



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, April 24, 2008, 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 Peixoto followed by the Pledge of Allegiance.

ROLL CALL

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

Staff Members Present: Conneely, DeLuz, Rizk, Lens

General Public Present: Approximately 27

PUBLIC COMMENTS

There were none.

PUBLIC HEARING

- 1. Site Plan Review No. PL-2007-0463 –Woodland Knolls Homeowner’s Association (Applicant/Owner) – Request to Install an Automatic Security Access Gate across Durham Way - The Project is Located Approximately 140 Feet Northerly of the Intersection of Durham Way and Oakes Drive in a Single-Family Residential (RSB40) Zoning District (Continued from March 27, 2008)**

Assistant Planner DeLuz summarized the staff report and clarified the history of Durham Way.

Commissioner Mendall noted that the quality of the road was poor compared to other nearby streets. Assistant Planner DeLuz indicated that the maintenance of Durham Way, a private street, is the responsibility of the homeowner’s association. In response to the number of gated communities in Hayward, Mr. DeLuz indicated that most newly constructed multifamily condominium properties have gates and that there are four single family residential subdivisions with gates: Green Briar, Stonebrae, Vista Bahia, and Bello View Estates. Mr. DeLuz stated that this proposal is the first application submitted for a second time for a gate within an existing subdivision on a private street. In response to Commissioner Loché’s inquiry whether this project might set precedence, Mr. DeLuz indicated that he did not know of another neighborhood that would meet the characteristics of the proposed application. Mr. DeLuz further stated that the application conforms to the Security Gate Ordinance. Planning Manager Rizk indicated that the previous application was approved ten years ago and did not lead to construction of many gates for single-family subdivisions. Commissioner McKillop inquired about the process for getting speed bumps and similar road

improvements installed on public streets. Associate Planner DeLuz indicated that Public Works has procedures in place with specific criteria. Planning Manager Rizk indicated that the Woodland Knolls Association By-Laws supports requirements for private security gates and sets the threshold for approval.

Chair Peixoto opened the public hearing at 8:00 p.m.

Mr. Glen Cartwright, Durham Way resident for 18 years, spoke strongly in favor of the proposed gate because it would improve the safety of the neighborhood and would also reduce crime. He also indicated that parking on Durham Way and having non-Durham residents access the Ward Creek Trail would be independent of the gate. He stated that according to the Police Department, the gate would reduce the indiscriminate traffic. In response to the Commissioners, Mr. Cartwright indicated that residents and/or guests park illegally on Durham Way and in the cul-de-sac. He stated that the neighborhood has experienced break-ins to homes during the day, and nuisance from teenagers that come to that area. Commissioner Mendall suggested that more no-parking signage and additional lighting in the area could significantly lessen the existing problem.

Mr. William Maier, Woodland Knolls Homeowners Association President and Durham Way resident for 30 years, expressed support for having a gate governed by the Board. He stated that the association's position was that crime occurs during the day.

Ms. Shirley Maier, Durham Way resident, shared her personal experience about incidents related to vandalism and numerous burglaries which have occurred during the day. Ms. Maier noted that the Police Department does not have sufficient manpower to adequately attend to burglary incidents. She stated that the gate was twice approved by the association and is designed to provide security for residents and to restrict vehicular traffic. In response to Commissioner Mendall on whether the gate was worth building if it was required to remain open from 7:00 a.m. to 7:00 p.m., she stated that it was not.

Mr. Mike Maier, Crestmont resident who grew up on Durham Way, reiterated frustration about vandalism and numerous burglaries during the day which he had experienced. He spoke against leaving the gate open from 7:00 a.m. to 7:00 p.m.

Ms. Henny Chapnick, Durham Way resident for 25 years, opposed the proposed gate indicating that it is not a solution to a social problem. Ms. Chapnick noted studies that concluded that gates do not prevent crime, but would create socio-economic differences between the neighborhoods. She asked that she not be fenced in.

Ms. Sara Quintero, Oakes Drive resident, indicated that a solution to more security would be for private homeowners to purchase security systems for their homes. She indicated that the Palma Ceia neighborhood would also need a gate due to its high crime volume. She did not favor an entry gate because it represents elitism. She also stated that residents tend to park in front of Oakes Drive. She questioned the vacation of Durham Way noting cases supporting her position against the staff proposal. In response to Commissioner Mendall in regard to the legality of vacating the right-of-way, Assistant City Attorney Conneely indicated that when the street was vacated, the residents were most likely notified and that the time to challenge such action had passed, and now such property had been conveyed to property owners.



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Mr. Bud Eckert, Oakes Drive resident, reminded the attendees that in 1998, one of the Commissioners voted against the gate because of a potential for setting a precedent. Mr. Eckert confirmed that residents park on Durham Way all the time and that the gate might create a precedent for other neighborhoods. He noted that the law states that gates require 100% of the affected residents' approval. He stated that he had also experienced crimes and burglaries, and to approve the gate would not be fair to other neighborhoods. He also stated that another reason to have the gate was to raise property values, and that approving the gate will constitute the approval for 24 hours a day. He commended Mr. DeLuz's work.

Mr. Saied Haddad, Oakes Drive resident, opposed the application because of the potential for setting a precedent. Mr. Haddad added that it would create physical boundaries, socio-economic segregation, and elitism.

Ms. Deborah Eckert, Oakes Drive resident, opposed the proposed gate, stating that Mr. Cartwright misrepresented the Woodland Knolls homeowners by neglecting to state disadvantages to having the gate, the opposition of other homeowners, and not addressing how the gate would negatively impact property values.

Dr. Aleta Azimi, Durham Way resident for 30 years, read a statement by Paul and Michelle Louie regarding support for the proposed gate. The letter was submitted for the record. Dr. Azimi also expressed support for the proposed gate.

Dr. Marshall Mitzman, Durham Way resident, spoke in favor of the security gate. He clarified that the proposed gate would be inside his property line and the maintenance of the driveway would be assessed by the homeowner's association. He stated that he did not want to keep neighbors from coming to Durham Way, but was in favor of restricting vehicles and nuisances to the area. In response to the Commissioners, Dr. Mitzman stated the association's opposition to leaving the gate open during the day because of the crime concern; and added that the gate would diminish illegal parking on Durham Way; and indicated he did not foresee concerns from neighbor's vehicles or individuals causing nuisance to his property.

Ms. Goergiandra Ostarello, Durham Way resident, opposed the proposed gate because it would segregate the community. Ms. Ostarello stated that she voted for a gate assessment, but the future responsibility and the gate maintenance were not addressed. She had not been aware of easement records for the association's acceptance for responsibility for the roadway. She added that the gate would not serve its purpose because Durham Way opens into the canyon, parks, and trails. Lastly, she urged the Commissioners to vote against the application.

Mr. Andrew Ostarello, Oak Creek Place resident, read a statement by Ms. Dolores Odell from Durham Way stating her opposition to the security gate because of delay concerns for emergency vehicles. Mr. Ostarello expressed his opposition to the gate because he did not believe that a security gate would significantly decrease crimes. He stated that the gate would be ineffective and

ceremonial and would serve to segregate. Lastly, he indicated that the gate would not be cost effective in addressing security concerns.

Mr. Bob Perry, Pelham Place resident, indicated that State law under the Subdivision State Map related to gated communities, requires 100% of property owner's approval and inquired why the City can circumvent the law. Assistant City Attorney Connelly responded by indicating that she did not see any impediment to acting on the application.

Mr. Doug Grandt, Oakes Drive resident, showed a slide presentation, pointing out that the proposed gate drawing is incomplete and asked for rejection of the application. He indicated that the roadway needs maintenance. He lastly stated that the gate is not effective for incapacitated pedestrian and horse entrance and asked that the ordinance be reviewed.

Mr. Ron Allen, PhD, Durham Way resident, spoke in support of the gate. Dr. Allen stated that the security gate would restrict vehicular traffic. He added that burglaries occur during the day time. He also mentioned that the desire of the association is to construct and maintain the gate. He submitted his statement for the record.

Mr. Neil Shumate, Picea Court resident, indicated that his neighbors would like to be located on a private street. He mentioned that the homes that have security concerns do not have fences. He inquired about the effectiveness and safety of the poles on the gate. He was opposed to the security gate and asked for legality clearance before proceeding.

Chair Peixoto closed the public hearing at 9:22 p.m.

In response to Commissioner Lavelle's inquiry for the rational behind the Condition of Approval No. 4, Attachment H, that the gate remain open between the hours of 7:00 a.m. and 7:00 p.m., Assistant Planner DeLuz indicated that it was based upon input received by both the opponents and proponents of the gate proposal. He added that the Police Department did not have opposition to the proposal.

Commissioner Thnay apologized for his absence at the previous meeting. He indicated that a security gate could prevent burglaries. Mr. Thnay spoke to the uniqueness of the topography and indicated that the condition of the street could be attributed to vehicular traffic on the private street. He sympathized with the neighbors that have to pay for the maintenance of the street.

Commissioner Lavelle thanked all for their input received on this item. Ms. Lavelle indicated that she is a resident of Oakes Drive and she did not have a conflict of interest on the issue. She respected all the concerns raised. She made a motion to deny that the project is exempt from environmental review pursuant to the California Environmental Quality Act and deny the Site Plan Review application. She indicated that the motion was made based on planning regulations and compliance to the Security Gate Ordinance. She did not agree with three of the Site Plan Review Findings for approval: Finding No. 1, that the security gate is compatible with on-site and surrounding structures and attraction; Findings No. 3, that the development complies with the intent of City development policies and regulations, e.g., Sec 10-14.202 – Single Family Communities, subsection (g), which claims that all property owners want to be gated; Finding No. 4, that the development will be operated in a manner acceptable and compatible with surrounding communities



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because there is opposition by the neighbors and there is no agreement to leave the gate open during the day. She agreed with Finding No. 2. She added that if the Woodland Knolls Homeowner's Association wants to pursue this application further, they would need to obtain the consensus of the people in opposition. She did not think this would be precedent setting and was optimistic about other strategies to stop crime.

Commissioner Mendall seconded the motion.

Commissioner Sacks indicated that there were good arguments presented on both sides. Ms. Sacks noted that if the association should pursue the application, she would suggest amending the recommended condition of approval to close the gate 24 hours a day. She was not sure about making a final decision.

Commissioner Mendall noted concurrence with Commissioner Lavelle's eloquent motion. Mr. Mendall noted that the problems are valid and encouraged the association to consider other ways of addressing the situation, e.g., additional lighting and no parking signage or add the service of a private security patrol. He urged compromise among neighbors.

Commissioner McKillop indicated that she lives at Woodland Estates and she could relate to the burglaries and mail stealing and she also sympathized with the concerns raised by the community. She did not support the condition for the gate to remain open from 7:00 a.m. to 7:00 p.m. She also did not agree with Site Plan Review Finding No. 4 because surrounding communities oppose the application. Therefore, she supported Commissioner Lavelle's motion.

Commissioner Loché showed appreciation for all the input. Mr. Loché indicated that the security gate could contribute to a divisive community, but it would make people feel more secure. He indicated that the concerns raised were about loitering and teenagers parking, but the burglary concerns were more obvious. He supported the security gate and felt that the times for the gate to remain open could be decided by the residents of Durham Way. He added that should the gate be constructed, he recommended it be moved further east and that the pedestrian poles be wide enough to accommodate pedestrian and horses passage. He did not support the motion.

Commissioner Thnay indicated support for the security gate with a compromise so that the majority of the residents could be served. He added that if the application does not get approved, the proponents should find consensus among the neighbors.

Commissioner Sacks concurred with Commissioner Thnay, adding that the gate be closed 24 hours. Ms. Sacks shared her personal experience from having lived in a half gated community, indicating that it had not stopped crime but has made people feel safer.

Chair Peixoto indicated that he is also a member of Woodland Estates Homeowner's Association and did not feel his participation to be a conflict of interest. Mr. Peixoto had seen the two communities torn apart and indicated that the concerns expressed about crime and burglary occur

throughout Hayward. He referred to a personal experience where his truck was stolen. He did not favor gated communities. He mentioned that when Woodland Knolls decided to have a private road, they took on the responsibility to maintain it. He mentioned that he did not want to impose on proponents of the gate, but he was concerned about the disapproval of other residents and surrounding neighbors. He supported the motion.

Commissioner Lavelle moved, seconded by Commissioner Mendall, and deny with the following vote, that the project is categorically exempt from environmental review pursuant to the California Environmental Quality Act (CEQA), per CEQA Guidelines Section 15303(e): New Construction or Conversion of Small Structures; and to deny the Site Plan Review application.

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

ADDITIONAL MATTERS

2. Oral Report on Planning and Zoning Matters
Planning Manager Rizk announced a Joint Work Session meeting regarding the Historic Preservation Ordinance scheduled for April 29, 2008. He also followed up on a request by Commissioner Mendall regarding graffiti on a building on Industrial Parkway.
3. Commissioners' Announcements, Referrals
Commissioner Loché announced that he would not be in attendance at Tuesday's Joint Work Session.

APPROVAL OF MINUTES

The Minutes of March 27, 2008 were approved.

ADJOURNMENT

Chair Peixoto adjourned the meeting at 9:57 p.m.

APPROVED:

Al Mendall, Secretary
Planning Commissioner

ATTEST:

Miriam Lens
Commission Secretary