



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, September 14, 2017, 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 Enders.

Chair Enders announced that there were technical issues that IT is currently troubleshooting.

**CALL TO ORDER Pledge of Allegiance**

Commissioner Willis Jr. led in the Pledge of Allegiance.

**ROLL CALL**

Present: COMMISSIONERS: Willis Jr., Goldstein, Schott, McDermott, Faria  
CHAIRPERSON: Enders  
Absent: COMMISSIONER: None  
Vacancy: COMMISSIONER: One

Staff Members Present: Briggs, Buizer, Chan, Lawson, Lochirco, Porto, Vigilia

General Public Present: 30

**PUBLIC COMMENT:**

There were none.

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

1. Haymont Townhomes and Apartment Mixed-Use Project-Proposed subdivision and construction of 35 townhomes and a mixed-use building of 39 apartment units with 1,020 square feet of ground floor commercial use on a 2.7-acre project site located at 26601 Mission Boulevard (west side, north of Sorenson Road) Assessor Parcel Number (APN) 452-0036-30-05, requiring approval of an amendment to South Hayward BART/Mission Boulevard Form-Based zoning code (Article 24) to allow residential density transfer/averaging among like-zoned development sites in the Urban General transect zones T4 (17.5 DU/Acre max); Site Plan Review; Warrants for: (1) roof pitch, (2) excess parking in the T4 zone, (3) glazing less than 30% for the first story along Mission Boulevard, and (4) parking within the Layer 2 setback area; and Vesting Tentative Map 8335. Application No. 201601022 Mitigated



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Negative Declaration. KB Home (Applicant) and DNS Capital Partners LLC/Robert Telles (Owner/Applicant)

Consulting Planner Porto provided a synopsis and PowerPoint of the staff report.

Commissioner Schott said without access to the staff reports for both items it would be difficult to have a comprehensive discussion.

Chair Enders called a recess at 7:19 pm because of IT issues. Ms. Enders reconvened the meeting at 7:28 pm.

Mr. Telles, applicant owner, spoke about the history and evolution of the project and the elements within the project.

Mr. Panek, Sr. Vice President for Planning for KB Homes, spoke about the project. Mr. Panek clarified that the request for the text amendment is for the Form Based Code to be consistent with the City's General Plan Land Use Policy 3.5, which encourages a density transfer to provide a variety of housing within a singular project. Mr. Panek said the residential element will be managed by a Homeowners Association (HOA). Mr. Panek requested a modification to Condition 142 regarding the timing of the demolition of existing buildings at the project site as their closing will not occur until after the appeal period expires. Mr. Panek spoke about the working with the City's Landscape Architect Koo on the project's landscaping. Mr. Panek said there is an issue with Condition 82, the requirement of four planters installed on the Mission Boulevard and noted that the developers have been working on this project with the City for eighteen months and were just told about Condition 82 a week ago and said they understand the purpose for planters are for traffic control. Mr. Panek requests that the Planning Commission make a recommendation to the City Council to delete this condition, he said it is not appropriate and is not fair.

Consultant Planner Porto responded to Commissioner Schott's question of where the planters are to be located, Mr. Porto said the Acting Deputy Director of Public Works Briggs will be able to speak about the purpose of the planters and were the drafters of Condition 82. Mr. Porto said the landscape planters will be seven feet deep and will bulb out onto Mission Boulevard will be buffer to cars encroaching on the parking lane. Mr. Schott commented that the City just spent \$170 million dollars to redo Mission Boulevard and questioned the purpose of the planters.

Acting Deputy Director of Public Works Briggs said that since the City had completed the Route 238 Corridor Improvement Project in 2014, the City has received a great number of comments regarding the speed on Mission Boulevard and the City has continued to move



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forward with the design of the Phase 2 project from Industrial Boulevard south to the south City limits. The City has been working with the community with the design of Mission Boulevard, during that design process what resulted was to narrow Mission Boulevard in that area in order to slow down the traffic. Mr. Briggs said in the design there are bulb-outs at street corners/intersections and at regular intervals to have the planter bulb-outs. Mr. Briggs said this has been required of other projects that are in the works such as the Holiday Bowl, the Mission Seniors Project, a hotel at 25697 Mission, Mission Paradise Condominiums, and Tract 8345 at 25501 Mission. In response to Chair Enders' question of how this new design fit in with the Bicycle Master Plan that is along the 238 corridor. Mr. Briggs responded that for Industrial Boulevard south there are bicycle lanes on both sides of street and the cross section. Mr. Briggs said he is not 100% certain how the new design with the bulb-outs fits in with the Bicycle Master Plan. Mr. Porto said the bulb-outs are not represented on the project drawings but described where the bulb-outs will be located on the project plans. Mr. Briggs explained for Ms. Enders that the bicycle lanes will be located between the bulb-outs and the traffic lanes, Mr. Briggs said the parking lanes are typically eight feet wide and the bulb-outs are within the parking lane and will not restrict vehicle traffic any more than a parked car. Mr. Briggs responded to Commission Schott that there will still be two lanes in each direction and the lanes will remain the same size and the City will maintain the landscaping on the bulb-outs.

In response to Commissioner Willis Jr., Consultant Planner Porto said per the Form Based Code there are two parking spaces maximum for each residential unit and the developer is requesting a warrant for the additional eight-guest parking. Mr. Porto said there is also an additional 15 parking spaces on the street. Mr. Willis is concerned about the problems that can occur if there is not adequate parking for residents and their guests. Mr. Panek responded to Mr. Willis that the project is all market rate housing and said the developer is requesting the parking warrant because they are concerned about adequate parking for residents and guests and they are concerned that the bulb-outs will take away parking spaces. Mr. Willis said one of the purposes of the planters is to make the area more appealing and add to the appearance.

In response to Commissioner Faria's questions about the layout of the townhomes, what is planned for the divider between new townhomes and existing single family homes, Mr. Panek said the townhomes will be set back 25-30 feet from the property line and there will be a significantly landscaped concrete wall. Ms. Faria said that she visited the project site and was not impressed with the exterior of an existing apartment building and observed the color scheme of the newer apartments being built near Tennyson and Mission and noted the colors are neutral and looks institutional. Mr. Telles responded that the goal is to do our best to make our project attractive and the landscaping will add to the aesthetics.



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In response to Commissioner McDermott's questions about the eight parking spaces and the commercial space and pointed out that there is another coffee shop that is patronized by people who drive by, Mr. Telles confirmed that three of the spaces are dedicated for the apartments and there is street parking for the commercial space. Mr. Telles said the commercial space is designed to serve the residents and the community. Mr. Telles responded to Ms. McDermott's question about the mixture of townhomes and apartments, said what made this project possible was the partnership with KB Homes as Mr. Telles did not have the resources by himself to build an all townhomes project. Mr. Telles confirmed for Ms. McDermott that the gas station tanks have been removed and spoke about the process to research the project site. Mr. Panek responded to Ms. McDermott that the common areas will be lighted utilizing solar energy. Consultant Planner Porto responded to Ms. McDermott that the traffic study conducted takes into consideration the traffic both north and south of the project and other projects that are going to be built. Ms. McDermott is an advocate of affordable housing, she is amazed at the rental rates and how expensive it is, there is an obligation to the community to have affordable housing stock and hopes that the affordable housing element becomes a requirement. In response to Ms. McDermott's question as to why developer was just told about Condition 82, Acting Deputy of Public Works Director Briggs said this is a new policy to install the bulb-outs with the planters that came up when working with the community about traffic calming measures along Mission Boulevard. Mr. Briggs is not sure why it was not discussed earlier with the developer but the City wanted to make sure that it is in place for the project. Mr. Briggs confirmed for Ms. McDermott that this will be a standard for all new projects.

Commissioner Schott is opposed to the bulb-outs and asked that Condition 82 be removed, that the entire site be demolished immediately and not just the KB site and to take care of any hazardous issues on that project site. Acting Deputy of Public Works Director Briggs said that staff has taken the Route 238 Mission Boulevard Phase 2 Project to the City Council at Work Sessions and has presented the traffic calming measures with the cross sections with the planters spaced evenly on Mission Boulevard starting an Industrial Boulevard going south. Mr. Briggs added that Council has looked at the William Lyons Homes Project numerous times that have these planters on Mission Boulevard. Staff has received acceptance and direction from Council to move forward with this traffic calming measure and will be extending this new policy on Mission Boulevard going towards Carlos Bee. Mr. Briggs added that the planters will take up the same space as a parked car and will not interfere with traffic. Mr. Telles responded to Mr. Schott that everything will be demolished during the 60-day period.

Commissioner Willis Jr. supports Condition 82, as trees have a calming effect on the location, improve property values, aesthetics, trees go with residences and hopes that the developer will agree to this. Mr. Willis is an advocate for market rate housing as the City



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has an overabundance of affordable housing stock noting that the developer will be paying the affordable housing in-lieu fees.

Chair Enders agrees with Commissioner Faria about the concern of the concrete wall and wants to make sure that it is well landscaped to discourage graffiti on that wall, strongly encourage the City Council to address the aesthetics of the apartment building. Ms. Enders understands and supports the developer's warrant for the eight guest parking spaces and asked that staff research a high-tech parking management system to address the parking issues. Ms. Ender's has concerns about affordable housing in the bay area and the City noting that she had met with Mr. Telles and at that meeting he was open to having one or two affordable housing units and asked what changed. Mr. Telles said previously he was under the impression that the affordable housing was a requirement but during the process he learned that he could pay the affordable housing in-lieu fees. Mr. Telles said that he is sensitive to that topic and the people in Hayward. Ms. Enders requested the developer to clarify Condition 142 as it seems that staff was on board with the request. Mr. Panek explained that in the contract with Mr. Telles there are provisions on both sides to close and one of the issues in KB's purchase agreement is that KB will not close until the statutory 30 day California Environmental Quality Act (CEQA) period ends, as the 30-day timeclock would start at the end of the CEQA statutory 30-day period. Staff confirmed that they are on board with this change.

Chair Enders opened and closed the public hearing 8:24 p.m.

Commissioner Willis Jr. made a motion to approve the staff recommendation.

The motion failed for a lack of a second.

Chair Enders supports Condition 82 as the traffic calming measures will be beneficial for Mission Boulevard and supported recommending to the City Council that in place of the affordable housing in-lieu fees to have an affordable housing element in this project. Ms. Enders mentioned that City Council members spoke out at the late spring/early summer sessions, that they were not going to approve any more housing developments unless affordable housing was included in project. Ms. Enders stands with the City Council and will not vote for this project unless the affordable housing element is included.

Commissioner Willis Jr. commented that property owners have the right, by law, to instead of building affordable housing to pay the in-lieu fees, to compel the applicant is a violation of their rights.

Chair Enders pointed out that the City Council is considering updating the affordable housing ordinance to increase the in-lieu fees or require the affordable housing element.



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Commissioner Faria agreed with Chair Enders, but until the City Council has formalized the affordable housing element as a requirement, it is not appropriate to compel this developer to have an affordable housing element.

Commissioner McDermott asked for the City Attorney to comment.

Senior Assistant City Attorney Vigilia said the current ordinance allows the applicant to either pay the in-lieu fees or incorporate an affordable housing element. Mr. Vigilia said it is not appropriate to impose an affordable housing element on any developer as the conditions of approval are based on the City's authority to impose those conditions.

Commissioner McDermott respectfully disagrees with Commissioner Willis Jr., and commented regarding affordable housing that there has been such a dramatic change in regards to the shrinking of the middle class, as there is the very rich and the very low income and there needs to be an opportunity by having affordable housing and she mentioned the numerous articles about affordable housing.

Chair Enders clarified that her sole vote will not stop this project from going forward. Ms. Enders is standing behind City Council in regards to making the affordable housing element a requirement. Ms. Enders said City staff did an exceptional job on the Negative Mitigated Declaration, the average unit per acre which is at the maximum density which she agrees with and there are many wonderful things about this project.

Commissioner Schott said it is up to the City Council to require staff to draft and update the affordable housing ordinance, noting there are other issues with the Form Based Code and parking warrants. Mr. Schott said it is the job of the Planning Commission to ferret these issues out prior to items going before Council for final approval.

Commissioner Schott made a motion to approve the item with the removal of Condition 82. Mr. Schott disclosed that he met with the applicant, Mr. Telles. Mr. Schott confirmed for Planning Manager Buizer that his motion includes the modification to Condition 142 to modify the 60-day timeframe to begin following the 30 day CEQA status of limitations. Commissioner Faria seconded the motion.

Commissioner Willis Jr. said staff must be willing to eliminate Condition 82, noting that the developer has agreed to Condition 82.

Commissioner Goldstein supports Condition 82 and spoke about the speed of the traffic in this area and how traffic calming measures are needed. Mr. Goldstein said he would not vote for a motion that did not include Condition 82.



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Planning Manager Buizer clarified that the slip lane in front of the CVS Store on Mission Boulevard was a requirement of the Form Based Code and is not the same as Condition 82 requirements.

Mr. Panek said his prior comments regarding Condition 82 was more about the process and noted the cost of the addition of Condition 82 as it was not part of their budget. Mr. Panek said this is a good project and does not want the project to be denied and since this is the way the City is headed he will accept Condition 82, he does not want to compromise a positive recommendation from the Planning Commission to the City Council.

Commissioner Willis Jr. made a friendly amendment to include Condition 82 in the motion.

Commissioner Schott did not accept the friendly amendment.

The motion failed with 5 noes and 1 yes.

Commissioner Faria made a motion to approve the staff recommendation with the modification to Condition 142 to modify the 60-day timeframe to begin following the 30 day CEQA statute of limitations. Commissioner Willis Jr. seconds the motion.

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

2. Proposed Zoning Text Amendment (Application No. 201705042) to Chapter 10 (Planning, Zoning, and Subdivisions) of the Hayward Municipal Code and Proposed Adoption of New Land Use Regulations pertaining to Medical and Adult Use Cannabis within the City of Hayward

Principal Planner Lochirco provided a synopsis and PowerPoint of the staff report.

In response to Commissioner Willis Jr. question regarding the restrictions and the buffer areas, Principal Planner Lochirco said there is a 600-foot buffer from recreation centers, youth centers, schools and daycare centers and it is recommended that parks be included which is consistent with other sensitive land use and confirmed that there would be 1000 feet separation between retail dispensary locations. Mr. Lochirco said included in the proposed draft ordinance is a requirement for background checks for operators and staff looked at the requirements to have a good balance without over regulating. Mr. Lochirco



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said background and safety protocols are licensed by the State and added there is a separate dual licensing criteria that operators must satisfy. Mr. Lochirco said the operators will have to meet all the health and safety components that is typically required per the building code. Senior Assistant City Attorney Vigilia said the State has not fully published all the regulations yet and it is anticipated that the State will issue emergency regulations towards the end of year and will likely include certification of employees in different categories. In response to Mr. Willis' comments about HOAs being able prohibit cannabis cultivation and distribution, Mr. Vigilia this issue probably has not been addressed yes, but noted that State law makes cannabis cultivation a legal use of one's property. Mr. Willis made the following recommendations: that HOAs should be allowed to make their own conditions on cannabis within their community, in addition to age enforcement, place restrictions on persons with criminal backgrounds, and require education training and certification for persons handling the cannabis cultivation and products.

In response to Commissioner Faria's questions about the limit on number of businesses allowed in the City, Mr. Lochirco said Council discussed this topic but did not come to an agreement and staff will continue to have this discussion with Council. Mr. Lochirco said if a permitting limitation is included in the draft ordinance would fall under the business component that the City Attorney's office is currently working on. Mr. Lochirco said City staff has concerns about oversaturation for a new industry and there are regulations for the medical use but the adult use, impact and potential demand is still unknown. He said having a cautious approach is good method but ultimately it is a policy decision, through the Request for Proposal (RFP) process the City will be able to see what kind of interest is out there.

In response to Chair Enders' question about allowing cultivation on agriculturally zoned land, Principal Planner Lochirco indicated there was a public safety concern surrounding outdoor cultivation and the draft ordinance specifically requires indoor cultivation in the industrial area.

In response to Commissioner Goldstein's question about is it illegal to consume cannabis in public, Senior Assistant City Attorney Vigilia said as far as smoking this is still subject to the City's smoking ordinance and noted that State has not imposed a regulation. Principal Planner Lochirco responded to Mr. Goldstein that it is difficult to determine impaired judgment when it comes to edibles and the City's approach is to come to an equitable balance in the regulations and noted there is the medical component of persons who have prescriptions. Mr. Lochirco responded to Mr. Goldstein that signage is included in the retail regulations that the cannabis products cannot be consumed on site.





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Senior Assistant City Attorney Vigilia responded to Commissioner McDermott that the State and local licensing can be done concurrently as the State will confirm with the cities if the applicant is in compliance with the City's regulations. Principal Planner Lochirco responded to Ms. McDermott that he conducted his research for other jurisdictions and listened to seminars about the pros and cons for cities of Portland and Denver, which has been an informative process to help the City craft a draft ordinance that would be the right size for Hayward. Ms. McDermott's expressed concern and prefers not to have commercial cultivation and that there should be a limit on the number of businesses as the City has had problems with massage parlors and vapor stores. Mr. Vigilia said that staff will propose to the City Council that they have the authority to place limits on the permit types and based on discussions with Council, they are reluctant to place limits without seeing what type of proposals will be received from applicants as Council wants to see the whole picture prior to placing limits and determine what those limits will be. He added that Council was not receptive to having staff place limitations on permits. Mr. Vigilia responded to Ms. McDermott that the applications will be reviewed on a case by case basis.

Chair Enders opened the public hearing at 9:35 p.m.

Mr. Chad Hagle, retail developer from Sherman Oaks, said his company is working with top operators in the cannabis retail industry to help them set up first rate establishments in municipalities. Mr. Hagle supports the merit based process, highlighting the need for a community benefits component, supports limits and the 1000-foot separation of dispensaries. Mr. Hagle will be working the Hayward Area Recreation and Park District (HARD) to define the word parks and open spaces as they are not all the same. Mr. Hagle said there would be areas now included in the park buffer that should not be but at the same time through his work with HARD to ensure that areas where children and youth activities would be protected.

Mr. Dan Georgatos, Pleasanton land use and cannabis attorney, represents Julio Romero of Hayward, spoke about the commercial cannabis dispensaries and that the City needs to define how they will process the applications.

Ms. Elba Villasenor, Hayward resident, spoke about how they are planning to open a dispensary and are requesting that not all parks be part of the limitation buffer. Ms. Villasenor said their goal is to have a dispensary that will dignify the use of medical cannabis use.

Chair Enders closed the public hearing at 9:45 p.m.

Commissioner Willis Jr. reiterated his recommendations: that HOAs should be allowed to make their own conditions on cannabis within their community, in addition to age enforcement place restrictions on persons with criminal backgrounds, and require education training and certification for persons handling the cannabis cultivation and



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products.

Commissioner Goldstein supported giving the City Council and HARD the flexibility to define the child and youth recreation areas in order to not group all parks and open spaces together.

Chair Ender made the motion to approve the staff recommendation with further definition of the term “parks” in the ordinance, so that there is separation for open space uses utilized by children and families as opposed to other uses.

Commissioner McDermott seconded the motion.

The motion passed with the following vote:

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

### **APPROVAL OF MINUTES**

3. Approval of minutes of the Planning Commission Meeting of July 13, 2017.  
Commissioner McDermott made a motion to approve, seconded by Commissioner Willis Jr., to approve the Planning Commissioner Meeting Minutes of July 13, 2017. The motion passed with the following votes:

**5:0:1 (AYES: Willis Jr., Goldstein, Schott, McDermott, Faria; ABSTAIN: Enders)**

**VACANCY: One**

4. Approval of minutes of the Planning Commission Meeting of July 27, 2017.  
Commissioner McDermott made a motion to approve, seconded by Commissioner Faria, to approve the Planning Commission Meeting Minutes of July 27, 2017. The motion passed with the following votes:

**4:0:2 (AYES: Willis Jr., Schott, McDermott, Faria; ABSTAIN: Goldstein, Enders)**

**VACANCY: One**



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**COMMISSION REPORTS**

**Oral Report on Planning and Zoning Matters:**

There were none.

**Commissioners' Announcements, Referrals:**

Commissioner Faria said there was a maintenance crew painting numbers on Tennyson Road near BART and asked if this was for BART parking and which agency receives the revenue generated from the parked cars. Planning Manager Buizer said that she will research this and return with an answer.

**ADJOURNMENT**

Chair Enders adjourned the meeting at 9:52 p.m.

**APPROVED:**

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Julius Willis, Jr. Secretary  
Planning Commission

**ATTEST:**

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Denise Chan, Senior Secretary  
Office of the City Clerk