

MINUTES OF MEETING
ALAMEDA COUNTY PLANNING COMMISSION
MAY 3, 2004
(APPROVED JUNE 7, 2004)

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

FIELD TRIP: 1:30 p.m.

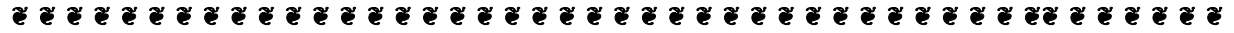
MEMBERS PRESENT: Commissioners Ario Ysit, Chair; Compton Gault; Richard Hancocks; Frank Imhof; Mike Jacob, Vice Chair; Glenn Kirby; Lena Tam

MEMBERS EXCUSED:

OTHERS PRESENT: Steve Buckley, Assistant Planning Director

FIELD TRIP: The meeting adjourned to the field and the following property was visited:

1. **2191st ZONING UNIT – HAROLD E. BAIN** – Petition to reclassify from an R-1 (Single Family Residence) District to a C-1 (General Commercial) District, to allow ice machine rental and sales, on one site containing approximately 5,227 square feet (0.12 acres), located at 1600 Fairmont Drive, north side, corner of Lark Street, unincorporated Lark Street, unincorporated San Leandro area of Alameda County, bearing County Assessor's designation: 0080-0035-031-03.
2. **MODIFICATION OF THE 1923RD ZONING UNIT AND CONDITIONAL USE PERMIT, C-8108, AND TENTATIVE MAP, TRACT 6869 – LEIDER/OAK TERRACE DEVELOPMENT** – Petition for modification of the 1923rd Zoning Unit, with the relocation of the access road and modification of the lotting pattern, on one site containing approximately 58.96 acres, in a PD (Planned Development) District, located at Oak Terrace, east side, approximately 0.2 miles east of Fairview Avenue, unincorporated Fairview area of Alameda County, bearing County Assessor's designation: 085A-6000-002-03.
3. **MODIFICATION TO A ZONING UNIT AND CONDITIONAL USE PERMIT, C-8267 – FAIRVIEW FIRE PROTECTION DISTRICT** – Modification to the 2058th Zoning Unit to allow transfer of Fire Station Title from Alameda County to the Fairview Fire Protection District, on one site containing approximately 1.15 acres, in a PD (Planned Development) District, located at 25862 Five Canyons Parkway, unincorporated Castro Valley area of Alameda County, bearing County Assessor's designation: 0417-0289-008-00.
4. **2187TH ZONING UNIT – PAYNE DEVELOPMENT CORP.** – Petition to reclassify from an R-S-D-20 (Suburban Residence with 2,000 square foot M.B.S.A.) District to a PD (Planned Development) District (previously zoned as a PD in 2002, but never implemented) to allow construction of approximately 151 – one and two-bedroom senior apartment units with 132 parking spaces, pool, outdoor recreation, court yards garden and individual decks/patios, on one site containing approximately 2.45 acres, located at 22056 Arbor Avenue,



northeast side, approximately 150 feet northeast of West A Street, unincorporated Cherryland area of unincorporated Alameda County, bearing County Assessor's designation: 429-0077-027-00, -028-00 and -029-00.

- 5. **SITE DEVELOPMENT REVIEW, S-1908 – BIGELOW** – Appeal of Planning Director's action denying an application to retain a security gate on the east side of the parking area to block access to adjacent property, and therefore not complying with the requirements of "S-1423, Exhibit B" dated March 24, 1994, in CVCBSP-SUB-7 (Castro Valley Central Business District Specific Plan) District, located at 3315 Castro Valley Boulevard, south side, 220 feet west of Wilbeam Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 84A-0040-019-009.

REGULAR MEETING: 6:00 p.m.

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

MEMBERS EXCUSED: None

OTHERS PRESENT: Eric Chambliss, County Counsel's Office; Steven Buckley, Assistant Planning Director, Jana Beatty; Senior Planner; Phil Sawrey-Kubicek, Senior Planner; Nilma Singh, Recording Secretary

There were approximately ten people in the audience.

CALL TO ORDER:

The Chair called the meeting to order at 6:05 p.m.

ANNOUNCEMENTS BY THE CHAIR: None.

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 - April 5, 2004.** Approval of Minutes was continued to the next hearing.
- 2. **GENERAL PLAN CONFORMANCE REPORT – VACATE SUPERSEDED PORTION OF LAND SOUTH OF UNION PACIFIC RAILROAD OVERCROSSING BY ALAMEDA COUNTY PUBLIC WORKS AGENCY:** Request by the Real Estate Section of the Alameda County Public Works Agency (ACPWA) for a General Plan Conformance Report under Government Code



Section 65402 for the disposal of a 0.71 acre piece of property located on the west side of Greenville Road, just south of the Union Pacific Railroad overcrossing, in unincorporated Livermore area of Alameda County, designated County Assessor's Parcel Number 099A-1475-004-03.

3. **CHEVRON PIPELINE RELOCATION AND WATERSHED PROTECTION PROJECT** – Chevron Pipeline Company proposes to construct and operate a new pipeline segment (approximately 7.5 miles long) to be joined to an existing petroleum products pipeline in order to reduce the risk of water supply contamination at the San Antonio Reservoir in the event of a pipeline failure within the reservoir's watershed. The relocation of the existing pipeline is a condition of the Project applicant's current right-of-way lease agreement with the San Francisco Public Utilities Commission. The proposed pipeline segment is generally within an existing electrical transmission line easement and would extend for approximately 6 miles through an area north of the San Antonio Reservoir and south of Vallecitos Road (Highway 84). The proposed pipeline segment would separate from the existing pipeline at the northeastern end of the Project site within Sycamore Grove Regional Park and rejoin the existing pipeline approximately 1 mile south of Livermore and approximately 1 mile southwest of the Vallecitos Road (Highway 84)/I-680 Interchange near San Antonio Creek. The area through which the proposed pipeline segment would pass is generally characterized as grasslands and rolling hills, currently used for grazing. Once the proposed pipeline segment has been completed within the alignment ultimately selected, the existing pipeline segment near the San Antonio Reservoir would no longer be used, and would be decommissioned in-place.

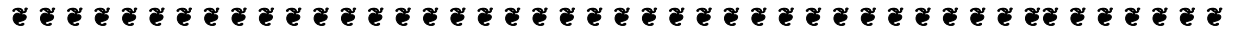
(Continued from March 15, 2004; to be continued without discussion to May 17, 2004).

4. **PERIODIC REVIEW OF CONDITIONAL USE PERMIT, C-4158, VASCO ROAD SANITARY LANDFILL** - Review to allow continued operation of an existing landfill (Vasco Road Sanitary Landfill, VRSL) in an A (Agriculture) District, located at 4001 North Vasco Road, east side, approximately one mile north of Dalton Road, Unincorporated Livermore area, designated as Assessor's Parcel Numbers 99B-4901-2-1 and 2-3; 99B-4926-2-1, 2-2, 2-4, and 2-5. (Continued from February 2, April 19, 2004; to be continued without discussion to May 17, 2004.)

Commissioner Gault moved that Regular Calendar item 4 and 5 would be moved to the Consent Calendar, to be continued without discussion to June 7th and May 17th respectively. Commissioner Kirby seconded the motion. Commissioner Tam made the motion to approve the Consent Calendar per staff recommendations and the above modifications. Commissioner Kirby seconded the motion, which carried 7/0.

REGULAR CALENDAR:

1. **2187TH ZONING UNIT – PAYNE DEVELOPMENT CORP.** – Petition to reclassify from an R-S-D-20 (Suburban Residence with 2,000 square foot M.B.S.A.) District to a PD (Planned Development) District (previously zoned as a PD in 2002, but never implemented) to allow construction of approximately



always provided adequate parking at their sites, especially as it was critical to the lease-up of the facility. Commissioner Kirby said that although this site could support the proposal which would be affordable housing that would be located near the freeway, it would require at least one parking space per unit and he had circulation concerns. As such, he was not in support. Commissioner Gault pointed out that public transportation was available on West A Street and Hesperian Boulevard that connects to BART. Commissioner Hancocks pointed out that the age requirement was a minimum of 55, which would mean that some residents would be still working and own cars. He concurred with Commissioner Kirby adding that the property would be over-built and would not do justice to tenant and neighbors. He did not support the project as submitted.

Public testimony was closed. Commissioner Tam made the motion to approve the application as submitted by staff, with the modification to Exhibit C to include reference to drought tolerant plants. Commissioner Gault seconded the motion. Motion was carried 5/2 with Commissioners Kirby and Hancocks voting no.

2. **2191st ZONING UNIT – HAROLD E. BAIN** – Petition to reclassify from an R-1 (Single Family Residence) District to a C-1 (General Commercial) District, to allow ice machine rental and sales, on one site containing approximately 5,227 square feet (0.12 acres), located at 1600 Fairmont Drive, north side, corner of Lark Street, unincorporated Lark Street, unincorporated San Leandro area of Alameda County, bearing County Assessor's designation: 0080-0035-031-03.

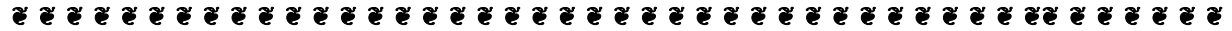
Mr. Buckley presented the staff report. Commissioner Hancocks asked for clarification on the non-conforming use. Mr. Buckley explained that the first variance was granted in 1959, indicating that the structure was in existence before zoning went into effect, and so the zoning of the property has always been inconsistent with the use of the site and, hence, it was a legal non-conforming use. Although there were photographs in support, there were no firm dates.

Public testimony was called for. Mr. Bain, Applicant, outlined the history of the property and business, indicating that neighbors said the building had been there since the 1940s. This area was zoned R-1 in 1957, and in 1970, a 598 square foot addition was constructed. He has operated for the last two years without incident/complaint and has kept the property neat and clean. Mr. Bain felt that perhaps it could be re-zoned back to R-1 but added that after the re-aligned of Fairmont Drive and the addition, it would be 'far-fetched'. He is simply asking for the zoning to be changed to what has been on the ground since 1940.

Public testimony was closed. Commissioner Kirby moved to approve the reclassification adding that neighborhood commercial is needed, and although C-1 would allow a broader range of uses, parking would likely restrain the intensity of use. Commissioner Tam seconded the motion. Commissioner Hancock voted no, adding that his concern was 'spot zoning'. He would look at this use favorably if it was neighborhood oriented, and felt that C-1 uses could be too intense, with small homes close by in the area. Commissioner Jacob did not agree in principle but noted that the neighborhood clearly was not opposed. Motion was carried 6/1.

The Planning Commission Heard the Following Modifications to Zoning Units as the Planning Commission and the Conditional Use Permits and Variance as the Board of Zoning Adjustments:

3. **MODIFICATION OF THE 1923RD ZONING UNIT AND**



**CONDITIONAL USE PERMIT, C-8108, AND TENTATIVE MAP,
TRACT 6869 – LEIDER/OAK TERRACE DEVELOPMENT –**

Petition for modification of the 1923rd Zoning Unit, with the relocation of the access road and modification of the lotting pattern, on one site containing approximately 58.96 acres, in a PD (Planned Development) District, located at Oak Terrace, east side, approximately 0.2 miles east of Fairview Avenue, unincorporated Fairview area of Alameda County, bearing County Assessor's designation: 085A-6000-002-03. (Continued from February 2, April 4 and 19, 2004).

Mr. Sawrey-Kubicek presented the staff report adding that if the modification was determined to be minor, then the change could be implemented through the Conditional Use Permit process. If the change was determined to be major, then rezoning will be required. Commissioner Kirby noted from Mr. Keller's letter that the Applicant does not have control/ownership or an agreement for the portion of land at issue, i.e. the access road. Staff replied that the Applicant as relying on a prior agreement between the Kellers and Oak Terrace.

Public testimony was called for. Alison Cook, adjacent neighbor, said she was aware of the difficulties with access and further read her written testimony. Since the Bay Ridge Trail goes through the streets, which was dangerous, this would be an opportunity to provide better and safer trails. She was happy with the location of the trail and supported the proposal. Commissioner Jacob asked if a representative of the Park District was available. Staff replied that there had been a conversation with Linda Chavez who had indicated that no one was available to attend the hearing, but that the District was satisfied with the proposal.

Ken Everett, property owner at 26048 Fairview Avenue, said he supported the original access which provides the best access to trails for the residents of Fairview, it was a short trail, very flat and not through woodlands, easier access for fire emergencies and has two flat areas for horses and drive-ins. The new access would not. Mr. Everett also indicated that he has neither been contacted on the easement/encroachment issue nor regarding any impact to him. In response to question from Commissioner Imhof, he pointed out the location of his property on the map.

John Kriege said he lives off Fairview Avenue and requested clarification on the trail entrance. Mr. Sawrey-Kubicek explained that the trail and the entrance location will not be re-located. Mr. Kriege then said that he would support both.

Don Keller, property owner at 25900 Fairview Avenue, said he lives in the middle of the project and opposes it. Oak Terrace has refused to sign the contract to purchase the land which provides him with access/frontage. He felt that any decision would depend on Oak Terrace and him. If this proposal is approved, he will not have access to his property and there was no current easement contract. He also indicated that Oak Terrace had filed suit against him. Since November, 2000, all his land has been under Measure D which complicates boundary adjustment. Oak Terrace was basing their proposal on the 1996 contract and he further read the contract. Sixty feet of his property was to be dedicated for a public street, but so far the development has proposed a private road. He urged denial since Oak Terrace was requesting approval of plans on land they did not own.

Kathryn Harris, 26165 Clover Road, said she was representing Fairview Hills homeowners who worked to protect the unique area. The homeowners support the park district in seeking a trail that would provide access to open space. She asked how the entrance could exist if the property ownership was still under

question. She pointed out that the original road had the trail and urged that the parties involved should negotiate amongst themselves so that the master plan of the Park District which included the access, would not be held up further.

Jenny Hunter, resident of Clover Road, had submitted her written testimony in support of maintaining the trail access through Oak Terrace.

Alan Harris, 26165 Clover Road, although unavailable, had submitted her written testimony in support of the trail access at Oak Terrace, which he felt was critical to their rural neighborhood.

Jo Ann Cook and Diane Saveny both were unavailable but had submitted their written concerns in support of maintaining the trail access.

Ms. Bea, resident of Arbutus Court, also had submitted written testimony. She was also interested in maintaining the access to the Chabot to Garin Bay Ridge Trail.

Barry Cilliers, property owner at 26157 Clover Road, in his written testimony, said he was concerned that the Mt. Diablo and SF access would be lost.

Charles Snipes, President of Fairview Community Club, said he hoped that the Commission would come to a resolution so that the Applicant could develop his property as the Club supported the development since 1995 when it was first considered. The trail concerns could be worked out with the developer. He also said that the homeowners were very happy with the service provided by Oro Loma Sanitary District.

Jewell Spalding, President of Hayward Hills Property Owners Association, stated that they recommended approval, but based on including the trail and plans for a crosswalk, as discussed in Condition 5, adding that the earlier approval was through Five Canyons. The Association had appealed the landscape plan for Five Canyons because it did not have a trail connection from Fairview through Five Canyons, to the next trail. The trail has been incomplete, missing a link. An approval today would provide some part of that and some original trail designation. She suggested deleting the words ‘...or the funds could reimburse the developer of Five Canyons for the traffic improvement work’ after ‘program’ in the last sentence of Condition 55, so that the funds could be used to construct about 1,000 feet of trail to the HARD park. The revision of this condition would provide the missing link. She suggested looking at the Blue Rock and Rancho Palomares projects, for example of acting on it without full control of the site, since both approvals did not have complete ownerships. Ms. Spalding felt that this was a minor modification as long as the original trail could be maintained.

Stephen Pahl and Bow Bowker, Counsel for Oak Terrace, provided copies of all three maps, stating that the plan included the same number of units, same plan, just different lotting and roads. They agreed with Mr. Keller that 60 feet of the property was dedicated to street widening. Regarding the agreement with the Kellers and the lawsuit, the hearing date has been set for May 28, 2004. Only the 1996 agreement has both signatures and it was to the Judge if this agreement would be considered valid. Commissioner Kirby said his concern was that Mr. Keller would not have access to his property. Mr. Pahl replied that they could not create a landlocked parcel, and had agreement that Mr. Keller would still have access.

Public testimony was closed. Commissioner Jacob requested clarification on Condition 55 from staff and asked County Counsel if this condition could be modified. County Counsel stated that the condition could be modified, but that there were considerations such as a nexus between a new impact and the use of the funds, and the original intent of the condition to reimburse Centex, who also might have a claim to

the funds. If confirmation was needed, then he would have to come back with an answer. Commissioner Kirby suggested that, if possible, the impact of traffic access funds from reimbursement be held aside and assess the impact. Commissioner Imhof suggested spending the money on a crosswalk.

Commissioner Gault moved to conclude that the modification was minor. Commissioner Tam seconded the motion, which carried 7/0. Commissioner Kirby stated that the section of Condition 55 after the word ‘or’ could not be deleted and instead suggested inserting the following “...other trail improvements including a crosswalk be built crossing from the HARD park to the trails and up to Fairview.” Commissioner Jacob said he was concerned with developments that did not have full ownership and had litigation involvement. Commissioner Tam said she agreed with him but added that this Commission was looking at public interest.

Commissioner Gault moved to approve the Conditional Use Permit as recommended by staff. Commissioner Jacob seconded the motion, which carried 7/0.

4. **MODIFICATION TO A ZONING UNIT AND CONDITIONAL USE PERMIT, C-8267 – FAIRVIEW FIRE PROTECTION DISTRICT –** Modification to the 2058th Zoning Unit to allow transfer of Fire Station Title from Alameda County to the Fairview Fire Protection District, on one site containing approximately 1.15 acres, in a PD (Planned Development) District, located at 25862 Five Canyons Parkway, unincorporated Castro Valley area of Alameda County, bearing County Assessor’s designation: 0417-0289-008-00. (Continued from February 2 and April 5, 2004).

Commissioner Gault made the motion to move this item to the Consent Calendar, to be continued without discussion to June 7, 2004. Commissioner Kirby seconded the motion, which carried 7/0.

5. **VARIANCE, V-11800 – CRANE –** Application to allow an existing fence in the front yard of a residence that varies in height from four feet seven inches to five feet six inches as the fence steps up a sloping street and front yard where four feet is the maximum allowed, in a R-1-RV (Single Family Residence, Recreational Vehicle) District, located at 16037 Gramercy Drive, south side, approximately 296 feet southeast of Selborne Drive, unincorporated San Leandro area of Alameda County, bearing Assessor’s Parcel Number: 080A-0170-013-00.

Commissioner Gault made the motion to move this item to the Consent Calendar, to be continued without discussion to May 17, 2004. Commissioner Kirby seconded the motion, which carried 7/0.

STAFF COMMENTS & CORRESPONDENCE: None.

CHAIR’S REPORT: Chair Ysitt announce the up-coming one day, “Exploring the Past; Envisioning the Future” conference on June 4th. Commissioner Gault added that it will be held at the Columbia State Historic Park and accommodation was limited.

COMMISSION ANNOUNCEMENTS, COMMENTS AND REPORTS: Commissioner Jacob requested that the matter of clarification on hearing procedures, presentation format, types of maps and minutes be agendaized. The Commission agreed.

