CITY OF HAYWARD
AGENDA REPORT

Meeting Date 1/22/04
Agenda Item 3

TO: Planning Commission

FROM: Richard E. Patenaude, Principal Planner

SUBJECT: Revocation of Use Permit Application No. 80-3 for an Auto Wrecking Facility (E&J Auto Wreckers) – Daniel Wheat (Owner) -The Project Is Located at 2851 West Winton Avenue in the Industrial (I) District

This item is being continued from December 11, 2003.

CITY OF HAYWARD
AGENDA REPORT

Meeting Date 12/11/03
Agenda Item 4

TO: Planning Commission

FROM: Richard E. Patenaude, Principal Planner

SUBJECT: **Revocation of Use Permit Application No. 80-3 for an Auto Wrecking Facility (E&J Auto Wreckers) – Daniel Wheat (Owner)**

The Project Is Located at 2851 West Winton Avenue in the Industrial (I) District

RECOMMENDATION:

Staff recommends that the Planning Commission find the project categorically exempt from CEQA and revoke Use Permit No. 80-3 for an existing auto wrecking facility subject to the attached findings.

DISCUSSION:

An auto wrecking facility has operated at 2851 West Winton Avenue since 1958. The use permits granted for this property required on-going renewals, generally every 5 years. However, the most recent approval was on November 17, 1980, by the *Board of Adjustments* (see attached minutes).

The *Board*, anticipating the installation of a storm drainage system to serve this area, required administrative renewals at six-month intervals or until a design of a drainage system and method for implementation were established and accepted by the City Engineer, whichever occurred first. The conditions of approval required that, at such time as the drainage system was available, new plans were to be submitted to the City, which included an on-site drainage plan, a landscape plan, an irrigation plan, a parking plan, and a fence design. The conditions of approval further required that "at that time, the Board of Adjustments shall reconsider renewing use permit for a long-term period (i.e., 10 to 20 years)." Other conditions of approval required agreements with the City to install street improvements and utility extensions.

By 1990, the storm drainage system was installed by Marathon Corporation as part of the development of the industrial park to the north of the E&J and Pick-Your-Part auto wrecking yards. Installation of this system also enabled the setting of the grades for the street and utility improvements in West Winton Avenue and triggered the requirement for an applicant for renewal of the use permit.

In November 1990, William J. and Patsy R. Wheat submitted an application to renew the use permit; only William J. Wheat signed the application. In 1991, City staff informed Mr. Wheat that, in order to complete processing of the use permit application, an Environmental Impact Report would have to be prepared, at the expense of the applicant. Mr. Wheat disputed this determination and initiated litigation challenging the decision to require an EIR. During the pendency of legal proceedings, William Wheat died, and his son, Daniel Wheat, assumed the operation of the business. The matter ultimately went to the appellate court, which decided, in April 1994, that the circumstances justifying the preparation of an EIR had not been established. The City requested a new signature on the application in July 1994 from his successor, Daniel Wheat. City staff worked with the Wheat's consulting civil engineer through 1997 regarding the preparation of plans and a new application, and draft project conditions were developed; however, a complete application was not received.

Most recently, a new application was submitted in September 1999. This application was deemed incomplete, and requests for the required information were made in October 1999, April 2000 and August 2001. The applicant was informed that the auto wrecking facility continues to operate without a valid use permit and that the City could seek an order for cessation of operations. At this time, The City has yet to receive a complete application and the conditions of approval of Use Permit No. 80-3 remain unsatisfied.

The Planning Commission may revoke a Conditional Use Permit when it finds that the manner in which a use is conducted, managed or operated impairs the character and integrity of the zoning district and surrounding area; and the applicant has not fully complied with all conditions of approval or improvements indicated on the approved development plan and modification of the conditions would not be in the public interest or would be detrimental to the public health, safety or general welfare. Besides disregarding the conditions of approval, the applicant has failed to submit a complete use permit application as required by the 1980 approval. The unmet conditions of approval include the requirement to enter into an agreement with City to install street improvements, the storm drainage system, an extension of sewer and water mains, and to participate in the benefit district established for the storm drain system. Operational conditions that remain unmet include requirements to make fence and parking improvements, provide adequate sewage disposal, and conform to sign regulations.

Revocation of the Conditional Use Permit would require E&J Auto Wreckers to cease operation. Should the Planning Commission revoke the Use Permit, the applicant may appeal the decision to the City Council.

ENVIRONMENTAL REVIEW:

The proposed action qualifies for a Categorical Exemption under Section 15321 (Enforcement Actions by Regulatory Agencies) of the California Environmental Quality Act (CEQA) Guidelines.

PUBLIC NOTICE:

On December 1, 2003, a Notice of Public Hearing was mailed to every property within 300 feet of the property.

CONCLUSION:

The City has supported renewal of the use permit for the auto wrecking facility at this location subject to connection to the storm drainage system and compliance with the conditions of approval. However, the business has neither submitted a new application for renewal of its use permit nor has it complied with its conditions of approval; the 1980 conditions are minor for this type of business and ensure that the auto wrecking facility will be minimally regulated and controlled such that it will not be detrimental to the surrounding neighborhood or businesses. The applicant has been asked on several occasions to submit an application to renew the use permit to avoid this revocation action.

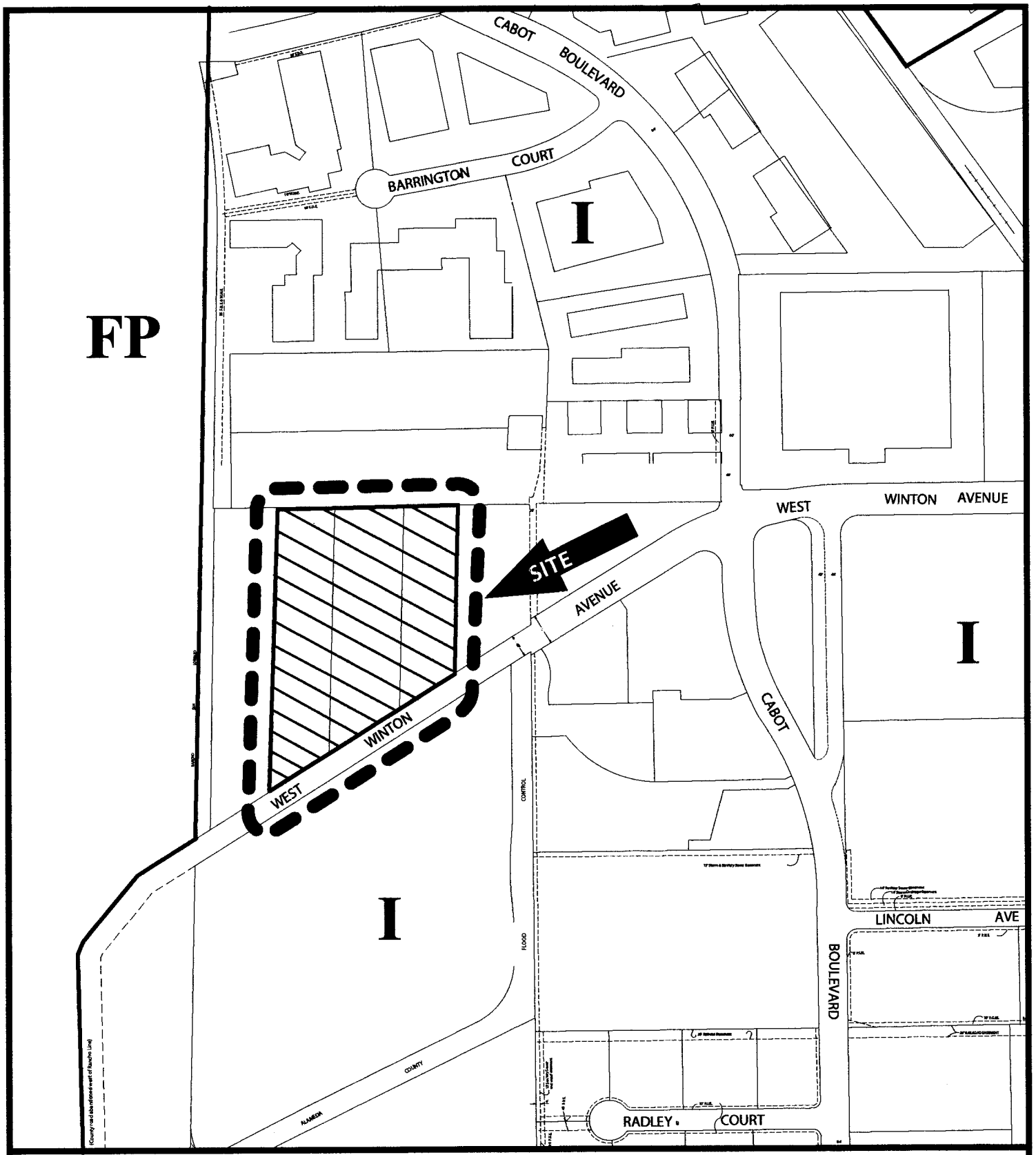
Prepared by:

Richard E. Patenaude, AICP
Principal Planner

Recommended by:

Dyana Anderly, AICP
Planning Manager

ATTACHMENTS:
A. Area Map
B. Conditions of Approval – 11/17/80
C. Findings for Revocation of Use Permit
D. Correspondence between David Lanferman/City of Hayward



Area & Zoning Map

Address: 2885 West Winton Ave.
Applicant: E & J Auto Wrecker
Facility/Daniel Wheat

FP-Flood Plain
I-Industrial

North

ATTACHMENT A

At this point, staff cautioned the Board to take action on each item separately and reminded the Board that the recommended short-term improvements did not involve any large expenditures of funds.

WITH THE FINDING THAT THE PROJECT WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT, IT WAS MOVED (BACHLE/MARTINO) AND UNANIMOUSLY CARRIED (PERRY ABSENT) THAT USE PERMIT APPLICATION NO. 80-3 TO CONTINUE AN AUTO WRECKING YARD ON A THREE-ACRE PARCEL AND WITHIN A 40' X 80' BUILDING, BE TEMPORARILY APPROVED, SUBJECT TO AUTOMATIC ADMINISTRATIVE RENEWAL, UNTIL SUCH TIME AS A DESIGN FOR A DRAINAGE SYSTEM AND METHOD FOR IMPLEMENTATION HAVE BEEN ESTABLISHED, ACCEPTABLE TO THE CITY ENGINEER, AND WITH IMPROVEMENTS TO BE CONSTRUCTED AS OUTLINED ON THE PLANS ENTITLED, "Plot Plan for Automobile Wrecking Yard for Ernest and Maryln Wheat, drawn by Richard A. Bohn A.I.A., on Sheet 1 (Job #1677), dated August 18, 1977," AS AMENDED BY STAFF AND MARKED EXHIBIT "A," WITH THE FINDING THAT, SUBJECT TO THE CONDITIONS IMPOSED, THE PROPOSED USE WILL NOT BE DETRIMENTAL TO THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE.

WITH THE FINDING THAT THE PROJECT WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT, IT WAS MOVED (BACHLE/BOWERS) AND UNANIMOUSLY CARRIED (PERRY ABSENT) THAT USE PERMIT APPLICATION NO. 80-13 TO CONTINUE TWO EXISTING AUTO WRECKING YARDS ON PARCELS CONTAINING APPROXIMATELY FOUR ACRES, AND ALSO TO USE APPROXIMATELY ONE ACRE FOR STORAGE AND PROCESSING (RECYCLING) OF CARDBOARD, BE TEMPORARILY APPROVED, SUBJECT TO AUTOMATIC ADMINISTRATIVE RENEWAL, UNTIL SUCH TIME AS A DESIGN FOR A DRAINAGE SYSTEM AND METHOD FOR IMPLEMENTATION HAVE BEEN ESTABLISHED, ACCEPTABLE TO THE CITY ENGINEER, AND WITH IMPROVEMENTS TO BE CONSTRUCTED AS OUTLINED ON THE PLANS ENTITLED, "Use Permit Plan for W. Fruge Junk Co., on Sheet #1 (Job #2052E-1), dated 12/10/79, and Sheet #2 (Job #2052E-3), dated 12/28/79," AS AMENDED BY STAFF AND MARKED EXHIBIT "A," WITH THE FINDING THAT, SUBJECT TO THE CONDITIONS IMPOSED, THE PROPOSED USE WILL NOT BE DETRIMENTAL TO THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE.

WITH THE FINDING THAT THE PROJECT WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT, IT WAS MOVED (MARTINO/LAPLANTE) AND UNANIMOUSLY CARRIED (PERRY ABSENT) THAT USE PERMIT APPLICATION NO. 80-14 TO CONTINUE OPERATION OF AN EXISTING TRUCK WRECKING YARD ON A TWO-ACRE PARCEL BE TEMPORARILY APPROVED, SUBJECT TO AUTOMATIC ADMINISTRATIVE RENEWAL, UNTIL SUCH TIME AS A DESIGN FOR A DRAINAGE SYSTEM AND METHOD FOR IMPLEMENTATION HAVE BEEN ESTABLISHED, ACCEPTABLE TO THE CITY ENGINEER, AND WITH IMPROVEMENTS TO BE CONSTRUCTED AS OUTLINED ON THE PLANS ENTITLED, "Use Permit Plan for W. Fruge Junk Co., on Sheet #1 (Job 2052E-1), dated 12/10/79, and Sheet #2 (Job #2052E-3), dated 12/28/79," AS AMENDED BY STAFF AND MARKED EXHIBIT "A," WITH THE FINDING THAT, SUBJECT TO THE CONDITIONS IMPOSED, THE PROPOSED USE WILL NOT BE DETRIMENTAL TO THE PUBLIC HEALTH, SAFETY, AND GENERAL WELFARE.

The conditions of approval for Use Permit Application Nos. 80-3, 80-13, and 80-14 are as follows:

1. All use permit approvals shall be for a period of six months, subject to administrative renewal by the Planning Director for additional six-month periods or until a design for a drainage system and method for implementation have been established and accepted by the City Engineer, whichever occurs first.

2. Within thirty (30) days after approval of the Use Permit, the property owner shall execute an agreement with the City obligating the owner to install:

a. Across his property frontage on West Winton Avenue

(1) Curb, gutter, sidewalk and pavement of one-half of the ultimate width of the street pavement,

(2) Any required storm drainage system;

b. Utilities

Extension of a City sanitary sewer and water main to and across his property frontage;

c. Area Storm Drainage

To participate in any benefit district, assessment district, etc. established for the purpose of providing a storm drainage system to serve his property;

d. Upon availability of a public storm drainage system, the property owner shall submit an on-site drainage plan to the City for approval by the City Engineer and the Board of Adjustments. At the same time, a landscape plan, irrigation plan, parking plan, and fence design shall be submitted for review and approval by the Board of Adjustments. At that time, the Board of Adjustments shall consider renewing use permit for a long-term period (i.e., 10 to 20 years).

WITHIN 60 DAYS THE FOLLOWING CONDITIONS SHALL BE MET BY ALL OF THE ABOVE-LISTED APPLICANTS UNLESS SPECIFICALLY NOTED OTHERWISE:

3. A minimum 10-foot setback from the precise plan line shall be provided along the full frontage of each operator's property and shall remain free of litter and rubble.

4. Existing fencing shall be repaired, painted, and broken interwoven slats replaced where needed.

5. Materials shall be stacked no higher than the height of the fence, nor shall materials be stacked within 10 feet of the fence.

6. All off-street parking shall be installed and maintained as shown on the approved plot plans labeled Exhibit "A", and the following shall also apply:

a. A minimum of one handicapped parking stall (12' width) shall be provided.

b. All parking area and driveways shall be paved and maintained with 2-inch A.C. over 6-inch aggregate base or paved in concrete.

c. Each parking space shall be provided with a Class "B" Portland Cement concrete bumper block or continuous concrete curb not less than 6 inches in height above the finished pavement.

d. All parking spaces and circulation areas shall comply with the minimum Parking Ordinance standards as to location, dimensions, drainage, surfacing, and marking.

e. Parking spaces shall remain open and clear for visitors' or customers' use and shall not be used for storage or the unloading of abandoned or wrecked vehicles, parts, or other materials associated with the proposed use.

f. For 2695, 2711, and 2725 West Winton Avenue (Use Permit Application Nos. 80-13 and 80-14), the following shall apply:

(1) Each use on the properties shall provide a minimum of five (5) parking spaces plus one space for each 20,000 square feet of land under use plus,

(2) One space of adequate size shall be provided for each item of rolling stock equipment stationed on the premises.

g. For 2707 West Winton Avenue (Use Permit Application No. 80-13 - Fruge's Junk Yard), the following shall also apply:

(1) A minimum of 0.8 parking spaces per employee shall be provided and maintained for each employee.

7. A minimum 13-foot-wide access aisle shall be provided which shall divide material storage areas into aisles not exceeding 35 feet in width.

8. No vehicle loading or unloading shall take place on public streets or within the required parking area.

9. All operations and physical improvements shall be conducted in accordance with the requirements of all municipal, county, state, and special district codes and regulations.

10. Applicants individually shall make application to the Alameda County Road Department for installation of "No Parking" signs along both sides of West Winton Avenue for the area immediately in front of subject properties, and said signs shall be installed at the applicant's expense.

11. Adequate sewage disposal facilities shall be provided (e.g. a chemical toilet).

12. Adequate hand washing facilities shall be provided.

13. All signs shall conform to the Sign Regulations.

14. All construction, repair, reconstruction, destruction, alteration or abandonment of any well in the City of Hayward requires obtaining a permit therefor from the Director of Public Works, Alameda County. Any well that is discovered in the course of operations, the Director of Public Works of Alameda County shall be notified of its location.

15. Failure to comply with all conditions within 60 days shall constitute automatic scheduling of the matter before the Board of Adjustments to consider revocation of use permit(s) at a public hearing.

Chairman Billmire advised the applicants and those present of the ten days within which to appeal the Board's decision to City Council.

WITH THE FINDING THAT THE PROJECT WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT, IT WAS MOVED (BOWERS/JOSE) AND UNANIMOUSLY CARRIED (PERRY ABSENT) TO DENY THE REQUEST WITHIN USE PERMIT APPLICATION NO. 80-35 TO EXPAND THE OPEN AUTO STORAGE AREA ON THE ABUTTING PARCEL CONTAINING APPROXIMATELY 9.4 ACRES AND TO TEMPORARILY APPROVE THE REQUEST WITHIN USE PERMIT APPLICATION NO. 80-35 TO CONTINUE OPERATION OF AN EXISTING AUTO WRECKING YARD ON A 3.45-ACRE PARCEL, SUBJECT TO AUTOMATIC ADMINISTRATIVE RENEWAL, UNTIL SUCH TIME AS A DESIGN FOR A DRAINAGE SYSTEM AND METHOD FOR IMPLEMENTATION HAVE BEEN ESTABLISHED, ACCEPTABLE TO THE CITY ENGINEER, AND

FINDINGS FOR REVOCATION
USE PERMIT 80-3
E&J AUTO WRECKERS
2851 W. WINTON AVENUE

1. The action is categorically exempt under Section 15321 – *Enforcement Actions by Regulatory Agencies*, of the California Environmental Quality Act (CEQA) guidelines.

2. The auto wrecking facility is operating in violation of the conditions of approval of its use permit. The facility, as conditioned under a renewed use permit, would be properly regulated and controlled to ensure that the facility will not be detrimental to the surrounding neighborhood or businesses and to ensure that the public health and safety are provided, especially with respect to the migration of hazardous materials.

3. The auto wrecking facility is operating in violation of the conditions of approval adopted as part of Use Permit No. 80-3, which required that, within 30 days after approval of the use permit, the property owner shall execute an agreement with the City obligating the owner to install street improvements and any required storm drainage system; to extend City sewer and water mains across the property frontage; to participate in the benefit district established to provide a storm drainage system; and to submit an on-site drainage plan, a landscape plan, irrigation plan, parking plan and fence design upon availability of a public storm drainage system.

4. The auto wrecking facility is operating in violation of the conditions of approval adopted as part of Use Permit No. 80-3, which required that, within 60 days after approval of the use permit, existing fencing to be repaired or painted as needed.

5. The auto wrecking facility is operating in violation of the conditions of approval adopted as part of Use Permit No. 80-3, which required that, within 60 days after approval of the use permit, materials not be stacked higher than the perimeter fence nor within 10 feet of such fence.

6. The auto wrecking facility is operating in violation of the conditions of approval adopted as part of Use Permit No. 80-3, which required that, within 60 days after approval of the use permit, on-site parking improvements in conformance to approved plans and the City parking regulations.

7. The auto wrecking facility is operating in violation of the conditions of approval adopted as part of Use Permit No. 80-3, which required that, within 60 days after approval of the use permit, no vehicle loading or unloading may take place within required parking areas.

8. The auto wrecking facility is operating in violation of the conditions of approval adopted as part of Use Permit No. 80-3, which required that, within 60 days after approval of the use permit, adequate sewage disposal facilities be provided.

9. The auto wrecking facility is operating in violation of the conditions of approval adopted as part of Use Permit No. 80-3, which required that, within 60 days after approval of the use permit, all signs be in conformance with City sign regulations The auto wrecking facility is operating in violation of the conditions of approval adopted as part of Use Permit No. 80-3, which require connection to the available storm drainage system and the installation of street and utility improvements; this use permit expired in May 1981.

CITY OF
HAYWARD
HEART OF THE BAY

October 14, 1999

Daniel Wheat
E&J Auto Wreckers
2851 W. Winton Ave.
Hayward, CA 94545

RE: APPLICATION FOR CONDITIONAL USE PERMIT

Dear Mr. Wheat:

We have received 17 sets of the following plans from your civil engineer, Yev Philipovitch:

- Site plan;
- Street improvement plan;
- On-site improvement plans;
- Restroom floor plan; and
- Landscape & irrigation plan.

We appreciate the time Mr. Philipovitch has spent in order to submit these well-prepared plans, including several consultations with us.

However, the following information is required before we can determine that the application is complete:

- Completed application form (enclosed);
- Initial application fee of $200;
- Elevations and floor plans of all existing and proposed buildings (17 copies);
- Details of existing and proposed fences and walls;
- One reduced set of all plans
- Completed Fire Department Questionnaire (attached to the enclosed *Development Application Instructions*);
- Level 2 Subsurface Environmental Site Assessment/Site Assessment Report of Soil & Groundwater Contamination performed by qualified professionals

DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT
PLANNING DIVISION

777 B Street, Hayward, CA 94541-5007
Tel: 510/583-4200 Fax: 510/583-3649 TDD: 510/247-3340

ATTACHMENT D

We are anxious to complete the processing of this application and look forward to the receipt of the required materials. If you have any questions, please feel free to contact me at (510) 583-4213.

Sincerely,

Richard E. Patenaude
Associate Planner

Encl.

Cc: David P. Lanferman
Yev Philipovitch
Joan Borger, City Attorney
Penny Nakatsu, City Attorney
Tim Koonze, Development Services Specialist

DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT
PLANNING DIVISION

777 B Street, Hayward, CA 94541-5007
Tel: 510/583-4200 Fax: 510/583-3649 TDD: 510/247-3340

CITY OF
HAYWARD
HEART OF THE BAY

April 24, 2000

Daniel Wheat
E&J Auto Wreckers
2851 W. Winton Ave.
Hayward, CA 94545

RE: APPLICATION FOR CONDITIONAL USE PERMIT

Dear Mr. Wheat:

I notified you on October 14, 1999, that your application for a Conditional Use Permit to continue operating your existing auto wrecking facility is incomplete. In addition, you have previously been requested on other occasions over the last several years to complete the application process. However, you have not yet submitted the materials necessary to make your application complete and allow us to process your application.

The following information is required before we can determine that the application is complete:

- Elevations and floor plans of all existing and proposed buildings (17 copies);
- Details of existing and proposed fences and walls;
- One reduced set of all plans;
- Completed Fire Department Questionnaire; and
- Level 2 Subsurface Environmental Site Assessment/Site Assessment Report of Soil & Groundwater Contamination performed by qualified professionals

The City will not allow you to continue operating without the required Conditional Use Permit (CUP) in violation of the Hayward Zoning Ordinance and Municipal Code unless you take immediate steps to complete the CUP application process. If your application remains incomplete on May 19, 2000, the City will require you to cease all operation of the E&J Auto Wreckers business until you have obtained a use permit.

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
PLANNING DIVISION

777 B STREET, HAYWARD, CA 94541-5007
TEL: 510/583-4200 • FAX: 510/583-3649 • TDD: 510/247-3340

The City hopes that you will complete the processing of this application and look forward to the receipt of all of the required materials on or before May 24, 2000. If you have any questions, please feel free to contact me at (510) 583-4213.

Sincerely,

Richard E. Patenaude
Associate Planner

Encl.

Cc: David P. Lanferman
Jesús Armas, City Manager
Penny Nakatsu, City Attorney
Sylvia Ehrenthal, Planning Director
Dyana Anderly, Planning Manager

LANDELS
RIPLEY &
DIAMOND
ATTORNEYS
LLP

Hills Plaza
350 The Embarcadero
San Francisco, CA
94105-1250
Tel 415 512 8700
Fax 415 512 8750
www.landels.com

May 18, 2000

David P. Lanferman
dpl@landels.com

Richard E. Patenaude
Associate Planner
CITY OF HAYWARD
777 "B" Street
Hayward, CA 94541-5007

Re: Use Permit for E & J Auto Wreckers
28851 West Winton Avenue, Hayward
Our File No. 07584.00003

Dear Mr. Patenaude:

Our client, Dan Wheat, has asked that we respond to your letter dated April 24, 2000, regarding the progress and status of the Use Permit application for the continued operations of E & J Auto at this location.

At the outset, let me note that I contacted Penny Nakatsu in the City Attorney's Office and she suggested that I contact you directly to try to work out the remaining details involved in this application. Upon calling your office I was informed that you will be out of your office till Tuesday, May 23. However, as your last letter requested submission of all of the requested information "on or before May 24, 2000" [I am assuming that the inconsistent reference to "May 19" on the first page of the letter is an error], I am forwarding this letter at this time, in the hope that we will be able to discuss - and, perhaps, to finally resolve - the issues raised in your letter upon your return later this month.

Our client remains ready, willing and able to finalize this application process, and does NOT want the City to feel any need to threaten the continued operations of this business.

While you are certainly right to observe that this process has taken longer than either of us anticipated, it is also fair to note that Mr. Wheat and his engineer have attempted to work with the City staff, and that both sides have been somewhat hampered by the complications of dealing with neighbors, and other agencies. We also have had to try to keep up with the 'moving target' posed by the changing requirements that have been set out by the City and other agencies.

For example, we have been trying for some time to get a critical piece of information from the City which will heavily influence the design of the drainage at the site, namely, the amount of the drainage connection fee or assessment that may be payable to "Benefit District 398-92" when E & J connects a portion of its drainage to the Sulphur Creek Storm Drainage Pump Station. As currently configured on the plans previously submitted to the City by our engineer, Yev Phillipovich, only about 2/3 of the E & J site would drain to the Sulphur Creek line. We have tried to contact the City's Finance Office on several occasions, as you and Mr.

LANDELS RIPLEY & DIAMOND
ATTORNEYS LLP

Koonze have suggested, to obtain this information, without success. We also have inquired about the procedures for seeking abatement or relief from the drainage connection charges.

We also have concern about the reference to the request for a Level 2 Subsurface Environmental Site Assessment as a condition of having a complete application. There was no such requirement stated at the time E & J began this process, and under the terms of the Court's decision, we believe it is not appropriate to add a new condition such as this. You may recall that we previously voiced this reservation regarding the new environmental study at our meeting with Joan Borger at the City Attorney's Office. Also, as the City is well aware, Mr. Wheat has already spent very substantial amounts on similar environmental studies and compliance with NDPES permitting requirements and obtaining approvals from the Regional Water Quality Control Board. It is not clear why this new study might now be requested.

With this exception, I believe that our client and engineer will be able to provide the City with the additional information and documents requested in your most recent letter. I am not sure that these can all be provided within the time frame specified in your letter, but we will undoubtedly be able to provide you with the balance within a relatively brief period. Please bear in mind that Mr. Wheat himself is also eager to complete this process as he has already expended more money to buy a new office building which is simply awaiting a building permit prior to installation.

Please give me a call upon your return and review of this letter. I look forward to working with you to bring this to a satisfactory conclusion.

Very truly yours,

DAVID P. LANFERMAN

DPL/cln

cc: D. Wheat
Y. Philipovitch

CITY OF
HAYWARD
HEART OF THE BAY

August 13, 2001

Daniel Wheat
E&J Auto Wreckers
2851 W. Winton Ave.
Hayward, CA 94545

RE: APPLICATION FOR CONDITIONAL USE PERMIT

Dear Mr. Wheat:

I write this letter because neither you nor your attorney have responded to previous letters sent by City staff, which ask you to file a *complete* Conditional Use Permit application to continue operating your existing auto wrecking facility. I last notified you on April 24, 2000, that your application for a Conditional Use Permit is incomplete. In addition, you have received requests on other occasions over the last several years to complete the application process. However, you have not yet submitted the materials necessary to make your application complete and allow us to process your application.

The City will not allow you to continue operating without the required Conditional Use Permit, which places you in violation of the Hayward Zoning Ordinance and Municipal Code, unless you take immediate steps to complete the application process. If your application remains incomplete on September 14, 2001, the City will require you to cease all operation of E&J Auto Wreckers, and any ancillary business, until you have obtained a use permit.

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
PLANNING DIVISION

777 B STREET, HAYWARD, CA 94541-5007
TEL: 510/583-4200 • FAX: 510/583-3649 • TDD: 510/247-3340

The City anticipates receipt of the completed application, including all supporting documentation, on of before September 14, 2001. If you have any questions, please feel free to contact me at (510) 583-4213.

Sincerely,

Richard E. Patenaude, AICP
Acting Principal Planner

Cc: David P. Lanferman
Jesús Armas, City Manager
Maureen Conneely, Assistant City Attorney
Sylvia Ehrenthal, Planning Director
Dyana Anderly, Planning Manager

7B3-89478
Correspondence

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
ATTORNEYS AT LAW
SEVENTEENTH FLOOR
FOUR EMBARCADERO CENTER
SAN FRANCISCO, CALIFORNIA 94111-4106
TELEPHONE (415) 434-9100
FACSIMILE (415) 434-3947

WRITER'S DIRECT LINE
dlanferman@smrh.com

OUR FILE NUMBER
100-92189

August 17, 2001

Richard E. Patenaude, AICP
Acting Principal Planner
City of Hayward
777 B Street
Hayward, CA 94541-5007

Re: Application for Conditional Use Permit

Dear Mr. Patenaude:

Our client, Dan Wheat of E&J Auto Wreckers, has asked that I reply to your letter dated August 13, 2001.

I have represented E&J Auto Wreckers throughout this CUP process and have previously responded to all known City communications on behalf of E&J. I am not aware of any "previous letters sent by City staff" to which we have failed to respond.

My clients and I take this CUP matter very seriously; my clients have expended a very substantial amount of money over the past few years attempting to comply with the City's CUP requests and are anxious to have this matter successfully resolved.

My files reflect that our last contacts with City staff occurred last Spring. Apparently you sent Mr. Wheat a letter on April 24, 2000; I sent you a reply by letter dated May 18, 2000 (copy enclosed). I have no record of any City response to the questions raised by my letter, and apparently there have been no communications by the City since that time.

Accordingly, we again reiterate our clients' desire and intention to successfully complete the CUP process as stated in my letter of May 18, 2000. We have believed that "the ball was in the City's court" with regard to continuing the processing of this CUP application.

Mr. Wheat will be out of town for the next week or so, but upon his return we would be glad to talk with you or other members of City staff to try to get answers to our questions and to move this CUP application forward.

Please note my new location for your files. Thank you.

Very truly yours,

David P. Lanferman

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

cc: Daniel Wheat
Maureen Conneely, Assistant City Attorney

CITY OF
HAYWARD
HEART OF THE BAY

October 30, 2003

Daniel Wheat
E&J Auto Wreckers
2851 W. Winton Ave.
Hayward, CA 94545

RE: INCOMPLETE USE PERMIT APPLICATION

Dear Mr. Wheat:

The City of Hayward remains concerned that your business continues to operate without a valid Conditional Use Permit; your original use permit required a new permit upon completion of the stormwater facility. You last made application for such permit in 1999; however, the application was incomplete (see attached letter dated October 14, 1999) and no attempt has been made to submit the required items to make it complete.

Please submit a complete application for a Conditional Use Permit by November 14, 2003. Should we not receive an application by this date, the City will begin proceedings to revoke your original use permit for failure to comply with its conditions of approval.

Should you have any questions regarding submittal of the application, please feel free to contact me at 510.583.4213 or Richard.Patenaude@ci.hayward.ca.us.

Sincerely,

Richard E. Patenaude, AICP
Principal Planner

cc: Maureen Conneely, Assistant City Attorney
David P. Lanferman, Lanferman, Fisher & Hashimoto, 3100 Mowry Ave., Ste. 300, Fremont, CA 94538

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
PLANNING DIVISION

777 B STREET, HAYWARD, CA 94541-5007
TEL: 510/583-4200 • FAX: 510/583-3649 • TDD: 510/247-3340

SHEPPARD MULLIN
SHEPPARD MULLIN RICHTER & HAMPTON LLP
ATTORNEYS AT LAW

17th Floor | Four Embarcadero Center | San Francisco, CA 94111-4106
415-434-9100 *office* | 415-434-3947 *fax* | ***www.sheppardmullin.com***

RECEIVED

NOV 17 2003

PLANNING DIVISION

David P. Lanferman
415-774-2996
dlanferman@sheppardmullin.com

November 14, 2003

Our File Number: 07B3-089478

VIA FACSIMILE AND FIRST CLASS MAIL

Richard E. Patenaude, AICP
CITY OF HAYWARD
Planning Division
Dept. Community/Economic Development
777 B St.
Hayward, CA 94541-5007
Facsimile: (510) 583-3649

Re: E & J Auto Wreckers/Daniel Wheat
2851 West Winton Ave., Hayward
Use Permit

Dear Mr. Patenaude:

Our client, E & J Auto Wreckers, has asked that we respond on their behalf to your letter dated October 30, 2003.

At the outset, let me point out that your recent letter makes reference to a letter apparently from the City dated October 14, 1999, which was supposed to be attached to your recent letter, but there was no such attachment. Also, please note my change of address for your files (your recent letter was apparently "copied" to me at an old address).

We are concerned by the statement in your letter which describes the E & J application as "incomplete." That is not our understanding, and indeed our client has gone to considerable trouble and expense to submit all of the various documents that the City requested over the years in the course of processing this application. We have replied to every communication from the City, and we believed our client's application to have been properly submitted some years ago. Please refer to my letters dated May 18, 2000, and August 17, 2001, responding to previous inquiries from the City.

I have no record of any reply from the City to my letter of August 2001.

Our correspondence makes it clear that E & J has sought to fully comply with the multiple (and variable) requirements from the City in processing an application for a renewed

Use Permit. Our client believes that it had completed its application, other than information that was under the City's control, and that the City should be able to proceed in considering the application on its merits. To the extent that any information is missing, it is information that we have been waiting for the City to provide, e.g., the storm water drainage situation.

Regardless, however, of how we have come to this particular point, please be assured that my client remains ready, willing and able to address the merits of his use permit application, and to work with City staff to attempt to obtain answers to any outstanding questions. We strongly object to the threat that the City may begin proceedings to revoke our client's permit, when he has sought in good faith to respond to all communicated City concerns.

We would, therefore, invite your office to contact either me or my client and to see what, if anything, needs to be done in order to have the City resume consideration of my client's application. Please feel free to contact me. Thank you for your consideration.

Very truly yours,

David P. Lanferman

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-SF:FPD\61392205.1

Enclosures (2)

cc: Maureen Conneely, Assistant City Attorney
Dan Wheat, E&J Auto Wreckers

CITY OF
HAYWARD
HEART OF THE BAY

December 1, 2003

David P. Lanferman
Sheppard, Mullin, Richter & Hampton LLP
17th Floor
Four Embarcadero Center
San Francisco, CA 94111-4106

RE: E&J Auto Wreckers / Daniel Wheat
2851 W. Winton Ave., Hayward
Use Permit

Dear Mr. Lanferman:

The City of Hayward has requested a *complete* Conditional Use Permit application to continue operating the existing auto wrecking facility most recently on three occasions: October 14, 1999; April 24, 2000; and August 13, 2001. None of the required materials depends on the possession of information under the City's control. However, the following materials necessary to make the application complete, and allow us to process your application, have never been submitted:

- Elevations and floor plans of all existing and proposed buildings (17 copies);
- Details of existing and proposed fences and walls;
- One reduced set of all plans; and
- Completed Fire Department Questionnaire.

Since the original application was made approximately four years ago, it will also be necessary to resubmit the following items:

- Completed and signed application form;
- Site plan;
- Street improvement plan;
- On-site improvement plans; and
- Landscape & irrigation plan.

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
PLANNING DIVISION

777 B STREET, HAYWARD, CA 94541-5007
TEL: 510/583-4200 • FAX: 510/583-3649 • TDD: 510/247-3340

After further evaluation, the Level 2 Subsurface Environmental Site Assessment/Site Assessment Report of Soil & Groundwater Contamination will not be required as part of the application package. For your information, however, the current fee for connection of this property to the storm drain system is approximately $75,000.

Continued operating of the auto wrecking facility without the required Conditional Use Permit places you in violation of the Hayward Zoning Ordinance and Municipal Code. A hearing before the Planning Commission to consider the revocation of the previously-approved use permit has been scheduled for December 11, 2003 at 7:30 p.m. in the Hayward City Council Chamber.

The City anticipates receipt of the completed application, including all supporting documentation, on or before December 11, 2003. If you have any questions, please feel free to contact me at (510) 583-4213.

Sincerely,

Richard E. Patenaude, AICP
Principal Planner

Cc: Daniel Wheat, E&J Auto Wreckers, 2851 W. Winton Ave., Hayward 94545
Maureen Conneely, Assistant City Attorney