

MINUTES OF MEETING
EAST COUNTY BOARD OF ZONING ADJUSTMENTS
APRIL 22, 2010
(APPROVED MAY 27, 2010)

The meeting was held at the hour of 1:30 p.m. in the City of Livermore Council Chambers, 3575 Pacific Avenue, Livermore.

FIELD TRIP: 10:00 a.m.

MEMBERS PRESENT: Members Jon Harvey; Larry Gosselin, Chair, and Jim Goff

OTHERS PRESENT: Jana Beatty, Senior Planner

FIELD TRIP: The meeting adjourned to the field and the following property was visited:

1. **RUESGA, CONDITIONAL USE PERMIT, PLN2009-00077** ~ Application to allow a wholesale plant nursery in a R-1-L-B-E (Single Family Residence, Limited Agricultural Uses, 5 acre Minimum Building Site Area) District, located at 1780 Buena Vista Avenue, east side, approximately 0.25 mile south of East Avenue, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 99-1250-017-02. (Continued from February 25th and March 26, 2010). **Staff Planner: Damien Curry**
2. **VERIZON WIRELESS/CHARNEL JAMES, CONDITIONAL USE PERMIT, PLN2009-00117** ~ Application to allow installation of a telecommunications facility in a 'A' (Agricultural) District, located at 5770 Mission Road, west side, approximately one mile north of Vargas Road, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 096-0056-008-12. **Staff Planner: Jeff Bonekemper**
3. **AT&T, CONDITIONAL USE PERMIT, PLN2010-00011** ~ Application to allow continued operation of a wireless communication facility in an "A" (Agricultural) District, located at 11600 Pleasanton/Sunol Road, southeast side, at the intersection with Paloma Way, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 0096-0376-007-02. **Staff Planner: Jeff Bonekemper**
4. **CROWN CASTLE/OSBORNE, CONDITIONAL USE PERMIT, PLN2010-00017** ~ Application to allow continued operation of a telecommunication facility in an 'A' (Agriculture) District, located at 7727 Altamont Pass Road, south side, approximately 100 feet east of Cross Street, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099B-5700-001-38. **Staff Planner: Jeff Bonekemper**
5. **WINE GROUP, LLC/JOHN SUTTON, CONDITIONAL USE PERMIT, PLN2010-00023** ~ Application to allow food service in conjunction with wine tasting in the visitor's center, in an A-CA (Agricultural, Cultivated Agriculture) District, located at 4590 Tesla Road, north side, approximately 500 feet east of South Livermore Avenue, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099-1200-001-00. **Staff Planner: Jeff Bonekemper**
6. **CROWN CASTLE/OSBORNE, CONDITIONAL USE PERMIT, PLN2010-00037** ~ Application to allow continued operation of a telecommunication facility consisting of a 50 feet monopole and equipment area on a 66 acre parcel, in an "A" (Agricultural)

District, located at 1901 Isabel Avenue, west side, south of Vineyard Avenue, Livermore area of Unincorporated Alameda County, bearing Assessor's Parcel Number: 904-0008-001-02. **Staff Planner: Jeff Bonekemper**

REGULAR MEETING: 1:30 p.m.

MEMBERS PRESENT: Members Jon Harvey; Larry Gosselin, Chair; and Jim Goff.

OTHERS PRESENT: Jana Beatty, Senior Planner and Nilma Singh, Recording Secretary

There were approximately nine people in the audience.

CALL TO ORDER: *The meeting was called to order by the Chair at 1:40 p.m.*

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.*

ANNOUNCEMENTS BY THE CHAIR: *The Chair announced that Regular Calendar items 2, 3, 5 and 7 will be moved to the Consent Calendar, all recommended to be continued. No public testimony was submitted. Member Goff made the motion to approve the Consent Calendar and Member Harvey seconded. Motion carried unanimously.*

NEIGHBORHOOD PRESERVATION AND ZONING ORDINANCE ABATEMENT – NONE

CONSENT CALENDAR:

1. **VERIZON WIRELESS/CHARNEL JAMES, CONDITIONAL USE PERMIT, PLN2009-00117** ~ Application to allow installation of a telecommunications facility in a 'A' (Agricultural) District, located at 5770 Mission Road, west side, approximately one mile north of Vargas Road, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 096-0056-008-12. **Staff Planner: Jeff Bonekemper**
Moved from the Regular Calendar.
2. **SPRINT PCS/MORIN, CONDITIONAL USE PERMIT, PLN2009-00162** ~ Application to allow continued operation of a cell site consisting of six panel antennas, located at the rear of a storage building, in a PD (Planned Development) District, located at 6500 Tesla Road, approximately 400 feet east of Vasco Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 99A-2935-002-00. (Continued from January 28th, February 25th and March 26, 2010). **Staff Planner: Jeff Bonekemper**
Moved from the Regular Calendar.

3. **CROWN CASTLE/OSBORNE, CONDITIONAL USE PERMIT, PLN2010-00017** ~ Application to allow continued operation of a telecommunication facility in an 'A' (Agriculture) District, located at 7727 Altamont Pass Road, south side, approximately 100 feet east of Cross Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099B-5700-001-38. **Staff Planner: Jeff Bonekemper**
Moved from the Regular Calendar.
4. **CROWN CASTLE/OSBORNE, CONDITIONAL USE PERMIT, PLN2010-00037** ~ Application to allow continued operation of a telecommunication facility consisting of a 50 feet monopole and equipment area on a 66 acre parcel, in an "A" (Agricultural) District, located at 1901 Isabel Avenue, west side, south of Vineyard Avenue, Livermore area of Unincorporated Alameda County, bearing Assessor's Parcel Number: 904-0008-001-02. **Staff Planner: Jeff Bonekemper**
Moved from the Regular Calendar.

REGULAR CALENDAR:

1. **RUESGA, CONDITIONAL USE PERMIT, PLN2009-00077** ~ Application to allow a wholesale plant nursery in a R-1-L-B-E (Single Family Residence, Limited Agricultural Uses, 5 acre Minimum Building Site Area) District, located at 1780 Buena Vista Avenue, east side, approximately 0.25 mile south of East Avenue, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 99-1250-017-02. (Continued from February 25th and March 26th, 2010). **Staff Planner: Damien Curry**

Ms. Beatty presented the staff report. There are two alternative actions, an approval subject to the recommended conditions or a continuance due to the existing building violations. In response to Member Harvey, staff explained that a wholesale nursery is a conditional use in a R-1 District.

Public testimony was called for. Victor Ruesga, applicant, read his written testimony: he is a horticulturist designer and uses his property for his hobby and landscape company; the nursery is not open for public sales but strictly for his use/projects and his landscaping business; there are 1-2 employees several days a week on-site; there is no plan to expand the nursery; although plant deliveries are received a maximum of once or twice a month, deliveries could be arranged between 8 am – 4pm; and dust control and weed abatement methods are also used. Mr. Ruesga stated a willingness to adjust his proposal for the board and neighbors.

Owen Parker, 2027 Buena Vista Avenue, said he has lived in this area for over 48 years and he has seen a tremendous growth in the business as contractors' trips have increased. He expressed concerns with the continued operation of the nursery; large trucks (18,000lbs) travel up and down the street; and there are 2-3 deliveries to and from daily. Mr. Parker felt that the staff report was flawed as it did not indicate how the conditions of approval will be enforced. Member Harvey asked if he agreed with the conditions but had concerns with the enforcement only. Mr. Parker replied that he would have to re-read the conditions but thought that although some conditions were good, past history indicates that enforcement will be difficult.

John Canfield, property owner at 2067 Buena Vista Avenue, stated that he has lived in this area for 35 years. He agreed with Mr. Parker regarding the conditions of approval. Although the conditions sound good, they are not enforceable, such as Condition #5 "...shall be grown on the site for a minimum of two years" and Condition #9 "No overnight parking of commercial vehicles shall be allowed".

Don Hughes, 1732 Buena Vista Avenue, north of the subject property, said that he was also speaking on behalf of Beverly Wooster, 91 year old adjacent property owner at 1746 Buena Vista and the Jaureguitos, who used to lease the eastern portion of Ms. Wooster's property for an equestrian facility. They had to discontinue the use for the safety of the animals due to continuous disruption by the operation of heavy equipment, large trucks and dumping of 31 yards of dirt. The applicant has shown total disregard to the building and zoning codes, and the neighbors. He urged a denial. The Chair asked if he would be in support of the conditions if they were met. Mr. Hughes replied no, history indicates that the conditions will not be complied with.

Libby Mihalka stated that she has lived on her property at 2075 Buena Vista Avenue for 23 years. The applicant has operated since 2004 with complete disregard to his neighbors and neighborhood to-date. If approved, this 'fiasco' will continue and the neighbors will once again be responsible for reporting the violations. The garage has been converted into an office with employees and, with an approval, he will be rewarded for not being in compliance. The applicant uses the gardens on his property to grow plants which he then sells at his retail landscaping business; bring clients to his property to show/use his gardens for demonstration which also increases traffic. Ms. Wooster cannot use part of her property due to dust and noise as trucks move dirt and employees yell at each all day long. Mr. Ruesga has been a bad neighbor and is a serial violator. Although he is aware of the concerns and complaints made to the County, he has not taken an action to improve but continued in this fashion. If there is no other option but an approval, Ms. Mihalka urged a one year probation period to show that he has received no complaints before granting an approval.

Valerie Raymond, 2368 Buena Vista Avenue, said that although she is not one of the immediate neighbors, she expressed concerns of 'creeping commercialization' of Buena Vista Avenue. This is primarily a residential area. Her other concerns included the issue of ignoring codes by the applicant, the enforcement of the conditions of approval, the two-year permit, truck trips and precedent setting. She supported Ms. Mihalka's suggestion of a one-year probation period as there does not seem an alternative method to enforce. The Chair asked if the enforcement could involve neighbors and/or the role of the neighborhood. Although there is some responsibility on the neighbors, Ms. Raymond said it would depend on the neighbors' acceptability of this responsibility. The Chair noted that there is a range of commercial activities in this area--only some are supported by neighbors. And once a Conditional Use Permit is granted, it is almost impossible to take it away.

Mr. Ruesga, in rebuttal, explained that he had started his business based on what he was told by his listing agent-- that other businesses (contractors) exist on Buena Vista Avenue. He apologized for doing this. However, he was informed by Ms. Lacy Starling, Code Enforcement officer, to cease his Vision Scape business and advised to submit a CUP application for the nursery. The nursery supplies plants for Vision Scape and the development of the landscaping operation. Mr. Ruesga stated a willingness to do all--have specific guidelines and work with the neighbors. Member Harvey asked if he agreed with the Conditions of Approval. Mr. Ruesga said that all employees are part of the Vision Scape and they do irrigation, fertilizing and pruning and maintaining the nursery; and the landscaping requires 40-50 hours of maintenance work weekly. He also has a vegetable garden and a similar one was completed for City of Livermore. Currently, he operates his business from Pleasanton and plants are pulled from the nursery several times a week. The Chair asked for the number of employees on site. Mr. Ruesga said one, Mary, who is available at this hearing. Per Ms. Starling, he was allowed to have one employee and one truck. Clients do visit the landscaping/water display in the rear of his property 2-3 times a week.

Public testimony was closed. In response to Member Goff, staff explained that although the Ordinance prohibits domestic employees working out of residences, it would be difficult to distinguish which

employees are working on the applicant's personal hobby operation and business. Member Harvey announced that the Board had visited the subject property and it was evident to him that the applicant is passionate about his work. However, he also is aware now of the neighbors' concerns of a high intensity use. The Chair thought that perhaps the matter needs to be continued to have a meeting with the planner, neighbors and the applicant to discuss the intensity of the use, allowing flexibility to bring clients to his property; consideration of a probation period and a shorter permit; and clarification on the number of employees allowed in a home office (domestic vs. commercial employees). Member Goff felt that the neighbors had already spent a lot of time and the violations need to be resolved or at least be in the process. Member Harvey noted that currently there is no CUP/Conditions of Approval to abide by and if the matter is continued, directions should be given to staff on the purpose of the continuance. Member Goff requested a list of violations. Staff read the following: the use, storage containers, illegal structure, and employees on site.

Public testimony was re-opened. Don Hughes said that he was hearing a continuance of what has been occurring for the last two and half years--continuous total disruptions of lives, constant comings and goings, and constant moving of large boxed trees and plants by three bobcats. This is a rural residential area and the history of non-compliance should be considered. A petition from 60 residents not supportive of a CUP has been submitted along with pictures of the Applicant's web page. All web links points to and/or reads 1780 Buena Vista Avenue. Mr. Hughes urged for a decision.

Libby Mihalka, in addition, pointed out the lack of thoughtfulness on the applicant's part, the constant beeping sound, the industrial component which is unfair to the neighbors; and the unreasonable hours of operation, 8 or 9 am including weekends. The applicant cannot 'fix' his history with the neighbors and the neighbors 'have had it'. The neighbors do not want the impacts of dust and noise.

Valerie Raymond concurred with Ms. Mihalka.

Owen Parker felt that there are no 'grey areas' and if the applicant is in violation, there should be fines. The applicant has had over nine months to correct the violations.

Mary Parsons, employee of the applicant, pointed out that some of the large trucks including their beeping are also related to the several construction projects down the street. She had not been aware of the elderly adjacent neighbor but only became aware of her concerns today. Ms. Parsons thought that the anger and the problems are based on personal issues within the neighborhood that are completely independent of the business. She pointed out that the employees are working temporarily on-site because the Vision Scape business is very slow.

Mr. Ruesga explained that there have been a lot of activities on-site since the day he moved (installation of a large driveway), and as long as he is within the law, he will continue to landscape on his 2.9 acre property, drill a well, have more gardens and grow vegetables and trees. He requested help from the Board so he could demonstrate to his neighbors that all this could work with guidelines.

Public testimony was closed. Member Harvey said that he did not think there will be a compromise--the business is too intense for this neighborhood and there is much opposition from the neighbors. He was in support of a denial. The applicant can appeal the decision to the Board of Supervisors or re-file for a scaled-down project in a year. Member Goff felt that the Conditions of Approval will scale the use down a lot. Although he was not ready to deny the application, his concerns were the violations. The Chair noted that the overwhelming history will carry into the future for the neighbors and there is no mechanism to get back in control. He also thought that with the recommended conditions with the exception of Condition #3 which needs to be tightened, this use could be supported at this location. He re-suggested a

continuance, perhaps to work out a compromise with the neighbors. The Chair also thanked the neighbors for their input adding that since there are numerous businesses on Buena Vista Avenue, any neighborhood efforts could be used by staff for comparable applications in future. Member Harvey indicated that he will support a continuance if the Applicant is willing, perhaps with some guidance/direction. *The Chair made a motion for a 60-days continuance during which time the Planner will circulate the recommended Conditions of Approval to the neighbors and Member Goff added that all violations be addressed and/or show efforts are being made to be in compliance. Member Harvey seconded and the motion carried unanimously, 3/0.*

2. **VERIZON WIRELESS/CHARNEL JAMES, CONDITIONAL USE PERMIT, PLN2009-00117** ~ Application to allow installation of a telecommunications facility in a 'A' (Agricultural) District, located at 5770 Mission Road, west side, approximately one mile north of Vargas Road, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 096-0056-008-12.
Staff Planner: Jeff Bonekemper

This item was moved to the Consent Calendar.

3. **SPRINT PCS/MORIN, CONDITIONAL USE PERMIT, PLN2009-00162** ~ Application to allow continued operation of a cell site consisting of six panel antennas, located at the rear of a storage building, in a PD (Planned Development) District, located at 6500 Tesla Road, approximately 400 feet east of Vasco Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 99A-2935-002-00. (Continued from January 28th, February 25th and March 26, 2010). **Staff Planner: Jeff Bonekemper**

This item was moved to the Consent Calendar.

4. **AT&T, CONDITIONAL USE PERMIT, PLN2010-00011** ~ Application to allow continued operation of a wireless communication facility in an "A" (Agricultural) District, located at 11600 Pleasanton/Sunol Road, southeast side, at the intersection with Paloma Way, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 0096-0376-007-02. **Staff Planner: Jeff Bonekemper**

Member Harvey recused himself.

Ms. Beatty presented the staff report adding that staff is not recommending any further linkage with other expiration dates or stealthing due to the lack of visibility. Member Goff asked for the expiration date for C-7427 and C-8039 (page 2 of the staff report). Staff replied that this application could be the continued operation of C-7427 but would have to double-check. And, although the expiration date for C-8039 is not available, a condition could be added or Condition #16 modified to reflect the same expiration date, perhaps 2022, as the standard renewal term was ten years in 2002.

Public testimony was called for. A representative of AT&T Mobility said that he was available for questions, explained that Nextel is now Sprint PCS and concurred with a 2022 expiration date.

Public testimony was closed. *Member Goff made the motion for an approval with the above change in the expiration date. The Chair seconded and the motion carried 2/0 with Member Harvey recused.*

5. **CROWN CASTLE/OSBORNE, CONDITIONAL USE PERMIT, PLN2010-00017 ~** Application to allow continued operation of a telecommunication facility in an 'A' (Agriculture) District, located at 7727 Altamont Pass Road, south side, approximately 100 feet east of Cross Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099B-5700-001-38. **Staff Planner: Jeff Bonekemper**

This item was moved to the Consent Calendar.

6. **WINE GROUP, LLC/JOHN SUTTON, CONDITIONAL USE PERMIT, PLN2010-00023 ~** Application to allow food service in conjunction with wine tasting in the visitor's center, in an A-CA (Agricultural, Cultivated Agriculture) District, located at 4590 Tesla Road, north side, approximately 500 feet east of South Livermore Avenue, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099-1200-001-00. **Staff Planner: Jeff Bonekemper**

Ms. Beatty summarized the staff report.

Public testimony was called for. John Sutton, representing the Wine Group, described the reasons for this application: since the construction for the new tasting room has been completed at Concannon Winery, this request, if approved, is to offer hot and cold bite-sized food in conjunction with wine tasting, from noon to 8pm, seven days a week. Member Harvey asked if this had been considered at the initial request of the CUP for construction. Mr. Sutton replied no. There is a current CUP for events and consideration to serve food was decided upon completion of the tasting room.

Public testimony was called for. Owen Parker, property owner at 2027 Buena Vista Avenue, said that he did not have any issues with the food services. Instead, his concern was that this winery is on a septic system. A neighbor's request for a bed and breakfast was denied because of the lack of sewer hook-up. The Wine Group has a larger capacity with bottling plant and a much larger water usage for a septic system. His concern was that the County will be requesting sewer hookups in the near future and thought that Planning Department could look into this as something needs to be done

Libby Mihalka, 2075 Buena Vista Avenue, stated that her property backs into the subject site and being a member of the Wine Growers Association, understands the importance of events. Since her concern was related to very loud music, Ms. Mihalka requested perhaps adding a condition to require indoor amplified music and acoustic music outdoors with an exception of special events. She has no concerns with the food serving but would like to request mitigation measures for traffic and noise (music) which becomes substantial concerns on some occasions.

Mr. Sutton, in rebuttal, explained that as part of the original building, a state-of-the-art septic system was installed; the renovation of the tasting room was approved by the County; and although the noise issue is already addressed under the existing CUP (a condition that prohibits outdoor amplified music and limits indoor music to 10pm), he was willing to provide a direct contact phone number for such incidents. They are always willing to work with their neighbors.

Public testimony was closed. Member Harvey asked how this permit relates to the event CUP. Staff replied that it does not and further explained that the previous CUP was for a winery-related use and this is for food service. Although both permits would have different sets of conditions of approval, an additional similar condition regarding amplified music can be added to this permit. Member Goff requested clarification regarding Condition #8. Staff explained that it was a 'carry-over' from the previous report. In reference to Finding #2, Member Harvey recommended deleting the word

“residential”, to read: “The use would be properly related to adjoining uses and nearby wineries, and all ...”. A discussion followed regarding the change. Member Harvey also suggested the addition of the same condition from the event CUP regarding music, indoor amplified music till 10 p.m. *He made the motion to approve the application with the change in Finding #2, an additional condition to reflect that amplified music be limited to indoors until 10pm and acoustic music outside during special events. Member Goff seconded and the motion carried unanimously, 3/0.*

7. **CROWN CASTLE/OSBORNE, CONDITIONAL USE PERMIT, PLN2010-00037 ~**
Application to allow continued operation of a telecommunication facility consisting of a 50 feet monopole and equipment area on a 66 acre parcel, in an “A” (Agricultural) District, located at 1901 Isabel Avenue, west side, south of Vineyard Avenue, Livermore area of Unincorporated Alameda County, bearing Assessor’s Parcel Number: 904-0008-001-02. **Staff Planner: Jeff Bonekemper**

This item was moved to the Consent Calendar.

APPROVAL OF MINUTES – February 25, 2010 ~ *Member Harvey made a correction on page 9, first paragraph, deletion of a sentence. Member Goff made the motion to approve the amended February 25th Minutes and Member Harvey seconded. Motion carried unanimously, 3/0*

STAFF COMMENTS & CORRESPONDENCE: *Ms. Beatty announced that Member Harvey has been reappointed to the Board.*

CHAIR’S REPORT: *The Chair noted that the Board had requested feedback from staff regarding the possibility of very initial hearings on projects in the pipeline and variances for heights of agricultural structures. Staff explained that height variances will most likely be considered as Site Development Reviews for agricultural structures and initial hearings would be presented as an Informational Item, similarly as for Planning Commission and CVMAC, to obtain comments.*

BOARD ANNOUNCEMENTS, COMMENTS AND REPORTS: *None*

ADJOURNMENT: There being no further business, the hearing was adjourned at 3:20 p.m.

ALBERT LOPEZ - SECRETARY
EAST COUNTY BOARD OF ZONING ADJUSTMENTS