

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
JUNE 23, 2010
(APPROVED JULY 14, 2010)

The Regular Meeting was held at the hour of 1:30 p.m. in the Alameda County Building, 224 West Winton Avenue, Hayward, California.

REGULAR MEETING: 1:30 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, William Fleishhacker; Code Enforcement staff; and Yvonne Bea Grundy, Recording Secretary.

There were approximately 13 people in the audience.

CALL TO ORDER: The meeting was called to order by the Chair at 1:38 p.m.

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

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.

Neighborhood Preservation Ordinance Abatement Hearing

- 1. Veronica Navarro/Reconstrust Company, Paradise Blvd. Hayward, CA 94541**
In violation of Alameda County Ordinance 6.65.030 A (1) and A (9)
 1. Overgrown vegetation and weeds throughout the property.

The Vice Chair motioned to uphold the staff recommendation . Declare the property a public nuisance, and require abatement to be complete within 10 days. Member Adesanya seconded the motion the motion. Motion carried 5/0.

- 2. Nga Nguyen, Idena Ave., Castro Valley CA 94546**
In violation of Alameda County Ordinance 6.65.030 A (1), A (8), A (9), A (10) and B (6)
 1. Accumulation of debris & miscellaneous items; and
 2. Overgrown vegetation & weeds in the rear yard.

Member Peixoto motioned to uphold the staff recommendation . Declare the property a public nuisance, and require abatement to be complete within 10 days. The Vice Chair seconded the motion the motion. Motion carried 5/0.

- 3. Raymond W & Sylvia L Leung, Vacant lot at Miramonte Ave., San Leandro CA 94578**
In violation of Alameda County Ordinance 6.65.030 A (8), A (9), A (10) and B (6)
 1. Overgrown vegetation and weeds throughout the property.

Member Spalding motioned to uphold the staff recommendation . Declare the property a public nuisance, and require abatement to be complete within 10 days. Member Peixoto seconded the motion the motion. Motion carried 5/0.

4. **CAA Internantional, Galway Drive/Yale Avenue, San Lorenzo, CA 94580**
In violation of Alameda County Ordinance 6.65.030 A (1), A (6), A (7) and B (6)
 1. Unlawful outdoor storage of buckets, debris, wood and miscellaneous items;
 2. Dilapidated fence; and
 3. Graffiti on fence.

Member Spalding motioned to uphold the staff recommendation. Declare the property a public nuisance, and require abatement to be complete within 10 days. The Vice Chair seconded the motion the motion. Motion carried 5/0.

5. **PG&E Co, 2716 East Avenue, Hayward, CA 94541**
In violation of Alameda County Ordinance 6.65.030 A (1), A (7), A (8), A (9), A (10) and B (6)
 1. Graffiti on equipment cabinet; and
 2. Tall weeds along perimeter of property and in public right-of-way area.

The Vice Chair motioned to uphold the staff recommendation . Declare the property a public nuisance, and require abatement to be complete within 10 days. Member Adesanya seconded the motion the motion. Motion carried 5/0.

6. **Annabel Manausa/Asset Foreclosure Services, Tulsa Street, San Lorenzo, CA 94580**
In violation of Alameda County Ordinance 6.65.030 A (1), A (8), A (9), A (10), A (12), B (2), B (3) and B (6).
 1. Abandoned and unsecured property being inhabited by trespassers with unsanitary conditions inside the dwelling including human excrement, junk, trash and debris; and
 2. Overgrown vegetation and weeds on the property.

Member Peixoto motioned to uphold the staff recommendation . Declare the property a public nuisance, and require abatement to be complete within 10 days. Member Spalding seconded the motion the motion. Motion carried 5/0.

CONSENT CALENDAR:

1. **ABC PRESCHOOL & DAYCARE / MAGGIE LAM, CONDITIONAL USE PERMIT, PLN-2010-00049** – Application to allow expansion of a child care facility from 41 to 56 children, in an R-S-D-3 (Suburban Residential, 2,500 square feet per Dwelling Unit) District, located at 20135 San Miguel Avenue, west side, approximately 350 feet north of Jeanine Way, unincorporated Castro Valley area of Alameda County, designated Assessor’s Parcel Number: 084A-0124-001-04. **Staff Planner: Christine Greene.** (To be continued to July 28, 2010).

Staff announced the application will be scheduled for July 14, 2010. The Applicant anticipates having the required inspection from the Fire Department complete by this time.

2. **EAST BAY MUD / AT & T MOBILITY - KELLY, CONDITIONAL USE PERMIT, PLN-2009-00154** – Application to allow installation and operation of

a wireless telecommunications facility (45 feet tall mono pine) in an R-1-SU-RV (Single Family Residence, Secondary Unit, Recreational Vehicle Parking Regulations) District, located at the end of Brookdale Boulevard, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Numbers: 084D-1100-001-16-00 and 084D-1103-070-04. **Staff Planner: Christine Greene.** (To be continued to July 14, 2010).

Member Adesanya motioned to accept the Consent Calendar with the date change of July 14, 2010 to PLN-2010-00049. The Vice Chair seconded the motion. Motion carried 5/0.

REGULAR CALENDAR

1. **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, May 12 and 26, 2010).

Staff reviewed the history of the application. The recommendation was approval. The application was continued to allow the Applicant to develop alternate designs. Modified plans have now been submitted. The storage space indicated now meets Ordinance requirements. Initial Board questions for staff were as follows:

- Where is the street frontage in relation to the units
- Is the proposed storage limited to the back section of the rear unit
- Is the garage on the front unit facing Cherry Way being retained
- How many cars can the rear section of the driveway hold
- How large is the front yard

Staff said according to the plans submitted by the Applicant. The frontage access is on the left side of the property. There is 810 square feet of storage area in the rear unit. The hallway remains open. The two car front garage that faces Cherry Street will be retained. Parking for the rear unit is at the end of the driveway. There is a space for two vehicles. Staff did not measure the front yard, as it is an existing condition. However observation of an aerial photograph of the neighborhood indicates the yard appears to be consistent with other properties in the neighborhood. Public testimony was opened.

Mr. Paul Escobar said the plans were modified to incorporate BZA recommendations given. The passage through the washroom has been eliminated. The storage area is 810 square feet. The front yard is 20 feet. Mr. Escobar told the Board, he has tried to be responsible. He urged them to grant the variance. His goal is to obtain compliance. He would not like to be stuck with an illegal unit. The design retains the storage space in the front half of the rear unit. The tenants would like to continue use of the space a unit, not a garage. The proposal is more convenient for the tenant and less expensive for the property owner. In this economic environment it is difficult to get tenants. It took 6 months to locate the current viable, stable tenants. The tenants in the front unit have been told several times to park inside of the garage.

The Vice Chair pointed out at the last hearing Mr. Escobar was unsure if he could get the front tenant to stop using the garage for storage. They appear to have an inflatable jumper business. She lives down the

street and daily observes multiple vehicles parked in the driveway. Mr. Escobar responded the tenants confirmed the garage is being used for storage. He explained the County had issues with vehicles blocking access the rear section of the driveway. As a result he has gotten the tenants to park two of the four vehicles, on the street. Member Spalding asked if Mr. Escobar had put this request in writing as an addendum to their lease/rental agreement. Mr. Escobar said he would not be opposed if the BZA approved the application. However the BZA is putting him in an awkward position. The tenants may not agree. He did not want tenants to leave. The Vice Chair reminded him it is the responsibility of the property owner to inform tenants of requirements. Conditions of Approval require that access to the driveway be provided. Ultimately it is the property owner's responsibility to comply. The Chair then asked Mr. Escobar where the tenants currently park. Also if the curb on the left of the driveway apron is part of Mr. Escobar's property. Mr. Escobar confirmed the curb was on his property. It is next to the lawn. The tenants do park along the curb. However they have stopped parking in front of the garage door. The next step is to gain further compliance. He thanked the Board for being patient and trying to work with him to resolve the issue. Public testimony was closed.

Member Spalding thought landscaping at the site was minimal. There is a lot of asphalt. Staff said the Zoning Ordinance does not allow more than 50% of the front yard to be paved. The Chair asked staff if continued parking in front of the rear units violated the Garage Conversion Ordinance. Condition E, requires: *or similar improvements and readily accessible from the public-right-of-way*. County Counsel confirmed access must be provided. Access to the garage is through the driveway whether converted or not. The Chair noted the BZA must find that Conditions of the Ordinance can be met. However multiple observations have confirmed access is blocked. She asked staff what constituted verification. Her concern is there may be an issue with future tenants parking in the wrong location. If the property is sold, there is no way to monitor parking. The Vice Chair asked if the Ordinance required the garage be used solely for parking, not for storage. Member Spalding thought a Condition of Approval should be added requiring written notification be provided to the tenants. The homeowner should then provide proof of notification. Her concern was there was no method to confirm compliance of Conditions #3 and #4. Member Peixoto said the landlord has options if tenants do not abide by the rules. One is to find new tenants. Staff explained the application before the Board was not a variance. The Garage Conversion Ordinance is considered a Site Development Review. If the Applicant can meet all the Standards under the Ordinance, the BZA is the decision making body. Once the Applicant meets all of the requirements, there is no need for a variance. The property owner will be sited by Zoning Enforcement if they are in violation. The Ordinance does not specify a vehicle must be parked in the garage. The Fire Code requires that a driveway width of 20 feet remain free and clear for access. The Vice Chair agreed notification of parking location to tenants is the responsibility of the owner. He will have to manage the process. She is satisfied with language in Conditions #3 and #4. Member Peixoto agreed Condition #3 could be enforced. The Chair asked staff to clarify on provided graphics where tenants can park. The Chair said clarification can be added to Condition #4 to specify the restricted parking area. The curb area can be painted red. Member Spalding was concerned a red curb on private property may cause confusion. The Vice Chair believed a red curb might serve as a visual alert. Member Spalding thought the property owner should still be required to provide written proof.

Member Adesanya motioned to uphold the staff recommendation of approval subject to Planning Staff recommendations and Conditions of Approval. Condition #4 shall be modified to state the curb on the left side of the driveway when facing the parcel shall be painted red as a visual reminder, parking is prohibited. **The Vice Chair seconded the motion.**

Member Peixoto asked a question to the motion. He asked how the proposed Condition would ensure enforcement and prevent parking in the driveway. The tenant is currently not obeying rules set forth.

There is no indication the landlord is going to comply. Member Adesaya believed it is a matter for Zoning Enforcement. If the landlord does not comply, Code Enforcement can follow-up on violations. The situation is one that has been in existence. The proposal is viable if the Conditions are followed, if not the landlord can pass violation costs along to the tenant.

The Applicant interjected from the audience, stating Member Peixoto's comment was illegal because there was a vote on the floor. The Chair called for order. She then explained the portion of the Hearing allowing Public Testimony was now closed. Board discussion is allowed.

The Chair re-stated the motion, and called for the question. **Member Adesanya motioned to uphold the staff recommendation of approval subject to Planning Staff recommendations and Conditions of Approval.** Condition #4 shall be modified to state the curb on the left side of the driveway when facing the parcel shall be painted red as a visual reminder that parking is prohibited. **The Vice Chair seconded the motion.**

Members Spalding and Peixoto were not in favor of approval. The motion to approve PLN-2009-00177 passed 3/2.

2. **SEVENTH STEP FOUNDATION, CONDITIONAL USE PERMIT, PLN-2010-00028** - Application to allow operation of a residential care facility for up to 16 beds in an RC (Residential Commercial) District under the Ashland Cherryland Area Specific Plan, located at 827 East Lewelling Boulevard, south side, approximately 250 feet west of Morrill Street, in the unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 414-0026-005-00. **Staff Planner: Christine Greene.**

Staff reviewed the project description. The recommendation was denial. Initial Board questions were as follows:

- Is this a new application
- Is the denial recommendation a result of over saturation of this type facility in the area
- Does the County have a Policy regarding oversaturation
- When was the application submitted

Staff confirmed the application is new. It was submitted on March 3, 2010. The County does not have a Policy regarding saturation. The proposal in the application is not consistent with the General Plan. In addition it is not consistent with Policies adopted by the Board of Supervisor's. Therefore staff is recommending denial. A few years ago there was a prior application submitted by this Applicant for another location. The application was denied by the BZA as a result of oversaturation. In addition the BZA had concerns regarding insufficient supervision, and an invalid State License. The BZA decision was appealed to the Board of Supervisor's. The denial was upheld. Member Spalding believed there was a Policy regarding the over saturation of residential care facilities. Staff clarified there has been discussion of the issue, not an official Policy or Ordinance. The Zoning for the proposed site on Lewelling Boulevard is General Commercial, per the General Plan adopted on March 30, 2010. The previous General Plan designated the area as Residential, and Commercial. The proposed location was formerly a residential care facility under another owner. Member Spalding disagreed with staff regarding Finding #3. She believed granting the use would result in oversaturation therefore the use would materially affect the health and safety of persons residing and working in the vicinity. Staff said oversaturation is a possible conclusion. However if the BZA seeks that conclusion, they must make the determination. Public testimony was opened.

Parole Agent and Unit Supervisor for the East Bay Unit Parole Office Mr. J. Bent testified. The East Bay office is located in Oakland. He previously worked in the Hayward Office. He has known Ron Doyle since 1999. Parolees do better when released if engaged in community programs. He knows residents do not want parolees in the neighborhood or on street corners. However parolees are there living in parent's homes, or on the streets. In the past 11 years the Parole Department has used Seventh Step successfully. The Parole Division would like to see Seventh Step have more available beds. Member Spalding explained the BZA's decision would be based on land use issues, not on the success of drug treatment programs. One relevant issue is location of the facility. Member Adesanya asked Mr. Bent to offer his opinion. Is it better to concentrate facilities in one area or spread them throughout the community? Mr. Bent said when he worked with the State to assign beds. The goal was to give clients access to transportation sources such as bus lines and B.A.R.T. This allows clients to seek employment or access Social Services. The Parole Department likes to have facilities clustered. It is not an issue for them. Agent Bent now works as one of seven parole units. His specialized unit covers all of Alameda County. However the parole office in Hayward focuses on coverage of Hayward, Fremont, San Lorenzo and Castro Valley. Member Adesanya asked if Mr. Bent believed there were too many facilities in the area. Also if there is a correlation with the area a person is in when they are sent to prison, and the location they are sent to when they get out. Agent Bent has a good idea where the facilities are. From the Parole Department's perspective there is not an overconcentration of facilities in Hayward. Most of the treatment providers are concentrated in Oakland, around International Boulevard. The Penal Code requires that parolees return to their County of commitment. Most parolees, 95% return to the environment they originally left. This is to prevent an overload of parolees in any specific County, per the Penal Code. They must stay in that County unless there is an official transfer out. This would require another person to transfer in. This maintains a balance. Member Spalding asked Agent Bent to define the type of parolees that are at Seven Step. The Applicant Mr. Doyle interjected. He will cover that information during his testimony. Mr. Bent continued, stating Seventh Step is a great program. It provides a variety of services, including after care. He will also refer people that need a place to stay while they are waiting for an opening in a rehab program. The Seventh Step program is a huge asset to Hayward. He would not be present supporting the program if he truly did not believe that. Member Spalding reminded Mr. Bent the decision regarding the Condition Use Permit and Variance would be based on land use, not the effectiveness and support of substance abuse programs.

Mr. Ron Doyle told the Board there was no oversaturation of this type of facility in the area. There may be an oversaturation of facilities for the elderly and child care. Seventh Step is the only licensed drug and alcohol treatment facility in Hayward. The need is great. Seventh Step has another small facility on Medford Avenue in Hayward. They have been in operation at the Medford location for 38 years. Mr. Doyle has been with the Organization for 34 years. The Seven Step Foundation fills a need in the community. They would like more than 16 beds but at present this is what they have. The location at Lewelling Boulevard would suit them well. Mr. Doyle has been before the BZA when requesting an expansion of the facility on Medford Avenue. The idea that a new facility will bring more convicts into the area is inaccurate. Convicts already live in the area. They are sleeping under the bridge, or living at Grandma's house. An 85 year old Grandma cannot supervise a 34 year old drug addict. Seventh Step can monitor them. Facility residents volunteer for the Cherryland Association. They go out and pick up debris like old mattress. They volunteer to keep the community vibrant. Each year Seventh Step provides 25 to 30 people for the bi-annual County Clean-Up Events in Cherryland and Ashland and other activities. The Cherryland Association has submitted a letter in support of the proposed location. A representative from the State came to the graduation ceremony for the Medford facility. The representative was not aware the people he mingled with all afternoon were convicts. He said they look like regular guys. The graduates look like sons, and nephews. They have committed crimes but are trying to clean themselves up. Seventh Step has been active for 38 years. There is a zero tolerance for drugs and alcohol. Random testing is done often. Sex offenders and arsonists are not allowed at any of

the Seven Step facilities. The applicants must convince Mr. Doyle they are ready to change their lives. If they cannot, regardless of how they are referred, they cannot stay. Seventh Step is there to support the community. Board questions for the Applicant were as follows:

- How many facilities does Seventh Step have in Hayward
- If residents are asked to leave where do they go
- How did Seventh Step identify this site
- Was the property purchased as a residential care facility

Mr. Doyle said there is one facility in Hayward on 475 Medford Avenue. They would like to open a second facility on Lewelling Boulevard. Seventh Step is the only licensed facility in south Alameda County that takes adult male parolees with drug and alcohol problems. The facility is residential. Residents live, eat and sleep there. Once parolees are in the program, they are referred to the services need such as jobs or mental rehabilitation. There is 40 hours per week of school on how to change their lives. Counselors work to rehabilitate residents to get them to the point where they can re-integrate with society, as productive people. A lot of time is spent on helping them find jobs. There are four programs that help people along their path ranging from 90 days to 6 months. There is Basin Program, Center Pointe Program and a State Dept. of Corrections Program. For example a resident may be under a Department of Corrections program for 3 months. At the end of that time period, he may be extended for an additional 3 months. If the person needs more rehabilitation after that, he can be referred to the Basin Program for additional time. Most people do not stay more than six months. At this point most have been clean and sober for 6 months, and have a job. Typically only two people to three people remain after 6 months out of 32 people. The Seventh Step Foundation operates three Clean and Sober living homes. One home is located across the street from the Medford facility, another on Leona Avenue. This may be a location that graduates end up, if there is room. Residents are still drug tested there as well. All of the Seventh Step houses have a zero tolerance policy for drugs and alcohol. There are other facilities in the area, however there are not drug tested and supervised. There are 25 staff people at the Medford facility. Mr. Doyle, a therapist, a shopper, and administrative assistant. Eleven are graduates from the Seventh Step Program. They are called monitors. They were once addicts that were paroled a long time ago. Some of the residents are referred by the State Department of Parole. They also get referrals from the County. Seventh Step's contract with the State Department of Parole prevents them from accepting sex offenders or arsonists, period. If someone does not pass a drug test, they are put out immediately. Typically they call a friend or relative to pick them up. If the person was placed by the Department of Parole, the parole agent will be notified the resident has been put out of the facility. If necessary for any situation, the Police are called immediately. Mr. Doyle attempted to purchase the property five years ago. The price was twice as high. The property was sold to someone else. The property became available again as an REO. The Board of Directors decided to make an offer for purchase. He knew it was a good deal because of the research completed the last time. The Seventh Step Foundation was started in 1962 by Bill Sands. In 1972 they were know as the East Bay Chapter. Over the years, there were many other chapters around the country, they have now fallen off. To Mr. Doyle's knowledge his Chapter is the one that remains. It was re-named Seventh Step Foundation 10 years ago.

Mr. Richard Hancocks said the testimony of the last hour had been informative however most of it is completely irrelevant to the question before the BZA. The question to be addressed: is the use consistent with the designation in the General Plan for General Commercial. This use is not. Mr. Hancocks is aware the application was submitted prior to final adoption of the Eden Area General Plan on March 30, 2010. However the Plan that is adopted is what must be applied to the application, according to the Hearing process. People in the community have worked very hard for the past seven years to bring about the land use changes that are reflected in the Plan. Among the changes is expansion of the amount of commercial property in the unincorporated area, for the purposes of providing economic development

opportunities. The matter is simple. As the staff report indicates, the use is non commercial. A non commercial use cannot be approved on a commercially designated property. The fact this is inconsistent with the Ashland Cherryland Business District Plan or the Zoning Ordinance is irrelevant. Those documents are now out of compliance with the General Plan. Appellate and State Supreme Courts have held that findings must be made the use is consistent with the General Plan designation. In this case, the use is not consistent with the General Plan. Legally there is no choice but to make the finding, the use is inconsistent with the General Plan. The BZA must deny the application.

Mr. Howard Beckman also came to speak in defense of the Eden Area Plan. In all of his years of community involvement with land use issues, he has never invested so much time in a project. The County was assisted by a terrific consultant, DCE from Berkeley. Initially there was resistance from staff against the concept that was developing. However with a change in Planning staff and a new willingness to accede to the direction set by the community. A forward land use Policy has now been developed. The core of that Plan is to develop sustainability in the unincorporated County. The Plan was done with an eye toward future incorporation. Self determination is part of sustainability. Economics is the core of sustainability. The core concept is the commercial spines that include Lewelling Boulevard. The future potential for commercial development, retail and jobs is fantastic along Lewelling Boulevard. This concept is the policy of the County. It has been adopted by the Board of Supervisor's earlier this year. Mr. Beckman was exceedingly disappointed that the Cherryland Association appears to be ignorant of the policy, and therefore in support of application approval. Mr. Beckman pointed out this is not an opportunity to debate the wisdom of the Eden Plan. It is not a question of the success of the Seventh Step program. Clearly it is successful. These programs are needed. However the decision is based on the use fitting the General Plan. This application is the first test of the General Plan since its adoption by the Board of Supervisor's.

Member Spalding posed a question to staff: is the project inconsistent with Development Standards for Residential Care Facilities adopted by the Planning Commission in 1969. Staff said they would respond during Board discussion.

Architect Ms. Hasta Birt, was hired by Seven Step to prepare their application. She will verify compliance with all relevant Codes and local Regulations to meet approval with Planning, Building and the Fire Department. She understands the General Plan was adopted after the application was submitted. The prior use was General Commercial. However per the Specific Plan and the Zoning Ordinance the site has mixed use zoning of General Commercial and Residential. She has been working closely with the staff Planner. The Planner said primarily the denial recommendation was not based on oversaturation, but non compliance of the land use with the General Plan. The secondary reason given was the project did not meet Design Guidelines for Residential Care Facilities. She was given four criteria. The only Design Criteria the project does not meet is the use is not located in a quiet residential district. It is located on one of the primary arterials. According to the Parole Agent, this mixed use location is probably better. Ms. Birt submitted a copy of the floor plan. The rooms in the structure are very small. The size is practical for a residential facility. She acknowledged sustainability is important but there are not many more practical uses for the space. The space can also be ADA compliant. Ms. Birt runs a business. It would be difficult to run another type of business from the site without space planning the interior. Member Spalding pointed out that one criterion of the Development Standards is that the facility be surrounded by compatible uses. This site is in a Commercial area. Ms. Birt responded the Commercial designation is per the new General Plan. The entire neighborhood is Mixed Use. While at the site she observed a store across the street. Per the site plan plenty of open space is provided at the rear which is required by Standard #D. Member Adesanya asked why Ms. Birt recommended the application go forward given it is not in compliance with the General Plan. Ms. Birt responded the project does comply with the Building Code and CA. Energy Code which deals with ingress and egress, fire protection etc. Member Asesanya asked Ms. Birt how the project complied with the Zoning and Development Code.

Ms. Birt stated the project did comply with the Zoning Code and Specific Plan, when she was hired the General Plan had not been adopted. This is why the Applicant is requesting a Conditional Use Permit. Ms. Birt is advising the Applicant to move forward with the project. The floor plan is suited for a residential care facility. The Applicant is willing to meet any relevant upgrades and requirements of Fire, Public Works and Planning. They cannot move forward with upgrades until the use permit is approved. Member Spalding asked if Ms. Birt was told the General Plan was pending or in draft form when she came to the project. Ms. Birt confirmed she was aware the present General Plan was pending.

Licensed Contractor Mr. Ron Germann was hired on retainer to ensure work done at the facility would comply with Planning, Fire and Building Codes. After the approval process is complete, Mr. Germann will pull required permits. He knows Mr. Ron Doyle, and is in recovery himself. He has witnessed others go through the process. He is unfamiliar with all of the legal ramifications but believes the facility is needed in the community. He is aware that prior to Mr. Doyle purchasing the site. It was used as a treatment center. The prior owners did get building permits. The permits are all related to this use. Mr. Germann confirmed there is a vacuum store located across the street.

Pastor William Grajeda told the Board that Ron Dole holds the line. He will not accept any mess, drugs or alcohol. There are currently 100 people waiting for a bed at a facility. Pastor Grajeda runs a facility in Oakland. He is co-founder of Gamble Institute. His foundation works with parolees too. He started with 3 clients. Now he has 72. He is a counselor, and case manager. There is a common denominator with all of the stories you hear. If the clients did not have the house / facility that they are in, they would be on the streets. Parolees get released to the Cities they are from. Oakland goes to Oakland, Hayward to Hayward. The destination is set prior to the person's release from prison. Pastor Grajeda holds parolees hands through the process. Once he was a parolee. He has been clean and sober for 14 years, after spending 32 years in the penal system. People need a place to go when they get out. Although they got into trouble, they owe society. He is now giving back. People that get out of Seventh Step give back to the community. Pastor Grajeda supervises one of the Seventh Step Facilities on Leona Drive. Supervision is very strict. He is a graduate of the Program. He is not knowledgeable about zoning. However he knows more beds are needed. Eleven people have gone on to higher education and jobs. People that succeed, bank in the community and get hired in programs. He will not give money to someone he sees asking for money on the street to drink. They could be productive in a program like Seventh Step. If the program is allowed to go through, it will help the community.

Ms. Veronica Becera is a member of the Neighborhood Watch Program. She lives around the corner, and had questions about the facility. Ms Becera also wanted to inform the Board there were several schools within a one mile radius of the proposed facility: Saint Johns, San Lorenzo High School, Edendale Junior High and an additional Elementary School. Ms. Beccera's questions were as follows:

- When is the facility scheduled to open
- Was the home purchased as an REO
- How was the selected location chosen
- Will the residents and have a curfew

The Chair told Ms. Becerra the location was formerly a residential care facility. Opening a facility will depend on obtaining approval from the BZA. The rest of Ms. Becerra's questions are related to facility operations, and should be posed to the Applicant. Member Peixoto commented he knows the program has strict rules based on observation of their facilities throughout the years. Pastor Grajeda interjected to confirm that curfew would be at 10:00 p.m. Program Director Ron Doyle reiterated rules are strict at their facilities. Residents are given drug tests at Noon. They are subject to further testing throughout the day. He was told by the staff Planner the reason staff recommended denial is the project did not comply with

the 1969 Residential Care Standards and the General Plan. Because of this, the Planner had no option. However Mr. Doyle believes the project does comply with the Specific Plan.

Ms. Hasta Birt, project architect asked to readdress the Board. As an architect she is advising Mr. Doyle how to address the project in relation to the General Plan. Applying for a Conditional Use Permit is a proper process. Member Adesanya explained, a Conditional Use Permit is not a Variance from the General Plan. The only way to develop a project that is not in compliance with the General Plan is a General Plan amendment. Ms. Birt believed pursuit of the Conditional Use Permit was the right process. Public testimony was closed.

Member Peixoto asked staff for more background history regarding use permits for the site. Variance, V-1146 was granted in conjunction with Conditional Use Permit, C-8575. However the BZA denied CUP-8575. Staff said the Board of Supervisors approved the use permit on appeal. County Counsel said the General Plan takes the highest priority therefore the use is inconsistent with the General Plan. The Specific Plan is now out of compliance with the General Plan. It would have to be amended in order to be consistent. Conditional Use Permit, C-8575 is now expired. The conditions of the Variance are only active if the use permit is active.

Member Spalding agreed with Tentative Finding #4. Testimony given also confirms the General Plan as General Commercial was pending at the time the application was submitted. This application is a good example as to how the current State law regarding residential care facilities should have some relation to parolees. The local Standards of Residential Care Facilities are not consistent with the needs of parolees, like transportation. This might be an example of how the State Legislature can develop policies that address the fact the existing permitting process is not meeting this constituency's needs. For example, Delancy Street in San Francisco is located in a Commercial District, yet it fits into that unique neighborhood.

Member Adesanya asked Counsel if the use could be Grandfathered-in. Counsel said that is not an option. The General Plan that is in effect at the time of hearing and/or approval should be consistent. Member Adesanya asked if a specific law or ordinance was applicable. Counsel responded there was no specific law but a general rule. Member Adesanya did not believe that had always been the case.

The Vice Chair said she lives in the neighborhood. She acknowledged Seven Step has developed good will. The community is well aware of the good work however the issue before the Board is a land use issue.

Member Adesanya said it was the Applicant's responsibility to prove the findings. She did believe that Tentative Finding #4 could not be made. However she disagreed with staff's position the use did not meet Standards for Development of Residential Care Facilities (1969). There is precedence at this specific site. Residential care facilities have been approved at this location. In her opinion the fact the facility is not in a quiet residential neighborhood, is irrelevant. However given County Counsel's explanation the General Plan in effect at the time of the hearing is what must be used. Finding #4 cannot be made. If not for this she believes Finding #4 could be supported.

Member Spalding pointed out this is a shortcoming of the Mixed Use zoning. She believes staff is correct. This is also consistent with the prior BZA denial of a project at this site. She appreciates the fact the Applicant states the facility is unique, however the oversaturation of care facilities in the area also considers there is a specific or more intense use. There may be a different consideration for elder care. However the staff recommendation an overconcentration exists, is correct. Finding #4 as drafted by staff is correct.

Member Spalding motioned to uphold the staff recommendation of denial. The use is contrary to specific clauses or performance standards established for District in which it is to be considered. Member Peixoto seconded the motion.

The motion to deny of Conditional Use Permit, PLN-2010-00028 Seventh Step carried 5/0.

3. **ALAN CORMIER, CONDITIONAL USE PERMIT, PLN-2010-00069** – Application to allow continued operation of a dog daycare, training, and overnight boarding facility for up to 20 dogs, in an R-1-L-BE-SU-RV (Single Family Residence with limited Agricultural Uses, 5 Acre Minimum Building Site Area, Secondary Unit with Recreational Vehicle Parking Regulations) District, located at 6776 Crow Canyon Road, west side, approximately 0.57 miles south of Norris Canyon Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 085-1700-003-06. **Staff Planner: Jeff Bonekemper.**

Staff announced the Applicant could not be present today. A request has been submitted for a continuance to the July 28, 2010 Hearing. Public testimony was opened. There were no requests to speak. Public testimony was closed.

Member Spalding motioned to continue PLN-2010-00069 to July 28, 2010. The Vice Chair seconded the motion. Motion carried 4/0. Member Adesanya briefly stepped away from the dais, and did not participate in the vote.

APPROVAL OF MINUTES: Member Adesanya motioned to accept the Minutes of May 26, 2010 as presented. The Vice Chair seconded the motion. The motion carried 4/0. Member Spalding was not present at the May 26, 2010 Hearing, therefore she did not participate in the vote.

The Vice Chair motioned to accept the Minutes of June 9, 2010 as presented. Member Peixoto seconded the motion. Motion carried 4/0. Member Adesanya was not present at the June 9, 2010 Hearing, therefore she did not participate in the vote.

STAFF COMMENTS & CORRESPONDENCE: Staff offered no comments.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: Board Members asked if there were any outstanding Board of Supervisor's appeals. Staff responded, Variance, V-12107 ANTHONY & MARTHA CASSINI was heard again on June 8, 2010. After discussion of the case, Alameda County Public Works may consider issuing an encroachment permit for the fence. Fence height was not an issue from their perspective. Staff will update the BZA on the outcome of further discussions.

Member Spalding asked County Counsel why Code Enforcement was not able to pursue violations on Railroad owned properties. Code Enforcement informed the Board they cannot trespass, and are unable to obtain permission from Southern Pacific. Member Adesanya said although she was unsure of the exact legislation. In her experience as a Planner, Railroads have a higher level of protection. Member Spalding asked Counsel to check applicable legislation. Perhaps there is an exception that allows access for health and safety issues.

The Chair asked staff to follow up with the Redevelopment Agency regarding presentation of a report listing current projects. A similar report was presented at the San Lorenzo Village Homes Association. Staff will schedule Redevelopment for a follow-up presentation, in front of the BZA.

The Chair asked if the July 14, 2010 Hearing would be cancelled if the Mehserle verdict is announced. Staff will verify precautionary safety plans and contact Board Members.

Member Adesanya will not be present at the July 14, 2010 Hearing.

ADJOURNMENT: There being no further business, the hearing adjourned at 4:15 p.m.

ALBERT LOPEZ - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS