



CITY COUNCIL/REDEVELOPMENT/GVMID

MINUTES

CITY COUNCIL REGULAR MEETING

April 20, 2009

BRISBANE CITY HALL, 50 PARK PLACE, BRISBANE

CALL TO ORDER/FLAG SALUTE

Mayor Richardson called the meeting to order at 7:30 p.m. and led the flag salute.

ROLL CALL

Councilmembers present: Barnes, Bologoff, Conway, Waldo, and Mayor Richardson
Staff present: City Engineer/Public Works Director Breault, Associate Civil Engineer Fabry, City Manager Holstine, Deputy City Manager/Administrative Services Director Schillinger, Assistant to the City Manager Smith, City Clerk Spediacci, City Attorney Toppel

ADOPTION OF AGENDA

CM Conway proposed adding under "Mayor/Council Matters" an item regarding the Council of Cities' recent discussion about Congress.

City Manager Holstine recommended adding a closed session conference with legal counsel to discuss the Leyh case.

CM Barnes made a motion, seconded by CM Waldo, to adopt the agenda as amended. The motion was carried unanimously by all present.

PRESENTATIONS

A. Recent installation of a noise monitoring device in Brisbane

Mayor Richardson invited Bert Ganoung, Manager, Aircraft Noise Abatement, San Francisco International Airport (SFO), to brief the City Council on noise abatement activities.

Mr. Ganoung said SFO has been updating its noise monitoring system for the past ten years. He presented a diagram illustrating the components of the system that gather data, monitor conditions, and report results to the community. He advised that Brisbane has a monitoring station on San Bruno Mountain near the water tank above Margaret Avenue. He pointed out its location on a map and displayed a photograph of the site.

Mr. Ganoung indicated that SFO collects data on airplane departures from Oakland and San Francisco, and he showed samples of recent noise measurements. He stated that noise levels have shown improvement over the past few years.

Mayor Richardson asked how noise limitations are enforced. Mr. Ganoung said SFO listens to recordings of noise and contacts pilots if they use improper departure routes, and air traffic controllers also relay warnings to pilots. He noted that regular training and follow-up has helped correct repeated problems. He showed lists of airlines with the best and worst noise records. Mr. Ganoung explained that the shoreline departures tend to create more noise than other routes, and weather is the primary factor in determining which runways are used. He displayed a sample pilot's chart and map showing local departure routes. He commented that many airlines have reduced the number of flights and have become more efficient in their operations in response to the economic downturn.

Mayor Richardson recommended letting consumers know which airlines are chronic offenders. She said she and many other people would probably avoid using particular airlines that violate noise restrictions.

Mr. Ganoung encouraged people to call when they have noise complaints. He said SFO investigates each complaint and notifies pilots and airlines when there are problems.

Mayor Richardson reported that she took a tour of the local air traffic control center and was very impressed with the operations. She recommended making tours available to school children to give them a better understanding of the types of careers available and the complexities of managing air flights. Mayor Richardson thanked SFO for its responsiveness in dealing with noise complaints and enforcing the rules.

Michele Salmon, Brisbane resident, asked about the possibility of installing two temporary monitoring stations near the center of Brisbane to monitor noise levels in the bowl-shaped part of town. Mr. Ganoung said SFO would be happy to deploy portable noise monitors if suitable locations can be found. Mayor Richardson proposed working with the staff to identify potential sites.

CM Bologoff asked if all pilots can comply with noise restrictions. Mr. Ganoung replied that SFO has found that both small and large planes can comply. He advised that there are sometimes problems when airlines implement new planes.

Mayor Richardson thanked Mr. Ganoung for his presentation.

B. Status report on the proposed Municipal Regional Stormwater Permit

Associate Civil Engineer Fabry provided an update on the municipal regional stormwater permit covering the jurisdictions in the Bay Area. He reported that the Regional Water Quality Control Board issued a draft of the new permit on February 11, 2009, and written comments were due on April 3. He stated that a public hearing was scheduled for May 13 before the Board adopts the new permit.

Associate Civil Engineer Fabry noted that Brisbane participates in the San Mateo County program and also implements its own stormwater programs, which include stricter standards to address stormwater issues for new development and construction, municipal maintenance programs, business inspections, public outreach and education, watershed assessments, and a Green Streets program that provides grant funding that helped build the new rain garden and swale at City Hall.

Associate Civil Engineer Fabry advised that the new municipal regional stormwater permit imposes new requirements that will create difficult financing issues for local governments. He estimated that the new standards will double the cost of the countywide program, resulting in a \$6 million deficit over the next five years. He said the City's costs of compliance will also increase substantially. Associate Civil Engineer Fabry questioned whether the benefits in terms of water quality will outweigh the added expense.

Associate Civil Engineer Fabry enumerated issues of concern with the draft permit. He expressed concern about the lack of prioritization in implementing the new requirements, and he advocated a phased approach. He observed that requirements going beyond federal standards create unfunded state mandates. He noted that the new monitoring, special studies, and pilot project provisions will be very expensive. Associate Civil Engineer Fabry observed that key issues for Brisbane and other municipalities include the extent of water quality monitoring required, trash and litter control, and how minor discharges to storm drains are handled.

Associate Civil Engineer Fabry said he and other local stormwater managers have been meeting with the Regional Water Quality Control Board to propose changes in the draft permit. He encouraged elected officials to attend the May 13 hearing to testify about local economic problems and urge the Board to work with local jurisdictions to develop a more realistic plan.

CM Conway asked about the possibility of using inmate work crews supervised by the Sheriff's Department to assist with trash removal. Associate Civil Engineer Fabry replied that the City has used the Sheriff's Department Work Assistance Program in the past. He said using sheriff-supervised laborers would ease some of the burden.

CM Barnes noted that the stormwater discharge permit applies to all jurisdictions, and he asked how the permit requirements are related to monitoring and sampling. Associate Civil Engineer Fabry said the Regional Board staff believes that better monitoring will help identify water quality issues and focus pollution control efforts where they are most needed. He expressed his opinion that this kind of stormwater monitoring would be very expensive and could be implemented over a longer period of time. He noted that Brisbane has already implemented monitoring programs on a local level that have been effective in identifying sources of pollution.

CM Barnes questioned the relationship between the new monitoring requirements and the quality of water Brisbane discharges into the bay. He said Brisbane should not be penalized for the quality of urban runoff from other jurisdictions. Associate Civil Engineer Fabry explained that the Board wants to conduct baseline studies and gather better data on the quality of the water released into the bay. He clarified that he supported certain types of monitoring, but questioned the effectiveness of collecting other kinds of data. He recommended prioritizing water quality issues and then targeting monitoring efforts to focus on known problems.

Mayor Richardson commented that the water regulatory structure in California has been criticized in a study by the state's Hoover Commission, and there has been talk about reorganizing the entire system in a way that would reduce local control. She observed that the Regional Water Quality Control Board seems intent on moving forward with its programs in spite of local opposition. She advocated working to phase in the new requirements and indicated that she planned to attend the May 13 hearing on behalf of C/CAG. CM Barnes said he was also interested in attending. Associate Civil Engineer Fabry stated that he would provide talking points to Mayor Richardson and CM Barnes before the meeting.

Michele Salmon, Brisbane resident, noted that pollution comes from a wide variety of sources, including siltation from development projects, seepage from landfills, parking lots, rooftops, old sewer systems, quarries, trash and debris, old cars, and railroad yards, many of which are found in Brisbane. She said this kind of pollution is just as toxic to wildlife in the bay as chemicals, and she expressed her opinion that Brisbane should be doing its part and participating in Regional Water Quality Control Board efforts to improve water quality.

Councilmembers thanked Associate Civil Engineer Fabry for his report.

ORAL COMMUNICATIONS NO. 1

Terry O'Connell, Brisbane resident, thanked the City for supporting the Habitat Restoration Day cleanup of Firth Canyon on April 18. She reported that volunteers were able to clear a significant amount of trash, and she encouraged people to walk the canyon to see the improvement.

John Christopher Burr, Brisbane, said the May 20, 2009 issue of *Popular Science* magazine includes an article about renewable energy that mentions a Seattle-based wind company, Clarion Technologies, that is developing a 36-inch “jellyfish” wind turbine for residential use. He noted the turbine requires no special wiring and costs only \$400. Mr. Burr advised that another company, RSI, is manufacturing photovoltaic windows to generate power. He recommended that Brisbane require renewable energy systems on all new buildings and suggested trying to attract this kind of company to Brisbane.

CONSENT CALENDAR

CM Barnes asked to remove Item B.

A. Adopt City Council Minutes of April 6, 2009

CM Waldo made a motion, seconded by CM Bologoff, to adopt the April 6 minutes as presented. The motion was carried unanimously by all present.

B. Authorize the City Manager to sign the Memorandum of Understanding with Siemens Building Technologies to complete an updated preliminary energy study for a City Hall photovoltaic project and complete application documents for California Energy Commission-administered federal stimulus funds

CM Barnes drew attention to the flow chart in the meeting packet. He said the proposal indicates that Siemens will provide a letter of intent for no cost, but a detailed energy study is necessary to complete the grant applications. He asked how much the energy study will cost. City Engineer/Public Works Director Breault said he expected that Siemens would provide necessary energy studies if the City intends to hire Siemens for the installation. He explained that the purpose of the preliminary work is to investigate the feasibility of a photovoltaic system for the roof of City Hall, and that updated information will probably be sufficient for the grant applications.

CM Barnes asked if signing the Memorandum of Understanding (MOU) would obligate the City to use Siemens for the installation or whether there would be a competitive bidding process. City Engineer/Public Works Director Breault responded that the MOU only applies to the preliminary energy study needed for the grant applications, not the installation contract. He said that once funding is secured, the City will need to decide how best to proceed. City Attorney Toppel advised that renewable energy projects that meet certain requirements are exempt from the normal competitive bidding process.

Mayor Richardson drew attention to the language in the proposal indicating the City would be making a “qualified” commitment, and she asked what that meant. City Engineer/Public Works

Director Breault commented that the City would probably want to hire Siemens if the company does the preliminary work and helps obtain funds.

CM Conway said he was not comfortable making a decision about the project at this time, and he proposed tabling this matter indefinitely. He noted that the roof of City Hall might not be able to accommodate photovoltaic panels, and he recommended exploring other options.

CM Conway made a motion, seconded by CM Bologoff, to table this item indefinitely.

Dana Dillworth, Brisbane resident, encouraged the City Council to take advantage of this opportunity to consider the possibility of forming a municipal utility district. She suggested establishing a Citywide power program rather than dealing with this project in a piecemeal fashion.

CM Barnes asked if the City had enough information to complete the AARA application without this work. City Engineer/Public Works Director Breault said the preliminary power study proposed by Siemens would be necessary to proceed with the application.

The motion was carried, 4 - 1 (CM Waldo opposed).

PUBLIC HEARING

- A. Consider appeal of the Planning Commission's conditional approval of a proposal to construct 438,104 square feet of office space in two buildings (8 and 10 stores), 1,386 parking spaces, including a five-level parking structure, and improvements to the Bay Trail on approximately 8.87 vacant acres; Opus West Corporation, applicant; Sierra Point LLC, owner; APN 007-165-020; 3000-3500 Marine Boulevard, Sierra Point Project**

Principal Planner Swiecki said the Planning Commission unanimously approved this Sierra Point office building project in February. He noted the project includes a five-level parking structure and improvements to the adjacent Bay Trail. He advised that in response to issues raised by the Planning Commission, the developer agreed to provide a renewable energy component or an in-lieu contribution, clean up off-site property, and work with the City to provide secondary emergency access to Sierra Point. He stated that the appeal raises issues about how this project fits with the overall plans for Sierra Point, the adequacy of the environmental review, the traffic and visual impacts of the project, the shadows that would be cast on the adjacent aquatic habitat areas, and the mass, height, and density of the proposed buildings. Principal Planner Swiecki indicated that the staff believes this project is consistent with the Sierra Point guidelines, and the other concerns have been addressed in the environmental review process and the conditions of approval. He recommended denying the appeal and allowing the project to go forward as approved by the Planning Commission.

Mayor Richardson opened the public hearing and welcomed comments from audience members.

John Christopher Burr said there are many gross abuses of the California Environmental Quality Act (CEQA) throughout the state, including this project. He noted there is no way the potential impacts of a project this size can be mitigated to a level of insignificance. Mr. Burr observed that the project is sited over a toxic waste dump that poses risks to the public. He pointed out that this project has numerous unanalyzed impacts and the information used in the environmental analysis is outdated. He urged the City to insist on a new environmental impact report (EIR) to fully study all potential impacts of this project.

Dana Dillworth, thanked CM Conway and Mayor Richardson for bringing this appeal based on whether the Planning Commission had the legal authority to approve the project. She agreed with Mr. Burr that a full EIR should be required. She noted that the project description includes no mention of the transfer of density from the biotech campus site, and the impacts from this project were not investigated as part of the biotech EIR. She advocated a full disclosure of all possible impacts.

Ms. Dillworth expressed her opinion that the City lacks authority to approve the project because the new Sierra Point design guidelines have not yet been adopted. She stated that this project does not enhance view corridors, does not consider impacts on adjacent land, and exceeds the six-story height limit. She said the City should consider global warming and applicable General Plan policy.

Ms. Dillworth reported that she contacted the Department of Fish and Game and the Bay Conservation and Development Commission (BCDC), and both entities indicated they would prefer a project that does not cast shadows on the waterfront.

Mayor Richardson commended Ms. Dillworth for her thorough research and expressed appreciation for the details provided in her letter.

Michele Salmon thanked Mayor Richardson and CM Conway for appealing the Planning Commission's decision on this project. She drew attention to recent articles in the April 18 *San Francisco Chronicle* regarding energy plans in Berkeley and the EPA's warning about greenhouse gases. She questioned whether a mitigated negative declaration was appropriate for a project of this magnitude.

Ms. Salmon said she was pleased the developer had agreed to install six solar panels on the parking garage roof, but expressed her opinion that much more should be done. She urged the City to require the project to be energy-neutral. She proposed a moratorium on any new large buildings until the City adopts a more aggressive energy policy.

Tom Heinz, Brisbane resident, provided copies of solar tracking studies he conducted for the project site. He said he noticed that parking garage overlooking the Marina is screened by tall trees, but this proposed parking structure would be much more exposed. He presented a diagram showing the shadows that would be cast by the office buildings and parking structure onto the adjacent wetlands. He noted that blocking sunlight will cause vegetation to decay, resulting in unpleasant odors.

Mr. Heinz expressed his opinion that the City should insist on attractive, world-class architecture rather than accepting the proposed mediocre and ugly, boxy-looking design proposed by the developer.

Mickey Ankelly, Opus architect, gave a brief presentation showing views of the site and the proposed building layout. He said the project consists of two office buildings and a parking structure, and the design was developed after extensive study of the site and its surroundings. He noted that BCDC approved the project after a detailed discussion of all its features. He pointed out the adjacent Bay Trail and the improvements the applicant will be making.

Mr. Ankelly stated that the applicant investigated the feasibility of a photovoltaic system on the parking structure roof and determined that six large panels would optimize the space available and produce the most energy. He advised that the entire parking structure and shade canopy will be equipped for future photovoltaic systems. He said all three structures will meet the LEED Silver standard using a range of energy conservation strategies.

Mr. Ankelly described the architectural features of the buildings and showed views from various vantage points.

Terry O'Connell thanked the City Council for hearing this appeal. She expressed her opinion that the 8- and 10-story buildings proposed will dwarf the rest of Sierra Point and block views of the Bay and the Marina. She recommended requiring the project to produce far more energy than the applicant is proposing.

Michele Salmon recalled that the applicant told the Planning Commission that the proposed solar panels on the garage roof will produce only 2 percent of the project's energy usage. She noted that better and more efficient technology is available.

Theresa Maturo, chair of the Planning Commission, clarified that the Planning Commission approved the project after extensive discussion and consideration of many issues. She noted the Commission unanimously approved the project based on its consensus that the project would improve the site and be good for the City. She cited the energy generation, trail improvements, and voluntary cleanup of off-site areas as examples of the benefits offered. She emphatically stated that there was no coercion or improper pressure placed on the Planning Commission.

Mike Durkee, Opus West, expressed his appreciation to the staff and the Planning Commission for carefully evaluating this project. He noted that installation of photovoltaic panels goes beyond City requirements and demonstrates the applicant's willingness to address City concerns and conserve energy.

Dana Dillworth said this project does not comply with the existing design guidelines for Sierra Point, the transfer of density was not mentioned in the project description, and the biotech campus EIR did not analyze the potential impacts of this project. She asked the City Council to deny the project for these reasons.

There being no other members of the public who wished to address the City Council on this matter, CM Waldo made a motion, seconded by CM Conway, to close the public hearing. The motion was carried unanimously by all present and the public hearing was closed.

The City Council took a brief recess. Mayor Richardson reconvened the meeting and invited Council discussion of the appeal.

CM Conway said he had a number of questions for the applicant and staff. He recalled that the applicant had talked about wind energy earlier in the process, and he asked about that possibility. Mr. Ankelly said the Planning Commission had concerns about the aesthetic impacts of a tall wind turbine and expressed a preference for photovoltaic panels. He said the size of the photovoltaic system is roughly equivalent to the energy generation component of the biotech campus project. He noted that the applicant is focusing on making the office buildings energy-efficient in other ways.

CM Barnes asked about bicycle racks. Mr. Ankelly responded that the applicant will provide bicycle locks, bike racks, and showers to help meet the LEED Silver standard. He said the bike racks will be near the side entrances to the office buildings.

CM Conway noted that the January 22 minutes indicate that the applicant will enter into an agreement with a green power broker, and he asked for more details. Mr. Ankelly stated that the agreement calls for the building owner to contribute to a fund to purchase clean wind and solar power.

Mayor Richardson asked what it would take to achieve energy neutrality. Mr. Ankelly replied that in addition to the proposed photovoltaic system, the project would need hydrogen fuel cells and other technology that goes well beyond the City's requirements. He commented that such systems would be very expensive and not as reliable as electricity. He stated that the parking garage will include plug-in electrical receptacles to accommodate electric vehicles.

Mayor Richardson observed that a number of speakers raised concern about the buildings blocking sunlight to the adjacent wetlands. Mr. Ankelly said he had not seen the studies, but he

acknowledged that the office building and parking structure may cast shadows on the slough at certain times of day.

CM Conway asked City Attorney Toppel to comment on whether the biotech campus EIR considered the impacts from this project. City Attorney Toppel responded that the Slough EIR did take the square footage and traffic impacts from this project into account, as well as cumulative impacts. He said the staff and Planning Commission determined that a mitigated negative declaration would be appropriate.

Judith Malamut, LSA Associates, confirmed that the cumulative impacts from developments in other communities were included in the environmental review process and the mitigated negative declaration.

City Attorney Toppel clarified that there are no zoning regulations for Sierra Point that restrict building height, although there are guidelines that show lower heights for this site. He said the Planning Commission decided that the best way to accommodate the transfer of square footage would be to allow taller buildings rather than have them extend outward. He advised that the Commission was well within its authority to make this kind of design decision.

With respect to comments about BCDC concerns regarding building height, City Attorney Toppel indicated that the BCDC reviewed the proposal and found it in compliance with all applicable requirements.

CM Conway asked if the shadow cast by the buildings would have an adverse effect on the biology of the adjacent slough. Principal Planner Swiecki stated that the Department of Fish and Game and BCDC reviewed the mitigated negative declaration and raised no concerns about the potential impacts of the shade.

Ms. Malamut acknowledged that portions of the building will shade the wetlands from time to time. She indicated that BCDC is more concerned about structures that create permanent shadows. She pointed out that the glass in the buildings will reflect diffuse light, and there is plenty of biodiversity and wildlife in the surrounding shoreline areas.

CM Conway noted that Ms. Dillworth submitted photographs showing old tires and other debris in the wetlands. Ms. Malamut said the applicant has agreed to clean up some of the adjacent land owned by the State Lands Commission.

CM Conway stated that he appealed the Planning Commission's decision in order to review the project in more detail and hear from members of the public. He noted that the City Attorney advised that the Planning Commission had authority to approve the project. CM Conway commented that he was pleased the applicant was voluntarily complying with the LEED Silver standard and offering other improvements. He encouraged the applicant to consider wind energy

in addition to solar panels. City Attorney Toppel recommended not requiring wind energy as a condition of approval. He suggested allowing the applicant to consider that option as a substitute for solar power. CM Conway supported allowing wind power if it turns out to be a more efficient choice than solar energy.

CM Barnes expressed support for considering wind power, but he cautioned that there is no wind study of the site, and there may be issues with respect to long-term maintenance and reliability.

Mr. Durkee stated that the applicant would be willing to consider the option of wind power.

Mayor Richardson said she was uncomfortable approving the project because she thought more energy generation should be required.

Ms. Dillworth disputed the City Attorney's advice that there were no height restrictions applying to the site. City Attorney Toppel clarified that the design guidelines were modified to allow the transfer of square footage to this site, and he observed that there are other taller buildings at Sierra Point.

CM Barnes observed that solar technology is not very efficient at this point, and far more would need to be done to make the project energy-neutral. He pointed out that the applicant is taking steps to reduce energy usage by making the buildings more efficient, resulting in a more substantial level of energy conservation than solar panels. He applauded the applicant for investing in clean energy, cleaning up the adjacent saltwater marsh, and clearing and permanently capping the rest of the site. CM Barnes thanked the Planning Commission for its thoughtful review.

CM Barnes expressed his opinion that the proposed buildings were ugly and ordinary-looking. He said the design represents a style of building that he would prefer not to see in Brisbane.

CM Bologoff emphasized the need to invest more in solar technology to make photovoltaic energy more efficient and cost-effective. He said he supported the Planning Commission's decision.

CM Waldo made a motion, seconded by CM Bologoff, to deny the appeal. The motion was carried, 3 - 2 (CM Barnes and Mayor Richardson opposed).

OLD BUSINESS

A. Consider approval of the proposed planting plan for San Mateo Lane

CM Bologoff recommended contacting the neighbors before planting trees along San Mateo Lane. He said he understood that some people had concerns about the size and species of the

new trees.

City Engineer/Public Works Director Breault noted that this is the third time this matter came before the City Council. He said the Open Space and Ecology Committee, the Native Plant Society, and members of the public had input in the proposal. He indicated that the staff would contact the immediate neighbors to discuss their concerns.

CM Barnes made a motion, seconded by CM Waldo, to approve the planting plan as proposed. The motion was carried unanimously by all present.

STAFF REPORTS

A. City Manager's Report on upcoming activities

City Manager Holstine reminded the City Council of the budget workshop scheduled for Sunday, May 3, beginning at 9:00 a.m.

MAYOR/COUNCIL MATTERS

A. Subcommittee reports

None.

B. Council of Cities

CM Conway proposed deferring this item to a future meeting, and other Councilmembers agreed.

ORAL COMMUNICATIONS NO. 2

Dana Dillworth urged the City to consider planting trees in the future that produce fruit for birds and other animals, and she gave several examples. She also suggested considering opening some of the old creeks in town and restoring habitat for butterflies.

Michele Salmon observed that in the discussion of the Planning Commission appeal, there were comments about complying with existing design guidelines and laws. Rather than being constrained by existing rules, she recommended taking a proactive approach and adopting forward-thinking policies that encourage energy conservation and environmental stewardship.

CM Conway commented that the green building ordinance is an example of the City's leadership in this regard.

CLOSED SESSION

There being no further business, the meeting was adjourned to a closed session at 10:33 p.m.

- A. Conference with legal counsel regarding pending litigation, one case, pursuant to Government Code Section 54956.9**

ADJOURNMENT

At the conclusion of the closed session at 10:45 p.m., the meeting was adjourned with no announcements.

ATTEST:

Sheri Marie Spediacci
City Clerk