



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, September 20, 2007, 7:30 p.m.  
777 B Street, Hayward, CA 94541**

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**MEETING**

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

**ROLL CALL**

Present: COMMISSIONERS: Sacks, Lavelle, Mendall, Thnay, Loché  
CHAIRPERSON: Peixoto  
Absent: COMMISSIONER: McKillop

Staff Members Present: Buizer, Connolly, Emura, Rizk, Lens

General Public Present: Approximately 16

**PUBLIC COMMENTS**

There were no public comments.

**PUBLIC HEARINGS**

1. **Blue Rock Country Club Project Development Agreement (Stonebrae Country Club) – Request to Amend the Development Agreement by Extending its Term For Five Years – The Project is Located Southeast of Fairview Avenue/Hayward Boulevard in Eastern Hayward on Walpert Ridge**

Staff report submitted by Senior Planner Buizer, dated September 20, 2007, was filed.

Senior Planner Buizer summarized the report and clarified questions from the Commissioners.

Having no requests to speak, Chair Peixoto opened and closed the public hearing at 7:38 p.m.

Commissioner Mendall moved the staff recommendation.

Commissioner Lavelle seconded the motion.

Commissioner Loché inquired how long it would take to complete the project. Senior Planner Buizer estimated that the project would be completed a year or two short of the five-year extension.

Commissioner Mendall moved, seconded by Commissioner Lavelle, and unanimously approved with Commissioner McKillop absent, to recommend to the City Council to approve the

Development Agreement Amendment to extend the term for five years subject to the required finding that such amendment is consistent with the General Plan.

2. **Use Permit Application No. PL-2005-0536 - Mario Pena, La Super Tapatia (Applicant), Ken Zemel, Hamburger Properties (Owner) - Request to Allow Sale of Beer and Wine for Off-Site Consumption at an Existing Market - The Project is Located at 603 "A" Street, on the Southeast Corner of "A" Street and Grand Street**

Staff report submitted by Associate Planner Emura, dated September 20, 2007, was filed.

Associate Planner Emura summarized the report and clarified questions from the Commissioners.

Chair Peixoto opened the public hearing at 7:48 p.m.

Mr. Mazen Elmashni, business consultant representing applicant Mr. Mario Pena, spoke about the improvements that have been done to the business and indicated that the applicant should not be penalized for past problems at the store. Mr. Elmashni expressed that the addition of beer and wine would complete the services already offered at the store. He indicated that this is a family store and that the Latino population would be more comfortable with a business that meets its needs. He clarified that the store would not be selling single cans of beer. He indicated that the store is suffering financially and expressed willingness to install cameras outside the store and have security after hours, should the application be approved.

Mr. Alfredo Coria, Prevention Specialist for Community Prevention of Alcohol-Related Problems (COMMPRE), indicated opposition to the conditional permit citing crime statistics for the area, abundance of alcohol outlets and the potential for increase in crime rate and social nuisance. Mr. Coria respectfully asked that staff deny the application.

Chair Peixoto closed the public hearing at 7:59 p.m.

Commissioner Lavelle made a motion per the staff recommendation.

Commissioner Thnay seconded the motion.

Commissioner Lavelle wished Mr. Pena well on his business and stated that the facts on the report and from COMMPRE are overwhelming and contributed to her decision. She indicated that the needs of the Hispanic community have already been met in the area.

Commissioner Thnay thanked Mr. Pena for the improvements he has done to La Super Tapatia. Mr. Thnay spoke about the statistics presented by Mr. Emura and Mr. Coria indicating that the overwhelming evidence contributed to supporting the motion. He recommended that Mr. Pena find alternative means to increase and promote his business.

Commissioner Sacks thanked Mr. Elmashi and Mr. Coria for their contributions. Ms. Sacks commended applicant Pena for the improvements he has made to the business. She also thanked the Police Department for the statistics report. She supported the motion.



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Commissioner Mendall echoed Commissioner Sacks' comments regarding the improvements done to La Super Tapatia. Mr. Mendall reiterated comments about the overwhelming crime facts in the area. He supported the motion.

Commissioner Loché spoke optimistically about the changes to the establishment, but indicated that there are convenience stores that already sell alcohol in the area. He supported the motion.

Chair Thnay spoke favorably about the signage improvement to La Super Tapatia, but he did not agree that there is public need for another alcohol establishment in the area. Mr. Thnay referred to the potential illegal activity that the establishment could bring to the area should one more establishment be approved. He supported the motion.

Commissioner Lavelle moved, seconded by Commissioner Thnay, and unanimously approved with Commissioner McKillop absent, to find the project statutorily exempt from environmental review, per Section 15270(a) (Projects that are Disapproved) of the California Environmental Quality Act (CEQA) Guidelines, and Deny the requested Conditional Use Permit, based on the findings.

**3. South of Route 92 Specific Plan Amendment Study**

- I. General Plan Amendment Application No. PL-2007-0019** - Request to Amend the General Plan Land Use Map Designation for Portions of the Area From "Industrial Corridor" to "Retail and Office Commercial" and "Medium Density Residential";
- II. Specific Plan Amendment** – Request to Amend the *South of Route 92/Oliver & Weber Properties Specific Plan* Land Use Designation for Portions of the Area From "Business Park" to "Retail Commercial" and "Residential", and Make Related Text Changes;
- III. Zoning Text Amendment Application No. PL-2007-0233** – Request to Delete the "Commercial Retail" District and Add a New "Regional Commercial" District, and Amend the "Business Park" District and "Neighborhood Commercial" District;
- IV. Zone Change Application No. PL-2007-0232** - Request to Amend the Zoning District for Portions of the Area From "Business Park" and "Commercial Retail" to "Medium Density Residential", "Neighborhood Commercial", and "Regional Commercial";
- V. Development Guidelines Revisions** – Request to Amend the *South of Route 92/Oliver & Weber Properties Development Guidelines* Consistent with Related Amendments to the Specific Plan;
- VI. Development Agreement Amendment** - Request to Amend the *Mount Eden Business and Sports Park Community Development Agreement*.

Legacy Partners, Inc. - Applicant/Eden Shores Associates I and II, LLC - Owners;  
City of Hayward – (Applicant/Owner)

The Project Site Includes Approximately 60 Acres Generally Located West of Hesperian Boulevard and East of Marina Drive, Between Industrial Boulevard and Eden Park Place

Staff report submitted by Planning Manager Rizk, dated September 20, 2007, was filed.

Planning Manager Rizk summarized the report. He also indicated that a letter of intent from a perspective regional retail business was submitted to the City Attorney's Office.

In response to Commissioner Mendall's inquiry about the staff preference regarding the land use alternatives, Planning Manager Rizk indicated that staff was supportive of alternatives two and three, but was more supportive of revised alternative two due to the reconfiguration in relation to land uses and traffic impacts.

Mr. Mendall further inquired about the procedural action for supporting the revised retail zoning, but not the residential plan. Assistant City Attorney Connolly indicated that Mr. Mendall could make such a motion to include any required amendments to the findings related to the proposal.

Commissioner Lavelle inquired if the initial intent at a previous work session was to require that the developer build the retail and business park uses before proceeding with the residential portion. Planning Manager Rizk indicated that the requirement for the developer to develop the retail and business park portions first could be properly addressed in the development agreement, if the Commission so desired, should the application be approved. Mr. Rizk also stated that he had not reviewed the letters of intent. Assistant City Attorney Connolly indicated that the City Attorney's office was in receipt of three letters of intent of different prospective businesses, but he had not reviewed them in detail. He added that at this point, the letters did not constitute a binding agreement with prospective tenants.

Commissioner Loché inquired if the Commission could learn about the letters of intent. Planning Manager Rizk indicated that the project proponent might be able to provide more information.

Chair Peixoto opened the public hearing at 8:41 p.m.

Mr. Steve Dunn, applicant with Legacy Partners, indicated that the community and neighborhood are supportive of the mixed-use and the connectivity plan. Mr. Dunn added that the revised proposal produces less traffic than the current zoning and is supportive of the market analysis that was conducted. He indicated that the lights in the park have a modern shield, which would minimize the concern for the residential portion. In reference to the parking issue, he indicated that the residential area could provide for the public and the overflow of visitors to the residential units.

He did not express support for alternative three because it was not feasible, but rather was supportive of revised alternative two.

In response to Commissioner Mendall's inquiry regarding alternative three, Mr. Dunn indicated that the project would not be financially feasible without the housing component and therefore could not support commercial and business park uses only. Mr. Mendall made reference to an article regarding Legacy Partners and the improving market for commercial and business park developments in the East Bay. Mr. Dunn indicated that from a financial standpoint, the project would need the residential component. Mr. Mendall further inquired about the prospective list of businesses on the letter of intent. Mr. Dunn indicated that because of confidentiality protocol, he could only share information about some credible letters, such as a full service 24-Hour Fitness and Rite Aid Drug Store.



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Commissioner Sacks thanked Mr. Dunn for the presentation and indicated that Mr. Gregg Hall left a message for her. Ms. Sacks was impressed by the diagrams and environmental sensitivity, such as bio-filtration strips, gardens and ornamental native trees. Ms. Sacks confirmed with Mr. Dunn that vacancies exist throughout Hayward and re-usage of obsolete buildings can also be considered for other types of uses.

Commissioner Thnay thanked Mr. Dunn for the presentation. Mr. Thnay added support for Ranch 99 as a prospective retail tenant that would meet the Asian community needs in Hayward. He inquired if Mr. Dunn would be supportive of conditions of approval that would first secure a tenant for the retail site before the residential development. Mr. Dunn was open to discussion and suggestions for certain phasing, but he could not compromise to complete development of all business park uses prior to residential development. He was willing to commit to building out 30% of the business park as proposed in alternative two, and then proceed with the residential development.

Commissioner Lavelle was excited about the retail portion of the plan and was pleased to learn that 24-Hour Fitness is a prospective business and asked that a swimming pool be an amenity that will be included.

Commissioner Loché indicated support for the report and for the 24-Hour Fitness as a prospective business, but wanted to know about the other potential businesses/tenants.

Mr. Larry Lepore, Superintendent of Parks with the Hayward Area Recreational and Park District (HARD), indicated that at a previous work session, there was concern about sufficient parking for the area. He indicated that the addition of 48 parking spaces for the residential area and additional street parking on Eden Park Place and Marina Drive would improve the parking shortage. He added that he would address the design for the residential area in future phases. He requested that the developer provide signage for additional overflow parking for the sports park and include street signage to facilitate direction. He mentioned support for the project.

In response to Commissioner Mendall's inquiry regarding sufficient parking spaces, Mr. Lepore indicated that the original plan provided more parking; however, he concurred with staff that the project is good for the area and with proper signage of street parking, the concerns could be mitigated.

In response to Commissioner Sacks' inquiry about how the developer was expected to provide overflow parking for a shortage resulting from inadequate capacity at the HARD facility, Mr. Lepore indicated that there are always trade-offs for the amenities received and HARD did not anticipate the demand that now exists. Ms. Sacks suggested that HARD might want to entertain creative carpooling plans to address parking concerns.

Commissioner Thnay inquired about additional on-street parking for the area and commented on the possibility of additional parking at the retail center. Planning Manager Rizk indicated that he

would relay the information to engineering staff to consider additional on-street parking. Mr. Lepore indicated that a similar agreement is in place between the Target Store, the developer and HARD for the parking across from Kennedy Park, which provides additional parking for Kennedy Park overflow. Mr. Rizk added that although the land use configuration might reduce the potential for additional parking, he was willing to work with HARD staff and the developer to try to provide additional parking capacity.

In response to Chair Peixoto's inquiry about the concern for lighting affecting the residential component, Mr. Lepore indicated that prospective buyers need to be aware that they are living across from a sports park and added that the lights are designed with photo-metrics with shields and the lights would be directed to the playing fields. Planning Manager Rizk added that concerns with lighting impacts could be addressed through design, including shielding of lights, locations of windows and landscaping.

Chair Peixoto closed the public hearing at 9:13 p.m.

Commissioner Mendall indicated that the business park concept is outstanding. He agreed with the retail component; however, he expressed concern about not knowing about the prospective retail tenants. He disagreed with the housing component, due to the risks associated with building on former wet lands in an earthquake zone. From a good planning use perspective, he did not agree that the project was right and it also lacked adequate parking. He was supportive of the retail component.

Commissioner Sacks made a motion to move the staff recommendation.

Commissioner Lavelle seconded the motion.

Commissioner Sacks indicated that at previous work sessions, she had reservations for approving projects close to the shore, but added that other uses have already been approved in the area. She stated that as long as prospective tenants and buyers are aware of the risks associated with the area, she was confident to move the mixed-use project. In reference to the retail aspect and from a marketing perspective, she was confident that the places will be filled up with businesses with integrity. Finally, she added that her concerns have been mitigated and she was in agreement with the amended site plan.

Commissioner Thnay expressed that at the work session, he voiced concerns for an Office/Biotech/Retail alternative. Mr. Thnay indicated that the revised plan with the business park close to the residential area makes sense and the parking garage close to the tracks was appealing. He agreed with the proposed layout and added that it promotes more walking/biking and less driving, which makes it more sustainable. He indicated that the retail component and the amendments allow him to support the motion.

Commissioner Loché indicated support for the layout of the plan, the residential area, and the inter-connectiveness of the project; however, he was not pleased with not knowing about the businesses that are intended to fill the spaces. He was concerned about the long-term effect that the project is going to represent for the City and indicated he did not support the motion.



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Commissioner Lavelle echoed Commissioner Thnay's comments. She indicated that the Commission role was to determine proper land use. She was optimistic that the developer would select proper tenants that would serve the needs of the community. She also stated that the community did not object to the project and that she appreciated Mr. Lepore's input. In reference to the parking issue, she commented that other alternatives such as encouragement to use buses, bicycle parking, and a shuttle to the sports park could be considered to meet the needs. She indicated that Hayward has been waiting for the parcel to be developed and a compromise that is in its best interest.

Commissioner Mendall indicated that the compromise eight years ago was to have 500 homes, a business park and retail and the compromise now was to build almost 1,000 homes, retail uses, and a business park. He expressed concern that in two years more housing will be proposed. He offered an amendment that the residential units not be sold until the business park is complete.

Commissioner Sacks did not accept the amendment, because it was impractical to put such a restriction on the developer.

Commissioner Mendall indicated disagreement for the motion.

Commissioner Thnay reiterated Mr. Dunn's comment and offered a friendly amendment that 30% of business park development be built before any residential development. Commissioner Sacks accepted the friendly amendment.

Chair Peixoto disagreed that the project would not work unless a residential component was included. He indicated that at the Council Work Session in May, there was inclination towards alternative three or variation thereof and thought that there was preference for an alternative that did not include a housing component. He stated that overall, the City has already contributed towards housing in Alameda County. He indicated that the land use policy needs to be more balanced. Finally, he favored alternative three or some variation thereof that would not include a housing component. He did not support the motion.

Commissioner Sacks moved, seconded by Commissioner Lavelle, and failed with the following vote, to recommend to the City Council approval of the Mitigated Negative Declaration, Mitigation Monitoring and Reporting Plan and Associated Technical Memorandum, the related land use applications and the Development Agreement Amendment, including a friendly amendment that 30% of business park development be built before any residential development, subject to the findings.

AYES: Commissioners Sacks, Lavelle, Thnay  
NOES: Commissioners Mendall, Loché  
Chair Peixoto  
ABSENT: Commissioner McKillop  
ABSTAINED: None

In response to Chair Thnay's request for direction, Assistant City Attorney Connolly indicated that the report would be forwarded to Council without a recommendation.

4. Oral Report on Planning and Zoning Matters  
Planning Manager Rizk announced forthcoming meetings.

5. Commissioners' Announcements, Referrals

Commissioner Lavelle announced that the Association of Bay Area Governments is offering a program on "Bay Area on the Move" on October 26 from 8:30 a.m. to 2:00 p.m., at the Oakland Marriott City Center. Ms. Lavelle also spoke about a publication from the League of California Cities dealing with the Brown Act.

Commissioner Thnay announced a festival with entertainment at St. Clement School next weekend.

Commissioner Mendall reported about a tree missing at the Twin Bridges Development, 343 Ashbrook Way.

#### **APPROVAL OF MINUTES**

The minutes of September 6, 2007, were approved.

#### **ADJOURNMENT**

Chair Peixoto adjourned the meeting at 9:43 p.m.

#### **APPROVED:**

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Al Mendall, Secretary  
Planning Commissioner

#### **ATTEST:**

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Miriam Lens  
Commission Secretary