

City of Manhattan Beach

1400 Highland Avenue
Manhattan Beach, CA 90266



Meeting Minutes - Draft

Tuesday, April 29, 2014

6:00 PM

Adjourned Regular Meeting

City Council Chambers

Manhattan Village Shopping Center Enhancement Project

City Council

Mayor Amy Howorth
Mayor Pro Tem Wayne Powell
Councilmember Mark Burton
Councilmember Tony D'Errico
Councilmember David J. Lesser

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A. PLEDGE TO THE FLAG

At 6:05 PM, Mayor Amy Howorth called the meeting to order.

Ms. Loy led the pledge of allegiance.

B. ROLL CALL

Present: 5 - Mayor Howorth, Mayor Pro Tem Powell, Councilmember Burton, Councilmember D'Errico and Councilmember Lesser

C. CERTIFICATION OF MEETING NOTICE AND AGENDA POSTING

City Clerk Tamura confirmed that the meeting was properly posted.

D. APPROVAL OF AGENDA AND WAIVER OF FULL READING OF ORDINANCES

A motion was made by Councilmember Lesser, seconded by Councilmember Burton, that this item be accept. The motion carried by the following vote:

Aye: 5 - Howorth, Powell, Burton, D'Errico and Lesser

E. PUBLIC COMMENT ON NON-AGENDA ITEMS

Connor Wohl, Aiden Nesicolaci, and Todd Wohl spoke regarding the First Annual Manhattan Beach Concours d'Elegance, a car show being organized at Mira Costa on May 31, 2014 and requested to put information on the City's website.

Viet Ngo spoke about the hiring of a City Manager, Interim City Manager, and Director of Community Development and urged members of the public to apply. He also spoke about alleged conspiracy and racketeering on the part of the City Council and the City Attorney.

Robert Bush spoke about endorsing Mayor Amy Howorth for State Assembly. He also spoke about the refunding of illegal street sweeping fees, the Manhattan Village Enhancement Project, and mansion building.

Antoinette Gill, a resident, spoke about concerns regarding parking and loitering problems on Oak Avenue, citing safety concerns.

Seeing no further request to speak, Mayor Howorth closed the floor to public

comment on non-agenda items.

F. PUBLIC HEARINGS

1. Consideration of Certification of a Final Environmental Impact Report and Approval of a Master Use Permit Amendment, Height Variance and Master Sign Program/Exception for the Manhattan Village Shopping Center Enhancement Project at 2600 through 3600 Sepulveda Boulevard and 1220 Rosecrans Avenue (Director of Community Development Thompson). **13-0444**
- ADOPT RESOLUTION NO. RES 14-0025 CERTIFYING THE FINAL EIR AND RESOLUTION NO. RES 14-0026 APPROVING THE PROJECT WITH CONDITIONS CONSISTENT WITH THE CITY COUNCIL MOTION ON JANUARY 14, 2014**

Mayor Howorth reminded those in attendance of the Rules of Decorum.

Councilmember Burton stated that City Council should have a discussion regarding what it anticipates accomplishing at this time adding that City Council should have enough time to make a deliberation.

Mayor Howorth stated that focus should be on the revisions to the project, the draft resolutions and the proposed conditions.

Councilmember Burton noted the need to understand the process and City Council's responsibilities and authority as well as CEQA issues and findings. Additionally, he commented on the need for City Council to take a leadership position and have the opportunity to have a full discussion and make a fully-informed decision.

Councilmember D'Errico expressed confusion regarding the differences between a "limited public hearing", a "focused public hearing" and a "public hearing".

City Attorney Quinn Barrow reported that this is the seventh public hearing on this matter and that the purpose of a public hearing is to provide the public with an opportunity to comment on the project. He reported that at the last City Council meeting, there was a motion to direct staff to return with resolutions certifying the EIR and approving the project, subject to certain conditions, modifications and revisions to the project. At this time, there will be an opportunity for the applicant and the appellant and anyone interested, to comment on the revisions, the draft resolutions and the proposed conditions. He added that there were ten or eleven components of the motion, that the Planning Commission resolution contains a number of conditions to be presented to City Council at this time, and that focus should be on what is different, the conditions and whether the language in the resolution captures the Council's prior motion.

In reply to an inquiry from Councilmember D'Errico, City Attorney Barrow confirmed that everything and anything presented so far is open for discussion.

Mayor Pro Tem Powell commented on the City's longstanding policy of audience participation and stated City Council would never have a meeting or discussions without the public. He encouraged everyone to speak. He addressed availability of the EIR and proposed listening to the staff report and the audience and then for Council to discuss the matter.

Mayor Howorth noted that the EIR has been available since last summer and noted that there have been many opportunities for public comment and City Council discussion and noted the need to proceed with the process.

Councilmember Burton stressed the need for City Council to proceed deliberately, methodically and professionally.

Community Development Director Richard Thompson addressed City Council's previous motion and noted that staff focused on the elements of that motion and has developed modifications to the plan that have captured the issues of concern to the City Council. He provided staff's recommendation and introduced Planning Manager Laurie Jester who provided a detailed staff report and a PowerPoint Presentation. Community Development Director Thompson then added that there are no three-story parking structures being proposed and that the proposed height of the structures is twenty-six feet with two-and-a-half stories. He stated that traffic circulation will be greatly improved and that over 43,000 square feet has been removed from the project.

Mr. Larry J. Kosmont, Kosmont Companies, gave a PowerPoint presentation on the financial implications of the Manhattan Village Expansion project.

Councilmember Burton and Mr. Kosmont discussed the consolidation of Macy's, the importance of committing them to the deal, the outdoor mall as a lifestyle destination, aspects of the outdoor experience including events and entertainment, elements of the different phases, incentivizing Macy's consolidation and costs associated with retrofitting Macy's Men Store.

Mayor Pro Tem Powell and Community Development Director Thompson engaged in discussion regarding the application for a variance and a sign exception, the purpose of the variance, height challenges related to elevator shafts as required by law, height of the parking structures and directional signage and minimal additional signage.

In response to Mayor Pro Tem Powell's inquiry, City Attorney Barrow reported that this would not be considered a "taking" as the applicant already has an economic use of the property.

Community Development Director Thompson reported that if the project is approved, it would not set a precedence as there is no obligation to approve a similar project. He added that findings and conditions need to be met before approving this or similar projects along Sepulveda.

Mayor Pro Tem Powell referenced an agreement between RREEF and Macy's noting that Council has not seen that agreement and asked for assurance that the agreement exists. Community Development Director Thompson suggested asking the applicant.

In response to Mayor Pro Tem Powell's inquiry regarding financial securities, Community Development Director Thompson stated that it was felt that 1 ¼ times the cost of the improvements was adequate bonding for a project of this size noting that many projects for which bonding is required are much smaller so that the City may require 2 times the amount. If Council prefers, additional bonding may be imposed. Relative to the condition of having mature landscaping installed, Community Development Director Thompson reported that is a requirement of the project and that the applicant is required to comply with the code. He added that the condition makes sure that the project will be built as approved.

Mayor Pro Tem Powell and Community Development Director Thompson discussed the security plan, the master signage and lighting plan, the proposed timeline as to the phasing of construction, a construction management plan and the Sepulveda Bridge Widening project and possible issues with the Mall construction.

Mayor Pro Tem Powell commented on leakage of sales through internet shopping and Mr. Kosmont addressed the educational and tactile experience that draws people to a mall and more and more retailers are becoming aware of same. He addressed ways in which a mall stays relevant and vital including the tenant mix and the amenity package.

Councilmember D'Errico and Mr. Kosmont discussed competing against the internet, other mall competitors, the size of the Manhattan Village Shopping Center and its open space and the importance of open space in creating a pedestrian experience and a diversity of tenants in competing with the internet and other shopping centers. Additionally, they discussed "forcing" the consolidation of Macy's, the Macy's Men Store, financial pressures to the developer and Macy's through conditions, Macy's ability to maintain the Mens Store and a letter received from Macy's in support of the development.

Councilmember Lesser commented on the City's and City Council's role as it relates to this project given that it is private property and not City owned property.

Interim City Manager Jalili noted that Metlox is a good example of private/public partnership.

Councilmember Lesser and Interim City Manager Jalili discussed impacts on the community, CEQA requirements, and negotiations between the City and the developer.

City Attorney Barrow reported that in the absence of a development agreement, there needs to be a nexus between the conditions imposed and the entitlements. He noted that the applicant has accepted the conditions but reiterated that the key is the nexus and that under CEQA, impacts must be mitigated.

Councilmember Lesser and Community Development Director Thompson engaged in discussions regarding concerns with traffic related to construction and provisions for a construction and parking plan. Community Development Director Thompson commented on the mitigation measures in the EIR, parking and circulation, phasing and the parking ratio during construction. Community Development Director Thompson commented on improvements to Cedar Way.

Councilmember Burton and Community Development Director Thompson discussed prior plans, different iterations of the location of the parking structures and the need for Planning Commission review of Phase 3 if the project is approved as presented. It was noted that Phase 3 is currently not included in the project.

Brief discussion followed regarding negotiating with the principal rather than the developer.

Mayor Pro Tem Powell commented on compact parking spaces and in response to his question, Community Development Director Thompson reported that in the current plan, there are very few compact parking spaces proposed.

Mayor Howorth and Mr. Kosmont discussed the length of leases of the surrounding banks along Sepulveda and the parking structure at the Grove.

At 8:11 PM City Council recessed and reconvened at 8:19 PM with all Councilmembers present.

Cory Briggs, representing the appellant, 3500 Sepulveda LLC., expressed concerns that they will not be given due process if they are not provided with the opportunity to comment at the end of the public comment period.

Mark Neumann, 3500 Sepulveda LLC., expressed concerns regarding the proper process and City Attorney Barrow reported that this matter has been properly noticed as a Public Hearing so there is no need for a motion to open public comments at this time.

Mark Neumann addressed the City Council as a property owner within the Mall, concerned over the harm to his interests by the project. He provided a PowerPoint Presentation and referenced numerous letters he has written to the City without response, but acknowledged they have been responded to in the EIR. He reported this has been a long and expensive process and addressed facts and myths of the project, fiscal implications, and problems with the EIR, the resolution requirements, broken promises and unanswered questions and the legal appeal to the project.

Brant Dveirin, Attorney from Lewis, Brisbois, Bisgaard & Smith LLP, representing the owners of 3500 Sepulveda LLC., spoke about a settlement agreement from 2008 between RREEF & 3500 Sepulveda LLC. and the project's impacts on the rights and interests of his clients. He asked that City Council not approve the project but help in negotiating an agreement with RREEF that preserves his clients' discretion and control of their property.

Cory Briggs, representing 3500 Sepulveda LLC., opined that the City is making a big mistake and alleged that the City has not complied with CEQA. He alleged that City Council approved the project in January without a CEQA document, that City Council has violated the public's due process rights by changing the project, that impacts have not been studied or mitigated properly and that the City did not circulate documents showing the City's independent judgment and he listed documents that have been prepared for other parties rather than the City, but used within the EIR. Additionally, Mr. Briggs suggested there may be some conflicts of interest involved noting that the rule applies to independent contractors working for the City as well as to City staff.

Mark English, a representative from RREEF, gave a presentation. He outlined the changes that have been made to the proposal. He noted that RREEF accepts the conditions of approval and addressed reduction of the size and shape of the north parking deck in Phase I, execution of an MOU that will facilitate a commitment to consolidate Macy's, negotiations and agreement with Apple, agreement with Fry's for a long-term lease extension, construction parking, parking structure modifications as requested by City Council, levels of the parking structure and vistas. He noted that the stepping back of the north parking structure will result in less massing.

Councilmember Burton suggested removing the north parking deck in order to increase open space and that the two parking structures in Phase I will disincentivize the consolidation of Macy's.

Mr. English reported that several options were studied for placement of the parking garages and explained the rationale for the current placement. He added that Macy's will not agree to building the northeast (Phase II) deck first and noted that with a consolidated store, the northeast deck is essential.

At 10:10 PM City Council recessed and reconvened 10:18 PM with all Councilmembers present.

In response to Mayor Pro Tem Powell's inquiry, Mr. English addressed the connection of Cedar Way to Rosecrans Avenue in Phase 2 and efforts to hide and architecturally enhance the parking structures.

Councilmember D'Errico and Mr. English discussed the importance of open space for people to visit, other than shopping and dining, in order to compete with nearby shopping centers. Mr. English noted that there are significant open space areas for programming events including the interior of the Mall, the large outdoor plaza and the ability to block off sections of Cedar Way. He added that because the developer is not working with a blank slate there are limitations and challenges relative to increased open spaces.

Councilmember Burton and Mr. English discussed the construction of the parking structures in terms of making them earthquake-proof and entering into contaminated soil.

Jeremy Squire, Senior Engineer, Murex Environmental, EIR Consultant, addressed entering into contaminated soil and noted he recommended against building underground garages.

Mayor Howorth opened the floor to public comments.

Loralee Ogden commented that she thinks the correct path is somewhere between Mr. Neumann and what RREEF is proposing.

Mark Creegdon, from the Oak Avenue group, commented he likes the village-like atmosphere, and does not want an overbuilt Mall.

Marvin Sintan, local commuter, is in favor of redevelopment of the Mall. He stated that he feels it is a great location for a pedestrian outlet and bike access.

Joanne Gallon spoke in favor of the expansion of the Mall.

Bill Victor stated he does not support parking garages.

Jim O'Callahan, Chamber of Commerce Executive Director, spoke about the Mall being designed in the Master Plan to be a regional draw, and the necessity of parking structures. The longer this is delayed the less likely it will be competitive.

Steve Callenbach supports updating the Mall, but agrees with Mr. Neumann about the traffic analysis.

Patrick McBride spoke about the Sepulveda Bridge, and the combined gridlock due to the bridge and construction at the mall.

Laura Sholtz thinks that Manhattan Beach has a massive problem with the Mall project. She further stated that because of the traffic at The Point she would not shop there and thinks the Manhattan Village has the shops the residents need.

Karol Wahlberg agrees with the previous two speakers, and does not think parking structures are the correct solution.

Viet Ngo asked whether the Council has read the entire EIR and clearly understands the EIR before they make the decision, and alleged violations of the law by the City Council.

Chris Petromedes spoke against the parking structures and thinks the mall needs to focus on the customer experience it will provide, especially looking forward ten years.

Vicki Neumann spoke about the importance of Phase 3.

An unidentified resident spoke about concerns regarding safety at the Mall and the surrounding neighborhoods. The speaker welcomes development, but not too much.

Neil Boyer opposed the Mall expansion due to the issues of bringing congestion, pollution and crime by being a regional draw.

Marie Calmy spoke regarding the conditions imposed on the developers, and that the conditions have been addressed, creating more open, green space. She also thinks some information provided against the parking structures is inaccurate.

Gerry O'Connor spoke in fear of the decision-making process of the Council. He does not think that the conditions imposed on the developers have been addressed adequately, that there is no development agreement and that Council does not have enough information to make a decision tonight.

Diane Wallace spoke to clarify a few issues, concerning the soil under the Village Homes and the Mall.

Seeing no further requests to speak, Mayor Howorth closed the floor to public comment.

At this juncture the appellant was granted a rebuttal.

Cory Briggs alleged issues concerning CEQA noting that it is designed to hold City Council accountable. He noted the need to be frank and "overboard" to make sure that the record is clear in case of future litigation. He urged that City Council focus on the message and not the messenger.

Mr. Neumann spoke about not having a desire to delay the project noting that Macy's has delayed the project. He believed there are flaws in the resolution in that he is not allowed to have banks as tenants and complained that he was shut out during previous meetings. He reiterated that his letters were never responded to by Planning, especially related to zoning issues, but they were responded to in the EIR. He commented on signage and the need to have a mechanism to allocate between the property owners. He added that he wants to be able to control the uses in his building without having to have RREEF sign applications.

Brant Dveirin, Attorney from Lewis, Brisbois, Bisgaard & Smith LLP, spoke regarding the submission of a letter and noted that the conditions set by City Council are different than those of the Planning Commission. He alleged that the City is "spot-zoning" because it is limiting his clients' use of their property pursuant to conditions.

*City Attorney Barrow entered documents into the record and listed same:
All the volumes and appendixes of the EIR including the April assessment of the refinements and modifications.*

All comment letters or responses to comment letters including responses to late

comments.

All the staff reports including the staff reports that were presented to the planning commission

All the attachments to those staff reports.

All the letters we've received including late letters.

In response to Councilmember Burton's request, City Attorney Barrow defined "quasi-judicial hearing" and "de novo hearing" and stated City Council's duties and responsibilities. City Attorney Barrow addressed developer rights, City Council's authority, the EIR documents and certification process, City Council's duties and responsibilities relative to the EIR and findings. Additionally, City Attorney Barrow addressed the conditions of approval and changes to same and conditions affecting the agreement between RREEF and 3500 Sepulveda. City Attorney Barrow noted the inclusion of a statement that the conditions will in no way affect the agreement between RREEF and 3500 Sepulveda as they exist and as of the day of the adoption of the Resolution. He added that the Resolution will not take away any of the 3500 Sepulveda LLC.'s entitlements.

Councilmember Lesser inquired regarding issues needing to be addressed and those the City may wish to address.

Discussion followed regarding the possibility of structuring the next City Council meeting related to this project, differently to allow additional comments and provide ample opportunity for City Council to deliberate.

City Attorney Barrow explained the process and considerations going forward.

Discussion followed regarding closing the Public Hearing and closing public comments and the distinctions and significance between the two.

A motion was made by Mayor Pro Tem Powell, seconded by Councilmember Burton, to continue the Public Hearing until May 20, 2014 at 5:00 PM, at which time the City Council will have an opportunity to ask additional questions and provide additional staff comments as directed and provide responses to comments and issues raised, then City Council will deliberate and make a decision.

Councilmember Burton offered a friendly amendment that the public only be allowed to comment on the draft resolution and conditions.

The motion with the friendly amendment passed by the following vote:

Aye: 5 - Howorth, Powell, Burton, D'Errico and Lesser

G. OTHER COUNCIL BUSINESS, COMMITTEE AND TRAVEL REPORTS, FUTURE DISCUSSION ITEMS

Councilmember Lesser reported that he attended the Chamber of Commerce Business Leader's Summit.

Mayor Pro Tem Powell stated he always makes his decisions based on what is best for the community.

Councilmember D'Errico reported he was also present for part of the Chamber's Business meeting, along with Councilmember Burton.

H. ADJOURNMENT

At 12:20 AM, the April 29, 2014, City Council Adjourned Regular Meeting was adjourned to the 8:00 AM, City Council Adjourned Regular Meeting (Closed Session) on Saturday May 3, 2014, in the Management Services Department/ City Manager's Conference Room in said City.

Vida Barone
Recording Secretary

Amy Thomas Howorth
Mayor

ATTEST:

Liza Tamura
City Clerk