



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, December 13, 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 Peixoto followed by the Pledge of Allegiance.

ROLL CALL

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

Staff Members Present: Buizer, Camire, Conneely, Patenaude, Rizk, Lens

General Public Present: Approximately 20

PUBLIC COMMENTS

There were none.

PUBLIC HEARING

1. **Text Amendment Application No. PL-2007-0586 – Initiated by the Planning Director – Request to Amend the Sign Ordinance to Permit Auto Dealers along Auto Row to Install Permanent Banners – Auto Row is Located along Mission Boulevard between Highland Boulevard/Sycamore Avenue at the North and Harder Road at the South**

Staff report submitted by Principal Planner Patenaude, dated December 13, 2007, was filed.

Principal Planner Patenaude summarized the report and mentioned a letter from Mr. James Jardine, insurance business owner on Mission Boulevard, who opposed the proposed banners for its limitation to auto dealers only. Mr. Patenaude clarified comments for the Commissioners regarding the proposal and the economic well-being of the industry for the City, measures to strengthen the advertising for auto retail business and safety measures to avoid obstruction of motorist visibility.

Having no requests to speak Chair Peixoto opened and closed the public hearing at 7:53 p.m.

Commissioner Lavelle made the motion per staff recommendation. She expressed support for having attractive signs that would draw more customers to Hayward and that would create more uniformity along Auto Row. She encouraged Mr. Jardine to get involved and address banners for other businesses as the City's Sign Ordinance gets reviewed.

Commissioner Mendall seconded the motion and expressed support for the uniformity being

proposed.

Commissioner McKillop commended staff and merchants on Auto Row for their effort in creating an Auto Row that is recognizable. Ms. McKillop added that the proposal meets the intent of the General Plan.

Commissioner Sacks concurred with the motion on the floor indicating support for the maintenance condition for the banners.

Commissioner Loché concurred with Commissioner Sacks indicating support for the motion.

Chair Peixoto supported the motion.

Commissioner Lavelle moved, seconded by Commissioner Mendall, and unanimously approved with Commissioner Thnay absent, to recommend to City Council to find the project Categorical Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15311, Class 11 (a), Accessory Structures; and Approve the Text Amendment subject to the findings.

2. **Zone Change Application No. PL-2006-0375 PD; Vesting Tentative Tract Map Application No. PL-2006-0374 TTM 7658 - KB Home of South Bay, Inc. (Applicant) / Bernabe & Cruz Aranda and Robert & Roberta Pratt (Owners) - Request to Change the Zoning from Medium Density Residential (RM) District to Planned Development (PD) District and to Subdivide 1.5 Acres to Develop 8 Detached Single-Family Residences and 14 Attached Single-Family Residences along Four Private Drives - The Project Site is Located between Eden Avenue and Saklan Road, Southerly of Middle Lane in the Mt. Eden Area**

Staff report submitted by Senior Planner Buizer, dated December 13, 2007, was filed.

Senior Planner Buizer summarized the staff report and added a Condition of Approval for the Tract related to payment of fees into the Benefit District, *"Prior to issuance of a Building Permit, the developer shall pay a per dwelling fee of \$10,008 to Benefit District 411-06 Saklan Road unincorporated Island Water, Sewer, Storm Drain Benefit District. This Benefit District was established by Council on January 16, 2007 to install water, sewer, and storm drain improvements in the context of the Mt. Eden Annexation. Since the fee applies to future development or additional units on any parcel, development will receive credit for up to three units that existed on the property prior to its redevelopment."*

In response to Commissioner Lavelle's inquiry about park in-lieu fee by the developer to Greenwood Park and the eight percent improvement cost associated with Phase I, Senior Planner Buizer indicated that the eight percent difference for improvement cost would be paid by other developments in the area.

In response to Commissioner Mendall, staff clarified the costs associated with the improvement to the existing and anticipated expansion of Greenwood Park.



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Commissioner Sacks inquired about the acquisition of the land for the expansion of the park. Senior Planner Buizer indicated that the property owner where the expansion of the park was envisioned, has not expressed interest in selling to KB Homes, but has expressed interest in developing the property.

In response to Chair Peixoto's inquiry regarding the parking ratio, Senior Planner Buizer clarified the required ratio of 3.0 parking spaces per unit.

Commissioner Lavelle inquired about public transportation for the development and any correspondence received since Phase II of the project was advertised. Senior Planner Buizer did not have public transportation information and indicated that the City was only in receipt of support for the expansion of the park. In reference to major benefits to utilities for the proposed development, Ms. Buizer noted water, sewer, storm drain, and light improvements for the proposal as a result of the Mt. Eden Annexation.

In response to Commissioner Mendall's inquiry, Senior Planner Buizer noted that the project applicant is in concurrence with Phases I and II of the development.

Chair Peixoto opened the public hearing at 8:27 p.m.

Mr. Larry Lepore, Superintendent of Hayward Area Recreation and Park District (HARD) acknowledged the working relationship with City staff and KB Home. Mr. Lepore noted that the additional expansion of Greenwood Park would meet the required open space for the proposed development on Saklan Road and Eden Avenue. He added that Phase I of the development did not include the amenities that were envisioned from the park in-lieu-fees, proposed on Phase II. He noted support for the staff proposal and included interest for continuing to work towards acquiring the land for the park expansion.

In response to Commissioner Mendall's inquiry about the cost associated with the expansion of Greenwood Park, Planning Manager Rizk clarified that the cost estimates for anticipated expansion and park improvements were based on 0.94 acres.

In response to Commissioner Sacks' inquiry about an alternative to land acquisition for the expansion of the park, Planning Manager Rizk indicated that staff would like to pursue a situation where all parties benefit from mutual consent.

Mr. Derek Farmer, representing KB Homes, concurred with the staff recommendation. Mr. Farmer commended City staff and HARD cooperation in allowing the phasing of the park expansion. He supported continuing negotiations with the land owner where the expansion of the park is envisioned.

In response to Commissioner Lavelle, Mr. Farmer indicated that Phase II is a continuation of the architecture of Phase I with the difference of mixtures of attached and detached units. He noted the

theme of the project to be Northern European, with a village concept.

Commissioner Sacks noted that she visited the Mt. Eden area and complimented the project and the staff at the sales office.

In response to Commissioner Loché's inquiry for the next step in dealing with the land where the expansion was envisioned, Mr. Farmer indicated that the land owner has expressed interest for developing his property and the City is awaiting his application.

In response to Chair Peixoto, Mr. Farmer indicated that there would be one homeowners association for both phases. He added that there would be a property manager.

Chair Peixoto closed the public hearing at 8:47 p.m.

Commissioner Loché made a motion per staff recommendation indicating support for the project and its attractiveness.

Commissioner Mendall seconded the motion including the added Condition of Approval for the Tract related to payment of fees into the Benefit District. Mr. Mendall added that the project is a good fit for the neighborhood and encouraged City staff to continue the efforts to complete the expansion of the park.

Commissioner McKillop concurred with the importance to have the park expanded and congratulated Senior Planner Buizer for a very well done presentation.

Commissioner Sacks supported the motion and concurred with the sentiments for the park and its completion.

Commissioner Loché moved, seconded by Commissioner Mendall, and unanimously approved with Commissioner Thnay absent, to recommend to City Council to adopt the Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program and approve the Zone Change, Preliminary Development Plan and Tentative Map, subject to the findings and conditions of approval with the addition of a Condition of Approval for the Tract related to payment of fees into the Benefit District.

- 3. Zone Change Application No. PL-2005-0536 and Use Permit Application No. PL-2007-0558 – Russ Pitto for Simeon Commercial Properties (Applicant) / SimVest Real Estate I, LLC (Owner) – A Request to Modify a Planned Development District to Allow a Neighborhood-Serving Retail Center Including a Drive-Thru Coffee Shop, Restaurant and a Convenience Store Selling Beer and Wine for Off-Sale Consumption on a 1.5-Acre Parcel at Mt. Eden Business Park - The Project is Located at 26251 Industrial Boulevard Adjacent to and North of Highway 92 Located at the Southeast Corner of Mt. Eden Business Park**

Staff report submitted by Associate Planner Camire, dated December 13, 2007, was filed.

Associate Planner Camire summarized the staff report indicating that on September 6, 2007, the



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Commission reviewed the proposal for denial and directed staff to conduct the environmental review and prepare findings and conditions of approval. Ms. Camire added that a representative of Community Prevention of Alcohol Related Problems (COMMPRE) was in attendance to address the Commission and she noted that COMMPRE received two petitions from members of the Spanish Ranch Mobile Homeowners Association and the South Hayward Neighborhood Collaborative in opposition to the modification of zoning to allow a convenience store with an alcohol license to sell wine and beer. The petition indicated that the City already had enough retail alcohol outlets and the problems associated with consumption of alcohol would increase the service calls to police. Ms. Camire added that she was in receipt of an e-mail from Mr. Nick Dahya, owner of Fairfield Inn & Suites-Marriott Hotel adjacent to the proposed project, who expressed support for the project; however, was in opposition of having a 24-hour convenience store such as a 7-Eleven Store that sells wine and beer. He also expressed safety concerns for the hotel guests.

Ms. Camire indicated that the applicant expressed the following concerns: Condition of Approval No. 22 (k) regarding green building and sustainable development practices, *"Natural linoleum or wood flooring alternatives shall be used,"* was too restrictive and Condition of Approval No. 23 (h), *"A minimum of one 15-gallon buffer tree shall be planted for every 20 lineal feet of property line adjacent of the state Highway. Understory shrubs shall be planted between the trees to achieve a solid screen within two years. This measurement shall be from the top of curb;"* would conflict the flow line of the swale at the location. Ms. Camire felt that the concerns could be resolved at staff level. In reference to the concern regarding Condition of Approval No. 24, *"A separate tree removal permit is required prior to the removal of any tree. Replacement trees equal in value to each tree that is removed shall be required for any trees removed, as required by the Tree Preservation Ordinance,"* Ms. Camire noted that it is a standard condition. In addition, regarding Condition of Approval No. 28, *"No more than five percent of the square footage of the sales area shall be dedicated to alcohol sales. Alcohol must be stored away from products oriented to youth, such as candy and non-alcoholic beverage,"* Ms. Camire indicated that Officer Hutchinson agreed to modify the Condition of Approval No. 28 to read, *"No more than five percent... Alcohol must be stored away from products oriented to youth, such as candy."*

Upon request by the Commission, Associate Planner Camire clarified Conditions of Approval No. 22 (k), 23(h), 22(g), 22(q), 23(f), and 27 through 34.

Commissioner Lavelle, referencing the letter from COMMPRE, Attachment I, Item 2, *"No cold storage or refrigeration of any alcohol products,"* and Item 6, *"Restrict the hours of sales of alcohol so that sales are stopped by 10:00 p.m."* inquired why they were not included as part of the conditions of approval. Associate Planner Camire indicated that the Police Department did not deem item 2 necessary. In reference to item 6, she indicated that the Police Department does not restrict sale of off-sale businesses.

In response to Chair Peixoto's inquiry for the police stand regarding the proposal, Associate Planner Camire indicated that the main concern expressed by the Police Department was lack of available staff for the proposed area. She added that it would have fewer incidents for police

surveillance, but the on-site security would be available from 6:00 p.m. to 6:00 a.m.

Chair Peixoto opened the public hearing at 9:15 p.m.

Mr. Russ Pitto, applicant for Simeon Commercial Properties, indicated that he was in attendance to respond to any questions.

In response to Commissioner Mendall's inquiry for the selection of a 7-Eleven and not a restaurant for the site, Mr. Pitto indicated that the 7-Eleven meets the demographics for the area and that efforts for a full service restaurant were proven unsuccessful. Mr. Pitto added that he will continue to look for other restaurants, but added that most likely a restaurant would sell beer, wine and possibly alcohol.

Commissioner Sacks inquired if a 7-Eleven would have surveillance cameras. Mr. Pitto indicated that 7-Eleven stores have surveillance cameras, and the project development would rely on the prospective tenants' ability to provide safety measures. He added that a security guard would be responsible for monitoring the retail center. Mr. Pitto added that by large, they have not received opposition from residents, other businesses, or neighbors.

In response to Commissioner Loché's inquiry about the limitation of size and packaging of the containers, Associate Planner Camire referenced Condition of Approval No. 31, "*The sale of individual containers of beer or malt beverages is prohibited. The sale of distilled spirits is prohibited;*" Condition of Approval No. 32, "*Beer, malt beverages, and wine coolers may be sold only in manufacturer pre-packaged multi-unit quantities;*" and Condition of Approval No. 33, "*Wine may not be sold in bottles or containers smaller than 750 ml.*" In reference to hours of sale of alcohol, Mr. Pitto indicated that the proposed 7-Eleven is not willing to restrict hours of sale of alcohol.

Mr. Cristobal Madueño, through translator Alfredo Coria, addressed the Commission. As resident of Hayward, he expressed concern for the existing 281 retail alcohol outlets. He strongly opposed another alcohol outlet because he felt that there is not enough police personnel to supervise current problems. He requested that the Commission oppose another alcohol establishment in the City of Hayward.

Mr. Alfredo Coria, representing COMMPRE, opposed the modification of the existing Planned District to allow an off-sale liquor outlet. Mr. Coria noted the current 281 retail alcohol outlets and indicated that approval of the application would lower the standards in Hayward. He referred to a sting operation by police which reported that about 27 adults purchased alcohol for minors at Hayward 7-Eleven stores. He indicated that there are four 7-Eleven stores within three miles of the proposed location with the closest one at 1.5 miles away. He referred to data that indicated that alcohol is one of the main revenues for 7-Eleven stores. He urged the Commission to consider that the adjacent reporting district has a higher rate of crime in Hayward. He respectfully requested denial of the application for sale of alcohol.

Chair Peixoto closed the public hearing at 9:31 p.m.

Commissioner Mendall expressed disagreement for any motion that would allow another liquor



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license for the proposed site. Mr. Mendall shared from personal experience that a 7-Eleven would not be a preferred service for the proposed area. He made a motion to approve the revised Negative Declaration; approve the modification to the Planned Development District; and deny the Use Permit.

Commissioner Loché seconded the motion.

Commissioner McKillop did not support the motion on the floor. She indicated that staff has been working with the applicant to find the right business. She disagreed that the proposed convenience store would add loitering or crime to the area, but rather, she indicated that it will be an added benefit for the area.

Commissioner Sacks did not support the motion indicating that she felt that people in the Mt. Eden Business Park requested services that would be delivered. Ms. Sacks noted from personal experience that 7-Eleven stores are convenient for frequent travelers.

Commissioner Loché understood that a restaurant might not be realistic for the proposed site; but disagreed that a 7-Eleven would be a good alternative. He expressed disapproval for another liquor establishment and disagreed that a 7-Eleven would represent a convenience to prospective patrons.

Commissioner Lavelle did not support the motion. Ms. Lavelle referred to the extensive list of restaurants that were contacted for the site and were proven unsuccessful. She believed that a 7-Eleven made sense for the proposal. She acknowledged the report presented by COMMPRE and was impressed with the willingness of City staff to work and compromise with the Police Department and COMMPRE staff.

Commissioner Mendall complimented staff for including the green building requirement in the report.

Chair Peixoto, referring to the e-mail by owner Narendra Dahya of Fairfield Inn & Suites-Marriot Hotel and the petitions by the Spanish Ranch Mobile Homeowners Association and the South Hayward Neighborhood Collaborative, was concerned that the approval of a business that sells beer and wine for off-site consumption could constitute damaging other businesses in the area. Mr. Peixoto was inclined to approve a 7-Eleven without the sale of alcohol. He commended the diligence of the developer in trying to secure a restaurant for the area; but felt that Hayward has enough alcohol establishments and lack of police personnel to patrol.

Interim City Attorney Conneely clarified the motion on the floor.

Commissioner Mendall moved, seconded by Commissioner Loché, and failed, to recommend to City Council to approve the Revised Negative Declaration; approve the modification to the Planned Development District, based on the findings and the conditions of approval; and deny the use permit, based on the findings and conditions.

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

Having failed the motion, Commissioner McKillop made another motion per staff recommendation.

Commissioner Lavelle seconded the motion indicating support for the 7-Eleven and noting that non-Hayward residents would be shopping at the store. She favored the proposed Starbucks. She offered two amendments: that Condition of Approval No. 28 regarding alcohol sales, *"No more than five percent of the square footage of the sales area shall be dedicated to alcohol sales. Alcohol must be stored away from products oriented to youth, such as candy and non-alcoholic beverages,"* be separated into two conditions of approval with *"Alcohol must be stored away from products oriented to youth, such as candy and non-alcohol beverage,"* as a separate condition. Also, that the condition recommended by COMMPRE, *"Restrict the hours of sale of alcohol so that sales are stopped by 10:00 p.m."* be added as a condition of approval.

Commissioner McKillop accepted the amendments to the motion.

Commissioner Sacks supported the motion adding that the 7-Eleven would sell items other than alcohol.

Commissioner Mendall did not support the motion.

Commissioner McKillop moved, seconded by Commissioner Lavelle, and failed, to recommend to City Council to approve the Revised Negative Declaration; approve the modification to the Planned Development District based on the findings and the conditions of approval; and approve the use permit, based on the findings and conditions with two amendments: that Condition of Approval No. 28 be separated into two separate conditions with *"Alcohol must be stored away from products oriented to youth, such as candy and non-alcoholic beverages,"* listed as a separate condition; and to add a condition to restrict hours of sale of alcohol by 10:00 p.m.

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

Interim City Attorney Conneely indicated that since there was a deadlock (a 3:3:0 vote), she suggested that the Commission follow Council's procedures and continue the item until the full commission is in attendance. She added that in the event that there would be lack of consensus, the item would then be forwarded to Council without a recommendation.

Chair Peixoto exercised his Chair prerogative and continued the item until the full Commission is



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present.

ADDITIONAL MATTERS

4. Oral Report on Planning and Zoning Matters

Planning Manager Rizk indicated forthcoming meetings in January, one scheduled for January 28 as part of a Joint City Council meeting regarding an update to the 238 Bypass Study.

5. Commissioners' Announcements, Referrals

Commissioner Sacks reported that the Tea Garden might need attention. She complimented Engineering/Traffic staff for their informative assistance and for the speed humps on Tennyson Road.

Commissioner Mendall reported on the power lines on Mission Boulevard at the Mission Paradise property that were used for the PG&E Underground Project.

APPROVAL OF MINUTES

The minutes of November 15, 2007, were approved.

ADJOURNMENT

Chair Peixoto adjourned the meeting at 9:55 p.m., wishing everyone a Happy Holiday Season.

APPROVED:

Al Mendall, Secretary
Planning Commissioner

ATTEST:

Miriam Lens
Commission Secretary