



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, May 10, 2007, 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, Peixoto, Thnay, Mendall, Zermeño
CHAIRPERSON: McKillop
Absent: COMMISSIONER: Sacks

Staff Members Present: Conneely, Emura, Rizk, Lens

General Public Present: Approximately 12

PUBLIC COMMENTS

There were no public comments.

PUBLIC HEARINGS

1. **Conditional Use Permit Application No. PL-2006-0566 – Chris Kelly (Applicant) / Catholic Bishop of Oakland (Owner) – Request to Modify Use Permit No. 81-94 to Allow a Second Crematory at the Holy Angels Funeral and Cremation Center – The Project is Located at 1051 Harder Road, easterly of Mission Boulevard**

Staff report submitted by Associate Planner Emura, dated May 10, 2007, was filed.

Associate Planner Emura presented the report indicating receipt of one comment opposing the crematory because of the projected increase in the number of cremations and the impact to the surrounding area. He added that another resident also commented on the negative impact. He also indicated that the Bay Area Air Quality Management District (BAAQMD) submitted a clarification on the Initial Study Checklist indicating that the baghouse has not been eliminated as the Best Available Control Technology (BACT) for controlling the particulate emissions.

In response to Commissioner Mendall's inquiry regarding monitoring compliance, Associate Planner Emura indicated that the City's involvement is to ensure permit compliance for the new crematory and that the BAAQMD would monitor the use. Mr. Emura also responded that he was not sure if Building would be assessing penalties for the installment of the second crematory without a permit. In response to the emission difference between the existing and the second crematory, Mr. Emura indicated that the cancer risk level is slightly higher for the existing

crematory. He added that there was no data as far as comparative machinery against the proposed crematory at the Mission Funeral Home, but he stated that both would serve the same purpose. He also stated that the crematory proposed at Mission Funeral Home is completely automated.

In response to Commissioner Lavelle's inquiry if Holy Angels Funeral would allow selling services to other area funeral homes, Associate Planner Emura indicated that the services would be for its sole use, and that a condition could be added to disallow to render services to others. Mr. Emura also responded that the mercury emission test level is within approval levels. In response to how soon the second crematory is expected to operate, Mr. Emura indicated that the Air Permit would have to be issued prior to operation and that the BAAQMD would not complete the engineering evaluation until the Planning Commission approves the California Environmental Quality Act (CEQA) documents.

In response to Commissioner Zermeño's inquiry as to what the BAAQMD requires and his concern about permitted cremations, Associate Planner Emura indicated that the BAAQMD has conducted the engineering evaluation, but has not confirmed whether a baghouse would be required and would not make any determinations until CEQA documents were approved. He added that the evaluation would only be for the second crematory and that the testing results are within allowable emission levels, but they have not ruled out requiring additional control devices to reduce the emissions. Planning Manager Risk referred to Conditions of Approval #3 and #6 indicating that cremations would have to be in compliance with the report from the BAAQMD's engineering evaluation. He suggested that the words "no more than" be inserted in Condition of Approval # 3 to specify the maximum number of cremations allowed per year. In response to Commissioner Zermeño about the frequency in which mortuaries are monitored for compliance, Associate Planner Emura indicated that the information is unknown but that there are procedures for reporting non-compliance situations and that the applicant would be required to keep a record of the operation of the crematory. It was reported that no infractions have been recorded. Planning Manager Rizk referred to Condition of Approval #14 indicating that potential non-compliance concerns can generate involvement by the Planning Director by considering imposing additional conditions or restrictions. He added that complaints would be carefully investigated for compliance with health and safety standards.

Commissioner Peixoto asked for clarification regarding particulate emissions (PM10). Associate Planner Emura stated that the regulation is established by the BAAQMD. It was stated that the emissions can be mitigated by reducing the number of cremations.

Commissioner Thnay referred to the table of projected cremations provided by Architect Kelly, and inquired what analysis was used in projecting the 1350 cremations. Associate Planner Emura indicated that the architect would be able to respond.

Chair McKillop inquired about an equivalent to the particulate emission standard and about other emissions that are under PM10. Associate Planner Emura indicated that the concern would be that the emissions could be deposited in the lungs once inhaled. He indicated that the emissions of diesel fuel would fall in the category of PM10. Planning Manager stated that the Toxic Risk Assessment test was found to be below the 1.0 hazard risk limit and apologized for not having comparative data.



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Chair McKillop opened the public hearing at 8:10 p.m.

Mr. Chris Kelly, Holy Angels applicant, in reference to the PM10, indicated that they are size-specific. He stated that the BAAQMD and the State Cemetery Board would monitor all the practices and the cremations. He referred to the chart included in the report indicating that the proposed numbers of cremations is based on the projected increase of cremation and death rates and in comparison to other services provided in other cities. He apologized for the circumstances in applying for the second permit. In response to Commissioner Lavelle, Mr. Kelly indicated that there is no plan to sell cremation services to other funeral homes.

Mr. Robert Seelig, Director of Funeral and Cemetery Services for the Diocese, indicated that Catholic population in California is moving in a direction that is less apprehensive to allowing cremations. He mentioned that they would like to prepare for a demand that is projected to increase. He added that the baghouse would not make it feasible to provide cremations, but would be agreeable to consider a more feasible option. In response to Commissioner Mendall, Mr. Seelig indicated that the projection is based on one third of the Catholic population, but the influx in the choice of cremation is estimated to increase by two thirds of the population in the next 15 years. In response to Commissioner Zermefio's inquiry related to the cost of cremation, it was indicated that the funeral service and cremation niche is estimated from \$2,000 to \$5,000 and the funeral service for a body burial plot is estimated from \$3,000 to \$7,000.

Mr. Bob Perry, resident of Hayward since 1950, expressed that he is not in favor or against the proposed crematory, but was concerned with the principle that a permit should be acquired prior to construction. He favored obtaining more information from the BAAQMD and added that the existing facility can serve the current demand. Furthermore, he indicated that the approval could set a precedent that it would be permissible to build prior to obtaining proper permits.

Ms. Janet Kassouf echoed Mr. Perry's sentiments about building without permits. She spoke against the second crematory because of health concerns such as cancer risk due from potential emissions. She provided an article from The Catholic Voice, "Doctors explore toxins in the life of the womb."

Mr. Andrew Quan, Hayward Youth Commissioner, spoke against the second crematory because of the impact and consequences of mercury emissions.

Chair McKillop closed the public hearing at 8:41 p.m.

Commissioner Lavelle expressed that she was not prepared to vote in favor of a second crematory because the projected chart prepared by the applicant did not demonstrate the current need for a second crematory and because the applicant did not express plans to offer services to other funeral homes. She added that she would be in favor of entertaining a modified application when the need arises.

Commissioner Lavelle made a motion to deny the staff recommendation.

Commissioner Zermefio seconded the motion indicating that he did not have data or findings from the BAAQMD to make an informed decision.

Commissioner Mendall encouraged the Commission to allow the applicant to use the second crematory under the allowable 300 per year permit because it was indicated to produce fewer emissions than the existing crematory. Planning Manager Rizk indicated that the BAAQMD would need to issue a permit for the second crematory prior to operation. Associate Planner Emura stated that the applicant would need to modify the application and the BAAQMD would need to do a new analysis. Planning Manager Rizk further indicated that the City did not have the authority to cease operation of the current unit, but it would be up to the discretion of the applicant.

Assistant Attorney Conneely indicated that proper protocol did not exist to revoke the existing crematory, and the action permitted by the Commission was to approve or disapprove the staff recommendation.

Commissioner Thnay stated that the existing number of cremations is close to the maximum 300 allowed and did not perceive that BAAQMD was against the application. He indicated that as long as the BAAQMD is able to set findings to protect the air quality in Hayward, this type of business should be supported. He favored denying the application without prejudice.

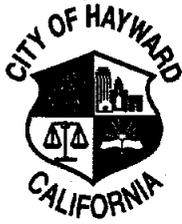
Commissioner Zermefio indicated hesitation about the information from the BAAQMD and inquired if the applicant could come back in a couple of years and apply for a larger number of cremations. Planning Manager Rizk responded that the BAAQMD indicated that both units are in compliance with the standards except for the particulate emissions (PM10.) He stated that the applicant could come back and reapply.

Commissioner Peixoto expressed disappointment at the sequence of events in getting the data. He added that the PM10 is a compelling issue and did not feel comfortable making a decision when there is ambiguity as far as the level of control that is appropriate to reduce health risks. He indicated that he could not approve it at this stage because of lack of data. Lastly, he recommended that staff express the dilemma with the procedural analysis to the BAAQMD.

Commissioner Lavelle moved, seconded by Commissioner Zermefio, and failed with the following vote, to deny the Mitigated Negative Declaration, Initial Study and Mitigation Monitoring Plan; and deny the Conditional Use Permit Application subject to preparation of findings and conditions of denial.

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

Since the motion failed, Assistant Attorney Conneely indicated the following alternatives in order to proceed: that a new motion be proposed, wait until there is full membership present, or forward



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to Council as denied.

In response to Chair McKillop's question for the applicant's preference, Mr. Kelly proposed to continue the public hearing to another meeting and have someone from the BAAQMD explain the information provided.

Commissioner Mendall requested that options be considered in allowing usage of the new crematory under the existing permit.

Chair McKillop moved, seconded by Commissioner Mendall, and approved with Commissioner Sacks absent, to continue the public hearing and include participation and input from the Bay Area Air Quality Management District.

ADDITIONAL MATTERS

2. Oral Report on Planning and Zoning Matters

Planning Manager Rizk reported on the forthcoming work session and public hearings.

3. Commissioners' Announcements, Referrals

Commissioner Thnay reported the blight landscaping condition at the Kishore and Sons building on Tennyson Avenue near Ruus Avenue.

APPROVAL OF MINUTES

The minutes of April 26, 2007 were approved.

ADJOURNMENT

Chair McKillop adjourned the meeting at 9:09 p.m.

APPROVED:

Mary Lavelle, Secretary
Planning Commissioner

ATTEST:

Miriam Lens
Commission Secretary