

**CITY OF UNION CITY
MINUTES FOR THE REGULAR PLANNING COMMISSION MEETING
OF MARCH 5, 2009, 7:00 P.M.
IN THE COUNCIL CHAMBERS OF CITY HALL
34009 ALVARADO-NILES ROAD, UNION CITY, CALIFORNIA**

- I. ROLL CALL: Commissioners Phillip Crosby, Raymond Gonzales Jr., Jo Ann Lew, Gurnam (Gary) Singh, and Chairperson Tikisa Anderson
Absent: Commissioner Panlilio**

STAFF: Joan Malloy (Economic and Community Development Director); Mark Evanoff (Redevelopment Agency Manager); Mintze Cheng (Public Works Director); Avalon Schultz (Associate Planner); Kit Faubion (Assistant City Attorney); Kris Fitzgerald (Administrative Assistant).

- II. APPROVAL OF MINUTES: The regular Planning Commission Minutes of February 19, 2009 were approved as submitted.**

III. ORAL COMMUNICATIONS:

Barry Ferrier, 32212 Allison Way, Union City, stated that he has noticed a proliferation of satellite antennas on apartment complex balconies. Mr. Ferrier stated that there should be a policy about the placement and size of these satellite dishes.

- IV. WRITTEN COMMUNICATIONS: None.**

V. PUBLIC HEARINGS:

- A. CONTINUED HEARINGS: None.**

B. NEW HEARINGS:

1. GENERAL PLAN AMENDMENT, AG-01-09

- a. To amend the text of the General Plan Land Use and Economic Elements to clarify the goals and policies for the Horner/Veasby Area, which consists of approximately 19-acres bounded by the Alameda County Flood Control District dredging basin on the north, Whipple Road on the East, Benson Road on the South, and Old Alameda Creek on the West. The proposed General Plan amendment will identify site constraints and the vision to guide the future development in the area. Table LU-2, *Union City General Plan Land Use/Zoning Consistency*, is also proposed to be amended to accommodate the creation of a new Zoning District for the Horner/Veasby Area called ML-HV, Horner/Veasby Light Industrial.
- b. To amend the Transportation Element to update Figure TR-5, *Existing and Proposed Bicycle Network*, and Figure TR-6, *Existing and Proposed Pedestrian Network*, for consistency with the City's Pedestrian and Bicycle Master Plan, to modify a proposed bicycle route linking the Central Bay Industrial Park to

neighboring residential developments, and update the Station District Area to reflect current improvements.

On February 12, 2002, the City Council certified an Environmental Impact Report (EIR) and adopted a statement of overriding considerations and mitigation monitoring plan for the 2002 General Plan Update (Resolution Nos. 2108-02 and 2109-02). The proposed Amendments will not result in additional impacts or mitigations beyond those analyzed in the 2002 General Plan EIR. No further environmental review is required.

Avalon Schultz, Associate Planner, presented the staff report.

Joan Malloy, Economic and Community Development Director, stated that two letters were submitted in regards to this item.

Commissioner Gonzales referred to attachment 4, page 2, Policies 1 – 4 and asked why language regarding “revenue enhancements” had been omitted.

Ms. Schultz replied that on the recommendation of the City Attorney “revenue enhancement” language was removed from the land use element.

Commissioner Gonzales asked if the goal was to enhance the land use to produce future revenue.

Ms. Schultz stated that it is broader and that is why the goal was changed to “successful infill development”. Ms. Schultz stated that “revenue enhancement” is just one component of that goal but not the driving factor. Ms. Schultz stated that there is language in the economic development section about revenues.

Commissioner Gonzales asked if the emphasis is to create a light industrial zone with job opportunities for residents.

Ms. Schultz replied that is correct.

Commissioner Gonzales asked if the City has generated a method to spread the cost of development amongst all the parcel owners in a fair manner.

Ms. Schultz replied that the outlined policies in the General Plan don’t impose any new requirements for development in terms of making the necessary upgrades to the utilities or overcoming the infrastructure challenges. Ms. Schultz stated that these policies are meant to advise that these are the constraints on these sites and so if one parcel owner wants to develop individually they would most likely have to front some of the costs for the infrastructure upgrades.

Commissioner Gonzales stated that he would like to hear the opinions from the audience.

Commissioner Lew asked if either of the studies, market or infrastructure, done on the area refer to the area as blighted.

Mark Evanoff, Redevelopment Agency Manager, replied that he did not think either study referred to the area as blighted.

Commissioner Lew asked how long the area has been in the redevelopment project area.

Mr. Evanoff replied that it has been a redevelopment project area since the formation of the Redevelopment Agency which occurred in 1988.

Commissioner Singh referred to the five existing single family houses and asked if they are no longer allowed to make any improvements to the houses.

Ms. Schultz replied that based on the Zoning Ordinance requirements for legally non-conforming uses, the homes can be maintained and repaired but they cannot be expanded.

Commissioner Singh asked if they can fix a leaking roof.

Ms. Schultz replied that they can do repairs or replace the roof.

Commissioner Singh stated that he thinks it would be too challenging for individuals to develop their parcels and they should use the master developer plan for the area.

Commissioner Crosby asked if staff could explain up to what point can repairs be done on these homes since the zoning is being changed.

Ms. Schultz stated that the properties are currently zoned ML, Light Industrial, and so the homes in the area have been non-conforming for decades. Ms. Schultz stated that the Zoning Code draws the line at structural changes.

Commissioner Crosby referred to the desk item letter from Mark Cohen and stated that the proposed changes regarding Mr. Cohen's clients' property were targeting a non-conforming use but they would be allowed to continue.

Ms. Schultz replied that Mr. Kirby received approvals from the City for site improvements for commercial vehicle storage in 1999 when commercial vehicle storage was a permitted use in the ML zone. Ms. Schultz noted that now commercial vehicle storage is a conditionally permitted use so Mr. Kirby's use is now a legally non-conforming operation and that would not change under the new policies.

Commissioner Crosby asked if it were usual practice for a jurisdiction to implement a program for a developer to obtain reimbursement in subsequent years as people take advantage of their infrastructure improvements.

Mr. Evanoff referred the question to the Director of Public Works.

Mintze Cheng, Public Works Director, replied using Alameda County Water District as an example; the first developer extends the water main and there is an agreement between the water district and the developer that subsequent developments that benefit from that water main extension will pay into a fund and the water district will refund the money to the first developer.

Commissioner Crosby asked if that information is recorded on the title of the property.

Ms. Cheng stated that there are various mechanisms and that is one of the methods.

Commissioner Crosby asked how the fees are broken down.

Ms. Cheng stated that it depends on the infrastructure that is being installed.

Chairperson Anderson asked why the City chose a master developer as the best option for this area.

Ms. Schultz replied that the City has not chosen any particular method of development for this area. Ms. Schultz stated that the property owners are free to develop their property independent of the other property owners. Ms. Schultz stated that using a master developer would be a way to help with the cost of the infrastructure upgrades and to create a more cohesive development.

Chairperson Anderson asked how will the property owners get a Use Permit once this language is adopted.

Ms. Schultz replied that once the General Plan change is adopted staff will start work on the text amendment for the Zoning Code, which will be noticed to all the property owners and will have public hearings before the Planning Commission and the City Council. Ms. Schultz stated that once the text with the uses and development standards is adopted then the moratorium will be lifted. Ms. Schultz stated that the text amendment will be consistent with the General Plan.

Chairperson Anderson noted that there is a typo in the resolution on the first page in the eighth paragraph.

Chairperson Anderson opened the public hearing.

Tuija Catalano, representing California Mortgage and Realty (CMR), One Bush Street, #600, San Francisco, Ca, stated that CMR owns four parcels in this area. Ms. Catalano stated that there is an appearance that the City is preparing to take CMR's parcels. Ms. Catalano stated that by the City's actions the value of CMR's parcels is decreasing. Ms. Catalano stated that CMR has attempted to lease some of the properties but the City has driven away the leasee causing CMR to lose the rental income. Ms. Catalano stated that CMR has attempted to sell one of the parcels but the City wrote a letter to the broker advising that a new septic could not be installed and therefore would not allow the building to be occupied. Ms. Catalano stated that based on the language of the moratorium she felt that replacing an existing septic with a new septic would be allowed. Ms. Catalano stated that they have received several code enforcement notices and felt that they were vague and not helpful. Ms. Catalano would like the City to wait to take action on the General Plan Amendment until they have had a chance to sort things out.

Ken Bertelson, 4735 Loretta Way, Union City, stated that he owns 31251 Veasy Street. Mr. Bertelson stated that he is concerned about his continued use of his land. Mr. Bertelson stated that he has some trucks parked there and a landscape business in there. Mr. Bertelson stated that he thought that the area was perfect for truck parking. Mr. Bertelson stated that with the flood plain and liquefaction problems he doesn't think the property should be built on.

Chairperson Anderson asked staff to comment on how Mr. Bertelson's use of the land will be affected by the text amendment. Chairperson Anderson asked what is meant by abandonment of a street.

Ms. Schultz replied that if a master developer compiles all the properties into one ownership then the City would give up its right of way and the street becomes private property. Ms. Schultz stated that Mr. Bertelson does not have any legally permitted uses on his property at this time. Ms. Schultz stated that under the moratorium he cannot file an application for those conditionally permitted uses but under the new zoning ordinance he would be required to establish uses that are consistent with the new code.

Commissioner Crosby asked if under the new code parking was a conditional use and the commission approved a permit for his use that would only apply to him and if he were to sell the property would the use be transferable to the new owner.

Ms. Schultz stated that Use Permits run with the land. Ms. Schultz stated that the City Council has directed staff to look at eliminating some of the uses that don't have buildings with them and look at infill in the area.

Commissioner Singh noted that there are a lot of trucks parked down there and there is also a pallet business in the area and asked if they are permitted.

Ms. Schultz replied that the pallet company is not a permitted use and does not have a business license. Ms. Schultz stated the big rig storage on Benson was not permitted. Ms. Schultz stated that there is a permitted truck repair facility that is permitted.

Commissioner Singh asked about the property that Mr. Bertelson owns.

Ms. Schultz replied that the northern portion of the property was being used for truck storage, the middle portion was being used for a landscaping contractor and the southern portion was a hobby yard and all three uses were not permitted. Ms. Schultz stated that in January letters were sent out to all the property owners to advise them of what was not permitted and advised the owners to come in and discuss any changes.

Ms. Malloy stated that the City has had code enforcement activities in this area for many years and it was not started as a result of the moratorium. Ms. Malloy stated that illegal uses such as pallet yards, truck driving schools, and truck storage have had code enforcement issues. The City continues to address health and safety issues with regards to illegal uses.

Ms. Malloy noted that there has not been a lot of movement in this area since the approval of the 2002 General Plan and City Council has directed staff to find out why this area has not developed.

Commissioner Gonzales asked how many of the parcel owners are not in compliance with the zoning ordinance.

Ms. Schultz replied that with the exception of the single family residences and two of the sites, the rest do not have permitted uses.

Ms. Malloy stated that the purpose of this evening is to approve a General Plan Amendment to provide clear policy framework for the area and out of that will grow the new zoning text.

Chairperson Anderson asked whose public interest is the commission supposed to find that this General Plan Amendment is serving.

Kit Faubion, City Attorney, replied that the public interest is a broad concept. Ms. Faubion stated that to a fair degree the Planning Commission will establish what they feel is the public interest that will be served by this amendment. Ms. Faubion stated the City Council is concerned that this area has had these land use designations in place for some time but the revitalization that was anticipated has not occurred. Ms. Faubion stated that in the course of the Planning Commission's review of the proposed amendment you will have to decide if you share that same vision as the City Council.

Barry Ferrier, 32212 Allison, Union City, asked what happened to the revenue enhancements that were in the land use element. Mr. Ferrier stated that he wanted to see more jobs brought into Union City and he is concerned with bringing in more revenue for the City.

Hugh McNamara, 32238 Mercury Way, Union City, asked where are they going to park trucks if they are zoned out of this area. Mr. McNamara stated that some of the properties might only be good for truck parking because of liquefaction issues.

Chairperson Anderson closed the public hearing.

Commissioner Gonzales noted that there is new text for the Economic Development that includes revenue generation in Attachment 4.

Commissioner Gonzales referred to Exhibit B Figure TR-5 and asked why segment B17 is being removed.

Ms. Malloy replied that because of changes in the area with the approval of Avalon Bay and changes to the BART station, the proposed path was no longer a safe, well-lit path. Ms. Malloy replied that three new points of access to BART have been made so that path is no longer necessary.

Commissioner Lew made a motion to recommend to the City Council approval of General Plan Amendment AG-01-09, making the finding that this is in the public's best interest because it identifies constraints and encourages successful infill development that is appropriate for the area and the Bicycle and Pedestrian Network amendments are in the public's interest because they respond to neighborhood safety concerns and reflect updated conditions, and adopt a resolution confirming this action.

Commissioner Singh seconded.

AYES	5 (Anderson, Crosby, Lew, Gonzales, Singh)
NOES	0
ABSTAIN	0
ABSENT	0

VI. SUPPLEMENTAL STAFF REPORTS:

A. CONTINUED REPORTS: None.

B. NEW REPORTS:

- 1. COMMUNITY REDEVELOPMENT AGENCY, CITY OF UNION CITY, a request to determine if the Disposition and Development Agreement between the Community Redevelopment Agency of the City of Union City and Mid-Peninsula Housing Coalition is consistent with the General Plan.**

Mark Evanoff, Redevelopment Agency Director, presented the staff report.

Commissioner Singh asked how long will it take to cover the \$14.9 million dollar loan.

Mr. Evanoff replied that it will take some time. Mr. Evanoff stated that the \$14.9 million comes out of housing funds and the Redevelopment Agency is required to spend 20% of the agency funds, which are housing funds, on affordable housing. Mr. Evanoff stated that Mid-Peninsula Housing Coalition will start to payback that loan out of residual receipts probably in the year 2025.

Commissioner Singh asked if there is a background check of the financials of Mid-Peninsula Housing Coalition.

Mr. Evanoff replied that prior to the disposition of the property, Mid-Peninsula Housing Coalition is going to need to bring in statements to the agency board attesting that all the financing is in place. Mr. Evanoff stated that the agency board will only release the land once Mid-Pen provides the documentation that it has the full financing to construct the project. Mr. Evanoff stated that in conjunction with the financing plan will be a detailed pro forma that will show how debt will be paid over time and in that pro forma will show when residual receipts will be available to start paying off the agency loan. Mr. Evanoff stated that the agency is essentially last in line in terms of the tiers of debt service.

Commissioner Singh asked if there is any guarantee that they will get a tax credit from the State.

Mr. Evanoff replied that there are two types of tax credit that Mid-Pen will be applying for; one will be a 9% tax credit and the other will be a 4% tax credit. Mr. Evanoff stated that they will also be applying for a 2009 TOD grant. Mr. Evanoff stated that the terms of the DDA are to allow one and a half funding cycles for Mid-Pen to try to obtain financing and to come back and report to the agency board for determination.

Commissioner Singh asked if they have to have a certain percentage of money before they get bank loans.

Chairperson Anderson asked to explain the proportions of where the funds are coming from.

Mr. Evanoff stated that there is a pre-construction loan which the agency has given them for about \$1.5 million. Mr. Evanoff stated that the remainder of the construction loan will be released only when Mid-Pen can demonstrate that it has obtained full financing for the project.

Commissioner Lew noted that there are some discrepancies in the report on the number of units and amount of commercial flex-space. Commissioner Lew asked if that was done on purpose because the number of units haven't been settled on yet or are these the numbers that will be actually used.

Mr. Evanoff replied that the size of the commercial space has changed slightly from when the Planning Commission first heard the presentation. Mr. Evanoff stated that the numbers presented tonight are the real numbers. Mr. Evanoff stated that there will be 155 affordable units and 2 manager units and about 9,400 square feet of flex-space commercial which includes the café space.

Joan Malloy, Economic and Community Development Director, stated that there is a total of 157 units.

Commissioner Lew confirmed that five units were added back and the parking remained the same.

Ms. Malloy stated that is correct.

Commissioner Lew referred to page 35 of the agreement and asked why the first step to resolving disputes is not mediation or arbitration.

Mr. Evanoff replied that he does not believe the language precludes the use of mediation or arbitration and that going to court is the action of last resort.

Commissioner Lew stated that is not what the language says in paragraph 7.4.

Kit Faubion, City Attorney, replied that these are the terms of the draft agreement and if the City Council where to decide that they wished to change those terms they could negotiate with the developer.

Commissioner Lew asked if the City Council is aware of that. Commissioner Lew stated that normally in real estate transactions isn't it preferred as a cost saving measure to seek arbitration or go to mediation before going to court. Commissioner Lew stated that she thought it was more cost effective. Mr. Evanoff replied that there is a good relation between the Redevelopment Agency and Mid-Peninsula Housing Coalition and if there are any problems that come up we will talk with each other.

Commissioner Lew stated that is not the same as mediation or arbitration and it really should be in the agreement if that is the City's intent to use it.

Ms. Malloy stated that it did not come up through reviews by the Agency's attorney and Mid-Pen's attorney and so this is how the agreement was drafted and your comment will be noted and provided to the City Council.

Commissioner Gonzales asked who is donating the land.

Mr. Evanoff replied that this is a recent change to the text of the DDA and the land is now going to be sold to Mid-Pen and the agency will be paid back. Mr. Evanoff stated that the land will not be donated.

Chairperson Anderson stated that he thought the DDA read that the land would be sold for one dollar.

Mr. Evanoff stated that was going to be the original terms but there was a request and agreed upon language that it is no longer a land donation. Mr. Evanoff stated that the land will be sold but there will be a deferred payment.

Chairperson Anderson stated that language is still in the DDA.

Mr. Evanoff replied that the DDA will be updated before going to the City Council.

Chairperson Anderson asked where the \$3.8 million land loan originated.

Mr. Evanoff stated that is the appraised value of the property.

Chairperson Anderson asked if the \$3.8 million is in addition to the \$14.9 million loan.

Mr. Evanoff replied that it is and it does not have to be repayed until the end of the regulatory agreement which is 55 years from now.

Chairperson Anderson asked what year Mid-Pen starts paying the loans back.

Mr. Evanoff replied in year 2023.

Chairperson Anderson asked how much time they have to pay the money back.

Mr. Evanoff replied that it is a 55 year regulatory agreement which starts with the execution of the DDA.

Commissioner Lew asked if the site is buildable now.

Mr. Evanoff replied that some site preparation will probably be needed.

Commissioner Lew asked if the utilities are in.

Mr. Evanoff replied that there will probably be additional utilities needed for the project.

Commissioner Gonzales asked if the City is going to be running a negative cash flow for years 2011 through 2025.

Mr. Evanoff replied that those are actually Mid-Pen's projections and they would be able to answer his question.

Chairperson Anderson opened the public hearing.

Juan DeLeon, Mid-Peninsula Housing Coalition, Foster City, replied that in that particular scenario that there is actually a positive cash flow during that period. Mr. DeLeon stated that on the line below is the distribution of the cash flow. Mr. DeLeon stated that they have been doing affordable housing for 38 years and have never defaulted on any loans that they have taken out and will not move forward with the agency loan unless all the other financing is in place. Mr. DeLeon stated that there is one gigantic closing where everything has to be reviewed and the agency and the banks will review all the financials again before anything goes forward.

Commissioner Singh asked if they are having any difficulties getting loans right now.

Mr. DeLeon replied that right now everyone is having problems but we don't have a problem getting loans from banks but we are having trouble with money from the State and the tax credits.

Barry Ferrier, 32212 Allison Way, Union City, asked if the flex commercial space going to be sold or leased and if it is leased then will the space be affordable. Mr. Ferrier stated that he thought that it should be affordable in order to get it occupied.

Mr. Evanoff replied that Mid-Peninsula Housing Coalition is going to be the owner of the flex space and the City will work with them to market the space Mr. Evanoff stated that it is in all parties' best interests to get the space filled as quickly as possible. Mr. Evanoff stated that Mr. DeLeon can explain the rent structure which is designed to keep it very low in order to get it occupied.

Hugh McNamara, 32238 Mercury Way, Union City, stated that a private developer can have higher affordable rents and the public developer will have lower affordable rents. Mr. McNamara hopes that this project goes forward right away.

Commissioner Lew made the finding that the DDA by and between the Community Redevelopment Agency, the City of Union City and Mid-Peninsula Housing Coalition is consistent with the General Plan, and adopt a resolution confirming this action.

Commissioner Singh seconded.

AYES	5 (Anderson, Crosby, Lew, Gonzales, Singh)
NOES	0
ABSTAIN	0
ABSENT	0

VII. REDEVELOPMENT AND ECONOMIC DEVELOPMENT REPORTS:

VIII. COMMISSION MATTERS:

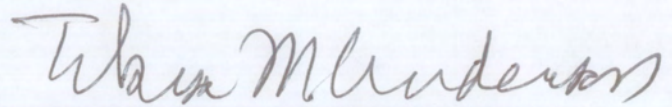
- A. Follow-up on Planning Commission referrals to the City Council.
- B. Upcoming applications for the Planning Commission meeting for March 19, 2009.

IX. GOOD OF THE ORDER:

Commissioner Lew stated that she will be attending an ACTIA meeting on Monday, March 9, 2009.

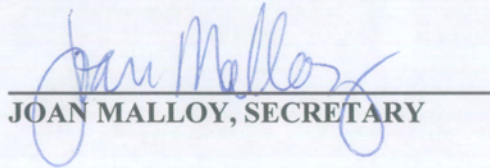
- X. **ADJOURNMENT:** 8:55 p.m.

APPROVED:



TIKISA ANDERSON, CHAIRPERSON

ATTEST:



JOAN MALLOY, SECRETARY