



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, October 15, 2009, 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 Lavelle.

ROLL CALL

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

Commissioner McKillop led in the Pledge of Allegiance.

Staff Members Present: Conneely, Fakhrai, Patenaude, Pearson, Philis

General Public Present: 9

ELECTION OF OFFICERS

Chair Lavelle called for the election of officers. Commissioner Peixoto made a motion, seconded by Commissioner Thnay, to elect Commissioner Mendall as Chair, Commissioner Loché as Vice Chair, and Commissioner Márquez as Secretary.

Motion passed unanimously. Chair Mendall thanked Commissioner Lavelle for her past service.

PUBLIC COMMENTS

None

PUBLIC HEARING

1. **Mt. Eden Annexation Phase II** – Adoption of the Mitigated Negative Declaration, the Mitigation Monitoring and Reporting Program, Approval of the Pre-Zoning Designations, and Approval of the Plan for Providing Municipal Services, Approval of Summary Vacations of Ramona Drive and Eden Avenue Rights-of-Way - The Annexation area is Located Between West Street and Depot Road, Generally Along Mohr Drive in the Mt. Eden Neighborhood

Senior Planner Erik Pearson gave the report noting that Commissioners should have received a correction to the first page of the report regarding the CEQA determination for the right of way vacation and utility easement on Eden Avenue right of way.

Commissioner Márquez confirmed that at a community meeting that took place in September, only

one person spoke against the commercial zoning of the two parcels fronting Depot Road, between Monte Vista Drive and Industrial Boulevard; eight local residents signed a petition in favor of the commercial zoning; and two emails were later received that opposed the commercial zoning. Senior Planner Pearson confirmed her understanding. Commissioner Márquez asked if other residents in the area had been surveyed and staff replied that this was all the information they had.

Commissioner Loché thanked staff for the report and asked for clarification on the location of the parcels under consideration for the commercial zoning. Staff directed his attention to a map that showed the location of the parcels.

Commissioner Peixoto asked for clarification of the cost of public improvements included in the annexation. He said previous estimates totaled approximately \$5 million, but that cost had grown to \$7.4 million, the difference being shared by the City and the County. Commissioner Peixoto asked if the entire \$7.4 was budgeted into the Capital Improvement Program (CIP). Deputy Director of Public Works Morad Fakhrai confirmed that the \$7.4 million includes the City's share of the difference which totals \$1.2 million. Commissioner Peixoto then confirmed that any County contribution is based on gas tax revenue not being taken away by the State. Senior Planner Pearson confirmed his understanding. Finally, Commissioner Peixoto asked if the sewer connection fees, \$6,700 to the City and about \$4,000 for a plumber to hook up the line, include any work done by the City. Mr. Fakhrai said the City will lay the line from the sewer main to the sidewalk but that the homeowner would have to pay the City hook-up fee and also connect the line to the house. Staff indicated the estimated hook-up price of \$4,000 seemed high.

Chair Mendall opened the Public Hearing at 7:52 pm.

Allen Bertillion, Mohr Drive resident, pointed out that existing septic tanks generate no costs other than basic maintenance and he's never had any problems with his tank in 30 years. He said the County has never inspected the tanks and as far as he knows, there have only been two tank failures out of the 140 homes in his development. He said the majority of residents are retirees or low-income and the estimated \$11,000 cost of hooking up is an issue. Mr. Bertillion said he would also like to see the zoning designations made consistent. The north end of the development has a zoning of RS, which is 5,000 square feet per lot and the south end RSB4, which is 4,000 square feet per lot. Finally, Mr. Bertillion pointed out that any new development would make Eden Avenue even busier than it already is. To provide more access and an alternative route, he would like to see Eden Avenue connect to Depot Road.

Commissioner Peixoto asked Mr. Bertillion if the 10-year time allowance to hook up to the main sewer line was reasonable. Mr. Bertillion said a lot of the residents are elderly and if that person moves or tries to develop the land, they would be required to immediately hook up to the sewer system.

Mitchell Medeiros, Monte Vista Drive resident, spoke against the commercial zoning on Depot Road. That area is in the industrial part of Hayward, he said, and he thinks people would gather there rather than return home. If alcohol is sold that could lead to problems since there's also a school in the area. He's also against the requirement to connect to the main sewer line and pay for annual tank inspections. In 25 years he's never had any problems with his septic tank and the proposed costs are too high. Also, if he is required to hook up, he would like to be able to do it



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himself rather than pay a plumber. At the community meeting, he heard that the City would take between 3 and 5 feet of property fronts for the right of way; this is the first time he's heard that up to 9 feet could be taken from some properties. He said he's sure many of his neighbors would be against the proposed commercial zoning and he might be willing to circulate a petition.

Jesús Armas, business address on Main Street, congratulated the new officers and complimented Commissioner Lavelle for a good performance as Chair. Mr. Armas spoke on behalf of the Jordan family who own the properties currently being considered for commercial zoning. He pointed out that designations made 20 years ago should be reconsidered as a lot has changed in that time. Looking at a map of the area, it becomes very telling, he said, that there's a need for a site where local residents, employers and employees can go for every day shopping needs. Right now they would have to drive their cars to go shopping which goes against the objectives of the City's Climate Action Plan. Regarding the deficit generated by the annexation, Mr. Armas pointed out that a commercial zoning might bring in enough tax revenue to create a financial surplus. Rather than wait and change the zoning later, Mr. Armas encouraged the Commission to instead recommend to Council spending the time now to work with the County. He said recent Supreme Court cases suggest that the risk of gas tax revenues being taken by the State are low. He urged the Commission to consider Neighborhood Commercial for the Jordan parcels and offered to answer any questions.

Juanita Gutierrez, ex-chair of the Mt. Eden Task Force, requested more time to speak and her request was granted. She spoke against the proposed annual septic tank inspection requirement. Many of the residents are on fixed income, she said, and the inspection costs would be a burden. She said when she was chair of the Task Force, there was discussion about providing fixed-income residents with either a grant to cover the cost of hook up or place a lien against the property that would then be recovered when the property sold. She heard no mention of the grant at the September community meeting. Ms. Gutierrez said residents with smaller lot sizes would benefit from assistance for the sewer connection. She spoke in favor of extending Eden Avenue all the way through to Depot to alleviate traffic on Mohr Drive. She also spoke in favor of changing all zoning to RSB4 to make lot sizes consistent at 4,000 square feet.

Mr. Robert Williams, Depot Road resident (at Monte Vista Drive), said that living on a corner is a special case. If right of way is taken from his property it will cut his property twice, 15 feet on one side alone. He asked what kind of compensation he would receive for the loss of his property. Mr. Williams said that many residents at the Waterford Apartments on Depot Road use, then abandon, shopping carts on the streets. He said the area would benefit from more local commercial options. He also mentioned that traffic is wild on Depot and Monte Vista traffic would increase if the barrier was removed so he supports the extension of Eden Avenue. And finally, he's been in his house 57 years and he's never had any problems with his septic tank and he certainly can't afford the \$11,000 cost of hooking up.

Deputy Director of Public Works Fakhrai indicated that the right of way take on Depot Road is only 5 feet, and while there was a planned 3 foot take on Monte Vista, the plan has been modified and that take will most likely be eliminated.

Chair Mendall asked staff to follow up on Ms. Gutierrez's question about utilizing a City grant for the cost of the sewer line hookup. He asked if funding from the Property Rehabilitation Grant and Loan Program could be used to cover the cost of the hook-up. Mr. Fakhrai said he wasn't certain if those funds could be used for that purpose. He said if owners can prove hardship, the City will work with them on a case by case basis to extend the 10-year hook up deadline.

Chair Mendall closed the Public Hearing at 8:13 pm.

Commissioner Lavelle asked staff about the proposed zoning recommendations and the difference between the RS and RSB4 zoning. Senior Planner Pearson explained that the RS zoning called for a minimum lot size of 5,000 square feet, versus 4,000 square feet for the RSB4 zoning. Mr. Pearson indicated that staff is recommending a carryover of the RSB4 zoning from the Mt. Eden Plan. Commissioner Lavelle confirmed that lot sizes would increase with RSB4 zoning and staff corrected her and said, no, the smaller lot size would be adopted. Commissioner Lavelle also asked about the septic tank inspections. Mr. Pearson said it was his understanding that the County didn't require any inspections but under city ordinance that exists for Phase I of the annexation, Hayward would. Ms. Lavelle asked if that requirement was consistent with other annexations completed by the City. Deputy Director of Public Works Fakhrai said he wasn't aware of that requirement, but pointed out that the certification doesn't have to be by a plumber. He said that homeowners in Phase I are going to be sent information regarding the 10-year hook up requirement along with a form they can use to certify themselves that their septic tank system is working properly.

Commissioner McKillop asked staff for their thoughts regarding the residents' request to extend Eden Road to Depot Road. Deputy Director of Public Works Fakhrai said the extension would require extensive right of way takes and at this time the proposal didn't seem feasible. Commissioner McKillop asked if that would be possible in the future and staff said possibly.

Commissioner Thnay asked if the Planning Commission could include a condition to the motion that would allow current owners to keep their septic tank systems until they move out to help with the financial hardship of hooking up to main sewer line. Deputy Director of Public Works Fakhrai said it's City policy to encourage residents to connect to the sewer system because it is safer and cleaner. Mr. Fakhrai said if 10 years is not enough time, the City would look at each property in case by case basis. Senior Planner Pearson added that the requirement for hook-up was the same for Phase I.

Commissioner Thnay said he understands the pros and cons on the project, for example, new sidewalks and wider streets, but 20 years ago the City had a different philosophy that didn't take into consideration sustainable development. Commissioner Thnay pointed out that there isn't any neighborhood commercial zoning in this area and the proposed commercial zoning at Depot Road and Industrial Boulevard would be a positive change for the area. Although it would be ideal for the six acres of land to all be zoned commercial at one time, he would prefer to zone the two acres commercial now, postpone LAFCO, and work with the owners of the remaining four acres to create a larger development. He also asked about bike lanes to serve the nearby Chabot College. He said the mitigation measures need to more strongly address the need for bike lanes.

Planning Manager Richard Patenaude said staff is in total agreement that the area needs improved



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neighborhood services. He explained that one concern that staff has about pre-zoning the two acres to commercial is that this would allow for a smaller development to occur before the other four acres get pulled into the commercial zoning. Staff would really like to see a larger development come in at one time. Mr. Patenaude said that he has not seen any indication that the other property owners are willing to go along with a plan for a large commercial development. Mr. Patenaude said that typically, when the City considers a zone change application there is usually a development project attached to it.

Commissioner McKillop said she understands staffs' concern, but the current zoning designations were made 20 years ago and property owners should be able to decide the best use of their land.

Commissioner McKillop made a motion per recommendation, seconded by Commissioner Loché, to recommend to the City Council approval of the Mt. Eden Annexation Phase II project, including adoption of the Mitigated Negative Declaration, the Mitigation Monitoring and Reporting Program, approval of the recommended pre-zoning designations, and approval of the Plan for Providing Municipal Services, subject to the attached findings of approval. Furthermore, that the Commission find that the proposed vacation of Ramona Drive and a portion of Eden Avenue is consistent with the General Plan and recommends to the City Council that it adopts a resolution to summarily vacate Ramona Drive and a portion of Eden Avenue, reserving an easement for utility purposes while requiring public access over said vacated streets. Commissioner McKillop amended the motion to change the zoning designation of the Jordan Family's two one-acre parcels on Depot Road to Neighborhood Commercial, and attach a signage requirement for the annexation area because of its historical significance.

Commissioner Loché said that while he appreciates the concerns of staff regarding the commercial zoning of the two acres, he suggested that resident Mr. Medeiros go out and talk to the neighbors about what they really want for that area and bring that information back to Council. Commissioner Loché said he thinks the commercial zoning, and the tax revenue it could generate, would be a great benefit to the area, but he encouraged neighbors to make their voices heard. He said he appreciates the City's willingness to work with the different families regarding hooking up to the sewer line within 10 years. He also agrees with Commissioner McKillop that the historical significance of the annexation area should be recognized with signage.

Commissioner Lavelle thanked the other commissioners and staff for their comments and information. She said she favors moving forward with the annexation because it's important for the City to come together as a whole to welcome the Mt. Eden residents and provide much needed improvements to the area. However, she did not support the motion on the floor because she was persuaded by staff and thinks the commercial zoning of the Jordan property can wait until there's a planned development. The economic market is still in a downturn, she said, so waiting two years to begin the process of requesting a rezoning won't jeopardize any future plans. Commissioner Lavelle also said she doesn't support the signage requirement because the goal of the annexation is to pull this area into the City, not set it apart. The City doesn't make a distinction between other neighborhoods. Regarding the sewer hook-up, she said it is a positive requirement but doesn't

understand the need for an annual inspection. She proposed inspections every five years to confirm the hook up has taken place, or, to allow residents to certify their own tanks each year. Finally, she urged residents to gather clear and accurate information from staff regarding the right of way takes proposed for their properties.

Commissioner Thnay said he can appreciate Commissioner Lavelle's point, but thinks a neighborhood commercial zoning designation might serve as an impetus for the other owners to combine the four acres of land with the other two. As a condition to the motion, Commissioner Thnay would like to see staff have the Jordan Family work with the other owners to pursue a joint project. He said without the zoning there won't be an incentive to pursue that route.

Assistant City Attorney Maureen Conneely said the City can't require a property owner to move in any direction but the Commission can recommend that staff work with the applicant and neighboring property owner to encourage them to go with a joint commercial use. She said she would be hesitant to impose a condition on a property owner that's not the subject of this particular proceeding and hasn't been properly noticed under the Brown Act.

Commissioner Thnay asked Commissioner McKillop if she would support that recommendation and Ms. McKillop said she would.

Chair Mendall said he would not be supporting the motion. He said he completely agrees with Commissioner Lavelle that the Commission wants to welcome this area into the City and the improvements would be beneficial especially knowing the City would be flexible with low and fixed income residents to make the transition. However, he agrees that the Jordan property, along with the neighboring four acres, should be rezoned together as larger commercial development. He pointed out that once a property is zoned, the City has very little leverage on what happens there.

Commissioner Peixoto said his decision was difficult because the area needs neighborhood shopping options, but staff presented a convincing argument and he doesn't think two years is too long to wait under current market conditions. He disagrees about the signage. He said signage wouldn't separate the area from the City but would recognize its historical significance. Regarding the sewer hook ups, Commissioner Peixoto is confident the City will work with owners who can't afford the hook-up and 10 years is a reasonable amount of time. He said he will not be supporting the motion.

Commissioner Márquez said she supports the neighborhood commercial zoning because there's a definite need, however it makes sense to wait until a project is actually in development. She agreed with the other commissioners that two years is reasonable and said that time could be spent working with the City and other property owners. Regarding hooking up to City sewer lines, she encouraged staff to hold a community workshop to present residents with all their options. Commissioner Márquez said while she is in favor of neighborhood signage for the area, she will not be supporting the motion.

There being no other comments, the motion failed with the following vote:

AYES:	Commissioners McKillop, Thnay, Loché
NOES:	Commissioners Lavelle, Peixoto, Márquez



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Chair Mendall
ABSENT: None
ABSTAINED: None

Commissioner Peixoto made a motion per staff recommendation, seconded by Commissioner Lavelle, with one amendment to include signage designating the area.

Commissioner Lavelle and Chair Mendall both indicated that they would support the motion to include signage if the proposed annexation was passed.

There being no other comments, the motion passed with the following vote:

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

ADDITIONAL MATTERS

2. Oral Report on Planning and Zoning Matters

Planning Manager Patenaude said the next regular meeting is November 5th with two items scheduled for review including an application for Eden Gardens Mobilehome Park for conversion to an ownership park, and an application for a restaurant/nightclub on B Street.

Commissioner Lavelle asked for an update on the Civic Center Drive project. She said she received a card from Planning indicating that the applicant wanted to add a 12th floor to the existing office building. Mr. Patenaude said only a partial building permit application has been received, and while staff continues to process it, the City needs assurances from the applicants that they are going to proceed.

3. Commissioners' Announcements, Referrals

None

APPROVAL OF MINUTES

4. Minutes from July 23, 2009 were unanimously approved.

ADJOURNMENT

Chair Mendall adjourned the meeting at 8:50 pm.

APPROVED:

Elisa Márquez, Secretary
Planning Commissioner

ATTEST:

Suzanne Philis, Senior Secretary
Office of the City Clerk