

CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL

Minutes for October 26, 2009

(Approved as presented November 9, 2009)

A. CALL TO ORDER: The Chair called the meeting to order at 6:00 p.m. Council Members present: Cheryl Miraglia, Chair; Dave Sadoff, Vice Chair, Jeff Moore, Sheila Cunha, Dean Nielsen, John Ryzanych and Andy Frank. Council Members excused: none. Staff present: Sonia Urzua, Christine Greene, Bob Swanson and Maria Elena Marquez. There were approximately 25 people in the audience.

B. Approval of Minutes of August 24, September 28 and October 12, 2009
Council Member Frank requested to correct the vote count through out the entire minutes. Council Member Cunha made a motion to approve the minutes of August 24, 2009. Council Member Nielsen seconded. Motion carried 6/1. Council Member Frank abstained.

Council Member Cunha made a motion to approve the minutes of September 28, 2009 as presented. Council Member Sadoff seconded. Motion carried 7/0.

Council Member Cunha made a motion to approve the minutes of October 12, 2009 as presented. Council Member Ryzanych seconded. Motion carried 6/1. Council Member Moore abstained.

C. PUBLIC ANNOUNCEMENTS / Open Forum – None.

D. Consent Calendar – None

Council Member Nielsen made a motion to move item number 2 in the Regular Calendar to the Consent Calendar. Council Member Frank seconded. Council Member Moore made a motion to approve the Consent Calendar. Council Member Cunha seconded. Motion carried 7/0.

E. Regular Calendar

1. SIGN REVIEW, PLN2009-00094 – NABHAN – Application to allow repainting; repair existing neon sign; and replace awning with new standing seam metal awning at the Dell Café, for property within land use designation Sub-area 2 of the Castro Valley Central Business District Specific Plan (CVCBDSP, S-02), located at 2637 Castro Valley Blvd, south side, approximately 110 feet west of Park Way, Castro Valley area of unincorporated Alameda County, bearing County Assessor's Parcel Number: 084A-0012-002-01. **Staff Planner: Rodrigo Orduña Continued to November 9, 2009.**

2. CONDITIONAL USE PERMIT, PLN2009-00048 -T-MOBILE CORPORATION/THE NEIGHBORHOOD CHURCH OF OAKLAND/MILLION – Application to allow continued operation of an existing telecommunication facility with a change of service provider from T-Mobile to T-Mobile West Corporation and to legalize an additional equipment cabinet in an R-1-CSU-RV (Single Family Residential, Conditional Secondary Unit, Recreational Vehicle) located at 20600 John Drive, north side, 300 feet northwest of Castro Valley Blvd, Castro Valley area of unincorporated Alameda County bearing County Assessor's parcel numbers: 084A-0228-001-03, 084A-

0235-001-07, 084A-0230-001-02, 084A-0230-003-03, 084A-0230-004-00, 084A-0240-001-02. **Staff Planner: Shahreen Basunia**
Moved to the Consent Calendar.

- 3. CONDITIONAL USE PERMIT, PLN2009-00098 – MILLER/CRAWFORD –** Application to allow a community facility (outdoor recreation facility – batting cages), in a R-1-SU-RV (Single Family Residence, Secondary unit permitted, Recreational Vehicle) District, located at 19829 Fern Way, west side, 400 feet, south of Edwards Lane, Castro Valley area of unincorporated Alameda County, bearing County Assessor's Number: 84C-0692-005. **Staff Planner: Christine Greene**

Christine Greene summarized the staff report. She stated that this application was submitted after the WBZA held a public hearing on June 10, 2009 and declared the existing batting cages a public nuisance. The Board told the owner to submit an application for a Conditional Use Permit. Mr. Miller submitted an application on July 22, 2009. Staff is recommending approval.

Council Member Nielsen asked Ms. Greene how many people objected. Ms. Greene said that 4 letters were submitted with concerns of noise, traffic and safety. A petition with 27 signatures was submitted from residents in support of the project.

Mark Crawford, representing the applicant, said that volunteerism has been under attack in our community recently. He described Mr. and Mrs. Miller volunteer efforts. There are many more neighbors in favor than against it. The proposed facility is a community facility. The Plan encourages these facilities within residential neighborhoods while minimizing the impacts on residences in the immediate surrounding area, so reducing the hours of operation or limiting the number of people using the facility could be considered appropriate for the scale of the neighborhood.

Oscar Miller, owner, stated that this is not just about baseball or softball, it is also about building character and leadership along with dealing with grades, motivation, family, respect. He described the college draft opportunities related to the operation. This has been going on in their back yard for over 25 years. They have lived in Castro Valley for 38 years. They love Castro Valley and they want to touch as many people as they can. He described how the children have access to the house. It has been that way for years but now there are cost and limitations. There is a lot of people his age that are contributing to this.

Public testimony was called for.

Dave Locey, resident at 19826 Alana Road, spoke in opposition. He read from a document that he prepared. Every Council Member received a copy of this document. He said that during the process Ms. Greene made an effort to get the two parties, he, his wife, Mr. Miller and Mr. Crawford together to work this thing out. He and his wife were there but Mr. Miller and Mr. Crawford did not show up.

Elke Sommer, resident at 19826 Alana Road, spoke in opposition. She said that they have lived at this address for 31 years. She complained about the lack of privacy in their back yard and about noise. At the beginning of the school year the disturbance begins. It is very stressful with the installation of the new cages. The only thing she is asking for is

that the county requires from Mr. Miller to comply with the residential rules as any other neighbor must abide. She requested from the Council to protect the residents.

Council Member Nielsen asked Ms. Sommer if the battings cages were there when she bought the property. She said no.

Fred Davis, resident at 19827 Alana Road, said that he is concerned about the noise and traffic impact. He is concerned with the number of kids. He thinks they are too many. He said that hard bats should be eliminated and only rubber balls and bats should be allowed. He suggested moving the facility to another location. He also asked the Council to consider insurance issues. Council Member Nielsen asked Mr. Davis how long has he lived in the neighborhood. He said 11 years.

David Wilhite, resident at 9640 Crow Canyon Road, spoke in support of the project. He said that the CUP fees are very high for a community volunteer. Mr. Miller is absorbing all of the costs so it is just fair to grant Mr. Miller a 5 year permit. The Millers have had an impact in this community.

Council Member Sadoff asked staff if the CUP were granted would it imply that the variance is approved for the equipments. Ms. Greene cited to the section of the Zoning Ordinance which states that fence heights can exceed 6 feet as a condition of approval so it would not be an additional variance application.

Nancy Christiansen, resident at 18656 Sheffield Road, Castro Valley resident for 37 years, spoke in support of the project. She said that the parents that are there sat quietly in the yard and watch their children. They are taught how to work with their children. The Millers have had these cages for a long time.

William Harris, resident at 19569 Alana Road, said that he has lived in Castro Valley for 15 years, spoke in opposition of the project. He complained about the noise.

Marj Perry, resident at 19830 Fern Way, said that the noise and traffic does not bother her. Her two grandsons go there. She supports the project.

Bob Jung, resident at 2762 E. Sugar Hill Terrace, Dublin, stated that he used to be a long time Castro Valley resident. He referred to condition limiting the number of adults. Council Member Frank asked Mr. Jung how much noise is generated by the parents watching their kids. Mr. Jung said very little noise.

Jan Jung, resident at 2762 E. Sugar Hill Terrace, Dublin. She used to take her son and stayed with him. Her son learned valuable lessons while attending Mr. Miller's training. Council Member Frank asked Mrs. Jung about her experiences as an observer and about the noise. She said not too many parents stayed, they would come at the end to pick up their children.

Don Christiansen, resident at 18656 Sheffield Road, said that he is a retired teacher and baseball coach. He said he is very familiar with what is going on in Mr. Miller's backyard. He expressed concerned over the recommended hours of operation and asked that the hours be extended to 7 p.m. Council Member Frank asked him about his

experience as coach. Mr. Christiansen described his experience and commented on the use of helmets and a pitching machine.

Council Member Ryzanych referred to aluminum bats and balls he said there have been some legitimate concerns raised and asked if it would be possible to modify to move to a quiet system, bat and ball combination that still give the instructional integrity. Mr. Christiansen said that wooden bats are very different than aluminum bats. Balls are another issue. You need to hit some hard balls.

Council Member Frank asked Mr. Christiansen addition questions about bats.

Council Member Ryzanych asked how many pitching machines are there and how many persons can actively bat at one time machine and non machine.

Council Member Moore asked if this facility is being used as a primary or supplemental training. Mr. Christiansen said supplemental training. Council Member Frank asked Mr. Christiansen if he can walk on a school campus and offer these facilities. Mr. Christiansen said no because they need to have a permit.

Mike Leogrande, resident at 19835 Fern Way, spoke in support of the project. He said he can attest to the character building and the teaching that Mr. Miller and his coaches give to the kids. It is just not baseball it's also good sportsmanship..

Joe Hendren, resident at 19942 Fern Way, spoke in support of the project. He said that he and his wife have lived there since 1978 prior to Mr. Miller moved in. He said that he is sensitive to privacy in his own home and noise levels in the backyard. Generally speaking, it is not an issue for him. He can hear the metal bats but it is not disruptive for them. Traffic is not an issue. The Millers are great neighbors. He referred to condition number 4. He said this is necessary for the community whether children are from Castro Valley or somewhere else.

Ricky Garcia, resident at 19563 Jaydine Street, said that he started going to Mr. Miller's batting cages when he was 11 years old. He invited him to his house and taught him to be a baseball player, everything that he has taught him has been instructive and great, he taught him to be a better baseball player, a better son and a better citizen. To get to the batting cages at Marshall you need to have a key, but only members or managers can have a key. He also said that he and his little brother only use wooden bats, they don't use metal bats, they were taught to use wooden bats.

Public testimony was closed.

Mr. Crawford pointed out the extent to which they are trying to mitigate the effect on the neighbors. When he says existing, he is referring to what Mr. Miller has been doing for 20 something years. He is there from Monday through Friday, as early as 8 a.m. on occasions and he has voluntarily limited himself until 7 p.m. That is 11 hours a day. Saturday is the same thing, 8 a.m. to 7 p.m. that is 11 hours per day, 66 hours a week. The staff report is recommending 2 p.m. to 6 p.m. They would like to see that as 3 p.m. to 7 p.m. instead and Saturday, noon to 7 p.m. or 1 p.m. to 7p.m. That is 7 hours a day. They are talking about bringing this down to 27 hours. This is what they are proposing to mitigate the effect on the neighbors. That is a 60% reduction in hours. The log included

in the staff report for the month of July. He basically logged 29.5 hours the cages were actually used during the month of July. If we can use those cages 11 hours a day prior to the CUP, that is 266 hours that could have been used but in reality they only used 29.5 hours. The lights are very rarely used. The cages were installed with permits from the County. As far as noise, it is not an issue. As far as the other batting cages, they do not have access to them. They are not maintained and are not safe. He would like to modify condition number 3. They would like to have hours of operation 3 p.m. to 7 p.m. Condition number 9, they are OK with the lights (Condition number 14) He does not agree with the landscape plan because it is costly. All they need to do is put an 8 foot fence with trees all across the rear yard. A planner can just come over and verify that that has been done properly and that the trees are irrigated. He disagreed with the time frames that are in the staff report as far as the 30 and 60 days. We are coming up on winter. They are not going to be able to put a fence in the back yard, so some adjustments need to be made to the time frames. He is OK with condition number 15, it is something that they can do to mitigate the noise. As far as condition number 18, he requested some clarification from the Fire Department. As for condition number 20, he said he does not know how necessary it is a one year probation period. They have a situation where they will be highly monitored at all times. Setting up this probation period, provides motivation for discontinuation of this. He does not see the need for the one year. They are going to get complaints either way. For the Millers to have to come to pay in one year seems to him unreasonable. In regards to the use of wooden bats versus metal bats, they would like to retain the option of using metal bats.

Council Member Miraglia asked if it would be reasonable to have the younger children up to a certain age to be able to use the aluminum bats but to have older children use wooden bats. Mr. Miller said that the wooden bat is heavier. Really it will be real negative with young kids to use a wooden bat.

Council Member Ryzanych asked if it would be practical for the younger kids to use a more quiet rubber ball. Mr. Miller described the difference between the two types of balls.

Council Member Frank and Mr. Miller discussed technical issues with regard to the balls like compression, power and speed which generate the noise.

Council Member Miraglia told Mr. Miller that if the Council were to approve the permit if he would be amenable to an additional condition that specify only wooden base ball bats should be used by batters 13 years of age or older. Mr. Miller said that he would like to request no probation, 5 years and he wants to make everyone happy.

Council Member Ryzanych told Mr. Miller that there was an issue raised about the activity that occurs between the rear batting cage and the rear property line. His information does not indicate that there is any activity going in there but he is under the impression that there is some sort of coaching activity going on. Mr. Miller said that they have a catchers' blocking area just designed for the catchers for teaching techniques. Council Member Ryzanych asked if that activity can be located to another part of the yard without compromising the quality of education. Mr. Crawford said that that area is used for batting tees, batting tees are used by the smaller kids.

Council Member Sadoff asked Mr. Miller if he maintains insurance and what kind. Mr. Miller said yes. They have been there over 25 years and never have had an injury. There are safety rules in the yard, they have signs there saying to wear helmets at all times. Council Member Sadoff asked Mr. Miller if he has general liability and bodily injury insurance. Mr. Miller said yes.

Council Member Moore said that he has no problem with the use, it is all about the conditions, some of the concerns is the number of kids and the number of cars involved, parking is a concern, the metal bats and the balls, the hours are pretty reasonable.

Council Member Miraglia said that it appears to her that he has made an effort to protect the activity and meet the different objections that some of the neighbors have. She has specific changes that she would like to see to the conditions. She would like condition number 21 added regarding the limitation on that any age and batter. She suggested changing the hours to 3 p.m. to 7 p.m. versus 2 p.m. to 6 p.m., 12 noon to 7 p.m. for Saturdays and Teacher Work Days and 12 noon to 7 p.m. on June 1 through August 31. Condition number 4 talks about 6 coaches, she would like to see that stricken or have that up to 12 so that there is one on one ratio. She would like to see Condition number 7 regarding pitching machines stricken. Condition number 9 person pitching to a live batter should be behind the screen. The first part of Condition number 20 should be stricken up to the last sentence instead of 3 years should be 5 years.

Council Member Frank said he concurred with Council Member Miraglia and the age restriction for 13 year olds hard base ball should be tossed and use wooden bats instead of metal bats and shifting to those less than 13 years of age to use metal bats. The other issue is he thinks there is no need of a sprinkler in the middle shed. Condition 14 putting up the fencing sooner the better understanding weather conditions may affect the timing aspect of that and that will affect compliance as far as 30 days but it is to be installed no later than the spring. As far as the parents, he agreed that every child should have their parent. We do not have a lot of interaction noise as far as the parents are concerned. As far as the coaches, sometimes you need coaches in terms of developing better hands-on skills for the players individually but you can restrict noise factors by placement of signs on the property. Children today do not have access to public facilities. It is very difficult for children to get instruction. The other issue is the timing, it allows the parents to come in. Kids need to be there sometimes until 7 p.m. until their parents can come and pick them up, that makes good sense, the hour restriction arrangement should mitigate the noise factor at least to some degree.

Council Member Miraglia asked staff if it would be appropriate to add a condition about a signage plan within the yard to mitigate noise levels should be submitted to the County for approval. Ms. Urzua said yes. Council Member Miraglia said hours of operation would be on a sign and one of those rules would be to keep the noise levels down. Also, she said there is no need for a fire sprinkler in the metal shed, the place for that to be figured out between the applicant and the Fire Department.

Council Member Nielsen said that condition number 20 concerns him, as a Council they never put a one year review in a conditional use permit, you either approve it or deny it, he said that 5 years would be appropriate.

Council Member Cunha said that as a realtor she appreciates other people concerns for the basic property rights and the opportunity to enjoy their backyard but this is being going on for a long time. She said that this is a disclosure item and if somebody sells his house this is disclosure in the transfer sheet that you have to fill out and goes out in the neighborhood, it does impact property rights, however, she commends Mr. Miller for all what he has done.

Council Member Ryzanych said that the use falls very similarly with swimming pools, miniature golf courses in back yards. It is still an allowable use and falls in that category. There are some legitimate complaints. The applicant has done a reasonable job in trying to accommodate those, the complaints are legitimate and valid, the noise and the activity issue would go long ways to making this a better community or at least reducing the complaint factor. We do not have a noise or view ordinance so we can not address these issues so it makes it more difficult. So we have to work with the tools that we have in the County. There are great accommodations being made.

Council Member Sadoff said that it is all about noise. The modification of the hours is a good compromise. We have to look at the value to the community that Mr. Miller is doing here and try to weigh that and come up to some common ground. He thinks that with this proposal we have come as close to balancing the two competing interest.

Council Member Moore asked if Council Members would be amenable to make it to from 1 p.m. to 7 p.m., trading one hour of peaceful enjoyment on the neighbors' property. There is no issue with parents 1 to 1 ratio. He has an issue with the cars. He also agreed with Mr. Crawford as far as the landscape plan. He thinks it is not necessary. Also, he said that it is pretty uncommon for the Council to put a one year moratorium. It can be brought before the Council anytime, there is no reason to restrict Mr. Miller.

Council Member Miraglia asked Council Member Moore the condition requiring the landscape plan. Ms. Urzua said that condition number 14 captures two things: landscaping and lighting. She would like to separate them, lighting is very important. As far as the landscaping it does not say that it has to be a licensed landscape architect.

Ms. Greene said that if the applicant is able to make a landscape plan he can just specify in writing the type of irrigation and frequency.

Council Member Frank made a motion to approve Conditional Use Permit, PLN2009-00098. Council Member Miraglia made changes to conditions of approval as follows: number 3 (a) change the times on Monday through Friday 3p.m. to 7 p.m., on the second part of that Saturdays and Teacher Work days 1 p.m. to 7 p.m. , on (b) Monday through Saturday 1 p.m. to 7 p.m., on number 4 change 6 coaches and/or parents to 12, strike number 7; on number 9 insert the words: to allow batter after persons pitching; on number 20 strike the whole first part of it until Review costs and change the 3 year term to 5; add condition number 21: only wooden or composite base ball bats shall be used by batters 13 years of age or older; add condition number 22: a signage plan within the yard to post walls and mitigate noise levels should be submitted to the county for approval. Council Member Frank said condition number 23 children under 13 years of age and using the batting tees can use metal bats but must use rubberized balls or synthetic balls other than a regular base ball as use in major league baseball. On condition number 9, persons pitching to a live batter shall remain behind a protective screen. On condition

number 7 he thinks the Chair did not mean to say they can use pitching machines 7 days a week. The applicant has agreed to one day a week. That needs to be changed. Condition number 7 remains unchanged. Council Member Nielsen seconded. Motion passed 7/0.

F. Chair's Report

Council Member Miraglia referred to the e-mail from a gentleman regarding accessibility of MAC members. It will be placed on the agenda and will be discussed at that time.

G. Committee Reports

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

Council Member Moore said that there is a Budget meeting scheduled for November 2nd. Council Member Miraglia said that she understands that there is a plan being put forward to expanding the Eden Redevelopment Area. She does not know anything about that and it will be nice to get a full report from Redevelopment.

- **Ordinance Review Committee**

Council Member Ryzanych said that the community has expressed concern that the Ordinance Review Committee has not met in several months and also the interest to deactivate the committee and there was a meeting held with people in Planning and various neighborhoods to discuss that issue and it looks like we are moving in that direction to re-organize it and re-activate it.

- **Eden Area Livability Initiative**

H. Staff Announcements, Comments and Reports

Ms. Urzua asked Council Members if they have schedule issues for the holidays, looking at the calendar she said that most of our staff kind of stay way from close to the holidays.

I. Council Announcements, Comments and Reports

Council Member Cunha informed that she and Council Member Miraglia went to a Constitutional Convention that Supervisor Haggerty and Supervisor Miley held in Fremont.. Council Member Miraglia summarized the event and encouraged all to learn more about it because it significantly impacts what the state does. It would be good to get involved

Council Member Moore informed that the Eden Hospital will have a ribbon cutting opening for the new helistop, it is opening this Wednesday at 8 a.m.

J. Adjourn

The meeting as adjourned at 8:15 p.m.

Next Hearing Date: Monday, November 9, 2009