

MINUTES OF MEETING
ALAMEDA COUNTY PLANNING COMMISSION
JUNE 16, 2003
(APPROVED JULY 7, 2003)

The meeting was held at the hour of 1:30 p.m. at 951 Turner Court, Hayward, CA

REGULAR MEETING: 1:30 p.m.

MEMBERS PRESENT: Commissioners Lena Tam, Chair; Compton Gault; Mike Jacob; Glenn Kirby; Audrey LePell; Ario Ysit, Vice Chair

OTHERS PRESENT: Bruce Jensen, Assistant Planning Director, Ronald Gee, Senior Planner, Phil Sawrey-Kubicek, Senior Planner, Bill Gomez, Public Works Agency Liaison; Holly Janvier, Recording Secretary

There were approximately 15 in the audience.

CALL TO ORDER:

The Chair called the meeting to order at 1:40 p.m.

ANNOUNCEMENTS BY THE CHAIR: There were none

OPEN FORUM:

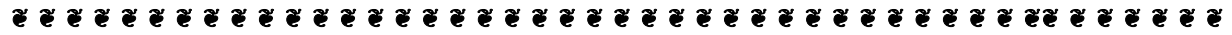
Open forum is provided for any members of the public wishing to speak on an item not listed on the agenda. Each speaker is limited to three (3) minutes.

No one requested to be heard under open forum.

CONSENT CALENDAR:

1. APPROVAL OF PLANNING COMMISSION MINUTES – June 2, 2003

Commissioner LePell moved to approve the minutes as submitted. Commissioner Ysit seconded the motion. The motion was carried 4/0, with Commissioners Jacob and Kirby not having yet arrived.



REGULAR CALENDAR:

- 2. REPORT ON RECENT STATE LEGISLATION PRECLUDING DISCRETIONARY REVIEW OR HEARING ON APPLICATIONS FOR SECONDARY UNITS** – This report provides basic information on recently adopted State legislation, A.B.1866, which amended State Government Code Section 65852.2(a) to preclude discretionary review or hearing on applications for secondary units, where such review or hearing was previously permitted.

Mr. Jensen presented the staff report. Commissioner Gault asked if the new bill was still in committee. Mr. Jensen said he thought it was. Commissioner Gault said that they should be sending comments to the committee. Commissioner LePell asked who the sponsors of the two bills were. Mr. Jensen said Stienberg and Koretz were the sponsors of AB-1160. Commissioner Tam asked if there was a tie-in to the Housing Element in AB-1866, which took effect July 1, 2003. Commissioner Jacob arrived. Mr. Jensen felt there was, due to the housing shortage. He said the secondary units would serve as low to moderate-income housing. Commissioner Tam asked if the County had made comments to the state on AB-1160. Mr. Jensen said they hadn't. Commissioner Kirby arrived. Commissioner Ysitt asked if AB-1866 would impact the Measure D area. Mr. Jensen felt that it likely wouldn't, since they addressed another type of housing unit in Measure D. They were also called second units. Commissioner Ysitt asked for a copy of Table 9 to be sent to the Commission. Commissioner Kirby asked about the difference between second and secondary units. Mr. Jensen said the original Ordinance allowed various jurisdictions to choose the areas where second units would be allowed. Our County did that. He said that not much has changed in AB-1866, except the units were no longer discretionary. The County could still make limitations. Public testimony was called for.

Nancy Van Huffel, Manager of the San Lorenzo Homes Association, said she was appalled at the process of notifying the community about these bills. She didn't know about the information being discussed, and found out that this had been discussed by many other jurisdictions in the County. She felt there was some misinformation. She didn't know why this had not been brought to the community for discussion long ago. She said she hoped the Commission would be angry at not hearing about this before this late date. She said it really bothered her that if things were not in place by July 1, the community had to accept what the state set.

Commissioner Tam asked if this had been brought before any other group. Mr. Jensen said it hadn't, they were just getting started on policy recommendation. Commissioner LePell asked when the community would be able to give input. She said that this had been brought up at their last meeting and they had asked to have it on this agenda. She asked to be notified in the future of new legislation that would affect the Commission. Commissioner Kirby said this affects the Housing Element, and the bill writer must have had this in mind. Ms. Van Huffel said someone knew about this months ago and asked why nothing was brought up before this time. Commissioner Kirby asked what would happen during the time that it took to get the County's plan together. Mr. Jensen said the Conditional Secondary Unit and Secondary Unit policy was in place. The only thing that would be looked at differently would be the CSU Districts in Castro Valley. They would be ministerial approvals now. Commissioner Kirby said many units

in San Lorenzo, built during the war, had second access doors to the guest-rooms, so they could be rented out to service men. He asked if these could be made into second units. Mr. Jensen said they couldn't. Ms. Van Huffel asked that this topic be discussed at the next Unincorporated Services Meeting.

Dennis Botelho of Castro Valley said he disagreed with staff, and felt that secondary units would be allowed in all areas. He said that the cities of Livermore, Pleasanton and Dublin all had their plans in place. He asked for a workshop to decide the County's plan. Commissioner LePell asked where he got his information. Mr. Botelho said he had obtained it from the Internet, Mr. Stienmetz and Mr. Wright. Mr. Jensen said that Mr. Wallace, of the Planning Department and County Counsel had talked and come up with the opinion he had stated. Commissioner Gault said he wanted County Counsel to talk to them on this and provide answers when Mr. Winnie came to talk to them. Commissioner Tam asked Mr. Jensen to check into this. Commissioner Gault asked that communities be notified, and if they needed a separate date for a hearing, they need to set a new date. Commissioner LePell asked for copies of the legislation.

3. 2169TH ZONING UNIT AND TENTATIVE MAP, TRACT 7370 – HOFFMAN & VAUGHN FAMILY TRUST - Petition to reclassify from a PD (Planned Development) District allowing Commercial Uses, to a PD (Planned Development) to allow nine residential units, on one site containing approximately 1.28 acres, located on Villareal Drive, south side, approximately 75 feet west of Clement Drive, unincorporated Castro Valley area of Alameda County, bearing County Assessor's Designation: 085A-6405-166-00. (Continued from May 19, 2003.)

Commissioner Gault recused himself from this item. Mr. Sawrey-Kubicek presented the staff report. He said that on the Site Development Review for the Recreation Center, they approved 48 parking spaces. They had talked to the Castro Valley Municipal Advisory Council about the parking being less than adequate. The staff report for that meeting said the lawn area south of the center would be developed for parking if needed in the future. Public testimony was opened.

Lee Peterson, representing the Home Association said he would answer questions. Commissioner Tam said that there was a possibility posed to use school property for overflow parking. Mr. Peterson said the school was a distance away, and he didn't feel this was a viable alternative for parking. He said that the property south of the Recreation Center is large and that is a possibility for development if the community wanted to spend the money, since the Association owned it. He said that the residents shot down all ideas for the purchase of the subject property. They didn't want the additional parking either. He tried to negotiate the price of the lot from the first buyer, but he wouldn't come down. Commissioner Tam asked when the peak usage of the Center occurred. Mr. Peterson said it was during the time the pool was opened and when there were parties. He said one problem was that people from a block away, drive to the pool when they could walk. Commissioner Tam asked how much parking would be needed. Mr. Peterson said 60 plus spaces would work. The 87 required wouldn't be needed except for wedding receptions.

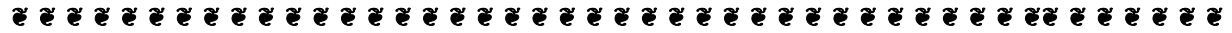
Commissioner Kirby said the objections were whether the subject site should be residential, if it effects the Center, and if it should have been sold without an okay from the community, since it was earmarked for commercial development. Mr. Peterson said the site was never offered to the community, it was sold to the first owner by the time they found out it had been for sale. Commissioner Kirby asked if outside people could rent the Center. Mr. Peterson said they could not. Commissioner Kirby asked about where the original approval for parking was supposed to be. Mr. Sawrey-Kubicek said that it was on the site to the south. Commissioner Kirby said that if more parking was needed, it could be provided there. That was helpful to him. Commissioner LePell asked about the Association make-up. Mr. Peterson said they had a seven-member Board, and the Peachtree Corporation ran it.

Dojun Yu said he lived near the clubhouse. He said while the pool, six tennis courts and two basketball courts were open, there was a lot of traffic. Since the subject site was closed off, the overflow parking was in the neighborhoods. He said parking was a monstrous problem. He felt the Association did not take care of the residents' needs. He encouraged the Association to work harder to maintain the area and take care of all the homeowner's needs.

Laura Lai didn't feel the site should be taken from commercial zoning. She said it would not benefit the community to be housing. She felt even 80 parking spaces would not be adequate for the Center. She said if an outside person wanted to rent the Center, they could have a resident rent it for them. She felt the property to the south should not be taken away from the community either, as people use it. She asked for a traffic study. She said that there was not enough room for the children of the residents in the area school. Commissioner Tam asked if the school was were open during the summer. Ms. Lai said just for summer school, but it rotates from school to school, so not this year.

Brad Thompson said parties at the Center could accommodate 300 people. He claimed Shepell had cheated them out of parking. He added that they had promised the property for the community use. He didn't want homes on the site. He noted that Shepell wouldn't return phone calls. He said he didn't want homes built on the site, he wanted overflow parking. He said they didn't want the area to the south made into parking. He mentioned that the Palomares Homes newsletter said the site wouldn't be changed from commercial without a vote of the residents. Commissioner Tam said there were homeowners meetings where this was to be discussed. Mr. Thompson said most people do not attend the meetings or read the notices. He said they shouldn't have to buy a lot that was met for the community, and added that it should never have been sold to the first buyer.

Tracy Davenport said he had found out there were a lot of people concerned about this project. He read from the sale brochure that said that this land was set-aside for a commercial development. He said there were 48 parking spaces, one disabled. He noted that there was a sports park nearby with no off street parking. He said Shepell didn't do anything without review, review, review, but this site was sold in secret. He said there was a negotiating committee, which never got a chance to meet.



The applicant read from the brochure also, but added that further on it said there would be a commercial site if needed. The newsletter said that the attendees of the meeting did not want commercial development on this site. He felt that if the residents wanted a parking lot, they should have bought the lot. He read from the special homeowners meeting notice, called to discuss the lot before it was sold. There were 200 residents present. Everything was discussed. In the purchase agreement of each home in Palomares Hills, it stated that there might be further changes in the development plan as economic changes occurred. He further stated that the people at the meeting did nothing. He said they he and his partner held an open house and everyone was positive. He didn't understand why this was all coming up now. Public testimony was closed.

Commissioner LePell said she was pleased that everyone stated his or her views. She felt it was good and healthy. She said the clubhouse was beautiful. She stated housing was desperately needed. What she heard from the community was that there was lack of communication. She supported the housing, and felt sorry Shepell had treated the community as they did. Commissioner Kirby said this was tough for him, but he appreciated the extra time gained by the continuance. He felt the parking issue had been addressed in the Site Development Review by putting it on the site to the south if needed. He liked the housing. He added that the real battle was the real estate transaction to the first owner. He said it was unfortunate that the clubhouse would be impacted, but no one had taken any action.

Commissioner Jacob moved staff recommendation. Commissioner Kirby seconded the motion. Commissioner Jacob said they were trying to assess whether a 7-11 type store or eight new homes were a better use of the property. He said the homeowners needed to check with an attorney if they feel their CC and R's had been violated. Commissioner LePell asked for a construction time for the project. Mr. Sawrey-Kubicek said that was usually included in the tentative map. Commissioner LePell said she would like them added as a courtesy to the homeowners. She said people who bought property should know where the right-of-way was, and whether the trees were there, or on private property. Commissioner Jacob asked if that would be in the landscape conditions. Mr. Sawrey-Kubicek said it would. Commissioner Jacob amended his motion to add the tree language and usual construction wordage. Commissioner Kirby amended his second. Commissioner Tam said there was a trend of trimming down the number of homes in this development, and this is not where the County needed to go. The motion carried 6/0.

4. **2176TH ZONING UNIT – NAVARRO** – Petition to reclassify from an R-1-SU (Single Family Residence , Secondary Unit Overlay) District, to a PD (Planned Development) District, allowing a second dwelling, on one site containing approximately 0.20 acres, located at 20381 Haviland Avenue, west side, approximately 205 feet north of Cherry Way, unincorporated Hayward area (Cherryland) of Alameda County, bearing County Assessor's designation: 0429-0014-021-00. (Continued from June 2, 2003.)

Mr. Gee presented the staff report, and added that the applicant had asked for a continuance of one month, to allow the applicant time to talk to the Cherryland Homes Association in order to receive their approval of his project.

Commissioner LePell moved to continue the application to July 21, 2003. Commissioner Gault seconded the motion. The motion was carried 6/0.

5. **2178TH ZONING UNIT – SIMONS** – Petition to reclassify from an R-1-L-B-E (Single Family Residence, 5 Acre m.b.s.a.) District to a PD (Planned Development) District, to allow a second dwelling, on one site containing approximately 2.69 acres, located at 664 Happy Valley Road, north side, approximately .42 miles west of Alisal Street, unincorporated Pleasanton area of Alameda County, bearing County Assessor’s designation: 0949-0007-014-04. (Continued from June 2, 2003.)

Commissioner Gault moved to continue the application to July 7, 2003, per staff recommendation. Commissioner Kirby seconded the motion. The motion was carried 6/0.

6. **APPEAL OF PLANNING DIRECTOR DETERMINATION BY BRYAN PAYNE** to require conditional use permit application for a commercial recreational facility use (personal training studio) in a C-1 (Retail Business) District, located at 1340 Bockman Road, south side, at the southwest corner of the intersection with Via Chiquita, unincorporated San Lorenzo area of Alameda County, bearing County Assessor’s designation: 0411-0069-001-02.

Mr. Gee presented the staff report. Commissioner LePell mentioned that the Commission had previously looked at a health spa in a shopping center in Castro Valley. Mr. Gee said that particular one was in a PD (Planned Development) District. The shopping center the Commission was looking at that afternoon, was a higher use area. Commissioner LePell asked if this would likely be approved if submitted as a Conditional Use Permit. Mr. Gee said it would likely be approved. Commissioner Kirby said that other applicants had asked to add a use that wasn’t mentioned under a particular zoning designation. Public testimony was called for.

The applicant, Mr. Payne, asked where the description of the use was defined. Mr. Gee said there really wasn’t a detailed definition. Mr. Payne said his use was being called recreation, but he felt recreation was about having fun, his business was about being healthy and living longer. He said his customers were coming for personal training, and there would only be a few people on site at a time, so there wouldn’t be a parking problem. He said he lived near the site, and felt it would be a good business for the community.

Commissioner LePell said she appreciated what the Planning Director wanted to do by requiring a Conditional Use Permit, but asked about the higher use. Mr. Gee said a karate studio near by needed a Conditional Use Permit. Commissioner LePell felt there was a larger issue there. She felt this business would grow over time, since there was a need. She saw support for the

business. Mr. Payne said there was no room for a gym on site, and eventually if he grew, he might have to move. He said only four or five people would be there at any given time.

Commissioner Kirby said his dilemma was that he was sympathetic, but permitted uses had been quantified. The Conditioned Uses needed to have conditions placed on them. Even if this use were similar to other uses that were permitted, he still would want to condition the use. He said he could see that the site had been vacant for a long time. Commissioner Tam agreed with Commissioner Kirby that this site needed to reach its potential. She said the use could revitalize the center sooner. She supported the appeal. She asked if Mr. Payne were trying to avoid getting a Conditional Use Permit. Mr. Payne said that wasn't it, he just felt he was in a gray area. Commissioner Kirby said he would like a reading of the list of permitted uses. Mr. Gee read the list.

Commissioner Gault said he was concerned about what they were doing. He said this was a new venture, not a retail venture. He heard it was a one-on-one business, now he was hearing there were several people there at once. He said they needed to protect the area, and because this was a new use, it should have a Conditional Use Permit. He agreed with the Director's determination.

Commissioner Jacob felt the integrity of the Director needed to be protected, but the applicant should be given the benefit of the doubt, since his use was not listed as permitted or conditional. Commissioner Ysit asked, if they require a Conditional Use Permit, would the applicant be able to run his business during the period between filing and the hearing date. Mr. Gee said he could run his business while the application was in the process. Commissioner LePell noted that since the use was not listed, the Planning Commission looked at many ways to solve problems. If they rejected the appeal, would this go on? Mr. Gee said this was the final decision, unless appealed to the Board of Supervisors. Mr. Gee said there would be over a two-month wait for a hearing. Commissioner LePell felt the use was equitable to a school or a beauty saloon, which were permitted. Commissioner Tam felt the wording in the Ordinance was ambiguous, and it left room to challenge. She felt if the Commission could streamline the process, they should.

Commissioner Gault said that if this was appealed to the Board, the Board may want to add this use to the permitted ones. This was an opportunity for the Board to look at this and possibly change the Ordinance. He said the Commission couldn't make policy. Commissioner Kirby said that in terms of the process, the application didn't indicate that anything was done inappropriately.

Commissioner Kirby moved for disapproval of the appeal. Commissioner Gault seconded the motion. Commissioner Jacob asked when the Board could hear this, if it were appealed to them. Mr. Gee said July or possibly August. Commissioner Kirby amended his motion to add that the Commission felt this was a good use for this zoning designation, and hoped to hurry this along, since they were sensitive to the applicant and the center. Commissioner Gault said that because of the uniqueness of this use, the applicant would likely want to appeal to the Board. He amended his second. Commissioner LePell said there had been a lot of criticism of the narrow interpretation of the former Zoning Administrator (now Assistant Planning Director) in the past,

and she felt this was still a beautification project. The motion was carried 4/2, with Commissioners LePell and Tam voting no.

7. ELECTION OF PLANNING COMMISSION OFFICERS FOR THE 2003-2004 YEAR.

Commissioner LePell nominated Commissioner Ysit to the office of President for the 2003-2004 year. Commissioner Gault seconded the motion. The motion was carried 6/0.

Commissioner Ysit nominated Commissioner Jacob to the office of Vice Chair for the 2003-2004 year. Commissioner Gault seconded the motion. The motion was carried 6/0.

STAFF COMMENTS & CORRESPONDENCE:

Staff was asked about noticing procedure for the upcoming report by County Counsel. Mr. Jensen, said notices were sent by way of the agenda to those people on the list. Newspaper notices were possible. Commissioner Gault said the agendas were in the *Daily Review* and *Forum*. Mr. Jensen said staff could send notice to the Valley paper also.

CHAIR’S REPORT: There was none.

COMMISSION ANNOUNCEMENTS, COMMENTS AND REPORTS:

Commissioner Gault thanked Commissioner Tam for doing a great job as Chair over the past year. He noted that she had chaired some controversial items. All of the other Commissioners agreed. Commissioner Tam thanked them.

ADJOURNMENT:

There being no further business Commissioner Gault moved to adjourn the meeting at 4:30 p.m. Commissioner Ysit seconded the motion. The motion was carried 6/0.

**JAMES SORENSEN - PLANNING DIRECTOR
COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY**