

**UNAPPROVED EXCERPTS FROM THE  
SAN LEANDRO PLANNING COMMISSION  
REGULAR MEETING**

City Council Chambers, First Floor  
835 East 14th Street  
San Leandro, California 94577

**7:00 p.m. Regular Meeting**

**June 19, 2014**

**Item 1: Roll Call**

**Present:** Planning Commissioners Esther Collier (District 6); Kevin Leichner (District 1); Kai Leung (District 4); Scott Rennie (At Large); Vice Chair Ed Hernandez (District 2); Chair Denise Abero (District 3).

**Excused:** Planning Commissioners Tom Fitzsimons (District 5)

**Staff:** Elmer Penaranda, Senior Planner; Keith Cooke, Principal Engineer; Mike Sobek, Police Lieutenant; Tom Liao, Secretary to the Planning Commission and Deputy Community Development Director; Sally Barros, Principal Planner; Richard Pio Roda, City Attorney; Larry Ornellas, Facilities Coordinator; Barbara Templeton, Recording Secretary.

**Item 4: Correspondence**

**Secretary Liao**, noting that several items arrived after the distribution of agenda packets, indicated that Planner Penaranda would cover any correspondence related to Item 7A.

**Item 5: Oral Communications**

**Commissioner Collier** reported receiving a phone call from Howard Kerr, past president of the Washington Manor Home Owners Association.

**Item 7A: Public Hearings**

PLN2014-00007, Modification of Planned Development PD 91-3, to construct new gates and fencing for the Heron Bay residential development. The proposed gates and fencing includes construction of 1) residents' vehicular and pedestrian gates measuring up to eight feet tall located on Bayfront Drive; 2) visitors' gates up to eight feet tall located on Anchorage Drive; and 3) fencing and gates up to seven feet tall for the open space at the northern entrance of the development, set back approximately 25 feet from the face of the curb of the Lewelling Boulevard Circle. RS(PD) Residential Single-Family, Planned Development Overlay District. Assessor's Parcel Numbers 80G-1325-5-1, 80G-1406-26 and 80G-1406-29. Peter Hartzell, Bay Cities Automatic Gates (applicant); Heron Bay Home Owners Association (HOA) c/o Cynthia Yonning, Professional Association Services Inc. (property owner). Continued from the May 15, 2014 Planning Commission meeting. (Penaranda)

**Planner Penaranda** presented the staff report via his PowerPoint presentation. He noted that the proposed plan calls for restricting use of the main Bayfront Drive entrance gate to residents' vehicles only. Residents would gain entry either via scannable ID tags on their vehicles or remote-control devices, either of which would activate the Anchorage Drive entrance. The Anchorage Drive ingress would be the sole access point for landscapers and other service providers, maintenance workers including San Leandro Public Works Department staff, police officers, delivery vehicles and visitors. Both sets of gates also would have adjacent pedestrian gates. The installation would include decorative metal tubular fencing along the width of the park that fronts Bayfront Drive. Planner Penaranda explained that the proposal to install gates would be a major modification to the Planned Development, which was approved in the mid-1990s, so the application is being treated as a new application by the Planning Commission.

**Planner Penaranda** suggested that in addition to more inconvenience and longer drive times, increased traffic would result from diverting all of these vehicles away from Bayfront Drive and onto Anchorage Drive and the east-west streets it feeds such as Charter Way, Mariner Way and Oceanside Way. He also noted restricted access would hamper emergency services by delaying response times. Not only would the emergency personnel need time to go to the Knox Box and unlock it in order to get through the gate, but they also might have to maneuver their way around any vehicles waiting in the queue, or perhaps even a maintenance worker who inadvertently went to the wrong gate.

**Planner Penaranda** indicated that Tract Map 6810 specifies a Public Access Easement (PAE) on the full length to the western terminus of Bayfront Drive from the Lewelling Boulevard Circle. He said this PAE was intended to provide vehicle and pedestrian access via Bayfront Drive and the adjacent sidewalk to the Bay Trail. In addition, he stated that the City Engineer's Report and Conditions of Approval for Vesting Tentative Map Tract 6665, an earlier version of Tract 6810, requires a PAE to be provided over Bayfront Drive to allow for public pedestrian and vehicular ingress and parking for access to the Shoreline Trail and Interpretive Center.

**Planner Penaranda** also explained that in addition to the City, the HOA must seek public access approval from the San Francisco Bay Conservation and Development Commission (BCDC). In response to Commissioner Rennie, he confirmed that the BCDC permit is separate and distinct from the City's.

**Planner Penaranda** further noted that the minutes from the November 9, 1995 Planning Commission meeting includes a statement from the developer's consultant that the development would not be gated. To substantiate his point about the City discouraging gated communities, Planner Penaranda referenced the list of 14 examples in the staff report of residential infill projects and subdivisions without gates that the City has approved since 1984 such as Washington Commons, Marina Vista and Cherrywood. He also provided supporting data indicating that District 4 has the lowest rate of violent crimes of any San Leandro Council District.

In response to Commissioner Rennie, **Planner Penaranda** showed where the traffic would flow on the PowerPoint slide. With the Bayfront Drive gate accessible to residents only, visitors, delivery vehicles and service providers would enter via Anchorage Drive. Instead of turning left from Bayfront Drive onto Oceanside Way and Harbor Way, they would have to drive around the complex and take the back way in. The route to Heron Drive, a right turn from the end of Bayfront Drive, would be even longer.

**Planner Penaranda** also summarized correspondence received after the Commissioners' agenda packets had already been assembled and mailed:

- A letter from BCDC Coastal Program Analyst Ande Bennett to Attorney Alan Berger, dated June 19, 2014

- An attachment to an email from Jeff Tepper on behalf of the Heron Bay HOA to Secretary Liao, email dated June 17, 2014, which Secretary Liao emailed to each individual Commissioner on June 18, 2014
- An email from Stephanie Smith, Kingfisher Court, to Secretary Liao, dated June 17, 2014
- An email from George Jahad and Gay Leonard, Laverne Drive, to Planner Penaranda, dated June 10, 2014
- An email from Commissioner Fitzsimons to Secretary Liao, dated June 19, 2014

**Commissioner Collier**, recalled from the development of the project in the mid-1990s two specific areas, which she pointed out on the map, that were intended to be parking lots for people using the Bay Trail.

**Principal Engineer Cooke** noted that the tract map was recorded and indicated a PAE from BCDC along Bayfront Drive. He added in response to Commissioner Rennie that the PAE on the map intended to allow for public access, including vehicular access to the Bay Trail.

**Commissioner Hernandez** asked whether this is an “all or nothing” proposal, or if the Planning Commission could consider the four components (i.e., three security gates and fencing) separately. Planner Penaranda said the Planning Commission has the discretion to support, deny or modify the proposal as it sees fit.

**Commissioner Leichner** pointed out that BCDC allowed construction provided the development met the City’s approval and the recorded PAE was part of the City’s approval. Planner Penaranda confirmed the PAE held higher position on title than the City’s PD approval in response to Commissioner Leichner’s inquiry.

Applicant representative **Jeff Tepper** presented a summary of his memo dated June 19, 2014 [that staff included in tonight’s Planning Commission agenda packet] which revised the application to keep the pedestrian gate unlocked at all times and would allow bicyclists too in response to BCDC concerns. He added that public access is important and the HOA will work with BCDC.

**Mr. Tepper** also emphasized that the proposal resulted from increased criminal activity in the neighborhood over the past year, particularly an escalation in violent crimes committed by non-residents. He said an overwhelming majority of Heron Bay HOA members have committed to assessing themselves for the cost of designing and installing the gating system to limit property access to those who have legitimate reasons for being there.

**Mr. Tepper** said the City staff’s crime data, which is broken out by Council District, doesn’t illustrate the extent of the problem in the Heron Bay neighborhood. Citing incident reports from the San Leandro Police Department (SLPD), he provided the Commission with a handout entitled “Heron Bay Crime Comparison,” with highlighted data showing 15 incidents listed in the violent crime category for Heron Bay for the period from May 2011 to May 2014, versus three in the Marina Vista neighborhood. He added that there were two strong arm robberies and a home invasion not included in the City data either.

**Mr. Tepper** noted the easement on the tract map makes no reference to vehicle-specific public access, adding that although the access issue is a BCDC matter, what the HOA must do procedurally is outlined by BCDC in its recent letter to HOA attorney Alan Berger. Ms. Ande Bennett from BDCD indicated in the letter that without City approval, which must occur first and

is a separate approval process, the BCDC would be unable to accept an application to amend the BCDC public access permit.

**Mr. Tepper** pointed out the Planning Commission's approval of a gate for the Floresta Gardens HOA in May 2014 for overriding public safety set a precedent. He also added that the security camera option was not a deterrent to crime as cameras capture the crime after the fact. Therefore, the HOA decided to skip the "passive" camera option and go directly with security gates. He commented that gates will discourage and impede perpetrators, who will then need to go elsewhere. The general public who use the trail is also susceptible to crime and would therefore benefit from the gate as well. He also refuted each of the six recommended findings of fact in the staff report for denial of the HOA's application.

**Commissioner Rennie** commented that even without a specific reference to public vehicular access, the tract map would not have identified Bayfront Drive as a PAE, as well as the sidewalk, if it intended to exclude vehicles.

Attorney **Alan Berger**, who represents the HOA, spoke on the applicant's behalf in response to Commissioner Rennie. Attorney Berger noted that BCDC is charged with assuring public access to the trail, particularly pedestrian and bicyclists, but BCDC does not require vehicular access. He also cited language on Tract Map 6810 stating that "private facilities [such as easements for private storm drains, private vehicle access and private pedestrian access on the tract map] shall be maintained by the HOA and such "easements are not offered for public use, and use by the public shall be permissive only."

Attorney Berger emphasized that vehicular access has never been part of the PAE requirements and raised concern that the City [per Engineer Cooke's earlier response] was altering the intent of the PAE to permit vehicle access. Attorney Berger also disagreed with Commissioner Collier's recollection about intended public parking spaces not designated in the tract map.

**Mr. Berger** introduced **HOA President Fred Simon** to respond to questions about recent security measures taken by the HOA in the Heron Bay neighborhood to address crime. Mr. Simon said the HOA hired a security guard and established a Neighborhood Watch group. He noted that 78 percent of Heron Bay HOA members voted last September to approve paying assessments to cover the cost of installing and operating the security gates. He then listed the recent security measures including 1) daytime guard from 9 am to 4 pm, 2) installation of security cameras, 3) working with the Police Department on a Neighborhood Watch program, and 4) email blasts among HOA residents. He emphasized that it was important for the HOA to protect Heron Bay residents, who refuse to be victims of violent crimes. Mr. Simon provided accounts of the recent homicide and recent robbery assaults.

**Chair Abero** noted that she had helped implement Neighborhood Watch program in her neighborhood and that having block captains were important to having an effective program.

**Peter Hartzell**, owner of Bay Cities Automatic Gates, explained how the gates would operate, and addressed questions about how effective security gates are in reducing the incidence of crime, particularly when they're used in conjunction with camera systems. He noted that he has no data measuring the effectiveness of gated communities, but he talked about how content former clients in a San Jose condominium complex are with the security gates he installed about six years ago.

**Chair Abero** opened the public hearing after a brief recess.

1. **Harry Petty, 2365 Riverside Court**, supports the gates.
2. **David Boles, 15611 Wicks Boulevard**, opposes the gates.
3. **Loanna Huynh, 15550 Harbor Way**, supports the gates as she no longer feels safe in Heron Bay.

- 4. Yakov Shapiro**, 2277 Oceanside Way, was a burglary victim and supports the gates.
- 5. Jeff Wong**, 15606 Baypoint Avenue, noted his cars have been vandalized, and while gates are not 100 percent assurance, access is too easy currently.
- 6. George Jahad**, Laverne Drive, commented that he uses the trail and was attacked three weeks ago. He asked what assurance the gates will be open if crime continued to occur after their installation. He opposes the gate on Bayfront Drive, but suggested gates on the side streets [which don't impact the public easement access].
- 7. Chris Cantora**, Regatta Way, was mugged three weeks ago and supports the gates.
- 8. Rakesh Gowda**, 15563 Harbor Way, felt he would be the next victim as his neighbors have been robbed already. He supports the gates.
- 9.** An unidentified Heron Bay resident conveyed an emotional account of how he and his wife were assault and robbery victims and he pleaded for a safer home.
- 10. Alvin Gee**, 2332 Seacrest Court, noted he is a 16 year resident and has been a crime victim six times. He supports the gates.
- 11. Benjamin Martinez**, 15679 Atlantus Avenue, noted he was speaking for "justice and fairness" and was supportive of the gates.
- 12. Nicole Mate**, 2335 Overlook Court, said she was a Heron Bay resident who opposes gates. She cited studies indicating the ineffectiveness of gates. She added that gates are contrary to democratic ideals and would not distinguish between trail users and criminals.
- 13. Rebecca Importante**, 2307 Regatta Way, recounted a home invasion she experienced and supports the gates.
- 14. Dorinda Grandbois**, 15691 Anchorage Drive, commented that people leave when they feel scared and the gate will increase property values and the City tax base.
- 15. Johanna Ota**, 2265 Mariner Way, stated that the gate would be a deterrent. She requested that the Planning Commission not outright deny the proposal, but work with the HOA to develop a compromise.
- 16. Bose Onyemem**, 15635 Anchorage Drive, added that the gate would be a deterrent and provide a sense of security.
- 17. Jack Liu**, 15468 Heron Drive, mentioned he installed alarms and cameras in his home. He noted that the effectiveness of the gates won't be known unless the HOA is allowed to install them.
- 18. Bob Spence**, 15468 Hull Court, cited an important urban design book from the 1970s that emphasized how healthy [community design] systems require flow. Therefore, maintaining flow in Heron Bay makes the community healthier and safer.
- 19. John Dalisay**, 2301 Pacific View Court, compared living in Heron Bay to his prior time living in an unsafe South Hayward area. He indicated that he was hopeful the Planning Commission would be open to the gate.
- 20. Will Kong**, 15677 Anchorage Drive, noted being a crime victim twice and supports the gate as a deterrent.
- 21. Yunyi You**, 15350 Bittern Court, supports the gates and added that crimes could happen to Bay Trail users too.

*Motion to close public hearing*

*Hernandez/Leichner: 6 Aye, 0 No (1 Absent)*

**Lieutenant Sobek** clarified the data from the Police [that Mr. Tepper referenced in his memo to Planning Commission and his presentation] by noting the data was actually “incident data” not a true “crime analysis.” The data reflects incidents reported and they are not all actually crimes committed. Lieutenant Sobek also noted that the last 4 months of incident statistics for District 4 showed the lowest crime rates of all Council districts. He added that areas with less activity can result in more crime, therefore any active security is effective. Helpful security measures he cited were Neighborhood Watch, cameras, alarms and security guards.

**Commissioner Rennie** said he understands the residents fears and concerns, and wants to help alleviate them, but they have posed a “big ask,” not only because gating is contrary to the General Plan, which represents the City’s Constitution, but also because it would limit Bay trail access as the gates would represent a physical barrier. He questioned whether other crime deterrent measures have been tried comprehensively enough, including cameras, security patrols and a very active Neighborhood Watch program. He said he thought the security guard stationed at the Bayfront Drive entrance was there counting vehicles rather than providing guard service.

**Commissioner Hernandez** also suggested that active patrolling would be more effective than stationary guards. He noted too that an appeal might lead to greater costs for the applicant.

**Commissioner Rennie** reiterated that the Planning Commission wants to help address the situation, but the City’s General Plan policy on gated communities, as well as neighborhood interconnectivity and public Bay Trail access are big hurdles to overcome.

**Chair Abero**, indicating that there had been a homicide only four doors away from her home in the past, said security cameras can be very effective and are not nearly as invasive as gating would be. She also considers an active Neighborhood Watch an effective tool. She asked the audience in the Council Chambers how many of them serve as Neighborhood Watch Block Captains. [One hand in the audience was raised in response.]

**Chair Abero** also indicated that she wouldn’t want Heron Bay to be isolated from the rest of the City because gating fragments neighborhoods, erodes the sense of community and discourages civic participation.

**Commissioner Hernandez** suggested that neighborhoods also could become involved in “Nextdoor,” [an online community social network]. Further, he noted that an upcoming Safety fair by the San Leandro Police Department would highlight additional safety measures for the community. He added that the community has private streets because of the density desired by the developer and they did not meet the minimum street widths of public streets. Therefore, he concluded that it is the responsibility of the HOA to provide for the immediate safety of its community and that it has failed its residents. From his observations on a previous site visit, Commissioner Hernandez noted there was one guard stationed at the main entrance and more active patrols throughout the community may be of greater benefit. Finally, given that there is no longer parking access on the main PAE to the trail, he commented that there is less of an opportunity to deter criminal activity due to the lack of foot traffic from visitors during the day.

Because **Commissioner Fitzsimons** was unable to attend the meeting, he sent an email expressing his views that Secretary Liao read into the record as follows:

Heron Bay was designed as an open community. Only an overriding public safety concern and the lack of alternatives should alter this condition. Installation of a security gate is only one method to attempt to reduce crime, and it is a drastic method. Only as a last resort should a gate be installed. It doesn't appear that any other alternatives have been tried. The residents of Heron Bay have voted to pay for this gate, so presumably they would be willing to pay for other measures such as private security. Additionally, it is unclear to me that a gate will have the desired effect since criminals can certainly walk into the development to commit crimes.

Furthermore, the Heron Bay development would not be allowed to have a security gate if it were a new project applying to be approved. Heron Bay is part of San Leandro with all of the incumbent benefits and challenges. Creating an exclusive enclave runs counter to the inclusive community we are striving to be.

For these reasons, I am strongly opposed to the installation of restricting access.

***Motion to support the staff recommendation  
for denial of the proposed modification to PD-91-3  
subject to the resolution provided [which was read into the record]  
and the findings for denial***

***Hernandez/Collier: 6 Aye, 0 No (1 Absent)***

**Secretary Liao** stated that decisions of the Planning Commission under public hearings may be appealed to the City Council by filing a form with the City Clerk within 15 days of the date of the action. The form shall specifically state the reason for the appeal, and an appeal fee will be required.

**END OF EXCERPTS**