



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, May 23, 2019, 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 Faria.

CALL TO ORDER Pledge of Allegiance

Commissioner Goldstein led in the Pledge of Allegiance.

ROLL CALL

Present: COMMISSIONERS: Willis, Andrews, Bonilla, Patton, McDermott, Goldstein
CHAIRPERSON: Faria
Absent: COMMISSIONER: None

Staff Members Present: Brick, Blanton, Buizer, Chan, Emura, Sharma

General Public Present: 7

PUBLIC COMMENT:

Mary Ann Higgs, Hayward resident, spoke about the Route 238 Corridor, Parcel 5, and her concerns that the City will rezone the area to have smaller parcels. Ms. Higgs said, consistent with other homes in the area, this is a perfect site to build single-family detached homes, with panoramic views of the bay area and that this area is close to the downtown area.

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. Proposed multi-family residential development of 40 townhouse style condominium units and related site improvements at 623-675 Jackson Street (Assessor Parcel Nos. 444-0027-005-02, 444-027-004-03, 444-0027-005-02, 444-0027-002-00 & 444-0027-001-00), Requiring Approval of Tentative Tract map 8339, Site Plan Review, and Density Bonus Application 201606492, and approval of a CEQA Infill Consistency Checklist; Joe Wu, Seton Pacific Company (Applicant)/Pine Vista LLC (Owner)

Commissioner Patton disclosed that he lives less than 1000 feet but more than 500 feet from the proposed project and said he does not have a conflict and will participate in the discussion on this item.



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Associate Planner Emura provided a synopsis of the staff report and a PowerPoint presentation. Mr. Emura announced that Mr. Abe Lieder, representing Rincon, the agency that prepared the In-Fill Checklist, was present in the audience.

Associate Planner Emura confirmed for Commissioner McDermott that the arborist report was requested by the applicant.

Commissioner Patton had questions regarding the applicant stating the undergrounding of utilities on the Jackson Street frontage road was cost prohibitive, and he expressed concern about potential traffic impacts resulting from the proposed traffic striping on Silva Avenue; Associate Civil Engineer Sharma with the Public Works, Engineering and Transportation Division, confirmed that Jackson Street east of Santa Clara is now part of the City and the undergrounding of utilities is required for new developments. Mr. Sharma shared that the only area left where the utilities are still above ground was on Jackson Street east of Soto Road. Mr. Sharma shared that the projected estimate for underground utilities is approximately \$300 per linear foot for a total of \$150,000, and the applicant would be required to remove four utilities poles. Mr. Sharma shared that he inform Transportation staff about Mr. Patton's concerns about possible traffic impacts from the planned striping on Silva Avenue, and he added that there is a Condition of Approval (COA) to place "speed feedback" signs on Silva Avenue.

In response to Commissioner Goldstein's question of what would happen if the Commission allowed the concession and removed COA 66 for the undergrounding of utilities along the Jackson Street frontage road, Associate Civil Engineer Sharma said the undergrounding of utilities is a low priority item for PG&E, and this work would not be performed until far into the future. Mr. Sharma said there would be no impact to the trees along this area when utilities are placed underground in the future.

In response to Commissioner Andrew's question about the disconnect between the applicant's estimate of \$1 million for the undergrounding of utilities and the City's estimate of \$150,000, Associate Civil Engineer Sharma said staff only recently received the proposed plans from the applicant and found the discrepancy that four utility poles need to be underground and not six. Mr. Sharma said there have been no issues with the undergrounding of utilities for recent developments. Planning Manager Buizer shared the only other development that requested a concession for the undergrounding of utilities was Apricot Station because of the large trees along B Street and that most developers accept the condition to underground the utilities as part of the development project.

Commissioner Bonilla requested that staff and the applicant meet regarding the discrepancy regarding the undergrounding of utilities. The applicant indicated that they were happy to meet with staff.



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Commissioner Willis asked about the rules regarding the undergrounding of utilities. Assistant City Attorney Brick said the Utilities Code Rule 20 addresses the undergrounding of utilities, a city is allotted a certain number of points annually and once a certain number of points is accumulated, the city can identify a district to underground the utilities and pay for this work with the accumulated points. Mr. Brick shared that the City has used up its allotted number of points going forward about twenty years.

Mr. George Szabu, project designer, spoke about the proposed project, emergency access roads and landscaping, and that there are pervious surface drives to allow the water to (flow/seep rather than go?) into the ground.

Mr. Steve Morland, project civil engineer, said that some of the utility poles about which the exception is being requested exist on the City's right of way and should not be included as part of the proposed project. Mr. Moreland said the applicant team will have a discussion with staff regarding the undergrounding of utilities which is a significantly complex issue since it involves the coordination of several agencies. Mr. Moreland said there are also extensive utilities such as: a major sanitary sewer collector, water distribution, and storm drainage, and that these utilities may have to be relocated in order to put in the substructure for the undergrounding of the utilities. Mr. Moreland spoke about the arborist report that values the trees at \$98,000, and to remove them would be an impact to the buffer zone. As per the staff report, Mr. Moreland requested that the Commission approve the removal of Condition of Approval 66.

Commissioner Willis said it does not make sense that there is a COA requiring the applicant to underground utilities that belong to private utilities. Associate Civil Engineer Sharma said the undergrounding of utilities will only be to serve the new development and will be safer along the Jackson Street frontage road. Mr. Sharma said that the utility poles along Silva Avenue may have more shared utilities, and that staff will work with the applicant on the more complex utility elements. Planning Manager Buizer clarified for Mr. Willis that there are two COAs, Condition 60 regarding the undergrounding of utilities in general and COA 66 which addresses the undergrounding of utilities along the Jackson Street frontage road, which is the condition that the applicant is contesting.

Commissioner Bonilla said COA 66 needs to be performed and asked staff about the cost estimate per linear foot, Associate Civil Engineer Sharma said staff checked with other municipalities and the cost is on average \$400 to \$500 per linear foot for a distance of 500 feet for a cost of approximately \$150,000 to \$200,000.

Commissioner Patton said a Public Hearing is not the forum to have an engineering meeting and that the Public Works staff should work with the applicant about a remedy for



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the undergrounding of utilities. Mr. Patton preferred that staff forward to the Commission modifications to COA 66. This will allow the discussions to occur between the applicant and the Public Works staff while allowing the project to move forward, and also allows the Public Works Director to decide what is reasonable in regard to the undergrounding of the utilities. Planning Manager Buizer said staff can act on the Commission's recommendations, or the Commission could continue the item to allow the discussions to occur, and then staff can bring the item back to the Commission after the applicant and staff have reached a solution.

Chair Faria said that there is insufficient information to enable her to make a decision and would like clarification to be able to move forward, and suggested that there might need to be a third party involved to clarify the discrepancies that have been presented by the applicant and City staff.

Commissioner McDermott said it is difficult to make a decision as she is not familiar with the complexities of undergrounding utilities and, from the discussion, this is an issue that needs to be resolved before the project can move forward. Ms. McDermott said it would be in everyone's best interest to continue the item until staff can present the Commission with a more accurate cost analysis for the undergrounding of the utilities and has worked with the applicant to remedy this issue.

Commissioner Goldstein commented that he always considers procedurally what will benefit the community and the developer, while meeting the City's rules and requirements. Mr. Goldstein suggested that the Commission can approve the item as is and let staff and the applicant meet and work out the costs for the undergrounding of the utilities. Mr. Goldstein said if a remedy cannot be worked out, then the applicant can file an appeal to the City Council.

Commissioner Willis asked the applicant if they can move forward with the project if the Commission were to approve the item with all of the COAs. Mr. Moreland responded that there is a disconnect regarding the costs as he does not agree with the \$300 per linear foot as this is a major undergrounding of utilities, and he went on to explain the complexity for this piece of the project, but also reiterated that the applicant's priority is to move forward with the proposed project.

Commissioner Patton said he is struggling with the facts that the applicant is providing affordable housing units and then the City has placed this costly COA 66. Mr. Patton said the Commission could approve the item, and if a remedy on the undergrounding of the utilities cannot be found, then the applicant can appeal to the City Council. Associate Planner Emura said that the applicant must appeal the Planning Commission decision within ten days, otherwise the COA 66 is attached to the project.



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Assistant City Attorney Brick suggested that the Commission could continue the item to enable staff and the applicant to meet and work out the costs and complexities for COA 66. Planning Manager Buizer added that the item can be continued to a date certain or allow staff to meet with the applicant to find a remedy to this issue. Ms. Buizer said once a solution has been found, then staff can again notice the item and place the item on the Commission's calendar. Mr. Brick added that the Commission can approve the item with a hardship exception so that the Public Works Director can work with the applicant on a remedy to this issue.

Commissioner Andrews noted that working with PG&E will add six months to one year in delays, and that the applicant should add the costs of these possible delays to the overall cost of the project.

Commissioner Willis commented that delaying the project will add costs.

Commissioner Bonilla said the Commission should not be making any decisions that will get appealed to the City Council. Mr. Bonilla encouraged his Commissioners to thoroughly discuss the item before them, and to resolve any issues and make solid recommendations at the Commission level. Mr. Bonilla said that the Commission should not approve items that will be appealed to the City Council.

Commissioner Willis commented that he is amenable to approving the staff recommendation but removing COA 66 based on the reasons stated by the applicant.

Chair Faria requested that staff provide more information on the hardship provision.

Assistant City Attorney Brick said if COA 66 is modified to include a hardship provision, this can be done in several ways; the Commission can give the authority to the Public Works Director to make the determination regarding the hardship; the Commission could determine a dollar amount that would be considered a hardship based on the information provided at this Public Hearing; or if the applicant and staff cannot come to a resolution on the costs and complexity of the undergrounding of the utilities, there can be a hardship exception allowing the applicant to return to the Planning Commission to request a modification to COA 66.

Chair Faria asked about the noise mitigation in relation to BART. Mr. Moreland replied that there is an existing physical separation between the project and the BART tracks, and they will be installing a 14-foot masonry wall. Associate Planner Emura responded to Ms. Faria that there have been no responses to the public notice or to the hearing notice.



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Commissioner Willis asked about solar panels and vehicle charging stations. Mr. Szabo said as required by law the units will have solar panels and garages will be prewired for EV charging stations. Planning Manager Buizer shared that there are code changes in 2020 for green elements. Mr. Willis said there needs to be a strong HOA with strong CC&Rs in order for the HOA to enforce the traffic regulations on the private street.

Mr. Szabo clarified for Chair Faria that there is no parking on the private street or in the driveway.

Commissioner McDermott is excited about the inclusion of the affordable housing element and asked about the units, and Mr. Szabo said the units will be the same as the market rate units.

Commissioner Bonilla asked about the size of the units, and Mr. Szabo said there will be three two-bedroom with loft units and four three-bedroom units.

Chair Faria opened and closed the public hearing at 8:32 p.m.

Commissioner Willis made a motion to approve the staff recommendation and to waive COA 66, the undergrounding of the utilities along Jackson Street frontage road, as they pose a hardship for the developer.

Commissioner Patton made a friendly amendment to modify Condition of Approval Number 66, to include a hardship provision requesting that the Public Works director work with the applicant on a remedy for the undergrounding of utilities and that during those discussions that the Public Works Director take into consideration the 20 percent affordable housing units that are included in the development. Commissioner Willis accepted the friendly amendment.

Commissioner Goldstein seconded the motion.

The Commission discussed the motion and friendly amendment and the reasoning behind the hardship provision, as there is a discrepancy between staff's estimate of \$150,000 to \$200,000 and the applicant's estimate of \$2.5 million for the undergrounding of the utilities. There was also discussion about the possibility of continuing the item.

Commissioner Willis made a motion, seconded by Commissioner Patton to approve the staff recommendation and to modify Condition of Approval Number 66, to include a hardship provision requesting that the Public Works Director work with the applicant on a remedy for the undergrounding of utilities along the Jackson Street frontage road and that during those discussions the Public Works Director take into consideration the 20 percent



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affordable housing units that are included in the development. The motion carried with the following vote:

AYES:	Commissioners Willis, Andrews, Bonilla, Patton, McDermott, Goldstein Chair Faria
NOES:	None
ABSENT:	None
ABSTAIN:	None

Planning Manager Buizer clarified for the developer that if they are unable to agree on a solution with the Public Works Director, the developer can then work with staff to request an amendment to the COA 66 that will be brought before the Planning Commission for consideration.

LEGISLATIVE BUSINESS:

2. General Plan Annual Report

Associate Planner Blanton provided a synopsis of the staff report and a PowerPoint Presentation noting that this item came before the City Council on May 7, 2019, and that there was additional Council feedback on prioritization following the Council retreat on May 11, 2019.

Staff shared with the Commission that the new 21st Century Library is due to open this summer.

In response to Commissioner McDermott's question about projects that have been placed on hold, Planning Manager Buizer shared that included in the General Plan update process was instituting fees to generate funds to be used for the long range Planning document updates such as the Zoning Ordinance Update. Prior to the establishment of these fees was utilizing Capital Improvement Program (CIP) funds. Ms. Buizer said that the City is very close to paying off the original cost of preparing the General Plan Update and following the repayment back to the CIP, the collected funds will be used for the Planning document updates. Ms. Buizer said that the City will also be applying for grant funds for these projects.

Commissioner Patton requested for future years that this item come before the Planning Commission first so that Council can benefit from the Commissions' comments.

Commissioner Goldstein asked what soft stories stands for. Planning Manager Buizer explained that soft stories are buildings with multi-family units above the parking level, and these buildings are not considered safe as there is not a full structural story below the



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living units. There will be a soft story ordinance coming before Council to encourage the retrofit of those types of structures to make them more seismically safe.

Planning Manager Buizer said that she can gather information from the City's Building Official and return to the Commission with more information about the soft story ordinance.

Commissioner Andrews asked if the fees being considered will help support the shuttle study, and Planning Manager Buizer responded that the shuttle study was a stand-alone study to find out the feasibility of the City providing shuttle service. Ms. Buizer said the studies referred to in the staff report are nexus studies that are required by law to be conducted when a municipality is considering imposing impact fees on a new development. Ms. Buizer said the City is currently in the process of several studies regarding the park in-lieu/park impact fees and traffic impacts fees related to new development.

Chair Faria asked if the Bicycle Master Plan will include bike sharing and a component for scooters. Associate Planner Blanton shared that the Bicycle Master Plan is currently being expanded to have a joint active transportation, bicycle and pedestrian mobility plan but does not know if scooters will be included in the Bicycle Master Plan. Planning Manager Buizer said that at this time, she does not know if scooters are included in the Bicycle Master Plan and added that staff will be bringing the Bicycle Master Plan to the Planning Commission for review. Ms. Faria also asked about ED-10, ED-11 Town Grown(?) Economic Strategic Plan. Planning Manager Buizer explained that these priorities have to do with developing and maintaining a symbiotic relationship with California State University East Bay and the downtown area and that the City is coordinating efforts with the University.

In response to Commissioner Andrews' question about intersection analysis, Planning Manager Buizer said that due to changes at the State level, the City will have to make modifications to address those changes.

Chair Faria opened and closed the public hearing at 9:05 p.m.

COMMISSION REPORTS

Oral Report on Planning and Zoning Matters:

There was none.

Commissioners' Announcements, Referrals:



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Commissioner Andrews announced that there is a Keep Hayward Clean and Green Task Force event in the Southgate area this Saturday, May 25, 2019.

ADJOURNMENT

Chair Faria adjourned the meeting at 9:08 p.m.

APPROVED:

Ray Bonilla Jr., Secretary
Planning Commission

ATTEST:

Denise Chan, Senior Secretary
Office of the City Clerk