

Marilyn Monreal

CC 2/19/19
CLOSED SESSION

From: Lauren Sapudar
Sent: Tuesday, February 19, 2019 9:29 AM
To: Marilyn Monreal
Subject: FW: Measure C Litigation - Attorney's Fees

Follow Up Flag: Follow up
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Closed Session 1c - Confirm this one with Grace/Kirsten.

From: Ian Greensides [ian@greensides.com]
Sent: Saturday, February 16, 2019 9:18 PM
To: City Council
Cc: Cupertino City Manager's Office; City Attorney's Office
Subject: Measure C Litigation - Attorney's Fees

Dear Council Members,

I am writing to call on the City Council to seek to recover attorney's fees against the Defendants in the Measure C litigation, including the Committee Supporting Cupertino Citizens' Sensible Growth, Steven Scharf, Xiangchen Xu, and Govind Tatachari. As you know, this case lost in the Superior Court, lost in the Appellate Court, and then Supreme Court denied review.

This case lacked merit, and constitutes frivolous litigation against the City of Cupertino, and caused the city to incur over \$200,000 in attorney's fees.

The court ruled that the Measure C ballot language was factually correct, and that the Plaintiffs' petition was time barred, because they did not seek a writ of mandate to amend or delete the ballot language within the required 10 day time limit. The city made the resolution and ballot questions publicly available for comment on April 6, 2016. The Plaintiffs waited until June 13, 2016 to file a writ of mandate. The court denied the writ petition on August 10, 2016. One week after this, Plaintiffs filed an emergency writ of mandate with the Appellate Court. This writ was summarily denied on August 23, 2016.

Measure C lost overwhelmingly at the polls in November 2016, with 61% of the voters rejecting it.

In spite of this, Plaintiffs persisted with appellate review, and asserted that "Appellants accept that the election has passed, and that Measure C failed, thus putting Appellants' substantive claims in the trial court beyond the Court's power to grant an effective remedy." Appellants contended that the court should nonetheless rule on their claims because they raised "several statutory issues of great relevance to the initiative process for the benefit of initiative proponents and opponents, election officials, legal practitioners and courts."

The court ruled, "**We are not persuaded.**"

The Appellate Court pointed out that the Plaintiffs waited until August 2017 to file an opening brief, more than one year after the writ was denied by the Superior Court.

This litigation was clearly frivolous, and intended to inflict financial damage upon the City of Cupertino, to retaliate for Measure C having lost at the polls.

It is not clear from the public record whether or not the City Attorney's office or outside counsel served a motion on plaintiffs, pursuant to Code of Civil Procedure 128.7, which would provide for sanctions and attorney's fees, after the final resolution of the case. Even if this motion was not served, or was not an available remedy to a public entity, I encourage the city to consider the filing of a lawsuit against plaintiffs for abuse of process, in order to recover its attorney's fees. If this remedy is not available to a public entity, I urge the city to take any legal steps available to request that the court classify this litigation as having been vexatious and without merit.

I understand that the City may have already had these conversations in closed session, and that this issue may have already been addressed.

It is deeply troubling that Steven Scharf, as a council member and now as mayor, would maintain a frivolous lawsuit against the city for over two years. I ask that you hold him accountable for the financial damage that he has inflicted upon the city, if there are any remedies available to the city to accomplish this.

Thank you for your time and consideration.

Sincerely,
Ian R. Greensides

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cc 2/19/19
Closed Session

From: James Moore cinco777@icloud.com
Subject: Vallco Town Center Presentation to 2/19/2019 5:30PM
Closed Session
Date: Feb 19, 2019, 4:15:07 PM
To: James Moore maxcinco@comcast.net

Last Friday, I shared the results of my analysis, a Best Case analysis favoring Vallco, of the 1,779 residential units "pre-bonus" Vallco Town Center project. I hope you had a chance to review it.

This 1,779 units project, the maximum permitted by our General Plan, CONTRARY to Sand Hill Property's claim, falls at least 550,000 square feet short of meeting the 2/3rds residential floor space requirement of Senate Bill 35. A 550,000 square foot shortfall is equivalent to over 675 1-bedrooms, 890 studios, and 1000 BMR units.

On Sunday, I started to analyze the 2,402 residential units project re its claimed numbers. In addition to my number-based analysis, I've discovered some oddities that may interest you.

The first is how many square feet of garage space, on average, is allocated per unit. That number is 598 square feet, and is equivalent to a 3 1/2 car garage space per unit, which is larger than the useable floor space for BMR studios and 1-BR units. Sand Hill Property might want to recommend that BMR residents move to their larger garage spaces. Obviously, this 598 avg. square feet per unit includes "driveway" space. "Driveway" space for a parking garage is typically 1/4 to 1/3 of the total parking space. That Sand Hill Property includes this "driveway" space as residential uses seems odd. You and I don't get to do the same to inflate the size of our houses, and make them appear larger for selling purposes.

Another oddity is that the 550,055 square feet of Residential Amenities, and the 1,435,605 square feet of so-called Residential garages don't contribute to Residential New Assessed Value, the Improvements Assessed value for a property. Neither are included or tallied in the September 7, 2018 Fiscal Impact Report done for Sand Hill Property. They are completely left out of Table 13.

I've noticed additional oddities but I'll leave them for another day since I'm out of time.