



## CITY OF HAYWARD AGENDA REPORT

Meeting Date 6/26/03  
Agenda Item 3

**TO:** Planning Commission

**FROM:** Tim R. Koonze, Assistant Planner

**SUBJECT:** Use Permit No. PL-2002-0577 – Jack-in-the-Box (Anthony Poligono Operator/Applicant) – Foodmaker Inc. (Owner) - Request to Amend Use Permit 80-109 to Expand Hours of Drive-Through to 24 Hours/Daily

The Property Is Located at 1075 Tennyson Road Approximately 150 feet East of Tampa Avenue Within a CN (Neighborhood Commercial) District

### **RECOMMENDATION:**

Staff recommends that the Planning Commission:

1. Find that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) Guidelines, Minor Alteration in Land Use Limitations; and
2. Deny the request to extend hours of operation and modify use permit by adding conditions of approval.

### **DISCUSSION:**

The Planning Commission approved the Jack-in-the-Box restaurant on Tennyson Road in 1980. An appeal was filed and the application was forwarded to City Council who upheld the Planning Commission's approval. The use permit limits the hours of operation from 6 a.m. to 12 midnight Sunday through Thursday and 6 a.m. to 2 a.m. Friday and Saturday.

It came to staff's attention that Jack-in-the-Box was operating 24 hours a day, and they were asked to limit hours of operation to those allowed by the use permit. Jack-in-the-Box complied and is now maintaining the hours of operation originally approved by Council. The applicant subsequently filed an application requesting to operate the drive-through window 24-hours a day, seven days a week. The applicant states that staying open on a 24-hour basis will provide added service to customers.

Multi-family and commercial uses surround the property. Six multifamily units are located approximately 15-feet from the northerly property line, a gas station and a small multi-tenant commercial building are located to the west of the property and Glad Tidings Church abuts the easterly property line.

Over time, the Police Department has consistently received service calls to this Jack-in-the-Box establishment. Incidents ranged in seriousness from minor disturbances to drug activity to battery. Almost half of these called occurred after 10:00 p.m. Even though the restaurant is currently closed after midnight during the week and after 2:00 a.m. on weekends, since March 1, 2003 a security guard has been on the site from midnight. to 6:00 a.m. and police calls to this site have maintained an average of three calls a month with the same percentage of calls occurring in the late evening and early morning hours. Although three calls a month is not unusually high, during the time the restaurant was open 24-hours a day the Police Department stated that the service calls were more frequent and of a more serious and violent nature.

The Harder-Tennyson Neighborhood Plan encourages support of the police to help reduce the crime rate and increase public safety. In recent years the City has devoted significant resources to reduce crime in this area. The Police Department recommends against extending the drive-up window hours in order to keep undesirable activity to a minimum during late night and early morning hours. Given the concerns of the Police Department, allowing the drive-up window of the restaurant to operate on a 24-hour basis would not be consistent with the neighborhood plan.

The conditions of approval that were approved in 1980 area attached. With this application to modify an existing use permit, conditions of approval may be added or amended as necessary to assure that the use occurs in maximum harmony with the area and in accordance with official City policies. Although staff recommends that the request to operate 24 hours a day be denied, it is recommended that conditions of approval be added that (1) require employees to daily pick up litter originating from the site that is deposited on adjacent properties within 300 feet of the perimeter of the site, (2) require the site manager to take whatever steps are necessary to assure the orderly conduct of employees, patrons, and visitors on the premises, including hiring security guards if necessary, and 3) require that signs be posted on the property requesting patrons to reduce the volume of their car stereos. These conditions are intended to address the issues associated with the high number of police calls and reported problems of loitering and late night criminal activity, noise and litter related to the operation.

#### **PUBLIC NOTICE:**

On October 28, 2003, a notice describing the request to operate the drive-up window on a 24-hour basis was mailed to all property owners and tenants within 300 feet of the subject property and to all interested parties. Negative responses were received from the owner of the Tennyson Shopping Center (located across the street to the east) the owner and manager of Tampa Square multi-family residential complex (adjacent to the rear of the property) and a resident who resides at 27746 Tampa Avenue on the south side of Tennyson Road.

The comments noted that the drive-thru speaker was too loud, that Jack-in-the-Box patrons play their car stereos too loudly and that there is excessive litter in the neighborhood coming from the fast food establishment. There was a common concern that longer operating hours will encourage late-night loitering and contribute to an already substantial drug-dealing problem that exist in the area.

Upon receiving these comments, the applicant began working with the neighborhood and agreed to:

1. Reduce the volume of the drive-thru speaker;
2. Post signs requesting patrons to reduce the volume of their car stereos;
3. Close the rear parking area from dusk to dawn.
4. Hire an armed security guard to patrol the premises from 6:00 p.m. to 3:00 a.m.;  
and
5. Continue efforts to remove Jack-in-the-Box litter from the surrounding streets on a daily basis.

In a letter dated April 4, 2003, the owner and manager for the Tampa Square Complex located next door to the Jack-in-the-Box informed the City that these improvements have addressed their concerns and they no longer object to the 24-hour operation of the drive-thru window as long as these requirements are made conditions of approval and the applicant adheres to them. The two other parties that expressed concerns would like to continue the restriction on Jack-in-the-Box's operating hours.

On April 25, 2003, a Notice of Public Hearing for the Planning Commission meeting was mailed.

#### **ENVIRONMENTAL REVIEW:**

The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305, Class 5, Minor Alterations of Land Use Limitations.

#### **CONCLUSION:**

The applicant has worked with the adjacent property owners and has proposed various improvements to alleviate their concerns of the restaurant drive-up window operating on a 24-hour basis. Although the applicant has managed to appease some of the neighbors, the Police Department continues to object to extending the drive-up window hours in this area of Hayward known to have suffered from problems related to crime.

*Prepared by:*

*Tim R. Koonze*

Tim R. Koonze  
Assistant Planner

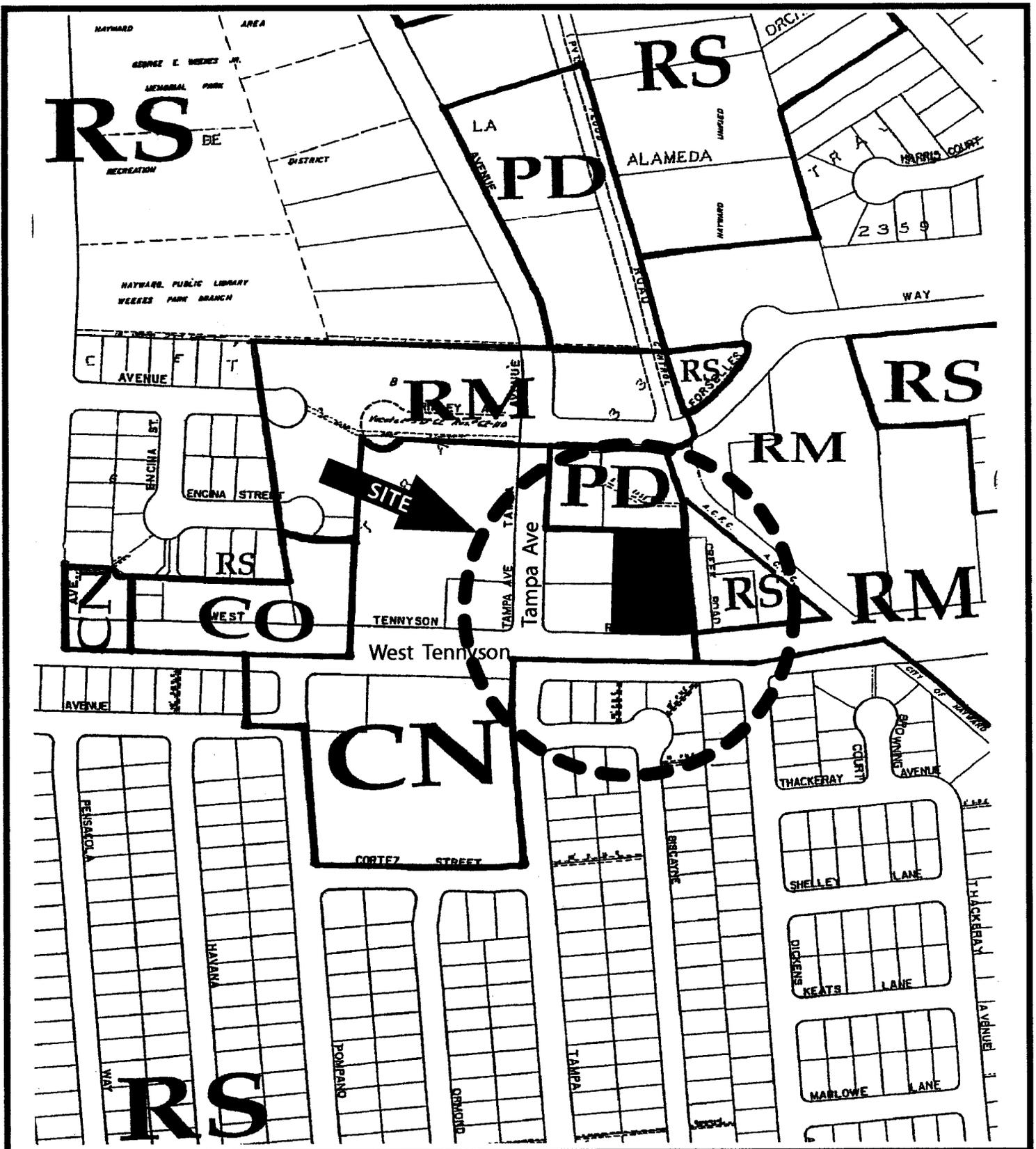
*Recommended by:*

*Dyana Anderly*

Dyana Anderly, AICP  
Planning Manager

Attachments:

- A. Area Map
- B. Aerial Photo
- C. Email expressing concern dated November 1, 2002
- D. Letter expressing concern dated November 5, 2002
- E. Letter expressing concern dated November 8, 2002
- F. Letter of support dated May 23, 2003
- G. Letter of support dated May 27, 2003
- H. Applicants letter dated June 16, 2003
- I. Conditions of Approval, 1980
- J. Findings for Denial of 24-hour operation and Findings for Approval of additional conditions of approval
- K. Conditions of Approval



**Area & Zoning Map**

PL-2002-0577 UP

Address: 1043 W. Tennyson Road

Applicant: Virginia Fanelli

Owner: Anthony Poligono

CN-Neighborhood Commercial

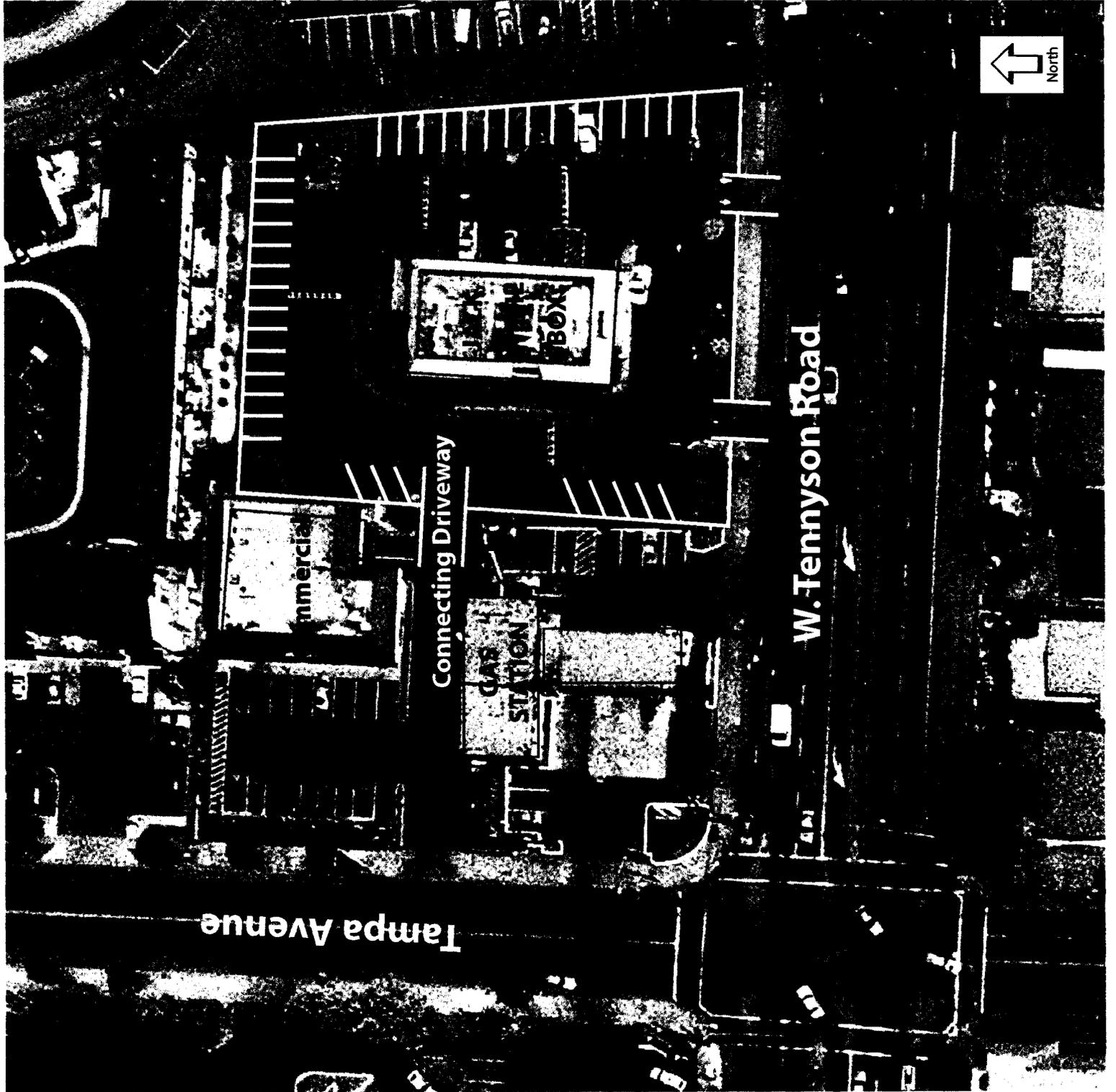
CO-Commercial Office

PD-Planned Development

RM-Medium Density Residential RMB 3.5, RMB 4

RS-Single-Family Residential,RSB4,RSB6

CHURCH



## Tim Koonze

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**From:** Ilene Weinreb  
**Sent:** Friday, November 01, 2002 9:47 AM  
**To:** Tim Koonze  
**Subject:** Proposed Jac-in-the-Box proposed operating hours

Dear Mr. Kooze:

I am the owner of the residential/commercial complex at the corner of Tampa and Forselles, quite close to the Jack-in-the Box in question.

I oppose extending the operating hours of the Jack-in-the-Box at 1075 W. Tennyson Road. The hours are very generous at present. I would like my tenants not to have to put up with the noise that longer hours would entail.

Furthermore and very important, we have had much drug traffic in the area. An establishment that is open all night long would only exacerbate the problem.

Please insert in the record my strong opposition to extending the operating hours at all.

Yours truly,

Ilene Weinreb

# EDEN REALTY

P. O. Box 126  
San Lorenzo, CA 94580  
(510) 537-8181  
Fax: (510) 537-8338

**RECEIVED**

NOV 6 2002

PLANNING DIVISION

November 5, 2002

Tim R. Koonze, Assistant Planner  
Planning Department  
City of Hayward  
777 B St.,  
Hayward, CA 94541

Re: PL-2002-0577 UP  
Jack in the Box – Increase in Operating Hours

Dear Mr. Koonze:

I am the Property Manager for the Tampa Square Complex at the corner of Tampa and Forselles in Hayward. Our Apartments #7 through #12 (six total) abut the drive-through area, with two of the apartments' bedroom windows directly opening onto Jack in the Box's drive-through area..

Our residents constantly complain about the noise that comes from the drive-through activities. These excessive disturbances include, but are not limited to –

- 1) A very loud, loud speaker that the store's staff uses to communicate with the patrons.
- 2) The very loud stereos of the cars that are in the drive-through especially the cars with loud bass beats. (Have you ever tried to sleep when your bedroom windows are vibrating due to a car stereo 50 feet away from you?)
- 3) The excessive litter that the patrons of the drive-through produce in the neighborhood when they are done with their meal and throw the garbage on the street.

**ATTACHMENT D**

Tim R. Koonze, Assistant Planner  
Planning Department  
City of Hayward

Re: PL-2002-0577 UP

Jack in the Box – Increase in Operating Hours

November 5, 2002

Page Two

We are also very concerned that 24-hour service will result in the parking lot becoming a hangout for the undesirable element in the neighborhood and contribute to the already substantial problem of street drug dealing that the community already faces in the area.

We would prefer that the drive-through be closed down completely. However, we understand that this will not happen.

However, please do not permit this nuisance to expand by permitting 24-hour service.

Thank you on behalf of the residents of Apartments #7, 8, 9, 10, 11 and 12. They appreciate the opportunity for their concerns to be heard.

Please contact us if you have any further questions or concerns.

Respectfully yours,

EDEN REALTY



Thomas R. Silva CPM

cc: File

Faye Clark

Residents of Apts. #7, 8, 9, 10 11 and 12 – 1050 Forselles Way, Hayward



November 8, 2002

Mr. Tim R. Koonze VIA: FAX 510-583-3649  
Assistant Planner Planning Division  
777 "B" Street  
Hayward, CA 94541

RE: PL-2002-0577 UP  
Jack-in-the-Box, 1075 W. Tennyson Road, Hayward, CA  
REQUEST for 24-Hour Drive-Thru

Dear Mr. Koonze:

On behalf of the owners and tenants of the Tennyson Shopping Center located at 1100 - 1196 West Tennyson Road in Hayward, California, I strongly urge the Planning Commission to reject Jack-in-the-Box's request to extend their hours of operation to a 24-hour drive-thru window.

We have a security guard on duty seven days a week between the hours of 3:00 pm - 11:00 pm to assist our patrons and tenants with problems associated with loitering, vandalism, graffiti and illegal dumping of garbage. Several tenants have had their windows broken. As recently as last week, our Round Table Pizza tenant had their windows broken by a group of young people.

We continue to be overwhelmed with garbage some of which blows in the wind from Jack-in-the-Box to Tampa Avenue. I am constantly receiving telephone calls from the residents on Tampa Avenue and Notices to Abate from the City of Hayward regarding accumulated garbage on Tampa Avenue eventhough the center is serviced by a sweeping company seven nights a week.

Our neighborhood will be negatively impacted by a 24-hour drive-thru restaurant in that it will increase the volume of criminal activity, loitering, vandalism, graffiti and garbage around the Tennyson Shopping Center.

I respectfully request this matter be set up for a public hearing before the Planning Commission.

Sincerely,

A handwritten signature in cursive script that reads "Cynthia Lee Hertz".

CYNTHIA LEE HERTZ

Property Manager Tennyson Center  
510-531-0820

**MARTIN HERTZ ASSOCIATES**

Commercial Investment Real Estate  
P.O. Box 13158, Oakland, California 94661 (510) 531-0820  
FAX: (510) 531-0838

ATTACHMENT E

# EDEN REALTY

P. O. Box 126  
San Lorenzo, CA 94580  
(510) 537-8181  
Fax: (510) 537-8338

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MAY 28 2003

PLANNING DIVISION

May 23, 2003

Tim R. Koonze, Assistant Planner  
Planning Department  
City of Hayward  
777 B St.,  
Hayward, CA 94541

Re: PL-2002-0577 UP  
Jack in the Box – Increase in Operating Hours  
Planning Commission Hearing, June 26, 2003

Dear Mr. Koonze:

I am the Property Manager for the Tampa Square Complex at the corner of Tampa and Forselles in Hayward. Our Apartments #7 through #12 (six total) abut the drive-through area, with the apartments' bedroom windows directly opening onto Jack in the Box's drive-through area.

On November 5<sup>th</sup>, 2002, I wrote you expressing our concerns in regards to this Application. Since then, we have had extensive discussions with the store manager, Mr. William Wong, and the Applicant, Ms. Virginia Fanelli, and we have developed a plan to address these concerns.

- 1) That they have turned down the volume on the drive-through speaker to a level that is not readily heard inside apartments 7 through 12.
- 2) That they have posted signs on the property to ask patrons to turn down their car stereos and to keep the volume down while they are on the premises.
- 3) That from 6:00 p.m. to 6:00 a.m., they have closed off the rear parking area next to apartments 7 through 12, so that no one parks there in the evening hours to eat their meals.
- 4) That they will have an unarmed guard on the premises from 6:00 p.m. to 3:00 a.m., seven days per week to enforce the above conditions when the drive-through is in operation during those hours.

ATTACHMENT F

Tim R. Koonze, Assistant Planner  
Planning Department  
City of Hayward  
Re: PL-2002-0577 UP

Jack in the Box – Increase in Operating Hours  
May 23, 2003  
Page Two

- 5) That they will continue their efforts to remove Jack in the Box litter from the surrounding streets on a daily basis.

These efforts have been in place on a trial basis since March 1, 2003, and have satisfactorily addressed most of our concerns. The only remaining item is a visual screening of apartments 7 through 12 from the store area. We request an additional condition requiring that the Applicant plant and maintain appropriate trees in the Planting Area to provide a natural cover from the parking area for these apartments

We have spoken with the Applicant and they have agreed in principal to our request.

I have surveyed our residents and they are have not voiced any objections with the above conditions. I have also spoken to Mrs. Weinreb, the owner of the property, and it is my understanding that she contact you directly to confirm that she will not object to the 24-hour drive-through operations, so long as all of the above conditions are followed at all times.

The above conditions satisfy all of our concerns as well.

In addition, we appreciate the good faith efforts of Ms. Fanelli and Mr. Wong, to develop effective solutions to our issues.

Thank you for the opportunity to present our concerns to you. Please contact us if you have any questions or concerns.

Respectfully yours,

EDEN REALTY



Thomas R. Silva CPM

cc: Ms. Weinreb  
Ms. Fanelli  
Ms. Clark and residents of Apts. 7-12

Ilene Weinreb  
65 Hiller Drive  
Oakland, CA 94618

Phone: 510-540-5666  
fax: 510-540-7321  
email: weinreb@telis.org

RECEIVED

May 27, 2003

MAY 30 2003

Tim R. Koonze, Assistant Planner  
Planning Department  
City of Hayward

PLANNING DIVISION

Re: PL-2002-0577 UP -- Jack in the Box-- Increase in Operating Hours

Dear Mr. Koonze:

I am the Property Owner of the Tampa Square Complex at the corner of Tampa and Forselles in Hayward. My apartments #7 through #12 abut the drive-through area of the Jack in the Box.

My property manager, Tom Silva, wrote you about our concerns in regard to this application. Since then he has had extensive discussions with the store manager, Mr. William Wong, and the applicant, Ms. Virginia Fanelli, and developed a plan to address our concerns. There were five concerns (see Tom Silva's letter of May 23, 2003). They have addressed these concerns (except for the planting of trees which they say they will do in the immediate future) on a trial basis. This trial has been satisfactory and I do not object to them operating on a 24 hour basis as long as all of the conditions are followed at all times.

If this does not happen, I would expect the permit to immediately be withdrawn. I trust the operation will continue in a satisfactory manner.

I appreciate the good faith efforts of Ms. Fanelli and Mr. Wong to develop effective solutions to our issues.

Yours truly,



Ilene Weinreb, Owner

ATTACHMENT G



# Fanelli Consulting, Inc.

*Land Planning / Property Management / Real Estate Broker*

RECEIVED

JUN 17 2003

June 16, 2003

PLANNING DIVISION

Planning Commission  
City of Hayward  
777 B Street  
Hayward, CA 94541

RE: PL-2002-0577 UP

Dear Planning Commissioners:

On behalf of Jack In The Box, we are writing this letter regarding our application for 24-hour operation of the Jack In The Box restaurant located at 1075 W. Tennyson Road.

We are aware that businesses that operate 24 hours a day are usually discouraged by Planning Departments in the belief that the extended hours can be a source of problems for the neighbors and the community. We are also aware that many businesses are very successful with 24-hour operations because they work closely with the neighbors and community to address their particular concerns and issues.

On October 17, 2002, we made an application with the City of Hayward to extend the hours of the drive thru portion of the restaurant to 24 hours. The Planning Department notified the neighbors of our application and 3 letters opposing the application were received by the city. We then requested that our hearing on this application be postponed to allow us to meet with and work with the neighbors.

The past several months we have met with neighbors and we have participated in the local community group that is working with the police department on neighborhood issues in order that we may fully understand how we can help improve some of the problem situations.

As a result of these meetings we have done the following:

- Hired security to patrol the site from 7:00 P.M. to 1 hour after closing. With approval for 24-hour operation, the hours will be from 7:00 P.M. to 3:00 P.M. which are the hours when the neighborhood experiences the most problems.
- Closed off the rear parking area after dusk to prevent juveniles gathering near the apartments.

- Reduced the sound from speaker board.
- Posted signs requesting all loud radios be turned off while on site.
- Instituted a twice a day trash pick-up along our street frontage and that of our immediate neighbors, extending to cover part of Tampa.
- Installed additional receptacles for trash along the drive thru and around the building,
- Donated award coupons to the local school which may be used for special events.
- Donated paper products for school activities.

We are very pleased that the neighbors who at first objected to our application have favorably received these efforts, on the part of Jack In The Box. You have letters from some of them in your packet stating they now support our application. We know that our restaurant is important to the community, as we have obtained many signatures from people who would like us to have a 24-hour operation so we can better serve those who work late or swing shifts. These will be submitted to you at your meeting.

We realize that our efforts will not completely remove all problems on site or in the area. However, we believe that these efforts on our part will continue to be well received by the neighborhood.

We are asking for your approval for a 24-hour drive thru operation. Jack In The Box operates this restaurant site and the corporation is firmly committed to making the restaurant a positive part of your community.

Very truly yours,



Virginia Fanelli  
President

Cc: Tim Koonze, Assistant Planner  
Dyana Anderly, Planning Director  
Angelina Reyes, City Clerk  
Earl Fisher, Jack In The Box

**Conditions of Approval**  
**UP 80-105**  
**Jack-in the-Box**  
**1075 West Tennyson Road**

1. All improvements indicated on the approved site and landscape plan, as amended by staff and labeled Exhibit "A", must be installed prior to authorization for gas or electric meter service.
2. After initial installation, all plantings must be maintained, including replacement where necessary.
3. Within all new landscape areas, a complete automatic sprinkler system with an automatic on/off mechanism shall be installed.
4. Where any landscaped area adjoins driveways and/or parking areas, Class "B" Portland Cement concrete curbs shall be constructed to a height of six (6) inches above the finished pavement.
5. Each parking space shall be provided with a Class "B" Portland Cement concrete bumper block or continuous concrete curb not less than six (6) inches above the finished pavement.
6. The premises shall be kept clean, and the operator shall endeavor to see that no trash or litter originating from the use is deposited on neighboring properties.
7. No obnoxious odors shall be generated on the site.
8. Noise levels measured at the property line shall not exceed the level of background noise normally found in the area. If a noise problem develops in the speaker box or from customer traffic on the site which cannot be resolved by mitigation measures, the matter will be referred to the Board of Adjustments for review with the possibility of removing the exterior speaker box or taking other mitigation measures deemed appropriate by the Board at that time.
9. Management of the use shall take necessary steps to assure the orderly conduct of employees, patrons, and visitors on the premises.
10. A copy of these performance standards and all use permit conditions of approval shall be posted alongside the necessary business licenses and be visible at all times to employees of the establishment.
11. Outside utility meters, when not enclosed in a cabinet, shall be screened allowing sufficient distance for reader access.
12. The developer shall contact the Fire Prevention Bureau for the location of standpipe systems, first aid fire appliances, and/or Fire Department connections.
13. Open storage is prohibited in paved parking area.
14. A minimum of six concrete trash receptacles shall be provided on the site including two (2) receptacles on the abutting church property, and the design and location shall be approved by the Planning Director.

15. During construction of the drive-in, a minimum of ten (10) parking spaces shall be available for patrons.
16. Mechanical equipment such as air conditioners shall be prohibited on the roof, unless screening and installation is approved, as approved by the Planning Director.
17. Prior to issuance of any sign permit, the Planning Director shall review the proposed signs to insure the sign size is in proportion to the building and located attractively either on the building or on a freestanding structure.
18. Violation of conditions is cause for revocation of permit after public hearing before the duly authorized review body.
19. Any lights provided to illuminate the development/paved parking area shall be arranged so as to reflect the light away from the abutting residential uses.
20. The hours of operation shall be 6:00 a.m. to 12 midnight, Sunday through Thursday and 6:00 a.m. to 2:00 a.m., Friday and Saturday.
21. A Right Turn Only sign shall be installed at ingress from Tampa entering the site.
22. Driveway easement from Tampa to the site to be landscaped to delineate as a driveway.
23. Prior to issuance of a building permit, a site grading and drainage plan, prepared by the owner, shall be approved by the City Engineer.
24. Prior to issuance of a building permit, a revised landscape plan and complete irrigation plan shall be submitted for review and approval by the Parks Superintendent.
25. Prior to issuance of a building permit, the lot line adjustment application shall be approved on the three parcels or combined into one recorded parcel.
26. Prior to connection of utilities, the irrigation system shall be installed.

**FINDINGS OF DENIAL OF 24-HOUR OPERATION  
and  
FINDINGS FOR APPROVAL OF ADDITIONAL CONDITIONS OF APPROVAL**

Use Permit No. P1-2002-0577  
Jack-in-the-Box  
Anthony Poligono (Operator/Applicant)  
Foodmaker Inc. (Owner)  
June 26, 2003

- A. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305, Class 5 (a), Minor Alteration in Land Use Limitations.
- B. The proposed 24-hour drive-up window is not desirable for the public welfare as it may foster late night loitering and increase the need for police surveillance. The property has a history of crime activity and unacceptable noise during late night hours of operation.
- C. The proposed 24-hour drive-up window will impair the character and integrity of the neighborhood by enticing late night activity to occur which is conducive to criminal activity.
- D. The proposed 24-hour drive-up window will be detrimental to the safety and welfare on the neighborhood by enticing late night activity to occur which is conducive to criminal activity.
- E. The project lies within the Harder-Tennyson Neighborhood Plan which encourages support of the police to help reduce the crime rate and increase the public's safety. The Police Department is recommending against the extended drive-up window hours to keep citizen activity down to a minimum during late night and early morning hours in order to curb undesirable actions.
- F. The proposed conditions of approval requiring the daily collection of litter within 300 feet of the perimeter of the site is consistent with the strategy of the Harder-Tennyson Neighborhood Plan requiring the daily pick-up of litter surrounding fast food restaurants.
- G. The proposed condition of approval assuring the orderly conduct of employees, patrons, and visitors on the premises, is consistent with the policy of the Harder-Tennyson Neighborhood Plan to increase public safety.
- H. The proposed condition of approval requiring the posting of signs requesting patrons to reduce the volume of their car stereos will help assure the public welfare by striving to maintain acceptable living conditions for residents within the apartment units that are adjacent to the restaurant.

**CONDITIONS OF APPROVAL**

Use Permit No. P1-2002-0577

Jack-in-the-Box

Anthony Poligono (Operator/Applicant)

Foodmaker Inc. (Owner)

June 26, 2003

1. Employees shall daily pick-up the trash originating from the site that is deposited on adjacent properties within 300 feet of the perimeter of the site.
2. The manager shall take whatever steps are necessary to assure the orderly conduct of employees, patrons and visitors on the premises, including hiring security guards if necessary.
3. Signs shall be posted on the property requesting patrons to reduce the volume of their car stereos.