

City Attorney Mattas provided guidance to the Council on how they might proceed. Ms. Giordano then withdrew her original motion above, with the consent of Mr. Livengood.

(3) Motion: continue this matter on appeal for about 60 days, provide City staff and business owners an opportunity to sit down, take in the context of the whole center, and return to City Council at the second meeting in October with the appeal

Motion/Second: Councilmember Livengood/Councilmember Polanski

Mayor Esteves announced his support of the new motion.

Motion carried by a vote of: AYES: 5
NOES: 0

2. Entertainment Permit for St. John the Baptist Church "Autumn Festival" on September 15-17, 2006

City Clerk Mary Lavelle explained the request for an Entertainment Event Permit for the second annual Autumn Festival in September. Two requests from the Church of the City were: (1) obtain some orange parking cones to assist with traffic flow set-up, and (2) to waive the fire inspection and permit fee of approximately \$400.

Ms. Lavelle introduced the church's Autumn Festival Committee Chair Mrs. Riza Santoro. She commented that the Committee still seeks a written letter of permission for parking at the nearby Serra Shopping Center. Mrs. Santoro also was working on obtaining the current insurance certificate that the City required.

Councilmember Livengood asked questions about the parking flow, and requested that the Festival Committee folks be very clear where patrons could park, with an emphasis on the east side of the street, so as to be courteous to businesses and homeowners in that downtown neighborhood.

The Mayor opened public hearing for comments.

Don Peoples, President of the Downtown Association, commented on the issue of parking in the area where the festival would be held. With kids and parents crossing the street, he requested St. John's maximize the parking on the east side of Abel, making lots of parking available. He offered his assistance to help get cooperation with other business and church owners to ensure that east side parking would be better for the festival goers, and ensure good cooperation.

(1) Motion: to close the public hearing

Motion/second: Councilmember Giordano/Councilmember Livengood

Motion carried by a vote of: AYES: 5
NOES: 0

(2) Motion: Approve Entertainment Event Permit for St. John the Baptist Catholic Church's Autumn Festival for the weekend of September 15, 16 and 17, 2006, with all departmental conditions noted and waive the fire inspection permit fee

Motion/second: Councilmember Giordano/Councilmember Livengood

Motion carried by a vote of: AYES: 5
NOES: 0

3. General Plan Amendment Denial GP2005-11 and Zone Change Denial ZC2005-2 to Fairfield for Residential Use

Planning Director Tom Williams reviewed the request from applicant Fairfield Residential LLC to seek a General Plan amendment with a rezone of land from industrial to a planned unit development (PUD) residential use. The land in question was in the western part of the City, near the research and development/technology center section of

Milpitas, near where Cisco, KLA Tencor, Maxtor/Seagate, and SanDisk companies do business in Milpitas. Fairfield Residential would propose 659 new residential units, both condominium and rental apartments.

The purpose for bringing forward this matter to City Council at this time was fourfold: to avoid excess time and expense; to provide direction sooner (pre-EIR) rather than later (following issuance of draft EIR); to act to deny the request, based solely on the land use issue in the City – not the merits of the specific project proposed; and, staff indicated its position to deny the project prior to formal submittal by applicant.

Mr. Williams provided a broad overview of the planning staff's perspective on land use in Milpitas, and the recommendation to maintain a large campus-type available industrial land in the region under discussion. This was a long-term view of what would be best for Milpitas. On July 26, the Planning Commission voted 6-0 to deny the land use change requested. The proposed change conflicted with the General Plan, in seven specific areas noted in the staff report. Furthermore, the re-zone would not actually promote "Smart Growth," as it does not meet the definition of that concept.

He reviewed how the City had accommodated business and housing already planned in the MidTown area along with the Great Mall redevelopment area.

Councilmember Giordano inquired if Fairfield had been in application with the City for one year. Staff replied that the original application was in February of 2005, when staff indicated no support to the applicant. In January of 2006 was the first time Mr. Williams met with Fairfield and provided the same indication, based solely on the land use (without any environmental review).

Vice Mayor Gomez asked if this was the first time the Council considered an early denial process and staff replied, most likely, yes. He asked what issues an Environmental Impact Report would analyze? Staff responded traffic, noise, land use impacts, soils, chemical products used by surrounding companies, and public services support needed such as schools, among other issues. Mitigation measures would be suggested in the EIR, also.

As a related issue, Vice Mayor Gomez inquired about the City staff's inventory of industrial land. He felt that information could help him make a decision. Mr. Williams anticipated that report in early September for completion and then brought to the City Council in October most likely. The Vice Mayor also inquired about an industrial land use conversion policy and whether there was a City policy; Mr. Williams said no.

Mayor Esteves noted he had received a letter received from KLA Tencor on this matter. He then invited comments from the applicant.

Mark Faulkner, Vice President of Fairfield Residential/Murphy Ranch project spoke, requesting the City Council allow his company to go through the full environmental and project planning process, to proceed with an EIR. He introduced his staff, which was available to answer questions. Also, a representative from Lucent Technologies – the property owner – was present in support of project moving forward.

Ed McCoy, Vice President of Fairfield Residential for the Murphy Ranch project, gave a powerpoint presentation (handout provided to Councilmembers) reviewing the history to date from Fairfield's point of view, and rebutted several of the points staff presented earlier. His company had spent \$600,000 to date on reports and plans, and would like to move forward on the potential housing project. Fairfield wished to stress the housing required in the City of Milpitas according to the City's Housing Element in the General Plan, and wished to proceed with the Murphy Ranch project to assist the City in meeting its goals.

Furthermore, Mr. McCoy recognized that the existing Development Agreement with Octel would require amendment, regarding fees for transportation improvements. Those improvements could be achieved with the new development.

Mayor Esteves announced that a Milpitas resident asked if he had met with Fairfield, and he stated no he did not, for the record. He asked if Fairfield had met with any Council members. Mr. McCoy stated that he had met only with Mr. Livengood.

The Mayor opened the public hearing for comments.

Don Peoples, President of the Milpitas Downtown Association and Milpitas Economic Development Commissioner, agreed with the City staff assessment. It doesn't offer much for the residential community in Milpitas. This would have a negative impact on MidTown development, and this residential plan would stifle MidTown. Also, lots of speculation was going on regarding industrial property, with some industrial land being marketed as too expensive. It was speculative that land could be offered for residential housing. So, the current project would have a negative business growth. Also, it set up an island of residents, who would have little close relation with the rest of Milpitas residents who might not feel connected to rest of the Milpitas community.

(1) Motion: to close the public hearing

Motion/second: Councilmember Giordano/Vice Mayor Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

Mayor Esteves asked, in terms of housing required, based on the Housing Element, could Milpitas project and satisfy requirements with the MidTown Plan and the Transit Area Plan? Mr. Williams replied yes and the City would exceed Housing Element goals once built out.

Vice Mayor Gomez was overwhelmed, with the good arguments on both sides, and filled with "I don't know," he needed to learn whether issues could be mitigated. He did not know how much sewer capacity was needed, if church land was near other neighborhoods/industrial use, but not residential as here? He wanted to start a discussion on industrial land conversion use policy.

Councilmember Giordano said staff brought up the most valid comment that this change would take away from industrial land use inventory. Council needed to find a win/win situation, to look at the underutilized industrial land now – so, make a plan. It was similar to the MidTown Plan, as the city was open-minded to create great opportunities. She quoted an August 11 Business Journal news article on housing in Silicon Valley, with comments from SVLG Carl Guardino and Don Guage: "lack of affordable homes for all our workers" was one of the most pressing identified needs everywhere they go.

Councilmember Polanski agreed that good points from both sides were made at this meeting. Balance was sought between industrial and residential uses in the City. She could not decide today on the parcel, if it was good/not good for high density housing. She was unable to say no to infill, when the industrial use study was not reported yet.

Councilmember Livengood noted he was part of the City Council that approved housing at McCarthy Ranch over ten years ago, when the City became more pro-active on housing to meet the growing demand, became more flexible on that side of I-880. He felt the staff arguments were outdated – they hark back to the 1980s. The City must start changing the way industry and technology was changing. Probably in the future Council would be approving housing next to where industrial uses were located. He favored allowing the applicant to come forward with an Environmental Impact Report and future plans. He was concerned about the isolation factor, but also acknowledged that lifestyles

were different now, with neighbors who did not all know each other in close neighborhoods any longer. The City should get on with the current trend, similar to the region around the Cisco buildings in neighboring San Jose.

Mayor Esteves called this a difficult situation, as he wanted to support staff and the Planning Commission position. He was scared that prime real estate would be used as housing. He looked at the site as a Milpitas Technology Center and did not want businesses to leave the city. It was not the EIR that was at issue, rather preservation of the site as a technology area in Silicon Valley. He supported the idea of "Smart Growth" and did not support a project if it was not Smart Growth.

(2) Motion: deny staff's recommendation to deny the General Plan amendment and rezone of land, and thus, allow the Fairfield/Murphy Ranch project to proceed with the process (conduct an Environmental Impact Report if they choose)

Motion/second: Councilmember Giordano/Councilmember Livengood

Motion carried by a vote of: AYES: 4
NOES: 1 (Esteves)

The City Council then took an announced 10 minutes break at 9:15 PM. They reconvened at 9:25 PM.

UNFINISHED BUSINESS

4. Introduce Ordinance No. 101.19 regarding PERS Agreement, and Adopt Resolution of Intent

Human Resources Director Carmen Valdez explained the request to amend the Public Employee Retirement System agreement for two specific benefits. Per negotiations with the Milpitas Police Officers Association, the City agreed to amend the contract with PERS to provide pre-retirement death benefits and 1959 Survivor benefits 4th level for local police only.

Government Code requires that the City disclose associated costs and adopt a Resolution of Intent. She stated the dollar amount representing the present value of Section 21548 benefit was \$151,245, while the City would not pay that amount, rather it represented the value to all the members eligible throughout the lifetime of the benefit. Accrual Liability for the City was \$100,775, amortized over a 20-year period. Approximate cost this year would be \$8,400. For Section 21574 benefit, there were no additional costs to disclose.

Mayor Esteves asked the total amount of the new MPOA contract agreement. Staff did not have the exact cost figures, but the Finance Director stated an estimate of \$1.5 or \$1.6 million dollar over three years.

Ms. Valdez recommended that the City Council waive the first reading beyond the title and introduce the Ordinance, and adopt the Resolution of Intention. She read the title of Ordinance No. 101.19 "An Ordinance of the City Council of the City of Milpitas Authorizing an Amendment to the Contract Between the City Council of the City of Milpitas and the Board of Administration of the California Public Employees' Retirement System to Provide Section 21548 (Pre-Retirement Optional Settlement 2 Death Benefit) and Section 21574 (4th Level of 1959 Survivor Benefits) for Local Police Members Only."

(1) Motion: Waive the first reading beyond the title of Ordinance No. 101.19

Motion/Second: Councilmember Livengood /Vice Mayor Gomez

Motion carried by a vote of: AYES: 5
NOES: 0