.17 acres) located at 3549 Castro Valley Boulevard, south side, 160 feet east of Redwood Road, Castro Valley area of unincorporated Alameda County, designated Assessor's Parcel Number: 084C-0618-10. **Staff Planner: Howard Lee**

The applicant did not attend. The item was continued to the next meeting, June 28, 2010.

F. **Chair's Report – None.**

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**

Mr. Orduña informed the Council that staff planner Sonia Urzua will be back for the next meeting, June 28. He also referred to the James Silva garage that has been continued by the Board of Supervisors until September. Council member Miraglia updated the Council on this issue and gave a brief explanation on why this item was continued

Council member Miraglia thanked council member Frank for his 11 years with the Council. This was his last meeting.

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

**J. Adjourn**

**The meeting was adjourned at 7:37 p.m.**

**Next Hearing Date: Monday, June 28, 2010**