

CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL

Minutes for December 14, 2009

(Approved on January 25, 2010 as presented)

- A. CALL TO ORDER:** The Chair called the meeting to order at 6:04 p.m. Council Members present: Cheryl Miraglia, Chair, Sheila Cunha, Dean Nielsen, Andy Frank and John Ryzanych. Council Members excused: Dave Sadoff, Vice Chair and Jeff Moore. Staff present: Chris Bazar, Elizabeth McElligott, Linda Gardner, Eileen Dalton, Sonia Urzua, Andy Young, Bob Swanson and Maria Elena Marquez. There were approximately 20 people in the audience.

B. Approval of Minutes of November 23, 2009

Council Member Nielsen made a motion to approve the minutes of November 23, 2009 as presented. Council Member Cunha seconded. Motion carried 4/1/2. Council Member Frank abstained and Council Members Moore and Sadoff were excused.

C. PUBLIC ANNOUNCEMENTS / Open Forum – None.

D. Consent Calendar

Council Member Nielsen made a motion to move item # 4 on the Regular Calendar to the Consent Calendar. Council Member Frank seconded. Council Member Nielsen made a motion to approve Conditional Use Permit, PLN2009-00090. Council Member Cunha seconded. Motion passed 5/2 with Council Members Sadoff and Moore excused.

E. Regular Calendar

1. Updates on 238 Corridor, Presentation by County Staff.

Chris Bazar, Community Development Agency Director, stated that this issue has been before the Council a couple of times. This has been a fairly lengthy process. There have also been a number of public meetings and there is a master plan process funded by Caltrans. Fran David, City of Hayward Assistant city Manager, is in attendance to answer any questions you may have.

Liz McElligott, Assistant Planning Director, gave a brief description of the land use study (included in the staff report).

Linda Gardner, Housing and Community Development Agency Director, summarized the settlement agreement between the City of Hayward, Caltrans and the tenants in the Caltrans properties.

Council Member Miraglia said presentation was extremely helpful in clarifying the misinformation.

Council Member Nielsen asked about how the money was to be spent. He said that this particular document is very useful. He said it was helpful to learn that there are only seven houses in unincorporated Castro Valley that will be affected by the program.

Council Member Miraglia asked about the creation of 237 new affordable housing units. She asked Ms. Gardner how many of those 237 properties are required to be in Castro Valley. Ms. Gardner said none. She also wanted to make sure that senior housing does qualify for that. Mr.

Bazar said that there is absolutely no formal proposal for anything on the table as of this moment. The only project that has a certain amount is the senior project in the Japanese Gardens area. Council Member Miraglia also asked about the Memorandum of Understanding and asked where is the Redevelopment Agency getting those funds. Eileen Dalton, Redevelopment Agency Director, said that the Redevelopment Agency is required to spend 20% of RDA funds on affordable housing. Council Member Miraglia asked about the impacts to tenants in those affected properties under the terms of the settlement agreement. Mr. Bazar explained that the settlement agreement is between the City of Hayward and the tenants. The County is not directly involved.

Ms. Gardner said given the current litigation, that there are disagreements between the tenants' organization and the City around what will happen. She also noted that if the deadline expires, those funds will no longer be retained for local transportation projects, and will go back to the state.

Mr. Bazar said that one of the fundamental efforts is ensuring that those monies stay in the local area. Not resolving these issues in accordance with state timeframes may result in losing money for local transportation projects.

Council Member Miraglia read some comments from Council Member Sadoff who was not able to attend this meeting. His comments: "This proposal appears reasonable. Current tenants are being offered the chance to purchase their homes with funding assistance compared to rentals in the county and the state. The conceptual plan of the area is an improvement over current conditions".

2. **VARIANCE, PLN2009-00105 – CASTRO VALLEY UNIFIED SCHOOL DISTRICT –** Application to allow and 9 foot 6 inches high sign where 4 foot is the maximum height allowed, and 97.6 square feet in area where 56 square feet is the maximum, in a R-1-CSU-R-V (Single Family Residence, Conditional Secondary Unit) District, located at 19722 Center Street, east side southeast corner of Paradise Knoll Court, Castro Valley area of unincorporated Alameda County, bearing County Assessor's number: 084C-1063-001-02. – **Continued from November 9, 2009. Staff Planner: Richard Tarbell.**

Ms. Urzua summarized the staff report.

Michael Miller, representing the Castro Valley Unified School District, said that by rising the sign to a pedestal will actually improve the side lines leaving the driveway, it will have a positive impact from what is there already.

Council Member Miraglia asked Mr. Miller about the district's future plans to install landscaping. Mr. Miller said that they will probably be putting some gravel. Basically anything that they plant will not survive. Council Member Miraglia said that gravel is not a big improvement, aesthetically is just dirt.

Public testimony was called for.

Jennifer Kline, resident at 16278 Lyle Street, spoke in support of the sign. She said that the existing sign is antiquated and a new one will help get all important information to the community.

Jan LeRoy, resident at 4479 Edwards Lane, spoke in opposition of the sign. In her opinion, it would be a detriment to the residential neighborhood. It is too imposing for the area and very close to the street.

Council Member Miraglia asked Ms. Urzua if the conditions of approval included any prohibitions to commercial advertising. Ms. Urzua said condition of approval # 3 explains that commercial advertisement for non-school related activities is not permitted. Council Member Miraglia asked Mr. Miller if the School District considered a smaller sign perhaps the size of what is there now. Mr. Miller said that the sign was chosen by the Parents Club and it is the approximate square footage of the existing sign except that it is located up higher.

Council Member Cunha asked Mr. Miller if it is similar to signs in other schools. Mr. Miller said that it is similar to Marshall's but more modern because Marshall's does not have the electronic display. Hours of operations would be 7 a.m. to 7 p.m.

Council Member Ryzanych express concern about possible vandalism since the proposed sign would be outside the fenced protective area. He asked Mr. Miller if he had considered a location inside the fence. Mr. Miller said yes but it would not be their preferred location given visibility opportunities for parents driving in to drop off children.

Council Member Nielsen noted that it would seem that if the sign were put inside the fence it would have to be much higher in order to be visible.

Council Member Ryzanych asked if the signage new materials are graffiti resistant. Mr. Miller said he does not know, however they have very good graffiti removers.

Council Member Miraglia said that the black fence has severe impact on the neighborhood. She strongly encouraged the school district to do something that is aesthetically pleasing and also do some landscaping.

Council Member Cunha made a motion to approve Variance, PLN2009-00105 with the request to install aesthetically pleasing landscaping. Council Member Frank seconded. Motion carried 5/0/2 with Council Members Sadoff and Moore excused.

3. **SITE DEVELOPMENT REVIEW, PLN2009-00070 – EDEN TOWNSHIP HEALTHCARE DISTRICT** - Application to allow construction of a three-story, approximately 25,473-square foot medical office building and related site improvements, including removal of an estimated 8,000-square foot modular office building, in the CVCBD, Sub 7 (Castro Valley Central Business District Specific Plan, Sub Area 7) District, located at 20410 Lake Chabot Road, east side, about 450 feet north of Castro Valley Boulevard, Castro Valley area of unincorporated Alameda County, designated Assessor's Parcel Numbers: 84A-0158-008-05 and 84A-0158-010-04. **Staff Planner: Andrew Young.**

Ms. Urzua summarized the staff report. She stated that this project was before this Council on July 13, 2009 for a preliminary review. This is the final proposal. Staff is recommending approval.

Kurt Anderson, Architect for this project, said that they have incorporated a lot of the comments from the last Council meeting. They have been working diligently with staff and also with Friends of the San Lorenzo Creek. He noted the most significant changes based on staff input reconstruction of this area. They reviewed the staff report and found the conditions acceptable and hope to have the Council's approval.

Council Member Nielsen said that the toning down of the initial colors worked very well and appreciated his efforts to adding more green along the creek because there has been a concern about that. He was very pleased with the concept.

Dev Mahadevan, Healthcare District Director, said that the District is about promoting health and to provide affordable office space.

Public testimony was called for.

Bruce King, resident at 3127 Terry Court and member of Friends of the San Lorenzo Creek (FLSC), noted the significance of this portion of the Creek. The FSLC has encouraged this project to enhance the current creek side areas to protect the ability to restore the natural feature of the creek and to provide a public experience to the visible side. Planning has now accomplished these objectives. He commended the project representatives, Planning, Public Works and specially the Flood Control staff together with Friends of the San Lorenzo Creek in developing the solutions that address the business needs of the healthcare district and the needs of the creek and the watershed. He also commended the project design features that provide energy efficient and environmentally sound building as measured by the needs criteria. He commended the project for requiring storm water runoff controls including the use of impervious pavers, creek and watershed public educational components such as signage marked in the main driveway to mark the location of the underground portion of the creek. Last and most importantly, commended the project plan for setback area along Chabot Creek open flood creek channel. He recommended that the Council support the plan.

George Bischalaney, President and CEO of the Eden Medical Center, submitted a letter in support of the project. The letter was entered into the record.

Howard Beckman, resident at Via Dolorosa, San Lorenzo and member of Friends of the San Lorenzo Creek, spoke generally about the watercourse protection ordinance (WCPO), specifically about set back and creek protection. The WCPO defines, among other things, setbacks from the creek. Setbacks are a land use planning tool. This puts the Planning Department in a very difficult if not impossible position when it comes to development proposals next to water channels because the WCPO also by its own terms gives enforcement to the Director of Public Works. The outcome depend on the applicant, the interest of the Flood Control district, on community opinion and pressure, and also involvement of one or more County supervisors. We should not have to have that kind of situation. Planning should be orderly and predictable. He is a strong proponent of professional planning and a strong proponent of strengthening our Planning Department in its work in the unincorporated area. Orderly predictable process is fair to owners and is fair to the community. Because the WCPO is enforced by the Public Works Agency, it is important to

understand the nature of this agency. Additional comments were made regarding differing perspectives. The WCPO was not an issue until five or six years ago when enforcement was questioned in particular cases and made an issue and this is due to the formation of Friends of San Lorenzo Creek and also the creation of a Creek Task Force which is a community based task force created by the Board of Supervisors to make recommendations concerning policies and revision to WCPO. He asked the Council to join the Friends of San Lorenzo Creek and the Creek Task Force in calling of the revision of the WCPO.

Public testimony was closed.

Council Member Nielsen said it is a great project. He moved to approve Site Development Review, PLN2009-00070 with staff recommendations. Council Member Cunha seconded. Motion carried 5/0/2 with Council Members Sadoff and Moore excused.

4. **CONDITIONAL USE PERMIT, PLN2009-00090 - T-MOBILE USA/CHRIS COONES** – Application to allow installation and operation of a new wireless telecommunications facility (antenna array) on an 11'-6"-high extension to the top of a 100'-high PG&E high-voltage transmission tower, with ground equipment placed between the four tower legs, in a PD (Planned Development) District, located on W. Cavendish Place, north side, 125 feet west of Troost Court, Castro Valley area of unincorporated Alameda County, bearing County Assessor's designation: 085-1510-0013-00. **Continued from September 14, 2009. Staff Planner: Richard Tarbell.**

This item was moved to the Consent Calendar.

5. **SITE DEVELOPMENT REVIEW, PLN-S-2016 – DONATELLO** - Application to allow conversion of a temporary Agricultural Caretakers unit to a Primary Dwelling Unit, in "A" (Agricultural) District, located at 10308 Cull Canyon Road, east side, about 1090 feet east of the terminus of Cull Canyon Road, Castro Valley area of unincorporated Alameda County, designated Assessor's Parcel Numbers: 85-0700-003-01. **Staff Planner: Damien Curry.**

Ms. Urzua summarized the staff report. Staff recommends approval.

Hugh Donatello, applicant, stated that he started this project 10 years ago. He notes that the issue with the final building permit on the primary residence has been resolved. He also provided background on his project. Since then, he changed his mind and moved to primary condition.

Council Member Nielsen asked Mr. Donatello if he would be willing in combining the two parcels in order to conform with Measure D's 100 acre minimum building lot size. Mr. Donatello said that they are combined. He just noted that the application has two addresses.

Public testimony was called for.

Susan Christensen, resident at 10303 Cull Canyon Road, was concerned that two separate parcels were listed with two addresses. She had instances in the past when the Sheriff's Department or other law enforcement, are looking for Donatello and 10300 address which is on his mailbox. She wanted to make sure that it stays 10300. She also said to include those two parcels, the one listed is 085-0700-003-01 the one that is not listed is 085-0540-002-05 which is 17.080 acres and combined equals 102 which is conforming to the Williamson Act contract.

Public testimony was closed.

Council Member Miraglia asked Ms. Urzua how that address can be corrected. Ms. Urzua said that she was told by the staff planner that the applicant can resolve this directly with Public Works.

Council Member Nielsen made a motion to approve PLN_S-2016 with a deed restriction of combining the two parcels to a 102 acre site that provides that neither site will be sold separately or build on separately and that the address be changed to 10300. Council Member Frank seconded. Motion carried 5/0/2 with Council Members Sadoff and Moore excused.

F. Chair's Report - None

G. Committee Reports

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

Council Member Nielsen reported about the recent CAC meeting and he referred to the Daugherty building. He said that the Redevelopment Agency didn't follow the CAC's directions; therefore, they had to make a motion to pull the project back. They are going to require the applicant to get an appraisal of the building so they know exactly what the building is worth rather than taking the owner's word for it. Also, they need to know who the prospects lessees were. They had a list which was very helpful, rather than having a large discount liquor outlet on that building. Also, he requested that a timetable be set up and that was not done. The Redevelopment Agency was going to pass this whole thing to the Board of Supervisors for approval without the CAC seeing the contract and that is not going to happen. One of the things that is a concern, is the need for an accurate appraisal. He has four that he is going to suggest that the owner of the property consider because they are very prominent commercial appraisers. The CAC will consider eminent domain proceedings. He normally opposes to eminent domain but in this case the building is the center piece of the downtown area and an eye sore and blight for 6 years so in this case it is justified.

Council Member Miraglia told Council Member Nielsen discussed the details of Council Member's motion at the CAC meeting. Council Member Miraglia said that she has asked Ms. Urzua to put this issue in the MAC agenda for January 11, 2010.

Council Member Nielsen said that the point is that he does not want to stop them. They want them correctly. If they do not do it correctly then they will evaluate the value of the building in relationship to eminent domain proceedings. We spent \$1,300,000 on shared parking only to find out that same night that they have not even reached an agreement with the Fong's before they bought that building and tear it down. The CAC is not going to spend \$1.3 and turnaround is going to spend \$1.8 for the benefit of one property owner. The CAC made it pretty clear that RDA works for the CAC, the CAC does not work for RDA. The last time that they did this, Supervisor Miley came in and clarified the point and Ms. Dalton seemed to understand. He does

not want to stop the process. They can go ahead, correct the shortcomings, and get the true value of the building so we can see if it is worth going ahead.

Council Member Cunha asked if the owner of the property agrees to an appraisal. Council Member Nielsen said that it is stated in the motion that he made that the owner of the property obtains the appraisal.

- **Ordinance Review Committee**
- **Eden Area Livability Initiative**

H. Staff Announcements, Comments and Reports

Ms. Urzua informed the Council that there are no items scheduled on the December 28 agenda, therefore, there will be no meeting. Also, the first meeting in January will be held at the new Castro Valley Library

I. Council Announcements, Comments and Reports

Council Member Miraglia made comments about the e-mail addresses in the Forum

J. Adjourn

The meeting was adjourned at 7:37 p.m.

Next Hearing Date: Monday, December 28, 2009