

**CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL**

**Minutes for July 12, 2010**

(Approved as corrected July 26, 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, Sheila Cunha, Dean Nielsen, John Ryzanych, Jeff Moore and Marc Crawford. Council Members excused: Dean Nielsen and Marc Crawford. Staff present: Sonia Urzua and Bob Swanson. There were approximately 10 people in the audience.

**B. Approval of Minutes of June 28, 2010**

The approval of the minutes of June 28 was continued to the next meeting.

**C. PUBLIC ANNOUNCEMENTS / OPEN FORUM**

**D. CONSENT CALENDAR - No Items.**

**E. REGULAR CALENDAR**

- 1. CONDITIONAL USE PERMIT, PLN2010-00058 – FIRST PRESBYTERIAN CHURCH OF HAYWARD/HIS GROWING GROVE** – Application to allow continued operation of a child care facility for up to 150 children in an C-1 (Retail Business) and R-S-D-20 (Suburban Residence, 2,000 square feet per dwelling unit) Districts, located at 2490 Grove Way, northwest side approximately 170 feet northeast of Redwood Road, Castro Valley area of unincorporated Alameda County, bearing Assessor's Parcel Number 416-0030-014-03. **Staff Planner: Christine Greene**

Ms. Urzua summarized the staff report. Staff is recommending approval with five year expiration period.

Libby Barbaria, representing the applicant, requested the Council to approve the continued operation of the child care facility and that they have a good reputation in the community. She added that there have been no complaints from the neighbors.

Council Member Cunha asked if all of the conditions of approval have been met. Ms. Barbaria said yes.

Public testimony was called for. No public testimony submitted.

**Council Member Moore made a motion to approve Conditional Use Permit, PLN2010-00058. Council Member Miraglia suggested that a 10 years permit should be appropriate. Council Member Moore repeated his motion to extend the permit to 10 years. Council Member Ryzanych seconded. Motion passed 5/2 with Council Members Nielsen and Crawford excused.**

**2. PROPOSED NEW ORDINANCE REQUIRING A CONDITIONAL USE PERMIT FOR ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS** – Consideration of an ordinance enacting a new section in Chapter 17.60 of Title 17 of the General Ordinance Code of the County of Alameda. **Staff Planner: Phil Sawrey-Kubicek**

Ms. Urzua said that this ordinance amends Section 17.32.030, Section 17.36.030 and Section 17.38.030. It also codifies the Alcohol Policy, which was drafted in 1986. This item was before the Unincorporated Services Committee meeting in March 2010. The main focus of the discussion was on the distance between similar uses and sensitive receptors. The distances discussed were between 500 feet and 1,000 feet. Community members spoke in favor of 1,000 feet. However, County Counsel expressed concern with regard to the 1,000 foot distance. It was decided at that meeting to move forward with the proposed ordinance with a 750 foot radius from similar uses and from sensitive receptors not including residential buildings.

Council Member Miraglia asked Ms. Urzua to distinguish between the existing process and the proposed CUP. She explained that the process would be the same except that instead of considering a policy, which is persuasive, the language would be binding on the applicant as an ordinance. Council Member Miraglia asked Ms. Urzua what specifically is too flexible in the policy. Ms. Urzua said that perhaps the 500 foot separation. An inconsistency was not sufficient to deny a CUP because we did not have the force of an ordinance behind us. We just had a strong policy.

Council Member Cunha said that the staff report states that there are concerns within the community and asked where these concerns come from that cause this discussion here tonight. Ms. Urzua discussed the meetings of the alcohol working group. Council Member Cunha asked if these working groups have been out to the community because she had not heard from them. She asked if other cities, counties and communities have this type of awareness. Ms. Urzua said she can find out.

Public testimony was called for.

Janice Louie, resident at 17946 Lamson Road, said that she supports the alcohol CUP with the 750 feet radius requirement between alcohol establishments and its proximity to sensitive areas (schools and park).

Linda Pratt, representing CommPre, described background on the draft CUP. The alcohol working group included community residents, CommPre, County Counsel, the Planning Department, the Environmental Health Department and also included one member of the MAC. Their work is to codify the County CUP process for certain alcohol licenses types and to modernize and make the language consistent with Chapter 6.104. She said that the most controversial point in this ordinance is the distance requirement. She added that County Counsel drafted language that would allow the WBZA to consider overriding considerations to allow a particular use.

Public testimony was closed.

Council Member Moore referred to the statement of the overriding consideration component of the proposal. He was concerned that it not be overly restrictive, making it impossible to make the findings necessary in a very select specific way to entice the type of businesses that we need and we want.

Council Member Sadoff agreed with Council Member Moore's comments. He is concerned about the 500 feet distance.

Council Member Ryzanych said that it has not been demonstrated that Castro Valley requires changes to the alcohol policy. There is no clear and definite problem so doesn't see a need to go forward with codification. Also, the criteria for WBZA is very loosely defined and questionable. The alcohol policy is currently well managed by Alcohol Beverage Control within the County. He asked if the Council really needs to codify this situation based on the fact that the law already exists. The current alcohol policy could be modified in order to accommodate any sort of loose ends that might be in place. He is not in favor of the 750' vs. 500' distance and also said he has a problem with the BZA language for overriding considerations. He stated that it's like being considered guilty and having to prove you are innocent – Doesn't think it should be a hurdle to open up a business that is a legal business in California.

Council Member Miraglia said that this Council never heard any concerns from anyone and the only time that concerns were brought forward was in the previous alcohol ordinance. She realized that the Alcohol Policy Committee has worked hard on this. She attended those meetings for a while and the Alcohol Policy Committee seems to be made up of primarily CommPre, CVCAN, Public Health, Sheriff's Department and staff with very few residents in attendance. Her main concern is that this does not really come from the community. She asked why the Council does not start with the policy that we have with 500 feet. She said that 750 feet is far too restrictive but beyond that if we have a policy in place for all of these years at 500 then we should start with that. In addition, the way this currently reads it talks about distance between any alcohol beverage establishment when in fact, she believes that we should stick with what the policy currently refers to which is between similar alcohol beverage establishments and perhaps delineate that by license type. She went through some examples of census tract statistics and pointed out a problem with the way the ordinance currently reads. She stated that the issue of oversaturation is definitely a bona fide issue but the fact is that ABC determines this and addresses this during its entire application process. Section 23958.4 of the Business and Professions Code goes into detail as to what is looked at in that process, including crime rates and she doesn't think that is something that should fall to our criteria and this speaks for the first criteria for denial. She said that she could support this CUP but that she would want the radius to start with the 500 feet. She took issue with Section C of the Section 17.60.60 Criteria for Review stating that in her opinion it is unconstitutional in

that it states that a business cannot advertise alcohol at all unless it's on the menu which would significantly prohibit a business from marketing its business. She feels such restrictive language is over the top but what she could be amenable to would be language similar to what is in the current policy which puts restrictions on the amount of alcohol related signage a business could have in its windows. In summary, she said that the grounds for denial which is in: A of Section 17.60.70 should be stricken and Sections B & C should refer to similar establishments and 500' and that Section C of the 17.60.60 Criteria for Review should be stricken or amended.

Council Member Moore said that overall he likes the use permit policy and that he supports a similar type of a motion with the comments that Council Member Miraglia made.

Council Member Miraglia said that the Council recommends approval of the proposed ordinance with the following changes:

**Under Grounds for Denial, Section 17.60.70 , paragraph (A) Should be stricken or be amended to read, "The Department of Alcoholic Beverage Control makes the written determination that the proposed alcoholic beverage sale establishment would contribute to an undue concentration of alcohol establishments in the area and is therefore denying the application."; Section 17.60.70 , paragraph (B) should be amended to read: "The Alcohol Beverage Establishment would be located within a 500 foot radius (measured property line to property line) of a similar Alcoholic Beverage Establishment as delineated by license type; Section 17.60.70 , paragraph (C) should be amended from 750 feet to 500 feet; and Section 17.60.60 , paragraph (C) should either be stricken in its entirety or reworded to more accurately reflect the 1993 Policy as it relates to window advertising. Council Member Moore seconded. Council Member Ryzanych asked Council Member Miraglia about her comment on 17.60.70. He asked about allowing for some favorable language to be inserted along with her recommendation. Council Member Miraglia stated to Ms. Urzua that the way it is written it appears that we do not want any more alcohol establishments and therefore these all are grounds for denial and if the WBZA wants to approve any they have to make these determinations. Council Member Ryzanych asked if the Council is going to leave 17.60.70 for re-wording. Council Member Miraglia said that she is going to leave her amendment as it is. Motion passed 5/2 with Council Members Nielsen and Crawford excused.**

3. **CONDITIONAL USE PERMIT, PLN2010-00019 - FABIANAC, CLUB K-9 –** Application to allow the continued operation of a day care and boarding kennel for 65 dogs, with an expansion to 100 dogs, in an "A" (Agricultural) District, located at 10671 Crow Canyon Road, 1.28 miles north of the intersection of Crow Canyon Road and Norris Canyons Road, Castro Valley area of unincorporated Alameda County, designated County Assessor's Parcel Number: 085C- 1991-006-00. **Staff Planner: Damien Curry**

Ms. Urzua summarized the staff report. Staff planner recommends approving the existing 65 dogs with the 100 dog expansion pending the Environmental Health issue resolution. She noted a correction to condition number seven, the current requirements are 14 percent grade instead of 15 percent as stated in the staff report. Also, condition number 11 should be stricken since no new structures are proposed with this conditional use permit. Staff is recommending 10 years, so the new expiration date is July 14, 2020.

Council Member Moore asked if that all of the site improvements shown on these plans are proposed to be completed as part of this renewal of the use permit. Ms. Urzua said yes. Council Member Moore asked for clarification on the required traffic improvements. Ms. Urzua said that staff conditioned the approval such that the applicant must continue working until those issues are resolved.

Council Member Sadoff asked about the Building Inspection Department's response relating to several retaining walls on site. He asked Ms. Urzua how long these violations have been open. Ms. Urzua suggested that the applicant might be able to answer this question.

Eric Fabianac, applicant, stated that he started operations in 1996. As of 2006 they were approved to construct a new building and run a kennel at the capacity of 65 dogs. They were approved to improve the site with an additional building to increase the capacity from 65 dogs to 150. Mr. Fabianac went on to explain what he has done since 2006 up to this date with regards to improvements to the kennel. He discussed the conditions of approval which were attached to the approval for 150 dogs, including road improvements and septic system design. There are not going to be more new buildings.

Council Member Miraglia raised questions about the proposed sound wall. Council Member Miraglia asked Mr. Fabianac if there is room inside for more dogs. Mr. Fabianac said yes but he uses it during inclement weather. Comments followed about using landscaping to buffer the sound wall from the right of way. Overall, she observed that the style of landscaping was not very agricultural.

Council Members Cunha and Miraglia asked Mr. Fabianac if the existing facilities could currently accommodate 100 dogs. Mr. Fabianac said yes. Council Member Ryzanych asked Mr. Fabianac what is the occupancy rate. Mr. Fabianac said 100%.

Council Member Sadoff asked Mr. Fabianac if there are standardized kennel requirements for square footage of the kennels and if so if he meets those requirements. Mr. Fabianac said that there is no published footage for the sizes. They buy the crates and they are sized specifically depending on the dog and they are not set by them, they are set by the industry.

Public testimony was called for.

Brian Pesicka, resident at 10411 Crow Canyon Road, spoke in support of the project and noted no noise or traffic problems.

Najibullah Sayami, resident at 10697 Crow Canyon Road, spoke in support of the project and said that he has not experienced any problems like noise, or any complaints from other people. He is happy with the kennel.

Diana Hanna, resident at 10142 Cull Canyon Road, spoke in opposition to the expansion. She said that her issue is that this is an existing non-conforming use under Measure D and was therefore allowed to continue with the business but it cannot be expanded. She said that traffic is an issue. Also, she has a problem with the run-off and does not know if that is going to be addressed. She said that she has a real problem with the size of the kennels. It needs to be considered. She said that she expects it is not granted a 10 years permit.

Cecelia F., Castro Valley resident and kennel customer since 2003, spoke in support of the kennel and said that it provides great services for dog owners and the community.

Mr. Fabianac said that he does not know how Measure D talks about expansion as far as the capacity or is it a physical size.

Council Member Miraglia asked Ms. Urzua to address how Measure D impacts the application. She said that she thought that when this kennel was before this Council in 2006 that it was determined by Planning staff that there was not an issue with Measure D. Ms. Urzua said that previously, kennels were considered consistent with Measure D. Under that analysis, the expansion would be appropriate.

Council Member Cunha asked Mr. Fabianac if the animals go into crates at night. Mr. Fabianac said yes.

Public testimony was closed.

Council Member Miraglia said that on the issue of Measure D, there are two things that the Council can do: one is to continue the item so that staff can research the Measure D issue; or move forward with an approval dependant on clearing up the issue. The Council would not want to approve something that would be in violation of Measure D.

Council Member Moore said that he is generally in favor of this project. He thought that the use was consistent. However, the issue with Measure D needs to be reviewed.

Council Member Sadoff preferred continuing the item in order to get legal advice regarding compliance with Measure D. He also reaffirmed the need for Bay Friendly landscaping as stated in condition # 14. Council Member Moore agreed.

Council Member Ryzanych said that he generally agrees with those comments and that it is very important that we are complying with Measure D because it is a non-conforming use. If the Council continues it, it will give an opportunity to develop a landscape plan and have it ready for review also.

Council Member Miraglia said in regards to the landscaping that it is so much concrete and she thinks that there is definitely room for improvement there. Ms. Urzua said that it can be continued for two weeks and get a clarification on the Measure D expansion issue. Council Member Miraglia said that it should have been addressed in the staff report. It should have not come before the Council without some clarification on Measure D.

**Council Member Ryzanych moved to continue Conditional Use Permit, PLN2010-00019 for clarification on Measure D compliance and to provide a landscaping plan. The continuance is for 2 weeks. Council Member Cunha seconded. Motion passed 5/2 with Council Members Nielsen and Crawford excused.**

4. **SITE DEVELOPMENT REVIEW, PLN2010-00075 – SAFEWAY** - Application to modify existing wall signage on an existing building, in the Castro Valley Central Business District Specific Plan – Subarea 7 (Central Castro Valley Boulevard/Redwood Road – Intensive Retail Core) District, located at 20629 Redwood Road, northwest corner of Castro Valley Boulevard and Redwood Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Numbers 084A-0080-011-011 and 084A-0080-011-012. **Staff Planner: Andrew Young**

Ms. Urzua summarized the staff report. Staff is recommending approval.

Mr. William Benn, a US Bank representative, was present to answer the Council's questions.

Public testimony was called for. No public testimony submitted.

Council Member Sadoff said that he is not generally opposed to the proposal and strongly recommended a blue color, as discussed in the staff report.

**Council Member Sadoff moved to approve Site Development Review, PLN2010-00075 with the alternate blue lettering on the exterior sign. Council Member Cunha seconded. Motion passed 5/2 with Council Members Nielsen and Crawford excused.**

#### **F. Chair's Report**

Council Member Miraglia informed the Council of two items of interest on the July 13, 2010 agenda before the Board of Supervisors. First is the Ordinance for Alcohol Beverage and Tobacco Products advertisements on billboards. Staff is proposing 500 foot buffers. The second agenda item of interest is regarding the Billboard Relocation Program.

Council Member Cunha asked for an update on the Silva garage issue. Council Member Miraglia said that Council Member Crawford offered to go there and make suggestions.

Council Member Miraglia referred to the meeting on the Climate Action Plan on June 30<sup>th</sup>. She heard from three different communities, Castro Valley was one of them. The impression that is given to people was that the Planning Department is not really making any revisions to the plan. If any of us wants to see any revisions to the plan we need to be prepared to say how many greenhouse emissions are substituted suggestion. Two of the three people that she spoke with told her that the meeting was a sham. It didn't go over well. If Planning means to do something different, they need to be advised. It would be helpful if the Planning Department had taken all the suggestions that they got from this Council and at least acknowledged those. She said that all Council Members should make an effort to attend the next CAP meeting.

Council Member Cunha said that she attended a meeting at the San Lorenzo Village Homeowners Association along with other people and they spoke with the planners and they were asking for input. She certainly would like to know about any other CAP meetings going forward.

Also, she referred to the letter to the Board of Supervisors by Council Member Miraglia and said that it was very well written and addressed point by point. She asked Anna Gee what happened at that particular meeting and what's the status on that. Council Member Miraglia said that Supervisor Miley needs to hear from every Council Member what they think about her letter. In regards to the batting cages, it will be before the Planning Commission in August.

**G. Committee Reports**

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

Council Member Miraglia said that the committee will be meeting this Wednesday at 12:30

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

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

Ms. Urzua informed the Council that she would forward material received in the mail regarding a proposed housing subdivision development on Proctor Road.

Council Members discussed ways to inform library patrons that the MAC meetings are in progress so that members of the public can join the meeting. A few sign options were discussed.

**I. Council Announcements, Comments and Reports – None.**

**J. Adjourn**

**The meeting was adjourned at 7:33 p.m.**

**Next Hearing Date: Monday, July 26, 2010**