

DATE: May 20, 2008

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Parcel Map No. 7460 – Michael Lindow (Applicant/Owner) - Request to Amend Parcel Map Relating to Certain Conditions of Approval Pertinent to Street Improvements along the Campus Drive and University Court Frontages – The Project is Located on the Southwest Corner of University Court and Campus Drive

RECOMMENDATION

That the City Council determines that this project is exempt from the California Environmental Quality Act and adopts the attached resolution approving amendments to the Conditions of Approval for Parcel Map No. 7460.

SUMMARY

The developer had requested reconsideration of the two of the Parcel Map conditions of approval associated with a three-lot subdivision approved originally in 1999. These conditions require completion of street improvements on Campus Drive and University Court including construction of a cul-de-sac at the terminus of University Court, prior to the issuance of *any* Certificate of Occupancy for the three associated single-family homes. The developer has asked that the City either eliminate the requirements to complete the street improvements, or at the very least, reduce the requirements or grant an extension of time for completion, and issue Certificates of Occupancy so the parcels may be sold. Staff supports the extension of time for completion of street improvements on Campus Drive and modified improvements on University Court cul-de-sac because of the changed circumstances in the housing market.

BACKGROUND

Tentative Parcel Map Approval and Changes of Ownership

The original Tentative Parcel Map No. 7460 was submitted in March of 1999 by Mr. Sukhdev Kapur. On July 15, 1999, the Planning Commission approved Tentative Parcel Map No. 7460. Subsequently, residents on University Court, Bandywine Place, and Thistle Court appealed the decision to the City Council on the basis of traffic concerns. On September 28, 1999, the City Council denied the appeal and upheld the Planning Commission's approval action. Subsequently, a

new developer, Mr. Noor Wais, processed the project from 1999 to 2004, when Mr. Lindow indicated that he was acting on behalf of the new owners, Mr. Lathrop and Mr. Greenwood. Mr. Lindow eventually became the owner of the property.

Parcel Map Approval with Associated Improvement Plans and Subdivision Agreement

Mr. Lindow encountered several delays because of problems with the project or because of delays associated with City actions. Although improvement plans were approved in December of 2001, the parcel map was not recorded, because it required corrections that were sent to the engineer of record in October of 2001, but which were never completed. In April of 2004, staff communicated to Mr. Lindow what was needed to process approval of the parcel map and indicated that, despite having not been recorded within two years of approval, if all remaining corrections were made expeditiously, the parcel map could still be recorded.

On November 3, 2005, a subdivision agreement was executed and faithful performance bonds in the amount of \$116,710 were submitted. The parcel map was finally recorded in November of 2005. The site improvement plans that were originally approved in December of 2001 and subsequently revised due to topographic survey inaccuracies, were reapproved in March of 2006.

Grading and Building Permit Applications

A grading permit application was submitted and a preconstruction conference on the grading was held on December 7, 2005. Approval to start grading was given on that date, and approval to start construction of improvements was given on March 17, 2006. Staff approved eliminating the four-foot wide sidewalk area along the private driveway, and the house frontage, as the grade and retaining wall changes made it no longer feasible to accommodate the sidewalk.

During this time period, Mr. Lindow was also going through a process to revise and resubmit new building permit application plans for his three custom-built homes. Building Division records show initial building permit applications were submitted on March 18, 2005, with a first punch list issued to the applicant on April 22, 2005; however, no record of resubmittal is shown until November 16, 2005. The building permit record does not indicate what happened during this seven-month period, though Mr. Lindow indicates discussions occurred between his structural engineer and staff during that period. A second set of comments was issued on November 29, 2005, and final approval for the building permits was issued on February 16, 2006. Construction on the houses has been ongoing, and construction of the driveway access retaining wall began October of 2006.

Street Improvements along Campus Drive and University Court frontages

One of the existing Conditions of Approval requires installation of a sidewalk, curb, gutter, and asphalt pavement tie-in along the Campus Drive frontage, as well as construction of the cul-de-sac to complete the terminus of University Court. These improvements appear on the improvement plans approved originally in 2001. In December of 2007, it was noticed that these houses were nearing completion, but no street improvements had been started on either the University Court cul-de-sac or Campus Drive. Mr. Lindow indicated he was waiting for permission from Alameda County to begin the cul-de-sac improvements, as the County owns a part of the land upon which the

cul-de-sac is to be constructed. On January 25, 2008, the County granted permission for the installation of the University Court cul-de-sac.

Request from Owner and Other Incurred Expenses

Initially, in February 2008, Mr. Lindow requested that the City relieve him of the street improvements required for both Campus Drive and University Court, in part because of the delays he has experienced in the project.

Mr. Lindow also pointed out other cost issues that he has incurred. Because the project had never been completely approved until the subdivision agreement was signed, when Mr. Lindow finally resubmitted his grading plans, he fell under the new water quality requirements and had to provide structural controls; in his case a CDS filter system. In spite of the original 1999 Conditions of Approval (number 4.a) that require that each house be equipped with an automatic fire sprinkler system, per NFPA 13-D (modified) standards, Mr. Lindow also indicates that staff should have advised earlier that, because his buildings had to have fire sprinklers, he would have significantly greater water connection costs. His fire sprinkler permit was not processed until April 2007; at that time, the required modifications were made to the plans.

Mr. Lindow also claimed that his building permit plans were lost once and his improvement plans were lost twice between March and November of 2005. Staff reviewed Building Division records and is unable to confirm what specifically occurred. On March 20 and 25, 2008, staff met with Mr. Lindow to further explore a possible compromise that staff could support.

DISCUSSION

Staff is recommending that Council approve modifications to the conditions that would allow improvements along Campus Drive (essentially installation of curb, gutter, sidewalk, and pavement tie-in) to be deferred to a later date when such improvements would be appropriate as part of a larger project. Each future homeowner would be responsible for the costs of such improvements along his/her frontage property. Such deferral would be executed via deferred street improvement agreements. A deferred street improvement agreement is typically used for a single parcel development where street frontage improvements may be deferred until such time improvements along a stretch of public-street become feasible to commence. That agreement is occasionally used for minor subdivisions, such as this case.

Staff is also recommending that the University Court cul-de-sac and related improvements be constructed, though they could be delayed until after certificates of occupancy are issued for two of the three homes and before the certificate is issued for the third home. Also, based on revised accurate topographic survey results, required improvements to complete the terminus of University Court would cost less compared to what was on originally approved plans.

Pursuant to the California Subdivision Map Act, any modifications to an existing approved parcel map shall be set for public hearing and the City Council shall confine the hearing to consideration of, and action on, the proposed modifications. Given positive outcomes from the aforementioned meetings and discussions, coupled with Mr. Lindow's now desire to complete the construction, staff recommends that the original Conditions of Approval for Parcel Map No. 7460 be modified as indicated below:

1. Condition of Approval No. 3 shall be modified as follows: The ~~property owner~~ developer shall enter into three ~~a subdivision agreement to install~~ Deferred Street Improvement Agreements for the installation of Portland Cement Concrete sidewalk, curb, gutter, and asphalt pavement tie-in paving along the Campus Drive frontage prior to issuance of certificates of occupancy. ~~University Court property frontages. The agreement shall state that the improvements are to be installed prior to issuance of a certificate of occupancy for any of the three parcels~~
2. Condition of Approval No. 3.a is added as follows: The developer shall install improvements on University Court consisting of the construction of a cul-de-sac, drainage system, and upgrades to existing streetlight heads and associated traffic control signage, to the satisfaction of the City Engineer, prior to the issuance of the third Certificate of Occupancy.
3. Condition of Approval 4.g shall be modified as follows: Prior to connection of utilities of any building constructed on the parcels created by Parcel Map 7460, access shall be provided to all three parcels via a 27-foot-wide common access driveway that provides an 18-foot-wide paved travel way, a 5-foot-wide landscape strip along the eastern property line, ~~a 4-foot-wide sidewalk abutting the west side of the driveway~~ and necessary retaining walls. The retaining walls shall have a decorative design approved by the Planning Director.
4. Condition of Approval No. 10 is no longer applicable and shall be eliminated: Prior to Connection of Utilities: Curb, gutter, sidewalk, and tie-in paving shall be installed across the Campus Drive and University Court property frontages per the subdivision agreement (see condition no. 3).

Findings

An amendment to a recorded parcel map may be made in accordance with the following provisions from the State's Subdivision Map Act:

- (1) if the changed circumstances make the conditions of the map no longer necessary;
- (2) if the modifications do not impose any additional burden on the fee owners of the real property;
- (3) the modifications do not alter the right, title, or interest in the real property reflected on the recorded map; and
- (4) the local agency finds that the parcel map as modified conforms to the California Subdivision Map Act Section 66474.

Staff has reviewed and determined that the amendments are justified by the changed circumstances in the housing market, that the proposed amendments to the conditions do not propose new additional burdens on the owner and, in fact, lessen them; that the changes do not alter any right, title, or interest in the property as reflected on the recorded parcel map; and that none of the findings stated in Government Code Section 66474 can be made, as was determined when the tentative parcel map was approved. Therefore, it is recommended that the City Council make the required findings as indicated in the attached resolution and approve the amendments.

Environmental Review

The project is categorically exempt from environmental review as defined by the California Environmental Quality Act (CEQA), Guidelines Section 15332: In-Fill Development Projects. A Notice of Exemption was prepared June 22, 1999.

PUBLIC CONTACT

Notice of this hearing was published in The Daily Review on April 12 and mailed to all property owners within 300 feet of the project site. A copy of this report was also sent to the developer. No responses to the notices have been received.

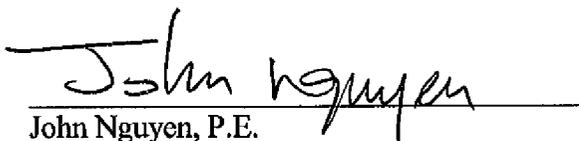
FISCAL IMPACT

There is no fiscal impact to the City for this recommendation; however, the future owners of the new homes would be responsible for the cost of street improvements on Campus Drive when and if requested by the City.

NEXT STEPS

If the recommendation is approved, staff will prepare Deferred Street Improvement Agreements for execution that would apply to each of the three new lots and specifically cover future curb, gutter, sidewalk and tie-in paving construction along their Campus Drive frontages in accordance with the existing approved improvement plans. The developer will also be directed to trim the bushes and trees to make the existing dirt area along Campus Drive more passable for pedestrians. It is anticipated that when the agreements are executed and recorded, the City will issue certificates of occupancy upon completion of construction for two homes and issue the final certificate of occupancy for the third home upon completion of the University Court cul-de-sac and improvements.

Prepared by:

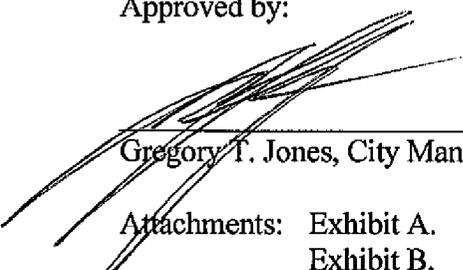

John Nguyen, P.E.
Development Review Engineer

Recommended by:



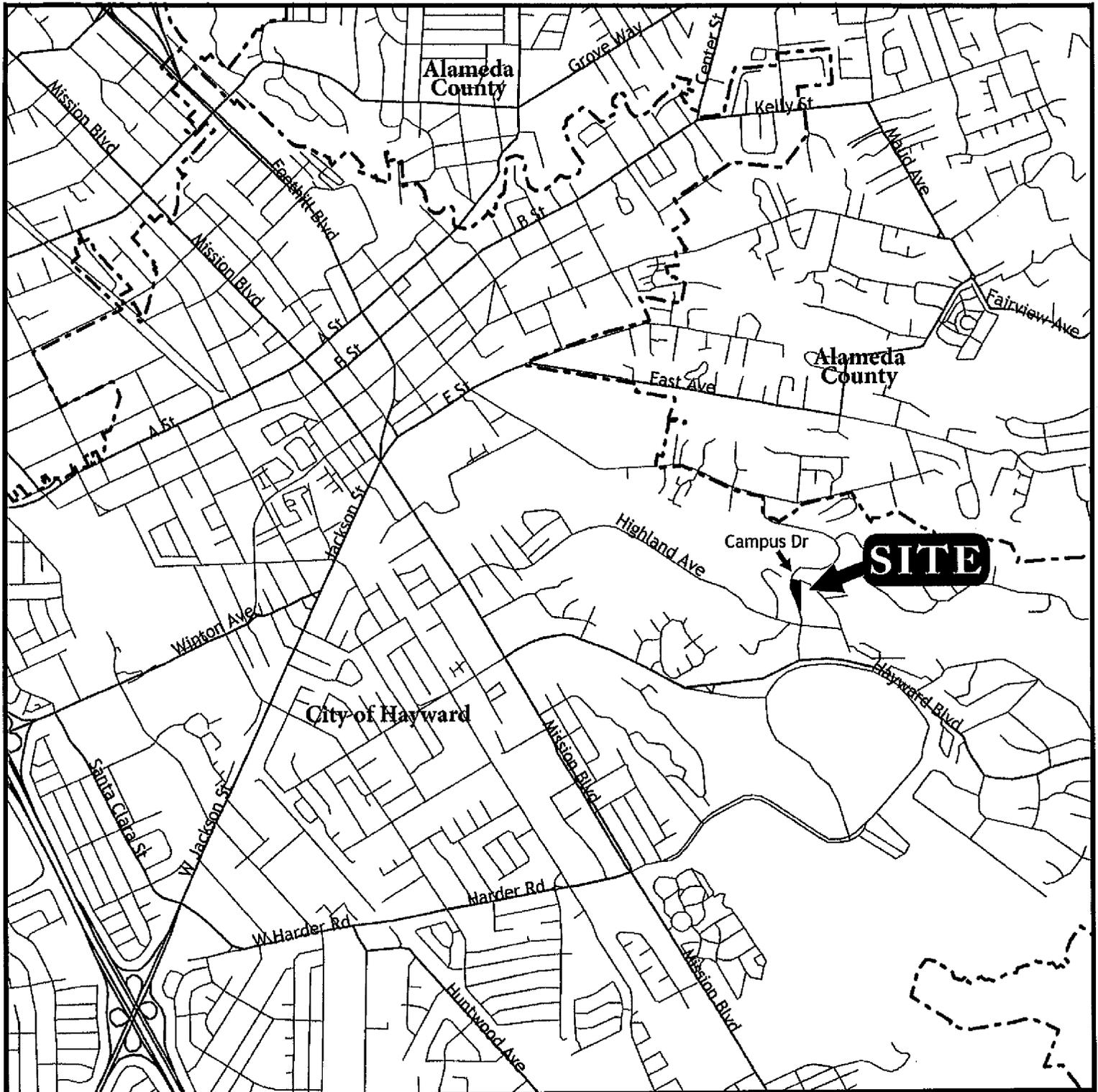
Susan J. Daluddung, Ph.D.
Director of Community and Economic Development

Approved by:



Gregory T. Jones, City Manager

Attachments: Exhibit A. Vicinity Map
Exhibit B. Area and Zoning Map for Parcel Map 7460
Exhibit C. February 22, 2008 email from Developer
Draft Resolution

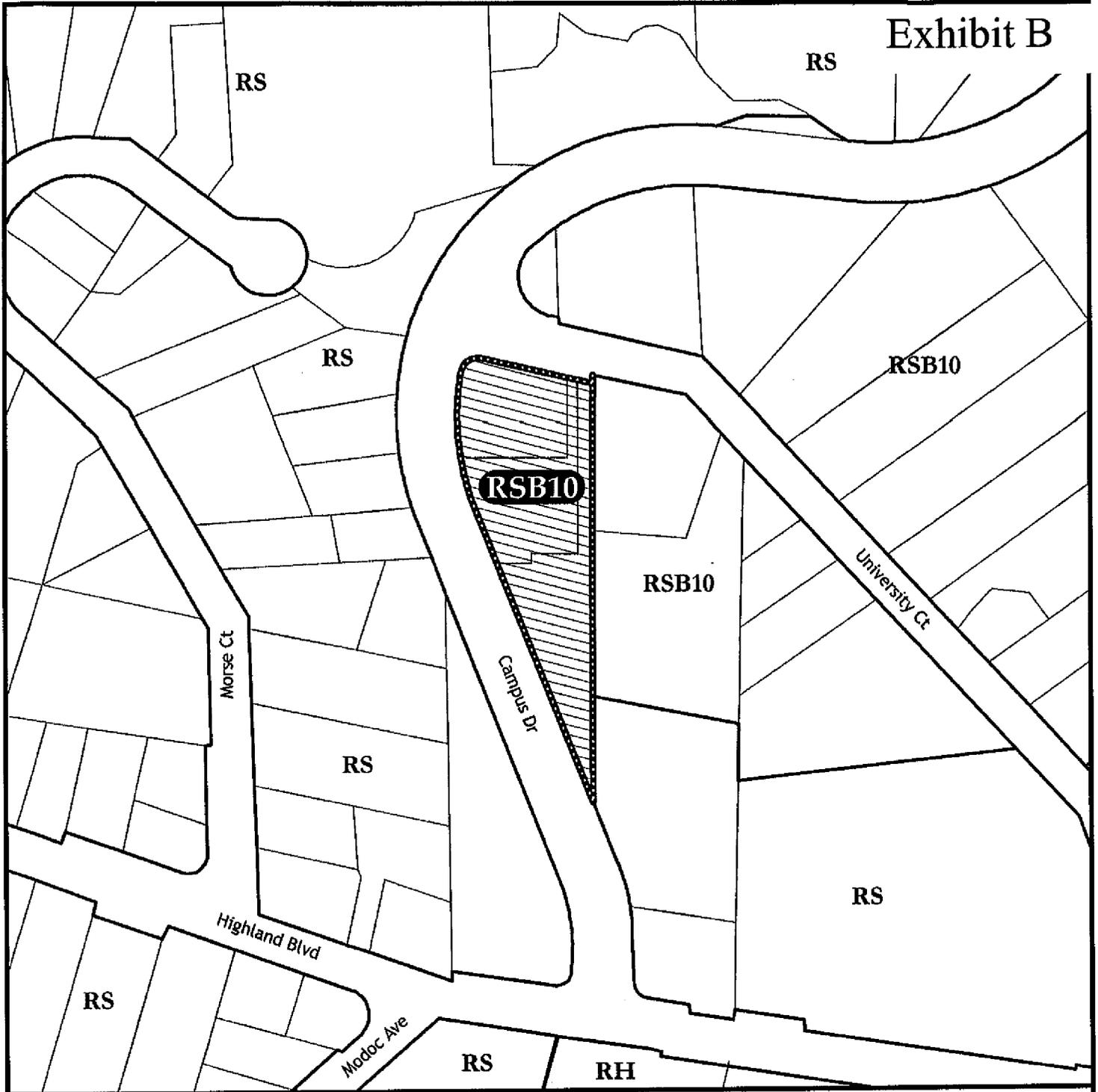


Vicinity Map

Parcel Map 7460

25401, 25403, and 25405 University Court





Area & Zoning Map

Parcel Map 7460

Address: 25401, 25403, and
25405 University Court

Applicant: Michael Lindow

Owner: Michael Lindow

Zoning Classifications

RESIDENTIAL

- RH High Density Residential, min lot size 1250 sqft
- RS Single Family Residential, min lot size 5000 sqft
- RSB10 Single Family Residential, min lot size 10000 sqft



FEET 100 200

From: office@california-cabinets.com [mailto:office@california-cabinets.com]
Sent: Friday, February 22, 2008 1:33 PM
To: Michael Sweeney
Cc: Serean Kimmel
Subject: University Court

Dear Mayor Sweeney,

On the 18th of March 2005, I submitted plans for building at 25401, 25403, and 25405 University Court. 38 weeks later those plans were finally approved for building. Those plans had already been approved several years earlier, but the permit time had expired. During those 38 weeks, the planning department lost the entire set of plans no less than twice. A set of plans consists of no fewer than 5 complete copies of each house. One of the sets was on Mylar.

I would call the department and also go to the counter to try and find what was holding the process up, only to be told, "We've lost your plans. Please submit new ones." The original target date for a punch list or approval was 4 weeks. A second submittal should take another 4 weeks to approve. Allowing for answering all the red lines, the entire process should take. 10-12 weeks maximum.

When attempting to pick up permits, it was mentioned that the process would not be complete with out a Storm Water Treatment Unit and Storm Water Treatment Agreement. No employee, official, or document had mentioned this until December of 2005. This treatment unit added an additional \$42,000 of unanticipated costs to the project.

We signed the agreement on January 24, 2006. In June of 2007 Public Works contacted us to say they had rejected part of that agreement. It took us until October of 2007 to get an answer back from that department as to EXACTLY what was wrong with the submittal.

When submitting the water line and meter needs with the plans, they were stamped with a meter size of 1". When trying to pay for the meter and line in July of 2007, I was informed that I needed a 1 1/2" meter and 2" service line due to what they claimed was the "additional demand" that the fire sprinklers would place on the water service. The fact that sprinkler and regular water lines would not be used at the same time was deemed irrelevant. This resulted in an additional \$43,000 in unanticipated costs. It was 14 weeks from the time that we paid the fees until those water meters were installed.

This project has been in the system now for almost 3 years. During that time they have not been able to give an official answer about the cul-de-sac improvements. Now the city is demanding that we improve the sidewalks and cul-de-sac, when they have not required this of similar projects on University Court, including one project that was finished last year.

There are many other issues that arose during this process, but for the purpose of being brief and concise we have only stated some the very costliest.

The time we have lost on this project waiting for city agencies to make decisions, find lost documents, and settling internal bickering, has cost us \$100,000-\$250,000 in lost value per house. If we had been able to go to market six month earlier, this value would not have been lost to us. Between losses of value and \$85,000 in additional costs, I and my wife are facing foreclosure on this property and imminent bankruptcy. Our small family business which supports 4 families may not be able to overcome this obstacle. Given our position at this point, we could use some help with some affordable housing ourselves.

We are asking that the city withdraw its demands for improvements to sidewalk and street. At the very least we need to have requirements reduced, more time and occupancy granted.

We appreciate your help and consideration.

Thanks,
Michael Lindow
510-795-0897 office
510-468-6948 cell

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. 08-

Introduced by Council Member _____

mol
4/2/08

RESOLUTION APPROVING AMENDMENTS TO PARCEL MAP 7460 RELATING TO CERTAIN CONDITIONS OF APPROVAL PERTINENT TO STREET IMPROVEMENTS ALONG CAMPUS DRIVE AND UNIVERSITY COURT

WHEREAS, Parcel Map No. 7460 is a three-lot subdivision located at the University Court terminus and was approved by the City Council in 1999; and

WHEREAS, the development has had many issues which have significantly delayed the project, including going through several owners and revisions to the site improvements plans originally approved in 2001 due to topographic survey inaccuracies which has caused hardship on the developer; and

WHEREAS, Michael Lindow (Applicant/Owner) has requested reconsideration of the Parcel Map's Conditions of Approval numbers 3, 4 and 10, which require completion of street improvements on Campus Drive and construction of the University Court cul-de-sac prior to the issuance of any Certificate of Occupancy, to either eliminate the requirements to complete the street improvements, reduce the requirements, grant an extension of time for completion and/or allow issuance of the Certificates of Occupancy so the parcels may be sold; and

WHEREAS, staff recommends that Council approve modifications to the conditions that would allow improvements along Campus Drive to be deferred to a later date when such improvements would be appropriate as part of a larger project and the completion of the University Court cul-de-sac prior to the issuance of the third certificate of occupancy; and

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

1. The changed circumstances make some conditions of the map no longer necessary;
2. The modifications to the conditions of approval do not impose any additional burden on the fee owners of the real property;

3. The modifications to the conditions of approval do not alter the right, title, or interest in the real property reflected on the recorded map; and
4. The parcel map as modified conforms to the California Subdivision Map Act Section 66474.
5. The project is categorically exempt from environmental review as defined by the California Environmental Quality Act (CEQA) Guidelines Section 15332, In-fill Development Projects.

NOW THEREFORE BE IT RESOLVED, that the City Council of the City of Hayward based on the aforementioned findings does hereby approve staff's recommendation to modify the conditions of approval as indicated in Exhibit A, attached hereto.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2008

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:

City Attorney of the City of Hayward