



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, April 14, 2016, 7:00 p.m.  
777 B Street, Hayward, CA 94541**

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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., Goldstein, Enders, Schott, Faria  
CHAIRPERSON: Parso-York  
Absent: COMMISSIONER: McDermott

**SALUTE TO FLAG**

Commissioner Willis Jr. led in the Pledge of Allegiance.

Staff Members Present: Alvarado Jr., Brick, Buizer, Chan, Flores, Golubics, Lens, Rizk, Schmidt Wilfong

General Public Present: 8

**PUBLIC COMMENT:**

Mr. Mark Stillman, Hayward resident, spoke about saving the Green Shutter Hotel and preserving residential single occupancy units (RSO). Mr. Stillman said the RSO residents can help educate the public on how to utilize public transportation and navigate the downtown area. Mr. Stillman said he is happy living at the Green Shutter Hotel and hopes it can be saved.

**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.

1. Appeal of Planning Director Decision to Deny an Administrative Use Permit to Establish an Outdoor Concrete and Asphalt Crushing Operation at 30120 Industrial Parkway Southwest in the Industrial (I) District, Frank Sanchez (Applicant)/Steve Navarro, Industrial Parkway LLC (Owner)

Senior Planner Schmidt provided s synopsis of the staff report.

Senior Planner Schmidt responded to Commissioner Enders that in September 2013, concrete recycling was considered major outdoor storage which would be subject to a conditional use permit (COA) and at that time the Planning Director made the



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determination this use would be subject to an administrative use permit (AUP) rather than a COA to support recycling. Assistant City Attorney Brick said per the Hayward Municipal Code the Planning Director has the authority to approve or deny an AUP.

Commissioner Willis Jr. disclosed that he declined Mr. Navarro's invitation to visit Nor-Cal Rock facilities as he had enough information to be able to study the item. He expressed concern about animosity between the City and a business and how this could discourage other businesses from coming to Hayward. Mr. Willis said there should be a better way to handle this situation, felt the reasons for denial of the permit was based on conjecture. Senior Planner Schmidt said staff recommended that outdoor concrete and aggregate crushing and stockpiling use not be allowed at this location, as there was a fundamental land use incompatibility between the outdoor concrete crushing and the regional retail/commercial center use that has been growing for the past twenty years around the site. Ms. Schmidt said staff suggested the use be moved to another location or be placed inside a building and noted the applicant declined placing the operation inside a building.

Senior Planner Schmidt responded to Commissioner Schott that another business has pulled a foundation and grading permit to build an indoor facility for the crushing operation and another business in Oakland with an indoor crushing operation.

Senior Planner Schmidt responded to Commissioner Faria that the Bar Area Air Quality Management District (BAAQMD) did not contact the City when BAAQMD issued Nor-Cal's permit. Ms. Faria made the recommendation for improved communication between BAAQMD and the City for permit applications by Hayward businesses. Development Services Director Rizk responded to Ms. Faria a change to land use/zoning designation does not necessarily mean a change in the physical land use and if an existing use was no longer consistent because of a City change of zoning designation, and unless there was a specific requirement that the use be brought into conformance with the General Plan, then the use could continue as a legal non-conforming use. Ms. Faria disclosed meeting with Mr. Sanchez and Mr. Navarro and visiting the Nor-Cal Rock facility said she saw large piles of debris and large equipment at the facility next door. Senior Planner Schmidt said staff had not observed this but if so, then the business would be held to the same notice of violation and would need to go through the same process.

Commissioner Goldstein said he passes by that area daily and visits the nearby Panda Express and has never heard and experienced any objectionable noise or dust and asked what level of standard BAAQMD applies. Development Services Director Rizk responded BAAQMD only deals with air quality; the City has multiple standards to apply such as land use, noise quality, and visibility. Senior Planner Schmidt said the 2012 business license was for retail sales of aggregate which is a passive activity. Ms. Schmidt said the current activity of concrete/aggregate recycling and crushing and stockpiling activity that takes up



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90 percent of the site began in 2008 which was the start of the business but never applied for permits for this activity.

In response to Commissioner Willis Jr.; Senior Planner Schmidt said Council adopted a General Plan and surrounding area is earmarked for future expansion of regional serving retail and that heavy industrial uses in close proximity to a regional serving retail were fundamentally incompatible based on the professional opinion of planning staff.

Chair Parso-York opened the public hearing at 7:49 p.m.

Mr. Steve Navarro, Hayward resident, owner of Nor-Cal Rock and the property, mentioned to Commissioner Enders that he tried to get a hold of her to invite her to meet with him and view the facility and also addressed Commissioner Faria's question, that the business next door is Sims Metals. Mr. Navarro provided his business background and the background of the site and what it was used for over the years. Mr. Navarro spoke about the efforts to make sure they were conducting business correctly and spoke about meeting with former Planning Director Patenaude and at that time how Mr. Patenaude reviewed the Nor-Cal site, conducted research on the site and how Mr. Patenaude was satisfied that Nor-Cal's crushing operation was grandfathered in. Mr. Navarro said with the information provided by Mr. Patenaude, Nor-Cal invested hundreds of thousands of dollars to set up the crushing operation and other permits, and currently is spending large sums of monies to defend their operation. Mr. Navarro said this process has been unfair and that Nor-Cal has never tried to hide their operation, operation is in plain view and did not have a single issue until Sims Metals began their business and created all the dust.

Mr. Frank Sanchez, Hayward resident, co-owner of Nor-Cal Rock, said Nor-Cal was a green company which was in line with the City's Green Initiatives that Nor-Cal provides a much needed recycling service to many entities including the City's Public Works department. Mr. Sanchez referenced a 2011 City Notice about being an unlicensed business and spoke about what transpired. He also spoke about Nor-Cal and the surrounding businesses that all do similar work and that the area is zoned correctly for the uses. Mr. Sanchez said the crushing machinery usage was a small percentage of the operation time. Mr. Sanchez spoke about the chain of events that have led up to their appeal. Mr. Sanchez said that they are a Hayward employer, their customers are small businesses and Nor-Cal provides a service to the community.

Ms. Dyana Anderly, former city planning manager, noted that the Nor-Cal Rock site was constrained with easements and the Flood Control Channel. Ms. Anderly said Nor-Cal Rock came to the City in good faith to start their business and spoke about issues in the staff report that were unfounded and should not be considered. Ms. Anderly said that the retail/commercial use near the Nor-Cal sight was found to be compatible with the



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Industrial Zone. A use permit should not be required because a former planning manager had made the determination that the use was grandfathered in. She said that the staff report had glitches, misinformation, omissions and bias. Ms. Anderly stated that a noise study was not needed in the industrial area and the environmental issues should be ignored. Ms. Anderly said per the Hayward Municipal Code a business license shall not be considered as determinative of any required zoning compliance or planning approval.

Mr. Todd Williams, with Wendell and Rosen, attorney for Nor-Cal Rock, said staff's findings for denial were based on the wrong standards of noise and visibility. Mr. Williams said the only complaint was when Sims Metals started their crushing operation. Nor-Cal should be allowed to continue their existing operation because of the prior determination in 2008 by a former planning manager that the use was grandfathered in; Nor-Cal invested monies into their business and has operated openly. Mr. Williams spoke about the proactive steps Nor-Cal Rock has instituted to run their operation such as apply for and receive the BAAQMD permit, install dust suppression, switching to an electric generator to keep noise down, and raising walls to avoid dust migration. Mr. Williams pointed out when the General Plan was being revisited the zoning designation was not changes. Mr. Williams urged the Planning Commission to grant the applicant's appeal.

Mr. Jason Holder, business address Oakland, representing Sierra Equipment Company, who owns the property adjacent to Nor-Cal Rock, supports staff's recommendation to deny Nor-Cal's appeal and believes strongly that an AUP should be required for the industrial use. In response to Commissioner Schott, Sims Metal is a tenant of Sierra Equipment Company.

Chair Parso-York closed the public hearing at 8:50 p.m.

Commissioner Schott disclosed meeting with Nor-Cal owners, surveyed the site and viewed the operation and spoke with Clarks U-Save Rockery. Mr. Schott noted it was a breezy day and did not experience an unusual amount of dust. Mr. Schott said Nor-Cal has been in operation since obtaining former Planning Director Patenaude determination in 2008; it needs to be presumed that Nor-Cal has been in compliance and has invested hundreds of thousands of dollars in their business. Mr. Schott noted that the dust was coming from Clarks which backs up to the business that was having a dust issue. Mr. Schott said the City cannot say how many businesses can be in Hayward and the applicant deserves his permit.

Commissioner Goldstein disclosed meeting with Mr. Navarro at Nor-Cal Rock and was impressed with the operation; the business does not create a nuisance, has not witnessed any problems in the area from any of the businesses; Nor-Cal is not hidden from view and he goes by that site every day. Mr. Goldstein said an administrative error on a business license should not be grounds for later issues to come up. Mr. Goldstein said Nor-Cal Rock is entitled to continue their operation and should not be required to have a permit.



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Commissioner Willis Jr. expressed concern about the atmosphere that this is creating for businesses that would like to do business in Hayward. Mr. Willis said he drives down Industrial Parkway and does not see any problems. The staff report is unfair towards the applicant and is inclined to support the appeal.

Commissioner Faria said in 2013 she was approached by a family who wanted to open a concrete crushing business and it appears the family is continuing the concrete crushing operation outdoors. Ms. Faria said the City needs to be consistent about how they apply their regulations. Ms. Faria said there seems to have been some inconsistencies that transpired overtime; she noted that Nor-Cal Rock has been upfront about their business; and Mr. Navarro was consistent every time he tells their story. Ms. Faria supported the applicant's appeal.

Commissioner Enders noted that she had contacted staff about this item and was told that the staff presentation would answer a lot of her questions. Ms. Enders said that Nor-Cal Rock has provided a compelling case and the City has not provided enough evidence to support the denial of application.

Chair Parso-York said this appears to be a difference of opinion of what transpired over the years; here was a business that has been in operation since 2008 and the permit is questionable but their business card was clear that they recycle aggregate. Mr. Parso-York said this is a green business, recycling is positive and does not think it is the City's rule to limit suppliers of a service and even though there were two other businesses providing the same service, it should not be a factor in this case. Mr. Parso-York disagreed with staff's recommendation, the business should be grandfathered in and suggested that Nor-Cal be considered a legal non-conforming use.

Development Services Director Rizk thanked the Planning Commission and the appellant; said this was a difficult situation when staff and proponent were in disagreement. For the record, Mr. Rizk said he had spoken with Mr. Patenaude and what Mr. Navarro had relayed was consistent with what Mr. Patenaude said had transpired but Mr. Patenaude could not recall any discussion on crushing of material. Mr. Rizk said for the record, that his determination for a policy change in September 2013, that the practice was to require a conditional use permit (CUP) for major outdoor storage in the industrial district. Mr. Rizk said his decision to require the less involved AUP is that it relates to recycling and the City encourages recycling.

Chair Parso-York reopened the Public Hearing at 9:07 p.m.

Ms. Elisa Wilfong, WPCF Administrator, spoke about new storm water regulations that are very stringent in restricting PCB runoff that was laden in demolition materials. Ms. Wilfong



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said there was a strong difference with a crushing operation, as they will receive materials from all over the bay area, and there will be new pollutants introduced during the crushing operation. The City will have to spend huge amounts of money to mitigate these pollutants by retrofitting, cleaning and identifying sites that are hotspots. Ms. Wilfong said she was working with other legal operations that need to satisfy storm water regulations. Ms. Wilfong said all the crushing operations will have to comply with the same stringent standards, will need to control dust and that mitigation efforts can be extremely challenging. Ms. Wilfong said the pollutants must be contained and does not want new PCBs and pollutants introduced into Hayward.

Mr. Todd Williams, with Wendell and Rosen, attorney for Nor-Cal, said the new storm water regulations are not what were before the Planning Commission tonight.

Commissioner Goldstein thanked Ms. Wilfong for sharing the information.

Chair Parso-York closed the Public Hearing at 9:15 p.m.

Assistant City Attorney Brick offered direction to the Planning Commission.

Commissioner Willis Jr. made the motion to grant the Appeal and find that an Administrative Use Permit is not required for the existing concrete and asphalt recycling and crushing use by Nor-Cal Rock, Incorporated; that such use was previously approved; and no use permit is required for the continued existing use.

Commissioner Goldstein seconded the motion. The motion passed with the following vote:

Commissioner Enders said she will not be supporting the motion as an AUP and an environmental review process should be required. Ms. Enders acknowledged the Planning Director's authority in this matter in changing the policy so that the City can get all of the businesses under compliance through the AUP/CUP process.

The motion passed with the following vote:

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



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**COMMISSION REPORTS**

2. Oral Report on Planning and Zoning Matters  
Planning Manager Buizer announced that there are full agendas coming up, the next meeting will be on April 28, 2016, and there are items calendared for the two meetings in May.
  
3. Commissioners' Announcements, Referrals  
Commissioner Schott said for the 2<sup>nd</sup> Street project that was just approved by the Planning Commission, if a traffic study was conducted during Spring Break, and then it should be redone and conducted over a period of time when both HUSD and Cal State are in session for more realistic results.

**APPROVAL OF MINUTES**

4. Approval of the Minutes of the Planning Commission Meeting on March 17, 2016.

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

5. Approval of the Minutes of the Planning Commission Meeting on March 24, 2016.

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

**ADJOURNMENT**

Chair Parso-York adjourned the meeting at 9:24 p.m.



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**APPROVED:**

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Brian Schott, Secretary  
Planning Commission

**ATTEST:**

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Denise Chan, Commission Secretary