

July 3, 2006

**Honorable Mayor and Members of the
Hermosa Beach City Council**

**Regular Meeting of
July 11, 2006**

SUBJECT: APPEAL OF PLANNING COMMISSION DECISION TO MODIFY THE CONDITIONS OF APPROVAL FOR THE HERMOSA PAVILLION PRECISE DEVELOPMENT PLAN AND PARKING PLAN (RESOLUTION NO. 03-45) -- 1605 PACIFIC COAST HIGHWAY

Planning Commission Recommendation:

1. Sustain the Planning Commission decision and adopt the attached Resolution to require that the property owner provide 2 hours free parking for customers with validation for all patrons of the building and provide signage identifying the free parking in order to increase use of the parking structure and prevent spillover parking in the neighborhood; and
2. Re-evaluate the effectiveness of the validation program in six months to determine whether it is necessary to impose new conditions on the Parking Plan or repeal the mandatory validation program and initiate public parking measures to mitigate spill over neighborhood parking.

Background:

On February 21, 2006, the Planning Commission reviewed a parking study submitted by the Hermosa Pavilion owner, and heard testimony from residents, customers and employees which established that adequate parking is provided on site¹ but that a significant parking problem exists on surrounding streets, since 30-40% of building users were choosing to park on-street or in other commercial lots rather than use the building garage. Staff and the owner presented parking solutions for Commission consideration, and the Commission continued the matter, directing staff to work with the applicant to find mutually acceptable parking solutions. On March 21, 2006, the Planning Commission reviewed the owner's recommendations and determined that it was necessary to amend the project conditions in order to mitigate problems created by the parking operations of the Hermosa Pavilion. On April 18, 2006 the Planning Commission approved Resolution No. 06-16, modifying the Parking Plan to require free validated parking for building customers and a signage program identifying the free parking.

The Planning Commission originally approved a Precise Development Plan and Parking Plan under Resolution No. 03-45 for the Hermosa Pavilion, which contains conditions related to the adequacy of parking supply and efficiency of parking operations for the building. The Parking Plan is based upon a shared parking analysis that allows the owner to park the project on peak parking demand for various uses in the multi-tenant building rather than on code required parking ratios, thus allowing the owner to provide significantly less parking than would typically be required under the Parking Ordinance. The Parking Plan approval is conditioned upon effective monitoring of project parking to ensure that parking operations do not create a nuisance to the surrounding neighborhood.

Condition No. 3(b) specifically states that the "adequacy of parking supplies and *efficiency* of the parking operation program shall be monitored for six-months after occupancy of the Health and Fitness Facility," requiring a report from the applicant's traffic engineer "certifying adequate on-

site parking is available". The owner and staff have been monitoring the use of the parking facility in relation to the use of the fitness club and other tenants in the building. The owner has provided a report pursuant to this requirement for Commission review to address both the adequacy of parking supplies, and the efficiency of the parking operation. The report supplied by the owner's traffic and parking consultant clearly shows a significant under utilization of the structure, and a substantial off-site parking impact." Section 6 of Resolution 03-45 includes the provisions that states that the "Planning Commission may review this Precise Development Plan and Parking Plan and may amend the subject conditions or impose any new conditions if deemed necessary to mitigate detrimental effects on the neighborhood resulting from the subject use."

Analysis:

The purpose of the present agenda item is to consider the appeal by the building owner to determine whether the City Council should uphold the decision of the Planning Commission to amend Resolution 03-45 to require that the property owner provide free parking to mitigate problems of spill-over parking in the adjacent neighborhood. The approved Parking Plan stipulates that in addition to supplying required parking, it is also the owner's obligation to ensure that the parking is being used and that parking operations for the project do not create neighborhood problems. When the project parking is creating a nuisance, these conditions give the City authority to take action, which may include requiring improvements to the parking operations to ensure use of the parking structure. It is the owner's obligation to demonstrate that the structure is being used efficiently.

Staff met with the applicant to discuss some of the options presented. The owner has focused on efforts to better promote and lower the cost for users of the Pavilion, by offering monthly or annual passes, that can potentially reduce the cost for parking from \$1.00 to 50 cents per visit. Also, a program to offer free parking validation with the purchase of a smoothie is proposed. The owner has offered to provide limited 2-hour free parking on level 2 of the parking garage in the tandem parking spaces (fitness club patrons would receive a double validation). This would require users to leave a key with a parking assistant. Sixty spaces are available at this level. Otherwise, the owner suggests that the City solve the problem by limiting parking on P.C.H. to 30 minutes, and initiate a preferential parking district for the impacted neighborhoods (please see attached correspondence).

Discussion of Planning Commission Recommended Condition

Modify conditions of the Parking Plan to require two hour free validated parking to all building customers and provide signage advertising the free parking.

The Commission majority determined that it was most effective to require that the owner provide 2 hours of validated free parking for all building customers, rather than limiting the validation only for the fitness club and only during peak parking demand periods as suggested by staff or to use any of the methods suggested by the owner. Some Commissioners and several area residents expressed interest in establishing a parking district to deal with the spillover parking problems. The City's traffic engineer reviewed the parking study and the spillover parking problem, and supports the recommendation for providing free parking, noting that the current cost for parking encourages the patrons of the facility to find alternative means to park their vehicles. Typically

those looking for parking seek the least expensive and convenient means to park their cars. For regular customers of the building, on street parking becomes a very attractive alternative. Since the critical period for customer parking related to the gym use is early morning and early evening, two hours of free parking during these periods was recommended to resolve the on-street parking problems. The Commission also determined that it was necessary to evaluate the effectiveness of this condition six months from the effective date of the modified resolution. At that time, if a study by the owner's parking consultant does not demonstrate that fitness club members are parking in the structure, the matter may be revisited by Commission which may then decide to repeal the condition or enact new parking conditions or, recommend public parking measures to discourage parking on the streets.

The owner is opposed to this condition and does not want to provide free parking in this manner. He argues that not charging for the frequent short parking visits by the customers of the fitness club will result in a significant loss in revenue which will in turn make it impossible to continue to provide the high level of security and service in the parking structure. He notes that he provides 24-hour security, and employs several cashiers and other attendants to make sure that the parking structure is maintained safe and clean, and operates smoothly, reflecting a first class operation. Further, he notes that the current rate structure is already established in the lease with 24-Hour Fitness, which cannot be modified, therefore, he cannot pass the cost on to the fitness club, or to members in their membership dues. He also argues the providing free parking will not necessarily be an effective solution, since it is not only the cost of parking that causes patrons to use street parking. The owner is basically proposing free tandem assist parking for two hours, and to better promote parking in the structure, and offering parking passes that will reduce the cost per visit if purchased in advance.ⁱⁱⁱ

In correspondence, the owner's attorney argues that the Commission's action is not supported by evidence that building customer's are dissuaded from parking on site due to cost; that the Commission has no authority to require free parking; that the Commission's decision deprives the owner of a property right without due process and that it's action constitutes a confiscatory taking without just compensation.

In response, the City Attorney has noted that since a specific problem causing detrimental effects on the neighborhood has been identified and quantified, the Commission and Council may decided to impose more specific conditions to address the problem such as providing 2 hours of free validated parking. If such a condition were added, it would explicitly give the City authority to withhold occupancy permits and construction permits for any new tenants until such free parking is provided and allow mandatory parking validation during specified periods.^{iv} As stated in Section 6 of Resolution 03-45, if the Commission or Council finds that the use of the building is causing detrimental effects on the neighborhood, conditions of the resolution may be amended or new conditions imposed. Also pursuant to Chapter 17.70 of the Zoning Ordinance (pertaining to revocation an expiration of permits or variances granted by the Commission), the Commission may after public hearing revoke or modify any permit if "the use for which the approval was granted was so exercised as to be detrimental to the public health or safety, or so as to constitute a nuisance." Therefore under either the Parking Plan resolution or the Zoning Ordinance the Commission or Council may lawfully consider permit revocation or modification.

Conclusion:

The City Attorney has determined that the City has the authority to require free or discounted validated parking for persons conducting business in the building. This is an exercise of the City's constitutional police power to impose reasonable conditions on a project to address project impacts and mitigate adverse environmental impacts associated with a development project and to avert creation of a public nuisance.



Sol Blumenfeld, Director
Community Development Department



Stephen K. Burrell
City Manager

Attachments:

1. Proposed amended Resolution
2. Resolution No. 03-45
3. Section 17.70
4. Correspondence
5. Parking Study Report

i. Existing Parking Supply:

Consistent with the approved Parking Plan a maximum of 540 parking spaces are provided as follows:
454 standard single load,
42 tandem (for employee parking or tandem assist for customers)
44 parallel for valet parking.

ii Tables 3-2 and 3-3 Parking Intercept Surveys, and Tables 3-4 and 3-5, Summary of On Street/Off-Street Parking Survey, Hermosa Beach Pavilion Parking Study Report, Linscott, Law & Greenspan, 2/13/06
A detailed customer intercept survey was conducted on Mondays and Fridays, between 7:00 to 9:00 p.m. and on Saturday from 7:00 to 9:00 p.m. for the area bordering the Pavilion (along Pacific Coast Highway, 18th, 17th, 16th and 15th, Streets) The intercept survey revealed that on Mondays 450 cars (27.9%) parked on the streets within this study area and 1,124 indicated they parked on site. Most of those surveyed parked on PCH but significant numbers also parked on the side streets. On Fridays 726 parked on site and 257 (25.6%) parked on the street. On Saturdays 298 parked on site and 496 (37.2%) parked on the street. The report concludes that based on these observations it can be concluded that there are Pavilion patrons parking in the surrounding neighborhoods. The parking on 16th Street is particularly impacted. During Monday peak period, 17 vehicles were observed parking on the street and 14 of those that parked (82%) went to the Pavilion. This is described on Table B-5 when the survey was conducted on 1/30/05.

iii Existing Parking Rates: Parking rates are \$1.00 per hour, or 16.00 per day. With validation, 24-hour fitness customers can park for up to two hours for \$1.00 (Monthly passes are available a price of \$20.00 per month). Employee parking passes (monthly and annual) are available to park in separately designated employee parking areas based on lease agreements with each tenant.

iv Section 2.84.010 Limitations on processing applications. – “Any illegal condition existing on property in the City shall be remedied before an application for permit, license, construct or other entitlement provided for in this code (other than permits necessary to cure the illegal conditions) shall be accepted as complete or processed in connection with that property.”

RESOLUTION NO.

1
2 **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERMOSA**
3 **BEACH, CALIFORNIA, SUSTAINING THE DECISION OF THE PLANNING**
4 **COMMISSION TO MODIFY CONDITIONS OF APPROVAL OF A**
5 **PREVIOUSLY APPROVED PRECISE DEVELOPMENT PLAN AND PARKING**
6 **PLAN FOR AN EXPANSION AND REMODEL TO AN EXISTING**
7 **COMMERCIAL BUILDING AND SHARED PARKING TO ACCOMMODATE**
8 **A NEW ALLOCATION OF USES WITHIN THE "THE HERMOSA PAVILION"**
9 **INCLUDING A NEW HEALTH AND FITNESS FACILITY, OFFICES, RETAIL**
10 **AND RESTAURANT USES AT 1601 PACIFIC COAST HIGHWAY AKA 1605**
11 **PACIFIC COAST HIGHWAY.**

12
13 The City Council of the City of Hermosa Beach does hereby resolve and order as follows:

14
15 Section 1. On August 19, 2003, the Planning Commission adopted P.C. Resolution 03-45
16 to approve an application by Shook Development Corporation owner of property at 1605 Pacific
17 Coast Highway, known as the "Hermosa Pavilion", to amend a previously approved Precise
18 Development Plan and Parking Plan to remodel and expand an existing commercial building and
19 to allow shared parking to accommodate a new allocation of uses within the building including a
20 health and fitness facility, office, retail and restaurant uses.

21
22 Section 2. At the Planning Commission meeting of February 21, 2006, the Planning
23 Commission conducted a six-month review of parking operations as required by Condition No.
24 3(b) of P.C. Resolution 0-45 to evaluate if parking supply and parking efficiency were adequate.
25 At that time, it was shown based parking surveys conducted by the property owners consultant,
26 city staff, and on testimony considered from the public that the parking structure was not being
27 used efficiently, causing detrimental spillover parking into the neighborhood, and the owner was
28 given the opportunity to resolve these problems. At the March 21, 2006 meeting, the Planning
29 Commission found that the solutions presented by the owner would not significantly reduce or
alleviate the problem directed staff to schedule a public hearing to consider modifications to the
Precise Development Plan and Parking Plan (P.C. Resolution 03-45) to resolve the problems
being caused by inefficient use of the Parking Structure.

Section 3. The Planning Commission conducted a duly noticed public hearing to consider
the revocation or amendment for the Precise Development Plan and Parking Plan on April 18,
2006, at which testimony and evidence, both written and oral, was presented to and considered by
the Planning Commission, and the Planning Commission adopted Resolution 06-16 to amend the
conditions of approval for the Precise Development Plan and Parking Plan.

Section 4. The owner of the Hermosa Pavilion, Gene Shook, filed an appeal of the Planning
Commission decision to amend the Precise Development Plan and Parking Plan.

Section 5. The City Council conducted a duly notice public hearing to review and consider
the appeal of the decision of the Planning Commission on July 11, 2006, at which the record of the

1 decision of the Planning Commission and testimony and evidence, both written and oral, was
2 presented to and considered by the City Council.

3 Section 6. Based on evidence received at the public hearing, and the record of decision of the
4 Planning Commission, the City Council makes the following findings:

5 1. The parking facility is currently not operating in compliance with the terms of the Parking
6 Plan and Precise Development Plan as amended in 2003 for the following reasons:

7 a) The six-month review of operations of the parking facility as required by the
8 Parking Plan and Precise Development has not demonstrated that the efficiency of the parking
9 operation is adequate. Instead the six-month review has clearly demonstrated (by parking
10 intercept surveys, and testimony from residents) that a significant percentage of customers of
11 the building are utilizing on-street parking in the residential neighborhoods rather than using
12 the parking structure. The parking in the structure costs at least one dollar with validation for
13 two hours, with an additional dollar for each hour, while the parking on the nearby streets is
14 free. This disparity in cost is the primary reason for this inefficient use of the parking facility.

15 b) The demonstrated spillover parking is causing detrimental effects on these
16 residential neighborhoods, as shown by the spillover parking, and supported by testimony
17 from residential property owners and occupants in the neighborhoods along 16th Street.

18 2. The allocation of uses and the use of the parking facility with shared parking to meet parking
19 requirements, for which the Parking Plan was granted, is not being exercised in accordance with
20 the approval and the assumption of the shared parking. Instead the operation of the parking
21 facility is resulting in a detrimental impact to the public health, and safety and constitutes a
22 nuisance, in that:

23 a) Spillover parking into nearby public parking areas along both residential and
24 commercial streets is detrimental to the existing businesses and residences which have long
25 established practice of using this on street parking.

26 b) The use of on-street parking across Pacific Coast Highway is forcing customers and
27 patrons of the Pavilion to cross P.C.H. which is a hazard to both the pedestrians crossing the
28 street and the vehicles traveling on P.C.H.

29 c) Another review of parking operations and spillover effects within 6 months, after
removal of the disparity in the cost of parking, will clearly show if the cost of parking is what is
causing this spillover parking.

3. The applicant has not demonstrated that his proposals to mitigate the demonstrated
spillover parking will result in any substantial reduction or alleviation of the inefficient use of the
parking facility and spillover parking into nearby neighborhoods:

1 a) The tandem assisted free parking would only available for those willing to park in level
2 2, which is not the most convenient location in the structure, and may not be more convenient
3 then nearby on-street parking.

4 b) The monthly parking passes are aimed only at frequent users, as it would not make any
5 sense for those parking 2-hours or less per visit who use the structure less than 20 times a month
6 to spend \$20 for a monthly pass. So a typical gym patron that comes 2-4 times a week would
7 have no reason to purchase a pass.

8 c) The smoothie validation program provides for free validated parking for customers
9 purchasing a \$5 or \$6 smoothie. As such, its potential effect is limited, and instead of addressing
10 the cost disparity, it results in a substantial cost to park in the structure.

11 Section 7. Based on the foregoing, the City Council sustains the decision of the Planning
12 Commission and hereby modifies and amends the subject Precise Development Plan and Parking
13 Plan, subject to the following **Conditions of Approval**, which supersede and incorporate the
14 conditions of P.C. Resolution 03-45.

15 **A. New Conditions**

- 16 1. **Two hour free validated parking shall be provided for patrons of the businesses
17 and offices within the Hermosa Pavilion.**
- 18 2. **Signs shall be prominently displayed at all entry locations and in all public areas of
19 the Hermosa Pavilion to promote the two-hour free validated parking program.**
- 20 3. **The effectiveness of the free validated parking program and the overall efficiency
21 of the use of the parking structure and off-site parking impacts shall be evaluated
22 in 6-months from the effective date of this Resolution. The owner shall provide
23 the necessary parking receipts, and parking intercept surveys and parking counts
24 to demonstrate the effectiveness of this program.**

25 **B. Original Conditions of Approval**

- 26 1. **The development and continued use of the property shall be in conformance with
27 submitted plans reviewed by the Planning Commission at their meeting of August
28 19, 2003. Minor modifications to the plan shall be reviewed and may be approved
29 by the Community Development Director, including modifications to the
allocation of uses if consistent with the shared parking analysis.**
2. **To ensure compliance with the Parking Plan for shared parking the allocation of
uses within the building shall be substantially consistent or less than the following
allocation:**

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	<u>Allocation(in square feet)</u>
Health and Fitness Facility (including a basketball court and pool)	46,500
Office	26,000
Retail	28,500
Restaurant	4,000
Total	105,000

Any material change to this allocation requires amendment to the Parking Plan, and approval of the Planning Commission.

- 3. A parking operation plan shall be submitted for approval by the Planning Division prior to issuance of the building permit for the Health and Fitness Facility, ensuring maximum use of parking structure consistent with the Shared Parking Analysis (prepared by Linscott, Law and Greenspan, dated August 3, 2003), and to ensure efficient ingress and egress to and from the structure. The parking structure shall be operated in accordance with said plan.**
 - a) A minimum of 450 single use and 30 dual use (tandem) parking spaces shall be available within the structure for employees and customers of all tenants within the building, and all parking shall be available on a first come first serve basis (i.e. no assigned parking except that tandem spaces may be assigned to employees).**
 - b) The adequacy of parking supplies and the efficiency of the parking operation program shall be monitored for six-months after occupancy of the Health and Fitness Facility, and annually thereafter in the month of January, with a report submitted to the Community Development Department by the applicant's traffic engineer certifying adequate on-site parking is available. If supplies are found to be inadequate, the applicant shall provide valet assisted parking, and a detailed valet assistance program shall be provided to the City for review by the City's traffic engineer. If the City's traffic engineer finds the parking supply inadequate the Planning Commission shall review the Parking Plan and may modify the Parking Plan to resolve any parking inadequacy.**
 - c) A lighting and security plan, including possible use of security personnel shall be reviewed and approved by the Police Department to ensure that the parking structure is well lit and safe for the patrons prior to issuance of building permits.**
- 4. Architectural treatment including sign locations shall be as shown on building elevations and site and floor plans. Any modification shall require approval by the Community Development Director**

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- 1 **5. The project shall comply with the requirements of the Fire Department and the Public**
2 **Works Department.**
- 3 **6. Final building plans/construction drawings including site, elevation, floor plan,**
4 **sections, details, signage, landscaping and irrigation, submitted for building**
5 **permit issuance shall be reviewed for consistency with the plans approved by the**
6 **Planning Commission and the conditions of this resolution, and approved by the**
7 **Community Development Director prior to the issuance of any Building Permit.**
 - 8 **a. The landscape plans shall include landscaping along Pacific Coast Highway**
9 **and street trees and shall be consistent with the original landscape plans**
10 **approved for the Hermosa Pavilion, subject to review and approval of the**
11 **Community Development Director.**
 - 12 **b. Project plans shall include insulation to attenuate potential noise problems**
13 **with surrounding residential uses.**
- 14 **7. All exterior lights shall be located and oriented in a manner to insure that**
15 **neighboring residential property and public right-of-way shall not be adversely**
16 **effected.**
- 17 **8. Bicycle racks shall be provided in conveniently accessible locations to the**
18 **satisfaction of the Community Development Director**
- 19 **9. The project and operation of the businesses shall comply with all applicable**
20 **requirements of the Municipal Code.**
- 21 **10. The Precise Development Plan and Parking Plan shall be recorded, and proof of**
22 **recordation shall be submitted to the Community Development Department.**

23 Section 8. This grant shall not be effective for any purposes until the permittee and the
24 owners of the property involved have filed at the office of the Planning Division of the
25 Community Development Department their affidavits stating that they are aware of, and agree to
26 accept, all of the conditions of this grant.

27 The Precise Development Plan and Parking Plan shall be recorded, and proof of
28 recordation shall be submitted to the Community Development Department.

29 Each of the above conditions is separately enforced, and if one of the conditions of
approval is found to be invalid by a court of law, all the other conditions shall remain valid and
enforceable.

Permittee shall defend, indemnify and hold harmless the City, its agents, officers, and
employees from any claim, action, or proceeding against the City or its agents, officers, or
employee to attack, set aside, void or annul this permit approval, which action is brought within
the applicable time period of the State Government Code. The City shall promptly notify the
permittee of any claim, action, or proceeding and the City shall cooperate fully in the defense. If

1 the City fails to promptly notify the permittee of any claim, action or proceeding, or if the City
2 fails to cooperate fully in the defense, the permittee shall not thereafter be responsible to defend,
3 indemnify, or hold harmless the City.

4 The permittee shall reimburse the City for any court and attorney's fees which the City
5 may be required to pay as a result of any claim or action brought against the City because of this
6 grant. Although the permittee is the real party in interest in an action, the City may, at its sole
7 discretion, participate at its own expense in the defense of the action, but such participation shall
8 not relieve the permittee of any obligation under this condition.

9 The subject property shall be developed, maintained and operated in full compliance with
10 the conditions of this grant and any law, statute, ordinance or other regulation applicable to any
11 development or activity on the subject property. Failure of the permittee to cease any
12 development or activity not in full compliance shall be a violation of these conditions.

13 The Planning Commission may review this Precise Development Plan and Parking Plan
14 and may amend the subject conditions or impose any new conditions if deemed necessary to
15 mitigate detrimental effects on the neighborhood resulting from the subject use.

16 Section 9. Pursuant to the Code of Civil Procedure Section 1094.6, any legal challenge to the
17 decision of the Planning Commission, after a formal appeal to the City Council, must be made within
18 90 days after the final decision by the City Council.

19 PASSED, APPROVED, and ADOPTED this day of , 2006,

20 _____
21 PRESIDENT of the City Council and MAYOR of the City of Hermosa Beach, California

22 ATTEST:

23 APPROVED AS TO FORM:

24 _____ CITY CLERK

25 _____ CITY ATTORNEY

26 F:\B95\CD\CC\PPR1605-amendment 2006.doc

P.C. RESOLUTION NO. 03-45

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERMOSA BEACH, CALIFORNIA, APPROVING A PRECISE DEVELOPMENT PLAN AND PARKING PLAN, AS AMENDED, FOR AN EXPANSION AND REMODEL TO AN EXISTING COMMERCIAL BUILDING, "THE HERMOSA PAVILION;" AND TO ALLOW SHARED PARKING TO ACCOMMODATE A NEW ALLOCATION OF USES WITHIN THE CENTER, INCLUDING A NEW HEALTH AND FITNESS FACILITY, OFFICES, RETAIL AND RESTAURANT USES AT 1605 PACIFIC COAST HIGHWAY

The Planning Commission of the City of Hermosa Beach does hereby resolve and order as follows:

Section 1. An application was filed by Shook Development Corporation owner of property at 1605 Pacific Coast Highway, known as the "Hermosa Pavilion", seeking to amend a previously approved Precise Development Plan and Parking Plan to remodel and expand an existing commercial building and to allow shared parking to accommodate a new allocation of uses within the building including a health and fitness facility, office, retail and restaurant uses.

Section 2. The Planning Commission conducted a duly noticed public hearing to consider the application for a Precise Development Plan and Parking Plan amendments on August 19, 2003, at which testimony and evidence, both written and oral, was presented to and considered by the Planning Commission

Section 3. Based on evidence received at the public hearing, the Planning Commission makes the following factual findings:

1. The Hermosa Pavilion retail and entertainment complex was originally approved in 1986, and constructed based on a approval consisting of a Parking Plan for shared parking and a Conditional Use Permit for a 6-plex movie theatre (Resolution P.C. 86-40). A new project without the theatre complex, and focusing on a health club and office uses was approved on June 11, 2002, (City Council Resolution 02-6201) which is in the process of construction at the demolition phase. The applicant is proposing changes to the allocation of uses from the June 11, 2002 approval as follows:

Prior Approved Use (6/11/02)	Allocation	Proposed Project	Proposed Allocation
Health and Fitness	68,300 SF	Health and Fitness Club	46,500
Office	25,380 SF	Office	26,000
Retail	15,050 SF	Retail	28,500
Total	105,378 SF	Restaurant	4,000
		Total	105,000 SF

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2. Based on the June 11, 2002, approval, the existing 6-level parking structure will be reconfigured to contain 450 parking spaces (334 standard, 116 compact size) with an additional 31 spaces if tandem parking is used and up to 514 spaces with valet assistance in the existing six-level parking structure.

3. The site is zoned S.P.A. 8 which requires amendment to the Precise Development Plan for a remodel and expansion project that exceeds 10,000 square feet and exceeds a floor area to lot area ratio of 1:1. A Parking Plan is necessary to amend the existing approved shared parking arrangement in order to comply with the parking requirements of the Zoning Ordinance.

Section 4. Based on the foregoing factual findings, the Planning Commission makes the following findings pertaining to the application for a Precise Development Plan and Parking Plan Amendment:

1. The project is consistent with applicable general and specific plans, and is in compliance with the use and development requirements of the Zoning Ordinance.

2. The site is zoned S.P.A. 8, Specific Plan Area-Commercial, and the project and proposed use complies with the development standards contained therein.

3. Pursuant to Section 17.44.210 of the Zoning Ordinance, a reduction in the number of parking spaces required is acceptable due to the proposed mix of uses with varying peak hours of parking needs. Parking demand is projected to be satisfied by the supply within the parking structure due to the proposed new mix of uses with varying times of peak parking demand. The applicant has submitted a Shared Parking Analysis, prepared by Linscott Law and Greenspan (dated August 5, 2003) to demonstrate that the parking will be sufficient for the proposed mix of uses. The shared parking analysis shows that based on projected hourly parking counts the proposed fitness facility; plus projected parking needs of the office and retail uses (based on City parking requirements), that the proposed supply of 450 spaces is adequate and can be supplemented with parking management.

4. Compliance with the conditions of approval will mitigate any negative impact resulting from the issuance of the Precise Development Plan.

5. The project is Categorical Exempt from the requirement for an environmental assessment, pursuant to the California Environmental Quality Act Guidelines, Sections 15303(b) and 15315 as the modifications to the project adopted with a Negative Declaration are minor.

Section 5. Based on the foregoing, the Planning Commission hereby approves the subject Precise Development Plan and Parking Plan, as amended, subject to the following **Conditions of Approval**, which supersede the conditions of City Council Resolution 02-6201

1. **The development and continued use of the property shall be in conformance with submitted plans reviewed by the Planning Commission at their meeting of August 19, 2003. Minor modifications to the plan shall be reviewed and may be approved**

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by the Community Development Director, including modifications to the allocation of uses if consistent with the shared parking analysis.

- 2. To ensure compliance with the Parking Plan for shared parking the allocation of uses within the building shall be substantially consistent or less than the following allocation:

	<u>Allocation(in square feet)</u>
Health and Fitness Facility (including a basketball court and pool)	46,500
Office	26,000
Retail	28,500
Restaurant	4,000
Total	105,000

Any material change to this allocation requires amendment to the Parking Plan, and approval of the Planning Commission.

- 3. A parking operation plan shall be submitted for approval by the Planning Division prior to issuance of the building permit for the Health and Fitness Facility, ensuring maximum use of parking structure consistent with the Shared Parking Analysis (prepared by Linscott, Law and Greenspan, dated August 3, 2003), and to ensure efficient ingress and egress to and from the structure. The parking structure shall be operated in accordance with said plan.
 - a) A minimum of 450 single use and 30 dual use (tandem) parking spaces shall be available within the structure for employees and customers of all tenants within the building, and all parking shall be available on a first come first serve basis (i.e. no assigned parking except that tandem spaces may be assigned to employees).
 - b) The adequacy of parking supplies and the efficiency of the parking operation program shall be monitored for six-months after occupancy of the Health and Fitness Facility, and annually thereafter in the month of January, with a report submitted to the Community Development Department by the applicant's traffic engineer certifying adequate on-site parking is available. If supplies are found to be inadequate, the applicant shall provide valet assisted parking, and a detailed valet assistance program shall be provided to the City for review by the City's traffic engineer. If the City's traffic engineer finds the parking supply inadequate the Planning Commission shall review the Parking Plan and may modify the Parking Plan to resolve any parking inadequacy.
 - c) A lighting and security plan, including possible use of security personnel shall be reviewed and approved by the Police Department to ensure that the parking structure is well lit and safe for the patrons prior to issuance of building permits.

- 1 4. **Architectural treatment including sign locations shall be as shown on building**
2 **elevations and site and floor plans. Any modification shall require approval by**
3 **the Community Development Director**
- 4 5. **The project shall comply with the requirements of the Fire Department and the**
5 **Public Works Department.**
- 6 6. **Final building plans/construction drawings including site, elevation, floor plan,**
7 **sections, details, signage, landscaping and irrigation, submitted for building**
8 **permit issuance shall be reviewed for consistency with the plans approved by the**
9 **Planning Commission and the conditions of this resolution, and approved by the**
10 **Community Development Director prior to the issuance of any Building Permit.**
 - 11 a. **The landscape plans shall include landscaping along Pacific Coast Highway**
12 **and street trees and shall be consistent with the original landscape plans**
13 **approved for the Hermosa Pavilion, subject to review and approval of the**
14 **Community Development Director.**
 - 15 b. **Project plans shall include insulation to attenuate potential noise problems**
16 **with surrounding residential uses.**
- 17 7. **All exterior lights shall be located and oriented in a manner to insure that**
18 **neighboring residential property and public right-of-way shall not be adversely**
19 **effected.**
- 20 8. **Bicycle racks shall be provided in conveniently accessible locations to the**
21 **satisfaction of the Community Development Director**
- 22 9. **The project and operation of the businesses shall comply with all applicable**
23 **requirements of the Municipal Code.**
- 24 10. **The Precise Development Plan and Parking Plan shall be recorded, and proof of**
25 **recordation shall be submitted to the Community Development Department.**

26 Section 6. This grant shall not be effective for any purposes until the permittee and the
27 owners of the property involved have filed at the office of the Planning Division of the
28 Community Development Department their affidavits stating that they are aware of, and agree to
29 accept, all of the conditions of this grant.

The Precise Development Plan and Parking Plan shall be recorded, and proof of
recordation shall be submitted to the Community Development Department.

Each of the above conditions is separately enforced, and if one of the conditions of
approval is found to be invalid by a court of law, all the other conditions shall remain valid and
enforceable.

Permittee shall defend, indemnify and hold harmless the City, its agents, officers, and
employees from any claim, action, or proceeding against the City or its agents, officers, or
employee to attack, set aside, void or annul this permit approval, which action is brought within

1 the applicable time period of the State Government Code. The City shall promptly notify the
2 permittee of any claim, action, or proceeding and the City shall cooperate fully in the defense. If
3 the City fails to promptly notify the permittee of any claim, action or proceeding, or if the City
4 fails to cooperate fully in the defense, the permittee shall no thereafter be responsible to defend,
5 indemnify, or hold harmless the City.

6 The permittee shall reimburse the City for any court and attorney's fees which the City
7 may be required to pay as a result of any claim or action brought against the City because of this
8 grant. Although the permittee is the real party in interest in an action, the City may, at its sole
9 discretion, participate at its own expense in the defense of the action, but such participation shall
10 not relieve the permittee of any obligation under this condition.

11 The subject property shall be developed, maintained and operated in full compliance with
12 the conditions of this grant and any law, statute, ordinance or other regulation applicable to any
13 development or activity on the subject property. Failure of the permittee to cease any
14 development or activity not in full compliance shall be a violation of these conditions.

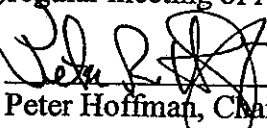
15 The Planning Commission may review this Precise Development Plan and Parking Plan
16 and may amend the subject conditions or impose any new conditions if deemed necessary to
17 mitigate detrimental effects on the neighborhood resulting from the subject use.

18 Section 7. Pursuant to the Code of Civil Procedure Section 1094.6 any legal challenge to
19 the decision of the Planning Commission, after a formal appeal to the City Council, must be
20 made within 90 days after the final decision by the City Council.

21 VOTE: AYES: Hoffman, Pizer, Perrotti, Kersenboom, Tucker
22 NOES: None
23 ABSTAIN: None
24 ABSENT: None

25 CERTIFICATION

26 I hereby certify that the foregoing Resolution P.C. 03-45 is a true and complete record of the
27 action taken by the Planning Commission of the City of Hermosa Beach, California at their
28 regular meeting of August 19, 2003.

29 
Peter Hoffman, Chairman


Sol Blumenfeld, Secretary

August 19, 2003
Date

Pc/8-19-03/ppr1605am

5. ~~Resolution(s) for consideration~~

~~None.~~

PUBLIC HEARINGS

6. **PARK 03-4/PDP 03-11 -- Precise Development Plan and Parking Plan revocation/modification hearing related to parking operations at 1601 Pacific Coast Highway, Hermosa Pavilion, AKA 1605 Pacific Coast Highway (PCH).**

Staff Recommended Action: 1) To adopt the attached Resolution amending Resolution No. 03-45 to require that the property owner provide free parking for customers with validation only during peak operating periods of the fitness club in order to increase use of the parking structure by the fitness club members and prevent spillover parking in the neighborhood; and 2) Re-evaluate the effectiveness of the validation program in six months to determine whether it is necessary to impose new conditions on the Parking Plan or repeal the mandatory validation program and initiate public parking measures to mitigate spill-over neighborhood parking.

Director Blumenfeld stated that the Commission has received a request from the property owner's attorney to continue this matter; noted that staff is not recommending this matter be continued, believing Mr. Shook had full knowledge of this hearing; and mentioned that this issue would be further addressed at the March 21, 2006 Commission meeting when staff was directed to set this matter for public hearing. He stated that prior to commencing with the actual hearing, the Commission will need to make a determination whether it wants to continue this matter, determine why the matter needs to be continued, why his consultants cannot adequately speak on his behalf or why he isn't prepared at this point. He advised that if the Commission decides to proceed with the hearing this evening, City Attorney, John Cotti, is present to respond to legal issues that were raised in the April 13, 2006, correspondence submitted by Mr. Shook's attorney.

Mr. Gene Shook, Shook Development, applicant, stated he knew this matter was set for a future date but not a specific date and that he only got word of it at the end of last week when he was leaving town; advised that his attorney was also not in town at the same time and that they believe adequate notice of this evening's hearing was not afforded them.

Commissioner Perrotti noted that Mr. Shook and his consultants were at the last meeting and expressed his belief the Commission was clear on its intent/discussion; and pointed out that this issue started last winter and that it shouldn't be of any surprise to anyone that it is on this evening's agenda. He added that the April 13, 2006, letter from Mr. Shook's attorney is detailed and that it is difficult to believe the attorney was not prepared to move forward if he had the time to prepare such a detailed letter to be submitted for the Commission's review this evening. He stated this matter should move forward.

Commissioner Pizer echoed Commissioner Perrotti's comments.

Chairman Hoffman stated that while the City has an obligation to notify the applicant involved, the owner also has a due diligence/responsibility to pursue this matter as well; noted that the Commission typically grants continuations at the will of the applicant because they're not prepared to move forward; but noted that in this case, there is a tremendous advantage to the applicant to delay this matter; and agreed that Mr. Shook's attorney has provided a detailed

letter and that he believes this matter needs to proceed.

Mr. Longacre mentioned that a large orange sign/notice of this evening's hearing was placed on the front door of Mr. Shook's building and that notice was on the City's website and in the *Easy Reader*.

MOTION by Commissioner Perrotti, seconded by Commissioner Pizer, to **PROCEED** with this hearing this evening. The motion carried as follows:

AYES: Allen, Hoffman, Perrotti, Pizer
NOES: None
ABSTAIN: None
ABSENT: Kersenboom

Director Blumenfeld stated that the purpose of this evening's hearing is to determine whether to modify the conditions of approval for the Hermosa Pavilion Parking Plan and Precise Development Plan that was approved in August 2003; and explained that the Commission has the authority to modify or revoke a permit under the provisions of the Zone Code if the Commission finds the building operations are having detrimental effects upon the neighborhood. He stated that at the March 2005 meeting following the 6-month review of the parking operations at the Pavilion, the Commission determined there was significant evidence that spill-over parking was occurring in the surrounding neighborhoods and that it resulted from the price of parking at the Pavilion since the fitness club users were choosing to park on the street rather than pay to park in the garage -- pointing out that the patrons were compelled to pay a dollar for a second hour of parking with respect to the use of the fitness club; and noted this was verified by the Parking Intercept Surveys that were performed by Mr. Shook's parking consultant who indicated that between 30 to 40 percent of the people parking on the street had the Pavilion as their destination.

Director Blumenfeld advised that the Commission must make specific findings that the use is not in compliance with the Parking Plan and Precise Development Plan in the Conditions of Approval in order to modify this permit, noting that some of those findings may be found on Page 3 in staff report; and stated that if the Commission decides to modify the permit, staff would recommend the Commission require a mandatory parking validation program be immediately put in place by the property owner during the peak operating periods of the fitness club -- between 10:00 A.M. and noon and 5:00 P.M. to 7:00 P.M. daily, the highest peak demand and greatest potential for spill-over parking in the surrounding neighborhood. He noted staff is also recommending this issue be revisited in 6 months to assess whether the new parking conditions are adequately addressing the nuisance parking problems in the surrounding neighborhoods or whether the price of parking is not the reason for spill-over parking; added that the owner will be required to have his parking consultant provide a similar parking analysis to survey the parking conditions; and that the Commission can use that analysis in its assessment in the next 6 months.

Director Blumenfeld explained that in the event the price is not the determining factor causing the spill-over parking, then the use of the validation program for the parking garage can be removed by this Commission in a follow-up review and that other measures should then be considered, such as a parking district or other restrictions to ease the neighborhood parking burdens. He highlighted staff's recommendation to adopt the resolution amending Resolution 03-45, requiring the property owner provide free parking for his customers with validation only during those peak operating periods of the fitness club in order to increase use of the parking

structure by the fitness club members and prevent spill-over parking in the neighborhoods; and secondly, that the Commission re-evaluate the effectiveness of the validation program in 6 months to determine if it's necessary to impose other conditions.

Director Blumenfeld stated that Page 7 of the Shared Parking Analysis prepared for the original project approval indicates the highest peak period for parking demand for the fitness club, noting that the fitness club members by far are the highest number of patrons for the parking garage; and stated that the free parking validation program would be available to all business customers in this facility.

Commissioner Pizer expressed his belief 2 hours of free parking should be available at any time of day, believing this is much easier to handle.

Director Blumenfeld explained that staff's intent to deal with the spill-over parking issue was to not unduly affect the property owner's parking revenue, but to address those peak hours that generated the most potential spill-over parking.

Chairman Hoffman opened the public hearing.

Mr. Shook reiterated that he did not have adequate notice of this evening's hearing. Mr. Shook stated that the current parking study and charts for 2006 are more reflective of what is taking place today; advised that there is a large traffic volume on Mondays and Tuesdays from 5:00 P.M. to 7:00 P.M.; and explained that he has tried to be a good corporate citizen in Hermosa Beach; that he has invested a lot of money to make this the best project he could provide; and stated that it has always been clear he had the expectation of being able to charge for parking. He stated that when the theatres were approved for this site, they were originally charging \$1.25 per hour for parking; and he stated there is no evidence that giving 2 hours free parking will solve the neighborhood parking problem, pointing out that people will quickly take advantage of the first and most convenient parking spaces directly in front of the Pavilion or on 16th Street; and added that some people do not want to park in parking structures. He expressed his belief the residents will be impacted from the beach parking no matter what he does with this structure. He stated that a number of things being recommended is speculation; advised that he has been proactive in his attempts to provide adequate parking; and he requested that he be given a full 6 months to fine tune the parking garage operations. Mr. Shook advised that he met with some of the business owners in the affected community; noted that those business owners are requesting green 30-minute parking zones in front of their businesses; and pointed out that parking problems existed in this area even before this center was open for business.

Mr. Shook highlighted the importance of providing a secure and safe parking facility, noting the need to maintain an adequate number of parking garage employees; stated that he has offered 60 parking spaces, 24 hours a day, 7 days a week that will be double validated on Level 2; and stated that the parking rates are extremely low, some working out to 7.2 cents per hour. He urged the City to allow him more time to work on this issue.

Ron Miller, Hermosa Beach resident, stated that he is the closest resident to the parking garage; advised that the parking garage operations are a nuisance because of the vehicle lights shining into his property, the loud noise coming from the car radios of people sitting in their cars waiting for people to come out of the fitness club; and noted that around 5:00 P.M. and 6:00 P.M., these cars verge on the entrance, blocking 16th Street. He added that people are parking in the Vons unloading area to wait for fitness club patrons, causing the semi trucks to blow their horns at night to move these people out of the way. Mr. Miller stated he would welcome a

parking permit district and to put in place one-way traffic to help maintain the safety and sanctity of this area.

Richard Thompson, Hermosa Beach resident, stated that the free parking in this structure should be offered 24 hours a day, 7 days a week; stated that because of the increase in traffic and high speed, he is concerned for pedestrians; and he noted that the new signal is diverting traffic up 16th Street.

Elizabeth Styles, Hermosa Beach resident, stated that parking on her street has become almost impossible; advised that only today, the City put in a light and painted the curb red half way up the street, now losing even more parking spaces; and expressed her belief that free parking would help. She noted that since the fitness club has opened, the parking has become a problem every day of the week.

Linda Miller, Hermosa Beach resident, stated that 16th Street between Ardmore and PCH has gotten too busy and dangerous for pedestrians; expressed her belief that the only way to solve the problem is with permit parking, asking that it be implemented on a trial basis; and she also suggested that this street be a one-way street going from the school westbound.

Lee Grant, Hermosa Beach resident, noted his concern that he did not receive notification of this evening's meeting; stated that when the movie theatre was in operation, the parking was validated for the patrons; advised that the traffic and parking on 16th Street has become a major problem; and suggested that this matter be revisited sooner than 6 months.

Lisa Holcombe, owner of the Pet Care Company, noted her concern that what is being recommended will not solve the problem; and she urged the City to implement a permit parking program and to be more proactive in parking and traffic enforcement all around this area. She noted her support of providing shorter hours of validation, stating it is not fair to take all the revenue away from the parking structure.

Patty Egerer, Hermosa Beach resident, expressed her belief that a parking district will ultimately be the thing that will stop the parking problems; and stated that Mr. Shook should be financially responsible for the cost borne by the residents to preserve their neighborhoods. She stated that the parking problem should be free to all, with a minimum of 2 hours, 7 days a week, 24 hours a day; and noted her opposition to painting green 30-minute parking spaces on PCH, believing it will have a negative impact on those businesses. She stated that people need to be encouraged to park in the parking structure that provides adequate and visible security at all hours, with active, uniformed security guards circulating the structure 24 hours a day; and she stated that the loitering and graffiti should be handled in an immediate fashion. She expressed her belief that only patrons of this center should be using the parking structure, not beach-goers or those participating in an event such as the Fiesta.

There being no further input, Chairman Hoffman closed the public hearing.

Chairman Hoffman stated that staff has identified in its report 10 specific findings which are indicative of the Commission's prior discussion and requested that those findings in staff report be reflected in the minutes as follows:

Findings for Modifying the Conditions of Approval:

The parking facility is currently not operating in compliance with the terms of the Parking Plan and Precise Development Plan as amended in 2003:

1. The six-month review of operations of the parking facility as required by the Parking Plan and Precise Development has demonstrated that parking operations are inefficient. This review, based upon parking intercept surveys and testimony from residents, indicates that a significant percentage of customers of the building are utilizing on-street parking in the residential neighborhoods rather than using the parking structure. The parking in the structure costs at least one dollar with validation for two hours, with an additional dollar for each hour, while the parking on the nearby streets is free. This disparity in cost is the primary reason for this inefficient use of the parking facility.
2. The demonstrated spill-over parking is causing a detrimental effect on these residential neighborhoods, as shown by the parking study and supported by testimony from residential property owners and occupants in the neighborhoods along 16th Street.
3. Review of parking operations within 6 months, after removal of the disparity in the cost of the parking, will clearly show if parking cost is causing spill-over parking in the neighborhoods.
4. The allocation of uses and the use of the parking facility with shared parking to meet parking requirements, for which the Parking Plan was granted, is not being exercised in accordance with the approval and the assumption of the shared parking. Instead, the operation of the parking facility is resulting in a detrimental impact to the public health and safety and constitutes a nuisance.
5. Spill-over parking into nearby public parking areas along both residential and commercial streets is detrimental to the existing businesses and residences, which have a long established practice of using this on-street parking.
6. The use of on-street parking across Pacific Coast Highway is forcing customers and patrons of the Pavilion to cross PCH, which is a hazard to both the pedestrians crossing the street and the vehicles traveling on PCH.
7. The applicant has not demonstrated that his proposals to mitigate the demonstrated spill-over parking will result in any substantial reduction or alleviation of the inefficient use of the parking facility and spill-over parking into nearby neighborhoods.
8. The tandem assisted free parking would only be available for those willing to park on Level 2, which is not the most convenient location in the structure and may not be more convenient than nearby on-street parking.
9. The monthly parking passes are aimed only at frequent users, as it would not make any sense for those parking 2 hours or less per visit who use the structure less than 20 times a month to spend \$20 for a monthly pass. So a typical gym patron that comes 2-4 times a week would have no reason to purchase a pass.

10. The smoothie validation program provides for free validated parking for customers purchasing a \$5 or \$6 smoothie. As such, its potential effect is limited, and instead of addressing the cost disparity, results in a substantial cost to park in the structure.

Commissioner Pizer noted his support of the findings to solve the parking problems; stated he understands the owner always intended to charge for parking, but pointed out that it's not working; and stated that the free parking may not completely solve the problem but that the Commission needs to take the first step in dealing with the parking problems. He reiterated his desire to see the 2-hour free parking program be offered at any hour of the day, offered to all patrons of this center, and not restricted to one level of the garage; and he suggested revisiting this issue in 3 months to see if the operation is working.

Director Blumenfeld clarified the 2006 survey reiterates the findings in the 2003 Shared Parking Analysis/survey which reflects the peak parking times and noted there is a parking accumulation survey, a count of occupancy in the garage – pointing out that these numbers are not speculative; and noted there is hard data reflecting that the peak demand for parking is from 10:00 A.M. and noon and 5:00 P.M. to 7:00 P.M.

Commissioner Perrotti stated that in order to make the 2-hour parking program less complicated to enforce, it should be offered at any hour of the day; and stated that he is able to support the findings.

Vice-Chairman Allen stated that in order to keep this less complicated for all, the 2-hour free parking should be offered at any hour of the day; expressed his belief that further mitigation measures will be necessary to solve the parking problems; and stated he can make the findings as noted in staff report.

Chairman Hoffman stated that any action taken should guarantee the resolution of the parking problem, not experiment to see if it works; stated he is reluctant to engage in this experiment given the punitive effect it may have on Mr. Shook; and expressed his belief that the only solution to the spill-over parking is the creation of a free parking district. He noted his belief that a 30-minute parking limit would unduly punish the retail establishments and residents along PCH in this area.

Commissioner Pizer stated that adequate signage and notification should be made of the free parking program.

City Attorney Cotti mentioned that not only is the Commission required to make the 10 findings, but those findings must be supported by substantial evidence. He stated that the residents' testimony demonstrates this project is causing spill-over parking; but explained that the issue here is whether providing 2 hours free parking will alleviate the spill-over parking; and that this is where the Commission needs to focus its inquiry.

Director Blumenfeld reminded the Commission that it has the ability to rescind or modify this new condition in 6 months if this plan does not have a material effect in the neighborhood. He explained that the Commission needs to isolate these issues and ultimately find a solution. He stated that the proposal for 2 hours free parking is a good place to start, to encourage people to park in the garage; and reiterated that this can be rescinded/modified or a new condition can be imposed if this does not work.

Commissioner Pizer reiterated his support for a 3-month review period.

Director Blumenfeld noted the necessity of proactive advertising/signage; and expressed his belief that 6 months is necessary to adequately test the program.

MOTION by Commissioner Perrotti, seconded by Commissioner Pizer, to **APPROVE** the attached resolution, to require that the property owner provide 2 hours free parking with validation; that this program be offered to any center patron at any hour of the day/night, 7 days a week; and that this issue be reviewed in 6 months. The motion carried as follows:

AYES: Allen, Perrotti, Pizer
NOES: Hoffman
ABSTAIN: None
ABSENT: Kersenboom

7. CUP 06-3 -- Conditional Use Permit to allow on-sale beer and wine in conjunction with a restaurant at 424 Pier Avenue, Crème de la Crepe (continued from March 21, 2006 meeting).

Staff Recommended Action: To continue to October 17, 2006 meeting.

Director Blumenfeld advised that the owner is attempting to sort out issues relative to the County Health Department and is seeking several months to resolve his issues; and he noted that this would require a new hearing notice.

Chairman Hoffman opened the public hearing. There being no input, Chairman Hoffman closed the public hearing.

MOTION by Commissioner Perrotti, seconded by Vice-Chairman Allen, to **CONTINUE** to October 17, 2006 CUP 06-3 -- Conditional Use Permit to allow on-sale beer and wine in conjunction with a restaurant at 424 Pier Avenue, Crème de la Crepe. The motion carried as follows:

AYES: Allen, Hoffman, Perrotti, Pizer
NOES: None
ABSTAIN: None
ABSENT: Kersenboom

8. PDP 06-3 -- Precise Development Plan to construct a second dwelling unit on a property in the R-2B zone at 33 16th Street.

Staff Recommended Action: To approve said request.

Senior Planner Robertson advised that the subject lot is on a fairly flat lot located on the north side of 16th Street, a walk street, between the beach and Hermosa Avenue; stated that the existing dwelling located on the front part of the lot was constructed in 1937 and remodeled in 1978; and that the applicant is proposing to demolish the existing detached garage and add a second unit above a new garage and carport with alley access at the rear of the property. He stated the applicant is proposing the addition of a new second dwelling unit that is 1,747 square feet, with a lot size of 3,652 square feet; that the proposed new dwelling unit is a 3-story building that contains 2 stories above the garage; that the parking is provided within a new 2-car garage and 3-car carport; that the dwelling unit contains 3 bedrooms and 3 baths; that the garage and

CITY OF
HERMOSA BEACH
MUNICIPAL CODE ON-LINE

ZONING

Chapter 17.70

REVOCATION AND EXPIRATION

17.70.010 Permits or variances may be revoked.

17.70.020 Expiration.

17.70. 010 Permits or variances may be revoked.

Planning commission may, after a public hearing held in the manner prescribed in Chapter 17.42 governing variances and conditional use permits, revoke or modify any permit or variance issued on any one or more of the following grounds:

- A.** That the approval was obtained by fraud;
 - B.** That the use for which such approval is granted is not being exercised;
 - C.** That the use for which such approval was granted has ceased to exist or has been suspended for one year or more;
 - D.** That the permit or variance granted is being, or recently has been, exercised contrary to the terms or conditions of such approval, or in violation of any statute, ordinance, law or regulation;
 - E.** That the use for which the approval was granted was so exercised as to be detrimental to the public health or safety, or so as to constitute a nuisance.
- (Prior code Appx. A, § 1800)

17.70. 020 Expiration.

Any permit or variance granted by the planning commission or city council becomes null and void if not executed within the date specified in such permit or variance, or if no date is specified, within two years from the date of approval of such permit or variance. (Prior code Appx. A, § 1801)



650 Town Center Drive | 4th Floor | Costa Mesa, CA 92626-1993
714-513-5100 office | 714-513-5130 fax | www.sheppardmullin.com

Writer's Direct Line
soconnor@sheppardmullin.com

July 1, 2006

Our File Number: 0GLC-064504

Via E-Mail

City Council
City of Hermosa Beach
1315 Valley Drive
Hermosa Beach, California 90254

Re: Appeal of April 18, 2006 Planning Commission Decision Re: Precise Development Plan and Parking Plan Modification Related to Parking Operations at the Hermosa Beach Pavilion at 1605 Pacific Coast Highway

Honorable Mayor and Members of the City Council:

This firm represents Shook Development Corporation ("Shook"), the owner of the Hermosa Beach Pavilion, an existing commercial shopping center located at 1605 (also known as 1601) Pacific Coast Highway (the "Subject Property"). This letter sets forth the reasons for Shook's appeal of the April 18, 2006 Planning Commission ("Commission") decision concerning modifications to the parking operations at the Subject Property. Specifically, on April 18, 2006, the Commission voted to require Shook to provide two hours of free parking to any patron of the Subject Property at any hour of the day/night, seven days a week. As set forth in detail below, the Commission's decision in this regard was unlawful, unfair and poorly reasoned. The City Council should grant Shook's appeal and overturn the Commission's decision.

I. THE COMMISSION'S DECISION WAS UNLAWFUL.

The Commission's decision to require Shook to provide two hours of free parking at all times to all patrons was unlawful for a number of reasons. First, there was no evidence to support the decision made by the Commission. Second, the Commission had no authority to require Shook to provide free parking at the Subject Property. Third, the Commission's decision deprived Shook of property without due process of law. Fourth, and finally, the Commission's decision constituted a confiscatory taking, requiring just compensation be paid to Shook.

a. There Was No Evidence To Support The Commission's Decision

As recognized by the Commission itself, there was no evidence to support the Commission's decision to require Shook to provide free parking at the Subject Property. Instead, in a light most favorable to the Commission, the Commission seemed to be hoping that its

decision requiring Shook to provide free parking would solve the parking problems. However, the Commission's hopes and speculations are not a proper basis to make the decision that it did.

The Commission's decision was wholly lacking in evidentiary support as clearly established in the Commission's own minutes and findings. Indeed, Finding No. 3 states: "Review of parking operations within six months, after removal of the disparity in the cost of the parking, will clearly show *if* parking cost is causing spillover parking in the neighborhoods." The very wording of this finding demonstrates that the Commission does not know whether free parking would resolve the spillover parking in the neighborhoods. Rather, the Commission suggests that a six month experiment of free parking be tried, and *then, at that time*, the Commission will know whether parking cost is causing spillover parking. This finding clearly shows that the Commission was lacking any evidentiary support concerning its decision.

The minutes from the April 18, 2006 hearing show that at least Chairman Hoffman had it right. He specifically stated that any action taken should guaranty the resolution of the parking problem, *not experiment to see that it works*. Chairman Hoffman hit the nail on the head – the Commission's decision can best be described as an experimentation, not a decision supported by evidence.

The minutes from the April 18, 2006 hearing also show that City Attorney Cotti clearly warned the Commission that it was required not only to make ten factual findings, but "those findings must be supported by substantial evidence." April 18, 2006 Minutes, p. 10. City Attorney Cotti also stated that the issue is whether providing two hours of free parking will alleviate the spillover parking, and that is where the Commission needed to focus its inquiry. Despite City Attorney Cotti's warnings, the Commission did no such analysis concerning whether two hours of free parking would alleviate the parking situation. There were no studies done to show why patrons may prefer street parking to parking in the Subject Property's structure. Do patrons prefer street parking because it is more convenient than dealing with the structure and finding a space? Do patrons prefer street parking because they can make it to the gym more quickly than by parking in the structure? Do patrons prefer street parking because it is closer to the gym? Do patrons prefer street parking because they can save a dollar? Shook does not know the answers to these questions. *But more importantly, the Commission does not know either, and there is no evidence that free parking will solve the problems.*

The Commission acted unlawfully when it voted to require Shook to provide free parking because there was no evidence to support the decision. The City Council must therefore uphold the law and overturn the Commission's decision.

b. **The Commission Had No Authority To Require Free Parking At The Subject Property**

As a purported basis for this requirement, the Commission relied upon Resolution 03-45. April 18, 2006 Minutes, p. 2; April 12, 2006 Staff Report, p. 1-2. More specifically, the Commission relied upon Condition No. 3(b) of Resolution 03-45, which states in part that the "adequacy of parking supplies and efficiency of the parking operation shall be monitored for six months after occupancy of the Health and Fitness Facility." April 12, 2006 Staff Report, p. 1. The Commission's reliance on this condition was misplaced. A proper reading of this condition leads to the inescapable conclusion that the condition focused on parking *adequacy* (i.e., supply), not parking efficiency.

Indeed, the word "efficiency" is mentioned only once in the entire Resolution 03-45. Moreover, the language following the one use of the word "efficiency" makes clear that the condition deals only with parking adequacy. Specifically, the remainder of Condition No. 3(b) "refers to monitoring parking for six months after occupancy" with a report submitted to the Community Development Department by the applicant's traffic engineer certifying *adequate* onsite parking is available." *Shook has fully complied with this condition.* Indeed, Shook's traffic engineer submitted a Parking Study Report dated February 13, 2006, which concluded: "The project's parking supply has been determined to be more than adequate to meet current and future parking demands." Linscott Law & Greenspan Parking Study Report, February 13, 2006, p. 28.¹

Condition No. 3(b) further provides: "If *supplies* are found to be inadequate, the applicant shall provide valet assisted parking, and a detailed valet assistance program shall be provided to the City for review by the City's traffic engineer. If the City's traffic engineer finds the *parking supply* inadequate the Planning Commission shall review the Parking Plan and may modify the Parking Plan to resolve any parking inadequacy."

The Staff Report concerning Resolution 03-45 also makes it clear that *the Commission was focusing on parking supply, not parking efficiency.* Specifically, the Staff Report provided in part: "Parking is projected to be satisfied with the existing *supply* within the parking structure due to the proposed new mix of uses with varying times of peak parking demand. The applicant has submitted a revised and updated Shared Parking Analysis (dated August 5, 2003), prepared by Linscott Law & Greenspan. This Shared Parking Analysis

¹ This Parking Study Report was submitted to the Community Development Department on February 13, 2006, and we hereby request that it be made part of the administrative record in this matter.

demonstrates that the existing *parking supply* will be sufficient for the proposed mix of uses based upon peak and off peak usage."

Further, the Planning Commission minutes concerning the approval of Resolution 03-45 also establish that parking adequacy, not efficiency, was the concern: "Director Blumenfeld stated that the applicant submitted a Shared Parking Analysis to reflect these changes; and advised that the analysis indicates the shared parking for these various uses will reach a peak demand at 5:00 p.m., needing 411 parking spaces, *which can be satisfied by the proposed onsite supply of parking within the structure*. He noted that staff is recommending approval." Planning Commission Minutes, August 19, 2003.

The Commission did not contend, nor could it have, that Shook had not provided adequate parking supply for the Subject Property. Indeed, to the contrary, the Commission's February 15, 2006 report acknowledges that: "*The supply of garage parking is currently more than adequate*." More recently, at a March 21, 2006 Commission hearing on this matter, Commissioner Hoffman acknowledged that parking at the Subject Property was adequate.

The foregoing analysis is critical because while Resolution 03-45 arguably gives the City the authority to monitor and modify the parking situation based on *inadequate parking*, the City has no authority require Shook to provide free parking because of the parking taking place on the street.

c. **The Commission's Decision Deprived Shook Of Property Without Due Process Of Law.**

The state and federal Constitutions prohibit government from depriving a person of property without due process of law. Kavanau v. Santa Monica Rent Control Bd. (1997) 16 Cal.4th 761, 771; Cal. Const., art. I, § 7, 155, U.S. Const., 11th Amend., § 1. These provisions place substantive limitations on legislative measures, preventing government from enacting legislation that lacks a reasonable relation to a proper legislative purpose. Id. In the context of price control, courts will only find that a regulation bears a reasonable relation to a proper legislative purpose if the law does not deprive the property owner of a "fair return." Id.

"[T]he essential inquiry in due process cases involving price controls is whether the regulatory scheme's result is just and reasonable." Id. at 778. "[I]t is the result reached not the method employed which is controlling. It is not theory but the impact of the price regulation which counts." Id. at 772. "[A] court must determine whether the regulation may reasonably be expected to maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed." Id.

The Commission's decision constituted a price control in its worse form -- it did not just seek to cap the cost of parking; rather it eliminated the price all together, forcing Shook

to provide free parking to all patrons at all times. This will have a tremendous impact on Shook's profits because it will result in a 100% loss. The dollar amount of this impact is unknown at this time, but believed to be in excess of \$1 million per year. With capitalization rates currently at approximately 5%, this translates into a total loss to Shook of over \$20 million, for which we will hold the City responsible.

The Commission's decision cannot "reasonably be expected to maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed." As such, the Commission's decision violated the Shook's substantive due process rights under the California and U.S. Constitutions.

d. **The Commission's Decision Constituted A Confiscatory Taking, Requiring Just Compensation.**

"The state and federal Constitutions prohibit government from taking private property for public use without just compensation." Kavanau v. Santa Monica Rent Control Bd. (1997) 16 Cal.4th 761, 773. "[A] regulation of property that goes too far may effect a taking of that property, though its titles remains in private hands." Id. This is true even if "it does not involve a physical invasion and leaves the property owner some economically beneficial use of his property." Id. at 774. In such a case, the property owner may bring an inverse condemnation action, and if it prevails, the regulatory agency must either withdraw the regulation or pay just compensation." Id. at 773.

Generally, in the context of price regulation, courts have "employed an analysis under the takings clause similar to that which it employs under the due process clause, focusing on the regulation's impact and investors' ability to earn a fair return." Id. at 776; see also Santa Monica Beach, LT. v. Superior Court (1999) 19 Cal.4th 952, 964. For the reasons explained above, the Commission's decision will have a tremendous economic impact on Shook and greatly interfere with Shook's ability to earn a fair return. Indeed, the decision will cause Shook to lose 100% of its profits during peak hours. Accordingly, the decision, if upheld by the Council on appeal, will constitute a taking under the California and U.S. Constitutions, requiring the City to withdraw the action or to pay just compensation to Shook.

2. **THE COMMISSION'S DECISION WAS UNFAIR AND POORLY REASONED**

a. **Shook Made A Substantial Investment With The Expectation, Disclosed To The Commission, Of A Fee Parking Structure.**

The Commission is well aware of the approximately \$10 million renovation at the Property, including the renovation of the six-level parking garage. The Commission also knows that the parking garage complies with the Resolution, provides ample parking, and passed City inspection.

Shook undertook those efforts and expenditures based, in part, on anticipated parking revenue. The Commission has recently mentioned that it believes Shook did not disclose that there would be paid parking at the Property. That is incorrect.

Shook has always made it clear that the parking would not be free. As reflected in the minutes from the Commission's January 19, 1999 meeting, "Gene Shook, owner of the property, stated the fee currently set at 50 cents for the first two hours for the 24 Hour Fitness patrons and 50 cents for the third hour." The minutes from the Commission's July 20, 1999 meeting note that, in response to a question from Chairman Tucker, "Mr. Shook stated the employees will not park in other spaces since they will be charged at the regular rates." Those are just some of the disclosures Shook has made regarding charged parking, and Shook believes a further review of the minutes, correspondence and parking reports will show other disclosures.

Simply put, Shook's investment was premised on the revenue from not only the tenants (rent), but also the patrons (parking revenue).

b. The Commission's Decision Was Far Too Broad, Unfairly Penalizing Shook

The action as proposed and recommended in the April 12, 2006 Staff Report would have been unlawful in any event, but the modifications made at the April 18, 2006 hearing by the Commission unquestionably turned the Commission's decision into an unlawful one. Specifically, the Staff Report recommended that the Commission vote to require Shook to provide free parking for two hours only to patrons of 24 Hour Fitness and only during peak periods (in the morning and in the evening). While Shook objected to this recommendation and felt that it was unlawful, at least the recommended course of action was narrowly tailored. Incredibly, however, the Commission expansively broadened the scope of the recommended action, requiring Shook to provide two hours of *free parking to all patrons at all times of the day and all times of the night*.

Any decision by the Commission requiring Shook to provide free parking would have resulted in severe financial damage to Shook, but the broad-brush approach taken by the Commission will cause catastrophic financial damage to Shook, thereby ensuring the unlawfulness of the Commission's decision.

The Commission's decision is all the more surprising in that it has a severe penal effect against a good property and a good citizen. Shook has spent substantial time and resources into making the Subject Property a source of pride for the City. Shook voluntarily funded a traffic signal to make the community a safer one. Simply put, Shook deserves better treatment than was dished out by the Commission.

c. The Commission's Decision Ignored the Real Problems

Primarily because the Commission's decision was not supported by any evidence, the decision ignores the real problems that are causing the parking difficulties surrounding the Subject Property. First, members of the Commission and members of the public who spoke at the April 28, 2006 Hearing noted that the real solution to the parking problem is the creation of a residential parking district. The Commission and the City could have lawfully taken this path but instead chose to pursue the unlawful path requiring Shook to provide free parking.

Many of the Commissioner's also recognize that the parking problems were caused by patrons of one tenant at the Subject Property (24 Hour Fitness). Indeed, the Commission specifically found (Finding No. 4) in reference to this tenant that the parking situation resulted "in a detrimental impact to the public health and safety and constitutes a nuisance." While Shook does not agree that the parking situation constitutes a nuisance, if the City believes this to be the case, it should take action against the tenant causing the nuisance problem, not against Shook. The City clearly has authority to do so. See, e.g., Sunset Amusement Company v. Board of Police Commissioners (1972) 7 Cal.3d 64 [holding that a roller skate rink provided insufficient parking that created a nuisance].

d. The Commission Ignored Shook's Proposals

As set forth in this firm's March 21, 2006 letter to the Commission, Shook proposed remedying the City's issues. These suggestions were as follows:

1. Shook will continue to use Level 1 (only 28 spaces, and the least desirable level) for 24 Hour Fitness employees.
2. Shook has started using a Tandem Assist at Level 2. This means an orange-vested assistant will help people park in spaces according to their vehicle size (not putting a Mini Cooper where a large Suburban can go). About 20 drivers would leave their keys with the Tandem Assist person at this level, which would only happen for a few hours per week. Shook will have 60 spaces marked for 2-hour validation on this level. With parking turnover, Level 2 could accommodate 250 to 300 vehicles or more in a busy day. This provides safety, security and comfort to those on Level 2 by having an attendant from 6:00 a.m. until 10:00 p.m. during the week, and 7:00 a.m. to 4:00 p.m. on Saturdays.
3. Level 3 will be for office workers and monthly passes for gym members. Shook now offers gym members a 4-month parking pass for \$60 or just \$15 per month. Shook is now using a Tandem Assist person at this level. This facilitates parking vehicles according to size which maximizes efficiency.

Planning Commission

July 1, 2006

Page 8

4. Level 4 will be for valet. Various people thought that no one would use valet; however, Shook has seen 90% usage at peak hours.

5. Levels 5 and 6 are for any non-monthly, non-employee users. These levels, which offer some of the best spaces, are available to gym members for \$1 for two hours. Additionally, Shook uses spotters so cars can be directed upon entry to the level with the most open spaces.

6. Shook has also proposed other programs and policies, as set forth in Shook's prior correspondence.

The Commission ignored these proposals and instead unlawfully required Shook provide free parking to all patrons at all times.

3. CONCLUSION.

Without any evidence supporting its decision, the Commission voted to require Shook to provide two hours of free parking to all patrons at all times of the day and night. This decision that will have a devastating impact on Shook. This decision was unlawful for the reasons set forth above. Shook therefore requests that the Council grant Shook's appeal and overrule the Commission's decision.

Very truly yours,



Sean P. O'Connor

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

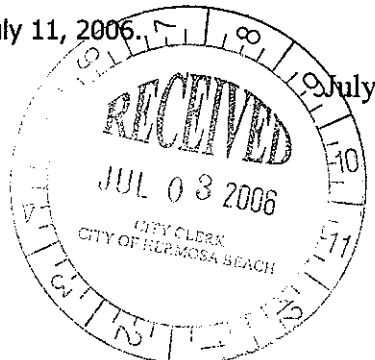
W02-WEST:NS0400028031.1

cc: Mr. Sol Blumenfeld

Mr. Gene Shook

*Please include this communication in council's agenda packet for July 11, 2006.

July 3, 2006



RECEIVED

JUL 03 2006

COM. DEV. DEPT.

City of Hermosa Beach
City Council Members
1315 Valley Drive
Hermosa Beach, CA 90254

**RE: P.C. RESOLUTION 06-16, AMENDMENT TO PARKING PLAN,
PAVILION, 1601 Pacific Coast Hwy, H.B.**

Dear Mr. Mayor and Members of Council:

The operational parking plan for business located at 1601 Pacific Coast Hwy, represents a progressive problem for residents in the surrounding area. P.C. Resolution 06-16 provides an opportunity to create an instrument to reduce impact. The resolution requires supplemental changes as identified below.

Supplemental Terms to: P.C. Resolution 06-16

- a) All employees (full & part time) to receive free parking.
- b) Patron parking to be free 7 days a week, 24 hours a day.
- c) The entire parking supply to be "self-park" no tandem parking or parallel parking spaces allowed. When the building is full, a sign would be posted "Garage Full."
- d) Parking structure NOT to be utilized as "special event" parking.
- e) Security: "Active" security personnel to monitor the parking structure, stairwells, and building perimeter 7 days a week, 24 hours a day. Security personnel to be easily identifiable by the public, i.e., security would be uniformed. The security company to be responsible for furnishing HBPD with disturbance reports on regular intervals.
- f) Red Zones: NO vehicle shall stop, stand, or park for any purpose along the dedicated red zones directly in front of the Pavilion, or along 16th Street, this includes vehicles "for hire." The dedicated right-turn lane along PCH, must be maintained clear, to avoid traffic congestion, and hazardous conditions.
- g) TAXIS: Service vehicles are NOT to lurk or park in neighborhoods or take up public parking spaces. Service vehicles are to be contained within the commercial building.
- h) Entry to the proposed "restaurant-bar" to be accessible exclusively via the interior lobby of the main building, not at a side entry located on PCH. This avoids problems with persons congregating outside and causing distraction for motorists.
- i) Tandem parking is not feasible or desirable for employees. Employees would be required to deposit keys with a parking attendant. This creates undesirable conditions by design.
- j) Land Use: NO "adult entertainment" allowed.

The Pavilion's "high impact tenant" opened in August of 2005 creating an influx of commercial traffic and patron parking in residential neighborhood. The gym-tenant occupies about 46,049 square feet (50%) of the building. The surrounding neighborhood and businesses were immediately impacted. Residents are deprived valuable parking, and safety concerns have manifested. Impact is NOT limited to 16th Street. Other interior streets, connecting with 16th Street, i.e., (15th Place, Mira Ave., Raymond Ave., and Bonnie Brae Ave.) all suffer from the same commercial intrusion. The developer has NOT implemented a single mitigation measure during this 10-month period. The city's intervention is required, to deter disruption for residents.

Municipal Zoning Code 17.44.050, Unlawful to reduce available parking. Code specifically prohibits the *"reducing, diminishing or eliminating existing required off-street parking."* Shook's operational-management policy/plan of the garage structure creates a deterrent preventing the effective usage of the structure.

Contrary to representations and assertions made by Gene Shook, the Pavilion's policy is inconsistent and NOT the norm for businesses in the surrounding area. NO other commercial-business location within Hermosa Beach or Manhattan Beach charge customers a "fee" to park. Claims that mitigation measures recommended by the commission *"...unfairly deprives me of my investment expectations..."* (Shook's letter, April 25, 2006) assumes the development project is entitled to adversely impact the surrounding neighborhoods.

The analysis prepared Linscott, Law & Greenspan's engineers is insufficient. Parking demands require recalculation. Parking for this 100,000-sq.ft building to be identified as 100% self-park. This is the standard, preference, and expectation of our community. The freedom and convenience to self-park can not be undermined. Imposing attendant assist parking on both patrons and employees manipulates the quantity of vehicles that can park within the building. The feasibility for "attendant assistance parking" is dubious, at best.

Tandem parking imposed upon employees is unrealistic, one can anticipate vehicles to avoid this method of parking. It is my understanding, this indirectly violates the owner's responsibility to contain parking in accordance with code.

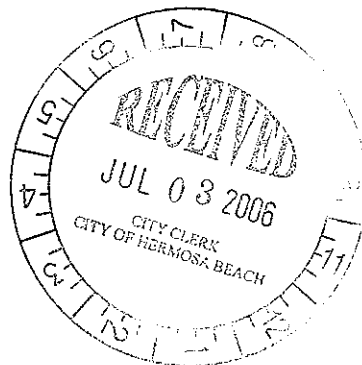
Linscott, Law & Greenspan's engineers previously submitted plans on behalf of their client that strategically aim to convert a residential artery to service commercial traffic. Once again, their analysis prepared in February 2006 (LLG Parking Report, Reference 1-06-3625) aggressively advocates Mr. Shook's interests. Conclusions made by the firm undermine residents, and offer no understanding or concept of solutions, acceptable to the residential community. Additionally, the report fails to represent all of the building's business uses (conforming and nonconforming.) The city needs to investigate, review, and assess all noncompliance issues prior to rendering a decision.

The proprietor has missed every opportunity to voluntarily implement mitigation measures. Everyday strangers from the Pavilion case and intrude upon our residential living environment. This destructive intrusion presents dramatic change to the character of our neighborhood. In effort to preserve and protect neighborhood, the supplemental terms defined herein require adoption into P.C. Resolution 06-16.

Thank you for your attention to this detail.

Respectfully,


Patty Egere
Hermosa Beach, Resident



April 18, 2006
RECEIVED

APR 18 2006

COM. DEV. DEPT.

Dear Planning Commission Friends,

I am a long time Hermosa Beach Resident & am very proud of it. Which is why I am writing this letter. My husband, Alan Strusser, has been attending City Council, Planning Commission and public works meetings ever since our neighborhood has turned into a PARKING LOT for 24 Hour Fitness! We didn't move into this neighborhood knowing it would be a Commercial zone instead of a Residential zone.

I am all for progress and growth & development in our community, but why do the Real Residents have to suffer for it all. We know that 24 Hour Fitness members do not wish to pay the \$1.00 to park in the structure, but meanwhile they come into our Residential streets, illegally park & take our neighborhood away from us.

Our hopes is that 24 Hour pays for their clients parking & our streets will be turned into PERMIT PARKING ONLY! This seems like a great & simple solution to such an unbearable problem.

SUPPLEMENTAL
INFORMATION

6

I wished to be here tonight in person, but my husband is out on business and I have to care for my children.

We are so passionate about our quaint little town and don't need all of Hermosa to be turned into a Commercial Zone.

I sure hope the welfare and happiness of Hermosa Beach residents count in this very important decision, and not only on keeping business owners happy.

Thank you so much for all your concern and efforts in trying to come up with a solution to these new "growing pains".

Kindly,

Kammi & Alan Strusser

home & fax # → (310) 372-3099

To: Planning Commission Dept.

From: The Strussers
824 17th St.

Ph. # (310) 372-3099

Date April 18, 2004

RECEIVED

APR 18 2006

COM. DEV. DEPT.

Re: Planning Commission
Meeting Issues !

* Commercial Parking on
Residential Streets.

April 13, 2006

Writer's Direct Line
soconnor@sheppardmullin.com

Our File Number: OGLC-064504

Via E-Mail

Planning Commission
City of Hermosa Beach
1315 Valley Drive
Hermosa Beach, California 90254

RECEIVED

APR 13 2006

COM. DEV. DEPT.

Re: Precise Development Plan and Parking Plan Hearing Related to Parking Operations at the Hermosa Beach Pavilion at 1605 Pacific Coast Highway

Honorable Members of the Planning Commission:

This firm represents Shook Development Corporation ("Shook"), the owner of the Hermosa Beach Pavilion, an existing commercial shopping center located at 1605 Pacific Coast Highway (the "Subject Property"). This letter serves as Shook's request that the hearing scheduled for April 18, 2006 be continued so that Shook can properly prepare for the hearing and present its positions. This letter also serves as Shook's preliminary objections to the proposal to require two hours of free parking at the Subject Property.

1. The Hearing Should Be Continued.

Shook first received notice of the hearing on April 7, 2006, the day before Shook's owner, Gene Shook, left for a family vacation over spring break. Mr. Shook will not return to work until April 17, 2006. Mr. Shook explained the situation to Sol Blumenfeld, Director of Community Development, on April 7, 2006, but Mr. Blumenfeld denied the requested continuance. Mr. Blumenfeld's denial of the requested continuance was based in part on his belief that Shook's attorneys were "apprised of the upcoming hearing in correspondence from the City Attorney." Mr. Blumenfeld is mistaken in this regard, and I believe that he now acknowledges that mistake. As the City Attorney will confirm, he never notified this firm of the upcoming hearing date.

As Mr. Shook has been on vacation with his family this entire week, he has not had an opportunity to properly prepare for the April 18, 2006 hearing. For example, Mr. Shook has not had an opportunity to consult with his traffic consultant and other experts in preparation for the upcoming hearing. Accordingly, we again request that the April 18, 2006 hearing be continued.

Planning Commission
April 13, 2006
Page 2

2. **Planning Commission Resolution 03-45 Provides No Basis To Require Free Parking On The Subject Property.**

It is our understanding that the Commission seeks to require Shook to provide free parking at the Subject Property. As a purported basis for this requirement, the Commission relies upon Resolution 03-45. More specifically, the Commission relies upon Condition No. 3(b) of Resolution 03-45, which states in part that the "adequacy of parking supplies and efficiency of the parking operation shall be monitored for six months after occupancy of the Health and Fitness Facility." The Commission's reliance on this condition is misplaced. A proper reading of this condition leads to the inescapable conclusion that the condition focused on parking *adequacy* (i.e., supply), not parking efficiency.

Indeed, the word "efficiency" is mentioned only once in the entire Resolution 03-45. Moreover, the language following the one use of the word "efficiency" makes clear that the condition deals only with parking adequacy. Specifically, the remainder of Condition No. 3(b) "refers to monitoring parking for six months after occupancy" with a report submitted to the Community Development Department by the applicant's traffic engineer certifying *adequate* onsite parking is available." ***Shook has fully complied with this condition.*** Indeed, Shook's traffic engineer submitted a Parking Study Report dated February 13, 2006, which concluded: "The project's parking supply has been determined to be more than adequate to meet current and future parking demands." Linscott Law & Greenspan Parking Study Report, February 13, 2006, p. 28.¹

Condition No. 3(b) further provides: "If *supplies* are found to be inadequate, the applicant shall provide valet assisted parking, and a detailed valet assistance program shall be provided to the City for review by the City's traffic engineer. If the City's traffic engineer finds the *parking supply* inadequate the Planning Commission shall review the Parking Plan and may modify the Parking Plan to resolve any parking inadequacy."

The Staff Report concerning Resolution 03-45 also makes it clear that the Commission was focusing on parking supply, not parking efficiency. Specifically, the Staff Report provided in part: "Parking is projected to be satisfied with the existing *supply* within the parking structure due to the proposed new mix of uses with varying times of peak parking demand. The applicant has submitted a revised and updated Shared Parking Analysis (dated August 5, 2003), prepared by Linscott Law & Greenspan. This Shared Parking Analysis

¹ This Parking Study Report was submitted to the Community Development Department on February 13, 2006, and we hereby request that it be made part of the administrative record in this matter.

Planning Commission
April 13, 2006
Page 3

demonstrates that the existing *parking supply* will be sufficient for the proposed mix of uses based upon peak and off peak usage."

Further, the Planning Commission minutes concerning the approval of Resolution 03-45 also establish that parking adequacy, not efficiency, was the concern: "Director Blumenfeld stated that the applicant submitted a Shared Parking Analysis to reflect these changes; and advised that the analysis indicates the shared parking for these various uses will reach a peak demand at 5:00 p.m., needing 411 parking spaces, *which can be satisfied by the proposed onsite supply of parking within the structure*. He noted that staff is recommending approval." Planning Commission Minutes, August 19, 2003.

The Commission does not contend, nor can it contend, that Shook has not provided adequate parking supply for the Subject Property. Indeed, to the contrary, the Commission's February 15, 2006 report acknowledges that: "*The supply of garage parking is currently more than adequate*." More recently, at the March 21, 2006 hearing on this matter, Commissioner Hoffman acknowledged that parking at the Subject Property was adequate.

3. **Shook Made A Substantial Investment With The Expectation, Disclosed To The Commission, Of A Fee Parking Structure.**

The Commission is well aware of the approximately \$10 million renovation at the Property, including the renovation of the six-level parking garage. The Commission also knows that the parking garage complies with the Resolution, provides ample parking, and passed City inspection.

Shook undertook those efforts and expenditures based, in part, on anticipated parking revenue. The Commission has recently mentioned that it believes Shook did not disclose that there would be paid parking at the Property. That is incorrect.

Shook has always made it clear that the parking would not be free. As reflected in the minutes from the Commission's January 19, 1999 meeting, "Gene Shook, owner of the property, stated the fee currently set at 50 cents for the first two hours for the 24 Hour Fitness patrons and 50 cents for the third hour." The minutes from the Commission's July 20, 1999 meeting note that, in response to a question from Chairman Tucker, "Mr. Shook stated the employees will not park in other spaces since they will be charged at the regular rates." Those are just some of the disclosures Shook has made regarding charged parking, and Shook believes a further review of the minutes, correspondence and parking reports will show other disclosures.

Simply put, Shook's investment was premised on the revenue from not only the tenants (rent), but also the patrons (parking revenue).

Planning Commission
April 13, 2006
Page 4

4. **The Commission's Proposed Action Deprives Shook Of Property Without Due Process Of Law.**

The state and federal Constitutions prohibit government from depriving a person of property without due process of law. Kavanau v. Santa Monica Rent Control Bd. (1997) 16 Cal.4th 761, 771; Cal. Const., art. I, § 7, 155, U.S. Const., 11th Amend., § 1. These provisions place substantive limitations on legislative measures, preventing government from enacting legislation that lacks a reasonable relation to a proper legislative purpose. Id. In the context of price control, courts will only find that a regulation bears a reasonable relation to a proper legislative purpose if the law does not deprive the property owner of a "fair return." Id.

"[T]he essential inquiry in due process cases involving price controls is whether the regulatory scheme's result is just and reasonable." Id. at 778. "[I]t is the result reached not the method employed which is controlling. It is not theory but the impact of the price regulation which counts." Id. at 772. "[A] court must determine whether the regulation may reasonably be expected to maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed." Id.

The Commission's proposed action constitutes a price control in its worse form – it does not just seek to cap the cost of parking; rather it seeks to eliminate the price all together, forcing Shook to provide free parking during peak hours. This would have a tremendous impact on Shook's profits because it would result in a 100% loss during peak hours which is when the parking lot is the busiest. Such an action cannot "reasonably be expected to maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed." As such, the proposed regulation, if passed, would violate the Shook's substantive due process rights under the California and U.S. Constitutions.

5. **The Commission's Proposed Action Constitutes A Confiscatory Taking, Requiring Just Compensation.**

"The state and federal Constitutions prohibit government from taking private property for public use without just compensation." Kavanau v. Santa Monica Rent Control Bd. (1997) 16 Cal.4th 761, 773. "[A] regulation of property that goes too far may effect a taking of that property, though its titles remains in private hands." Id. This is true even if "it does not involve a physical invasion and leaves the property owner some economically beneficial use of his property." Id. at 774. In such a case, the property owner may bring an inverse condemnation action, and if it prevails, the regulatory agency must either withdraw the regulation or pay just compensation." Id. at 773.

Generally, in the context of price regulation, courts have "employed an analysis under the takings clause similar to that which it employs under the due process clause, focusing on the regulation's impact and investors' ability to earn a fair return." Id. at 776; see also Santa

Planning Commission
April 13, 2006
Page 5

Monica Beach, LT. v. Superior Court (1999) 19 Cal.4th 952, 964. For the reasons explained above, the Commission's proposed action would have a tremendous economic impact on Shook and greatly interfere with Shook's ability to earn a fair return. Indeed, the proposed action would cause Shook to lose 100% of its profits during peak hours. Accordingly, the proposed regulation, if passed, would constitute a taking under the California and U.S. Constitutions, requiring the Commission to withdraw the action or to pay just compensation to Shook.

6. Shook's Proposals.

As set forth in this firm's March 21, 2006 letter to the Commission, Shook proposes remedying the City's issues as follows:

1. Shook will continue to use Level 1 (only 28 spaces, and the least desirable level) for 24 Hour Fitness employees.

2. Shook has started using a Tandem Assist at Level 2. This means an orange-vested assistant will help people park in spaces according to their vehicle size (not putting a Mini Cooper where a large Suburban can go). About 20 drivers would leave their key with the Tandem Assist person at this level and this would only happen for a few hours per week. Shook will have 60 spaces marked for 2 hour validation on this level. With parking turnover, Level 2 could accommodate 250 to 300 vehicles in a busy day or more. This provides safety, security and comfort to those on Level 2 by having an attendant from 6:00 a.m. until 10:00 p.m. during the week, and 7:00 a.m. to 4:00 p.m. on Saturdays.

3. Level 3 will be for office workers and monthly passes for gym members. Shook now offers gym members a 4 month parking pass for \$60 or just \$15 per month. Shook is now using a Tandem Assist person at this level. This facilitates parking vehicles according to size, which maximizes efficiency.

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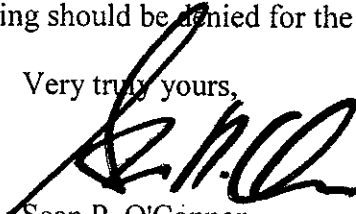
6. Shook has also proposed other programs and policies, as set forth in Shook's prior correspondence.

Planning Commission
April 13, 2006
Page 6

7. Conclusion.

Based on the foregoing, Shook again requests that the April 18, 2006 hearing be continued so that Shook can properly prepare for the hearing. Additionally and alternatively, the Commission's proposal to require free parking should be denied for the reasons set forth above.

Very truly yours,



Sean P. O'Connor

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-OC:NSOM41424482.1

cc: Mr. Sol Blumenfeld
Mr. Gene Shook

Wednesday, April 12, 2006

RECEIVED

APR 13 2006

COM. DEV. DEPT.

Planning Commission
City of Hermosa Beach
1315 Valley Drive
Hermosa Beach, California 90254

Re: April 18 Precise Development Plan Revocation/Modification Hearing

We the undersigned residents of the Commodore at 1600 Ardmore wish to provide the following input to the hearing process. We have reviewed the documents on file at the Planning Commission office.

We live in unit #213 and are the closest residence to the parking structure on 16th street. This structure has changed our lives for the worst.

Issue #1

Parking traffic is not managed and ingress and egress of the parking structure blocks 1600 street from through traffic often from 5 pm through 10 pm. Because of class schedules at the Pavilion and the charges for parking users in automobiles wait on 1600th Street for a time close to the starting time of their class. This places illegally parked vehicles in the Von's truck unloading area and along the curb painted red for no parking on 1600th street. These vehicles leave their engines running and their stereo radios blaring for long periods of time. Once the Pavilion health club class is ready to start all of these vehicles merge onto 16th Street to enter the parking garage again blocking the street. Because of the charge for parking many of the health club users are dropped off and picked up by drivers illegally parking in Von's delivery driveway and red curb areas on the north side of 16th Street. This blocks the trucks going to Von's to deliver. How many times have we had to listen to a 18 wheeler blasting their horn to get cars to move from the delivery area.

Issue #2

The Pavilion management states that the parking structure is always staffed by parking attendants. Every night automobiles entering the structure are allowed to keep their stereo radios full blast while moving into, in and from the parking garage. This even occurs at 1 am but remember that after 10 pm it violates the city noise ordinance. No effort has been made by the parking 'attendants' in the past six months to stop this practice. Also automobiles leaving the parking structure 'peal out' of the exit and race up and down the street. Just talk to the school crossing guard at the crosswalk on Ardmore and 16th Street to see how often this occurs during the short time he is on the corner. This will become worse when the traffic light is operational. We do not have Hermosa Beach Police patrolling the street very often. We of course would welcome more Police patrols and would encourage the use of speed bumps.

Also these 'attendants' allow patrons to gather outside the parking entrance and create noise that often extends up to 2 am in the morning. The Pavilion security staff should try to ensure that the noise level from their garage operation is at an acceptable level, especially after 10 pm.

Issue #3

Members of the Health club park anywhere they can. This causes an large amounts of jaywalking across Pacific Coast Highway, 16th street and Ardmore Avenue (one fatality recently). Crossing at the new traffic light will help but the Pavilion needs to educate its membership on the jaywalking issue. If nothing else hire a security person to watch and stop the jaywalking. Better yet, have Hermosa Beach Police write jaywalking tickets. Most of this jaywalking occurs because the Health Club members park using Von's parking lot or the east side (northbound) of Pacific Coast Highway.

Issue #4

The Pavilion's legal counsel letter dated March 21, 2006 on page 3 states:

It is a well known 'secret' that other business do not comply with CUP conditions and other parking restrictions.

This is not true. I know from experience dealing the Hermosa Beach Code Enforcement staff (very professional) and the Hermosa Beach Police Department (very responsive) that parking and unloading restrictions are strictly enforced. One only needs to review the number of responses to calls by us for illegal parking and unloading. Hermosa Beach Police and Parking Enforcement are active on 1600 Street. Even trades people working at the Pavilions have been moved by the police or cited for illegal parking. Von's vendors have also received tickets for parking in the red zone on 16th Street.

That same letter also states on page 3:

Residents use street parking because of space restrictions and the lack of City restrictions (e.g. Commodore). Shook believes that he is being made to pay for the sins of others.

The Commodore is a residence residing is a proper zone area for multi residences. What are the streets for in a residential area. If the residents are not allowed to park on the streets, then the same should apply for parking on Pacific Coast Highway on both sides of the street for Health Club patrons. Currently most parking is taken by customers of the Pavilion. If a resident needs to have a permit to park then that might be an alternative for us. Mr. Shook brings a business into the area with parking facilities but wants his customers to use outside parking by charging them to use his parking. Something does not ring true here.

We support the City in its proposal to force the Pavilion to provide free parking for its patrons for two hours. We do believe that this is a good start in resolving many of the issues we raised above.

We will be in attendance at the Hearing and will be happy to answer any questions the Planning Board might raise.

Thank you for considering this submission.

A handwritten signature in cursive script that reads "Ronald Miller". The signature is written in black ink and is positioned above the typed name and address.

Ronald and Linda Miller
1600 Ardmore #213
Hermosa Beach, California 90254
(310) 937-9052

RECEIVED

APR - 6 2006

Per.....

1707 Pacific Coast Hwy
Hermosa Beach, CA
90254

RECEIVED

APR 10 2006

COM. DEV. DEPT.

Re: Hermosa Beach Planning Commission
mandate that offers two
hours of free parking for
persons visiting the pavilion,
I concur. Please uphold
this decision and do not
reduce parking on PCH to
thirty minutes. Parking for
residents and their guests
is already difficult enough.

Thank you for your
consideration.

Brenda Hager

RECEIVED

APR - 5 2006

Per.....

MAYOR : COUNCIL MEMBERS,

4/4/06

THE BEACH REPORTER RAN AN ARTICLE ON THE COUNCIL MANDATING THAT THE HERMOSA PAVILION SHOPPING CTR OFFER TWO HOURS FREE PARKING TO PERSONS VISITED TO THE BUSINESSES IN THE PAVILION.

WE ARE RESIDENTS ON PCH AT HERMOSA SURF, 1707 PACIFIC COAST HWY - UNIT #313, NEIGHBORS TO 24 HOUR FITNESS - HERMOSA PAVILION. WE SUPPORT THE COMMISSIONERS RECOMMENDATIONS. THE DECISION TO APPEAL YOUR RULING IS UNTHOUGHT OF. THE LETTER BY FRED HUEBSCHER SAYS IT ALL.

DO NOT APPEAL YOUR DECISION

RESIDENTS & TAXPAYERS OF
HERMOSA BEACH,

ELIZABETH T. GLENN
BARRETT J. GLENN

SEE ATTACHED

Lois ...
Manhattan Beach in

Council should uphold free parking

Last week, the Hermosa Beach Planning Commission mandated that the Hermosa Pavilion shopping center offer two hours free parking for persons visiting businesses located in the pavilion. The commission's decision was based upon complaints from neighbors around the pavilion; since the gym in the pavilion opened, gym users have been parking up the streets surrounding the pavilion including PCH because of the pavilion's charging for parking 24 hours a day. Residents can't find parking because of this situation.

The owner of the pavilion, Gene Shook, has announced that he intends to appeal the Planning Commission's decision to the City Council. Shook has proposed as an alternative setting up a permit parking district around the pavilion to prevent gym users from parking on these streets and forcing them to pay for parking in his shopping center. Moreover, he'd like the city to allow only 30 minutes of parking on PCH at all times.

The permit parking district will cost residents \$35 per year per permit and will make it difficult to have visitors. Moreover, the 30-minute limit on PCH will make it difficult to visit residents of the apartment complexes located on PCH.

My question is why is the owner of the pavilion making the residents suffer and then expect them to pay for the privilege of parking? I urge all residents to contact the City Council and tell them to uphold the Planning Commission's decision.

Fred Huebscher
Hermosa Beach

I encourage people to write letters to the Mayor and City Council members supporting the Planning Commission recommendation that Hermosa Pavilion provide two hours free parking to persons visiting businesses in the pavilion write to

Mayor & Councilmembers
1315 Valley Dr.
Hermosa Beach
CA 90254

or e mail

www.HermosaBeach.org

RESIDENT: VOTER

Residence should not pay to park on city streets

24 hr. patrons have their own parking & should use it.

Owners of pay boxes.

RECEIVED

APR 05 2006

COM. DEV. DEPT.

RECEIVED

4-3-06

APR - 4 2006

Sirs,

Per.....

I am opposed to a proposal presented in the "Beach Reporter" calling for changes in the parking allowed on Pacific Coast Highway surrounding the 24 Hour Fitness Center.

A 30 minute parking limit is totally unrealistic for Condo homeowners residing in the area. They would be unable to have guests visit or have contractors complete work on their units if parking on the street is unavailable.

The owner of 24 Hour Fitness should have the responsibility of providing free parking in his now practically empty parking structure.

Sincerely,

Walter Jones
1707 Pac. Coast Hwy #309
Hermosa Beach, 90254



650 Town Center Drive | 4th Floor | Costa Mesa, CA 92626-1993
714-513-5100 office | 714-513-5130 fax | www.sheppardmullin.com

March 21, 2006

Writer's Direct Line
mstewart@sheppardmullin.com

Our File Number: 0GLC-064504

VIA FACSIMILE
(310) 937-6235

VIA EMAIL
sblumenfeld@hermosabch.org

Planning Commission
c/o Sol Blumenfeld, Director Community Development Department
City of Hermosa Beach
1315 Valley Drive
Hermosa Beach, California 90254

RECEIVED

MAR 21 2006

COM. DEV. DEPT.

Re: Six-Month Review of Parking Operations At The
Hermosa Beach Pavilion at 1605 Pacific Coast Highway

Dear Honorable Members of the Planning Commission:

This firm represents Shook Development Corporation ("Shook"), the owner of the Hermosa Beach Pavilion, an existing commercial shopping center located at 1605 Pacific Coast Highway in the City of Hermosa Beach (the "Property").

The City Planning Commission (the "Commission") has scheduled for this evening's meeting a discussion regarding the parking review at the Property. The following constitutes additional items that Shook believes will benefit the Commission in discussing this matter.

Resolution P.C. 03-45

Shook believes that the Commission's review is premature and unfairly seizes on the term "efficiency." In August 2003, the Commission issued Resolution P.C. 03-45, consisting of five pages of parking related points and conditions, most of which address the number of parking spaces Shook must provide at the Property. Shook has complied by providing those spaces, and generally upgrading the parking structure as part of a \$10 million renovation of the Property.

**SUPPLEMENTAL
INFORMATION**

10

50

March 21, 2006

Page 2

The Commission does not contend that Shook has not provided sufficient parking spaces, or vastly improved ingress and egress, or that Shook has not improved security and aesthetics. In fact, the Commission's February 15, 2006 report correctly notes that "The supply of garage parking is currently more than adequate."

However, the Commission seizes on the word "efficiency," which is mentioned only once in the five-page Resolution, and concludes that Shook must provide free parking to address street parking used by patrons of 24 Hour Fitness. The Commission's suggestion unfairly focuses on "efficiency," despite Shook's compliance with the Resolution and expenditure of seven-figure sums. Shook requests that the Resolution be viewed as a whole, and that Shook's investment in the Property and the City be recognized. Shook should not be ordered under the City's "police powers" to provide free parking after making this significant investment.

The Resolution contemplates a six-month review, and Shook believes that the current review is premature. The final occupancy permit for the Property was issued in mid-October, 2005. The Commission's parking survey was conducted over four days in January and five days in early February 2006. Not only was the survey conducted before the six-month period, but it took place during two of the three busiest months for 24 Hour Fitness, and health clubs in general. This means that the survey results are skewed by an influx of patrons of 24 Hour Fitness that does not exist at other times during the year. It also came at a time when Shook was, and is, still working things out in terms of parking and other operating issues.

As set forth in Shook's March 14, 2006 letter and follow-up email of March 15, it is not uncommon for a newly opened center to experience growing pains. Shook is implementing policies and programs to promote parking in the structure, as detailed in his prior letters. Shook requests that he be given time to implement those programs and show the Commission the results it seeks. It should be remembered that the Commission doubted Shook's ability to renovate and re-open the Property at the time the Commission issued the Resolution. Since that time Shook has undertaken great efforts, and the Property is proof of those efforts. Shook again asks the Commission for time to allow Shook to implement his suggested measures.

Shook's Investment And Prior Disclosures Of Charged Parking

The Commission is well aware of the approximately \$10 million renovation at the Property, including the renovation of the six-level parking garage. The Commission also knows that the parking garage complies with the Resolution, provides ample parking, and passed City inspection.

Shook undertook those efforts and expenditures based, in part, on anticipated parking revenue. The Commission has recently mentioned that it believes Shook did not disclose that there would be paid parking at the Property. That is incorrect.

March 21, 2006

Page 3

Shook has always made it clear that the parking would not be free. As reflected in the minutes from the Commission's January 19, 1999 meeting, "Gene Shook, owner of the property, stated the fee currently set at 50 cents for the first two hours for the 24 Hour Fitness patrons and 50 cents for the third hour." The minutes from the Commission's July 20, 1999 meeting note that, in response to a question from Chairman Tucker, "Mr. Shook stated the employees will not park in other spaces since they will be charged at the regular rates." Those are just some of the disclosures Shook has made regarding charged parking, and Shook believes a further review of the minutes, correspondence and parking reports will show other disclosures.

It is simply inaccurate to contend that Shook concealed that there would be paid parking at the Property. Shook's investment was premised on the revenue from not only the tenants (rent), but also the patrons (parking revenue).

Safety Concerns

Shook encourages the Commission to visit the Property, inspect the parking structure, and assess the parking situation. Shook has asked City personnel and management to do so, but is not aware of any such visits. The parking structure is better lighted, better patrolled, better managed, and is simply safer than others in the area, including the City parking structure.

Shook's investment in parking cashiers, attendants, and security can only be justified with incoming parking revenue. Shook has made this very clear in his correspondence and comments to the City. And again, Shook encourages Commission members to visit the Property and see how well the parking operates.

Shook believes, and is fully invested, in the City and the Property – to a degree that few can match. Shook wants to maintain a high level of safety in the parking structure, and is concerned about the Commission's apparent desire to prohibit Shook from deriving parking revenue. Shook financed the renovation based on parking revenue, set lease rates based on parking revenue, and finances ongoing operations based on parking revenue.

Any reduction in Shook's parking operations would not only raise safety concerns, but also harm the efficiency of the operations. Shook's attendants and spotters utilize valet parking, tandem parking and quickly handle the often sudden influx attributable to the start time of the most popular fitness classes. Their absence will seriously reduce the efficiency of the parking operations.

The spillover parking is not new to this area, and, Shook believes, is somewhat overstated in the Staff Report, if nothing else because it focuses on a time period (post-New Year's) when fitness patrons are most prevalent. It is a well known "secret" that other local business do not comply with CUP conditions or other parking restrictions. Residents use street parking because of space restrictions and the lack of City restrictions (e.g., Commodore). Shook believes he is being made to pay for the sins of others. The City approved Shook's renovation,

March 21, 2006

Page 4

knew Shook intended to collect parking revenue, and should not now order Shook to provide free parking – especially when Shook has submitted alternatives and proposed a further review.

Shook's Proposals

Shook proposes remedying the City's issues as follows:

1. Shook will continue to use Level 1 (only 28 spaces, and the least desirable level) for 24 Hour Fitness employees.
2. Shook has started using a Tandem Assist at Level 2. This means an orange-vested assistant will help people park in spaces according to their vehicle size (not putting a Mini Cooper where a large Suburban can go). About 20 drivers would leave their key with the Tandem Assist person at this level and this would only happen for a few hours per week. Shook will have 60 spaces marked for 2 hour validation on this level. With parking turnover, Level 2 could accommodate 250 to 300 vehicles in a busy day or more. This provides safety, security and comfort to those on Level 2 by having an attendant from 6:00 a.m. until 10:00 p.m. during the week, and 7:00 a.m. to 4:00 p.m. on Saturdays.
3. Level 3 will be for office workers and monthly passes for gym members. Shook now offers gym members a 4 month parking pass for \$60 or just \$15 per month. Shook is now using a Tandem Assist person at this level. This facilitates parking vehicles according to size, which maximizes efficiency.
4. Level 4 will be for valet. Various people thought that no one would use valet, however, Shook has seen 90% usage at peak hours.
5. Levels 5 and 6 are for any non-monthly, non-employee users. These levels, which offer some of the best spaces, are available to gym members for \$1 for two hours. Additionally, Shook uses spotters so cars can be directed upon entry to the level with the most open spaces.
6. Shook has also proposed other programs and policies, as set forth in Shook's prior correspondence.

SHEPPARD MULLIN RICHTER & HAMPTON LLP

March 21, 2006

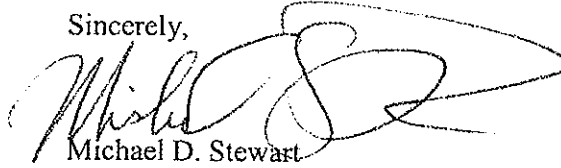
Page 5

Conclusion

Shook respectfully requests that the Commission allow Shook six months to implement the above measures. If, after that period, the parking does not comply with the Resolution, the City and Shook can address implementing other measures.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael D. Stewart", is written over a large, stylized scribble or flourish.

Michael D. Stewart

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-OC:NA341422466.1

March 14, 2006

Members of Planning Commission

SUBJECT: UPDATE ON PARKING

The Hermosa Pavilion management team is working hard to deliver solutions to the parking issues raised as a result of the February 21 recommendation of the Planning Commission directing City staff to work with Hermosa Pavilion. We called the next day (2-22-06) and once call was returned the earliest City Staff could meet was 2-28-06 at 2pm.

At the meeting we discussed a 3 way approach.

- 1A.-First what the Hermosa Pavilion could do to increase use of parking structure.
- 2B.-Second to meet with local businesses on PCH from 18th to Pier.
- 3C.-Third to meet with local residents East of PCH from 18th to 14th and the Commodore on 16th west of PCH.

Regarding 1A above Hermosa Pavilion did the following.

1. Met with 24 Hour Fitness to strategize on ways to increase member use parking structure.
2. Posted and handed out parking fliers for 24 Hour Fitness for parking passes at \$20 per month to increase awareness of parking passes.
3. Created buy 3 months get 1 month free on parking. Effectively reducing cost to \$15 per month (\$20 X 3 divide by 4) or just 50 cents per day.
4. Started Buy a Smoothie and have parking validated program at Stillwater Café.
5. Started Valet program on 3-13-06, it is optional at \$1 extra. This adds over 80 additional spaces to parking structure and helps to have parking work more efficiently.
6. Added additional cashier and installing Pay on foot pay station (a free standing way to bypass cashier). Both of these will eliminate lines at cashier to make it easier for customers.
7. Glen Ivy has agreed to do a multi hour validation for their customers.

Regarding 2B above Hermosa Pavilion did the following.

1. We walked business area and talked to businesses on PCH from 18th to Pier and shopping center with Von's.
2. Had town meeting for local businesses on 3-13-06 with 10 businesses attending.
3. Started local business watch group from meeting. The group is formulating a flier that is agreed by group on what to do. I will forward when I receive. In general the group likes green stripe 30 minute parking in front of businesses on PCH from 18th to Pier and believes that if cars are illegally parked the most effective method is to tow them.

Regarding 3C above Hermosa Pavilion did the following.

1. Met with City Staff on 2-28-06 and they agreed to supply us with names and addresses of Residents East of PCH from 18th to 14th and the Commodore on 16th west of PCH. As of 3-14-06 we have not received them. Once received we will mail letter and set up town meeting for residents.
2. We walked the area East of PCH from 18th to 14th and talked to some residents and took pictures of existing conditions. It was difficult to meet with residents without list.

CONCLUSIONS

It is clear that Hermosa Pavilion has met the requirement of providing adequate parking. The issues we are attempting to resolve in collaboration with City Staff involve specific concerns raised by some residents and local merchants due to 24 Hour Fitness gym members parking in designated free parking spaces along PCH and in the surrounding neighborhoods. Some have suggested 2 hour free parking in the Pavilion parking lot. We believe that this would have more negative effects than positive. If the city in their parking structure went to 2 hours free I believe it would create more of a problem for the city. By charging at the city lot it helps eliminates an element that may not be desirable to local businesses and residents. If the lot was free it would simply fill up quicker and have a higher spillover with upset people that expected to park for free. The same in general would apply to the Hermosa Pavilion parking structure. I have noticed many times at the city parking structure that cars are parked not in the space but overlapping into the adjacent space creating a lot fewer spaces (cars taking up 2 spaces). By having the staff at the Pavilion we are able to monitor this and keep it to a minimum. Many of our spaces are Tandem or Valet and by utilizing our staff to do this we are able to have over 540 spaces instead of 454 1st access spaces this is well over what we were required to have when this was approved (we did this by spending a lot of money to move walls and shrink rooms to create more useable parking spaces). By having a large parking staff we are able to monitor floors and direct traffic to reduce congestion. For example when 24 hour Fitness has a large class that enters or exits at the same time we alternate incoming traffic from upper floors to lower floors (and switch back again) and move an extra cashier into booth at peak times, allowing a larger number to get in and out more efficiently. If for example level 6 is full, parking staff will tell you when you arrive "top level is full please park on level 5." This eliminates someone searching for a parking space. We offer a very safe parking structure that is well illuminated. And we have a lot of parking and security personnel, along with 29 cameras that hold about 90 days of data (it is one terabyte).

We would like to recommend that the City allow the Pavilion to continue to build out the balance of the retail center while we continue to spend the next 6 months exploring the parking alternatives with our local residents and business owners. We have a phenomenal restaurant concept Stillwater Bistro and will also be bringing a unique retail space to the Hermosa Pavilion (on virtually all spaces on first floor SDC will be owner or part owner). We would like to finish our construction phase by the 3rd quarter of this year on all the remaining space.

It is important to note that the costs of the parking garage far outweigh any revenue generated at this time. We are running operations to deliver a superior product at about \$600,000 or above per year. The reason is simple. We could change to a lower standard of operating costs, but that is not in keeping with the total concept of the Hermosa Pavilion.

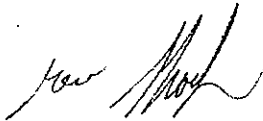
In closing, we intend this document to reflect to the City our sincere efforts to be a good community citizen to promote our commitment to the City of Hermosa Beach. We do not feel it is in anyone's best interest to delay the progress of the Hermosa Pavilion any longer while we research the parking review and recommendations. We are looking forward to a positive and progressive resolution to these issues, and we urge you to consider the investment Hermosa Pavilion has contributed to the community in terms of the signal light, property values, a beautiful building and a concept: health, wellness and beauty which are truly unique to the South Bay.

CLOSING RECOMMENDATIONS:

1. Have the Hermosa Pavilion to continue their efforts outlined above and review in 6 months.
2. Allow the Pavilion to build out the rest of the space as per our allocation in LLG parking study dated 2-13-06.

We are looking forward to a great summer. Thank you for your support and consideration.

Sincerely,

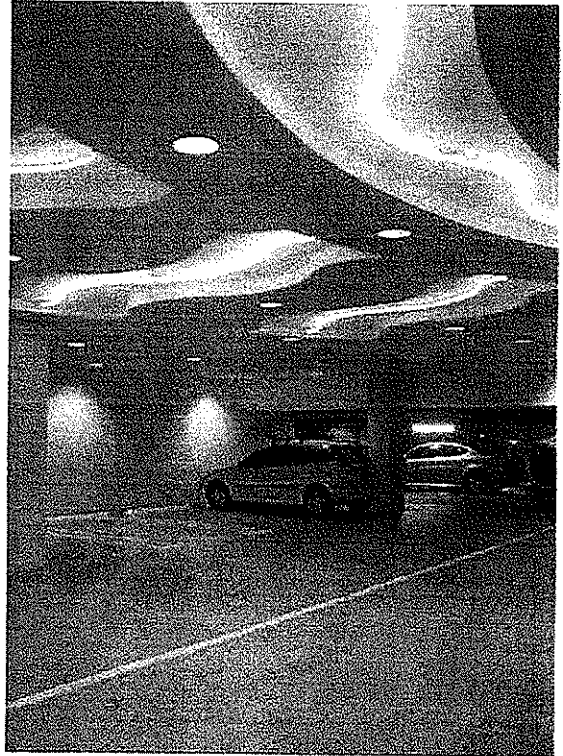
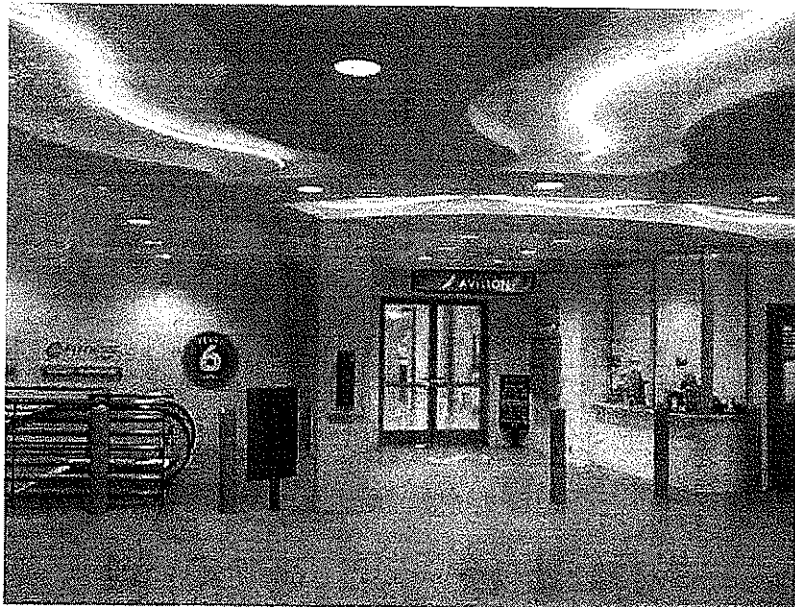


Gene Shook
President
Shook Development Corporation
1601 Pacific Coast Highway Suite 300
Hermosa Beach, CA 90254
Phone 310 698-0700
Fax 310 698-0701
Email gshook@shookdevelopment.com

HERMOSA
PAVILION

Parking Passes

SAVE BIG!



Want to save time?

Not a fan of long lines?

Like saving money?

Afraid you may lose
your parking ticket?

Were you thinking that
parking should be more
convenient in a town where
parking is inconvenient?

LOOK NO FURTHER!

\$20 Monthly pass*
for 100 hours
**(WOW! That's over 3 hours a day
3 times a week!)**

\$25 Monthly pass*
for 250 hours
(now that's saving!)

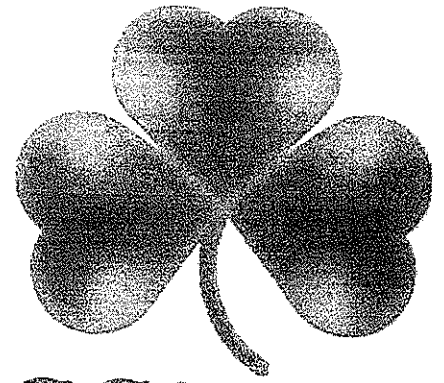
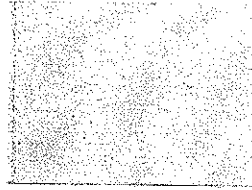
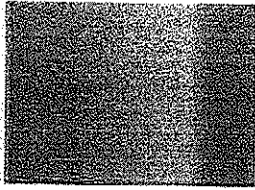
*Monthly Parking Passes are now available. Rules, regulations and stipulations do apply. Please ask a Pavilion Service Representative for details. Monthly parking passes may not be used on Levels 5 & 6 of the parking structure; parking only in areas specifically designed for pass holders will be enforced. Exceeding pass hours will be penalized. Presentation of parking pass is required for entry. Additional identification of the pass holder may be required. The parking pass is non-transferable and non-refundable. The pass may be revoked without refund. Lost processed monthly passes may be replaced for a fee with proper identification. A \$10 refundable deposit is required for key card. Parking hours do not rollover.

Hermosa Pavilion
1601 Pacific Coast
Highway
Hermosa Beach, CA
90254

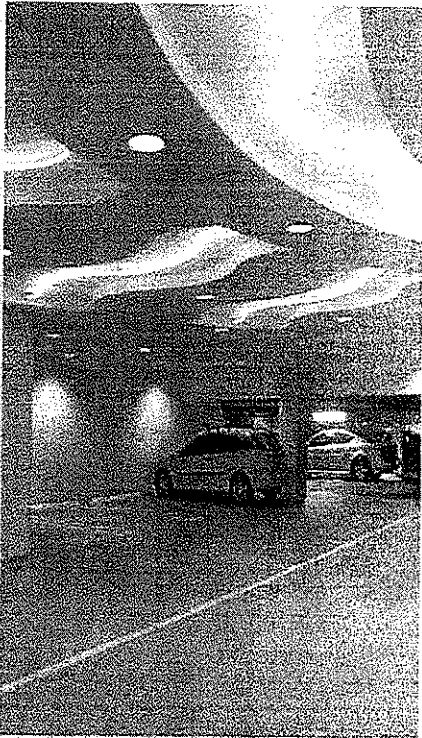
WWW.HermosaPavilion.com
WWW.Seasideoffice.com

Please be considerate and kind to our neighbors by parking in designated areas. Please be advised that parking in designated areas is enforced. Thank you.

HERMOSA
PAVILION



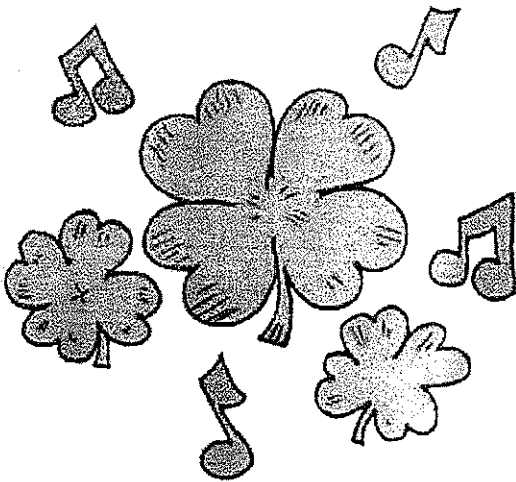
MARCH MADNESS!



WHAT A BIG DEAL!

**BUY 3 Month's of Parking
Get the 4th month free!***

*Purchase 3 month's of parking worth 100 hours each month and receive your 4th month for free! That's up to 400 parking hours for only .50cents a day! Rules & regulations do apply. Please ask a Pavilion Representative for details. Parking passes may not be used on Levels 5 & 6; parking in designated areas will be enforced. Exceeding pass hours will be penalized for a small fee. Parking hours do not roll over each month. Presentation of parking pass is required for entry. The parking pass is non-transferable and non-refundable. The pass may be revoked without refund. Lost processed monthly passes may be replaced for a fee with proper identification. A refundable deposit of \$10 is required for the pass key card. Hurry, deals like this only happen when a leprechaun has lost his gold! Offer expires March 31, 2006.



Please be considerate and kind to our neighbors by parking in designated areas. Please be advised that parking in designated areas is enforced daily. Thank You.

STILLWATER

Cafe & Green Bar



Want to Re-Energize
your day?
Buy a smoothie & have
your parking validated!



StillWater Café and Green Bar will validate your parking ticket with the purchase of a RAW, organic smoothie.*

* good for \$1.00 validation; may be used with other validations. Offer expires on April 30th.



Please be considerate and kind to our neighbors by parking in designated areas. Please be advised that parking in designated areas is enforced.

TOWN MEETING

For business owners

At the



On

FRIDAY, MARCH 10, 2006 1:00pm

Regarding

The Parking In Your Neighborhood

PLEASE JOIN US IN A COMMUNITY
EFFORT

YOUR TIME & OPINIONS DO COUNT!

THERE ARE SOLUTIONS!

We are gathering at the StillWater Café & Green Bar
of the Pavilion.

Refreshments will be served.



Proud Sponsor



Memo

From: Raymond R. Abassi
Subject: Comments on the HB Pavilion Parking Study

I have reviewed the Parking "Study Report – Hermosa Beach Pavilion" and have the following comments:

1. Some of the patrons are parking off-site to use the facilities on HBP. It represents two problems:
 - a. Any on-site parking survey does not show the full usage of the parking stalls on-site. Therefore, any parking usage survey should survey both on and off-site parking usage simultaneously.
 - b. Patron of the site should use the on-site parking stalls.
2. The cost for parking encourages the patrons of the facility to find alternative means to park their vehicles. As in traffic flow, parking vehicles look for the least expensive and yet convenient means to park their cars and therefore the on-street parking stalls become very attractive. Therefore I agree with the planning staff that accommodation for the patrons should be made to inform them of the free parking and therefore not park off-site.
3. The methods for sharing of the parking stalls are questionable to me. Many assumptions are made and testimonial is received from the on-site merchants that are used to calculate the parking demand. I think more acceptable engineering methods should be used in coming up with the actual demand. This may include conducting concurrent on and off-site surveys to document existing parking demand and conducting parking demand survey at other facilities with similar land uses. Also the assumptions of the percent of the peak demand parking for various time increments need to be explained better as to the source of the data.
4. There are other miscellaneous uses on site such as the Detail shop and Kiosks that need to be accounted for.
5. To restrict the usage of the on-street parking stalls should not be done as this will require enforcement and will cost the City money to maintain.

In conclusion, I believe that the parking should be free or pretty close to it and the parking study need to better reflect the existing demand and more accurately project the future demand.

After review of my comments, if you any questions, please call me on my cell at 714-329-4500.

February 28, 2006

Mr. Sol Blumenfeld
Director, Community Development

Mr. Ken Robertson
Senior Planner

SUBJECT: OPTIONS TO RESOLVE PARKING SITUATION

The Hermosa Pavilion management team is working hard to deliver solutions to the parking issues raised as a result of the February 21 recommendation of the Planning Commission.

It is clear from Chairman Hoffman's comments that Hermosa Pavilion has met the requirement of providing adequate parking. The issues we are attempting to resolve in collaboration with City Staff involve specific concerns raised by some residents and a few local merchants during public comment due to 24 Hour Fitness gym members parking in designated free parking spaces along PCH and in the surrounding neighborhoods.

Hermosa Pavilion respectfully asserts our position that any designated free parking space is just that – a free parking space and we should not be held responsible for policing or enforcing the parking usage of City designated free parking. We have, however, as a good community citizen, gone the extra mile to provide the following research and recommendations.

PARKING RESEARCH

Hermosa Pavilion management staff has bounded the areas noted by residents and local merchants concerns as bordered by 18th Street North and South to 14th Street, East as far as Prospect and West on 16th Street to Ardmore. Please see map.

Hermosa Pavilion management staff has physically walked the streets in areas and are in the process of documenting the parking signs and free parking spaces in these residential areas. We have already spoken to a few residents and most of the business owners and we are reviewing a number of options that will work for the residents and businesses. We are looking at getting more input through a "town meeting" forum where we will invite residents one evening and businesses another evening to help us collaborate to creatively problem-solve our parking problems to come up with a global solution.

COMMUNITY SUPPORT

Hermosa Pavilion is making a strong and focused effort to reach all residents and local businesses impacted by the current parking and traffic issues. This week we will be inviting our neighbors in the community to two separate meetings to specifically address their concerns, obtain feedback and recommend solutions to the parking problems. Preliminary research findings show that business owners on PCH WANT to have 30 minute free parking zones with green painted curbs and we are in

favor of this recommendation. It is our plan to conduct our "town meetings" with residents and local businesses and provide the research to support these options to ask for consensus on a collaborative solution.

For individual residents, we are exploring several options for remedy to the parking situation as are currently found in the City in other residential areas like Loma and Monterrey. One solution that may work is to provide these same types of remedies for residents East of PCH. Currently residential parking is impacted by a number of factors including the 24 Hour Fitness gym members such as spill-over parking from the area apartment and condominium structures. Some residents at the last meeting of the Planning Commission on February 21 also made recommendations to modify 16th Street East of PCH. We will be reviewing these recommendations during our town meetings with all of the other solutions we are researching.

Many of the residential streets in the bounded area noted are noticeably not up to a consistent standard. We recommend the City review 14th Street and 15th Street as excellent examples of how the parking issues may be resolved.

WAYS THE CITY CAN HELP

We would like to request any information on studies that might have been conducted for the parking and traffic impact to 14th Street with the Pier Avenue and PCH signal was installed. We feel it is only logical that similar traffic concerns must have been experienced by the residents of the 14th Street East when this signal was placed.

We would like to invite Council members and members of the Planning Commission to our "town meetings" to hear feedback firsthand.

We would like to request that the City consider parking remedies that currently exist in other parts of Hermosa Beach. See specifically Manhattan Avenue and Monterrey Avenues where there is a basic system of 1 hour parking, the parking spaces are clearly marked and permit parking is allowed for residents only.

Over the last 5 years the City of Hermosa Beach has experienced an increase in parking demand along PCH and surrounding areas. Many homes are being built out of the vacant lots and all of this culminates in a greater population density than in previous years. It is easy to single out Hermosa Pavilion as the sole target of the parking problems we are experiencing in the community, but it may not be accurate or fair to do so. Regardless of what we do or don't do, parking is now impacted in the residential areas, and has been for years and will continue to be impacted. The only way to resolve the situation is to implement a positive solution that takes in a number of these parameters for consideration.

OUR EFFORTS SINCE LAST TUESDAY

In addition to the onsite research our management team has started this week by walking the affected area as noted, Hermosa Pavilion has actively begun to inform and promote our parking as follows:

- ❖ Flyers created (example attached) to offer parking to customers of the Pavilion at \$20 per month or 100 hours, whichever comes first; or \$25 per 250 hours. These flyers have been distributed to 24 Hour Fitness Sales Representatives and Management as well as individuals throughout the Pavilion.
- ❖ We will be offering these additional promotions for parking. Buy 3 months and get 1 month free. This promotion is valid until March 30. For example: for \$60 you would be getting 120 days of parking, effectively bringing the cost of parking to 50 cents per day in our structure!
- ❖ Any patron who buys an organic smoothie in our Stillwater Café & Green Bar will get an additional hour of validation for their visit to the Pavilion toward their parking. This promotion is valid until April 30. Thus a gym member that buys a smoothie and is here for 2 hours will park free.
- ❖ As noted we are working with 24 Hour Fitness to creatively find ways to inform their members of our parking situation.
- ❖ We have implemented a weekly update called Dear Friend of the Pavilion to inform our tenants and patrons of our community efforts and concerns
- ❖ We are actively working toward collaboration with the surrounding residential buildings to solicit feedback and support for our preliminary options noted in this brief.
- ❖ We are actively contacting local businesses and residents to invite them to attend our “town meeting” forum to collaborate on how to collectively solve our parking problems and create consensus through information and dialogue.
- ❖ We are implementing a Valet Parking program during the hours of 7am to 10pm for a \$1 surcharge as a totally optional alternative for parking.
- ❖ We are creating a notice of Parking Ombudsman for the residents of the surrounding neighborhoods so that they are informed about who to call if parking problems arise on their streets.

We would like to recommend that the City allow the Pavilion to continue to build out the balance of the retail center while we continue to spend the next 5-6 months exploring the parking alternatives with our local residents and business owners. We have a phenomenal restaurant concept waiting to take shape and will also be bringing a unique retail space to the Hermosa Pavilion (on virtually all spaces on first floor SDC will be owner or part owner). We would like to finish our construction phase by the 3rd quarter of this year on all the first floor retail space.

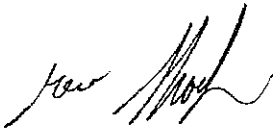
It is important to note that the costs of the parking garage far outweigh any revenue generated at this time. We are running operations to deliver a superior product at about \$600,000 or above per year. The reason is simple. We could change to a lower standard of operating costs, but that is not in keeping with the total concept of the Hermosa Pavilion. Even the retail spaces on the first floor are being built by the owner in partnership with very select retailers and restaurateurs' who fit the Hermosa Pavilion concept. Free parking has pros and cons, and could increase the spillover instead of decreasing the spillover.

In closing, we intend this document to reflect to the City our sincere efforts to be a good community citizen to promote our commitment to the City of Hermosa Beach. We do not feel it is in anyone's best interest to delay the progress of the Hermosa Pavilion any longer while we research the parking review and recommendations. We are looking forward to a positive and progressive resolution to these issues, and we urge you to consider the investment Hermosa Pavilion has contributed to the community in terms of the signal light, property values and a concept: health, wellness and beauty which are truly unique to the South Bay.

We are looking forward to a great summer. Thank you for your support and consideration.

Gene Shook

Sincerely,



Gene Shook
President
Shook Development Corporation
1601 Pacific Coast Highway Suite 300
Hermosa Beach, CA 90254
Phone 310 698-0700
Fax 310 698-0701
Email gshook@shookdevelopment.com

February 21, 2006

Honorable Chairman & Members of the
Hermosa Beach Planning Commission

**SUBJECT: SIX MONTH REVIEW OF PARKING OPERATIONS AT THE
HERMOSA PAVILION 1601 Pacific Coast Highway**

The Hermosa Pavilion is addressing the planning commission findings in their report of February 15 by the Director of Community Development, Sol Blumenfeld and Ken Robertson, Senior Planner for the City of Hermosa Beach.

The requirements of the 2003 Planning Commission Condition No. 3(b) of Planning Commission Resolution 03-45 requires a report from the applicant's traffic engineer to "certify adequate on-site parking is available". To this first point the Hermosa Pavilion's traffic engineer team parking study, Linscott, Law & Greenspan indicates that the parking supply is adequate. This assertion is validated and confirmed by both Mr. Robertson and Mr. Blumenfeld.

The issues we will address today concern operating efficiency of the parking garage, and the neighborhood complaints about the street parking from the gym members at 24 Hour Fitness and spill-over parking.

OPERATING EFFICIENCY

As indicated by the LLG report and evidenced in the document by Mr. Blumenfeld and Mr. Robertson, The Hermosa Pavilion has 540 parking spaces. Please note that this is 60 more parking spaces than originally required by the Planning Commission.

The breakdown is as follows:

- 454 standard single load
- 42 tandem for employee parking
- 44 parallel for valet parking

As of this date, our parking crew and management team are conducting Valet Parking runs to test the operations when Valet is in use in anticipation of our VIP Amenity program which will begin in March. Each level of the parking garage is designated for a particular use in operations. For example:

- Level 1 = Employee Parking / Tandem Assist
- Level 2 = Employee Parking / Tandem Assist
- Level 3 = Valet Parking sections & General Parking
- Level 4 = Valet Parking sections & General Parking
- Level 5 = General Parking
- Level 6 = General Parking



27941 Suffolk Lane San Juan Capistrano, CA 92676 P: (949) 661-1887 www.hermosapavilion.com

The parking garage at Hermosa Pavilion is currently hosting parking at 270 cars per day attributed to 24 Hour Fitness, and we project 60-100 for Glen Ivy and the Stillwater Bistro as we continue to develop our retail outlets. These numbers confirm two things: 1) we are operating efficiently and 2) we are under-parked with adequate room for expansion given our total build-out plans.

PARKING COSTS & COMPARISONS

In addition to the review by the City, Hermosa Pavilion staff also undertook research to review parking and validation programs for gyms that are within Southern California, yet comparable to the 24 Hour Fitness facilities at the Pavilion. By comparable, we mean workout facilities that offer the same or better class of amenities as those offered by our gym. The 24 Hour Fitness facilities at the Hermosa Pavilion are considered the high end of the "sport" category. 24 Hour Fitness has 5 categories of workout facilities: Express, Active, Sport, Super Sport and Ultra-Sport. This particular facility is the most successful and fastest growing in its category in the United States. 24 Hour Fitness has over 400 clubs nationwide.

When comparing parking rates we reviewed not only the facilities but the neighborhoods in which we found these gyms. Many times we were not comparing "apples to apples". For example, the 24 Hour Fitness Sport in Santa Monica is located at the Santa Monica Airport in a business park which is difficult to locate. If you do not have pay-for-use parking validation at this location the cost to park is \$1.15 for each 15 minutes. Both the location, and the facilities are considerably different than those of the Pavilion. The 24 Hour Fitness location in Long Beach is another example of a mismatch in parking comparisons. The Oceangate facility is classed as an "Active" center, which provides only workout machines, no pool, no classes, and no basketball court. To park in this location, you have to be there after 3:30 pm or find metered parking on the street. The attendant was quoted at this location as saying, "Try to get here as close to but not before 3:30 as possible, or good luck trying to find a meter. Don't stay too long either", insinuating expensive and unavailable parking meters. The parking structure at this facility charges \$2.50 each 20 minutes.

Parking rates charged at Hermosa Pavilion are the same as rates charged all over the City at the meters and in the City parking lot at 13th Street. In fact, in addition to our research we compared the two facilities as follows:

Amenities	13 th Street Parking Garage	Hermosa Pavilion Parking Garage
Parking Spaces	300	540
Security Cameras	None	29
Security Staff	None	3 shifts 24/hrs day/7 days per week
Well-lighted	Yes	Yes
Escalators	No	Yes
Elevators	Yes	Yes
Valet parking	No	Yes
Auto Detail	No	Yes
Hours of Operation	7a-3a	24 hours per day
Currently usage	270 max on 300 spaces	270 max on 540 spaces; valet available



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Rates	\$1.00 per hour same as meters	\$1.00 per hour same as meters
	\$6.00 flat rate on Fri/Sat after 6pm	\$1.00 for 2 hours with 24HF validation
	\$25 per month for 7a-7p pass	\$20 per month for 100 hours usage
	\$50 per month for unlimited usage	\$25 per month for 200 hours usage

In essence, Hermosa Pavilion is the cheapest and best parking facility in the City of Hermosa Beach. As a business owner, it makes no fiscal sense to give away the parking in the Hermosa Pavilion for less than what the City currently charges for its own garage.

PARKING ISSUES

The report by Mr. Blumenfeld and Mr. Robertson indicates complaints and observations concerning customers of the fitness club using street parking instead of the parking structure. Further, the report indicates that is unclear whether these customers choose not to use the structure because of operational issues such as congestion, ease of ingress and egress or if it's related to cost. The Hermosa Pavilion respectfully submits our opinion that the reason has to do with perception and change in the community.

We have demonstrated that parking is safe and reasonably priced, and the efficiency of our operation is currently sufficient. We have demonstrated that the cost is reasonable and comparable with not only other workout facilities of a similar nature, but also with the City of Hermosa Beach parking rates.

While we cannot police or enforce the utilization of free parking spaces along the residential streets, we can and do meet with our merchant neighbors in the community to address their concerns. We actively solicit their feedback and we have begun an ongoing communication process with our tenants to inform, educate and advise them of our efforts and concerns from the neighborhood community. We have asked that our merchant neighbors strictly enforce their Private Property/No Trespassing rules and actively engage in towing unauthorized vehicles from their property. This is their right as business owners and necessary for them to maintain their place in the free market economy. Every business owner has to make choices as to the livelihood of their business. The statement that, "We've never had this problem before Hermosa Pavilion got here", is not a sound premise. The reality is that Hermosa Beach and all the Beach Cities in the South Bay are under parked. Hermosa Pavilion is increasing business and has in fact, created additional parking for a City already burdened with parking issues. As Hermosa Beach expands and the population increases and new businesses are attracted here, parking will continue to be a problem.

OPTIONS & RECOMMENDATIONS

In an effort to be a good community citizen, we offer these suggestions for specific issues and are in concurrence with the findings of Mr. Blumenfeld and Mr. Robertson's report:

- In consideration of neighborhood parking, we respectfully submit that the Pavilion is not yet experiencing spillover parking, due to lack of availability; we are under-utilized in our current parking. Indeed, if we lower our parking rates we anticipate a large amount of spillover which would adversely affect the community.

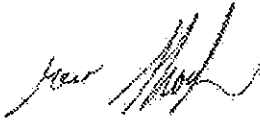


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- Please see the attached Friend of the Pavilion flyer which goes out weekly to inform our tenants and customers of the Pavilion of the impact of their parking habits.
- We concur with the recommendation that the City take steps to restrict parking on impacted streets by either creating a parking district, or installing metered parking.
- The Hermosa Pavilion is not prepared to offer lower rates than the City of Hermosa Beach for its parking facility due to the costs of operation (4 x what the 13th St lot costs to operate) over \$600,000.00 annually.
- A lower price structure is already in place with the validation program at 24 Hour Fitness. Each tenant decides their parking validation program when they negotiate their lease. This is not within our control for leases that have already been negotiated.
- We are happy to provide local residents with parking passes for use of our garage for the established monthly rates. This is also applicable for the local business who may be interested to use these for the parking structure for their visitor or employee parking.

Thank you for your consideration of our report and its findings regarding the 6-month parking review for Hermosa Pavilion.

Sincerely,



Gene Shook
President
Shook Development Corporation
1601 Pacific Coast Highway Suite 300
Hermosa Beach, CA 90254
Phone 310 698-0700
Fax 310 698-0701
Email gshook@shookdevelopment.com

Dean Francois
Box 808
Hermosa Beach, ca 90254
310-318-3326

Planning commission
E. Doerfling, City clerk
City of Hermosa Beach
Hermosa Beach, ca 90254
Via email: edoerfling@hermosabch.org

Subject: receive & file for item #11 (Hermosa pavilion parking) planning commission 2/21 meeting

To Whom It May Concern:

Please have this letter received, filed, and distributed to all commissioners for the commission meeting.

I support the intention of the first 3 recommendations in the staff report and oppose the 5th recommendation.

As noted in the report, it is clear that users of the fitness center are parking elsewhere, especially those that use the facility for a greater length of time. The only clear solution is to have all the parking at the pavilion free. The garage is underutilized at this point and it is ridiculous to expect residents to be subjected to this simply because they are charging to park there. If and when business increases, then we can talk about paying to park. As noted in your report, the installation of a signal on 16th & PCH there will make it even easier to park on other streets and the situation will be worse for neighbors. Having more restricted residential parking is not the answer.

Thank you,

Dean Francois
Friends of the South Bay Bicycle Path

(310) 318-3326
cell 938-2191

www.geocities.com/SAVETHESTRAND

**SUPPLEMENTAL
INFORMATION**

11

71



1630 Pacific Coast Highway • Hermosa Beach, California 90254

February 16, 2006

Planning Commission
City of Hermosa Beach
1315 Valley Drive
Hermosa Beach, CA 90254

RECEIVED

FEB 16 2006

COM. DEV. DEPT.

RE: 6 Month Review of Hermosa Pavilion Parking Plan

Dear Council Representatives:

I am writing to express our desire to see changes made regarding the parking plan for the tenants at Hermosa Pavilion. Since the opening of 24 Hour Fitness, we have seen a marked decrease in sales and hear continually from our customers that they are unable to find parking near our store when our lot is full. This is a huge impact on an independent retailer like us. These issues are due to people seeking free parking on Pacific Coast Highway rather than pay for parking within the development where 24 Hour Fitness is located.

Not only does this situation impact our business at 1630 Pacific Coast Highway, it also poses a community safety hazard since few of the people parking on street are using crosswalks. The number of near-miss accidents we see daily is a growing concern!

We would like to offer the following suggestions to alleviate the problems being caused by the change in impact to the surrounding neighborhood since the opening of Hermosa Pavilion:

- Change the fee structure within the facility so that tenants and customers have free parking for a designated period of time.
- Change the street signage from 2 hour parking to half hour parking on Pacific Coast Highway.
- Create a street parking permit program for residents and businesses.
- Increase law enforcement's presence at 16th and 17th to encourage a more conscientious and safe traffic and pedestrian patterns.

Please note, we are not opposed to 24 Hour Fitness being in Hermosa Pavilion or to the improved development of this site by Gene Shook and Shook Development Company. However, we would hope that Hermosa Pavilion and its tenants would be better community citizens. As a business that has been part of the community for more than 15 years at our location, we strive to be conscious of our neighbors. We hope that you will encourage the City Council and the developer to do the same.

It is also important that this issue be dealt with quickly. In a short time, Glen Ivy and Kids Cabaret will be opening. This will only magnify the problem we are currently dealing with and increase the safety problems on Pacific Coast Highway.



SUPPLEMENTAL
INFORMATION


11

PHONE (310) 372-1980 • WEBSITE www.petcarecompany.net • E-MAIL: info@petcarecompany.net

(OVER, PLEASE) 72

Thank you for the opportunity to voice our concerns and we look forward to working with the Commission to find an appropriate and amenable solution.

Sincerely,



Lisa Holcombe
Community Relations Specialist

Fred Huebscher

From: Fred Huebscher [drslate@verizon.net]
Sent: Saturday, January 28, 2006 6:17 PM
To: Steve Burrell; 'Peter@electpetertucker.com'; JR Reviczky; Michael Keegan
Subject: Hermosa Pavilion parking situation

Gentlemen,

As you may know I live on 16th Street in the second block above PCH (i.e. east of PCH). Since the 24 Hour Fitness has opened in the Hermosa Pavilion, the gym's patrons are now parking on 16th Street because of the Pavilion's charging for parking. Moreover, gym patrons are also parking on PCH between 15th and 17th Streets. People are parking on 16th and on PCH as early as 5:30 AM. And apparently, gym patrons are also parking in the Vons' shopping center parking lot (I say this because they now have signs posted at the entrance to the lot prohibiting parking except for shopping center patrons.). I understand that the city will soon be approving a specific parking plan for the Hermosa Pavilion. I would ask that you inform all the residents surrounding the Pavilion when you are going to be evaluating the plan because I think it's essential that residents' input is considered. The obvious solution is to mandate that the Pavilion offers free parking for the first hour and half. Otherwise, we will need to establish permit parking in our area to ameliorate the situation. And I would hope that Mr. Shook would pay for our permits since his building is the direct cause of the problem. Thank you for your consideration.

Fred Huebscher

Fred Huebscher
310-374-0568
www.politicalscientists.com