

**MINUTES OF MEETING
ALAMEDA COUNTY PLANNING COMMISSION
NOVEMBER 3, 2003
(APPROVED JANUARY 20, 2004)**

The meeting was held at the hour of 6:00 p.m. at 224 W. Winton Avenue, Room 160, Hayward, California.

REGULAR MEETING: 6:00 p.m.

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

OTHERS PRESENT: Bruce Jensen, Senior Planner, Phil Sawrey-Kubicek, Senior Planner, Eric Chambliss, County Counsel's Office; Holly Janvier, Recording Secretary

There were approximately twelve people in the audience.

CALL TO ORDER:

The Chair called the meeting to order at 6:02 p.m.

ANNOUNCEMENTS BY THE CHAIR: There were 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 - October 20, 2003**

The minutes were not completed, and staff recommended that they be continued to the next hearing for approval.

2. **2177TH ZONING UNIT – RAMIREZ** – Petition to reclassify from an R-1 (Single Family Residence) District to a PD (Planned Development) District to allow construction of an addition to a converted, detached



garage as a second dwelling, on one site containing approximately 0.13 acres, located at 1178 Grove Way, north side approximately 50 feet southwest of Ocean View Drive, unincorporated Cherryland area of Alameda County, bearing County Assessor's designation: 0414-0081-067-00. (Continued from October 20, 2003.)

Staff recommended continuing consideration of the project to December 1, as it was expected that the applicant would withdraw the application.

Item four (2146th Zoning Unit, Marchand) was moved to the Consent Calendar (see below).

Commissioner Tam moved to approve the Consent Calendar as recommended by staff. Commissioner Kirby seconded the motion. The motion was carried 7/0.

REGULAR CALENDAR:

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 October 20, 2003.)

Mr. Sawrey-Kubicek presented the staff report. Commissioner LePell asked when an applicant changes the road, wouldn't that be a major modification. Staff noted that the last time the road was changed, the Commission felt it was minor. Commissioner LePell asked if Llama Lane was a private road. Mr. Sawrey-Kubicek said it was. From the County's standpoint, it was not an approved County roadway, and has lots that can't be developed because of it.

Commissioner Kirby asked if the legalities with the easement were a civil matter. Mr. Sawrey-Kubicek said they were. Commissioner Tam asked if the private road was made public, would it need to be widened. Mr. Sawrey-Kubicek said it would. The proposal was for two ten-foot travel lanes and a parking area. Commissioner Tam asked if the topography would allow for more widening. Mr. Sawrey-Kubicek said retaining walls would be needed on other neighbors' properties. Commissioner Tam asked if there was fire approval on the proposal. Mr. Sawrey-Kubicek said there was and there would be hydrants installed. Commissioner Ysit asked if there would be an EVA road. Mr. Sawrey-Kubicek said there wouldn't. The City of Hayward was against it.

Mr. Imhof asked if Oak Terrace Road was a public road. Mr. Sawrey-Kubicek said that it

wasn't, it would be privately maintained. The only public road would be the paved part of Llama Lane. Commissioner LePell asked why the road wasn't going to be public. Mr. Sawrey-Kubicek said that it was not wide enough by two feet. Public testimony was called for.

Cheryl Miraglia commented that the Five Canyons Association was not opposed to the change. Their only problem was traffic. She asked for a traffic study to be done. She said they would like the in-lien fees for parks dedicated for the Five Canyons Park.

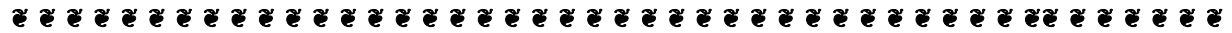
Roger Poynts, the project engineer, said they were proposing to move the entrance from one side of the project to the other. It reduced the grading, but most of the lots remain the same size. They would also have a paved road going out to Five Canyons Parkway. Commissioner LePell asked if the road was not being made up to County standards because of economics. Mr. Poynts said that was not the case. There was a discussion about the road.

George Putnam, the builder, said that they couldn't build the road wider because they don't own the easement. He added that the homeowners' association would maintain the road. Commissioner Kirby said he saw more of a change, because they were changing the EVA standard. He added that some of the road was now going to be narrower.

Robert Bower, the applicant, said they hadn't changed their basic project. They lowered three lots to help Mr. Keller to maintain his view. They had been trying to be good neighbors, at considerable cost to them. Commissioner Kirby said the original agreement with EBRPD, had the trail on their site, and now put it on Mr. Keller to provide the trail. Mr. Bower said they offered an alternate trail behind their project, but the Park District refused.

Jewell Spalding, of Hayward Hills Property Owners, said when the original project came through, her Association had no problems. They asked for an agricultural overlay to be added to the zoning designation. She explained the access roads to the park area and the roadway. She said it was unclear whether there was access from Llama Lane to Five Canyons Parkway, and if there was an overlay trail easement to connect the trails. She felt the Commission needed to know the status of the trails before making a decision. She felt it would be beneficial to everyone.

Don Keller of Fairview Avenue said the applicant did lower three of the homes to cooperate with their request to retain their view. He said he was opposed to the modification because they were still in negotiations over issues arising from the project. He passed out a letter and map of the area. He stated that the applicant said they couldn't gain access from him. He said that wasn't true. They had a signed contract. He and his wife asked for amendments, and were still in negotiations over this. The applicant wanted 1.3 acres of his property instead of 0.5 acres. They are agreeable to that. They just need to sign the new contracts. He asked that an easement not be granted on his property to the 25 new homeowners. Commissioner Kirby said Mr. Keller had supported the project in the past. Mr. Keller said he did, but based on the existing contract. Now the applicants don't want to comply. Commissioner Kirby said the applicants say they can't complete the road as designed because they didn't own the land. Mr. Keller said they would own the land if they signed the contract.



Richard Goodman attorney for Mr. and Mrs. Keller said he was called in. His client spent \$20,000 trying to negotiate the contract. They spent hours to come up with a new contract. The first draft was returned to them, to be reworked according to what they agreed upon. The second draft was returned with things removed that were agreed to. The third draft was never acknowledged. He said the basic problem there, was that the applicant does not have the right to build a road. The developer is trying to get around a good faith agreement and conditions the Commission set on them. He said the staff report was inaccurate on several areas. He said the law requires dedicated roads, but may allow private roads, because the County doesn't want the problems that arise from private roads. He requested the modification be denied so the developer would have to comply with what they promised.

Myron Etienne, Jr., the attorney for Oak Terrace, said Mr. Keller was willing to accept what he was complaining about as long as he got what he asked for. He said he had not been involved previously, because he liked to have people work out their deals. He showed a chart of the original things Mr. Keller had asked for. It totaled \$63,000. Next he asked for more fencing and asphalt. That was \$77,000. So far his clients agreed. Next he asked for structure limitations on height. He also wanted a concrete fence and a dog-proof fence and temporary driveway and all costs to Mr. Keller paid. Now it totaled \$480,000. He felt this was not good faith. He asked for approval of the project as presented.

Janice Keller said she had never seen the charts that were shown. They had asked for cost figures for those things and never got an answer. She said they have used 1-1/2 years of her daughters' education money to negotiate with the applicants. She said the applicants are not moral or ethical people. She asked where anyone could get 1.3 acres of prime land for 400,000 dollars. She asked for the money to be in a trust to take care of things if they weren't built. She maintained that the applicants were out-of-towners, but she and her husband had lived in the area for years and were there to stay.

Mr. Putnam returned and said the new proposal before the Commission was so they wouldn't have to deal with the Kellers. He said every time they agreed the deal got bigger. He felt they were being taken. Public testimony was closed.

Commissioner Kirby said he didn't agree with the structural limitations, and felt it was an inflated number. He didn't believe any of the numbers. He said he could not find that this was a minor change, but could agree to a continuance. He said this deal left the Park District out in the cold. Commissioner Gault agreed and said significant occurrences would happen. He had also expressed concerns over the look of the road and impacts to the park area across the street. He felt this was major.

Commissioner Tam moved for continuance in order for the parties to resolve their problems. When they approved the last modification it allowed for continuance of the park district to keep the area. She didn't agree with Condition 3. Commissioner Kirby seconded the motion.

Commissioner LePell agreed and asked for information on whether at the south entrance, there

be parking planned for people entering the trail. She asked for County Counsel to comment on the safety of the design for the new proposal. Commissioner Gault said he had concerns with regard to the design of the entryway from Fairview Avenue and what it meant to the public safety.

Mr. Imhof asked if the Commission were to decide if the change was minor. Mr. Sawrey-Kubicek said they were. Mr. Imhof felt the change was major, and asked for the traffic engineer to check it. Commissioner Jacob felt the problem was who was going to pay for the swap. He said he supported the continuance. He asked for a representative from the Park District to appear at the next hearing.

Commissioner Kirby asked if the easement could be overburdened. Mr. Chambliss said that could happen. This was not something that the Commission needed to address. Commissioner Gault asked the issues raised by the Commission be addressed. Commissioner Jacob said he was concerned as to how much more people would have to pay for their homes to provide this easement. The continuance suggested was to the first meeting in January, or January 5, 2004. The motion passed 7/0.

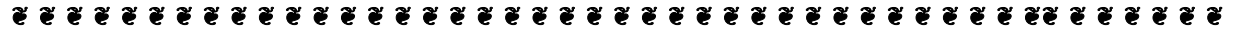
4. **2146TH ZONING UNIT - MARCHAND** - Petition to reclassify from the R-1-L-BE-CSU-RV (Single Family Residence, Limited Agricultural, five acre minimum building site area, 100 feet median lot width, 30 feet front yard, Conditional Secondary Unit, Recreational Vehicle Regulation) District, to a PD (Planned Development) District, allowing a 1280 square foot secondary unit, on one site containing approximately 11.45 acres, located at 8600 Oak Tree Lane, southwest side, approximately 340 feet southeast of Norris Canyon Road, unincorporated Castro Valley area of Alameda County, bearing County Assessor's designation: 085-5000-001-19. (Continued from September 15, 2003.)

Mr. Jensen stated that the applicant had requested a continuance to December 15. Staff was asking for the continuance. This item was moved to the Consent Calendar for approval. (See above.)

STAFF COMMENTS & CORRESPONDENCE:

Mr. Jensen reported on the progress of the meeting room renovations. He said they would start in approximately three months. After that there would be approximately months of construction. It was expected that the remodel would include everything the Commission had asked for, except for the back offices, however that may be added in the future.

CHAIR'S REPORT: There was none.



COMMISSION ANNOUNCEMENTS, COMMENTS AND REPORTS:

Commissioner Gault said he was hoping that all of the Commissioners could make the Planning Commissioners Conference in Napa.

Commissioner LePell asked Mr. Chambliss about members of the public petitioning Boards and/or Commissions to address any issue in respect to Planning. She spoke about Mr. Miller who claimed that things could not be addressed. Commissioner Gault said the Apperson Ridge project was not to be discussed due to some legal issues. Mr. Chambliss said there was a five-year review coming up for the project, and the Commission couldn't just call something back before its time had ended.

ADJOURNMENT:

There being no further business Commissioner Tam moved to adjourn the meeting at 8:10 p.m. Commissioner Kirby seconded the motion. The motion was carried 7/0.

**CHRIS BAZAR, SECRETARY
COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY**