

BRISBANE PLANNING COMMISSION
Summary Minutes of June 23, 2016
Regular Meeting

A. CALL TO ORDER

Chairperson Do called the meeting to order at 7:30 p.m.

B. ROLL CALL

Present: Commissioners Anderson, Do, Parker and Reinhardt.

Absent: Commissioner Munir.

Staff Present: Community Director Swiecki and Senior Planner Ken Johnson.

C. ADOPTION OF AGENDA

Commissioner Reinhardt moved and Commissioner Anderson seconded to adopt the agenda. The motion was approved 4-0.

D. CONSENT CALENDAR

1. APPROVAL OF DRAFT ACTION MINUTES

- i. May 18, 2016 special meeting

Commissioner Parker moved and Commissioner Anderson seconded to adopt the consent calendar. The motion was approved 4-0.

E. ORAL COMMUNICATIONS (limit to a total of 15 minutes)

None.

F. WRITTEN COMMUNICATIONS

Chairperson Do acknowledged written communications from Mike Sullivan regarding item G.1, and a League of Women Voters newsletter.

G. OLD BUSINESS

- 1. **Baylands Planning Applications (Baylands Concept Plans, Brisbane Baylands Specific Plan, General Plan Amendment Case GP-01-06) and related Final Environmental Impact Report;** Universal Paragon Corporation, applicant; Owners: various; APN: various. Ongoing Planning Commission deliberations.

Director Swiecki introduced Lloyd Zola, of Metis Environmental Group, who gave the staff presentation. [The presentation is available here on the City's website:

<http://brisbaneca.org/sites/default/files/06-23-2016%20Deliberations.pdf>.]

Commissioner Parker said the Regional Water Quality Control Board has said they look at the land use before they go into remediation. She asked for clarification on that process.

Mr. Zola said site remediation depends on the proposed land use of the site, as it would be based on a human health risk assessment analyzing the potential exposure to people on the site. The site's land uses are determined at a General Plan level. Relating to the Commission's interim land use recommendations, the General Plan would designate the site for a mixture of industrial, office, research and development (R&D), open space, and renewable energy generation. Both the Regional Water Quality Control Board (RWQCB) and State Department of Toxic Substances Control (DTSC) would use the General Plan land use designations for the human health risk assessments to determine potential exposure. The General Plan sets the land uses, and the Specific Plan contains zoning regulations and design guidelines to implement the land uses. The EIR's mitigation measures stipulate that the City will determine the land use at a General Plan level, followed by preparation of remedial action plans and landfill closure plans, after which a Specific Plan would be prepared and considered by the City.

Alison Krumbein, consulting legal counsel, reviewed the presentation slides regarding the role of the EIR and CEQA in decision-making processes.

Commissioner Parker referred to Slide #12 and asked how forthcoming studies requested by the Planning Commission would be included in the EIR.

Ms. Krumbein asked Commissioner Parker which studies she was referencing.

Commissioner Parker said she was referring to studies on high-speed rail, Recology, and traffic.

Ms. Krumbein said an agency can always conduct further study if it wished, should it believe further study is required in order for it to consider the project. The "studies in progress" referenced on Slide #12 of the staff presentation are studies that may be happening in 1-2 years, or those with a lot of uncertainty. The point is an EIR cannot be determined to be inadequate if the process isn't put on hold for a year or two years, because if that approach is taken an EIR may never be finished. New information is always being presented. The Commission has to consider what is available and make a diligent effort to gather all the information possible, but cannot say to a project applicant that they need to wait five years to make a decision on the application because of a study that will be complete three years from now.

Commissioner Anderson said the DEIR consists of thousands of individual datum points that would take hours, if not consecutive days, to consider. He asked if a line-item by line-item analysis of these datum points was more likely to be part of the development agreement, or if the Commission needs to address them during the EIR deliberation process.

Ms. Krumbein asked for clarification of the question.

Commissioners Anderson said he was referring to mitigation measures and observations made in various EIR sections. Some thresholds of significance were set federally, and others were invented because there are no guidelines. There are many items that require some sort of decision

in the development agreement. He asked if the development agreement would follow the guidelines in the EIR. They had to make a lot of decisions and he wanted to know where in the process that would happen.

Ms. Krumbein said at this point, they are looking at a General Plan level of review. The development agreement, along with other site-specific development proposals, will come later. At that later time, the question will be whether the EIR covers those later approvals or whether additional CEQA review is required. Every time the City makes a discretionary decision in which it has to use judgment, CEQA is triggered. Even if the City Council decided to certify this EIR, every time something new happens, CEQA compliance will be considered. The EIR will be examined to see if the site-specific activities are covered or if additional study is needed. That will happen each time there is a future application.

Chairperson Do clarified that the Commission's goal at tonight's meeting was to pick one of the options presented on Slide #14 in terms of the structure of their recommendation. If they pick options 2 or 3, that means they needed additional information beyond what was studied in the EIR. If they miss something tonight, they can modify their interim recommendation at the next Commission meeting.

Mr. Zola said staff would package together the Commission's interim land use direction and the direction they give on the EIR. The Commission would consider it as a draft recommendation at a future public hearing, and would hear public comment. After the public hearing, they would look at the draft land use recommendation and EIR recommendation and determine whether any changes were necessary.

Chairperson Do asked if the public would be involved in that discussion.

Mr. Zola confirmed the upcoming meetings on the draft recommendation would be a public hearing subject to public comment. He said the Commission has accomplished far more in their deliberation process than other Commissions or Councils he has seen. They have been very clear about the direction they want to go, and it has been easy to maintain the list of interim direction. As complex and difficult as it seems, they have done a good job getting this far. He said at tonight's meeting they should decide if they need anything else from the EIR to support their interim land use recommendation.

Commissioner Parker suggested they organize how they are going to structure their discussion.

Commissioner Anderson suggested talking about the EIR section by section.

Mr. Zola suggested that the Commission start with considering what changes to the EIR would be needed no matter what. He asked them to consider whether they feel comfortable with the EIR for the level of land use intensity they are considering, and if additional information would be needed if more square footage were developed. If their land use recommendation is for 1-2 million square feet (MSF) of additional development, asking for studies to further analyze impacts of 4,000 dwelling units and 6 million square feet of development would not be germane to the recommendation. They could identify what studies would be needed for any development

over the 1-2 MSF they are recommending. They could also determine if additional study is required before than can even make a recommendation. Their interim land use recommendation is very close to the renewable energy alternative studied in the EIR, the primary difference being the open space configuration and maintaining development along Industrial Way.

Commissioner Anderson said they were considering development at a higher density than the renewable energy alternative.

Mr. Zola said the renewable energy alternative recommended about 1 MSF of total development, and the Commission had recommended 1-2 MSF of development in addition to existing on-site development. The other alternatives, including the DSP and CPP, were much more intense.

The Commission agreed to discuss the Aesthetics section of the EIR first.

Commissioner Anderson said although they did receive some public comment that the Aesthetics analysis was inadequate, the plan that's going to come back will look quite different than what was studied in the EIR, which was the maximum buildout of the proposed plans. He thinks Aesthetics must be addressed again when there is a new Specific Plan proposed. He believes the analysis is adequate under CEQA for the Commission's interim land use recommendation.

Commissioner Parker referred to staff's presentation Slide #14, and asked how the Commission should use the three decision-making options shown on that slide in their discussion.

Commissioner Anderson said the Commission should consider those three options for each section of the EIR.

Chairperson Do clarified that option 2 would allow the Commission to recommend additional studies but not prior to approval, while option 3 would require studies to be done prior to approval.

Commissioner Anderson said Aesthetics would have to be re-examined after a final land use direction is approved by the City. He reiterated his earlier question regarding what the development agreement could accomplish.

The Commissioners voiced agreement with Commissioner Anderson regarding Aesthetics.

They moved on to discuss the Air Quality, Greenhouse Gases, and Transportation sections together.

Commissioner Parker said according to staff and legal counsel, the traffic study is ongoing. She asked for clarification from staff.

Director Swiecki said the traffic study was part of the original EIR. If there was a concern over the conclusions or methodology of that traffic study, to the extent the Commission can articulate what problems they found with it would be useful. They could request that the study be redone,

but the methodology used is state of art in the field. It is unclear what value would be added by repeating the existing study, but the Commission could recommend that.

Chairperson Do suggested putting the traffic study discussion on hold and revisiting it at a future meeting.

Commissioner Parker said no matter what they do, traffic levels would not meet the level of service limits established in the General Plan.

Director Swiecki reminded the Commission that “adequacy” refers to the study itself, not the conclusion of the study. If the outcome of the study indicates a result that the Commission does not find acceptable, like unavoidable traffic impacts, that is not an issue related to the “adequacy” of the study.

Commissioner Anderson said the traffic study is the most complicated study in the DEIR and is probably the most difficult to comprehend and decide on. He strongly disagrees with the conclusions reached in the traffic study and would probably find the entire study inadequate if they were choosing between the CPP and DSP. However, because they are not choosing between those alternatives, and they know traffic will be substantially worse with any development, and substantially worse with no development, he thinks the study is adequate under CEQA for the level of development contemplated by the Commission.

Commissioner Parker suggested that the study was adequate for their level of recommendation, but if there were an increase in density then it would be inadequate.

Chairperson Do asked for consensus from the Commission on Commissioner Parker’s statement. The Commissioners generally agreed.

Mr. Zola said at previous meetings relating to the traffic study, the Commission had requested additional study of mitigation measures and had expressed concern with the number of significant impacts. Other issues they had brought up included confirmation of the mode split, internal trip capture, and how site development could be tied to transit and roadway improvements that were assumed in that traffic study.

Commissioner Parker asked how they would address all of those issues.

Chairperson Do said they could outline those concerns in their recommendation.

Mr. Zola said the Commission could say that the traffic analysis as adequate for their interim land use recommendation, but that any development above that would require additional study of: additional mitigation beyond that proposed in the EIR; the assumptions regarding how much traffic would be contained within the site; how many people would use transit; and how to ensure that the roadway and transit improvements assumed in the traffic would actually be in place within the development phasing.

The Commissioners expressed concurrence with Mr. Zola’s summary.

Next, the Commission moved on to Biological and Cultural Resources.

Chairperson Do said the EIR's analysis of those sections was adequate, considering the scope of their land use recommendation.

Commissioner Reinhardt said the most important issues were covered in the Sustainability Framework. He agreed the EIR's analysis was adequate.

Commissioner Parker said she had no comment.

Commissioner Anderson said he largely agreed with Chairperson Do. However, there was some public commentary on the inadequacy of biological resources, including the time of year the studies were conducted and the kinds of species surveyed. Although he considers himself on the environmental end of the spectrum, he does not agree with all of those comments. As a Planning Commissioner, however, he wanted to consider the public testimony and determine whether any additional study was needed. He wondered if some items could be addressed in the development agreement. He said it depended on the time scale they were using in their studies. On a geological scale, a handful of decades are not very long. As infill occurs and pushes out the natural habitat of as nesting ground owls and frogs that should be protected, he wondered if surveys of that nature could be handled in the development agreement. If the density is low in Area 5 as proposed, and the waterways around Visitacion Creek are installed as proposed, that would cover many of the public's concerns.

Chairperson Do agreed with Commissioner Anderson. She said many of those points were addressed in the incremental considerations for each area. They could use that as the overarching caveat for their ongoing discussion.

Commissioner Anderson said adding a soil cap over the entire site seems to challenge preservation of biological resources. He didn't understand if the Roundhouse would be completely torn down and rebuilt, or if it needed to be jacked up for restoration.

Chairperson Do agreed. She said she needed further clarification on how to understand enough of the details without delving into them, and how to acknowledge those details in their future recommendations.

Mr. Zola said they could set a performance standard that the developer would have to follow. For example, typically the environmental baseline studies in the EIR would be required to be updated the spring prior to site grading and remediation. Between the time the EIR is completed and the baseline studies are conducted, it could be five years or more before any grading occurs. The conditions of approval could require updating those baseline studies. As for restoring the Roundhouse, it would likely be jacked up so the ground below could be raised and the building could be stabilized. Those requirements would take into account the building's structural integrity and other considerations for preservation.

Chairperson Do said Slide #6, bullet point #2, summarizes the Commission's general direction to "Provide appropriate infrastructure and site amenities for each increment of development." She hoped that was broad enough, but she shared Commissioner Anderson's concern of how to verbalize their direction if they don't know how it would be accomplished.

Mr. Zola said for infrastructure, basic engineering standards could be used. They could require adequate water supply to be in place and committed prior to approval of any site-specific development. They could require infrastructure to be designed to accommodate adequate fire flow and basic storage requirements. For sewer, they could require basic engineering components. For hydrology, the EIR contains basic parameters and criteria, including protection from the 100-year flood, and 100 years of sea level rise. If there is a ratio of open space to parkland to amount of development, that ratio should be retained across the site. The Commission could set requirements for each increment of development. The Specific Plan would outline what each site-specific development must comply with.

Chairperson Do asked if they could assume industry standards for infrastructure requirements.

Mr. Zola confirmed. In relation to parks, they could require that open space would be commensurate with the level of development on the site. The General Plan already has certain requirements, such as open space dedication and connectivity of open space and habitat. For public services and facilities, the police have required an additional beat and on-site station on the site for the first increment of development. The fire department has also required that any buildings with three or more stories would require a ladder company within a certain radius of the building, and certain improvements would be triggered when the first building is built.

Next, the Commission moved on to Geology and Hazardous Materials.

Commissioner Anderson said under the Commission's land use recommendation, there would be no structures on the eastern side other than solar panels, which would have a minimal amount of framing. Even on the western side, at the density recommended, the height of the buildings would be limited so there would be limited pile driving and excavation. Under those conditions, the studies of geology and hazards are adequate because they would avoid disturbing the soil. If there was a plan that involved a lot of pile driving or excavation, however, then he would require additional study.

Commissioner Reinhardt said he had no comments.

Commissioner Parker said she wanted to go back and look at public testimony. For now, she thought it was adequate.

Next, the Commission moved on to Hydrology.

Commissioner Anderson said the state of the water agreement is inadequate for building. There is no water agreement and the outlook for that agreement looks very difficult. On the other hand, in terms of what is possible under CEQA, he does not think they could solve the water problem until the applicant has an approved plan and can negotiate with the water powers that be. So they

can't build until they have an agreement, and the DEIR has identified some of the many barriers they will be facing to get an agreement. At this point of the process, the hydrology study has met the requirements of CEQA. Obviously they will be required to do a lot more work on this matter before the development agreement is complete.

Chairperson Do said she saw it as a necessary starting point that they could not proceed without.

Commissioner Anderson said he liked Mr. Zola's comments that hydrology is not just the water agreement, but also flooding and sea level rise considerations. Combining hydrology with Geology and Hazards, he doesn't think they've adequately studied what will happen with sea level rise. Sea level rise might lead to flooding in the contaminated area adjacent to 101, and he wanted to know if that would have any non-localized effects. Under their current plan, if there are not any buildings in that area that mitigates it. However, he doesn't know if they really know the full extent of that scenario. He didn't know if it was speculative. We do know sea level is rising, but he does not know if anyone knows how it will affect this site.

Chairperson Do said regardless, they need a starting point. She asked the other Commissioners for comments.

Commissioner Reinhardt referred to Slide #5, bullet point #2, summarizing the Commission's interim land use direction to "Incorporate applicable provisions of Sustainability Framework into the General Plan." The role of the sustainability framework in this process was unclear. Will it be incorporated into the development agreement or the General Plan? His comfort level would be increased if it had more weight. The framework addresses sea level rise using international targets, and the KPI's preclude building on sites at higher risk for sea level rise as determined by FEMA.

Mr. Zola said the Council had accepted the Sustainability Framework, but it was not part of the General Plan. The Commission could recommend that the Council incorporate all the policy statements in the Sustainability Framework into the General Plan. The City can't adopt the Sustainability Framework on its own because it hasn't gone through CEQA. By incorporating the Framework into the General Plan as part of the Baylands action, the Commission's recommendation on the EIR would cover the land use recommendation and incorporation of the Sustainability Framework into the General Plan. In relation to water supply, which is addressed in Utilities section, the Commission could consider the same process as the process for remediation as laid out in the EIR. The City would establish land use at a General Plan level, subsequent project-level analysis of water supply and the design of how water would be transported would follow. The design of the system, as well as CEQA clearance, would be concurrent with the Specific Plan. All agreements would be signed prior to any approval of a site-specific development.

Commissioner Anderson asked when that would happen, and if Mr. Zola could help draft that document based on his previous experience with other projects.

Mr. Zola said he would collaborate with the Public Works Director to draft the language, based on the proposed land uses, the physical facilities needed to deliver water, and CEQA clearance in

relation to the Specific Plan and site-specific development. Staff will draft a process similar to the process provided previously for remediation.

Commissioner Parker said CEQA was probably adequate for biology. She requested guidance regarding mitigating sea level rise using dikes, as opposed to cleaning and enhancing the shoreline. She wants a clean-up method that could also help mitigate sea level rise. Could they adopt that as a goal under CEQA?

Commissioner Anderson said that at Candlestick Point, they are raising the ground level by about 20 feet for the development. That would have some impacts on aesthetics for some people in town, but in terms of sea level rise, that's the level of precaution another project is taking.

Director Swiecki said CEQA is a vehicle to minimize environmental harm. Mitigating the harm of sea level rise could be accomplished by raising the site, or accommodating the anticipated increased flow in a more natural way. The Commission could look at that as an aspirational component of an open space plan. All the areas that would be available and suitable for accommodating additional inundation area are planned as open space. So instead it becomes a question, of how that flow is accommodated in site specific designs. He pointed out that Highway 101 which physically borders this site, acts as a barricade or dike.

Commissioner Parker said they had discussed putting a park adjacent to the highway.

Commissioner Reinhardt said it could also be tied into the Sustainability Framework.

Chairperson Do asked for further comments on that section. There were none.

The Commission moved on to Land Use and Population and Housing.

Commissioner Anderson said that since they are not proposing housing, this section may not be relevant. However, contrary to the recent recommendation that the Commission not study a land use they are not recommending, he feels that the housing development in Emeryville at Watergate is very relevant to their decision not to recommend housing. It would be very useful to have a survey paper that the Commissioners could examine, because while it's not as large as the Baylands, it's a large development built on fill about 20-30 years ago and it would be interesting to see what challenges they faced and how they addressed them.

Commissioner Parker asked if this paper would be incorporated into the EIR.

Commissioner Anderson said he didn't know if it had to be a CEQA study or just more reading homework for the Planning Commission, but he wanted the Commission to review it before they make their decision.

Commissioner Reinhardt supported Commissioner Anderson's statement.

Chairperson Do asked whether the Center for Creative Land Recycling (CCLR) representative was going to return to the Commission.

Director Swiecki said a CCLR representative had made a presentation to the Commission's Baylands subcommittee, but would not return to the full Council. Instead, their information would be provided in writing to the full Commission for their reference.

Chairperson Do summarized that the EIR sections were adequate for their level of recommendation, with the addition of the requested white paper.

Commissioner Anderson said he didn't want to declare something adequate without that study.

Chairperson Do clarified that the EIR section was adequate pending the requested white paper.

The Commission moved on to the Noise section.

Commissioner Parker said there would be a lot of noise associated with the project.

Commissioner Anderson said a lot more needed to happen before construction started on the site.

Commissioner Parker said there would be a lot of pile driving even with the Commission's interim land use recommendation of 1-2 MSF of new development.

Commissioner Anderson said there are quiet pile driving methods that are more expensive, and still noisy, but much better than standard methods. He observed this in Mission Bay and found it more tolerable. Years ago, night pile driving was required on the railroads and that was the worst. Pile driving every single night for consecutive nights would be the worst of the worst. That issue wasn't fully described in the EIR, but it was vocalized in the public comments. He thinks if the development agreement addresses all of those concerns, it could be acceptable.

Director Swiecki said it sounded like the Commission had specific mitigation measures in mind. They may want to revisit the mitigation monitoring program to include those provisions.

The Commission moved on to Public Services/Utilities/Energy Resources.

Commissioner Anderson said he had similar feelings on this section as on Aesthetics. When the new Specific Plan is submitted, everything that had been studied is going to have to be re-examined.

Commissioner Parker asked if the EIR adequately studied the solar.

Commissioner Anderson said the National Renewable Energy Laboratory (NREL) study was pretty good, and solar is only getting cheaper. The interesting thing is that they NREL declared the CREBL plan was financially feasible, while the financial consultants Keyser Marston disagreed. If the City Council approved the Commission's land use recommendation, the NREL study would have to be updated to take into account increased efficiencies and lower costs. That would be part of the ordinary evolution of the specific plan and development agreement. The studies that were done were adequate considering when they were prepared.

Commissioner Parker asked if he felt the studies were adequate for the solar.

Commissioner Anderson said he thought the studies were adequate based on the level of information known at the time and the land use program the Commission is recommending.

Chairperson Do asked if the Commission agreed with Commissioner Anderson's statements. The Commissioners concurred.

Next, they moved on to Recreation.

Commissioner Anderson said he thought the Recreation section was mostly adequate. The Specific Plan included some nice illustrations showing piers in the lagoon and references to water recreation. However, it seemed those were not actually associated with the application. If it was just illustrative art, then the studies are adequate. If UPC is actually proposing to build a pier into the lagoon, however, then more studies are required.

Mr. Zola said there were provisions in the DSP scenario regarding piers in the lagoon. However, the mitigation measures in the Biological Resources section effectively prevented that type of water-based recreation and recommended leaving the lagoon as a lagoon.

Commissioner Anderson said in that case, then the study is adequate.

Chairperson Do asked for assent from the other Commissioners. The Commissioners concurred with Commissioner Anderson's statement.

Commissioner Anderson said he thought they needed to do more homework on each section. He anticipated receiving public comments on each section as well.

Chairperson Do said for now, they had made interim decisions based on the information at hand and would revisit their decisions at the upcoming public hearing.

Mr. Zola said the Commission's recommendation would include modifications to mitigation measures and the monitoring program to reflect the level of development actually proposed, since by reducing the amount of development they have eliminated some of the impacts that required mitigation.

Chairperson Do opened up the floor for public comment on the Commission's discussion.

There were no speakers.

H. ITEMS INITIATED BY STAFF

Director Swiecki said the recommendation would be packaged and presented at a formal public hearing at the July 28 regular meeting, in order to allow noticing and time for staff to prepare all necessary materials. The July 7 special meeting would be reserved for regular business items.

I. ITEMS INITIATED BY THE COMMISSION

There were none.

J. CANCELLATION of the Regular Meeting of July 14, 2016 and ADJOURNMENT to Special Meeting of July 7, 2016 at 7:30 p.m.

Commissioner Anderson moved and Commissioner Reinhardt seconded to cancel the regular meeting of July 14, 2016 and adjourn to the special meeting of July 7, 2016 at 7:30 p.m. The motion passed 4-0 and the meeting adjourned at 9:07 p.m.

Attest:

John A. Swiecki, Community Development Director

NOTE: A full video record of this meeting can be found on DVD at City Hall and the City's website at www.brisbaneca.org.