



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, December 15, 2005, 7:30 p.m.
777 B Street, Hayward, CA 94541**

MEETING

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Chair Thnay followed by the Pledge of Allegiance.

ROLL CALL

Present: COMMISSIONERS: Lavelle, Sacks, Bogue, Peixoto, Zermeño
CHAIRPERSON: Thnay
Absent: COMMISSIONER: McKillop

Staff Members Present: Anderly, Conneely, Emura, Gaber, Patenaude, Lens

General Public Present: Approximately 14

PUBLIC COMMENTS

There were no public comments.

PUBLIC HEARINGS

1. Use Permit Application No. PL-2005-0537 – Shu Jun Chen (Applicant), Lupe Compean (Owner) - Request to Operate Massage Establishment – The Project is Located at 22551 Second Street, Suite #200

Staff report submitted by Associate Planner Camire, dated December 15, 2005, was filed.

The item was continued to January 26, 2005.

2. Administrative Use Permit PL-2005-0538 & Variance PL-2005-0539 – Steve Cohn (Applicant)/ Amos Picker (Owner) - Request to Construct a Commercial Retail Center with Restaurants and Personal Services to Allow a Parking Exception From the 15 Percent Tractor/Trailer Requirement – The Project is Located at 26025 Eden Landing Road in the Industrial District

Staff report submitted by Associate Planner Emura, dated December 15, 2005, was filed.

Associate Planner Emura presented the staff report.

Commissioner Bogue inquired about possible location for outdoor seating areas. Associate Planner Emura indicated that there is opportunity to add landscaping and outdoor seating along the driveway and the side of the building.

In response to the question of trash storage area, Associate Planner Emura mentioned that the trash size has been approved by the Waste Management and Recycling departments.

In response to Commissioner Lavelle, Associate Planner Emura indicated that there was no response to the public notices.

Chair Thnay opened the public hearing at 7:42 p.m.

Mr. Steve Cohn, project applicant, introduced his brother and co-applicant, Mr. Gary Cohn. He requested approval of the proposed project as requested in the report. He also mentioned that the trash enclosure is satisfactory with Waste Management. He expressed concurrence with the conditions of approval. He introduced his staff indicating that they would be available to respond to any questions.

In response to Commissioner Peixoto, Mr. Cohn indicated that prospective lessee such as Starbucks and Subway Sandwiches were contacted and were amenable to the proposed project.

In reference to Commissioner Sacks' concern for potential traffic issues, staff indicated that the plans were reviewed by the traffic division and it was determined that the plans are in compliance with City standards.

Commission Bogue suggested amending Condition of Approval No. 5, that time for removal of graffiti be changed from within seven days to within 72 hours of occurrence. Also, he suggested that Condition of Approval No. 17 be revised to indicate that the Planning Director shall also determine whether some of the uses may need a trash receptacle near the doorway. Mr. Cohn was in agreement to both suggestions.

Commissioner Lavelle indicated that the proposed project would fulfill services that are needed in the area during weekdays, but inquired if Mr. Cohn had prospective plans for services on weekends as well as security measures if there is not enough activity. Mr. Cohn was optimistic about having enough business on weekends and did not foresee problems with vacancies or problems on weekends.

Chair Thnay commented that the name of the project is Gateway Landing and across the freeway there is a Gateway Plaza. Mr. Cohn did not think that the names would create confusion.

Mr. Michael Yantos, architect for the project, was available to answer any questions.

Chair Thnay closed the public hearing at 7:54 p.m.

Commissioner Zermeño, commending the developer for the project and its name Gateway Landing, made a motion to approve the project as per staff recommendation.



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Commissioner Sacks seconded the motion.

Commissioner Bogue offered a friendly amendment to change Condition of Approval No. 5 to change the length of time to remove the graffiti from within seven days to within 72 hours of occurrence. Also, add to Condition of Approval No. 17, that in addition to being located near each outdoor dining area, to require trash receptacles at doors if necessary.

Commissioners Zermeño and Sacks concurred with the amendments.

Chair Thnay commended the applicant for the proposed project.

Commissioner Zermeño moved, seconded by Commissioner Sacks, and approved with Commissioner McKillop absent, to accept that the project is categorically exempt from the California Environmental Quality Act (CEQA) guidelines, Section 15303, Class 3 New Construction and Section 15305, Class 5 Minor Alteration in Land Use Limitations; and approve the Administrative Use Permit, Variance and Parking Exemption subject to the findings for approval and conditions of approval, with changes to Condition of Approval No. 5 that the graffiti shall be painted out or removed within 72 hours of occurrence, and to add to Condition of Approval No. 17 that a trash receptacle shall be located at the door if necessary.

3. Site Plan Review No. PL-2005-0525 & Tentative Tract Map No. 7699/PL-2005-0527 – Jitender Makkar, Edge Concepts Inc. (Applicant/Owner) – Request to Subdivide a Half-Acre Parcel and Develop Five Townhomes – The Project is Located at 420 Smalley Avenue, between Flag Street and Princeton Street

Staff report submitted by Associate Planner Emura and Development Review Engineer Gaber, dated December 15, 2005, was filed.

Associate Planner Emura presented the staff report.

Commissioner Peixoto expressed concern about the proper function of the Homeowners Association (HOA) Board without a property manager that would normally deal with administrative tasks associated with the CC&Rs and the upkeep of the property. Associate Planner Emura indicated that due to the small size of the project, there is no need for a project manager. Development Review Engineer Gaber added that from past experience, small developments can operate fine without a management company and that the residents would take on administrative tasks as needed. Commissioner Peixoto made a recommendation for staff to review and research issues or problems with small HOAs that do not have management companies. He expressed concerns for placing the burden on residents.

Chair Thnay concurred with Commissioner Peixoto's concern and mentioned that in ten or fifteen years, small HOAs might not be able to finance the improvement and reconstruction of properties. He was in favor of studying this issue more.

Planning Consultant Anderly added that there are advantages in having requirements for professional property management associations that oversee HOAs because of their expertise levying fees and establishing reserves, but added that the overhead charges tend to be larger per unit.

Chair Thnay opened the public hearing at 8:08 p.m.

Mr. Jitender Makkar, applicant, thanked staff for their direction in working on this project and added that he made efforts to integrate the existing home into the new development.

Commissioner Lavelle thanked the applicant for the project and asked if he concurred with the conditions of approval presented in the report. She also emphasized Condition of Approval No. 21, that garages be used to park cars in order to leave outside areas open. Mr. Makkar agreed with the conditions of approval.

Discussion about Condition of Approval No. 20 regarding removal of graffiti ensued. Commissioner Bogue recommended that the condition be changed to 72 hours of occurrence.

Mr. Makkar indicated that since the applicant's control after the property is sold is limited, and he suggested that five days would be a more reasonable timeframe.

Chair Thnay closed the public hearing at 8:12 p.m.

Commissioner Sacks made a motion to accept the staff recommendation with a change to Condition of Approval No. 20, that the graffiti removal be within 72 hours of occurrence.

Commissioner Zermeño seconded the motion.

Commissioner Sacks moved, seconded by Commissioner Zermeño, and approved with Commissioner McKillop absent, to accept that the proposed project is categorically exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15332, In-Fill Development; approve the site plan review application subject to the findings and conditions; and approve the tentative tract map application, subject to the findings and conditions with a change to Condition of Approval No. 20, that the graffiti shall be painted out or removed within 72 hours of occurrence.

4. Text Change of Alcoholic Beverage Outlet Regulations - Initiated by the Planning Director

Staff report submitted by Planning Consultant Anderly, dated December 15, 2005, was filed.

Planning Consultant Anderly presented the staff report, indicating that the Chamber of Commerce sent an e-mail in favor of the ordinance amendments as they would benefit the downtown.

In response to Commissioner Zermeño regarding the lines for allowing full-service bar and mentioning La Victoria and Buon Appetito restaurants, Planning Consultant Anderly mentioned



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that if it is incidental to the main function of the restaurant, does not have more than 55% of sales devoted to alcohol, and operates in conjunction with the standards set forth in the new ordinance, they could operate as a primary use unless they become a public nuisance. She added that she has not heard about problems about the two restaurants. In reference to having two full-service restaurants at the new cinema place, Planning Consultant Anderly stated that the ordinance would not prevent having them since the new cinema place is in a planned development district.

Commissioner Bogue referenced the Definition for Alcoholic Beverage Outlet Regulations, section (d) (iii) regarding that a full service restaurant shall not offer live or recorded entertainment, and inquired if sporting events on television without sound would be considered. Planning Consultant Anderly mentioned that television programming is not included in the ordinance. She also emphasized that item (e), that, "all employees, except those employees with no customer contact shall attend a training class on Responsible Beverage Service within 90 days of being employed." There was clarification that only those employees that are engaged in the handling of alcoholic beverages should be required to attend the training, and the rest of the employees should be precluded from it.

In response to Commissioner Bogue, Planning Consultant Anderly added that there are remedies to comply with required standards and that the Planning Director, in concert with the Chief of Police, could make a determination about particular restaurants that fall outside the standards.

In response to Commissioner Lavelle's inquiry, Planning Consultant Anderly responded that since October 2004, the only conditional permit was granted to Buon Appetito. Also, Target did not require a permit because of its size and it did not want to pursue the sale of alcohol beverages. Discussion and clarification ensued regarding the Department of Alcoholic Beverages (ABC) liquor licenses and the Police Department involvement.

In reference to staff recommendation to amend the 500-foot separation requirement, Commissioner Lavelle noted that lessening the separation requirement would encourage more alcohol outlets in one particular block. Planning Consultant Anderly added that it could increase the number of establishments that could apply for a use permit and would not have to apply for a variance to the distance requirement.

Chair Thnay commended Planning Consultant Anderly for the report. In reference to the current statistics of ABC licenses, which exceed the proportionate share, it was indicated that by amending the 500-foot separation to only alcohol-related uses on the same side of the street, would create more establishments of this kind. Planning Consultant Anderly added that she did not think it would have a significant impact in terms of the numbers that are applying or that are approved.

In response to Commissioner Zermeño, Planning Consultant Anderly mentioned that the amendment is an approach to integrate into the City responsible establishments that are engaged in the sale of alcoholic beverages.

Currently, restaurants such as La Victoria have the right to sell alcoholic beverages at the table and are not required to have a use permit, but if they become irresponsible and management fails to control the behavior, it would have to be dealt with as a public nuisance rather than as one that would be dealt with at the Planning Commission purview.

Commissioner Peixoto did not understand why ABC with its standards would issue licenses in excess of targeted amounts. In response to the Police Department and ABC training session for employers and conditions of approval requirement, Planning Consultant Anderly mentioned that applicants that have use permits now have a requirement for the employees to attend the session and added that it is difficult to enforce. According to the Police Department, the trainings are useful tools when they deal with facilities that are engaged in the sale of alcohol.

In response to Commissioner Sacks' concern regarding the Planning Director's responsibility, Planning Consultant Anderly responded that 10,000 square feet is the threshold for the Planning Director authority to make the findings of public convenience or necessity.

Commissioner Lavelle read a list of use permits from the period of 1993 to 2004 and it was noted that the majority of the permits issued on the list were not for small convenient store markets.

Commissioner Zermeño mentioned that regardless of the number of permit applications, it is within the Planning Commission purview to issue them.

Chair Thnay expressed disappointment that the Police Department is unable to qualify for ABC grants, despite their success. He was also disappointed about the inaccuracy of the data supplied by ABC.

Chair Thnay opened the public hearing at 8:51 p.m.

Mr. David Cota, Commpre representative, spoke strongly about lack of public input on the matter before the Commission. He added that the proposed amendment regarding policy change should come from Hayward residents and not from City officials. He stated his opposition for the Commission to give the authority to the Planning Director to prepare letters of public convenience or necessity. He added that the amendment to the ordinance will have an impact on the quality of life. He asked the Planning Commission to direct staff to present the change of policy to the communities in Hayward.

In response to Commissioner Bogue's question for additional recommendations to the amendment, Mr. Cota indicated that he would like to include the hours when alcohol can be served, which are established by ABC. He would like to keep the regulations by the Police Department to not sell alcohol for offsale consumption.

In reference to Commissioner Peixoto's request for more information about the 500-foot requirement, Mr. Cota indicated that Commpre concurs with the 500-foot requirement as defined in the proposed changes; however, he thinks that the quality of life for neighborhoods outside the remainder of the City and outside the downtown, can be impacted by requirements lower than the 500-foot requirement.



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Discussion ensued regarding the perception that this project is projecting to the public.

Mr. John Mallory, Hayward Citizens for Responsible Liquor Outlets (HCRLO) member, expressed that the Conditional Use Permit (CUP) has been an effective tool in reducing alcohol related problems. He added that an important component to the CUP is that it allows the community to add input about the different types of businesses. He discouraged the idea of having one person or one department in charge of policy change.

Ms. Liz Morales, Commpre Prevention Specialist, referred to the staff report indicating that the CUP process in placing conditions and license transfers are tools to mitigate alcohol problems. She mentioned that Hayward already exceeds the recommended number of licenses allowed. She added that weakening the CUP and distance requirements, could increase the number of alcohol outlets in Hayward. She requested that the Commission re-consider supporting the amendments to the ordinance.

Chair Thnay closed the public hearing at 9:12 p.m.

In response to Commissioner Zermeño, Planning Consultant Anderly mentioned that many of the locations that have licenses have been in business for many years. Commissioner Zermeño inquired about data on businesses that have closed down due to abuses such as the Plunge and El Tapatio.

Commissioner Sacks inquired if the Commission can request to review the impacts of the policy change after implementation in order to determine the accuracy of the projected perception that this change will create more problem establishments. In relation to public input, she added that there has been outreach and that Planning Commission meetings are well publicized and allow for input.

Planning Consultant Anderly agreed to the suggestion by Commissioner Sacks. In regards to public input, she indicated that people tend to engage in the participation process when issues at stake are pertaining directly to residents or when they are not against proposed changes, such as the case with the Chamber of Commerce that is in favor of the amendment. She added that Council will provide another opportunity for public input.

In response to Commissioner Peixoto, Planning Consultant Anderly clarified that the Planning Director would be given the authority to prepare letters of public convenience or necessity for uses that are exempt from the regulations.

Commissioner Zermeño indicated his support for full service restaurants and made a motion to approve the staff report.

Commissioner Sacks seconded the motion.

Commissioner Lavelle commended staff for the information presented and thanked Commpre representatives for meeting with her to better understand the matter under discussion. She offered a

friendly amendment to accept the staff recommendation with the exception of the 500-foot separation requirement for alcohol-related uses on the same side of the street, but to remain as currently required.

Also, Commissioner Lavelle indicated that Planning and Council meetings offer an opportunity for public input and commended the role that Commpre plays on the community. She indicated that even though ABC does not have accurate statistics, Hayward has gone beyond the number of licenses expected. Lastly, she spoke in favor of giving the authority to the Planning Director to write the letters of public convenience or necessity for limited circumstances.

Commissioners Zermeño and Sacks concurred with the friendly amendment.

Commissioner Bogue expressed hesitance for removing tools that are important in mitigating problems. He mentioned that there needs to be more conditions that define full service restaurants. He further indicated that some of the large retails that are exempt from the ordinance also sell items that would not be normally allowed.

Assistant Attorney Conneely clarified that the modified ordinance contains a provision that indicates that if a full-service restaurant does not meet the criteria established, it must obtain a CUP and if it fails to do so, it is in violation of the zoning ordinance and subject to the enforcement and penalties that are contained in the Zoning Ordinance. She added that there is a collaborative effort between ABC and the City to ensure full compliance.

Commissioner Sacks indicated support for the friendly amendment indicating that over concentration of outlets might be mitigated with an increase in population. She indicated that it is a challenge trying to implement good policies but the effort outweighs the involvement.

Commissioner Peixoto mentioned support for the modifications to the ordinance with reservations. In regards to alcohol policy, consumption and sale, he mentioned that there are areas in the City where higher concentration of establishments is appropriate such as in the downtown area because the establishments should be complementary to entertainment activities. He supported the friendly amendment.

Chair Thnay supported the friendly amendment and commended Planning Consultant Anderly for the comprehensive report. He added that a good policy is hard to institute and a bad one is hard to abolish. He thought there was enough public representation with the audience that was able to address the Commission. He mentioned that ABC should use technology that provides better accuracy.

Commissioner Zermeño moved, seconded by Commissioner Sacks, and approved with Commissioner McKillop absent, to recommend that the City Council adopt the Negative Declaration and the attached Ordinance amending the Alcoholic Beverage Outlet Regulations, subject to the findings with the exception of the 500-foot separation requirement for alcohol-related uses on the same side of the street, but to remain as currently required.



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ADDITIONAL MATTERS

5. Oral Reports on Planning and Zoning Matters

Acting Planning Manager Patenaude announced that the next meeting is scheduled for January 26, 2006. He also announced that Senior Planner Rizk will be acting in his stead during his vacation from December 21st through January 9th.

6. Commissioners' Announcements, Referrals

Commissioner Zermeño informed staff about dozens of cars that are abandoned and vandalized in the Food 4 Less Parking Lot at the corner of Tennyson Avenue and Hesperian Boulevard. He clarified that the graffiti removal is within 72 hours of occurrence. He also wished everyone a Feliz Navidad.

Chair Thnay informed that there are trucks parked across from Starbucks on Strafford Road. He suggested that those trucks be cited.

Commissioner Sack stated that the Kumbala building looks attractive.

APPROVAL OF MINUTES

Minutes of November 17, 2005 were approved.

ADJOURNMENT

Chair Thnay adjourned the meeting at 9:49 p.m., with two quotes from Charles Dickson, author of Christmas carols.

APPROVED:

Marvin Peixoto, Secretary
Planning Commission

ATTEST:

Miriam Lens
Commission Secretary