

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
JUNE 24,-2009
(APPROVED AUGUST 26, 2009)

REGULAR MEETING: 1:30 p.m.

MEMBERS PRESENT: Chair, Dawn Clark-Montenegro; Vice Chair, Kathy Gil; Member, Jewell Spalding.

MEMBERS EXCUSED: Ineda Adesanya.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; Code Enforcement Staff; County Counsel, Eric Chambliss; Yvonne Bea Grundy, Recording Secretary.

There was no one present in the audience.

CALL TO ORDER: The meeting was called to order by the Chair at 1:30 p.m.

ANNOUNCEMENTS BY THE CHAIR: The Chair made no special announcements.

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.

Neighborhood Preservation Ordinance Abatement Hearing

1. Highlander Holdings LLC, Meekland Ave., Hayward CA 94541

In violation of Alameda County Ordinance 6.65.030 B (1), B (2), D (1), D (3), G (1) and M (1).

1. Overgrown vegetation and weeds throughout the property;
2. A dilapidated perimeter fence which does not prevent illegal access to the property.

Member Spalding motioned to uphold the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. The Vice Chair seconded the motion. Motion carried 3/0.

2. Vilma Vega, Banyan St., Hayward, CA 94541

In violation of Alameda County Ordinance 6.65.030 D (1), D (3) and M (1).

1. Overgrown vegetation & weeds throughout the new construction site.

The Vice Chair motioned to uphold the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. Member Spalding seconded the motion. Motion carried 3/0.

3. Robert Setser & Mark Jarvis, Edwards Ln., Castro Valley CA 94546

In violation of Alameda County Ordinance 6.65.030 D (1), D (3) and M (1).

1. Overgrown vegetation & weeds throughout vacant lot.

The Vice Chair motioned to uphold the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. Member Spalding seconded the motion. Motion carried 3/0.

4. Vanessa Rubio/Cal-Western Reconveyance Corporation, Garrison Ave., Castro Valley CA 94546

In violation of Alameda County Ordinance 6.65.030 D (1), D(2), D (3) and M (1).

1. Overgrown vegetation & weeds.

The Vice Chair motioned to uphold the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. Member Spalding seconded the motion. Motion carried 3/0.

5. **Daniel J & Donna F Martin/Chase, Greenview Dr., Castro Valley CA 94546**
In violation of Alameda County Ordinance 6.65.030 A (1), D (1), D (3) and M (1).
 1. Overgrown vegetation & weeds.
 2. Unlawful outdoor storage of debris & miscellaneous items.

Member Spalding motioned to uphold the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. The Vice Chair seconded the motion. Motion carried 3/0.

6. **REST LLC, Fern Way, Castro Valley CA 94546**
In violation of Alameda County Ordinance 6.65.030 A (1), D (1), D (3), F(1) and M (1).
 1. Unlawful outdoor storage of debris & miscellaneous.
 2. Overgrown vegetation & weeds.
 3. Unsecured garage.

Member Spalding motioned to uphold the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. The Vice Chair seconded the motion. Motion carried 3/0.

7. **Luis and Julieta Hallig/Wachovia Bank, Paseo Largavista, San Lorenzo, CA 94580.**
In violation of the Alameda County Ordinance 6.65.030 D(1) & M(1).
 1. Overgrown weeds and vegetation.

Member Spalding motioned to uphold the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. The Vice Chair seconded the motion. Motion carried 3/0.

8. **Recontrust Company, Ralston Way, Hayward, CA 94541**
In violation of Alameda County Ordinance 6.65.030 D (1), D (2), D (3) and M (1).
 1. Weeds and overgrown vegetation.

The Vice Chair motioned to uphold the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. Member Spalding seconded the motion. Motion carried 3/0.

9. **California Reconveyance Company, Yale Avenue, San Lorenzo, CA 94580**
In violation of Alameda County Ordinance 6.65.030 D (1), D (2), D (3) and M (1).
 1. Weeds.

The Vice Chair motioned to uphold the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. Member Spalding seconded the motion. Motion carried 3/0.

10. **Altima Contracting Limited, Inc. c/o Aftab Gill, Jelincic Drive, Hayward, CA 94542**
In violation of Alameda County Ordinance 6.65.030 A (1), A (2), A (3), M (1) and 17.52.180 Accessory Uses.
 1. Unlawful outdoor storage of construction debris, garbage, trash, rebar, wood and other miscellaneous items; and
 2. An inhabited recreational vehicle.

Member Spalding motioned to uphold the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. The Vice Chair seconded the motion. Motion carried 3/0.

CONSENT CALENDAR:

1. **ANTHONY & MARTHA CASSINI, VARIANCE, V- 12107** – Application to allow a wrought iron fence, four feet, nine inches in height where two and four feet are the maximum allowed, in an R-1- (Single Family Residence) District, located at 16006 Via Harriet, south side, corner southwest of Via Catherine, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 411-0045-077-00. (Continued from May 28 and September 24, 2008; to be continued to August 26, 2009). **Staff Planner: Richard Tarbell.**

Member Spalding motioned to accept the Consent Calendar as proposed. The Vice Chair seconded the motion. Motion carried 3/0.

REGULAR CALENDAR

1. Informational Presentation by Tona Henninger, Assistant Deputy Director, Code Enforcement Division: Proposed Ordinance Amendments to the Junk Vehicle, Neighborhood Preservation and Zoning Ordinances; and Draft Ordinance: SB 1137 Vacant Foreclosed Properties. (Continued from June 10, 2009).

Tona Henninger distributed a presentation of proposed Amendments to the Alameda County Junk Vehicle, Neighborhood Preservation and Zoning Ordinances. In the District by District overview Ms. Henninger pointed out that often properties have multiple violations. Recently there has been an increase in the number of foreclosed properties. In 2008 there were a total of 15 foreclosed properties. The number of sites that incurred charges and were then billed is 142. Presently the \$94 re-inspection fee occurs most often. If fines remain unpaid the Board of Supervisor's places a lien on the property. Liens were placed on 96 sites for non-payment It is estimated liens will increase dramatically in 2009. Initial Board questions were as follows:

- What is a lien
- Does the proposal recommend increasing the amount charged for fines and fees
- What are the most common types of violations
- Will updates include demolition of dilapidated structures

Ms. Henninger explained that unpaid Code Enforcement fines and fees are charged as a lien against the real property and owner's tax roles. There will be an increase in fines and fees. However the increase will still not completely cover staff costs. Some offenses are non-abatable, like parking a vehicle on the lawn or garbage cans left out beyond pick-up day. Non-abatable violations were approximately 7.05 % of the cases in 2008. There have only been two occasions when properties have been demolished. The structures were destroyed by fire, and torn down by determination of the Building Department. Un-secure structures that may be inhabited by homeless or infestation of rodents etc. are handled in a different manner, usually by clearing and securing the structure. The administrative process proposal is 10 days to bring abatable violations into compliance, as opposed to 15 days. Non-abatable violations, vehicles parked on an unpaved surface, trash cans or garage sales will be re-inspected every 3 days. Community members and the Board of Supervisor's have been very involved throughout the process both have a vested interest in the outcome. Although property owners are sometimes victims, as is often the case with graffiti. Re-inspection will occur in 3 days. Code Enforcement sympathizes however if not abated quickly, it inspires further tagging. If a property owner lives within a Redevelopment Zone they can sign a release form and have the Public Works Agency remove graffiti.

There is also free paint available through Stop Waste.org. Member Spalding asked how the compliance time frame was calculated. Ms. Henninger said dates are counted from the letter post mark. Ten days for violations to be brought into compliance for abatable violations, 3 days for non-abatable violations. If the violation is removed and/or in compliance within the specified time frame, there is no fee. Staff also attempts to do outreach to the property owner, and work with them. However the property owner is ultimately responsible, even if a violation is non-abatable.

Board questions were as follows:

- How are fine/fee amounts determined
- Do fines/fees vary based on violation type
- Will the same fee structure be in effect for Unincorporated County as a whole
- What are proposed fines for illegal uses
- What criterion was used to determine fines, for illegal uses and/or business, size, type etc
- Will fines increase for successive violations of the same type
- Will the proposed changes increase staff time

The County General Ordinance Code will be updated by adding Chapter 6.66 regarding neglected, vacant foreclosed residential properties. The Ordinance is based on the *State Senate Bill 11.37* which was passed in July 2008. The Ordinance gives local authorities the ability to charge property owners that do not bring violations into compliance up to \$1,000 per day for failure to maintain properties acquired through foreclosure. Legal property owners must be given 30 days to remedy the violation and/or the opportunity to contest the imposition of fines or hearing. The Ordinance works hand in hand with the existing Ordinance. Many local cities have adopted the State Ordinance and accumulated thousands of dollars in fines. In Alameda County we abate violations that are abatable offences. Our priority is to remove blight, not to solely collect fines. The new Ordinance may come into play with some non-abatable offenses. However most offenses like weeds and debris can be resolved with the existing Ordinance. Member Spalding asked how the current Ordinance related to vacant properties. Ms. Henninger confirmed the new Ordinance 6.66 specifically addresses foreclosed and vacant properties. The current Ordinance can address vacant homes, in addition to the issue of an occupied home when the owner does not clean up. Member Spalding said the language regarding foreclosed properties might be modified to be more specific. Ms. Henninger explained the draft is in-line with language in the State Senate Bill. The proposed Ordinance was drafted by County Counsel. Member Spalding responded the County may still want to make language more clear, to motivate banks etc. to comply. This may also prevent a challenge. The Chair said she also read the CA Senate Bill draft. The language appears to be carefully considered and should not require many modifications. Ms. Henninger assured the Board their comments would be noted.

Ms. Henninger then explained the proposed changes to the *Junk Vehicle Ordinance 6.48*. The definition of inoperative vehicle has been changed to correspond more closely with the State Vehicle Code. Inoperative is defined as not street ready. Typographical errors in the Ordinance were also corrected.

The *Neighborhood Preservation Ordinance Title 6, Chapter 6.65 .65.A, B and C* layout has been reformatted to make it easier to read. *Schedule A*, fines and fees for Administrative Hearings will remain unchanged at \$50 dollars. Appeal fee to the Board of Supervisors remains \$25 dollars. The subsequent violation and/or dangerous condition fine is \$500 dollars. Re-inspection fee(s) will be billable staff time. The rate for billable time will be set each year by the Finance Department. Code Enforcement and the Finance Department will add any additional applicable costs. Letters will include the hourly dollar amount to be charged. Member Spalding asked if the rate would vary depending on the level of expertise of the staff person. Ms. Henninger clarified although there are different job classes such as Finance

Technician and multiple Zoning Investigator classifications. Staff time will be set at one rate to make calculation easier. *Schedule B*, which includes violations such as parking on the lawn, garage sales etc. No charge for the first violation. Second violation a charge of \$100 dollars, third violation \$400 dollars. Fines and fees were last updated in 2001. Letters include the maximum amount that can be charged. The West and East County will now have the same rates. All references to language referring to infraction, misdemeanor or court language that refers to infractions will be removed. That language limited fines to a \$500 maximum. In addition there has not been a court initiated process for some time. The Ordinance was last re-written in 2002.

The East County BZA is in favor of the update. There are some areas in the County where certain types of violations occur more frequently. For example the East County has more of a problem with illegal businesses. *Title 17, Zoning Ordinance* will be organized sectioning permitted uses like traffic and parking from non-permitted uses. Operators of the illegal business will now be charged \$250 dollars for the first failed re-inspection, \$500 for the second failed re-inspection, \$1,000 dollars for the third, and \$1,500 for the fourth failed re-inspection, and subsequent failed re-inspections. Re-inspections will reoccur every 2 weeks. If the violation(s) remains beyond a six month period a \$5,000 dollar fine will be assessed every six months until the violation(s) is/are corrected. The fines should motivate to get people to conduct appropriate businesses in suited locations.

Ms. Henninger said she had given the Ordinance revision presentation to the CVMAC, East County BZA, the San Lorenzo HOA, the Cherryland Association, and Sunol Association. There has been overwhelming support and minimal comments. Some community members were not aware of the County Ordinances. The Sunol Association was unsure many Ordinance issues applied to their area. They expressed concerns about staff being more proactive. Some asked that Sunol be subject to a separate process. However that probably will not be possible. Staff did assure that investigators would not be going door to door.

Further Board questions were as follows:

- Does the County stop illegal uses
- Does the County seize properties with on-going violations
- Is language used in notification that communicates the assessment of fines can be avoided if violations are brought into compliance
- Is there a method to bring sites that conduct illegal activities into compliance

Ms. Henninger explained the goal of the amendment updates is to have violations corrected. Code Enforcement staff will work with people to gain compliance. Enforceable tools are needed that can be implemented if the violation is not brought into compliance. Staff spends too much time on non-abatable offenses. Regarding sites where illegal activity is conducted. A tool that can be implemented is use of the Building Code. A portion was incorporated into the Neighborhood Preservation Ordinance when the last update occurred. Staff also works in conjunction with the Alameda County Sheriff's Department, and Environmental Health to address health and safety issues. Various County agencies also contact Code Enforcement to assist in resolving code issues. Each County Agency will follow through with the appropriate process for their organization. For example the Sheriff's Department may contact the District Attorney's Office. The County does not seize property County staff does ensure there are no immediate health or safety issues. If appropriate the County will secure a property.

Ms. Henninger then explained proposed updates to Code Enforcement letters. Member Spalding said perhaps some improvements can be gained by altering the use violation letter. One recent person before the Board was very upset with the language. Violation letters might be formatted to state the process at the top of the document, and the fines at the bottom. This may prevent persons from becoming

intransigent. Language should also include that if the violation is brought into compliance within the required time frame, fines can be avoided. Ms. Henninger confirmed language explaining time frame and applicable fees, and the resulting measures for issues not brought into compliance, are present components of enforcement letters. Form letters are not used. A template is employed, each letter site specific. Staff understands people might become upset when they receive a letter. When people reach out, staff tries to work with them. The language in the letter referred to at a prior hearing was not accurately interpreted. For example, Code Enforcement does not shut down an illegal use. The language includes legal requirements. Staff is reviewing the present layout to determine if it can be further improved.

Ms. Henninger asked the Board if they were supportive of the proposed amendments. The Planning Commission is the policy board that will make the determination. She will forward BZA comments to the Planning Commission.

Member Spalding told staff she was in support of the proposed Ordinance Amendments. She appreciated consideration of foreclosed properties. She said a good effort should be made to clarify and possibly add a proviso to encourage compliance without the assessment of fines. However at a point when fines are incurred the proposed graded scale is appropriate when considering the violation types. For example, 20 abandoned cars vs. an abandoned warehouse or one illegal sign. If the distinction is made it reduces opposition. The punishment should fit the crime.

The Chair was in support of the proposed amendment updates, especially the component pertaining to vacant properties. There is a vacant home in her neighborhood, and it has had an impact on the community. The increase in fines should motivate people to become proactive as a result of increased financial penalty.

The Vice Chair was also supportive of higher fines she believed it would result in a higher percentage of compliance.

The Chair called for a brief recess at 3:50 p.m. The Meeting reconvened at 4:00 p.m.

APPROVAL OF MINUTES: Member Spalding motioned to accept the Minutes of April 22, 2009 with submitted modifications. The Vice Chair seconded the motion. Motion carried 3/0. Member Adesanya was excused.

Member Spalding motioned to accept the Minutes of May 13, 2009 with submitted modifications. The Vice Chair seconded the motion. Motion carried 3/0. Member Adesanya was excused.

The Minutes of June 10, 2009 were continued to the July 8, 2009 Hearing.

STAFF COMMENTS & CORRESPONDENCE: There have no recent appeals of Board of Zoning Adjustments case decisions have been appealed to the Board of Supervisors.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: Board Members asked if the Redevelopment Agency had any programs, marketing research and or data to assist businesses broaden their market base that currently rely on alcohol and tobacco sales. This may provide businesses options for alternate uses in Unincorporated County. The Chair also suggested contact with the local Chamber of Commerce. Perhaps services are available to Unincorporated County. Staff will follow up with County Departments and Local Agencies to determine available services to business. A staff member from Community Development will be invited to speak at an upcoming Hearing.

The Chair and Vice Chair reported out on topics discussed at the most recent EALI Meeting. There were representatives present from San Lorenzo, Cherryland and Fairview. There were no community members from Ashland present. The group was unsure if everyone was aware a meeting was taking place. Everyone wanted to ensure that a representative from Ashland did not become inactive in the process. The Vice Chair said the Cherryland Association will also look out for Ashland interests since they do not have a specific contact person at this time. The hope is someone in the Ashland area will step up and learn more about the process to increase participation. Member Spalding who was also present at the EALI Meeting said the criticism of the "CVMAC" process regarding proposed appointments may not necessarily benefit the entire community. There may be a means to further utilize the present Unincorporated Service Meeting. There was a sense that community members could get more involved in the selection of Agenda items. Also suggested was development of an unincorporated webpage that listed all projects taking place within Unincorporated County. An e-mail notification could also be sent from the County website when a new project is posted. The Vice Chair acknowledged discussion of a website had been raised in the past. One challenge is identifying an entity to support, and maintain the site.

The Vice Chair said three Members of the CVMAC were present at the meeting, although one Member left early. During discussions Dean Nielsen interjected and requested that the question of the CVMAC obtaining powers like the BZA be revisited. The Vice Chair said the outcome of a vote at the prior EALI Meeting resulted in a decision not to grant those powers. The CVMAC would remain an advisory committee. Mr. Nielsen's response was the CVMAC felt they were being "held back". Member Spalding said the ever-present concern was the appointment process. Also if the Castro Valley area boundaries are re-configured, further seats could potentially move from surrounding areas to the CVMAC, and it appeared the present CVMAC appointees may be unaware that by revising the CVMAC, new appointments may be made. The Vice Chair said the question as to why a Board of Zoning Adjustments exists was also raised. Member Spalding said she had been involved in the process which resulted in the formation of the BZA. The goal was to provide consistency throughout the entire Unincorporated County.

The Chair announced there is a possibility she may not be present at the July 22, 2009 Hearing. She will keep staff informed. The Vice Chair announced she would not be present at the July 22, 2009 Hearing. She will be on vacation.

ADJOURNMENT: There being no further business, the hearing adjourned at 4:25 p.m.

ALBERT LOPEZ - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS