



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, November 5, 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 Mendall.

ROLL CALL

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

Commissioner Thnay led in the Pledge of Allegiance.

Staff Members Present: Camire, Conneely, Cruz, Lawson, Nguyen, Patenaude, Philis

General Public Present: 48

PUBLIC COMMENTS

None

PUBLIC HEARING

- 2. PL-2007-0576 – PM 9700 – The Loftin Firm (Applicant) / Eden Gardens MHP, LLC (Owner) – Request for a Parcel Map to Convert Eden Gardens Mobilehome Park to Resident Ownership - The Property is Located at 1150 West Winton Avenue in the Mobilehome Park**

Planning Manager Richard Patenaude provided a synopsis of the report noting an additional staff recommendation to the conditions of approval which states that the applicants and residents shall enter into a Nonpurchasing Resident Protection agreement in substantially the form set forth in Exhibit E to the Tenant Impact Report. Mr. Patenaude also noted that staff has received a letter from Jay Hendrick, on behalf of the Eden Garden Mobilehome Park Residents Club Board of Directors, stating Board support of the application.

Chair Mendall asked Assistant City Attorney Maureen Conneely to comment on the legal statuses governing tonight's decision. Ms. Conneely explained that the Commission is somewhat circumscribed to act on the application because the state has taken over jurisdiction of mobilehome park conversions per Government Code Section 66427.5. The Commission's primary task, she said, is to determine if the application is in compliance with requirements of the state law.

Commissioner Peixoto asked if non-low income, non-purchasing residents are losing rent control under the proposed agreement. Planning Manager Patenaude explained that if the map was approved without the rental agreement with the owner, the formula cited in the report would be imposed by

state law and a base rent of \$397 would jump to \$557 in four years. Commissioner Peixoto asked if residents are going to pay significantly more in four years. Mr. Patenaude indicated that under the conditions of approval and proposed rental agreement with the owner, residents would be paying less than what either the state program or the City's rent control program could provide. Commissioner Peixoto then questioned the findings statement that read residents will "enjoy the security of living in a resident owned controlled and managed park whose motivation is not for profit but rather achieving the best living environment at the most affordable rate." He said that it seemed to him that residents are already living at an affordable rate; he didn't see how the conversion betters their economic position. Mr. Patenaude said the owner's agreement would keep rents lower than even current City or State standards.

Chair Mendall opened the Public Hearing at 7:41 p.m.

Sue Loftin, speaking on behalf of the applicant, acknowledged the numerous communications exchanged between the City and the applicant and thanked the City Attorney's Office for providing assistance in creating the most protective non-purchasing resident program in the state. She also thanked the mobile home park residents for participating in this lengthy process and the owners for recognizing the residents' concerns. Ms. Loftin said the owner has no objection to the additional condition of approval as the owner and residents entered into such an agreement months ago and is now looking for the approval of the Planning Commission. This is about choice, she said, all of the residents are protected by rent control for as long as they live there, and can pass that control on to their heirs. She said because the owner listened to the residents, the parties involved were able to craft a program that protects all residents and provides stability over the years. Ms. Loftin explained that there are purchase programs available at the various economic levels.

Preston Cook, one of two managing members and owners of Eden Garden Estates, explained that two years ago the owners offered the Eden Garden residents a package of conversion protections unsurpassed in the state of California. In the years since, Mr. Cook said he has had the pleasure of meeting with members of the Eden Garden Board of Directors, negotiating additional protections, and discussing the conversion and protection plan with all residents. Using the state's Endprop Financing Program, Mr. Cook said low-income residents wishing to purchase their land will have access to assistance programs and may find their monthly housing costs will actually do down. For non low-income residents wishing to purchase their lot, the park owners are offering seller assistance financing as appropriate and needed. For those who choose to continue to rent, Mr. Cook said they will be provided with protections that far exceed City rent controls and State conversion laws, including life-time leases for them and for their children. Rents will stay the same with the usual annual increase which, he said, will actually be lower than in the past, and rent controls will remain. Eden Gardens will be deed-restricted to remain a community of 55 and older forever, he said. He finished by saying that residents are receiving more protections and benefits with the conversion than without and the agreement is outstanding in its commitment to fairness, involvement, financial assistance, and numerous resident protections. He asked for the Commissioners' affirmation vote for the conversion of Eden Garden Estates to a resident-owned community.

Regarding his statement that some residents who purchase their land will be in a better situation than they are now, Commissioner Peixoto asked Mr. Cook how those residents would qualify for a loan. Mr. Cook responded saying there is a state program specifically designed for low-income residents over 55 living in a mobilehome park that is going through a conversion. The state fund of approximately \$8 million is not part of the general California budget, he said, and his attorney, Sue



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Loftin, has applied for and received more funds than any other attorney in the state of California. Because of her familiarity with the process, he's going to make sure as many residents as possible apply and receive these funds, he said. Commissioner Peixoto asked about the Homeowners Association (HOA) and whether or not the renters will have to pay dues. Mr. Cook said he will be responsible for paying the HOA dues for the renters and all the unsold lots.

Commissioner Márquez asked Mr. Cook if the terms of the Non-Purchasing Resident Protection Agreement would pass to another family member upon the death of current resident and would the heir have to live in the mobilehome. Mr. Cook said the heir would receive the same protections if they are 55 or older. If they qualify, they don't have to live there to receive the protections. Commissioner Márquez asked if the heir died, would the protections pass to the next generation. Mr. Cook indicated that the heirs will outlive him and he's already offering protections that exceed what the City or State can offer.

Angie Bravo, resident next door in a manufactured home at the Hayward Mobile Country Club, explained that when she bought her home three years ago she wanted to be part of a quiet, senior community. She said the number of options for seniors are limited in Hayward and asked if the conversion application was already approved. She said she can't see how this agreement is going to benefit the people who already live there on fixed incomes. She asked how they could possibly afford to purchase their lots, and if they can't, where else can they live that is so centrally located to bus lines and grocery shopping. She said a tract of new homes was recently completed on the other side of her and now she's going to be wedged in between those and the proposed townhomes. Ms. Bravo expressed displeasure that the conversion to ownership is going to create more noise and traffic, both on foot and in cars. Said she is against the application and hopes the conversion doesn't go through.

Planning Manager Patenaude clarified that the proposal is not a replacement of mobile homes with townhomes, but instead allows the mobile home residents to purchase the land. He explained to Ms. Bravo that there will be no visible change to the mobile home park.

Jay Henderick, representing the Board of Directors for the Eden Garden Estate Residents Club, read the letter he sent, dated October 30, 2009 and signed by the entire Board, to enter it into the public record.

Commissioner Peixoto asked Mr. Henderick about a statement in his letter that said residents support the conversion, yet a survey of residents showed 86 out of 96 respondents were opposed to it. Commissioner Peixoto asked if the opposing residents have changed their minds. Mr. Henderick explained that the Board supports the Non-Purchasing Resident Protection Agreement and do not have the authority to make a recommendation to the Commission regarding the conversion so the Board is taking a neutral position.

Ruth Hendricks, Eden Garden resident, said she's attended the meetings to discuss the conversion but she hasn't discussed a thing and nobody seems to know what's going on. She said she doesn't feel like she has equal rights and thinks the conversion agreement is "bullpucky". Ms. Hendricks

said her social security check will not cover the rent increases under the proposed agreement, which she claims say one thing and do another. She said that everyone is not cooperating. She went to the meeting to elect the Board of Directors but nobody got elected so after everyone went home the Board nominated themselves. All she wants to do is live in peace and now that peace is gone.

Chair Mendall closed the Public Hearing at 8:08 p.m.

Commissioner Lavelle thanked the residents for attending the meeting and showing their support of the agreement. She said the Planning Commission's role is to make a determination regarding the tenant impact report and conditions of approval.

Commissioner Lavelle made a motion per staff recommendation to find that the project is exempt from CEQA review and approve the parcel map to convert the Eden Gardens Mobilehome Park to resident ownership, subject to the attached findings and conditions of approval including the additional condition presented by staff at the beginning of the meeting. Commissioner Thnay seconded the motion.

Commissioner Lavelle said she is very impressed with the generosity of the agreement both for the residents who wish to become owners and the residents who choose to continue to rent. She said the City wants to maintain the variety of the residents living in Hayward and doesn't want to lose any opportunities for home ownership by senior citizens.

Commissioner McKillop said as a Planning Commissioner they are often faced with very difficult decisions; sometimes it's not easy to know what's right and correct. She explained that the main role of the Commission is to make decisions about proper land use. She said she doesn't think the proposed agreement is the proper use for the parcel's land use designation, and while she fully supports the protections offered in the conversion agreement, she won't be supporting the motion.

Commissioner Thnay said he appreciates the attendance of so many of the residents. He said due to the stability of the agreement, the unparalleled protections, and the choice it provided, he feels the conversion has been well thought out and speaks volumes that what residents wanted has been accomplished. He said the fear of the conversion has been taken care of. Commissioner Thnay thanked Mr. Cook for developing an agreement all the residents can support and indicated that he would be supporting the motion.

Commissioner Loché said he thinks this is a very good plan. He applauded the residents for working with the owner to develop a protection plan that will work for them rather than just sitting by and waiting to see what would happen. Commissioner Loché said a choice is always a good thing to have and that he will be supporting the motion.

Commissioner Peixoto said he studied the issue of condominium conversion for a couple of years and said he will be voting against the motion because he doesn't agree with the finding that states there will be no economic impact. He explained that he also has a problem with the process; according to the survey, 86 out of 96 respondents disapproved of the agreement. The state law (that did not pass) said that the manager must demonstrate a survey that shows the support of the residents. Commissioner Peixoto said he doesn't get the feeling that the majority of residents want the conversion so regardless of what the Board has said, he will not be supporting the motion.



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Commissioner Márquez said she will be supporting the motion because the applicant is in compliance with the state requirement and she acknowledges that he has tried to accommodate the residents by creating additional rental protections.

Chair Mendall echoed the sentiments of the other commissioners indicating that he thinks the agreement is a good one and he applauds Mr. Cook for providing more than what was required. Whether or not the conversion is a good idea, he explained, state law doesn't give him the discretion to state an opinion. What the Planning Commission is voting on, he said, is whether the owner has complied with state law and it is clear that he has. Chair Mendall said he would be supporting the motion.

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

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

3. **Text Amendment Application No. PL-2009-0454** – Starzz Management Services, Inc. (Applicant) – Request to Amend Hayward Municipal Code Section 10-1.2735(b) to Delete the Restriction on On-Sale Alcohol-Related Commercial Activities on Properties which Front B Street Between Watkins Street and Foothill Boulevard, or Main Street Between A and C Streets, in Respect to Proximity to any School, Public Park, Library, Playground, Recreational Center, Day Care Center, or Other Similar Use

Conditional Use Permit Application No. PL-2009-0201 - Starzz Management Services, Inc. (Applicant)/Dinesh Shah (Owner) - Request to Operate a Restaurant and Night Club Within the Downtown Entertainment District - The Property is Located at 926 B Street

Commissioner Márquez explained that her family owns a restaurant on C Street, Los Compadres, so she will not be participating in the discussion.

Commissioner McKillop disclosed that she also owns property nearby, but doesn't feel it is a conflict of interest.

Associate Planner Arlyne Camire gave a synopsis of the report indicating that staff has received a letter from CommPre writing against the approval and an email in favor of the project from the owner of Gary's Donuts, located at B Street and Main. Ms. Camire concluded her report by outlining the conditions of approval that would provide security protections for the City for Club ME's proposed nightclub activities.

Chair Mendall asked if a representative from the Hayward Police Department was in the audience and no one identified themselves as such. He then requested that staff see if a representative could be located in time to answer questions from the Commissioners.

Commissioner Loché asked for clarification on page seven of the report regarding Alcoholic Beverage Control (ABC) and what they say is an over-concentration of off-sale liquor licenses in that census track, yet Buxton’s retail report indicates that the downtown area is underserved by drinking establishments. He asked staff to clarify what the landscape for alcohol consumption is in the area.

Planning Manager Patenaude said the formula used by the ABC is based on residential population and since downtown is primarily retail with only a few residents, it skews the results of the survey.

Commissioner Lavelle thanked Associate Planner Camire for the report and asked how much activity would be taking place in the basement of Club ME and whether or not patrons would have an option other than stairs. Mr. Patenaude explained that the primary nightclub activities would happen at the street level, but the basement would be open for activity. The conditions of approval stipulate that the total occupancy is based on the ground floor. He said the basement level would serve as a lounge area with pool tables, video games, and a place patrons could go if they don’t want to listen to the music. He said the live entertainment is on main level with restaurant seating remaining for those who wanted to eat. Commissioner Lavelle asked if the fire department has reviewed and approved the plans, including access issues, and Mr. Patenaude said yes.

Commissioner Lavelle asked why the restaurant is described as “family-oriented” and asked what makes it so. Planning Manager Patenaude explained that during the week and weekend days, the club would function as a restaurant only and the intent is to attract families by providing a full menu. On Sunday afternoons, he said, the entertainment would be free and geared toward family members of all ages.

Commissioner Peixoto asked staff if the building is unreinforced masonry and Planning Manager Patenaude said all masonry buildings in the downtown area have been reinforced. Commissioner Peixoto then indicated that if a police representative showed up he had questions for them.

Mr. Patenaude said that staff was unable to locate a police representative who could answer questions, but staff was present during several meetings in which police representatives were present, he said, so Commissioners should go ahead and ask any questions related to security.

Commissioner Peixoto asked staff about Kumbala, a downtown restaurant/nightclub that is now closed, and how Club ME is going to avoid the problems Kumbala experienced during a 1:00 a.m. personnel shift change. Planning Manager Patenaude said that Club ME’s nightclub has a shorter operating time so City staff and police are expecting less of an impact on City resources.

Chair Mendall said one of the conditions of approval require the Conditional Use Permit be reviewed in one year, he asked if the review is a one-time review or ongoing. Planning Manager Patenaude explained that after one year the City should have a general idea of what’s going to happen. If there are any “critical incidents” either before or after the one-year review, the City can certainly take action, he said. Mr. Patenaude explained that most of the conditions of approval are



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based on past experience in regards to operations, safety and management. City staff has met with the applicant and they are confident they can comply with all conditions of approval.

Chair Mendall asked why the Planning Commission should care about the number of pool tables and video games the club intends to have. Planning Manager Patenaude explained that while Hayward doesn't have any stated limits, other cities state limits to ensure an establishment doesn't become anything other than what the applicant indicated they were going to be. Mr. Patenaude said the applicant has not expressed any issue with the limits and has indicated that they want to keep the lounge area a multi-purpose space.

Chair Mendall asked about condition of approval number 39 which limits live entertainment, community talent shows, poetry readings and similar activities, to Sundays up until 9 p.m. Chair Mendall asked why these activities can't happen on a Tuesday, for example. Planning Manager Patenaude explained that the applicant chose the activity times. The City's intent is to keep the various uses separate so the establishment remains primarily a restaurant.

Regarding condition of approval number 26, Chair Mendall asked when alcohol consumption would stop on Friday and Saturday night if the condition states 1:00 a.m., but the club doesn't close until 2:00 a.m. Planning Manager Patenaude confirmed that during the week, alcohol sales would end when the restaurant closes, on Friday and Saturday night sales would end at 1:00 a.m., or one hour prior to closing. Chair Mendall then confirmed with staff that a condition limiting signs on the front of the establishment is to aid in visibility for police. Staff added that entertainment advertisements would be restricted. Then Chair Mendall asked about condition 18i and why the Commission should care about indoor pay phones. Planning Manager Patenaude explained that eliminating pay phones also aids in preventing on-site drug deals.

Finally Chair Mendall Condition asked why conditions 12a and 12b, which discuss the security of areas surrounding the establishment, don't mention Newman Park located next door to the proposed restaurant/club. Chair Mendall asked if Club ME would be responsible for park security on nights other than Friday and Saturday. Planning Manager Patenaude said if a critical incidence occurs at the park, the conditions don't rule out that the incident originated at the club. The conditions also set up the club's primary areas of responsibility. Mr. Patenaude explained that the club's security plan is required to include a patrol of the park during nightclub hours.

Commissioner Lavelle asked staff to review the City's no smoking ordinance. Planning Manager Patenaude explained that City ordinance bans smoking on public property. Commissioner Lavelle confirmed that this would include the road and sidewalk in front of the club, the parking lot behind the club, and the park next door. Staff indicated that she was correct.

Chair Mendall opened the Public Hearing at 8:49 pm.

Chuck Horner, Lyford Street resident, said he would love to see a nice classy restaurant next to the park because it would increase business to the downtown area, but he's "totally confused" why the City would allow two nights to compromise that. He said when the Rotary Club built Newman Park

for local children and families he's sure they never intended for a nightclub to move in next door. In the past, the City has denied permits to a number of different establishments including a consignment shop and a church, he asked why the City would bring in an establishment that serves alcohol. He said along with hip hop comes the art, the alcohol, the tagging, etc. In the next week, he said he will ask Rotary members, church members, and task force members what they think of the idea. He said police department resources are already strained. He suggested putting in a good restaurant. Quality not quantity, he said. Alcohol is big business, but Mr. Horner said he doesn't think a nightclub two nights a week is worth the compromise. Don't forget the problems of the past, he said, when an establishment has tried to combine a large group in a small space.

Monica Thompkins, representative of Starzz Management, explained that Starzz Management is an established company that has been around for 18 years with a very successful track record of providing contract services to the government at the state and county levels. Ms. Thompkins said Club ME will be a quality dining and entertainment establishment. With the club, Starzz Management is looking to revitalize the City. She said she's lived in Hayward for over 10 years and sees there is no entertainment venue in Hayward that provides something for all ages and races, not even bowling. Ms. Thompkins said the corporate officers of Starzz Management have already received FBI clearance, are in the security business, and will address all security concerns because they want their customers to be safe. Ms. Thompkins said the restaurant will have fine dining with family-oriented, quality meals (meaning meals parents approve of and kids will eat) at affordable prices. Regarding the family entertainment, Ms. Thompkins explained that Sunday is the only day of the week that working parents can participate in events that interest families, and kids won't be busy with homework and after-school activities. If they need to, she said they will add more times for family entertainment. Regarding Friday and Saturday nights, she said that Club ME is not all about hip hop; the Club will provide a variety of music that appeals to all Hayward residents. Ms. Thompkins said they have already been working with colleges and groups in the area to provide a local venue for all kinds of entertainment and activities. The goal of Club ME and Starzz Management is to bring more vitality to the City and a well established, quality business that everyone will be proud of. Starzz Management will continue to operate their current business—this isn't their only club—so they can't allow anything to happen that will jeopardize their security clearances which is the nature of their primary business. She said that they will be pro-active to eliminate any situations that might compromise security at Club ME.

Commissioner Peixoto asked Ms. Thompkins about the government contracts she mentioned and if her experience on military bases is with officers, or enlisted men's, clubs and she said yes. He pointed out that those are self-contained, self-policing environments. He said he was more interested in her other clubs in Atlanta and Chicago function regarding security. First Ms. Thompkins clarified that military bases are no different from regular clubs and most are open to non-military personnel. Second, she explained that regardless of the club, they have controls in place to check age, maintain the perimeters of the club, proper levels of security both inside and outside of the club, and if a situation starts to occur, it is handled pro-actively. Ms. Thompkins said they will use the same methods at Club ME. Commissioner Peixoto asked about their club in Atlanta and what happened there. Ms. Thompkins said the club was very successful, but one of the owners passed away and the family chose to go into another area of service. At the Atlanta club they had a strict dress code, which they will adhere to here in Hayward, as well as a general check as people come into the club. She said that under their watch there were no critical incidences in Atlanta. Ms. Thompkins explained that the biggest issue in Chicago was crowd control at the entrance because of the weather.



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Commissioner Loché said that nightclub establishments tend to come and go, he asked Ms. Thompkins how Club ME will be different. Ms. Thompkins agreed that passed clubs have lasted 3-5 years, but it is Starzz Management's intention to stay longer with Club ME. She said she's not starting with short-term plans in mind, and as part of a business that is 18 years-old and a resident of Hayward, she focused on quality and longevity.

Commissioner Lavelle said she read in the report that Starzz Management ran a restaurant at the naval post graduate school in Monterrey, but she wanted to hear specific examples of the company's experience in starting a new restaurant, securing a kitchen, hiring staff, advertising, and how exactly they plan on running the restaurant in Hayward.

Ms. Thompkins explained that in Monterrey the navy contracted out the restaurant service and Starzz Management's responsibility was hiring the staff, including the cooks and the cleaning crew. Ms. Thompkins explained that under the Project Management branch of Starzz that's what they do; they set-up the restaurant, and create and execute innovative business solutions. The employees of Starzz have previous experience with the food industry including restaurant management as a specialty. Starzz Management is also an equipment distributor and working with the architect they have the experience to purchase the appropriate equipment for their meal service needs. Starzz Management also has cash handling experience, including making purchases for government. Ms. Thompkins concluded putting together each of the company's functions including providing security, with the contracts they have handled, that's why they feel they have the skills necessary to operate this restaurant.

Commissioner Thnay asked if crowd control becomes more of an issue as they night goes on and what policies does Starzz Management have in place when it becomes clear a patron has had more than enough to drink. Ms. Thompkins deferred the question to her security staff.

Security representative, John Taylor, owner of Golden Gate Security, said they have been in business since 1983 with staff consisting of former police and peace officers. Mr. Taylor said that his company has extensive experience with crowd control/management. He said that when Golden Gate Security was in charge at Kumbala the club had zero problems. It was after their contract expired, he explained, that the club started to have problems. Mr. Taylor said his company is pro-active in crowd control and staff is trained to keep an eye on patrons to not let someone get too drunk. If they see someone become unruly they immediately notify other club personnel to stop the situation before it escalates.

Commissioner Peixoto asked Ms. Thompkins if customers will be given a hand stamp for in and out privileges or if once they come in that's it. Ms. Thompkins said once they come in that's it. If the patron leaves, she explained, they will have to pay to get back in. Commissioner Peixoto asked where patrons will go to smoke if they aren't allowed to smoke in the club or in most areas downtown. Mr. Taylor said public education is key and because of the park next door security will have to very pro-active to control smoking in the park and the areas around the club.

Chair Mendall asked if people will be banned from the club if they are known trouble-makers and if

the club keeps a list. Mr. Taylor said yes, club staff will identify problem patrons, keep a list, and at the end of the week turn the list in to management and the police. Chair Mendall asked Mr. Taylor if the nightclub closes at 2:00 a.m. and 243 people spill out into the streets, does staff go home at 2:01 a.m. Mr. Taylor said the police can attest to the fact that club security will make sure that everyone goes to their car, goes home and does not linger in the area. Mr. Taylor said that staff will make note of license plate numbers of any suspicious vehicles and they keep excellent records. Chair Mendall asked who will be on-site running the day to day operations at Club ME and what their experience is. Ms. Thompkins said Debra Willis will manage Club ME after Starzz completes the initial set-up and Ms. Willis ran the club in Chicago and also holds a security clearance.

Commissioner McKillop said she was trying to familiarize herself with the names on the application and asked who Dinesh Shah is. Ms. Thompkins explained that he is the owner of the building. Commissioner McKillop expressed a desire to meet management staff after the other speakers have an opportunity to address the Commission.

John Cowee, architect for the project, said he is here to answer any questions and hopes the Planning Commission will support the motion because he thinks this is a good project for the City.

Commissioner Lavelle asked Mr. Cowee for details about the restaurant area. Mr. Cowee asked staff to bring up the slide that shows the layout of the club and pointed out the booths along the perimeter of the restaurant area, round table and chairs to the left of the dance floor, and bar stools at the bar area. The dance floor is flush with the rest of the area, but the stage, or DJ platform is raised, Mr. Cowee explained. The lobby area has the registration counter, the bathroom entrances and the stairway to the downstairs area. Commissioner Lavelle asked if there will be an elevator as well as stairs. Mr. Cowee said development will go in phases and an elevator may be added later. Commissioner Lavelle asked if there is a theme or color palette selected yet. Mr. Cowee said the color palette would be submitted with the design review, so it's still under consideration as is the exterior appearance of the club.

Commissioner Loché noted that the location of the bathrooms was moved for safety reasons, and asked if there were any other "safety by design" measures taken. Mr. Cowee said besides meeting all egress requirements, the club also has fire alarms, lights and sprinklers, manned security, and monitored security cameras. Mr. Cowee also mentioned that although the back doors are locked to any incoming traffic during normal business hours, in the case of a fire they automatically open for people to exit the club.

Commissioner McKillop asked him the capacity of the restaurant and dance floor. Mr. Cowee said the capacity is 243 for the club, approximately 78 for the restaurant. Commissioner McKillop asked for more information on the color scheme of the club and what is meant by fine dining.

Linda Pratt, program director of CommPre (Community Prevention of Alcohol Related Problems), said her organization believes the findings for approval do not support either amending the conditional use permit ordinance or approving this business application. She said they fully support a high quality, full-service restaurant at this location and think the application should be changed to either be an application for a restaurant or for a nightclub (barring all patrons under 21), but not try to be both. Ms. Pratt pointed out that the City hasn't had much luck with ambiguous, hybrid applications in the past and the primary use stated on this application is to be a leading entertainment venue hosting showcase events for new entertainers. She said that history has shown that when the



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true desire of an applicant is to run a club, but the City requires a restaurant, the venue will eventually turn into a club. Ms. Pratt said another concern is the neighboring park which should be protected by a 100 foot distance requirement, but nothing in the 65 conditions of approval specifically holds Club ME responsible for protecting and maintaining the park. CommPre believes the park is an asset for the City, she said, and deserves to be protected by the ordinance. She points that queuing is not allowed in front of adjacent businesses or in the rear parking area, so that only leaves the area in front of the park and there will be impacts. Ms. Pratt pointed out that the 65 conditions of approval will create a huge enforcement obligation for the City. She concluded by reading a Daily Review new article from May 2006 regarding two violent attacks in front of the Kumbala club and restaurant. Ms. Pratt asked the Planning Commission if the City is really ready for more “critical incidences” that will come with another nightclub.

Maria Gloria, Pompano Avenue resident, said she opposes the application to change the ordinance saying Club ME’s application reminds her of Kumbala’s. Ms. Gloria said she attended all the hearings for Kumbala and what she is hearing tonight is that Club ME will primarily be a restaurant for families, that there will be adequate security, that the entertainment will attract families and people who just want to socialize. The reason why Kumbala had so many problems, she explained, is it really was just a nightclub. She pointed out that 63 conditions of approval for Kumbala didn’t make it a responsible business. Ms. Gloria said she does not agree with the City’s findings and will no longer feel safe walking on B Street at night if the application is approved.

Doug Ligibel, Grand Terrace resident, spoke against approval of the application. He said he disagrees completely with the statement in the report that says the proposed ordinance change will promote the “public health, safety, general welfare of the residents of Hayward”. Mr. Ligibel said approval will put the burden on the police department which is already dramatically understaffed citing the ratio of one sworn officer to every 940 residents. He said that both Oakland and San Francisco have ratios of one officer to every 400 residents. Although he is highly in favor of a restaurant at this location, he’s looked at Starzz Management’s menu and he thinks they would be successful, he said the police don’t have enough time to monitor the nightclub’s security and compliance issues that are listed in the conditions of approval. Mr. Ligibel said all questions for the police should be answered before the application is approved. He noted that another young lady was killed outside of a San Jose nightclub just two nights ago and concluded that the downtown Hayward area is saturated with alcohol-related establishments.

Gopi Malhotra, Mallard Court resident, said she’s thrilled to see a restaurant come into downtown and welcomes them, but she’s very concerned about a nightclub downtown. Ms. Malhotra explained that when she lived in San Jose, she and her friends would drive to San Francisco to avoid an unsafe environment. She excited about the revitalization of downtown, but bringing in a nightclub, liquor and young people, is not what Hayward residents are looking for. If a Hayward family is looking for something to do, she said, going to a nightclub is not it. She said she strongly opposes this application.

Pete Simos, San Leandro resident, said there isn’t a lot to do in the local community. He and his wife, she’s a scientist, he’s a teacher, he explained, often go to San Francisco and spend their money

there on a hotel and entertainment. He would like to stay local. He and his wife are excited about Club ME and think that if the City is serious about revitalizing downtown, there should be venues that serve residents of all ages and races. He said he was in favor of the application.

Per Commission request Ms. Thompkins then introduced the management staff of Starzz Management Services starting with Chief Operations Officer Joe Thompkins. She said Mr. Thompkins is certified by the Department of Defense, FBI and DOE, and will serve as facilities security officer. Mr. Thompkins, a Hayward resident for 16 years, with the company since 1991 and before that an officer in the US Navy for 12 years, said he found some of the previous speaker comments offensive. He said Starzz Management has a proven track record.

Ms. Thompkins then introduced Tracy Thompkins, event coordinator, who is already working with community outreach and will schedule the Sunday programs. Miss Tompkins explained that most of her experience comes from being active with school activities although she also took classes at College of Alameda in small business management. She said her teacher emphasized finding a niche and knowing what your target audience wants. Miss Tompkins pointed out that not all young people listen to hip-hop or get in trouble. She agreed that nightclubs have nothing to do with children, but pointed out that activities like poetry readings on Sunday will allow young people to contribute to, and be part of, the community.

Ms. Thompkins thanked the commission.

Chair Mendall closed the Public Hearing at 9:41 p.m.

Chair Mendall asked staff for verification that Mr. Taylor's statement that there were no critical incidences under his watch at Kumbala was true. Staff was unable to confirm the claim.

Commissioner McKillop said the main issue is security and without police department representation it's very difficult to make a decision.

Commissioner Thnay said he's not sure if the nightclub hours will generate enough revenue to offset the potential problems and wondered if the nightclub hours were "worth it". Echoing the concerns of Commission McKillop, Commissioner Thnay made a motion to postpone the vote until a police representative can address commission questions. Commissioner Lavelle seconded.

Assistant City Attorney Conneely asked for confirmation whether Commission Thnay was continuing or denying the application. Commissioner Thnay said his motion was to continue the public hearing to another time. Commissioner Lavelle confirmed the second.

Planning Manager Patenaude asked the commissioners for a particular date. Chair Mendall asked him to propose one and Mr. Patenaude suggested November 19th.

Commissioner McKillop asked if the continuation could be expedited rather than going through the entire public hearing again. She asked if the police could give a presentation of some type as part of a limited hearing. Chair Mendall expressed similar concerns.

Assistant City Attorney Conneely said they could try to avoid some repetition, but the police will be presenting new evidence and the applicant and public should be able to respond to any new issues or



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, November 5, 2009, 7:30 p.m.
777 B Street, Hayward, CA 94541**

concerns.

In speaking to the motion, Commissioner McKillop said Starzz Management's application is not Kumbala revisited. What she sees, she said, is evidence of a "whole different ballgame" and it is clear that the applicants want to create something different that is good for the City.

Commissioner Thnay said he is excited about the proposal, and only wants to hear what police have to say about the proposed nightclub hours. He applauds their support of the vision for downtown and appreciates that they are Hayward residents.

Chair Mendall agreed with Commissioner McKillop that this is not Kumbala revisited. Of course there are some similarities, he said, but the differences are what he was hoping to see and he'd like to think the club could work for downtown. He said confirmation from the police department that they handled security successfully at Kumbala is a big factor. He said he's looking forward to the next hearing when the Commission can conclude the hearing.

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

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

ADDITIONAL MATTERS

4. Oral Report on Planning and Zoning Matters

Planning Manager Patenaude indicated that in addition to the continuation of the public hearing on November 19th, December 17th is the last meeting of the year.-

5. Commissioners' Announcements, Referrals

Chair Mendall inquired about getting a copy of a market analysis conducted for Hayward that listed what businesses would do well and are needed in Hayward. Planning Manager Patenaude said he could make copies available for everyone and reminded the Commissioners that if they ever want to call a work session to discuss various topics they can. Commissioner McKillop said that Economic Development Committee already has the marketing report posted online.

APPROVAL OF MINUTES

6. Minutes from October 15, 2009 were unanimously approved with minor changes from Commissioner Lavelle and Chair Mendall.

ADJOURNMENT

Chair Mendall adjourned the meeting at 9:53 p.m.

APPROVED:

Elisa Márquez, Secretary
Planning Commissioner

ATTEST:

Suzanne Philis, Senior Secretary
Office of the City Clerk