



**APPROVED MINUTES
CUPERTINO CITY COUNCIL
Regular Meeting
Tuesday, March 15, 2005**

CALL TO ORDER

At 6:10 p.m. Vice-Mayor Richard Lowenthal called the meeting to order in the Council Chamber, 10350 Torre Avenue, Cupertino, California.

ROLL CALL

City Council members present: Vice-Mayor Richard Lowenthal, and Council members, Sandra James, Dolly Sandoval, and Kris Wang. Council members absent: Mayor Patrick Kwok.

CLOSED SESSION

1. Labor negotiations - Government Code Section 54957.6 – closed session regarding proposals for fiscal year 05-06 with Cupertino Employees Association (CEA).

At 6:10 p.m., Council recessed to a closed session. At 6:50 p.m. Council reconvened, and Deputy City Attorney Eileen Murray reported that no action had been taken.

RECESS - 6:34 p.m. until 6:50 p.m.

PLEDGE OF ALLEGIANCE

At 6:50 p.m. Mayor Patrick Kwok called the meeting to order again in the Council Chamber, 10350 Torre Avenue, Cupertino, California, and led the Pledge of Allegiance.

CEREMONIAL MATTERS – PRESENTATIONS - None

POSTPONEMENTS - None

WRITTEN COMMUNICATIONS

The City Clerk reported that Council had been given a letter dated February 14 from Cathy Helgerson regarding item No. 9; an exhibit handed out for the Stevens Creek Corridor near Blackberry Farm, item No. 10; and email from Mary Luke with questions about item No. 10.

ORAL COMMUNICATIONS

E. J. Conens said he did not think it was proper that Council member James was involved with the Association for a Better Cupertino (ABC), which was opposing the CCC initiatives, since the Council members should represent everyone in the city. James said that the ABC was a group of local community members who had aligned themselves to answer questions regarding the initiatives. She said that as an elected official, it was her role to make sure everyone has proper and accurate information, and the community will make the final choice.

Bob McKibbin spoke about the lack of adequate public notification regarding projects in general, and in particular the Vallco "Rose bowl" item on the agenda. He said there had been changes made 5 days before the City Council meeting that should not be treated as a minor modification. He asked that it be delayed to allow more citizen review and participation.

Rusty Britt said that instead of replacing empty storefronts with new businesses, housing is going into those places. She asked the council to slow down their plans for housing and instead attract new businesses.

CONSENT CALENDAR

Lowenthal/James moved and seconded to approve the items on the Consent Calendar as recommended. Vote: Ayes: James, Kwok, Lowenthal, Sandoval, and Wang. Noes: None. Absent: None.

2. Approve the minutes from the March 1 City Council meeting.
3. Adopt resolutions accepting Accounts Payable for February 25 and March 4, Resolution Nos. 05-041 and 05-042.
4. Adopt a resolution accepting Payroll for February 25, Resolution No. 05-043.
5. Accept the Treasurer's Budget Report for January 2005.
6. Accept applications for Alcoholic Beverage Licenses:
 - (a) Ramenrama Red Miso, 19772 Stevens Creek Blvd. (new restaurant next to the Elephant Bar)
 - (b) A restaurant at 1655 S. DeAnza Boulevard, near Prospect Road (formerly Formosa Restaurant)
7. Adopt a resolution authorizing an application for grant funding under the Clean, Safe Creeks and Natural Flood Protection Program, Resolution No. 05-044.
8. Adopt a resolution approving the Settlement and Mutual Release of Claims Agreement with the Silicon Valley Animal Control Authority (SVACA), Resolution No. 05-045.

ITEMS REMOVED FROM THE CONSENT CALENDAR (above) – None**PUBLIC HEARINGS**

9. Consider an appeal of the Planning Commission's approval of Application No. TM-2004-05, Wayne Aozasa (CA Water Service), located on Greenleaf Dr., APN 326-33-107:

- (a) Tentative Map to subdivide a .95-acre parcel into four lots ranging from approximately 6,430 square feet to 8,880 square feet, plus a remainder of 11,500 square feet.

Community Development Director Steve Piasecki reviewed a PowerPoint presentation, and the City Clerk distributed a letter from Cathy Helgerson dated February 14, 2005, to the California Water Company raising concerns about potential contamination of the well.

Cathy Helgerson spoke and distributed copies of her statement. She said that Cupertino citizens have submitted a petition with 78 names opposed to the Greenleaf Drive project. Helgerson said the project does not comply with California laws regarding water resources, that there is a potential for contamination, especially within 100 feet of the well, and that she believed an environmental impact review is necessary.

Shawn Heffner, representing California Water Service, referred to a letter written in response to Ms. Helgerson's concerns. He said current regulations set forth guidelines for location of wells with respect to sewer and storm drain lines. In this project, both the sewer and storm drain lines will be at least 50 feet away and are in compliance with the requirements of the California Department of Water Resources. He said the well itself is 715 deep, and the water table begins at 160 feet, and that all their wells are concrete sealed. He said the well is tested regularly, with full testing every 3 years, plus water sampling done every week.

Jeannette Weber, Water Quality and Laboratory Manager for California Water Service, said that the compliance period for organic and inorganic chemistry testing is every three years pursuant to the California Water Code, and other federal regulations require radiological testing every four years.

David Lee, an attorney representing California Water and Northern California Developments, said the applicant could relocate the trees instead of removing them, although they are disfavored trees, such as eucalyptus and pines. He discussed the landscaped island that had been added to the entrance in order to angle the traffic, and he said they believe the wrought iron fence around the well area would provide sufficient security.

Leo Wang expressed concern about the possible contamination of the well because it provides drinking water for many Cupertino residents. He showed a copy of California Water Well Standards from the Department of Water Resources that indicates there should be at least 50 feet between a well and possible sources of contamination.

Arlett Kerley, Santa Clara County Department of Environmental Health, said that her agency had reviewed the project and had no concerns.

Penny Whittaker asked how many households were serviced by the well, how old are the wells, and what proof is there that the water will not become contaminated by vehicle traffic or chemicals used in the homes.

Virginia Tamblyn said she is a real estate agent, and has had a listing on Homestead road that was next door to a well. She said it was on a fenced lot surrounded by a lot of trees, and there was some noise from the equipment. The existing neighbors did not mind it.

Council members discussed whether an independent assessment of water quality was advisable, since the water company had a financial interest in the project.

In response to concerns raised by the City Council, Community Development Director Steve Piasecki said that staff would contact the Public Utilities Commission and other agencies for a referral to an expert third party to conduct an independent evaluation of this project and its potential impact on water quality. He said that the costs would be borne by the applicant. He suggested that this item be removed from the agenda at this time and would be advertised again when the independent review was completed.

Lowenthal/James moved and seconded to table this item. The motion carried unanimously.

UNFINISHED BUSINESS

10. Consider the trail alignment, picnic ground capacity, fund balance transfer, and project schedule for Stevens Creek Corridor Park.

Parks and Recreation Director Therese Smith showed a PowerPoint slide show that highlighted the staff report and distributed a photocopy of the presentation.

Rhoda Fry said she didn't think the community was given sufficient notice about the decision on the trail alignment. She said that although the community has been working on it for years, this seems to be an 11th hour change.

Alex Tsai said he had concerns about security, noise and privacy. He asked the Council to consider impacts on the neighborhood, and he suggested reducing the number of bridges. Council member Lowenthal said that one of the major reasons to change the park operation has to do with Mr. Tsai's home, and in order to separate free areas from

fee areas, the bridges and tunnels are necessary to keep the park usage away from the residence.

Lowenthal/Sandoval moved and seconded to approve an east side trail alignment (as illustrated on all the alternative plans) with a 100' setback from the Meadows property line. The motion carried unanimously.

Discussion followed about making the trail appropriate for multiple uses.

The following individuals were in favor of a multi-use trail.

- Mike Vroman (in favor of paving)
- Don Burnett (in favor of paving)
- Fred Stanke
- Margaret Limberatos
- Larry Dean (in favor of paving)
- David Greenstein (preferred no paving but ADA compliant)
- Paul Nam (keep McClellan Ranch area natural)
- Kevin Jackson
- Jeanne Bradford (not paved)
- Anne Ng, (paved up to McClellan Ranch and then a natural, all-weather surface through the park).
- Aaron Grossman (new materials available are more organic and drain better; prefers a smooth, all-season surface that is environmentally sensitive)
- Robert Skyles
- Adrienne Harber

Deborah Jamison read a statement and distributed copies that included photographs of the Los Alamitos Creek Trail in San Jose. She said that this project would disrupt the old orchard area and would impact the local wildlife including bluebirds, deer, and red-shouldered hawks.

The following individuals were also opposed to a multi-use trail:

- Robert Hirt, Vice President of the Santa Clara County Audubon Society. He suggested a one-year test period.
- Rhoda Fry
- Larry Loo
- Don Bautista
- Janet Van Zoeren

Sandoval/James moved and seconded to approve a multi-use trail along the east side of McClellan Ranch, preserving the meadow and keeping traffic as far from the creek as possible. The motion carried unanimously.

Lowenthal/Wang moved and seconded to have a non-asphalt, non-concrete trail that would be suitable for all wheeled activities including rollerblading, bicycling, strollers, wheelchairs, etc. The motion carried unanimously.

Discussion followed regarding the picnic facilities.

Deborah Jamison said that the impact of picnickers could harm the creek restoration, and the west side should be kept relatively free of human impacts. She said that Council should not choose to gain more revenue at the expense of restoration and natural areas.

Jennifer Van Zoeren said she agreed with Jamison's comments. She also felt that all areas of the park and picnic areas should be open to the public when not reserved for groups.

Rhoda Fry talked about the possible contamination from swimming pool water entering the creek and suggested that the pool be moved following the end of its useful life. She also talked about the change in picnic use and said that the park did not need extra fences, gates, or barriers. She said that nonresident users should pay full fare, and that the park needs an entrance from the Stevens Creek Trail.

James/Lowenthal moved and seconded that Blackberry farm shall operate at a maximum capacity of 800 persons with 300 parking spaces, and that staff shall manage parking with shuttles, as necessary. This alternative reserves both riparian restoration options. The motion carried unanimously.

Lowenthal/Sandoval moved and seconded that the project shall commence in 2007, to meet a grant funding deadline, and that Blackberry Farm will operate as it has for the 2005 and 2006 season; and there shall be a transfer of \$680,000 from the Blackberry Farm Fund balance to the project budget. The motion carried unanimously.

Sandoval asked that when the next meeting is held to discuss access to the site, they should also discuss paid parking and opportunities for people to picnic at the farm without paying an entry fee.

NEW BUSINESS

11. Consider architectural and site review for a previously approved use permit for 204 residential units, 105,300 square feet of new retail and a parking structure. Application No. ASA-2005-03, Mike Rohde (Vallco Shopping Center), 10123 and 10150 N. Wolfe Road, Assessor's Parcel Nos. 316-20-037 and 316-20-038.

Mike Rohde, Vallco Fashion Center, said that the project had been reduced in height from 72 to 69 feet. He discussed the development agreement that was signed in October of 1991, and said it gives them the opportunity to create a unique, standalone project that will help revitalize the project.

Architect John Eller gave a brief PowerPoint slide show of the Rose Bowl site and discussed the circulation plan, building setbacks, and the pedestrian links throughout the project. He said the primary corner of interest is now an octagonal tower instead of an ellipse that was shown on earlier plans.

Landscape Architect Vince Lattanzio reviewed the landscaping plan and recommended accent trees at the corners such as palms, upright poplars or cypress trees.

Ned Britt recommended that the City Council not approve this project until the theaters are under construction, and he also suggested more public notice since they are adding another story and increasing the building and parking areas, which will cause concern about school impacts and traffic.

Dennis Whittaker said this project's height is out of character for Cupertino, and that the public had not been noticed about the character change. He said the contents of the development agreement should also be publicized, and that the combination of projects by Menlo Equities and Vallco will create major congestion.

Jennifer Griffin said she was concerned by the number of changes in the plans since last week, and public notice was particularly important concerning the Rose Bowl area. She said there would be impacts on overall density and traffic and pedestrian safety; that attention should be paid to bus routes; that the green belt area should serve as a public park; and that the new plans remove many of the ash trees that were supposed to be retained.

Bob McKibbin asked for a 60-day deferral because of the lack of sufficient public notification. He said that these appear to be major changes, including building density increase of 23%.

Tom Hugunin expressed concern with the height, density, and the amount of affordable housing that would be provided. He said it appears that the traffic circulation will require the use of Finch Avenue, and he objected to the use of palm trees as a gateway design for the city.

Virginia Tamblyn said that residents throughout Cupertino should receive proper notice with photographs of the proposal. She was also interested in seeing the 1991 development agreement and how it addresses residential uses.

Mark McKenna, representing the Cupertino Chamber of Commerce, said that with current conditions it is very difficult to provide housing for Cupertino residents and employees, and they did not want that requirement passed on to businesses unfairly. For that reason they wish to work with the City to find land to support both business and housing, to look at the ABAG housing to jobs ratio, and find ways to create more housing and not lose jobs.

Mike Rohde described the new parking structures that will be used by movie theater patrons, and said that yesterday they had pulled the permit to begin demolition at the theater site. He said the lower level work would take about 6 months. Then, they will begin working on the upper level, the podium on top of the mall, and finally will build the shell for the theater.

James/Wang moved and seconded to give architectural and site approval, file No. ASA-2005-03, in accordance with Planning Commission Resolution No. 6295 and with the conditions listed below. The motion carried with Lowenthal voting no.

- Height shall be those shown in height comparison graphic dated 3-15-05
- Accurate square footage shall be provided as part of the additional design review
- The intent of the project is for it to truly be sales-tax generated retail
- Include a water feature as a design element
- Council preferred the taller of the two towers shown on the plans
- Encourage the applicant to look at incorporating one-bedroom units

Lowenthal asked that the record reflect he voted no because he did not have a problem with the project, but with the process, and he thought the construction of the project should be linked with the construction of the movie theaters.

12. Reject all bids for Blackberry Farm Golf Course maintenance, Project No. 2005-01; Authorize staff to evaluate the bid requirements and re-bid the project contract; and Authorize the Director of Public Works to negotiate and execute a change order for a two-month extension to the current contract with Professional Turf Management to ensure continuity for maintenance of the golf course in an amount not to exceed \$35,000.

Lowenthal/Sandoval moved and seconded to reject all bids, authorize to evaluate the bid requirements and re-bid the project, and to authorize the Director of Public Works to negotiate and execute a change order for a two-month extension with Professional Turf Management. The motion carried with Council member Sandoval absent.

13. Accept the 2003-04 Management Letter from City Auditors, Maze and Associates.

This item was continued to the next meeting.

ORDINANCES

14. Conduct the second reading of Ordinance No. 1960 repealing Chapter 20.02, which required the City Council to authorize General Plan Amendments. "An Ordinance of the City Council of the City of Cupertino repealing Chapter 20.02 of the Cupertino Municipal Code Regarding General Plans."

James/Lowenthal moved and seconded to read the ordinance by title only and that the City Clerk's reading would constitute the second reading thereof. Ayes: James, Kwok, Lowenthal, Sandoval, and Wang. Noes: None. Absent: Sandoval.

Lowenthal/James moved and seconded to enact Ordinance No. 1960. Ayes: James, Kwok, Lowenthal, Sandoval, and Wang. Noes: None. Absent: Sandoval.

STAFF REPORTS

15. Receive a legal opinion on mailed ballot elections.

This item was continued to the next meeting.

16. Receive a status report on General Fund Revenue and Expenditures (No documentation in packet).

This item was continued to the next meeting.

17. The next General Plan hearing is scheduled for Tuesday, March 22, at the regular Planning Commission meeting held in the Cupertino Community Hall, 10350 Torre Avenue, Cupertino (No documentation in packet).

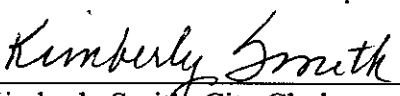
City Manager David Knapp invited the public to attend.

COUNCIL REPORTS

Council members highlighted the activities of their committees and various community events.

ADJOURNMENT

At 12:50 a.m. on March 16, 2005, p.m. the meeting was adjourned to Tuesday, April 5 at 6:00 p.m. to conduct interviews for the Community Development Block Grant (CD BG) Steering Committee.


Kimberly Smith, City Clerk

For more information: Staff reports, backup materials, and items distributed at the meeting are available for review at the City Clerk's Office, 777-3223, and also on the Internet at www.cupertino.org. Click on Agendas & Minutes/ City Council/ Packets.

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