



**MINUTES OF THE WORK SESSION OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, January 15, 2009, 6:30 p.m.
777 B Street, Hayward, CA 94541**

MEETING

The work session of the Hayward Planning Commission was called to order at 6:32 p.m., by Acting Chair Mendall.

ROLL CALL

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

Staff Members Present: Patenaude, Conneely, Rizk, Lens, Philis

General Public Present: 30

PUBLIC COMMENTS

Hayward resident Andy Wilson reminded Commissioners of the Bay Area Air Quality Managements Districts' hearing regarding Russell City Energy Center planned for January 21, 2009, at 6pm, to be held in the Council Chambers. He pointed out that the Federal Aviation Administration still has concerns regarding the project. He also remarked that the current median home values for Hayward, as listed in the newspaper, are some of the lowest in the area. He said he hopes tonight's topic (form-based code), and Cal State East Bay's proposal to increase their total student and faculty population, will help Hayward grow and prosper.

Fremont resident, and Hayward apartment owner Jeevan Zutshi, said a lot of change is needed in the Tennyson/BART station area to make it more pedestrian friendly and safe. He said the property lots are deep and windows don't face the street so residents can't see what's happening on the street. He indicated he has hired private security, but when they are off duty it's "business as usual." He suggested that the Planning Commission take a hard look at the area.

WORK SESSION

1. Proposal to Develop a Form-Based Code for the South Hayward BART Station Area

Director of Development Services David Rizk welcomed and thanked residents for attending the meeting. He said the purpose of the work session was to explain how staff had arrived at this point, give an overview of the existing Concept Design Plan as adopted by Council in June of 2006, and finally to introduce consultants who will give an overview of form-based codes and how they could be beneficial to the South Hayward BART station area.

As background, Mr. Rizk explained that in 2008, the City Council adopted as one of their priorities revisiting the South Hayward BART plan, and in response, staff was exploring the development of a form-based code in the southern portion of the area. Mr. Rizk indicated that a form-based code was first discussed at a Council work session in July 2007, and again December 2, 2008, when staff sought Council approval to begin development of a form-based code, and that Council deferred making a decision until the Planning Commission could make a recommendation. Council would like to make a decision based on the Commission's feedback in early February 2009.

He stated that main concerns of Council expressed at past meetings included re-opening a development plan that had already been adopted and whether or not the Redevelopment Agency had enough money to support the development of a form-based code. The estimated cost of developing the code and to conduct community outreach is \$300,000.

Mr. Rizk gave a brief overview of the Concept Design Plan for the South Hayward BART area, which was adopted by Council in June 2006 and included amendments to the Zoning Ordinance and General Plan. He stated that the plan has five chapters, which included existing conditions and a description of the Concept Plan Area: approximately 240 acres between Mission Blvd. and the BART tracks, and from Industrial to Harder Road. He indicated that Chapter 3 has the concept land use plan, which details housing densities and open space; Chapter 4 has design guidelines which address the relationship between buildings and the street; and Chapter 5 addressed circulation improvements including bike paths and pedestrian linkages.

Staff then introduced the consultants, Kevin Colin of Lamphier-Gregory, and Laura Hall of Hall Alminana. Mr. Colin worked for the City of Ventura where he led the development of a form-based code. Ms. Hall most recently applied a form-based code to development in Petaluma. She also gives workshops and seminars on Smart and Form-Based Codes. Architect Robert Alminana, instrumental in the development of form-based code most recently in Hercules, supplemented Ms. Hall's presentation.

In their three-part PowerPoint presentation, Mr. Colin first gave a hypothetical case study of what would currently be required of a developer looking to develop a property on Dixon Street in the South Hayward area in terms of the City's laws and regulations. Looking at all the many regulatory documents of the City, he said it was very difficult for a developer to "see" the City's desired physical outcome. He concluded that too much was open for interpretation and could only lead to ambiguous results. He showed photographic examples from a walking tour of Dixon Street of what could result under current guidelines.

Ms. Hall explained what form-based code is and how it might apply to the South Hayward BART area. Historically, zoning was used to separate, for example, homes from the factories. Decades later that has created the need to drive from one land use to another. She explained that form-based codes regulate development to achieve a very specific and desired urban form. Form-based codes are useful to implement measures for achieving certain general plan goals, such as walkable neighborhoods and mixed-use and transit-oriented development.

She said, in 2004, the State approved AB No. 1268 which institutionalized form-based codes. She added that now there's also legal impetus to adopt form-based codes. The Global Warming Solutions Act, Assembly Bill No. 32, requires the State Air Resources Board to adopt a stateside



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greenhouse gas emissions limit equivalent to the statewide levels in 1990 to be achieved by 2020. And SB375, the anti-sprawl bill, is incentive-based, offering developers faster approvals, funding, etc. She said that 44.8% of greenhouse gases in Hayward are from various forms of transportation.

She then asked why so many people take their cars rather than walking. She pointed out that areas have to be engaging to attract foot traffic. There are psychological reasons why people don't want to walk through certain areas; they feel too exposed. Areas and buildings created using form-based code theories are more easily defensible because focus is external rather than internal, she said. Smaller block size also make people more comfortable when walking. Form-based codes allow for higher density, thus more people on the street and a higher sense of safety.

She then reviewed several of Hayward's current setback regulations showing examples of why greenery in front of a building pushes activity away from the street and removes any feeling of safety for pedestrians. Form-based codes are not just about architectural style and setbacks and landscaping, she said, it's about blending those elements. It's the same amount of investment but it brings all the uses together to create safe, walkable spaces, she explained.

She said that form-based codes create a written code or a Regulating Plan which is like a zoning map but with design standards embedded in it. The code covers the area from the private lot to the street, all the public area, and not so much behind the front of the building. And the civic spaces like parks and town squares, she said, are intentional, not just the green areas left over.

Ms. Hall showed slides of Pass Christian, Mississippi, that was 80% destroyed by Hurricane Katarina. Traditionally the property lots were long and narrow similar to Hayward, but after applying form-based codes, property owners could see the value in allowing streets to cut through their lots creating smaller blocks and more foot traffic. One historic building was slated for destruction, but, using a form-based code, the area gained enough value that the building owner could afford to rehabilitate and use the building.

Because form-based codes so change an area, she said, the community has to participate in the design process so they feel involved and understand the goals. For form-based code, the charrette process is used. A charrette is a week-long workshop where designers are working in front of the public and feedback groups are giving direction as the project unfolds. The charrette allows the public to express what they want, introduce the developer to *their* town and includes everyone, even children, in the process of designing an area. When organizing a charrette a City should include people who don't normally participate by going out to them. "You have to find a way to reach them," she said.

Mr. Colin concluded the presentation with a "What If". What if a developer approaches the City with a plan? "He's somewhere between a stack of rules and a review process." Based on the rules he will come up with a project that is usually average or below average in quality. That begins the negotiation process that will hopefully produce a compromise that will benefit all parties, from the community to the City to the developer, he said. One particular project he worked on for 10 years

went through 15 different plans based on the old style of planning but none of them were satisfactory. Finally using a form-based code, the 16th plan worked. The instructions were much clearer and the project mixed uses, created value, and created a sense of community.

Acting Chair Mendall thanked them for the presentation and then opened the floor to comments and questions.

Commissioner Marvin Peixoto thanked them for the presentation. He said he finds form-based codes an attractive alternative to current planning. What he likes best about the code is the element of functionality. He said past developers have come before the commission trying to create transit-oriented areas but it just ends up as high-density housing situated next to BART. He asked the consultants how form-based codes can avoid that. If an area is designated for high density housing, do form-based codes specify that sufficient park space should also be in the area? Yes, Kevin said, form-based codes can tell you exactly where to put those things.

Commissioner Loché thanked them for the presentation saying that it clarified a number of questions he had had. He was very intrigued with the psychological effects of form-based codes; his main concern being safety. He wanted to know how much effect form-based codes had on crime and wondered if there were any numbers that supported the presentation. Mr. Colin said in his experience in Ventura, the Police Department found they didn't need to ask for better street lighting or security fences because, using form-based code techniques, the houses' porch lights provided the light and the buildings were all aligned together.

Ms. Hall suggested reading "a great book" called *Life Between Buildings*, which summarizes studies of how many interactions between people occur based on the different building types. She also did a drive-along with the police about 15 years ago she said they knew where the crime was going to be based on the building types.

Commissioner McKillop pointed out that the City has made a lot of changes to the downtown and she asked Mr. Colin what he thought of the changes in respect to form-based codes. Kevin said "You've got good bones to start with." The street network is already built, he said, and anything we do to the buildings will only add value. He said he also sees a lot more pedestrian traffic downtown than he does in South Hayward. Ms. Hall said that form-based codes connect everything and could have been used to create a more cohesive plan for the gaps between walkable areas.

Commissioner McKillop then asked Mr. Colin if he's come forward with a form-based code in an area where another design plan had already been adopted. How did he combine the two? Mr. Colin said he had to go through a "series of surgeries". In Ventura, they could not do a comprehensive implementation of form-based code but had to plug it in incrementally and that took five years. Ms. Hall added that there's always an awkward transition time during any zoning or plan update.

Commissioner McKillop asked if the Concept Design Plan that the City already has for the South Hayward BART area has any value now. Ms. Hall said absolutely. The currently plan will give form-based code developers ideas of what the goals for the area are, she said.

Commissioner Christopher Thnay said the presentation was very clear but asked how do planners work with all the different property owners and easement issues to create a form-based code if the



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owners don't want to participate? Also, how do you deal with subdivisions? He also asked if form-based codes are ever found to be too rigid. And finally he asked why, if these codes are so good, aren't we applying them to the whole city?

Ms. Hall answered the first question saying that during the charrette the property owners realize that a form-based code is going to create value. "All their interests can be met through design," she said. "Nothing gets forced."

Mr. Colin answered the Commissioner Thnay's question about rigidity by telling the story of downtown Ventura. Developers there said a form-based code would restrict their designs and they were also reluctant to revise designs already completed. But by the end of the charrette process, the developers realized that a form-based code is more specific and clear but that there is still an inherent flexibility to designing within the code. It was only by designing within form-based code did the developers realize how easily it could be done, he explained.

Ms. Hall added that what property owners and developers end up with is something better than that originally designed and typically they then start to compete to create more interesting spaces.

Architect Robert Alminana explained that most property owners are afraid that whatever is built around them might decrease the value in their own property. Through form-based codes, the project starts with a vision and there is some predictability that everyone can agree on. "It's not taking from one to give to the other... it brings up everyone's values," he said. Owners don't need to be afraid of what happens next to them because the rules have been set.

Commissioner Thnay wondered how the City would get people to show up. What would they do, he asked, if half the property owners don't want to show up? Ms. Hall said they have all sorts of ways to get to people. During the project in Gulf Port, Mississippi, residents were so angry with the prospect of introducing a form-based code that they refused to show up to the workshops. So Robert Alminana went to their houses to talk to them and the issues were resolved. You can't be afraid to engage the people, she said.

Commissioner Elisa Marquez asked for more information about the tools of the charrette. Ms. Hall explained that written and visual surveys create common interests. This process creates guided visualization that people can see and get excited about. Other tools include small group exercises and large group discussions. Commissioner Marquez asked how long this process takes and Ms. Hall answered one week. Using the various tools and getting people to participate is more intense at the beginning, she explained, with visits to non-participants in the middle of the week. By the end of the week the tools are still being used, but the controversy has dropped off.

Commissioner Marquez then asked how a form-based code applies to the existing properties? For example, she said, on Dixon there are a lot of properties with deep lots; how would they incorporate those lots into the vision? Mr. Colin said a form-based code would replace all the zoning regulations, subdivision regulations and design guidelines. All of those are consolidated into a

single new concise document. Commissioner Marquez clarified by asking what would physically happen to these properties? Mr. Alminana explained that nothing would happen. That whatever is there would be grandfathered in, nothing would be destroyed, and that the code would then apply to the next generation of buildings.

Commissioner Mendall said that traditionally, five different property owners would create housing with a certain percentage of open space within each development. What would happen if you have five neighboring properties slated for housing and a park under a form-based code? How do you get that fifth owner to agree to have his property be the park and not the housing? Ms. Hall answered that there should be diversity of open space in a neighborhood and courtyard housing is fantastic for the elderly and parents with young children. Form-based codes intentionally create open space of varying amounts and types.

Mr. Alminana added that one rule of form-based codes is that the higher the density of the housing the larger and more important the shared open space. But communities should have all kinds of open spaces, he said, depending on the use of the area. Open space can be used in different ways: you can walk in it, play in it, sit, listen to music or just be visually open. So any open space contributes to the enjoyment of the community and the value, he said.

But Commissioner Mendall asked, how do you appease the owner who ends up with the park? Mr. Colin said acquiring property is never an easy answer. In the South Hayward area the state owns a lot of the land so it might be easier to acquire. The purpose of a charrette is to come up with a feasible plan. If a city has a particular purpose in mind for a property or area, the city would have to see how feasible it is to buy the land that would become a park. "You have to test the question," he said.

Commissioner Mendall asked staff if the City were to re-open the design plan for the South Hayward area would all the properties be included or the same subset of properties? Staff responded that the City would include all the properties, especially if the goal is to change the character of the area.

Commissioner Mendall asked Director of Development Services David Rizk if he was excited by a form-based code. Mr. Rizk responded that yes, he's very excited. The opportunity to make significant changes is great in the South Hayward BART area, he said. The predictability of a form-based code to really create a transit, pedestrian-oriented area is exciting. Mr. Rizk said he's also looking forward to engaging the community. "We've never done a charette in Hayward, it's a different experience and we hope people will get excited about it and participate."

Acting Chair Mendall then opened the discussion to the public.

Navdeep Gill, a Hayward business owner and resident, stated he is a proponent of form-based code. He's seen examples in Palo Alto, San Francisco, Oakland and Berkeley and it really seems to work well with retailers and communities, he said. His biggest concern in Hayward is the actual policing of the area. Before the development of the Twin Bridges project, the South Hayward area was crime-ridden, and on any given Friday night there are only nine police officers for the entire city. He wondered if policing would be increased if the density of housing is increased. He's also noticed that if an area doesn't have a retail hub and coffee shops and restaurants, people just walk out of



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their houses and go to work. There's no central hub, no place to get together and get to know each other. In conclusion, he's seen a lot of changes in the South Hayward area and he welcomes this project and thinks that a form-based code would be excellent for the area if the City is truly open to the opinion of public and local retailers.

Lee Williamson, Delgado Road/Spanish Ranch II mobile home park resident, said that regardless of what zoning practice is used to develop the area that decision is going to impact the people who already live there. He wonders what current residents will think of all the new people and traffic coming into the area. He also made the analogy of logging trees: when they clear cut an area they leave a strip of forest between the road and the bare land. He feels like he's the clear cut with this nice strip of forest being planned along Mission Boulevard. "Don't forget us is all I'm saying." Don't forget how the changes (both visually and practically—including traffic on Tennyson) would impact people already there, he said.

Charles McKeag, Citation Homes, expressed support for the staff's recommendation and the council's direction to pursue looking at a form-based code. He also "echoed" Commissioner Thnay's question of why don't we apply it to the entire city? He said the downtown area would have benefited from a more comprehensive approach. From the developers perspective, he said, one of the great positives of a form-based code approach is it allows developers making a land acquisition decision to know specifically where the City stands on fundamental elements. He said he won't have to wonder how the council will like his setback because a form-based code provides the specific answers for the exact areas that you want it. He applauds the City for looking at form-based codes.

Henry So, first-time home owner on Dixon Street, came to the meeting worried that a form-based code would negatively impact his property, but now he's excited about the plan. Crime is occurring in his neighborhood and he hopes a form-based code will help eliminate it.

Jose Vidal, May Court resident, doesn't think it's a good idea to dovetail a form-based code into an existing plan. He likes the project proposed by Wittek and Montana with the supermarket and the open space. He owns a large piece of property in Hayward and he wants to decide what to do with it, not be told by the City. He said he feels it's too late to introduce a form-based code into the plans already on the books. It might have worked in Mississippi, he said, but they started with nothing so anything was better than what they had.

Steve Murtaugh, Oakes Drive resident, wasn't expecting to speak tonight but thought it was a great presentation and thinks form-based codes are a great idea that could benefit the area. But he's interested in the preservation and restoration of local creeks and wonders what will happen to the creek that flows through the South Hayward BART area. He hopes a form-based code can take the creek into consideration. Mr. Hall said it can.

Andy Wilson, Greenbrier Lane resident, said the presentation was very good but imbedded within the presentation he sees increased housing density without increased police and fire protection. He

requested some numbers to demonstrate how that area was going to be sufficiently protected. Also, during the Mission Boulevard work session, people requested a community center on some state-owned land on Dixon and possibly a basketball court on Industrial just west of Dixon. Is staff going to apply the form-based code to only Dixon Road or the entire area? Staff responded that the entire area is being considered including the Holiday Bowl site. In addressing police services, staff indicated that council has also expressed concern and is looking into forming a Community Facility District which would help fund increased police presence. But form-based code, through design, should also mitigate some of those concerns. Mr. Wilson's final comment is that the entire length of Mission Boulevard should be included in the plan because of the number of available properties and the lack of appearance standards. In conclusion, if the issue of police and fire is dealt with, he's in support of a form-based code.

Mimi Bauer, Meadowbrook resident/Fairway Park Neighborhood Association member, is in favor of the form-based code. But she thinks there is a misunderstanding. We're talking about South Hayward BART station area and not the entire City, she said, because during discussions (the charrette process) the City would want to talk to the people who live in the area, not everyone in the City. Once you're done with that area then you'd move to a new spot and talk to the neighbors there, she said. She thinks it's a great opportunity for the community to finally be heard and the charrette process is the culmination of what they've been asking for. The charrette would give them the opportunity to make sure that they are being understood through feedback and give them a chance to clarify again what they meant during the Concept Design Plan process. Ms. Bauer also mentioned Acting Chair Mendall's question about who gets the park versus who gets the houses. Could a property owner swap land with the City or State, she asked?

Mr. Colin explained that they are focusing on the South Hayward BART location at the Council's direction. Ms. Hall said whether or not to look at just one area or the entire City just depends on what makes the most sense for the community. She explained, however, that the City does want everyone in the whole City to get involved in any charrette because it's their town too, not just the people who live in the immediate area. By including everyone it creates a much richer process, she said.

Evelyn Cormier, Carroll Avenue resident, thanked the commission for the discussion and said she is in favor of a form-based code. She said she's delighted to hear Ms. Hall say that she's interested in the broader community's opinion because she lives on the south side of Industrial, but she's very interested in what's happening. She thought she heard Mr. Alminana say that the change would be generational and that made her wonder if all the buildings and apartments along Dixon would be included or only some? Mr. Alminana responded that all buildings would be included.

Acting Chair Mendall closed the public comments at 8:35pm. Because this was a work session and required no official vote, Acting Chair Mendall asked the commissioners if anyone wanted to sum up with an opinion, thought or recommendation for Council.

Commissioner Loché said it was the City's duty to think long term. He said that economics are a huge issue right now but points out it would be "a bad thing" to look back 20 years from now and say the South Hayward area could have been a lot nicer, but at the time we were a little short on cash so we did something different to save money. It would be short-changing the citizens who live in that area, and the community at large, if we don't move forward with a form-based code, he said.



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“We don’t want to make a wrong decision at this time and pay for it over the years.” He concluded by saying he was in favor of pursuing a form-based code.

Commissioner Peixoto asked staff to explain where the money is coming from? Will the City sacrifice another project if they spend the \$300,000 on this project? Staff said the Redevelopment Agency has already appropriated the money for this project. Commissioner Peixoto concluded that he is fully in support of a form-based code and can’t see any reason not to move forward. Also he’s hopeful the charette process will make everyone in the community feel truly involved and heard.

Commissioner Thnay believes the money needs to be spent if the result outweighs the cost. In this case, he thinks this money will be well-spent. He’s against a piecemeal approach and thinks a form-based code is a better way to improve the area, he said. He hopes South Hayward will become a destination point.

Commissioner Julie McKillop asked what about the timing if Council decides to move forward with a form-based code. Staff answered that they envision an 11 month process to develop a form-based code. Commissioner McKillop asked if the code could get “stale” during the time it takes to buy property and actually build. Staff replied that due to the involvement of the community and policy makers in developing a vision for that area, it is unlikely that any plans would get stale. Staff also thinks that the introduction of a form-based code will increase the likelihood of development as would the Wittek and Montana project which is proceeding independently of the code.

Commissioner Marquez asked if City staff have contacted developers who have already expressed interest in the area to see if they want to work with a form-based code. Staff replied there aren’t a lot of developers they need to contact, but the ones they’ve talked to are interested. Commissioner Marquez also asked what is the next step if the Commission recommends a form-based code to Council. Staff said they are tentatively scheduled to go before Council on February 3, 2009. In conclusion, Commissioner Marquez said she appreciates the presentation because of the clarity it provides to residents who attended the meeting. She’s concerned that people won’t participate but sees there are different tools to pull them in.

Staff clarified that the Commission’s positive recommendation to Council would allow them to authorize the City Manager to enter into a contract for development of a form-based code.

Commissioner McKillop said she neglected to add that she thinks this is a fabulous idea.

Commissioner Mendall thanked everyone who attended. It was a long meeting, he said, but the feedback and input from the public is helpful. He explained that he saw the consultant’s presentation months ago and came away excited and confused. Now seeing it again he’s just excited. He said he’s ready to try something different and he thinks form-based codes can provide that opportunity. Even if only half the things they promise come true, he said, it’s still worth trying. In conclusion, he said the South Hayward BART area is the obvious place to try something new; \$300k for a chance to change something from good to WOW is not that much. He’s very much in

favor of pursuing a form-based code.

ADDITIONAL MATTERS

2. Oral Report on Planning and Zoning Matters

Planning Manager Richard Patenaude said no meeting is planned for February 5th, but that February 19th looks like a busy meeting and hopes everyone can attend.

3. Commissioners' Announcements, Referrals

Commissioner McKillop asked who was responsible for cleaning up the property across from the new Burbank Elementary School. The project was completed months ago, she said, but there is still a lot of "junk" and debris. Staff replied that they would speak to Redevelopment.

ADJOURNMENT

Acting Chair Mendall adjourned the meeting at 8:52 p.m.

APPROVED:

Rodney Loché, Secretary
Planning Commissioner

ATTEST:

Suzanne Philis
Senior Secretary