

City Council Meeting
Tuesday, May 22, 2012
Supplemental to Attachment XXI –
Correspondence in Support of
Walmart Project
(19 in Support)

Supplemental to Attachment XXI (Correspondence in Support of Walmart Project)

From: Cecelia Cooke
Sent: Tuesday, May 22, 2012 3:33 PM
To: List-Mayor-Council
Cc: Miriam Lens; David Rizk; Katy Ramirez
Subject: Walmart Support Phone Call 5/22/12

Valerie Lee, Hayward Constituent, said to pass on to Mayor and City Council that she is in support of having a Walmart in Hayward.

She lives in the Hayward Hills and goes to that area to shop.

She is not against unions, but thinks Walmart should not be turned away because they are not union.

Her phone number if needed is: [REDACTED]

Thank you.

Cece

Cecelia Cooke
Office of the Mayor and City Council
City of Hayward
777 B Street
Hayward, CA 94541
(510) 583-4340
cecilia.cooke@hayward-ca.gov

From: Tom, Pamela [mailto:[REDACTED]]
Sent: Tuesday, May 22, 2012 12:33 PM
To: Michael Sweeney; List-Mayor-Council
Cc: dan@temkinproperty.com; Dick@LoewkeAICP.com; David Rizk; Fran David; Michael Lawson; Maureen Conneely; Lawson, Kristina
Subject: Hayward 880, LLC

Attached are:

(1) May 22, 2012 letter from Kristina Lawson to the Honorable Mayor Michael Sweeney and Members of the City Council regarding the May 22, 2012 City Council Meeting, Agenda Item 8 (Public Hearing); and

(2) two attachments.

Pam Tom

Legal Secretary to:
Alvin T. Levitt
Clayton B. Gantz

Supplemental to Attachment XXI (Correspondence in Support of Walmart Project)

Ray F. Triana

Kristina Lawson

Manatt, Phelps & Phillips, LLP

One Embarcadero Center, 30th Floor

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ptom@manatt.com



Kristina Lawson
Manatt, Phelps & Phillips, LLP
Direct Dial: (415) 291-7555
E-mail: KLawson@manatt.com

May 22, 2012

Client-Matter: 45528-030

BY E-MAIL

Honorable Mayor Michael Sweeney
and Members of the City Council
City of Hayward
City Hall
777 B Street
Hayward, CA 94541-5007

Re: May 22, 2012 City Council Meeting, Agenda Item 8 (Public Hearing)

Dear Honorable Mayor Sweeney and Members of the City Council:

As you know, this office represents Daniel Temkin and Hayward 880, LLC in connection with land use and entitlement matters for the distressed shopping center located at 2480 Whipple Road in Hayward. Over one year ago, on March 23, 2011, Hayward 880, LLC filed a formal application for a building permit (Building Permit applications BI-2011-0885/0989/0990) to allow tenant improvements to be constructed for a new supermarket in the now vacant, former Circuit City building at 2480 Whipple Road (the "Pending Application"). After a year of questionable legal proceedings (including a proposed supermarket moratorium), a baseless appeal, and an unlawful decision by your Planning Commission, this matter is now finally scheduled for consideration by the City Council.

Late yesterday (after 5:00 p.m.) we received a copy 29-page letter from Mark Wolfe on behalf of the person and organization that filed the original appeal of the planning clearance for the project. Attached to this letter in question and answer format is a complete response to Mr. Wolfe's correspondence. We find its baseless contentions completely without merit, and wholly lacking in evidentiary support.

We fully support your expert staff's recommendation that the City Council reverse the April 5, 2012 decision of the Hayward Planning Commission and approve the planning clearance for the proposed grocery store at 2480 Whipple Road. Your expert staff, and Hayward 880's independent land use and planning expert, Richard Loewke, have all independently determined that the Pending Application is consistent with all zoning requirements, and all requirements of the existing conditional use permit for the site (Use Permit No. PL-2004-0039). Other experts, such as Philip Lehrman, have reached the same conclusion. (See Letter from Philip Lehrman, dated May 16, 2012, (page 342 of your agenda packet).) These expert determinations mirror our



Honorable Mayor Michael Sweeney and Members of the City Council
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conclusion that the proposed use is fully consistent with both the existing use permit and the underlying zoning regulations. We refer you specifically to our previous correspondence to the City of April 26, 2011, May 3, 2011, and December 21, 2011 regarding this matter, which correspondence we incorporate herein by reference, wherein we also note that Hayward 880, LLC has vested rights under the existing use permit which cannot be modified or revoked. We also refer you to, and incorporate herein, the December 14, 2011 Letter from Judy Davidoff to David Rizk on the same subject.

A copy of the expert determination made by Richard Loewke is attached hereto, and incorporated herein, for your reference.

1. Relevant Procedural Background

The matter scheduled for your consideration is a very unusual matter for the City Council: *you are being asked to provide planning department clearance for a building permit application.* You are not being requested to issue a new entitlement for 2480 Whipple Road – in 2004, Hayward 880, LLC obtained a conditional use permit that authorizes commercial and retail uses at the site. The 2004 use permit was unanimously approved by the City Council.

As a review of several years of City Council agendas indicates, this “planning department clearance” is not a matter typically handled by the City’s legislative body. Planning clearance is a matter normally handled administratively by the City’s development services department or planning department because of the special planning and land use expertise that resides in these departments. These departments are the City’s institutional and historical knowledge base, and can and do provide apolitical, expert advice and opinion on a wide variety of matters, including the Pending Application.

As set forth in the staff report, your expert City staff has determined that the Pending Application meets all zoning ordinance requirements, and all requirements of the existing conditional use permit for 2480 Whipple Road. Where, like here, a use is consistent with applicable zoning, and a conditional use permit has been obtained, then the next step generally would be to issue a building permit, the issuance of which is presumptively a ministerial rather than discretionary act.¹ (*Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, citing *Day v. City of Glendale* (1975) 51 Cal. App.3d 817, 820-821.) The only question before you on appeal is whether the proposed use involves the sale of retail goods

¹ The City Council’s review of the planning clearance for the site is ministerial. The Council must make its determination based on objective factors, such as whether the proposed use complies with the requirements of the zoning ordinance and use permit. The Council may not exercise discretion in connection with the Pending Application.



Honorable Mayor Michael Sweeney and Members of the City Council
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with a regional or sub-regional marketing base. Your answer to this question must be based on objective factors.

As you may be aware, the only reason this matter is before the City Council is because following the issuance of planning department clearance for the Pending Application an appeal was filed to target the tenant proposed for 2480 Whipple Road. The appeal was not based on any land use or planning principle, nor was the appeal based on any land use or environmental law. Quite simply, the appeal of your City staff's expert determination requested that the City deny planning department clearance for the Pending Application based on the desire to exclude a particular retailer from the City.

We have reviewed the previously issued building permits for the shopping center and the adjacent Target shopping center, and have determined that this is the first time the planning department clearance has been appealed. Previously, the City issued building permits (under the same standards applicable here) for a nail salon, a Quiznos, a Starbucks, a taco shop, and a hair salon. All of these uses were determined to satisfy the requirement that uses in this zone involve the sale of retail goods with a regional or sub-regional marketing base. Accordingly, in addition to the experts' conclusion that the proposed grocery use is consistent with the applicable City zoning, the City's own precedent indicates that a grocery use would be consistent with the applicable zoning requirements.

2. The Planning Commission's Unlawful Decision

On April 5, 2012, the City's Planning Commission considered the appellant's request to overturn the evidentiary-based decision of your expert City staff. Like the matter pending before you, the matter before the Planning Commission was whether the City's planning department properly determined that the Pending Application complied with all applicable planning and land use regulations and existing entitlements. At its April 5 meeting, the Planning Commission heard a comprehensive presentation by your expert City staff that the Pending Application fully complied with all applicable law. The Planning Commission also heard from land use attorneys that specialize in land use and environmental law, from real estate brokers that are experts in the Hayward and surrounding markets, and from many local residents who offered expert testimony on the matter before the Planning Commission. In fact, as your staff report accurately notes, a majority of the speakers at the Planning Commission offered support for the Pending Application.

Notwithstanding the overwhelming substantial evidence presented indicating that the Pending Application complied with all applicable planning and land use regulations and entitlements, the Planning Commission unlawfully disregarded this evidence and made a determination without any evidentiary basis whatsoever. The Planning Commission's



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determination did not adhere to the applicable law and must not be sustained. (See e.g., *Azusa Land Reclamation Co., Inc. v. Main San Gabriel Watermaster* (1997) 52 Cal.App.4th 1165, 1192; *Bright Dev. v. City of Tracy* (1993) 20 Cal.App.4th 783.)

3. **Tenant Identity Is Not a Proper Factor To Be Considered In A Land Use and Planning Determination**

A great deal of scrutiny has been placed on the identity of the tenant proposed for 2480 Whipple Road. While the identity of the tenant might be interesting, and in some cases even useful for assessing potential land use impacts, the City may not exclude particular tenants from its jurisdiction just because some of the members of the legislative body do not like that particular tenant.

In *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, the Third District Court of Appeal reminded that review of land use applications, such as the Pending Application, must be based on lawful factors:

While a city has broad authority over the regulation of land use within its territory, that authority is not unlimited. **Where certain uses are permitted, a city cannot arbitrarily exclude others who would employ a similar use.** .. Zoning and building laws "cannot be used unqualifiedly to restrict competition" ... or simply to shield existing businesses from competition ... While valid zoning regulations may affect competition and have other economic effects, **a city does not have carte blanche to exclude a retail merchant that it, or some of its residents, do not like.** ..

(*Id.* at 1014 [internal citations omitted, emphasis added].)

The planning department clearance pending before you does not extend to tenant approval. In addition, to the extent Hayward 880, LLC or the proposed tenant is treated differently than any other proposed end-user of the site, such treatment would violate the equal protection and due process rights of Hayward 880, LLC and the proposed tenant. (42 U.S.C. § 1983; see also *Genesis Environmental Services v. San Joaquin Unified Air Pollution Control Dist.* (2003) 113 Cal.App.4th 597, 605.)

The question here is whether the use complies with the applicable zoning requirements, including the existing use permit. As set forth above, and in your staff report, your expert staff, and independent land use and planning experts have determined the Pending Application to be in full compliance with all applicable law.



Honorable Mayor Michael Sweeney and Members of the City Council
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4. **In Order to Ensure a Fair Hearing, The City Council Must Immediately Make the Disclosures Required by Government Code Section 84308, and the City Attorney Must Determine Whether Any Conflicts Of Interest Exist**

As the City Council is aware, there is an upcoming City Council election scheduled for June 5, 2012. In light of the temporal proximity to the election, we respectfully request full compliance with all campaign finance laws applicable in the land use entitlement process, including Government Code section 84308. We respectfully request that all Councilmembers and all participants in this matter review their campaign contributions and make all disclosures necessary in advance of Tuesday's public hearing. We further request the City to inform all participants in the proceeding of section 84308's mandatory requirements.

In addition, pursuant to the California Public Records Act (Gov. Code, §§ 6250 et seq.) and all applicable law, following tonight's meeting please provide the undersigned with copies of all filed campaign contribution reports for the past 12 months for all current City Councilmembers and all City Planning Commissioners.

We have also been informed that statements have been made by one or more of the Councilmembers which may indicate a bias and animus so extreme against the Pending Application that their participation in the hearing would deny the appellant a fair hearing. (See e.g., *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1169.) It is absolutely essential, and legally required, that all decisionmakers be disinterested and unbiased; the tenets of procedural due process require that the hearing be conducted by reasonably impartial, uninvolved reviewers. (*Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 482.) We respectfully request the City Attorney to determine whether any conflicts exist.

5. **As a Practical Matter, The Pending Application Is Good For Hayward And Approval Will Signal That Hayward is "Open for Business"**

As we have previously stated, most commercial property owners would have already walked away from this type of non-performing investment property. However, because our clients are a family partnership that takes great pride in all of its properties, our clients have been impeccably maintaining the 2480 Whipple Road shopping center since Circuit City went out of business. Hayward 880, LLC has maintained landscaping, cleaned graffiti and has gone to great expense to remove abandoned vehicles and furniture that are routinely dumped at the property due to the lack of activity at the almost vacant center. Our clients have reduced or waived rents in order to encourage the shop tenants to remain at the property. Unfortunately, four out of the eight shop tenants have gone out of business already, and it is unlikely the remaining four can survive without an anchor tenant to activate the center.



Honorable Mayor Michael Sweeney and Members of the City Council
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As you know, vacant, blighted space invites criminal activity. Three of the four remaining businesses at 2480 Whipple Road have been robbed. Wingstop, which is a quick format restaurant owned by a local franchisee and is the sole remaining tenant in the back building, has been robbed at gunpoint at least twice. Again, this property is very close to reaching a point of no return.

In our several letters to the City, we have explained in great detail why the proposed supermarket use fully complies with the existing conditional use permit and underlying site zoning. Your expert staff and our independent consultant has also determined that the proposed use fully complies with all applicable law. Accordingly, from a purely legal perspective, it is clear that the proposed use is in full compliance with the law. From a practical, economic perspective, the proposed supermarket use also makes perfect sense. A new supermarket at the City's southern gateway will:

- Offer more shopping options to the City's residents;
- Provide goods at significant value;
- Revitalize the shopping center and neighborhood;
- Create over 100 new jobs;
- Generate sales and property tax revenues for the City; and
- Bring a business to the City that has a strong record of giving back to local communities.

* * *

In summary, for all of the reasons set forth above and as may be presented at Tuesday's hearing, we urge you to support your expert staff's recommendation that the City Council reverse the April 5, 2012 decision of the Hayward Planning Commission and approve the planning clearance for the proposed grocery store at 2480 Whipple Road.

Very truly yours,

A handwritten signature in black ink that reads "Kristina Lawson / P.T." The signature is written in a cursive, slightly slanted style.

Kristina Lawson

Enclosure



Honorable Mayor Michael Sweeney and Members of the City Council
May 22, 2012
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cc: Hayward 880, LLC
Richard Loewke, AICP
David Rizk, Development Services Director
Fran David, City Manager
Michael Lawson, City Attorney
Maureen Conneely, Assistant City Attorney

302400389.3

**HAYWARD 880, LLC'S RESPONSE TO
5/21/2012 CORRESPONDENCE
FROM MARK WOLFE TO HAYWARD CITY COUNCIL**

- **Is a new CUP required for the shopping center because Circuit City closed in 2009?**

No. The shopping center has been in continuous use in accordance with the requirements of Use Permit No. PL-2004-0039 since 2004. While Circuit City's bankruptcy resulted in the loss of the shopping center's "anchor" tenant, the shopping center use has never been discontinued. Today, a Starbucks, Quiznos, and a Wingstop are tenants of the shopping center. The shopping center use has never ceased operation for any period of time, and Section 10-1.3270 of the Zoning Ordinance is therefore inapplicable as a matter of law.

Even if Mr. Wolfe's interpretation of the applicable law were correct (which it is not), his argument would fail. The Circuit City space has been leased on a seasonal basis to Spirit Halloween store, which was in operation less than six months prior to the filing of Building Permit applications BI-2011-0885/0989/0990.

- **Is additional environmental review required?**

No. The planning clearance for Building Permit applications BI-2011-0885/0989/0990 is not a project subject to the requirements of the California Environmental Quality Act ("CEQA"; Pub. Resources Code, §§ 21000 et seq; 14 Cal. Code Regs., §§ 15000.) CEQA only applies to discretionary actions proposed to be carried out or approved by a public agency. (Pub. Resources Code, § 21080(a).) An action is discretionary if the City is required to exercise judgment in deciding whether to approve or disapprove the particular activity, as distinguished from situations where a public agency merely has to determine whether there has been conformity with objective standards in applicable ordinances or other laws. (Pub. Resources Code, § 21080; CEQA Guidelines, § 15357.) Here, the only matter before the City Council is whether the proposed use conforms with one of the requirements of the zoning ordinance. As a result, CEQA is not applicable. (See *Health First v. March Joint Powers Authority* (2009) 174 Cal.App.4th 1135.)

Notwithstanding that CEQA is not applicable to the pending building permit applications, both the City and Hayward 880 conducted a traffic impact analysis and determined that no significant traffic impacts would result from the proposed re-tenanting of the Circuit City site.

- **Does the proposed use involve the sale of retail goods with a regional or subregional marketing base?**

Yes. As your expert staff has concluded, and as Hayward 880's expert has separately concluded, the proposed use involves the sale of retail goods with a regional or subregional marketing base. These expert conclusions, which are based on accepted planning definitions and standards, are set forth in the staff report and the letter from

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Manatt, Phelps & Phillips, LLP
May 22, 2012

Richard Loewke to the City Council. Mr. Wolfe's "interpretation" of the City's zoning ordinance has no basis in either the law or in City precedent, which has found uses including a hair salon, sandwich shop, coffee shop, and nail salon to involve the sale of retail goods with a regional or subregional marketing base. There is no substantial evidence or any expert opinion included in Mr. Wolfe's correspondence which could lead the City to ignore its own law and precedent.

302425622.1



May 18, 2012

Honorable Mayor Sweeney and City Council
City of Hayward
777 B Street
Hayward, CA 94541-5007

SUBJECT: Analysis of Market Orientation for Walmart Market at 2480 Whipple Road

Dear Mayor Sweeney and Council,

I am the principal of an urban and environmental planning firm established in 1986, and a Charter Member of the American Planning Association, providing planning, zoning and environmental analysis for public and private interests throughout California. My resume is attached for reference.

I have been asked to provide a professional opinion as to whether the Walmart Market supermarket use satisfies the criterion identified in Section 10-1.1620b(6)(b) of the City's Zoning Ordinance. This criterion provides that the following "Retail Commercial Uses" are permitted in the Industrial District, subject to the approval of a conditional use permit:

"Sale of retail goods with a regional or sub-regional marketing base, including but not limited to discount retail or warehouse retail, on a minimum 4-acre parcel which is visible from Interstate 880 or State Highway 92."

The City relied on the foregoing ordinance provision in its issuance of Conditional Use Permit PL-2004-0039 in 2004 for construction and operation a retail center consisting of a 34,000 square foot regional retail building together with two smaller in-line shop buildings on a 5-acre site located at 2480 Whipple Road in the Industrial District. The Use Permit authorizes occupancy of the larger 34,000 square foot building by any retail use which satisfies the criterion contained in Zoning Ordinance Section 10-1.1620b(6)(b) by showing that it would market its goods to customers within the region or sub-region.

The initial tenant of the principal 34,000 square foot building, Circuit City, was qualified under Section 10-1.1620b(6)(b) as a use which would market to customers within the "region" or "sub-region", but closed in 2009, leaving the building vacant for the past three years. At the time of its operation in Hayward, Circuit City concurrently operated a nearby store in Fremont, approximately 10 miles to the south, also situated with direct access to I-880. The market base of the Hayward Circuit City store therefore extended from Hayward south along the I-880 corridor to include a portion of adjoining Union City.

The City of Hayward has repeatedly relied on Section 10-1.1620b(6)(b) for issuance of use permits for a number of other retail stores directly adjoining the I-880 freeway. One of these is the adjoining Target store located at 2499 Whipple Road. This Target store sells pharmacy items and fresh groceries (as does Walmart Market), and is situated 5.8 miles south of a second Hayward Target store adjoining I-800 at 19661 Hesperian Boulevard. The Hesperian Blvd. Target also sells fresh groceries and pharmacy goods.

Mayor Sweeney & Council
May 18, 2012
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The City's General Plan designates the subject property as part of Hayward's Industrial Corridor (IC Map Designation) which extends from Whipple Road on the south to "A" Street and the Hayward Airport on the north. The Land Use Element notes that this Industrial Corridor has long attracted warehouse and distribution facilities due to its *"easy access and central location within the East Bay"*, but that a changing economy is bringing new uses to the corridor, including high-tech industries, offices, commercial uses and even residential (page 2-12). The Land Use Element explains that one of the reasons for this diversification within the Industrial Corridor is that it contains several areas (including Whipple Road) which *"function as important gateways to the city."*

The General Plan Economic Development Element states that Hayward's *"central location in the Bay Area has been a key factor in the success of the retail sales market"* (page 4-6). It goes on to explain that in past years, Hayward's retail establishments *"attracted most of the trade generated by local residents and captured business from outside the primary market area"*, but notes that more recently, *"there has been a significant increase in the number and type of retail establishments in surrounding cities."* The analysis in the Economic Development Element focuses on Hayward's capture of retail sales along the I-880 corridor between San Leandro and Fremont. One of the key policies in this section of the General Plan is to attract new businesses by indentifying *"upscale retail (such as bookstores, coffee stores, gourmet food shops, etc.) that could serve the Hayward community, the surrounding region and commuters"* (Policy 5.5).

Book stores have since largely evolved into on-line retailers, and abundant competition in the market place has led to closure of the Hayward Circuit City store (and others). As emphasized in the Economic Development Element, retail facilities situated along the I-880 corridor in Hayward now face growing competition, particularly from new retail businesses along I-880 in the adjoining communities of Fremont, Union City, and San Leandro.

The City's Zoning Ordinance defines use of the 34,000 square foot building at 2480 Whipple Road by Walmart Market as a *"Supermarket"*, based on its retailing of *"food, beverages, drugs, variety items and similar goods."* This same set of retail goods is currently marketed to customers within Hayward, San Leandro and Union City by the two Hayward Target stores (including the one across Whipple Road from the subject property). Consistent with the findings of City's General Plan Economic Development Element (and Section 10-1.1620b(6)(b)), the marketing of food and drug products by Target from their two Hayward locations with direct exposure and access to I-880 focus on reaching customers both within the entire City of Hayward as well as the adjoining communities of Union City and San Leandro. The Walmart Market supermarket use would retail the same food and drug products to this same base of customers including the cities of Hayward, San Leandro and Union City.

Mayor Sweeney & Council
May 18, 2012
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The language of Section 10-1.1620b(6)(b) refers to the "sale of retail goods with a regional or sub-regional marketing base" on parcels which are "visible from Interstate 880". The specific size, freeway visibility, and I-880 accessibility of the subject property all focus on marketing to a customer base which extends throughout Hayward and beyond. Furthermore, the subject property is situated at Hayward's southerly border with Union City. In order to be successful, both the existing Target and proposed Walmart Market must necessarily market their food and drug products to a customer base which includes Union City, Hayward and parts of San Leandro.

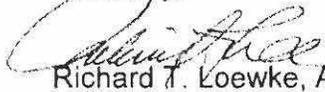
The staff's report and PowerPoint presented to the Hayward Planning Commission noted that the California Planning Roundtable defines regional as "pertaining to activities or economics at a scale greater than that of a single jurisdiction and affecting a broader geographic area." This definition is consistent with the following Association of Bay Area Governments (ABAG) definition of "subregion":

"While a subregion may be defined as a county and the cities and local agencies within it, a subregion may also be a group of cities and local agencies within a county or an area that crosses county boundaries."

The nine counties surrounding San Francisco Bay are organized as a single geographic "region", and are represented by ABAG. Inside this region, a number of functional subregions may be identified for purposes of land use and transportation planning, air quality management, promotion of economic development and defining specific customer market bases. The Cities of Oakland and San Leandro, for example, have established a "subregional program" for coordinated planning and economic development, with direct support from ABAG. Further reinforcing the concept that a subregion is more than one individual community but less than the entire region is CEQA Guidelines Section 15206, which defines a project as having an impact of "areawide" significance if its effects extend "beyond the city or county in which the project is located".

In summary, the Walmart Market use at 2480 Whipple Road would be situated with visibility and direct access from an interstate freeway, and will necessarily draw from a market base which extends well beyond the boundaries of Hayward. Like the adjoining Target food store use, the Walmart Market is a defined "Supermarket" use which will therefore draw from a subregional market base, satisfying the criteria in Section 10-1.1620b(6)(b).

Sincerely,


Richard T. Loewke, AICP

cc: Kristina Lawson
Daniel Temkin

LOEWKE PLANNING ASSOCIATES
URBAN & ENVIRONMENTAL PLANNING

Biography - Richard T. Loewke, AICP

My consulting practice focuses on major land use, economic development and environmental analysis, involving projects within the San Francisco Bay Area and throughout California. As a practitioner with 35 years of experience, my clientele include major corporations, private land owners, city and county governments, redevelopment agencies, special districts and joint powers authorities. A significant portion of my consulting experience has focused on the preparation of general and specific plans, supporting environmental documents, and implementing ordinances and strategies. A complete summary of projects and services may be viewed on my web site at www.Loewke.com.

Education

- Bachelor of Science in City & Regional Planning, California Polytechnic State University, San Luis Obispo, Calif., June 1974.
- Master of Urban Planning, San Jose State University, San Jose, California, July 1982.
- Post-Graduate Coursework, University of Calif. (1978 to Present). Coursework in California Planning, Subdivision and Environmental Law, Fiscal Impact Analysis and Related Topics.

Professional Memberships

- American Planning Association, Charter Member.
- American Institute of Certified Planners, Comprehensive Examination, November 1979.

Private Practice

- **Richard T. Loewke, AICP Urban & Environmental Planning**
Established in 1985, my consulting practice involves the preparation of land use, economic development, environmental studies and implementing ordinances and strategies. Over the past 24 years I have served as the leader of multi-disciplinary project teams involving the preparation of major general plan documents, specific plans, zoning and related ordinances, environmental impact reports, expanded negative declarations, development feasibility analyses, and municipal services and annexation studies. Available on our company web site is background information on recently completed specific plans and environmental documents for large-scale commercial, residential and mixed use projects, as well as implementing ordinances in the Cities of Antioch, Berkeley, Brentwood, Pleasant Hill, San Ramon, Oakley and Moraga. Other services include project team management, visual simulation and expert witness testimony.

Municipal Planning

- **Director of Planning & Building, City of Martinez, California: 1983-1985**
Administration of staff of 19 full-time employees. Managed planning and building inspection services for a city of 30,000 population.
- **Zoning Administrator, City of Salinas, California: 1981 - 1983**
Manager of Development Review Division with 5 employees responsible for permit processing; code enforcement for the Monterey County Seat, with a Population of 85,000.
- **Associate Planner, City of Sunnyvale, Calif.: 1977 - 1981**
Chief Project Planner for dynamic Silicon Valley city of 110,000 population during its principle industrial growth period.
- **Planner I, City of Saratoga, Calif.: 1974 - 1977**
Responsible for preparation of general plan land use, housing and related elements, and management of design review process for community of 30,000.

From: peter padilla [REDACTED]
Sent: Tuesday, May 22, 2012 12:41 PM
To: List-Mayor-Council
Subject: Hayward Walmart Market

I'm all for it. Can you tell me more about this? Will it be a market like to buy food, vegetables, produce etc.?

Thank you,

Peter

From: Barbara Sacks [REDACTED]
Sent: Tuesday, May 22, 2012 7:30 AM
To: List-Mayor-Council
Subject: In Support of 880/Whipple Proposed Walmart

Mr. Mayor and Council Members:

I urge you to follow the excellent direction you have from City Staff and overturn the Planning Commission decision denying Mr. Daniel Temkin his legal rights and denying Walmart access to his property.

Barbara Sacks

From: Javier Rincon [REDACTED]
Sent: Tuesday, May 22, 2012 6:48 AM
To: List-Mayor-Council
Subject: Fwd: Letter of Support for Walmart Market in Hayward

Sent from my iPhone
Thanks..... Javier

Begin forwarded message:

From: Javier Rincon [REDACTED]
Date: May 20, 2012 7:40:33 PM PDT
To: list-mayor-council@hayward-ca.org
Subject: Letter of Support for Walmart Market in Hayward

Good day,

I am a homeowner and tax payer in Eden Shores community in S. Hayward. I am sending this note to request your support for Walmart's market project to be open in the old Circuit City building.

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I am deeply disappointed by the conduct of the Planning Commission board when in the last meeting they approved the appeal from the union to block this project. The group's job is to follow rules and promote fair commerce. Instead 4 of the appointed commissioners approved the appeal and denied the Walmart project to move forward. They went against advice from the city legal counsel and the work of the city planner director.

The approval for the Walmart project will add jobs and revenue to the city of Hayward, as you know, very needed. Moreover, I want to shop there and want to have the option to pay less for my groceries, just like people against this project have the right and option to shop elsewhere. The evident decay of the city of Hayward or its financial progress is your responsibility. Please support this project and allow Hayward residents the opportunity to have more options to shop at better prices.

Thank you,

Javier Rincon


From: Carlos Vega 
Sent: Tuesday, May 22, 2012 12:57 AM
To: List-Mayor-Council
Subject: CITY COUNCIL OF HAYWARD MEETING, MAY 22, 2012

TO : The Honorable Mayor and Councilmembers of the City of Hayward, CA

Greetings!

With all due respect.

What will happen to the property if the Hayward City Councilmembers will continue to ignore the general sentiments of Hayward residents favoring the opening of WalMart? Will the Honorable Councilmembers continue to favor 'UFCW' and disregard the City Land Use Law?

To the Honorable approving authorities of the City of Hayward, may we be guided by the wisdom that is focused to the economic aspect that would eventually benefit the city and its residents.

Respectfully yours,

CARLOS P. VEGA

From: [REDACTED]
Sent: Monday, May 21, 2012 3:14 PM
To: List-Mayor-Council
Subject: Walmart Grocery

I understand that you are meeting to consider turning the old Circuit City into Walmart grocery. We are not Hayward residents but live in Union City right over the city line. We would definitely benefit from the low prices that Walmart would offer. Please vote to approve this move.

Jill and Steven Baer
[REDACTED]

From: Mitchie Aquino [REDACTED]
Sent: Monday, May 21, 2012 11:50 AM
To: List-Mayor-Council
Subject: Walmart in Hayward

I strongly support to have our Hayward City Council approve the Walmart Market at the closed Circuit City on Whipple Ave. @Industrial Parkway in Hayward.

I believe that having Walmart in the vicinity will be very beneficial to all Hayward Residents.

Thank you for your consideration.

Respectfully,
Mitchie Aquino
[REDACTED]

From: Kevin Kelly [REDACTED]
Sent: Monday, May 21, 2012 11:41 AM
To: List-Mayor-Council
Subject: Re: walmart store

I have been a resident of Hayward most of my life and want to encourage you to vote to have Walmart Market move into to the old Circuit City. I think it will be good for the residents we would have a place to shop that will fit our incomes and it would be good tax revenue.

Kevin Kelly

From: [REDACTED]
Sent: Monday, May 21, 2012 10:30 AM
To: List-Mayor-Council
Subject: Hayward Walmart Market

To City of Hayward and Council...

As a senior citizen on a fixed income and living in an adult mobile home community, I want to first thank the City Council for fighting for and considering the Hayward senior communities of which there are several. Your support of the Rent Control Ordinance serves as a blessing to all of us.

I would also like to request your support of the Hayward Walmart Market. I have heard good and positive things about the Walmart Markets in other areas.

With the cost of gas and groceries these days and the ridiculous ads put out by Lucky and Safeway (visit the store on every day of the week and get a decent price on an item or buy 10 of certain items to get a sale price) ... who can afford the gas to drive to these stores every day to take advantage of their "ridiculous sales??" There are many things that could be said about all of the other grocery stores in our area and the concern about traffic (traffic will always be with us), but the main thing to be considered right now is...

Bringing jobs to Hayward, additional income to our City and supporting the other businesses in the new Hayward Walmart Market complex.

PLEASE SUPPORT THE HAYWARD WALMART MARKET!

Thank you!

Edith Hollerson
[REDACTED]

From: [REDACTED]
Sent: Monday, May 21, 2012 9:37 AM
To: List-Mayor-Council
Subject: WalMart grocery store

I support the effort to bring WalMart supermarket to the old Circuit City Bldg in south Hayward. This will be beneficial to all the elderly and the others who are on monthly limited income.

Please vote "yes" to pass this.

Thank you.

George Tyler

From: Jack Shallow [REDACTED]
Sent: Sunday, May 20, 2012 6:30 PM
To: List-Mayor-Council
Subject: Walmart in old Circuit City bldg

I would like the city to approve Walmart putting in a store in this facility. Thank you, Jack shallow

From: Access Hayward [mailto:noreply@user.govoutreach.com]
Sent: Saturday, May 19, 2012 4:52 PM
To: Cecelia Cooke
Subject: City of Hayward: You have been assigned a new Request #: 32163

Request # 32163 from the Government Outreach System has been assigned to you.

Request type: Question

Request area: Send a Comment to the Mayor and City Council

Citizen name: Cheryl Bergquist

Description: Hello - I wanted to voice my request for the councils approval of the Walmart grocery store planned for the shopping center located on Whipple Road. I think many of the city's working middle class families will find the grocery store a valuable resource.
I would also encourage any and all negotiations to bring a grocery store to the Southland Mall. I truly miss having a major grocery store at the Mall. I am currently shopping for groceries in San Lorenzo.
Thank you for your attention,
Cheryl

Expected Close Date: 06/04/2012

-----Original Message-----

From: Beverly Portillo [REDACTED]
Sent: Saturday, May 19, 2012 11:41 AM
To: List-Mayor-Council
Subject: WalMart

To Hayward Mayor and City Council

I am asking you to recommend and support to have the Walmart Market come into the old Circuit City building. The senior citizen community as well as other Hayward residents need an economical shopping source. It's location by the freeway offramp will bring people from around the Bay Area to shop.

Thank you, Beverly Portillo
Spanish Ranch II resident

From: ernie [REDACTED]
Sent: Saturday, May 19, 2012 8:19 AM
To: List-Mayor-Council
Cc: [REDACTED]
Subject: Walmart

To: Mayor and Council

Please approve the Walmart store. Hayward has not had a reputation as a business friendly-city. I remember in the 60's, GM was interested in selecting Hayward as the site of its new plant. They selected Fremont, because it was more friendly. There are many other examples. One of my former students had a thriving dog grooming business on Mission; but she closed after some years, because of unreasonable demands by the city. I have heard of many other such "horror stories."

I remember B Street being a thriving center of business. In the 30's, as a five-year old boy, I would look forward coming with my grandfather from his farm in San Lorenzo to the old Bank of America (or it could have been called "Bank of Italy") on B and Main, I think. Then, afterwards he would take me for a chocolate-dipped cone at a drug store on upper B street, about where the Bijou is now.

More large grocery stores are needed in various places in Hayward. The unions have badmouthed Walmart for years; and, consequently, public officials, who are supported by unions, frequently turn down expansion of Walmart.

Please approve Walmart.

Sincerely,

Ernest Avellar
Hayward

From: [REDACTED]
Sent: Friday, May 18, 2012 7:45 PM
To: List-Mayor-Council
Subject: Proposed Walmart Market - Whipple Road & I-880

Hayward Planning Commission

City Hall

777 B Street

Hayward, CA 94541

Dear Mayor Michael Sweeney and Members of the City Council,

Supplemental to Attachment XXI (Correspondence in Support of Walmart Project)

I am writing to you again on behalf of the Residents' Association of Eden Roc Mobile Home Park in Hayward, to inform you of our support for the proposed Walmart Marketplace to be located on Whipple Road, filling the vacant Circuit City building.

We thoroughly discussed the pros and cons, and found more pros than cons to the Marketplace coming into our city. It will give the residents of Hayward a true grocery store to shop in for quality goods and foods, within the City of Hayward, at a convenient location.

We desperately need the jobs and revenue the Walmart Marketplace will bring to the city, not to mention bringing traffic to the small businesses struggling in that area, suffering since Circuit City closed. It would also encourage more businesses and jobs into the area.

We look forward to the opportunity to shop within our city and not have to travel to Union City, Fremont or even San Leandro, and keep our tax dollars in the city of Hayward.

We sincerely hope you take our support of the proposal under consideration when voting on this matter.

Thank you for your consideration,

Sincerely,

Patricia Flusche

Secretary, Eden Roc Residents' Association

----- Forwarded message -----

From: "PATRICIA FLUSCHE" [REDACTED]

To: "List-Mayor-Council" <List-Mayor-Council@hayward-ca.gov>

Subject: Proposed Walmart Market - Whipple Road & I-880

Date: Fri, May 18, 2012 7:44 pm

Hayward Planning Commission

Supplemental to Attachment XXI (Correspondence in Support of Walmart Project)

City Hall

777 B Street

Hayward, CA 94541

Dear Mayor Michael Sweeney and Members of the City Council,

I am writing to you again on behalf of the Residents' Association of Eden Roc Mobile Home Park in Hayward, to inform you of our support for the proposed Walmart Marketplace to be located on Whipple Road, filling the vacant Circuit City building.

We thoroughly discussed the pros and cons, and found more pros than cons to the Marketplace coming into our city. It will give the residents of Hayward a true grocery store to shop in for quality goods and foods, within the City of Hayward, at a convenient location.

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We look forward to the opportunity to shop within our city and not have to travel to Union City, Fremont or even San Leandro, and keep our tax dollars in the city of Hayward.

We sincerely hope you take our support of the proposal under consideration when voting on this matter.

Thank you for your consideration,

Sincerely,

Patricia Flusche

Secretary, Eden Roc Residents' Association

5-18-12

Hayward City Council,

We support "Hayward Walmart Market" whole heartedly!

Their locating in Hayward would be a wonderful asset to all of us.

Please let it happen.

Thank you

Senior citizens
Tom and Gladys Lewis
Georgian Manor Mobile
Home Park
Hayward -

Your participation is vital for the seniors to have this new economical shopping source

How to Support Hayward Walmart Market

- **Send an Email** – Email the city at List-Mayor-Council@hayward-ca.gov
- **Send a Letter** – Write your Mayor & City Council at City of Hayward, City Hall Building, 777 B Street, Hayward, CA 94541
- **Attend the Council Hearing**
Fill out a speaker card and speak in favor of the proposed Walmart Market.
Hearing is Tuesday, May 22nd at 7 p.m.
City Hall in the Council Chambers, 777 B Street in Hayward, 2nd Floor.
- **Talk to friends and neighbors**, encourage them, do all of the above!

Need a ride on Tuesday night? Call (510) 783-5780



Each citizen, and especially senior citizens on a fixed income, should be entitled to and able to shop where they desire for their best bargains without the interference or dictation of another, especially their elected officials. Denying this use is such interference.

**Your Senior Hayward Neighbors
seek your support
and your help:**

To ask the Hayward City Council to
approve the Walmart Market at the closed
Circuit City on Whipple Ave. at Industrial
Pkwy. in Hayward

**Tuesday
May 22, 2012
7:00 p.m.**

**City Council Chambers
777 B Street, 2nd Floor**

**Need a ride, have questions?
Call Jerry (510) 783-5780**

Please attend

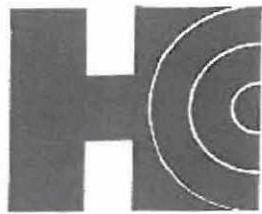
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PERMIT NO.

Spanish Ranch I. Hayward, CA 94545

Tom & Gladys Lewis
AUTO 5-DIGIT 94544
To Our Neighbors



Georgian Manor Mobile Home Park



HAYWARD
CHAMBER of
COMMERCE



Miriam David R

RECEIVED
MAY 17 2012
OFFICE OF MAYOR

May 16, 2012

The Honorable Michael Sweeney
Mayor of Hayward
Hayward City Hall
777 B Street
Hayward, CA 94541

Dear Mayor Sweeney,

The Hayward Chamber of Commerce agrees with the city staff determination that a Wal-Mart Market is an "allowable use" and fits the subregional zoning for the proposed site at the former Circuit City building on Whipple Road. We are in full support of the effort of the property owner to reuse or recycle that vacant building for a grocery store operated by Wal-Mart. This follows unanimous votes of support from our Government Relations Council on March 1 and Board of Directors on March 22. (See attached list). We urge your full support of this project when it comes before the City Council on May 22.

South Hayward is a community that has been calling for a full-service grocery store for some time and the former Circuit City building has been empty for more than three years. The vacancy has resulted in crime, vandalism, vehicle "sideshows," and graffiti. The restaurant of one of our chamber members adjacent this empty building has been robbed three times, twice at gunpoint in front of patrons.

A grocery store in this location would rejuvenate business in the area and create more shopping options for Hayward residents. The market will provide about 100 jobs and badly needed sales taxes for a city budget expected to be \$14 million smaller this fiscal year than last.

The vote by our Planning Commission on this issue discounted the views of our city's professional planning staff and traffic engineer as well as the wishes of neighborhood residents and the small businesses in the area I represented at the hearing. It is ridiculous to contend that putting a Wal-Mart in a "big-box" at a freeway exit does not constitute a regional use. Since that vote I have had communications with regional economic development agencies and other chambers of commerce where they are amazed that our city would send this message to businesses that might have considered Hayward for a home base. And please note that most of the opponents at the Planning Commission weren't even Hayward residents.

On May 22 please support this tremendous opportunity for economic development in our city and send the message that Hayward is truly "open for business."

Sincerely,


Kim Huggett
President & CEO