

CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL

Minutes for July 26, 2010

(Approved as submitted August 23, 2010)

- A. CALL TO ORDER:** The Chair called the meeting to order in memory of Therese Carrera, staff person at the Planning Department and wife of Art Carrera from Public Works. Council Members present: Cheryl Miraglia, Chair. Dave Sadoff, Vice Chair, Sheila Cunha, Dean Nielsen, John Ryzanych, Jeff Moore and Marc Crawford. Council Members excused: none. Staff present: Sonia Urzua, Rodrigo Orduña, Bob Swanson. There were approximately 20 people in the audience.

B. Approval of Minutes of June 28 and July 12, 2010

Council Member Nielsen asked that a paragraph to read as follows: “Councilmember Nielsen requested Planning to advise Council the total number of cell sites in Castro Valley” to be added to the minutes of June 28, 2010. Council Member Nielsen moved to approve the minutes as corrected, Council Member Moore seconded. Motion passed 5/1. Council Member Cunha abstained.

Council Member Miraglia submitted several corrections to staff. Council Member Moore moved to approve the minutes of July 12, 2010, as corrected. Council Member Cunha seconded. Motion passed 4/2.

C. PUBLIC ANNOUNCEMENTS / OPEN FORUM - None

D. Consent Calendar - No Items.

E. Regular Calendar

- 1. 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 (Continued from July 12, 2010)**

Ms. Urzua summarized the staff report. This item was before this council two weeks ago for expansion of the kennel from 65 to 100 dogs. Staff is recommending approval pending completion of requirements of the Environmental Health Department regarding sewage disposal. This item was continued for two weeks in order for staff to consult with County Counsel regarding the expansion of a nonconforming kennel use in the resource management general plan designation and inquire the Public Works Building Department related to inspection issues on retaining walls built without permits. County Counsel stated that the 2006 approval required that the CUP be implemented within three years, or shall be of no force or effect. County Counsel stated that the facility is not a nonconforming use. A stop work order was issued on July 27, 2009, relating to some of the retaining walls that failed. The applicant since then has submitted an application for a building permit to get approval for the retaining walls. Public Works staff will have to verify heights of retaining walls. The applicant is showing good faith efforts to finalize the remaining issues.

Mr. Fabianic, applicant and owner of the property, stated that they have been in operation since 1996. They have worked with County staff and applied for a Conditional Use Permit. In 2006 the

application was approved for operating a business for 65 dogs, and approved to build an extension to accommodate 250 dogs. In 2008 some of the work related to the expansion was initiated such as soundproofing the current facility and some other improvements. In mid 2008 the economy was changing and they felt that such a large expansion was not wise during this period. Jana Beatty suggested that they contact the neighbors about the scaled down plan and all their neighbors were in favor of the modified plans. Later on they met with Sonia Urzua and she suggested that the new conditional use permit should be for a renewal and instead of an application for a new building. The applicant submitted an application to expand from 65 to 150 dogs using the same buildings on the site. The applicant is currently working with Grading and Building staff to resolve the issues related to the retaining walls built outside of the permit process and replace the ones that have failed. This kennel has been awarded best kennel of the east bay in 2006. There have been no complaints from neighbors or people that use this business. It appears that kennel can operate under Measure D. Member Miraglia asked if grading was approved and was it done by permits in 2006. Applicant responded yes.

Public testimony was called for.

Diana Hanna, resident of the Cull Canyon area, said her opposition remains the same, it is a legal non conforming use. The kennel proposed to be built on Dublin Canyon Road went before the Board of Supervisors and they voted unanimously to deny the project and at the time Brian Washington from County Counsel said “this is a precedent setting decision”, which meant no kennels should be allowed under the Resource Management/Measure D land. Again on June 7, the Board of Supervisors heard an appeal for an RV storage place in Livermore, a non conforming use, which means that the business can’t expand from its original footprint. The Board unanimously voted to again deny the project. Ms. Hanna read from a report from Peter Ward, owner and operator of Happy Kennel in Sunol, where he states that business for kennels has steadily gone down and that the existing kennels are not used to full capacity. She personally is against using crates for housing animals. She feels they are too constricting and not up to Pet Care Service Association standards. She reiterated that her main issue with this application is that the kennel is a legal non conforming use and should not be allowed to expand.

Dick Schneider, representing Sierra Club, said that Sierra Club appealed to the Board of Supervisors the approval of the kennel on Dublin Canyon Road by the EBZA and the project was consequently denied by the Board. The Board denied the project on several grounds and made a precedent setting decision on how to interpret Measure D in regards to kennels, and that kennels that do not have a connection to the land, that is kennels that are only used for board and day care and do not have an agricultural connection to the land are not permitted outside the urban growth boundary. This is definitely a non conforming use in Measure D boundaries and not an agricultural use according to County zoning. The storage place in Livermore was also recently denied an expansion at the Board of Supervisors because it was also a non conforming use. This application is the same situation and Sierra Club is only concerned with being consistent with the decisions in regards to these various applications which are under Measure D. He urged the Council to turn down this application.

Matt Turner agrees with Dick Schneider. Measure D has been on the books for ten years now and the residents voted for it, and there should not be a need to appear at these meetings to fight for something that has been voted and approved by the residents of the County.

Mark Caggins, resident of Castro Valley, houses his dog at this kennel. It is an excellent resource for the community. Mr. Caggins said he has to plan 9 months in advance to be able to house his dog at this kennel. It is worthwhile for the community to approve this application.

Mr. Fabianac, said that the memorandum from County Counsel indicates that this application can be approved under Measure D. He said some people have to make reservations one year ahead of time and this kennel is always booked during holidays, vacations, etc. This business has no trouble keeping fully booked. There are 20 acres where the dogs can run around and when they come into the facility they are ready to sleep, so the crates are not a problem.

Public testimony was closed.

The Chair said she that it looks like there is conflicting opinions from County Counsel, but in this case they have said that this business is a conforming use. County staff said that County Counsel's opinion is that the legal use depends on the facts of every application. Dean Nielsen said that he is a little confused and that the precedent made decision was related to Measure D. The Chair recollects that the reason why the applicant on Dublin Road was denied had to do with the facts of the application, it was related to the size, location and view from the freeway. County staff agreed. Member Moore said that if council has discretion and that if County Counsel is of the opinion that this type of business is okay under Measure D, then he is okay with it. Member Ryzanych said he agrees with Jeff but still feels that the opinion of County Counsel is not clear. He would like to get clarification on kennels under Measure D. Member Nielsen said the County Counsel's opinion needs to be clarified and also what the Board said about a kennel of this size in Measure D. He was not in favor of approving this application. Member Crawford wanted to set aside Measure D issues and take into consideration the existing retaining walls that are failing and the ones that have been put in place without permits. Does not understand how staff can consider the expansion of the facility with the retaining walls without proper permits and also the fact that some of the waste is not being handled properly. He said the property is well run and very quite. It is a good operation and it looks like there is demand for the expansion but the outstanding issues need to be addressed.

Member Miraglia said she was not sure why County Counsel did not address the precedent issue. This Council is limited until County Counsel clarifies their opinion. She has some issues with the walls being built without permits, the conditional use permit being given for ten years and she would only give it for three years. Should be conditioned to limit expansion until all issues resolved as to retaining walls, landscape and include a condition to upgrade or install an adequate septic and waste disposal system.

Member Moore made a motion to approve the project with staff considerations and modifications to the conditional use permit per Member Miraglia conditions: expiration of CUP in three years, no expansion until permits on all currently built and proposed retaining walls finalized, landscape plan to include hedge or softening for the length of wall facing Crow Canyon Road and not to include Palm trees, and that septic system and waste disposal be upgraded. Cunha seconded, motion passed 4/2/1 with Council Members Moore, Cunha, Crawford and Miraglia voting in favor, Council Members Ryzanych and Nielsen voting against, and Council Member Sadoff absent.

2. **Consideration of Updates to Chapter 6.20 – “Burials and Cremations”, and Section 17.52.036 – “Conditional uses – Board of Zoning Adjustments”, of the Alameda County General Ordinance Code.** County-initiated updates to Chapter 6.20 of the Health and Safety Code and Section 17.52.036 of the Zoning Ordinance, to conditionally permit crematory units when located within 300 feet of an established residence, when certain findings can be made, and when accessory and incidental to an existing mortuary, funeral home and columbarium or an existing cemetery; for properties located within unincorporated areas of West Alameda County (lands outside the East County Area Plan). **Staff Planner: Rodrigo Orduña**

Mr. Orduña summarized the staff report. This new section of the zoning ordinance code would allow the Board of Zoning Adjustments review of applications for conditional use permits for crematorium units. The crematorium units as proposed would be conditionally permitted for mortuaries, funeral homes, cemeteries and columbarias. Right now the rules state that you can't have any cremation within 300 feet of residential areas. This change would allow crematoriums even if located closer than 300 feet to the nearest residence, subject to conditions and appropriate findings. County staff is drafting an Initial study to determine any impacts from the language change. It will be ready to be sent out on the week of August 3, 2010. It will have a 30 day review period. This meeting is to introduce to this council the proposed changes. Staff would like to take this item to the Board of Supervisors on September 14, 2010. This Initial Study takes a programmatic review of potential impacts, if any, from the language change to the surrounding areas, it is not for any particular facility. In the future, as part of review of Conditional Use Permits, each application will have to have its own Initial Study/CEQA analysis to determine the potential impacts to the surrounding area.

This proposed change to Title 6 of the general ordinance code is to address issues related to an application received for an existing mortuary in the unincorporated area of the County. The crematory unit was originally permitted because it was an addition to an existing mortuary. Staff did not notice the provision in Title 6, Health and Safety Code, prohibiting such facilities less than 300 feet to residential areas. This rule was written prior 1953 because of concern with the exhaust from the crematorium units. The new crematorium units are much more efficient and release fewer pollutants into the air. The representative of the Bay Area Quality Air Management is here to speak to this issue. The small mortuaries would like to be able to add crematorium units to stay competitive with other mortuaries in the area. Mr. Orduña said the impact on the community would be significant if at least five of the crematoriums were located within one mile radius, but currently they are all far away from each other.

Member Cunha asked how come this ordinance change only applies to the West County. Mr. Orduña said that East County is very different than the West County because most of it is zoned agricultural and those properties are larger. The Chair expressed that she would like to have the ordinance apply to all of the unincorporated county. Mr. Nielsen asked why is the Grove Way facility not included in this staff report. Mr. Orduña said that his understanding is that it is only an office. Mr. Crawford asked if air quality includes odor. Mr. Orduña said yes. Mr. Ryzanych is the Bay Area Quality Control Board the only body that controls this type of facility. He asked what other bodies, state/federal, has any influence or have any regulatory oversight over these facilities. Mr. Orduña said locally there is the Building and the Fire Department that regulates these facilities.

Lisa Bradshaw, owner of Grissom's Mortuary, said the mortuary has been in existence for 57 years, it is a family business. The mortuary has to have a permit from the Department of Consumer Affairs, Bay Area Quality Cemetery and Funeral Board, and the Bay Area Quality Management District, local county boards and an annual minimum State inspection. There is also an agreement with the manufacturer that they have to abide by their regulations or the machine will be shut down. The manufacturer can shut it down; and they are regulated by national and state regulations. The percentage of cremations in the past used to range from 15 to 20 percent of all body treatment, in the past few years it has doubled. This is a family owned business and to keep it viable, it needs to be competitive with other mortuaries. It has not been a secret that we wanted to install this unit. Not changing the exterior, barely changing the interior to accommodate this unit. Member Miraglia asked where else do they currently perform cremations. Ms. Bradshaw said at the Irvington crematory which is surrounded by dozens of homes and schools and they have no issue with the crematory. She said that the place on Grove Way has not had a crematorium at the location for a while. Member Nielsen said it was shut down a few years ago.

Rachel Stellar, member of an organization called Green Action, works with residents that have environmental, health, and safety issues in their community. Green Action was contacted by some residents that live in this area. The residents are concerned that this ordinance caters to one business and it does not make sense. Normally ordinances are changed to address general issues but should also be very protective to health and safety issues. The residents are concerned for their health and the idea of breathing in something they are not sure about. Not trying to shut down any businesses. Chair Miraglia asked if she has any evidence of studies on this issue. Ms. Stellar shared some of the studies done in the UK and related health problems with residents living close to a crematorium. She also mentioned that people that are cremated might have mercury remnants or other chemicals in their body or in some cases objects that are cremated with them could let out toxins in the air and affect residents that live in the surrounding area.

Doris Marciel, resident of Lewelling Blvd, has lived in this community all her life. Many residents are concerned with the approval of this crematorium by the Bay Area Quality Control Board. This area is a very dense area and impacted by many pollutants. This crematorium will be in close proximity to a high school and two elementary schools with a total of 2,400 students, businesses, day care facility, recently built condominiums, single family residences and apartment buildings. This area is very much impacted and surrounded by two freeways, a railroad, BART tracks, a three-acre plant nursery and excessive traffic on Lewelling which will soon be widened to four lanes bringing in more traffic into the area. The Bay Area Air Quality Control Board issued a permit even though they knew they were required to notify the neighborhood about toxic air contaminants with schools and residences within 1,000 feet from a proposed crematorium. The argument is that the crematoriums have improved. This crematorium will just add to the pollution of the air for this community. There are emissions of small particles that are not visible to the eye, which can cause respiratory problems, which is mentioned on page 7 of the staff report. On October 2009, a community person located the Alameda County Health and Safety ordinance which does not allow crematoriums within 300 feet of a residential area and contacted the Bay Area Quality Control Board, but the board did not revoke the permit they had already issued. Surrounding cities have recently denied new crematorium permits close to residential areas because of health concern and quality of life. The County issued a permit without a CEQA review and public review. The mortuary owners were proposing to use the County zoning compliance letter from 1989 allowing the addition of the crematory because no one revealed the County Health and Safety ordinance. Now the County with input of the business owners wants to

change the ordinance to accommodate this business without taking into consideration the health and safety of the residents. The ordinance should remain as it is and not be changed because of one business. Ms. Marciel noted that there is a pet crematorium on Grove Way in Castro Valley.

Kathy Bossley, a San Lorenzo resident, said when selling a home one has to disclose that a crematorium is nearby. The proposed crematorium construction will introduce potentially dangerous toxins into an already crowded residential area with some businesses and schools nearby. According to the EPA and the U.S. Department of Health and Human Services, mercury emissions are unsafe and can cause a number of significant and permanent health problems. Crematoriums are known for emitting mercury and dioxins which are unsafe and therefore should not be placed close to residential areas. The United States Center for Disease Control states "elements of metallic mercury primarily causes health effects when it is breathed as a vapor where it can be absorbed thru the lungs, they are more harmful than any other form because more mercury of this form reaches the brain." This toxin is only one of 17 other toxins on the draft that was permitted by the Bay Area Quality Management District and on the same draft a toxin Chromium Hevelin was noted to exceed safety levels. This is a wonderful community and has residents that care about their neighbors, the County must agree to assure the health of every citizen of San Lorenzo and putting this crematorium in this neighborhood will affect the health and safety of the neighborhood.

Member Moore asked Ms. Bossley if the safety standards were proved to be safe would she still feel the same way about the moratorium. Ms. Bossley answered that cremations are not creepy to her but if she had a child and she would live close to the crematorium and would not have her child attend the nearby schools.

Judy Eisenberg, lives down the street from the crematorium, she wanted to clarify that the business is family owned but it has had different owners. She said the County has not done a good job at notifying the neighbors. It seems that this change is being done for one business. This neighborhood is close to the freeway. There are days that after washing her car the previous night, the car is black the next morning. Will they shut down the crematorium if the air is not safe? She questioned the analysis that was made on people that are 150 pounds. There are issues with titanium plates and other metals that are in people's bodies. The County keeps pushing businesses that are not necessarily good for our community. She would like to see them go to other areas such as Livermore, Fremont. How is she going to know what the tipping point, or how many bodies can be cremated. She expressed her concern how the toxins from this business will affect persons with asthma in this area.

Nancy Yee, Senior Engineer at the Bay Area Quality District, wanted to let everyone know that she is here to answer any questions in regards to the application. She wanted to address some of the issues brought up by the previous speakers. The District can't deny a permit to a facility that has an I-4 permit and meets the district's rules and regulations. The local cities and counties have the right to deny the use permit. There have been cities and counties that have denied permits for these types of facilities. The District covers 9 Bay Area counties and there are over 70 inspectors assigned to various areas. All facilities/equipment/cremators are inspected at least once a year. The District has imposed a number of conditions for this cremator that requires accurate record keeping for the number of bodies being cremated on a yearly basis. The limit is 500 bodies, there is also a limit on the temperature to be kept for the cremator. The temperature has to be maintained at a certain temperature when not being operated.

The Chair asked when about the 150 pound weight for each crematium. Ms Yee said that this is an average figure. It could be a small infant or a larger adult, but if it is over 275 pounds they need to be sent to another crematory. The USPA puts out an emission factor for air quality; they come up with the emission factors. Member Miraglia asked if they addressed the asthma issue. Ms Yee said asthma is a disease that could be affected by many other factors such as genetics, eating habits, and environmental setting. Member Miraglia asked if there is a study on how this could impact people with asthma. Ms. Yee said it varies from person to person, it could affect some and it could not. Member Miraglia said that it sounded pretty uncertain. Member Miraglia said she did some research on the web regarding mercury emissions and could not find much information on this subject. Ms Yee said for the last 20 to 30 years there have not been any fillings where they used mercury. She mentioned an article written by a colleague that talks about mercury emissions and she discussed it with him and he confirmed that mercury has not been used for the last 20 to 30 years. Member Miraglia said she would like to see a study done by others outside of this industry. She also asked if she knows of any neighborhood studies where a crematorium was denied. Ms. Yee said that the last one denied was in San Rafael because it was right in the middle of downtown across from a bakery. Member Miraglia asked if Ms. Yee knows of any studies on the affects of Mercury emissions from crematoriums on people with asthma. Ms. Yee said she would check. Member Miraglia asked if when taking into an application in a neighborhood such as this, does the District take into consideration the cumulative effects this might have on the neighborhood. Ms. Yee said the emission is so low that they do not look at that, but that she would consult with one of the planners in her office who did a study of this area. The planner found that the impact was very small.

Member Nielsen asked about the comparison data in the staff report and where did it come from. Ms. Yee said it was from a handbook and the district's report. She said the figures are just an average for this type of business and it is not related to the specific equipment being used by the facility. She noted that the emission numbers are higher than usual. Ms. Yee noted that one of the speakers mentioned a study done in the UK and that California has much more stringent rules than the UK.

Carol Dieter, lives on Meekland, said she has gone to most meetings and wants to reiterate that her opposition has nothing to do with Grissoms. She has lived in this area since 1952. Member Moore interrupted Ms. Dieter and asked County staff if there should be discussions specifically to the applicant. He was under the impression that this discussion was just for the change in the ordinance. Mr. Orduña said it is related to this application and it refers to each and every future application. Ms. Dieter said that she does not appreciate some of the jokes made at a previous meeting about the crematorium because she has asthma and it is not funny. She feels that this area is the armpit of the County and ends up with unwanted businesses. She is very supportive of previous speakers and their issues. The company that sold the equipment is not located in California, if it malfunctions then what happens. She reminded everyone of the other impacts to the community such as the freeway, and the widening of Lewelling. She asked that the ordinance not be changed and that the community does not want this ordinance.

Public portion closed.

Member Cunha asked County staff on the numbers of crematoriums in the County. Mr. Orduña did not know and said he would bring back answers at the next meeting. Ms. Yee said she has

calculated 82 units in the Bay Area. Approximately a dozen in Alameda County, 1 in Livermore, 2 in Hayward, 1 in Fremont, 6 in Irvington, 2 Emeryville, 2 in Castro Valley, and 2 in Alameda. Member Cunha asked if they are all located within 300 feet of residences. Ms Yee said she did not know.

Member Ryzanych asked if this facility is located less than 300 feet from schools, residential, commercial areas. Mr. Orduña said they are definitely within 1,000 feet and that there are many within 300 feet. Mr. Orduña said Spencer is surrounded by homes, it was originally built in 1989. In the past title 6 was not considered in the staff review. Member Ryzanych asked how were residents notified. Mr. Orduña said that for this meeting a notice was put in the Forum and the Daily Review. Member Crawford asked if notices were sent for the unincorporated meeting. Mr. Orduña said it is a meeting for Supervisor Miley and Lai-Bitker, so noticing followed their procedures. Member Crawford asked for a template of the emissions the unit puts out so that the council can compare numbers in the staff report. Mr. Orduña said the numbers in the staff report are not from the manufacture and should be used as a benchmark and are not related to any specific unit.

Member Nielsen questioned why go through this exercise when it seems from the number of crematoriums in Alameda County, it is well served. He asked why this review was started. Mr. Orduña said that the ordinance rules say no crematorium units at within 300 feet of residences, so this business expressed an interest and staff's position is that we needed to update the ordinance. The application for Grissoms was denied and then we started checking our ordinance.

Member Moore said he appreciates both sides of the issue. One is the scientific side and the other is the community. We need to focus on the ordinance and it is the appropriate way to do it in serving a viable business. The conditional use permit is the appropriate method for the application and it needs to look at case by case. Overall this is the appropriate process.

Member Ryzanych wants to know this ordinance excludes East County. Noticing requirements should include residences and business within 1,000 foot radius to the facility. Everyone needs to get notified, especially because this ordinance deals with the health and safety of the community. Not in favor of putting something thru to benefit one special business, there is a fine line on how this is being fostered.

Member Miraglia would like to see this item to come back to the council to address some of the concerns. She grew up in San Lorenzo, has had many family members' services performed at Grissom's and agrees with Member Moore that this council has the responsibility to keep businesses viable in Alameda County. She would like staff to address the following: output/emission numbers for this particular unit, scientific studies for the complications of mercury/toxins in the air for people with asthma, study on body weight or how this number came about, and would like to tighten up item "b", and also apply this ordinance to the whole unincorporated Alameda County. Would also like to have someone from Supervisor Haggerty's office address why they do not want this ordinance to apply to East County.

Member Nielsen asked if there are better emission reports for the type of unit the applicant wants to install at this location. This would help address some of the concerns mentioned tonight by the neighbors, and also address some of the green house gass emission concerns for the county. If the emission numbers are a concern then the applicant should look for an alternative.

Member Miraglia a lot of these questions should be addressed in the initial study. Mr. Orduña agreed but said staff would like to get comments from the public and at this meeting prior to finalizing the study. Member Ryzanych commented that he would like to recommend that the notices should include residences, business in the area and any other mortuaries in Alameda County.

Member Miraglia asked that this item be continued to the next meeting.

F. Chair's Report - None

G. Committee Reports

- **Eden Area Alcohol Policy committee - None**
- **Redevelopment Citizens Advisory Committee - None**
- **Ordinance Review Committee - None**
- **Eden Area Livability Initiative - None**

H. Staff Announcements, Comments and Reports - None

I. Council Announcements, Comments and Reports – None.

J. Adjourn

The meeting was adjourned at 8:45 p.m.

Next Hearing Date: Monday, August 9, 2010