



## Legislation Details (With Text)

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**Title:** Staff Report for APL15-0001; Appeal of two conditions of approval in an approved Site Plan Review, PLN2014-00028, granted by the Board of Zoning Adjustments (BZA) on February 5, 2015 to construct a new 161,200 square foot warehouse building on the western portion of 1717 Doolittle Drive. One condition requires payment of \$329,487 for Development Fees for Street Improvements and the other requires payment of \$264,880 for Undergrounding Utilities Conversion Fees. [A BZA approval is final, but it can be appealed to the City Council. In this case, Appellant appeals the imposition and amount of the two conditions that require payment of the fees cited above. The City Council must conduct a public hearing, after which it must consider granting the appeal to impose and/or modify the fee amount(s) or it may deny the appeal and affirm the approval of the BZA to require payment of the fees prior to the issuance of building permits. The property is zoned IG Industrial General District. Alameda County Assessor's Parcel Number 79A-541-10; A. Comstock, Comstock Realty Partners, Inc. (Appellant).]

### Indexes:

### Code sections:

**Attachments:** 1. Appeal Application with Supporting Statements, 2. Ord 88-023, 3. Reso 2005-128, 4. Reso 2010-046, 5. SLMC 5-3, 6. DFSI Calculator, 7. Excerpts of 02-05-15 BZA Mtg minutes Draft, 8. Email from S. Tayco with City Reply, dated 2-5-2015, 9. Vicinity Map, 10. Recommended Findings of Fact, 11. Recommended Conditions of Approval, 12. Exhibits A-R, 13. Photos of Aurora Drive, 14. PowerPoint

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Staff Report for APL15-0001; Appeal of two conditions of approval in an approved Site Plan Review, PLN2014-00028, granted by the Board of Zoning Adjustments (BZA) on February 5, 2015 to construct a new 161,200 square foot warehouse building on the western portion of 1717 Doolittle Drive. One condition requires payment of \$329,487 for Development Fees for Street Improvements and the other requires payment of \$264,880 for Undergrounding Utilities Conversion Fees. [A BZA approval is final, but it can be appealed to the City Council. In this case, Appellant appeals the imposition and amount of the two conditions that require payment of the fees cited above. The City Council must conduct a public hearing, after which it must consider granting the appeal to impose and/or modify the fee amount(s) or it may deny the appeal and affirm the approval of the BZA to require payment of the fees prior to the issuance of building permits. The property is zoned IG Industrial General District. Alameda County Assessor's Parcel Number 79A-541-10; A. Comstock, Comstock Realty Partners, Inc. (Appellant).]

## SUMMARY AND RECOMMENDATIONS

At its February 5, 2015 meeting, the Board of Zoning Adjustments (BZA) heard the Site Plan Review application to construct a new 161,200 square foot warehouse building at 1717 Doolittle Drive. The BZA reviewed the proposal, took public comments, and, after closing the public hearing, the BZA made the necessary findings of fact and approved the proposed project subject to certain conditions

of approval. The motion passed 4-0 (3 vacancies). Excerpts of the Board of Zoning Adjustments meeting minutes relevant to this appeal are attached to this staff report. BZA actions are final unless appealed to the City Council within 15 days of the action. On February 20, 2015 the appellant filed the appeal referenced above.

#### Staff Recommendation:

Staff recommends denial of the appeal, per the proposed Resolution. The proposed Resolution denies appellant's request to modify the fee amounts listed in the Site Plan Review conditions of approval, PLN2014-00028, for the Comstock warehouse building. The Resolution affirms the BZA's approval of the Site Plan Review conditions of approval, which, amongst other conditions, imposes the payment of the fees.

### **BACKGROUND**

Appellant proposes to construct a new 161,200 square foot warehouse building at the western portion of 1717 Doolittle Drive, which has been used for outdoor storage since the site was developed for the telephone company in 1955. The project site comprises approximately 19 acres. It is already developed with a two-story 421,500 square foot office and warehouse building.

This matter was originally scheduled for hearing on the November 6, 2014 Board of Zoning Adjustments meeting agenda. The applicant requested postponement for additional time to study the required fees and expenses of the proposed project. Subsequently, the applicant requested that the matter be re-noticed for BZA consideration. It was re-scheduled for the February 5, 2015 BZA meeting.

The proposed project was found by the BZA to enhance and improve a portion of the property that was underutilized. The BZA appreciated that the proposal was designed to not affect nor conflict with residents to the south of the subject property. The BZA approved the project by taking the following actions:

1. Adopted a California Environmental Quality Act (CEQA) Exemption for the project per CEQA Guidelines Section 15061 (b)(3);
2. Adopted the Recommended Findings of Fact for Approval of PLN2014-00028; and
3. Approved Site Plan Review PLN2014-00028 to construct a 161,200 square foot warehouse building with loading docks and administrative offices subject to Conditions of Approval.

The Site Plan Review (Planning) application is used to analyze and determine the various City departments' requirements (such as the Building and Safety Services, Fire, Engineering and Transportation, Planning, and Public Works) before a Building Permit application is pulled. The requirements are detailed in the Conditions of Approval. In addition, the required fees established by the City Council pursuant to various provisions of the San Leandro Municipal Code (SLMC) and the San Leandro Administrative Code (SLAC) are also determined during the Planning process.

#### Appeal

Appellant requests that the City Council consider modifying the amounts due for the Development Fees for Street Improvements and the Utility Undergrounding Fees.

## ANALYSIS

### Development Fees for Street Improvements

The Development Fee for Street Improvements (DFSI) is applied as a condition to obtaining a building permit within the City of San Leandro when there is a change in land use. It is a traffic impact fee established to mitigate the effect of a change in land use on the condition of public streets due to an increase in vehicular traffic. There are 13 different land use categories identified when calculating DFSI; they are listed in Title 8, Chapter 10 of the City of San Leandro Administrative Code. Each use category has a base fee rate listed in Title 6, Chapter 4 of the City of San Leandro Administrative Code (see attached Calculation Form for DFSI 2014-15). Additionally, there are two individual adjustments that may apply to any project, as allowed per Title 7, Chapter 11 of the City of San Leandro Municipal Code. The "Davis Street/Doolittle Drive Intersection Traffic Impact Fee" and the "Marina Boulevard/Interstate 880 Interchange Traffic Impact Fee" were adopted by the City; they have a different fee schedule that is applied in addition to the base DFSI. In Title 8, Chapter 10 of the City of San Leandro Administrative Code, there are maps delineating the boundaries of the zones where these adjustments apply.

To calculate the total DFSI for a particular project, the proposed and current land uses are analyzed and determined by staff. The fee is then calculated first for the proposed use, and then for the current use. Should the proposed fee be higher than the current use fee, the permit applicant is credited the fee amount for the current use. Should the proposed fee be lower than the current use fee, the applicant does not need to pay DFSI.

Currently, the subject parcel is within the Marina/I-880 Traffic Impact Fee Zone, and Davis/Doolittle Traffic Impact Fee Zone 5. These two fees are applied to the project along with the DFSI base fee. For the 161,200 square foot building, a usage of "General Industrial" was used. The base DFSI fee for the "General Industrial" category is \$1.16 per square foot, with an additional \$0.85 per square foot for the Marina/I-880 fee adjustment, and an additional \$0.03 per square foot for the Davis/Doolittle fee adjustment. The rates provided are rounded to the nearest cent, and the un-rounded rates are used in the final calculation. Since the location where the new construction will occur is vacant, no credit was applied. The DFSI fees are \$329,486.79.

### Utility Undergrounding Fee

The Utility Undergrounding Fee (UUF) is applied as a condition to obtaining a building permit for construction located in an Underground Utility District, as defined in the Underground Utility District Master Plan dated April 20, 1992, and per Title 5, Chapter 3 of the City of San Leandro Municipal Code. It is a fee established to help facilitate the "gradual conversion of overhead utility systems to underground systems." Its purposes are to "increase public safety, promote the general welfare and improve the appearance of the City".

The UUF applies only to the frontage of a parcel within an Underground Utility District. It provides for a credit for other improvements already constructed on the site. If the cost of the proposed improvements is less than 25% of the replacement cost of the existing construction, no UUF is required. If the cost of the proposed improvements is greater than 75% of the replacement cost of the existing construction, the entire UUF is required. If the cost of the proposed improvements is between 25% and 75% of the replacement cost of the existing construction, the UUF fee is pro-rated for that percentage. If a parcel is subdivided, the entire UUF is due for the original parcel frontage(s).

The subject parcel has frontage on three streets: Aurora Drive, Williams Street and Doolittle Drive. Only Williams Street and Doolittle Drive are in Underground Utility Districts, so only those frontages were considered when calculating the fee. The subject parcel also has an existing building on it, the replacement cost of which was compared to the cost of the proposed new construction to determine the final fee.

In 2009, several building permits were issued for work in the existing building on the site. However, the cost of the improvements, when compared to the replacement value of the existing improvements, was less than the 25% threshold and therefore did not trigger any UUF payment at the time.

The parcel frontage along Williams Street is 1,585.50 feet, and the parcel frontage along Doolittle Drive is 500 feet, for a total UUF frontage of 2,085.50 feet. Currently, the UUF rate is \$341.70 per linear foot of parcel frontage, for a fee of \$712,615.35. The Building Department calculated the cost of the proposed building and the replacement value of the existing building. For the new construction, a cost of \$57.11 per square foot was used for the 3,500 square foot fire sprinkler installed and conditioned space. A cost of \$53.11 per square foot was used for the 157,700 square foot warehouse space, for a total cost of \$8,575,332.00. For the existing construction, a cost of \$57.11 per square foot was used for the 170,000 square foot fire sprinkler installed and conditioned space, and a cost of \$53.11 per square foot was used for the 251,538 square foot warehouse space, for a total replacement cost of \$23,067,883.18. Comparing the two, the proposed building cost is 37.17% of the existing buildings replacement value. Therefore, the UUF applied to this project is \$264,880.43.

### DFSI and UUF Fiscal and Project Impacts Analysis

Staff does not recommend that the fees discussed in this report be reduced. These fees are restricted for and dedicated to the safe and coordinated development of the City, which benefits investment in San Leandro. The fees provide the necessary funding to cover the costs of upgrading public infrastructure. Therefore, waiving or modifying the fees in question for this appellant would be detrimental to the City because it would greatly restrict the City's ability to fund programs and projects such as the Neighborhood Traffic Calming Program, and utility undergrounding projects already proposed on East 14<sup>th</sup> Street and Marina Boulevard. In addition, an appeal granting a waiver or a modification to DFSI and UUF fees is unprecedented; staff neither provides nor recommends waivers or modifications as a policy or a practice. The fees were approved and established in accordance with State law. They should be considered reasonable infrastructure investments that provide both extrinsic and intrinsic benefits to appellant and appellant's property.

The Development Fee for Street Improvements (DFSI) and Underground Utilities Fees (UUF) are in the City of San Leandro Municipal Codes Chapters 7-11 and 5-3, respectively. Periodically, the fee rates are revisited to determine their viability and the rates are indexed yearly based on Engineering News Record cost data for the San Francisco Bay Area region. This ensures the fees assessed are in-line with construction cost inflation.

When compared to neighboring governmental agencies, the traffic impact fees applied to development projects within the City of San Leandro are low. For example, the City of Hayward has a Building Construction, and Supplemental Building Construction and Improvement Tax for Industrial/Warehouse construction of \$1.44 per square foot. The City of Pleasanton has a Traffic

Development Fee for Industrial construction of between \$7.65 and \$9.13 per square foot. The City of Berkeley has a Transportation Services Fee for Warehouse construction of \$1.10 per square foot. The City of Emeryville has a Transportation Impact Fee for Industrial construction of \$9.15 per square foot.

For Utility Undergrounding in lieu fees, the City of San Jose has, for example, an Overhead Utility Undergrounding In-Lieu Fee of \$440 per linear foot, well above the City of San Leandro's rate of \$341.70 per linear foot.

### **Current Agency Policies**

The fees in question were established by the City Council pursuant to various provisions of the San Leandro Municipal Code (SLMC), the San Leandro Administrative Code (SLAC), and State law.

### **Applicable General Plan Policies**

- 7.01 Industrial Assets - Build on the strengths of the City's existing industrial base, transportation infrastructure, and proximity to Oakland International Airport in the City's business development efforts.
- 7.06 Adaptive Reuse - Encourage private reinvestment in vacant or underutilized industrial and commercial real estate to adapt such property to changing economic needs, including the creation of flex/office space.
- 7.09 West San Leandro Business District - Build upon the locational strengths and transportation features of West San Leandro to support the area's continued development as a major industrial, technology, and office employment center. In accordance with the West San Leandro Plan, limit the encroachment of incompatible residential and retail uses into the area, and promote additional development and redevelopment with manufacturing, technology, warehouse and distribution, office/flex, and similar uses.
- 10.02 Off-Site Impacts - Consider the setting and context of each site when evaluating proposals for development in industrial areas. The potential for impacts on adjacent uses, including the potential for land use conflicts and increased parking demand and truck traffic, should be a key consideration.
- 10.03 Buffering - When new development takes place in the transitional areas between industry and housing, use a variety of buffering measures including land use restrictions, landscaping and screening, sound walls and insulation, and limits on hours of operations and activities to promote land use compatibility. The City's zoning regulations should continue to contain development and design standards that minimize the potential for conflicts between industrial and residential uses, and between commercial and residential uses.
- 44.05 Street Beautification - Upgrade the City's commercial thoroughfares by building upon their existing strengths and improving their aesthetic qualities. The City should implement programs to underground utilities, abate weeds and graffiti, eliminate litter, improve buffers to adjacent residential uses, prohibit excessive or out-of-scale signage, remove billboards, and provide streetscape amenities and landscaping along these thoroughfares.

- 52.01 Development Impacts - Permit new development only when infrastructure and utilities can be provided to that development without diminishing the quality of service provided to the rest of the City.
- 52.02 Fair Share Costs - Require future development to pay its fair share of the cost of improving the water, sewer, drainage, and other infrastructure systems needed to serve that development. Use fees and other appropriate forms of mitigation to cover the costs of upgrading public infrastructure.

### **Permits and/or Variances Granted**

- Conditional Use Permit, PLN2006-00085, for a vehicle storage yard at the rear of the subject property for a car rental business. November 16, 2006
- Conditional Use Permit, PLN2007-00010, for an outdoor storage yard at the rear of the subject property for a building materials and services business. May 3, 2007

### **Environmental Review**

At its February 5, 2015 meeting the Board of Zoning Adjustments determined that this project is exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines, Article 5, Section 15061 (b)(3) where it was seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

### **Board/Commission Review and Actions**

The Board of Zoning Adjustments made the findings and approved the proposed Site Plan Review for the project, PLN2014-00028, to permit the construction of a 161,200 square foot warehouse building on the western portion of 1717 Doolittle Drive.

### **Summary of Public Outreach Efforts**

This City Council public hearing item was afforded the requisite 10 day notice. The required methods for noticing were conducted, including a legal advertisement in the Daily Review newspaper, the posting of placards adjacent to the subject property on nearby utility poles, mailed notification to property owners and business owners within a 500-foot radius of the subject property, and mailed notification to the Mulford Gardens' Improvement Association and the Marina Action Committee (Neighborhood Associations). The Board of Zoning Adjustments meetings received similar noticing.

### **Legal Analysis**

The City Attorney's Office reviewed and approved the staff report.

## **ATTACHMENTS**

### **Attachments to Staff Report**

- Appeal Application with Supporting Statements
- Ordinance No. 88-023 "An Ordinance Adding Chapter 11 to Title VII of the San Leandro

Municipal Code and Establishing and Imposing a Development Fee for Street Improvements on New Development Projects in the City of San Leandro”

- Resolution No. 2005-128 “Resolution of the City Council of the City of San Leandro Imposing a Traffic Impact Fee to Fund Improvements to the Davis Street-Doolittle Drive Intersection and Adopting a New Chapter 8.10 to the San Leandro Administrative Code Relating to Development Fee for Street Improvements”
- Resolution No. 2010-046 “Resolution Adopting a Supplemental Traffic Impact Fee and Amending the San Leandro Administrative Code to Add Section 8.10.320, Incorporating Administrative Regulations for the Implementation of the Fee Program for Developments within a Zone of Benefit to Cover the Cost of Improvements to the Marina Boulevard/Interstate-880 (I-880) Interchange”
- San Leandro Municipal Code Chapter 5-3, “Underground Utility Districts”
- Calculation Form for DFSI 2014-15
- Excerpts of the Board of Zoning Adjustments Meeting Minutes of February 5, 2015
- Email from S. Tayco with City Reply, dated February 5, 2015
- Vicinity Map, dated November 6, 2014
- Findings of Fact for Approval
- Conditions of Approval
- Exhibit A - Title Sheet with Rendering (Sheet T-1)
- Exhibit B - Proposed Site Plan (Sheet A-1)
- Exhibit C - Proposed Enlarged Site Plan; West (Sheet A-1.1)
- Exhibit D - Proposed Enlarged Site Plan; East (Sheet A-1.2)
- Exhibit E - Existing Office Plans (Sheet A-2)
- Exhibit F - Proposed Floor Plan (Sheet A-3)
- Exhibit G - Existing Elevations with Proposed Elevations (Sheet A-4)
- Exhibit H - Proposed Elevations (Sheet A-4.1)
- Exhibit I - Proposed Roof Plan and Sections (Sheet A-5)
- Exhibit J - Topographic Survey (Sheet C1)
- Exhibit K - Preliminary Grading Plan (Sheet C2)
- Exhibit L - Preliminary Grading Utility Plan (Sheet C3)
- Exhibit M - Preliminary Erosion Control Plan (Sheet C4)
- Exhibit N - Storm Water Quality Control Plan (Sheet C5)
- Exhibit O - Landscape Planting Plan; South Portion (Sheet L1.0)
- Exhibit P - Landscape Planting Plan; North Portion (Sheet L1.1)
- Exhibit Q - Landscape Hydro-Zone Plan; South Portion (Sheet L2.0)
- Exhibit R - Landscape Hydro-Zone Plan; North Portion (Sheet L2.1)
- Photographs of Existing Site Conditions

**Attachment to Resolution**

- Exhibit 1 -Findings of Fact for Approval

**PREPARED BY:** Elmer Penaranda, Senior Planner, Community Development Department