City Council Meeting
Tuesday, June 12, 2012

Correspondence from the public pertaining to Item No. 18

18. Denial of a Proposed Walmart Market Grocery Store at the 34,000-square-foot Building Formerly Occupied by Circuit City at 2480 Whipple Road ***(Report from Development Services Director Rizk)***

manatt
manatt | phelps | phillips

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

June 12, 2012

Client-Matter: 45528-030

BY E-MAIL TO CITY CLERK

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

Re: June 12, 2012 City Council Meeting, Agenda Item 18 - Denial of a Proposed Walmart Market Grocery Store at the 34,000 Square Foot Building Formerly Occupied By Circuit City at 2480 Whipple Road

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, including the above-referenced item in which Hayward 880, LLC is the appellant. At this point in the process, I am not sure which is more offensive: the City's complete disregard for the applicable law and precedent, or the fact that the City scheduled this matter eighteenth, and dead last, on its meeting agenda. As the City Council is well aware, many of the Hayward residents that attended and spoke at the May 22, 2012 appeal hearing were senior citizens who have great difficulty attending meetings lasting into the late hours of the evening. By scheduling the proposed denial resolution for consideration as the fourth public hearing matter and eighteenth agenda item, the City Council's lack of interest in the comments and concerns of its own residents could not be more apparent.[1]

The purpose of this letter is three-fold. First, this letter serves as a formal request for reconsideration of the appeal that was before the City Council on May 22, 2012, on the grounds that both Councilmember Quirk and Councilmember Henson should have been precluded from participating in the decision because their participation in the hearing denied Hayward 880, LLC

[1] As other members of the public have already noted to the City, the staff report for the above-referenced matter was not available until late in the evening on Friday, leaving those wishing to review and analyze the proposed resolution only one business day to do so. The late posting of the staff report for today's meeting failed to comply with the City's usual procedure of posting the staff report at 5:00 p.m. We also note that neither Daniel Temkin nor representatives of this office are available to attend this evening's hearing. Mr. Temkin is out of the country, and the undersigned has a professional conflict.

a fair and impartial hearing. Second, this letter sets forth the reasons why adoption of the resolution included in the staff report as Attachment I would violate applicable law. And, third, this letter incorporates by reference all previous correspondence to the City Council regarding the above-referenced matter, the pending building permit applications, and the proposed supermarket moratorium, and on behalf of Daniel Temkin and Hayward 880, LLC thereby submits all factual and legal issues to the City in anticipation of litigation.[2]

1. **Councilmembers Quirk and Henson Are Not Disinterested, Unbiased Decisionmakers, And Their Participation In the Consideration of The Appeal of the Planning Commission's Determination Denies Hayward 880, LLC A Fair Hearing Because Of The Unacceptable Probability of Actual Bias**

Code of Civil Procedure section 1094.5 expressly mandates that there be a fair trial when a local agency, such as the City, holds an administrative hearing. Because of the extreme bias and animus of Councilmembers Quirk and Henson, in light of the totality of the circumstances as described below, Hayward 880, LLC was denied a fair hearing on May 22, 2012 and the matter must be reconsidered without their participation.

The facts in the leading case of *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152,[3] are strikingly similar to the facts presented here. In *Clark*, the owners of a duplex in Hermosa Beach filed an application to demolish the duplex and replace it with a two-unit condominium. A self-interested property owner concerned with his own view of the Pacific Ocean filed an appeal challenging the proposal. The City Council responded by first proposing a moratorium on all new condominiums, which did not garner enough votes to go into effect. When the City Council thereafter considered the appeal, a supermajority of the public speakers at the meeting spoke in favor of the condominium application. City staff opined that the project

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[2] The following correspondence, including all attachments thereto and all factual and legal issues contained therein, is hereby incorporated by reference for purposes of exhaustion of administrative remedies. Please note that this list is not inclusive of all documents that comprise the administrative record in this matter.

1. April 26, 2011 Letter from Kristina Lawson to Mayor Michael Sweeney and Members of the City Council
2. April 26, 2011 Letter from Hayward 880, LLC to Mayor Michael Sweeney and Members of the City Council
3. April 26, 2011 Letter from the California Retailers Association and the California Business Properties Association to Mayor Michael Sweeney and Members of the City Council
4. May 3, 2011 Letter from Hayward 880, LLC to Mayor Michael Sweeney and Members of the City Council
5. May 3, 2011 Letter from Kristina Lawson to Mayor Michael Sweeney and Members of the City Council
6. December 21, 2011 Letter from Kristina Lawson to Mr. David Rizk.
7. May 22, 2012 Letter from Kristina Lawson to Mayor Michael Sweeney and Members of the City Council
8. All oral testimony at the City Council meetings of April 26, 2011

[3] For your convenience and review, we have attached a copies of *Clark v. Hermosa Beach* (Exhibit A) and *Nasha LLC, v. City of Los Angeles* (Exhibit B) to this letter.

complied with all applicable regulations. However, during Council deliberations of the appeal, one of the Councilmembers set forth his own interpretation of the City's municipal code (an interpretation with no basis in precedent or regulation) and was able to gain the support of three other Councilmembers to uphold the appeal and effectively deny the project.

In its analysis of the facts and applicable law, the Court of Appeal found that the City had denied the duplex owners a fair hearing for several reasons, including that one of the Councilmembers lived near the proposed condominium, and also because the Council had proposed a moratorium directed at the condominium project. (*Id.* at 1171-1174.) While this moratorium failed to gain enough votes for approval (a four-fifths vote was required), the Court found that the fact that the Council then denied permits on projects that would have been subject to the moratorium if it had passed established that the Council was not impartial to the project. (*Id.* at 1173.) In essence, the City enacted a moratorium when it did not have sufficient votes to do so. The City of Hayward has done precisely the same thing.

In the case of the proposed Walmart grocery, Hayward 880, LLC filed building permit applications for 2480 Whipple Road with the City on March 23, 2011. This application was then, as it is now, the only pending application for a grocery use in the City. Only a few short weeks after its application was submitted, on April 25, 2011, Hayward 880, LLC was informed by email from the City's Planning Manager that the City Council would be considering a proposed supermarket moratorium on an urgency basis at its April 26, 2011 meeting. Documents contained in the City's administrative record[4] establish that Councilmember Quirk had been approached by certain project opponents and encouraged to support and advance this moratorium, specifically in response to Walmart's entry into the stand-alone supermarket business. The minutes of the City Council's February 1, 2011 meeting reflect that at that meeting Councilmember Quirk asked that the City Manager review a request from a project opponent regarding an ordinance targeted at Walmart grocery stores.

The April 26 City Council meeting was continued to May 3, 2011. Immediately prior to the May 3, 2011 meeting, project opponents were observed in the City Hall lobby. Just after the start of the City Council meeting, at approximately 7:05 p.m., a man addressed the project opponents in the lobby and stated that it was not necessary for the project opponents to stay to support the passage of the moratorium ordinance. The man stated that the Council had determined it would not approve the moratorium, but that the City would require Hayward 880, LLC to obtain a new use permit and the City Council had agreed it would not approve the use permit. The man's comments have been described by one observer as "a victory speech."

[4] An email containing this information was read into the record by Daniel Temkin at the City Council's May 22, 2012 hearing.

When the moratorium agenda item was called, following a staff report by the City Manager, Councilmember Quirk and Councilmember Henson were the only two Councilmembers to ask questions of City staff. Councilmember Quirk inquired as to how quickly staff could review Hayward 880's building permit application, and Councilmember Henson asked whether traffic and economic impacts would be considered. Likely based on the "deal" reached prior to the City Council meeting, the moratorium was not approved on May 3, 2011.

Notwithstanding the clear prejudice against the project, Hayward 880, LLC pushed ahead with its building permit applications. On January 19, 2012 the City's Development Services Director issued a letter finding the proposed use consistent with the requirements of the existing site entitlements. This approval was appealed by the same project opponents that sought to advance the moratorium. City staff recommended the appeal be denied. The Planning Commission considered the matter on April 5, 2012, and overturned the Development Services Director's approval of the matter. Interestingly, following the Planning Commission's effective denial of the project, Planning Commissioner Al Mendall, (who at the time of the hearing was a candidate for City Council) was formally endorsed by the project opponents.[5] Mr. Mendall was one of the most outspoken opponents of the project during the April 5 hearing.

A significant number of Hayward residents appealed the Planning Commission's decision, and Hayward 880, LLC formally joined the appeal, which was scheduled for May 22, 2012. City staff recommended the appeal be upheld, such that the project would be approved. However, before the building permit applications could be considered by the Council on May 22, 2012, both Councilmember Henson and Councilmember Quirk continued their public opposition of the project. Both appeared at community and organization meetings and expressed they would never vote to approve a project that included a Walmart grocery. Councilmember Quirk was quoted in the newspaper as an opponent of the project. In short, Councilmember Henson and Councilmember Quirk are not reasonably impartial uninvolved reviewers. Quite the contrary: both Councilmembers have campaigned actively against the project and Hayward 880, LLC cannot receive a fair hearing if either Councilmember participates in the decision.

At the May 22, 2012 City Council meeting both Councilmember Quirk and Councilmember Henson took a bizarre approach to considering the matter: each said they had insufficient information to make a determination because the City's zoning ordinance included no definition of regional/sub-regional. Rather than applying established precedent (which each had previously applied in the context of other applications), or considering the testimony of land use and real estate experts, both Councilmembers (each of whom was already determined to deny the appeal and the project) attempted to deflect attention away from their overwhelming

[5] A copy of the endorsements page from Mr. Mendall's campaign website is attached hereto as Exhibit C.

bias by blaming their denial of the project on the City's zoning ordinance. It is notable that Councilmember Quirk was the maker of the motion to deny the appeal and the project.

The law is clear:

> '[A]n individual has the right to a tribunal "which meets...standards of impartiality."...Biased decisionmakers are...impermissible and even the probability of unfairness is to be avoided...The factor most often considered destructive of administrative board impartiality is bias arising from pecuniary interests of board members...Personal embroilment in the dispute will also void the administrative decision...
>
> Over 60 years ago, one Court of Appeal discussed the common law prohibition on conflicts of interest, stating: 'A public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public'[]...'[T]he common law doctrine against conflicts of interest ... prohibits public officials from placing themselves in a position where their private, personal interests may conflict with their official duties.'...

(Id. at 1171-1174.) Applying these principles to the facts, it is clear that Hayward 880, LLC was deprived of a fair hearing. Councilmember Quirk and Councilmember Henson both had deep personal interests in the decision, which actually influenced their judgment on May 22, 2012. Further, under *Clark*, the mere existence of the moratorium proposal in the administrative record for this matter calls into question the impartiality of the proceedings. In *Nasha, LLC v. City of Los Angeles* (2004) 125 Cal.App.4th 470, the Second District Court of Appeal found a claim of bias well founded where a Planning Commissioner authored an article attacking a proposal under consideration. We have no doubt that a reviewing court will agree that both Councilmember Quirk and Councilmember Henson went too far here, and by doing so denied Hayward 880, LLC a fair hearing in front of the City Council.

2. Proposed Findings 2, 3 & 4 Are Not Supported By Any Evidence And Adoption of The Resolution Would Be An Abuse of Discretion

Code of Civil Procedure section 1094.5 also requires that adjudicatory decisions, like the decision before the City Council this evening, be supported by findings that bridge "the analytical gap between evidence and ultimate decision or order," and are supported by substantial evidence in the administrative record. (*Topanga Ass'n for a Scenic Community v.*

County of Los Angeles (1974) 11 Cal.3d 506, 514-15.) Such findings: (1) provide a framework for making principled decisions and enhance the integrity of the administrative process, (2) facilitate orderly analysis and reduce the likelihood that the City will leap randomly from evidence to conclusions, (3) serve a public relations function by helping to persuade parties that administrative decisionmaking is careful, reasoned, and equitable, (4) enable the parties to determine whether and on what basis they should seek judicial review and remedies, and (5) apprise a reviewing court of the basis for the City's decision. (*Id.* at 516-517.)

The City's "findings" are findings in form, but not in substance. The proposed resolution, which is included as Attachment I to your staff report, contains only four "findings" to serve as the basis for the City Council's denial of planning clearance for the pending building permit applications for the proposed Walmart grocery store. With respect to the issue that was before the City Council on May 22, 2012, the resolution includes the following three "findings":

- "Finding" 2. The proposed Walmart Market does not meet the Zoning Ordinance requirement that limits retail sales to "sale of retail goods with a regional or sub-regional marketing base," because most of the customers anticipated for the market would come from residential neighborhoods in Union City and Hayward to the east, and not from Interstate 880.

- "Finding" 3. The April 20, 2004 City Council staff report related to Conditional Use Permit PL 2004-0039 for the Circuit City Store and the associated retail center observed that "...the site is a prime location for regional or sub-regional retailers due to its location at the junction of two arterial roadways, access to the Nimitz Freeway (I-880), and high visibility..." Because the evidence indicates that the customer base of the proposed market will come from the surrounding residential neighborhoods, rather than utilizing the site's proximity to Interstate 880 and high visibility to draw from the broader region, the proposed market does not meet the regional and/or sub-regional requirement.

- "Finding" 4. The immediate area is currently served by ten grocery stores, including grocery stores like Lucky's and Food Maxx that are substantially larger than the proposed 34,000 square foot market, which reduces the chances that the proposed market would draw from a regional or sub-regional marketing base.

Not one of these "findings" provides the analytical bridge required by *Topanga*. Rather, these findings perfunctorily recite the absurd and irrational conclusions reached by the City Council at its May 22, 2012 meeting. Such boilerplate or conclusory findings are not legally sufficient. (*Village Laguna, Inc. v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1033-34; see also *Honey Springs Homeowners Ass'n v. Board of Supevrisors* (1984) 157 Cal.App.3d 1122, 1151.)

We note there is no evidence in the record to support the proposed "findings," and certainly not the substantial evidence required by law. (*Topanga Ass'n for a Scenic Community v. County of Los Angeles*, *supra,* 11 Cal.3d at 515.) The staff report prepared by City staff for the May 22, 2012 hearing does not provide any evidence to support the "findings" and in fact presents substantial evidence that the project complied with all applicable zoning ordinance requirements. Both written and oral testimony included in the administrative record, some of which was presented by expert attorneys and land use professionals, similarly failed to provide evidence to support the "findings" and to the contrary served as substantial evidence that the project complied with all applicable zoning ordinance requirements.

The reason the "findings" are not supported by substantial evidence in the record is because no such record evidence exists. The City Council failed to act rationally in its deliberation and decisionmaking on May 22, 2012, and as a result the proposed resolution is fatally flawed.

* * *

For several years, Daniel Temkin has done the right thing for the City by impeccably maintaining a vacant building and the surrounding shopping center at the City's southern gateway. The City Council now has the opportunity to do the right thing and conduct an impartial hearing where substantial evidence and the law (not personal politics) are paramount. On behalf of Daniel Temkin, and Hayward 880, LLC, we respectfully request Councilmembers Quirk and Henson decline to participate in further proceedings on this matter, and that the City Council direct staff to agendize the appeal for rehearing.

Very truly yours,

Kristina Lawson

KXL:kl

cc: Daniel Temkin
Fran David, City Manager
Michael Lawson, City Attorney

Philip M. Lehrman

[redacted]

June 12, 2012

Michael Sweeney, Mayor
City of Hayward
For Hayward City Council
777 B Street
Hayward, CA 94541

Proposed Walmart Market Grocery Store

Once again, tonight, at one of the regular meetings, you will be asked to take a stand on this important issue. As I have asked you before, and in my motto: Will you allow me to make my decision where and when I may and can shop, or to take the privilege from me and thus dictate to me that I cannot shop at a super market that will offer me bargains that will extend my shopping opportunities.

As you well know if you vote to deny me this privilege you will be bowing to a select group of people with a self serving agenda and not the wishes of the whole community which you represent.

Please extend to me the right and privilege, that I may make my choice whether or not to shop at this planned Walmart market, a store with a new and different concept than now at Union Landing. I'm counting on you, as are many seniors and those on limited income in this truly regional scope throughout the whole of our Hayward region to represent us in our best interest at this June 12 final hearing.

We believe in the following slogan and hope you do as well:

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

You have the power over us as our city council to vote for approval of the project and to allow us this privilege. Won't you consider our request as reasonable, prudent, and just?

Respectfully submitted, on my behalf and others,

Philip M. Lehrman,
Senior citizen of Hayward

Miriam Lens

From: Philip Lehrman [redacted]
Sent: Tuesday, June 12, 2012 10:17 AM
To: Designated recipients
Subject: Public comment, Hayward City Council meeting June 12 (061212)

To city clerk, Please accept my familiar Speaker card to allow me to speak in the three minutes under Public Comments. Please distribute to each official so they may be apprised of the presentation.

To others, please attend if you can this evening. Many vital issues are to be addressed. If you cannot and don't receive the cable broadcast, here is the text of my proposed presentation. If you miss it tonight, we will try to arrange a YouTube presentation later.

For public comment period, Hayward City Council

June 12, 2012

This is the first council meeting after the mid-year election where the electorate of Hayward, seeing the failure of certain council members attending to their needs turned out one of them. The astute electorate seeing the attention of certain members in recent years have given their constituents: seniors and fixed/low income citizens, overwhelming paid tribute by reelection. I voice for myself and others my appreciation to incumbents Halliday and Zermeño on their reelection.

I'm not feeling well today. I may not be able to finish my preparation for my presentation this evening on item 8. Denial of proposed Walmart. I will try.

What I haven't told you, I became ill Sunday morning with my condition, anemia weakness, dizziness and fainting spells and had to go to Kaiser emergency. After numerous blood tests including CAT scans, they sent me home at nine in the evening. I haven't really recovered since. The staff with whom I have had contact have been cordial and considerate yet the stress of not being able to get the material timely from the city as to the staff's reports, minutes, etc. leaves me stressful and under extreme duress.

The purpose of this email and subsequently my comments to the council under PUBLIC COMMENT is to warn the council that in this age of sophisticated electronics: email, closed circuit television, YouTube, etc., the constituent citizens of Hayward can now in real time and by other means monitor every lawful decision and to follow whether the officials are truly "representing" them as the constitution demands.

So I ask the recipients of my email and the listeners/watchers of this presentation to be vigilant and cognizant that we seniors and others on fixed limited income will turn you out at future elections as one person recently told me, "the only incumbent to vote against it (Walmart) lost his seat on the council after 18 years." Seniors will unite and seek representation now, in November and at future elections. Those of you here and at home watching be thankful that you have been allowed the opportunity to hear me today. Concerned? Contact me anytime by email, letter or phone.

Phil Lehrman, [redacted]

Miriam Lens

From: Philip Lehrman [redacted]
Sent: Friday, June 08, 2012 7:14 PM
To: CityClerk
Cc: Dan temkin; Designated recipients
Subject: RE: June 12 Staff report (060812)

Ms. M. Lens,

As of 6:23 pm on Friday before the Tuesday June 12, 2012 hearing on agenda item 18. Denial of a Proposed Walmart Market Grocery Store at the 34,000-square-foot Building Formerly

Occupied by Circuit City at 2480 Whipple Road no evidence of posting for applicant/property owner or the public for inspection or review of the "***(Report from Development Services Director Rizk)***" is shown.

Therefore, it is drawn to your attention and to be submitted for the attention of each councilman/councilwoman that the applicant/public has insufficient time to prepare cogently salient arguments to rebut or confirm staff reports to redirect the denial of councilmen Quirk, Henson and Peixoto. Furthermore, with only two calendar workdays until the time of hearing applicant/public has insufficient time to research, find, and apply relevant citations of California case law supporting this insufficiency. The email author therefore requests inordinate attention to this element as it applies to any written or oral testimony.

Respectfully,
Philip M Lehrman, author

From: Miriam Lens [mailto:Miriam.Lens@hayward-ca.gov] **On Behalf Of** CityClerk
Sent: Friday, June 08, 2012 1:47 PM
To: Philip Lehrman
Cc: Katy Ramirez; Yolanda Cruz
Subject: RE: June 12 Staff report (060812)

Mr. Philip Lehrman,

Attached is the agenda for Tuesday's Council meeting. We have not received a final report yet. As soon as my office receives final reports, we will post them to the City's website. We anticipate they will be posted before 5:00 pm at the following link.

http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/index.shtm

Thank you,

Miriam Lens, CMC MPA
City Clerk
City of Hayward | Office of the City Clerk | 777 B Street | Hayward, CA 94541 |
☎ Phone: 510-583.4401 | ✉ Email: Miriam.lens@hayward-ca.gov
www.hayward-ca.gov | City Clerk's Blog: www.hayward-ca.gov/cityclerk/

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REPLY ADVISORY: Please be advised that messages sent to me on the City of Hayward e-mail system are not confidential and may be reviewed by other persons without my knowledge. Please do not send messages or attachments that may violate the City of Hayward e-mail policy.

From: Philip Lehrman [redacted]
Sent: Friday, June 08, 2012 12:24 PM
To: CityClerk; Katy Ramirez
Subject: June 12 Staff report (060812)

I can't find the subject reports as of 12 noon, June 8, 2012.

6/8/12

Katy Ramirez
Administrative Secretary
(510) 583-4234
katy.ramirez@hayward-ca.gov

City Council staff reports are available on the City of Hayward's website on Friday before the June 12, 2012 City Council meeting

Miriam Lens

From: Cecelia Cooke
Sent: Thursday, May 24, 2012 8:25 AM
To: Miriam Lens; David Rizk; Katy Ramirez
Subject: FW: Walmart on whipple RD,

Do you all still need these emails?

Thank you.

Cece

From: Russ Keys [redacted]
Sent: Wednesday, May 23, 2012 5:21 PM
To: List-Mayor-Council
Subject: Walmart on whipple RD,

It is my understanding that Walmart wants to open a market in the old circuit city building on Whipple Rd. I think that is a good idea, as they provide food at discounted price levels. To my knowledge Hayward does not have any markets in this area to serve lower income families.

Your consideration in this matter is greatly appreciated.

R. Keys
[redacted]

Miriam Lens

From: Barbara Sacks [redacted]
Sent: Monday, June 11, 2012 10:18 AM
To: List-Mayor-Council
Subject: Agenda Item #18, June 12, 2012

RE: Agenda Item #18, June 12, 2012
Subject, Denial of a Proposed Walmart Market Grocery Store at the 34,000-square-foot Building Formerly Occupied by Circuit City at 2480 Whipple

June 11, 2012

Members of the Hayward City Council,

After viewing the results of the May 22 Council action on this item and reviewing the staff report for the June 12 meeting, I strongly believe that this item should not be before you. Since it is, it should be rejected with profound apology to Mr. Temkin and his tenants.

...

On May 22, I was present at the City Council Meeting for the purpose of speaking as one of the appellants to the Planning Commission decision regarding this property. It was so late that by the time statements from the public were completed, it was not possible for me to remain to listen to the rest of the meeting.

This morning I watched the video of the last hour of the May 22 meeting.

I would like to thank our City staff for their excellent decision-making and for their professionalism in the face of certain moments of this hearing. I would like to thank Council Members Salinas, Halliday and Zermeno for their wise and compassionate decision-making. I am disgusted by the statements and conclusions of the rest of Council.

Barbara Sacks
[redacted]

Note: This message will be sent to undisclosed recipients under separate cover.

Miriam Lens

From: Harlene Strauss [redacted]
Sent: Monday, June 11, 2012 1:40 PM
To: List-Mayor-Council
Cc: Daniel Temkin
Subject: Walmart Market

We would like to express our regret at the fact that the City Council voted to deny Walmart Market the right to put a store on the Circuit City site in Hayward.
We cannot believe that the council was so short sited in this matter. Hayward has a reputation that it is difficult to business in the and with the city and it has sure shown it with this matter.
The market would be a great asset to both the city, not only for tax purposes but also for the residents. We have lived in Hayward since
1992 and have seen the growth in Union City of Union Landing, Mi Pueblo and Ranch Market off of Decoto and other additions to their city. Get with it Hayward and make our city a star in the area. I know many people who travel many miles to a Walmart Market because of the prices and the selection of food, let's bring this to our area and keep these people shopping in our city.

We certainly hope that this matter is not dead and that the City Council will do what is best for the city and the residents by approving the zoning to allow Walmart to put their market in the city.

Sincerely,
Harlene and Marty Strauss

Miriam Lens

From: [redacted]
Sent: Monday, June 11, 2012 1:42 PM
To: List-Mayor-Council
Cc: [redacted]
Subject: Re: Hayward City Council (Wrongful) Denial of Walmart Market

Dear Mayor Sweeney & Council Members

> I sincerely hope, now that the threat of the Union thuggery can no longer affect the election you will come to a proper solution, YES for the Wal-Mart project. One, to give seniors a place for a price break on groceries and possible more important, clean up to blighted area, reduce policing cost and give the businesses already there a chance to survive.
>
> Note, that one member voting to refuse Mr. Temkins proposal was not re-elected.
>
> There are angry seniors and they let it be known by their votes.

Mr. Martin E. Strauss -- (Age 80. One of those angry seniors.)

[redacted]

-----Original Message-----
From: Daniel Temkin [redacted]
To: Daniel H. Temkin [redacted]
Sent: Mon, Jun 11, 2012 12:53 pm
Subject: Hayward City Council Denial of Walmart Market

Dear Friends and Supporters of Walmart Market,

As I'm sure you have all heard by now, the Hayward City Council voted on May 22nd to deny the approvals for the proposed Walmart Market at Whipple Road and I-880. The vote was 4 to 3 with Council Members Halliday, Salinas and Zermeño voting to approve the Walmart Market, and Mayor Sweeney and Council Members Peixoto, Quirk and Henson voting against. We strongly believe that this entire process has been unlawfully target at Walmart and that the land use laws of the City of Hayward were disregarded. The bottom line is that the language of the zoning ordinance has been in existence for the past seventeen years and numerous permits were issued during that time to other businesses without ever questioning the definition of "regional or sub-regonal." By issuing permits to businesses such as Starbucks, Quiznos, Bella Nail Salon, and many others, the city determined that those uses were "regional or sub-regional". This makes sense because of the property's location at the border of Hayward and Union City and it's easy access on and off I-880. Now, along comes Walmart Market and the City Council suddenly and arbitrarily decides that a "better" definition is needed. The city's **EXPERT** staff had already determined that the proposed use conformed to the zoning and the definition of "regional or sub-regional" and they recommended approval of the project. Nevertheless four council members decided to ignore the staff's recommendation and to deny the application. It is quite clear that their decisions were based on their political whims rather than the law. Interestingly, neither the mayor nor a single one of the council members was able to provide an alternate definition of "regional or sub-regional" on which they could base their decisions.

At tomorrow's council meeting (June 12th, 7:00 PM), the City Council aims to pass a resolution confirming their 4 to 3 decision. This will be the final nail in the coffin for the proposed Walmart Market. Many Hayward residents and business owners have contacted me and the City Council to express their disgust with the city's illegal action discriminating against a single business. I am forwarding an email sent to the City Council by former, long-term Planning Commissioner Barbara Sacks. It pretty well sums up what I have heard from the many individuals that have contacted me.

On behalf of my family and the four remaining businesses in the shopping center, I want to thank all of you for generously giving your time and energy in support of the project. I want to also express my appreciation to the three council members who courageously voted to uphold the laws of their city and not cave in to special interests. Absent some

surprising turn of events tomorrow evening, the war will be over. It was a valiant effort but it appears we ended up one vote short.

If anyone wishes to contact the City Council to express their views or their opposition to passage of the resolution, they can be emailed at: List-Mayor-Council@hayward-ca.gov
Of course, if you decide to attend the council meeting in person, you will have the opportunity to make public comments.

Thanks again. In the words of Council Member Francisco Zermeño: *Hayward On!*

Dan Temkin

P.S. Our attorney will be filing a letter in opposition of the proposed resolution. If anyone would like a copy of the letter, please respond and I will forward it.

Begin forwarded message:

-----Original Message-----
From: Barbara Sacks [redacted]
Sent: Monday, June 11, 2012 10:18 AM
To: List-Mayor-Council@hayward-ca.gov
Subject: Agenda Item #18, June 12, 2012

RE: Agenda Item #18, June 12, 2012
Subject, Denial of a Proposed Walmart Market Grocery Store at the 34,000-square-foot Building Formerly Occupied by Circuit City at 2480 Whipple

June 11, 2012

Members of the Hayward City Council,

After viewing the results of the May 22 Council action on this item and reviewing the staff report for the June 12 meeting, I strongly believe that this item should not be before you. Since it is, it should be rejected with profound apology to Mr. Temkin and his tenants.

...

On May 22, I was present at the City Council Meeting for the purpose of speaking as one of the appellants to the Planning Commission decision regarding this property. It was so late that by the time statements from the public were completed, it was not possible for me to remain to listen to the rest of the meeting.

This morning I watched the video of the last hour of the May 22 meeting.

I would like to thank our City staff for their excellent decision-making and for their professionalism in the face of certain moments of this hearing. I would like to thank Council Members Salinas, Halliday and Zermeno for their wise and compassionate decision-making. I am disgusted by the statements and conclusions of the rest of Council.

Barbara Sacks
[redacted]

Note: This message will be sent to undisclosed recipients under separate cover.

Miriam Lens

From: Cecelia Cooke
Sent: Monday, June 11, 2012 1:50 PM
To: Miriam Lens
Subject: FW: Walmart Market

FYI. Thanks.

-----Original Message-----
From: Harlene Strauss [redacted]
Sent: Monday, June 11, 2012 1:40 PM
To: List-Mayor-Council
Cc: Daniel Temkin
Subject: Walmart Market

We would like to express our regret at the fact that the City Council voted to deny Walmart Market the right to put a store on the Circuit City site in Hayward.
We cannot believe that the council was so short sited in this matter. Hayward has a reputation that it is difficult to business in the and with the city and it has sure shown it with this matter.
The market would be a great asset to both the city, not only for tax purposes but also for the residents. We have lived in Hayward since
1992 and have seen the growth in Union City of Union Landing, Mi Pueblo and Ranch Market off of Decoto and other additions to their city. Get with it Hayward and make our city a star in the area. I know many people who travel many miles to a Walmart Market because of the prices and the selection of food, let's bring this to our area and keep these people shopping in our city.

We certainly hope that this matter is not dead and that the City Council will do what is best for the city and the residents by approving the zoning to allow Walmart to put their market in the city.

Sincerely,
Harlene and Marty Strauss

Miriam Lens

From: PATRICIA FLUSCHE [redacted]
Sent: Monday, June 11, 2012 5:50 PM
To: List-Mayor-Council
Subject: Walmart Market at Whipple Road and I-880

Hello everyone,

I truly have to say, I knew I should have waited in mailing my absentee ballot until after the May 22nd meeting.
But I truly thought, after all the talk, after all the voices of Hayward proclaimed their support for this market, and the voiced concerned of all involved in the future well being of Hayward, maybe you all would have voted the way best for everyone.
I was very wrong and am very disappointed.
I really cannot even remember who exactly I voted for, but I have to commend Council Members Halliday, Salinas and Zermeño, and apologize if I was errant and didn't vote for you, and very happy if I did. I think 2 out of 3 are who I voted for, I wish I knew for sure.
I no I voted for Bill Quirk and yes, having second thoughts about the next time.
I have all emails saved, and believe me, I will remember how much you all cared for the future and well being of Hayward and its residents, next time elections come due.

I can only hope you do also, and forget the 7 letters in the name of the parent company, and think only of Market Place! And how the resident's of Hayward in the area surrounding Whipple Road, Industrial and 880, desperately need a convenient and cost effective place to shop for quality groceries and the jobs desperately needed in the area as well.

Thank you,
Patricia Flusche
Eden Roc Mobilehome Park

Miriam Lens

From: PATRICIA FLUSCHE [redacted]
Sent: Monday, June 11, 2012 9:14 PM
To: Bill Quirk - Forward; List-Mayor-Council
Subject: Re: Walmart Market at Whipple Road and I-880

Hello again, Bill and everyone,

I know there are many many other issues at hand to worry about within the city, but there is always the one that really matters to some people.
This is one of them.

Would you mind telling me, what exactly is your true problem with the market place moving into the location? Besides that suddenly there is a zoning issue.

Is it really the grocery store and zoning?
Or the name Walmart?

Would you have the same concerns if it was Target's Fresh and Easy wanting to move in?
Or Mi Pueblo? Or Smart and Final?

I would really like to know.
Patricia Flusche
Eden Roc Mobile Home Park

From: Bill Quirk <BillQuirkForHayward@Comcast.net>
To: PATRICIA FLUSCHE [redacted]
Sent: Mon, June 11, 2012 8:12:11 PM
Subject: Re: Walmart Market at Whipple Road and I-880

Patricia,
Sorry to have disappointed you. My opponent in November also spoke out against Walmart at the meeting.
I hope you will consider other issues like local government experience when voting in November.
Thanks,
Bill

Bill Quirk
(510) 329-7475
Hayward City Council
Candidate for the 20th AD

FPPC# 1336971
Bill Quirk for Assembly 2012
PO Box 3254
San Leandro CA 94578

Sent from my iPad

On Jun 11, 2012, at 5:49 PM, PATRICIA FLUSCHE [redacted] wrote:

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Thank you,
Patricia Flusche
Eden Roc Mobilehome Park

Miriam Lens

From: Jerry & Pat Higgins [redacted]
Sent: Tuesday, June 12, 2012 4:13 PM
To: List-Mayor-Council
Subject: 6/12 Hearing on Walmart grocery

12 June 2012

City of Hayward Officials:
Re: Walmart Market...

1. The Regional/Sub-regional designation for the property has been in place for seventeen (17) years. It is still has the same proximity to I-880/Whipple Road as always.

2. Re-zoning is not necessary. Zoning was and is, for the (entire) shopping center, not just the Circuit City site.

3. If not one (1) union member, or any other citizen, in the entire United States that desires not to, never enters a Walmart facility anywhere, rest assured that that Bensonville, AR Corp. will remain in business.

4. Several important things should be considered.

Hayward needs more business, NOT more commercial vacancies.

Help put into practice "Shop Hayward"....

The placing of such a business there will insure that over 90 jobs will be created, plus, not only saving the demise of the remaining businesses there, but them adding jobs for their increased business.

The sales tax from the purchased materials for the multimillion dollar renovation alone will be no small change.

Let Hayward citizens determine their choice of shopping & the success or failure of that store.

Competition and free enterprise is what built America.

Jerry Higgins
[redacted] Street Hayward
A 44 year Hayward resident &
Home owner