

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
MAY 12, 2010
(APPROVED JUNE 9, 2010)

The Regular Meeting was held at the hour of 6:00 p.m. in the Alameda County Building, 224 West Winton Avenue, Hayward, California.

FIELD TRIP: 1:00 p.m. Cancelled, Members visited sites on an individual basis.

MEMBERS PRESENT: None.

MEMBERS EXCUSED: Chair; Dawn Clark-Montenegro; Vice Chair, Kathy Gil; Members, Jewell Spalding, Frank Peixoto and Ineda Adesanya.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner

FIELD TRIP: The meeting adjourned to the field and the following properties were visited:

1. **BRIAN KHO / SCOTT DONOHUE, VARIANCE, PLN-2010-00036** – Application to allow construction of an attached garage resulting in a third story and an average building height of the residence, 28 feet, 3 inches where two stories and 25 feet is the maximum allowed, and providing a front yard setback of zero feet where 20 feet is the minimum required, in an R-1 (Single Family Residence) District, located at 14641 Midland Road, west side, approximately 330 feet north of Altamont Road, unincorporated Hillcrest Knolls area of Alameda County, designated Assessor’s Parcel Number: 079-0004-011-03.
2. **HAMRICK / WOODSIDE NIGHTINGALE, CONDITIONAL USE PERMIT, PLN-2009-00167** – Application to allow continued operation of a residential care facility for up to 14 elderly clients in an R-S-D-20 (Suburban Residence, 2,000 square feet per Dwelling Unit) District located at 20531 Forest Avenue, west side, approximately 750 feet north of Castro Valley Boulevard, unincorporated Castro Valley area of Alameda County, designated Assessor’s Parcel Number: 084C-0724-079-00. **Staff Planner: Christine Greene.**
3. **RIGG / MOTESSORI SCHOOL OF CASTRO VALLEY, CONDITIONAL USE PERMIT, PLN-2009-00175** - Application to allow continued operation of a pre-school for up to 90 children in an R-1-SU-RV (Single Family Residence, Secondary Unit, Recreational Vehicle parking) District, located at 19234 Lake Chabot Road, east side, approximately 75 feet north of Barrett Court, unincorporated Castro Valley area of Alameda County, designated Assessor’s Parcel Number: 084B-0529-011-020. **Staff Planner: Christine Greene.**
4. **BEVERLY AXELRAD, CONDITIONAL USE PERMIT, PLN-200-00108** – Application to allow continued operation of an outdoor recreation facility, in an “A” (Agricultural) District, located at 10200 Crow Canyon Road, northeast side, approximately 700 feet northeast of the terminus of Crow Canyon Road, unincorporated Castro Valley area of Alameda County, designated Assessor’s Parcel Number: 085-0700-002-00. **Staff Planner: Damien Curry.**

BOARD OF ZONING ADJUSTMENTS WORKSHOP

Time: 5:00 p.m.

Place: Planning Department Conference Room
224 West Winton Avenue, Suite #111
Hayward, California 94544

Rules of Procedure: Alcoholic Beverage Sale Regulations

MEMBERS PRESENT: Chair, Dawn Clark-Montenegro; Vice Chair, Kathy Gil; Members, Frank Peixoto, Ineda Adesanya. Member Jewell Spalding arrived late.

MEMBERS EXCUSED: None.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; County Counsel, Andrea Weddle, Sheriff's Department staff; Sergeant Paul Liskey and Technician Cherry Lemmon.

REGULAR MEETING: 6:00 p.m.

MEMBERS PRESENT: Chair, Dawn Clark-Montenegro; Vice Chair, Kathy Gil; Members, Jewell Spalding, Frank Peixoto and Ineda Adesanya.

MEMBERS EXCUSED: None.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; County Counsel, Andrea Weddle, William Fleishhacker; Code Enforcement staff; and Yvonne Bea Grundy, Recording Secretary.

There were approximately 15 people in the audience.

CALL TO ORDER: The meeting was called to order by the Chair at 6:05 p.m.

ANNOUNCEMENTS BY THE CHAIR: The Chair made no special announcements.

Neighborhood Preservation Ordinance Abatement Hearing

There were no items scheduled for the Neighborhood Preservation Ordinance Abatement Hearing Calendar.

Alcoholic Beverage Sale Regulations Administrative Hearings

There were no items scheduled for the Alcoholic Beverage Sale Regulations Administrative Hearings Calendar.

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. **CLEARWIRE LEGACY LLC / CHRISTIE CHAD, CONDITIONAL USE PERMIT, PLN-2009-00145** – Application to allow installation of two 26.1 inch, and one 15.3 inch in diameter microwave antenna dishes; two 42 inch by 12.7 inch panel antennas, and one 4 inch in diameter GPS antenna, on three corners of an existing PG&E transmission tower, with an equipment enclosure located at the base of the tower, in a PD (Planned Development, 1337th Zoning Unit) District, located opposite 17249 San Franciscan Drive, east side, approximately 325 feet south of the T intersection with Bellingham Drive, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 085-6311-001-00. **Staff Planner: Andrew Young.** (Continued from January 27, February 24 and April 14, 2010). **THIS APPLICATION HAS BEEN WITHDRAWN BY THE APPLICANT.**

2. **PAUL ESCOBAR, CONDITIONAL USE PERMIT, PLN-2009-00177** - Application to allow retention of an existing garage conversion in a rear unit, in an R-S-SU (Suburban Residence with Secondary Unit) District, located at 550 and 552 Cherry Way, north side, approximately 300 feet north east of Haviland Avenue, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 429-0019-016-04. **Staff Planner: Jeff Bonekemper.** (Continued from April 14, 2010; to be continued to June 23, 2010).

Staff announced that the Applicant had submitted revised drawings. The application will now be considered at the May 26, 2010 Hearing.

Member Spalding motioned to accept the Consent Calendar with the modification of the hearing date to May 26, 2010 for Escobar- PLN2009-00177. The Vice Chair seconded the motion. Motion carried 5/0.

REGULAR CALENDAR

1. **HAMRICK / WOODSIDE NIGHTINGALE, CONDITIONAL USE PERMIT, PLN-2009-00167** – Application to allow continued operation of a residential care facility for up to 14 elderly clients in an R-S-D-20 (Suburban Residence, 2,000 square feet per Dwelling Unit) District located at 20531 Forest Avenue, west side, approximately 750 feet north of Castro Valley Boulevard, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084C-0724-079-00. **Staff Planner: Christine Greene.**

Staff reviewed the application for continued use. The Castro Valley Municipal Advisory Council and Planning staff recommended approval. In 2008 the variance application for a six foot side yard was denied by the BZA. The decision was overturned by appeal at the Board of Supervisors to allow construction of a patio enclosure on the north side of the facility. The Applicant has obtained building permits for the enclosure. Public testimony was opened.

The owner of the facility, Ms. Barbara Hamrick was present. The sunroom is incomplete awaiting final permits. Board questions for the Applicant were as follows:

- Is Ms. Hamrick aware the Fire Department will not issue a Certificate of Occupancy until all building permits are final

- Has Ms. Hamrick met with the Fire Department

- Will there be an increase in the number of residents at the facility

Staff confirmed the Applicant spoke with the Fire Department. All outstanding issues will be resolved. Condition of Approval #5 requires compliance with Fire Department requirements. Ms. Hamrick told the Board there would not be an increase in the number of clients. Public testimony was closed.

Member Peixoto was unsure if the BZA could grant the permit request since building permits were not yet final. During his tenure as a Fire Inspector, a life was lost at a facility that was deemed un-safe. He did not want a facility to obtain approval if conditions are unsafe. Ms. Hamrick interjected from the audience. Fire sprinklers have been installed at the facility. Public testimony was re-opened. Further Board questions were as follows:

- What is the current status of the outstanding building permits
- Are photographs available of the present stage of construction
- Do residents of the facility currently have access to the incomplete sunroom
- Is there a Fire Escape Plan for the facility
- Is there more than one exit available at the site

Staff presented photographs of the site interior. The Board can add a further Condition of Approval requiring Fire Department approval prior to use of the sunroom. Member Spalding thought Conditions of Approval should be further modified to require continued compliance with all, Conditions. Ms. Hamrick told the Board the sun room had sprinklers installed. The system has been tested. She is now awaiting sign-off from the Fire Department. Access to the sun room is not allowed until approval is obtained. There is more than a single exit method from the building. A ramp was constructed at the rear of the building that leads to the side yard. Public testimony was closed.

Member Peixoto said the Fire Department should sign off on the permit within 60 days. It is the BZA's duty to set conditions that require follow through. He did not know why there had been a delay. The Vice Chair and Member Spalding said there appears to be some procedural snags. The Applicant needs to set an appointment with the Fire Department. At this juncture the sun room is not being used. Member Adesanya recommended Condition #5 add language requiring fire clearance prior to occupancy of the sun room. Member Spalding requested Condition #4 require the site be maintained in a graffiti free manner. Landscaping shall also be maintained in good condition; including existing and future landscaping. Member Peixoto agreed. On his site visit he observed landscaping at the front of the property in a shabby state.

Member Spalding motioned to adopt the staff recommendation of approval with the following modifications:

Condition #4 shall be modified to include: A free standing sign as described in the staff report dated May 12, 2010, shall be posted. The sign shall remain in good condition, and graffiti free.

Condition #5 The property shall remain in good condition, and graffiti free. Fire clearance shall be obtained prior to occupancy of the sun room.

Condition #7 All new and existing landscaping shall be maintained, and remain in good condition.

Member Peixoto seconded the motion. The motion to approve PLN-2009-00167 carried 5/0.

2. **RIGG / MOTESSORI SCHOOL OF CASTRO VALLEY, CONDITIONAL USE PERMIT, PLN-2009-00175** - Application to allow continued operation of a pre-school for up to 90 children in an R-1-SU-RV (Single Family Residence, Secondary Unit, Recreational Vehicle parking) District, located at 19234 Lake Chabot Road, east side, approximately 75 feet north of Barrett Court, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084B-0529-011-020. **Staff Planner: Christine Greene.**

The staff recommendation was approval. The Castro Valley Municipal Advisory Committee recommended approval as well. Initial Board questions were as follows:

- Did the CVMAC recommend approval for 68 or 90 children
- What is the total number of children approved through CA State Community Care Licensing
- Did the Applicant comply with all Conditions of the prior use permit
- How large is the present facility
- How large is the proposed addition to the facility

Staff explained CA State License allows up to 90 children. Current Conditions of Approval are for 68 children. If the Applicant complies with past further Conditions and completes the proposed 1,000 square foot addition, the facility can handle up to 90 children. Storage space will also be added. Public testimony was opened.

The Applicant Ms. Pamela Rigg was present. Ms. Rigg read the staff report. She was in agreement with the CVMA recommendations and the proposed Conditions of Approval. Ms. Rigg has lived in the community for 25 years. Board questions for Ms. Rigg were as follows:

- Why has the Applicant allowed high weeds to grow at the site
- Is the facility currently open

Ms. Rigg explained the facility was currently closed due to remodeling. The site is not currently being used for children. The daycare will not occupy the facility until remodeling is complete. The Building Department will not issue permits until approval of the use permit has been obtained. Ms. Rigg acknowledged there are weeds at the site. Due to the recent rain, the overgrowth has not been trimmed. If it has not already been cut, it will be done as soon as possible. Public testimony was closed.

Member Peixoto was concerned. The time lag for Building and Fire Department permit approval has been too great. Plans submitted to the Fire Department in 2007 have yet to be approved. The delay has been on-going for 3 years. He would like the application conditioned as such, if Fire Department approval is not obtained, a notice shall be sent to staff. Staff clarified said County Fire sent a letter to the Applicant's architect in May of 2007. There was no response. Staff was unaware of any outstanding issues with the site. It is currently closed, awaiting approval. If there are issues, the Fire Department will notify staff. Typically yearly fire inspections are conducted; or if someone applies for a permit, an inspection is required. This permit also includes a Certificate of Occupancy, which includes a Fire inspection. In previous years there was not a set schedule for fire inspections. There is new staff, and an updated process. Things have vastly improved. The time frame thus far has been acceptable and consistent.

Member Spalding pointed out there was no Landscape Plan in effect. The site is deteriorating. The permit process could take 5 years to implement therefore a Landscape Plan should be approved, and implemented now. The use is ongoing. Perhaps public testimony should be re-opened to speak with the Applicant. Staff confirmed the use was considered an on-going operation. Member Adesanya pointed out the existing landscaping is in a defined area, within a walkway. The Applicant does need to weed the property. However any issues can be resolved through Code Enforcement. Member Peixoto said his observation was that landscaping was limited to a planter box. Member Adesanya said once the weeds are removed, there may be further locations to place landscaping. Staff pointed out Condition # 12 requires the Applicant to submit and obtain an approved Landscaping Plan prior to issuance of building permits, and occupancy. Member Spalding was still concerned. There was no time set for compliance. There is a possibility Ms. Rigg may never complete the expansion. An additional Condition of Approval should be added that requires compliance separate and apart from completion of the facility. Signage on the property should also be maintained and kept graffiti free. Member Adesanya recommended Conditions of Approval be updated. The Applicant shall maintain current landscaping in compliance with the approved Landscaping Plan. If compliance is not maintained, Code Enforcement ordinances apply. The Chair requested the Landscape Plan be submitted in 30 days. Existing landscaping shall be brought into compliance within 30 days, and continue be maintained. Approval and clearance from the Fire Department shall be obtained prior to the opening of the facility.

Member Spalding motioned to accept the staff recommendation of approval for a period of 5 years expiring on May 12, 2015 with the following modifications:

Condition of Approval #1 shall include, all necessary Fire Department clearance must be obtained prior to re-opening the facility.

Condition #7 shall include, signage on the property to be maintained in good condition, and kept graffiti free.

A Condition shall be added that existing landscaping shall be brought into compliance within 30 days, and continue to be maintained. The site shall remain in compliance with Code Enforcement Ordinances and requirements contained in the Landscaping Plan in the 2004 Resolution.

The Vice Chair seconded the motion. The motion to approve PLN-2009-00175 passed 5/0.

3. **SAINT ANTONIUS COPTIC CHURCH / SAM HANNA - CONDITIONAL USE PERMIT, PLN- 2009-00102** - Application to allow expansion of a church, with the construction of a 16,200 square foot multi-purpose building on an adjacent parcel to the south requiring a Variance for a 40 foot average building height, where 30 feet is the maximum height allowed; and to adopt the Mitigated Negative Declaration and Initial Study for the project, located in an R-1-B-E (Single Family Residence, 10,000 and 6,000 square foot Minimum Building Site Area, 60 foot Median Lot Width, 20 foot Front Yard, 7 foot Side Yard Minimum) District, located at 2500 Hansen Road, west side, approximately 300 feet north of East Avenue, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Numbers: 426-0130-072-00 and 426-0130-003-01.
Staff Planner: Richard Tarbell. (Continued from April 14, 2010).

The staff recommendation was approval. The Board asked the status of the request for a 12 foot rear yard. Staff explained due to a redesign, the rear yard setback is now in compliance. The variance request is now limited to building height. Public testimony was opened.

Mr. Karl Danielson from the Dahlin Group was present representing the Applicant. Mr. Danielson presented renderings and graphics of the project. The design process had been ongoing for quite some time. He is in agreement with the Conditions of Approval. Due to the thoroughness of the staff report in lieu of a presentation, he made himself available to answer questions. Initial Board questions were as follows:

- Is the expansion of the use limited to the multi-purpose hall
- How many rooms will the expansion contain
- What is the distance from the proposed building and the property line
- What is the anticipated construction period
- Has notice of the project been given to neighbors, and have discussions resulted

Mr. Danielson confirmed expansion of the use was limited to the multi-purpose facility. There will be restrooms on the upper level, and a meeting hall. The balance of the space will be the basketball court. The building will have a single story profile from the street. At the rear a two story profile. There is a distance of 20 feet to the rear property line. The church owns both lots. Construction should be complete in 14 months. Notices of the project were sent to neighbors. Mr. Hannah from the church is present, and can provide further information.

Mr. Sam Hannah told the Board the first home on the street is owned by a member of the church. There is another home adjacent on the left side. The building actually sits behind that property line. The parking lot is adjacent to the neighbor on the left. There is also a neighbor to the rear of the site. Four to five public notices have gone to neighboring properties. A church member also knocked on doors and invited people to a meeting. No one showed up at the meeting held.

Mr. Robert Olsen lives to the south of the proposed variance site. His house is one removed from the church. He asked if the church will be required to install curb, gutter, and sidewalks. He stated for the record he did not want a sidewalk for his property. Neither did other neighbors. The church says it will provide off-street parking. This parking is now in use, yet people are walking in the street. There may be an agreement with the East Avenue School but commuters walk down Hansen Road, causing a dangerous hazard. Mr. Olsen did not see how the proposal will alleviate the situation. The proposed use for a basketball court will happen during evening hours. This will increase activity on Hansen Road which could also be dangerous. If sidewalks are installed at the church, parking could be further reduced. The Board asked Mr. Olsen the following questions:

- Did Mr. Olsen receive notice of a meeting at the church
- What level of evening activities use has Mr. Olsen witnessed
- Does Mr. Olsen or his neighbors have any proposals that may resolve issues raised

Mr. Olsen said the church should provide access to East Avenue School since they are using the parking lot. From time to time he has witnessed some night soccer games. Since the church is applying for a space to play basketball, he assumes the facility will be used. He did receive a notice about a meeting at the church a year ago. He was unable to attend due to health issues. He has received more recent mailings from the Planning Department about the project. The Chair explained to Mr. Olsen the BZA did

not have the purview to prevent the installation of sidewalks at the church. Public Works will make that determination. She then asked Mr. Olsen if he thought parking stalls would resolve the issue. Mr. Olsen did not believe so. Approximately 20 cars currently use the unpaved area on Hansen Road to park. Vehicles would continue park on a walkway or paved sidewalk, if provided. Mr. Olsen thought the parking area in front of the church had become a safety issue.

Member Spalding referred to the 2009 recommendation posed by Development Services which refers to a 1970 Ordinance requiring property owners dedicate 30 feet of County road as a Condition of Approval. She asked staff if it would be adopted as part of the permit. She believed when this happens the results are unattractive, unimproved land that is not maintained. Staff said the County has yet to determine if the road will be widened. They showed plans stamped January 21, 2010.

Ms. Tricia Henry lives on Hansen Road. She is the neighbor adjacent to the property. Her home shares the rear property line. Ms. Henry only recently found out about the proposal. She did not receive notice from the church, perhaps because she recently purchased the home. She did see a notice on the telephone pole about this hearing. Although she is coming to the process late, she would like to offer input. Her home is in a single family residence zone. She anticipated someone would build a home on the property next door. She had no idea the property behind her was to become a church facility, 13 times larger than her home at 16,000 square feet. The only wild life mentioned in the Initial Study are birds, there are also deer and wild turkeys. On Sundays the atmosphere is a zoo. Cars park in front of homes. Ms. Henry did not believe the proposal would have a positive impact on the neighborhood. Although a parking garage at the site would be worse. There is also an impact as a result of light and noise. On Sundays you hear car doors slamming and children crying. In addition the church is proposing a terrace that surrounds the facility. The light and noise from this area will impact her property. Member Spalding asked Ms. Henry if she read the portion of the initial Study that addresses light and noise. Ms. Henry confirmed she had. Existing light at the church shines over the property line onto her property. The proposal gives the appearance there will be a buffer. In reality the buffer will be ineffective because the site overlooks her backyard.

Mr. James Le Barge, a neighbor that lives on Hansen Road stated he was in agreement with Ms. Henry's comments. Public testimony was closed.

Board questions for staff were as follows:

- Is storm drain approval required by the Director of Public Works prior to cup permit approval
- Is approval of the landscape plan by the Planning Director required prior to use permit approval
- Will additional info be attached to the Biological Resource Plan regarding swale and creek beds
- How many parking spaces are provided at the school
- Is the Applicant required to make a dedication of property for the purposes of improvements

Member Peixoto pointed out language in the Mitigated Negative Declaration says the BZA cannot approve the use permit until Storm Drain Outfall and Landscaping Plans are approved. Based on his interpretation if the BZA approves the cup at this juncture, they would also be approving mitigation measures. He asked for clarification. Counsel said there was discussion in the staff report that

recommended mitigation measures be adopted prior to cup approval. Although he had not yet read the mitigated negative declaration, typically recommended mitigation measures are adopted at the time of cup approval. The measures are addressed in the building permit process. Compliance with mitigation measures are shown by issuance of final building permits. Staff confirmed approval of Storm Drain Outfall Plan and additional information regarding the Biological Report will be submitted to Public Works. Compliance with mitigation measures will be verified prior to sign-off on building permits. Staff further explained the Applicant did submit plans to the Director of Public Works. As reflected in the staff report on page #26, the plans are under review. They have yet to be approved. This will occur prior to issuance of a building permit. The requirements of the Initial Study have been satisfied by plan submission to the Director of Public Works. Member Spalding did not believe the process was fair. Public Works may modify mitigation measures. The BZA would not have an opportunity to weigh in if necessary. Member Spalding asked what is the next step in the process after Applicant plan submission to Public Works. In addition she was not in agreement with Conditions #34 and #35 regarding an offer of dedication of property frontage. Regarding process, Counsel responded typically dramatic changes are not made at the entitlement stage. If major changes are necessary, plans would return to Planning. Staff further explained Public Works completes an initial review. Comments are then sent back. The Planning Department is still in control of the permit process. If Public Works identifies a glaring issue, Planning will be notified. At this juncture the Planning Department has approved the Landscape Plan. Member Spalding said she was still concerned with a reference in the Biological Resource section of the Initial Study. The Applicant must submit evidence of compliance the Army Corps of Engineers prior to issuance of a use permit if mitigation measures for wetlands are required for storm water detention and treatment planters. This is important because the location is near a swale, and creek bed. Requirements of Condition #35 of a 30 foot dedication on both parcels will have an impact. This could result in the loss of parking spaces. The dedication of frontage also requires site plans showing the effects to proposed improvements not limited to, proposed driveways, new and existing parking, fences, gates, curb, gutter and sidewalks, the storm water inlet along Hansen Road and storm water treatment and drainage measures. Staff said the Biological Report, swale and creek bed are addressed on page #7 of the staff report. Regarding dedication of frontage, the Applicant is required to offer the frontage to the County. The County will reject the offer, however the offer will stand. There are no planned improvements at this time that would affect the frontage; or changes to the existing pavement line or pavement. If in the future if the County decides to widen Hansen Road. The County can then accept the dedication and move forward. Member Peixoto agreed Conditions #34 and #35 asked for a lot. If the County needs the frontage they could purchase it through eminent domain. He believes legal precedence has been set that does not require a property owner to grant property, in order to be granted a use permit. Member Adesanya pointed out the Board of Supervisor's adopted the future right of way many years ago. She asked Counsel if the BZA was required to Condition applications with grants of land to Public Works. Counsel said he did not have enough experience with this specific Ordinance to state definitively. However it sounds like the practice is acceptable. Members Spalding and Peixoto told Counsel there was precedence of the BZA striking this Condition from past applications. In this particular case there is a significant proposal to take 30 feet. Past cases have proposed dedication of approximately 10 feet. A dedication of 30 feet would take away parking spaces. Member Adesanya did not believe the impression parking would be reduced was accurate. Member Spalding thought there was a possibility, her experience had been otherwise. She did not want to do anything that could cause a loss of parking. Based on testimony presented, and the fact Public Works has its own mindset. She would need further information about parking to determine the true impact. Member Peixoto restated his belief that a requirement of dedication is the equivalent of taking private property.

Member Adesanya said the existing overflow parking may be in compliance with the Zoning Ordinance. It appears there are more cars on the vacant lot as opposed to the front of the lot. She asked staff how this could be addressed. Staff confirmed the proposal is not only in compliance with the Ordinance but offers parking in addition to what is required. Parking spaces are also being provided at the East Avenue

School. Currently only shrubs are proposed at the southern property line. Staff acknowledged, perhaps further plants are needed. The Chair re-opened public testimony to obtain further information. Board questions were as follows:

- Is there a written parking agreement with the church and the East Avenue School
- Will additional off-site parking be needed in conjunction with the church expansion
- Is overflow parking only used on Sundays
- Can the church parking needs be met without the parking at the school
- What portion of the parking will be utilized for the basketball facility
- What is the size of the church congregation
- How many services are held on Sundays
- Can “No Parking” signage be posted along Hansen Road
- Has the church contacted the State Department of Fish and Game
- Has the church contacted the US Army Corp of Engineers
- What further solutions can be offered based on issues raised by neighbors, such as foot traffic on Hansen Road, noise, light exposure and loss of privacy
- Is the church in agreement with the Condition requiring a dedication of right of way
- How large will the trees proposed in the landscape plan grow
- Has further landscaping been considered, including Hansen Road and the church parking lot
- What type and size plantings are being considered

Mr. Malic, a Member of the church told the Board they had an understanding with the school principal regarding parking, not a written agreement. The church sometimes uses the off-site parking on Sundays. It depends on the flow. Off-site parking is definitely needed to accommodate special occasions like Feasts, and Easter. The church has a membership of 200 families. All members do not attend at one time. There is one service conducted on Sunday’s. The basketball activities are not expected to increase the congregation size.

Mr. Sam Hannah told the Board the church had not yet contacted Fish and Game or the Army Corp of Engineers. The church, first wanted to put all effort into obtaining permit approval. The church is aware that Conditions of Approval require interaction with other agencies. The church has contacted people with expertise in this process. Based on their feedback they do not believe there will be any issues. Mr. Hannah said at one point a walkway was proposed to handle foot traffic along Hansen Road. However that proposal is unlikely. The church uses an usher on Sundays to direct traffic at the entrance of the

driveway. As one of the ushers Mr. Hannah does not allow anyone to park on Hansen Road, to protect the safety of pedestrians. Great effort is made, including announcements during the service. Alternate parking is available at the school. Once in a while a visitor from out of town may park on Hansen Road unknowingly. One option being considered is a shuttle that will run between the school parking lot and the church. The church wants to be a good neighbor. They are open to ideas, and will do whatever it takes to make the project happen. Regarding light from the church shining onto the neighboring property, existing lighting will be re-directed immediately.

Civil Engineer for the project, Michael Bacillus used an Exhibit to show future road alignment for Hansen Road. The proposed alignment would require the removal of 3 homes at the intersection. Approximately 25 feet on one side, and 50 feet on the other side of Hansen Road will be used. As a result he did think the realignment was likely. The church was not given a choice. They agreed to the dedication knowing it is unlikely. Member Spalding asked if the church would object to the removal of Conditions of Approval #34 and #35. Mr. Bacillus confirmed the church would not object.

The Project Architect Mr. Karl Danielson said the proposed 5 gallon bushes would grow to approximately 4 feet. The fence height will exceed four feet. At this point additional landscaping buffering has not been considered. However there should be sufficient room to add trees since the home behind sits at a slightly higher elevation. There will also be plants in the middle of the church parking lot. There are no plans to place additional greenery along Hansen Road, as there is a fair amount already present.

Ms. Tricia Henry was asked to re-approach regarding proposed shrubbery along her property line. Ms. Henry said more substantial plants would be more effective. Her home sits higher than the recreation facility. The current proposed height would not have a sufficient impact. Member Adesanya responded the Board could Condition the application to place substantial landscaping along the fence. Member Spalding requested Ms. Henry have an opportunity to review and comment on proposed landscaping, prior to installation. Staff agreed. Public testimony was closed.

Member Spalding was still concerned with biological Resource considerations raised on page #7 of the staff report. The Initial Study suggested the permittee provide compliance approval from State Fish and Game also the Regional Water Quality Control Board prior to approval of the conditional use permit. Yet County staff including the Public Works Agency recommend Initial Study Language be changed to allow the permittee an appropriate phasing of this evidence of compliance during the Grading and Building Permitting phase. Typically there is more information contained in the Environmental Impact Report. The location is next to the tributary of Sulphur Creek. Member Spalding responded the Initial Study is to support the mitigation measures proposed. Counsel said the document was referred, even though no comments received. Condition #6 contains language that requires the Applicant submit evidence of compliance with applicable requirements of Fish and Game, US Army Corps of Engineers, and California Regional Water Quality Control for drainage outlets etc. If mitigation is required, it will be evaluated by Public Works, and monitored as part of the CEQA Monitoring and Reporting process. Member Adesanya said all references have language like that stated on page #25. This is how mitigation measures are generally incorporated. Staff explained each Condition is addressed individually on page #12. The Conditions are as a result of the Initial Study. Member Spalding used an example and referred again to page #25. The study says there is no stream side vegetation, therefore there is no impact. That is a strong statement. The possible question of sediment release into the tributary is not addressed. Staff said the Applicant has submitted a preliminary plan to Public Works. They must issue final approval.

The Chair asked if the agencies forwarded an outline of their general comments to the Applicant. Staff said a general expectation of what will be required is sent to the Applicant. The Initial Study was referred to US Army Corps of Engineers, and California Regional Water Quality Control. During the 30 day review period, no comments were received. The project engineer is probably familiar with some general

requirements. Staff was unsure if any of the agencies provided general or standardized comments to applicants, or through their websites. However they are required to respond in the final stages of a project. The process of compliance takes time and money. The Applicant can see what will be required prior to moving forward. A full set of plans must be submitted for review, prior to approval. Evidence of compliance is deemed as approval of the application. Member Spalding said the Initial Study contemplates that the architect and the engineer will investigate. The language states evidence of compliance must be provided. Staff responded evidence of compliance is approval. The Vice Chair commented that when agencies like the Army Corps of Engineers do not respond to a referral, one can only hope they do what is required prior to approval. She suggested Condition #26 be re-worded to include plantings be added on the southern side of the property. Plants should be of sufficient height at installation to provide screening. The neighbors shall have the opportunity to review the landscape plan prior to installation. Condition #27 should require that existing lighting not shine outside of property boundaries, in addition to proposed lighting. Condition #33 should also require the church to provide a shuttle service from the school parking lot within 60 days. Public works shall also install "No Parking" signs in front of the church area on Hansen Road. Member Spalding reminded the Board the Public Works process to place signage on Hansen road is through the Board of Supervisor's. Member Peixoto asked if signage could be entered as a recommendation. Counsel agreed assignment as a Condition of Approval may be difficult. The church can request that the BOS allow signage to be posted along Hansen Road. Member Adesanya recommended the church take on enforcing parking rules for the use. They can adopt the appropriate mitigation measures. For example at her church, the Deacons enforce parking. If someone's car is blocking a driveway. An announcement is made to the congregation. Member Spalding agreed. The church can adopt a Traffic Management Plan, to include implementation of a shuttle, and "No Parking Signs" posted in front of church property. Board Members agreed the Traffic Management Plan can become part of Condition #33.

Member Peixoto motioned to adopt the Initial Study and Mitigated Negative Declaration for PLN, 2009-00102, Coptic Church. The Vice Chair seconded the motion. Motion carried 4/1. Member Spalding was not in favor of adoption of the Initial Study.

Member Peixoto motioned to uphold the staff recommendation of approval of 2009-00102, Coptic Church, Conditional Use Permit and Variance with the following modifications:

Condition #26 shall now include the southern property line, including the installation of trees. All greenery and trees shall be installed at full size. The neighbors will review and give input on landscaping prior to installation.

Condition #27 shall be now include language that requires existing and newly installed lighting shall not shine beyond the boundaries of the church property.

Condition #33 shall also require a Traffic Management Plan to include implementation of a shuttle from the East Avenue School parking lot, and the posting of "No Parking Signs" in front of the church.

Conditions # 34 and 35 shall be stricken entirely.

Member Spalding seconded the motion. Motion carried 4/1. The Chair was not in favor of approval of 2009-00102, Coptic Church, Conditional Use Permit and Variance and the removal of Conditions of Approval #34 and #35. Although Member Adesanya voted to uphold the staff recommendation of approval, she did not agree with the removal of Conditions #34 and #35. In addition the Chair was not in agreement with the removal of Conditions #34 and #35.

APPROVAL OF MINUTES: The Vice Chair motioned to accept the Minutes April 28, 2010 with Member Adesanya's stated changes. Member Adesanya seconded the motion. Motion carried 5/0.

STAFF COMMENTS & CORRESPONDENCE: The appeal of ANTHONY & MARTHA CASSINI, VARIANCE, V-12107 will be heard at the June 8 Board of Supervisor's meeting.

Application, MILLER / CRAWFORD, CONDITIONAL USE PERMIT, PLN-2009-00098 was withdrawn by the Applicant; therefore the Board of Supervisor's appeal process will cease. The property owner has agreed to abide by rules governing batting cage use.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: The Vice Chair asked staff to include a copy of the Alameda County Ordinance 6.104 Alcoholic Beverage Sale Regulations in the next board packet to prepare for their role as Hearing Officers.

ADJOURNMENT: There being no further business, the hearing adjourned at 9:05 p.m.

ALBERT LOPEZ - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS