



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, December 17, 2015, 7:00 p.m.  
777 B Street, Hayward, CA94541**

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**MEETING**

A regular meeting of the Hayward Planning Commission was called to order at 7:00 p.m. by Chair Parso-York.

**ROLL CALL**

Present: COMMISSIONERS: Willis Jr., Enders, Schott, Faria  
CHAIRPERSON: Parso-York  
Absent: COMMISSIONER: Goldstein, McDermott

**SALUTE TO FLAG**

Commissioner Faria led in the Pledge of Allegiance.

Staff Members Present: Alvarado Jr., Christensen, Cruz, Rizk, Schmidt

General Public Present: 46

**PUBLIC COMMENT:**

Mr. Kim Huggett, President of the Hayward Chamber of Commerce, spoke about the publication of the new Hayward Business directory. He shared that the 72<sup>nd</sup> annual Chamber of Commerce Awards Gala will be held on Saturday, January 30, 2016, and would honor the Fire Fighter, Police Officer, Educator, and Business Person of the year.

**PUBLIC HEARINGS:** For agenda item No. 1, the decision of the Planning Commission is final unless appealed. The appeal period is 10 days from the date of the decision. If appealed, a public hearing will be scheduled before the City Council for final decision. For agenda item No. 2 and agenda item No. 3, the Planning Commission may make a recommendation to the City Council.

1. Proposed Demolition of a Portion of the Southeastern Part of Southland Mall and Construction of a New Five-Theater Cinema with Ancillary Beer and Wine Sales at One Southland Mall Drive, requiring approval of a Conditional Use Permit in the Central Business (CBB20) District, Ashton Simmons (Applicant)/ Southland Mall L.P. (Owner).

Senior Planner Schmidt provided a synopsis of the staff report.



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Chair Parso-York opened the public hearing at 7:11 p.m.

Mr. Edward Bogue, President of the Southgate Homeowner's Association, expressed his support of the project and offered a couple of modifications to the project. In regards to the landscaping, he noted that a requirement of 30" buffer of plants for the site lines may impact visibility of traffic from La Playa Drive. He added that his Association preferred the original iteration of the project which featured a different elevation plan, which included different accents, a larger LED display, and a slightly different façade.

Mr. Kim Huggett, indicated that the proposed project was a step in the right direction for Hayward as it promoted residents to stay in town for entertainment options. He stated that individuals residing in the Eden Shores, Southgate, and Kennedy Park who would frequent Century Theaters in Union City and San Leandro could now attend a closely situated theater at Southland Mall. He commented that the proposed project would make Southland Mall financially viable and would increase revenue in Hayward generated from sales tax. Mr. Huggett stated that the General Manager of Rouse Properties was doing an excellent job in keeping the stores in Southland Mall filled, bringing exciting restaurants and a new sports facility.

Ms. Jenine Garcia, a Hayward resident, stated that although she supported the proposed theater as an addition to the mall, she was not favorable to alcohol sales at the theater. She commented that as a parent, she could presently drop her kids off at the mall to shop around but would feel uncomfortable doing this if alcohol was being sold at the mall. Ms. Garcia mentioned that if individuals want to consume alcohol, there were opportunities for this at the surrounding restaurants.

Ms. Sophia Espinosa, a member of the Hayward Youth Commission and a member of the Hayward Coalition for Healthy Youth, stated that the Hayward youth supported a new theater in Hayward in a recently conducted survey. She expressed concern over alcohol sales being permitted in conjunction with the new project. Ms. Espinosa commented that the image of the City be protected and strongly advised against going along with the new fad of allowing alcohol sales at movie theaters. She pointed out that the reason many attendees in the audience were holding teddy bears in hand was to remind the City to keep children in mind first when making such planning decisions.

Ms. Jennifer Armenta, a Hayward student, expressed concern about how the Conditional Use Permit would change the culture at Southland Mall. She shared that according to research, increased exposure and access to alcohol, contributes to lower perception of the



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harm of alcohol to young people. She urged the Planning Commission to reconsider the proposed project and also keep in mind how decisions about similar projects are made in the City.

Mr. Robert Dousa, a Hayward resident, noted that he has participated in DUI prevention programs for Hayward schools. He described that although the proposed project was beautiful, he raised the question of whether relying on alcohol sales was the only way to increase revenue opportunities in the City. He commented that amount of funds generated from sales tax would not be sufficient to cover the cost of the first DUI crash resulting from a noninsured patron of the proposed project. Mr. Dousa shared facts about problems arising from alcoholism. He expressed concern about young adolescents being in an environment such as a movie theater where alcohol may be permitted to be sold. He pointed out that in a restaurant setting, individuals consuming alcohol could be seated at different tables from those not drinking alcohol; however, with the proposed project, a non-consumer of alcohol could be sitting right next to someone who had been drinking.

Ms. Elisa Vigil, a member of a local youth coalition called Make Your Mark, expressed concern about the developing theater at Southland Mall that may be permitted to sell alcohol. She mentioned that the Kids Come First Campaign was developed in conjunction with the Hayward Coalition for Healthy Youth, which were created to protect youth friendly places in the City from exposure to substances such as alcohol, tobacco, marijuana, electronic cigarettes, and prescription drugs. Ms. Vigil noted that Southland Mall was one of the few remaining youth friendly places in Hayward. She underscored that there were many pressures for adolescents to engage in underage consumption of alcohol.

Mr. Andy Krake, a Castro Valley resident and a member of the Hayward Rotary Club, commended the youth present at the meeting who have voiced their concern about the proposed project. He stated that the proposed project would create jobs, it would help fulfill an entertainment need in the community, and would boost sales tax revenue for the City. He spoke favorably of Mr. Ashton Simmons who was the General Manager of Southland Mall.

Ms. Monica Ackerman, a longtime Hayward resident, stated that although she favored the proposed project, she stressed the importance of preserving Southland Mall as a kid friendly environment and objected the sale of alcohol at Southland Mall. She commented that she would not want her grandchildren to be exposed to inebriated individuals at the mall.

Chair Parso-York closed the public hearing at 7:32 p.m.



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Commissioner Enders thanked the members of the public who raised concern about the proposed project, especially the youth. She asked staff if there was any sales loss anticipated due to the movie theater that was being newly constructed at Newpark Mall.

Development Services Director Rizk noted that Rouse Properties also owned Newpark Mall. Mr. Ashton Simmons, with Rouse Properties and also the General Manager of Southland Mall, shared that in his experience in managing both malls, Southland Mall tended to draw customers from Northern Alameda County and Newpark Mall drew in customers from Southern Alameda County. He indicated that the movie theaters at both malls should not impact one another. He added that the AMC theater at Newpark Mall would be selling alcohol.

Commissioner Enders requested that the applicant elaborate on the loss of an 800 square foot senior center that was presently located in Southland Mall. Mr. Simmons stated that the senior center which was formerly inside Southland Mall was decommissioned for the last two years.

Commissioner Willis Jr. asked staff how employees of the cinema would monitor and document activities of patrons consuming alcohol at the theater.

Senior Planner Schmidt clarified that staff would not monitor alcohol consumption activity through surveillance cameras, but noted that individuals drinking alcohol would receive a wristband and would be drinking out of cups that would look much different than the regular concession cups. She shared that some of the conditions that staff has worked on with the Hayward Police Department (HPD) included requirements where staff members of the movie theater would be walking through movie theaters to ensure that people drinking alcohol were wearing wristbands and that individuals were drinking out of appropriate cups.

Mr. Simmons added that the Century Theater in Mountain View which now sold beer and wine included a process of requiring individuals consuming alcohol to present proper photo identification, they had to wear a wristband, and a maximum number of beverages sold per individual was also enforced. He shared that the movie theater was not completely dark and that there was ambient lighting which permitted employees to effectively monitor alcohol consumption. Mr. Simmons noted that although movie theaters have security cameras in place, it was unbeknownst to him whether the Century Theater in Mountain View relied on video surveillance for monitoring alcohol sales and consumption.

Commissioner Willis Jr. asked how the staff at the proposed movie theater would enforce and document the two beverage maximum. Senior Planner Schmidt responded that the documentation kept would be for the number of alcohol sales over a given period of time, a



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record of the walkthroughs that employees did of each screening room, and any record kept of any potential issues or belligerent behavior. She added that the Hayward Police Department could request this documentation from the movie theater on a quarterly or monthly basis.

Senior Planner Schmidt elaborated for Commissioner Willis Jr. that CineArts could feature films that may not typically be shown at a larger blockbuster type movie theater, such as independent films.

Senior Planner Schmidt indicated for Commissioner Faria that the restrictions outlining the hours for alcohol sales were in the Conditions of Approval and stated that alcohol could be sold up to one hour after the start time of the last film for the day. She noted that this would give an individual sitting through the last show time of the night ample time to metabolize the consumption of the alcoholic beverage. She emphasized that in no case would alcohol sales be permitted after 12:30 a.m. Ms. Schmidt stated that no start time for alcohol sales was indicated in the Conditions of Approval.

In regards to Century Plaza located on B Street, Commissioner Schott noted that the City Council and the Planning Commission were adamant about not having a marquee on the outside of the building. He commented that with the current marquee located at Century Plaza, there was still the problem of some individuals braking in front of the movie theater in an attempt to read information on the marquee. He asked the applicant if the sign for Southland Mall visible from I-880 would be a marquee for the movie theater.

Mr. Simmons mentioned that it had not been determined yet if movie show times would appear on the electronic billboard for Southland Mall. He understood the concerns expressed by Commissioner Schott for the potential traffic hazard this may create for motorists travelling on I-880 who were trying to read cinema times. He shared that the method to see show times would be to go on the mall website, Cinemark website, or seeing the show times being played at the mall itself.

Mr. David Shesgreen, with Cinemark and the former CEO of Century Theaters, commented that utilizing marquees was becoming an obsolete practice at movie theaters as these presented too much information and were difficult for people to read.

Senior Planner Schmidt indicated for Commissioner Schott that in regards to the downtown movie theater, there was an existing agreement between the Successor Agency to the Redevelopment Agency and Cinemark. She elaborated that per the agreement, if another theater opened up which was not under Cinemark's ownership, then the Agency and the City would be responsible to pay a certain sum of money to Cinemark. She indicated that per



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Condition of Approval No. 4, Cinemark has agreed to enter into an agreement that will rescind this requirement in the event that the ownership of the proposed movie theater changes. Ms. Schmidt added that staff did not anticipate this occurring.

Development Services Director Rizk stated that the City's outside legal counsel has been working with Cinemark's legal counsel to establish an agreement related to Condition of Approval No. 4. He summarized that the agreement would protect the City from exposure to a potential \$5 million penalty related to the development of the proposed theater at Southland Mall. He added that this agreement would not apply to potential theaters at other locations in the City, as these would have to be evaluated separately.

Senior Planner Schmidt indicated for Commissioner Schott that the limitations for alcohol sales were as stated in the Conditions of Approval. She stressed that individuals who had purchased alcohol inside the movie theater could not leave the theater premises with their beverage, emphasizing that consumers could not walk into the mall with their beverage.

Commissioner Schott asked whether individuals could sit down in the lobby of the theater and purchase and have drinks in this area after watching a film.

Mr. James Blissett, architect for the cinema, noted that there was not a designated seating area in the movie theater plans for the consumption of alcohol. He mentioned that there was a bar area in the concession stands with a couple seats but there was no lounge type of environment.

Commissioner Schott admired the students for voicing their concerns about alcohol sales at the proposed movie theater. He gave the example of how bowling alleys have full service bars without measures such as wristbands in place to control alcohol sales and consumption. Mr. Schott commented that as a business owner himself, he stated that the operator of the proposed movie theater was a professional business operator who would not risk their ABC license enterprise-wide.

Chair Parso-York appreciated the input received from the public in audience. In regards to the comments expressed by Mr. Bogue, Chair Parso-York asked staff if there would be sufficient line of sight for traffic, considering that there was no sidewalk on La Playa Drive where the hedges are proposed to be placed for landscaping. Senior Planner Schmidt noted that included in the Conditions of Approval was the final submittal of a Landscape Design, adding that this concern could be reviewed during the process of the landscape design. She stated that sight distance would be evaluated by the Engineering and Transportation division.



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Chair Parso-York commented that it was his understanding that landscaping could not obstruct line of sight for traffic. Senior Planner Schmidt responded that the landscaping requirements had height restrictions for plants that were in areas adjacent to driveways.

Chair Parso-York asked the applicant what the longest hours were alcohol sales for a theater managed by the applicant and what his experience had been with such facilities. Mr. Shesgreen mentioned that for a theater he managed in Evanston, Illinois, which was situated next door to Northwestern University, there was a successful 18 screen movie theater in operation with no issues. Mr. Shesgreen commented that this theater featured children's movies and art movies and pointed out that moviegoers were primarily there to watch movies. Mr. Shesgreen confirmed for Chair Parso-York that individuals would have to purchase a movie ticket before they could buy alcohol inside the theater.

Chair Parso-York requested that a representative from the Hayward Police Department share what the Police Department included in its evaluation before approving the sale of alcohol for the proposed project.

Lieutenant Darin Nishimoto with the Hayward Police Department, noted that he managed the VICE Intelligence Bureau. He stated that when the project application came forward, his department contacted police departments located in nearby jurisdictions that have movie theaters currently selling beer and wine. He reported that all of these jurisdictions did not have any problems occurring at their movie theaters. He stated HPD and Planning staff had worked together to establish regulations that would safeguard alcohol sales at the proposed movie theater.

Development Services Director Rizk clarified for Commissioner Willis Jr. that there would be a limit of two alcoholic beverages sold per customer per transaction.

Commissioner Willis Jr. expressed concern about the types of the movies that may be shown at the proposed movie theater attracting crowds similar to those who consume alcohol at bowling alleys.

Senior Planner Schmidt commented that arthouse movie theaters typically draw in audiences ranging in the age group of thirties to forties, noting that children generally are drawn to blockbuster movie theaters that can showcase 3D or animated films. She highlighted that arthouse films usually consisted of award-winning foreign films. She did not feel that alcohol sales in conjunction with showing art movies would result in any type of nuisance.



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Commissioner Willis Jr. asked what type of marketing study revealed that showing alcohol at a movie house would improve business. Mr. Shesgreen responded that it was evident in the revenue generated at movie theaters selling alcoholic beverages, noting that this has been immensely successful in drawing in a lot of people and making movie theaters more viable.

Commissioner Schott noted that in his experience in going to a movie with his wife, he usually goes to the concession stand and purchases food and drinks for himself and his wife. He shared that in his youth, he sold alcohol at a concession stand at the Oakland Coliseum where there were similar restrictions of a certain number of drinks being sold per sales transaction. He recalled that the ABC department would always conduct inspections to ensure adherence to alcohol sales regulations. Mr. Schott stated that the theater operators do not solely rely on revenue generated from the sales of movie tickets and also relied upon earnings from the concession stands. He commented that proposed project including alcohol sales was not very different than what was currently permitted at sporting events. He underscored that he had no problem with alcohol sales at the proposed movie theater as this would be done in a controlled environment, adding that the theater operator would not risk the liability of selling alcohol.

The applicant confirmed for Commissioner Schott that there would be no marketing restriction on which films could be shown at the proposed theater.

Commissioner Enders supported the project as it was crucial to promote business in the City. She understood the concerns expressed by the youth and other members of the community about alcohol sales at the movie theater; however, she pointed out that alcohol was a controlled substance. She was highly concerned about the uncontrolled substances that were being consumed in the City and were a ravaging issue. She highlighted that alcohol sales would be limited to beer and wine, and would not include hard liquor. She also noted that there were full service bar options located approximately 100 feet away from the movie theater and commented that individuals who want to consume a greater quantity of alcohol and create more of a raucous would be likely to concentrate at an establishment with a full service bar. Ms. Enders stated that Southland Mall would still have a family friendly environment whether alcohol is sold at the proposed movie theater or not.

Commissioner Faria appreciated the concerns expressed by the youth. She agreed with Commissioner Enders' comments regarding there being numerous restaurants around Southland Mall with full service bars and happy hour specials in place. She noted that these same restaurants selling alcohol have seating areas for families that were not too far from the bar area. She supported the project noting that there would be less issues with alcohol being sold at a movie theater in comparison to a restaurant with a full service bar as the former





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offered a different type of environment than a restaurant. She indicated that the movie theater would be a great addition to the City and preferred the marquee and façade discussed by Mr. Bogue as these brought class to the area. She thanked the applicant for bringing this project to Southland Mall as it would make the shopping area more viable and would lead to further growth.

Chair Parso-York supported the marquee and façade mentioned by Mr. Bogue as this side of the movie theater would be facing the freeway. He thanked the members of the public for expressing their concern about alcohol sales at the proposed project; however, he shared that alcohol was a substance that was present within our homes and that individuals need to exercise self-control when consuming it. He pointed out that HPD had done ample research on the restrictions that will be in place at the proposed project site and that other theaters selling alcoholic beverages have had a positive experience. Mr. Parso-York stated that it wasn't uncommon to hear that malls were closing down across the nation, and he was delighted that an investment was being made to keep Southland Mall alive and going.

Commissioner Willis Jr. appreciated the comments received from the public about the proposed project; however, he was supportive of the proposed project as it would improve business in Hayward and there would be a controlled environment inside the movie theater in regards to the sales of alcohol. He made a motion to approve the proposed project per staff recommendation. The motion was seconded by Commissioner Schott.

Commissioner Enders was highly concerned with traffic impacts on the intersection of La Playa Drive and Winton Avenue. Senior Planner Schmidt shared that the recommendations in the memorandum were included as conditions for the proposed project which were on Attachment III. Ms. Schmidt indicated that one of the southbound lanes on the intersection Winton and La Playa will be restriped and that westbound lane would be re-channelized. She indicated for Commissioner Enders that although a representative from the Engineering and Transportation Division was not present, staff had carefully evaluated traffic concerns in this area and it was staff's conclusion that the recommendations outlined in the traffic study would improve traffic conditions.

Commissioner Faria noted for Commissioner Enders that the barrier that was in place preventing traffic coming off Winton Avenue and preventing a left-turn on La Playa Drive was temporary for the holidays.

Senior Planner Schmidt confirmed for Commissioner Enders that the moving of the intersection from Winton Avenue would presently not occur as the mall property was under



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different ownerships. She noted that the restriping option was cost effective and would enhance traffic circulation in the area.

Commissioner Enders voiced that there were traffic flow concerns throughout the City, emphasizing that it was impactful to public transportation and she was worried that traffic congestion problems would deter the public from using public transit options. She stated that the Winton Avenue area was along a major public transit route. She underscored that traffic concerns need to be addressed as more residents move into the City.

The motion passed with the following vote:

AYES:	Commissioners Willis Jr., Enders, Schott, Faria Chair Parso-York
NOES:	None
ABSENT:	Goldstein, McDermott
ABSTAIN:	None

- Proposed subdivision and construction of six detached single-family homes around a central open space area located at 1151 Overlook Avenue requiring a zone change from Sustainable Mixed Use (SMU) to Planned Development (PD) and approval of Tentative Tract Map 8244 - Overlook Terrace, LLC (Applicant/Owner)

Assistant Planner Christensen provided a synopsis of the staff report. He noted that the original application was for eight homes; however, at staff's request, the project was redesigned to feature six homes and this yielded in enhanced architectural definitions for the proposed units. He added that the elevation for four of the units was reduced from three stories to two stories. Mr. Christensen shared that a letter was received from a citizen after the publication of the Agenda Packet expressing concerns about views. He added that in staff's field survey and view study, it was determined that Unit 2 which was an upper tier unit, did have the potential to block some views to the west; however, these views were already impacted by trees and existing development. He stated with a reduction of the elevation, it was shown to have no impact on views.

Chair Parso-York opened and closed the public hearing at 8:25 p.m.

Commissioner Willis Jr. requested that staff elaborate on Condition of Approval No. 127, Section A. Assistant Planner Christensen responded that many of the sections for Conditions, Covenants and Restrictions (CC&R) for Homeowners Associations were standardized and applied to proposed developments in the City, noting that Condition of Approval No. 127



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would provide some flexibility to the City.

Commissioner Willis Jr. expressed concern that if the City were at some point to withdraw interest in the proposed development, would it lose jurisdiction over the abatement of nuisances.

Assistant City Attorney Alvarado noted that Condition of Approval No. 127 applied to obligations under the CC&R's to the residents of the proposed development, the City was included in the provisions as the City maintains the authority to abate nuisances on private property and did not relinquish the City's ability to enforce generally applicable public nuisance laws.

Commissioner Willis Jr. commented that two of the homes appear to be isolated from the remaining four units as the two homes would face Palisade Street and the four units would have its own separate entryway. He wondered the reasoning for this design as there was a Homeowners Association. He mentioned that there was a current property owner adjacent to the proposed project site who expressed concern that their privacy would be violated due to the view from the higher level property overlooking their activity. He described that the same property owner was concerned that excavation work may cause erosion of the land and damage to the property.

Assistant Planner Christensen noted that although the site was located on a high grade, creating a two level structure severely limits the amount of grading that is required for the site. He described that it was staff's preference that a development mold into the hillside rather than tear the hillside. He added that in order to integrate the two levels, there would be central open space area and also pointed out that the applicant designed a stairwell system to tie the development together. In regards to the upper tier, Mr. Christensen noted that staff did have the same privacy concerns for the adjacent property owner initially. He added that the initial application was for a three story product for both of the units on the upper tier; however, the redesign to a two story reduced the height.

Commissioner Willis Jr. asked staff to elaborate on the architectural requirements for the City. Assistant Planner Christensen stated that the owner of a nearby rental property had expressed concern about the architectural design of the proposed project, he mentioned that staff felt that the overall architecture proposed for the project was fitting with the existing neighborhood and noted that the existing housing stock was older.

Assistant Planner Christensen stated that although the units may have a smaller floorplate and is slightly taller, this was because the units are on smaller lots. The benefit of this resulted



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in the preservation of the southern portion of the property. He added that incorporating the taller units into the hillside helped minimize the impact. He commented that the initial application was for all three story towers on the hillside and this did not fit in with the neighborhood; however, the redesign of the proposed development had made it more compatible with its surroundings.

Commissioner Schott shared that the street of the project site was formerly a dangerous location and that the street had been repaired a few years ago. He had a strong concern about the number of cars that make a left-hand turn on this street while going up a 14% grade onto Overlook Avenue. He commented that properties such as the project site which were previously under the ownership of Caltrans had caused the City of Hayward much blight, noting that the Caltrans Real Estate Division's method of selling its properties should be examined. He indicated that he was aware that Caltrans had purchased single family homes in RSB6 neighborhoods and stated that he would not be supportive of zone changes for neighborhoods that were originally purchased as RSB6 neighborhoods. He commented that Caltrans was now selling this property and developers were purchasing them for a relatively cheap price in his opinion. He mentioned that there were still approximately 400 parcels still owned by Caltrans and described these properties as being boarded up and not in good condition. He stated that he would not be supportive of projects going further down Palisade Street in the areas of Redstone.

Commissioner Enders requested that staff elaborate on the environmental sensitivities in the area. Assistant Planner Christensen responded that there were some vegetative species identified in the area and these were included in the background report for the initial study. He noted that a thorough environmental analysis was not conducted as the project will place southern portion into a protected status.

Commissioner Enders asked staff who the other developers were proposing to develop the quarry site, noting that the potential development of the surrounding area needs to be carefully evaluated in order to determine what the uses will be for this new neighborhood.

Assistant Planner Christensen indicated that there was no active application for the quarry site. He stated that over the years there have been numerous conversations about the potential uses of the quarry site, commenting that City View Apartments used to be a quarry site and there was also the La Vista quarry. In terms of active parcels, he shared that there were applications further up Overlook Avenue which were still a part of the RSB6 zone. He indicated that Caltrans sells these parcels individually and shared that these were just single family homes. Mr. Christensen shared the long term vision for this area and the quarry site, the intent was to facilitate the site as a middle school or as an environmentally friendly high



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density development with unbundled parking; however, there were no applications received fitting this vision and noted that this may be developed in the future. He stated that for a highly dense community, it was envisioned that there would be access to a wide variety of alternative transportation options such as shuttles to BART.

Commissioner Enders commented that the point in having a sustainable mixed use area is to have a walkable area where there is less of a reason to have a car, and did not feel that the proposed project was conducive to a sustainable mixed use. She didn't envision the units being used for housing college students nor did it seem like there would be transportation available from this pocket neighborhood to the college. Ms. Enders stated that there was single family residential on two sides of the development, there was complete open space on another side, and she felt that the project would be encroaching on land that should be preserved. She expressed that the proposed density belonged in a hub of public transportation options.

Commissioner Faria asked if there was a better drawing depicting the group open space. She had a hard time grasping what type of amenity the group open space would provide for the units proposed in the project.

Assistant Planner Christensen stated that more detailed information would follow in the Precise Plan and pointed out that if there were any specific amenities that were desired, these could be added as Conditions of Approval. He stated that the basic vision for the group open space consisted of having tables and gathering spaces where people could congregate as most of the units would not have enough private open space.

Commissioner Faria commented that the proposed units were close together and that they would not be able to have fences creating a separation.

In response to Commissioner Enders' comments about the use of the quarry site, Commissioner Schott responded that it was to be used as a potential relocation site for Bret Harte Middle School or for a development project proposed by Mr. Sherman Lewis and a group. He commented that the proposed project worked at the proposed site and noted that the sustainable features of the project were the provision of electric vehicle charging stations and solar panels.

Chair Parso-York stated that the size of the open space area seemed inadequate to him and asked where the closest place was for outdoor recreational opportunities for children.



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Assistant Planner Christensen responded that the Eden Greenway was located nearby along Mission Boulevard and pointed out that there were some areas on campus at California State University East Bay that provided outdoor recreational space. Mr. Christensen mentioned that in planning the project, staff did struggle with how open space would be included in the development. He noted that the original application included plans to use some of the southern portion of the property to fulfill the open space requirement; however this option did not work as it would be difficult to create a path and this would be too great a distance from the units.

Chair Parso-York expressed that he had an issue with creating large family homes that did not provide the family enough space to be outdoors. He indicated that the streets around the development posed a hazard to children residing in the proposed units and for these safety reasons, he did not support the project.

Commissioner Willis Jr. made a motion to recommend that the City Council approve the proposed project per staff recommendation. The motion was seconded by Commissioner Schott. The motion failed with the following vote:

AYES:	Commissioners Willis Jr., Schott, Faria
NOES:	Commissioner Enders Chair Parso-York
ABSENT:	Goldstein, McDermott
ABSTAIN:	None

Development Services Director Rizk stated that since the motion did not pass, the item could go to the City Council without a recommendation from the Planning Commission.

Assistant City Attorney Alvarado shared that the motion failed as four affirmative votes were needed to approve or deny the project. He said that if the Planning Commission could not come to a decision, then the item could be referred to the City Council without a recommendation from the Planning Commission. He added that in this circumstance, the City Council could make a decision without a recommendation from the Planning Commission.

Assistant City Attorney Alvarado clarified for Commissioner Willis Jr. that the item could be appealed to the City Council if the Planning Commission had voted to deny the project.

Development Services Director Rizk stated that it was staff recommendation at this point to let the item go before the City Council without a formal recommendation from the Planning Commission, noting that the City Council could review the Planning Commission Meeting



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Minutes in order to determine what transpired at the meeting. He outlined that the second option was to move to continue the item at a future Planning Commission meeting when there would be a full commission present to take action on the item.

Commissioner Faria made a motion to allow the item to go before the City Council for a decision without a recommendation from the Planning Commission. The motion was seconded by Commissioner Schott. The motion passed with the following vote:

AYES:	Commissioners Willis Jr., Enders, Faria Chair Parso-York
NOES:	Schott
ABSENT:	Goldstein, McDermott
ABSTAIN:	None

3. Amendments to the City of Hayward Livestock Regulations, including establishment of a revised, simplified permit process for the keeping of bees, hens, and other small animals in residential areas.

Assistant Planner Christensen provided a synopsis of the staff report.

Chair Parso-York opened and closed the public hearing at 9:09 p.m.

Assistant Planner Christensen noted for Commissioner Schott that turkeys were not specifically defined as permissible livestock that could be kept, adding that this could be determined by the Planning Director and could be evaluated on an individual case by case basis.

Development Services Director Rizk stated that he did not consider turkeys as a type of fowl that could be kept under the proposed regulations.

Assistant Planner Christensen noted for Commissioner Schott that an apiary was the land used for beekeeping, noting that the general regulations would limit the number of hives to two. Currently this regulation is allowed for the flood plain areas and the agricultural district, and there are no limits set for these areas.

Assistant Planner Christensen clarified for Commissioner Enders that per the revised fees, staff was proposing to eliminate the line item from the Administrative Use Permit, and would be reflected under the Zoning Conformance Permit. For chickens, staff would have to create a second tier for the Zoning Conformance Permit, right now staff was proposing to have the \$210 fee which would apply to beekeeping in order to cover the noticing cost. A separate tier



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of \$52.50 would be created for urban chickens and could be expanded to other uses in the future as needed.

Commissioner Enders asked if there was a scientific basis requiring beekeepers to have a six foot tall fence surrounding the bees' home. Assistant Planner Christensen responded that this was a common practice by other cities in the area and noted that it was also recommended by those who have hives. The City's current limit for a rear yard fence was six feet. He elaborated that if there was a hive that was four feet in height and a bee that is leaving the hive, if the bee encounters a physical barrier such as a solid fence, then the bee has to fly up. Mr. Christensen described that for the adjacent neighbor, this forces the bees to fly a little higher and would decrease the probability that the bee would fly at a lower level in the adjacent neighbor's yard.

Commissioner Enders asked what evidence would be used to determine which neighbors located within a distance of 100 feet of a beekeeping area was allergic to bees. Assistant Planner Christensen indicated that per the current proposed regulations, if the City received a notice that someone is allergic, the City would impose the restrictions. He added that if these regulations need to be modified and applied in a more stringent manner in the future, it could be done so.

Commissioner Enders commented that there could be the case that some individuals oppose the idea of beekeeping and could falsify information claiming that they are allergic when they are not. She urged staff to investigate guidelines that could be used to determine what course of action to follow for beekeeping restrictions in regards to neighbors who were allergic to bees.

Chair Parso-York appreciated the thorough staff report. Assistant Planner Christensen confirmed for Chair Parso-York that the current permitting process was challenging for residents where some residents opt to not obtain a permit.

Development Services Director Rizk stated that the proposed regulations provided realistic standards for residents to follow, emphasizing that the regulations would provide an opportunity to provide the public with information and educate them.

Commissioner Faria asked if the educational material would be made available in other languages. Assistant Planner Christensen indicated that staff could look into this, adding that many of staff's handouts at the Permit Center were available in English and Spanish.

Chair Parso-York stated that many people have chickens and bees in their yards and asked what would be the impact of these regulations on these residents. Assistant Planner





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Christensen commented that for these residents, they may be currently operating without a permit which would be a violation of the Hayward Municipal Code; however, the intent of the City was to have those without permits in conformance.

Chair Parso-York asked staff if there would be efforts made to inform the general citizenry of Hayward of the new regulations. Assistant Planner Christensen noted that there would be an outreach event conducted at the Hayward Library in February 2016. He noted that there was a lot of public interest on the proposed regulations.

Assistant Planner Christensen indicated for Commissioner Schott that the initial set up for the application would have to be conducted in person, adding that the benefit of this would be that staff could talk to the applicant and provide them with information on the regulations. Mr. Christensen mentioned that in the near future, the City would implement an online permitting process but would still strive to equip citizens with resources and the information they need to be in compliance with regulations.

Assistant Planner Christensen noted for Commissioner Schott that the application was generally linked to the address of the applicant.

Commissioner Willis Jr. made a motion to recommend that the City Council approve the proposed regulations per staff recommendation. The motion was seconded by Commissioner Enders.

Commissioner Enders thanked the members of the community who took the time to express their concerns about the proposed regulations. She stated that disagreements between neighbors about various nuisances were inevitable, and this included complaints about the keeping of livestock and she pointed out that the City would take action to address these issues. Ms. Enders noted that farming was part of Hayward's history and she was paying her homage to this by supporting the proposed regulations.

Commissioner Schott offered a friendly amendment to include llamas in the language defining large livestock. Mr. Schott noted that there were a couple llamas in his neighborhood that assisted with controlling the growth of plants on the hillside.

Commissioners Willis Jr. and Enders were agreeable to the friendly amendment.

The motion passed with the following vote:

AYES:	Commissioners Willis Jr., Enders, Schott, Faria Chair Parso-York
NOES:	None



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ABSENT: Goldstein, McDermott  
ABSTAIN: None

**COMMISSION REPORTS**

4. Oral Report on Planning and Zoning Matters

Development Services Director Rizk wished everyone Happy Holidays.

5. Commissioners' Announcements, Referrals

Chair Parso-York thanked staff for their hard work over the year and wished everyone Happy Holidays.

**APPROVAL OF MINUTES**

6. Approval of Minutes

There were none.

**ADJOURNMENT**

Chair Parso-York adjourned the meeting at 9:25 p.m.

**APPROVED:**

\_\_\_\_\_  
Brian Schott, Secretary  
Planning Commission

**ATTEST:**

\_\_\_\_\_  
Yolanda Cruz, Deputy City Clerk  
Office of the City Clerk