

## CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL

### Minutes for November 10, 2008

(Approved as presented January 12, 2009)

**A. CALL TO ORDER:** The Chair called the meeting to order at 6:04 p.m. Council members present: Jeff Moore, Chair; Cheryl Miraglia, Vice Chair. Council members: Dean Nielsen, Dave Sadoff, Andy Frank, Sheila Cunha and John Ryzanych. Council members excused: None. Staff present: Tona Henninger, Sonia Urzua and Maria Elena Marquez. There were approximately 10 people in the audience.

**B. Approval of Minutes of October 13, 2008**

**Council member Miraglia moved to approve the minutes of October 13, 2008. with minor corrections. Council member Cunha seconded. Motion carried 7/0.**

**C. PUBLIC ANNOUNCEMENTS / Open Forum – None.**

**D. Consent Calendar – None.**

**E. Regular Calendar**

**1. PROPOSED AMENDMENT TO ZONING ORDINANCE – REVISING SECTIONS RELATING TO AGRICULTURAL CARETAKER UNITS** ~ The proposed amendments would allow agricultural caretaker units to be permanent structures under certain circumstances where such structures are now required to be temporary. The proposed amendments would also clarify the type of information that must be submitted by a property owner to demonstrate the need for an agricultural caretaker unit. **Staff Planner: Bruce Jensen**

Mr. Jensen summarized the staff report. He stated that this proposal applies only to the A-Agricultural zoning districts within unincorporated Alameda County. It does not affect or modify any general plan land use designation, as every applicable designation provides for such uses. Staff feels that the proposed language meets the concerns and needs of both the West and East County areas. Staff expects that the MAC review the staff analysis and proposed draft language to amend the Zoning Ordinance with respect to agricultural caretaker dwelling units, take public testimony, consider the potential benefits and drawbacks of the proposed language and if appropriate, provide Planning staff with a formal recommendation to the Planning Commission and Board of Supervisors.

Mr. Nielsen said that there are no guidelines as far as the size of the property and the number of units that are allowed for a particular use. He does not see anything in the ordinance talking about the nature of the uses and if there are any square footage requirements or restrictions and how many agricultural caretakers can be allowed in the property. Mr. Nielsen asked that if the property has an X number of horses or X number of acres of (?) how many caretakers units should be allowed.

Liz McElligott, Assistant Planning Director, discussed that limitations set forth by state regarding the County's ability to limit the number and the size of caretaker units. There is a law having to do with promoting farm worker housing and this type of use.

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Mr. Nielsen said that when someone that has 5 or 6 horses and requests 3 agricultural caretaker buildings, the rule of reason would say we don't need 3, particularly when they are relatives. The Council is looking for some guidance. Also, there should be some square footage involved here, because if somebody wants to raise 500 rabbits on half an acre and wants 2 caretakers, what do we do. Ms. McElligott said that that is the purpose of requiring the report. We have to provide information about what kind of agricultural use they have. We are adding to the past requirements. We are consulting with the agricultural commissioner on the appropriateness of the agricultural use.

Mr. Frank asked Ms. McElligott if she reviews the applications and review what actually goes in the site in terms of what they validate what they do from the agricultural standpoint. Ms. McElligott said they will have to give the Planning Department the information about the agricultural uses onsite and then the planner assigned will visit the site and verify that they actually have what they say they have. Mr. Frank asked Ms. McElligott how often she reviews it. Ms. McElligott said she does the initial review when the application first comes in.

Mr. Nielsen reiterated the need for guidelines within the ordinance so the Council can make an intelligent decision. Mr. Jensen clarified that the Planning Department's goal is to change the requirement from a temporary foundation to any building that is suitable that the Public Works Agency can approve.

Ms. Miraglia asked why the Council is reviewing this and she asked about reporting. If in fact state law says that absolutely we cannot put any guidelines in. Her first question would be if County Counsel is weighting on that and if there is no jurisdiction that has any kind of guidelines. If they are required to report, what is going to be the criteria. She recommended consulting with the agricultural commissioner and checking with them on the application.

Mr. Jensen said that we had a couple of applicants recently for some agricultural caretaker units who have run across the inconsistency between the zoning ordinance language and the building ordinance language. The zoning ordinance requires the temporary foundation. The building ordinance language does not recognize temporary foundation. As a result, to avoid confusion and try to resolve this in a way that can take care of this problem, we want to change this language. It makes it possible for planners to use a temporary foundation as a way to monitor and as a way to help the applicant understand that this is a temporary use and at the end of the agricultural need is going to go away. As far as reporting go, what we tried to do with the current language is to strengthen the reporting requirement considerably. The current initial requirement is that they simply give us a "report" that indicates what they are going to be doing on the site. To date, those reports have been really very simple, just a couple of statements, basically how many acres of coverage and how long the intent to have the agricultural unit. What we are asking for is something considerably more substantial about their operation, what kind of economic agricultural viability they have on site.

Mr. Nielsen said that one of the reasons that he brought up his concern is because there was a group that was living north the La Vista Quarry in Hayward that happened to be in the County and they were probably 8 to 10 trailers there that were "caretakers". The real concern is not a part of this. I can see the question as far as temporary foundation versus

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permanent foundation. Language is needed to determine whether it is appropriate for a caretaker unit to be there at all.

Mr. Jensen said that we are limited a great deal by what we can prohibit as far as agricultural caretaker dwellings. The state generally makes it very clear that the one thing we are not allowed to is to even require a conditional use permit, and that they are allowed in state law basically as a matter of right, limiting our ability to regulate them, but what we can use is a site development review and we can say specifically whether what they are proposing is commensurate with effect to agricultural use on site. The state does not leave it up to a local agency to make that determination in a meaningful way beforehand. The state does not allow us to use a conditional use permit because it recognizes that you have to regulate these things on the site, they really leave it up to the applicant to decide how much they need but we do have the ability to do a site development review to review the size and scope of the dwellings that are there. As far as the type of use that Mr. Nielsen discussed just north of the La Vista quarry, he said he thinks it is not there anymore. As far as that type of use goes, where people act in violation, we have to use other hammers than the zoning ordinance to try to go after them. It is going to be very hard for us to regulate that through the zoning ordinance.

A discussion continued among council members and staff regarding the proposed draft language revisions. Attachment "A" of the staff report was entered into the record.

Public testimony was called for.

Jason Preece, resident at 10366 So. Flynn Road, said that he is one of two applicants that is waiting for this ordinance change. He wanted to stress that agricultural endeavors on properties are very taxing and very complicated. Any kind of specific ordinance inflexibility can provide difficulty to county staff for dealing with that endeavor. At some point in a house's history, there may come a time when it does not meet the needs of the owner of the property and he wants to replace it. He will need to have that home ideally to live in during that construction. This ordinance change would allow that to happen in his property. There are enough constraints on the property already. The consistency between Williamson Act and the County's zoning ordinance is important, and that is why staff is here proposing to revise this ordinance. He has been studying ordinances at state and county level and has tried to work with county staff on modifying or doing whatever it is to ease this endeavor. Look at the big picture, look at the whole county regarding parcels, look at the size of the parcels and what is going on with the economy and how you want to comply with Measure D's policies on stimulating that agricultural growth in the county and focus on what this does; it gives the county a mechanism and a stringent review process to determine who may live in that [agricultural] dwelling, and the ability to take it away. He is a proponent for this ordinance change.

Public testimony was closed.

Mr. Moore summarized the two issues, one is the desire by the County to change the language from permitting temporary foundations only to permitting a permanent foundation; and the other is the desire for issues of control. There are some various issues related to density; maybe some kind of quantitative review would be appropriate, and he does not know whether or how that would work. We have this in front of us, we can

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make a motion to append, we can bring it back but what I am hearing also is that there might be some legal issues associated with some of these issues.

Ms. Miraglia said that she likes the language changes but she thinks they are not complete. The issues that other council members have brought up are very valid, and we need to address them somehow.

**Ms. Miraglia made a motion to recommend that Planning do further review to determine language that would be in keeping with federal and state law but that would: a) link number of units allowed per site to a demonstrated need; b) give tighter control in the on-going reporting process; and c) change No. 4 under 17.06.090 to “The Planning Director may extend initial site development review for an additional 5 year period”. Ms. Cunha seconded. Motion carried 7/0.**

2. **VARIANCE, V-12129 – OLSON** - Application to allow a detached garage with a building height of 17.25 feet where 15 feet is the maximum allowed, in a R-1-B-40-CSU-RV (Single Family Residence, 40,000 Minimum Building Site Area, Conditional Secondary Unit with Recreational Vehicle Parking Regulations) District, located at 5212 Wildrose Lane, east end of lane, approximately 313 feet east of Madison Avenue, Castro Valley Area of unincorporated Alameda County, bearing County Assessor’s Parcel Number: 084C-0895-008-00. **Staff Planner: Damien Curry**

Ms. Urzua summarized the staff report.

Cliff Olson, applicant, said that his proposal is to build a garage in order to keep his RV. The main reason is to keep the garage structure looking the same as his house. He realizes that he is in no way of obstructing anybody’s view with the redwood trees.

Mr. Frank said that redwood trees can grow quite high and if they are used as shield, one of the biggest complaints that we receive over the years is the type of tree that is planted. You can find a tree that may be 20 or 25 feet high, redwood trees grow taller than that, so you could affect the view of neighbors on Center Street. He suggested that other type of tree might be in order.

Public testimony was called for.

John Aufdermauer, resident at 17580 Madison Avenue, spoke in support of the variance.

Lupita Perez, resident at 18477 Center Street, expressed concern about obstruction of her view and reduced property values. She requested that the garage be allowed at the fifteen feet.

Roxanne Lewis, resident at 17750 Madison Avenue, said she wanted to make sure that this project is in consistent with the Madison Specific Plan. Also, she wanted to know what is the extent of grading.

Connie Deets, resident at 18413 Madison Avenue, asked if this project is on a grade, the Specific Plan says to stay away from the 30% grade. There are water issues already going on the creek. She said this is a very wise variance.

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Mr. Moore reiterated asked staff to verify and confirm whether the proposal does not implicate the 30% slope.

Ms. Miraglia asked Mr. Olson what is the percentage of the grade. Mr. Olson said about 11%.

Ms. Frank asked Mr. Olson if he would be agreeable instead of having palm tree limited 20 or 25 height. Mr. Olson said that the trees that are in question are already trees that they are not on his property, it looks like they are in his property but they are not. That property belongs to George Baines (?). He was going to build 7 houses, but unfortunately he had an accident and died. Mr. Olson said that there is a fine line between Mr. Baines' property and his property. Mr. Baines' property comes 10 feet down the hill towards him and it makes it look like his property. He planted a bunch of oleanders years ago. He put a fence 10 feet up on a flat surface. Mr. Frank asked if there are existing redwood trees. Mr. Olson said yes. Mr. Olson said that one of his neighbors on Center Street is concerned because one of his trees is blocking her view. He told her he never tried to obstruct her view. When he built his house in 1995 he got permits to build the house with 10 and 12 pitch on the roof. He changed the pitch to 7 and 12 and put up another structure. The neighbor still has her view. He wants to be a good neighbor.

Mr. Sadoff asked Ms. Urzua if any of the residents on Dunnigan Court were notified. Ms. Urzua said that typically there is a copy of the mailing labels on file but apparently there is no copy on file. Mr. Sadoff said that overall it looks like a good candidate as a project. He is very sensitive to the Madison Specific Plan because there have been a lot of issues, so he prefers to scrutinize every project.

**Mr. Nielsen moved to approve Variance, V-12129 with Planning considerations and that the property owner continue to honor its commitment to keep the trees at a reasonable height. Mr. Sadoff seconded. Motion carried 7/0.**

3. **SITE DEVELOPMENT REVIEW, S-2176 – DAVID KASLIN** - Application to allow new signage on an existing building in a CVCBD-SP-SUB-3 (Castro Valley Central Business District Specific Plan, Subarea-3) District, located at 2626 Castro Valley Boulevard, north side, approx. 400 feet west of Lake Chabot Road, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 84A-0181-073. **Staff Planner: Damien Curry**

Ms. Urzua summarized the staff report. She stated that staff found the proposal consistent with the specific plan. The applicant has worked with the Redevelopment Agency's Façade Improvement program. Also, the Chamber of Commerce responded and said they would like to see black vinyl appliqué curtains instead of lime green as shown on the staff report. The staff planner agreed with the proposal.

Redevelopment Manager, Jaimie Benson, representing the applicant, described the project and the positive contribution that this project would make to the block.

Mr. Sadoff asked Ms. Benson if she knew if the owner would be amenable to the comments from the Chamber of Commerce. Ms. Benson said that it was a recommendation and not a requirement. Mr. Sadoff asked Ms. Benson if the owner had

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been notified of the Chamber of Commerce's comment. Ms. Benson said no, because the Redevelopment agency has taken the lead

Ms. Miraglia said that the façade improvement is great and desperately needed on the boulevard and she would like to encourage that. She relayed concerns from a community member who was very upset about this and said that Mr. Kaslin has remodeled this particular property from the interior such as allegedly has a bunch of sheds in the back, used for storage without permits. The property on 206-220 Stanton, allegedly has two houses turned them into offices without permits, no site development reviews, never came to this Council. The property at 2829 Castro Valley Blvd. next to JD's, took a garage and turned it into an office. Ms. Miraglia already informed Code Enforcement, and filed a formal complaint. Obviously, the Council wants the façade to be improved. The concern is with approving something for someone who really has not been involved in the planning process. She thinks we should not be investing Redevelopment funds into someone who operates in this manner. She wanted to make sure that what she was told this morning was true and apparently permits have not been pulled for any of the stuff.

Ms. Benson said that it is unfortunate, but Mr. Kaslin has been very disinterested.

Mr. Moore agreed with Ms. Benson but if she has an owner that has to be dragged, kicking and screaming, he wonders if this is a two step process. We voted to move on with the facade improvement, let's deal with the other potential issue possibly at a later date.

Mr. Ryzanych asked staff if this had been addressed and if staff had a chance to look at any of these issues. Ms. Henninger said that there aren't any on record. Mr. Ryzanych asked if this is consistent with Ms. Miraglia's account. Ms. Henninger said that so far yes. She said that she has not been to each of the sites obviously but she did not find any permits on file.

Ms. Benson said that Mr. Kaslin never wants to get those things done. Ms. Miraglia asked Ms. Benson what kind of investment Redevelopment would be putting into this. Ms. Benson said \$25,000 but she is willing to go over that amount because it is a two tenant building, up to \$35,000.00. Ms. Miraglia asked if Mr. Kaslin will not be putting anything. Ms. Benson said yes, it is a forgivable amount.

Mr. Nielsen said that at the very least we could investigate to find out if those improvements were done to code before even considering it.

Mr. Ryzanych said that as a member of the Redevelopment Committee, he believes that one of the conditions is if the property in question is in compliance with code. This property has some code considerations. His suggestion is that the Council denies the application. Mr. Nielsen said that it needs to be continued, not denied.

Mr. Frank said that this is tax payers money and tax payers have the right to make sure that the person is accountable and conforms to whatever requirements are. Mr. Moore agreed with Mr. Frank. We want to see this done. We have to wait for Code Enforcement process. Ms. Henninger said that according to the ordinance, if there are compliance issues, the application does not move forward until those compliances are addressed. By the next meeting, we should be able to have enough time to check out. Also, the

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applicant, under the MAC resolution, is supposed to be present at the time, so we have to ask Redevelopment to ask the applicant to be present at the meeting.

Mr. Moore said that this item will be continued until we can get it back.

Ms. Benson introduced Joe Flores, who is working with her in the façade program.

**F. Chair's Report – None.**

**G. Committee Reports**

- **Eden Area Alcohol Policy Committee**
- **Redevelopment Citizens Advisory Committee**

Mr. Nielsen reported that he had the opportunity to go the Board of Supervisors meeting to explain the MAC's point of view on the Kremer lot split on Charlene. One question brought up by one of the supervisors was the way in which this Council interprets the lot size consistency and the point was well taken. He asked if the MAC considered a 5% deviation reasonable, a 10%, 15%, as far as lot size consistency. We need to get more specific because people are paying attention to the lot size consistency standards that we use. One of the questions that Supervisor Miley had was that there are 3 criteria for lot size consistency, one is the average, the other is the need, and the third one is if there are special circumstances requiring consideration. He made it a point several times in the motion and discussion that the Kremer lot did not meet 2 of the criteria, one is the average because one of the supervisors said two other lots in Castro Valley that were smaller than Mr. Kremer's had been approved and he could see where she was going. It would be helpful for the Council to consider what the maximum deviation would be as far as the lot split is concerned, so not only the Council is consistent but it is reasonable in Mr. Kremer's case. When the Council makes a decision that we make it specifically for a neighborhood, we need to start establishing what the criteria are. On Charlene, the minimum lot size was for 5,000 square feet, the average was over 13,000. We need to consider some additional definition as far as how we apply the lot size consistency the way we do.

Mr. Moore agreed. He said this item needs to be on the agenda soon. The Council needs to have an open discussion on lot size consistency with a goal possibly of written guidelines. Members come and go and there are different opinions on how to address this issue.

Mr. Nielsen said that if Supervisor Miley had not been at that meeting, there would have been a good chance that the Board had reversed the denial and that would have been disastrous for the Council.

Mr. Frank said that there were prior discussions from previous years. The key issue was people do not understand what a neighborhood is so where you can have a minimum zoning of 5,000 or 10,000 and where you may find a

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neighborhood with 7,000 or 14,000 respectively. The definition of a neighborhood is often hard to understand.

Mr. Moore asked staff to put this issue on the agenda. Ms. Henninger said it will be brought up to the Planning Director.

Ms. Miraglia said that it might be good to actually have a workshop where you have the MAC, WBZA and Planning Commission together with staff for discussion on the subject versus to have it with each of us individually.

Mr. Nielsen said that representatives from the neighborhood were concerned that Mr. Kremer might come back and wanted to change the zoning to commercial. One neighbor asked him what they could do to preserve the neighborhood. He told him to ask for rezoning to 10,000. Mr. Moore said that it is not MAC's position to give neighbors guidance on how to protect them on something that might occur.

- **Ordinance Review Committee**

Ms. Miraglia said that as we discussed last time, she set up a meeting with Supervisor Miley to discuss the agendas for the general plan meeting. She met with him last Thursday. This coming Monday there will only be two things on the agenda, one that was continued last time, the HARD tobacco advertising and the school district fencing would be on the agenda. Public Works and John Bates will be here to talk about how it impacts all of that. Ms. Urzua will also be here to summarize the report. County Counsel will be at the meeting with Supervisor Miley and Chris Bazar. In the meantime, it was suggested to meet with the Superintendent of schools on this coming Friday along with Ken Carbone, so one member of the Planning Commission and one member from MAC just to start the dialogue before Monday's meeting. The issue is not security, it is the ordinance and it has to do with the violations and how it impacts the rest of the community.

Mr. Moore said that there is a lot of concern from the community on security.

- **Eden Area Livability Initiative**

**H. Staff Announcements, Comments and Reports**

**I. Council Announcements, Comments and Reports**

**J. Adjourn**

The meeting was adjourned at 7:40 p.m.

**NEXT HEARING DATE: MONDAY, November 24, 2008**