

**CITY OF SAN MATEO  
PLANNING COMMISSION  
MINUTES OF THE REGULAR MEETING  
NOVEMBER 23, 2010**

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The meeting convened at 7:30 p.m. in the City of San Mateo Conference Room C and was called to order by Chair Moran, who led the Pledge of Allegiance.

Those present were Chair Moran, Vice-Chair Freschet, Commissioners Feinman, Massey and Whitaker.

A motion was made by Commissioner Massey, seconded by Commissioner Feinman to approve the minutes of the Regular meeting of November 9, 2010 as revised.

Vote – Passed 3 – 0 - 2 abstention

**\*\*\* PUBLIC COMMENT**

Chair Moran opened the public comment period.  
The following people spoke: (street name, city only)

- John Love, Humboldt Street, San Mateo
- Rich Hedges, Wharfside Road, San Mateo
- Idalee Pitino, Queens Lane, San Mateo
- Brenda Sell, Arroyo Court, San Mateo

Their comments included:

- I am a San Mateo resident and a (PIA) Peninsula Interfaith Action member of St. Matthew's Catholic Church. There is a need for affordable housing near retail transit. Transit Oriented Development reduces trips and helps to mitigate transportation impact. There is ample space within the development and I approve of the project. Open space is also provided on site and in the surrounding area.
- I encourage the Planning Commission to move forward with this project.
- I am a (PIA) Peninsula Interfaith Action member of St. Bartholomew's Catholic Church. There has been a lack of affordable housing in San Mateo. The project location is close to retail and buses. There are schools within walking distance. Many young people need to relocate out of the area due to a lack of affordable housing. The Transit Oriented Development is beneficial and I support the project.
- We need more housing and affordable housing. Our service people cannot afford to live here.

(No other persons wishing to speak, the Chair closed the public comment period.)

**ITEM 1**

**+ STUDY SESSION– CONTINUATION OF STATION PARK GREEN**

**PA 07-030 STATION PARK GREEN**, Review of a Specific Plan, Design Guidelines and Development Agreement for a project that includes mixed-use, transit-oriented development, with office, retail, residential and public use facilities, including parks. 1700 and 1790 South Delaware Street (APN 035-200-180, -060)

**Required Approvals:**

- A. Mitigated Negative Declaration
- B. Specific Plan
- C. Design Guidelines
- D. Development Agreement

The property is an approximately 12 acre site and is located at the northwest corner of Concar and South Delaware Street. The property is designated Transit Oriented Development (TOD) in the City's General Plan and is zoned Transit Oriented Development.

**PROJECT PLANNER:** Lisa Ring, Senior Planner  
330 W 20<sup>th</sup> Avenue  
San Mateo, CA 94403  
(650) 522-7213  
[lring@cityofsanmateo.org](mailto:lring@cityofsanmateo.org)

**APPLICANT:** EBL&S Development LLC  
30 W. Poplar Ave.  
San Mateo, CA 94402

**PROPERTY OWNER:** ARJAX Railroad Associates II, LLC  
230 South Broad Street, Mezzanine  
Philadelphia, PA 19102

Lisa Ring gave the staff presentation, which included a power point presentation.

The Planning Commission had the following questions for staff regarding the Development Agreement:

- Does the city have the discretion to impose impact fees? Proposition 26 passed in November. Staff: Proposition 26 states that impact fees need to go to a vote, but not

all impact fees and it applies to a limited number of impact fees, not the ones included as part of this project.

- The term of the Development Agreement is ten-years. The city wants the applicant to waive future density-bonus for provision of affordable housing in the Development Agreement.
- The public benefits included in the Development Agreement include land for the shared path along Concar Drive (a value of \$800,000), \$627,000 to fund the "Complete Street" along South Delaware,\$200,000 for flood studies, Planting of trees and maintenance of these trees in 19<sup>th</sup> Avenue Park for a total of \$1,627,000value in Public Benefits. A Community Room available to the public is also included. Waiving of the Density Bonus may also be included in the Development Agreement if there can be agreement on the provision of Below Market Rate (BMR) units as part of the project.
- If \$100,000 is not needed for the flood money what happens to the money? Staff: The Development Agreement does not specify this at this time, but it is intended that if not required for flood improvements, the money be used for bicycle improvements in the project area. This language can be added to the Development Agreement.
- Would the applicant comply with the city's BMR program? Staff: The applicant is proposing to comply with the City's current BMR ordinance, but there is currently an issue with State Law that states that Cities may not require BMR rental units. We do not know what the outcome of this will be in the future and it could result in this project not providing BMR units on the site if they are rental units. Therefore staff is seeking to include language about the provision of BMR units in the Development Agreement which would avoid the conflict with state law. Applicant: We are fully ready to provide the BMR units on the site and have allocated costs in the pro forma for this, we are concerned about having to provide BMR units on-site if the City's BMR ordinance changes in the future due to the Palmer Decision and other projects do not have to have on-site BMR units and are maybe just required to pay a fee. This would put us at a competitive disadvantage.
- Hines and Bay Meadows did not exclude special taxes. Proposition 26 - some fees need to go to a vote, but not impact fees. Applicant: We would be in favor of a provision in the Development Agreement that stated that the project would be subject to any Citywide taxes, but not a tax that could be levied solely on Corridor Plan projects or maybe just this project. We think it is fair that all people in San Mateo should pay citywide special taxes.
- Could you talk more about the city getting to choose an attorney as described in the indemnification clause of the Development Agreement? Staff: We would like to have the right to choose the attorney to represent the City in case of lawsuit, since we feel we know the best firms to represent us in these matters. Applicant: We do not think it is fair for the City to require us to pay attorney fees and for us not to have a say in the attorney chosen or in the fees they charge.
- The City should have the right to choose the council and the applicant should indemnify all agents working for the City. Applicant: We do not want to indemnify all agents that

work for the City. We feel that a consultant that has a contractual arrangement with the city should not be covered by us.

- The most recent copy of the Development Agreement did not mention the shuttle service. Is there a reason for that? Is there a dollar amount on the shuttle service? Staff: The shuttle service is in the Conditions of Approval not in the Development Agreement. The language regarding the shuttle can be found Under Transportation Demand Measures it is required as a condition of approval to reduce vehicle trip and therefore there is no cost associated with it, since it is not considered a public benefit in the Development Agreement.
- Would the Community Room be included in the Development Agreement? Staff: The Community Room is something we would not be able to require as a Condition of Approval, therefore it is included in the Development Agreement. Applicant: We do not have a cost for the Community Room.
- The project may not get financing in ten years. Could the project go past ten years? Staff: Yes, there would have to be some type of review-site plan or architectural review after the expiration of the development.
- The development agreement ends in ten years. How would it be extended? Staff: It would have to be amended.
- I am sympathetic on the BMR units and competing development agreement. The 15% would be the public benefit and should really be included as a public benefit in the Development Agreement. If we give in on this there would be no compromise on anything else. Indemnification – Rely on City Attorney regarding BMR.
- I concur with Indemnification and regarding the BMR. I feel positive about the project and agree with taxes charged city-wide. Special taxes should be kept out of the language. Applicant: We'll pay if everyone else pays.
- I agree on impact access tax city-wide with a 2/3 vote. The applicant should be held to the new fees. The BMR is a voluntary process between the City and the applicant and should include both rental and "for sale" units.
- A 15% BMR public benefit section should be included in the Development Agreement. Need to ensure implementation or some language that provides some assurance for competitive equity with this and other future projects.
- BMR – Palmer Decision applies to just rental units. If the project includes 599 units, potentially you will have both rental and ownership units. The current Condition of Approval addresses Below Market Rate units. To give an example the City of San Francisco has a fee-based program now as a result of the Palmer Decision.
- I think the City is asking for BMR units as an additional public benefit by demanding 15% BMR. Maybe it should be listed as such. Applicant: We may not be able to move forward with the project. The public benefit spread sheet will be attached to the City Council Administrative Report memo from the EPS.
- I am supportive of the Development Agreement with a 15% Below Market Rate on site and it should be listed as a public benefit.

- The mixture of funding may not be right for the Station Area Planning. The monies not spent on the flood study should be spent on a Station Area Plan. It should primarily be used for flood control, but, if not needed, then put the monies toward Station Area Planning. The third choice would be for bicycle/pedestrian infrastructure. No money is currently available for this planning except through grants that the city might seek.
- Jobs are important and housing is important. There are no incentives currently in the Development Agreement for speeding up the process. Should this be included? Something could be included that would trigger additional benefit to the applicant in later years if project starts sooner. Staff: Incentives language was not found previously. It would not be easy to control.
- How many Development Agreements has Jared Eigerman worked on? Applicant: Two. How many has Alan Talansky worked on? Applicant: Two. The city has completed four. Why is there no outside counsel for negotiating the Development Agreement, as there was for Bay Meadows? Staff: Since this project is smaller in scope and we have now had experience with several Development Agreements in the City, we did not feel the need for outside counsel.

**Jared J. Eigerman, Esq.** gave the applicant presentation.

- Does not want an indemnification “agent”. The current attorney’s language includes “agents”. I do not want to indemnify consultants. Per-Diems are okay. Capping the pay fee is not the issue. We will not accept just anyone imposed on us. We want to have most favored nation’s status - no better or worse than others. You can insist that you are getting a contract. We want a level playing field.
- In our Development Agreement we are subject to Title 24 of the state code, we are fine with this since it applies to all projects in the state and that is a level playing field. We are not using the density bonus as part of this project but I would not advise the applicant to waive density bonus until the BMR provision issues are resolved.
- Timing of improvements for public benefit of the dedication of land for the Concar Drive shared multi-use path. -The previous version of the Development Agreement stated 90 days, now it states an association with the final approval of the Development Agreement - how long is that? Staff: It is still 90 days as it relates to Article 9 – Indemnification under “covered action”- regarding development agreement, ninety days for the time.

The Planning Commission had the following questions for the applicant:

- If the city wanted 20% BMR would that be possible? Applicant: It would not be our preference and we would want the ability to choose the applicable requirement.
- Is it going to be rental or ownership? Applicant: It would include a mix of both for-sale and rental units.
- Does the Development Agreement run with the land? Applicant: Yes.
- Is there a surety agreement? Staff: No application for tentative maps.

- Explain that provision. Staff: It is the timing of public benefits, 90-day statute of limitations (which is an appeal period).
- Covered actions statute any 90 days? Staff: From effective date of the ordinance. Ninety days after council votes.
- How do we require how the streets get built? Applicant: I cannot speak for staff but that would be when you come back for SPAR.
- The phasing of the streets on Condition 18 - the intent is to leave it up to City Engineer to ensure access for vehicles, pedestrians and bicycles. Is this something we do with site development SPAR? Staff: Yes. That would be Condition 57 - the timing of park improvements under construction of The Park and Construction of The Gardens. I want to be able to get the streets all the way around the park. Applicant: We could modify Condition 57 for street around the entire park and timing of that construction.
- Staff: Parks and Recreation have not agreed to reduce in-lieu due to Park Development on-site.
- Nothing prevents continued use of the existing buildings while other parts of the site are being developed.
- How do the SPAR's come in? Would the developer want to come in at less than a block? Applicant: Maybe. We may want to come in with partial blocks along Concar Drive to build the retail uses there but need to follow up with the owners of the project in Philadelphia.
- Bay Meadows was overwhelming, so I do not want the entire site done at the same time. Applicant: I will discuss this with the owners in Philadelphia.
- SPAR for RE8 and the gardens are a total piece and shall be substantially complete no later than issuance of the certificates of occupancy.
- This area is under-parked. There could be too much development on the MU-1 block before a park is built or some part of the park gets built.
- Does anyone else have comments about phasing? Commissioners: No.

The Planning Commission made the following comments: on the Development Agreement:

- I want 15 percent of BMR added to the Development Agreement. I do not like the idea of the applicant having the choice of compliance with the current BMR ordinance or a future ordinance. I'm inclined to go with the City attorney's recommendation and proposed language.
- Want the city to protect you regarding the fees that could be imposed as described in the Development Agreement but this should not include Special Taxes. The positive aspect about the whole project is having the BMR units. If the applicant complies with new fees and should be held to BMR. The voluntary process between the City and the Applicant should include both rental and "for sale" units. Applicant: Where would we put the 15 percent added BMR?
- If everyone were required to pay the impact taxes you would be ok with that? Applicant: Yes.

- If the Palmer holds then we would not get BMR units. I want some agreement that we would get rental and owner units.
- Consensus about what I'm hearing here is that the city wants 15% BMR on-site for both rental and for-sale housing and it should be included in the Development Agreement.
- Does the rail corridor plan mention 15% BMR? Staff: It is in the General Plan. Affordable housing is a goal. Applicant: I do not know that I can finance the project with 15% BMR if other future projects are not held to the same requirement. It could put us at a competitive disadvantage.
- Articles in Development Agreement refer to Conditions of Approval, but I do not see a description of those conditions in the document. They need to be added. Staff and Applicant: This language will be reconciled.
- What is Article 4 about on page 11? Staff: Refers to State law to verify water provision but ~~is~~ City exempts projects in urban areas; the term is defined in this section.
- Page 6, Contribution to Study of Flood Protection, what if this study is not necessary? Staff: Need to add that contribution will be used for a Station Area Plan for the Hayward Park Train Station or bicycle/pedestrian improvements instead, if it is not needed for study of flood protection.
- Question about extension of the Development Agreement. Staff: Intended to allow construction of the project and issuance of a building permit if close to the termination date of the development agreement.
- Subject to our discussions and direction, support the Development Agreement. Public benefits appear to be commensurate with the benefits accruing to the applicant. This public benefit includes 15% BMR.
- Want to make sure that the public benefit interests of the Sunnybrae homeowners are represented because they have raised the most objections.

The Planning Commission made the following comments on the draft Conditions of Approval:

- I am concerned about people wanting jobs. Is there any incentive in this agreement about jobs being created any sooner? One piece is to incentivize getting this in the ground sooner. Applicant: I have not seen a mandatory start date as part of a Development Agreement. Staff: If someone was to take a look at the return on the project and will not lend the money to the developer that is something the city does not have control over.

The Planning Commission made the following comments on the draft Conditions of Approval:

- Under page 22 required trip reductions. What do rental verses "for sale" have to do with trip reduction? Staff: Different types of housing results in different number of trips, and therefore depending on the project option chosen would result in different percentages of vehicle trip reduction.

- Page 4, item 16 what does that mean? Staff: It is for tree replacement fees. If you remove trees from a site you have to replace them at the full Landscape Unit or plant replacement ~~trips~~ trees at the same value as the trees removed.
- Parking on page 18. Access to the parking. How do I access the parking lot? Applicant: One level is secure for residential uses and the upper level is open for office, retail and residential visitor parking. Is there an attendant? Applicant: it is not anticipated at this time.
- Does the project propose the undergrounding of utilities? Applicant: Yes. The project is subject to undergrounding of utilities on the project site but not along the Concar or Delaware frontage, even though we are proposing to remove poles and do undergrounding of utilities on Concar Drive as part of the multi-use shared path.
- Page 14, the hours of construction on Sundays are 12-4. Building will take over 10 years. I am concerned about the construction noise impacts to the neighbors. Staff: The more you limit the hours of construction the longer the project is under construction. There will also be a designated Noise Disturbance Coordinator that will be identified and available to discuss any construction noise issues with the adjacent neighborhoods.
- Questions regarding construction fencing have been brought up. Staff: Condition #20 has been modified to state that the project must provide for appropriate fencing for the location on the site and that it should be attractive and aesthetically pleasing. This can be reviewed at the time of SPAR on the project.
- Overflow parking where would it go if we get the parking wrong? Staff: We feel the parking ratios proposed are appropriate as proposed. However, any overflow parking that requires the implementation of a Residential Parking Program in the adjacent neighborhoods will require enforcement by the police department. Existing parking permit areas are enforced and monitored primarily on a complaint basis with an occasional monitoring if adjacent to commercial areas. According to the police department, there is no specifically dedicated staff for just the monitoring of these areas and therefore it is difficult to assess a cost for enforcement. The cost to respond to a complaint is recouped by the payment of the citation issued. Public Works spends money to set up the Residential Parking Programs in the City and the physical improvements for these, including signs. The costs for these are taken from traffic impact fees charged to new developments.
- Please explain the Unified Construction Agreement as described in Condition 22? Staff: This condition provides for the applicant (one applicant) to be held responsible for the construction management of the entire project site. Staff will add language to the beginning of the Conditions of Approval document to clarify this.
- 87, this is written to be a station integration plan, but requires additional information. Staff: We will add appropriate information to this condition to reflect what is requested
- Page 22, shuttle service. Why 75%? Staff: according to the City's Consultant, Nelson Nygaard, the shuttle service becomes more feasible at 75 percent of build-out of the development since there is enough ridership to support the shuttle and it becomes an effective measure to reduce project vehicle trips.

Specific Plan suggested Revisions by Planning Commissioners:

- Page 24, use consistent reference to “channel” instead of “culvert”. Staff: We will revise accordingly.
- Page 66, Measure P findings need to be reviewed. Staff: Will be reviewed.
- All references to “space-efficient parking” should be deferred to the SPAR level, instead of a general reference in the Specific Plan Block Standards. Also, delete language to “encourage” space efficient parking in the design guidelines. Staff: Will change Design Guidelines and will amend language in Block Standards.
- Applicant favors adding a d. section on page 95 addressing the EVAE on the project site.
- Page 114, second bullet down.....if EVAE is built.
- Page 52, where it says station engagement could it say seamless integration and development? Applicant: Yes.
- Page 54, comma or alternative access or emergency access cannot be provided?
- Page 56, Applicant: We do not want to be beholden to the Joint Powers Board. Right now we have 6 bullet points.
- Page 56, in the guidelines on pavers. Commissioner: I agree with the applicant’s concerns about what the “should” is.
- Page 58, need loading information.
- Page 106, it shows the street section that does not provide for bicycle connection. Applicant: It is meant to be a shared path.
- Page 115, indicate that the location of the bike path along the EVAE is a contingency plan
- Page 65 and 92 column 2, there is a catch on page 92 - not applicable.
- Mixed-use bike path-one concern #13, low pedestrian volumes. Applicant: One would hope they would be going through the park.
- How is loading going to be handled? Applicant: We will provide additional information on this at the next meeting
- The Pedestrian/Bicycle Path is shown as 8-feet wide with 2 feet on either side for a total width of 12-feet clear. Requested Alta review of path for safety, comfort of users and function within area bike/pedestrian network. Staff will obtain Alta’s review.
- Clean up page 119 to reflect accurate names of water quality programs.

Design Guidelines Suggested Revisions by Planning Commissioners:

- I found the discussion about the accessibility of townhouses very confusing. You do not want to have someone in a wheelchair feel that they have to go in the back door. Applicant: We must apply with State access and ADA and will clarify this section in the next draft of the document.

This being a study session no motion was made.

Set meeting for Station Park Green Public Hearing to Thursday, December 16<sup>th</sup>.

## **COMMUNICATIONS/ANNOUNCEMENTS**

### **1. Communications from Staff**

- a. Tuesday, November 30<sup>th</sup> there is a workshop for the Hillsdale Station Area Plan.
- b. Tuesday, December 7<sup>th</sup> is a continuation of a single family dwelling Yang-Hung.
- c. Commissioner Freschet will not be available on December 14<sup>th</sup>. After discussion it was agreed that Thursday, December 16<sup>th</sup> would be the public hearing for Station Park Green.

### **2. Communications from the Commissioners**

- a. Thank you to everyone for all the hard work.

## **ADJOURNMENT**

There being no further items before the Planning Commission, Chair Moran adjourned at 12:30 p.m. on Tuesday, November 23, 2010.