COUNCIL AGENDA: 6-29-04
ITEM: 4.4

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Stephen M. Haase
Katy Allen

SUBJECT: SEE BELOW

DATE: June 29, 2004

Approved

Date

COUNCIL DISTRICT: 3
SNI AREA: 13th Street

A. PUBLIC HEARING ON APPEAL OF THE PLANNING COMMISSION'S CERTIFICATION OF A FINAL RECIRCULATED SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT (EIR) FOR THE CIVIC PLAZA STRUCTURE, A THREE BAY STRUCTURE ON A 1.22 ACRE SITE, WHICH WOULD CONTAIN BETWEEN 1,128 AND 1,250 PARKING SPACES AND UP TO 7,660 SQUARE FEET OF GROUND FLOOR COMMERCIAL USES LOCATED BETWEEN NORTH FOURTH AND NORTH FIFTH STREETS APPROXIMATELY 225 FEET NORTH OF EAST SANTA CLARA STREET.

B. ADOPTION OF A RESOLUTION RESCINDING RESOLUTION NO. 71742 AND APPROVING THE CIVIC CENTER GARAGE PROJECT TO CONFORM TO THE LOCATION STUDIED IN THE FRSEIR, AND DIRECTING STAFF TO IMPLEMENT MITIGATION MEASURES IDENTIFIED AND DESCRIBED IN THE FRSEIR, AND TO PROCEED WITH THE DESIGN DOCUMENTS.

RECOMMENDATION

The Director of Planning, Building and Code Enforcement recommends the City Council adopt a resolution to certify:

1. The City Council has read and considered the Final Supplemental EIR;
2. The Final SEIR has been completed in compliance with the California Environmental Quality Act (CEQA); and

3. The Final SEIR reflects the independent judgement and analysis of the City of San Jose.

The Director of Public Works recommends the City Council adopt a resolution

1. Rescinding Resolution No. 71742 and approving the Civic Center Garage Project to conform to the location studied in the FRSEIR;
2. Directing staff to implement mitigation measures identified and described in the FRSEIR; and to proceed with the design documents.

BACKGROUND

On September 9, 2003, The City Council approved by adopting Resolution No. 71742 the construction of the Civic Plaza Parking Garage project. The underlying CEQA clearance for that approval was later the subject of litigation by Preservation Action Council of San Jose (PACSJ) challenging the CEQA analysis performed by the City for the garage. As a result of the litigation, a portion of the City's analysis contained in the Final Supplemental EIR for the project was found to be inadequate. Resolution No. 71742 approving the garage was based on that partially invalidated CEQA action. Since that action, the City has completed additional CEQA review for the garage project. Item a. of this action addresses the new CEQA review that revisits those portions of the City's environmental review that the Court felt was inadequate. Item b. of this action is for the City Council to formally rescind the previous resolution approving the garage location and to reconsider for approval the garage at the same site.

On June 23, 2004, the Planning Commission held a public hearing on certification of the Civic Plaza Parking Garage Recirculated Supplemental Environmental Impact Report (RSEIR). After public testimony and discussion, the Planning Commission voted (7-0), to certify the Final SEIR, as recommended in the attached staff report to the Planning Commission from Stephen M. Haase dated June 17, 2004. On June 28, 2004, the Department of Planning, Building and Code Enforcement received a written appeal of the Commission's certification from the Preservation Action Council of San Jose.

San Jose Municipal Code (SJMC) Chapter 21.07 requires the Director of Planning, Building and Code Enforcement to schedule a noticed public hearing on a timely appeal of the Commission's certification of the Final RSEIR before the City Council. The certification appeal hearing of the City Council must be de novo. The City Council may hear the appeal of the certification concurrently with the project. Upon conclusion of the certification appeal hearing, the City Council may find that the Final RSEIR has been completed in compliance with the requirements of CEQA. If the City Council makes such finding, it shall uphold the Commission's certification of the Final RSEIR and it may then immediately act on the project associated with the Final RSEIR. If the City Council finds that the Final RSEIR has not completed in compliance with CEQA, the

Council must require the Final RSEIR to be revised and it may not take any action on the project. All decisions of the City Council are final.

ANALYSIS

The attached letter dated June 25, 2004 from Alex Marthews, Executive Director, Preservation Action Council of San Jose (PACSJ), constitutes a formal appeal of the Planning Commission's certification on June 23, 2004 of the Civic Plaza Parking Garage Recirculated Supplemental EIR. The primary grounds for the appeal are (1) that staff incorrectly advised the Commission during the meeting regarding the concerns PACSJ was raising on the feasibility of alternatives not proposed by the project; and (2) the EIR failed to clearly label the project site as inferior to Site G when both environmental impacts and feasibility are considered. The appellant asks the City Council to overturn the decision of the Planning Commission to certify the Recirculated Supplemental EIR and direct that the RSEIR be revised before action is taken on the project. The City of San Jose's responses are discussed below under subheadings that correspond to the primary grounds for the appeal. (Revise discussion below as needed responding to new appeal)

I. The Planning Commission was inadequately advised by staff on concerns by PACSJ that the FRSEIR complied with the substantive provisions of CEQA.

The appellant states "… such feasible alternatives and mitigation measures do exist that are not adopted, a fact that makes the FRSEIR inadequate. The Planning Commission must, as a part of their certification of the project, make the statement that the project complies with CEQA." The appellant cites Public Resource Code Section 21002 in his letter that states that public agencies should not approve projects where feasible alternatives and mitigation measures.

Staff stated at the meeting that the role of the Planning Commission was to consider the FRSEIR for adequacy under CEQA including the review of adequate alternatives and mitigation measures. Staff also stated that the Planning Commission had no role in the decision of the location or design of the parking garage. The decisions for the parking garage was solely that of the City Council, and that the City Council would utilize the analysis contained in the FRSEIR of alternatives and potential mitigation measures in their deliberations on the approval of the parking garage.

The appellant further states that the Planning Commission should have discussed the alternatives as to their feasibility and if mitigation measures were not included in the project that were feasible. As noted above, both the staff and the Planning Commission recognized the role of the Planning Commission in the review and certification of the FRSEIR and that only the City Council could determine if specific project alternatives and mitigation measures would in fact be feasible based on the priorities and realities faced by the City Council in considering and approving the garage.

II. The EIR Failed to identify that the project site was inferior to Site G when one considered both environmental impacts and feasibility.

The appellant cites three arguments of staff why Site G was infeasible for the garage and challenges each of the three arguments. The three arguments were Site G is planned for a public use such as a theatre, Site G is more appropriate for a transit supporting use, and that Site G requires extra design consideration due its proximity to City Hall. The appellant's challenges for each argument are presented below with a staff response.

Site G is planned for a public use such as a theatre
The appellant states that the discussions on the uses of Site G "…are at best embryonic, and where the DRSEIR itself admits to some doubt over whether a new performing arts center will be built…". The uses discussed for this high profile site across East Santa Clara Street City Hall complex have centered on public uses to leverage the public investment in the new City Hall and revitalization efforts in the area. Other uses certainly are possible for Site G. The responses by staff on Site G acknowledge that other uses on Site G should maximize the benefit of the Site G attributes of existing and planned transit infrastructure on East Santa Clara Street, and adjacency to the Richard Meier designed City Hall.

Site G is more appropriate for a transit supporting use
The appellant notes that Site G and Site A are both near the East Santa Clara Street transit oriented development corridor. The appellant states that the difference between Site G and Site A for being transit supportive are "… at best a marginal judgment call...". Staff disagrees strenuously that locating a 70 foot tall parking garage on the corner of East Santa Clara Street and North 4th Street is substantially less transit supportive that locating that same garage mid block where auto circulation would be less disruptive to pedestrian activity on sidewalks on the transit oriented development corridor. The corner of East Santa Clara Street and North 4th Street with the construction of the BART project and the City hall Station is poised to be one of the major intersections in Downtown. In such a prime location, the choice of use, and placement of structures is a critical urban design decision. A proper choice will positively support usage of BART and other public transit choices and reinforce the pedestrian corridor planned for East Santa Clara Street. To locate a parking garage, even with ground level retail on such a prime location, will not allow as many potential transit riders to be located in as close proximity to the station, and will create a potential dead zone for pedestrians walking to the City Hall BART Station.

Site G requires extra design consideration due its proximity to City Hall
The appellant states that neither Site A nor Site G complies fully with City policies, and that the design issues identified by staff for Site G are offset by impacts to the Fox Building for Site A. The appellant further argues that the Site G upgrades proposed by staff for a approximately 70 foot tall garage are only relevant if the City were compelled to make the upgrades rather than it only being a reasonable action to take. Staff disagrees

that the quality of a garage on Site G is not a compelling issue as the appellant states. One major reason for the investment in the City Hall complex under construction at East Santa Clara Street and North 4th Streets is to provide a redevelopment investment to the eastern edge of Downtown and spur private investments. The quality of design for each of the public pieces of the overall project has been paramount. Private development in the area is also being reviewed based on proximity to the City Hall complex to ensure that the highest quality design is incorporated into each project.

The FRSEIR considered the modifications to the proposed garage that would be required if the garage was to be located on Site G. As noted in the FRSEIR, major redesign would be required to provide an appropriate façade for the East Santa Clara Street and North 4th and 5th Street frontages. The architectural treatments proposed for North 4th and 5th Streets for the mid block location provides a limited level of street activity due to the location away from the City Hall complex and on lower level pedestrian activity streets.

IV. Recirculation of FRSEIR

As a general rule, EIRs are circulated once for public review and comment. If "significant new information" is added to the EIR after the close of the public review period on the Draft EIR but before certification of the Final EIR, the Lead Agency must provide a second public review period and recirculate the Draft SEIR for comments. Under CEQA Guidelines 15088(b), recirculation is required when new significant information identifies:

(1) a new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented;
(2) a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance;
(3) a feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it; or
(4) the Draft EIR was so fundamentally inadequate and conclusory in nature that meaningful public review and comment were precluded.

Recirculation of a Draft SEIR is not required where the new information merely clarifies, amplifies, or makes minor modification to an adequate Draft SEIR. The written appeal of the Planning Commission's certification of the Final SREIR does not require recirculation based on the above criteria. All information in the appellant's letter, which has been added to the Final SREIR, merely reiterates previous public comments that the City responded to in the Final SEIR. The appellant's comments do not raise any "significant new information" which was not addressed in the discussion and analysis in the Final SEIR. Therefore, the City Council may certify the Final SREIR and take action on the project.

PUBLIC OUTREACH

Public outreach was conducted for the Final SREIR as described in the attached staff report to the Planning Commission from Stephen M. Haase dated June 17, 2004.

COORDINATION

Preparation of this memo was coordinated with the City Attorney's office.

CEQA

Resolution to be adopted.

STEPHEN M. HAASE AICP, DIRECTOR
Planning, Building and Code Enforcement

KATY ALLEN, DIRECTOR
Public Works

SMH:JH

Attachments
Appeal Letter

C: Appellant
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