



BRISBANE CITY COUNCIL
SUMMARY MINUTES

**SPECIAL MEETING TO DISCUSS THE BAYLANDS
TUESDAY, JANUARY 16, 2018
BRISBANE CITY HALL, 50 PARK PLACE, BRISBANE**

8 P.M. CALL TO ORDER – PLEDGE OF ALLEGIANCE

Mayor Conway called the meeting to order at 8:01 p.m. and led the flag salute.

ROLL CALL

Councilmembers present: Council Members Cunningham, Davis, Lentz, O'Connell, and Mayor Conway

Councilmembers absent: None

Staff present: City Manager Holstine, City Engineer Breault, Police Chief Macias, City Clerk Padilla, City Attorney Roush, Administrative Services Director Schillinger, Community Development Director Swiecki

ADOPTION OF AGENDA

City Attorney Roush reported there was no actionable direction during the prior closed session.

CM O'Connell made a motion, seconded by CM Lentz, to adopt the agenda. The motion was approved 5-0.

OLD BUSINESS

- A. Council will re-commence its deliberations concerning the Brisbane Baylands Planning Applications (Baylands Concept Plans, Brisbane Baylands Specific Plan Case SP-01-06, General Plan Amendment Cases GP-01-06/GP-01-10) and related Final Environmental Impact Report (SCH##2006022136). Universal Paragon Corporation, applicant; Owners: various; APN: various.

Mayor Conway noted that following the December Council reorganization meeting he asked staff to provide a written report on the 2017 legislative session as it pertained to the Baylands, and how future State legislation may impact local decision-making on the Baylands.

City Manager Holstine gave the agenda report. He introduced Thomas McMorrow of law firm Manatt, Phelps, and Phillips, consultants to the City.

Mr. McMorrow stated the State legislature is interested in housing affordability and development statewide. He said the housing legislation package in the fall of 2017 initially included a proposal to transfer land use authority over the Baylands to the State, but that bill was not introduced. He said the current legislative session included additional housing-related bills, including a bill that would eliminate local control over new housing development adjacent to certain transit cores.

CM Lentz asked Mr. McMorrow if the State legislature has exerted control over local land use decisions in other communities.

Mr. McMorrow said there were ample examples of legislative action over land use decisions, including Los Angeles County. He stated most communities do not fight such attempts due to the cost of litigation.

CM Lentz asked what a bill passed by the State to regulate the Baylands would look like.

Mr. McMorrow stated the bill that was drafted but never introduced addressed the components of the developer's proposal and made certain findings that would result in its approval as presented, without regard for remediation, water rights, or the fiscal health of the City. He expected a similar bill would be proposed in 2018.

CM Davis asked if a bill was introduced that directly impacted Brisbane and was in conflict with the Council's decision, could the City win a fight against the legislature?

Mr. McMorrow said they won in 2017 due to education and timing, but that doesn't mean they would win in 2018. There are many motivated legislators in regards to housing who are prepared to aggressively fight and reintroduce similar bills.

CM O'Connell asked staff to address the recommendation to prepare fiscal analysis of different land use scenarios.

Lloyd Zola, Metis Environmental Group, stated residential development did not pay for itself in California and cities need to balance residential use with sales-tax generating uses. He stated staff recommended Council consider how Brisbane can balance the cost of residential development on the Baylands against net income generated by commercial uses so that the City could afford to provide necessary services that residential development on the Baylands would require. Staff's recommendation was to analyze various densities of residential use with different intensities of commercial uses so that the Council could make an informed decision.

CM O'Connell asked if the analysis would study the jobs-housing balance.

Director Swiecki stated the analysis could include raw jobs-housing data, but noted different types of commercial uses generate a different range of employees per square foot.

CM Cunningham asked how the Council could guarantee the developer will actually clean up the

land.

City Manager Holstine replied the City could assure the safety of the site through General Plan policies, a development agreement, and as a responding party with the City's consultant Dr. Fred Lee who will review all documents throughout the permitting process with the State Department of Toxic Substances Control (DTSC).

Mr. Zola stated the remediation standard at the applicant's Schlage Lock development was not residential, but rather institutional controls were imposed to limit resident exposure to the ground. He stated it was important for OU-1 to be remediated to a residential standard without institutional controls, in order for the development to have daycares, playgrounds, and other important components of a residential community.

CM Lentz asked staff whether the development agreement would be approved by the Council.

City Manager Holstine stated the City Council would have ultimate approval over any development agreement.

CM Davis asked staff what the development agreement could contain.

City Attorney Roush said a development agreement was a binding contract between the City and a developer negotiated in good faith, which could include cleanup standards, financial protections in the event the developer defaulted, development timelines and sequencing, and other assurances that the City had clear and enforceable standards to hold the developer responsible. He reiterated the development agreement would go through a public process at the Planning Commission and City Council before approval.

Mayor Conway said any decision regarding housing would require a General Plan amendment and asked if there were any legal considerations there.

City Attorney stated a General Plan amendment was a legislative matter and it was appropriate for the City Council to send that to the voters if they wished. Staff could prepare a General Plan amendment for the November 2018 ballot in that case. He noted the deadline for submitting such a ballot measure was June 30, 2018.

Mayor Conway asked for public comment from the audience. CM Cunningham moved to limit public comment to two minutes per person. CM O'Connell seconded the motion and it was approved 5-0.

Michele Salmon, Brisbane resident, said she did not think residential development was appropriate on the Baylands but asked the Council to ensure conditions requiring safety of that development was incorporated into any decision. She did not believe UPC was ever going to build housing and instead intended to upzone the property to get a higher price from the State in a future eminent domain purchase.

Greg Anderson, Brisbane resident, said it was a mistake to approve a small amount of housing just to avoid losing control and the first priority had to be safety above all else. He stated the

Planning Commission recommended rejection of the developer's alternative due to safety concerns. He also stated the site was at high risk of liquefaction and there was conflicting data on this subject in the EIR.

Tony Verreos, Brisbane resident, said he was concerned that the City worked with the property owner to create the soil storage business on the Baylands without permits or air quality monitoring. He said the worst scenario would be to lose the imagination for what greatness looks like and to add to sprawl. He encouraged that the City not "think small."

Anja Miller, Brisbane resident, said the General Plan needed to be studied as a whole. Since 2009, they have heard that High Speed Rail may use Brisbane for a maintenance yard. She stated land use decisions should not be made until the rail yard location was determined. The fiscal analysis should include the potential operation of the maintenance rail yard. She said the City should communicate that to the State.

Barbara Ebel, Brisbane resident, said the City allowed UPC to study housing on the Baylands even though it was prohibited. She said when the EIR named the alternative energy alternative as the environmentally superior alternative, UPC was working behind the scenes at the State. Mr. Scharfman was a subcommittee member during the legislative session. She said the State constitution guaranteed the right to self-determination and self-government and the City's rights were being bartered away. She referenced plans for a rail yard and said the developer was intending to get more money from the State during eminent domain.

Lori Liu, Brisbane resident, said future residents deserve a safe development. She said the threat of the State taking control over the Baylands was real and it would have been a rubber stamp approval of the developer's proposal that did not address any community benefits. She asked the Council to do all possible to retain its leadership and ensure a safe and sustainable Baylands development. She asked the Council to do what was necessary to retain local control. She asked the State and developer to work with the City.

Phil Marks, Brisbane resident, said he was against housing on the Baylands. He asked who would be liable if a cancer cluster developed among Baylands residents. He asked if UPC went bankrupt halfway through the project if the City would be responsible for finishing the project. He said if housing was approved, it must be balanced with revenue generating uses.

Dan Carter, Brisbane resident, said he trusted the Council. He said the sequence of development was important and commercial should be built before the housing. He asked if State legislation would cease if the City adopted a ballot measure to allow housing. He said site cleanup was paramount. He said housing numbers had to be realistic so they do not get into another conflict with the State. He said the City must be able to live with the results of their decision. He said local control and cleanup were not worth losing.

Corey Smith, San Francisco Housing Action Coalition, said he and his peers felt boxed out of the Bay Area and were scared for their future. He said historically local control resulted in not enough housing being built. He said safety was paramount and housing was useless if the land wasn't safe. He said his Coalition members have experience in remediation projects.

Ray Miller, Brisbane resident, said San Francisco-based members of the legislatures were in UPC's pocket, and negotiating a reasonable amount of housing under Brisbane control was unrealistic. The legislature was sovereign and could do anything to local jurisdictions despite General Plans or votes. He suggested if UPC gets its way, the City could consider de-annexing the northern part of the Baylands to the County or Daly City.

Deb Horen, Brisbane resident, said the City could not impose restrictions on development to make housing development safe. She said many Council members ran on a no-housing platform and was insulted that regional politicians were trying to force Brisbane to become unsafe and lose its quality of life. She asked that the draft 2017 legislation referenced by the Council be made public so she could understand what their State legislators were attempting. She said the State has never changed a City's General Plan. She thought they could go public.

Michael Barnes, Brisbane resident, supported the staff recommendation. He said the Council recently approved a General Plan amendment to allow housing on a former landfill site. He opposed a high speed rail yard on the Baylands and asked the Council to fight that. He asked the Council to retain a seat at the table and said that may not occur if the area is de-annexed. When the issue goes to a vote of the people, the Council should make it clear to the community what a no vote for housing on the Baylands would mean.

Tony Verreos said he different sides to the question had not been debated publicly. He supported Mr. Miller's suggestion. He said fighting high speed rail is ridiculous. He said the Council should take the offensive and get creative.

Barbara Ebel, Brisbane resident, said it was upsetting to her to watch the democratic process be undermined by money. She did not want the City to leave the table, but said she would not respect Council members who rolled over. It was a matter of principle and they didn't deserve to control their own town if they let their politicians and media be bought by developers.

James Christie, Brisbane resident, said safety of any development on the Baylands was priority. He said what made the City special could be expanded to whatever gets developed on the Baylands. He was not opposed to seeing some housing on the Baylands but wanted it to be as high density as possible near the train station to minimize traffic impacts and include a downtown-type area.

Mayor Conway asked Mr. Zola for an update on the EIR.

Mr. Zola said the project evaluated in the EIR was the UPC application for 4,400 dwelling units and 7 million square feet of nonresidential uses, and a series of alternatives including the renewable energy alternative. This gives the Council a range of options as to the land use decision. When the Council reached a consensus on a land use program, staff would bring back CEQA findings and revised analyses necessary to make sure the Final EIR addresses the approved project. He said fiscal analyses balancing residential and commercial uses to ensure a net positive or neutral cash flow had not been completed and depended on project phasing. The General Plan requires development to pay for itself so the City could ensure that each increment of development paid for itself. He stated if Council authorized a fiscal analysis they would look

at a range of housing from 1,000-2200 units and 2-6 million square feet of commercial.

CM O'Connell clarified that the City did not own the Baylands but rather was considering land use policies to allow for specific development and not the cost of sale of land.

Mr. Zola confirmed.

CM O'Connell asked whether de-annexing a portion of the Baylands to San Mateo County would put the City in a worse position.

Mr. McMorrow stated it had been discussed but the San Mateo County Board of Supervisors have not indicated interest.

CM O'Connell asked if any more substantial direction has come regarding High Speed Rail.

Mr. McMorrow stated High Speed Rail was facing increased budget overruns and delays. He also stated the gubernatorial race featured candidates who were opposed to high speed rail and its fate remained to be seen.

CM O'Connell asked if Caltrain electrification may generate need for a rail yard.

Mr. McMorrow stated he could not speak to any plans to establish a Caltrain yard in Brisbane.

Mayor Conway asked what protections could be ensured if the developer went bankrupt.

City Attorney Roush stated a development agreement would address that contingency and how it would be handled, the consequences, and sequencing of infrastructure and development so that the City would not be adversely affected.

Mayor Conway said he didn't like what was going on at the State. He agreed that the City should perform a fiscal analysis but not at the level proposed by the developer.

CM O'Connell made a motion to direct staff to work with financial consultants to study the fiscal impacts of 1,000 to 2,200 units and a range of nonresidential intensities for the Council's consideration. She asked that the analysis include a jobs-housing balance analysis.

CM Davis seconded the motion.

CM Lentz asked staff when that analysis would be available to Council.

City Manager Holstine stated the March 1, 2018 meeting was reasonable.

The motion was approved 5-0.

MAYOR/COUNCIL MATTERS

A. City Council Schedule Concerning the Baylands Deliberations Process

After discussion, the City Council determined its next meeting would be March 1.

WRITTEN COMMUNICATION

A. Acknowledge receipt of written communications regarding the Brisbane Baylands Project

Mayor Conway acknowledged correspondence received since the last meeting which was in the public record.

ADJOURNMENT

CM Lentz motioned and CM Davis seconded to adjourn the meeting. The motion was approved 5-0 and the meeting adjourned at 9:19 p.m.

Ingrid Padilla, City Clerk