

CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 04/27/04
AGENDA ITEM 7
WORK SESSION ITEM _____

TO: Mayor and City Council
FROM: Director of Community and Economic Development
SUBJECT: Appeal of the Planning Commission's Approval of Administrative Use Permit – Application No. PL-2003-0576 to Allow Truck and Bus Driving School – Moe Janda (Applicant/Owner) - The Property Is Located at 2977 Baumberg Avenue in an Industrial (I) District (continued from April 20, 2004)

RECOMMENDATION:

It is recommended that the City Council adopt the attached resolution finding the project categorically exempt from CEQA review and denying the application.

DISCUSSION:

On February 5, 2004, the Planning Commission unanimously approved an Administrative Use Permit for a truck and bus driving school. The Planning Commission's conditions of approval include requirements for replacing the modular building with a site-built structure that is designed to comply with City guidelines, installation of landscaping, paving, street improvements, a street light, new fencing, and a sewer lateral between Industrial Boulevard and subject site.

At the Planning Commission hearing, the staff did not object to the use based on the recommended schedule for improving the site in accordance with City standards, particularly in light of the fact that business operations were begun without permits. The Zoning Ordinance requires compliance with its provisions and the conditions of all associated permits before operating the business. But because the school was already in operation, the Commission's approval action allowed for a departure from this requirement and imposed deadlines for completing the conditions of approval that would bring the property into compliance with the City's Design Guidelines and "Minimum Design and Performance Standards" for industrial properties.

At the City Council meeting of April 20, 2004, the applicant appealed the decision of the Planning Commission as he indicated that strict compliance with the deadlines for submittal of plans and improvements, set forth in the conditions of approval, is not physically possible. The applicant indicated that he would need seven to nine months to prepare a complete set of construction documents and to obtain permits (between November 2004 and January 2005). This time frame would have delayed the construction of improvements until early spring of 2005, approximately one year hence. The City Council indicated that it would not be willing to accept a significant delay and the appellant responded that he could possibly work under a shorter timeframe. The appellant was directed to meet with staff to submit an alternative schedule.

Following a meeting with staff, the appellant asked that his construction timeline be extended as displayed in the following chart, and compared with the Planning Commission conditions.

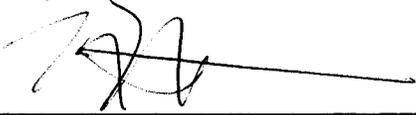
Although it appears that the appellant's request would establish a fixed timeline for installation of the required improvements, the dates are dependent upon the issuance of grading and building permits. It is difficult to gauge the timing under which the permits would be issued as much depends on the quality of plans submitted and the timeliness by which the applicant responds to correction punchlists.

	Planning Commission Conditions	Appellant Request
Submittal of Building/Grading Permit Applications	30 days from Commission approval	30 days from Council approval
Replacement of chain-link fence	30 days from Commission approval	180 days from Building/Grading Permit issuance
Lighting Installation	90 days from Commission approval	180 days from Building/Grading Permit issuance
Trash Enclosure Construction	90 days from Commission approval	180 days from Building/Grading Permit issuance
Installation of Drainage Improvements/Pavement	90 days from Commission approval	180 days from Building/Grading Permit issuance
Installation of Landscape	90 days from Commission approval	180 days from Building/Grading Permit issuance
Completion of Permanent Building	1 year from Commission approval	1 year from Building Permit issuance

To date, the applicant has not taken significant steps toward meeting the Planning Commission's conditions of approval. It is unfortunate that the appellant did not approach staff prior to the establishment of the business on this site. Had he done so, the numerous requirements could have been made known at that time and he could have then made a determination whether it would have been feasible to locate at this site, or to locate on another property that would have been sufficiently improved.

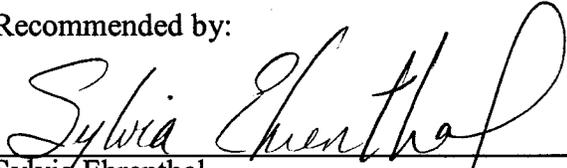
In staff's opinion, granting the requested delays in meeting the conditions of approval would be conferring special privileges not extended to other developers in the Industrial Zone. With the appellant's position that he is unable to improve his property as the Planning Commission required, staff cannot support the continued use of the property for a truck school and recommends denial of the use permit.

Prepared by:



Richard E. Patenaude, AICP
Principal Planner

Recommended by:



Sylvia Ehrental
Director of Community and Economic Development

Approved by:



Jesús Armas, City Manager

Attachments: Exhibit A. Findings for Denial
Draft Resolution

4/22/04

**CITY OF HAYWARD
CITY COUNCIL
April 27, 2004**

**ADMINISTRATIVE USE PERMIT APPLICATION No. 2003-0576 – Moe Janda
(Applicant/Owner) – Request to operate a truck and bus driving school**

The site is located at 2977 Baumberg Street, in the Industrial (I) District, APN 456-0054-016/456-0054-017

FINDINGS FOR DENIAL

1. The California Environmental Quality Act (CEQA) does not apply to projects that are not approved.
2. The proposed project would not be desirable for the public welfare in that the applicant began operations of the truck driving school prior to obtaining the required permits and the applicant has indicated that it is not possible to install the required site improvements in a timely manner. Granting the delays requested by the applicant would confer special privileges not extended to other developers in the Industrial District.
3. The proposed project is not consistent with the character and integrity of the Industrial District in that it is difficult to modify the modular such that it complies with the minimum design guidelines of the Industrial District. Modifications would have to be made to include the addition of materials to provide a variety of textures, use of interesting patterns, provision for interesting shadows, offsets, decorative siding, and attractive accent materials. The applicant has indicated that it is not possible to replace the modular with a permanent building in a timely manner. Granting the delays requested by the applicant would confer special privileges not extended to other developers in the Industrial District.
4. The proposed use would be detrimental to the public health, safety, or general welfare in that site is in close proximity to the intersection of Industrial Boulevard and Baumberg Avenue, which is a heavily traveled and congested intersection. Trucks and buses driven by students entering and exiting the site would hamper traffic progression on Baumberg Avenue. In addition, truck and buses parked along the street block site lines of cars and trucks moving northbound on Baumberg Avenue creating a potential hazardous condition. The applicant has indicated that it is not possible to install the required site improvements to alleviate these conditions in a timely manner. Granting the delays requested by the applicant would confer special privileges not extended to other developers in the Industrial District.

5. The project would not be in harmony with applicable City policies in that it has not been demonstrated that the proposed project can comply with the City's minimum design standards for the Industrial District in a timely manner.

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

mhl
4/20/04

Introduced by Council Member _____

RESOLUTION DENYING ADMINISTRATIVE USE PERMIT
APPLICATION NO. PL-2003-0576, MOE JANDA
(APPLICANT/OWNER)

WHEREAS, the Applicant applied for an Administrative Use Permit, Application No. PL 2003-5675, to operate a truck driving school at 2977 Baumberg Avenue in an Industrial (I) District; and

WHEREAS, the Applicant has operated a truck driving school on the subject site without a use permit since 2001, although a use permit is required for this operation; and

WHEREAS, the property is basically unimproved, with only portable sanitary facilities, a dilapidated chain link fence on the street frontage, no landscaping, and a modular building used for an office and classrooms, which was installed without a building permit; and

WHEREAS, on February 5, 2004, the Planning Commission unanimously approved an Administrative Use Permit for a truck and bus driving school subject to conditions of approval which included requirements for replacing the modular building with a site-built structure that is designed to comply with City guidelines, installation of landscaping, paving, street improvements, a street light, new fencing, a sewer lateral between Industrial Boulevard and subject site, and the dedication of 5 feet of the Baumberg Avenue property frontage right-of-way purposes; and

WHEREAS, the Planning Commission imposed a strict schedule for improving the site in accordance with City standards, as conditions of approval for the Administrative Use Permit, several of which conditions required the submission of plans within 30 days of the approval of the use permit; and

WHEREAS, the Applicant has appealed the Planning Commission's approval of the use permit, indicating that strict compliance with the 30-day deadlines for plans and improvements required by the conditions of approval is not physically possible. Additionally, the Applicant is seeking relief from Condition No. 19 requiring installation of a sanitary sewer main from the property frontage to Industrial Boulevard and Condition No. 16, requiring installation of curb, gutter, sidewalk and tie-in paving; and

WHEREAS, with regard to the administrative use permit, the City Council hereby finds and determines that:

1. The proposed project is categorically exempt from the California

Environmental Quality Act (CEQA), pursuant to Guideline 15332, In-Fill Developments.

2. The proposed project would not be desirable for the public welfare in that significant delays in providing the required property improvements would be conferring special privileges not extended to other developers in the Industrial District.
3. The proposed project would not be consistent with the character and integrity of the Industrial District in that the inability of the owner to provide required property improvements in a timely manner would allow the maintenance of a property that would not comply with the City's Industrial Architectural Performance Standards. The Standards require the use of building materials to provide a variety of textures, use of interesting patterns, provision of interesting shadows, offsets, decorative siding, and attractive accent materials.
4. The proposed use would be detrimental to the public health, safety, or general welfare in that inability of the owner to provide required property improvements in a timely manner would allow the maintenance of an unsafe property and would allow the tracking of dust and mud onto City streets.
5. The project would not be in harmony with applicable City policies in that significant delays in the provision of required property improvements demonstrates that the proposed project cannot comply with the City's minimum design standards.

NOW THEREFORE BE IT RESOLVED, upon the basis of the aforementioned findings, and based on City staff's concerns and the Applicant's position that he is unable to improve his property expeditiously, the City Council hereby denies the Administrative Use Permit Application No. PL 2003-0576.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2004

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward