

CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL

Minutes May 24, 2010

(Approved as corrected June 28, 2010)

A. **CALL TO ORDER:** The Chair called the meeting to order at 6:00 p.m. Council Members present: Cheryl Miraglia, Chair; David Sadoff, Vice Chair. Sheila Cunha, Dean Nielsen, Andy Frank and John Ryzanych. Council Members excused: Jeff Moore. Staff present: Sonia Urzua, Bob Swanson and Maria Elena Marquez. There were approximately 25 people in the audience.

B. Approval of Minutes of April 12 and 26, 2010.

The minutes of April 12 and 26 were continued to the next meeting.

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

D. **Consent Calendar – No Items.**

E. **Regular Calendar**

1. Discussion of Draft Alameda County Policy regarding Batting Cages Policy. Presentation by Sonia Urzua.

Ms. Urzua summarized the staff report. She provided background information and discussed the proposed timeline.

Council Member Frank asked for clarification on the provision regarding amortization. Council Member Frank asked Ms. Urzua how the general public would be notified of the ordinance. Ms. Urzua said that the ordinance will be noticed in the same way as any other new ordinance. The intent of this ordinance is to limit the scope of certain operations so a discretionary permit is not required.

Council Member Nielsen suggested striking the provision about camps and teams.

Public testimony was called for.

Derek Watry, with Wilson Inrig & Associates, acoustical consultants, spoke about a noise study conducted in February 2009 from the Locey/Sommer property. He gave a brief explanation about how noise measurements are made and the national standards. He explained that as currently operated, that batting cage is violating the Alameda County Noise Ordinance. Council Member Nielsen asked Mr. Watry about the bats and balls being used during the noise study. Council Member Nielsen asked if the sound test was done in the house. Mr. Watry said it was done at the property line.

Elke Sommer, resident at 19826 Alana Road, spoke in favor of the ordinance. She spoke about how the policy evolved. She said that she was a community participant in the round table discussion resulting in this draft policy. She stated that Mr. Marc Crawford was also a participant. Supervisor Miley moderated the discussion and they ultimately succeeded in achieving unanimous agreement among the participants.

Christina Sonas, resident at 22450 Charlene Way, spoke in favor of the ordinance. She said that she was a community participant in the round table discussion as well as the previous speaker. She is the chair of an organization called "Castro Valley Neighbors Protecting Homeowners Rights", which is a coalition of residents who have been active on this residential zoning issue. They asked the Council to recommend approval of this policy as it was originally and unanimously drafted. They expect that the Council vote to recommend this policy as it stands.

David Locey, resident at 19826 Alana Road, spoke in favor of the ordinance. He said that the proposed ordinance offered some objective measurement of the noise. It was his understanding that the goal of this policy is that the owners of backyard batting cages have some guidance in using their property so they can reasonably avoid complaints from their neighbors. Also, Zoning Enforcement, Planning Department, the MAC, the WBZA, Board of Supervisors and other bodies have an objective standard use before they need to commission an expensive noise study.

Marc Crawford, resident at 3832 Somerset Avenue, described the public process to the related Conditional Use Permit (CUP), including an appeal to the Board of Supervisor. He expressed concern with the expenses related to the discretionary review. Ultimately, the Millers withdrew the CUP application. He described Supervisor Miley's mediation efforts between the neighbors, and county staff which would develop a good draft batting policy to go forward with. The result was a draft policy to go through the public process that Mr. Miller would live with the mean time. They agreed that it would be for a limited period of time and once we got through the public process it would be something more reasonable. The problem is that the proposed ordinance is geared toward constricting the Millers at the greatest extent as possible. Mr. Crawford went on to discuss his concerns with the components of the ordinance.

Council Member Nielsen expressed concern that this was not a consensus between both sides. Mr. Crawford said that the consensus was that they would try to come up with a draft policy that Mr. Miller would live while the draft policy went through the public process. He said he made it clear to Supervisor Miley that this is very restrictive and that they would be looking to get it relaxed through the public process.

A discussion ensued about the costs and concerns about noise studies. Mr. Crawford suggested that the County should conduct a noise study if it is going to create an ordinance.

Council Member Nielsen expressed concern over the 840 square foot size limitation.

Jeff Sonas, resident at 22450 Charlene Way, spoke in support of the ordinance. He opined that it is not appropriate to conduct business in a residential scenario like this. He also spoke about the use of shrouds, bats, and balls. His understanding is that during the round table discussion, Mr. Miller indicated that you really have to use hard balls in the batting cages in order to get the kids proper training.

Oscar Miller, resident at 19829 Fern Way, commented about the mediation process. He also commented about the expenses related to the discretionary review. He also talked about how the proposal would affect the unincorporated county. When they went to the Board of Supervisors, they said that they could not do anything and that a study needed to be done and still has not been done. He was under the impression that somewhere along the line within this time frame this would be done. He knows that there is not a lot of money anywhere but there is something we have to look at. We want something that works for everyone.

Council Member Nielsen asked Mr. Miller about the existing batting cage facility. Mr. Miller discussed aluminum bats versus wooden bats and rubber balls versus hard balls. He also expressed concern about the size limitation in the policy. Council Member Nielsen discussed changes landscaping along the Miller's rear property line.

Council Member Frank and Mr. Miller continued to discuss noise studies.

Christina Sonas said that this policy is limited to residential zoning. Schools and community facilities have different zoning.

Public testimony was closed.

Council Member Miraglia asked about the impetus for this ordinance coming forward and asked additional questions.

- She asked if Zoning Enforcement has been inundated with complaints about any other batting cages in unincorporated Alameda County and if so, how many and what were the basis of those complaints. Ms. Urzua said that she would get that information from Code Enforcement staff.
- Why we are not considering a revision or a tightening of that ordinance instead of further regulating for the entire County something that is really not an issue rather than with the Millers and the Loceys. Ms. Urzua explained the scope of the Planning Department's authority under the zoning ordinance.
- Council Member Miraglia asked if staff researched this and which surrounding jurisdictions have such an ordinance as she could only find one on line and that was in Southern California – there are absolutely none in the Bay Area. Ms. Urzua summarized

her research of other jurisdictions through an inquiry to League of Six jurisdictions responded – only one had a batting cage ordinance (Thousand Oaks).

Council Member Miraglia said that we need to keep in mind that any batting cage ordinance that this County may ultimately adopt is for all of unincorporated County and is not supposed to be solving any particular problem in the neighborhood. She asked Ms. Urzua if from her research this draft ordinance that the Council received tonight is staff actually recommended or if this is what is what the version that became the negotiated agreement between the Loceys and the Millers. Ms. Urzua said that this is the revised version of the policy that staff drafted. The Planning Director, County Counsel and the other parties contributed and added other aspects to the draft.

Council Member Miraglia said that nowhere in the draft ordinance is a definition of batting cage and to her that is very problematic. Ms. Miraglia provided a copy of a list of questions for staff regarding the conditions. The list was entered into the record. She said she didn't understand how the County could do this without the County performing an objective noise study in multiple batting cage settings to determine what the criteria should be, it is absolutely necessary. It is ludicrous that we come forward without the statistics and the criteria. She said that the draft ordinance is worded very poorly. The County actually permitted and approved two batting cages.

Council Member Nielsen said that when County ordinances come out, they usually cover the full spectrum of a situation and in this particular case it doesn't even come close to covering the full spectrum of the recreation type facilities in people's yards because noise could be a problem with the swimming pools, the basketball courts with a horse shoe pit, with tennis courts, etc. This is very discriminatory against the owner of the batting cages. Either we are going to do this thing so we are not holding somebody up to ridicule and do a credible job as far as noise generated by any recreation type facilities in a yard we can fairly look at problems in all areas. If we are going to analyze recreation facilities of all kinds in yards we should include more than just batting cages.

Council Member Cunha said that staff indicated that there are other batting cages in the unincorporated area, she asked Ms. Urzua if they have been noticed and invited to participate. Ms. Urzua said that since the batting cages are generally not required to pull a building permit, we do not have a record of everyone with a batting cage.

Council Member Frank said that the policy needs to be comprehensive. If you are going to have an ordinance that applies to any type of activity, it should be applied equally to all activities. The County bears responsibility to investigate further because it is creating the ordinance.

Council Member Sadoff said that the key issue here is noise. This is almost an unnecessary exercise. We already have a noise ordinance. If you look at this proposed ordinance, all the other

restrictions are immaterial. If Mr. Miller were to show compliance with the noise ordinance, he would say “to leave us alone” and not pursue it.

Council Member Ryzanych said that he agrees with the other Council Members, in his opinion to pick up one backyard activity and to try to isolate it and define it when there are comparable activities like swimming pools, tennis courts, and basketball facilities. It is impossible to enforce. This is a noise issue. A County funded study is appropriate and we can move forward in that direction.

Council Member Miraglia said that she is glad that the Loceys and the Millers have come to an agreement for the mean time and she does not think that the way to settle this is to put through an ordinance that affects all of unincorporated Alameda County. This ordinance is far too restrictive. She would like to recommend denial of the ordinance in its present form and recommend that the current noise ordinance be revised to resolve the problems at hand rather than writing an ordinance on batting cages. If the Planning Department, decides to continue with an ordinance specific to batting cages, that it do the following first and bring it back to the Council before going forward. A) Document a demonstrated need for such an ordinance beyond the Loceys /Millers situation; B) To do jurisdictional research necessary for an ordinance this caliber and present information to Council; C) Do the sound study required for this ordinance and present that information to Council; D) Have community outreach so the residents with batting cages in Alameda County are informed of what the County is planning; E) Offer substantiated reasoning for the restrictive times and hours unless revised; F) Add a clarify wording of the proposed ordinance to address: 1) definition of batting cages and to the questions brought up regarding lighting, amortization, declaration of public nuisance and privacy issues.

Council Member Nielsen asked what about the rest of the activities that creates as much noise. Council Member Miraglia said that she is recommending that the current noise ordinance be revisited not that they go forward with the batting. Council Member Nielsen said that noise is the question and if the motion was to have the County do a noise study at their expense to determine the acceptable level for all recreational amenities in backyards in unincorporated Alameda County, he will be fine with it.

Council Member Frank seconded the amendment to the motion. Council Member Miraglia repeated the motion: Council recommends denial of the ordinance in its present form and recommend that the current noise ordinance be revised to resolve the alleged problems at hand rather than writing an ordinance on batting cages, research include swimming pools, tennis courts, basket ball courts, for all types of backyard recreational activities.

Bob Swanson said that the noise ordinance covers all those things.

Council Member Sadoff asked if the motion on the table right now is simply a motion to deny our approval of this draft ordinance or to deny plus if it goes forward to throw these other items on the table. Council Member Miraglia said that her understanding is to deny in its present form to have the noise ordinance revisited but if it goes forward in any way it should be with everything that she listed. Council Member Sadoff asked why the Council should revisit the noise ordinance if it already covers these activities that have been brought up. Council Member Miraglia said that because obviously something is falling short from the noise ordinance if it is not enforceable right now that is why there is a problem.

Council Member Sadoff said that the issue here boiled down to noise; that we already have a noise ordinance; and therefore the batting cage ordinance is unnecessary and redundant. Council Member Sadoff made a motion to deny the proposed Draft Ordinance for Batting Cages in Residential Districts. Council Member Nielsen seconded. Motion passed 6/1 with Council Member Moore excused. Council Member Miraglia asked if there is a second motion to revisit the noise ordinance to try to resolve the alleged problems at hand and do the sound study and have whatever needs to be done in order to accomplish that and also assess other recreational activities in people's backyards. Council Member Frank seconded. Motion passed 6/1. Council Member Moore excused.

2. **ELWORTHY-VERIZON, CONDITIONAL USE PERMIT, PLN2009-00099** – Application to allow replacement of three and construction of three antennas, a total of six new antennas with continued operation of a telecommunication facility in an A (agricultural) District, located at 10410 Crow Canyon Road, northeast 1600 feet of the intersection of Crow Canyon and Bellina Canyon, Castro Valley area of unincorporated Alameda County, bearing Assessor's Parcel Number: 085-1950-002-09. **Staff Planner: Shahreen Basunia.**

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

Michelle, with CN Wireless and representing Verizon, requested that the landscape requirement be eliminated because there is existing landscape there that they consider to be adequate. Their site is not visible from Crow Canyon Road.

A discussion ensued about the site's visibility from the Crow Canyon Road. Council Member Frank supported a landscape requirement to screen the project from the general public.

Public testimony was called for. No public testimony submitted.

Council Member Miraglia and Nielsen stated their support for the landscape requirement.

Council Member Sadoff asked Ms. Urzua about the term for this conditional use permit and if they are currently in compliance with previous conditions of approval. Ms. Urzua said 10 years and yes, they are in compliance.

The project representative requested removal of the Fire Department's fire clearance certificate requirement. Ms. Urzua suggested that the applicant will have to deal with the Fire Department directly.

Council Member Frank made a motion to approve Conditional Use Permit, PLN2009-00099 with the following conditions: that they comply with the recommendations as set forth by the Alameda County Planning Department; that they provide landscape and maintain the landscape and water it so it survives and be reviewed within 6 months to a year by the County; Council Member Nielsen seconded. Motion carried 6/1 with Council Member Moore excused.

- 3. BEVERLY AXELRAD/THE SEQUOIANS - CONDITIONAL USE PERMIT, PLN-2009-00108** – Continued operation of an outdoor recreation facility, in an A (Agricultural) District, located at 10200 Cull Canyon Road, northeast side, approximately 700 feet northeast of the terminus of Cull Canyon Road, Castro Valley area of unincorporated Alameda County, designated County Assessor's Parcel Number: 085-0700-002-00. **Staff Planner: Damien Curry**

Ms. Urzua summarized the staff report. Staff is recommending approval with an expiration date of May 26, 2020.

Beverly Axelrad, applicant, appeared and discussed the proposal.

Council Member Frank asked for clarification of the permit term.

Public testimony was called for. No public testimony submitted.

Council Member Miraglia suggested a five year renewal period. Council Member Nielsen agreed with Council Member Miraglia.

Council Member Ryzanych recommended that the permit be provided for 5 years as opposed to 10 years for control and management purposes.

Ms. Axelrad said that the reason why it was expired is because they were not notified when it should be renewed and as soon as they discovered that they contacted the County and they have been working on this since last September. That is why it has been taking so long.

Council Member Nielsen made a motion to approve Conditional Use Permit, PLN2009-00108 for a 5 year period with County considerations. Council Member Ryzanych seconded. Motion carried 6/1 with Council Member Moore excused.

- 4. SITE DEVELOPMENT REVIEW - PLN2010-00004 – NAHAS / SEARS- CASTRO VILLAGE PHASE II IMPROVEMENTS** - Application to allow Castro Village Phase II improvements including building and site improvements for Walgreens and Shari's Restaurant, new building signage for Shari's and Walgreens, a drive-up window at Walgreens, and street and access improvements, CVCBD-S7 (Castro Valley Central Business District - Sub Area 7) District, located at 3360 and 3382 Castro Valley Boulevard, on the north side of Castro Valley Boulevard, off the northeast corner of Santa Maria Avenue and Castro Valley Boulevard, Castro Valley area of unincorporated Alameda County, bearing Assessor's Parcel Number: 084A-0080-015-08, 084A-0080-015-14, 084A-0080-016-06, 084A-0085-001-03, and 084A-0085-006-02. **Staff Planner: Howard Lee.**

Ms. Urzua summarized the staff report. She stated that Phase I came before this Council in April of 2009 where the Council considered the changes. A color board was presented and the Council approved it. This proposal is consistent with the Master Sign program. Staff recommends approval.

Randy Nahas, applicant, introduced the project architect and said that staff did a good job describing all the things that they are proposing and that they are satisfied with all the conditions except the condition about removing the big sign that they have there in this phase. When the signs are designed that would be phase III, it will be to replace that sign.

Council Member Sadoff asked about changes to the ingress/egress. Mr. Nahas said that there will be a couple of modifications. Council Member Sadoff also asked if the parking spaces are going to remain the same. Mr. Nahas said no, then described the changes. Overall, there is a loss in parking throughout the site.

Council Member Miraglia asked additional questions. The applicant noted that with the street improvements, they are now picking up parking along the street.

Public testimony was called for. No public testimony submitted.

Council Member Cunha made a motion to approve Site Development Review, PLN2010-00004. Council Member Sadoff seconded. Motion carried 6/1. Council Member Frank said that Mr. Nahas requested that the sign for Ross be done in the third phase rather than the phase II. Council Member Cunha amended the motion to say that on the condition that item 14 be removed and implemented in phase 3. Council Member Sadoff seconded. Motion carried 6/1 with Council Member Moore excused.

F. Chair's Report – None

G. Committee Reports

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

Council Member Nielsen provided an update which included a discussion about the Daughtery building.

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

H. Staff Announcements, Comments and Reports

Bob Swanson noted that the Castro Valley Farmers Market is doing well.

I. Council Announcements, Comments and Reports

Council Member Miraglia reported that she will be meeting with Mr. Silva, Supervisor Miley, Marc and Richard Rhodes on Wednesday.

J. Adjourn

The meeting was adjourned at 7:59 p.m.

Next Hearing Date: Monday, June 14, 2010