

**CITY COUNCIL MEETING
MAY 4, 2021**

**DOCUMENTS RECEIVED
AFTER PUBLISHED AGENDA**

AGENDA QUESTIONS & ANSWERS

Items 8 & 9

AGENDA QUESTIONS & ANSWERS

MEETING DATE: May 4, 2021

Item #8 [CONS 21-150](#): Adopt Two Resolutions to 1) Initiate Proceedings Pursuant to Government Code Section 53753, 2) Provide Intention to Levy Assessments for FY 2022, 3) Preliminarily Approve FY 2022 the Engineer's Report, 4) Provide a Notice of Proposition 218 Public Hearing for Stratford Village Flood Control Facilities Improvement Assessment (MD1 - 2021), 5) Approve the Mailing of Ballots, and 6) Adopt Proposition 218 Assessment Ballot

Regarding the Stratford Village assessment, agenda item 8, I understand why the repair loan would need to be repaid, but am not clear why interest would be charged?

The interest component of the loan is included because the funds used to provide the loan came from revenue collected in the Stormwater Fund. As you know the City establishes the stormwater (and other) rates to fund not only operating costs, but may also include a component to fund future infrastructure needs. In establishing those rates and in order to be compliant with applicable statutory regulations established by the state, should funds be used to provide a loan, including to other City funds, these loans can not be given interest free if they are being used for purposes other than to fund said future infrastructure needs as it intended to when establishing the rate. In this case, the funds will generate interest revenue at the same rate they would if they were in the City's managed investment portfolio.

Do the Stratford Village residents pay into the city's storm water fund?

Stratford Village properties, like all other properties, pay a nominal annual stormwater fee. The fee is currently less than \$30 per year for residential single family properties. The fee, which has not changed since the 1990s, is mainly used to pay for street sweeping activities.

Is it possible to offer an option of spreading the first year \$255 increase over two to three years?

The total proposed FY 2022 assessment is \$498. Of that amount, \$243 is the original assessment and \$255 is the additional amount needed to repay the \$379,000 transfer of funds from the Stormwater Fund by the Maintenance District. The amount was presented and discussed with the neighborhood property owners during a Zoom community meeting on April 14, 2021; and presented again here in this staff report and accompanying Engineer's report. Spreading a portion of the \$255 out over several years, or 1-2 years, will elongate the payback period and increase the interest charge but is an option that can be considered if the Council wishes to provide direction on this.

Item #9 [PH 21-032](#) Home Avenue Single Family Residence: Adopt a Resolution Approving a Site Plan Review and Grading Permit Application for Proposed Single-Family Residence and Attached Accessory Dwelling Unit on a Vacant 0.21-Acre Hillside Lot with an Average Slope Greater than 20% Located at 2579 Home Avenue, Assessor Parcel No. 081D-1660-040-00, Application No. 202000579, Bich-Khoi Do (Applicant) and Bradley Switzer Trust (Owner) (Report from Assistant City Manager Ott)

Condition of approval #32

"Earth retaining structures greater than 4-feet in height (top to bottom of footing) shall building permit from the Building Division of the Development Services Department of the City."

Guessing they shall OBTAIN a building permit?

Yes, that is just a typo and we will correct in the final Resolution. It should read: Earth retaining structures greater than 4-feet in height (top to bottom of footing) shall obtain a building permit from the Building Division of the Development Services Department of the City.

eCOMMENTS RECEIVED

Item 11

eComments received for May 4, 2021 Hayward City Council Meeting:

Item	Name	Comment	Position
11. LB 21-013 Affordable Housing Development Funding: Adopt Resolutions Authorizing the City Manager to Prioritize Current Affordable Housing Projects for Allocation of Existing Inclusionary Housing Trust Funds Not-to-Exceed \$4.9 million and to Issue a Notice of Funding Availability (NOFA) to Establish an Affordable Housing Development Pipeline (Report from Assistant City Manager Ott)	Sidney Stone	I am Director of Real Estate Development for Christian Church Homes (CCH). CCH & Novin Development are developing an 80 unit senior development located at 603 A Street, and in late 2020, the team won \$7.4 million in State HCD TOD Funding. We are in support of current staff's recommendation on current & future allocations of city housing funds. We suggest that the City's future NOFA's prioritize entitled transit oriented projects, ready to construct, that have allocated State or Federal funding.	Support

ITEM #9 PH 21-039

Home Avenue Single Family Residence: Adopt a Resolution Approving a Site Plan Review and Grading Permit Application for Proposed Single-Family Residence and Attached Accessory Dwelling Unit on a Vacant 0.21-Acre Hillside Lot with an Average Slope Greater than 20% Located at 2579 Home Avenue, Assessor Parcel No. 081D-1660-040-00, Application No. 202000579, Bich-Khoi Do (Applicant) and Bradley Switzer Trust (Owner) (Report from Assistant City Manager Ott)

PUBLIC COMMENTS



May 4, 2021

VIA EMAIL

Mayor & City Council
City of Hayward
777 B Street
Hayward, CA 94541

Email: barbara.halliday@hayward-ca.gov; aisha.wahab@hayward-ca.gov;
angela.andrews@hayward-ca.gov; sara.lamnin@hayward-ca.gov;
elisa.marquez@hayward-ca.gov; mark.salinass@hayward-ca.gov;
francisco.zermeno@hayward-ca.gov; list-mayor-council@hayward-ca.gov

Re: 2579 Home Avenue, Application No. 202000579.

To the Mayor & City Council:

Californians for Homeownership is a 501(c)(3) organization devoted to using legal tools to address California's housing crisis. We are writing regarding the application to develop a residential project at 2579 Home Avenue.¹

State ADU Law (Government Code Section 65852.2)

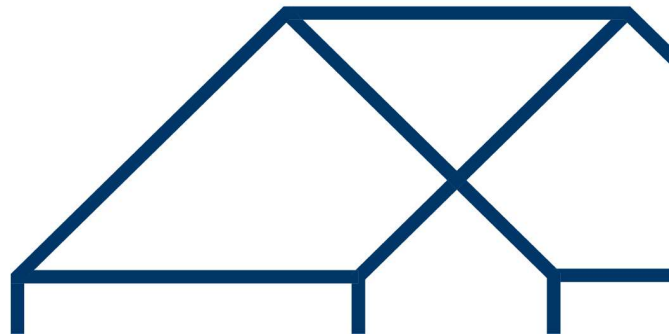
State ADU law requires ADUs to be approved ministerially, without a public hearing, including when they are proposed with new primary dwellings. Gov. Code § 65852.2(a)(3).

Based on our review of the record, it appears that the City has unlawfully subjected the ADU portion of this project to a public hearing. To be clear, the ADU portion of this project is subject to ministerial, staff-level approval, cannot be subjected to a public hearing, should not be the subject of any discussion at your upcoming meeting (unless the applicant agrees otherwise), and should not be subjected to any conditions of approval.

The Housing Accountability Act (Government Code Section 65589.5)

The City's approval of this project is governed by the Housing Accountability Act, Government Code Section 65589.5. Because the project meets all of the City's objective development standards, it must be approved under the Act. For the purposes of Government Code

¹ We write here on our own behalf. We have had no contact with the applicants or their representatives. This letter is based on information we learned from the public record.



Section 65589.5(k)(2), this letter constitutes our written comments submitted in connection with the project.

The Housing Accountability Act generally requires the City to approve a housing development project unless the project fails to comply with “applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete.” Gov. Code § 65589.5(j)(1). More specifically, among other obligations, the Act requires that the City make a written determination whether the development is consistent with such standards. Gov. Code § 65589.5(j)(2)(A). To count as “objective,” a standard must “involve[e] no personal or subjective judgment by a public official and be[] uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.” Gov. Code § 65589.5(h)(8). In making this determination, the City must err on the side of approving a project if the evidence “would allow a reasonable person to conclude” that the project met the relevant standard. Gov. Code § 65589.5(f)(4). That means that if staff have determined that a project meets those standards, the City must find that staff acted unreasonably in doing so if it later desires to find otherwise.

If the City determines that a project is consistent with such standards, but nevertheless proposes to reject it, it must make written findings, supported by a preponderance of the evidence, that the project would have a “specific, adverse impact upon the public health or safety,” meaning that the project would have “a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.” Gov. Code § 65589.5(j)(1)(A); *see* Gov. Code § 65589.5(k)(1)(A)(i)(II).

Even if the City identifies legally sufficient health and safety concerns about a project, it may only reject the project if “[t]here is no feasible method to satisfactorily mitigate or avoid the adverse impact . . . other than the disapproval of the housing development project” Gov. Code § 65589.5(j)(1)(B). Thus, before rejecting a project, the City must consider all reasonable measures that could be used to mitigate the impact at issue.

These provisions apply to all housing developments, including the development of market-rate single-family homes. Gov. Code § 65589.5(h)(2); *see Honchariw v. Cty. of Stanislaus*, 200 Cal. App. 4th 1066, 1074-76 (2011). The Legislature has directed that the Act be “interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.” Gov. Code § 65589.5(a)(2)(L).

When a locality rejects or downsizes a housing development project without complying with the rules described above, the action may be challenged in court in a writ under C.C.P. § 1094.5. Gov. Code § 65589.5(m). The legislature has significantly reformed this process over the last few years in an effort to increase compliance. Today, the law provides a private right of action to non-profit organizations like Californians for Homeownership. Gov. Code § 65589.5(k). A non-profit organization can sue without the involvement or approval of the project applicant, to protect the public’s interest in the development of new housing. A locality that is sued to enforce

Section 65589.5 must prepare the administrative record itself, at its own expense, within 30 days after service of the petition. Gov. Code § 65589.5(m). And if an enforcement lawsuit brought by a non-profit organization is successful, the locality must pay the organization's attorneys' fees. Gov. Code § 65589.5(k)(2). In certain cases, a court can also impose fines that start at \$10,000 per proposed housing unit. Gov. Code § 65589.5(k)(1)(B)(i).

In recent years, there have been a number of successful lawsuits to enforce these rules:

- In *Honchariw*, 200 Cal. App. 4th 1066, the Court of Appeal vacated the County of Stanislaus's denial of an application to subdivide a parcel into eight lots for the development of market-rate housing. The court held that the county did not identify any objective standards that the proposed subdivision would not meet, and therefore violated the Housing Accountability Act in denying the application.
- In *Eden Housing, Inc. v. Town of Los Gatos*, Santa Clara County Superior Court Case No. 16CV300733, the court determined that Los Gatos had improperly denied a subdivision application based on subjective factors. The court found that the factors cited by the town, such as the quality of the site design, the unit mix, and the anticipated cost of the units, were not objective because they did not refer to specific, mandatory criteria to which the applicant could conform.
- *San Francisco Bay Area Renters Federation v. Berkeley City Council*, Alameda County Superior Court Case No. RG16834448, was the final in a series of cases relating to Berkeley's denial of an application to build three single family homes and its pretextual denial of a demolition permit to enable the project. The Court ordered the city to approve the project and to pay \$44,000 in attorneys' fees.
- In *40 Main Street Offices v. City of Los Altos*, Santa Clara County Superior Court Consolidated Case Nos. 19CV349845 & 19CV350422, the Court determined that the City of Los Altos violated the Act when it rejected a 15-unit mixed-use project. The City ultimately was forced to pay over \$1,000,000 in damages and attorneys' fees.

In other cases, localities have settled lawsuits by agreeing to approve the subject projects and pay tens or hundreds of thousands of dollars in legal expenses.

Sincerely,



Matthew Gelfand

cc: Michael Lawson, City Attorney (by email to michael.lawson@hayward-ca.gov)
Jennifer Ott, Assistant City Manager (by email to jennifer.ott@hayward-ca.gov)
Marcus Martinez, Associate Planner (by email to marcus.martinez@hayward-ca.gov)
Sara Buizer, Acting Dep. Dir. of Dev. Svcs. (by email to sara.buizer@hayward-ca.gov)

From: MARK LOWMAN

Date: May 4, 2021 at 6:47:42 PM PDT

To: List-Mayor-Council <List-Mayor-Council@hayward-ca.gov>, OHHAHayward

Subject: May 4th Agenda Item #9 PH21-39 & Californians for Homeownership

To the Mayor of Hayward and City Council,

I find it interesting and concerning that an attorney who claims to represent an organization called Californians for Homeownership, Matthew Gelfand of Los Angeles, has weighed in on a home construction project in a mid-sized Northern California city. His letter dated today seems to be a thinly veiled attempt to extort our City Council into approving a project of which I am sure his knowledge is limited, in support of an agenda mainly know only to Mr. Gelfand.

Mr. Gelfand may be a fine Los Angeles housing attorney, however, he has demonstrated a lack of understanding of the processes employed by the City of Hayward, and a lack of knowledge of the city in general and of the Old Highlands neighborhood in particular. The neighbors met with Mr. Switzer to iron out any differences and to come to a consensus agreement regarding the project, and that should be the guiding light going forward. Please do not be swayed by a three-page, single spaced extortion letter that only an attorney would write.

Thank You,

Mark Lowman
Hayward, CA

From: Sara Ellen Daniel
Sent: Tuesday, May 4, 2021 12:33 PM
To: TERESA DULBERG
Cc: List-Mayor-Council; OHHAHayward

Subject: Re: May 4th Agenda Item #9 PH21-39

CAUTION:This is an external email. Do not click on links or open attachments unless you know the content is safe.

Hi Everyone,

I have to agree with Teresa. Even though I've only lived here since 2017, I've come to love this neighborhood. I feel safe and connected with nature, and the neighbors are friendly. But in my one, brief interaction with Mr. Switzer, he told me he didn't care about my view, and then he lied about it at the city council meeting.

While I appreciate the negotiations between OHHA and Brad Switzer and the resulting 350 square foot decrease in size of his proposed structure, the project will still leave my property in a very large shadow. Teresa's native California garden is so beautiful and a model for what I wanted on my property. I, too, would rather look at The Bay than the East side of Brad Switzer's house. Once the Switzer Trust residence is built, I will assess the damage to my quality of life. It may we'll be time for me to sell and move on as well.

Even with the 350 square foot reduction, my best calculation is that the 4 garage bays take up 800 square feet, and the resulting structure would still encompass 5150 square feet of space. I understand that the garage space doesn't "count" toward square footage, but it still takes up space and blocks sight lines. The only property more impacted than Teresa's is mine. I will have a next door neighbor who admitted he cares nothing about me and is showing, through his actions, that he cares only about himself. His structure is inappropriate for the lot, and that's all there is to it.

Hayward has dropped the ball by ignoring the 1998 Old Highland Homeowners agreement. The agreement predated the City's current plan, and the City should have to acknowledge its mistake and incorporate the signed agreement into its City plan, retroactively. This would then not allow the Switzer Trust project and the subsequent Tan project to be built.

These opinions are strictly mine and do not reflect the opinions of the OHHA.

Sincerely,
Sara Ellen Daniel

On Sat, May 1, 2021, 10:03 AM TERESA DULBERG wrote:

RE: May 4 Council Meeting
Agenda item #9 (PH 21-039) Proposed new build on Home Avenue
(Switzer project)

From: TERESA DULBERG
Sent: Saturday, May 1, 2021 10:04 AM
To: List-Mayor-Council
Cc: OHHAHayward

Subject: May 4th Agenda Item #9 PH21-39

CAUTION:This is an external email. Do not click on links or open attachments unless you know the content is safe.

RE: May 4 Council Meeting
Agenda item #9 (PH 21-039) Proposed new build on Home Avenue (Switzer project)

First, I would like to say I appreciate the process afforded to the surrounding affected community to have concerns weighed and considered when such a project is considered for approval by the city. We are fortunate to have this avenue to discuss, compromise, and modify plans to hopefully suit all parties in the end.

The amount of time and effort toward a positive collaborative solution on the parts of the city council, Mr. Switzer (owner of property), and the OHHA board is considerable and appreciated.

Having said that, because of this project which will still take up an entire hillside just one house away from mine and another huge house project which is planned for the lot next to it, I am currently looking at options to sell my beloved home and move from this once semi-rural hillside home I've lived in happily since 1974.

The reason we bought our home on Hillcrest Avenue was because of the wonderful country feel of the neighborhood and we were further assured by the signed and documented 1998 Old Highland Homeowners agreement with the city, that the open semi-rural feel of the area would be protected. If that agreement had been honored and adhered to, I doubt the huge scope of the Switzer project would have even been considered for approval. I do understand that the state law allowing for a broad definition and acceptance

of "accessory dwelling units" has seriously thrown a wrench into the spirit of what a single family dwelling actually is. I also understand that he owns the lot and should be able to build a house on it. I just wish it did not take up an entire hillside.

Once all the open grassy areas of our neighborhood are completely covered by buildings and paved driveways which it appears will be soon, it will be time for us to enjoy our retirement elsewhere.

The one request I have at this time is that the trees which are proposed to be planted on the Switzer lot do not further ruin our once panoramic view of the bay. Our view has already been obscured to the north east already by the huge row of pines which were planted years ago alongside a lot on Home Avenue below us, and now if the height of the proposed trees to be planted on the Switzer property end up blocking our view to the east, then we've lost the entire view of the bay which will also affect the value of our home which once commanded a sweeping view of the bay from our deck. So please----no tall pine trees!

In closing, thank you all for your hard work and determined efforts ...hopefully toward a solution that benefits the neighborhood in a positive way.

Sincerely,
Teresa and Paul Dulberg



YIMBY Action advocates for welcoming communities where everyone can thrive.
yimbyaction.org

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

April 30, 2021

RE: Support for 2579 Home Ave

Dear Mr. Martinez:

YIMBY Action is pleased to support the proposed project at 2579 Home Ave. This project would replace a vacant lot with much-needed housing, including a new home and an accessory dwelling unit. The project will help ease the crippling housing shortage that California is facing, while giving us a chance to welcome new neighbors to enhance the vibrancy of Hayward.

YIMBY Action is a network of pro-housing activists fighting for more inclusive housing policies. Our vision is an integrated and environmentally sustainable society where every person has access to a safe, affordable home near jobs, services, and opportunity.

California's severe housing shortage is causing skyrocketing homelessness and poverty, crippling our economy, and leading to debilitating commutes that exacerbate our global climate crisis. These impacts fall disproportionately on

low-income workers and families, and disproportionately deny communities of color access to opportunity. If we strive to be a society that advances racial and class justice, we must do more to ensure abundant housing in our region. This project will help address the housing shortage and ensure a welcoming Hayward where everyone can thrive.

Best regards,

Laura Foote

YIMBY Action, Executive Director



YIMBY Action advocates for welcoming communities where everyone can thrive.
yimbyaction.org