



**MINUTES OF THE CITY COUNCIL MEETING
CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, November 12, 2002, 8:00 p.m.**

MEETING

The Meeting of the City Council was called to order by Mayor Cooper at 8:00 p.m., followed by the Pledge of Allegiance led by Council Member Ward.

ROLL CALL

Present: COUNCIL MEMBERS Jimenez, Hilson,
Rodriquez, Ward, Dowling, Henson
MAYOR Cooper
Absent: None

PRESENTATION: Business Recognition Award

This month, the City of Hayward presented its Business Recognition Award to Zyomyx, a company doing research and development in the area of protein biochip technology. Zyomyx is making life science research and drug discovery faster and more efficient by creating a powerful class of protein analysis tools. For all the many contributions of Zyomyx to our City, for expanding their facilities since they commenced operations back in 1999, for creating many well-paid jobs and attracting more than \$90 million in investment to Hayward, for developing cutting edge protein biochip technology that will help us understand information emanating from the genome project, and for all the positive attention that Zyomyx brings to our City, the Business Recognition Award was presented to Zyomyx. Mr. Dan Theobald, Director of Facilities, accepted on behalf of Zyomyx, and thanked the Council for this recognition.

PUBLIC COMMENTS

Mayor Cooper announced that the City of Hayward received an award from the National League of Cities for 45 years of membership and dedicated service in shaping and advocating national municipal policy and helping to strengthen and promote communities of all sizes.

Mayor Cooper also announced and congratulated Council Member Hilson for being appointed to serve as a Director on the Board for the League of California Cities.

Jim Bray spoke on behalf of the Clearbrook Homeowner's Association and the need to resolve issues not corrected by Standard Pacific, the developer.

Mayor Cooper asked the City Attorney whether the developer had followed the terms of the development contract guidelines.

City Attorney O'Toole responded that he did not know, however, it would be possible to insure that all of the conditions were adhered to before the bonds were released.

Ron and Jonathan Wong spoke on their problems with Standard Pacific. Mr. Wong commented that the Year 2000 slide caused severe damage to their home. He commented that for the past 2 years, Standard Pacific has not fulfilled any of their promises. He noted the current damage and that the developer was asking for a signed release from them saying that Standard Pacific was not liable for the damage. He said they would gladly allow them access to the property for completion of the restoration of their property. He asked the City not to release the completion bonds to Standard Pacific until these problems were corrected.

Jeffrey Etter discussed his problems involving Standard Pacific's response, and said he was forced by Standard Pacific to contact the State Licensing and Contracting Board in order to get his problems resolved.

Daryl Breaker stated that Standard Pacific Homes do not stand behind its product. He described his circumstances and issues that remain to be resolved. He described his cooperation with the developer and having to retain a lawyer.

Jason Moreno reported that there are two vicious dogs on Highland Boulevard and asked anyone who sees them to report them to the animal shelter. He also showed photographs of several areas that need to be cleared of debris.

Barbara Swarr spoke on the use of Measure U funds. She suggested Hayward provide shuttle service from BART to the downtown areas, and free transportation similar to that of San Leandro. She discussed the available land being used for parking and the possible use of this land for more practical purposes.

Patrick Sullivan stated his family's concerns on the hillside slide in their Clearbrook Development home off Garin Drive. He noted that Standard Pacific forced them to sign documents to release them of all future liabilities before they would repair the damage. He submitted documents in support of the problems he has faced with Standard Pacific. He insisted they are not customer friendly and expressed concern about the development at Oliver West. He asked that Standard Pacific not be allowed to turn over the slope-control area until they have provided the geo-tech firm with all manometer readings, and these disseminated to all interested parties.

CONSENT

1. Approval of Minutes of the City Council Meeting of October 29, 2002

It was moved by Council Member Henson, seconded by Council Member Hilson, and unanimously carried to approve the minutes of the City Council Meeting of October 29, 2002.

2. Police Building Youth and Family Services Bureau Addition: Approval of Plans and Specifications and Call for Bids

Staff report submitted by Deputy Director of Public Works Bauman, dated November 12, 2002, was filed.



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It was moved by Council Member Henson, seconded by Council Member Hilson, and unanimously carried to adopt the following:

Resolution 02-162, "Resolution Approving Plans and Specifications for the Police Building Youth Family Services Bureau Addition Project, Project No. 6901, and Call for Bids"

3. Annual Investment Report, Revisions to Statement of Investment Policy and Delegation of Investment Authority

Staff report submitted by Director of Finance and Internal Services Carter, dated November 12, 2002, was filed.

It was moved by Council Member Henson, seconded by Council Member Hilson, and unanimously carried to adopt the following:

Resolution 02-163, "Resolution Accepting the Annual Report on Investment Program and Activity for the City of Hayward, Affirming the Statement of Investment Policy and Renewing the Delegation of Authority to Make Investments to the Director of Finance"

HEARINGS

4. Appeal of Planning Commission Denial of Variance No. PL-2002-0400 to retain a Storage Room; to Allow 33 Percent of Rear Yard to be Covered; an Exception to the City's Design Guidelines - Ernest Armijo (Applicant/Owner) - The Property is at 26476 Cascade Street

Staff report submitted by Consulting Project Planner Weisbrod, dated November 12, 2002, was filed.

Planning Manager Anderly provided the site plan and explained that the Planning Commission had denied the appeal. She noted that the structure had been there since 1976. She commented that to approve this structure, findings must be made to approve its exception to code requirements.

Council Member Henson said he drove through the area and noticed other homes with similar structures, and asked why, since this structure had been there so long, was City staff taking exception to this building.

Planning Manager Anderly stated that there was no proactive effort on the part of staff. This structure was brought to staff's attention via a complaint. This house was constructed in the fifties and could have been in compliance.

Council Member Ward said he met with the applicant and discussed the front yard and side yard setback requirements at the time of construction of the house. He commented that driving through many older subdivisions, there are similar situations.

Council Member Hilson asked if staff had inspected the property.

Planning Manager Anderly indicated that there is a lot of dry rot in the building and it is not in good condition. She commented that a new shed could be built, but in a smaller size.

Mayor Cooper opened the public hearing at 8:51 p.m.

Danny Rabuco spoke on behalf of the applicant and emphasized that after 35 years, there has only been one complaint. He noted that it would be a hardship to raze the shed and rebuild.

D.E. McKenzie said he lives across the street and that this property is one of the better-maintained properties in the neighborhood. He commented that he was not even aware the shed was there until he had been living in his home for two years.

Ernest Armijo, the applicant, stated that he had been singled out by another neighbor, and asked for approval of this structure. He emphasized that he purchased the home in 1966 with that shed in place. He said there is no room in the yard to rebuild a shed of the same size. He said he would not turn in any other neighbors who might have illegal buildings.

Council Member Rodriquez asked how the shed was explained at the time he bought the house.

Mr. Armijo stated that nothing was said about it. He commented that he did not think it was fair to have to destroy it after having had it for 35 years.

Jason Moreno suggested that Mr. Armijo post a bond with the City to pay for the removal of the structure upon the change of ownership.

City Attorney O'Toole said he would advise the Council not to treat different structures differently. In applying the law uniformly, this was an illegal structure. He indicated that if Council was focusing on findings for a variance, they might concentrate on how this can be enforced in court.

Mayor Cooper closed the public hearing at 9:01 p.m.

Council Member Dowling asked about the purpose of the side yard.

Planning Manager Anderly stated that it is for safety, light, air and open space.



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Council Member Dowling asked what kind of precedent would this set for the rest of the community.

Planning Manager Anderly indicated that most exceptions are for corner lots.

City Manager Armas said this might be setting an example and City Council would have to weigh the merits of allowing this exception. He suggested that staff could investigate and provide findings, and effect appropriate safeguards for some of the issues raised. In addition, would be consistency in regulations.

Council Member Dowling said he agreed with Mr. Moreno, if there is any way to agree without setting a precedent.

Council Member Ward said there is confusion as to the front and side yard. He said he would support a variance with conditions to modify the architectural treatment to the exterior of the shed to match the home including the roof pitch and adding the stucco.

Planning Manager Anderly said the roof materials that could be applied, although they might be costly.

Council Member Ward then offered a motion to approve the variance that allows the structure to be retained in the side yard and the applicant be required to architecturally modify the structure so that the exterior treatment goes along the roofline and the exterior wall to be consistent with building materials of the house.

City Attorney O'Toole advised that a building permit might be required, and before granting a variance, Council may wish to have the shed inspected for constructive and safety purposes as it is utilized with some occupation.

With this response, Council Member Ward then withdrew his previous motion and offered a new motion. He moved, seconded by Council Member Rodriguez, to have this item returned to Council, after staff has met with the applicant, with the objective of retaining the structure with modifications to the exterior as previously indicated; and any building code requirements as they relate to a shed must be adhered to by the applicant.

Council Member Henson, asked that staff look at other methods to see if something could be done to make an exception in this case. His concern is that staff is being aggressive in pursuing illegal structures, and City Council has asked them to be aggressive. We would deal with this repeatedly. He then asked to include language in the motion so that staff could use other methods to resolve this type of issues. This was agreed to by both Council Members Ward and Rodriguez.

Council Member Dowling suggested thinking about whether, if approved, many other homeowners might consider asking for the same consideration. He suggested with the

improvements, it might be considered a livable structure. He would not support the motion, because of these concerns.

Council Member Rodriguez stated that clearly this building should not be there, but has been there for 35 years. She said there is a reasonable solution. It should be brought back to Council.

It was moved by Council Member Ward, seconded by Council Member Rodriguez, and carried, with a "No" vote from Council Member Dowling, to have this item returned to Council after staff has met with the applicant, with the objective of retaining the structure with modifications to the exterior consistent with the house; and that any building code requirements as they relate to a shed must be adhered to by the applicant.

LEGISLATIVE BUSINESS

5. Adoption of Ordinance Reclassifying Certain Properties Located at Industrial Parkway West and Stratford Road Pursuant to Zone Change PL-2002-0296

Staff report submitted by City Clerk Reyes, dated November 12, 2002, was filed.

City Clerk Reyes reported that this ordinance was introduced at the previous meeting related to the Stratford Village development. Staff placed it under Legislative Business, as the vote was not unanimous.

With no requests to speak, Mayor Cooper opened and closed the public hearing at 9:19 p.m.

It was moved by Council Member Dowling, seconded by Council Member Ward, and carried by the following roll call vote to adopt the following:

Ordinance 02-20, " An Ordinance Reclassifying Certain Properties Located at Industrial Parkway West and Stratford Road Pursuant to Zone Change Application PL-2002-0296"

AYES: Council Members Jimenez, Rodriguez, Ward,
Dowling, Henson
MAYOR Cooper
NOES: Council Member Hilson
ABSENT: None

COUNCIL REPORTS

There were no Council Reports.



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ADJOURNMENT

Mayor Cooper adjourned the meeting at 9:21 p.m.

APPROVED:

Roberta Cooper, Mayor, City of Hayward

ATTEST:

Angelina Reyes, City Clerk, City of Hayward