



**DATE:** November 18, 2008

**TO:** Mayor and City Council

**FROM:** Director Development Services Department

**SUBJECT:** Site Plan Review No. PL-2007-0463 –Woodland Knolls Homeowner’s Association (Applicant/Owner) – Appeal of Planning Commission’s April 24, 2008 Denial of a Request to Install an Automatic Security Access Gate Across Durham Way, a Private Street - The Project is Located Approximately 130 Feet Northerly of the Intersection of Durham Way and Oakes Drive, in a Single-Family Residential (RSB40) Zoning District

**RECOMMENDATION**

That Council adopts the attached resolution, finding that the project is statutorily exempt from environmental review, pursuant to the California Environmental Quality Act (CEQA), and denying the Site Plan Review application for the proposed security gate.

**SUMMARY**

The proposed security gate is supported by 12 of 17 (71%) members of the Woodland Knolls Homeowners Association, the project proponent. The gate is proposed to provide security for residents in the Association, who live along Durham Way, a dead-end private street. The gate is opposed by some members of the neighboring Woodland Estates community along Oakes Drive, near the intersection of Durham Way, and the most affected property owners whose property is along Durham Way adjacent to the proposed gate location. A petition signed by 76 residents of the 370 residences of the Woodland Estates neighborhood (21%) was submitted approximately one year ago opposing the gate (see Exhibit H). Opponents argue that the gate would reduce property values of homes along Oakes Drive and would create an unfriendly and unwelcome appearance to the neighborhood, while not providing any real security enhancement.

Pedestrian and equestrian public access easements exist over the portion of Durham Way where the gate is proposed. That southerly portion of Durham Way was vacated as a public street by the City in 1997, subject to reservation of such easements. The remaining portion of Durham Way to the north contains a 20-foot wide trail easement that connects to a public greenbelt trail maintained by the Hayward Area Recreation and Park District (HARD). Such trail also exists across Oakes Drive from Durham Way (see Exhibit B).

The HARD Board of Directors unanimously adopted a resolution on October 27 indicating it opposed the gate, "because it will deter and hinder the free and convenient access and use of the Hayward Area Recreation and Park District's much used and well-planned trailhead" and that "such use is for hikers, bicyclists and equestrians, both able-bodied and disabled" (see Exhibit M). HARD staff had submitted a letter dated October of last year (Exhibit N), indicating HARD approved of the gate design, provided HARD would be provided with remote key access. City staff relied on such input in its recommendation of support of the gate to the Planning Commission in April.

Although the gate would be required to include an access for pedestrians and equestrians via a design that is consistent with HARD, and East Bay Regional Park District standards, because of the position of the HARD Board, City staff is no longer recommending approval of the gate. Such recommendation is based on the inability to make one of the required findings for approval of a Site Plan Review application that states that the gate must be found to be "compatible with on-site and surrounding structures and uses..."

As indicated in the attached April 24, 2008 Planning Commission meeting minutes (Exhibit D), the Commission voted 4 to 3 to deny the project. The main impetus for the Commission's decision was based on the inability to make three of the four required findings to approve the Site Plan Review application, related to incompatibility with the surrounding areas, and opposition by some of the neighborhood residents.

The decision of the Planning Commission was appealed by Bill Maier, then-president of the Woodland Knolls Homeowners Association (see attached Exhibit C).

## **BACKGROUND**

Durham Way was extended north of the intersection of Oakes Drive and Durham Way in 1975 when the Woodland Knolls subdivision was created. That extension was approved as a private street by City Council at that time, and the subdivision's CC&R's reflect the homeowner's responsibility to maintain the private street. The first approximately 150 feet of area of Durham Way north of Oakes Drive, over which the gate is proposed, was constructed prior to the development of the Woodland Knolls subdivision. This short segment of Durham Way was a public street that was tied to the extension of Oakes Drive, and the development of the upper (eastern) Woodland Estates subdivision. Such segment was vacated as a public street by the City Council in 1997.

### 1997 Action on Previous Application -

In 1996, the Woodland Knolls Homeowner's Association (WKHA) proposed to install an automatic security access gate that was similar in design to the currently proposed gate. Upon recommendation by the Planning Commission in January of 1997, the City Council approved the gate in February, 1997 (see attached meetings minutes, Exhibit J). Such approval was accompanied by the vacation of the public (southern-most) portion of Durham Way, thereby making all of Durham Way a private street. Such action also resulted in conveyance of the

western portion of the abandoned street to the Eckert's (owners of the adjacent property to the west), and the eastern portion to the WKHA (owners of the adjacent property to the east). Although the Council resolution (97-016) associated with such action incorrectly indicated the conveyance was just to the WKHA, in fact, the adjacent property owners became owners of the land, by law, upon the vacation action in February of 1997. The vacation was approved "subject to the reservation of easements for pedestrian and equestrian access to the HARD Greenbelt trail and for public utilities and emergency access..."

The 1997 City Council meeting minutes (Exhibit J) on page 5 indicate that the actions to adopt resolutions supporting the proposed gate be conditioned on there being "a Homeowners Association resolution with written consent from a majority of the property owners." Although the files do not show such a resolution, the 1997 project files do contain a signed letter dated February 21, 1996, from four of five Association Board members stating, "On general meeting of Woodland Knolls Association was decided to install automatic gate. This decision was re-confirmed on general membership meeting October 24, 1995."

Gate construction and installation were delayed for unforeseen financial reasons, and the Homeowner's Association failed to request a time extension for the project approval, which expired in 1998. Staff did not pursue recording of the private street documents after the expiration of the 1997 Site Plan Review approval, until representatives of the Woodland Knolls Homeowner's Association contacted staff to do so. This delay did not impact the conversion of Durham Way to a private street, since State law does not require a street abandonment to be tied to the development of a project.

The Eckert's subsequently granted the Woodland Knolls Homeowner's Association a private street easement, executed on December 13, 2004, over their portion of the vacated street for "the purpose of vehicular and pedestrian ingress and egress, including the construction, reconstruction, operation and maintenance of entrance gates, public utilities, and sewers..." The easement was recorded by the Alameda County Recorder on March 17, 2005.

*Appeal of Planning Commission's April 24, 2008 Denial of the Site Plan Review Application –*

Mr. Maier's appeal letter states that information presented at the April 24, 2008, Planning Commission hearing in opposition to the gate was misleading, and inaccurate. Specifically, Mr. Maier states that monies have been set aside by the Association to repair Durham Way, and that the construction of the pedestrian/horse pass-through was designed to Hayward Area Recreation and Park District (HARD) specifications. Mr. Maier further states that the landscaping and lighting proposed at the gate entry area was reviewed by the homeowners, that Durham Way has always been a private street, and that the Woodland Knolls subdivision, and the extension of Durham Way, were constructed with the intention of having a homeowners association on a private road. Mr. Maier stresses the need for security in the neighborhood, and that the proposed gate is necessary to reduce crime in the area, since burglaries have become common.

Due to the interest in the project regarding the 1997 and related actions, staff held an information meeting on September 11, 2008, and sent invitations to that meeting to interested parties along

Oakes Drive, and Durham Way. Staff distributed a summary of the 1997 actions by the City Council to the meeting attendees (Exhibit E).

Also, a meeting was held on October 8 that involved several members of the Woodland Estates subdivision, as well as one owner (Maier) in the Woodland Knolls Homeowners Association (WKHA). Apparently, invitations to the meeting were distributed to all members of the WKHA. The meeting, which focused on security issues, was also attended by members of the Hayward Police Department's Community Policing division. Information about Neighborhood Watch efforts and other programs was distributed, and attendees agreed to meet regularly to discuss security issues. To date, to staff's knowledge, no agreement has been reached regarding the location of the proposed gate, nor its need.

On October 27, the HARD Board held a meeting to discuss the proposed gate, at the request of community members concerned with the gate. After hearing testimony regarding concerns with access to the HARD Greenbelt Trail that would be created if the gate were installed, the HARD Board of Directors unanimously adopted a resolution opposing the gate.

## **DISCUSSION**

The main reason given by the project proponent for the need for the gate is to enhance security for the neighborhood. Exhibit I contains a summary of reasons for the proposed gate. According to the majority of the Woodland Knolls residents, Durham Way has been, for many years, a place where non-residents have driven to congregate during the evening, and early morning hours to enjoy the view, but also to loiter. Residents report that they have placed numerous calls for police service.

The Hayward Police Department provided a summary of calls for service from the period of October, 2007, through September, 2008, for the reporting district that includes the Durham Way area, which also includes the adjacent Greenbriar subdivision (AR0430, see Exhibit O). The record cites a total of 19 calls for service during the last 12 months through end of September, which are comprised of the following:

- 3 burglary/theft calls
- 3 suspicious person, vehicle or circumstance calls
- 10 alarm sounding calls
- 3 miscellaneous calls (forgery, cruelty to a child, check on welfare)

Reflective of concerns expressed by some residents along Durham Way during the April Planning Commission regarding daytime crime, the report also indicates that 63 percent (12 of 19) of the calls were received between 8:00 am and 8:00 pm.

The 19 calls is a relatively low number of calls, and typical of more isolated subdivisions with larger lots, compared to more densely populated areas of the City. Residents feel that because of their remote location, police response is at times delayed, and that the gate would help to address such security concerns.

Although there currently exists only four other private security gates for single-family subdivisions in Hayward, three of those gates are located in this general vicinity, as indicated in Exhibit A: GreenBriar off Fairview Avenue, adjacent to the Woodland Knolls subdivision; Vista Bahia, located off Hayward Boulevard at Farmhill Drive; and Stonebrae, at the intersection of Hayward Boulevard and Fairview Avenue, which are generally on the fringe of development in Hayward.

Planning Commission Review -

At the April Commission hearing, 17 speakers addressed the Commission, the majority of whom spoke in opposition to the gate. As indicated in the meeting minutes (Exhibit D), a majority of the Planning Commissioners could not make three of the four findings required to approve a site plan review application. Commissioner Lavelle, who made the motion to deny the project, indicated she could not make the following findings:

1. Finding 1, in that the proposed gate was not compatible with on-site, and surrounding structures;
2. Finding 3, in that the gate would not comply with the intent of City Development policies and regulations; specifically, subsection (g) of the single-family communities standards of the Security Gate Ordinance, which she felt indicated that all property owners should want to be gated; and
3. Finding 4, since the proposed gate would not be operated in a manner acceptable and compatible with surrounding communities, because there is opposition by the neighbors, and there is no agreement to leave the gate open during the day.

Staff's Analysis -

Staff's recommendation to the Planning Commission to approve the Site Plan Review application was based on the conclusion that the security gate met all criteria and required standards of the City's Security Gate Ordinance and that all findings for a Site Plan Review approval could be made.

Security Gate Ordinance –

Subsection (a) of the Security Gate Ordinance standards for gates for "Single-Family Communities" indicate security gates "shall be permitted across private streets unless the Planning Director, in consultation with the City Engineer, determines....where public access to public amenities or facilities would be obstructed or hindered." Although staff concludes that the gate would meet all other applicable standards of the ordinance, it cannot continue to make such conclusion related to this standard, because of the HARD Board's position. Staff had previously relied on HARD staff's acceptance of the gate design to conclude such standard would be met. As proposed, the gate could be considered a hindrance to accessing the trail, since the six-foot wide pedestrian/access gate or opening that would be required to be installed would limit the ability of multiple users to access the trail simultaneously. Also, the gate could limit the ability of a non-handicapped equestrian to assist a handicapped equestrian through the gate.

*Findings required for Site Plan Review Approval –*

Four findings are required to be made in order for a site plan review application to be approved. In summary, based on the recent position by the HARD Board of Directors, staff cannot make the required findings as indicated below, and is therefore recommending against the project. The attached resolution summarizes responses to the findings.

**a. The development is compatible with on-site and surrounding structures and uses and is an attractive addition to the City.**

This finding cannot be made in that the six foot wide gate or opening that would be required to be installed to allow for pedestrian and equestrian access could hinder simultaneous access to the HARD Greenbelt Trail off Durham Way by multiple users, or could hinder access to that trail by handicapped equestrians. In addition, HARD's Board of Directors recently adopted a resolution finding that the gate will deter and hinder the free and convenient access and use of HARD's Greenbelt Trail trailhead, which is located within the Woodland Knolls subdivision, by both able-bodied and disabled members of the public.

**b. The development takes into consideration physical and environmental constraints.**

This finding cannot be made in that the gate, according to the HARD Board of Directors, may impede the access of disabled and able-bodied members of the public to the Greenbelt Trail, which trail head is located within the Woodland Knolls subdivision.

**c. The development complies with the intent of City development policies and regulations.**

The proposed gate does not comply with the intent of City development policies and regulations in that Hayward Zoning Ordinance Section 10-14.202(a) provides that a security gate shall not be permitted across a private street in a single-family development, if it is determined that the gate could hinder or obstruct access to public amenities or facilities. As determined by the HARD Board of Directors, the gate could hinder access to the HARD Greenbelt Trail, a public amenity and facility, by both able-bodied and disabled hikers, bicyclists and equestrians.

**d. The development will be operated in a manner determined to be acceptable and compatible with surrounding development.**

The gate would not be operated in a manner determined to be acceptable and compatible with surrounding development in that the gate could hinder or obstruct access to the HARD Greenbelt Trail by both able-bodied and disabled hikers, bicyclists and equestrians.

## ENVIRONMENTAL REVIEW

If disapproved, the project would be statutorily exempt from the California Environmental Quality Act (CEQA), per Section 15270 of the CEQA Guidelines: *Projects which are Disapproved.*

## FISCAL IMPACT

The Site Plan Review approval would have no General Fund fiscal impact.

## PUBLIC CONTACT

Many comments were received opposing the security gate, which are included as Exhibit H. Comments from Oakes Drive residents cited concerns with potential parking problems on Oakes Drive by hikers accessing the Ward Creek Trail, the loss of property values, creating a separate neighborhood within a neighborhood and the sense of isolating a part of a neighborhood that never before appeared isolated. A minority of Durham Way residents stated that the security gate will create a sense of divisiveness in the neighborhood and will not provide true security in that anyone wanting to enter the private street will find some other way to access the neighborhood.

On November 7, 2008, a notice of the public hearing was mailed to the properties within a 300-foot radius of the gate site, and to interested parties. A notice of the hearing was also published in *The Daily Review* on November 8. No responses to such notice were received at the time this report was completed.

## NEXT STEPS

If the appeal is denied, no further action is required.

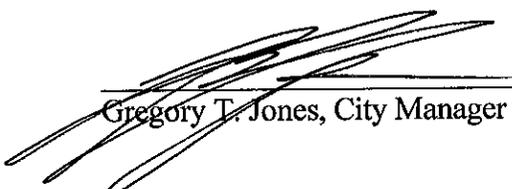
If the City Council wishes to sustain the appeal, based on the ability to make all of the required findings for Site Plan Review approval, it should direct staff to return with findings in support of the project and recommended conditions of approval.

Prepared by:



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David Rizk, AICP  
Director of Development Services Department

Approved by:

  
\_\_\_\_\_  
Gregory T. Jones, City Manager

- Attachments:
- Exhibit A. Neighborhood Associations Map
  - Exhibit B. Greenbelt Trail Exhibit
  - Exhibit C. Appeal letter dated April 30, 2008 from Bill Maier, President of the Woodland Knolls Homeowners Association
  - Exhibit D. April 24, 2008 Planning Commission Meeting Minutes
  - Exhibit E. Summary of 1997 Action and History Associated with Previously Proposed Gate
  - Exhibit F. April 24, 2008 Planning Commission Staff Report (without attachments)
  - Exhibit G. Woodland Knolls Homeowner's Association Supplemental Information (presented to Planning Commission)
  - Exhibit H. Correspondence in Opposition (presented to Planning Commission)
  - Exhibit I. Correspondence in Support (presented to Planning Commission)
  - Exhibit J. City Council Meeting Minutes, February 11, 1997
  - Exhibit K. Ordinance No. 98-07 (Security Gate Ordinance)
  - Exhibit L. Exhibit of Gate that Meets HARD Standards for Pedestrian and Equestrian Access
  - Exhibit M. October 31, 2008 Letter of Opposition to Gate from the Hayward Area Recreation and Park District
  - Exhibit N. October 26, 2007 Letter from HARD Staff Indicating Approval of Proposed Gate Design
  - Exhibit O. Police Reporting District AR0430

Plans  
Draft Resolution

**DUE TO THE LENGTH AND COLOR OF  
THE REFERENCED EXHIBITS, THEY  
HAVE BEEN ATTACHED AS  
SEPARATE LINKS**

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

*mae*  
11/1/08

Introduced by Council Member \_\_\_\_\_

RESOLUTION DENYING THE APPEAL AND UPHOLDING  
THE PLANNING COMMISSION'S DENIAL OF SITE PLAN  
REVIEW NO. PL-2007-0463

WHEREAS, Site Plan Review Application No. PL 2007-0463 involves a request by applicant, Woodland Knolls Homeowners' Association, to install an automatic security access gate across Durham Way, a private street, approximately 130 feet northerly of the intersection of Durham Way and Oakes Drive, in a Single-Family Residential (RSB40) Zoning District (the Project); and

WHEREAS, on April 24, 2008, the Planning Commission held a public hearing on the Project, finding it categorically exempt from the California Environmental Quality Act and denying the request to install an automatic security access gate across Durham Way; and

WHEREAS, the Woodland Knolls Homeowners' Association appealed the Planning Commission's denial of the Project, alleging that information presented in opposition to the Project was inaccurate and misleading; and

WHEREAS, the City Council reviewed and considered all the material presented, including the record of the proceedings before the Planning Commission, at a public hearing held on November 18, 2008.

NOW THEREFORE, the City Council hereby finds and determines that:

1. The Project is statutorily exempt from CEQA review pursuant to Section 15270 of the CEQA Guidelines, Projects which are Disapproved.
2. The Project is not compatible with on-site and surrounding structures and uses in that the six-foot-wide gate or opening that would be installed to allow for pedestrian and equestrian access could hinder simultaneous access to the HARD Greenbelt Trail off Durham Way by multiple users or access to that trail by disabled equestrians. In addition, HARD's Board of Directors recently adopted a resolution finding that the gate will deter and hinder the free and convenient access and use of HARD's Greenbelt Trail trail head, which is located within the Woodland Knolls subdivision, by both able-bodied and disabled members of the public.
2. The Project does not take into consideration physical and environmental constraints, in that the gate, according to the HARD Board of Directors, may

impede the access of disabled and able-bodied members of the public to the Greenbelt Trail, which trail head is located within the Woodland Knolls subdivision.

3. The Project does not comply with the intent of City development policies and regulations in that Section 10-14.202(a) provides that a security gate shall not be permitted across a private street in a single-family development, if it is determined that the gate could hinder or obstruct access to public amenities or facilities. As determined by the HARD Board of Directors, the gate could hinder access to the HARD Greenbelt Trail, a public amenity and facility, by both able-bodied and disabled hikers, bicyclists and equestrians.
4. The Project would not be operated in a manner determined to be acceptable and compatible with surrounding development in that the gate, according to HARD, could hinder or obstruct access to the HARD Greenbelt Trail by both able-bodied and disabled hikers, bicyclists and equestrians.

NOW THEREFORE BE IT RESOLVED, upon the basis of the aforementioned findings, the City Council hereby denies the appeal and upholds the Planning Commission's denial of Site Plan Review No. PL-2007-0463.

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