



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, October 18, 2007, 7:30 p.m.  
777 B Street, Hayward, CA 94541**

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**MEETING**

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m., by Chair Peixoto followed by the Pledge of Allegiance.

**ROLL CALL**

Present: COMMISSIONERS: Sacks, Lavelle, Mendall, Thnay, Loché  
CHAIRPERSON: Peixoto  
Absent: COMMISSIONER: McKillop

Commissioner McKillop entered the Council Chambers at about 7:32 p.m.

Staff Members Present: Connolly, Emura, Rizk, Lens

General Public Present: Approximately 30

**PUBLIC COMMENTS**

There were none

**PUBLIC HEARING**

Commissioner McKillop recused herself from the public hearing.

Planning Manager Rizk commented that at the request of Attorney Ron Peck, the item was continued from October 4, 2007, and he introduced Associate Planner Emura.

1. Administrative Use Permit No. PL-2005-0510 – Gene Mattauch (Applicant) / MFG Holding LLC (Owner) - Request to Modify Use Permit 99-160-20 to Allow a Crematorium within an Existing Mortuary and to Allow a Maximum of 500 Cremations per Year - The Property is Located at 22297 Mission Boulevard, at the Northeast Corner of Grace Street (*Continued from October 4, 2007*)

Staff report submitted by Associate Planner Emura, dated October 18, 2007, was filed.

Associate Planner Emura summarized the report submitted on October 4, 2007.

In response to Commissioner Mendall's inquiry about cancer levels, Associate Planner Emura noted that if the cancer risk is ten in a million, the crematorium would not be allowed. In response to the noise from the Visalia video that was presented at the October 4, 2007 meeting, Mr. Emura indicated that the noise outside the building was from gas flowing through the pipes.

Commissioner Thnay indicated that he reviewed the video of the meeting on October 4, 2007. In response to the comparison of pollutant impact from a crematorium and a gas station, Associate Planner Emura stated that pollutants from a crematorium and a gas station do not have the same carcinogen, but the comparison was to show that the cancer risk is comparable.

Commissioner Sacks inquired clarification about the new request of 500 cremations per year and the option to offer the service to other funeral homes. Associate Planner Emura indicated that initially the applicant did not consider a possible expansion for his business. Ms. Sacks addressed Commissioner Mendall's noise concern indicating that from her visit to Salser & Dillard Funeral Chapel in the City of Visalia, she did not notice visible emissions from the moratorium. She added that the place was well insulated because she could not hear the operation from outside the building.

In response to Commissioner Lavelle's inquiry for the change in staff's recommendation, Findings for Approval A thru E in Attachment C from the Findings for Denial submitted on October 2006, Associate Planner Emura expressed that in 2006 staff did not have the Engineering Evaluation Report from the Bay Area Air Quality Management District (BAAQMD). He also indicated that without an engineering evaluation he had to base his findings on other proposed crematoriums in the Bay Area. Mercury emissions were an issue in San Leandro, but not at Mission Funeral Home. He added that as currently proposed the crematorium exhaust stack does not represent a visual impact and thus a less psychological impact. In addition, the engineering report demonstrated to be within approvable levels and the cancer risk was not out of range compared with other processes in the area. He added that improvements to the building enhance the neighborhood. At the request of Ms. Lavelle, Mr. Emura clarified Condition of Approval No. 2 in Attachment D.

In response to Commissioner Loché's inquiry for other agencies besides BAAQMD that enforce compliance with maintenance requirements, Associate Planner Emura indicated that the City has limited involvement when there is no compliance with permits/operation requirements. Mr. Emura added that when there is lack of compliance, the City can bring the application back for further review.

Commissioner Mendall inquired about the first time that the mortuary was considered for the area. Associate Planner Emura indicated that in 1999 there was an application to establish the mortuary. Mr. Mendall further asked if a gas station would be an appropriate land use for the proposed site. Mr. Emura noted that it would be an allowed use subject to approval of a Conditional or Administrative Use Permit.

Chair Peixoto opened the public hearing at 7:59 p.m.

Mr. Ron Peck, Attorney for Mr. Mattauch and Mission Funeral Home, indicated that since 2006 the concerns expressed regarding toxic and visible emissions have been mitigated with the Engineering Evaluation Report from the BAAQMD. Mr. Peck added that the District has determined that with the improved technology (FT1), there is no health risk to the neighborhood. In reference to the gas station comparable cancer risk to the crematorium, he mentioned that the District determined through the Best Available Control Technology for Toxic Emissions (TBACT) analysis that there is no cancer risk as long as the machines are properly maintained. He added that the operation would be from 9:00 a.m. to 6:00 p.m., Monday through Friday, when some people are at work. In



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reference to the request to perform up to 500 cremations per year, he indicated that the request would allow for expansion without having to go through the process again when there would be no difference in terms of the emissions. In reference to Commissioner Loché, Mr. Peck indicated that BAAQMD's role is to monitor and enforce procedural compliances. In reference to Mr. Mendall's question, he added that Mr. Mattauch bought the funeral home from the Machado's Mortuary. He reassured the audience that the visual impacts have been mitigated and expressed that the concerns voiced at the previous hearing were mostly traditional concerns. He added that customers that opt for cremation would benefit by the proposal. Lastly, he stated that Mission Funeral Home would be the last business in Hayward to have its own crematorium on site and it would be smaller than others and more technology compatible.

Mr. Tom Snyder, representative from the manufacturer of FT1, indicated that demand for the equipment is growing significantly in the area. Mr. Snyder disagreed that there is a requirement that information about a crematorium be disclosed to prospective property buyers. In reference to the video tape that showed the crematory operation in Visalia, he noted that there is construction next to the building. Regarding Commissioner Loché's comment about the noise, Mr. Snyder indicated that noise levels refer to the size of the machines and the insulation. He added that Model FT1 has been in the market for 15 years and has proven a greater efficiency. In response to Commissioner Lavelle's inquiry of how long it would take to process two cremations per day, Mr. Snyder indicating that depending on the ambient heat and the variables with the machine, it would take from 70 to 90 minutes.

Mr. Gene Mattauch, Mission Funeral Home applicant, expressed that since the application process started more than two years ago, he spent about \$25,000. Mr. Mattauch indicated that the business industry has changed to be corporate owned and his business is the only one that does not have a crematory. He requested approval of the proposal in order to compete with other funeral homes and to serve current customers. In response to Commissioner Loché's inquiry regarding cost savings, Mr. Mattauch responded that the cost for cremation is less than a burial. He also indicated that the rate of cremations has increased.

Ms. Rosario Arreola, representing Tiburcio Vasquez Health Center, reiterated comments she made at the previous hearing indicating that the proposed application represents a health impact to patients, neighborhood and employees. She submitted asthma statistics from "Select Health Indicators for Cities in Alameda County, 2007," which indicate that hospitalization related to asthma is the second highest in Hayward. Finally, she urged the Commissioners to consider the health concerns associated with the Model FT1 and the cumulative effect.

Mr. Larry Arend, Main Street resident and member of the Board of Directors of the Prospect Hill Neighborhood Association, indicated that the visibility impact to the surrounding neighborhood activity has not been mitigated. He noted that the crematorium would represent a psychological impact to the neighborhood. He referred to other cities that have shown attention to the impact on the quality of life to the residential neighborhood and indicated that Prospect neighbors are already dealing with crime and traffic control. He requested denial of the application.

Mr. Frank Goulart, Prospect Street resident and President of Prospect Hills Neighborhood Association Board of Directors disagreed with Mr. Snyder's comment about disclosure of a crematorium and real estate procedures. In response to his petition, about 16 people stood up to show support against the application. He requested that an Environmental Impact Report (EIR) be required for the proposal since the cumulative impact could not be determined by the District. He requested the Mitigated Negative Declaration be denied and an EIR conducted. In reference to the trip to Visalia, he commented that the wind could have diminished the visual heat waves. He indicated that Mission Funeral Home is not an appropriate use for the residential area. He gave background on the mortuary indicating that in the 1990's a crematorium was not an appropriate use for the area. He disagreed that a crematorium should be placed in the middle of residential neighborhood.

Mr. Jesse Allen, Prospect Street resident and member of the Prospect Hills Neighborhood Association, represented children and indicated concern for the standards of acceptable emission levels. Mr. Allen read a paragraph from the October issue of Scientific America regarding mercury levels and the association with learning disabilities. He expressed concern for the overall cumulative effect and a Day Care Center near Prospect Street and the impact to the neighborhood. He urged the Commission to consider acceptable levels and thus deny the application.

Chair Peixoto closed the public hearing at 8:40 p.m.

Commissioner Lavelle thanked the residents for participating. Ms. Lavelle expressed her regret for not being able to visit the crematorium in Visalia, but was optimistic about the professional report of the BAAQMD and the reconfiguration of the stalk. She indicated that Mission Funeral Home serves a sector of the population that opts for cremation. She added that truck pollution would be created if Mission Funeral Home customers opt to have cremations and have to drive to Livermore. She expressed that there is need for this type of service. Lastly, she made a motion to approve the staff recommendation.

Commissioner Sacks seconded the motion. She stated that public comments were considered in making a decision and indicated that the issue of the crematory was one of facts and feelings. She added that quality of life also has to do with death and having a crematory at the funeral home. She noted that the air quality facts presented by the BAAQMD were the determining factor for seconding the motion. In reference to real estate values, she indicated that if the crematory is presented in a positive light, property values should not have a negative impact.

Commissioner Loché noted that there is an increase in the trend for cremation. He accepted the BAAQMD report, but he added that the visual impact is going to differ for people. He indicated that he contacted a compliance counselor at the BAAQMD and was informed that the agency's goal is to inspect facilities once a year but the goal is not always achieved. He was informed that if emissions are visible, then that would be a sign of an improperly maintained facility. He was not optimistic that the crematory might be properly operated and maintained. He did not support the motion because of the risks associated.

Commissioner Mendall did not agree that the proposed location was appropriate for a crematorium and stated that even another business would not be allowed at the proposed site. He did not support



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the motion.

Commissioner Thnay thanked the residents for their input. He indicated that he was concerned with the safety of the operation of Model FT1. He offered support for the motion with two amendments: that the operation of the crematorium be from 9:00 a.m. to 4:00 p.m., and that the applicant pay a yearly fee for the BAAQMD to inspect the facility once a year.

Commissioner Lavelle accepted the change of service hours from 9:00 a.m. to 4:00 p.m., but asked Assistant City Attorney Connolly for his input on the proposed second amendment. Assistant City Attorney Connolly indicated that he did not foresee a problem with imposing a yearly fee as a condition of approval to conduct the evaluation. In response to Ms. Lavelle's inquiry if the City could get involved in ensuring that a yearly inspection be scheduled without an additional fee, Planning Manager Rizk favored a yearly inspection with collaboration between staff and the District. Ms. Lavelle proposed that staff add a condition that City staff ensure that regular inspections occur. Mr. Thnay indicated that his motivation involved ensuring more accountability. Ms. Lavelle referred to Condition of Approval No. 16 and indicated that language could be added to make sure that the crematory is operated properly according to BAAQMD regulations.

Attorney Peck indicated agreement with the 9:00 a.m. to 4:00 p.m., amendment and requested that if after three years there are no problems, the applicant could ask for more hours of operation. He agreed to pay an inspector to conduct as many inspections as appropriate. He also stated that the Funeral Commission and State Cemetery Association serve as governing bodies for this type of business. Lastly, he asked Commissioner Loché to reconsider his position.

Commissioner Sacks agreed with the amendments.

Commissioner Peixoto was sympathetic to the applicant and the nature of the business, but was concerned with the adverse impact that it could have on the neighborhood. He spoke about the psychological impact that the business imposes to the Prospect neighborhood. He also believed that property values might be affected by approving the crematorium. He indicated that other social aspects already need attention in the neighborhood. He did not support the motion.

Commissioner Lavelle moved, seconded by Commissioner Sacks, and failed with the following vote:

AYES: Commissioners Sacks, Lavelle, Thnay  
NOES: Commissioners Mendall, Loché  
Chair Peixoto  
ABSENT: None  
ABSTAINED: Commissioner McKillop

It was noted that the proponent or other interested parties could appeal the item to Council within ten days of the decision.

**2. Oral Report on Planning and Zoning Matters**

Planning Manager indicated forthcoming meetings. He reported on control measures at the West Winton Park Business Owners Association regarding dust emanating from Pick Your Part.

**3. Commissioners' Announcements, Referrals**

Commissioner Mendall inquired about the status of the Housing Subdivision at Baumberg and Arf Avenues and reported on a big rig parked on the dirt. Planning Manager Rizk took note of the report.

**APPROVAL OF MINUTES**

The minutes of October 4, 2007, were approved.

**ADJOURNMENT**

Chair Peixoto adjourned the meeting at 9:12 p.m.

**APPROVED:**

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Al Mendall, Secretary  
Planning Commissioner

**ATTEST:**

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Miriam Lens  
Commission Secretary