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DATE: November 5, 2009

TO: Planning Commission

FROM: Richard E. Patenaude, AICP, Planning Manager

SUBJECT: **PL-2007-0576 – PM 9700 – The Loftin Firm (Applicant) / Eden Gardens MHP, LLC (Owner) – Request for a Parcel Map to Convert Eden Gardens Mobilehome Park to Resident Ownership**

The Property is Located at 1150 West Winton Avenue in the Mobilehome Park (RMP) Zoning District

RECOMMENDATION

Staff recommends that the Planning Commission find that the project is exempt from CEQA review and approve the parcel map to convert the Eden Gardens Mobilehome Park to resident ownership, subject to the attached findings and conditions of approval.

SUMMARY

Eden Gardens, like the other eight mobilehome parks in the City, is currently operated as a rental mobilehome park. The owner has submitted this parcel map application, which would provide for resident ownership by converting the park's 129 mobilehome spaces to "condominiums."

The applicant has submitted the required Tenant Impact Report (TIR) pursuant to the State Government Code. Pursuant to the TIR, and to a Non-Purchasing Resident Protection Agreement negotiated by the applicant and the residents' representatives, protections would be afforded to those residents who elect not to purchase their space. All residents will be afforded the opportunity to either 1) buy the space on which their mobilehome is situated, or 2) continue to rent the space. Under state law, if a low-income resident elects to continue to rent their space, rent increases would be regulated. As discussed below, there are only limited rental protections for those residents who are not low income. If this application is approved, the owner has agreed to extend rental protections to both the low- and non-low-income residents who elect not to purchase their space. Upon the death of the original resident, the rental protections would extend to a child of that resident.

BACKGROUND

On May 8, 2007, the City Council adopted an emergency ordinance that placed a moratorium on the conversion of mobilehome parks in Hayward, after becoming aware of the intent of the owners of various mobilehome parks to convert them to resident ownership. The purpose of the moratorium was to provide the City sufficient time to adequately analyze the City's regulations, adopted in 1984, with proper community input and provide opportunity for resolution of proposed State legislation that could impact Hayward's authority to regulate conversions. The proposed legislation has since been vetoed by the governor.

On November 13, 2007, The Loftin Firm, for Eden Gardens MHP, LLC, submitted a tentative parcel map application to convert the park to resident ownership. No action could be taken on this matter until the close of the moratorium on May 8, 2008. In the meantime, the City Council adopted a new Mobilehome Park Conversion Ordinance on April 22, 2008. Subsequently, Planning staff gave notice to The Loftin Firm that its application was incomplete under the requirements of the new ordinance. As the result of a recent court decision, the City is preempted from imposing the requirements of its newly-adopted Mobilehome Park Conversion Ordinance, other than to determine that the application complies with state law. Staff has determined that the application satisfies the state's requirements for a mobilehome park conversion to resident ownership and deemed the application complete on October 15, 2009.

Project Description and Setting –

Eden Gardens Mobilehome Park occupies a 15.13-acre, flat, L-shaped property with vehicular access from West Winton Avenue and Eden Avenue; emergency access is also provided to Middle Lane. The site is located across West Winton Avenue from the Hayward Executive Airport, between Hesperian Boulevard and Clawiter Road. Eden Gardens was constructed circa 1969. There are 129 mobilehome spaces with a shared clubhouse, swimming pool and spa, shuffleboard building, covered car wash area, and an office on site. The subject property is zoned Mobilehome Park (MH) District. Another mobilehome park is to the east (241-space Hayward Mobile Country Club).

Eden Gardens, like the other eight mobilehome parks in the City, is currently operated as a rental mobilehome park; that is, residents own their own mobilehomes but the land upon which the mobilehomes are located is owned by the park owner. Eden Gardens is also a "senior park," meaning that at least one of the residents in a unit must be at least 55 years old.

The map would convert the park's 129 mobilehome spaces to "condominiums." The physical layout of the park would not change. If the application is approved, it would remain a mobilehome park. Those not wishing to purchase, however, would not be required to purchase and would continue to pay rent. Action on this application is not required by the City Council unless the Planning Commission's decision is appealed. The park owner would then file the required documents with the State Department of Real Estate, the same process as is observed for permanent construction subdivisions, in order to receive approval to sell the condominium interests in the park. The condominium conversion would not change the "senior park" status.

DISCUSSION AND STAFF ANALYSIS

The California Government Code sets forth the conditions for mobilehome park conversions. Section 66427.5 of the Government Code states:

At the time of filing a tentative or parcel map for the conversion of a rental mobilehome park to resident ownership, the subdivider is required to avoid the economic displacement of all non-purchasing residents in the following manner:

- (a) The subdivider shall offer each existing tenant an option to either purchase his or her condominium, or to continue residency as a tenant.
- (b) The subdivider is required to file a report on the impact of the conversion upon residents of the mobilehome park.
- (c) The subdivider is required to make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on the map by the legislative body.
- (d) The subdivider is required to obtain a survey of support of residents of the mobilehome park for the proposed conversion. The survey of support must be conducted in accordance with an agreement between the subdivider and a resident homeowners' association. The survey must be obtained pursuant to a written ballot and shall be conducted so that each occupied mobilehome space has one vote. The results of the survey must be submitted to the local agency upon filing of the tentative or parcel map, to be considered as part of the subdivision map hearing.
- (e) The subdivider is required to be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the map. The scope of the hearing shall be limited to the issue of compliance with this section.
- (f) The subdivider is required to avoid the economic displacement of all non-purchasing residents in accordance with the following:
 - (1) As to non-purchasing residents who are not lower income households, the monthly rent, including any applicable fees or charges for use of any pre-conversion amenities, may increase from the pre-conversion rent to market levels in equal annual increases over a four-year period.
 - (2) As to non-purchasing residents who are lower income households, the monthly rent, including any applicable fees or charges for use of any pre-conversion amenities, may increase from the pre-conversion rent by an amount equal to the average monthly increase in rent in the four years immediately preceding the conversion, except that in no event shall the monthly rent be increased by an amount greater than the average monthly percentage increase in the Consumer Price Index for the most recently reported period.

Tenant Impact Report -

The applicant has submitted the required Tenant Impact Report (TIR) pursuant to State Government Code Section 66427.5(b) above. The purpose of the TIR is to explain the protections afforded to those residents that elect not to purchase their space. All residents will be afforded the opportunity to either 1) buy the space on which their mobilehome is situated, or 2) continue to rent the space. Further, if a low-income resident elects to continue to rent their space, then the rent increases will be according to State Government Code Section 66427.5(f) above, which provides greater protection against rent increases than the City's rent control ordinance. In addition, the owner has agreed to rent protections for non-low-income residents who elect to rent their space, beyond the protection afforded by state law. Under 66427.5, non-low-income rent may be increased to full market value

over the course of 4 years. The owner has agreed to a formula that limits the rent increases for non-low-income renters and to extend the rent protection to both the residents who elect not to purchase their space, and, upon their death, to a child of that resident.

Based on the state rent control provisions, (f)(2) above, for low-income households, the increase in base rent would be the average percentage increase for the previous four years but shall not exceed the consumer price index (CPI) average monthly percentage increase for the most recently reported period. This would provide greater protection than that under the City's rent control ordinance, in that the annual, permissible rent increase under City law is 60% of CPI or 3%, whichever is greater. In addition, under City law, the owner may "pass-through" some qualifying capital improvement costs, among other things, in the form rent increases. Under the state provisions, there is no minimum amount that can be charged and there are no pass-throughs.

The park owner has, in the Non-Purchasing Resident Protection Agreement, agreed to rent protections for the non-low-income renting residents over and above that provided for in the State rent control provisions, (f)(1) above. The base rental increase shall not exceed the CPI average monthly percentage increase for the most recently reported period, plus the percentage difference between the low- and moderate-income levels. Under state law, the non-low income households would enjoy only temporary protection from an increase in rent for a period of four years as the rent is increased to market level. As set forth in the Non-Purchasing Resident Protection Agreement, the owner, however, has offered rent protection for the life of the non-low-income resident and a child of that resident.

Findings for Parcel Map Application

The scope of the hearing on the application is limited to determining whether the applicant has complied with Section 66427.5 of the State Government Code. This significantly narrows the scope of Planning Commission's authority compared to typical parcel map applications. Staff has listed the requisite findings in bold with staff's response in *italics*.

The subdivider shall file a report on the impact of the conversion upon residents of the mobilehome park to be converted to resident owned subdivided interest, and shall make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on the map by the advisory agency or, if there is no advisory agency, by the legislative body.

In converting the Eden Gardens Mobilehome Park to resident ownership, Government Code Section 66427.5 requires the park property owner to avoid the economic displacement of all non-purchasing residents. This is accomplished in a number of different ways: limiting the right to evict upon conversion; offering each resident the option to purchase the lot (i.e., condominium unit) or continuing residency as a renter; and as to non-purchasing residents, complying with State law as to how rents are to be calculated, depending on the income level of the resident household. For both low- and non-low-income residents, additional rent protections are provided.

On October 20, 2009, the property owner sent to each resident a Notice of the Planning Commission Hearing and the Tenant Impact Report, a copy of which is attached as Attachment B.

The subdivider shall obtain a survey of support of residents of the mobilehome park for the proposed conversion. The survey of support shall be conducted in accordance with an agreement between the subdivider and a resident homeowners' association, if any, that is independent of the subdivider or mobilehome park owner. (The survey shall be obtained pursuant to a written ballot, the survey shall be conducted so that each occupied mobilehome space has one vote, and that the results of the survey shall be submitted to the local agency upon the filing of the tentative or parcel map, to be considered as part of the subdivision map hearing prescribed by subdivision).

On November 14, 2007, staff received a copy of the survey of residents form and a tally sheet dated July 2, 2007, a part of the first submittal application package. Residents were provided five options: 1) support the conversion, but indicating a desire to remain a tenant under the proposed rent-control provisions; 2) support the conversion, but indicating a desire to remain a tenant with a lifetime lease; 3) decline to respond; 4) not support the conversion; and 5) inability to respond due to lack of information. The survey of support was conducted in accordance with an agreement between the subdivider and a resident homeowners' association. As indicated in the Tenant Impact Report, at the time of the vote, there were 128 occupied spaces and the results of the survey were calculated on July 2, 2007 as follows:

<i># Responses</i>	<i>Support Yes</i>	<i>Support No</i>	<i>Low Income</i>	<i>Other</i>
<i>96</i>	<i>10</i>	<i>86</i>	<i>49</i>	<i>1</i>

Staff has determined that, by providing the Tenant Impact Report and the Resident Survey of Support, the owner is in compliance with the requirements of State Government Code Section 66427.5.

ENVIRONMENTAL REVIEW

The conversion of an existing rental mobilehome park to a residential subdivision, cooperative, or condominium for mobile homes is statutorily exempt [California Environmental Quality Act (CEQA) Guidelines, Section 15282 (e)].

PUBLIC OUTREACH

Notice of this application was sent to all residents of the Park and to property owners within 300 feet of the subject property. The owner has also made a copy of the Tenant Impact Report available to each resident of the mobilehome park at least 15 days prior to this hearing as required by Section 66427.5(c) of the Government Code. At the time this report was prepared, staff had received no comments regarding the condominium conversion.

Prepared and Recommended by:



Richard E. Patenaude, AICP
Planning Manager

- Attachment A: Area and Zoning Map
- Attachment B: Tenant Impact Report, containing summary of Resident Survey of Support and Non-Purchasing Resident Protection Agreement
- Attachment C: Findings
- Attachment D: Conditions of Approval Plans