

APPROVED MINUTES*
SUNNYVALE CITY COUNCIL MEETING
TUESDAY, AUGUST 26, 2008

(Redevelopment Agency meeting convened immediately following City Council meeting. The Onizuka Local Redevelopment Authority meeting convened directly after the Redevelopment Agency Meeting.)

Pursuant to Government Code Section 54953, Subdivision (b), the following 7 p.m. Council meeting included teleconference participation by Councilmember Otto Lee from the Sheraton Denver Hotel, 1550 Court Place, Denver, Colorado 80202. The Notice and Agenda were posted at the teleconference location; public comment from such address was allowed.

5 P.M. SPECIAL COUNCIL MEETING (Closed Session) - Conference with Labor Negotiator pursuant to Government Code Section 54987.6; Negotiator: Erwin Young, Director of Human Resources; Employee Organizations: Sunnyvale Employees Association (SEA), and Service Employees International Union (SEIU) Local 715 (part-time employees)

6 P.M. SPECIAL COUNCIL MEETING (Study Session) - A More Aggressive Approach to Code Enforcement

7 P.M. COUNCIL MEETING

SALUTE TO THE FLAG

Mayor Spitaleri led the salute to the flag.

ROLL CALL (voice roll call)

City Clerk Gail Borkowski announced that roll call and voting this evening will be conducted by voice vote, and called in random order due to Authority Member Lee teleconferencing into the meeting.

PRESENT:

Mayor Anthony Spitaleri
Vice Mayor Melinda Hamilton
Councilmember John Howe
Councilmember Otto Lee (via teleconference)
Councilmember Ron Swegles
Councilmember Christopher Moylan
Councilmember David Whittum

ABSENT:

None

STAFF PRESENT:

City Manager Amy Chan
Assistant City Manager Robert Walker
City Attorney David Kahn
Director of Community Development Hanson Hom
Director of Finance Mary Bradley
Associate Planner Ryan Kuchenig
Planning Officer Trudi Ryan
Finance Manager – Treasury Therese Balbo

Approved by Council as amended on September 30, 2008

Senior Management Analyst Pete Gonda
Director of Public Safety Don Johnson
Finance Manager – Budget Grace Leung
City Clerk Gail Borkowski

SPECIAL ORDER OF THE DAY

National Purchasing Institute Annual Achievement of Excellence in Procurement Award for 2008

CLOSED SESSION REPORTS

Vice Mayor Hamilton reported Council met in Closed Session on August 25, 2008 pertaining to: Closed Session pursuant to Government Code Section 54957 – Public Employee Appointment.
Title: City Manager

Vice Mayor Hamilton reported Council conducted the second round of interviews, deliberated, and adjourned to August 26, 2008 at 4 p.m.

Vice Mayor Hamilton reported Council met in Closed Session earlier this evening pertaining to Conference with Labor Negotiator pursuant to Government Code Section 54987.6; Negotiator: Erwin Young, Director of Human Resources; Employee Organizations: Sunnyvale Employees Association (SEA), and Service Employees International Union (SEIU) Local 715 (part-time employees)

Vice Mayor Hamilton reported direction was given, but no action was taken.

PUBLIC ANNOUNCEMENTS

Barbara Fukumoto announced an upcoming West Coast Green Festival in San Jose.

Councilmember Howe stated he would like to sponsor a study issue regarding equitable garbage rates for townhomes, condos, mobile home parks and single family homes based on efficiencies similar to the special rate that mobile home parks receive. Councilmember Howe identified that currently only one Councilmember is needed to sponsor a study issue.

Councilmember Swegles spoke of the *Music in the Streets* event series.

CONSENT CALENDAR

Mayor Spitaleri identified that a member of the public requested to pull Item 1.D.

MOTION: Vice Mayor Hamilton moved and Councilmember Howe seconded to approve the Consent Calendar with the exception of Item 1.D.

VOICE VOTE: 7-0 (Councilmember Lee teleconferencing)

1.A. Approval of Draft Minutes of July 24, 2008

1.B. Approval of Information/Action Items – Council Directions to Staff

Fiscal Items

1.C. RTC 08–254 List of Claims and Bills Approved for Payment by the City Manager – List No. 415

Staff Recommendation: Council reviews the attached lists of bills.

1.D. RTC 08–256 Investment and Cash Management Policy Update for Fiscal Year 2008/2009

Mayor Spitaleri announced that this item was pulled by a member of the public, Tap Merrick.

Public comments opened at 7:13 p.m.

Tap Merrick identified items in the staff report that he would like changed and/or corrected.

Merrick explained that Government Sponsored Enterprise (GSE) bonds are not the same as government guaranteed bonds.

Public comments closed at 7:16 p.m.

Councilmember Whittum asked staff to comment on the speakers request to add a requirement that the City's investment committee have financial qualifications. Director of Finance Mary Bradley explained that the intent of the committee is for general City oversight.

Councilmember Whittum verified with Director Bradley that staff consulted with an independent financial advisor who reviewed the City's investment portfolio and the firm's conclusion was that the City should limit investments in GSE's to somewhere between 15 and 30 percent. Director Bradley explained that bonds are quite stable as measured by the market rate compared to the Treasury's.

Councilmember Whittum verified with Director Bradley that the City's investment and cash management policy allows for 30 percent investment in federal agencies and 30 percent in government sponsored enterprises of any single user. Director Bradley stated the City has 53 percent of its portfolio in all agencies and the market value of them is above par value.

Councilmember Whittum verified with Director Bradley that staff will research whether the National Association of Securities Dealers (NASD) has been replaced as the speaker mentioned. Director Bradley stated corrections will be made to the report if staff finds that NASD was replaced.

Councilmember Whittum verified with Director Bradley that the City's investment policy

requires that financial dealers and institutions must be headquartered in California; however, that does limit the pool of financial dealers available to the City. The reasoning behind this requirement is that California firms are typically more knowledgeable about California law.

MOTION: Vice Mayor Hamilton moved and Councilmember Swegles seconded to approve staff recommendation: Council adopts Investment Policy for FY 2008/09 as presented

with additional direction that staff will confirm whether the National Association of Securities Dealers (NASD) certification is still the correct name or agency referenced on page 3, item 3.b.

VOICE VOTE: 7-0 (Councilmember Lee teleconferencing)

1.E. RTC 08-243 Notice of Intent to Apply for, Accept, and Appropriate a Grant from the Office of Traffic Safety in the Amount of \$42,700 for Seat Belt Enforcement and Approval of Budget Modification No. 4.

Staff Recommendation:

- Council authorizes staff to apply for the Office of Traffic Safety Next Generation-Click it or Ticket Mini-Grant for overtime costs for special enforcement during program, November 2008 – September 2009, and
- Council authorizes acceptance of the grant, if awarded, approval of Budget Modification No. 4, and appropriation of the monies to a new project to fund the associated overtime expenses.

1.F. RTC 08-241 Notice of Intent to Apply for, Accept, and Appropriate a Grant from the Office of Traffic Safety in the Amount of \$18,500 for Sobriety Checkpoints and Budget Modification No. 5

Staff Recommendation:

- Council authorizes staff to apply for the Office of Traffic Safety Sobriety Checkpoint mini-grant monies, and
- Council authorizes acceptance of the grant, if awarded, approval of Budget Modification No. 5, and appropriation of the monies to a new project to fund the associated overtime expenses.

Other Items

1.G. RTC 08-242 Approval of Final Map (Tract No. 10007, Sunnyvale Town Center) – A Two-Lot Subdivision for Condominium Purpose by Target Corporation and Downtown Sunnyvale Mixed Use, LLC

Staff Recommendation:

- Council approves final map for Tract No. 10007, and Council authorizes the City Clerk to sign the City Clerk's Statement accepting any public street and easement dedication on the map, to sign the Certificate of Abandonment and forward the final map for recordation upon: developer's signature and submittal of other documents deemed necessary by the Director of Public Works.

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

None.

PUBLIC COMMENTS

None.

PUBLIC HEARINGS/GENERAL BUSINESS

2. RTC 08-255 2007-0346 Extension of Sustainable Building Requirements Beyond Moffett Park (Study Issue)

Associate Planner Ryan Kuchenig presented the staff report.

(Video tape briefly stopped recording).

Vice Mayor Hamilton verified with Planning Officer Trudi Ryan that incentives are meant to assist with introducing the new requirements.

Vice Mayor Hamilton stated it seems that there is enough awareness in the community about green building practices and it does not seem that incentives are needed. Planning Officer Ryan stated that many companies are using green practices in their marketing; however, they are not necessarily at the levels that staff is recommending.

Councilmember Swegles explained that standards continually change and spoke about the fine line between encouraging green building and making a project too cost-prohibitive to build. Director Hom responded that it is difficult to recommend a certain standard because everything is evolving; therefore, whatever Council adopts should be revisited on a regular basis in regard to what new technology is available and whether there are any issues with some of the requirements.

Planning Officer Ryan explained that the City participates with the regional efforts in coordination with other municipalities. Collaboratively the standards are reviewed and the group works together to identify when the standards change and to provide uniformity between the communities within the standards that are being used, which is helpful to homeowners and developers.

Councilmember Whittum inquired as to whether the proposed building standards incorporate proximity to transit. Planning Officer Ryan responded that the Leadership in Energy and Environmental Design (LEED) program awards points for proximity to public transit.

Councilmember Whittum verified with Planning Officer Ryan that flexible parking standards could mean fewer parking spaces, a different percentage of compact spaces, the reservation of a number of spaces previously not allowed, or it may reduce the number of parking spaces because they would be timed and managed in a different manner.

Councilmember Whittum verified with Planning Officer Ryan that staff is recommending phasing in the program so that as each year progresses the standard is raised.

Councilmember Whittum and Director Hom discussed the effects of the Global Warming Solutions Act (AB 32). Councilmember Whittum verified with Director Hom that over time the state code will incorporate more AB 32 standards as mandatory requirements.

City Manager Amy Chan explained that this report reflects some leadership issues such as the level to set the LEED requirements. Staff's recommendation took into account that policy direction is needed from Council on this item.

Councilmember Moylan verified with Planning Officer Ryan that staff would look at the levels being recommended Citywide and incorporate those same levels into the Moffett Park framework. Should Council decide not to incorporate the same levels in the Moffett Park area then the area would have a lower standard than the rest of City, and Council may choose to encourage incentives in the Class A development area. Planning Officer Ryan explained that a general Citywide ordinance would not address Moffett Park and that is why staff is suggesting an amendment to the specific plan for this area.

Councilmember Moylan verified with Planning Officer Ryan that it is conceivable that the result of staff's work could result in the Moffett Park specific plan staying as it is; however, should staff find a disconnect between Moffett Park and the rest of the City, Council may want to address that issue.

Councilmember Moylan stated if Council approves these requirements, in the future staff may return to Council with a recommendation to increase the standards for Moffett Park; however, currently staff is looking into this for consistency. Director Hom clarified that Council may provide direction to implement the building requirements Citywide including Moffett Park or decide not to change the requirements for Moffett Park. Should Council wish to impose that the requirements also include Moffett Park then staff would need to return to Council with a specific plan and ordinance requirements in order to implement that option. Director Hom explained that staff is recommending implementing higher level requirements uniformly for all projects in the City, regardless of whether they are in Moffett Park or not.

Public hearing opened at 7:55 p.m.

Jim Griffith, member of Cool Cities, spoke in favor of sustainable building requirements within the City. Griffith stated he would like Council to consider the long-term effects and benefits of a sustainable building requirement policy. Griffith stated greater consideration should be given to the more difficult requirements, because the benefits will be long term and can offer substantial savings in the future. Griffith stated Council should also consider that these building requirements will be mandatory in the near future; therefore, Council should be cautious in hiring staff for something that within a few years will become normal practice for builders. Griffith stated he opposes modifying zoning standards for setbacks, heights, and signage. Griffith stated he is concerned over adopting educational requirements, because the City would be duplicating educational efforts that are already currently available.

Councilmember Moylan stated the staff report made a good point in identifying that there is a limited amount of incentives that can be provided for residential developments.

Griffith stated he agrees with Vice Mayor Hamilton in questioning the need for incentives as a necessity, because they are likely to create a situation in which a large amount of an existing home was built one way, and a smaller percentage, possibly an addition, was built using green standards.

Barbara Fukumoto spoke about the benefits of green building practices. Fukumoto requested Council consider her suggestions which entail including extensive residential remodels in the policy; deleting residential incentives, and shortening the phase and time tables to 12 months.

Gary Bailey, vice chair of local chapter of the Sierra Club, stated he agreed with the previous speaker, Fukumoto. Bailey encouraged Council to adopt the proposed standards in a timely manner.

Public hearing closed at 8:04 p.m.

MOTION: Councilmember Moylan moved and Councilmember Howe seconded to approve Alternative 1: Council approves developing a framework for sustainability that includes several elements, as amended by staff and the Planning Commission, with all the alternatives as listed on pages 23-25 of the staff report **with** add in the incentive 1.A.-9 from page 22: Require LEED or BIG certification for projects that take advantage of the modified zoning standards.

Vice Mayor Hamilton stated she opposed the motion.

Councilmember Moylan stated five years ago Council took a risk to require that companies in the Moffett Park Specific Plan wanting more floor area ratio (FAR) would need to incorporate green practices. Passage of this requirement was extremely controversial at the time, but it did pay off and it is part of the reason why this study issue was originally proposed. Councilmember Moylan stated the reason an incentive is needed is because it is at least one to two percent more expensive to build a green project and a high level of certification would increase the expense even more. The higher the level of green building, the longer it will take to be financially justified. Most residents are not adopting green practices necessarily to save money rather residents install energy efficient systems for reasons such as becoming immune to rolling blackouts. Councilmember Moylan stated incentives will be needed until such time that it becomes inexpensive to build a green project, and that will not happen anytime soon. Councilmember Moylan stated he agreed with the option of leaving Moffett Park where it is, depending on the work plan. Councilmember Moylan stated he supports including 50 percent residential remodels in the policy and verified with staff that he will need to add that item formally to his motion.

Vice Mayor Hamilton stated the incentives offered at Moffett Park five years ago are no longer needed as they have hit their tipping point, and no incentives are needed on the commercial side. Vice Mayor Hamilton stated for residential, financial tools, such as a low

cost loan, are more valuable than incentives. Vice Mayor Hamilton stated her biggest concern under the proposed incentive plan is that residential or commercial properties with proposals for huge floor area ratios (FAR) would be allowed. Vice Mayor Hamilton stated that a problem arises when a larger home is built and then subsequent developers or homeowners request the same FAR allowance. Vice Mayor Hamilton stated that if Council is concerned about paving over all the bare land in the City, then they need to consider smaller lot coverage for projects.

Vice Mayor Hamilton offered a friendly amendment to approve Alternative 1 without items 1.a., i and 1.a., ii. Vice Mayor Hamilton stated without that amendment, she cannot support the motion.

Councilmember Moylan was silent regarding the friendly amendment offered by Vice Mayor Hamilton.

Councilmember Howe accepted the friendly amendment.

Councilmember Howe inquired when this report will come back to Council with meaningful data as to whether the incentives are working or not, and Planning Officer Ryan stated within three years some data would be available. Director Hom stated Council's endorsement of higher LEED standards would require a decision soon as the implementation date is January 1, 2009.

Councilmember Howe offered a friendly amendment to have staff return to Council for review within three years from the effective date of the ordinance.

Friendly amendment accepted by Councilmember Moylan and Councilmember Howe.

Councilmember Swegles stated he heard Councilmember Howe, as the second to the motion, accept modifications and he would like to be clear that the modifications accepted were made by Councilmember Howe and not the Vice Mayor. Councilmember Swegles stated that he heard Councilmember Howe accept a friendly amendment from the Vice Mayor, as the second. Councilmember Moylan stated that Councilmember Howe approved his own friendly amendment.

Councilmember Swegles stated he will support the motion and asked that staff continue to review any changes in the LEED standards. Councilmember Swegles asked staff to return to Council right away should any issues arise, even if something occurs before the designated three years that staff has been asked to return to Council.

Councilmember Whittum verified with Planning Officer Ryan that LEED standards will be required for new or remodeled properties between 5,000 and 50,000 square feet; however, an incentive will be offered to obtain a higher LEED standard.

Councilmember Whittum stated he does support much of what is included in the framework; however, he opposes the motion because it is not financially sustainable. Councilmember Whittum stated the economic impact is more complex than just an FAR incentive. Councilmember Whittum stated he does not see the direct benefit to the public of imposing requirements, especially if residents cannot afford it, and business owners do not need the City's financial advice.

Mayor Spitaleri inquired whether Councilmember Moylan added in residential housing issues to his motion and Councilmember Moylan verified that he added to his motion that the LEED standards will be required for new residential construction or remodels which are 50 percent or more of the original space. Mayor Spitaleri verified financial assistance will be available to homeowners to assist with financing these items. Councilmember Moylan explained that during a remodel, if the home already had items in the home that would meet the LEED standards, such as double pane windows, then credit would be given for those items toward the finished project.

Mayor Spitaleri verified with Planning Officer Ryan that Council will have an opportunity to review the provisions as they are prepared in an ordinance and will have an opportunity to modify those provisions.

Restated MOTION: Councilmember Moylan moved and Councilmember Howe seconded to approve Alternative 1: Council approves developing a framework for sustainability that includes several elements, as amended by staff and the Planning Commission, with alternatives as listed on pages 23-25 of the staff report.

with

- Add in the incentive 1.A.-9 from page 22: Require LEED or BIG certification for projects that take advantage of the modified zoning standards.
- LEED standards will be required for new residential construction or remodels which are 50 percent or more of the original space.
- Council directs staff to return within three years of the effective date of the ordinance for review of the data regarding the effectiveness of the incentives.

VOICE VOTE: 5-2 (Vice Mayor Hamilton and Councilmember Whittum dissented and Councilmember Lee teleconferencing)

3. **RTC 08-239** **2008-0183: Appeal by the applicant of an application for related proposals located at 795 Nisqually Drive (near Lewiston Drive) in an R-1 (Low Density Residential) Zoning District. Use Permit to allow two accessory utility buildings to be located between the face of the house and public street; Variance to allow side yard setbacks of 1' and zero lot line where 6' minimum is required.**

Planning Officer Trudi Ryan presented the staff report.

Mayor Spitaleri inquired whether the appellant is requesting a temporary permit and Planning Officer Ryan stated the appellant is asking to have a permit issued for essentially five years. Planning Officer Ryan stated she would only need the permit until the trees were of sufficient height and estimated it would take about five years. Mayor Spitaleri stated he was under the impression that the appellant would take the shelters down after five years and Planning Officer Ryan stated that amount of time for the permit evolved as the application proceeded.

Councilmember Whittum inquired whether findings made for a variance can consult the conditions of a use permit or do the findings have to stand alone. Planning Officer Ryan explained there are two sets of findings that would need to be met in order to approve this

project, which consists of three variance findings and one use permit finding. For the use permit there are two findings; however only one of them has to be met in order to approve the use permit.

Public hearing opened at 8:28 p.m.

Bernice Petersen, appellant, provided an explanation on the background of the landscaping in her yard. Petersen explained that a few months ago, she needed to remove a tree on her property because it had become a nuisance. The tree had been providing necessary shade for Petersen's two 35 year old flowering plants and without the tree; the plants are not surviving very well. Petersen stated she is requesting that the City allow her to have two small shelters in order to protect her two plants, which are now exposed. Petersen asked that the shelters remain until the new tree grows tall enough to be able to offer shade to the two exposed plants. Petersen also spoke about issues with her next door neighbor.

Vice Mayor Hamilton verified with Petersen that she would need the temporary shelter for five years maximum as the new tree is rapidly growing and it should be able to provide the needed shade within that time. Petersen stated she would remove the structures as soon as possible and the structures would not be seen by anyone walking by or the neighbors.

Councilmember Howe verified with Petersen that the new tree was planted directly after the old tree was removed last year.

Kevin Robins, neighbor to Petersen, stated there are two shade structures under discussion, one that was built several years ago which is located along the front of the house, and another 10 foot structure on their mutual property lines. Robins stated the structure is oversized for the area and expressed his reasons for not wanting the structure within his sight line.

Kathryn Axtell, neighbor of Petersen, stated Petersen's yard is esthetically beautiful and she does not question that whatever Petersen were to add to the yard, in the form of a shade structure, would be in the same good taste. Axtell stated she likes both neighbors; however, felt she needed to share her opinion.

Mayor Spitaleri inquired as to Axtell's opinion on the proposed structures. Axtell stated they remind her of a wooden arbor, which is much better than placing nylon net over plants to shade them. Axtell questioned whether a compromise could be worked out.

Councilmember Moylan verified with Axtell that she did not notice that the structures stood out as strange or invasive, from her house or the times that she has been in Petersen's yard.

Sig Wolf, neighbor of Petersen, stated that he took a walk and identified 20 shade structures within the neighborhood which are located either to the left or right side of the homes and they are visible from the street frontage. Wolf stated that it appears that other property owners are enjoying similar benefits as those being requested in this appeal. Wolf recommended the appeal be granted with the variance and permit. Wolf stated he does not have a problem with the esthetics of the structure on Petersen's property.

Councilmember Moylan explained that the reason this structure requires a variance is because the structure has been placed up against the edge of the property without the required setback. Councilmember Moylan inquired whether Wolf identified that any of the shade structures he saw in the neighborhood were close to the property lines. Wolf stated some of the structures went up to the fence and property line. Wolf stated staff explained to him that their interpretation of the setback requirement is based on where the posts are located. Wolf stated the structure on Petersen's property is partially obstructed by the landscaping and courtyard fencing.

Petersen stated her neighbor, Robins, has a 10-foot hedge so they are not able to see the structure on her property.

Councilmember Moylan explained that a variance is very hard to get and that all three findings must be met. Councilmember Moylan explained that the second finding of the variance states that the structure must not receive any objections from the neighbors and Councilmember Moylan requested Petersen explain how she could meet that finding. Petersen stated the tree is so tall that it obscures the neighbors view and they can only see one foot of the structure.

Mayor Spitaleri verified that the neighbors have a 10-foot hedge on their property located right next to their fence which borders Petersen's property line.

Councilmember Whittum verified with Petersen that she has two structures and that one has been completed and the other only has the posts in place. Councilmember Whittum inquired as to what would happen if only the completed shade cover were to remain. Petersen explained that the plants are having a hard time and they will not thrive without shade. If the additional shade structure was not built, the one plant that would be left exposed could die, as currently the leaves are pale green.

Mayor Spitaleri verified with Planning Officer Ryan that the shade structures would be considered accessory utility buildings and their size is measured by the roof area, which is different than habitable space. The actual square footage is based on the section across the top of the structure and in this case, that section goes out to the property line.

Mayor Spitaleri closed the public hearing at 9 p.m.

Councilmember Howe inquired whether a tree removal permit was obtained when Petersen's tree was removed. Planning Officer Ryan stated she does not believe that a permit was required, and she is not aware that one was obtained.

Councilmember Swegles verified with Planning Officer Ryan that the proposed height of the shade structure is 10 feet. Councilmember Swegles inquired as to what part of the structure would be seen over a 10 foot hedge and Planning Officer Ryan explained that one structure is eight foot, six inches in height and the other is a 10 foot structure. The hedge on the adjacent property is next to the eight foot structure and the 10 foot structure is obscured by a six foot fence; therefore, a section of the structure is visible above the fence line. Councilmember Swegles inquired as to where the 10-foot hedge was located and Planning

Officer Ryan stated she is not sure of the exact location, but it does not extend for the whole length of the fence. Planning Officer Ryan stated viewing the structure from different angles would provide various views.

Councilmember Moylan explained that this issue originated as a neighborhood preservation complaint and during that time staff must have visited the site. Councilmember Moylan questioned the fact that there appear to be differing opinions on whether you can see the structure and Planning Officer Ryan explained that you can see the structure depending on where you are standing on the adjacent property. Planning Officer Ryan stated it is really hard to say that something is not visible, because that is a qualitative judgment on the part of the viewer.

Councilmember Moylan verified with Planning Officer Ryan that there are other shade structures in the neighborhood, which were likely built without permits, and whether they would require a variance or not, would depend on where they were located on the property.

MOTION: Councilmember Swegles moved and Councilmember Moylan seconded to approve Alternative 1: Council denies the appeal and upholds the decision of the Planning Commission and denies the use permit, and denies the variance.

Councilmember Whittum stated there are two structures in question and offered a friendly amendment to call out the structures differently because the findings could be different for the two structures.

Councilmember Swegles accepted the friendly amendment and agreed that the larger structure would be of more concern.

Councilmember Swegles stated this was a hard decision, but the bottom line is that no new information was presented and finding number two was not met. Councilmember Swegles stated that as hard as it is in this case, Council must follow the regulations however strict they are, because all the findings were not met. Councilmember Swegles suggested a study issue on the findings needed for a variance.

Vice Mayor Hamilton explained how difficult at times it can be to turn down a variance request; however, consistency is needed when making the findings.

Councilmember Moylan stated issuing a variance is deliberately made tough to obtain and it boils down to whether all three findings can be met. Councilmember Moylan stated he can't make any of the three findings and in this case, the neighbor is within their rights.

Councilmember Whittum stated his friendly amendment was accepted and he has identified the eight-foot shade structure, closest to the house, as structure A.

Councilmember Swegles verified with Planning Officer Ryan that a motion could be made for each structure and that each structure would require a use permit and variance.

Councilmember Moylan verified Councilmember Swegles is splitting his motion into two parts.

Councilmember Whittum stated structure B is the larger 10-foot structure and structure A is the smaller 8-foot structure closest to the house and already built.

Restated MOTION: Councilmember Swegles moved and Councilmember Moylan seconded to approve Alternative 1: Council denies the appeal and upholds the decision of the Planning Commission and denies the use permit, and denies the variance, as to the larger 10 foot shade structure (B) only.

Mayor Spitaleri inquired whether the City can send out the City Arborist to suggest ways to preserve and protect the plant. Planning Officer Ryan stated staff has made some suggestions; however the appellatant has not felt comfortable with those suggestions.

Mayor Spitaleri stated he does not believe a trellis is a utility building and he verified with Planning Officer Ryan that staff will be coming back with proposed changes to the code for landscape features.

VOICE VOTE: 7-0 (Councilmember Lee teleconferencing)

MOTION: Councilmember Howe moved and Councilmember Whittum seconded to grant the appeal for the eight-foot shade structure (A) only and approve the use permit and variance.

Vice Mayor Hamilton asked if staff would have made different findings if the structures had been split into two. Planning Officer Ryan stated staff's concern with both structures was in regard to their height and setbacks; however, an option does exist for the decision maker to find something unique about the use, as in this case the garden area as opposed to the property, which suggests that a variance may be needed to protect the use. Planning Officer Ryan stated that most likely staff would have recommended against approval of either structure.

Councilmember Whittum stated he would attempt to make the findings for structure (A). Councilmember Whittum stated the first finding requires exceptional or extraordinary circumstances of which the proximity of the home, with respect to the lot line, is unusual. The second finding can also be made as the structure is not detrimental to the adjoining properties due to the 10-foot hedge on the side and because the structure is screened from the front. Since it is not visible, it is not detrimental to adjoining uses. Councilmember Whittum explained that there are similar shade structure uses throughout the neighborhood and therefore, this item meets finding three as Council would not be granting special privileges to Petersen. Councilmember Whittum explained that one finding would also need to be made for the use permit and identified that the shade screen will not impair the development of, or existing uses of adjacent properties; therefore, the finding has been met.

Councilmember Howe announced that the city manager had to leave the Council meeting due to a family emergency.

Councilmember Moylan explained that there is not any evidence that an existing shade structure and setback have been granted to anyone in the neighborhood; therefore, granting

this structure would be granting a privilege that is not afforded to anyone else and the finding cannot be met. Councilmember Moylan stated he will oppose the motion on that basis alone.

Councilmember Howe verified with Planning Officer Ryan that if this item is approved, all references, under the conditions of approval (Attachment B), should be changed from *two structures* to *one structure* and Council needs to decide if these conditions should be a part of the motion.

Councilmember Howe stated the conditions of approval are part of his motion and he will include the corrections within the conditions to all references of two shade shelters, changing them to one shelter.

Councilmember Whittum stated Council will be granting a temporary use permit for the shade structure under the conditions of approval for not more than five years; therefore, Council will not be granting a permanent privilege of any kind and finding three can be met.

Restated MOTION: Councilmember Howe moved and Councilmember Whittum seconded to grant the appeal for the eight-foot shade structure A only and approve the use permit and variance. Council makes the findings that: 1) this property is unique; 2) the structure is not detrimental to adjoining properties as it is screened and is not visible from those properties; 3) there are similar uses throughout the neighborhood and this is a temporary use for a finite period of time **with** include the recommended conditions of approval as referenced in Attachment B, modifying condition 1.G. and 1.H., to reference *one structure* in place of *two structures* for these conditions.

VOICE VOTE:6-1 (Councilmember Moylan dissented and Councilmember Lee teleconferencing)

Mayor Spitaleri announced the time and asked Council if they wish to continue with the remaining items on the agenda.

Vice Mayor Hamilton stated she would like to move forward with the agenda.

Councilmember Howe stated he would like to see if some items could be moved as Council has additional meetings at the end of the Council meeting. Councilmember Howe requested Item 7 be moved to the October 7, 2008 Council meeting.

Councilmember Moylan stated he would prefer to keep the agenda as it is.

Councilmember Whittum stated he supports Councilmember Howe's request to move Item 7 to October 7, 2008.

MOTION: Councilmember Howe moved and Councilmember Whittum seconded to move Item 7 to October 7, 2008.

Public hearing opened at (time not recorded).

No speakers.

Public hearing closed at (time not recorded).

VOICE VOTE: 6-1 (Councilmember Moylan dissented and Councilmember Lee teleconferencing)

4. **RTC 08–258** **2007-1302: Appeal by the Applicants of the Conditions of Approval Imposed by the Planning Commission in Approving a Design Review to Allow a One- and Two-Story Addition to an existing single-story home. Application located at 1035 Daisy Court (near Smoke Tree Way) in an R-0 (Low Density Residential) Zoning District. (APN: 213-15-002)**

Planning Officer Trudi Ryan presented the staff report and announced that page seven of the staff report, bullet point two, should identify the size of the proposed home as 3,507 and not 3,807 square feet. The size of the proposed home is correctly listed in the rest of the report and in the data tables. The error was on page seven only.

Councilmember Whittum stated the home located on Sequoia (figure 3 of Attachment E) has a higher floor area ratio (FAR) of 58 percent and asked staff if they agree that this home located 860 feet away in the same neighborhood has a 58 percent FAR. Planning Officer Ryan stated she does not know for certain that staff verified that; however it sounds reasonably accurate. Officer Ryan stated it is really a definition of neighborhood and staff was looking at a smaller distance. Councilmember Whittum stated it was the Ponderosa Park neighborhood. Planning Officer Ryan stated neighborhoods can be defined as a square mile or one block.

Councilmember Whittum inquired as to the difference between figure five (applicant's view) and figure six (existing home across the street) on page five of Attachment E because the two homes look fairly similar in terms of their mass and shape, one does not seem more massive than the other. Councilmember Whittum asked staff what they view as the major difference between figure 5 and 6 in terms of mass and Planning Officer Ryan explained the photo in the report looks straight at the home; however, the proposed home extends further back and the side view from adjacent properties, would render it to appear more massive than the other home. Councilmember Whittum verified with Planning Officer Ryan that if a side view was supplied, the difference in mass would be apparent.

Public hearing opened 9:45 p.m.

Colleen Yamada and Steven Schweizer, appellants, stated they have gone through extensive redesign and compromise on their proposed home; however, they have not been able to reach agreement with the City. Yamada stated they disagree with staffs opinion that their home is too large and visually bulky compared with other homes in the neighborhood. Yamada stated that side bulk is not typically visible. Yamada stated they are asking Council to approve their redesigned home, currently at 56.6 percent floor area ratio (FAR). Yamada explained that their home has a higher FAR primarily because of the depth of their home,

which is three feet deeper than typical two-story homes. Yamada stated their home will not be out of scale for the neighborhood and will be obscured by a large tree in the front of the home along with a row of cypress trees that run along the side yard. Yamada stated her neighbors have signed a petition in favor of their remodel. Schweizer explained that they are not asking for any variance and that their design is within all setbacks and guidelines. Schweizer stated he did not feel their project was given proper consideration at the Planning Commission hearing.

Councilmember Swegles inquired whether the appellant had any new information that was not presented to the Planning Commission. Yamada stated the sketch of the side view of the home is a new presentation which was not shown to the Planning Commission. Councilmember Swegles verified with Schweizer that his proposed home would have the largest FAR in the neighborhood court and because of that fact, he and his wife have paid special attention to any concerns from their neighbors. Schweizer stated they received letters of endorsement from their neighbors.

Councilmember Swegles stated the Planning Commission did approve 52 percent FAR and Yamada stated the reality is that after several versions of the remodel, the proposed reduced floor plan is at 56.6 percent FAR. To reduce the plan further to 52 percent FAR would remove two bedrooms from the second story.

Schweizer stated in 2001 their original plan with 57 percent FAR was approved by the Planning Commission; however, they did not proceed with that remodel at the time and in 2007 when they returned to submit their project again, they were denied. Yamada stated that previously the Planning Commission only reviewed FAR's that were over 60 percent; however, since 2001 the FAR that receives Planning Commission review was lowered to 45 percent and along with that it appears that there has been a movement to have smaller home additions and have them be more in line with the 45 percent FAR, rather than 60 percent FAR.

Councilmember Moylan inquired as to what the appellant meant by their project being a unique case. Yamada stated they wanted to do a large addition to their home, which is unique for this neighborhood. Schweizer stated that what occurs in their neighborhood is that when a homeowner wants to have a larger home, they rent out their home and move elsewhere. Schweizer stated there is a large amount of rental homes in the area. Yamada stated the homes are difficult to add on to because the lots are small. Yamada stated that to place an arbitrary number on their home, is a huge detriment to them as homeowners, and does not affect anyone else. Yamada stated if her neighbor had a concern then she would honor that; however, that is not the case.

Councilmember Moylan stated it is not the front elevation only that counts because where the mass is located at the rear of the home will affect the rear neighbors. Yamada stated their home is still within the setback for the back yard. Yamada stated identifying bulk is subjective and she does not agree that the home looks bulky.

Councilmember Moylan explained that the new FAR threshold for planning review came from residents concerned over homeowners dramatically increasing the size of their homes and not from City government. Yamada stated the concerns came from certain

neighborhoods across town, which should not impact her home or neighborhood.

Councilmember Whittum verified that the appellant's proposed second floor is smaller, as a percentage of the first floor, than most homes within the neighborhood; however, the square footage is larger.

Councilmember Whittum inquired about the mass of the side view and the appellant verified that their home sits between a two-story home and a single story home. The mass of the side view will not affect the two-story home and the mass will provide shade for the single story home. The appellant's home is screened by a large cypress tree in front of their home. Yamada stated people driving by cannot see their home.

Vice Mayor Hamilton verified with Planning Officer Ryan that second stories had to be set back and could not have straight sides. Planning Officer Ryan explained that the current regulations require additional setbacks from the front and side, over what would be permitted on the first floor, but they do not require that the second story has to be recessed from the wall plane, rather the set back is measured from the property line. A recent action of the Council approved the development of regulations which will require that the second floor be inset, regardless of the distance from the property line.

Vice Mayor Hamilton verified with the appellants that the proposed home would be flush on the back side of the house and the sides will be inset somewhat. Vice Mayor Hamilton asked how the roof comes to an end at the back of the house and Yamada stated the roof may just end at the back of the house.

Yamada offered closing statements and acknowledged that their proposal is for a larger home, but stated that it is not out of scale for the neighborhood. Yamada stated the City's regulations should address those properties that are grossly out of scale. Yamada stated she is surprised that they have had this difficulty since their project had already been approved seven years ago.

Public hearing closed at 10:11 p.m.

MOTION: Councilmember Whittum moved and Vice Mayor Hamilton seconded to approve Alternative 2: Council grants the appeal and approves the Design Review with modified conditions

with allow a 56.6 percent Floor Area Ratio (FAR) the appellant has proposed.

Councilmember Swegles stated he can not make the finding to grant the variance. Councilmember Swegles stated the Planning Commission did deliberate about the FAR and they did not conclude that it would be appropriate to allow something this large to be in the neighborhood. Councilmember Swegles stated he supports the Planning Commission's recommendation

Councilmember Howe stated he will not support the motion and cited various design review renditions that Council has previously approved. Councilmember Howe cautioned his colleagues to be careful as to what they approve.

Mayor Spitaleri disclosed he met with the appellant a few weeks ago.

Mayor Spitaleri identified that there was not much discussion among the Planning

Commission members as to why they went from 56 to 52 percent FAR. Mayor Spitaleri stated the proposed home fits in the neighborhood and the neighbors are supportive of the proposed design. Council needs to look at the families that want to stay in Sunnyvale but need more room. Mayor Spitaleri stated to deny this appeal would be an injustice to the residents in that neighborhood and offered his support for the motion.

Vice Mayor Hamilton stated she believes this case to be an exception as the home fits the neighborhood; however, she does believe that the Planning Commission did give this item due consideration. Vice Mayor Hamilton stated she has some concerns over the bulk of the home, but identified that there are a number of two-story homes on the court. Vice Mayor Hamilton explained that Council represents the entire City and the 45 percent FAR design review was approved for a reason.

Councilmember Lee stated he lives two blocks from the proposed property; however, he does not own the property so he is entitled to vote on the motion. Councilmember Lee stated he supports the motion because the house is not out of character for the neighborhood and since the neighbors do not object to the project, even though the FAR is high.

Councilmember Howe asked the mayor to explain what he meant by his statement that if Council were not to approve this item it would be an injustice to the community. Mayor Spitaleri responded that his comments were in reference to the neighborhood, not the entire community. Mayor Spitaleri explained that this situation is about a growing family needing space and who are surrounded by two-story homes. Mayor Spitaleri stated Council needs to look at the changing population in the community and identified that the days of moving to a larger home as your family grows, are gone.

Councilmember Whittum stated he supports the City requiring Planning Commission review for additions over 45 percent FAR, because Council is concerned over homes that do not fit into neighborhoods. Councilmember Whittum explained that this project does not involve code deviation or variance, rather it is a design review, and Council has thoroughly reviewed the design and it does fit within the aesthetics of the neighborhood.

Councilmember Swegles confirmed with City Attorney David Kahn that Councilmember Lee is entitled to vote on this item, because he is not the property owner of the home he is living in that is close to this project. Councilmember Swegles stated that 52 percent FAR was larger than he would have liked to see for this project; however, he would have supported a motion for that amount. Councilmember Swegles stated he is not able to support 56 percent FAR and will not be supporting the motion.

Councilmember Moylan noted that the members of Council who are tending to vote against this motion happen to be previous members of the Planning Commission. Councilmember Moylan stated that design reviews are not supposed to be decided through a popularity vote or a poll. What happens to the house will be in place for years to come and any decision should not be based on who is currently living in the home. Councilmember Moylan stated Council should be using some type of criteria to base their opinion. Councilmember Moylan agreed that a design review is subjective; however, the single issue is the FAR and the fact remains that the Planning Commission voted 7-0 against this proposal.

He noted the last time Council over ruled a 7-0 Planning Commission recommendation was the BestBuy/PetSmart project and several councilmembers have since admitted their action was a mistake. Councilmember Moylan stated he agreed with Councilmember Swegles in that no new information was presented. Councilmember Moylan stated if Councilmembers believe the project fits in the neighborhood, that is a valid reason to approve the design review, however, stating that there are other two-story homes in the neighborhood and that the neighbors like the design is not a valid reason to approve this project. There is no such thing as a two-story character to a neighborhood.

Councilmember Whittum stated that his motion includes the removal of the first bullet point of Item 3.A. under the Recommended Conditions of Approval, Attachment B, page 1 of 2, of the staff report.

Restated MOTION: Councilmember Whittum moved and Vice Mayor Hamilton seconded to approve Alternative 2: Council grants the appeal and approves the Design Review with modified conditions

with

- Council approves a 56.6 percent Floor Area Ratio (FAR) as the appellant has proposed;
- Council directs staff to remove the first bullet point of item 3.A. under the Recommended Conditions of Approval, Attachment B, page 1 of 2, of the staff report. Remove as listed and with ~~strikeout: Reduce Floor Area Ratio below 52% with the majority of the reduction to be from the sides of the second floor (as modified by the Planning Commission).~~

VOICE VOTE: 4-3 (Councilmembers Swegles, Howe and Moylan dissented and Councilmember Lee teleconferencing)

Mayor Spitaleri called for five minute recess.

Mayor Spitaleri reconvened the Council meeting at 10:40 p.m.

5. RTC 08-261 Expenditure of Public Funds for Bottled Water (Study Issue)

Senior Management Analyst Pete Gonda presented the staff report.

Councilmember Moylan inquired whether Public Safety Officers could carry their own water bottles and refill them with tap water. Director of Public Safety Don Johnson stated that there is a reason to have bottled water at some training sites, such as locations where potable water is not available.

Vice Mayor Hamilton verified that under the staff recommendation, bottled water would not be served at Council meetings or Council dinners, instead a pitcher of tap water would be supplied.

Councilmember Swegles inquired whether a pitcher of water with paper cups would be used at trainings, dinners and for the Senior lunch program. Assistant City Manager Robert Walker responded that Attachment B explains what staff is recommending for exceptions as to when bottled water would be allowed; however, in most cases, it will be reasonable and practical to use a pitcher of water as Councilmember Swegles suggested.

Public hearing opened at 10:50 p.m.

Jim Griffith offered his support for Alternative 2 in which the city manager will have discretion in approving bottled water only when no reasonable alternative exists.

Public hearing closed at 10:52 p.m.

MOTION: Councilmember Lee moved and Councilmember Swegles seconded to approve Alternative 2: Council adopts Council policy to restrict or further limit the current purchase of bottled water for City-sponsored events and functions, public meetings, and/or department operations such as recruitment panels, recognition lunches and training sessions, with any necessary exemptions to comply with Cal-OSHA requirements and to allow for the purchase of single-serving bottled water for public safety emergencies, offsite training and recreation and sports programs for children and youth as necessary. This alternative also includes intent language such that the policy does not preclude employee use of privately-funded water clubs and private purchase of bottled water using private funds. This alternative further includes policy language allowing the purchase of bottled water where no reasonable alternative exists, as deemed necessary by the city manager.

Councilmember Lee thanked staff for the comprehensive report. Councilmember Lee stated he does not believe the City uses that much bottled water, but it is important that the City show leadership in limiting the use of bottled water as much as practical.

Councilmember Moylan stated he supports the motion.

VOICE VOTE: 7-0 (Councilmember Lee teleconferencing)

6. **RTC 08-259 Agreement with the California Public Employees Retirement System (CalPERS) to Pre-Fund Other Post Employment Benefits (OPEB) through the California Employers' Retiree Benefit Trust Fund**

Finance Manager Grace Leung presented the staff report.

Vice Mayor Hamilton inquired as to how the 28 million was acquired and Manager Leung stated the City began budgeting for this in fiscal year 2006/07 and over the years has built up the fund to the current amount. Vice Mayor Hamilton verified with Manager Leung that the City has shifted to a pre-funded status for this trust fund.

Public hearing opened at 10:59 p.m.

No speakers.

Public hearing closed at 10:59 p.m.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approve staff recommendation: Council adopts a resolution that: 1) approves an agreement and election to pre-fund Other Post Employment Benefits (OPEB) through

CalPERS; 2) authorizes the city manager to execute the agreement; and 3) authorizes the city manager to take other actions required by CalPERS.

Councilmember Howe stated this is an excellent way to take care of this liability. Councilmember Howe verified with Director of Finance Mary Bradley that none of the funds for this item are being taken out of the City's required contingency operating reserves.

Councilmember Moylan congratulated staff for their prescience on this item.

VOICE VOTE: 7-0 (Councilmember Lee teleconferencing)

7. RTC 08-252 Consideration of the Number of Councilmembers Needed to Support Creation of a Study Issue Paper

This item has been continued to the October 7, 2008 Council meeting.

Earlier MOTION: Councilmember Howe moved and Councilmember Whittum seconded to continue this item to October 7, 2008.

Earlier VOICE VOTE: 6-1 (Councilmember Moylan dissented and Councilmember Lee teleconferencing).

8. RTC 08-257 Consider a City Co-Sponsorship of a Pet Parade

Mayor Spitaleri gave a brief presentation.

Vice Mayor Hamilton inquired as to the anticipated cost of this event and Mayor Spitaleri responded that volunteers will be used and the minimum cost would be very little, mostly for advertising.

Public hearing opened at 11:04 p.m.

Arley Marley offered his support for the parade and explained that the last time a pet parade was held in Sunnyvale was 1955. Marley explained there are a lot of volunteers ready to get started on this project and the website is ready to go live. Marley stated this is good exposure for the City and he encourages Council to support this parade. Marley stated the budget is anticipated to be under \$20,000.

Public hearing closed at 11:06 p.m.

MOTION: Councilmember Howe moved and Councilmember Moylan seconded to approve the City's co-sponsorship of a pet parade.

Councilmember Moylan stated the benefits to the downtown would be even greater if a people parade was held. Councilmember Moylan suggested Council give serious consideration to an annual parade once the downtown is completed. Councilmember Moylan stated he supports a recent suggestion he received from a downtown merchant, in

which the City would host an annual St. Patrick's Day parade on Murphy Street.

Mayor Spitaleri stated his intent is to bring activities into the downtown, not only the Pet Parade, but also a St. Patrick's Day parade along with other events.

VOICE VOTE: 7-0 (Councilmember Lee teleconferencing)

NON-AGENDA ITEMS & COMMENTS

COUNCIL: Councilmember Swegles stated today is Council's Executive Assistant Heidi Kirk's birthday and he wished her a happy birthday.

STAFF: None.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- Approved Minutes of Special Joint Meeting of Parks and Recreation Commission and Arts Commission of July 23, 2008
- RTC 08-260 Opportunity for Council to Appeal Decisions of the Planning Commission of August 11, 2008 and the Administrative Hearing of August 13, 2008
- Draft Minutes of Parks and Recreation Commission Meeting of August 13, 2008
- Summary Study Session Minutes – Supervisor Liz Kniss, District 5 Update
- Summary Study Session Minutes – VTA Governance Structure Issue

ADJOURNMENT

Mayor Spitaleri adjourned the Council meeting to the Redevelopment Agency at 11:09 p.m.

Gail Borkowski
City Clerk

Date