

**MINUTES OF MEETING**  
**EAST COUNTY BOARD OF ZONING ADJUSTMENTS**  
**NOVEMBER 9, 2006**  
**(APPROVED JANUARY 25, 2007)**

The meeting was held at the hour of 1:30 p.m. in the City of Pleasanton Council Chambers, 200 Old Bernal Avenue, Pleasanton.

**FIELD TRIP: 9:00 a.m.**

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

**OTHERS PRESENT:** Jana Beatty, Senior Planner

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

1. **STEVE POWELL/ALFRED RHEINHEIMER, CONDITIONAL USE PERMIT, C-8291** ~ Application to allow a winery with tasting room, art and event center and 38 parking spaces, in an "A" (Agricultural) District, located at 5143 Tesla Road, south side, approximately 330 feet east of Mines Road, Livermore area of unincorporated Alameda County, bearing County Assessor's Parcel Number: 099A-2340-002-00.
  
2. **ERNEST and BEVERLY TRUTNER, VARIANCE, V-12039 and BOUNDARY ADJUSTMENT, BA-21-06** ~ Application to construct two single family homes 30 feet in height where 25 feet is maximum, and provide a 23 foot front yard, a five foot and 20 foot total side yards where 30 feet and 15 feet front and side yards are minimum respectively, in a R-1-B-10 (Single Family Residential, 10,000 square feet Minimum Building Site Area) District, located at 3631 Vine Street, north side, approximately 185 feet west of Linden Road, Pleasanton area of unincorporated Alameda County, bearing Assessor's Parcel Numbers: 946-1704-009-01 and 946-1704-009-02.

**REGULAR MEETING: 1:30 p.m.**

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

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

There were approximately sixteen people in the audience.

**CALL TO ORDER:** The meeting was called to order by the Chair at 1:35 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:** None.

**CONSENT CALENDAR:** There are no items on the Consent Calendar.

**REGULAR CALENDAR:**

1. **STEVE POWELL/ALFRED RHEINHEIMER, CONDITIONAL USE PERMIT, C-8291** ~ Application to allow a winery with tasting room, art and event center and 38 parking spaces, in an "A" (Agricultural) District, located at 5143 Tesla Road, south side, approximately 330 feet east of Mines Road, Livermore area of unincorporated Alameda County, bearing County Assessor's Parcel Number: 099A-2340-002-00. (Continued from September 29, October 27, December 15, 2005; January 12, February 22, March 30, May 25, June 29, August 24 and September 28, 2006).

Ms. Beatty presented the staff report.

Public testimony was called for. Steve Powell, applicant, described his compliance progress. Final signature/permit has been obtained from Environmental Health, he is working on identifying the Building Department requirements and working together with PGE on the electrical requirements. He has completed all requirements of each department. Mr. Powell urged an approval adding that he would agree to a continuance after a final signature is obtained from the Building Department. There are other similar winery and winery-related uses in the area for which he had provided addresses to staff. The seven existing similar facilities do not have a current CUP. His application has been pending for three years and has been in operation for two years. Mr. Powell indicated that he has not signed the CEQA papers because he does not want to pay \$200 for each event.

Michael Tuuri, attorney representing Mr. Powell, further explained that Mr. Powell has not signed the CEQA documents because of the unlawful conditions that have no basis. Although Mr. Powell is promoting winery in the valley, he felt that staff wants to impose conditions and the requirement of an Administrative CUP. Mr. Powell has lost a lot of time and money. In response to Member Gosselin, Mr. Tuuri said he wished that this Board had been involved from the beginning of the process. He agreed that Mr. Powell had outstanding permitting issues initially and although he is doing all to rectify the situations, he felt that the County is trying to punish Mr. Powell.

Judy McPherson, adjacent property owner, requested a denial. This process has been pending for a very long time. Although the Applicant is requesting an art event/wedding center supporting agriculture, he held a funeral memorial event last Friday. She was not sure how this is related to agriculture. Mr. Powell is also selling wine and has had no revenue loss as he has continued to hold events with advertisements in the local papers.

Public testimony was closed. Member Gosselin noted that the wine tasting room is permitted and the supporting uses/events are appropriate although there is an excess of similar uses in this area. The issues are the uses beyond the description of an art/event wedding center. The Chair noted that he could not make the third finding in the affirmative. His concerns included the road (safety), drinking, parking, existing code violations and the impact on the neighbors that have not been addressed. There is little evidence that the conditions will be met. Member Gosselin suggested limiting the type of activities in a week pointing out that tents do shape the South Livermore area.

The Chair made the motion to deny the application and Member Goff seconded which carried unanimously.

2. **RIVER'S END MARINA, CONDITIONAL USE PERMIT, C-8438** ~

Application to allow modification of an existing Outdoor Recreation Facility so as to enclose and augment marina services including two new buildings of 6,000 square feet and 2,500 square feet, in an "A" (Agricultural) District, located at 6020 Lindemann Road, east side, approximately 0.6 mile north of Byron-Bethany Road, Unincorporated Byron area, Assessor's Parcel Numbers: 99B-7150-012-00; 99B-7150-004-09, 99B-7150-004-08 and 99B-7150-004-07. (Continued from August 24 and October 26, 2006).

Ms. Beatty presented the staff report and in response to the Chair confirmed that no environmental work has ever been prepared for this site.

Public testimony was called for.

Mick Lamb said he was available to answer questions. Ron Mize, applicant, said he would like to store additional boats if possible as there is a demand/waiting list. In response to Member Gosselin, he explained that the covered structure would mainly be for repairs and he was aware of the 20,000 square foot limitation. Mr. Lamb added that if additional space is needed, additional space is available on the adjacent property. The objective for this application is to provide services on-site and enhance the customer base. Gasoline storage is not underground but in an above-the-ground facility. At the request of the Chair, staff explained the process and requirement of a Negative Declaration. Mr. Mize indicated that although not submitted, a soils report has been completed already.

Public testimony was closed. The Chair said that he was in support of a Negative Declaration to reduce impacts in future. Member Gosselin agreed adding that although he did not want to see a delay, he would like an assurance that the use will not impact the waterway. Member Goff noted that this would be a positive improvement to the property and boating for the area.

Public testimony was re-opened. Ron Allison, dock owner and partner, confirmed that all permits have been obtained for hazardous waste and a Hazardous Map Plan is available; compliance with oil recycling requirements; clearance from the Fire Department has been obtained; and the property has been cleaned up. Public testimony was re-closed.

The Chair indicated that although he supported all other aspects of the application, he was still supporting a Negative Declaration. Member Gosselin felt that the project was categorically exempt and, as such, made the motion to approve the application as recommended by staff. Member Goff seconded. Motion carried 2/1 with the Chair dissenting.

3. **BRYAN FORRESTER, VARIANCE, V-12018** ~ Application to approve as a building site a lot with 90.87 feet of effective lot frontage where 150 feet is required, in a R-1-L-B-E (Single Family Residence, Limited Agricultural Uses, 5 acre Minimum Building Site Area) District, located at the site behind 987 Kilkare Road, east side, approximately 1.2 miles north of intersection with Foothill Road, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Numbers: 096-0530-009-00; 096-0531-003-00; 096-0531-004-00 and 096-0531-005-00, 096-0531-06, 96-0531-11, 96-531-12 and a portion of 96-531-18. (Continued from August 24, 2006).

Ms. Beatty presented the staff report noting staff's recommendation for a denial.

No public testimony was submitted. Member Gosselin stated that in response to his request, the

representative did provide a copy of the easement. He had geological stability concerns and he felt that there was inadequate information available to make a decision. The Chair agreed adding that an approval will affect the quality of life for the adjacent property owner. Member Goff made the motion for a denial and the Chair seconded. Motion carried unanimously.

4. **HAL MILLER, VARIANCE, V-12020** ~ Application to approve as a building site an 80-acre parcel with 50 feet of effective lot frontage where 750 feet is required, in an "A" (Agricultural) District, located at the terminus of Lupin Way, south side, approximately one mile east of Greenville Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099A-1750-006-03.

Ms. Beatty summarized the staff report. Member Gosselin noted that there had been discussions regarding the Williamson Act issues at the last hearing and asked if there have been any further discussions with County Counsel and if a copy of Mr. Miller's contract was available. Staff replied no adding that she was not aware of any new discussions with County Counsel.

The Chair announced a break. Meeting reconvened and public testimony was called for. Mr. Miller said he had the same comments as the last hearing.

Public testimony was closed. The Chair felt that the application could be approved based on the contract. Member Gosselin discussed the possibility of an approval with a condition that if the Contract has restrictions on the property, the matter will come before this Board regarding his agricultural plans. Staff noted that all Measure D requirements still exist and although the County has no Design Review Process, the proposal will go through a Site Development Review process.

The Chair made the motion to approve the application with an additional condition that the matter will be reheard by this Board if it is determined that agricultural uses are required. And if under the Contract, a house is allowed, this condition will be deleted. Member Gosselin seconded and the motion carried 3/0.

5. **ERNEST and BEVERLY TRUTNER, VARIANCE, V-12039 and BOUNDARY ADJUSTMENT, BA-21-06** ~ Application to construct two single family homes 30 feet in height where 25 feet is maximum, and provide a 23 foot front yard, a five foot and 20 foot total side yards where 30 feet and 15 feet front and side yards are minimum respectively, in a R-1-B-10 (Single Family Residential, 10,000 square feet Minimum Building Site Area) District, located at 3631 Vine Street, north side, approximately 185 feet west of Linden Road, Pleasanton area of unincorporated Alameda County, bearing Assessor's Parcel Numbers: 946-1704-009-01 and 946-1704-009-02.

Ms. Beatty summarized the staff report. The Chair pointed out that City of Pleasanton's design review was not included in the Conditions of Approval and requested set back information. Staff explained and recommended using the language under Response to Referrals, City of Pleasanton for a Condition of Approval.

Public testimony was called for. Beverly Trutner, co-applicant, explained that they have been working with both the County and the City; they had no concerns regarding the annexation and that the orientation of lot 2 is towards the street as a pr-annexation requirement. Parcels 1 and 3 have been served by the easement and they were requesting the same for Parcel 2. Initially, there had been two entrances from Vine Street and they would prefer to retain both as the end of the street is used for parking. The Chair

discussed the City's Leed Silver building guidelines.

Public testimony was closed. The Chair said he had access issues and he was aware of the issue of street parking. He was also not sure of the rear yard setback of the adjacent property. Ms. Trutner pointed out that a 15 foot side yard setback on both parcels 1 and 2 will be provided. The Chair recommended deletion of Condition #4 to allow access from both easement or from Vine Street and an additional condition reflecting that the Applicant meet the City's Leed Silver building guidelines. The Applicant agreed.

The Chair made the motion for an approval for the variance per staff recommendation with the following modifications: 1) Condition #4 be deleted; an additional condition to reflect that the homes meet City's Leed Silver building guidelines or equivalent; and side yard setback on the western boundary for both parcels 1 and 2 be 15 feet. Member Gosselin seconded and the motion carried unanimously.

**Approval of Minutes** – Member Gosselin made the motion to approve October 26<sup>th</sup> Minutes as submitted. The Chair seconded and the motion carried 3/0.

**STAFF COMMENTS & CORRESPONDENCE:** Ms. Beatty reported that no recent application for an expansion has been received for the Mines Road area; she did not have a response on Member Gosselin's request for the role of SRC nor an up-date on the idea of presenting applications to the Board in the early stages. Member Gosselin suggested perhaps a timeline. Staff explained that currently there is flat fee for the CUP and Variance applications adding that perhaps a timeline could allow for increased billing. Member Gosselin pointed out that it would be beneficial to the Applicant and provide options at an early stage. Staff said that she would check with the Planning Director. Regarding the issue on Dagnino Street, she would check with Zoning Enforcement. The December 14<sup>th</sup> meeting has been cancelled.

**CHAIR'S REPORT:** None.

**BOARD ANNOUNCEMENTS, COMMENTS AND REPORTS:** None.

**ADJOURNMENT:** There being no further business, the hearing was adjourned at 4:10 p.m.

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**CHRIS BAZAR - SECRETARY**  
**EAST COUNTY BOARD OF ZONING ADJUSTMENTS**