

MINUTES OF MEETING
ALAMEDA COUNTY PLANNING COMMISSION
OCTOBER 18, 2004
(APPROVED NOVEMBER 15, 2004)

The meeting was held at the hour of 1:30 p.m. at Public Works Auditorium, 399 Elmhurst Street, Hayward, California.

CLOSED SESSION – Conference with Legal Counsel

Time: 1:00 p.m.

Place: 224 W. Winton Avenue, Room 111
Hayward, California

There was no action taken during Closed Session.

REGULAR MEETING: 1:30 p.m.

MEMBERS PRESENT: Commissioners Compton Gault; Richard Hancocks; Frank Imhof; Mike Jacob, Chair; Glenn Kirby; Lena Tam and Ario Ysit.

OTHERS PRESENT: Bruce Jensen, Senior Planner; Brett Lucas, Planner III; Brian Washington, County Counsel's Office; Nilma Singh, Recording Secretary

There were approximately 15 people in the audience.

CALL TO ORDER: The Chair called the meeting to order at 1:40 p.m.

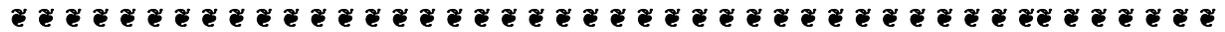
ANNOUNCEMENTS BY THE CHAIR: The Chair announced that Valley Times on September 9th had published an article on City of Dublin's condo conversion policy, copies of which have been distributed by Commissioner Ysit.

He also recommended that the committee appointed to review the Condo Conversion Policy should convene before Commissioner Ysit's term expires in December, 2004.

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. No one requested to be heard under open forum.

CONSENT CALENDAR:

1. **APPROVAL OF PLANNING COMMISSION MINUTES - October 4, 2004.**



2. **2193rd ZONING UNIT AND TENTATIVE TRACT MAP, TR-7530, ROBERTS/UTAL** –Petition to reclassify a site comprising approximately 8.25 acres from the R-1-SU-RV and R-1-B-E-SU-RV District to the PD (Planned Development) District, to allow subdivision of three parcels into 38 lots for development of single-family homes, located at 4524 Crow Canyon Place, approximately 500 feet south of Crow Canyon Road, Castro Valley area of unincorporated Alameda County, bearing Assessor’s Parcel Numbers: 084C-1068-001, 084C-1068-007 and 084C-1068-008. (Continued from September 7, 2004; to be continued without discussion to November 1, 2004).

3. **2190th ZONING UNIT - MOHLER** - Application to rezone the subject property to a PD (Planned Development with an Agriculture-Cultivated Agriculture base zone) Zoning District, so as to maintain all the development rights and restrictions in the A-CA district, except that operation of a heliport (personal helicopter landing and take-off from a helipad) only as described herein, is Permitted, on a 122 acre property within an “A-CA” (Agricultural, Cultivated Agriculture) District, located at 7490 Mines Road, east side, 2.2 miles south of Tesla Road, unincorporated south Livermore area of Alameda County, bearing Assessor’s Parcel Number: 099A-2420-004-24. (Continued from June 6, July 19 and August 16, 2004; to be continued without discussion to November 15, 2004).

Commissioner Kirby made corrections on Page 4 fourth paragraph; line 4 of the third paragraph on Page 6 and the second paragraph on Page 7. He made the motion to approve the Consent Calendar with the above modifications and Commissioner Gault seconded the motion. Motion carried 7/0.

Committee Reports

1. **California Tiger Salamander** – Commissioner Kirby, Environmental Committee Chair, announced that a letter from the Committee has been submitted to the Fish and Wildlife Services recommending adoption of the Special Rule exemption to taking prohibitions of Section 9 of the Endangered Species Act for routine ranching activities. The Chair thanked the Committee for their work. Commissioner Gault made the motion to accept the report and Commissioner Tam seconded. The Commission accepted the report unanimously.

2. **Granite Construction** – Commissioner Imhof announced that they had two meetings and a consensus had been reached which is reflected in the letter. Commissioner Gault added that all parties concerned had participated. Commissioner Ysitt concurred. Commissioner Gault made the motion to accept the report and Commissioner Kirby seconded. The Commission accepted the report unanimously.

REGULAR CALENDAR:



1. **PARCEL MAP, PM-8447 – FLETCHER** – Application to subdivide one 76 acre parcel into two lots (Variance, V-11788 allowed two parcels, 44 acres and 32 acres, where 100 acres is the minimum) in an “A” (Agricultural) District, located at 3265 Laughlin Road, east side, approximately 1.8 miles north of I-580, unincorporated Livermore area of Alameda County, bearing County Assessor’s designation: 099B-5475-005-01.

Mr. Lucas presented the staff report. Commissioner Ysitt asked for the size requirement of a caretaker’s unit and the maximum number of units allowed. Mr. Jensen replied that there was no size requirement for caretakers units and one could have as many as needed, within reason. The Chair requested clarification on staff’s recommendation and the history of the two variances. He also asked for the options available to the Applicant if the application was denied today. Mr. Lucas stated that staff was recommending conditional approval and further outlined the history. Mr. Jensen added that the Applicant could appeal a denial action to the Board of Supervisors noting that an approval could be granted since the variance had been approved by the BOS. Commissioner Hancock asked if the recommended conditions of approval were standard conditions. Mr. Lucas replied yes.

Public testimony was called for. Mick Lamb, 2178 Rheem Drive, Pleasanton, representing the landowner, agreed with all the recommended conditions except Condition #5, He felt that it would be preliminary to require this condition since soil testing has not been done and, as such, requested flexibility. Commissioner Ysitt agreed adding that Environmental Health selects a site for the location of the septic system before a dwelling location is chosen. Commissioner Tam indicated that her concern was adequate potable water supply since the parcels are separated. Mr. Lamb replied that historically water supply has been a problem in this area even though well-water supply has been sufficient. His first step was to obtain approval for the subdivision and then aggressively pursue other issues including water.

Public testimony was closed. Commissioner Kirby noted that three other parcels were divided by a road. He asked if there were special circumstances with the subject property that supported approval of the variance and if their action today would preclude other applications. Mr. Jensen said he would have to check into it. Commissioner Hancock thought that this would be irrelevant since the Board of Supervisors have already approved the variance. Commissioner Gault made the motion to approve the application per staff recommendation and Commissioner Kirby seconded the motion. Commissioner Imhof asked for the number of units that could be placed on the property. Mr. Jensen replied that approvals for caretakers units have been discretionary actions, processed through Conditional Use Permits. The Chair asked if applications for accessory buildings and secondary units would cover caretakers’ units. Mr. Lucas replied no.

Commissioners Gault, Hancock, Imhof and Ysitt voted in support of the motion. Commissioners Jacob, Kirby and Tam voted no. Motion carried 4/3.



2. **RMC PACIFIC MATERIALS/GRANITE CONSTRUCTION COMPANY** – To consider the matter of the asphalt batch plant recently constructed and operated by Granite Construction Company, located on the site of (and operated as accessory to) the existing Eliot Quarry operated by RMC Pacific Materials (Permittee), regulated under Alameda County Quarry Permit Q-1 and Surface Mining Permit and Reclamation Plan SMP-23. This asphalt batch plant is located on the Q-1/SMP-23 site in the Livermore-Amador Valley in unincorporated Alameda County, approximately 0.6 mile south of Stanley Boulevard, approximately 500 feet southeast of Shadow Cliffs Regional Recreation Area, and 1,800 feet northeast of the existing northwest-southeast portion of Vineyard Avenue in the City of Pleasanton. (Continued from September 2, 2004).

Mr. Jensen presented the staff report. The Chair said he appreciated the committee’s work and the meetings held.

Public testimony was called for. Jim Cady, General Counsel for Granite Construction Company, stated that there is no legal basis for this Commission to ask Granite to move the plant nor has he received any legal information from any of the agencies involved to make it a legal option for this Commission. He did not concur with the committee report and further read portions of the report. He was concerned with the word ‘perception’ and pointed out that Granite has not been given the opportunity to mitigate. They have legally complied with the permit process, acquired a valid legal permit to operate the plant and have been in full compliance with the permit. He felt that asking to relocate will be “railroading” a valid business which will leave Granite with no other option than to pursue the matter in court. He hoped for a reasonable conclusion.

The Chair thanked him for his input and pointed out that the Committee’s work was to gather input from all parties involved to help with the decision.

Michael Roush, attorney representing City of Pleasanton, requested a continuance. He said that the City Council has not had an opportunity to discuss and respond to the numerous good recommendations that came out of the discussions with the Committee. Chair Jacob asked if their previous letter should not be taken into consideration now. Mr. Roush replied that this letter was submitted prior any discussion on the Committee report. The Chair also pointed out that at the Pleasanton meeting, he had asked the City if there was any other possible mitigation for Granite and the City’s response had been “No”. Mr. Roush stated that the response had been appropriate at that time.

Commissioner Tam asked if a finding had been made regarding the disclosure that there was no source of hazardous air pollutants within a ¼ mile radius of the proposed school site. Mr. Roush said that perhaps it was the School District’s finding and not the City Council. Commissioner Tam also asked if this meant that the Council did not review the school site. Mr. Roush said that although he does not recall any specific finding regarding specific hazardous materials, the Council was aware of the proposed school site, and they did not have any information which reflected that this was not a good site. Since the asphalt plant did not exist at this time, it had not

been considered in the 1999 approval of the Specific Plan.

The Chair noted that he had requested justification for non-compatible uses within the cross-jurisdictional line. To date, Mr. Roush said that nothing has been submitted to County Counsel.

Steve Brozosky requested that the minutes reflect that he was speaking as a resident of this community. The parties involved did not come to a consensus as the Committee. The neighbors and the City feel that even with the mitigation, there would still be problems, which were not perceived but were real problems. He had seen no proof that the equipment will completely mitigate the odor problem and the Applicants state that it will reduce the asphalt emissions but it may not completely reduce the odors of rubberized asphalt. An approval without a public hearing will set a precedent. Regarding discussions on whether there has been an asphalt plant at this location, prior to 2001 there has been no asphalt plant on this quarry; and, as such, this was not a continued operation but a new use. A Bay Area Air Quality District's report, complaints started May, 2003 with 38 complaints to-date. With the new proposed homes, this number will increase.

Commissioner Hancocks asked if he could define the threshold for a nuisance and whether his suggestion that any changes in the operations and/or locations of operations within a quarry, should be subject to a public hearing, was an idea or based on a requirement. Mr. Brozosky said he could smell the asphalt in his house which was a nuisance. He read a related section of the Mining Ordinance adopted by the County Planning Commission which requires that findings be made that use is compatible with the adjacent uses, which was not done. The 1957 permit specifies that the asphalt plant can continue at its current location but did not allow an asphalt plant to be situated anywhere on the 500 acre parcel.

Commissioner Tam asked if he had read the air toxics assessment report prepared on behalf of the School District. Mr. Brozosky said that he had not read the entire report which was very scientific but had looked at the wind study which he had some objections to. Most asphalt plants operate at night or early mornings when there is no wind or little from the opposite direction. The School District had not been interested in the odor problem but health risks. The study indicates that there are no significant health risks but does not discuss the nuisance, noise or odor issues. Commissioner Tam asked if the community was comfortable with the Committee's proposed specific mitigation measures regarding noise and visibility. Mr. Brozosky replied no adding that they would recommend relocation to another area on site which is more compatible.

The Chair asked if he considered the odor as being strong during the field trip and if he had visited the Vulcan site. Mr. Brozosky replied that it had not been strong since the plant was in operation; the smell is the strongest when the plant is heated up. Although he has not visited the Vulcan site, he was aware that the technology used there was very new and state-of-the-art. The Chair asked if he was affected by the Vulcan plant. Mr. Brozosky said no due to the fact that the site was further away and new equipment. The Chair also asked that if the subject plant was properly equipped to reduce or eliminate odor, would he still have objections. Mr. Brozosky said he did not think it would solve the problem or mitigate the issues completely.

Mary Roberts, 1666 Vineyard Avenue, said her problem was not only perception but she has had

the odor problem for the last two years. Her first complaint letter was submitted in September, 2002. Being a Planning Commissioner for the last six years, she was aware that the proper process was not taken including CEQA. Ms. Roberts further explained why she did not trust the recommended mitigation measures. The mitigated measures in response to smell and sound complaints were proposed only after the community had pushed the concerns adding that only after this Planning Commission had become involved, the new equipment was bought. She agreed with Mr. Brozosky that the rubberized asphalt is a different use/product and that there was not a consensus. She disagreed that it was just perception. Ms. Roberts indicated that she did not want any type of MOU tied with the school as there were other problems also. For the second Committee meeting, she thought that Granite and RMC would develop a plan but RMC did not participate. She felt that the statement (made by Mr. Sheidenberger at the Pleasanton meeting) that the Operations Manager had approved the asphalt plant was incorrect since RMC had been aware of the existence of the Specific Plan. Ms. Roberts also felt that the plant would be more appropriate on Stanley Boulevard and that impacts could not be mitigated substantially.

In response to Commissioner Tam, she re-stated that her letter was submitted in September, 2002. Commissioner Tam further asked if she had any complaints from August, 2001 to May, 2002, when the portable plant was in operation. Ms. Roberts replied no. The Chair asked what her opposition was to tying mitigation measures to a presence of a school. Ms. Roberts stated that it would not help all the residents and with the newer developments, complaints both old and new will come forward. Her primary focus was the Specific Plan which reflects the school site and a visibility concern. She felt that the study done by the School District was not adequate.

Sandra Lemmons, Assistant Superintendent of Business Services, Pleasanton Unified School District, confirmed that before the school site was purchased, there was no disclosure that a permit existed to operate an asphalt plant nor was there any contact from RMC regarding the location of the plant. Once aware, the School District requested an air quality study to determine the health standards. A substantial amount of money has been spent and a substantial commitment has been made to this area. Although the School District is in litigation with the prior developer, the school will be built at this location as there were not many open space areas in the City. Even though the study does not indicate any health risks, having the asphalt plant immediately opposite will be problematic. The District was pleased with the Committee's Report. Commissioner Tam asked if the location of the asphalt plant was the problem with the developer or if it was strictly a funding issue. Ms. Lemmons indicated that it was the latter and in response to Commissioner Hancocks, clarified that the school's capacity would be 650 children.

Geoffrey Etnire, real estate attorney for RMC, said he was involved in the formation of the Specific Plan. RMC is the landowner, the holder of the quarry permit and have a contract with Granite Construction. He agreed with Granite's legal analysis but pointed out that RMC has a long history in Alameda County and has been coporative with the County and City in the past. At the request of the City, RMC gave up land and mining rights and reduce mining to create the new subdivision, open space and school site in addition to the three acres for Vineyard Avenue. The focus of the Specific Plan was primarily the new home buyers and disclosure of the quarry existence. RMC also requested an easement for noise, dust, odor from the new subdivision.

Granite was willing to entertain reasonable mitigation measures since previously they had operated a portable plant with no complaints. Commissioner Hancocks asked if the measures will include mitigation for the future developments. Mr. Boraston indicated that during the meetings, discussions dominated the possibility of a relocation and he was not sure what mitigations measures were being proposed.

Commissioner Kirby asked for a timeframe to install the noise and odor control equipment. Mr. Boraston said it would take about a month as a foundation has to be built. Commissioner Tam asked if, during the continuance period, Mr. Boraston saw any activities that would move any of the three recommendations. Mr. Boraston felt that constructive discussions should occur on how to mitigate the asphalt plant at its current location.

Public testimony was closed. The Chair noted that six options have been outlined in the staff report. Commissioner Kirby pointed out that the plant has been in operation for some time; there was a range of perception on the nuisances; odor problem off-site; Granite's willingness to mitigate the immediate problem and the parties have not reached a consensus. He hoped that during the continuance period, Granite's counsel would allow staff participation in this process. If at the next meeting the City held the same position as today, he felt that staff would have the same constraints and would be difficult to resolve some of the issues/concerns. Commissioner Hancocks felt that if all parties agree that nuisances exist, the Applicant should be given the opportunity to abate the nuisances. On the other hand, it was a lawful permitted operation, as part of a larger quarry operation, and it needs to be recognized as such. Commissioner Imhof concurred with a 2-3 week continuance.

Commissioner Gault felt that clarification was needed on the Committee meetings. Much discussion had occurred on the relocation and all parties discussed their accounts of mitigation measures with some strong comments from all sides. The Committee's aim was to listen, discuss the concerns and prepare a report. He hoped that a continuance will allow the parties to come back with a positive report which will help this Commission move forward.

Commissioner Tam recommended a continuance. She felt that even with a CEQA process, the Commission needed specific thresholds on what constitutes a nuisance before the Commissioner can consider any action proposed by the Committee. Granite is requesting time to allow installation of equipment and address the odor and blue smoke concerns. She requested clarification/testimony from an Air Quality Board representative at the next meeting. Commissioner Ysit said he would agree with a continuance only if both parties were willing to provide a consensus position for this Commission to work with. Commissioner Hancocks added that the Commission needs to first determine whether or not a nuisance exists.

The Chair recommended that the Commission, staff and interested parties focus on the following issues: what are the nuisance thresholds, and what process and outline of necessary findings to find a nuisance condition which also needs to be reflected in the next staff report; call and obtain a copy of Bay Area Air Quality Management District's nuisance definitions; staff to get a peer review on the Pleasanton Unified School District study; parties involved to provide a consensus position, if possible; Granite or RMC to provide proof of existence of a prior temporary plant;

