MINUTES OF THE REGULAR MEETING OF THE CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, October 5, 2006, 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 McKillop followed by the Pledge of Allegiance.

ROLL CALL

Present:	COMMISSIONERS:	Lavelle, Sacks, Peixoto, Thnay, Mendall, Zermeño
	CHAIRPERSON:	McKillop
Absent:	COMMISSIONER:	None

Staff Members Present: Conneely, Emura, Patenaude, Rizk, Lens

General Public Present: Approximately 30

Principal Planner Patenaude indicated that he was pleased to have worked as the Acting Planning Manager and introduced David Rizk as the new Planning Manager.

PUBLIC COMMENTS
None

PUBLIC HEARINGS

1. **Administrative Use Permit No. PL-2006-0510 – Gene Mattauch (Applicant) / MFG Holding, LLC (Owner)** – Request to Modify Use Permit 99-160-20 to Allow a Crematorium within an Existing Mortuary - The Project is Located at 22297 Mission Boulevard, at the Northeast Corner of Grace Street

   Staff report submitted by Associate Planner Emura, dated October 5, 2006, was filed.

Associate Planner Emura made the staff report indicating that in addition to the letters of opposition presented in the report, three additional people voiced opposition before the meeting.

After Commissioner Peixoto obtained clarification on the distance of the crematory stack related to surrounding properties, he inquired about what the staff recommendation could have been had there been an evaluation prepared by the Bay Area Air Quality Management District (BAAQMD). Principal Planner Patenaude indicated that the data from the report could have been analyzed. Associate Planner Emura indicated that the applicant was advised to obtain a report from the BAAQMD but he did not want to proceed until obtaining a land use clearance. Commissioner Peixoto further inquired about standards for stack heights. Associate Planner Emura indicated that according to BAAQMD, they would have to do a modeling. Principal Planner Patenaude indicated

that adjusting the stack's height could affect the visual impact the stack would have on the surrounding area.

In response to Commissioner Mendall's inquiry about the agency responsible for monitoring emission levels, Associate Planner Emura indicated that BAAQMD is responsible for ensuring that crematories comply with the federal and state regulations. In regards to complaints received about the Machado Hillside Crematorium or concerns expressed by the Tiburcio Vasquez Health Center, staff indicated that the City is not aware of complaints received.

Commissioner Lavelle inquired about the mercury toxic materials that are anticipated to be emitted from the stack. Associate Planner Emura indicated that the BAAQMD has standards for emission: emissions of less than one in one million for cancer risk would grant approval of the air permit; levels less than ten in a million, would grant approval with measures to lower the emission; and levels greater than ten to a million, would not get approval of the air permit. He added that toxic emissions are low and carbon monoxide exposure is less than what cars emit. Commissioner Lavelle also inquired about cremation activity compared to the activity of surrounding fireplaces during the winter season. Principal Planner Patenaude indicated that although the comparison is unknown, the City has an ordinance regulating the installation of wood burning fireplaces. He added that while BAAQMD has determined that the mercury releases from the operation may be relatively low, and there is lack of data for modeling and for proximity to land use where full occupancy can be expected. He showed concern for the residents and the cumulative effect for emissions.

Chair McKillop inquired about information for Spencer Mortuary and Crematory in Castro Valley. Associate Planner Emura did not have the information and added that the concern is if the crematory is compatible for the residential district. She further inquired if the Machado Hillside Crematory has produced any discrepancies with the operation since it was built in 1986. Associate Planner Emura stated no.

In response to Commissioner Sacks' inquiry about the equipment at the Machado Hillside Crematory, Associate Planner Emura indicated that the equipment has not been replaced since 1986. He added that new equipment is designed to emit less emissions and less odor with the exception of heat waves.

In reference to Commissioner Mendall's inquiry regarding a letter and potential liability for the City, Assistant City Attorney Conneely indicated that an executive session would be the appropriate venue to assess for liability.

Community Zermeño inquired about possible conditions of approval that would make for a recommendation of the application. Associate Planner Emura indicated that the stack could be disguised as a chimney and be subject to the conditions attached by the BAAQMD.

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

Mr. Mattauch, the applicant, indicated that the equipment for the smoke stack is less than 20 feet high. He indicated that last year about 400 people requested that the facility offer cremation services. He also indicated that approximately 50% of the families the business serves favor

cremation as a method of final disposition. In response to the demand generated, they have to transport bodies to an offsite crematory facility where there is no supervision and yet they are responsible and accountable for the procedure. He mentioned that the negative perception is based on past equipment and that the new equipment is state-of-the-art, which exceeds all the environmental standards for air quality control. He kindly requested approval indicating that the cost is half or less than that of corporate owned crematorium.

Commissioner Mendall inquired about other materials that would be burned aside from human remains. Mr. Mattauch indicated cardboards or wooden containers, clothing, or sheets from the hospital as possible examples.

Commissioner Zermeño inquired about possible toxic materials that could be burned. Mr. Mattauch indicated that the system itself would burn anything that is toxic. In reference to mercury emission, he added that there is more mercury emitted from a dental office and that crematoriums are at the bottom of the list for emitting mercury.

Mr. Tom Snyder, Vice President for Sales and Marketing for Faculty Technologies of the Americas and former President of the Cremation Association of North America, made reference to data of the United Stated Environmental Protection Agency (USEPA) indicating that after crematoriums have been tested, reviewed, and evaluated there is no evidence that there are environmental issues tied to crematorium operations. He added that according to the EPA, the mercury emission is not an issue for the environment. In reference to the remains that are burnt in the chamber, he mentioned that metals or toxins are not included.

Mr. Ron Peck, attorney for the Mission Funeral Home, requested approval of the application. He stated that general concerns are based on the traditional perception and that modern equipment produces no smoke or odor and no concern for the emission. He mentioned that the Planning Commission is addressing the zoning aspect and that the BAAQMD will address the emission standards. He added that according to the BAAQMD there was a recommendation that the zoning be approved first. He added that they are willing to meet the guidelines and standards set forth by the BAAQMD if necessary. He indicated that there has not been complains from the 350 feet radius residents at the Machado Hillside Mortuary. He also added that there would be no visual impact, smoke, odor, or toxic emission. He kindly asked for the approval.

In reference to Commissioner Lavelle's inquiry regarding the site used for crematorium services, Mr. Mattauch indicated they use a site in Livermore.

Mr. Frank Goulart, President of the Prospect Hill Neighborhood Association, mentioned that the residents oppose the project. He indicated that even though the Machado Hillside Mortuary is not close to residential property, it has received objections from neighbors and mentioned concerns about obnoxious odors. He did not agree the proposal to be good land use planning and did not favor relying on the BAAQMD in order to make a decision. He kindly asked that the Commission look after the interest of the community and thus deny the application.

Mr. Mark Dameral, Hayward business owner on Mission Boulevard, opposed the application because of the negative long-term impact that it might bring to his place of employment.

Mr. Richard Hale, Prospect Street resident, objected to the application because of the proximity to multi-family dwelling.

Ms. Sara Stafford, Prospect Hill resident, opposed the proposed application because of the chemicals used in doing the cremation and was concerned with the long-term effects and concerned that the number of people interested in the type of service might increase.

Ms. Valerie Snart, Warren Street resident, showed concern about the emissions that would be released from the stack and the proximity to the residential area and therefore opposed the proposed application.

Ms. Michelle Yates, Warren Street resident, indicated that she is about 350 feet away from the proposed project and was concerned about the health risks that it could cause to her children's health and thus spoke unfavorable about the application.

Ms. Mariam Kolm, Montgomery Street resident, indicated she was pleased with the appearance and services of Mission Funeral Home but asked that the proposed crematory not be allowed because of concerns of long-term health effects.

Commissioner Sacks mentioned that she went on a tour of the site. Discussion ensued regarding the stack height and its purpose.

Chair McKillop closed the public hearing at 8:59 p.m.

Commissioner Thnay favored acquiring more scientific data related to air quality dispersion and inquired for the appropriate direction to follow.

Principal Planner Patenaude recommended that the modeling be done.

Assistant City Attorney Conneely suggested that an alternative would be to deny the application without prejudice in order for the applicant and staff to consult with the BAAQMD to do the modeling study and when completed bring back findings.

Commissioner Thnay empathized with the applicant and the residents; however, indicated that he would like to see more data before proceeding in order to make a proper decision that will address the quality of life for the residents. He also suggested that neighbors as well as interested parties tour existing crematoriums(s) in the area.

Commissioner Lavelle echoed sentiments expressed by Commissioner Thnay regarding air quality impacts and suggested that an alternative action would be to approve the application knowing that the project would have to come back for further review. She indicated that emissions of cars would also impact the environment and thus did not favor transporting bodies but instead providing services onsite. She was confident to learn that the proposed new equipment would not present

concerns of equipment used by the other crematoriums used in the area. She favored the land use because of compatibility with services used in the area. She indicated that concerns for increase of crematorium services can be properly addressed as they occur. Therefore, Ms. Lavelle made a motion to approve the use permit and ask for the BAAQMD's assessment and bring back with findings.

Commissioner Sacks seconded the motion.

Assistant City Attorney Conneely suggested that the appropriate motion would be to direct staff to conduct an environmental review and bring back findings. Commissioner Lavelle concurred with the suggestion.

Commissioner Sacks referred to the distinction of emission produced by transporting bodies and emissions from a crematorium and the delay experienced when trying to get cremation services. She supported sending the application for further review.

Commissioner Zermeño favored a recommendation for continuation of the item because of lack of data for the Machado Hillside Mortuary and the Spencer Mortuary and Crematory. He expressed that the neighbors could be educated by obtaining confirmation from the BAAQMD and added that as a business owner he understands the applicant but would like to see more information.

Commissioner Mendall did not feel confident with approving the proposed application with the information presented and expressed that he would like to talk to people living close to a crematorium with the same device and favored a tour of a site with similar equipment and information from the BAAQMD.

Chair McKillop referred to the land use issue and indicated that it would be difficult to see the operation of a site with the level of new technology and equipment. She felt that the Mission Funeral Home would not want to use a service that would negatively impact its business. She concurred with the motion presented by Commissioner Lavelle and indicated a friendly amendment that subject to further approval that there be some treatment to the look and height of the stack.

Commissioner Thnay did not favor the motion on the floor indicating his preference to tour a site in operation with similar technology to the proposal.

Commissioner Peixoto indicated that even though the application presented a land use issue and toxic emission issue, he felt that the Commission was faced with making a decision about land use and not an emission issue because of lack of expertise on the topic of toxic emission. He understood the desire of the owner to try to offer services that are in demand. He mentioned that until he has reliable information that there would be no harm to the community, he was not confident in making a proper decision. He did not favor having this type of operation in proximity to the health center and the elderly facility. He did not support the motion.

Commissioner Mendall offered a substitute motion to deny the application without prejudice.

Commissioner Thnay seconded the motion.

Discussion and clarification ensued regarding the BAAQMD. Associate Planner Emura indicated that according to the BAAQMD, the applicant could apply for the BAAQMD at any time before or after the Planning Commission.

At the request of Commissioner Sacks, the public hearing reopened at 9:31 p.m., in order to obtain clarification from Mr. Ron Peck regarding the BAAQMD. Mr. Peck indicated that the applicant is willing to have conditions that would include getting the approval of the BAAQMD.

Commissioner Lavelle clarified the motion indicating that the motion did not include support nor opposition but a requirement for more information in order to have a definitive vote.

The public hearing was closed at 9:35 p.m.

The Commissioners voted on the substitute motion to deny the application without prejudice. The motion failed with three votes in favor and five against. The Commissioners then voted on the original motion offered by Commissioner Lavelle.

Commissioner Lavelle moved, seconded by Commissioner Sacks, and approved, to direct staff to conduct an environmental review and come back with findings.

AYES:	COMMISSIONERS Lavelle, Sacks, Thnay, Zermeño CHAIR McKillop
NOES:	COMMISSIONERS Peixoto, Mendall
ABSENT:	COMMISSIONER None
ABSTAIN:	COMMISSIONER None

Planning Manager Rizk asked the applicant for information regarding FT-1 Crematory in the area or the state.

ADDITIONAL MATTERS

2. Oral Report on Planning and Zoning Matters

Planning Manager Rizk reported that the October 19th meeting has been cancelled. He also asked for suggestions via e-mail for a work session where different topics could be addressed.

Commissioner Mendall suggested a topic on the City's green building policies and solar energy and about cost benefits.

3. Commissioners' Announcements, Referrals
Commissioner Thnay suggested discussion about CC&Rs, Homeowner's Association, and pros and cons regarding private streets.

Commissioner Sacks referred to Redwood City meetings that take place the first Wednesday of every month from October to May. She added that the first meeting is scheduled for November 1st regarding Fear and Crime as Motivators of Good Urban Design. She reported on a meeting she attended at Kaiser Hospital regarding plans for the new hospital in San Leandro. Lastly, she spoke highly of trees planted at the Whitman Village project between Tennyson High School and Harder School on Whitman Street.

Commissioner Thnay read a verse acknowledging Commissioner Zermeño's birthday.

APPROVAL OF MINUTES

The minutes of September 14, 2006 were approved.

ADJOURNMENT

Chair McKillop adjourned the meeting at 9:47 p.m.

APPROVED:

_____
Mary Lavelle, Secretary
Planning Commissioner

ATTEST:

_____
Miriam Lens
Commission Secretary