

**CITY OF UNION CITY  
MINUTES FOR THE REGULAR PLANNING COMMISSION MEETING  
OF JULY 6, 2006, 7:00 P.M.  
IN THE COUNCIL CHAMBERS OF CITY HALL  
34009 ALVARADO-NILES ROAD, UNION CITY, CALIFORNIA**

**I. ROLL CALL: Commissioners Anderson, Savage, Sison, Sweeney and Chairperson Lew  
ABSENT: Commissioner Savage**

**STAFF:** Mark Leonard (Director, Economic and Community Development); Joan Malloy (Planning Manager); Carmela Campbell (Senior Planner); Janice Lum (Assistant Planner); Avalon Evans (Assistant Planner); Carlos Jocson (City Engineer); John Bakker (City Attorney); Kris Fitzgerald (Administrative Assistant).

**II. APPROVAL OF MINUTES: The regular Planning Commission Minutes of June 15, 2006 were approved as submitted.**

**III. ORAL COMMUNICATIONS: None.**

**IV. WRITTEN COMMUNICATIONS: None.**

**V. PUBLIC HEARINGS:**

**A. CONTINUED HEARINGS: None.**

**B. NEW HEARINGS:**

- 1. RALPH FLORES, 33800 ALVARADO-NILES RD, Use Permit UP-04-06;**  
The applicant, Ralph Flores, is requesting Use Permit approval to locate a new sports massage facility within an existing office center located at 33800 Alvarado-Niles Road on the corner of Alvarado-Niles and Hartnell Street (APN: 486-0054-011-01). The project is considered categorically exempt from the California Environmental Quality Act (CEQA) Guidelines.

Carmela Campbell, Senior Planner, presented the staff report

Commissioner Sweeney asked about renumbering the conditions of approval in the resolution to include the desk item.

Ms. Campbell stated that the resolution would be renumbered.

Chairperson Lew opened the public hearing.

Commissioner Sweeney asked the applicant to describe his professional training and licenses held.

Ralph Flores, applicant, replied that he graduate from National Holistic Institute in Emeryville in 1999. Mr. Flores stated that he has done some continuing education in Reiki and worked with other therapists. Mr. Flores stated that he has also worked for the National Track and Field Championships as a volunteer therapist.

Chairperson Lew asked if this was the applicant's first office.

Mr. Flores replied that it is his first own office.

Chairperson Lew closed the public hearing.

Commissioner Sweeney made a motion to approve Use Permit UP-04-06, making findings 1 – 5, with amended conditions of approval and adopting a resolution confirming this action.

Commissioner Anderson seconded

AYES	3 (Anderson, Lew, Sweeney)
NOES	0
ABSTAIN	0
ABSENT	2 (Savage, Sison)

- 2. UNION CITY DECOTO INDUSTRIAL STUDY PARK AREA (DIPSA) Specific Plan Amendment SP-01-06 and related Zoning Text Amendment AT-03-06;** The City is proposing to comprehensively update the Decoto Industrial Park Study Area (DIPSA) Specific Plan to bring it into conformance with the City's 2002 General Plan. The City is also proposing to modify Title 18, Zoning, of the Union City Municipal Code to add a Decoto Industrial Park Study Area (DIPSA) Zoning Chapter (18.102), and make the text consistent with the amended DIPSA Specific Plan (SP-01-06). The DIPSA is comprised of approximately 440 acres. The DIPSA is generally bounded by Mission Boulevard, Decoto Road, Alvarado-Niles Road and the Union City/Fremont boundary line and also includes an adjacent 40 acre vacant parcel which is located on the southern side of Alvarado-Niles Road adjacent to the Union City/Fremont boundary line. Pursuant to California Environmental Quality Act (CEQA) Guidelines sections 15612 and 15168, the projects environmental impacts were previously evaluated in the certified Program EIR prepared for the 2002 General Plan update, the certified EIR prepared for the 2002 amendment to the Union City Community Redevelopment Plan and the certified EIR prepared for the DIPSA Specific Plan.

Avalon Evans, Assistant Planner, presented the staff report

Commissioner Sweeney thanked staff for making the changes from the study session.

Chairperson Lew referred to page 1-3, first paragraph, fifth line and asked if the 40 acres is included in the DIPSA or is an exception.

Ms. Evans replied that the 40 acres are included in the DIPSA they are not in the area bounded by those roads. Ms. Evans feels that the wording is correct as it is.

Chairperson Lew feels that the wording is confusing.

Ms. Evans stated that this was the suggested change made at the study session.

Ms. Evans suggested changing the wording to "except for approximately 40 acres of the plan area which are located at the southwest corner adjacent to Quarry Lakes Drive".

Commissioner Sweeney stated that the new wording does make it clear that the 40 acres is part of the plan area.

Chairperson Lew agreed to the new wording.

Chairperson Lew referred to page 3-8, Objective B and recommended adding “greatest” before “extent”.

Chairperson Lew referred to page 4-2, statement #4 and suggested rewriting the statement to make it clearer. Chairperson Lew read “That every effort shall be made to design projects that eradicate the harmful effects of past land uses and retain and integrate only those existing structures that add value to the immediate community and the City at large”.

Chairperson Lew stated that she understands the intent of the statement but does not feel that it is clear enough.

Ms. Evans stated that staff could insert her wording into the statement.

Commissioner Sweeney agreed.

Commissioner Anderson stated that it is a general statement and very vague

Commissioner Sweeney feels that the new wording would help make it clearer.

Chairperson Lew referred to page IV-5, statement #6 and recommended a minor rewrite to the following “that the design of all new commercial development shall be not only attractive but also flexible”.

Ms. Evans clarified that it is “should” and not “shall”.

Commissioner Sweeney agreed with the change.

Chairperson Lew referred to page IV-36, last statement at the bottom of the page and asked to add the word “greatest” before extent.

Chairperson Lew referred to page V-17 and asked to make sure that the footnotes are deleted as well.

Ms. Evans stated she would make sure.

Chairperson Lew referred to Exhibit B and asked if this is going to cross-reference this new chapter with other chapters of the Zoning Text.

Ms. Evans replied that the only other zoning districts affected by the DIPSAs besides the commercial, CSMU, RDC would be the Civic Facilities, Open Space and Private Institutional. Ms. Evans stated that for all of the residential guidelines the primary chapter will be this new DISPA chapter. Ms. Evans stated that the new DIPSAs chapter will refer to the existing residential chapter. Ms. Evans stated that with the exception of the residential chapter, these DIPSAs references could be included in the Civic Facilities, Open Space and Private Institutional for consistency.

Chairperson Lew asked which will have precedence “design guidelines” or “design criteria”

Ms. Evans stated that none of the zoning chapters takes precedence over one another. Ms. Evans stated that they are called “guidelines” because they do not want to be restrictive. Ms. Evans stated that they are not something that must be met but guidelines for staff reviewing DIPSA projects.

Ms. Evans stated that the design guidelines came directly from the Specific Plan and they were intended to supplement design criteria from the zoning districts rather than to create any conflicts.

Chairperson Lew asked if the Environmental Impact Review document needs to be signed before it can be submitted.

Ms. Campbell replied that the City prepared an Initial Study that is a precursor to determine what type of environmental document needs to be prepared for a project. Ms. Campbell stated that the Initial Study was used to evaluate the environmental impacts of the proposed changes beyond those evaluated in the DIPSA 1994 EIR, the RDA EIR and the General Plan EIR. Ms. Campbell stated that the final copy will be signed and in the file.

Chairperson Lew opened the public hearing.

Chairperson Lew closed the public hearing.

Commissioner Sweeney made a motion to recommend approval of the Specific Plan Amendment SP-01-06, and Municipal Code Text Amendment AT-03-06 to the City Council making findings 1 – 8 and adopting resolutions confirming this action.

Commissioner Anderson seconded

AYES	3 (Anderson, Lew, Sweeney)
NOES	0
ABSTAIN	0
ABSENT	2 (Savage, Sison)

3. **AVALON BAY AT UNION SQUARE, 14 – 44 UNION SQUARE, Final Environmental Impact Report, Site Development Review SD-06-05, Use Permit UP-06-05, V-03-06 and Tentative Tract Map 7746 and Development Agreement;** The applicant, Avalon bay Communities, Inc., is requesting Site Development Review (SD-06-05) to allow the construction of two five-story buildings with 438 units, on approximately six acres located adjacent to and southeasterly of the BART parking lot in Union City. The project location is 14 - 44 Union Square (APN: 087-0019-001-25 and 087-0019-001-26). The northerly building would consist of 272 units with parking primarily located in a six-level, on-grade parking structure adjacent to BART. The southerly building would consist of 166 units with parking primarily located in a three-story podium garage located directly below the building footprint. A new pedestrian/bicycle bridge crossing would be developed over the flood control channel adjacent to the project site to connect the Brookstone neighborhood to BART. The project will require a Use Permit (UP-06-05) to allow a high-density residential development in the Station-Mixed Use Commercial (CSMU) zoning district and a Variance Permit (V-03-06) for relief from parking and storage requirements. The applicant is also requesting approval of a Vesting Tentative Tract Map (VTTM 7746) to create a two-parcel subdivision and allow for the mapping of 438 condominium units. A Development Agreement for the proposed project

will also be considered. The City will consider certification of the Final EIR (State Clearinghouse #2005092069).

Janice Lum, Assistant Planner, presented the staff report

Commissioner Anderson stated that he did not have an opportunity to finish reviewing this project and therefore will abstain from voting. Commissioner Anderson asked if this would affect the ability of the other commissioners to vote on this project.

John Bakker, City Attorney, replied that if there are two votes to recommend then the project would be able to go forward. Mr. Bakker stated that if it is a tie vote then it will be a problem.

Commissioner Anderson stated that the only vote he would feel comfortable making is a vote to continue the project otherwise he will abstain because he was not able to give the project a good review.

Commissioner Sweeney stated that she has many questions and concerns and would also lean towards considering a continuance.

Commissioner Sweeney referred to sheet 2a and asked if there will be a trail connecting to the pedestrian bridge.

Ms. Lum stated there will be trail behind the Avalon fence on the canal side.

Commissioner Sweeney asked if there will be pedestrian access to the BART property next to the EVA gate.

Ms. Lum replied that the access will only be through the main drive aisle.

Commissioner Sweeney asked how a pedestrian would know that.

Ms. Lum stated that signs could be put up directing pedestrians.

Commissioner Sweeney stated that there is a pedestrian gate next to the EVA gate and asked if it is for the residents use only.

Joan Malloy, Planning Manager, stated that the applicant had indicated that would be fully gated there but it should be clarified on the drawing.

Commissioner Sweeney stated that she has concerns about the public access to the future pedestrian bridge and the security concerns for the building.

Ms. Malloy stated that the applicant is here to respond to that question.

Commissioner Sweeney asked what will be the name of this development.

Ms. Malloy replied that the projects name is "Avalon at Union Station" and the name in the Development Agreement may be a legal name.

Commissioner Sweeney stated that her preference would be "Avalon at Union City Station" so as not to confuse it with "Union Station" in Los Angeles.

Commissioner Sweeney asked what will be the cost of the pedestrian bridge and the improvements on the flood control property.

Carlos Jocson, City Engineer, replied that it has been estimated \$75,000 to \$100,000.

Commissioner Sweeney asked if funding for this bridge has been set aside in the budget.

Mark Leonard, Director Economic and Community Development, replied that it would be funded by the Redevelopment Agency.

Commissioner Sweeney asked if that is an identified item in their budget.

Mr. Leonard replied that it is.

Commissioner Sweeney stated that she has concerns over the business relocation. Commissioner Sweeney asked if businesses other than automotive would be given relocation assistance.

Mr. Leonard stated that there will be no relocation assistance for businesses other than the automotive businesses. Mr. Leonard stated that the reason is that Union City does not have very many automotive businesses and the City would like to encourage them to stay in the City.

Commissioner Sweeney asked how the relocation money will be allocated.

Mr. Leonard replied that there have been meetings between the City and the automotive businesses. Mr. Leonard stated that some businesses will go out of business, some have found places to relocate outside of Union City, some have found places to relocate in Union City and some will need additional relocation assistance. Mr. Leonard stated that this is not a redevelopment or City project and it is entirely a private project.

Commissioner Sweeney asked if that includes the allocation of the money.

Mr. Leonard stated that the developer is making a \$600,000 contribution to the City and the City is working with the businesses through one major contact to allocate the money. Mr. Leonard stated that this person is developing an automotive repair type condominium project in the Central Bay Business Park and will offer to lease spaces to other automotive businesses.

Commissioner Sweeney stated her concerns that not all the businesses going into the condo project are representative of the businesses we are losing in the Union Square area. Commissioner Sweeney stated that to the extent that the City is using money intended for automotive business relocation but these particular businesses are not the ones being relocated she is very uncomfortable with that. Commissioner Sweeney stated that if the automotive condominium project is not open to other competing repair services as well, it does not have the same flavor of what we are losing as a community asset.

Mr. Leonard stated that one particular business stepped forward and used their own money to purchase land in the Central Bay Business Park and developed the facility with Avalon Bay's help, the cost of those condominium spaces will be very competitive with other areas. Mr. Leonard stated they are trying to develop a center that has complete automotive services. Mr. Leonard stated that you are correct that not all the businesses will come from Union Square, as the City is trying to get an automotive use to move from the residential Decoto area to the automotive condominium site.

Commissioner Sweeney asked for an explanation of the fees that the developer is going to pay.

Mr. Leonard replied the current ordinance requires that apartments pay a "bedroom tax". Mr. Leonard stated that it has been in place since the early 80's or late 70's. Mr. Leonard stated that is all that would be required under the Municipal Code, however, if this project is converted to condominiums, then the Quimby Act fees apply and that would include parkland in-lieu fees and those are the highest fees of all the ones mentioned. Mr. Leonard stated that if the developer pays the Quimby Act fees, they will get a credit for the bedroom tax that they have already paid. Mr. Leonard stated that even if they never convert to condominiums, the City will charge them a park facilities fee. Mr. Leonard stated that the City Council will be asked to act on this fee at their next meeting. Mr. Leonard stated that the fee will be \$2000.00 per unit. Mr. Leonard stated that the developer will have to pay the park facilities fee before issuance of building permits along with the bedroom tax. Mr. Leonard stated that both of those fees will be credits, if and when the project is converted to condominiums, the park-in-lieu fee that would be paid at that time and based upon the value of the land at that time would be set against that credit.

Commissioner Sweeney stated that it is not clear in the development agreement that the fee will be based on the future land value. Commissioner Sweeney referred to page 5 section 8.3 of development agreement states compliance with the parkland dedication requirements for residential subdivisions. Commissioner Sweeney stated that in the middle of the paragraph it says in particular "the parties agree that the amount of the fee in lieu of dedication will be calculated using the formula set in 17.30.070 of the Municipal Code as it existed on the effective date (that's of the agreement) and the fair market value shall be determined based on an appraisal performed immediately prior to filing the final map." Commissioner Sweeney asked isn't the final map going to be filed long before the condominiums are sold.

Mr. Leonard stated that it is still the same concept. Mr. Leonard stated that the applicant will pay the fees any time they chose to file the final map. Mr. Leonard stated that if they chose to file the final map now they would pay the fees based on the value now. Mr. Leonard stated that the City would take the money and invest it or buy land or other facilities.

Commissioner Sweeney stated then it wouldn't be the same amount of money.

Mr. Leonard stated that it would not be the same exact dollars but the same value in proportion to the cost of land.

Commissioner Sweeney asked if the fee is based on vacant land or developed land.

Mr. Leonard stated that it would be similarly zoned vacant land.

Commissioner Sweeney referred to condition #7 and asked what alternative enhancements would be.

Ms. Lum replied that it was added at the applicant's request because the architect has not completed the final drawings and they did not want to lock them into a very specific window trim if something better was available.

Commissioner Sweeney asked if that means to match 100%. Commissioner Sweeney asked if that was just the window trim and not changes to the elevations in general.

Ms. Lum stated that it is just the articulation of the windows including the frame and the trim.

Commissioner Sweeney suggested adding window enhancements to condition #7.

Commissioner Sweeney referred to condition #8 and asked which tower elements are to be enhanced.

Ms. Lum stated it would be the southern tower on Building B and the tower adjacent to the BART property on Building A.

Commissioner Sweeney referred to condition #10 and asked why we are only encouraging the applicant to use an integral color coat when we have required it in the past.

Ms. Malloy stated that the building has many different color tones and it is to simplify application.

Commissioner Sweeney stated that the commission has been told that integral color retains better and resists chipping and cracking.

Mr. Leonard stated that the applicant asked to have this condition changed and suggested that she ask the applicant their reasons.

Commissioner Sweeney referred to condition #29 and if the 11 foot wide easement next to the BART property is going to be all sidewalk or a combination of sidewalk and landscape.

Ms. Malloy stated that it will more like an urban sidewalk with street trees and lighting.

Commissioner Sweeney referred to conditions #35 thru #39 and stated that these fees are not written out the same way that they are written out in the development agreement.

Mr. Leonard replied that for example the General Plan Cost Recovery Fee will be adjusted by the City Council so it is written to include the latest change.

Commissioner Sweeney stated that fee is listed in the development agreement with a specific rate and asked which document will prevail.

Mr. Leonard stated that it will have to be changed so that we can collect the most up to date fees as established by the City Council.

Commissioner Sweeney suggested the conditions should mirror the language in the development agreement.

Mr. Leonard agreed.

Mr. Bakker stated that often fees may change so it would be better to not spell out the specific amount just that they are required to pay the fee.

Mr. Leonard stated that they agreed to freeze some fees at the date of approval and condition #36 is accurate.

Commissioner Sweeney asked when that fee would be reviewed for currency.

Ms. Malloy stated that the Capital Facilities Fee is generally reviewed every two years.

Commissioner Sweeney referred to condition #40 and asked why did you use the date of the development agreement instead of the date of occupancy.

Mr. Leonard stated that it could be either, if prefer you can change it to occupancy.

Commissioner Sweeney would prefer to set it at the date of first occupancy.

Commissioner Sweeney referred to condition #48 and asked if that is just parking lot lighting.

Ms. Malloy stated that it would be all outdoor lighting, including building, pedestrian and parking.

Commissioner Sweeney referred to condition #28 from the desk item and asked without that easement can the project go forward at all.

Ms. Malloy stated that is why the condition linked the easement to combustible materials instead of the foundation.

Commissioner Sweeney asked what happens if you get the foundations and footings in and then cannot get the easement.

Commissioner Sweeney stated that the easement should be obtained before the issuance of building permits.

Mr. Leonard stated that we can incorporate that change.

Commissioner Sweeney would hate to see all that work being done and then not able to be completed because of no EVA.

Commissioner Sweeney referred to condition #77 and asked what “demonstrate” means.

Ms. Malloy stated that the site is under a voluntary clean up plan and any contamination below four feet is under the jurisdiction of Alameda County Water District. Ms. Malloy stated that any clean up must be approved by ACWD.

Commissioner Sweeney asked if the applicant will have to provide any documentation.

Ms. Malloy replied that ACWD would have to authorize the closure of the site before building permits could be released. Ms. Malloy stated that they do not issue a closure letter.

Commissioner Sweeney asked to change the condition so that the applicant will document their good standing.

Commissioner Anderson stated that they always submit a letter at the end of site remediation so why is it a problem to get it.

Ms. Lum stated that the DTSC issues the “no further action” letter. Ms. Lum spoke with Lorenzo Perez, Union City Hazardous Materials Inspector, who said that ACWD does not usually provide a similar closure letter.

Commissioner Anderson asked why then are we asking ACWD for something that they do not usually provide.

Ms. Lum stated that DTSC is the lead agency in the voluntary clean up agreement.

Commissioner Anderson stated that if we have a condition that requires the letter from DTSC that should satisfy the condition.

Commissioner Sweeney stated that they are asking for an indication from each of the applicable agencies so we should say what we want them to do.

Commissioner Sweeney referred to condition #79 and asked who is the "Bureau" and could it be spelled out.

Ms. Lum stated that it is the "Union City Fire Prevention Bureau".

Commissioner Sweeney referred to condition #80 and asked if it applies to every unit.

Mr. Leonard stated that staff will get clarification from the Police Department but it should be the entry doors to the lobbies and major entrances to the parking lot.

Commissioner Sweeney referred to condition #94 and asked what vehicles would be accommodated by the turn around.

Mr. Jocson replied that it would be private vehicles.

Commissioner Sweeney referred to condition #107 and the format is not the same as in the development agreement. Commissioner Sweeney asked if the fee was sufficient to cover all of the intersections that are in the condition.

Mr. Jocson stated that the fee is based on percentage contribution of this project towards the mitigation for the traffic.

Commissioner Sweeney stated that it looks like they will make a one percent contribution to the increase in traffic.

Mr. Jocson agreed with that estimate.

Commissioner Sweeney stated that then it will take about \$2.5 million dollars to fix those three intersections.

Mr. Jocson stated that is what has been budgeted. Mr. Jocson stated that the intersection of Alvarado-Niles Road and Decoto Road is now under design. Mr. Jocson stated that the expected construction costs are about \$800,000.

Commissioner Anderson asked if the other intersection improvements will cost about the same.

Mr. Jocson replied that the \$2.5 million was budgeted for three intersections.

Commissioner Sweeney referred to condition #108 and asked if it should read "gunite" instead of "granite".

Commissioner Sweeney referred to condition #109 and asked if there are cut and fill slopes in this project.

Ms. Malloy stated that there will be a great deal of grading in terms of excavation for the clean up and garage podium.

Commissioner Sweeney referred to page 56, second bullet on the page and asked who will review the informational literature to be passed out.

Mr. Jocson stated that it will be reviewed by the Clean Water program coordinator.

Commissioner Sweeney asked to have the review added to the condition.

Mr. Jocson agreed.

Commissioner Sweeney referred to page 58 and 59 and asked why the text was included in the condition.

Ms. Lum stated that those paragraphs can be deleted.

Commissioner Sweeney stated it should be changed on mitigations 3.15.2 and 3.15.3.

Commissioner Sweeney referred to mitigation 3.15.5 and asked where figure 3.22 is.

Ms. Lum stated that it is in the EIR.

Commissioner Sweeney asked to have it included in the conditions since it is being referenced.

Ms. Lum suggested referring the condition to the EIR.

Commissioner Sweeney accepted that change as long as it is clear where that figure can be located.

Commissioner Sweeney referred to the development agreement section 9.6 and asked to change it to “first occupancy date”.

Mr. Leonard confirmed that the “first date of occupancy” would be acceptable.

Commissioner Sweeney agreed with that.

Chairperson Lew stated that on page 7 in the last paragraph of the staff report there is an incomplete sentence.

Ms. Lum stated that it will be fixed.

Chairperson Lew referred to page 15 second paragraph and asked what is the size of the easement.

Ms. Lum stated that there will be a 30 foot wide access point along the BART property and there will be 26 foot EVA's throughout the rest of the development.

Chairperson Lew asked if the paragraph was actually referring to condition #28.

Mr. Leonard state that it is not referring to condition #28.

Chairperson Lew asked if there is a conflict between the fees as written in the conditions of approval and the fees in the development agreement, which will prevail.

Mr. Bakker replied that the development agreement will prevail in regards to the amount of the fees. Mr. Bakker stated that the conditions of approval will state what fees the project is subject to, and the development agreement will cap the amounts.

Chairperson Lew referred to condition #24 and is it final occupancy or initial occupancy.

Mr. Leonard stated that it is before the City finals the project.

Commissioner Sweeney asked if it should include more than the front yards.

Mr. Leonard stated that the condition will be changed to include all the landscaping.

Mr. Leonard stated that they will take out the word "front".

Chairperson Lew referred to condition #27 and if the right of entry is temporary or permanent.

Ms. Malloy stated that it is temporary specifically related to BART construction of Phase I site improvements.

Chairperson Lew asked to specify that it is a temporary right of way.

Mr. Leonard agreed to use the word temporary.

Chairperson Lew asked to include an end date.

Ms. Malloy stated that she does not think it will be necessary.

Chairperson Lew referred to condition #8 and asked to reference condition #46 and tie them together.

Chairperson Lew referred to condition #48 and asked to fix the reference to "condition 80".

Chairperson Lew referred to condition #65 and asked to add the word "install" after shall.

Chairperson Lew referred to condition #74 and asked to have the fee named.

Mr. Leonard stated that it is just called the "fire equipment acquisition fee".

Chairperson Lew referred to the development agreement and asked why there is no provision for disputes or alternative means of resolution of disputes.

Mr. Bakker replied that there is a defaults provision in the agreement that explains what remedies are available. Mr. Bakker stated that in typical development agreements alternative resolutions means are not included. Mr. Bakker stated there is an attorney's fees clause and one remedy is to go to court.

Chairperson Lew referred to the development agreement and asked what parcel is being referred to.

Mr. Bakker stated that there are two buildable parcels and they can assign the development agreement to either one of the parcels which is why it has been left blank.

Chairperson Lew asked when the development agreement will be executed.

Mr. Bakker replied that it would be if the developer decided to sell the parcel before they developed it.

Chairperson Lew referred to condition #16 and asked if the recycling will be located in with the trash enclosures.

Ms. Lum stated that they would be in the same area.

Chairperson Lew asked if recycling could be added to the condition.

Mr. Leonard agreed with the change.

Chairperson Lew opened the public hearing.

Chairperson Lew stated that she visited two Avalon Bay communities in San Jose and thanked Mr. Nathan Hong for showing her around.

Commissioner Sweeney asked what will be the name of the project.

Nathan Hong, Avalon Bay, replied that it hasn't been decided but would be willing to use "Avalon at Union City Station".

Commissioner Sweeney asked why they don't want to use the integral stucco coating.

Mr. Hong stated that wanted to keep their options flexible for the project. Mr. Hong stated that sometimes with integral color when you mix a patch it sometimes doesn't match well with the rest of the coating. Mr. Hong said that we would not rule out using integral color.

Commissioner Sweeney asked why the plans showed 2 bedroom stoop units on the ground floor plan but on another page they looked more like 3 bedroom units.

Glen Togawa, Architect, replied that these are not completed or final floor plans.

Commissioner Sweeney stated so this is just to indicate the space that they would occupy in the building.

Julius Concepcion, Union City, stated that this is a enclosed neighborhood that is bounded by Alvarado-Niles Road to the south, the flood control canal to the west and the BART tracks to the north. Mr. Concepcion stated that crime would be higher when BART riders find out that bridge is open, people will park their cars in their neighborhood and use the bridge to get to BART. Mr. Concepcion is concerned about the home values if the bridge is built. Mr. Concepcion does not want to see the bridge built in their neighborhood.

Philip Crosby, Union City, stated that an important element is whether the bridge should be built at all. Mr. Crosby wants the commission to weigh the positive versus negatives. Mr. Crosby stated that the walk to BART now is 10 minutes and bridge will cut it to five minutes. Mr. Crosby stated that the disadvantage of building the bridge is lack of park space for the Avalon Bay community. Mr. Crosby stated that they only have a small park for the Brookstone development and he feels that the residents of Avalon will come to use their park and it is not designed for heavy usage.

Steven Braswell, Union City, stated that he has lived in Brookstone for over 10 years. Mr. Braswell stated that it is a very close community. Mr. Braswell is also concerned about the over usage of the park. Mr. Braswell feels the bridge will bring in more cars and he doesn't want to see the neighborhood as BART parking lot. Mr. Braswell stated they don't need the bridge.

John H. Rennels, Jr., BART property development, stated that he supports staff recommendation regarding the EVA negotiation by the time that combustibles are on site. Mr. Rennels feels that they should be finished by the time that occurs.

Brian Hui, Union City, stated that he has two concerns about pedestrian bridge; one is causing BART parking in the neighborhood and the traffic it would create and the other concern is the security of path at night.

Chairperson Lew asked whether the bridge was planned before the Brookstone development or was it planned as part of the Brookstone development.

Mr. Leonard replied that when the area was planned the goal was to create pedestrian connections to BART from basically every direction and when the subdivision came in a break in the wall was created to connect the development for the benefit of the neighborhoods behind the wall. Mr. Leonard stated that what is there today is not what it will be in 10 or 15 years as it becomes more of a downtown area for Union City. Mr. Leonard stated that staff sees no reason to vary from the plan. Mr. Leonard suggested that the commission could consider mitigations. Mr. Leonard stated that one of the concerns is BART users parking in the neighborhood and the plan is to build two parking garages in the Intermodal area. Mr. Leonard stated that one parking garage will be built on an existing BART parking lot and the other will be built behind the BART station and will be accessible when they open the back wall of the BART station. Mr. Leonard stated that one of the things the commission can consider is the timing of when the bridge goes in, if in fact you still support the original plan. Mr. Leonard stated that the commission could recommend the bridge go in now or when the first parking structure is built. Mr. Leonard stated that timing could address those concerns. Mr. Leonard does not feel that crime will be an issue. Mr. Leonard stated if the area is planned properly, circulated properly and patrolled properly and if the City has the means to continue to beef up the police department commensurate with our growth that we will see no additional increase in crime. Mr. Leonard stated that if the bridge doesn't work it could also be removed as it is only a pedestrian bridge. Mr. Leonard stated that the bridge could be monitored with cameras.

Chairperson Lew asked if the flood control channel is going to be improved.

Ms. Malloy replied that the flood control channel is not planned to be improved at this time. Ms. Malloy stated that the City has an agreement with Alameda County Flood Control to use the levees for trails, so there might be some paving to improve the pathway.

Chairperson Lew asked if there will be access for bikes and pedestrians.

Ms. Malloy replied that it will only be to get to the bridge.

Chairperson Lew asked if there was any water in the canal.

Ms. Malloy replied only seasonally.

Chairperson Lew asked if the bridge would create a safety hazard.

Ms. Malloy replied that it would be built to the appropriate building standards and safety controls.

Chairperson Lew asked what the bridge will be constructed of.

Ms. Malloy stated that it will have 42 inch guard rails and most likely will be a pre-fabricated bridge that will be set in place.

Joe Cao, Union City, spoke in opposition to the bridge.

Julie Bauer, Union City, stated that she has lived in the Brookstone community since it was first opened and they were not told about the possibility of the bridge. Ms. Bauer asked if the security cameras are going to be put in her neighborhood as well. Ms. Bauer stated that she does not want the bridge.

Maria Calbonero, Union City, stated she is opposed to the building of the bridge because she feels it will be an invasion of privacy and it will invite BART riders to come in and park in their neighborhood for free. Ms. Calbonero stated that the proposed project will be too massive for the location.

Lily Qian, Union City, agreed with her neighbors about not building the bridge.

Chairperson Lew closed the public hearing.

Commissioner Sweeney stated that she has no major objections to the project but does have concerns with the pedestrian bridge and as it is not actually a part of the project. Commissioner Sweeney stated that this plan provides for an easement for the bridge and the City could hold that easement for a very long time without building the bridge until the neighborhood wanted one. Commissioner Sweeney would encourage the City to retain the easement for the future. Commissioner Sweeney stated that there are big changes coming to the area and residents who see only the downside now may say in the future why wasn't the bridge built when there is all this great stuff I could be getting to more conveniently.

Commissioner Sweeney would recommend the City retain the easement. Commissioner Sweeney would still prefer to see the 30 foot wide emergency vehicle access easement in place prior to the issuance of building permits. Commissioner Sweeney believes that BART requires a right of access in order to do their project and BART can provide it in a timely fashion.

Chairperson Lew agreed with Commission Sweeney.

Commissioner Sweeney asked to go over the changes to the conditions of approval.

Mr. Leonard went over the changes to the conditions:

- Add to condition #7 “alternative enhancements to the window trim may be considered by staff”.
- Change condition #8 to add “of condition #46” at the end.
- Change condition #16 and add “recycling” and “Tri-CED”.
- Change condition #18 “forced air ventilation shall be provided as required by mitigation measure 3.11.1”.

Commissioner Sweeney asked if forced air ventilation can be provided without an air condition unit.

Mr. Leonard replied yes.

Commissioner Sweeney asked if the residents can put in a window air conditioner.

Ms. Lum replied that condition #18 prohibits window air conditioning units in certain cases.

Commissioner Sweeney asked who will be enforcing the condition.

Mr. Leonard stated that the condition can preclude window air conditioners in all cases.

Commissioner Sweeney feels that it will be a problem since the developer is not putting it in the central system.

Mr. Leonard changed condition #18 to add a sentence at the end that reads “individual window or wall air conditioner units shall not be allowed”.

Commissioner Anderson stated that it will only prevent them at time of construction and not in the future.

Mr. Bakker stated that if it is a condition of approval in the Site Development Review it would be enforceable against future owners. Mr. Bakker stated that if code enforcement got a complaint and it violates the conditions of approval, they could be cited for that. Mr. Bakker stated that normally conditions are for development but there can be ongoing conditions.

Commissioner Anderson stated that the condition does not state who is responsible for seeing the condition is met.

Mr. Bakker stated that the owner is ultimately responsible for the actions of the tenants. Mr. Bakker stated they could include provisions in the lease.

Mr. Leonard continued:

- Change condition #20 to add at the end “or as may be allowed by the City and BART”.

Commissioner Sweeney asked what BART has to do with the removal of the office building.

Ms. Malloy stated that the office building is located about five feet from the BART property. Ms. Malloy stated that the office building would be in the way for Phase I of the BART site improvements.

Commissioner Sweeney asked why BART has the power to allow or disallow the demolition.

Ms. Malloy stated that Avalon has been working with BART and the City for the EVA.

Mr. Leonard continued:

- Change condition #24 the first sentence to read “the applicant shall fully landscape yards and interior courtyards with ...”.
- Change condition #27 to indicate it is a temporary right of entry.
- Change condition #28 to read “prior to placing combustible material on site the applicant shall secure from BART a 30 foot wide emergency vehicle access easement to the benefit of the City of Union City as required by the EIR mitigation measure 3.15.4 and the easement shall be approved....”.

Commissioner Sweeney stated that mitigation measure 3.15.4 has been stricken.

Mr. Leonard stated it will just read 3.15.

Commissioner Sweeney stated her preference for it to read prior to issuance of building permits.

Chairperson Lew also prefers prior to issuance of building permits.

Mr. Leonard agreed to change condition #28 to read “prior to issuance of building permits”.

- Change condition #29 to read “prior to issuance of building permits”.
- Change condition #30 to read “prior to issuance of building permits,...”.
- Change condition #33 to read “prior to issuance of building permits...”.
- Change conditions #35 through #39 to be generalized as to payment of the fees.

Commissioner Sweeney suggested referring it to the development agreement.

Mr. Bakker stated that he did not see a problem with that.

Mr. Leonard continued:

- Change condition #40 to read “from date of first occupancy”.
- Change condition #48 to read “condition #80”.
- Change condition #65 to read “the applicant shall install a gate...”.
- Change condition #70 to read “prior to issuance of building permits”.

Commissioner Sweeney stated that if the road had to be paved then she would be fine with changing it to combustible materials.

Mr. Leonard continued:

- Change condition #70 to read “prior to placing combustible materials on site”.
- Change condition #74 to read “the applicant shall pay applicable fire equipment acquisition fees as required by the City at the time of issuance of building permits.”

Commissioner Sweeney stated that this is a fee called out in the development agreement and it could create conflict.

Mr. Leonard continued:

- Change condition #74 to read “the applicant shall pay applicable fire equipment acquisition fees as required by the development agreement.”
- Change condition #77 to read “the applicant shall document...”.
- Change condition #79 to read “Union City Fire Prevention Bureau”.
- Change condition #80 to get clarification from the Police Department as to whether it means major entryways or all outdoor lighting.
- Change condition #94 to read “All streets within the development shall be private”.
- Change condition #102 to read “prior to the removal of any trees on site a permit shall be obtained from the City”.
- Change condition #107 to reflect the development agreement.
- Change condition #108 to change the word “granite” to “gunitite”.
- Mitigation (pg 56) to read “the informational literature shall be reviewed by the Clean Water Program coordinator prior to public distribution”.

Ms. Lum read back the changes to the mitigation measures:

- Mitigation 3.15.2 to delete from the end of the second paragraph to the end of the measure.
- Mitigation 3.15.3 to delete from the end of the second paragraph to the end of the measure.
- Mitigation 3.15.5 to reference figure 3.22 will be referenced to the page in the DEIR.

Ms. Malloy stated that in the final EIR there is an exhibit 3.10 that needs to be updated to show the latest roadway Option 2.

Mr. Leonard stated that there are going to be changes to the development agreement that will not be substantial. Mr. Leonard would like them approve it in concept.

Commissioner Sweeney asked to change in the development agreement be the date of the beginning of the ten year period for rental units.

Mr. Leonard stated that would be in section 9.6

Commissioner Sweeney stated they will have to agree on a name.

Commissioner Sweeney asked if all the changes in the conditions would be made to the resolutions.

Mr. Leonard replied that it would.

Commissioner Sweeney made a motion to recommend to the City Council certification of the Environmental Impact Report, and approval of Vesting Tentative Tract Map VTTM 7746, Site Development Review SD-06-05, Use Permit UP-06-05, Variance V-03-06 and Development Agreement DA-01-06, subject to the extensively amended conditions, making findings 1 – 9 for the Vesting Tentative Tract Map, Site Development Review and Use Permit, and for the Variance permit findings 10-18 and for the Development Agreement finding 19-23 and adopting resolutions confirming these actions.

Commissioner Lew seconded

AYES	2 (Lew, Sweeney)
NOES	0
ABSTAIN	1 (Anderson)
ABSENT	2 (Savage, Sison)

Mr. Leonard thanked Avalon Bay for all of their cooperation with staff and the commission. Mr. Leonard stated that they have been excellent to work with. Mr. Leonard stated that the development will be a great asset to the City.

**VI. SUPPLEMENTAL STAFF REPORTS:**

**A. CONTINUED REPORTS:** None.

**B. NEW REPORTS:**

- 1. BALCH ENTERPRISES, INC., 1300 ATLANTIC ST., Site Development Review SD-06-06;** The applicant, Balch Enterprises, is requesting Site Development Review approval to construct a new 52,226 square foot industrial building to be used for food manufacturing on a vacant parcel located at 1300 Atlantic Street (APN: 475-009-025). This project has been determined to be categorically exempt from the California Environmental Quality Act (CEQA) Guidelines per Section 15332, Class 32 – Infill Development projects.

Carmela Campbell, Senior Planner, presented the staff report

Chairperson Lew referred to condition #13 in the desk item and noted that it should be #14.

Commissioner Sweeney asked since they are providing 5 parking spaces at the loading docks why do they need additional truck parking.

Ms. Campbell replied that was part of the justification for not requiring truck parking. Ms. Campbell stated that in the ordinance loading docks cannot substitute for truck parking, however, the Economic and Community Development Director can make the case based on the unique circumstances of the use that truck parking would not be required. Ms. Campbell stated that from a practical standpoint trucks can pull in there and stage.

Commissioner Sweeney asked to prohibit truck parking on the gravel area similar to the condition applied to the moving company. Commissioner Sweeney stated that the trailers could park there but not the trucks due to objections by the Clean Water Coordinator. Commissioner Sweeney thinks to suggest that area would be overflow parking would be a mistake in this case.

Ms. Campbell asked if she wants to add a condition of approval.

Commissioner Sweeney replied yes.

Mr. Leonard asked if she is referring to the tractors and not the trailers.

Mr. Leonard suggested "Truck tractors shall not be parked on the gravel area."

Commissioner Sweeney stated that it needs to cover different types of trucks as well.

Ms. Campbell suggested changing it to "truck parking".

Ms. Campbell stated that the applicant has indicated that they have no intention of using the gravel area at this point.

Commissioner Sweeney asked why the standard condition of approval relating to the washing of equipment and mats outdoors and draining to the sanitary sewer is not here.

Ms. Campbell stated that it can be added.

Ms. Campbell asked if condition #77 would be sufficient.

Commissioner Anderson asked why the recommendation section cites a different CEQA section.

Ms. Campbell replied that the recommendation should be revised to read "section 15332".

Commissioner Anderson referred to conditions #20 and #22 and asked why they do not have shall statements. Commissioner Anderson suggested adding the "shall".

Commissioner Anderson referred to condition #41 and it is missing the word "shall".

Chairperson Lew asked if staff would like her to go through the changes that she sent in an email.

Ms. Campbell replied that the grammar corrections should be in the desk item. Ms. Campbell stated that there are a few items that she would like to go into detail about that were not addressed in the revised conditions but were in the email.

Chairperson Lew referred to condition #13 and asked where the masonry wall would be located.

Ms. Campbell replied that it has not been identified and that it is usually a detail that will be in the building plans.

Chairperson Lew referred to condition #27 and recommend moving the closed parentheses to follow "civil engineer".

Ms. Campbell stated that she had clarified the condition with the Building Department and it is worded correctly.

After further discussion, Mr. Leonard stated that the revised condition #27 will read as follows "the proposed building foundation design shall be reviewed by the geo-technical engineer or civil engineer who prepared the soils investigation".

Chairperson Lew invited the applicant to come forward.

Jack Balch, Balch Enterprises, thanked staff for all their help with this project. Mr. Balch stated that Plats du Chef is looking to expand their facility and Union City was very helpful in bringing this project to the city. Mr. Balch stated that the engineer on this project will design the foundation to not exceed the load. Mr. Balch would rather not have the condition about parking the trucks on the gravel area. Mr. Balch stated that there has been truck parking on the area in the past and there are plenty of preventative to keep contaminates out of the water system.

Commissioner Sweeney asked if the existing trees in the front are staying.

Mr. Balch replied that some of the trees may be moved or removed due to utility changes and they will replace the trees.

Commissioner Sweeney stated that normally they ask to have the frontage bermed to reduce the view impact of the parked cars from the street.

Mr. Balch stated that it would not be good for the existing trees.

Commissioner Sweeney stated that it would be arbitrary to require one business to comply with the no truck parking on gravel condition and not require it of other businesses.

Mr. Balch stated that it has never been a requirement of this land in the past. Mr. Balch stated that the area is already graveled and is an all weather surface. Mr. Balch stated that they will use the area to stage the construction equipment and supplies but they do not plan to use it for permanent parking.

Commissioner Sweeney stated that our Clean Water requirements are very strict.

Mr. Balch stated that we can agree to disagree.

Barry Ferrier, Union City, complimented staff on expediting a new business for Union City. Mr. Ferrier feels that the building will be an improvement to the site. Mr. Ferrier hopes that it will be a good

neighbor for the recently approved automotive center. Mr. Ferrier feels that the shrubs could be used instead of berms. Mr. Ferrier asked when there will be more reports from the Economic Development Coordinator.

Ms. Campbell asked Commissioner Sweeney if the gravel area was paved would that be a better solution. Commissioner Sweeney stated that she should talk to the Clean Water Coordinator.

Commissioner Anderson made a motion to approve Site Development Review SD-06-06, making findings 1 – 4, with amended conditions of approval and adopting a resolution confirming this action.

Commissioner Sweeney seconded

AYES	3 (Anderson, Lew, Sweeney)
NOES	0
ABSTAIN	0
ABSENT	2 (Savage, Sison)

**VII. REDEVELOPMENT AND ECONOMIC DEVELOPMENT REPORTS: None.**

**VIII. COMMISSION MATTERS:**

- A. Follow-up on Planning Commission referrals to the City Council.
- B. Upcoming applications for the Regular Planning Commission meeting of July 20, 2006.

**IX. GOOD OF THE ORDER:**

Commissioner Sweeney stated that she will not be at next meeting.

Commissioner Sweeney asked why Tom's Flowers had to vacate the building.

Mr. Leonard replied that the building has been demolished. Mr. Leonard stated that the site is going to be cleaned up for the Decoto Farmer's Market. Mr. Leonard stated that they are preparing for a mixed use development on this site.

Chairperson Lew stated that the landscaping at Union Landing Transit center is looking pretty shabby.

Mr. Leonard stated he will bring it to Public Works attention.

Chairperson Lew asked about the status of SkyVenture.

Mr. Leonard replied that there will be a ground breaking ceremony the second week of August. Mr. Leonard stated that they had problems getting the tower engineered. Mr. Leonard stated that they have gotten financing and the project is really moving forward now.

Chairperson Lew referred to the area behind Lowe' and asked if they are allowed to store materials back there as it looks very messy.

Ms. Malloy replied that they are in the process of doing a re-merchandising and they are taking out shelves and product displays and it should be done by the end of July.

X. **ADJOURNMENT:** 11:05

**APPROVED:**

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**JO ANN LEW, CHAIRPERSON**

**ATTEST:**

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**MARK LEONARD, SECRETARY**