

**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, October 15, 2015, 7:00 p.m.  
777 B Street, Hayward, CA94541**

## **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, McDermott, Faria  
CHAIRPERSON: Parso-York  
Absent: COMMISSIONER: None

## **SALUTE TO FLAG**

Commissioner Enders led in the Pledge of Allegiance.

Staff Members Present: Alvarado Jr., Brick, Buizer, Emura, Madhukansh-Singh, Quach

General Public Present: 8

## **PUBLIC COMMENT:**

There were none.

**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, the Planning Commission may make a recommendation to the City Council.

1. Proposed Demolition of a Portion of the Eastern 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 with Special Lot Standards Combining District for minimum 20,000 square foot lot (CBB20) District, Ashton Simmons (Applicant)/ Southland Mall L.P. (Owner).

Planning Manager Buizer stated that staff was recommending that the item be continued to a future date that will allow the staff, property owner and the applicant to resolve some potential issues regarding the conditions of approval for the project. She noted that a new public hearing notice will be mailed to property owners residing in the affected vicinity and that a notice will be published in the newspaper.



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Commissioner Schott commented that this was the second consecutive postponement of the public hearing item, noting that there were members of the audience present at the previous Planning Commission meeting who were in attendance specifically for the proposed cinema project. He asked staff if the item should be heard as a work session item.

Planning Manager Buizer responded that the item should not be heard as a work session, reiterating that the postponement was due to the revision of the draft conditions of approval. She added that the applicant was a large national retailer and that staff wanted to ensure that the applicant was in agreement with the conditions that were being proposed. She assured the Commissioners that staff was close to finalizing the conditions of approval. Ms. Buizer shared that the Southgate Homeowners Association was present at the previous Planning Commission meeting and stated that staff did contact this HOA to inform them of the proposed continuation of the item.

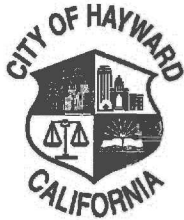
Commissioner Willis Jr. made a motion to continue the item per staff recommendation to a future meeting date, the motion was seconded by Commissioner McDermott.

The motion passed with the following vote:

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

2. Proposed Zone Change from Agriculture (A) to Single-Family Residential Special Lot Standards Combing District, Minimum Lot Size 10,000 Square Feet (RS B10) for 890 and 900 Calhoun Street, and Adoption of a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program - Aman Pohyar (Applicant/Owner - 900 Calhoun Street), Mr. Servando B. Zepeda (Owner- 890 Calhoun Street)

Associate Planner Emura provided a synopsis of the staff report. He shared that one of the concerns of residents was that another large house would be constructed on the property, similar to the present home owned by the applicant. Mr. Emura stated that a lot of the buildable area on the applicant's property will be taken up as Mr. Pohyar would be required to have a fire truck turnaround on his property therefore he could not construct a second home as large as the first one. He noted that the building height for an agricultural zoning was 40 feet and that a single family residential zoning was 30 feet. Mr. Emura commented that in retrospect, staff should have required Site Plan Review for the first home that Mr. Pohyar built. He shared that staff received a total of two petitions, three emails, and one letter opposing the zone change. In regards to the current livestock (five large livestock) on Mr.



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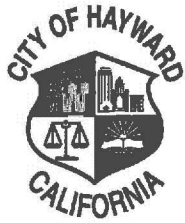
Zepeda's property, this was a legal nonconforming use and was grandfathered in whether the zone change occurred or not. Mr. Emura explained that if Mr. Zepeda were to remove the livestock from his property for a period greater than six months, he would lose the grandfathering and would have to comply with the current livestock regulations which would limit him to two large livestock and one medium livestock. He noted that there was misinformation passed on to Mr. Zepeda that if he applied to rezone his property from agricultural to a single-family residential development, he would not be allowed to raise livestock on his property. Mr. Emura stated that the staff recommendation was that the Planning Commission recommend that the City Council approve the proposed project, emphasizing that staff supported the application in order to bring the current zoning in compliance with the General Plan Low Density Residential Designation and also highlighted that Mr. Zepeda would not lose rights to have livestock on his property.

Chair Parso-York opened the public hearing at 7:22 p.m.

Mr. Juan Gonzalez, residing at a neighboring property to the project site, said that Mr. Zepeda's intent was to preserve his property as an agricultural zoning. He commented that Mr. Zepeda was confused because although he was informed by the city that he could keep his livestock, he was afraid that with the proposed zoning change, he would be subject to different rules under residential zoning. Mr. Gonzalez said that Mr. Zepeda was concerned that taxes would be assessed differently with a zone change. Mr. Gonzalez stressed that the neighborhood wants to maintain the agricultural zoning for the properties in question because the neighborhood benefits from having the agricultural setting, adding that parents take their children to see the animals on Mr. Zepeda's property.

Mr. James McMurray, a property owner on Calhoun Street, was concerned that the proposed project may change the feel of the neighborhood and expressed the importance of preserving the animals in his neighborhood. He appreciated that the applicant had added many trees to his property, noting that Hayward was a tree town. Mr. McMurray stated that since the city was interested in bringing the properties in compliance with the General Plan, a better proposal might be to allow the zone change to single-family residential for Mr. Pohyar's property and to maintain the agricultural zoning for Mr. Zepeda's property. Mr. McMurray shared that when Mr. Pohyar purchased his property, he was unaware of the zoning challenges for the site. He reiterated the concerns about changes in tax assessments if Mr. Zepeda's property is changed from agricultural to residential.

Mr. Servando B. Zepeda, property owner of 890 Calhoun Street, requested that Mr. Juan Gonzalez translate for him. He stated that he is retired and that when he purchased his property, it was because of the location of the property in an agricultural setting. He stated that he owned livestock and preferred the agricultural lifestyle and did not favor the zone change.

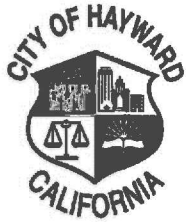


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Ms. Marcella James, a lifelong resident of the neighborhood, commented that there was no public notification or a public hearing for the first home that was constructed by the applicant. She underscored that residents of the community were largely opposed to the project and did not want another home constructed on the project site, regardless of its size, emphasizing that the majority opinion should rule in this case. She expressed that if the zone change was approved, it was inevitable that the residents of the two homes on Mr. Pohyar's property would start filing complaints with the city about the animals in the neighborhood. Ms. James stated that many people such as herself find the current agricultural setting of Calhoun Street to be therapeutic and peaceful, noting that some of these individuals are the elderly or disabled persons who cannot make it up to the Garin area. She described the view from her home consisting of the hillside, the livestock, turkeys and raccoons, stating that she would be disappointed if this changed. Ms. James concluded that if the proposed project was approved, this would lead to more development in the area.

Mr. Aman Pohyar, the project applicant, stated that he purchased his property at 900 Calhoun Street in 2005 and mentioned that prior to closing escrow on his property his broker had provided him with a General Plan Land Use Map and indicated that the property had been converted to residential. He described that before his purchase, the property was vacant, there were tall weeds covering the property and broken trees. He noted that the tenants of the previous owner at 890 Calhoun Street, engaged in gambling, rooster fighting, drinking alcohol, listening to loud music, among other types of public nuisances. He shared that during the course of constructing his first home on the property, he was able to help eradicate some of these nuisances with the assistance of the Hayward Police Department. The tenants were removed from the property and the previous owner sold the property to Mr. Zepeda. Mr. Pohyar shared his property was divided into lots 11, 12, and 13 prior to his purchase. He noted that some lots in the neighborhood were converted from agricultural to residential in the 1990s. He stated that after three years of working with city staff, he was able to commence constructing his first home on the property. He underscored the following benefits to the area of constructing his home: an increase in property value to the surrounding area; the addition of 20 fruit trees and 15 privacy trees on his property; and his development brought a clean environment to the neighborhood. He described his family as being good residents in the neighborhood and requested the approval of the zone change in order to be consistent with the General Plan Land Use policies.

Mr. Ron Barreau, asked staff to clarify the term of legal nonconforming and to elaborate on how the grandfathered clause would impact Mr. Zepeda's ability to maintain his livestock. Planning Manager Buizer clarified that the per the proposed zone change application, Mr. Zepeda could continue to maintain the same number of livestock that he presently had on the property, and pointed out that once there was a change to the number of livestock for over a six month period, he would have to comply with the City's current livestock regulations. She confirmed for Mr. Barreau that if one of the current livestock were to pass away, Mr. Zepeda



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could replace the livestock maintaining the nonconformity as long as he did not exceed the initial number of livestock and noted that he would also have to do so within the six month timeframe.

Chair Parso-York closed the public hearing at 7:39 p.m.

Associate Planner Emura confirmed for Commissioner McDermott that Mr. Pohyar's property was zoned agricultural when he bought the property. He mentioned that the agricultural district permitted one single family dwelling on the lot. He added that a second single family dwelling could be permitted if the lot was twice the minimum lot size (two acres). For this reason, Mr. Pohyar was requesting the zone change to single family residential minimum lot size of 10,000 square feet. Mr. Emura clarified for Commissioner McDermott that Mr. Pohyar's property was previously subdivided into three parcels, noting that this was no longer the case as the lots were merged in order to make a larger parcel.

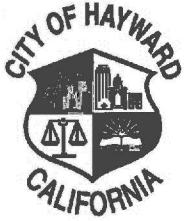
Planning Manager Buizer clarified that the General Plan Land Use designation was and currently remained low density residential, which was separate from the zoning designation which was currently agricultural. She stated that the zone change sought with the proposed planning application was from agriculture to single family residential, in order to be in conformance with the General Plan Land Use designation of low density residential.

Planning Manager Buizer noted for Commissioner McDermott that Mr. Zepeda was originally a part of the application; however, within two or three weeks of the application submittal, he had requested that his property be removed from the application. She further indicated for Commissioner McDermott that if the zoning were to remain agricultural, Mr. Zepeda could not increase the number of livestock on his property as the keeping of livestock was based upon the lot size, and not necessarily the zoning designation.

Commissioner McDermott asked if the second development on Mr. Pohyar's property would be an in-law unit. Associate Planner Emura responded that the applicant could construct an in-law unit on his property without a zone change; however, the application was for a detached single family dwelling.

Commissioner McDermott requested that staff respond to Mr. McMurray's question regarding the tax consequences of the zone change. Planning Manager Buizer responded that she was not aware that there would be a tax implication due to a zone change, noting that when improvements are made to a property then the property could be reassessed for tax purposes.

Commissioner Schott stated that there was the potential for a tax implication if Mr. Zepeda fell under the Williamson Act for property taxes. He expressed concern as to why Mr. Zepeda's request to remove his name from the proposed application had not been fulfilled. He



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commented that the zoning of Mr. Pohyar's property had been misrepresented to him by the broker as being single family residential under the General Plan; however he purchased the property with the agricultural zoning designation. Mr. Schott was highly concerned with the number of residents objecting the proposed project application. He stated that the Planning Commission has heard multimillion dollar projects for the city, pointing out that there was seldom such strong opposition to these larger projects. He commented that there would be 35-40 residents of the area that would not benefit from the proposed application and for these reasons he did not favor the staff recommendation.

Commissioner Enders stated that given the topography of the project site having a steep slope, she asked staff how it would be possible for the applicant to provide fire truck access to the rear of the property. Associate Planner Emura responded that in order for the second home to be built on the property, the applicant would have to provide fire truck access on the property, noting that if the second home was located over 150 feet from the street then the applicant would be required to have a turnaround for the fire truck. Mr. Emura mentioned that he did not see the slope of the project site as being as challenging in providing fire truck access as some other constraints of the site, which were the gouge from the quarry and the seismic landslide area. He added that it would be difficult for the applicant to create a large second home on the property and still accommodate the fire truck access.

Planning Manager Buizer shared that the project application had a condition of approval requiring the development of any future home to go through the site plan review process, noting that the plans submitted would have to demonstrate how a fire truck access would be provided on the site and this would need to be evaluated by the Fire Department.

Commissioner Enders asked staff if there was a difference in how noise and smell complaints regarding livestock in the area would be handled if the property was zoned low density residential versus agricultural. Planning Manager Buizer stated that any alleged nuisance complaint was investigated by staff regardless of the zoning designation of the property. Ms. Buizer added that the single family zoning allowed the keeping of livestock and that the General Regulations for Livestock established the standards for keeping livestock. She commented that the General Regulations indicate the minimum square footage per number of animals.

Commissioner Enders referenced the Alquist Priolo Special Studies Zone Act and noted that the northeast portion of the proposed project site had been designated as a fault trace. She indicated that the aforementioned Act came about because individuals concerned with improving earthquake safety did not want homes to be built on an earthquake fault. Ms. Enders pointed out that municipalities had the ability to exercise their discretion and allow applicants to build homes on an earthquake fault; however, she remained concerned about this and could not envision allowing a home to be built on a fault. She asked staff to elaborate



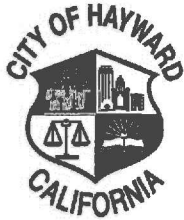
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on why they favored supporting the project while knowing that the applicant's intent in seeking a zone change was so that he could build a second home on his property that would be within 50 feet of the fault trace.

Associate Planner Emura clarified that the yellow area in Figure 3 of the staff report indicated the fault zone and that the red line indicated the fault trace. He noted that in the case of the proposed project, the fault trace was located on the northeast corner of Mr. Pohyar's property and ran through the quarry, adding that the applicant would not be building on the fault trace. He further indicated that per the Alquist Priolo Special Studies Zone Act, homes were required to be built at least 50 feet from a fault trace. Mr. Emura pointed out that the fault zone ran through Hayward and that there were many homes in the city that were in the fault zone. He stated that when a building permit is submitted for a home, the applicant has to also submit a geotechnical report with recommendations on the foundation; he added that the Building Division will not approve a single family home without this report. Mr. Emura emphasized that a home could be built in the fault zone but not on the fault trace. He commented that if Mr. Pohyar builds the second home on the northwest corner of the property, then this would be an adequate distance from the fault trace.

Commissioner Willis Jr. was concerned that Mr. Zepeda's property may lose market value due to the rezoning. He commented that the present residential home on Mr. Pohyar's property was already large enough to accommodate a large family and that the construction of another residential building at the site, would change the ambiance of the area. He stated that the opponents of the project want to maintain the agricultural essence of the area and that authorizing a zone change was bound to impact adjacent properties. Mr. Willis Jr. expressed concern as to why the applicant would want to construct a home in close proximity to a designated landslide area and two fault traces. He commented that even if the homes were built a certain distance from the fault trace, there was still a potential danger of not only loss of property but also loss of life. He felt leery about approving the application as a significant number of community members objected the project.

Commissioner Faria expressed concern as to why Mr. Zepeda's property was still included in the proposed zone change after he had requested that his application be withdrawn. She suggested that the two properties included in the proposed application be evaluated separately, where one could remain agricultural and the other changed to single family residential. Ms. Faria commented that it did not appear reasonable to her to construct another home on Mr. Pohyar's property. She added that requiring a site plan review for the second home, which will be smaller, was an effort by the city to correct not requiring a site plan review for the first constructed home, which was oversized for the area. She did not support the proposed project.



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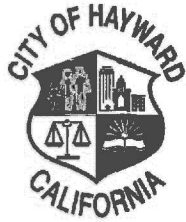
Commissioner Goldstein commented that he was impressed with the amount of public objection to the project, and given this, he was not inclined to approve the project. He asked staff if any outreach had been conducted with the public giving them an opportunity to be informed about the impacts of the project to their neighborhood.

In response to Commissioner Goldstein, Associate Planner Emura noted that the project had been noticed several times, stating that it had initially been noticed only for Mr. Pohyar's property and then at the request of his director, the project had been noticed to include Mr. Zepeda's property. Mr. Emura shared that there had been a lot of misinformation spreading through the community regarding the project. He added that not all of the individuals who had signed the petition or sent emails expressing opposition to the proposed project lived in the area. He emphasized that there have been opportunities for the public to comment on the project. Mr. Emura stated that one of the reasons Mr. Zepeda withdrew his application was because someone told him that he would not be able to continue keeping livestock on his property with the zone change, adding that staff had not been able to dislodge this misconception that Mr. Zepeda had. He elaborated that he had reviewed the proposed project with Mr. Zepeda and Mr. Gonzalez, outlining the different scenarios of keeping livestock with the agricultural zoning and the single family residential zoning. He reiterated that it was staff's goal to have zoning designations comply with the General Plan.

Commissioner Goldstein expressed his appreciation to staff noting that staff always did a great job. He was surprised with the volume of opposition to the project. He stated that the General Plan which staff recently updated was valid until 2040, mentioning that the zone change could perhaps be considered at a future date after more community discussion had been conducted and perhaps with the inclusion of some mitigation measures. Associate Planner Emura stated that if the project was not approved, Mr. Pohyar could certainly reapply at a future date with the option of submitting an application solely for his property at 900 Calhoun Street.

Commissioner Schott emphasized that it was not uncommon for individuals residing outside of the impacted area to oppose projects. He added that he had not heard from a single neighbor living in close proximity to the project site recommending approval of the project; based on this, he expressed that the Planning Commission listen to the opinion of the neighborhood.

Commissioner McDermott stated that the Planning Commission's role with the proposed project was to make a recommendation to the City Council. She commented that Mr. Pohyar had sufficient property within the project site to build a second home, underscoring that staff had pointed out that the applicant would have to comply with specific requirements. Commissioner McDermott made a motion supporting staff's recommendation, but excluding Mr. Zepeda's property from the zone change.



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Commissioner Willis Jr. commented that the proposed motion would create a strange situation where a single family residential zoning designation would be surrounded by agriculturally zoned property. He objected to the motion and instead suggested that any action by the Planning Commission either approve or deny the entire project as it was being proposed.

As there was no second to Commissioner McDermott's motion, the motion died for lack of support.

Commissioner Willis Jr. made a motion to recommend that the City Council disapprove the proposed project, seconded by Commissioner Schott.

Senior Planner Buizer confirmed for Chair Parso-York that if the second home on Mr. Pohyar's property were to be constructed in the future, it could potentially have a different owner.

Chair Parso-York commented that the proposed project was one the more difficult ones he has had to make a decision on during his term on the Planning Commission, noting that there were valid concerns on both sides of the issue. He commended the neighbors for attending the Planning Commission meeting and voicing their concerns. Although he agreed with staff that it was a desirable goal to bring zoning designations in compliance with the General Plan, due to the strong opposition to the proposed project at the moment, he supported the motion on the floor.

The motion carried with the following vote:

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

### **COMMISSION REPORTS**

3. Oral Report on Planning and Zoning Matters

There were none.

4. Commissioners' Announcements, Referrals



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Commissioner Schott recognized that October was Breast Cancer Awareness Month and honored his wife who recently underwent surgery. He urged members of the public to be proactive in consulting their doctors and getting a mammogram.

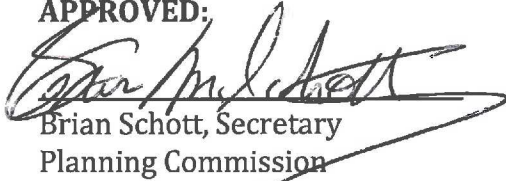
**APPROVAL OF MINUTES**

5. There were none.

**ADJOURNMENT**

Chair Parso-York adjourned the meeting at 8:17 p.m.

**APPROVED:**

  
Brian Schott, Secretary  
Planning Commission

**ATTEST:**

  
Avinta Madhukansh-Singh, Management Analyst I  
Office of the City Clerk