

MINUTES OF MEETING
EAST COUNTY BOARD OF ZONING ADJUSTMENTS
JANUARY 24, 2008
(APPROVED MARCH 13, 2008)

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: Member Larry Gosselin, Chair.

MEMBERS ABSENT: Members Jon Harvey and Jim Goff.

OTHERS PRESENT: Jana Beatty, Senior Planner

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

1. **NSA WIRELESS, INC/OSBORNE, CONDITIONAL USE PERMIT, C-8641**
~ Application to allow continued operation of a radio transmission facility in an “A” (Agricultural) District, located at 11705 North Flynn Road, west side, approximately ½ mile south of I-580, Livermore area of unincorporated Alameda County, bearing Assessor’s Parcel Number: 099A-1785-001-08. **Staff Planner: Pat Anekayuwat**

2. **CROWN CASTLE/DERKAS/Franco, CONDITIONAL USE PERMIT, C-8665** ~ Application to allow continued operation of a telecommunications facility in an “A” (Agricultural) District, located at 7820 Vallecitos Road, south side, approximately one mile east of I-680, Sunol area of unincorporated Alameda County, bearing Assessor’s Parcel Number: 096-0365-002-05. **Staff Planner: Howard Lee**

3. **CROWN CASTLE/DERKAS/KIMBRO, CONDITIONAL USE PERMIT, C-8666** ~ Application to allow continued operation of a telecommunications facility in an “A” (Agricultural) District, located at 5810 Mission Road, west side, approximately 1.2 miles north of Vargas Road, Sunol area of unincorporated Alameda County, bearing Assessor’s Parcel Number: 096-0056-008-12. **Staff Planner: Howard Lee**

4. **SPRINT-NEXTEL/TOM DERKAS, CONDITIONAL USE PERMIT, C-8667** ~ Application to allow continued operation of a telecommunications facility in an “A” (Agricultural) District, located at 4011 Vasco Road, north side, approximately 1.8 miles northeast of Dalton Avenue, Livermore area of unincorporated Alameda County, bearing Assessor’s Parcel Number: 099B-4901-002-03. **Staff Planner: Howard Lee**

5. **USA EXPLORATION and PRODUCTION, LLC., CONDITIONAL USE PERMIT, C-8688** ~ Application to allow continued operation of an oil production facility, in an “A” (Agricultural) District, located at 8617 Patterson Pass Road, south side, approximately ½ mile east of Greenville Road, Livermore area of unincorporated Alameda County, bearing Assessor’s Parcel Number: 099A-1650-003-08. **Staff Planner: Jeff Bonekemper**

6. **SPRINT PCS/SWANSON, CONDITIONAL USE PERMIT, C-8689 ~** Application to allow continued operation of a telecommunication facility in an "A" (Agricultural) District, located at 2980 Vallecitos Road, east side, one mile southwest of Vineyard Avenue, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 950-0007-005-09. **Staff Planner: Jeff Bonekemper**
7. **SPRINT PCS/SWANSON, CONDITIONAL USE PERMIT, C-8691 ~** Application to allow continued operation of a telecommunications facility in a R-1-L-B-E (Single Family Residence, Limited Agriculture, 5 acre Minimum Building Site Area) District, located at 1100 Lambeth Road, approximately 660 feet north of Farnsworth Drive, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099-0015-020-08. **Staff Planner: Jeff Bonekemper**
8. **JOHN SUTTON/THE WINE GROUP, LLC, CONDITIONAL USE PERMIT, C-8710 ~** Application to allow winery-related activities including hosting indoor and outdoor charitable, non-profit, civic and community oriented events in and around an existing structure, in an A-CA (Agricultural, Cultivated-Agriculture) District, located at 4590 Tesla Road, north side, approximately 500 feet east of South Livermore Avenue, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099-1200-001-00. **Staff Planner: Jeff Bonekemper**
9. **DENIS VAN DERA, VARIANCE, V-12088 ~** Application to allow expansion of a residence, a non-conforming use without frontage on an approved County road, in an 'A' (Agricultural) District, located at 9911 Foothill Road on G Road, south side, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 096-0290-001-03. **Staff Planner: Andrew Young**

REGULAR MEETING: 1:30 p.m.

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

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

There were approximately twenty-one people in the audience.

CALL TO ORDER: The meeting was called to order by the Chair at 1:30 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.

Micahdale Brock, property owner at 1880 Almond Avenue, in reference to #9 on the Regular Calendar, complained and asked why the lights are on 24 hours. The Chair advised him that the issue could be discussed with the application under the Regular Calendar.

ANNOUNCEMENTS BY THE CHAIR: The Chair announced that all the cell site applications, 2, 3, 4, 5, 7, 8, will be moved to the Consent Calendar, to be continued for a month, to allow staff to synchronize all

co-locating applications so as to not burden one carrier. Larry Daniel, Sprint/Nextel, explained that their site is a stand-alone facility although there are numerous towers. Rochelle Swanson, Sprint PCS, (items 7 and 8) concurred with the Board's recommendation of synchronization adding that this would be helpful to the carriers and a continuance will not constitute any hardship. Mr. Derkas said that although he understood the Board's intention, he requested approval of his applications. Member Harvey, in reference to item #4, C-8666, noted the potential of some sort of camouflage and the lack of a site photograph for item 7, C-8689.

CONSENT CALENDAR:

1. **BOSCO and GERARDA STOCKING, WILLIAM SPEER, JR. and CLAUDE HENSLEY, VARIANCE, V-11924** – Application to modify a nonconforming use (commercial use in an area designated by the General Plan as WM) so as to operate an event center with on-site alcohol sales, in a Water Management (ECAP) District, located at 11984 and 11986 Main Street, south side, end of Kilkare Road, unincorporated Sunol area of Alameda County, bearing Assessor's Parcel Number: 0096-0140-002-07. (Continued from June 23, July 28, September 29 and December 15, 2005, May 25, August 24 and October 26, 2006, January 25, March 22, June 28, September 27 and November 8, 2007; to be continued to March 27, 2008). **Staff Planner: Shahreen Basunia**
2. **FOSCALINA/LAMB SURVEYING, INC., VARIANCE, V-12064** ~ Application to approve as a building site one parcel reduced in area from the required 100 acres to 39.82 acres and a boundary adjustment between two parcels, in an "A" (Agricultural) District, located at 3073 Cross Road, west side, approximately 0.3 mile south of Patterson Pass Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099A-1750-004-00. (Continued from May 24, June 28, August 23, September 27, October 25 and December 13, 2007; to be continued to March 27, 2008). **Staff Planner: Jana Beatty**
3. **NSA WIRELESS, INC/OSBORNE, CONDITIONAL USE PERMIT, C-8641** ~ Application to allow continued operation of a radio transmission facility in an "A" (Agricultural) District, located at 11705 North Flynn Road, west side, approximately ½ mile south of I-580, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099A-1785-001-08. **Staff Planner: Pat Anekayuwat.** *(Moved from the Regular Calendar)*
4. **CROWN CASTLE/DERKAS/Franco, CONDITIONAL USE PERMIT, C-8665** ~ Application to allow continued operation of a telecommunications facility in an "A" (Agricultural) District, located at 7820 Vallecitos Road, south side, approximately one mile east of I-680, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 096-0365-002-05. **Staff Planner: Howard Lee.** *(Moved from the Regular Calendar)*
5. **CROWN CASTLE/DERKAS/KIMBRO, CONDITIONAL USE PERMIT, C-8666** ~ Application to allow continued operation of a telecommunications facility in an "A" (Agricultural) District, located at 5810 Mission Road, west side, approximately 1.2 miles

north of Vargas Road, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 096-0056-008-12. **Staff Planner: Howard Lee** (*Moved from the Regular Calendar*)

6. **SPRINT-NEXTEL/TOM DERKAS, CONDITIONAL USE PERMIT, C-8667** ~ Application to allow continued operation of a telecommunications facility in an "A" (Agricultural) District, located at 4011 Vasco Road, north side, approximately 1.8 miles northeast of Dalton Avenue, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099B-4901-002-03. **Staff Planner: Howard Lee.** (*Moved from the Regular Calendar*)

Member Goff requested an up-date on the Williamson Act Contract. Ms. Beatty replied that the RFP has gone out for a consultant. *Member Harvey made the motion to approve the modified Consent Calendar, including Regular Calendar items 2, 3, 4, 5, 7 and 8 and Member Goff seconded. Motion carried unanimously.*

REGULAR CALENDAR:

1. **NICA METALS, CONDITIONAL USE PERMIT, C-8398** ~ Application to allow continued operation of a metal recycling facility, in a M-2 (Heavy Industrial) District, located at 101 N. Greenville Road, east side, approximately 712 feet south of Front Road, Livermore area of unincorporated Alameda County, bearing County Assessor's Parcel Number: 099B-5100-001-33. (Continued from March 30, April 27, May 25, June 29, July 27, September 28, October 26 and December 14, 2006, and January 25, March 22, April 26, May 24, June 28, August 23, November 8 and December 13, 2007). **Staff Planner: Andrew Young**

Staff presented the staff report including the update on the signalization issue, noted the lack of the owner's response on progress to the previous conditions; the inclusion of the most important conditions on Page 7; and also noted that the Board had requested the presence of the landowner.

Public testimony was called for. Ben Gibbons, representing the landowner, stated that the property has been in his family since 1965 and concurred with staff recommendation. In reference to the signalization issue, the southern end was part of the condemnation proceedings and the entrance was approved to facilitate egress to the property many years ago. Since this is his mother's only source of income, they, including Nica Metals, are willing to do all to be in compliance, or they will find another use for the property. Mr. Gibbons urged an approval.

Public testimony was closed. Member Goff expressed surprise at the absence of the Applicant noting that the matter was continued in September for 60 days and this is January with no new progress. Member Harvey pointed out that extensions have been granted continuously and requested clarification on the revocation process. The Chair said he could not see changes with compliance in future. *Member Goff made the motion to deny the application and Member Harvey seconded. Motion carried unanimously, 3/0.*

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This item was moved to the Consent Calendar, to be continued.

3. **CROWN CASTLE/DERKAS/Franco, CONDITIONAL USE PERMIT, C-8665 ~** Application to allow continued operation of a telecommunications facility in an "A" (Agricultural) District, located at 7820 Vallecitos Road, south side, approximately one mile east of I-680, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 096-0365-002-05. **Staff Planner: Howard Lee. *This item was moved to the Consent Calendar, to be continued.***
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Ms. Beatty presented the staff report noting that staff is recommending that the bond requirement be waived as it is required by the State.

Public testimony was called for. John Castellucci, representing USA Exploration, said he was available to answer any questions. In response to Member Goff, he indicated that the Gross family owns the property and has expressed no objections. This property is adjacent to the one approved for another similar facility approved at the last meeting.

No other testimony was submitted. Public testimony was closed. Member Harvey asked if both permits

have similar conditions of approval and will expire simultaneously. Staff replied yes to the expiration date but asked if the Board would like to include the condition of undergrounding the pipes. *Member Harvey made the motion to approve the application and Member Goff seconded.* Public testimony was reopened. Mr. Castellucci confirmed that such a condition would not be a problem pointing out that it was part of the previous permit. About 90% of the pipes are already buried and those few on top are not in an area where any digging occurs. Public testimony was re-closed. *Motion to approve as recommended passed unanimously.*

7. **SPRINT PCS/SWANSON, CONDITIONAL USE PERMIT, C-8689** ~ Application to allow continued operation of a telecommunication facility in an "A" (Agricultural) District, located at 2980 Vallecitos Road, east side, one mile southwest of Vineyard Avenue, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 950-0007-005-09. **Staff Planner: Jeff Bonekemper.**

This item was moved to the Consent Calendar, to be continued.

8. **SPRINT PCS/SWANSON, CONDITIONAL USE PERMIT, C-8691** ~ Application to allow continued operation of a telecommunications facility in a R-1-L-B-E (Single Family Residence, Limited Agriculture, 5 acre Minimum Building Site Area) District, located at 1100 Lambeth Road, approximately 660 feet north of Farnsworth Drive, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099-0015-020-08. **Staff Planner: Jeff Bonekemper**

This item was moved to the Consent Calendar, to be continued.

9. **JOHN SUTTON/THE WINE GROUP, LLC, CONDITIONAL USE PERMIT, C-8710** ~ Application to allow winery-related activities including hosting indoor and outdoor charitable, non-profit, civic and community oriented events in and around an existing structure, in an A-CA (Agricultural, Cultivated-Agriculture) District, located at 4590 Tesla Road, north side, approximately 500 feet east of South Livermore Avenue, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099-1200-001-00. **Staff Planner: Jeff Bonekemper**

Ms. Beatty presented the staff report and pointed out that the Applicant, during the Field Trip, had confirmed that a total of 10-12 charitable events will be held annually and only the small outside area will be used for outside activities. Member Goff requested clarification between an Administrative CUP and a CUP and Member Harvey asked if the subject of lighting is included in staff analysis. Staff replied that she was unsure of the issue, otherwise a related condition could be imposed.

Public testimony was called for. Louis D'Ambrosio explained that there is a need as expressed by the community. He was unaware of any lighting issue which could perhaps be on the other parcel. He also submitted two maps of the facility. Member Harvey asked if he would like to include non-charitable events. Mr. 'Ambrosio indicated that he was not prepared to address this point pointing out that profit events are held on the other parcel. In response to Member Goff, he stated that the facility can hold 168 people maximum, seated is 68-70 for dinner events, per Fire Department.

Micahdale Brock, 1880 Almond Avenue, said he was not opposing the proposal but had noise concerns, which have continued till midnight. Light is another major concern as he is the closest neighbor and he submitted photographs in support. The neighbors including him do not have any contact number for concerns/complaints. At Member Harvey's request, he pointed out the location of his property. His other concerns included over-flow parking (closest to the vineyards), dust and noise. Mr. Brock requested a cut-off time at night and felt that the effects will be evident after a few events.

Alex Mihalka, property owner at 2075 Buena Vista Avenue, stated that he is in support of amplified music during the very-public events such as Wine Harvest Festival, etc which stops at 5pm. He has lived in this area for 25 years and has been awakened at 1:30pm from loud music. He was not concerned whether the events are charitable or not but only with indoor amplified music. Mr. Mihalka further read a petition signed by thirty other neighboring property owners and one neighbor, Gail Shearer/John Fletcher, who had submitted their own letter. Both indicate support of the proposal only if Condition 8 and 9 are included as Conditions of Approval.

Jim Ryan, 2133 Research Drive, Estate Manager, Concannon Winery, pointed out that he is on site 6-7 days a week and their toll-free number is in the phone book. He was willing to be the contact person for the community. The lights, he explained, located on the tank farm are being used more than usual due to the construction, after which the tower will be removed. The lighting during the event will be less than the production lights. Amplified music will be during the daylight hours, for 10-12 events annually. The Chair asked for the possibility of installing blinds in the bottling facility. Mr. Ryan explained that this is a SMART building, capable of shutting itself down (programmable), but they are going through the initial stages. Nevertheless, he added, the last person leaving the tank farm can turn off the light or could be programmed to turn off at the end of the shift. Currently, the bottling session goes on till 7-8 pm but he did not anticipate a 24-hour operation although there is a possibility of double shift. To-date, he had been unaware of any lighting concerns although some neighbors from Buena Vista had raised concerns regarding security which has been resolved.

Cathie Bliss, 4505 Country Lane, stated the following: she has no issues with the building and the color blends in with the surrounding; the lighting is an issue; recommended that parking and access be kept up towards the building, on Tesla and S. Livermore; music is not an issue except when past 9 pm during the weekdays and 10 pm over the weekends; existing amplified music which ends at 5pm is great; agreed that the big energy-saving windows do need blinds at night or perhaps some large landscaping; an increase in the bottling hours would result in a noise concern. In response to Member Harvey, she explained that any over-flow parking along the service road, close to the homes, would be an issue.

Mr. Mihalka, in addition, discussed the crushing and the associated noises. He further clarified that the petitions signers do not support amplified music outdoors but only indoor amplified music and recommended that lights could face south only which would allow a well-lit facility also.

Chris Chandler, Executive Director, Livermore Valley Winegrowers Association which represents 43 bonded wineries, supports the winery-related activities. She urged that the South Livermore Valley Area Plan be followed.

Mr. D'Ambrosio, in rebuttal, stated that they had no desire to have the neighbors dissatisfied with the facility. The windows were installed per City's requirements. Crushing will be greatly reduced from 3,000 tons to 300 tons in the future and the crushing equipment will be moved shortly and the new portable crushing facility will be inside one of the buildings. Mr. Ryan added that visitors are kept away from the vineyards due to the liability issues but kept to the parking lots, 85 and 101 spaces. There has been only one big band event at the old winery, the Labor Day Harvest Festival and, as such, any other

music was not from their facility.

Public testimony was closed. Member Harvey felt that the applicants will provide a balance and find a way to take care of the lighting issue. The Chair also felt that the amplified music issue has been resolved and the neighbors support the conditions of approval. The lighting issue will be resolved with a timer or a change in policy which could be formalized as a condition of approval. Since production will continue, the applicants should pursue the options; blinds which could have a cleanliness concern or landscaping. He did not feel it was appropriate for this Board to be limiting agricultural operations, specifically, hours of crushing. Member Harvey requested clarification on the amplified music. Ms. Beatty explained that this facility is only proposing indoor amplified music and the Conditions of Approval reflect this. She clarified that there is a facility next door but on a separate parcel which operates under an Administrative CUP. Member Goff felt that this is a good facility, requested clarification with Condition #1 and #3a which he thought were both too broad; and also asked if tent use is a concern. Staff suggested deleting Condition 3a. The Chair pointed out that the Ordinance prevents tents beyond a particular period of time in a year and staff added that Supervisor Haggerty's office is also looking at the canvas tent issue. A discussion followed regarding the tent issue and the need for an ACUP for a temporary tent. Both Member Harvey and the Chair agreed with Condition 3a as recommended by staff. Mr. D'Ambrosio clarified that they use caterers and there is no food preparation on site. Ms. Beatty recommended adding the words "and related to event" at the end of the condition. Member Harvey recommended that Condition #6 be modified to include "otherwise screen windows possibly from the outside or be turned off.

Member Harvey made the motion to approve the application subject to the recommended conditions with the following modifications: Condition 3a to include the words "and related to that event." and #6 to include: "otherwise screen existing lighting from neighbors". Member Goff seconded and the motion carried 3/0.

10. **DENIS VAN DERA, VARIANCE, V-12088** ~ Application to allow expansion of a residence, a non-conforming use without frontage on an approved County road, in an 'A' (Agricultural) District, located at 9911 Foothill Road on G Road, south side, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 096-0290-001-03. **Staff Planner: Andrew Young.**

Ms. Beatty presented the staff report.

Public testimony was called for. David Thimgan, project architect, said that they concurred with all the conditions and he was available to answer any questions. In response to the Chair, he indicated that construction could begin late spring.

Public testimony was closed. The Chair said he was not sure if a variance is needed at all but perhaps a Site Development Review (SDR). There is no variance for a setback. With a SDR application, a precedent could be set which in turn could reduce staff work in future. Member Harvey and Goff both opted to move this application as submitted. Ms. Beatty added that perhaps staff could look into this issue for future applications.

Member Goff made the motion to approve the application subject to the recommended conditions and the Chair seconded. Motion carried unanimously.

Approval of Minutes – November 8, 2007 – *Member Goff made the motion to approve the November 8th Minutes as submitted and Member Harvey seconded. Motion carried 3/0.*

STAFF COMMENTS & CORRESPONDENCE: *None*

CHAIR’S REPORT: *None.*

BOARD ANNOUNCEMENTS, COMMENTS AND REPORTS: Member Harvey announced that he is learning about Contra Costa planning. He had also attended the Planning Commission Altamont Revocation hearing and requested the outcome. Staff said that the motion was to continue events during day-light hours, noise monitoring devices around the perimeter, no RV parking, 28 event days necessary for NASCAR certification and no more than 4 event days in a 30-day period.

The Chair asked if the Board was interested in weighing the role of the East County Planner. Member Harvey felt that it would be appropriate to submit comments only.

ADJOURNMENT: There being no further business, the hearing was adjourned at 3:40 p.m.

CHRIS BAZAR - SECRETARY
EAST COUNTY BOARD OF ZONING ADJUSTMENTS