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UNAPPROVED MINUTES
CITY OF MILPITAS

Minutes:	Special Joint Meeting of Milpitas City Council & Milpitas Redevelopment Agency
Date of Meeting:	December 14, 2004
Time of Meeting:	7:00 p.m.
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

CALL TO ORDER

Mayor Esteves called to order the Special Joint Meeting of the Milpitas City Council and the Milpitas Redevelopment Agency at 7:00 p.m. Present were Mayor Esteves, Vice Mayor Gomez, and Councilmember Giordano. Councilmembers Livengood and Polanski were absent.

PLEDGE

Mayor Esteves led the Council and audience in the Pledge of Allegiance.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, asking that comments be limited to two minutes or less.

Rob Means, Milpitas, commented on the House Judiciary Committee hearings going on in Ohio yesterday to look into the election malfeasance and manipulation in the 2004 vote; said what they are coming up with is that there were actually a wide variety of methods used in tilting basically 3-5 percent of the vote they needed to shift over from the Bush column to the Kerry or from the Kerry column to the Bush column and read excerpts from the affidavits filed in conjunction with that investigation.

Mayor Esteves mentioned that Councilmember Polanski was absent because her father passed away and expressed condolences to Ms. Polanski and her family. Mayor Esteves asked for confirmation from the City Attorney that Council Member Livengood was not present because of a conflict of interest. City Attorney State Mattas responded the Mayor was correct.

AGENDA

Mayor Esteves said he thought only the EIR would be discussed tonight. City Manager Wilson responded that was correct and to maintain the integrity of the agenda, the Council was only being asked to act on a portion of it –asked the City Attorney if that was correct. City Attorney Mattas responded that was correct, the agenda itself was not being changed; when the staff report was presented, the staff would make a recommendation with regard to limiting the actions that the Council and Agency would take this evening, but it didn't actually change the agenda.

MOTION to approve the agenda.

M/S: Gomez, Giordano. Ayes: 3 Absent: 2 (Livengood, Polanski)

PUBLIC HEARING
Elmwood Residential Project

City Manager Wilson reported this item was a public hearing to consider approval of the Elmwood residential development project and to authorize the Redevelopment Agency's Executive Director to enter into an agreement with KB Homes South Bay, Inc., for the purchase of sale and development of the Elmwood surplus properties; Troy Fujimoto would be making the staff presentation; and present in the audience were representatives from KB Homes, Larry Klamecki from Santa Clara County, and City staff.

Planner Troy Fujimoto introduced Ernie Glover of GRC Consultants, who was the author of the EIR. Mr. Fujimoto described the project area that included commercial lots and residential lots for 683 homes on approximately 28 acres. Mr. Fujimoto explained that his presentation was specifically geared for the Environmental Impact Report; the EIR analyzed all environmental impacts associated with the project; the Draft EIR was circulated for public review on October 1; the public comment review period ended on November 14 and eight comment letters were received; and the Final EIR was circulated for review on December 3 and one comment letter was received yesterday from the Department of Toxic Substances Control. Mr. Fujimoto reported the EIR covered various environmental impacts including traffic, air quality, noise, biological resources, flooding, drainage, water quality, hazards, and public utilities and facilities. Mr. Fujimoto further reported for purposes of this presentation, he would be providing a summary of traffic, biology, and public utilities and facilities. Mr. Fujimoto stated that the project will generate less traffic than what was assumed in the

Midtown EIR, significant unavoidable traffic impacts were identified at five intersections (and the same intersections, with the exception of Alder/Tasman, were expected to have unavoidable impacts in the Midtown EIR), and described proposed traffic improvements.

Mr. Fujimoto reported the EIR identified that there will be impacts to burrowing owls and a mitigation plan was created that included passive relocation and purchase of land for habitat replacement. Mr. Fujimoto noted that the owl nesting season is between February and August and the plan requires a 250 ft. protection zone around nests that are not vacated by February, making it important to start the mitigation plan as soon as possible. Mr. Fujimoto further reported on sewer impacts stating that residential uses would generate more wastewater than commercial uses. Mr. Fujimoto said the EIR identified significant unavoidable impacts that could not be reduced to a less than significant level. Mr. Fujimoto explained that CEQA allows for a Statement of Overriding Considerations for significant unavoidable impacts when the project provides public benefits that outweigh the impacts identified in the report, and the public benefits were included in the resolution the Council was being asked to adopt. Mr. Fujimoto reviewed the recommendations before the Council to adopt the resolution certifying the Environmental Impact Report including the Statement of Overriding Considerations, the Mitigation Monitoring Plan, and the required CEQA Findings.

City Manager Wilson stated that as this was noticed, it included efforts to review and potentially provide entitlements to the entire project; working with KB Homes and in light of Councilmember Polanski's absence and some work that staff needed to do to clarify some remaining issues with regard to entitlements, staff was recommending that the only part of the package presented be the consideration and adoption and approval of the EIR; that would allow the project to proceed only with regard to the mitigation of the owls, which are on a sensitive timeline based upon their nesting program and procedures; it would allow the project to move forward with that substantial event but no other activity with regard to the project would be provided this evening; the Council would receive those recommendations in conjunction with KB and staff presentation at a date later, probably the second meeting in January, and that would provide a full Council available and also the opportunity for everybody to come together with the positive and total recommendations with regard to some of the issues that were recognized by the Planning Commission and need to be clarified in the report.

Vice Mayor Gomez inquired if the public would be allowed to speak on the project regardless of whether it was out of the scope of the EIR; that way the Council could consider those comments when it does talk about the project so those people wouldn't have to come back. City Manager Wilson said that could be done, with the consent of the attorneys, and a formal record of those comments would be made. Mr. Wilson also advised the Council that staff was asking that the public hearing be continued, but staff would re-advertise the public hearing as a courtesy to be sure the public was aware of the new time frame on those opportunities to speak. Mayor Esteves inquired if this would impact the overall schedule of the project stating that the critical part was the burrowing owls and, hopefully, the EIR would address that and let the project continue. Mr. Wilson responded that was correct.

Councilmember Giordano inquired how quickly would the plans come back so that the Council will have more than a few days to review them and people will have a chance to respond to them. City Manager Wilson responded all the issues should be resolved and the information provided to the Council no later than the first of next week.

Mayor Esteves, referring to the letter from the Department of Toxic Substances Control, inquired how that was addressed in the EIR. Acting Planning Manager James Lindsay responded that comment letter was just received yesterday and the applicant had informed staff that the studies mentioned in the report have been done and staff will be getting copies to have on file; they were studies normally done in the course of a real estate transaction, and the soil sampling was done throughout the project site but staff just didn't have record of that but will make sure the City records do have that report on file. Mayor Esteves said he reviewed the comments of the Planning Commission and didn't see any comments with respect to the EIR and inquired if that was accurate. Mr. Lindsay responded there was no public testimony on the EIR at the Planning Commission meeting and no comments on the EIR from the Commission.

Mayor Esteves opened the public hearing and invited comments, noting that comments were not limited to the EIR.

Rob Means, Milpitas, said he had a question about the burrowing owl relocation plan because he had heard stories about mitigating wetlands and it was his understanding that particular process does not work very well, the new wetlands areas that are created really don't turn out the way we want them to or they don't support the wildlife that we expected them to and just really haven't been particularly successful. Mr. Means asked if there's been any feedback because he knew the burrowing owl situation had been mitigated here in the past and was wondering what the results were of those mitigation efforts and whether the burrowing owl population continued to thrive or not.

Acting Planning Manager Lindsay responded the burrowing owl relocation and mitigation plan was approved by the State Department of Fish and Game in consultation with advocacy groups for the owls and in consultation with biologists and experts in the field; staff felt that the relocation plan had been successful in the past; staff will continue to follow the Department of Fish and Game's protocol as further enhancements are made for other projects noting that staff had found there are enhancements each time there is a project that has a mitigation plan for burrowing owls and more is learned each time. Mr. Lindsay said staff felt this program would be a success and would insure that it meets the satisfaction of the Department of Fish and Game.

Mayor Esteves asked how do we really know that the mitigation or the program is successful. Mr. Lindsay responded it was his understanding it would be monitored by the State Department of Fish and Game. City Manager Wilson added that the Department of Fish and Game does maintain a very comprehensive record of their assessment of success and they report that on an annual basis and also they consistently upgrade the requirements. Assistant City Manager Blair King pointed out that Larry Klamecki of Santa Clara County had been the principal point person on the burrowing owl issue and has been working with a biologist in developing the mitigation plan that was approved by Fish and Game and invited Mr. Klamecki to comment.

Larry Klamecki, Special Projects Manager for Santa Clara County, said he was responsible for implementing the Department of Fish and Game plan for the burrowing owls on the Elmwood property; that program focused on increasing the Bay Area's supply of appropriate habitat for this particular species of birds; that was determined first by identifying property that already has a population of burrowing owls that is not threatened by development or any other outside factors and has room for expansion of the current population; the County has entered into contracts to acquire conservation easement for all eternity of 78 acres, which was one and one-half times the normal ratio in the event mitigation takes place on site; the cost was somewhere in the neighborhood of $1.2 million plus a maintenance program and fee to secure the property that's already been qualified by the Department of Fish and Game; their management plan had been analyzed and approved by the Department of Fish and Game, and their biologist was conducting onsite studies to be sure that the population count on the Elmwood site was accurate and so that when they do, in the next week or so, close escrow on acquiring the property for the conservation easement, they will have adequate property. Mr. Klamecki noted they were purchasing approximately 9 1/2 acres for each historically occupied burrow; when they ran their several studies, they had eight occupied burrows on the site.

Vice Mayor Gomez, referring to some letters submitted by residents, asked for clarification as to the impact on the schools and the Milpitas Unified School District, and said he thought the statement was they were concerned about public school impact and those were not properly addressed in the EIR. Mr. Lindsay explained how school impacts were addressed for a project this size noting that State law did limit what the City can actually required through an EIR; the impacts to schools were regulated through school impact fees, payment of school impact fees had been deemed sufficient mitigation, and staff estimated approximately $2 million in school impact fees will be paid by this development. Vice Mayor Gomez said another question sent to him had to do with sewage flows and the water treatment capacity and asked what process was used to make sure the water treatment plant can handle extra development. Mr. Lindsay responded the City purchases capacity at the treatment plant and the treatment plant does have additional capacity beyond that; Milpitas was at or near that capacity right now and any development that comes forward that goes above and beyond the City's projected flow, the City would ask for their participation in purchasing additional capacity; in this case, the City was working through an arrangement with West Valley cities to purchase an additional capacity that they are not using.

Mayor Esteves inquired if there were any further public comments. There were none.

MOTION to continue the public hearing to January 18, 2005.

M/S: Giordano, Gomez. Ayes: 3 Absent: 2 (Livengood, Polanski.)

Mayor Esteves asked, with respect to traffic and circulation and assuming the mitigation plans are implemented, what would be the worse level of service and what would be the intersection. Mr. Lindsay responded a large number of intersections were studied within the traffic analysis and five intersections were identified as having impacts that could not be mitigated to a significant level, noting that they currently are very impacted with existing development and carried the bulk of the regional traffic and historically Milpitas, being at the crossroads of Silicon Valley, does suffer this regional traffic impact and has had projects contribute their fair share towards improvement.

City Attorney Mattas said the Council did have in their packet this evening the first resolution certifying the environmental impact report for the Elmwood residential project and commercial development and adopting related mitigation findings regarding alternatives, a statement of overriding considerations, and a mitigation and monitoring program; if the Council wished to take action on that, it could do so and advised the Council that since it was in the form of a resolution, it would require three affirmative votes for passage.

MOTION to adopt Resolution No. 7493, a resolution of the City Council of the City of Milpitas certifying an Environmental Impact Report for the Elmwood residential and commercial development project and adopting related mitigation findings, findings regarding alternatives, a Statement of overriding Considerations and a Mitigation Monitoring Program pursuant to the California Environmental Quality Act (as stated in the resolution in the Council's packet).

M/S: Giordano, Gomez. Ayes: 3 Absent: 2 (Livengood, Polanski)

ADJOURNMENT

There being no further business, Mayor Esteves adjourned the meeting at 7:34 p.m.

Gail Blalock
City Clerk/Secretary