



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, July 22, 2010, 7:00 p.m.  
777 B Street, Hayward, CA 94541**

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**MEETING**

The regular meeting of the Hayward Planning Commission was called to order at 7:02 p.m. by Chair Mendall.

**ROLL CALL**

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

Commissioner Thnay led in the Pledge of Allegiance.

Staff Members Present: Camire, Conneely, Koonze, Patenaude, Philis

General Public Present: 29

**PUBLIC COMMENTS**

Chair Mendall explained that his back is sore and that he may have to stand for periods of time during the meeting.

**PUBLIC HEARING**

1. Appeal of Approval of Administrative Use Permit Application No. PL-2009-0570 – Marianne Klinkowski, Klinkowski Properties, LLC (Appellant) / Pamela Noble, Verizon Wireless (Applicant) / Stonebrae, L.P. (Owner) – Request to Install a 100-Foot-High Stealth Telecommunications Monopole - The Project Is Located at 222 Country Club Drive, within Stonebrae Country Club (**Continued from June 24, 2010**)

Commissioner Lavelle recused herself from the Public Hearing due to conflict of interest. Chair Mendall explained that Commissioner McKillop also had a conflict of interest and would join the meeting after Item #1.

Associate Planner Tim Koonze gave a brief synopsis of the report noting that on March 24, 2010, the Planning Director approved the aforementioned project, but during the 15-day appeal period the adjacent property owner submitted an appeal on April 6, 2010, citing the visual impact of the pole and charging that the categorical exemption from the CEQA was unwarranted due to the impact on vistas and the potential impact on future zoning changes. Mr. Koonze explained that the Appellant also said proper notice was not given to residents who currently have a view of the eucalyptus trees at the location of the proposed pole.

Commissioner Loché asked for confirmation that the existing eucalyptus trees would have to be replaced by a similar sized tree if removed for any future development. Mr. Koonze explained that the eucalyptus grove runs along the rear line of the property with a 20-foot setback for any future development to help preserve the trees. Mr. Koonze also confirmed that the City's tree preservation ordinance would require the replacement of any trees removed. Commissioner Loché reiterated that the appellant can "rest assured that there will always be something there."

Commissioner Loché then asked if there was any other location for the pole that would be less conspicuous for the adjacent property owner. Mr. Koonze said the location of the pole was based not just on appearance, but also on the reception grid system. He said staff considered other locations on the property but coverage was impacted and staff determined this was the best spot. Commissioner Loché asked if additional poles might be proposed in the same area in the future and Mr. Koonze said it was possible.

Commissioner Márquez asked staff to comment on Ms. Klinkowski's (the Appellant) letter in which she expressed concern that having the pole so close to the trees would pose a fire hazard. Mr. Koonze said he discussed the issue with the City's Fire Marshall who said that he felt confident that the facility would not cause any fire danger whatsoever. The Fire Marshall pointed out that the City has many telecommunication poles next to trees and vegetation throughout the City and there has not been one fire. Mr. Koonze said only during the construction phase when welding is taking place does a slight fire hazard exist, but preparations are taken to mitigate any such dangers. According to Mr. Koonze, the Fire Marshall said even during installation there have been no fires.

Commissioner Márquez then asked if the Stonebrae community currently has cell phone service and Mr. Koonze said large areas of the development do not.

Chair Mendall said he would like to hear from the applicant, Verizon, about why they selected that particular location for the pole and if there were any other acceptable locations.

Chair Mendall opened the Public Hearing at 7:14 p.m.

Marianne Klinkowski, Cupertino resident, thanked the Commission for hearing the appeal and said that in great part, the eucalyptus trees are the focus of why this is the perfect location for the pole, but she said Stonebrae should use a stand of its own trees because she does not think the eucalyptus will always be there. She said her grandfather planted the trees in the 1930s with the intention to use them for firewood. She read a letter from the City of Hayward Planning Department, dated August 11, 1982, and addressed to her uncle, James Carden, regarding Hayward Boulevard Annex No. 2. In the letter, Zoning Administrator Dean Detton reassures Mr. Carden that the current agricultural land uses for the area will remain in place after he signs the annexation agreement. Ms. Klinkowski said the letter proves that the agricultural uses, including the harvesting of wood from the eucalyptus trees, was promised before the annexation took place.

Chair Mendall asked staff to comment on the contents of the letter. Planning Manager Richard Patenaude explained that this is the first time he had heard of the letter. Mr. Patenaude said any non-conforming uses that were permitted could continue, but he wasn't sure how that would impact the harvesting of the trees for wood.



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Chris Durand, place of business at 2000 Crow Canyon Place, Suite 400, in San Ramon, California, introduced Pamela Nobel, same business address, to explain how Verizon selected this particular site for the facility. Ms. Nobel explained that the City of Hayward contacted Verizon because of the lack of coverage in the Stonebrae area and the potential safety concerns for responding fire and police. To meet the needs of the City, she said Verizon representatives made multiple visits to the area to determine the best location for the pole on the rolling hills. She said they considered four different locations with the one selected providing coverage for the required area and connecting the other existing carriers' service. Ms. Nobel said they had a limited area where they could actually put the monopole to connect services and at the site there are only one or two feet to make any location adjustments.

Chair Mendall asked why there is no room for movement even by two feet. Ms. Nobel explained that because of the configuration of the land and the rolling hills if they move the pole over by a few feet the signal will shoot in the wrong direction and there will be interference from other sites. She also said there wouldn't be room for the pole because the available area is narrow. Ms. Nobel said they discussed the options in depth with planning staff. Mr. Durand pointed out that Verizon is taking advantage of the existing berm to recess the equipment shelter into the slope of the hill so it "disappears" for patrons of the golf course and future Stonebrae residents.

Chair Mendall said he understands that the pole needs to be located in the general vicinity, but from a cell phone coverage perspective he asked why it couldn't be moved 15 or 20 feet. He asked if a few feet really matters that much. Mr. Durand said a few feet left or right won't make a difference in cell phone coverage but if they move it too far then they won't be able to take advantage of the natural concealment aspect of the trees and the pole will make a bigger visual impact. Mr. Durand explained movement is also constrained by the golf cart path.

Alex Fomitchev, Riding Club Court resident, pointed out that the pole is located within 1000 feet of Stonebrae Elementary School. He said he was concerned about the safety of the children in terms of radiation exposure. Mr. Fomitcher said he read the staff report but didn't see any mention of radiation levels and whether or not the monopole was safe.

Ken Klinkowski, husband of Appellant, asked why a development on Stonebrae was impacting an adjacent piece of property. He said that didn't seem fair-handed. He said if Stonebrae and Verizon want to put a pole someplace, the antennae farm at the top of the hill seemed like an appropriate spot. Granted coverage may not be complete, but Mr. Klinkowski said at least they wouldn't be impacting other people. Stonebrae should be responsible for creating their own tree line if they want the cell phone tower to blend in with the environment, he said.

Eddie Fernandes, Aqua Vista Court resident, said most of the discussion has focused on the cosmetics of the pole, but according to research, the real concern is EMFs (electro-magnetic frequencies) and hazards to the public's health. He said his experience with big business is that the public isn't told everything for the sake of profits and he hopes the City will look at the situation closely because there are children nearby. If children are going to be adversely affected, he said,

then the City should put this whole thing on hold until "we figure it out". Mr. Fernandes then read an article discussing the dangers of EMFs and the dangers of placing a communication pole on or near a school.

Chair Mendall asked to staff to comment on Mr. Fernandes' concerns. Associate Planner Koonze explained that a study was submitted as part of the application process and the levels of radiation emitted at the base of the proposed pole (.0020) would be lower than the lowest acceptable public levels (1.00). Mr. Koonze said the amount of radiation emitted would be .35 of one percent of the allowable rate so it's almost immeasurable.

Chair Mendall closed the Public Hearing at 7:32 p.m.

Chair Mendall asked for confirmation from staff that according to his reading of the staff report, the trees would remain and would require permission from the City to remove. Planning Manager Patenaude explained that the trees have been there for some time and there was no evidence to suggest that the trees had been continuously harvested for wood. He said the City has a tree protection ordinance, especially for heritage trees, so the general disposition of the City is to protect a stand of trees or, if there a reason to remove them, replace them with trees with a similar esthetics value.

Chair Mendall reiterated his question that the property owner cannot remove the trees without permission and Mr. Patenaude said that would be the City's position especially on hillside areas. Chair Mendall asked staff if the letter Ms. Klinkowski read made them want more time to reconsider or study the implications of the letter's content. Mr. Patenaude said staff is comfortable that the trees would remain and sees no recent activity suggesting they have been continuously harvested for wood. Chair Mendall asked how many trees were in the groove and Mr. Koonze replied between 15-20 trees.

Commissioner Loché said he has a few concerns about the application including the contents of the letter read by Ms. Klinkowski. He said just because the trees aren't currently being harvested, he wonders if it might happen in the future. Aside from that, he also said the location of the pole is questionable and he said he finds it hard to believe that with the lack of reception for the development there is no place else to put the tower. This may be the very best location, he said, but being this close to a property whose owner clearly wishes it not to be there, makes the application troublesome for him and he would not be putting forth a motion.

Commissioner Thnay thanked residents for expressing their concerns and shedding some light on the report. He said being a public agency one of the factors he considers when making his decision is whether proper procedure has been followed and whether all the important issues have been addressed. He said it appears to him that all the rules have been followed. In terms of the concerns expressed, he agreed with the questioning of radiation levels. He said it appears that levels are within acceptable range. He said the other concern is aesthetics. He explained that to him, the monopole is like a light pole and objectively, the rules have been followed. He reiterated Ms. Nobel's explanation that four potential sites were considered and according to her the one selected was the best. Having gone through this type of review before, Commissioner Thnay said he would be comfortable with a motion that included an independent review that confirmed Ms. Nobel's selection and Mr. Durand's statement that this location would best serve the public need.



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Commissioner Thnay said he sees the need for pole in that area and he's trying to find a balance to achieve a common good. He said to make sure the trees remain the City needed to use the conditions of approval and/or compensate the owner of the trees to make sure they are not removed. He said that seemed like a fair trade-off.

Chair Mendall asked staff if they felt comfortable providing the suggested independent confirmation that enough research was conducted to determine that the pole had to be located at the small area selected. Planning Manager Patenaude said staff relied on the testimony of Verizon that this location provided the best coverage, but while working with Verizon early on, staff suggested different distances from the property line and other infrastructure located in the area. He said staff also considered other factors including how to keep the pole as hidden as possible or other decorative pole options, and the proposed pole seemed to be the best overall solution.

Chair Mendall said the pole is right next to the property line so it seemed to him that it would not be unfair if the Klinkowskis saw some percent of revenue to guarantee to the City that the trees would not be removed. He said he wasn't sure how practical that idea was or if the applicant would be open to that, but if there was some sort of agreement in place he would feel more comfortable in supporting the proposal. Chair Mendall said he "gets" why the pole needs to be at that location, but he still wasn't sure and he said he didn't have a motion to make.

Commissioner Loché said he trusts that the location is the very best because if Verizon could put it somewhere else it would probably be "less of headache" to do so. He pointed out that providing the best coverage may lead to more development in the area in the future, but that shouldn't be at the expense of the "very close" residents of this location. He made a motion to deny the request to install the monopole at this location.

Commissioner Márquez seconded the motion, but asked for clarification from staff what the next step would be if the motion did not carry.

Assistant City Attorney Maureen Conneely explained that the staff recommendation doesn't include Findings for Denial so she said the Commissioners should make a motion to direct staff bring back Findings for Denial. Once the report comes back, she said, at that point the Commission can determine if the Findings are consistent with the facts in the staff report and make their decision to deny the project.

Commissioner Loché amended his motion to direct staff to bring back Findings for Denial. Commissioner Márquez said she seconded the motion based on the concerns expressed.

Commissioner Thnay said he would like the motion to include verification from an independent consultant so that residents know that the City has their best interests in mind. He also mentioned his earlier suggestion regarding compensation to tree owners.

Chair Mendall clarified the motion and called for a vote.

There being no other comments, the motion failed 2:2:2 (ONE VACANCY) with the following vote:

AYES:	Commissioners Márquez, Loché
NOES:	Commissioner Thnay Chair Mendall
ABSENT:	
ABSTAINED:	Lavelle, McKillop

Noting that the vote was split, Chair Mendall asked if any of the Commissioners wanted to make another motion, although he expressed doubt that the result would change.

Assistant City Attorney Conneely concurred and explained that the practical effect of a split commission is that the application is denied.

Chair Mendall confirmed that the appellant could still take the item to the City Council and Ms. Conneely said yes, the Council will automatically hear the matter because neither the appeal nor the application was approved.

Commissioner Márquez asked staff if the Commission could table the item until they come back in the fall with the new commissioners who may or not have a conflict of issue.

Ms. Conneely said yes, and explained that because the motion did not pass the Commission had not taken action so they could table the item until the Commission is fully seated.

Commissioner Márquez made a motion to postpone the hearing until September. Assistant City Attorney Conneely confirmed that the motion did not need to include asking staff to bring back a report that included the information requested by the Commission and the findings for both approval and denial because that would happen automatically. Chair Mendall seconded the motion.

There being no other comments, the motion passed 4:0:2 (ONE VACANCY) with the following vote:

AYES:	Commissioners Márquez, Loché
NOES:	Commissioner Thnay Chair Mendall
ABSENT:	
ABSTAINED:	Lavelle, McKillop

Chair Mendall suggested that the applicant and the appellant meet to see if an agreement can be reached, including some sort of revenue sharing if the applicant is open to it, so “everyone can come away from this feeling whole” and allow the pole to be in the right place. If not, he said, the issue will be back before the Commission in September. Chair Mendall said he appreciated everyone’s patience for the delay due to the two commissioners recusing themselves and the vacancy on the Commission.



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Commissioners Lavelle and McKillop returned to the dais.

2. Conditional Use Permit Application No. PL-2010-0219 - Son Tran (Applicant) / Thiala Schmitt (Owner) - Request to Operate a Tattoo Establishment – The Property is Located at 155 Jackson Street, Easterly of Soto Road

Associate Planner Arlyne Camire gave a brief synopsis of the report indicating that they received one call from a long-time resident in opposition to the project based on the type of clientele the business could potentially attract, and one email from a nearby resident indicating that tattoos are immoral and expressing concern about youth getting tattoos.

Commissioner Márquez asked if the studio was currently occupied and Ms. Camire said it was not. Commissioner Márquez then asked what cell phone company would be sharing the space with the tattoo parlor and Ms. Camire said that Mr. Tran, the owner of the tattoo business, would be able to answer that question.

Commissioner Lavelle indicated she had questions for the applicant and asked if he had submitted a speaker card. Chair Mendall said he had.

Chair Mendall opened the Public Hearing at 8:00 p.m.

Son Tran, applicant, said he would explain why Blazing Horse Tattoo Studio would be beneficial to the City of Hayward. Mr. Tran said that the studio would be owner-occupied and operated and that collectively, the artists would have over 20 years experience in the body art field. He said his goal would be to provide his clients with high quality custom tattoos in a safe, sterile environment using hospital-grade equipment, and meeting all health and safety standards required by the County of Alameda and Cal-OSHA. Mr. Tran said clients will be informed of the tattoo process and the studio will “maintain a balance between client satisfaction and tasteful art”. Mr. Tran said Blazing Horse Studio hopes to be a platform for local artists and artists from abroad to display their work at open studio nights and to create a positive art scene in Hayward. In closing, Mr. Tran pledged that his studio would be a great asset to the City by contributing to the art scene, generating revenue, and bringing vibrancy to the heart of Hayward.

Commissioner Lavelle asked Mr. Tran why he chose to bring his business to Hayward. Mr. Tran said he currently works at Salvation Tattoo in San Jose, but explained that he started in Hayward and only left to get more experience. Commissioner Lavelle asked him if he would be bringing his clientele with him and he said yes. Commissioner Lavelle asked him how he will control gang tattoos and Mr. Tran explained that any time someone comes in asking for a gang affiliated design it’s “an automatic turn down”. Commissioner Lavelle confirmed that he, as well as the other artists, was prepared to manage that situation and Mr. Tran said definitely.

Commissioner Loché asked Mr. Tran that if this project is approved would he be the sole employee. Mr. Tran said there could be two other artists, but the exact number was not confirmed because they

were waiting to see the outcome of the application. Commissioner Loché pointed out that Mr. Tran has been doing tattoos for a long time and Mr. Tran said "I've been way overdue for this." Mr. Tran confirmed for Commissioner Loché that tattoos would be the only source of revenue at the studio.

Commissioner Márquez said she read in the staff report that Mr. Tran had to receive certification from the Alameda County Department of Environmental Health. She asked Mr. Tran if the other artists would have to receive the same certification and if it was required to post that certification at the studio. Mr. Tran explained that the certification was renewed on an annual basis and that all artists would be required to post certification. Commissioner Márquez asked what cell phone company would he be partnering with and Mr. Tran responded that his cousin would be making that decision and running the business. Commissioner Márquez asked Mr. Tran how he would go about recruiting other artists and asked for confirmation that other genres of art would be displayed. Because he'd worked at other studios, Mr. Tran said he had plenty of artists to choose from and that he'd invite them, as well as artists from the community, to display their artwork at the studio.

Thiala Schmidt, Hampton Road resident, said she was a lifelong Hayward resident and in 1937, her parents opened Alberto's Grocery Market on Jackson Street. After 23 years they retired, she said, added more buildings, and began renting space to other businesses. Ms. Schmidt explained that she and her family have been maintaining the property every since and it is their sole source of income. Maintaining the property and the property value is crucial, she said, and the last thing she would want is a tenant who would attract a bad element. She explained that she has an obligation to her other retail tenants to maintain a professional atmosphere and would never jeopardize the relationship by bringing in a negative element. Ms. Schmidt said she has had several conversations with Mr. Tran during which he explained the tattoo process. She said Mr. Tran is very professional and takes his craft very seriously abiding by all the laws and health codes, and catering to an upper clientele who appreciates the artistry of his work. She reiterated that Mr. Tran does not support gang tattoos. With his proposal to show other artwork, Ms. Schmidt said she truly believed Mr. Tran will be respectful to the property and to the community.

Regarding the concerns brought to her attention, including the statement by a resident that a tattoo business would attract the homeless and drug user, she said, "That's ridiculous! Nothing attracts homeless and drug traffic more than an empty building." Having a thriving business, she said, not only deters crime, but helps raise the value of the surrounding property. Addressing a resident's concern that a tattoo business would not generate any revenue or jobs for the community; she said this was an equally ridiculous statement because businesses pay taxes, she said, which strengthens the community. Ms. Schmidt pointed out that in this economy residents should applaud Mr. Tran for having the courage to open a small business; with all the businesses that are closing, the number of empty buildings is "quite scary". Any new business that fills one of those empty buildings is a step in the right direction, she said. As a lifelong Hayward resident who wants her City to thrive, Ms. Schmidt asked the Commissioners to allow Mr. Tran the opportunity to open his establishment and give him the chance to be part of the community.

Andrew Kaska, Benton Street resident in Santa Clara, said he wanted to be a character reference for Mr. Tran. Mr. Kaska said he has been following Mr. Tran for five years explaining that he is a professional man that enjoys the art of tattooing. Mr. Kaska stated that to have the art "mesh" and for the tattoo to be "successful" the artist and the client need to bond and Mr. Tran has that ability. He said that Mr. Tran is also very hygienic, very professional, and very upstanding. He showed his



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arms to display some of Mr. Tran's work. Mr. Kaska concluded by saying that Mr. Tran was ready to thrive and would be an asset to Hayward.

Chair Mendall asked Mr. Kaska if he followed Mr. Tran from studio to studio. Mr. Kaska explained that he has followed Mr. Tran for the last five years because he likes his work and because it was very rare to find someone he trusted for both their work and the cleanliness of the equipment. "This is forever," he said, showing his tattooed arm, "It's a big deal to trust someone to give you a tattoo."

Chair Mendall closed the Public Hearing at 8:14 p.m.

Commissioner McKillop said she had heard nothing but wonderful comments about the applicant and that it sounded like a wonderful business. She also said she liked that he was a returning Hayward resident. Commissioner McKillop made a motion per staff recommendation. Commissioner Lavelle seconded the motion.

There being no other comments, the motion passed 6:0:0 (ONE VACANCY) with the following vote:

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

Chair Mendall welcomed Mr. Tran back to Hayward, wished him luck in his business and said he hoped Mr. Tran follows through with his proposal to display artwork at the studio.

3. Site Plan Review Application No. PL-2009-0200; Robert Hatton, Clear Channel Outdoor, Inc. (Applicant) / Robert S. Figone, Jr. *et al* (Owner) – Request for Demolition of Existing Double-Faced Conventional Billboard and Replacement with New Billboard Structure with Faces Containing LED Technology and of the Same Size and Height as the Existing.

The Project Site is Breakwater Avenue (APN 439-0099-017-04), approximately 550 Feet Westerly of Whitesell Street and one mile easterly of the Hayward Shoreline Interpretive Center, in the Industrial Corridor General Plan Land Use Designation and Industrial (I) Zoning District

Removal of Five Billboard Structures at 21330 Foothill Boulevard, 22385 Mission Boulevard, 27630 Mission Boulevard, 28000 Mission Boulevard, and 28049 Mission Boulevard, located on properties in various General Plan Land use Designations and Zoning Districts.

Planning Manager Richard Patenaude gave a synopsis of the report and indicated that representatives from Clear Channel were present to answer any questions.

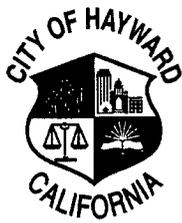
Chair Mendall thanked staff for the thoroughness of the staff report and the studies saying that they were helpful for him to start forming a judgment. He also indicated that he spoke to the applicant and their representatives a few days ago to answer a few questions.

Commissioner Lavelle said she seconded Chair Mendall's comments about the staff report and that she also met with the representatives at their request. She said she found condition of approval number 12 of the site plan review application extremely helpful. If the project is approved, she said, the condition says the City "may impose additional conditions or restrictions on this permit." She said she hadn't seen this before and asked staff what some of these conditions could be. Planning Manager Patenaude explained that for this project he used direct wording from the City's zoning ordinance for this condition. He said additional conditions could include adjusting the light levels in the marsh areas; the times the sign is lit; and adjusting the ambient light levels to name a few options.

Commissioner Lavelle said there was quite a bit of information in the consultant's report about wildlife and birds in the area and she asked what has been happening with the current sign in terms of birds perching or nesting on the billboard. Mr. Patenaude said the ornithologist present could best answer those types of questions. Ms. Lavelle then received confirmation from staff that the dimensions and height of the new sign would remain exactly the same and that the sign would only have one post rather than four and five. Commissioner Lavelle said she also appreciated the proposed "shaders" that would stop the light from going into the sky and Mr. Patenaude said Clear Channel included that feature in its proposal. She asked if staff had any specific response to the comments made by the East Bay Regional Park District's letter stating opposition to the sign based on wildlife concerns. Planning Manager Patenaude said staff's response was general and stated that the reports and studies included in staff report addressed their concerns.

Chair Mendall said he was also pleased to see condition number 12 and asked staff, for the record, to tell him if the following items could be modified under this condition: operation hours, brightness levels, the speed at which images are rotated, and due to the impact on birds by the LED lighting on foggy days, turning the sign off. Planning Manager Patenaude said the ornithologist had a response regarding the image rotation cycle and a possible solution for foggy days. Chair Mendall reiterated his request for confirmation that under condition 12 the City could ask Clear Channel to turn off the sign under certain circumstances and Mr. Patenaude said certainly. Having read that the rotation cycle helps birds, Chair Mendall then asked if a blank cycle, that lasted up to three minutes so any birds that are confused or trapped could escape, could be required under condition 12 and Mr. Patenaude said yes. Chair Mendall explained that he was asking these questions just to make clear the types of steps the City could take if, in five years, it became clear that billboard was causing harm.

Regarding the five billboards along Mission and Foothill that would be removed under this proposal, Chair Mendall asked staff if the billboards would have been removed anyway. Planning Manager Patenaude said one was scheduled for removal, but the others were not likely to change on their own. Mr. Patenaude added that because of a recently adopted ordinance that extended permit times, even the one billboard scheduled for removal due to an upcoming project, could still be there



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for two or three years if it wasn't included in Clear Channel's current proposal. Finally, Chair Mendall asked staff if the term "biological resources" should be included in the language of condition 12 to make sure any concerns about birds or wildlife are covered. Planning Manager Patenaude said it did seem appropriate to add that language.

Commissioner Márquez asked what the City's current policy is regarding billboards. Planning Manager Patenaude said the current sign ordinance does not allow for any new billboards within the City of Hayward so the only way staff can allow this project is to enter into a relocation agreement with the current owners to replace the existing billboards. He said this gives the City the advantage of removing the other five billboards and having assigned space available for City functions on the lighted replacement billboard. Before moving on to her next question, Commissioner Márquez mentioned that she also met with representatives of Clear Channel. Ms. Márquez said she visited the site of the replacement billboard and said the area is enclosed by a fence. She asked staff if the entire fenced area is Clear Channel's property and Mr. Patenaude explained that Clear Channel holds an easement in that area but he wasn't sure if it correlated with the fence line. Commissioner Márquez said she didn't see any conditions that require that they maintain the property and the shed that is there, although they are responsible for graffiti abatement. Planning Manager Patenaude said the Commissioners could add another condition to cover property maintenance, but said maintenance would be included in the relocation agreement.

Commissioner Loché stated that he also met with representatives from Clear Channel. He asked how far the billboard is away from the interpretive center because he said he's read different distances. Planning Manager Patenaude said about half a mile. Chair Mendall said he walks that area and he said it's about a third to half a mile. Commissioner Loché pointed out that the LED billboard technology is fairly new, and asked if the technology is improved in the future, could the City reconsider the billboard to require "a newer, better, and cleaner" version that has an even lower impact on the area, and Mr. Patenaude said it was certainly a possibility. Commissioner Loché said he would like that to be a requirement, but Mr. Patenaude said the City doesn't know what's going to happen in the future. Commissioner Loché asked if there are any billboards similar to what is being proposed in the area. Planning Manager Patenaude said the applicant will be providing a clip that shows other examples.

If LED billboard technology did improve in the future, Chair Mendall asked staff how the topic could be revisited in the future. Planning Manager Patenaude said the relocation agreement could be modified and at that time the City could also ask for further concessions if desired, but pointed out that Clear Channel would probably instigate the update because they would benefit from the newer technology. Chair Mendall mentioned that he had emailed staff some questions including electricity usage and asked Planning Manager Patenaude if he could answer him or if he should wait for the applicant to respond. Mr. Patenaude said the level of usage was better than what was cited in the report, but indicated that the applicant would address the question. Chair Mendall said he didn't see anything about demolition debris in the conditions of approval and asked staff if Clear Channel would be responsible for recycling all debris possible. Mr. Patenaude said it is standard language in the building permit. Finally, Chair Mendall asked if the pole becomes a graffiti target

under condition 12 could the City require Clear Channel to direct a camera at the pole so they could see when it needs to be painted. Planning Manager Patenaude said yes the City could require it, but suggested Clear Channel representatives address the question when they come up to speak and let the Commission know how often the property will be inspected.

Chair Mendall opened the Public Hearing at 8:51 p.m.

Frank Delfino, Castro Valley resident, said “when you have problems in the City that you don’t know what to do with you take them out to the shoreline and dump them and that’s what this is.” Mr. Delfino said the City should deny this proposal. He said 40 years ago Oakland Scavenger wanted to create a “super garbage dump” from Hayward to San Leandro, but his wife and two other woman protested and stopped it. Mr. Delfino said the shoreline is too valuable for education and tourism. He said mitigation money from the Dumbarton Bridge was used to buy the property and create the trail and that’s a basis for denial. Mr. Delfino said Hayward should be careful when making a change like this when really, the City should just get rid of the billboard. He said Hayward doesn’t need a Las Vegas-like billboard and he recommended that the commission deny approval. Mr. Delfino said the ex-City Manager is working to get the billboard built and he’s working to get it not built. He said, “I know what you’re going to do and you’re going to do the right thing—denial.”

Colleen Hutchings, East 16<sup>th</sup> resident, said she opposed the electronic billboard because it would be distracting to drivers. She said she drives past a similar billboard on Highway 101 in Redwood City and people always slow down to look and that can cause road traffic congestion. The point of advertising is to get people’s attention, she said, and that’s a distraction on a road that is already heavily congested. Ms. Hutchings said LED billboards are extremely bright and that makes them even more distracting especially in foggy weather or dim light. She reiterated that she really doesn’t want to see an electronic sign there.

Audrey LePell, Chair, representing Hayward Area Shoreline Planning Agency (HASPA), a group formed by a joint powers agreement between the City, the East Bay Regional Park District and HARD, said members are very protective of their shoreline. She said HASPA has been in existence for over 30 years and Mr. Delfino’s wife was one of the original members. Ms. LePell said members met on June 24 to discuss the billboard and she directed the Commissioners’ attention to the minutes from the meeting included in the report. She said during the meeting, members determined that the sign would be too bright and asked the applicant for more information regarding the angle of the billboard. She said they also felt the sign would be too busy in both in color and movement and overall didn’t think this type of sign was appropriate for the area. Ms. LePell said there were too many vague suppositions and expectations contained in the report. HASPA found the background of the sign too cluttered and she expressed concern that this sign would set an example for other companies wanting to place a sign along Highway 92. She said she hoped the Commissioners had a chance to look at their recommendations and, if the Commission finds in favor of the project, that they review the billboard in six months to make sure the lighting wasn’t distracting drivers, birds and wildlife. On a personal note, she said more light does not follow with the “greening” policies of the City. In closing, Ms. LePell said HASPA used stronger language in terms of protection of the shoreline because they don’t want this billboard to set an example for future changes that might be even more negative.



**MINUTES OF THE REGULAR MEETING OF THE  
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**777 B Street, Hayward, CA 94541**

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Jesús Armas, business on Main Street, representing Clear Channel, indicated that other Clear Channel representatives were present to answer questions. Mr. Armas said he wanted to offer a couple of remarks and show a short video to help put some of the questions in context. Mr. Armas confirmed Chair Mendall's earlier statement that the billboard is located between one-third and half a mile away from the Hayward Interpretive Center. He said a proposed power plant is over three quarters of a mile away. In regards to the conditions of approval, Mr. Armas said Clear Channel is in concurrence with all of them and finds them acceptable, including condition 12, however Mr. Armas pointed out that there is a due process and staff must have an appropriate basis for anything taken into account. He thanked Planning Manager Patenaude for his hard work and assistance with the application and said the quality of the staff report was a testament to that. The staff report indicates that tobacco and alcohol advertising is prohibited on the billboard and Mr. Armas reiterated that Clear Channel was in concurrence. He said he also wanted to clarify, regarding hours of operation, the billboard would be dark between midnight and 6 a.m.

Mr. Armas acknowledged the fine work of Mr. Delfino and his efforts to protect the shoreline. Mr. Armas said because this is a replacement billboard, with the same dimensions and located at the same site, it isn't introducing a new element or compromising the environment. Mr. Armas also said the billboard isn't Las Vegas-style; it is ad copy that will change every eight seconds. Regarding graffiti abatement, Mr. Armas said the shed located near the billboard does not belong to Clear Channel. Clear Channel owns the sign, he said, but holds an easement on the land. He also indicated that the storage yard located nearby is also owned by somebody else and agreed that the area needs some attention regarding graffiti. Mr. Armas then began a two minute video clip that included the current location of the sign from a pedestrian's perspective and a day and night-time simulation of how the sign will look. In response to Chair Mendall's question about power consumption, Mr. Armas said the digital sign would use 5000-8000 kilowatt hours per month compared to the static billboards being removed or replaced which used a total of 2700 kilowatt hours per month.

Chair Mendall reiterated that the new digital billboard would use two to three times the electricity compared to all the other signs being removed or replaced and that was for illumination only. Mr. Armas confirmed that was correct and said factors such as the savings in diesel fuel and not needing to produce and install hard ad copy were indicated under beneficial effects on the environment. Chair Mendall asked about changing out a traditional billboard and Mr. Armas said they are usually rotated every 30 or 60-days depending on the contract and many are produced in Denver and have to be flown and driven in. Mr. Armas pointed out that advantage of the digital billboard is that copy can be changed electronically, eliminating the need for ad installation, and also that the copy can be changed instantly in the case of an emergency. Mr. Armas said Chair Mendall's idea of installing a camera to monitor graffiti is acceptable to Clear Channel.

Commission Márquez said that her question regarding the savings in gas and to the environment by not having to produce and install hard copy was already answered.

Chair Mendall then introduced ornithologist Scott Terrill with the firm H.T. Harvey and Associates, who prepared the biological report. Mr. Terrill explained that he was part of a team of ornithologists who prepared the initial analysis based on data they received on light shed, illumination on the marsh, impacts on local movements of birds, and migration. Commissioner Lavelle reiterated her question regarding whether or not the new sign would have an impact on bird nesting. Mr. Terrill said there was "not a lot" of nesting on the existing sign; they did see some rock pigeons but no cliff swallows. He also confirmed Commissioner Lavelle's understanding from the report that migrating birds fly fairly high. Mr. Terrill explained that most migrating birds do so at night and travel at 500 to 2000 feet up, water birds as high as 5000 feet. He said most lighting issues occur on tall buildings and structure while the light on the billboard is low and directed down. Commissioner Lavelle asked Mr. Terrill to explain the concept behind the eight second image rotation. Mr. Terrill explained that experiments have indicated that bright static white light is the most attractive to birds, color and/or strobing decreases the attractiveness. Commissioner Lavelle asked if the sign would therefore be helpful to the birds on foggy days and Mr. Terrill said it should be.

Chair Mendall said suppose the electronic billboard is approved and a year from now the City finds out it is creating a problem for birds, what options exist that could reduce the impact on the birds. Mr. Terrill said the biggest issue is the amount of light that hits the marsh. The ornithologists based their findings on the data provided, he said, if the amount of light is more than proposed, then Clear Channel could redirect the light or put up a shield. Right now, he said, the proposed light appears to be very diffuse but this could be monitored. Chair Mendall asked the hypothetical question of what could be done to mitigate the situation where a bird crossing over the freeway got "mesmerized" or "trapped" by the light and hit the sign. Mr. Terrill said they don't anticipate a lot of movement from west to east and the birds would have to be travelling pretty low, but speaking hypothetically, a faster rotation cycle would improve bird safety.

Mr. Armas reiterated that Clear Channel went to the HASPA board and took into account comments made and still felt comfortable moving forward as did HARD and the East Bay Regional Park District. He also took the opportunity to thank Mr. Thnay and Ms. McKillop for their service to the Commission and to the City.

Chair Mendall closed the Public Hearing at 9:19 p.m.

Commissioner Thnay said the report was very comprehensive and said the trade off is good because the only difference between the existing and proposed sign is static versus illuminated. He agreed that the billboard was not a Las Vegas-style sign said he was inclined to say that the area is not degraded by the proposed sign. Commissioner Thnay made a motion to approve staff recommendation. Commissioner McKillop seconded the motion.

Commissioner McKillop said the report and the comments made were very thorough and answered all of her questions. She said the billboard was new technology so the Commission had some concerns but pointed out that there are other signs like the one proposed and she hadn't heard anything particularly negative about them. She said she was pleased to eliminate some of the billboards on Mission Boulevard and looked forward to a very attractive sign on Highway 92.



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**Thursday, July 22, 2010, 7:00 p.m.**

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Commissioner Lavelle supported the motion saying the billboard was a modern way to bring advertising to the drivers, cyclists and pedestrians. She said she too was worried about this being a Las Vegas-style sign so was happy to learn more about the technology and agreeing with the statements made by Commissioner McKillop, said she looked forward to giving the electronic billboard a try. She said, in essence, her decision comes down to whether a new, brightly lit sign was worth the trade off of removing old dilapidated signs along Mission, which she said she very much looks forward to. She pointed out that Clear Channel has to remove the old signs first before the new sign can be installed and the City could use the 12.5 percent ad space to promote activities and bring people into the City. The City has a lot of innovative new events, she said, and if the billboard can bring someone downtown to listen to free music, they just might stay for some food and drinks. Commissioner Lavelle said she was also pleased with the conditions of approval because if there are some negative impacts realized in the future, perhaps the City, the Planning Commission, or HASPA, can bring the sign back before Council to be reviewed and the problem mitigated. And finally, she said she was most appreciative to learn about the aesthetics of the sign. She said she lives in the Hayward hills and from her home she can clearly see the digital billboard at Marina Boulevard in San Leandro. After speaking to Clear Channel representatives, she said the proposed sign appears to be quite a bit different and she doesn't think it will have the same impact.

Commissioner Márquez said she also supported the motion but asked Commissioner Thnay if he would agree to include the biological resources language to condition of approval number 12. She said she was pleased that Clear Channel accepted all the conditions including no tobacco or alcohol advertising, was providing free ad space for the City, and that advertising might be more affordable for local businesses to purchase. Regarding Ms. LePell's comments, Commissioner Márquez said what she heard from staff is that there will be no more billboards throughout the City and she said she hopes the City just sticks with this one electronic billboard and "sees how it goes." Finally, she said condition 12, as well as the other conditions of approval, will allow the City to see if this is going to be a good fit.

Commissioner Loché said he appreciated the very thorough report and while he agreed with many comments made by his fellow commissioners, he said he found himself unwilling to support the motion because he agreed with a speaker who said the shoreline is just not an appropriate location. He said it was a basic lack of respect for such an "environmental gem" in the City of Hayward. He said he did not think the shoreline would be destroyed because of this single billboard, but that the shoreline would be better if it was not there. He said he would not be supporting the motion.

Chair Mendall asked that installation of a camera to monitor graffiti be included in the conditions of approval and be included in the motion. He said he will be supporting the motion, but it was not without concern. He said it appeared to be "a wash" for the shoreline because some areas would be receiving less light, while others, primarily the freeway, received more. He said he was worried about the effect on birds, but the conditions of approval should protect them and the applicant has tried to do the right thing by minimizing impact. If the Commission is wrong, he said, condition 12, which is very broad, would allow the City to try different solutions. He said unquestionably the billboard will be beneficial to the City with the free air time and he agreed that getting rid of the

signs along Mission was wonderful. Finally, he said he appreciated staff working out this agreement, and he appreciated the applicant's flexibility in developing an agreement he could support.

Commissioner Loché asked if it was possible to include something in the motion that asked Clear Channel to replace the billboard if it becomes a "dinosaur" in 10 years.

Assistant City Attorney Maureen Conneely said such a request seemed a "little bit vague" and pointed out that if this land use approval was granted the applicant will go to considerable cost to construct the sign with its technology. She said, however, if the applicant was in agreement with the condition she would want to hear from them.

There being no other comments, the motion passed 5:1:0 (ONE VACANCY) with the following vote:

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

#### **COMMISSION REPORTS:**

##### **4. Oral Report on Planning and Zoning Matters**

Planning Manager Patenaude said there were no meetings scheduled for September until the motion was made to postpone the first Public Hearing. That will have to be re-noticed, he said, and would probably take place the second date of the month after the new commissioners are seated. He said as usual, training of the new commissioners would have to be scheduled and it was suggested to invite Council Member Salinas to participate as he has never served on the Planning Commission. Chair Mendall asked staff to send out an email when the new commissioners were selected by Council.

##### **5. Commissioners' Announcements, Referrals**

Commissioner Thnay thanked staff for the nearly nine years since he began his service to the City. He pointed out that a lot had happened in that time including 9/11, two administrations, three out of his six children left for college and one grew from three to almost six and a half feet. One of his first projects with the City was the Gateway-Mission Project and he said he was inspired to serve the City by the handling of the project by the then Mayor-elect Guliani. He said he was also inspired by several people such as former Council Member Bill Ward, former Mayor Roberta Cooper, who appointed him, and former Planning Director Diana Anderly who told him, "Christopher, when you are up there, don't fidget." He thanked staff and the residents of Hayward for the opportunity and he encouraged residents to get involved. He thanked everyone for a memorable experience.

Chair Mendall read a resolution acknowledging Commissioner Thnay's service to the Planning Commission.



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Commissioner McKillop said she would certainly miss Chris and his well-thought-out, thoroughly researched benedictions that he has always given the Commission. She also recounted a story about Planning Director Anderly who gave her this practical advice: "Never wear red and never wear stripes!" Commissioner McKillop said she has had a great run with the Planning Commission and, for the most part, has enjoyed every minute of it, as well as learned a tremendous amount about the City and the workings of the City. She said she has made some terrific friends and met some wonderful people. She said she will miss staff, especially Planning Manager Patenaude and Assistant Attorney Maureen Conneely, but reminded them she was right across the street. She thanked clerk Philis, and her fellow Commissioners saying, "Keep up the good work."

Chair Mendall read a resolution acknowledging Commissioner McKillop's service to the Planning Commission.

Chair Mendall said sometimes the Commissioners agreed, sometimes they didn't, but he was always glad Commissioner McKillop was there to push him and make him think, and he said he will miss her especially. He said the Commission has lost its three most experienced members and he joked to Commissioner Lavelle that they "would have to step it up a bit".

**APPROVAL OF MINUTES**

6. Minutes from June 24, 2010 were held back by Chair Mendall for correction

**ADJOURNMENT**

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

**APPROVED:**

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Elisa Márquez, Secretary  
Planning Commissioner

**ATTEST:**

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Suzanne Philis, Senior Secretary  
Office of the City Clerk