



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, June 28, 2018, 7:00 p.m.
777 B Street, Hayward, CA 94541**

MEETING

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

CALL TO ORDER Pledge of Allegiance

Commissioner Willis led in the Pledge of Allegiance.

ROLL CALL

Present: COMMISSIONERS: Willis Jr., Bonilla Jr., McDermott, Faria
CHAIRPERSON: Goldstein
Absent: COMMISSIONER: Schott
Vacancy: ONE

Staff Members Present: Brick, Epstein, Lee, Lens, Lochirco, Martinez

General Public Present: 25

PUBLIC COMMENT:

Mr. Zachariah Oquenda, Hayward resident, spoke about the City of Oakland utilizing city-owned properties to develop affordable housing with a focus on anti-displacement strategies with a program named "Public Land for Public Good". Mr. Oquenda suggested Hayward should look at setting up a similar program including rezoning parcels in Hayward in a thoughtful way.

PUBLIC HEARINGS: For agenda item No. 1, No. 2, and No. 3, the Planning Commission may make a recommendation to the City Council.

1. Proposed Single-Family Residence on a Vacant 0.27-Acre Hillside Lot Located at 2367 Rainbow Court, by Mark Bucciarelli, (Applicant) on Behalf of Quan and Thip Tran (Property Owners, Requiring Approval of a Site Plan Review and Grading Permit (Application No. 201700714); and the Adoption of a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program

Assistant Planner Martinez provided a synopsis of the staff report and a PowerPoint presentation.



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Commissioner McDermott said her house also has a sloped driveway and when it rains, water will come into her garage and asked about mitigation measures for the proposed project's sloped driveway. Assistant Planner Martinez responded that the proposed project plans were reviewed the Public Works Department – Engineering Division, for the submittal package the Engineering Division included civil engineering plans that included mitigation measures through grading and drainage plans. Mr. Martinez confirmed that the project will have gas fireplaces as wood fireplaces are no longer allowed.

In response to Commissioner Faria's question if the geotechnical engineer is present at all times since the geotechnical report states "under the supervision and observation of the geotechnical engineer", Assistant Planner Martinez said the geotechnical engineer prepares the report and takes the responsibility to ensure that certain requirements are accomplished and thus the engineer is likely to be present on the project site when certain benchmarks are accomplished such as the placing of the footings, concrete slab on grade and piers into bedrock.

Chair Goldstein opened the public hearing at 7:15 p.m.

Mr. Zachariah Oquenda, Hayward resident, asked if the project had solar panels, Assistant Planner Martinez said per the California Residential Code the developer is required to install the infrastructure for solar amenities.

Chair Goldstein closed the public hearing at 7:19 p.m.

Commissioner Willis made a motion to approve the staff recommendation. Commissioner McDermott seconded the motion.

AYES:	Commissioners Willis Jr., Bonilla Jr., McDermott, Faria Chair Goldstein
NOES:	None
ABSENT:	Schott
ABSTAIN:	None
VACANCY:	One



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2. Proposed Single-Family Residence on a Vacant 0.25-Acre Hillside Lot Located at 26620 Call Avenue (APN 081D-1665-026-00) by Applicant/Owner: Somnadh Allu, Requiring Approval of Site Plan Review with Grading Permit and Adoption of a Mitigated Negative Declaration with Mitigation Monitoring and Reporting Program (MMRP). Application No. 201703214

Associate Planner Lee provided a synopsis of the staff report and a PowerPoint presentation.

Mr. Gary Diebel, project architect, spoke about the proposed project, the challenging sloped site and how the owner favors modern architecture.

In response to Commissioner Faria's question about the project timing in relation to the expiration date of the geotechnical report, Associate Planner Lee said if the construction process takes longer than expected then the geotechnical report can be updated.

In response to Commissioner Bonilla questions about the site's steep slope and if the City issues grading permits for sites this steep, Associate Planner Lee said any projects with slope over 20% must go before the City Council for approval and noted that a grading permit is needed for sites with milder slopes also. Mr. Lee said this slope is consistent with the area and noted there have been other projects that have been approved with similar or higher percentage of slopes.

Chair Goldstein opened and closed the public hearing at 7:29 p.m.

Commissioner Willis made a motion to approve the staff recommendation.

Commissioner Faria seconded the motion.

Commissioner McDermott commented that the Planning Commission has reviewed similar projects with steep slopes and she has reviewed the project and does not see anything unusual that would prevent the Commission from approving the project.

Commissioner Faria agrees with Commissioner McDermott and added that numerous projects with geotechnical reports have come before the Planning Commission for their review and the Commissioners make sure the recommendations for mitigation measures are in place prior to approving the proposed projects.

Chair Goldstein echoed the same comments that the Commission has become familiar with projects with steep slopes and the Commission reviews the geotechnical reports and also considers any public comments prior to making a recommendation.



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Commissioner McDermott said she has enjoyed the multitude of architectural styles as it can be challenging to build on a sloped site and part of developing a site is the removal of trees.

Associate Planner Lee noted there are some trees that will need to be removed and the owner will also be planting a lot of trees.

The motion passed with the following vote:

AYES: Commissioners Willis Jr., Bonilla Jr., McDermott, Faria
Chair Goldstein
NOES: None
ABSENT: Schott
ABSTAIN: None
VACANCY: One

3. Proposal to Subdivide a 5.1-Acre Site into 45 Parcels to Allow the Construction of 41 Detached Single-Family Residences with Common Open Space Areas and Related Site Improvements at 22626 4th Street (APNs 427-0036-033-05, 427-0036-033-06, 427-0036-033-07, 427-0036-055-19, & 427-0036-085-01) by Applicant: Tony Dutra on Behalf of Owner: Dutra Enterprises, Requiring Approval of a Vesting Tentative Tract Map, Planned Development (PD) Rezone, Site Plan Review, and the Adoption of a Mitigated Negative Declaration with Mitigation Monitoring and Reporting Program (MMRP). Application No. 201704074

Associate Planner Lee provided a synopsis of the staff report and a presentation.

Mr. Tony Dutra and Mr. James Wilson, with Dutra Enterprises, presented a PowerPoint presentation about the proposed project.

Commissioner Willis said he was disappointed that this is a reduced density development as there is a great need for more housing and asked if the developer will consider adding more density to the project. Mr. Dutra said originally the project was proposed at a higher density in November 2016 but at that time the City wanted a development that fit in with the existing neighborhood and community feedback was for a less dense project. Mr. Dutra said at this point it is too late to increase the density but that they will increase density and include the affordable housing element in future developments.

In response to Commissioner Bonilla's question about the number of grandfathered-in projects will be coming before the Commission, Principal Planner Lochirco said the majority of the multifamily housing projects have already gone through the entitlement process and pointed out that this was a larger project and has been going through the



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process for more than a year. Mr. Bonilla asked about the homeless population that were moved out of the area and if any services were provided to them. Mr. Lochirco said he would defer this question to public safety staff and to the applicant. Mr. Dutra said the Police Department treated the homeless population with respect and patience. Assistant City Attorney Brick said there are procedures that the City follows prior to removing property and noted there is a required minimum posting period for this type of notification, then public safety staff will speak with individuals and typically will refer individuals to services. Mr. Bonilla hopes that did happen as in his experience on the Community Services Commission this does not occur as much as we would like.

In response to Commissioner McDermott's question about public outreach, Associate Planner Lee said staff conducted a hard outreach by going out in pairs with copies of the project along with a survey that can be completed online and spent a half day walking the neighborhood. Mr. Lee said the responses were collected and provided to the applicant, who then incorporated changes into the plans. Mr. Lee said staff was able to contact about half of the residents and business owners. Ms. McDermott suggested a mechanism needs to be set in place to be able to contact residents more effectively. Mr. Lee added there was more outreach done besides the hard outreach and that he made sure to respond to all emails that he received.

In response to Chair Goldstein's question about the repair of streets adjacent to the project site, Associate Planner Lee said one of the conditions of approval is for the developer to pave to the center line of the street and along the project frontages. Mr. Goldstein asked staff to check with Public Works Engineering and Transportation to look into paving and repairing the balance of the street.

Chair Goldstein opened the public hearing at 8:19 p.m.

Mr. Bruce King, with Friends of San Lorenzo Creek, spoke against the project as it does not adequately address creek related needs and referred to the document provided to the Planning Commission. Mr. King said the project will be removing important riparian areas that is vital to the creek, expressed the need to maintain the minimum creek setback to prevent development eroding or impacting the creek, and indicated that the Alameda County Water Course Protection Ordinance supports these standards and concerns. Mr. King recommended the Planning Commission resolve creek related issues such as the limit depths of backyards, require the developer to restore the native riparian areas, and not allow the HOA to assume ownership and responsibility of maintaining the riparian areas.

Associate Planner Lee and Mr. Dutra met regarding Mr. King's recommendation. Mr. Lee said he checked with Alameda County and their engineers and the Water Course Protection Ordinance is a good guiding document but is not codified in the City's Municipal Code. Mr.



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Lee said the CEQA analysis concluded that the project would have no impacts on the creek and the fence provides a clear demarcation of where a property line ends; therefore, Planning staff and Public Works staff were comfortable keeping the proposed fence. Mr. Lee checked with the CEQA consultant who indicated that it would be costly to restore the creek, and presented all information to Mr. Dutra. Dutra Enterprises decided not to commit to the additional condition of approval regarding the riparian areas. Mr. Dutra said the fence line was thoroughly discussed with staff and it was decided this was the best course of action based on all the expense and work to cleanup the area from the debris. Mr. Dutra noted to go through this additional process would be costly and time consuming. Mr. Lee said the waterway is County owned and the creek bank area is part of the project site. Mr. Dutra added the creek bank areas would be maintained by the HOA.

In response to Chair Goldstein's question about meeting the standards of the Friends of San Lorenzo Creek and hold the HOA accountable to meet those standards, Principal Planner Lochirco said the HOA can look at the maintenance of the open space areas but it would be difficult to require a stream bed alteration permit down the road to require the HOA to plant riparian vegetation. Mr. Lochirco said the Commission can make this recommendation and add this condition for the City Council to consider.

Ms. Ginny Delaney, Hayward resident, spoke in favor of the proposed project and is a member of the Keep Hayward Clean and Green Task Force. Ms. Delaney said the proposed project will improve this area.

Mr. Zachariah Oquenda, Hayward resident, said the presentation was very anti-homeless and there is a housing issue and more needs to be done more to assist the population who are on the lower end of the economic spectrum and are in need of housing. Mr. Oquenda suggested the project needs a full environmental impact report (EIR) done.

Ms. Marlina Selva, Hayward resident, spoke about the importance to preserve the past which includes wildlife and resources and spoke against the project as there is a substantial number of wildlife that depend on the creek and riparian creek beds. Ms. Selva was concerned about traffic impacts, increased crime, and the disruption of the existing neighborhood.

Ms. Linda Bennett, Hayward resident, spoke about negative impacts from homeless persons on B Street. Ms. Bennett said there was an original neighborhood meeting when the residents were notified and what was discussed was to have single family homes to fit in with the existing neighborhood and said there was no further outreach beyond that first notice. Ms. Bennett spoke against the proposed project because of the negative impacts to the existing neighborhood including parking, traffic, and inadequate creek setback and harm to wildlife. Ms. Bennett added her husband totally opposes the project.



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Ms. JoAnn Cola, Hayward resident, said a group of neighbors visited the Planning Department to talk about this project. Ms. Cola said they were never contacted about this project and how they were never allowed to put up fences along the creek. Ms. Cola said problems at 4th and B Street occurred about five years ago.

Ms. Melinda Selva, Hayward resident, spoke about not being contacted about the project and not being able to access the survey. Ms. Selva said she only received one postcard for tonight's meeting and issues started about five years ago. She has concerns about increased traffic impacts, increase in population density, there are elderly population in older Hayward homes, the community has not been allowed to be heard, and impacts to the peace of the neighborhood.

In response to Chair Goldstein's question about public outreach, Principal Planner Lochirco said this is the first public hearing on this project. Mr. Lochirco said Planning staff is always available to the public and staff left door hangers if not able to contact residents. Mr. Lochirco said public outreach is an essential component to start dialogue with the public. Associate Planner Lee said staff encouraged the applicant to conduct public outreach.

Ms. Maricela Frausto, Hayward resident, said she received flyers and could access the website and that it was helpful for her to provide input. She is concerned about housing density, negative impacts to traffic and nature. Ms. Frausto spoke about issues she has had from the homeless population and spoke in favor of the project.

Chair Goldstein closed the public hearing at 9:07 p.m.

Commissioner Willis commented that the population is expanding and there is a housing issue. Mr. Willis made a motion to approve the staff recommendation.

Commissioner Bonilla spoke about our moral obligation, the need to ask how we can solve the housing crisis, and how he is troubled that the project is brought before the Commission without an affordable housing element. In response to Mr. Bonilla about the issue of fences, Associate Planner Lee said a building permit is not required to build a fence under seven feet. Principal Planner Lochirco said the CEQA analysis performed is based on special status as there are protected species that are protected and some that are not such as wild turkeys that are not protected by state or local law. Mr. Bonilla said he will support the project if it includes the condition to restore the riparian creek bed.

Commissioner Faria said she has mixed feelings about this project, she likes the development, is glad for the decreased density and has concerns about lot sizes, wildlife



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and the creek. Ms. Faria understands that cost is an issue and will support the development if there is a condition for the creek and vegetation.

Commissioner McDermott has mixed feelings about this project but knows there is a housing issue since the City is losing people as it is too expensive to live in California and the bay area. Ms. McDermott said she holds the Dutra family in high regard as they have made positive changes to the City.

Commissioner Willis said the developer has worked within the law and has worked and cooperated with staff and said impacts to parking, traffic and density are a result of growth. Mr. Willis supports the project because it will provide housing and reiterated his motion to approve the staff recommendation.

Chair Goldstein would like to see a condition added to incorporate the findings of the Friends of San Lorenzo Creek.

Commissioner Bonilla said this is a good project but would like a friendly amendment to restore and take care of the riparian creek bed.

Associate Planner Lee said correspondence provided to the Planning Commission included Mr. King's letter from April and correspondence on the mitigated negative declaration.

Chair Goldstein asked staff for direction as he would like the creek protected.

Associate Planner Lee said the CEQA document is an analysis on the impact from the development on the creek and Mr. King's comments were aimed at enhancing the creek.

Assistant City Attorney Brick pointed out that if the Commission were to recommend an EIR be conducted then the item would need to be denied. He said if the Commission is recommending approval of the project with an amendment to the conditions of approval address to riparian creek bed then this can be brought forward to the City Council.

Mr. King said his concern is there needs to be a mechanism to protect the riparian creek beds.

Mr. Dutra read from the staff report "staff recommends the Planning Commission consider requiring the removal of non-native vegetation and planting of riparian vegetation within part of the creek bank that is within the boundaries of this parcel". Mr. Dutra said the challenge is that the exact area and type of riparian vegetation has not been defined and the cost and time to work with the appropriate agencies has not been determined.



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Chair Goldstein requested that staff let developers know that any proposed developments along San Lorenzo Creek will have these same issues come up as verbalized by the Friends of San Lorenzo Creek.

Principal Planner Lochirco clarified for the Planning Commission that the item is for a planned development rezoning and the development standards specifically crafted for this project are reflected in the site plan. Mr. Lochirco said it is not required of any project in the City of Hayward to mandate the Alameda County Watershed requirements as it relates to the creek setback. Mr. Lochirco noted many cities do adopt the county's ordinance.

Commissioner Willis asked Mr. Dutra if he accepts the friendly amendment to the Conditions of Approval. Mr. Dutra said he can't say at this time that he is agreeable to the added condition of approval as there are too many unknowns and there needs to be further discussion.

Commissioner Willis does not accept the friendly amendment since the added COA is not required by the City. Mr. Willis stands by his original motion. Commissioner McDermott seconded the motion.

Chair Goldstein said that he will not be voting in favor of the motion.

Commissioner Bonilla said there needs to be more clarification to the term "restore" to the creek bed. Mr. Bonilla said he will not be voting in favor of the motion.

The motion failed with the following vote:

AYES:	Commissioners Willis Jr., McDermott
NOES:	Commissioners Bonilla Jr., Faria, Chair Goldstein
ABSENT:	None
ABSTAIN:	None
VACANCY:	One

Chair Goldstein made a motion to approve the staff recommendation with an added Condition of Approval to restore the riparian watercourse area with Mr. Dutra, Mr. King and staff working together.

Commissioner Faria seconded the motion.

Commissioner Bonilla said the motion is still too vague as there needs to be further clarification. Mr. Bonilla said he will not be voting in favor of the motion. Mr. Bonilla would



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like for staff and Mr. Dutra to meet and come back with a condition that further defines the restoration of San Lorenzo Creek.

The motion failed with the following vote:

AYES:	Commissioners Faria, Chair Goldstein
NOES:	Commissioners Willis Jr., Bonilla Jr., McDermott
ABSENT:	None
ABSTAIN:	None
VACANCY:	One

Assistant City Attorney Brick clarified that this a recommendation to the City Council and the applicant can choose to proceed to the City Council or the applicant can continue to work with staff.

APPROVAL OF MINUTES

4. Approval of the Planning Commission Minutes of May 24, 2018

Commissioner Willis Jr. made a motion, seconded by Commissioner McDermott to approve the Planning Commission Meeting Minutes of May 24, 2018. The motion passed with the following votes:

4:0:1:1 (AYES: Willis Jr., Goldstein, Bonilla Jr., McDermott; ABSTAIN: Faria; ABSENT: Schott)

Vacancy: One

COMMISSION REPORTS

Oral Report on Planning and Zoning Matters:

Principal Planner Lochirco said there is one vacancy on the Planning Commission.

Commissioners' Announcements, Referrals:

There were none.

ADJOURNMENT

Chair Goldstein adjourned the meeting at 9:54 p.m.



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APPROVED:

Ray Bonilla Jr., Secretary
Planning Commission

ATTEST:

Denise Chan, Senior Secretary
Office of the City Clerk