



HAYWARD 880, L.L.C.

1002 TOWER BUILDING
1809 SEVENTH AVENUE
SEATTLE, WA 98101

April 26, 2011

Honorable Mayor Michael Sweeney and
Members of the City Council
City of Hayward
777 B Street, 2nd Floor
Hayward, California 94541

Honorable Mayor and Members of the City Council:

I am the managing member of Hayward 880, LLC, the owner of a five acre parcel at 2480 Whipple Road in the southern portion of the City of Hayward. This parcel is a distressed property, as our former anchor tenant, Circuit City, vacated the site following its bankruptcy in 2008. I have been working with the City staff for more than a month on a building permit application that would allow tenant improvements to be constructed for a new grocery store in the now vacant anchor tenant space.

This morning I received a distressing email from your Planning Manager, Richard Patenaude, informing me for the first time of a "PROPOSED MORATORIUM ON SUPERMARKETS IN HAYWARD." (Copy of email attached.) While this email was sent yesterday evening at 4:25 p.m., I did not receive it until this morning because I am currently traveling out of the country. I forwarded the email to my legal counsel, Kristina Lawson of Miller Starr Regalia, for a response, and she will be responding by separate correspondence. Because I am out of the country, it will be physically impossible for me to attend tonight's City Council meeting to express my significant concerns about the process by which this proscriptive ordinance was advanced, and the dire consequences such a moratorium will have for the Whipple Road shopping center and the City.

The Whipple Road shopping center is owned by a family partnership, and is our family's single largest asset. Following Circuit City's bankruptcy, our family has been subsidizing the shopping center at a significant cost. The center is currently 87% vacant, with no realistic prospective tenants for the shop space because of the absence of an anchor tenant. Notably, we have had no serious inquiries or offers in the past to lease the anchor space other than a chain of thrift stores. We declined to lease the anchor space to the thrift store chain because we felt such an anchor tenant would devalue the center.

For more than one year we have been working diligently on the lease transaction that resulted in the application we formally filed with the City's building department on March 23. This proposal represents the only viable opportunity to revitalize the distressed center. In these uncertain economic times, it would be a great disservice to the residents of Hayward for the City to squander the opportunity to revitalize the neighborhood at the southern gateway to the City.

Honorable Mayor Michael Sweeney
and Members of the City Council
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The supermarket moratorium, if adopted, will cost the City of Hayward future sales tax revenue and jobs. In addition, the moratorium will cause a loss of goodwill with the supermarket and greater development interests in the greater Bay Area, and will almost certainly cost Hayward other important opportunities. This is no way for a City to do business in an economy struggling to recover.

Moreover, the grave inequity associated with the proposed moratorium is clear. The third paragraph of the staff report makes clear that this moratorium has been directed specifically at the Whipple Road center owned by my family. By letter dated March 22, 2011, we informed the City of the proposed use, and submitted to the City thousands of dollars in necessary building permit and plan check fees. (Copy of letter attached.) I personally met with the Planning Manager on March 23, 2011 to file and discuss the application, and neither the proposed moratorium nor any other restriction on supermarket development were disclosed to me. It is simply not fair or reasonable to impose this moratorium on our building permit request after we have submitted a complete application to the City wherein we informed the City of our proposed grocery use.

As you should be aware, the Whipple Road center was fully entitled back in early 2004, pursuant to a conditional use permit (No. PL-2004-0039). This conditional use permit (copy attached) expressly requires that the center be occupied by "Retail Commercial Uses that have a regional/sub-regional marketing base and are listed in Section 10-1.1315a.(5) (Central Business District – Retail Commercial Uses)." **A supermarket is an expressly permitted, already entitled use under the terms of PL-2004-0039.** (Copy of section 10-1.1315 attached.)

We would appreciate the opportunity to bring more than 100 new jobs to the City of Hayward, and generate additional sales tax revenue for the City. It is simply incomprehensible to us how locating a new supermarket in a vacant, blighted shopping center poses a threat to the public health, safety or welfare.

At a minimum, we request that the Whipple Road center be expressly excluded from the moratorium. Our legal counsel will be present at your meeting this evening to express our concerns and answer any questions you may have.

Sincerely,

Daniel H. Temkin
Managing Member
Hayward 880, LLC

cc: City Manager
City Attorney

From: Richard Patenaude <Richard.Patenaude@hayward-ca.gov>
Date: April 25, 2011 4:35:14 PM PDT
To: "dan@temkinproperty.com" <dan@temkinproperty.com>
Cc: David Rizk <David.Rizk@hayward-ca.gov>, Sean Brooks <Sean.Brooks@hayward-ca.gov>
Subject: PROPOSED MORATORIUM ON SUPERMARKETS IN HAYWARD

Dan:

As you may have heard, the Hayward City Council will be considering adopting an interim urgency ordinance tomorrow (Tuesday) evening related to new supermarkets. The staff report for that item, which is item #4 on the Council's agenda, can be found on the City's website at:

<http://www.hayward-ca.gov/citygov/meetings/cca/2011/CCA11PDF/cca042611full.pdf> .

I would appreciate it if you could forward this e-mail to your potential tenant for the former Circuit City building. Please let David Rizk, Development Services Director, or Sean Brooks, Economic Development Manager, know if you have any questions.

Richard E. Patenaude, AICP

Planning Manager

City of Hayward

510.583.4213

IRS CIRCULAR 230 DISCLOSURE:

Pursuant to Treasury Regulations, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used or relied upon by you or any other person, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any tax advice addressed herein.

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HAYWARD 880, L.L.C.

1002 TOWER BUILDING
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SEATTLE, WA 98101

March 22, 2011

City of Hayward
Development Services Department – Building Division
City Hall Building
777 B Street
Hayward, CA 94541-5007
Attn: Damita Bell, Permit Supervisor

Re: 2480 Whipple Road

Dear Ms. Bell:

We are pleased to submit the attached application for a building permit to authorize tenant improvements at the former Circuit City building located at 2480 Whipple Road. Also included with this application is a check in the amount of \$4,000.00 for the necessary building permit and plan check fees. The re-leasing of the regional anchor space (34,000 sq. ft.) in this commercial retail center marks a first and crucial step in revitalizing the shopping center, which has struggled under high vacancy levels (currently 87% vacant) and diminished traffic since Circuit City's bankruptcy.

As you may be aware, the shopping center was fully entitled in early 2004, pursuant to Use Permit No. PL-2004-0039, and is currently occupied by a Starbucks, Quiznos, Ono Hawaiian Barbeque, and Wingstop. The proposed end-user for the anchor space at 2480 Whipple Road is a national retailer with a well-established regional marketing base. Among other things, the retailer will feature a wide variety of products for sale, including: fresh produce, meat and dairy, deli foods, bakery items, pet supplies, household supplies, health and beauty aids, and pharmaceuticals. It is anticipated that the national tenant will create approximately 100 new jobs in the City of Hayward, and will generate additional sales tax revenue for the City.

At the present time, we are precluded from releasing the identity of our new tenant because of its strategic marketing plan for the Northern California market. As the property owner, we are excited about this opportunity to revitalize the site, and look forward to providing the City with more detailed information in the months to come. As 2480 Whipple Road is the "gateway" to Hayward on the I-880 corridor, we hope City staff will share our excitement over the permanent retenuing of the anchor space.

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We believe this is an exciting opportunity for our shopping center and for the community, and would greatly appreciate the City expediting the permit process so that the necessary tenant improvements can be completed and the store can open in the near future. To that end, we would welcome any input regarding how we may best assist City staff in its review of the proposed plans. We understand from the project architects that following submission of our application, including required permit and plan check fees, that the City may be in a position to review the application in approximately ten business days.

If you have any questions regarding this application, please feel free to contact me personally, or you may also contact our representative in California, Ms. Kristina Lawson with Miller Starr Regalia's Walnut Creek office (925-941-3283).

We look forward to working with you on this exciting project.

Sincerely,
Hayward 880, L.L.C.



Daniel H. Temkin
Managing Member

cc: Kristina Lawson

CONDITIONS OF APPROVAL
Use Permit No. PL-2004-0039
2480 Whipple Road
Jim Towslee for PacLand/Batavia Holdings (Applicant)
Frank J. Warn, Inc. (Owner)



Planning Division

1. Use Permit No. PL-2004-0039 to accommodate construction of a commercial retail center consisting of a 34,000-square-foot regional retail building with two retail buildings of 5,100 and 6,000 square feet, shall be constructed according to these conditions of approval and the plans approved by the Planning Commission on March 25, 2004.
2. This approval is void one year after the effective date of approval unless prior to that time an extension is approved. Any modification to this permit shall require review and approval by the Planning Director. A request for a one-year extension-of-time, approval of which is not guaranteed, must be submitted to the Planning Division at least 30 days prior March 25, 2005.
3. If a building permit is issued for construction of improvements authorized by the site plan review approval, the site plan review approval shall be void two years after issuance of the building permit, or three years after approval of the application, whichever is later, unless the construction authorized by the building permit has been substantially completed or substantial sums have been expended in reliance upon the site plan review approval.
4. Unless otherwise required, all pertinent conditions of approval and all improvements shall be completed to the satisfaction of the Planning Director prior to final inspection and occupancy of any structures.
5. The permittee shall assume the defense of and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.
6. Violation of these conditions is cause for revocation of permit, after a public hearing before the duly authorized review body.
7. No outside storage of material, crates, boxes, etc. shall be permitted anywhere on site, except within the trash enclosure area as permitted by fire codes and within areas designated for outdoor display of merchandise for sale. No material shall be stacked higher than the height of the trash enclosure screen wall and gate.
8. Tenant management shall take reasonable necessary steps to assure the orderly conduct of employees, patrons and visitors on the premises to the degree that surrounding commercial uses would not be bothered and that loitering is not permitted.
9. Sidewalks and parking lots must be kept free of litter and debris and to minimize the amount of wind-blown debris into surrounding properties and streets. If pressure washed, debris must be

trapped and collected to prevent entry to the storm drain system. No cleaning agent may be discharged to the storm drain. If any cleaning agent or degreaser is used, washwater shall be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval, and conditions of the City wastewater treatment plant.

10. A minimum of two trash receptacles shall be placed at each customer entry to the primary building; one receptacle shall be placed at each customer entry in the "Shops" buildings. Trash receptacles shall be the same decorative, pre-cast concrete type with a self-closing metal lid.
11. No vending machines shall be displayed outside the building, except for newspaper racks.
12. The applicant, owner(s) and/or tenants shall maintain in good repair all building exteriors, walls, lighting, trash enclosure, drainage facilities, driveways and parking areas. The premises shall be kept clean. Any graffiti painted on the property shall be painted out or removed within seven days of occurrence.
13. The uses permitted in the "Shops" buildings shall be limited to those Retail Commercial Uses that have a regional/sub-regional marketing base and are listed in Section 10-1.1315a.(5) (Central Business District – Retail Commercial Uses). Other approved uses are banks, barber or beauty shops, and copying and mailing facilities. Other similar uses may be approved by the Planning Director with the determination that they support a regional/sub-regional marketing base. Prohibited uses include industrial uses, administrative and professional offices/services (except banks), automobile related uses, personal services (except barber or beauty shops), service commercial uses (except copying and mailing facilities), and residential uses.

Design

14. All roof mechanical equipment and any satellite dish shall be fully screened from the freeway and from ground-level view within 150 feet of the property.
15. Prior to occupancy and the installation of any signs, the applicant shall submit a Sign Permit Application to the Planning Director for review and approval, subject to the following:
 - a. compliance with the City of Hayward Sign Regulations;
 - b. the sign program may include one freeway-oriented sign and one monument sign;
 - c. the base and framing of any freestanding/monument sign shall reflect the architectural design, colors and materials of the building, and shall consist of pilasters on each side with a raised center panel to mimic the entry section of the Circuit City store;
 - d. only the letters, and the exterior ring, in the sign for the major tenant may be illuminated;
 - e. wall signs for tenants in the "Shops" buildings shall use individual channel letters;
 - f. directional signs shall not exceed 6 sq.ft. in area per face and 3 feet in height; and
 - g. the applicant/business operators shall not display any illegal banner signs, portable signs, inflatable signs, or other illegal signs on the property.
16. Exterior lighting for the establishment shall be maintained which is adequate for the illumination and protection of the premises but does not exceed a light level that provides glare to motorists, nor spills onto nearby properties, or up into the sky. The fixtures shall be designed to keep the light from spilling onto adjacent properties. Within the parking lot, the

minimum requirement is 1-foot candle of light across the entire surface. Luminaires shall be of a design that complements the architectural style of the building and the landscaping in developing a quality image of the City of Hayward and shall be approved by the Planning Director. The maximum height of the luminaires shall be no greater than the height of the structures unless otherwise permitted by the Planning Director. The lighting, and its related photometric, plan shall be reviewed and approved by the Planning Director.

17. The design of the metal awnings shall be appropriate to the mass of the building as determined by the Planning Director; details shall be submitted for approval prior to submittal of an application for building permit.
18. The pedestrian walkway between the "Shops B" building and the Circuit City building shall be delineated continuously by decorative paving subject to approval by the Planning Director. The portions of the walkway that cross vehicular drives shall be differentiated from the dedicated walkway, but the materials and colors of the various segments shall be coordinated.
19. The pedestrian "plazas" in front of the Circuit City store and the "Shops A" building shall architectural features, such as low walls, or landscape features to form a visual "barrier" between the vehicular and pedestrian areas.
20. The chain-link fence along the easterly property line (Shurgard) shall be replaced with a new chain-link fence with slats, subject to approval by the Planning Director.
21. The chain-link fence along the southerly and southwesterly property lines (Amaral Court and I-880) shall be replaced with a solid masonry wall with detailing to match the buildings, subject to approval by the Planning Director.
22. The chain-link fence between the project and the gas station shall be removed.
23. Changes in building color require the approval of the Planning Director.

Landscaping

24. The applicant shall submit detailed landscaping and irrigation plans prepared by a licensed landscape architect for review and approval by the City. Landscaping and irrigation plans shall comply with the City's Water Efficient Landscape Ordinance and the following requirements:
 - a. Parking areas shall include a minimum of one 15-gallon parking lot tree for every six parking stalls. The minimum dimension of any new tree well or landscape median shall be five feet, measured from back of curb.
 - b. Parking areas shall be buffered from the street and freeway with shrubs; their type and spacing shall create a continuous 30-inch high screen within two years.
 - c. All blank building façades, at the discretion of the Planning Director, shall be softened with a combination of vertical-growth landscape materials and vines on decorative trellises.
 - d. Above ground utilities (e.g. gas or electric meters, backflow devices) shall be screened from public view with shrubs.
 - e. Where any landscaped area adjoins driveways or parking areas, Class B Portland Cement concrete curbs shall be constructed to a height of six inches above the adjacent finished pavement.

- f. Street trees, low shrubs and groundcover shall be planted along Whipple Road. Trees shall be minimum 24-inch box planted 40 feet apart according to City Standard Detail SD-122.
 - g. Evergreen trees shall be planted every 20 feet along all interior property lines. Trees shall be minimum 15-gallon.
25. Landscaping shall be installed and a Certificate of Substantial Completion and an Irrigation Schedule shall be submitted prior to issuance of a Certificate of Occupancy.
26. Landscaping shall be maintained in a healthy, weed-free condition at all times and shall be designed with efficient irrigation practices to reduce runoff, promote surface filtration, and minimize the use of fertilizers and pesticides, which can contribute to runoff pollution. The owner's representative shall inspect the landscaping on a monthly basis and any dead or dying plants (plants that exhibit over 30% dieback) shall be replaced within ten days of the inspection. Trees shall not be severely pruned, topped or pollarded. Any trees that are pruned in this manner shall be replaced with a tree species selected by, and size determined by the City Landscape Architect, within the timeframe established by the City and pursuant to the Municipal Code.

Parking/Driveways

27. All parking stalls and maneuvering areas shall meet the minimum standards of the City Parking Ordinance. The parking areas shall be paved with either Portland cement or asphalt concrete and the area shall be striped to designate the parking stalls. The Planning Director shall approve the design of the driveway, curbing and materials to be used. Aisles, approach lanes, drive-through lanes and maneuvering areas shall be marked and maintained with directional arrows and striping to control traffic flow.
28. Vehicular circulation areas shall be signed as a fire lane and posted for no parking except within designated parking stalls and pick-up areas.
29. The primary Whipple Road driveway entry, between the property line and the first cross aisle, shall be enhanced with decorative pavement such as colored, stamped concrete (bomanite or equivalent), brick, concrete interlocking pavers, or other approved materials. The secondary driveway shall be so enhanced between the property line and the first parking space. The Planning Director shall approve the location, design and materials utilized.
30. A reciprocal, permanent and non-exclusive access and parking agreement shall be entered into between all project property owners/tenants and recorded prior to issuance of any building permit. Such agreement shall include the installation and maintenance of lighting and landscaping. The City Attorney shall approve such agreement.
31. The property owner(s) shall provide for vehicular access connections into parking and circulation areas on the adjacent properties, as shown on Exhibit A, to reduce the need for multiple street access points.

Building Division

32. The project plans shall include storm water measures for the operation and maintenance of the project for the review and approval of the City Engineer prior to occupancy. The project plan shall identify Best Management Practices (BMPS) appropriate to the uses conducted on-site to effectively prohibit the entry of pollutants into stormwater runoff. Prior to issuance of a building permit, a drainage plan shall be submitted that meets the approval of the Planning Director, and shall include the following:
 - a. That all storm water is conveyed into City of Hayward or Alameda County Flood Control District facilities.
 - b. Structural controls such as a CDS unit with oil absorbent material, a Vortechs system or other approved devices per applicant's discretion which accomplish the same shall be installed to intercept and treat storm water prior to discharging to the storm drain system. The design, location, and a maintenance schedule shall be submitted to the City Engineer for review and approval prior to the issuance of a building permit.
 - c. Erosion control measures to prevent soil, dirt and debris from entering the storm drain system during construction, in accordance with the regulations outlined in the ABAG Erosion and Sediment Control Handbook.
 - d. The labeling of all on-site storm drain inlets in the shopping center with "No Dumping - Drains to Bay," using approved methods approved by the City.
 - e. The cleaning of all storm drains in the shopping center at least once a year immediately prior to the rainy season (October 15th). The City Engineer may require additional cleaning.
 - f. No storm water shall be discharged to the sanitary sewer without a Wastewater Discharge Permit, which will be issued only if there is no feasible alternative. This means that if washing takes place in the trash area, the wash water shall be discharged to the sanitary sewer. If this area is covered and protected from storm water runoff, a permit is not necessary.
 - g. Drains in any wash or process area shall not discharge to the storm drain system. Drains should connect to an approved collection system. The collection system is subject to the review and approval of the City Engineer prior to the issuance of a building permit.
 - h. Truck loading docks shall be constructed so to prevent run-off of drainage from outside the dock; and to minimize the discharge of dock area flows to the storm drain.

33. The National Pollution Discharge Elimination System (NPDES) standards shall be met. A Notice of Intent permit is required from the Regional Water Quality Control Board prior to the start of any grading. The applicant shall submit a construction Best Management Practice (BMP) program for review and approval by the City prior to the issuance of any building or grading permits. These BMPs shall be implemented by the general contractor and all subcontractors and suppliers of material and equipment. Construction site cleanup and control of construction debris shall also be addressed in this program. The applicant is responsible for ensuring that all contractors are aware of all storm water quality measures and implement such measures. Failure to comply with the approved construction BMPs will result in the issuance of correction notices, citations or a project stop work order. The NPDES program shall include the following items:
 - a. Gather all construction debris on a regular basis and place them in a dumpster or other container, which is emptied or removed on a weekly basis. When appropriate, use tarps on the ground to collect fallen debris or splatters that could contribute to storm water pollution.

- b. Remove all dirt, gravel, rubbish, refuse and green waste from the sidewalk, street pavement, and storm drain system adjoining the project site. During wet weather, avoid driving vehicles off paved areas and other outdoor work.
 - c. Broom sweep the sidewalk and public street pavement adjoining the project site on a daily basis. Caked on mud or dirt shall be scraped from these areas before sweeping.
 - d. Install filter materials (such as sandbags, filter fabric, etc.) at the storm drain inlet nearest the downstream side of the project site prior to: 1) start of the rainy season (October 15), 2) site dewatering activities, or 3) street washing activities, 4) saw cutting asphalt or concrete, in order to retain any debris or dirt flowing into the City storm drain system as necessary. Filter materials shall be maintained and/or replaced as necessary to ensure effectiveness and prevent street flooding. Dispose of filter particles in the trash.
 - e. Create a contained and covered area on the site for the storage of bags of cement, paints, flammables, oils, fertilizers, pesticides or any other materials used on the project site that have the potential for being discharged to the storm drain system through being windblown or in the event of a material spill.
 - f. Never clean machinery, tools, brushes, etc. or rinse containers into a street, gutter, storm drain or stream.
 - g. Ensure that concrete/gunite supply trucks or concrete/plasters finishing operations do not discharge washwater into street gutters or drains.
34. Water Pollution Source Control requirements shall include but not be limited to the following:
- a. No polluted waters from HVAC units shall be discharged to the storm drain via roof drains. Uncontaminated condensate is acceptable for storm drain discharge.
 - b. All wastewater and washing operations shall be discharged to the sanitary sewer and not the storm drain, including mat cleaning and any washing of the trash area.
 - c. The sanitary sewer discharge from this facility shall be in compliance with all wastewater discharge regulations, prohibitions and limitations to discharge, including the 300-milligram per liter oil and grease limit. A monitoring structure (SD309) shall be constructed on the sewer lateral for each building.
 - d. Materials, gasoline spill, oil spill, heavy stains, radiator fluid, litter, etc. shall be picked-up by dry methods and sweeping so as not to pollute stormwater runoff.
 - e. All discharges and connections shall require approval from Water Pollution Source Control.

Utilities

35. Prior to issuance of a building permit, the developer shall submit gallon per minute demand to determine proper meter size.
36. Install Reduced Pressure Backflow Prevention Assembly per City of Hayward Standard Detail 202 on all domestic & irrigation water meters. All water meters shall have remote radio read capability.
37. Installation of a separate irrigation meter to avoid sanitary sewer charges on water used for landscape purposes is recommended.
38. Only Water Distribution Personnel shall perform operation of valves on the Hayward Water System.

39. Provide keys/access code/automatic gate opener to utilities for all meters enclosed by a fence/gate per Hayward Municipal Code 11-2.02.1.
40. Water service shall be made available subject to standard conditions and fees in effect at time of application. Allow 4-6 weeks from time of application to installation of water services.
41. Sanitary connections for the new retail building shall be subject to the review, approval, and conditions of the City wastewater treatment plant. Sanitary sewer main shall always end with a manhole.
42. All water mains shall be looped.
43. Any water or sewer services that cross CalTrans right-of-way will require a CalTrans permit.
44. Water mains and sanitary sewer mains shall have a minimum separation of 10 feet.

Public Safety

Access

45. Prior to start of combustible construction, an all-weather access road shall be installed for the development.
46. Design and engineering of the site access roads shall meet Fire Code requirements and shall be capable of sustaining 50,000 lb. gross vehicle weight (GVW).
47. Curbs shall be painted red at driveway entrances and along all landscape islands that are in the driveable path. Fire lane signage shall be installed throughout the parking lot in locations approved by the Fire Department. Signage shall meet Hayward Fire Department Standards.
48. Fire Department lock boxes shall be installed on each building in locations approved by the Fire Department.

Water Supply

49. Provide civil engineered (site improvement/grading/utility) drawings to the Fire Department for review and approvals.
50. Provide fire flow calculations for each on-site fire hydrant. Fire flows shall meet a minimum of 2,500 gallons per minute (gpm) at 20 PSI (50% allowance has been granted for automatic fire sprinkler systems within each building).
51. Type of fire hydrant(s) shall be double steamers, equipped with 2 - 4 ½" outlets and 1 - 2 ½" outlet.

52. On-site fire hydrants are allowed to share the same fire service laterals serving the fire sprinkler systems for each building, but shall be installed independent of the fire service laterals so that they remain operational when a fire sprinkler system is shut-down for service and/or repair.
53. On-site fire hydrants shall be installed in accordance to NFPA 14 Standards and Hayward Fire Department Standards.
54. On-site fire hydrants shall be maintained as a private fire hydrant system and it shall be the responsibility of the property owner to keep accurate service and maintenance records.
55. Crash posts may be required at each fire hydrant to prevent any potential impact damage from moving vehicles and/or equipment.

Building Construction

56. The development (each building) will require the proper submission of plans and permits to the City of Hayward.
57. Building construction shall be in accordance with the California Building Code (CBC) and applicable City Ordinances and Standards.
58. Building addressing shall be established for each building within the property. Address numbers shall be installed on each building in locations approved by the Fire Department.

Fire Protection

59. Each building shall be fully protected with an automatic fire sprinkler system designed and installed per NFPA 13 Standards. If there is no known tenant, sprinkler system densities shall meet Fire Department Standards with a minimum of .33gpm/3,750 sq.ft.
60. Each building shall have a dedicated underground fire service line designed and installed per NFPA 24 Standards. Underground fire service lines shall also meet City of Hayward Fire Department Standards (Detail #204) for installation of check valve, fire department connection (FDC) and post indicator valve (PIV).
61. Portable fire extinguishers shall be installed within each building (once a tenant is established).
62. Fire sprinkler system(s) shall be provided with central station monitoring for waterflow activity.
63. Each building shall have an exterior audible alarm device and an interior audible alarm device installed as part of the fire sprinkler system, which will activate upon any waterflow alarm.
64. Building address shall be installed in an approved location on the structure. Minimum size of numbers shall be 6" on contrasting background, visible and legible from the street.

65. There shall be no use and/or storage of any hazardous materials within each building unless reviewed and approved by the Fire Department.
66. Each tenant shall be required to obtain a City of Hayward business license prior to occupancy. At that time, if there are any hazards listed on the business license application for the proposed use, the Fire Department will impose additional requirements as needed.

Hazardous Materials

67. Prior to issuance of a building permit, provide and submit a completed Hayward Fire Department Chemical Inventory Worksheet Packet for each proposed building.
68. Prior to issuance of a building permit, submit copies of the Phase I Environmental Site Assessment with recommendations to the Hazardous Materials Coordinator, Hugh Murphy (510) 583-4924.
69. The current Crescent Trucking facility did not conduct the required facility closure in coordination with the Hayward Fire Department. Prior to issuance of a building permit, complete this requirement to ensure the proper handling and disposal of hazardous materials/waste(s) as well as other closure requirements for the facility.

Solid Waste

70. The owner(s) and/or tenants shall participate in the City's recycling program. The applicant shall clearly indicate the proposed location and dimensions of each enclosure, indicating whether the trash and recyclables will be compacted. The applicant must also indicate the number and type of refuse and recycling containers that will be used. The space and available capacity provided for the storage of trash must be the same size as that provided for recyclables. The procedure that must be followed regarding sorting and collection of recyclables is provided for in Section 3.2.02 of the Franchise Agreement.
71. A 6-inch wide curb or parking bumpers must be provided along the interior perimeter of trash enclosure walls to protect them from damage by the dumpster. A 6-inch wide parking bumper, at least 3 foot long, should also be placed between the refuse dumpster(s) and the recycling containers.
72. A minimum space of 12 inches must be maintained between the dumpster(s) and the walls of any trash enclosure and the recycling carts/dumpster to allow for maneuvering the dumpster(s). A drain to the sanitary sewer should be provided beneath the refuse dumpster(s) wherever wet waste, such as food waste, is generated and wherever can washing areas are located.
73. If any equipment/trash enclosure is gated, the gates and hinges must be flush with the enclosure wall. It is important to ensure that the gates open straight out and that the hinges and that the gate be flush with the enclosure wall, in order to allow adequate maneuverability of the equipment/dumpster in and out of the enclosure to service it. All trash enclosures shall be covered.

74. The applicant must ensure that there is adequate space for a garbage truck to service each dumpster. A 40-foot turning radius is adequate for garbage trucks.
75. The applicant is required to submit for review by the Solid Waste Manager an on-site recycling plan, which would be implemented during the entire demolition and construction phases. The plan must:
 - a. Show the anticipated start and completion dates of the project.
 - b. Estimate the quantities of construction and demolition waste that will be generated by the project.
 - c. Estimate the quantities of material that will be recycled and identify the facilities that will be used.
76. The applicant must ensure that construction and demolition debris is removed from the site by a licensed contractor as an incidental part of a total construction, remodeling, or demolition service offered by that contractor, rather than as a separately contracted or subcontracted hauling service using debris boxes, or is directly loaded onto a fixed body vehicle and hauled directly to a disposal facility that holds all applicable permits.
77. The applicant shall provide for adequate on-site storage capacity for recyclables within the buildings, including storage space for containers to store paper, glass/plastic/metal beverage containers, and other recyclables where these materials are generated.
78. The applicant shall ensure that the specifications of any compactor meet the approval of Waste Management.
79. The applicant must contact the City's franchised hauler, Waste Management of Alameda County, at 537-5500 to arrange for delivery of containers with sufficient capacity to store construction and demolition materials to be landfilled.

Engineering/Transportation Division

80. Developer must obtain an agreement from Target for the realignment of Target's main driveway on Whipple Road to line up with the Circuit City driveway. The design of the intersection caused by the alignment of the two driveways with Whipple Road shall be approved by the City Engineer. Changes to the Target site shall be approved by the Planning Director and plans shall include revised landscape plans. Improvement plans shall be approved prior to issuance of any grading permit. Improvements requirements due to this realignment shall be installed prior to occupancy of the project.
81. The developer shall design and install a traffic signal at the intersection of the aligned Circuit City/Target driveways with Whipple Road. The signal design shall include a timing plan for coordination and interconnection with the proximate signal(s) and shall be subject to approval by the City Engineer.
82. A preliminary soils report shall be submitted for review and approval of the City Engineer prior to the issuance of a building permit.

83. The applicant shall provide appropriate signage at project entrances and exits. Signage shall meet City standards. The applicant shall install "Right Turn Only" signs at the secondary, unsignalized, exit at Whipple Road.
84. All overhead utility lines along Whipple Road shall be placed underground.
85. Install a double-steamer fire hydrant on Whipple Road.
86. Install a standard street light on Whipple Road.
87. Remove and replace the cracked sidewalk along the Whipple Road frontage.
88. The applicant shall pay the appropriate Supplemental Building Construction & Improvement Tax prior to receipt of a certificate of occupancy.
89. Prior to commencement of any clearing, grading or excavation, the developer shall submit evidence to the City that a Notice of Intent (NOI) has been submitted to the State Water Resources Control Board.
90. The design of the drainage system shall be reviewed and approved by the Alameda County Flood Control District. The Hydrology & Hydraulics Criteria Summary, Alameda Flood Control & Water Conservation District, latest edition, shall be used to determine the storm drainage runoff.
91. Prior to the issuance of a grading permit and/or beginning of construction activity, the developer's engineer shall complete the Development Building Application Form Information, namely 1) Impervious Material Form and 2) Operation & Maintenance Information Form.
92. The developer/owner shall prepare a Maintenance Agreement for stormwater BMPs (available from Engineering & Transportation Division), and the Maintenance Agreement shall be recorded with the Alameda County Recorder's Office to ensure that the maintenance is bound to the property in perpetuity.
93. The applicant shall relocate the adjacent AC Transit/Union City Transit bus stop such that it can be placed along the Whipple Road frontage. The applicant shall pay for all relocation costs.



RECEIVED

APR 05 2004

PACLAND

March 30, 2004

Jim Towslee
PacLand/Batavia Holdings
1144 Eastlake Ave. East
Seattle, WA 98109

SUBJECT: USE PERMIT APPLICATION PL-2004-0039 – 2480 WHIPPLE ROAD, HAYWARD, CA – CIRCUIT CITY

Dear Mr. Towslee,

On March 25, 2004, the Hayward Planning Commission conditionally approved your application to construct a retail center to accommodate a 34,000-square-foot regional retail building (Circuit City) with two retail shops buildings of 5,100 and 6,000 square feet, on approximately 5 acres. The approval is effective on Tuesday, April 6, 2004, following a 10-day appeal period. If no appeal is filed, a final "Disposition of Permit" will be sent to you.

Congratulations on the approval of the project. Staff looks forward to working with you to complete construction of the project. If you have any questions, please contact me at (510) 583-4213 or e-mail me at Richard.patenaude@hayward-ca.gov.

Sincerely,

Richard E. Patenaude, AICP
Principal Planner

Enclosures: Conditions of Approval
Exhibit "A"

cc: Frank J. Warn, Inc., 2480 Whipple Rd., Hayward, 94544

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

SEC. 10-1.1300 CENTRAL BUSINESS DISTRICT (CB)

Sections:

- Section 10-1.1305 Purpose.
- Section 10-1.1310 Subdistricts.
- Section 10-1.1315 Uses Permitted.
- Section 10-1.1320 Conditionally Permitted Uses.
- Section 10-1.1325 Lot Requirements.
- Section 10-1.1330 Yard Requirements.
- Section 10-1.1335 Height Limit.
- Section 10-1.1340 Site Plan Review Required.
- Section 10-1.1345 Minimum Design and Performance Standards.

SEC. 10-1.1305 PURPOSE.

The CB District shall be subject to the following specific regulations in addition to the general regulations hereinafter contained in order to make provision for a principal downtown area of regional importance, and several outlying areas of more than neighborhood importance, where concentrations of comparison shopping facilities, financial and business services, and amusement or recreation may be found in quantity.

SEC. 10-1.1310 SUBDISTRICTS.

Any combining B District (see Section 10-1.2400).

SEC. 10-1.1315 USES PERMITTED.

- a. **Primary Uses.** The following uses, or uses determined to be similar by the Planning Director, are permitted in the CB District.
 - (1) **Administrative and Professional Offices/Services.**
 - (a) Accounting and financial offices. (excluding check cashing stores)
 - (b) Architectural and engineering offices.
 - (c) Banks and financial institutions.
 - (d) Chiropractic and acupuncture offices.
 - (e) Insurance and real estate offices.
 - (f) Law offices.
 - (g) Medical and dental offices.
 - (h) Travel and airline agency offices.
 - (2) **Automobile Related Uses.**
 - Automobile parts store.

- (3) Personal Services.
 - (a) Barber or beauty shop.
 - (b) Dance studio.
 - (c) Dry cleaner/laundry.
 - (d) Martial arts studio.
 - (e) Music studio.
 - (f) Nail salon.
 - (g) Palm reading.
 - (h) Photography studio.
 - (i) Physical fitness studio.
 - (j) Shoe repair shop.
 - (k) Tailor/seamstress shop.

- (4) Residential Uses.
Residential dwelling unit(s). (Above first floor commercial uses only)

- (5) Retail Commercial Uses.
 - (a) Antique store.
 - (b) Appliance store.
 - (c) Art and art supplies store.
 - (d) Bakery.
 - (e) Bicycle shop.
 - (f) Bookstore.
 - (g) Camera store.
 - (h) Card shop.
 - (i) Carpet/drapery store.
 - (j) Clothing store.
 - (k) Coffee/espresso shop.
 - (l) Delicatessen.
 - (m) Fabric store.
 - (n) Floral shop.
 - (o) Furniture store.
 - (p) Garden supplies store.
 - (q) Gift shop.
 - (r) Hardware store.
 - (s) Jewelry store.
 - (t) Locksmith shop.
 - (u) Music store.
 - (v) Nursery (plant).
 - (w) Paint/wallpaper store.
 - (x) Pet grooming shop.
 - (y) Pet store.
 - (z) Plumbing and heating store.
 - (aa) Restaurant. (Where not abutting a residential district or property and no bar)

 - (bb) Sporting goods store.

- (cc) Stationary store.
- (dd) Supermarket.
- (ee) Theater (Small Motion Picture or Live Performance only.)
- (ff) Toy store.
- (gg) Variety store.
- (hh) Video sales and rental store.

(6) Service Commercial Uses.

- (a) Copying or reproduction facility.
- (b) Mailing or facsimile service.
- (c) Reverse vending machine(s). (When located within a convenience zone)

(7) Other Uses.

- (a) Banquet hall. (Where not abutting a residential district or property and where no alcohol is served)
- (b) Broadcasting studio.
- (c) Catering facility.
- (d) Christmas tree or pumpkin patch lot. (See General Regulations Section 10-1.2735d. for standards)
- (e) Day care home. (State-licensed, less than 24-hour care for children or adults, 14 or fewer persons, excluding staff. See definitions)
- (f) Day Care Center. (State-licensed, less than 24-hour care for children or adults, 15 or more persons, excluding staff. See definitions.)
- (g) Public agency facilities.

b. Secondary Uses. The following uses are permitted as secondary or subordinate uses to the uses permitted in the CB District:

- (1) Accessory buildings and uses. (See Section 10.1.845d.)
- (2) Garage sales. (4 per year per dwelling. See General Regulations Section 10-1.2735e.)
- (3) Home Occupation. (See definitions.)
- (4) Household pets.

SEC. 10-1.1320 CONDITIONALLY PERMITTED USES.

a. Administrative Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CB District subject to approval of an administrative use permit:

- (1) Administrative and Professional Offices/Services.
None.

- (2) Automobile Related Uses. (See Section 10-1.1045h. for special requirements)
- (a) Automobile repair (minor and major).
 - (b) Automobile service station.
 - (c) Car wash.
 - (d) Parking lot.
- (3) Personal Services.
Suntan parlor.
- (4) Residential Uses.
None.
- (5) Retail Commercial Uses.
- (a) Convenience market. (See General Regulations Section 10-1.2735b. for regulations of alcohol)
 - (b) Restaurant. (Where abutting a residential district or property and no bar)
- (6) Service Commercial Uses.
- (a) Appliance repair shop. (Not ancillary to primary use)
 - (b) Hotel or motel. (Where not abutting a residential district or property)
 - (c) Recycling Collection Area. (When located within a convenience zone)
- (7) Other Uses.
- (a) Ambulance service.
 - (b) Auction.
 - (c) Banquet hall. (Where not abutting a residential district or property)
 - (d) Carnival.
 - (e) Catering facility. (Where not abutting a residential district or property)
 - (f) Commercial Amusement.
 - (g) Cultural facility.
 - (h) Educational facility.
 - (i) Home occupation - expanded.
 - (j) Hospital, convalescent home.
 - (k) Outdoor gathering. (See General Regulations Section 10-1.2735h.)
 - (l) Passenger transportation terminal.
 - (m) Recreational facility.
 - (n) Religious facility.
 - (o) Temporary use.

b. **Conditional Uses.** The following uses, or uses determined to be similar by the Planning Director, are permitted in the CB District subject to approval of a conditional use permit:

- (1) Administrative and Professional Offices/Services.
 - (a) Check cashing store.
 - (b) Payday loan facilities.
- (2) Automobile Related Uses.
Drive-in establishment.
- (3) Personal Services.
Massage parlor.
- (4) Residential Uses.
Multiple-family dwelling.
- (5) Retail Commercial Uses. (See General Regulations Section 10-1.2735b. for regulations of alcohol.)
 - (a) Bar, cocktail lounge.
 - (b) Dance or nightclub.
 - (c) Liquor store.
 - (d) Theater, Large Motion Picture (See Section 10-1.1045 for special requirements.)
- (6) Service Commercial Uses. (Where abutting a residential district or property.)
Hotel or motel.
- (7) Other Uses. (Where abutting a residential district or property.)
 - (a) Banquet hall.
 - (b) Catering facility.

SEC. 10-1.1325 LOT REQUIREMENTS.

- a. Minimum Lot Size: None.
- b. Minimum Lot Area Per Dwelling Unit: Same as permitted in RM or RH Districts, whichever is deemed consistent with the General Policies Plan Map and Neighborhood Plan.
- c. Minimum Lot Frontage: None.
- d. Minimum Average Lot Width: None.
- e. Maximum Lot Coverage: 90 percent.

- f. Minimum Lot Depth: None.
- g. Special Lot Requirements and Exceptions: See General Regulations Section 10-1.2720.

SEC. 10-1.1330 YARD REQUIREMENTS.

- a. Minimum Front Yard: 10 feet, unless waived by the Planning Director or by the approving authority.
- b. Minimum Side Yard: Five feet or 10 percent of lot width up to 10 feet unless waived by the Planning Director or by the approving authority.
- c. Minimum Side Street Yard: 10 feet unless waived by the Planning Director or by the approving authority.
- d. Minimum Rear Yard: None.
- e. Special Side and Rear Yard Provisions:
 - (1) The side or rear yard required for any structure in a CB District shall be the same as the District abutted.
 - (2) Where a CB District abuts any residential District or property the side and rear yard shall be a minimum of 10 feet and 20 feet respectively. Such yards shall be increased one foot for each foot of height for any structure in excess of 40 feet.
- f. Special Yard Requirements and Exceptions: See General Regulations Section 10-1.2725.

SEC. 10-1.1335 HEIGHT LIMIT.

- a. Maximum Building Height: No limit.
- b. Maximum Accessory Building Height: 14 feet and one story.
- c. Maximum Height for Fences/hedges/walls:
 - (1) Front and Side Street Yard 4 feet.
 - (2) Side and Rear Yard 6 feet.
(Also see Section 10-1.845k. for additional standards).
- d. Special Height Requirements and Exceptions: See General Regulations Section 10-1.2730.

SEC. 10-1.1340 SITE PLAN REVIEW REQUIRED.

Site Plan Review approval is required before issuance of any building or construction permit or construction of a fence within this district only if the Planning Director determines that a project materially alters the appearance and character of the property or area or may be incompatible with City policies, standards and guidelines. This may include fences (i.e., such as anodized gray chain link fences) in certain circumstances.

SEC. 10-1.1345 MINIMUM DESIGN AND PERFORMANCE STANDARDS.

The City recognizes that high-quality design of commercial structures can contribute to a positive appearance of neighborhoods and improve the overall character of the community. This Section establishes design and performance standards that shall apply to the construction of residential and commercial buildings and certain commercial uses in the CL District, including but not limited to cultural or recreational facilities.

Commercial Uses.

For commercial buildings and uses, including but not limited to cultural, educational, religious or recreational facilities, refer to the criteria and standards contained in the CG District, Section 10-1.1000.