CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 01/21/03
AGENDA ITEM 4
WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Appeal of Planning Commission Approval of Administrative Use Permit Application No. PL-2002-0262- Mark Thomas - Heart of the Bay Christian Center (Applicant/Owner)/ Cecelia Wilson and Patricia Liatto (Appellants)

RECOMMENDATION:

Staff recommends that the City Council adopt the resolution
1) Approving the Negative Declaration and,
2) Upholding the appeal and denying the Administrative Use Permit.

DISCUSSION:

Heart of the Bay Christian Center is requesting to convert the former United Artists Theater into a religious facility with a sanctuary, administrative offices, six classrooms, a youth room, a multiuse room, and a youth arcade. They are proposing to increase the floor area by 4,200 square feet with additions to the rear and the second floor of the theater. When completed, the total floor area would be 30,794 square feet. Other site improvements, such as new parking lot trees, a new walkway from Hesperian Boulevard, and additional fencing would be provided to enhance the site. The property encompasses 5.03 acres and is located in the Neighborhood Commercial District. The General Plan designation is Retail and Commercial Office. The Heart of the Bay Christian Center would be relocating from Sunset Elementary School in San Lorenzo where they have the use of 27,246 square feet of building area until 2007, with an option to extend their lease to 2012.

The application was initially considered at a Planning Commission meeting on September 12, 2002. Staff recommended that the Planning Commission deny the application. In staff's opinion, the project would be inconsistent with the Southgate Neighborhood Plan, which supports maintaining the commercial shopping areas along Hesperian Boulevard and calls for attracting and retaining regional and neighborhood-serving businesses. Specifically, the project would reduce the commercial development potential and viability of the commercial area, especially the block bounded by Hesperian Boulevard and La Playa Drive. Approval would result in locating a non-commercial use in the midst of other commercial uses, resulting in visual and other impacts relating to retail viability. Non-commercial uses would consume up to 43 percent of the commercially zoned properties in the block and cover about 57 percent of the block face along Hesperian Boulevard. Additionally, the project would impede the City's ability to carry out the policies and strategies of the Economic Development Element of the General Plan, which calls for

attracting investments that increase the tax base, creating employment opportunities, and generating revenue for the City. It also encourages creating opportunity zones within close proximity of major highway interchanges to attract large retail operations, discounters and other regional-serving establishments. The project, as proposed, would not contribute to the commercial revitalization of the area, and the loss of tax base could have the potential of impacting the delivery of public services, particularly in light of the current and anticipated economic climate. This loss of sales and property tax base would be further compounded by the impact on cities of proposed actions to bring the State budget in balance. Therefore staff believes that the City has a legitimate interest in maintaining this property for commercial use. If the project were designed as a minor portion of a larger commercial venture, staff would be able to support the project.

During the public comment period, twenty-four persons (primarily church members) spoke in favor of the project and no one spoke against it, although staff received numerous letters from church members supporting the project and three letters from neighborhood residents opposing the project. As CEQA review had not been conducted and the Planning Commission did not have the requisite findings at hand to support the project nor any prepared conditions of approval, they were not able to act on the project. Therefore the matter was continued and staff was directed (4:3) to come back at a later date with findings and conditions in support of the project.

The project was brought back to the Planning Commission on November 26, 2002, when the Planning Commission approved the project (4:3). Those that supported the project indicated that vacant commercial spaces in the vicinity have remained vacant for some time, that the Zoning Ordinance does not list a religious facility as a primary use in any zoning districts, and that a church of this size could only be located in a commercial district and on a property of this size. The Commissioners further indicated that the project could have a positive impact on Hayward and the surrounding area.

The opposing Commissioners spoke about the retail potential of the site and its impact on the surrounding businesses and the City. It was pointed out that businesses rely on other businesses to make a commercial area successful and that by approving the project the commercial area would be constrained. They concluded that the City has a compelling government interest in maintaining the property for commercial use. Others expressed concern about the potential loss of revenue to provide basic services for the residents of Hayward.

During the public comment period of the November 26 hearing, one member of the public spoke in support of the project stating that the church would have less impact to the surrounding neighborhood then a commercial development and that there are vacant properties in the area that have remained vacant for a long period of time that could accommodate a large retailer. Two persons spoke against the project, one indicating that a church would not be appropriate in area with existing liquor establishments and that a church could have negative impact on the businesses involved in the sale of alcoholic beverages. The other person expressed concern about a loss of revenue to the City and indicated that there should be proof of the claims on the amount that church members would contribute to the economy of Hayward.

Following the Planning Commission decision, two residents of the Southgate Neighborhood appealed the decision. The reasons for their appeals are their concerns that the commercial area would be jeopardized and that the church would not contribute to the cost of city services.

CONCLUSION:

In addition to staff's opinion that the project would be inconsistent with adopted City policies, it should be pointed out that the Heart of the Bay Christian Center has not established that denying their application would place an undue burden on the exercise of their religion. The church can continue to operate in their current location, which is larger than the area of the theater building. If they were to carry out their plan to expand the theater building, the expanded theater would only be about 13 percent larger (about 3,500 square feet) than their current location. In addition, the San Lorenzo Unified School District has not indicated any present intention to terminate its lease with the Center before 2007, and there are options to extend the lease (in five-year increments) to an even later date. And although it was represented at the public hearing before the Planning Commission that some of the commercial buildings in the vicinity have been vacant for some time, there has been considerable interested expressed by the development community in acquiring the property for various development purposes. Therefore, there is a legitimate interest, in staff's opinion, in retaining this property for commercial purposes.

Prepared by:

Dyana Anderly, AICP
Planning Manager

Recommended by:

Sylvia Ehrenthal
Director of Community and Economic Development

Approved by:

Jesús Armas, City Manager

Attachments:	Exhibit A.	Negative Declaration
	Exhibit B.	Appellant's Letter (Wilson), dated November 30, 2002
	Exhibit C.	Appellant's Letter (Liatto), dated December 2, 2002
	Exhibit D.	Planning Commission Staff Report and Minutes, dated November 26, 2002
		Plans
		Draft Resolution

1/16/03

EXHIBIT A

DEPARTMENT OF
COMMUNITY AND ECONOMIC DEVELOPMENT
Planning Division

NEGATIVE DECLARATION

Notice is hereby given that the City of Hayward finds that no significant effect on the environment as prescribed by the California Environmental Quality Act of 1970, as amended will occur for the following proposed project:

I. *PROJECT DESCRIPTION*:

To convert the 22,292 square foot theater located at 24800 Hesperian Boulevard to a religious facility with administrative offices. The floor area will be increase by 4,200 square feet with additions to the rear and second floor of the theater. The total floor area will be 30,794 square feet. Additional trees will be provided to replace trees that have been severely pruned and to meet the parking lot tree requirements. The property is 5.03 acres and located in the Neighborhood Commercial District (CN). The General Plan designation is Retail and Commercial Office (ROC). The project proponent is Mark Thomas/Heart of the Bay Christian Center.

II. *FINDING PROJECT WILL NOT SIGNIFICANTLY AFFECT ENVIRONMENT*:

The proposed project will have no significant effect on the area's resources, cumulative or otherwise.

III. *FINDINGS SUPPORTING DECLARATION*:

1. The project application has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and an Initial Study Environmental Checklist Form has been completed for the proposed project. The Initial Study has determined that the proposed project could not result in significant effects on the environment.

2. The proposed project is potentially in conformance with the General Policies Plan Map designation of "Neighborhood Commercial," the judgment to be determined as part of the consideration of the use permit application.

3. The proposed project is potentially in conformance with the intent and purpose of the Zoning Ordinance designation of "Neighborhood Commercial" for the property, a judgment to be determined in concert with consideration of a use permit.

4. The proposed site plan provides proper access, circulation and parking for the proposed church and administrative offices.

IV. *PERSON WHO PREPARED INITIAL STUDY*:

Carl T. Emura
Associate Planner

Dated: 9/23/02

V. *COPY OF INITIAL STUDY IS ATTACHED*

For additional information, please contact the City of Hayward Development Review Services Division, 777 B Street, Hayward, CA 94541-5007 or telephone (510) 583-4209

DISTRIBUTION/POSTING

- Provide copies to project applicants and all organizations and individuals requesting it in writing.
- Reference in all public hearing notices to be distributed 20 days in advance of initial public hearing and/or published once in Daily Review 20 days prior to hearing.
- Project file.
- Post immediately upon receipt at the City Clerk's Office, the Main City Hall bulletin board, and in all City library branches, and do not remove until the date after the public hearing.

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
Development Review Services Division

INITIAL STUDY CHECKLIST FORM

Project title:	**Administrative Use Permit – Request to convert an existing theater to a religious facility with administrative offices. CN (Neighborhood Commercial) Zoning District.** Mark Thomas, Heart of the Bay Christian Center (Applicant/Owner).
Lead agency name and address:	City of Hayward, 777 "B" Street, Hayward, CA 94541-5007
Contact persons and phone numbers:	Carl T. Emura, Associate Planner (510) 583-4209
Project location:	The property is located at 24800 Hesperian Boulevard, Hayward, California in the Jackson Triangle Neighborhood Plan area.
Project sponsor's name and address:	Mark Thomas C/o Heart of the Bay 20450 Royal Avenue Hayward, Ca. 94541
General Plan:	Retail and Commercial Office (ROC)
Zoning:	Neighborhood Commercial (CN)
Description of project:	Request to convert an exiting theater to a religious facility with administrative offices.
Surrounding land uses and setting:	The property is a 219,161 square feet T-shaped parcel. It is surrounded by the San Leandro-Hayward Elks Lodge to the south; a vacant commercial building (formerly Radio Shack) Midas, State Farm and the Korean Baptist Church to the north.
Other public agencies whose approval is required:	None.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:
The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

☐ Aesthetics	☐ Agriculture Resources	☐ Air Quality
☐ Biological Resources	☐ Cultural Resources	☐ Geology /Soils
☐ Hazards & Hazardous Materials	☐ Hydrology / Water Quality	☐ Land Use / Planning
☐ Mineral Resources	☐ Noise	☐ Population / Housing
☐ Public Services	☐ Recreation	☐ Transportation/Traffic
☐ Utilities / Service Systems	☐ Mandatory Findings of Significance	

DETERMINATION: (To be completed by the Lead Agency)
On the basis of this initial evaluation:

☒ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

_____	October 18, 2002
Signature	Date
Carl T. Emura, Associate Planner	City of Hayward

ENVIRONMENTAL ISSUES:

	Potentially Significant Impact	*Potentially Significant Unless Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
I. **AESTHETICS** -- Would the project:				
a) Have a substantial adverse effect on a scenic vista? ***Comment:*** *The project will not affect any scenic vista.*	☐	☐	☐	☒
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway? ***Comment:*** *The project will not damage scenic resources.*	☐	☐	☐	☒
c) Substantially degrade the existing visual character or quality of the site and its surroundings? ***Comment:*** *The project will not substantially degrade the existing visual character or quality of the site and its surroundings as the building is existing and only a 1,600 square foot addition is being added to the rear of the building.*	☐	☐	☐	☒
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area? ***Comment:*** *The project has existing light fixtures but may not comply with the City's security ordinance.* **Prior to issuance of a building permit, a lighting plan prepared by a qualified professional must be submitted for approval by the Planning Director. Lighting Plan must comply with Security Ordinance which requires that light not cast a glare onto the Public R.O.W or adjacent properties.**	☐	☐	☒	☐
II. **AGRICULTURE RESOURCES**: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use? **Comment:** *The project site does not contain farmland.*	☐	☐	☐	☒
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract? ***Comment:*** *The project is not located in an agricultural district nor an area used for agricultural purposes.*	☐	☐	☐	☒

	Potentially Significant Impact	*Potentially Significant Unless Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use? ***Comment:*** *The project area does not contain agricultural uses or farmland, See II b.*	☐	☐	☐	☒
III. **AIR QUALITY** -- Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan? ***Comment:*** *The traffic volumes associated with this project are not anticipated to be substantial and will take place during off peak hours. Therefore, a significant increase in air emission or deterioration of ambient air quality attributed to the project is not anticipated. It should be noted that the latest information provided by the Bay Area Air Quality Management District (BAAQMD) indicates that the Bay Area is designated a non-attainment area for ozone and particulate matter (PM10). Typically, the BAAQMD does not require site-specific air quality analyses for projects that do not meet minimum size threshold (typically in excess of 2000 vehicle trips per day), which this project would not meet.*	☐	☐	☐	☒
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation? ***Comments:*** *See III. a) above.*	☐	☐	☐	☒
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)? ***Comment:*** *See III. a) above.*	☐	☐	☐	☒
d) Expose sensitive receptors to substantial pollutant concentrations? ***Comment:*** *See III. a) above.*	☐	☐	☐	☒
e) Create objectionable odors affecting a substantial number of people? ***Comment:*** *The project would not create objectionable odors affecting a substantial number of people.*	☐	☐	☐	☒

IV. **BIOLOGICAL RESOURCES** -- Would the project:

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporation	Less Than Significant Impact	No Impact
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? ***Comment:*** *The project site has been fully developed as a Theater. Since the property is urban in nature, biological resources will not be adversely affected.*	☐	☐	☐	☒
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service? ***Comment:*** *The site contains no riparian or sensitive habitat.*	☐	☐	☐	☒
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means? ***Comment:*** *The site contains no wetlands.*	☐	☐	☐	☒
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites? ***Comment:*** *The site does not contain habitat used by migratory fish or wildlife nor is it a migratory wildlife corridor.*	☐	☐	☐	☒
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance? ***Comment:*** *Thirty one trees where severely pruned by the previous property owner, United Artist Theatre. HBCC has indicated on their plans that they will be replaced and additional trees will be added to the parking lot to comply with the tree preservation and zoning ordinance.*	☐	☐	☐	☒
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional or state habitat conservation plan? ***Comment:*** *There are no habitat conservation plans affecting the property.*	☐	☐	☐	☒

V. **CULTURAL RESOURCES** -- Would the project:

	Potentially Significant Impact	*Potentially Significant Unless Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5? ***Comment:*** *The applicant will be occupying a site that has been fully developed therefore no substantial adverse change in the significance of a historical resource is expected.*	☐	☐	☐	☒
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5? ***Comment:*** *See V. a) above.*	☐	☐	☐	☒
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature? ***Comment:*** *See V. a) above.*	☐	☐	☐	☒
d) Disturb any human remains, including those interred outside of formal cemeteries? ***Comment:*** *See V. a) above.*	☐	☐	☐	☒
VI. **GEOLOGY AND SOILS** -- Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:	☐	☐	☒	☐
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42. ***Comment:*** *The project site is not within the Earthquake Hazard zone. However, it is likely that the existing building will be subject to seismic shaking and other earthquake-induced effects. It will be required to comply with the Uniform Building Code Standards to minimize seismic risk due to ground shaking.*	☐	☐	☒	☐
ii) Strong seismic ground shaking? ***Comment:*** *See VI. a) i above.*	☐	☐	☒	☐
iii) Seismic-related ground failure, including liquefaction? ***Comment:*** *See VI. a) i above.*	☐	☐	☒	☐
iv) Landslides? ***Comment:*** *The site is level and is not subject to landslides.*	☐	☐	☐	☒
b) Result in substantial soil erosion or the loss of topsoil? ***Comment:*** *The project site is flat. The Engineering Division will ensure that proper erosion control measures (Best Management Practices) are implemented.*	☐	☐	☐	☒

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporation	Less Than Significant Impact	No Impact
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse? ***Comment:*** *See VI. a) i above.*	☐	☐	☐	☒
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property? ***Comment:*** *HBBC will be utilizing the existing building that previously complied with the Uniform Building Code when it was constructed and would have been designed to deal with the type of soil the building was constructed on.*	☐	☐	☐	☒
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater? ***Comment:*** *The existing building is hooked up to the City's sewer and storm drain systems.*	☐	☐	☐	☒
VII. **HAZARDS AND HAZARDOUS MATERIALS** - Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials? ***Comment:*** *There is no evidence of hazardous materials at the site nor will hazardous materials be used or transported near the site.*	☐	☐	☐	☒
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment? ***Comment:*** *See VII a.*	☐	☐	☐	☒
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school? ***Comment:*** *See VII a .*	☐	☐	☐	☒
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment? ***Comment:*** *See VII a.*	☐	☐	☐	☒

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporation	Less Than Significant Impact	No Impact
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area? ***Comment:*** *The project is not located within an airport zone.*	☐	☐	☐	☒
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area? ***Comment:*** *See VII e.*	☐	☐	☐	☒
f) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan? ***Comment:*** *The project will not interfere with any known emergency response plan or emergency evacuation plan. The Hayward Fire Department serves the area. Emergency response times will be maintained.*	☐	☐	☐	☒
g) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands? ***Comment:*** *The project is not located in an area of wildlands and is not adjacent to wildlands.*	☐	☐	☐	☒
VIII. **HYDROLOGY AND WATER QUALITY** -- Would the project:				
a) Violate any water quality standards or waste discharge requirements? ***Comment:*** *The site is fully developed with an adequate drainage system.*	☐	☐	☐	☒
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)? ***Comment:*** *The site is currently paved, and does not depend on groundwater for a source of water.*	☐	☐	☐	☒
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site? ***Comment:*** *The project is not located near a stream or a river. Development of the site will not result in substantial erosion or siltation on-or off-site.*	☐	☐	☐	☒

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporation	Less Than Significant Impact	No Impact
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site? ***Comment:*** *The project is within an urban area and has been developed as such. Drainage patterns on the site will not cause flooding.*	☐	☐	☐	☒
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff? ***Comment:*** *The amount of run-off from the project will not exceed the capacity of the stormwater drainage system. See VIII a.*	☐	☐	☐	☒
f) Otherwise substantially degrade water quality? ***Comment:*** *See VIII a.*	☐	☐	☐	☒
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map? ***Comment:*** *The project does not include any housing.*	☐	☐	☐	☒
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows? ***Comment:*** *The project is not located in the 100-year flood zone.*	☐	☐	☐	☒
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam? ***Comment:*** *See VIII h.*	☐	☐	☐	☒
j) Inundation by seiche, tsunami, or mudflow? ***Comment:*** *The project is not in a location that would allow these phenomena to affect the site.*	☐	☐	☐	☒
IX. LAND USE AND PLANNING - Would the project:				
a) Physically divide an established community? ***Comment:*** *Introducing a non-commercial use of significant size in the midst of a commercial area could have a visual and other retail-related impacts on the commercial area.*	☐	☐	☒	☐

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporation	Less Than Significant Impact	No Impact
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? ***Comment:*** *The project does not conflict with any land use plan or policy that would have an environmental effect on the surrounding area.*	☐	☐	☐	☒
c) Conflict with any applicable habitat conservation plan or natural community conservation plan? ***Comment:*** *See IV f.*	☐	☐	☐	☒
X. **MINERAL RESOURCES** – Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state? ***Comment:*** *The project will not result in a significant impact to mineral resources since the project study area is a developed urbanized area that does not contain mineral resources that could be feasibly removed.*	☐	☐	☐	☒
b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan? ***Comment:*** *See X a.*	☐	☐	☐	☒
XI. **NOISE** - Would the project result in:				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies? ***Comment:*** All activities will be indoors. No outdoor speakers, amplification or bells will be used. No sound is proposed to be used to signal the start of a meeting or prayer session.	☐	☐	☐	☒
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels? ***Comment:*** *See XI a.*	☐	☐	☐	☒
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project? ***Comment:*** *See XI a*	☐	☐	☐	☒

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporation	Less Than Significant Impact	No Impact
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project? ***Comment:*** *During construction of improvements, there may be an increase of ambient noise levels in the vicinity. Hours of construction should be limited to daytime activity and hour limitations placed on Saturday and Sunday activity. Construction equipment should have sound reduction devices to reduce noise impacts on surrounding properties. Due to acceptable ambient noise level in the vicinity, no mitigation is required.*	☐	☐	☒	☐
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels? ***Comment:*** *The project is not located within an airport land use plan or within two miles of a public airport or public use airport.*	☐	☐	☐	☒
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels? ***Comment:*** *See XI.e) above.*	☐	☐	☐	☒
XII. **POPULATION AND HOUSING** -- Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)? ***Comment:*** *The use of the existing theater as a church is not expected to induce population growth.*	☐	☐	☐	☒
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere? ***Comment:*** *The property is currently a theater and no residential facilities exist on the property.*	☐	☐	☐	☒
b) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere? ***Comment:*** *See XII b.*	☐	☐	☐	☒
XIII. **PUBLIC SERVICES**				
Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporation	Less Than Significant Impact	No Impact
a) Fire protection? **Comment:** *The loss of tax base associated with the use of the land for a religious facility has the potential of impacting public services in light of the current and anticipated economic climate.*	☐	☐	☒	☐
b) Police protection? ***Comment:*** *See XIII a.*	☐	☐	☒	☐
c) Schools? ***Comment:*** *See XIII a.*	☐	☐	☒	☐
d) Parks? **Comment:** *See XIII a.*	☐	☐	☒	☐
e) Other public facilities? ***Comment:*** *See XIII a.*	☐	☐	☒	☐
XIV. **RECREATION --**				
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated? ***Comment:*** *The project is not expected to have any impact on the use of or demand for recreational facilities.*	☐	☐	☐	☒
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment? ***Comment:*** *See XIV a.*	☐	☐	☐	☒
XV. **TRANSPORTATION/TRAFFIC** -- Would the project:				
a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)? ***Comment:*** *The City's Engineering and Transportation Division reviewed the proposal and determined that there will not be a significant effect on a.m. or p.m. peak hour traffic congestion. No traffic study was required.*	☐	☐	☒	☐
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways? ***Comment:*** *See XV a.*	☐	☐	☐	☒

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporation	Less Than Significant Impact	No Impact
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks? ***Comment:*** *The project will not affect air traffic patterns.*	☐	☐	☐	☒
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? ***Comment:*** *The project will not have any hazardous design features or incompatible uses.*	☐	☐	☐	☒
e) Result in inadequate emergency access? ***Comment:*** *The Hayward Fire Department has reviewed the project and finds the project acceptable to Hayward Fire Department requirements and standards.*	☐	☐	☐	☒
f) Result in inadequate parking capacity? ***Comment:*** *The project meets the minimum parking requirements set forth in the City's Off-street Parking Ordinance.*	☐	☐	☐	☒
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)? ***Comment:*** *The project does not conflict with adopted policies supporting alternative transportation.*	☐	☐	☐	☒
XVI. **UTILITIES AND SERVICE SYSTEMS** - Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board? ***Comment:*** *The use of the wastewater treatment facilities is expected to be equal to or less than the previous occupant.*	☐	☐	☐	☒
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? ***Comment:*** *See XVI. (a).*	☐	☐	☐	☒
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? ***Comment:*** *No new storm water drainage facilities or expansion of existing facilities will be required as a result of this use*	☐	☐	☐	☒
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed? ***Comment:*** *The water usage is expected to be equal to or less than the previous occupant.*	☐	☐	☐	☒

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporation	Less Than Significant Impact	No Impact
e) Result in a determination by the wastewater treatment provider, which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments? ***Comment:*** *See XVI. (a).*	☐	☐	☐	☒
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs? ***Comment:*** *Waste Management of Alameda County will dispose the solid waste. The Altamont landfill is available to the City of Hayward until 2009 and has sufficient capacity to handle the amount of solid waste generated by the project. The landfill recently received an approval that increases the capacity and adds 25 years to the life of the landfill to the year2034.*	☐	☐	☐	☒
g) Comply with federal, state, and local statutes and regulations related to solid waste? ***Comment:*** *The project will comply with all federal, state, and local statutes and regulations related to solid waste.*	☐	☐	☐	☒
XVII. **MANDATORY FINDINGS OF SIGNIFICANCE --**				
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	☐	☐	☐	☒
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	☐	☐	☐	☒
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	☐	☐	☐	☒

EXHIBIT B

November 27, 2002

City of Hayward
Planning Department
777 B Street
Hayward, CA 94541

Re: Administrative Use Permit Application No. PL 2002-0262
Heart of the Bay Christian Center
24800 Hesperian Boulevard

I would request that this "Use Permit" be appealed to City Council.
I believe that the site should continue to be used for commercial uses.
Changing this property's designation will jeopardize the rest of the commercial area.

Thank you,

Cecelia Wilson
752 Poinciana St
Hayward, Ca. 94545

EXHIBIT C

att Richard E Patenaude
associate Planner -
Fax 583-3649

Ref: Church on Hesperian Blvd

NO we do not need another church on Hesperian - they have a 10 yr lease - so they can stay there - unless the city is afraid of the their expensive lawyers from San Francisco -

If the residents are so worried about the landscape going to pot - then we should get a committee to clean it up and the city pay to haul it away - until the city can find a "Business" that will pay taxes to move in -

Question - Why is it so hard to get new business to move to Hayward? Maybe because we are basicly a Transit City?!

I don't want the taxes to increase just because a Church - Pressured my city council - the Church will be there forever - no taxes to be paid to the city -

Patricia Liatto
981 CURRANT WAY
Hayward, Ca 94545
Ph 510 887 0253

the Planning Commission had any authority in asking for conditions on the property to be brought up to code.

Assistant City Attorney Conneely said they had the authority to require the applicant to remedy any building code violations that exist on the property.

Commissioner Caveglia **moved**, seconded by Chairperson Bogue, to find the project categorically exempt fro CEQA review; approve the tentative Parcel Map 7990 and the associated variances subject to the findings and conditions with additional conditions requiring the owner to remove the septic tank and leach field, as well as bringing the buildings up to code. He added a further condition to protect the fig tree and all the significant trees on the property.

The **motion passed unanimously.**

3. **Continuation of a Referral By The Planning Director: Administrative Use Permit No. PL-2002-0262 – Mark Thomas-Heart of the Bay Christian Center (Applicant/Owner)** – Request to Convert an Existing Theater to a Religious Facility With Administrative Offices (Continued From 9/12/02) – The Property is Located at 24800 Hesperian Boulevard in a Neighborhood Commercial (CN) District

Associate Planner Emura indicated that subsequent to the mailing of the meeting notice, the Department received two calls one in support and one against. The negative call cited the increased traffic in the area as well as the loss of revenue to the City by not having a commercial building at this location. He added that the applicant would ask for changes to some of the conditions, he asked for staff to have input on these prior to a vote.

Commissioner Halliday asked specifically about condition 34, and the 31 trees that were severely pruned and were required to be replaced with 24" box trees.

Associate Planner Emura commented that the damage was done by the previous owner who never complied with condition of replacement.

The public hearing was opened at 9:12 p.m.

Pastor Mark Thomas said they are excited about this new home for their church. He said he had asked that only those members who felt they must speak, to do so. He then thanked the Commission for the prior vote. He then described the conditions to which they had taken exception, and the problems with them. He noted that condition 11 had been satisfied through the renderings submitted; Condition 14 requiring a masonry wall should be changed to either a wooden wall, which would be a small percentage of the cost of a masonry wall. He asked that Condition 25, regarding the driveway reconstruction, be considered for future changes, and that a modification be made of Condition 34 requiring all 31 existing trees be replaced. He said the Church had hired a certified arborist to check the trees and agreed that 24 of the trees were dead; the seven remaining trees might be redeemable. He asked that, if the condition were not modified, the Church would be allowed to phase in the plantings since the cost of replacing 31 trees with 24" box trees would be prohibitive. He then noted that the property was 1,800 square feet, and not 1,600 as described in the initial study.

Jim Swanson, speaking on behalf of the applicant, described a few more changes they would like that were asked for the conditions. He also showed the plans for compliance with several of the conditions, like Condition 13, the pedestrian walkway to Hesperian. He then suggested that they would like to comply with Condition 14 by erecting either a wooden fence or a decorative metal lattice fence that would be approved by the Planning Department. He showed the proposed decorative paving at the driveway entry off of Hesperian as required in Condition 22, and said they would agree to the remaining conditions as well.

Al Reynolds spoke against the church going into this location because of the resulting lack of revenue to the City. He asked for conditions to be required for the Church to prove that their economic forecast is correct. He also commented that the driveways should be wider.

Roy Gordon explained that any concerns regarding traffic should be alleviated by the understanding that any other commercial enterprise at this location would greatly increase traffic at peak hours, whereas the Church only generates greater traffic on Sundays and possibly in the evenings. He commented that there are too many long-term buildings vacant on Hesperian, most of them commercial buildings. He added that at least this would fill one building and bring more people into the community.

Al Nunes, of the "Hollow Leg," discussed his bar, which is located next to the new church property. He then described all of the liquor establishments in the area and commented that this would be a very inappropriate place to locate a church. He noted that it is a very commercial area and wondered, why, if a church was already established in the area, locating a bar next to it would be forbidden. He suggested that if you cannot locate a bar next to a church, perhaps you should not be able to locate a church next to a bar.

Chairperson Bogue asked staff whether it was legal to place a church next to alcohol establishments.

Planning Manager Anderly did note that schools next to liquor establishments were not permitted and cited Chabot College across the street or a day care center at a church. She noted that if an existing liquor establishment closed and a new one did not open up within six months, a liquor establishment would not be able to locate within 500 feet of a Church or school.

The public hearing was closed at 9:36 p.m.

Commissioner Thnay asked questions regarding Conditions 22 and 25, and wondered whether they were consistent with previous applications.

Associate Planner Emura said they were and also discussed the request for changes for Condition 11. He said staff had never received color samples and would like to reserve the right to see samples to make sure the building will blend into the location. He explained that Condition 14

requiring the masonry wall was added when staff thought there were residential units behind the site. He agreed that other decorative fencing would be okay. He said staff would agree to modify Condition 25 to read any "future drive-way". Also Condition 34, they would leave the opportunity for corrective pruning on the trees to reestablish themselves. He emphasized that 24 trees need to be removed. He thought phasing them in as time and money permits would be difficult since the reason for the trees is aesthetics. Staff felt it would be appropriate to do it all at once. He added that nice landscaping will help revitalize the area.

Commissioner Halliday then **moved**, seconded by Commissioner Sacks to adopt the negative declaration, approve the Administrative Use Permit with findings and conditions of approval, with amendments to the conditions to include: 14., to some other type of fencing, wood or metal, subject to staff approval; Condition 25. to read, "any future driveways;" 34. to include an evaluation of the 31 trees on the site by the City Landscape Architect for viability and those no longer viable are to be replaced with 24" box trees.

Chairperson Bogue emphasized that this location should be used for commercial use. For that reason he would not support the motion.

Commissioner Zermeño agreed that this project hinders Hayward's ability to grow.

Commissioner Halliday asked the Assistant City Attorney whether the Commission had not already approved that application.

Assistant City Attorney Conneely said the Commission had not approved the application. They had merely agreed to ask staff to do the environmental analysis and come back with findings for approval.

Commissioner Halliday said she might agree with Chairperson Bogue if the property were owned by the City or in a redevelopment area. Since a church is permitted in this zoning district, she thought it would be appropriate. It would not fit into another zoning district. Since it is larger than most, it would not belong in a residential district. She said the Church works well on this property. Services will not interfere and create more traffic during commute times, or anything.

Commissioner McKillop said she had looked at the building and its history. She would prefer to see the lot developed and felt this was appropriate at this time.

Commissioner Sacks said if the City of Hayward had a commercial building going in, she would support it. She then read the portion of the RLUIPA law, which precludes local agencies, absent a compelling government interest, to vote against the motion. She noted that given the situation in that area, she could find no "compelling government interest," so she would support the motion.

Commissioner Thnay commented that quite often when vacant property is noted, the City comes up with hopes for a huge bookstore or other vague proposal. He commented on the number of vacant buildings in this area, including Hesperian House, etc., which have all been closed for a long time. By agreeing to the proposed Church at this location, he said, it will bring many benefits to the City. He would support the motion.

The motion **carried** by the following vote:

AYES:	COMMISSIONERS	Halliday, Thnay, Sacks, McKillop
NOES:	COMMISSIONER	Caveglia, Zermeño
	CHAIRPERSON	Bogue
ABSENT:	None	
ABSTAIN:	None	

ADDITIONAL MATTERS

4. Oral Report on Planning and Zoning Matters

Planning Manager Anderly reminded Commissioners of the two meetings in December on the 5th and 19th with a special event on December 12th.

Commissioner McKillop noted her involvement with the "Light Up the Season" event on December 5th.

Planning Manager Anderly indicated that efforts would be made to cancel the December 5 meeting.

5. Commissioners' Announcements, Referrals

Commissioner Sacks commented on the irony of the bar owner noting that with all of the bars in the area on Mission, a church was still allowed to locate there, whereas the reverse would probably not be true.

APPROVAL OF MINUTES

Commissioner Thnay noted that a comment he made on page five of the agenda was to read, "dogs" not "ducks." The minutes were then approved with this correction.

- November 7, 2002

ADJOURNMENT

The meeting was adjourned by Chairperson Bogue at 10:03 p.m.

APPROVED:

CITY OF HAYWARD
AGENDA REPORT

Meeting Date 11/21/02
Agenda Item 3

TO: Planning Commission

FROM: Carl T. Emura, Associate Planner

SUBJECT: Referral By The Planning Director: Administrative Use Permit Application No. PL 2002-0262 – Mark Thomas-Heart of the Bay Christian Center (Applicant/Owner) – Request to Convert an Existing Theater to a Religious Facility with Administrative Offices (Continued from 9/12/02)

The Property Is Located at 24800 Hesperian Boulevard in the Neighborhood Commercial (CN) District

RECOMMENDATION:

Staff recommends that the Planning Commission adopt the Negative Declaration. Should the Planning Commission approve the Administrative Use Permit, staff recommends the attached findings and conditions of approval.

DISCUSSION:

Heart of the Bay Christian Center proposes to convert the former United Artists Theater to a religious facility. On September 12, 2002, the Planning Commission reviewed this application. Staff recommended denial of the application, raising concerns about the further loss of commercial property in the Hesperian Boulevard corridor and the resultant loss of revenues to provide City services. Planning Commissioners pointed out that there are a number of underutilized commercial properties in the area and that this location is suitable for a church of its size and could be a positive draw for the City. The Planning Commission, by a vote of 4-3, directed staff to prepare the necessary environmental documents, and the findings and the conditions of approval in support of the project.

Staff continues to believe that a religious facility is not the most appropriate use at this location. City policies encourage retailing or mixed-used development to provide the stimulus to revitalize the area and generate revenue and employment for the City, allowing for greater benefits to the City and the surrounding neighborhood. With the addition of Heart of the Bay Christian Center, noncommercial uses will occupy 43 percent of the immediate Neighborhood Commercial District. In staffs' opinion, this would weaken the commercial viability of the area. Staff could be supportive of a religious facility at this location provided it would be a component of a mixed-use development incorporating neighborhood-serving retail and service uses. Staff has

addressed this issue with the applicant, but, to date, no proposal has been made to include other uses.

ENVIRONMENTAL REVIEW:

An initial study was prepared resulting in the finding that no significant effects on the environment as prescribed by the California Environmental Quality Act (CEQA) will occur for the proposed project. A Negative Declaration has been prepared.

PUBLIC NOTICE:

On October 31, 2002, a Notice of Public Hearing was mailed to every property owner and occupant within 300 feet of the subject site, as noted on the latest assessor's records, the Southgate Area Homeowners Association, Westwood Manor Homeowners Association, Eden Garden-Parkwest Homeowners Association and the Southgate Neighborhood Task Force.

Prepared by:

Carl T. Emura ASLA
Associate Planner

Recommended by:

Dyana Anderly, AICP
Planning Manager

Attachments:

A. Staff Report dated 9/12/02
B. Planning Commission minutes dated 9/12/02
C. Negative Declaration/Initial Study
D. Findings for Approval
E. Conditions of Approval

CITY OF HAYWARD
AGENDA REPORT

Planning Commission

Meeting Date 9/12/02
Agenda Item 2

TO: Planning Commission

FROM: Carl T. Emura, Associate Planner

SUBJECT: Referral By The Planning Director: Administrative Use Permit Application No. PL 2002-0262 – Mark Thomas (Applicant)/Las Vegas Trail Theatre Company (Owner) – Request to Convert an Existing Theater to a Religious Facility with Administrative Offices

The Property is Located at 24800 Hesperian Boulevard in the Neighborhood Commercial (CN) District

RECOMMENDATION:

Staff recommends that the Planning Commission deny the Administrative Use Permit, subject to the attached findings.

DISCUSSION:

SITE

The Spanish style, six auditorium, 22,292 square-foot theater was built in 1977 on a 219,161 square-foot (5.03 acres) T-shaped parcel. It has access from both Hesperian Boulevard and Turner Court. It is surrounded by single family dwellings to the east, the San Leandro – Hayward Elks Lodge (currently on the market) to the south; a vacant commercial building (former Radio Shack which has been sold to a Fabric Company), Midas, State Farm and the Korean Baptist Church to the north. It is the largest parcel on the block facing Hesperian Boulevard with the other parcels ranging from .91 acres to 1.10 acres. The property is also in proximity to Southland Mall to the north, and Chabot College to the west and Kaiser Permanente to the south. The property is zoned *Neighborhood Commercial (CN)* and the General Plan Designation is *Retail and Commercial Office (ROC)*. It is located off a major bus route and has convenient access to I-880 and Highway 92.

ATTACHMENT A

PROPOSAL

Heart of the Bay Christian Center (HBCC) is an interdenominational Christian church currently located at the former Sunset Elementary School site (20450 Royal Avenue) where they originally leased 40,454 square feet in 1990 from the San Lorenzo Unified School District (SLUSD). In 1997, SLUSD took back 25,208 square feet to open up a continuation school leaving them with 15,246 square feet. In addition to the leased space, they have exclusive use of a 733-seat auditorium (12,000 square feet) built by HBCC in 1990 and the parking lot (296 spaces). Their lease expires in October 2007 and they have one 5-year renewal option but can terminate their lease with a year's notice; SLUSD can terminate the lease with a 2-year notice. SLUSD has indicated that it has no present intention to terminate the lease.

The reduction of the leased space in 1997 prompted HBCC to look for a permanent location. HBCC finds the UA Theater site desirable because it has good visibility, a sizable building adaptable to being converted to a sanctuary hall, ample parking, access to major freeways and room for expansion. They are currently in escrow to purchase the property.

HBCC proposes to convert the theater to an auditorium (810 seats), multi-use room, youth room, classrooms and offices. An 1,800-square-foot addition is proposed for the rear of the building for a stage for the auditorium, and the second floor is proposed to be expanded by 2,400 square feet for offices and an arcade. With the additions, there would be a floor area of 30,794 square feet. A new cornice is proposed to be added to the top of the existing building and rear addition to visually tie the two together. The building would be repainted and a new wall sign would be added to the front of the building. Improvements would be made to the landscaping, including replacing 31 trees that were severely pruned by UA Theater and adding new planting islands. With the landscape improvements, there would be a total of 408 parking stalls (282 standard, 117 compact and 10 handicapped stalls) where only 203 stalls are required.

HBCC has 930 members, of which 28 percent reside in Hayward with the remaining coming from various Bay Area locations. Church services are held on Sunday morning and evening. During the summer months attendance averages around 400 and during other times of the year 500. Other church activities are generally held in the evenings. Sermons are taped, edited and later shown on television. The church has nine pastoral staff and eight office staff. The church administrative office is closed on Monday and opens Tuesday through Friday. Staff would be on site from 7:30 am to 7:00 pm daily. The church provides senior, family, singles and youth activities and performs community out reach. As part of their community outreach, they have sponsored neighborhood fairs and have given out groceries and toys to needy families. HBCC indicated they will not have a soup kitchen nor will people be living at the church. Childcare facilities are being considered but have not been included as part of this application.

GENERAL PLAN AND ZONING ISSUES

Prior to the adoption of the Southgate Neighborhood Plan, 15 percent of the Neighborhood Commercial area in the block of Hesperian Boulevard and La Playa Drive were converted to noncommercial uses. The noncommercial uses include the Korean Baptist Church on La Playa in August 1995 and the San Leandro-Hayward Elks Lodge on Hesperian Boulevard in May 1996. The task force was concerned with the dwindling commercial space; and as a result, the following goal was formalized in the Neighborhood Plan:

> *Maintain the commercial shopping areas along Hesperian. Attract and retain neighborhood-serving businesses and support Southland Mall as the primary regional shopping center.*

To implement this goal, the plan recommended that the zoning for this property and other properties be changed from *"Limited Access Commercial (CL)"* to *"Neighborhood Commercial (CN)"* to foster the type of neighborhood-oriented uses that would serve the neighborhood. The Zoning Ordinance was changed to comply with the Neighborhood Plan recommendation. If HBCC is approved, a noncommercial use would comprise 43 percent of the commercially zoned properties along the block of Hesperian Boulevard and La Playa Ave.

Besides providing retail uses to serve the neighborhood, the property has many advantages for retail use. First, it is an excellent location for retail. It is off a major road and is close to major highway interchanges. Furthermore, the Economic Development Policy encourages retail near highway interchanges:

> *Create opportunity zones within close proximity of major highway interchanges to attract large retail operations, discounters, and other regional-serving establishments (such as hotels with conference centers).*

Second, it is also a large commercial property that can accommodate one or two large retailers such as Crate and Barrel, Border's Bookstore, Cost Plus, Bed Bath and Beyond, Best Buy or Orchard Supply and Hardware. In order to attract these retailers, a site has to be at least 4 acres. Since the City has very few vacant commercial parcels larger than one acre, this site provides an opportunity to lure them to Hayward.

Third, the Southgate Neighborhood Plan is supportive of these businesses being located in its neighborhood.

> *Encourage attraction of both regional-based and neighborhood-based businesses as part of the city's economic development activities. One example of such a business is a home improvement/hardware store.*

Fourth, a large retailer could benefit from being located in proximity to Southland Mall where they could feed off of the mall's regional customer base. And finally, Chabot College students could be a source of potential employees as well as customers

The City would benefit in several ways from a large retailer locating to the site. First, a large retailer would generate revenue. Sales and property tax revenues are major components of the General Fund and revenue generated from a large retailer would have a positive impact on the City. Second, a large retailer would create jobs. The General Plan Economic Development Policies and Strategies are supportive of development that generates revenues and employment for the City as indicated by the following policy:

> *Create a sound local economy that attracts investment, increases the tax base, creates employment opportunities for residents and generates public revenues.*

A large retailer would generate greater revenues and provide more employment opportunities than HBCC. A survey, conducted by HBCC of its members who live outside of the City, projects that they spend approximately $16,959 a week at local restaurants, shopping malls and gas stations. A large retailer, however could average up to $70,000 a week in gross receipts and employ up to a 100 individuals. HBCC employs 17 individuals.

Finally, a large retailer could have a positive effect in revitalizing the existing commercial area. The commercial area surrounding the property lacks a sense of place. Buildings are dated and landscaping is minimal and/or poorly maintained, contributing to parcels being vacant for long periods of time. A new building or a facelift, new landscaping and increased pedestrian traffic would contribute to revitalizing the area since this parcel encompasses 28 percent of the commercially zoned properties along the block of Hesperian Boulevard and La Playa Drive. HBCC would primarily draw people to the site in the evenings and on Sunday. A large retailer would draw people 7 days a week from 9 am to 9 pm.

If this parcel is combined with the San Leandro – Hayward Elks Club, which is currently on the market, a mixed-used development would be feasible with retail on the ground level and residential above. The site is close to major employers and has convenient access to all major employment centers in the Bay Area. It is also off a major bus route that provides express service to San Francisco. The General Plan Land Use Policies and Strategies supports mixed-used development along major transit corridors:

> *Encourage mixed-use development where appropriate to ensure a pedestrian-friendly environment that has opportunities such as housing, jobs, child care, shopping entertainment, parks and recreation in close proximity.*

A mixed-used development would provide another housing alternative and would increase the customer base for the surrounding retail and service establishments. It would contribute to reducing the problems associated with sprawl (pollution, centerless

communities and lengthy commutes), and may result in a more pedestrian friendly environment and a reduction in the use of the car. The residential strip along Hesperian Boulevard, which is lacking in neighborhood serving businesses, would benefit by providing retail and service facilities such as a coffee shop, hair salon, drycleaner, restaurant and copying center at the subject site. The proximity to major employers, banks, markets, retail facilities, medical facilities, schools, bus routes and highways makes this a very attractive site for a mixed-use development. Both a large retailer and mixed-used development are a primary use in the Neighborhood Commercial District.

RELIGIOUS LAND USE AND INSTITUTIONALIZED AND INSTITUTIONALIZED PERSON ACT OF 2000 (RLUIPA)

The Religious Land Use and Institutionalized Person Act (RLUIPA) is a law designed to protect religious assemblies and institutions from zoning and historic landmark laws that substantially interfere with religious exercise. RLUIPA precludes local agencies from imposing a substantial burden on the exercise of religion through a land use decision absent a compelling government interest. The applicant has another 10 years left on the terms of its lease and the lease space is adequate for its needs. The City has an legitimate interest in maintaining its commercially zoned property to protect further erosion of the commercial viability of this area. Staff believes that denial of the project is appropriate.

ENVIRONMENTAL REVIEW:

A project that is denied does not require review under the California Environmental Quality Act (CEQA). Should the Planning Commission wish to approve their project, staff will have to prepare the appropriate environmental documents and conditions of approval for review at a later date

PUBLIC NOTICE:

On September 9, 2002, a Notice of Public Hearing was mailed to every property owner and occupant within 300 feet of the subject site, as noted on the latest assessor's records, the Southgate Area Homeowners Association, Westwood Manor Homeowners Association, Eden Garden-Parkwest Homeowners Association and the Southgate Neighborhood Task Force. The city received six responses to the public notice, four against, one for and another one neutral. Six persons responded to the public notice, which drew a luke warm response to the proposed church. Two responses opposed the use of the property for a church. The Southgate Homeowners Association neither supports the use of the site for the church nor opposes it. Another person opposes it. One person who initially opposed it, change his mind after meeting with HBCC and indicated that he would prefer having something there to the property remaining vacant. Whether or not the respondees supported the project or not, they all wanted the property be maintained, whether occupied or vacant. Heart of the Bay members sent in 93 letters of support, 47 letters were residents of Hayward.

With the addition of HBCC, the noncommercial use will take up 43 percent of the Neighborhood Commercial District along the block of Hesperian Boulevard and La Playa Drive. In staffs' opinion, this would weaken the commercial viability of the area. A large retailer or a mixed used development would provide the stimulus to revitalize the area and generate revenue and employment for the City. Both of these uses would be consistent with City Policies and generate greater benefits to the City and surrounding neighborhood. Staff is supportive of religious facilities locating to the City, however the site would be better utilized for a large retailer or a mixed-use development. Therefore staff recommends denial of the application. If the Planning Commission is supportive of the use, appropriate findings must be adopted.

Prepared by:

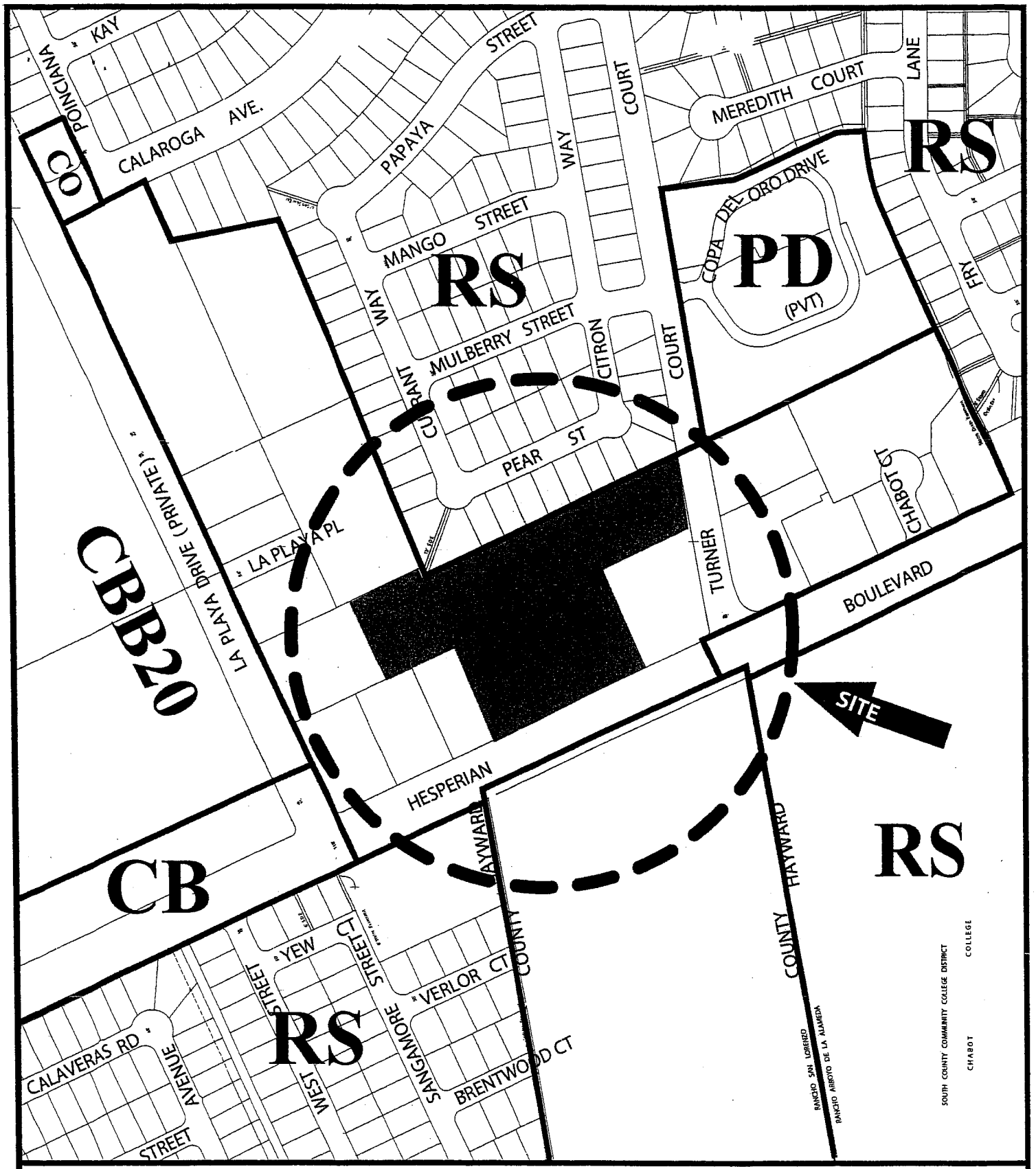
Carl T. Emura ASLA
Associate Planner

Recommended by:

Dyana Anderly, AICP
Planning Manager

Attachments:

A. Area & Zoning Map
B. Findings for Denial
C. HBCC Executive Summary
D. Commercial/Noncommercial Use Map
E. Public Responses
F. Letter of Support from HBCC (typical)
G. Plans/Elevations/Perspectives



Area & Zoning Map
PL-2002-0262 AUP
Address: 24800 Hesperian Blvd.
Applicant: Mark Thomas
Owner: Las Vegas Trail Theatre Company

CB-Central Business
CBB-Central Business-Combining Districts
CN-Neighborhood Commercial
CO-Commercial Office
PD-Planned Development
RS-Single-Family Residential,RSB4,RSB6

ATTACHMENT A

FINDINGS FOR DENIAL
Administrative Use Permit No. Pl-2002-0262
24800 Hesperian Boulevard
Mark Thomas (Applicant)/
Las Vegas Trail Theatre Co. (Owner)

1. An environmental review of the proposed project is not required should the project be denied. Should the Planning Commission approve the proposed project, staff will prepare an environment review of the project pursuant to the California Environmental Quality Act (CEQA) guidelines.

2. The proposed use is not desirable for the public convenience or welfare in that the property would be underutilized when compared to a retail or a mixed-use development. If approved, the noncommercial use of the commercial district along the block of Hesperian Boulevard and La Playa Drive will be reduced by 43 percent thereby eroding the commercial character of the area. An opportunity to lure a large retailer would be lost that could help revitalize the commercial district. Furthermore, an opportunity to increase revenues and employees for the City would be reduced substantially with the approval of this application.

2. The proposed use will impair the character and integrity of the zoning district and surrounding area in that it would add another 28 percent of noncommercial use in the Neighborhood Commercial District along the block of Hesperian Boulevard and La Playa Drive. This would bring the total noncommercial use in this area to 43 percent further weakening the Neighborhood Commercial District.

3. The proposed use will be detrimental to general welfare in that it would further reduce the Neighborhood Commercial District in a corridor that has a shortage of neighborhood serving business. The Southgate Neighborhood Plan specifically calls for maintaining the commercial shopping areas along Hesperian Boulevard for neighborhood-servicing businesses.

4. The proposed use is not in harmony with applicable City policies and the intent and purpose of the zoning district involved. The Southgate Neighborhood Plan calls for maintaining the commercial shopping areas along Hesperian and to attract and maintain neighborhood-serving businesses. Other General Plan Policies & Strategies are supportive of uses that would generate revenue and create jobs for the City.

5. There is a compelling government interest in retaining the commercial zoned property for commercial use. The approval of the application would significantly reduce the commercial viability of the commercial area along the block of Hesperian Boulevard and La Playa Drive. Noncommercial use would take up to 43 percent of the commercial zoned properties in the area and would not contribute to revitalizing of this commercial strip. An opportunity to lure a large retailer that

could generate revenue and jobs for the City would be lost as well as a possible stimulus to encourage revitalization of this commercial area.

6. The denial of this application does not place a substantial burden on the applicant because its current leased space is adequate; the lease has approximately 10 years remaining. The San Lorenzo Unified School District has indicated that HBCC is an excellent tenant and at this time has no intentions of terminate their lease.

HEART of the BAY
CHRISTIAN CENTER

Executive Summary of Detailed Description of Heart of the Bay Christian Center

I. Introduction

Heart of the Bay Christian Center is a contemporary, Christian church in Hayward, California, that was established in 1982 with approximately 125 people in attendance. Over the years, it has grown to 1,004 members.

Heart of the Bay Christian Center is guided by its vision, which is:

- We believe in the potential of people, and are committed to helping people discover and develop that potential fully.
- We are helping people develop a vibrant relationship with God through faith in Jesus Christ.
- We are committed to teaching God's Word in a sensitive and relevant manner so people may understand and apply the principles they have heard.
- We encourage people to become participating members by being active in the church and by developing caring and supportive relationships inside and outside the church.
- We exist to offer people the opportunity to worship and pray together.
- Our passion is to reach Hayward and the surrounding Bay Area with the redeeming love and restorative power of God. To bring as many people as possible to a saving knowledge of Jesus Christ.

II. Description of Heart of the Bay Christian Center Church Activities

A. General Description

Today, more and more people are realizing the importance of belonging to a church family. They're discovering the support and strength for living that comes from being connected with people who care about them. It is our desire to be such a place. A place where people can relate, grow and build relationships that last a lifetime. We provide a variety of ministries, each designed to provide an atmosphere of good fellowship. Participation helps build healthy and strong relationships, while encouraging each person in their personal walk with God.

B. Schedule of Weekly Services and Activities

		Average Attendance
Sunday:		
9:00 a.m.	Second Wind	20
10:30 a.m.	Sunday Morning Service	647
	Preschool	53
	Children's Ministry (C.I.A.)	85
	Ground Zero (Jr. High)	26

Sunday, continued:		
7:00 p.m.	Sunday Evening Service	338
	Preschool	18
	Children's Ministry (C.I.A.)	41
	Oneighty Discipleship Class (youth)	26
Tuesday:		
7:00 p.m.	Church Prayer	5
Wednesday:		
10:00 a.m.	Women's Prayer	15
6:00 p.m.	Oneighty (Jr. & Sr. High School)	68
7:30 p.m.	Mid-week Service	286
	Preschool	13
	Children's Ministry (C.I.A.)	27
Thursday:		
12:00 p.m.	Noon Prayer	10
Friday:		
7:00 p.m.	Graceland (bi-monthly)	48
Saturday:		
7:00 p.m.	Singles Alive (bi-monthly)	20
	Coupled 2gether (monthly – off site)	30

(Unless otherwise indicated, all church activities are held on site.)

C. During each church service, we have classrooms for all children, babies through High School age.

1. Preschool Ministry (new born to Kindergarten)
   - Discoverers (new born to 18 months of age)
   - Playful, Prayerful Pandas (18 months to 2½ years of age)
   - Noah's Listeners (2½ to 4 years of age)
   - Kingdom Seekers (4 years of age to Kindergarten)
2. Children's Ministry (1st – 6th Grade)
3. Youth Ministry (Jr. and Sr. High youth)

D. In addition to our weekly church services, we have classes and meetings scheduled on a regular basis throughout the month.

- Graceland (College & Career, ages 18-30)
- Singles Alive (Single Adults, ages 30-49)
- Coupled 2gether (Married Couples)
- Second Wind (Seniors)
- Men's & Women's Groups

E. Heart of the Bay Training Center: a one-year lay Bible school presented primarily through video with occasional live speakers. This video presentation allows us to offer many of the premier Bible instructors available to the Body of Christ. The class meets weekly on Tuesday and Thursday evenings, with a repeat class on Saturdays.

F. Other Church Meetings and Activities

Weekly / Monthly (See schedule of Weekly Services and Activities under part C above.):

- Prayer Class
- Various Team Training Meetings
- Team Leaders Meetings
- Team Fellowships & Activities

Quarterly (or three times a year):

- Membership & Ministry of Helps Classes
- Baby Dedication Service
- Women's Meetings
- Water Baptism Services (off site)
- Men's Meetings

Annual Events and Activities:

- All Church Picnic (off site)
- Church Anniversary Celebration
- National Day of Prayer
- Dessert Fellowships
- Christmas Dessert Fellowship
- Team Leaders Christmas Banquet (off site)
- Annual A's Game Night (off site)
- Pastors' Anniversary Celebration
- Kid's Day Camp
- Hallelujah Night (Halloween)
- Christmas Musical Program
- New Year's Eve Service

Other Periodic Events:

- Bible Classes
- Evangelism Outreach/Meetings
- Children's Ministry Training

Other Facility Usages:

- Weddings
- Funerals

G. Church Administration

1. Church Staff: The Church Staff consists of 9 Pastoral Staff and 8 Office Staff.
2. Church Office Hours:

Monday:	Office Closed (Partial staff on site)
Tuesday – Thursday:	9:00 a.m. to 4:00 p.m.
Friday:	9:00 a.m. to 3:00 p.m.

(Office Staff hours range from 7:30 a.m. to 7:00 p.m., resulting in enhanced security. The facility will no longer be underutilized.)

3. General Description of On-Site Activity
   - Plan and manage church activities and events
   - Give pastoral guidance to members
   - Meetings with leaders and members

III FINANCIAL IMPACT

Attendees of Heart of the Bay Christian Center contribute significantly to the economy of the City of Hayward. They not only come to attend services and events at the church, but they also spend their dollars eating in local restaurants, shopping at the mall and purchasing gasoline. A survey of 425 attendees revealed that 289 of those surveyed live outside the City of Hayward and spend on average an aggregate of $16,959 a week in the city.

Although the survey reflects a small sample of those who attend our church, the following statistics show that a greater portion of the monies spent in Hayward are by those attendees who live in the East Bay, followed by those who live in the West Bay, then the North Bay and the South Bay.

	# of Surveys	$ Spent Weekly	Average $ Spent Weekly Per Person
East Bay	363	$32,558.00	$89.69
West Bay	27	$1,224.00	$45.33
North Bay	30	$1,060.00	$35.33
South Bay	5	$142.00	$28.40

In addition to what church ers bring into Hayward, we do busi vith the following local vendors:

- Abacus Chinese Restaurant
- Albertsons
- Circuit City Stores
- Hayward Airport Executive Inn
- Hayward Blue Print and Supplies
- Home Depot
- Orkin Exterminating
- Rescue Rooter
- Serpico Landscaping
- The Good Guys
- Torpedo's Catering
- Vargas Hi Performance
- Alameda Electrical
- Caesar's Chicken
- Costco
- Foothill Locksmith
- Hayward Rubber Stamp
- Office Max (new)
- Pepsi-Cola Company
- Safeway
- Stanley Steamer
- Tietema Florist
- Unical 76
- World's Fare Donuts

IV. Description of Search for Other Locations

Since the inception of our church in 1982, we have known the importance of owning our own facility. Our search for a permanent home has spanned over the 20-year existence of our church.

From 1982 through 1984 the church sub-leased a facility in San Leandro. In 1984, we moved our church to Marina High School on Wicks Boulevard. We leased approximately 20,000 to 22,000 square feet of this facility from the San Lorenzo School District from 1984 to 1990. Marina High School was then sold to a developer and homes were built on that 40-acre parcel.

The loss of the Marina property only heightened our search for a permanent home. As we began looking up and down the 880 corridor from Oakland to Union City, we realized more than ever the problems facing a church of our size. We discovered churches were often not allowed in industrial areas without requiring stringent zoning changes or conditional use permits.

Most allotted parcels for churches were very small in size and located in neighborhoods which could not accommodate a congregation of our size and would present parking and traffic issues. In addition to being unable to find a parcel of land to build on, we have also been unable to find an existing church property for sale that would be adequate for our congregation.

Upon the loss of the Marina property, we found ourselves in a dilemma as to where to house our church. We ended up in another leased facility, Sunset Elementary School, located at 20450 Royal Avenue in Hayward, where we leased 40,454 square feet. This has been our current facility since 1990.

In 1997, we were once again reminded of the importance of owning our own property when the School District took back 25,208 square feet to open a continuation high school. The School District has the right to terminate our lease agreement upon two years written notice, leaving the church in a precarious position.

Since we have already experienced the loss of one leased facility, Marina High School, and the loss of needed space at our current location, we were left wondering where we would go should this occur again.

Because of the size and mission of the church, and its congregation and staff, this uncertainty of the future produces a substantial burden. We believe that churches such as ours, which are a valuable asset to the community, should have an opportunity to own property that will facilitate their vision.

V. Description of Desirability of UA Location

In all the years of searching for a permanent location for our church, we finally found a property that is ideally suited to meet our needs and meets all of our necessary criteria:

- Great church location
- Visibility
- Adequate parking
- Existing building, which would more than accommodate the size of our congregation
- Financial feasibility for our church
- Positive impact on neighbors
- Access to shopping and restaurants before and after activities
- No adverse environmental impact

As a church, we have a definite purpose and call to minister to the needs of people in Hayward and the Bay Area. Heart of the Bay Christian Center is a contemporary Christian Church comprised of people from various parts of the Bay Area with diverse backgrounds.

Our uplifting worship, relevant messages from the Word of God, exciting youth ministry, and fun-filled children's services, as well as other specialized groups, make Heart of the Bay Christian Center an appealing church for families in Hayward, as well as from other cities in the Bay Area.

This location is easily accessible to major freeways, which is a definite plus for all those desiring to attend our church. In addition, it is a highly visible and safe location for those currently attending and those we desire to reach with the message of God's love. *"For God so loved the world that He gave His only begotten Son, that whoever believes in Him should not perish but have everlasting life." (John 3:16)*

The property has sufficient size to accommodate both the present and projected future church needs. The existing building is more than adequate for the current size of our congregation and for future growth. The existing parking lot currently has 400 plus stalls which is very appealing to us. Our current location only has a total of 300 stalls, so the additional stalls will also meet our needs and facilitate future growth.

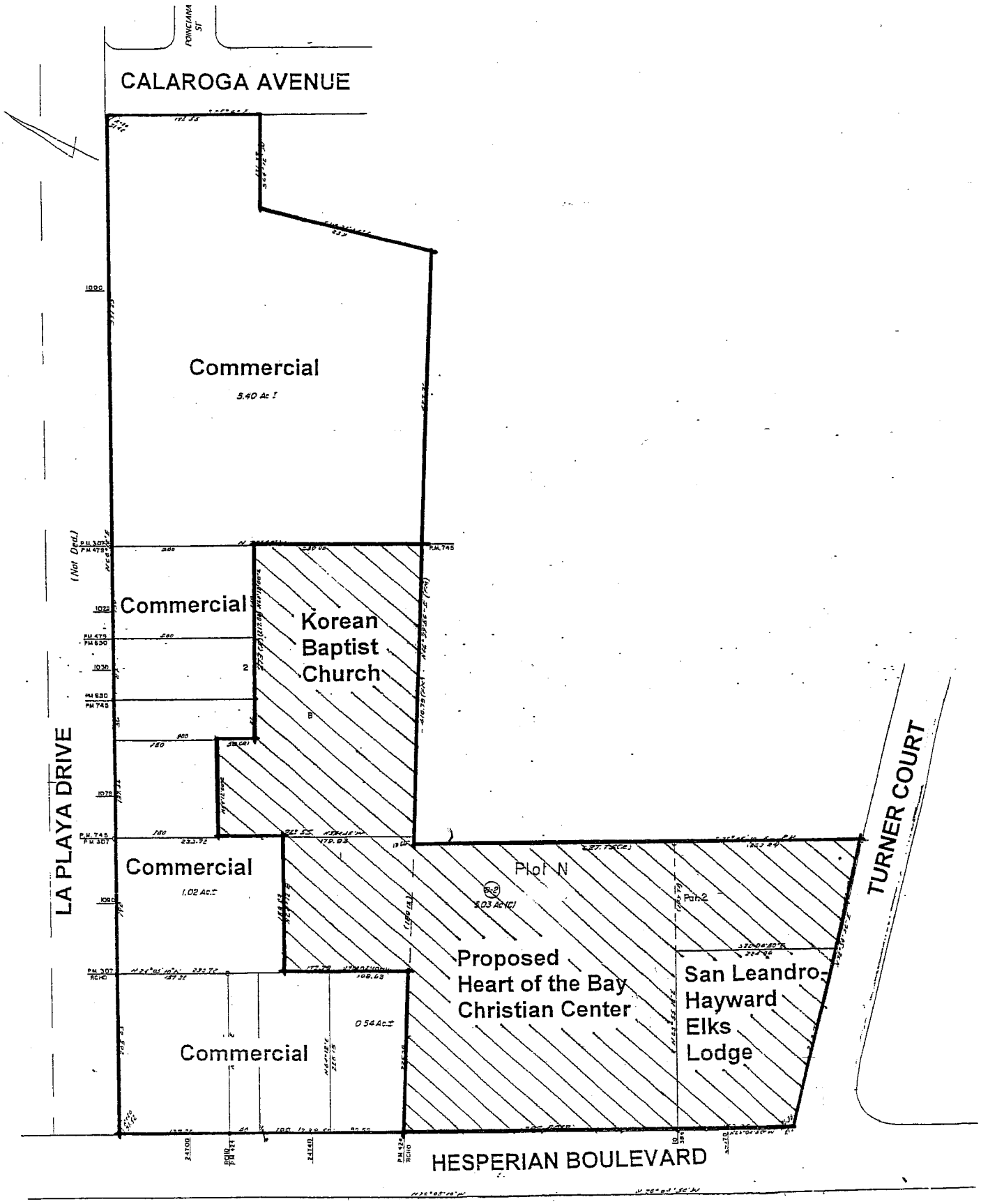
With the current price of land in the East Bay, this five acre parcel is affordable and an excellent deal for our church.

After much prayer and discussion with our board, church leaders and congregation, there is a strong consensus among our membership that this property is to be the permanent home of Heart of the Bay Christian Center.

VI. Current UA Use Characteristics

A recent analysis of the use of the United Artists Theatre has produced the following information. (These figures represent a per day average.)

Average number of Shows	Average Number of Showings	Average Number of Cars
5	25	55



COMMERCIAL/NONCOMMERCIAL USE

(Along the block of Hesperian Blvd. and La Playa Drive)

Noncommercial Use

ATTACHMENT D

Sent: Tuesday, May 07, 2002 5:09 PM
To: Carl Emura
Subject: PL-2002-0262 AUP

Thank you for responding to my request for information re above subject application. I still don't feel comfortable having a religious facillity at that location. I am assuming that churches and/or religious facilities are allowable uses in this designated zone. But don't we have enough churches nearby? Also, there is a residential area located directly behind the theatre. Would the homes abutting the theatre/Elks Lodge properties be impacted in any way, such as noise? My other concerns are the possibilility of more traffic congestion on Hesperian, especially when there are automobile accidents that tie up I-880. If the application is administratively approved, I would appreciate receiving a copy of the conditions of approval to share with my neighbors in case we decide to appeal the decision to the Planning Commission. I plan to be in touch with the Southgate Area Homeowners Assoc., Eden Garden Parkwest Homeowners and Southgate Neighborhood Task Force for their opinions as well.

Pauline Craft, Pres.
Westwood Manor Homeowners Assn.

ATTACHMENT E

Carl Emura

From: Roy [ninerroy@attbi.com]
Sent: Friday, May 10, 2002 11:34 AM
To: Carl Emura
Subject: United Artists Building

Dear Mr. Emura,

This is a follow-up to the phone conversation that we had yesterday regarding the proposed development of the Heart of the Bay Christian Center Church. Initially my wife and I were against having a church being built on property that has been commercially zoned for many years. We realize that once the zoning is changed from commercial, we have basically lost that designation forever. The Southgate Neighborhood has lost several commercial areas over the years and we hate to lose anymore. Several locations come to mind including: the old Southgate Shopping center which is now Bridgeporte Condominiums, and the Mc Donalds at Kay Ave. and Calaroga Ave. which is now a Romanian Church. Both of those were improvements to the neighborhood because of the blighted conditions caused by demise of the commercial ventures that had previously occupied the sites.

If we could be assured that another commercial developer would redevelop the United Artists site into a viable commercial enterprise, that would be compatible with the surrounding neighborhood, we would be ecstatic. However, all we have to do is to look at the available commercial sites that have been left vacant in the Southgate Area. The radio shack building on Hesperian Blvd. has been vacant for approximately two years. The old Service Merchandise building at Southland has been vacant, other than at Halloween, for more than ten years. The Clothes Time building and another in the same strip have been left vacant. The old Southland Cinema was the first of our theatres to close down. The Hesperian House has been closed for several years although it appears to have a new possible tenant.

We don't want anymore fast food restaurants in our area and we are tired of seeing old vacated buildings that attract graffiti and vagrants. United Artists has been a less than desirable neighbor over the years with their poor track record of keeping their property free of litter and landscaped properly. My wife and I, therefore have come to the conclusion that we would like to see the Heart of the Bay Christian Center Church be approved for the United Artists property at 24800 Hesperian Blvd. We have met with the senior Pastor, Mark Thomas and his wife Brenda, whom we feel would be an excellent addition to our community. The Thomas's provided plans for landscaping as well as the internal and external changes to the existing building. They have promised us that they would concentrate on the exterior of the building, the landscaping and the parking area once they receive approval from the city. They would also move some of the administrative staff on site during the construction. This would help provide for needed security of the outside grounds.

Is it better to keep a piece of property zoned commercial and have it vacant and eventually becoming a blight on the neighborhood, or would it be better to have a beautiful church be built that would be properly maintained and become an asset to the neighborhood? We would prefer the church and hope that the city does the same. Thank you for your consideration of our views.

Sincerely,

Roy and Jodie Gordon
1269 Stanhope Ln.
Hayward, CA 94545
783-3508

RECEIVED

MAY 14 2002

PLANNING DIVISION

To Carl Emura.

It was nice to talk to you at counter with Deann Bogue.

I am talking about the property of the United Artist, Assessor map number 442 – 0038 – 00 – 02.

As being only one person the reason I am against this Church as there be no more Tax Base please notes that I am not against the Pastor Mark Thomas or the people that will be coming to this Church.

But this will bring to the streets of Hesperian Blvd and Calarga Ave more traffic.

Also what I what to see in black and white that their be no soup kitchen and not Be a place people can come get education to learn things fixing car with cars on property And other things like this to be done on this property.

Also property must be landscape and keep cleans and maintained, the driveways must be wider, no small Carnival, no small bouquet.

Also no one to sleeps over night, also I did not see the plans of the up stairs if you Can send me this would very helpful..

Also I can not speak for the Eden Garden Parkwest Homeowners Association, yes I can bring this up for they information from the under sign.

Al Reynolds.

2547 Erskine Lane.

Hayward, Calif. 94545 – 3025.

Phone Unlisted. 670 – 0985.

Carl Emura

From: Beth Bufton [bbufton@innetix.com]
Sent: Friday, May 03, 2002 6:43 PM
To: Carl Emura
Subject: 24800 Hesperian

You state a request for a "Religious Facility? What kind of a facility? Church, school, day-care? Isn't the traffic on Hesparian bad enough already? Also you are already closing the theater by the airport, if you close this theater THERE WILL BE NO THEATER IN THE CITY OF HAYWARD. I'm certain Union City will appreciate the extra customers for their Union Landing Center.

Beth Bufton
25019 Copa del Oro #103
Hayward CA 94545

May 05, 2002

Carl T. Emura, AICP
Associate Planner, Planning Division
City of Hayward
777 B Street
Hayward California 94541

Re: PL-2002-0262 AUP
United Artists Theater / Heart of the Bay Christian Center
24800 Hesperian Blvd.

Mr. Emura,

There is a limited supply of commercial / retail sites available. Hesperian Blvd. is the center of the commercial activity on the west side of town. It is the location for retailers that do not normally locate within regional shopping malls. Examples of these retailers are, Toys R Us, Circuit City, Albertsons, Rite Aid, along with the latest additions of Office Depot and Walgreens.

This is a large commercial property with a large parking lot, We as a city cannot let a high quality piece of property be converted into a use that provides no property or sales tax Taking away from the rest of the commercial area, Creating a property that will never be anything else but a church. If the applicants can not make it, Paying off a four million dollar loan plus the one to one and a half million dollar cost to remodel for their use, The site will be an eyesore.

From Winton Ave. south to Tennyson, Hesperian east to 880, We now have six churches.

But if there is no way out for us, The following concerns should be included in the conditions of approval.

I want the strongest conditions on landscaping and it's upkeep. (There have been a lot of trouble with the landscaping at the theater) The landscaping needs to be upgraded, recently the landscaping has not been well maintained and much of it is missing or should be replaced. The landscaping at the adjacent Elks Lodge has been well maintained and could be used as an example for a landscape design.

I have attached a copy of a letter from the applicant highlighting the statements that should be included in the conditions of approval.

A signed agreement with the Elks, Allowing them to continue parking in the back lot.

No fence at all be allowed along the street frontages.

The two driveways on Hesperian Blvd. now are too narrow with the heavy flow of traffic now on Hesperian. I suggest that staff look at the design of the driveway used on Winton Ave. between Applebee's and Marie Callender's as an example of what might work.

No Ringing Bells or Outside Loudspeakers.

No parking in neighboring lots such as Chabot College or the former Lyon's restaurant lot.

No bright colors on the building.

Lighting restrictions that prevent light from shining into the homes along Pear Street should be continued.

I would also like you to send me a copy of the conditions of approval so I can go over them before the permit is approved.

Thank you for continuing to keep the neighbors informed of projects in our neighborhood. I am always happy to offer suggestions.

Sincerely,

Deanna Bogue
729 Poinciana Street
Hayward, CA 94545
510 - 782 - 2824

Southgate Area Homeowners Association
P.O. Box 4032, Hayward, CA 94540

RECEIVED
MAY 07 2002
PLANNING DIVISION

May 2, 2002

Mr. Carl Emura
Associate Planner
Planning Division
Hayward, CA 94541

Dear Mr. Emura,

This letter is to follow-up a meeting that was held on May 1, 2002. The Board of Directors of the Southgate Area Homeowners Association met with Mark and Brenda Thomas of the "Heart of the Bay Christian Center Church". We appreciated the fact that Mr. And Mrs. Mark Thomas reached out to work as "good neighbors" instead of just having the planning department notify us of the plans to replace a movie theater with a church.

While we will neither support nor will we appeal any decision made by the planning department on this matter, we wanted to stay involved in the permit process for this development. Prior to the decision of the planning department, we would like to receive a copy of the building plans, site plans and conditions of approval.

Mr. Thomas promised that at the close of escrow, their church would clean-up the parking lot area, and perform the required landscaping and upgrades of the parking lot and exterior of the building. Mr. Thomas also said that they would relocate some of their administrative functions from their present location in Hayward to the new location to improve security at the site.

Sincerely,

Roy Gordon
President
Southgate Area Home owners Association

LETTER FROM HBCC MEMBER (TYPICAL)

RECEIVED

JUL 22 2002

PLANNING DIVISION

July 18, 2002

Carl Emura, Associate Planner
Department of Community and Economic Development
City of Hayward
777 B Street
Hayward, CA 94541

Re: Heart of the Bay Christian Center

Dear Mr. Emura:

I am writing to inform you of my support of Heart of the Bay Christian Center (HBCC) purchasing the United Artist property on Hesperian Blvd. I am also requesting that the City of Hayward grant the necessary Administrative Use Permit for Heart of the Bay Christian Center to use the property for its intended use.

Heart of the Bay Christian Center has served as a family to me. My parents and siblings attended this church from 1990-1995. During that time I was attending California Polytechnic State University in San Luis Obispo and would come home during the weekends and often attended Church. They lived in Milpitas yet commuted every week because they loved the church. My family was very involved in various ministries and their lives where changed.

Heart of the Bay is *a family Church*. After I graduated in 1997, I moved back to the Bay Area. My family had moved to Texas but I knew that my place was here. HBCC became my second family here. I worked in San Jose yet *I commuted three to four days a week* since February 1st, 1998. I could have gone to various local churches in the San Jose/Milpitas area but I knew HBCC was the place I called home. The moment you walk through the HBCC doors you sense the love of God and it shows through the people. The people are nice and friendly Three years ago I moved to Fremont, worked in San Jose and still commuted and spend most of my time in Hayward. I now both live and work in Hayward (I've been here for almost a year) and of course still attend HBCC.

HBCC has a place for everyone to get involved and make a difference in someone's life. We serve our community with various outreaches. I personally work with the Youth and our new College and Career group. I've served, as an usher, greeter and whatever needs help at the moment. My motivations for doing this are first and foremost my love for God and second my love for my Church.

Our Church is a growing Church. Right now our space is very limited and we actually have to share space with the San Lorenzo School District. There are more ministry outreaches that we would like to do but again our space is limited therefore we are unable to do them for now. This new building will provide the space we need to keep helping and being a blessing to our community.

In closing, I am requesting that you approve the proposed plan for Heart of the Bay Christian to move into the United Artist Theater site.

Sincerely,

Maribel Lugo

Maribel Lugo
26655 Gading Road #9
Hayward, CA 94544

ATTACHMENT F

already used the shed for 35 years, he should be allowed to keep it. He said that in our older neighborhoods, he felt that there might be room for growth for their properties.

Commissioner Thnay said this was a difficult decision because this structure has been around for 35 years, as well as for a good neighbor's intent. However even if we grant this variance, the shed would have to be rebuilt. Staff indicated that through proper requests, the applicant could apply for a building permit to allow a legal shed to be built under public code. In either way, the cost would be a significant amount of investment.

Commissioner McKillop said approving the variance would probably mean rebuilding the building from scratch. She encouraged Mr. Armijo to plan, get the correct permit and build a new shed that conforms to the yard requirements.

Commissioner Sacks said members constantly wrestle with the problem of how to allow the older neighborhoods to expand their homes. However, she was not willing to approve illegal facilities.

Commissioner Caveglia said he, too, struggled with the issue, and decided that if the applicant is going to have to tear it down anyway, he might as well come back to the Planning Department and build a new one correctly.

The motion carried by the following vote:

AYES:	COMMISSIONERS Halliday, Thnay, Sacks, McKillop CHAIRPERSON Bogue
NOES:	COMMISSIONER Zermeño
ABSENT:	None
ABSTAIN:	None

3. Referral by the Planning Director – Administrative Use Permit Application No. PL-2002-0262 – Mark Thomas (Applicant)/ Las Vegas Trail Theatre Company (Owner) - Request to Convert an Existing Theater to a Religious Facility with Administrative Offices – The Property is Located at 24800 Hesperian Boulevard in the Neighborhood Commercial (CN) District

Associate Planner Emura indicated that the Heart of the Bay Christian Center now owns the property. He described the location and the their previous location as well as the conversion improvements. The theatre building would give them a total of 30,000 square feet within the building with an addition. They would replant 31 trees that were severely pruned and add a substantial number of others as well. He noted that in the 90's a number of commercial buildings were turned into non-commercial uses within this area along Hesperian Boulevard and La Playa Court. The Southgate Neighborhood Task Force expressed concern that these commercial properties were being converted to non-commercial uses. As a policy, they recommended that the commercial strip along Hesperian Boulevard be retained. The Korean Baptist Church and the San Leandro Elks Lodge comprise 15 percent non-commercial use in this area. The approval of this project would make it 43 percent non-commercial use in the area. He noted that this is an

excellent site for retail. There are very few vacant commercial parcels of this size available in the City of Hayward. He then enumerated the retail possibilities for the site. He noted that a large retailer or mix-use residential/retail would be appropriate for the site. He noted that the City has a compelling interest in retaining the property for commercial use. He commented that converting this building into non-commercial use would weaken the commercial viability of the area.

Chairperson Bogue commented that members had received a binder of information from Heart of the Bay Christian Center. He also noted that he had attended the Southgate Area Homeowners meeting when the applicant made a presentation. He also noted that he had served on the Southgate Neighborhood Task Force.

Chairperson Boug then opened the public hearing at 8:31 p.m.

Mark Thomas, Union City, senior pastor, noted that the Church was established in 1982 when it grew from 125 parishioners to 991. He enumerated the various facilities that have been leased for church services. He indicated that the regionally based type church with over thirty departments is different from the traditional neighborhood church. He stressed that his congregation is impacted due to lack of space at its current location. It is a substantial burden for this church not to be able to own its own property. This project is financially feasible as the property was purchased.

Douglas Wiele, Latrobe, CA, President of Foothill Partners, said they are in the shopping center business and were retained by the Church to evaluate the property for retail. He noted that this is a very desirable property since this is a well-located parcel. The building is in good condition, however, it does not lend itself to the uses proposed by staff. It does not lend itself to retail use, in that it does not have the kind of access retailers. There is no left turn into or out of the property. He said their studies show that there is a significant variance between the market value and the underlying land value. Since it is not within the Redevelopment District for the City of Hayward, there is no financial mechanism to subsidize the value of the property as it stands, and the value of the property as a large retail outlet.

Matt Francois, San Francisco, attorney for Heart of the Bay, emphasized the need for the City to accept the application. He commented on the law regarding a church versus other uses in this zoning area. If this permit is denied, he said the City of Hayward would be obligated to pay Heart of the Bay's legal fees, were this to be litigated.

Commissioner Halliday asked the attorney whether the law precludes the City from requiring an administrative or conditional use permit.

Mr. Francois said he did not believe that was the intent of the Federal Law. He said this law was meant to limit the discrimination against Church use. He noted that the land use issues and reasonable conditions could be imposed in this instance, as long as it is not a substantial burden on Heart of the Bay's use.

Roy Gordon, Hayward, said he was also on the Southgate Task Force, which was completed in 1998. He asked why the representatives of Heart of the Bay were not informed of the Zoning demands of that plan when they first applied for the Use Permit. Too often people are given inaccurate or incomplete information from the City of Hayward. He commented that it would now be a burden on them since they have now closed escrow on the building. He described the number of buildings, which have been closed down in the area and noted that there is room in the Southland area for any number of retail uses. He emphasized his support for this application.

Commissioner Halliday asked him to elaborate on his comment that Heart of the Bay was misinformed by the City of Hayward. She then asked staff whether it was City policy to give applicants the Neighborhood Plan for an area at the time of an application.

In response, Mr. Gordon said they did not receive the information of the Southgate information plan at the time they applied for their permit.

Principal Planner Patenaude stated that it was usual to provide this information at the time of the application as the proposal warrants.

Associate Planner Emura added that when Heart of the Bay came in for a pre-application meeting and the information was not given to them. Once the application was submitted, Heart of the Bay was informed of the policy in the Neighborhood Plan.

Jaynee Santos Caruso, Hayward, said she has been involved with the youth in the community. She supports the application because Heart of the Bay will help to provide education and tutoring services as well as counseling. She noted the activities at the Church for the youth. She described it as a safe haven. As an educator, she stressed the need for an alternative for youth in Hayward.

Jim Swanson, Concord, landscape architect, said they have diligently worked with City Landscape staff and intend to plan an enhancement for the project.

David Austen Smith, Danville, also an architect who designs churches, stated that this is the most logical property that he has converted. This theater has non-bearing weight walls, which can be readily removed. There is plenty of parking on site. It is a natural as the building has the weight bearing wall runs parallel along the Hesperian. He added that this is the most logical conversion he had ever seen.

Commissioner Halliday asked for clarification on the purpose of the north/south weight-bearing wall.

Mr. Smith noted that the weight-bearing wall would not have to be disrupted if used for a church but would be if it were used for retail.

Assistant Pastor Tom Hernandez, San Leandro, read a supporting statement submitted by Bill Lynch, a Hayward Firefighter. He noted that the Church provides a haven for young people in

the area.

Sheri Woods resides in San Jose and spoke on the positive efforts of the children's programs at the Heart of the Bay Christian Center.

Brenda Blanton, Hayward, spoke in support of the church.

Joseph Mayorga, Hayward, is a member and lives in the Hayward hills area. He described the programs offered by the church for men, that includes mentoring and Bible ministry. He indicated that traffic from this church would be greatest during off-peak times. He commented that the primary services are held on Sundays and Wednesday evening.

Marcella Parras, Hayward, described her experiences with the senior citizen program that provides visiting services to hospitalized elders. She commented on the public transportation availability for seniors.

Pamela Nickolopoulos, business owner in Hayward and member of the Heart of the Bay and spoke in support of the Church.

George Nickolopoulos, business owners in Hayward and employed in Hayward for over thirty years, noted the various worthy causes that he has supported as the DARE program, Sun Gallery and other Hayward programs. He has commented that the church can improve its commitments by owning its own property. He urged approval.

James Ersando, Daly City, operates a limo service and spoke in favor of the location and its easy directions.

Paul Dede Vernocy, San Ramon, team leaders for married couples that support families. He asked for support for the proposal.

Russell Crooks, San Leandro, also a member of the Church, described the teaching classes that take place at the church to assist members in improving their personal lives. He also spoke on the advantage of this location as compared to its present location in the ingress and egress of this site.

DeDe Martinez, Hayward, chose to commute to Silicon Valley daily so that she could attend church.

Steve Nirschl, Castro Valley, is the youth pastor and spoke on the impacts that its youth ministry offers to this community. It serves youth with a safe place that offers arcade games and various youth oriented activities. He also meets with college age students. Currently there is limited space at its current site due to the school district taking back a large portion of the building.

Connie Bennett, daughter of former Pastor Bennett of Palma Ceia Baptist church, and was raised in Hayward. She spoke of her experiences and urged approval of this full-service Christian ministry. She also spoke on the professionalism of the administrative staff of the HBCC.

Michael Vagenas, San Ramon, offered his opinion and information on revenue generation in revitalization of citizens.

Ingrid King, Oakland, employed by HBCC, clarified that there are twenty-seven employees that work daily on the site, and there are prayer meetings. She elaborated on the lease terms with the School District at the present location and noted that the actual wording is optional for extending the lease. She commented that the school district could end the lease should it need the classrooms.

Brenda Thomas, Union City, co-pastor of HBCC, urged approval on the administrative use permit and suggested that the Commission weigh the benefits of the services provided by HBCC in comparison to the amount of revenue that might be generated. She assured the Planning Commissioners that HBCC would improve the Southgate neighborhood.

Steve Cassidy, San Francisco, attorney for the Church, discussed site security, generation of revenues, positive harmonious use, and the similarity between the assembly use by the theater and the Church.

Mark Hudson, Hayward, spoke in support of Heart of the Bay Christian Center.

The public hearing was closed at 10:03 p.m.

Chairperson Bogue moved, seconded by Commissioner Caveglia, to deny the administrative use permit subject to the findings for denial. He maintained that there is a compelling interest for the City to maintain the property for commercial district property. If you look at the immediate area, the two blocks are commercial. This is important and is a compelling interest to maintain that property as such.

Commissioner Halliday said she would be opposing the motion. She said the City has an interest in protecting its commercial district. However there are a number of properties in that area, which are underutilized and available for use. She noted that this is not a redevelopment area and the City of Hayward does not own either of the properties in question. She noted that since the properties are privately owned, the City needs to respect the rights of property owners. This is not totally out of character. As large as this church is, this may be the best location. There is an economic viability. A good point was made about transit and that big box shoppers don't usually take the bus as church members might. As far as traffic impacts, she opposed the Home Depot project. This use works the way the City tries to make things work. She indicated that the public presentation was excellent.

Commissioner Thnay said he agreed with Commissioner Bogue and the City staff. He said it is more like a wish than a reality in filling many of commercial spaces. He called attention to significant areas in the vicinity, which might feel compelled to move into the area with the Church there. He commented on what the City would like to see for this site, but in facing

reality, this would be a good and positive draw for the City of Hayward. He ended by saying he would support a motion by Commissioner Halliday to support the Church.

Commissioner Sacks questioned 'the use of classrooms.' She clarified that there is no school associated with the Church.

Rev. Thomas explained that classrooms are occupied by various programs.

Commissioner McKillop discussed the possibility of a mixed-use development on the property. She said there are extraneous issues with that proposal. The Heart of the Bay Christian Center has made a compelling case for this proposal. She said she would oppose the motion.

Commissioner Zermeño commended the church for its excellent presentation. He said residents would like to see better City services. Losing this as a commercial site would not serve the residents. As a result, he said he would be supporting the motion.

Commissioner Caveglia said he was impressed by most of the people who spoke and their sincerity in supporting the Church. He said he found it disturbing that the highly paid lawyers come in to say the City of Hayward has no right to enforce their zoning laws if a church buys the property and then threatens a very punitive law suit if we dare try. He suggested that this issue be taken onto the City Council.

The motion failed by the following vote:

AYES:	COMMISSIONERS	Caveglia, Zermeño
	CHAIRPERSON	Bogue
NOES:	COMMISSIONER	Halliday, Thnay, Sacks,
	McKillop	
ABSENT:	None	
ABSTAIN:	None	

Commissioner Halliday moved, seconded by Commissioner Thnay, to direct staff to prepare the necessary documents that include suitable environmental documents and conditions and findings in support of approval.

Commissioner Sacks said she would vote for the motion, but admitted she was put off by the high-handed beginning to the public hearing.

The motion passed by the following vote:

AYES:	COMMISSIONERS	Halliday, Thnay, Sacks,
	McKillop	

NOES:	COMMISSIONER	Caveglia, Zermeño
	CHAIRPERSON	Bogue
ABSENT:	None	
ABSTAIN:	None	

Assistant City Attorney Conneely said that technically this decision could be appealed to Council, but doubt if any would do so at this point since the decision is just direction to staff.

ADDITIONAL MATTERS

3. Oral Report on Planning and Zoning Matters

There were no oral reports made.

4. Commissioners' Announcements, Referrals

Commissioner Sacks said she likes the looks of the Yamaha development on Foothill, and the Tennyson project. Both look good.

Chairperson Bogue noted that the Lyons on Hesperian is now Luigis' Restaurant. He commented that it is very nice.

Commissioner Thnay asked about the City of Hayward checking with the contractor at Mission and Industrial. He noted that the landscape near golf course has been damaged and asked the City of Hayward to check into it.

Commissioner McKillop asked whether the Home Depot issue has been resolved.

Principal Planner Patenaude noted that they have not yet fully complied, however, City staff is working with them. He noted that they had been before the CCCIC..

Commissioner Caveglia indicated that he was surprised that the Home Depot traffic is not as bad as he anticipated that it would be. He said the ingress and egress seem to be handling any problems. The fears were unnecessary, things are working fine.

APPROVAL OF MINUTES

- July 11 – were held for further corrections
- July 18 – were held for further corrections
- June 21 – were brought back
- July 28 – Passed

ADJOURNMENT

The meeting was adjourned by Chairperson Bogue at 10:39 p.m.

APPROVED:

FINDINGS FOR APPROVAL
Administrative Use Permit No. Pl-2002-0262
Mark Thomas – Heart of the Bay Christian Center
(Applicant/Owner)

1. The proposed project will not have a significant negative impact on the environment pursuant to the California Environmental Quality Act (CEQA) guidelines and a Negative Declaration has been prepared.

2. The proposed use is desirable for the public convenience or welfare in that it is a suitable use to occupy an otherwise vacant building located along a major transportation corridor.

3. The proposed use will not impair the character and integrity of the zoning district and the surrounding area in that it is a less intensive use than the previously-existing theater. The existing building will be enhaneed with the addition of architectural details and additional landscaping will be added to the site.

4. The proposed use will not be detrimental to the public health, safety and general welfare in that it provides a religious experience desired by members of the community, and such use is generally expected to be located in a community. City services and the local transportation system are adequate to meet the demands of the proposed use.

5. The proposed use is in harmony with applicable City policies in that the General Plan Policies & Strategies are supportive of uses that increase revenues to the City. The use is expected to attract patronage by persons outside of the City and they are expected to patronize local restaurants, gas stations and shopping centers.

CONDITIONS FOR APPROVAL
Administrative Use Permit No. Pl-2002-0262
Mark Thomas, Heart of the Bay Christian Center (Applicant)/ Property Owner)

General

1. The proposed application (Administrative Use Permit Application No. Pl-2002-0262) is to convert an existing theater to a religious facility with administrative offices. The religious facility shall operate according to these conditions of approval and plans approved by the Planning Commission on November 21, 2002, labeled Exhibit "A". This approval is void one year after the effective date of approval unless a building permit application has been submitted and accepted for processing by the Building Official. Any modification to this permit shall require review and approval by the Planning Director.

2. Prior to final inspection all pertinent conditions of approval and all improvements shall be completed to the satisfaction of the Planning Director.

3. If determined to be necessary for the protection of the public peace, safety and general welfare, the City of Hayward may impose additional conditions or restrictions on this permit.

4. The permittee shall assume the defense of and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.

5. The applicant shall maintain in good repair all fencing, parking lot surfaces, landscaping, lighting, drainage facilities, project signs, etc. The premises shall be kept clean. Any graffiti painted on the property shall be painted out or removed within seven days of occurrence or the City has the right to enter and remove and charge the property owner for the clean-up.

6. No work shall be done in the street except for the replacement of the broken sidewalk along the property frontage.

7. Public telephones and vending machines shall not be installed outside the building.

8. No outdoor public address system may be used.

9. No outside storage of materials, crates, boxes, etc. shall be permitted anywhere on site, except within the trash enclosure as permitted by the fire code.

10. Violation of conditions is cause for revocation of permit after public hearing before the duly authorized review body.

Design

11. Exterior colors and finishes shall be approved by the Planning Director prior to issuance of a building permit.

12. Any roof-mounted mechanical equipment shall be fully screened from view by the parapet wall.

13. Provide a pedestrian walkway through the parking lot between Hesperian Boulevard and the building. The walkway shall be paved with decorative materials, subject to approval by the Planning Director, with landscaping on both sides, subject to approval by the City Landscape Architect.

14. The existing chain-link fencing on the northeasterly portions of the property line shall be replaced with a masonry wall matching the existing.

15. Provide bicycle racks with a capacity of at least 8 bicycles. The design and placement shall be approved by the Planning Director.

16. A trash enclosure shall be constructed at the location as depicted on the site plan. The trash enclosure shall be constructed of a decorative 6-foot-high masonry wall, which incorporates the architectural style, color and materials of the primary structure(s), with a solid and lockable, decorative metal access gate. The enclosure shall include internal concrete curbs to protect the side walls. The enclosure shall provide for an equivalent amount of space for recycling containers as for trash containers. The final design shall be approved by the Planning Director prior to the issuance of a building permit.

17. A decorative pre-cast concrete trash receptacle, with a self-closing metal lid, shall be located near each of the exterior customer doors. The Planning Director shall approve the design and placement.

Signs

18. The monument sign for the theater along the south property line shall be removed.

19. All signs shall comply with the Sign Ordinance regulations for the Neighborhood Zoning District. No changes may be made to any sign after installation unless previously approved by the Planning Director.

20. Any free-standing, monument sign(s) must reflect the architectural style, colors and materials of the building to which the sign relates. The size, design and placement

shall be approved by the Planning Director.

Parking and Driveways

21. The driveway off Turner Court closest to Hesperian Boulevard shall be removed and replaced with curb, gutter, sidewalk and landscaping as appropriate.

22. Provide decorative paving at driveway entries off of Hesperian Boulevard and Turner Court between the property line and a line 10 feet back. Paving materials shall be approved by the Planning Director prior to issuance of a building permit.

23. Prior to connection of utilities, the parking lot pavement shall be repaired or replaced. Existing pavement shall be resurfaced to eliminate potholes and to provide a smooth, safe surface. The City Engineer shall determine the scope of improvements.

24. Accessible parking spaces shall comply with ADA guidelines and City requirements.

25. Driveways, which serve the proposed use, shall be constructed to City Standard SD-110.

26. Each open parking space shall be provided with a Class "B" Portland Cement concrete bumper block or a continuous concrete curb not less than 6 inches in height above finished pavement.

27. Vehicular circulations areas shall be signed as fire lanes and posted for "No Parking".

Lighting

28. Lighting within the parking storage area shall be provided and be maintained at a level which is adequate for illumination and protection of the premises. Lighting shall be designed by a qualified lighting designer and erected and maintained so that light is confined to the property and will not cast a direct light or glare upon adjacent properties or rights-of-way. A photometric lighting plan shall be submitted and approved by the Planning Director. Lighting Plan shall comply with the City's Security Ordinance.

29. New light poles in the rear along east property line adjacent to the residential properties shall be limited to 12 feet in height.

Grading

30. The drainage plan shall be approved by the City Engineer prior to issuance of any building permits.

Landscape

31. Prior to the issuance of the building permit, detailed landscaping and irrigation plans shall be prepared by a licensed landscape architect and submitted for review and approval by the City. Landscaping and irrigation plans shall comply with the City's Water Efficient Landscape Ordinance. A Certificate of Substantial Completion and Irrigation Schedule shall be submitted by the project landscape architect prior to approval of occupancy.

32. Trees shall be preserved in accordance with the *Tree Preservation Ordinance.* Tree shall not be severely pruned, topped or pollarded. Any trees that are pruned in this manner shall be replaced with a tree species selected by, and size determined by the City Landscape Architect, within the timeframe established by the City pursuant to Municipal Code. A tree removal permit is required prior to the removal of any tree. Replacement trees shall be required for any trees removed, as determined by the City Landscape Architect.

33. One 15 gallon parking lot tree shall be provided for every 6 parking stall.

34. The 31 existing trees that were severely pruned shall be replaced with 24" box trees.

35. Shrubs shall be incorporated in the planters along all street frontages. The type and spacing of shrubs shall create a continuous 30" high hedge within two years.

36. The Myoporum lateum trees along the east property line shall be thinned out and shrubs below.

37. A 5 foot wide landscape planter shall be provided along the rear building addition.

38. Planter endcaps shall be provided at the ends of parking rows. Minimum interior width of endcaps and all other landscape islands shall be 5 feet.

39. All above ground utilities and mechanical equipment shall be screened from the street with shrubs. Adequate access shall be provided to read and service equipment.

40. A complete automatic sprinkler system with an automatic on/off mechanism shall be installed within all required landscape areas. An individual adjustable flood bubbler shall be provided at each tree.

41. Where any landscape area adjoins parking areas, a Class "B" Portland Cement concrete curb shall be constructed to a height of 6 inches above the finish pavement.

42. All raised concrete curbs, which lie between a landscape planter and the side of a

parking stall, shall be widened to 18 inches to accommodate vehicle access.

43. Landscaping shall be maintained in a healthy, weed-free condition at all times. The owner's representative shall inspect the landscaping on a monthly basis and any dead or dying plants (plants that exhibit over 30 percent die-back) shall be replaced within ten days of the inspection

44. The rear and side of the building shall be enhanced with tubular metal trellises and vines.

Fire Department

45. The building shall have a complete structural review to bring it up to earthquake codes.

46. The building shall meet a 1-hour fire rating throughout.

47. The existing Class II standpipe system shall meet current state certifications and be inspected for reliability

48. The building shall have a manual and automatic fire alarm system installed throughout, meeting NFPA 72 & ADA requirements for audibility and visual devices, pull stations at all exits to the exterior, smoke detectors in the A-3 areas and E-3 (nursery), FACP, and central station monitoring. The elevator shall be installed with firefighter recall as per NFPA 72 Standards.

49. The interior improvements shall meet requirements per the 1998 CFC, Article 25, for places of assembly, to include panic hardware, exit sign illumination, occupant loads (and signage), aisle widths, and flame treatment for decorative materials within the "A" occupancy areas

50. The proposed fire hydrants shall be double steamer and installed as per City Standard Detail SD-206. Crash post (bollards) shall be installed to prevent any type of vehicular damage from impact. Crash post shall be installed per City of Hayward Standards.

Mechanical/Utilities

51. No mechanical equipment, or solar collectors, may be placed on the roof unless it is adequately screened from view. Prior to installation, documentation shall be provided that the roof-mounted mechanical equipment is adequately screened.

52. All television or satellite reception antennas shall be completely screened from view by the proposed roof structure.

53. Any transformer shall be located underground or screened from view and shall be

located outside any front or side street yard.

54. A Reduce Pressure Backflow Prevention Assembly as per the City of Hayward Standard Detail 202 shall be installed on all domestic & irrigation water meters. All Backflow Prevention Assemblies must be the same size as the water meter or line size which ever is larger.

55. Gallon per minute demand shall be provided to verify existing 1.5 " domestic and 2" irrigation water meters are adequate for proposed use.

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

RESOLUTION APPROVING THE NEGATIVE DECLARATION AND DENYING USE PERMIT APPLICATION NO. PL 2002-0262, CONCERNING A REQUEST TO CONVERT THE FORMER UNITED ARTISTS THEATER INTO A RELIGIOUS FACILITY

WHEREAS, Use Permit Application No. PL 2002-0262, concerns a request by Mark Thomas-Heart of the Bay Christian Center (Applicant/Owner) to convert the former United Artists Theater into a religious facility within a CN (Neighborhood Commercial) District; and

WHEREAS, the application was considered at the Planning Commission Meeting on September 12, 2002 and staff recommended denial of the application as it is inconsistent with the Southgate Neighborhood Plan which supports maintaining the commercial shopping areas and neighborhood-serving businesses; and

WHEREAS, although staff recommended denial of the project, the Planning Commission (4:3) directed preparation of the necessary documents in support of the project and the project was brought back to the Planning Commission and approved on November 26, 2002; and

WHEREAS, following the Planning Commission decision, two residents of the Southgate Neighborhood, Cecelia Wilson and Patricia Liatto (Appellants) appealed the decision, because of concerns that the commercial area would be jeopardized and that the church would not contribute to the cost of city services; and

WHEREAS, a Negative Declaration has been prepared and processed pursuant to the requirements of the California Environmental Quality Act; and

WHEREAS, the City Council of the City of Hayward hereby finds and determines as follows:

1. The proposed project will not have a significant negative impact on the environment pursuant to the California Environmental Quality Act (CEQA) guidelines and a Negative Declaration has been prepared.

2. The Applicant has not established to the satisfaction of the Council that denial of this application places a substantial burden on the Applicant's exercise of religion. The proposed project would not result in a substantial increase in the square footage available to the Applicant under its current lease. The Applicant currently leases 27,246 square feet and the proposed project would give it 30,794 square feet, an increase of only 3,548 square feet. The Applicant has indicated that the attendance at services consists of approximately 400 congregants in the summer and 500 congregants the rest of the year, which the current space can accommodate. The Applicant's lease has approximately 10 years remaining, and the San Lorenzo Unified School District has indicated that HBCC is an excellent tenant and at this time has no intentions of terminating the lease.

3. The proposed use is not desirable for the public convenience or welfare in that the property would be underutilized when compared to a retail or a mixed-use development. If approved, the noncommercial use of the commercial district along the block of Hesperian Boulevard and La Playa Drive will be reduced by 43 percent and approximately 57 percent of the commercial block face on Hesperian Boulevard would be devoted to noncommercial uses, thereby eroding the commercial character of the area. In the current economic climate, with the State of California seeking ways to make up its budgetary shortfall, possibly through the shifting of revenue from municipalities, this project may have a negative impact on the City's ability to provide public services such as fire and police protection, as a result of the further erosion of its revenue base. An opportunity to lure a large retailer would be lost that could help revitalize the commercial district. Furthermore, an opportunity to increase revenues and employees for the City would be reduced substantially with the approval of this application.

4. The proposed use will impair the character and integrity of the zoning district and surrounding area in that it would add another 28 percent of noncommercial use in the Neighborhood Commercial District along the block of Hesperian Boulevard and La Playa Drive. This would bring the total noncommercial use in this area to 43 percent further weakening the Neighborhood Commercial District.

5. The proposed use will be detrimental to general welfare in that it would further reduce the Neighborhood Commercial District in a corridor that had a shortage of neighborhood-serving business. The Southgate Neighborhood Plan specifically calls for maintaining the commercial shopping areas along Hesperian Boulevard for neighborhood-serving businesses.

6. The proposed use is not in harmony with applicable City policies and the intent and purpose of the zoning district involved. The Southgate Neighborhood Plan

calls for maintaining the commercial shopping areas along Hesperian and to attract and maintain neighborhood-serving businesses. Other General Plan Policies and Strategies are supportive of uses that would generate revenue and create jobs for the City. Furthermore, the insertion of a noncommercial use of this magnitude in the midst of this commercial area may be environmentally inconsistent with City plans and policies.

7. There is a compelling government interest in retaining the commercial zoned property for commercial use. The approval of the application would significantly reduce the commercial viability of the commercial area along the block of Hesperian Boulevard and La Playa Drive. Noncommercial use would take up to 43 percent of the commercial zoned properties in the block and devote approximately 57 percent of the Hesperian Boulevard block face to noncommercial activity, which would not contribute to revitalizing of this commercial strip. An opportunity to lure a large retailer that could generate revenue and jobs for the City would be lost as well as a possible stimulus to encourage revitalization of the commercial area.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that, based upon the aforementioned findings, Administrative Use Permit Application No. PL 2002-0262, regarding a request to convert the former United Artists Theater into a religious facility, is hereby denied, and the appeal is upheld.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2003

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST:_____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

_____