



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, March 9, 2017, 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 Enders.

ROLL CALL

Present: COMMISSIONERS: Willis Jr., Parso-York, Schott, McDermott, Faria
CHAIRPERSON: Enders
Absent: COMMISSIONER: Goldstein

Commissioner Goldstein arrived in the Council Chambers at 7:12 p.m.

SALUTE TO FLAG

Commissioner Faria led in the Pledge of Allegiance.

Staff Members Present: Brick, Buizer, Chan, Pearson, Rizk, Wilfong

General Public Present: 6

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.

1. Appeal of Planning Director Decision to Deny an Administrative Use Permit to Operate a Non-Hazardous Waste Water Treatment and Water Recycle Center at 3200 Depot Road in the Industrial (I) District, Jon Bennett for Environmental Logistics, Inc. (Applicant)/Financing & Receiving Services LLC (Owner)

Planning Manager Buizer provided a synopsis of the staff report.

Environmental Services Manager Pearson provided information in support of the denial, the importance of protecting the City's Water Pollution Control Facility (WPSC), the City's need to comply with the Federal Clean Water Act and the requirements of the Regional Water Quality Control Board. Mr. Pearson noted the City's biggest concern is the accidental release of untreated or under-treated wastewater to the City's sewer system as once the



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problem is discovered the damage will already be done. Mr. Pearson spoke about his response to an email from Mr. Abbott that was received today and noted: the City does not “screen” out certain kinds of water but relies on monitoring the kinds of pollutants in wastewater. Mr. Pearson shared that the City is currently building a \$12 million facility that will recycle approximately 260,000 gallons per day which will recycle about 2% of the City’s average daily flow; after paying initial sewer connection and capacity fees, the ongoing discharge fees are based on volume of water consumed; the proposed facility will not use much potable water; and the City does not have stand-alone volume-based discharge fees. Mr. Pearson said that any fees collected are designed to cover costs and do not result in a profit. He pointed out that the Zoning Ordinance is exclusionary, a proposed use that is not specifically listed as an allowable use is prohibited unless otherwise determined and it further states that a use can be allowed if it is determined that the use is similar to and not more objectionable or intensive than the uses listed. Mr. Pearson said it is staff’s determination that Environmental Logistics Inc. (ELI) proposed facility’s use would be more intensive than the uses that are listed in the Industrial Zoning Regulations and staff is concerned that this use could impact City facilities. Mr. Pearson introduced Water Pollution Source Control (WPSC) Administrator Wilfong.

WPSC Administrator Wilfong said she is responsible for managing the pretreatment program that protects both the sewer collection system and the wastewater treatment plant. Ms. Wilfong spoke about the risks of allowing the ELI proposed wastewater treatment plant and noted the City has never permitted a facility that would truck wastewater of unknown pollutant quantity and quality through the City, process this wastewater and discharge unknown pollutants into the City’s sewer system. If this were permitted, then the City’s collection system and wastewater treatment plant as well as the operators and utilities workers would be exposed to a continuous source of wastewater from the greater Bay Area and beyond. She said this discharge would be difficult to characterize, treat and guarantee safe and cannot say that it will not harm our sewer system; noting sources of wastewater may include oily, organic, heavy metal and possibly worse a mixture which combines pollutants that may react with one another and thus makes it hard to identify pollutants. Ms. Wilfong noted that permitted facilities typically only have one source of pollution and treat for that pollution and the City can test the wastewater per the known pollutant. Ms. Wilfong explained Hayward’s plant relies primarily on biological treatment of waste and does not have activated sludge. The plant’s first and only line of defense for the three digestors is the trickling filters which are robust but not enough for repeated contamination and explained what would happen if the process broke down. Ms. Wilfong said if the digestors were killed it would take up to 60 days to repopulate the bacteria in a digester and if this were to occur then the plant ceases to process wastewater and can no longer service Hayward’s residential and business customers. Ms. Wilfong pointed out that if wastewater that contains untreated pollutants passes through the City’s wastewater treatment facility, then the City would be in violation



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of their wastewater permit and subject to fines and this would also damage the WPSC's record as an award-winning plant. Ms. Wilfong reminded everyone that Hayward is part of a consortium of plants in Alameda County called the East Bay Dischargers Authority (EBDA) that collectively discharge to the bay from one pipe and if Hayward were in violation, then EBDA would also be in violation. Ms. Wilfong described the different projects of a healthy wastewater treatment plant and does not want these projects threatened and the liability is too great from ELI's proposed facility.

Chair Enders thanked staff and invited the applicant to present their presentation to the Commission.

Mr. Marcial Barragan, Hayward resident and Facility Manager with ELI, spoke about his experience in the hazardous waste field and the purpose of ELI to provide a green alternative for businesses by picking up and transporting hazardous material for processing. Mr. Barragan asked the Planning Commission for their support of ELI's proposed facility

Mr. Kevin Abbott representing ELI, provided a PowerPoint presentation describing the function of the facility and the mitigation measures that ELI will provide to protect the environment and the Bay Area and how it will benefit the City. During his presentation Mr. Abbott noted there was a discrepancy between the number of inspections noted by City staff and ELI's sign in sheets that indicates only one inspection by City staff.

WPSC Administrator Wilfong responded to Commissioner Parso-York that none of Hayward's businesses have requested the service proposed by ELI. Ms. Wilfong also spoke to the storm water's last annual report that indicated 20-30 warnings with one violation. Ms. Wilfong added that a warning could be as simple as trash or missing labels on storm drains to help employees prevent a spill that could result with an impact to the storm drain system. Mr. Jon Bennett ELI owner, responded to Mr. Parso-York that wastewater does not have access to get into the groundwater as the facility walls and floors are made of concrete.

Commissioner Willis Jr. disclosed that he contacted ELI representatives and upon his request he was provided with a nine-page response from ELI on the City's objections to the proposed facility and that he has shared this response with his fellow Commissioners. Planning Manager Buizer confirmed for Mr. Willis that there was an inspection and staff found unpermitted wastewater treatment equipment at the facility and water was found inside the tanks and noted that she cannot confirm if the equipment was functioning or plugged in. Mr. Bennett responded to Mr. Willis regarding the inspections in question that ELI has security measures in place which requires all visitors and that staff had checked videos and ELI was firm that the additional inspections did not take place. Mr. Bennett said



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ELI was sure they had completed the process and would receive the permits so he went ahead and ordered and received the equipment, had it installed but the equipment was never energized. Staff confirmed for Mr. Willis that staff has not heard from neighboring businesses. Mr. Willis commented that if ELI were to lose the appeal it would be disastrous for them. Mr. Bennett noted that a neighboring business submitted a letter to staff.

Mr. Bennett responded to Chair Enders that City staff only inspected the facility one time as opposed to the three times as stated by City staff.

Mr. Barragan responded to Chair Enders that sign in sheets signed by City staff, are available for the one initial inspection when pictures were taken. Mr. Barragan said City staff used these same pictures for the other inspections where ELI has no proof that the inspections occurred. Ms. Enders commented that it would have been beneficial if ELI had produced the sign in sheets that staff signed on the initial visit.

Commissioner Schott disclosed that he visited the plant on Wednesday and at that time he did not view a lot of truck activity. Mr. Barragan responded to Mr. Schott that ELI's application is to treat 75K gallons of wastewater daily which equals approximately 14 truckloads per day. Mr. Schott also visited Aaron Metals and they stated that they emailed a letter of support for ELI. Staff replied that they have not received this letter. Ms. Wilfong responded to questions from Mr. Schott regarding frequency of storm water inspections; the addresses listed in the storm water report are updated every other year and that site addresses do not drop off; the process if there is a hazardous waste spill; and that fees are associated with water use.

Assistant City Attorney Brick responded to Commissioner Schott that per Proposition 26 the City cannot make a profit from a fee.

Chair Enders noted from the staff report that the applicant has indicated that they are willing to pay 50% more for water discharge. WPSC Administrator Wilfong said the City does not currently have a fee structure for discharge.

In response to Commissioner Schott's question about getting a discharge fee added to the 2017-2018 fiscal budget by July 1st, Assistant City Attorney Brick said the annual fee structure for fiscal year 2017-2018 which will come before Council within a month would not allow enough time to calculate the fee within that timeframe. Mr. Brick said a study would need to be done based on Proposition 26 to determine if the fee could be included or whether it is a special tax or general tax.



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Mr. Bennett spoke to the proposed fee structure and that annually ELI would donate \$5K to the City to clean up hazardous waste and ELI would like to come up with a fee structure to make this profitable for the City and the City's residents.

WPSC Administrator Wilfong responded to Commissioner Schott about the process if a diesel spilled occurred and that she would be more comfortable utilizing an existing plant with the knowledge of how to deal with a hazardous waste spill. Ms. Wilfong pointed out that cities that have these plants also have a different type of wastewater treatment plant than Hayward. Ms. Wilfong said the businesses in Hayward abide by the program; there has never been a bypass, interference or a discharge, the WPSC has an excellent track record and the risk would be too high to allow the proposed ELI facility.

Mr. Bennett responded to Commissioner Schott that their trucks have never had a spill.

Mr. Bennett responded to Commissioner Faria that he has been in wastewater treatment for about four years, he said the technology for the proposed facility will be state of the art noting that the Redwood City facility is 35 years old. Ms. Faria mentioned driving by the facility and not seeing the security as was previously mentioned by the applicant. Mr. Bennett spoke about the security at the plant.

Commissioner McDermott commented that she was bothered by the difference between staff's record of a total of three inspections and ELI stating there was only one inspection. Ms. Wilfong noted she was present at the initial inspection and Planning Manager Buizer said she would need to search Code Enforcement inspection records. In response to Ms. McDermott, Mr. Bennett said they changed their business plan because of the passing of the Clean Water Act and the importance for businesses to be in compliance. Mr. Bennett said his company would offer a low cost and convenient method for local businesses to dispose of nuisance water. Mr. Bennett said the reason he ordered the equipment prior to receiving all the permits was because after the second meeting with staff he was confident that the project would be approved and because it would take about ten months to receive the equipment. Mr. Abbott added that it is important to note that the equipment has not been operated. In response to Ms. McDermott, WPSC Administrator Wilfong clarified that the WPSC can handle the wastewater volume the major concern was the unknown pollutants that would go to the City's facility.

Commissioner Goldstein commented that he has received feedback that there is a need for this type of business in Hayward the need for sustainability and addressing green concerns and hopes that something can be worked out. WPSC Administrator Wilfong responded to Commissioner Goldstein that the permitted businesses, both large and small, participate in Hayward's pretreatment program where they treat their waste prior to the wastewater entering the City's sewer system. Ms. Wilfong said for ELI to be permitted as part of



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Hayward's pretreatment program she would need to review their treatment process to be able to identify ELI's equipment. Ms. Wilfong noted at that the first inspection ELI's equipment was not the most sophisticated and there are many steps that ELI's equipment would need to pass to be a viable system and receive approval for the pretreatment program.

Ms. Wilfong said ELI would need to follow the City's regulations which are the federal regulations; the waste would need to be classified, sent through treatment, but the major concern was that ELI might receive wastewater that contains pollutants that are not part of the regulations and the risk of these unknown pollutants going through the WPSC is too high. Mr. Bennett explained the process for Mr. Goldstein, he said there are sworn affidavits, there is a profile for each wastewater generator that includes what pollutants are expected to be found in the wastewater. Mr. Bennett said because of ELI's process that includes sampling the wastewater three times throughout the process and that unknown pollutants will not be discharged into the City's sewer system. Mr. Bennett said that ELI would obtain the equipment necessary to satisfy the City's requirements.

Planning Manager Buizer explained for Commissioner Goldstein that if the Planning Commission upholds the Planning Director's decision which is the denial of the applicant's Administrative Use Permit (AUP) which starts a 10-day appeal period. If the applicant were to appeal the item it would go before the City Council. Ms. Buizer continued that if the Planning Commission were to uphold the applicant's appeal, she recommended that the Planning Commission send the item back to staff to conduct additional analysis per the California Environmental Quality Act (CEQA), come up with findings based on information that the Commission would provide to support the respective findings that are required for the AUP, and draft Conditions of Approval (COA). Staff would then bring the CEQA analysis, findings and COA back to the Planning Commission for consideration.

Commissioner Willis Jr. expressed that he is conflicted because of his desire to see that businesses thrive in Hayward and that the City should welcome businesses and his respect for Planning staff. Mr. Bennett responded to Mr. Willis about looking for another location that ELI likes the site where they are located, it works well for them and it is a very industrial area, and does not see a better property. Mr. Willis stated that he respects staff's integrity and appreciates staff's position and hopes that ELI can work with staff to resolve any issues. Mr. Abbott added that ELI is very willing to cooperate with the City and will do what needs to be done, ELI wants to move forward after this hearing tonight.

Planning Manager Buizer responded to Chair Enders' request for an update on the request for proposals (RFP) for the Industrial District Regulations Update Project released on August 8, 2016, which is to establish a clear and concise land use classification system for each zoning district that clearly identifies uses that are allowed by right or may be



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permitted in each zoning district with the approval of an AUP or conditional use permit. Ms. Buizer explained staff had submitted the RFP, the budget is in place, staff has secured a consultant but because of the loss of 65% of Planning staff towards the end of last year this project timeline has been pushed forward to approximately May 2018. Ms. Buizer said the project was just begun in late February early March 2017. Ms. Enders said this appeal could have been avoided all together if the industrial district regulations project had been further along, including the joint work sessions with the Planning Commission and City Council and the definitions could have been more defined and have clarification for the permit application process.

Development Services Director Rizk said staff will be going to Council in a few weeks to execute the contract for the Industrial District Regulations Update Project. Mr. Rizk said the core reasons for the denial of the appeal were the concerns of the impact from the amount of waste going to the WPSC. Mr. Rizk spoke about the concerns of current and past Council Members and Planning Commissioners about the amount of waste that is transported through the City by vendors that serve businesses outside of the Hayward.

Chair Enders opened the public hearing at 8:48 p.m.

Mr. Dwight Hoenig, Hayward resident and former environmental consultant, supports ELI's application as there is a need for this service, small businesses need a local solution, and this is a better alternative as opposed to transporting hazardous waste over a bridge.

Mr. Hisam Baqai, Victorville resident, provided his background in water quality control and he spoke in support of the ELI project.

Chair Enders closed the public hearing at 8:58 p.m.

Commissioner Schott said when he visited the ELI facility, the panel was not hooked up and noted the applicant is already permitted to transport hazardous waste on Depot Road which is a heavily industrial area. Mr. Schott said the City staff can look at setting up a water discharge fee structure for FY 18-19 and suggested that ELI could offer an incentive to Hayward businesses. Mr. Schott said he was concerned to see the color photos and then the same picture in black and white. Mr. Schott will be supporting the applicant's appeal and hopes the CEQA analysis will address all the concerns and staff will return with the appropriate COAs.

Commissioner Goldstein commented that he has great respect for Planning staff; there are zoning and planning issues that have not been finalized and the road map for success for business like ELI is incomplete. Mr. Goldstein said this makes it difficult for the Planning Commission to entice businesses to come to our City. He likes the idea of ELI's proposed



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wastewater treatment plant, he agrees that if you have a method of wastewater treatment that is affordable and convenient, businesses will utilize it and if there is not such a service people will dump the hazardous waste and materials as he has seen it for himself. Mr. Goldstein said it would be an interest to have a business like this in the City and to allow local communities to utilize this service also. Mr. Goldstein said he would like to see the issues of water treatment and the cost of monitoring resolved and is considering upholding the applicant's appeal, returning the item to staff and to find a way to make this work.

Planning Manager Buizer noted she was able to access the ACCESS HAYWARD system and could provide the dates for five to six Code Enforcement inspections at the ELI facility.

Commissioner Parso-York said that he would support the item if it was sent back to staff for further analysis and to mitigate the risks to the WPSC. Mr. Parso-York commented that what makes this item more complex is that ELI wants to bring in wastewater from outside of Hayward and causes more concern for residents.

Commissioner Willis Jr. said sending it back to staff will not be a solution as staff has cited violations and the site is not advantageous for this type of operation. Mr. Willis supports staff and felt the applicant should not have purchased the equipment prior to receiving all their permits and that the facility would be better in an area suitable for this type of operation away from population. Mr. Willis said the applicant has a recourse if his appeal is denied because he can then appeal to the City Council and staff has indicated that they are firm on their position.

Commissioner Schott explained if the Planning Commission upholds the appeal, the item goes back to staff, a CEQA review is conducted at the expense of the applicant. Commissioner Willis was amenable to this.

Commissioner Faria sees the benefit of the proposed ELI service but said she is not a proponent of bringing waste from other locations into Hayward and is concerned about the potential negative impacts and risks to the WPSC. Ms. Faria said the City needs to change our image and bringing more waste into Hayward was not beneficial.

Commissioner McDermott agrees with Commissioner Schott as there needs to be more information and which would be enable the Planning Commission to make an informed decision. Ms. McDermott added that she respects staff immensely.

Development Services Director Rizk pointed out that staff is here to serve the community, City Council and the Planning Commission. Staff is here to do their job and make sound decisions and recommendations. Mr. Rizk indicated that staff asks that each Commissioner look at projects/items in an objective way, listen to both sides of the argument and make



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decisions based on that information; indicating that staff is here to proceed per the Planning Commission's directions.

Chair Enders does not particularly want to see waste brought into the City but our role is to be objective. Ms. Enders said this is an industrial district and there are similarities with the power plant that was built and she had the power plant item minutes and noted there were no incompatibility issues raised for the power plant to be in the Industrial District.

Ms. Enders said it was not prudent that ELI purchased and installed the equipment prior to receiving all approvals and hopes ELI can work with staff and resolve the issues of discharge fees and the cost of monitoring of the pollutants which would enable an established business to add amenities to their current services.

Commissioner Schott made a motion to uphold the applicant's appeal, return the item to staff to conduct a CEQA analysis and then bring the item back to the Planning Commission with the findings.

Commissioner McDermott seconded the motion.

Development Services Director Rizk said it is not only a CEQA and environmental impact analysis but also the findings to support approval. Mr. Rizk said based on the Planning Commission's direction, staff will take the testimony tonight and draft findings in support of the project. Mr. Rizk reminded the Commissioners that any decision by the Planning Commission can be appealed to the City Council.

Chair Enders said in order to address staff's issues, that the motion include the important components of a study on establishing a discharge fee and the cost of monitoring be the responsibility of the applicant.

Commissioner Schott supported those suggestions and asked Assistant City Attorney Brick for guidance.

Assistant City Attorney Brick said at this stage, he does not recommend including a requirement for staff to develop a fee schedule. He said the CEQA analysis will identify impacts that need to be mitigated and staff will recommend mitigation measures when the item is brought back to the Planning Commission.

There was discussion between staff and the Planning Commission to clarify the motion and the Planning Commission's direction to staff regarding the findings for support, the CEQA analysis, conditions of approval and mitigation measures.

Commissioner Schott restated his motion.



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A motion was made by Commissioner Schott, seconded by Commissioner McDermott, to uphold the applicant's appeal and remand the matter to staff with direction to conduct a CEQA analysis, develop findings that would support the approval of the Administrative Use Permit, and develop any conditions of approval as may be necessary before the item is brought back to the Planning Commission. The motion carried by the following vote:

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

COMMISSION REPORTS

2. Oral Report on Planning and Zoning Matters

Assistant City Attorney Brick announced that last Thursday, March 2, 2017, the California Supreme Court reached a decision which addressed disclosure on personal devices, whether it is your personal email, cell phone or tablet; those emails and communications could be subject to disclosure under the Public Records Act Request if those communications concerned public business. Mr. Brick said the City Attorney's Office will provide a memorandum regarding this change to the law and this is a reminder to be vigilant with your communications both because of the Brown Act and the Public Records Request Act.

Planning Manager Buizer spoke about an email and a packet passed out to Commissioners this evening inviting the Commissioners to the Downtown Specific Plan Design Charrette taking place next week, this event will be exciting and the Commissioners are encouraged to participate. The Design Charrette will be from Tuesday, March 14 with the closing event to be held in the City Hall Rotunda on Saturday, March 18.

3. Commissioners' Announcements, Referrals

Commissioner Schott spoke about an advertising supplement in the San Francisco Business Times about Hayward. Mr. Schott spoke highly of the supplement and commended Economic Development Manager Hinkle and his team for a job well done. Mr. Schott said the supplement showed Hayward in a positive light.

Commissioner McDermott said she appreciated Development Services Director Rizk's comments about the Planning Commission's purpose to remain objective.



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ADJOURNMENT

Chair Enders adjourned the meeting at 9:36 p.m.

APPROVED:

Julius Willis, Jr. Secretary
Planning Commission

ATTEST:

Denise Chan, Senior Secretary
Office of the City Clerk