

MINUTES OF MEETING
ALAMEDA COUNTY PLANNING COMMISSION
JANUARY 16, 2007
(APPROVED FEBRUARY 5, 2007)

REGULAR MEETING: 6:00 p.m.

MEMBERS PRESENT: Commissioners Ken Carbone, Vice-Chair; Richard Hancocks; Frank Imhof; Glenn Kirby, Chair; Alane Loisel and Kathie Ready.

MEMBERS EXCUSED: Commissioner Mike Jacob.

OTHERS PRESENT: Chris Bazar, Planning Director; Steven Buckley, Assistant Planning Director; Bruce Jensen, Senior Planner; Cindy Horvath, Transportation Planner; Karen Borrmann, Public Works Agency Liaison; Ray MacKay, County Counsel's Office; Nilma Singh, Recording Secretary.

There were approximately twenty-one people in the audience.

CALL TO ORDER: The Chair called the meeting to order at 6:35 p.m.

ANNOUNCEMENTS BY THE CHAIR: 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** - January 8, 2007. Commissioner Hancocks made the motion to continue approval of January 8th Minutes to the next meeting and Commissioner Carbone seconded, which carried 4/0.

Commissioner Loisel arrived a few minutes late.

REGULAR CALENDAR:

1. **EDEN PLAN DRAFT EIR ~ *Informational Up-Date*** ~ Staff and Consultant will report on new information received and its impact on the DEIR.

Ms. Horvath presented the staff report. In response to Commissioner Hancocks, she indicated that the flooding survey and the Draft EIR were completed simultaneously, and so the update of one necessitates an update of the other. The Chair thanked staff for the up-date.

2. **PRESENTATION BY ENVIRONMENTAL HEALTH DEPARTMENT STAFF REGARDING THE PROPOSED SEPTIC ORDINANCE ~**
Presentation on how the current code allows only standard septic systems on large lots that are relatively level and have good soil and how the proposed code will allow advanced septic systems on challenging lots that do not meet these criteria.

Ron Torres, Program Supervisor, Environmental Health, provided a brief history on the Draft Ordinance. Work on the Draft started in 1998 after receiving approval from Zone 7 and RWQCB, the two other major involved agencies. The Draft will be on the February 5th Board of Supervisors agenda. He also introduced Russ Handzus.

Mr. Handzus distributed copies of the Draft Ordinance and requirements, and background information; and with a powerpoint presentation, explained the following options for the new system: documents will be made available to the property owners to monitor their systems and/or a list to hire private contractors from. The Ordinance currently does not have provisions for certification of inspectors. Mr. Torres added that during community meetings, especially in Sunol, concerns had been raised regarding remodeling/inspection, problem parcels and the lack of a strong inspection system.

The Commission discussed the following: problem parcels; ground water monitoring; allowable nitrate levels in drinking water in the County; lack of a strong inspection system; remodeling/expansion concerns in the Sunol areas; and possible problems as a result of a power failure on the new system. The Chair stressed the importance of a strict professional monitoring system. Mr. Torres indicated that they are awaiting the approval of a system like the Sonoma County Monitoring system.

Public testimony was called for. Robert Feinbaum, Director, Hydro Nova, submitted copies of his article on Onsite Water Treatment 'The Folly of Operating Permits'. He has been involved with concerned property owners who will support a new system with a monitoring program. Their main concerns were: 1) operating permit which is expensive and unnecessary with a 'once-a-year' report to Environmental Health. Instead, the County should provide a list of qualified professionals/workshops to deal with any problems; 2) reports on remodeling permits is unnecessary as it could be included on the Building Permit form; 3) administrative issue – the new system is already in use in other jurisdictions and tested by EPA. He suggested that the Environmental Health subscribe to the Permit Streamlining Act under which a permit can be issued after 30 days of a full permit application. He felt that this Ordinance needs more attention, thought and handled in a more-consumer friendly manner.

The Chair pointed out that the trigger is the increase in square footage. Commissioner Loisel said that she liked the suggestion of providing homeowners a list of agencies/professionals and concurred with the Chair that an increase in square footage is an increase of water usage. Commissioner Carbone said he agreed with educating the homeowners but was concerned with any change of ownership. Mr. Feinbaum pointed out the Real Estate Disclosure Law adding that the private market is dealing with this issue. He felt that perhaps there is not a need for a rapid move which requires expensive systems by homeowners.

Public testimony was closed. The Chair thanked Environmental Health staff for their presentation.

3. **NOTICE OF ADMINISTRATIVE HEARING ON ABATEMENT OF NUISANCE** ~6550 Collier Canyon Road, Livermore, Assessor's Parcel Number: 905-0005-006-00. Illegal land uses (establishment and operation of ground concrete slurry settling ponds, unregulated reclamation of property used for this purpose, and landfilling/storage of processed waste slurry material) in violation of Alameda County Ordinance 17.06.030 Permitted Uses.

Mr. Jensen presented the staff report adding that he had visited the site this morning with the property owner, Dr. Gosselin, and further described the site as such: there was no evidence of any residual slurry material either at the slurry pond site nor in the horse activity areas; the area has been roughly graded to a nearly flat condition with mulch lightly applied; grass is beginning to grow on the side; water was visible in a few areas indicating slow drainage off site; no sign of dust; no sign of slurry material being tilled or applied on roads or trails; and reclamation process is almost complete. Per Dr. Gosselin, the contractor probably has records reflecting complete removal of material from site and tests performed for contamination of the wet and dry materials. Staff will attempt to obtain copies, if available. At the pond site, there was a small pile of asphalt grinding which has been used for road maintenance. Staff recommended that Dr. Gosselin be allowed to keep asphalt grinding for this purpose. Mr. Jensen read his recommendation as outlined on Page 2 of the staff report with the exception that Condition #2 be deleted. The well sampling program as described in Conditions 6-9 will deal with, to some extent, the possible source of contamination.

The Chair noted receipt of a letter from American Civil Contractors requesting a continuance.

Mark Bradford, 6199 Collier Canyon Road, submitted material from the internet. His concern was water quality and the health effects. There is a fourth pond, the location and contents of which has not been disclosed to-date. He did not think that the materials have been removed from the site.

Allison Batteate, 5600 Collier Canyon Road, thanked staff for his work and expressed her concern with the inadequate well testing and the deletion of Conditions 6-9. She also disagreed with the statement that it would be unusual for the County to place the requirement of reimbursement. The well-water testing was warranted as it is part of the abatement plan. A visual inspection of the remaining material on-site is not sufficient and, as such, suggested that perhaps Scott Seary could identify locations for future tests. She pointed out that this area is not Dublin but Livermore.

Bob Blach, 5000 Collier Canyon Road, on behalf of Gary Cose, the nearest neighbor at 6475 Collier Canyon Road, asked who will conduct the test and when. He would like to request that the tests be done by an independent company. Ray Benetti, property owner at 5939 Collier Canyon Road, is requesting that all down-stream wells be tested, at least once, as a baseline. Speaking for himself, he agreed with Mr. Bradford regarding the fourth pond.

Larry Gosselin, property owner, said he had similar concerns with the neighbors. He requested a continuance based on the following: significant amount of information continues to come in; testimonies/information submitted by Caltrans may not have been correct and decisions were made based on this information; Mike Kessel, Chief Operations Officer, Caltrans Sacramento and Assemblyman Huston have both indicated an interest in this matter; all material has been removed from the property and there is no other pond; his receipt of the Abatement Plan last week together with the holidays has not provided an opportunity to completely read the Plan and has provided inadequate time to obtain responses from other agencies/individuals; there are some corrections to be made in the Plan; Zone 7 has shown an interest and has requested either a formal response from this Commission to present this information to their Board or they would like a presentation by him specifically related to toxicology; Section 17.54.030 is more appropriate than Section 17.06.030 as to the procedure to be followed; there were other sources of well water contamination, and there is a need to re-assess the forthcoming information and the Abatement Plan conditions. An informal approval had been obtained from the Zoning Department and the activities had been taking place for three weeks and not seven months as it has been indicated. Dr. Gosselin requested another name, Valley Cooper, an environmental company, to be added to the parties responsible for the clean-up list. All new in-coming information has been forwarded to staff. Tests have been conducted which indicate no toxicity levels in the well water. He expressed concern with the inflammatory tone used. Crushed asphalt is not part of this project as indicated by staff. Conditions 6-9 are not necessary. Per Mr. Leighton, RWQCB feels that tests are not needed considering the nature of the soil. If a off-site well testing program is introduced, he felt that he would have to report any discovery of other activities on other properties, which he did not want to do. Once the science of this particular activity is looked into, most of the concerns will evaporate. He reiterated his request for a continuance. The Chair stated his concern of the pH level in ground water. In response to the Chair, Dr. Gosselin indicated that perhaps the contractor did but he did not have any plans for testing. The acidity of soil and the alkalinity of the dried concrete material are normal.

Public testimony was closed. The Chair recommended that all property owners conduct testing on their properties. Commissioner Ready felt that whether the abatement proceeding is approved or not, water testing should be conducted and paid by either the contractor or the property owner. Commissioner Carbone agreed adding that the result would confirm the source of contamination. Commissioner Hancocks and Loisel also concurred adding that there was no reason for delay. Commissioner Imhof suggested doing some soil borings in the pond area to determine what remains in the ground. He asked for the status of the aerial photographs and if staff had checked with other counties. Mr. Jensen replied that he had checked with Caltrans who had not encountered any other similar situations. In reference to the error in the Zoning Section, Mr. Bazar acknowledged that Dr. Gosselin did have an informal conversation with Zoning and Grading Departments and Mr. MacKay confirmed that there was nothing to trigger Section 17.54.030.

Commissioner Hancocks made the motion to declare that a nuisance exists and Commissioner Loisel Loisel seconded. Motion carried unanimously.

Commissioner Loisel made the motion to start abatement proceedings immediately. Commissioner Hancocks seconded. Mr. Jensen pointed out that per Ms. Henninger any abatement is subject to an appeal within 10 days. Commissioner Loisel requested that the motion be made by Commissioner Imhof as he had brought the matter to the Commission.

Commissioner Imhof made the motion to start abatement proceedings immediately and Commissioner Loisel seconded. Motion carried unanimously.

Commissioner Carbone felt that a baseline needs to be established immediately and Commissioner Imhof added that on-site borings need to be included. The Chair requested relevant documentation be submitted.

Commissioner Imhof made a motion to adopt staff's recommendation and add Condition #10 requiring core testing on the slurry pond site and delete Condition #2. Mr. Jensen suggested adding the boring requirement to Condition #3. Commissioner Hancocks seconded, which carried unanimously.

4. **ZONING UNIT, ZU-2240 and SITE DEVELOPMENT REVIEW, S-2078 - CHRISTENSEN** ~ Petition to reclassify one 5.73 acre parcel from the R-1-L-B-E (Single Family Residence, Limited Agriculture, 5 acre Minimum Building Site Area, 300 feet Median Lot Width, 30 feet Front Yard) District to the P-D (Planned Development) District, to allow construction of a secondary unit, located at 753 Kilkare Road, east side, approximately one mile north of Foothill Road, unincorporated Sunol area of Alameda County, bearing Assessor's Parcel Number: 096-0210-002-04. (Continued from November 6, November 20 and December 18, 2006).

Mr. Buckley presented the staff report. The Chair requested an explanation from Environmental Health staff on septic system installation on an extensively graded site. Mr. Handzus said that he had visited the site in July 2005 and submitted a photograph of the property. The Commission agreed that the property looked similar except perhaps with some new grading in the rear. A soil profile was prepared and an area on the slope of the hill, away from the creek, was identified. Mr. Handzus further described the system in detail.

Commissioner Ready asked why a PD is being applied when the main house is not habitable. The staff report reflects that the secondary unit will have a similar appearance as the main house. Commissioner Hancocks asked if the need to rezone the property was consistent with the State's amendment of the Secondary Unit policy noting that, if yes, the Commission has yet to see such a policy at the County level. Staff responded that the standard zoning requirements are still applicable for site development in the urban area, and staff has taken the approach that the County policy also still applies in the rural area, and for small sites that policy requires rezoning.

Public testimony was called for. Darin Christensen, applicant, stated that he had submitted his application in July 2005 and was willing to do what was necessary to resolve any outstanding issues so he can proceed with his project. His intention is to build the secondary unit first followed by the main house on the same footprint of the 2,000 square foot existing dwelling, which is larger than the allowable size for a secondary unit and so it would remain the designated main dwelling. The Commission discussed the secondary unit and its relationship with the main dwelling; the possibility of looking at both plans simultaneously; both dwellings having similar appearances; the building envelope for both units and their separation. Mr. Christensen replied that he has a rough plot plan showing 30 feet between the two units; there will be a back-up system/generator for emergencies if needed for the septic system and his first focus is the secondary unit.

Public testimony was closed. Commissioner Hancocks stated his dislike for the over-usage of a PD, what he considers a super-variance. The plan does not say anything about the principal unit. Staff pointed out Exhibit C, Condition #3 which could be modified to include a SDR for the replacement of the main house and reflect that the building envelope would be established around the existing area of the primary residence and the second residence; and the intent to have similar style, related as a primary and secondary by design, location and size. Commissioner Ready expressed her concern regarding frontage setback. **Mr. Buckley pointed out Condition #1**

which could be modified to include lot area and setbacks, building height be consistent with the current zoning. Commissioner Ready made the motion to approve the application as recommended by staff with Condition #3 modified as above. Commissioner Loisel seconded. Motion carried 5/1 with Commissioner Hancocks dissenting.

5. **ZONING UNIT, ZU-2243 and TENTATIVE PARCEL MAP, PM-9134, KAWALJIT and RUBY WALIA** ~ Petition to reclassify one parcel containing approximately 0.38 acres from the R-S-SU (Suburban Residence, Secondary Unit) District, to a P-D (Planned Development) District, to allow subdivision for an existing single family dwelling with a proposed addition on one parcel and an existing four-plex on the second parcel, located at 20325 Concord Avenue, west side, approximately 350 feet north of Medford Avenue, Cherryland area of unincorporated Alameda County, bearing Assessor's Parcel Number: 414-0036-058-00. (Continued from December 18, 2006).

Mr. Buckley presented the staff report.

Public testimony was called for. Kawaljit Walia stated that his project will improve the area. The existing house, he said, does not look so good, so he just wants it to look better. The Chair said it appeared that the new house design looks very good, and that the new improvements for the front dwelling were better than previously proposed. Commissioner Carbone said the house in the front looked very good but that perhaps the four-plex in the rear could have a little more dimensional character, with more than the little porches. The project architect, Ivan Fernando, spoke and pointed out that the four-plex is an existing building, and would have trim added around the entire building located in the rear, and with an added base treatment.

Commissioner Hancocks said the four-plex still looked very boxy, and that in the future, such projects should have more definition. Commissioner Ready asked if it was possible to add some shutters on the upper story of the four-plex. The architect said it would conflict with the trim.

Public testimony was closed. Commissioner Ready asked for an alternative to a PD. Staff explained that when the site is subdivided, the lots will have a density higher than the underlying zoning and the lot sizes and setbacks will vary from the norm, so even though the site is a legal nonconforming use, subdivision requires rezoning to address these constraints. In response to Commissioner Hancocks, he confirmed that the density is consistent with the General Plan.

Commissioner Imhof made the motion to adopt staff recommendation for an approval and Commissioner Carbone seconded. Motion carried unanimously.

6. **ZONING UNIT, ZU-2242 and TENTATIVE PARCEL MAP, PM-9255 - KHAN** ~ Petition to reclassify from the R-S-D-20 (Suburban Residence, 2,000 square feet Minimum Building Site Area per dwelling unit) District, to a P-D (Planned Development) District, so as to allow three single family detached dwellings on individual lots of less than 5,000 square feet and site-specific development standards, located at 1630 -159th Avenue, southeast side, approximately 100 feet north of Marcella Street, Ashland area of unincorporated Alameda County, bearing Assessor's Parcel Number: 080-0051-001-14. (Continued from December 18, 2006).

Mr. Buckley presented the staff report. He described how the Applicant had provided the Commission with drawings showing an alternative of four attached units, as requested by the Commission at the prior hearing as potentially preferable to the three detached units, but that they would be dominated by greater building bulk and limited by parking requirements. He stated that staff found the current proposal to be a viable solution for the project site, and that it is similar to other projects in the area. To make a finding that the project is "harmonious" with the surroundings would be somewhat subjective, he added.

Commissioner Loisel noted the large size of the units and the relative size of the lots and open space being somewhat out of scale. Commissioner Kirby noted that the net lot areas had been corrected in the staff report, and that the project had been re-described as like a townhouse project but with detached units. He found that description interesting, and said that although the Commission had concerns with setbacks that perhaps there was not necessarily a better alternative for the site.

Commissioner Carbone stated that he did not believe that there was adequate parking on the site. Commissioner Imhof requested clarification on the driveway width and apron as reflected on the site plan.

Public testimony was called for. Jitender Makkar, project designer, explained that some lines and dimensions on the site plan were carried over from the old plans. He clarified for Commissioner Ready that the doorway of the front house would face 159th Street. Mr. Makkar explained that he and the owner had explored many different options for the site, and he showed one plan to the Commission with four attached units, and another plan with attached units. Mr. Makkar said that there was great difficulty in developing a small infill site such as this when there is a high cost of land, high construction costs, long delays before completion and limits to what a buyer can or will pay. He said with four units, there is no way to provide nice, habitable space for the family, including both the outdoor and the indoor spaces. He spoke from personal experience about living spaces, and that his focus was on making the unit work well for family life. While the Commission wanted to focus on what was best for the public and outdoor areas, they were focused on what would work for the house, as well as the outdoor spaces and what the Commission wished to see. But mainly he was working on making it nice for the family, and that the project was the best way to develop the site. An alternative with only two units was not

feasible, he said, and stated that going back to redesign the project was not possible. All of the options had been considered.

Public testimony was closed. The Chair indicated that the lack of two guest parking spaces will not affect his support for the project. Commissioner Hancocks stated that he opposed the project due to the shallowness of the front yard setback from the private street. He continued, and said these are single family detached units for which the public have different expectations based on the standards in the Zoning Ordinance as compared to attached units. Commissioner Hancocks continued, and took note that the Zoning Ordinance, in the R-S District requires lot sizes of 5,000 square feet, and these are much smaller than required.

Commissioner Carbone said he concurred, adding that although consideration was given for good livable space, there is limited access, with double parking in driveways, which will create additional problems. Staff explained that the 5,000 square foot lot size requirement under the R-S-D-20 District is for the lot size, but it would permit up to two units per 5,000 square foot lot, and just requires 2,000 square feet per dwelling unit. He also noted the parking requirements and that on-street parking can count toward guest parking. He also noted that 4' setbacks would be provided for each unit from the driveway.

Commissioner Loisel felt that this is not a superior development and not affordable housing and, as such, she did not support the project either. She also noted that the staff report stated it was not clear what other public benefit the project had other than improved architecture and infill development. The Chair added some comments that there were difficulties with odd-shaped lots such as the site, that although the zoning might appear to permit extraordinary things to be done, when the setback requirements are considered, the number of units possible is greatly reduced.

Commissioner Ready said she liked the design compared to the existing surroundings, infill housing does not always have to be affordable housing and bringing the standard up in this area will be a major step, because all the housing around it is generally for lower income households. Her biggest concern is parking, because she objects to projects in areas that are over-parked. The project could easily consist of two units with all required setbacks and parking spaces. Commissioner Loisel said she agreed that it should not necessarily always be low income housing when infill housing is approved, but added that they were being asked to modify many things, including setbacks, parking and other things that do not necessarily need to be approved. Commissioner Ready said that while reducing the project down to two units would enable the Applicant to meet all the parking and setback requirements, and it was clear that was not what the Applicant wanted to do, it would be the best solution. The Chair said that three units could be put on the lot, but that requiring more parking reduces the amenities on the site, and that while the limited amount of parking proposed on the site would not prevent him from supporting the project, he said he would support the consensus of the Commission.

Commissioner Hancocks made the motion for a denial and Commissioner Loisel seconded. Motion carried unanimously.

CHAIR'S REPORT: None.

COMMISSION ANNOUNCEMENTS, COMMENTS AND REPORTS: None.

ADJOURNMENT: There being no further business, Commissioner Ready moved to adjourn the meeting at 9:30 p.m. Commissioner Imhof seconded the motion. The motion was carried 6/0.

CHRIS BAZAR, SECRETARY
COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY