

DRAFT MINUTES*
JOINT MEETING OF THE
SUNNYVALE CITY COUNCIL
AND THE REDEVELOPMENT AGENCY
TUESDAY, MAY 11, 2010

CALL TO ORDER - Mayor and Redevelopment Agency Chair Hamilton called the meeting to order in the Council Chambers.

SALUTE TO THE FLAG

ROLL CALL

PRESENT:

Mayor and Agency Chair Melinda Hamilton
Vice Mayor and Agency Vice Chair Christopher Moylan
Councilmember and Agency Member Otto Lee
Councilmember and Agency Member Ron Swegles
Councilmember and Agency Member Anthony (Tony) Spitaleri
Councilmember and Agency Member David Whittum
Councilmember and Agency Member Jim Griffith

ABSENT:

None

STAFF PRESENT:

City Manager and Agency Executive Director Gary Luebbers
Assistant City Manager Robert Walker
City Attorney and Agency Counsel David Kahn
Director of Finance Mary Bradley
Director of Community Development and Agency Secretary Hanson
Hom
Director of Public Safety Don Johnson
Director of Public Works Marvin Rose
City Clerk Kathleen Franco Simmons

CLOSED SESSION REPORT FOR MARCH 30, 2010

Closed Session pursuant to Government Code Section 54956.8 - Conference with Real Property Negotiator

Vice Mayor Moylan reported direction was given and no action was taken.

CLOSED SESSION REPORT FOR APRIL 20, 2010

Closed Session pursuant to Government Code Section 54956.8 - Conference with Real Property Negotiator

Vice Mayor Moylan reported direction was given and no action was taken.

CLOSED SESSION REPORT FOR MAY 4, 2010

Closed Session pursuant to Government Code Section 54956.9(a) - Conference with Legal Counsel – Existing Litigation

Vice Mayor Moylan reported direction was given and no action was taken.

CLOSED SESSION REPORT FOR MAY 11, 2010

Closed Session pursuant to Government Code Section 54957.6 - Conference with Labor Negotiator

Vice Mayor Moylan reported direction was given and no action was taken.

SPECIAL ORDER OF THE DAY – National Public Works Week

PUBLIC ANNOUNCEMENTS

Councilmember Swegles announced the 2010 City of Sunnyvale Health & Safety Fair.

Councilmember Swegles announced the 2010 City of Sunnyvale Hands on the Arts Festival.

Councilmember Swegles announced an Affordable Housing Tour that begins in San Jose and travels through Milpitas and Santa Clara.

Councilmember Swegles provided information regarding the Cities for All Ages Land Use Planning and Our Aging Population presentation.

Councilmember Lee provided a reminder regarding the June 8th Primary Election, and announced the last day to register to vote is May 24.

Richard Kolber, Democratic Club of Sunnyvale, outlined the events to take place at their next meeting.

Patrick Walz announced Bike to Work Day and Bike to Work Week and encouraged participation.

CONSENT CALENDAR

Councilmember/Agency Member Griffith stated his vote will be an abstention on Item RDA 1.A. because he was not an Agency Member at that time.

MOTION: Vice Mayor/Agency Vice Chair Moylan moved and Councilmember/Agency Member Swegles seconded the motion to approve the Consent Calendar.

VOTE: 7 - 0 (Councilmember/Agency Member Griffith abstained on RDA 1.A)

RDA 1.A. Approval of Draft RDA Minutes of Meeting of December 15, 2009

1.A. Approval of Council Meeting Minutes of April 27, 2010

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

Fiscal Items

- 1.C. MOTION List of Claims and Bills Approved for Payment by the City Manager – List
RTC 10-119 Nos. 502 and 503

Staff Recommendation: Review the attached lists of bills.

- 1.D. MOTION City of Sunnyvale Investment Report - 1st Quarter 2010
RTC 10-122

Staff Recommendation: Receive and file the investment report.

Contracts

- 1.E. MOTION Award of Contract to Provide and Install Payroll System Software
RTC 10-117 Application Modules for the Department of Finance (F0909-23)

Staff Recommendation: Award a contract in the amount of \$193,390, including applicable taxes, to High Line Corporation, to provide and install Distributed Software Application Modules to the existing payroll system and approve a project contingency in the amount of \$19,339.

- 1.F. MOTION Acceptance of Contract for \$370,000 with County of Santa Clara for
RTC 10-116 NOVA to Provide Summer Youth Employment Services

Staff Recommendation: Approve acceptance of a contract for \$370,000 with the County of Santa Clara for NOVA to operate a summer subsidized employment program for economically disadvantaged youth.

Contracts: Sunnyvale Works!

- 1.G. MOTION Award a Sunnyvale Works! Contract for Design and Construction Support
RTC 10-126 Services for Citywide Sanitary Sewer Main Replacements 2010 (F0904-93)

Staff Recommendation: Award a contract to West Yost Associates in an amount not to exceed \$160,835, for design and construction support services for the Citywide Sanitary Sewer Main Replacements 2010 and approve a project contingency in the amount of \$16,084.

Other Items

- 1.H. ORDINANCE Adoption of Ordinance No. 2918-10 Amending Sections 19.12.130 (“L”) of Chapter 19.12 (Definitions), 19.28.110 (Landscaping and Open Space) of Chapter 19.28 (Downtown Specific Plan District), and 19.98.020 (Applications) of Chapter 19.98 (General Procedures); Adding Chapter 19.37 (Landscaping, Irrigation and Useable Open Space) to Article 4 (General Development Standards) of Title 19 (Zoning); and Repealing Section 19.38.070 (Landscaping, Irrigation and Usable Open Space) of Chapter 19.38 of Article 4 (General Development Standards) of Title 19 (Zoning) of the Sunnyvale Municipal Code to Clarify Requirements and Establish Water-Efficient Landscape Regulations Pursuant to State Law

Staff Recommendation: Approve second reading of Ordinance No. 2918-10.

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

None.

PUBLIC COMMENTS

Deborah Marks expressed concern about the lack of trees in Sunnyvale and provided information regarding the Urban Forestry Management Focus Group, which supports plans for more trees and policies to further protect existing trees.

PUBLIC HEARINGS/GENERAL BUSINESS

RDA 2. RESOLUTIONS Approval of 2010 Modification Agreement to the Amended and
RDA 10-001 Restated Disposition and Development and Owner Participation
Agreement and Related Documents

Councilmember/Agency Member Whittum disclosed that he met with Jon Knorpp and Janice Thacher of Wilson Meany Sullivan on March 9, and he met with Jeff Warmouth for a tour of the downtown in 2008.

Mayor/Agency Chair Hamilton disclosed that she met with Wilson Meany Sullivan.

City Attorney/Agency Counsel David Kahn presented the staff report.

Councilmember/Agency Member Swegles stated one of the four developers who showed an interest in the re-bid of the project the second time was Hunt Company. He stated Council decided at that time to continue with the existing developer, Fourth Quarter, because they had time and money invested in the project. Swegles stated he recognizes the Hunts are very in tune to what the project is all about.

Councilmember/Agency Member Swegles requested a point of clarification as to how many bids the Council will be able to see if there are multiple bids that come in. City Attorney/Agency Counsel Kahn responded under this modification agreement, the bank would review prospective developers and would present one recommendation based on their screening of the criteria; the City would have the opportunity to review those criteria but would not necessarily see more than the top candidate presented by the bank at one time.

Councilmember/Agency Member Swegles confirmed with the city attorney that if this is passed and the financing is there, the work will begin immediately. City Attorney/Agency Counsel Kahn stated the agreement requires the interim project improvements including weather-proofing, appearance and other issues that were present in February 2009 to be completed by June 2010.

Councilmember/Agency Member Swegles confirmed with the city attorney that the City could accommodate a developer with cash in hand. City Attorney/Agency Counsel Kahn stated the City would accept a \$350 million deposit if a developer wanted to do that.

Councilmember/Agency Member Swegles asked what guidelines the City has if the developer presents quarterly reports that show they haven't had a lot of success, but other areas appear to be having success. City Attorney/Agency Counsel Kahn stated one of the requirements of the modification agreement is quarterly reports be made to the agency director regarding the leasing, financing, and status of the project to monitor

the efforts to move the project forward. Kahn stated in the event there are significant changes in the lending and retail markets not reflected in the action of the developer, there is a provision that if the City thinks commercially-reasonable lending may be available and not being pursued, there is action that can be taken to assure it is pursued.

Councilmember/Agency Member Griffith requested clarification of the minimum project size. He stated it is significantly larger than the previous agreement while not reflecting any change to the actual finished project size. City Attorney/Agency Counsel Kahn stated the build-out of the entire project, referred to as Block 6, currently the Macy's surface parking lot, and a small portion of Block 5, where the theater is proposed, is not required to proceed as part of the completion of the minimum project. Kahn stated when that is built-out will depend on the status of the economic, retail and leasing markets. He stated when completed, it will be the same as the original project, but under the modification agreement the obligation is to complete the minimum project which is substantially larger.

Councilmember/Agency Member Spitaleri requested the city attorney to go back over the response to the question related to working with a developer with all cash. Kahn stated there was a period of time when DSMU wasn't able to continue and the agency provided the opportunity to look for additional equity contributions or all cash contributions to complete the project. He stated that was not available which is consistent with the market reports. City Attorney/Agency Counsel Kahn stated another problem is with a cash offer there is no guarantee that cash will be available at the time it is needed for completion of the project. One of the issues with the original DSMU proposal was there was a commitment of up to \$800 million in equity to complete the project but by February 2009 that cash was not available because of changes in the market. Kahn stated there is a safety factor in having approved and secured financing to make sure this will not happen again. He added another issue is if the cash is available to complete the project, it is not a good thing for the city to have a project completed but vacant without retail tenants.

Councilmember/Agency Member Spitaleri stated based on that, this project could sit for a long time unless a lot of leases are signed for retail spaces and asked how to move the project along toward completion. City Attorney/Agency Counsel Kahn responded the prospect of an office building with excellent tenants as is currently proposed is a very positive step towards energizing the project, as was the completion of the Target store. He stated there will also be a strong effort to sign a theater lease as quickly as possible, and there is an incentive in terms of early tax increments to make it more economically viable. Kahn stated retail leasing may take place as early as mid-2011 and the reason we don't want to have a date-certain is in the event leases are available sooner, or to not set up expectations a retailer will be moving in sooner than available.

Councilmember/Agency Member Spitaleri commented that someone with the ability to build right away or build other projects should be attractive to a bank. He stated that under this agreement, the Council would not have the opportunity to look at other developers that may want to bid on this project, but would have to accept whatever the bank puts forward that meets the criteria. He stated the Council wouldn't know if another developer could meet the City's needs and goals sooner. Spitaleri provided the example of a developer who has multiple projects on hold and is selected for this project, and asked what will ensure this project is first on their list? Kahn responded that the issue would be whether the developer has the financial capability to undertake this project in

conjunction with their other projects. Kahn stated the City will have the opportunity to ensure there is financial backing and references that would enable the developer to complete both the Town Center project and their other projects. City Manager/Agency Executive Director Luebbers stated one of the key elements to this agreement is the tax increment and the limited time that can be accrued, which provides incentive more than any other reason to build as quickly as possible. Luebbers stated the City has a project that is not dirt or steel coming out of the ground, but that has potentially one of the largest companies in the country moving their campus here and one of the most successful Target stores in the Bay Area.

Councilmember/Agency Member Lee asked if the previously agreed terms regarding prevailing wage have been changed. City Attorney/Agency Counsel Kahn stated the prevailing wage terms are required by law because this is a redevelopment project with agency contribution and the terms in the existing ARDDOPA will not change.

Councilmember/Agency Member Lee stated he likes that once the project is restarted in earnest, the timing is very strict. He stated he is concerned the firm start date is not in the agreement, due to the inability to commit a retail tenant. Lee asked if there is anything the City can do to make sure the developer or receiver will aggressively recruit retail tenants. City Manager/Agency Executive Director Luebbers stated the City has already started to do this as the City's Economic Development Manager will be attending International Shopping Center group meetings and she will be as involved in the recruitment of retailers for this project as the developer.

Mayor/Agency Chair Hamilton allotted 10 minutes for the receiver team to make their presentation.

L. Gerald Hunt, Quattro Realty Group, stated he is the receiver and pointed out that as the receiver, Quattro acts as the receivership estate. He introduced his partner, Mike Parker, and stated they both function as the receivership estate. Hunt stated they were appointed receiver October 5th in an appointment of receiver and temporary restraining order. He stated in the judge's order, the receivership estate is given absolute control of the ownership of the project and the property, an important distinction of which is that as the receiver, they work for the judge, not the bank. He stated the receivership has ordered insurance protecting the collateral, is working with government agencies, settling lawsuits, and dealing with liens. Hunt stated they have affirmed the receiver's authority to enter into a lease with Nokia, enter into a funding agreement to fund the improvements for Nokia, and to enter into the proposed modification agreement. Hunt stated the bank has the decision as to whether or not they will fund the receivership.

Hunt stated there was a lot of concern as to the protection of the buildings and deterioration. He stated there has been tremendous progress, including the opening of the Target store, lawsuits with Devcon and 75 lien clients have been settled, protective work on the buildings has been instituted. Hunt stated as part of their order and charge they are to do things that are favorable for the community, and that is one of the things that will qualitatively guide them in terms of what benefits the project.

Hunt stated the lease with Nokia is significant. It will be 156,000 square feet and occupy the entire building. He stated a notice to proceed will be signed with Devcon to commence construction after receipt of the approval and modification agreement, with a targeted occupancy date for Nokia in December. He stated that is an enormous step and momentum builder; when the market comes back, a project like this will be in the

best position possible to enjoy that market.

Hunt provided a brief overview of some of the things that are important to the receivership in terms of the modification agreement, including curing defaults and having a marketable entitlement. He stated the modification agreement doesn't predetermine the developer; it is neutral and allows that selection process to play out. He stated the real estate depression has caused everyone to have to readjust timeframes and expectations, and this modification does this in a responsible manner.

Hunt stated the receivership will be pursuing the theater in earnest and has commenced communications as to Target and Macys. He concluded the project is in a far better place and the property is in a far better position to enjoy a rising tide in the future.

Councilmember/Agency Member Swegles disclosed he had a telephone conversation with Jerry Hunt earlier. He asked when the receiver's responsibilities will end with this project. Mr. Hunt responded that they are the receiver until the receivership is terminated, either at a judicial foreclosure or a non-judicial foreclosure.

Councilmember/Agency Member Swegles inquired as to whether the receiver would be a part of the selection process for a new developer. Mr. Hunt responded it would depend on whether there was a foreclosure, in which case they would not, as the receivership would be terminated. Hunt stated in the case where there is a non-judicial termination and the property could be sold while in receivership, they would be.

Councilmember/Agency Member Griffith stated the building Nokia is looking at occupying is around 80% completed with mostly interior remaining and inquired as to who will pay for the completion. Mr. Hunt responded with the notice to proceed with common area and infrastructure work and with the Nokia arrangement, they will go beyond the interim project work. They will be bringing the interior of that building to a condition to turn over to the tenant, and the exterior will be finished to the same level as in the adjacent office building and buildings E and F on McKinley, along with other common area and infrastructure work and transaction costs. He stated the receivership to date has spent over \$30 million that the bank has funded, and the bank's commitment regarding Nokia will be close to \$40 million.

Councilmember/Agency Member Lee confirmed with Mr. Hunt the Nokia project will be building C. Lee stated the minimum project schedule sets the projected commencement date January 2011, which is later than the potential occupancy reported to be as early as December 2010. Hunt responded construction would start tomorrow and confirmed Nokia would occupy by December. Lee inquired whether this could be done in as little as seven months. Hunt confirmed it will be done in less time, in that timeframe.

Councilmember/Agency Member Lee stated the current agreement states the theater lease would be in place by end of October 2010 and asked whether this could actually happen sooner. Hunt responded the groundwork has been laid to commence it, and much progress was made with the prior developer. He stated his business as a developer between 2000 and 2010 has been involved with numerous redevelopment agency projects, theater projects, and parking structure projects, so it has a strong relationship with the theaters, especially with them.

Councilmember/Agency Member Lee stated the construction of the office within the tight timeframe does not appear to have enough time for a developer to show up and

inquired whether this would happen under the receivership unless foreclosure takes place. Hunt responded the construction of the office and the pursuit of the theater would happen under the receivership unless the receivership is terminated.

Councilmember/Agency Member Lee confirmed with Mr. Hunt that if there were any type of termination of the receivership once the commencement starts, there would be no interruption between the legal title being turned over to foreclosure.

Councilmember/Agency Member Lee stated based on the current agreement the receivership has all the rights to develop whichever part of the project as the receiver sees fit. Hunt responded the receiver is in control of all that is DSMU and what was the borrower, and with this modification agreement the receiver is armed with what they need to start construction tomorrow.

Mayor/Agency Chair Hamilton inquired as to the process of terminating the receivership and when it will get terminated. Mr. Hunt responded he doesn't have a specific date as the receiver doesn't determine that. He stated the receivership gets terminated by either a judicial or non-judicial foreclosure, if the borrower was to cure all defaults under the loan and the borrower and the lender were to agree.

Mayor/Agency Chair Hamilton confirmed with Mr. Hunt that when the receivership is terminated the property will be owned and controlled by the bank. Hamilton requested confirmation that the bank has funded roughly \$70 million so far. Hunt responded the amount the receivership has spent that the bank has funded and the amount the receivership is committing to spend and the bank is committing to fund would be \$70 million. Hamilton disclosed she also had a conversation with Mr. Hunt this afternoon.

Public hearing opened at 8:21 p.m.

Joe Rayborne stated he is concerned about the downtown development and recommended Council be mindful about changing anything. He stated the bankers own the land, but the developers that do the job should keep the plan as it was originally. He stated any cutbacks will cut the money, which could be used for the community for the people that need it. He stated he thinks the City should stick with the original developer and Sand Hill.

Mayor/Agency Chair Hamilton stated this agreement does not make any changes to the design of the project or the approved project. City Attorney/Agency Counsel Kahn noted for clarification that the modification agreement in terms of the minimum build-out is the 272,000 square feet of retail, 198 housing units, and 273,000 square feet of office does not include the square footage for Macys and Target, but between the million square feet, which was the initial development agreement there were changes made at the time of the ARDDOPA that reduced and modified some of the square footages. Kahn stated the project that is required to be completed under this modification agreement is the minimum project as described in the agreement. Hamilton added this is not changing the boundaries of the project, but only in how the City is dealing with the business aspect.

Vice Mayor/Agency Vice Chair Moylan stated Council is not deciding on a possible new developer at this time, but simply making the amendments to the agreement that will enable the City to move forward. He stated once it moves forward, if the receiver is still in charge or if the bank is in charge, they would have to come to the Council with their

proposed developer who meets all of the Council's criteria, and then the Council would decide whether they do.

Steve Graham stated when his business moved here two years ago, they looked first at Livermore, Walnut Creek and up the peninsula, but chose Murphy Street because of the uniqueness of the street and the promise of what this project would do to downtown Sunnyvale. He stated his only concern is that he only found out about the plans and the agreement today and hasn't had time to look at it or provide feedback. He stated it is too important a decision to make without input from the downtown association or Chamber.

Peter Pau stated this is his first opportunity to come before the Council in a public hearing since the project started. He stated his company, Sand Hill Property, is part of the entity DSMU which is in default on both the ARDDOPA and the loan with the bank. He stated about a year ago, his financial partner, RREEF decided not to put any more money into the project and worked out an arrangement with the bank which allowed them to sell it. He stated Sand Hill is committed to the project and has been working non-stop to find a way to try to get the project back on track as soon as possible and to get everybody back to work. He stated he has requested the bank to allow them to continue with the project and finish what they started. Pau stated he has been successful in finding a new capital partner to replace RREEF, and has found several sources to back him with more than \$200 million in commitment. He stated on February 17 they made a formal offer to the bank, including upon closing in 120 days his entity intends to resume construction immediately, fund all costs with capital contributed by the investor group and not rely on any third party debt. Pau stated since the offer was made, his group was not and is not counting on any modification to the ARDDOPA and has no contingency regarding financing. He stated the group doesn't need financing or pre-leasing and they are prepared to go forward with or without the Nokia deal or any other tenant. He stated they will start immediately including with the theater for which they are close to having a lease.

Councilmember/Agency Member Swegles disclosed he has met with Peter Pau on many occasions but not recently. Swegles inquired as to whether Pau would be able to put up money that is guaranteed for this project. Pau responded in the affirmative and stated under the current ARDDOPA that is one of two key elements: the developer must show evidence of financing and the City or agency has sole discretion of approval right. He stated when DSMU first started the evidence of financing was waived, set aside or satisfied. He stated that has gone away under the new agreement, and he believes in the near future there will not be any construction financing available especially for a project of this size and complexity. Pau stated if they are selected by the bank they will be happy to provide their capital information to the Council, the Agency and the bank. He stated the bank has talked to his capital source to confirm their interest, and he believes there is no question those people are qualified and capable of doing what they said they would do.

Councilmember/Agency Member Lee asked Mr. Pau how the retail market is right now and what the Council could do to help get it moving in Sunnyvale. Mr. Pau stated retail leasing has been bad for a year or two and suggested very few retailers would be willing to sign a pre-lease today. He stated to get retailers, you have to have the building almost ready for them.

Councilmember/Agency Member Lee asked Mr. Pau how long it would take to complete the theater and what he thinks regarding the success of the theater. Mr. Pau stated that

particular operator has been in place before Fourth Quarter and has signed with three different developers. Pau stated at the time he was told to stop work he already had the steel ordered, but that tenant is still very interested in locating here. Pau stated the construction schedule is fourteen months from ground up, including the interior fit-out, which the theater would do themselves.

Councilmember/Agency Member Lee asked Mr. Pau how long he thought it would take to finish building C for the proposed project with Nokia. Mr. Pau stated they talked to Nokia a year ago; they were a very good candidate, but there were other national tenants were interested as well. He stated the building shell is almost completed; it would take about three months to complete the rest of the exterior after which it would be turned over to the tenants to do their improvements, which would take two to three months.

Vice Mayor/Agency Vice Chair Moylan stated a reminder that the Council is not here at this time to choose a developer for the project, but to approve or not to approve the agreement with the receiver. Moylan stated the reason the Council has been negotiating with the receiver is because Pau owes the bank \$108 million. Moylan referred to Pau's stated commitment for \$200 million of funding and stated the receiver's comments earlier indicated there are two ways the receivership can be terminated: the bank could foreclose on Pau, or Pau could pay the \$108 million and make the default go away. Moylan asked Mr. Pau if he has \$208 million why doesn't he just do that. Mr. Pau responded he couldn't speak for the bank but he was told it doesn't really matter at this point as the bank thinks its best interests are to restructure the property, put it in position to where they can foreclose it, and to go out and solicit multiple bids. Pau stated that technically he cannot cure the default because the default party is DSMU which he doesn't have control over.

Vice Mayor/Agency Vice Chair Moylan asked Mr. Pau if he is taking a position on whether or not the agreement should be approved. Mr. Pau stated assuming it is an open competition, equal opportunity, fair bidding, he is glad to participate, but there is no assurance in the agreement. Pau stated he doesn't feel he is here to tell what is good or bad about the modification agreement, but when he made the offer to the bank in February he was not anticipating any such changes to the ARDDOPA. He stated they know what the old ARDDOPA says and are prepared to live with most of it. Pau stated there are a few provisions that make no sense such as you can't take over a project that is in default and cure the default. Pau stated some of the features in the new modification which relates to getting pre-leasing or getting construction financing are not conditions or contingencies he is looking for.

Mayor/Agency Chair Hamilton stated Mr. Pau claimed he is not the main financing partner and couldn't go to the bank and cure the \$108 million default loan, but there was another part of the project – the Town and Country development. She stated her understanding was that has been carved out and Pau has bought that part of the project and is the sole owner. Pau responded it is a similar situation, not called DSMU, in partnership with RREEF as the managing member of the entity. Pau stated he will be coming to the City for an application on that project as it previously didn't make it through the Planning Commission because they didn't like some features of the application. Pau stated once his group has talked to the downtown association about the parking situation they will resubmit the application and expect to build the first phase soon.

Mayor/Agency Chair Hamilton stated Mr. Pau has been quoted in the newspaper as saying he will demolish the project and let it sit until the commercial lending markets get better. Pau responded he didn't think that was the right quote, that he thinks what he was saying was that he will clean up the sites, which he has, and will get the project going. He stated his group is not waiting for the commercial lending market to get better because their project is unique. He stated they want somebody to come in and look at Town and Country and say it is a great project on its own, it doesn't matter what the general market is, and say they will finance it. Pau stated he believes he's got that lined up already.

Mayor/Agency Chair Hamilton stated there is plenty of empty office and retail space in Sunnysvale and asked why Pau thinks having built an empty retail space would be an asset.

Mayor/Agency Chair Hamilton stated in her understanding, Pau has a project in Newark that was built where Mervyns went in and is now in foreclosure. Pau stated when they built the Mervyns in Newark, within two months it filed bankruptcy and left. He stated he has a dark building and has not been able to replace a tenant. Pau stated the newspaper article is not correct; the building is not in foreclosure, it is empty.

Reed Moulds, with Sand Hill Property Company, stated from the perspective of a concerned neighbor as the owner of Town and Country project across the street from Town Center, the receiver has done a great job up to this point. He stated the receiver served him with a subpoena this afternoon for questions he would like to ask. The first question is: Is the Council concerned that by removing all commencement deadlines and penalties they are encouraging the new developer to wait for the perfect loan and the perfect lease instead of encouraging a more tenant-friendly lease and no loan contingencies? He stated he is not convinced a \$12-16 million TIF is a primary motivator on a \$750 million project. Moulds asked whether it is accurate the developer must complete the minimum project by various dates in 2012 unless it does not believe acceptable construction financing is available in which case it can delay minimum completion of the project until December 31, 2015. He stated if the developer's failure to complete the minimum project is due to financial market conditions beyond its control, it can again delay completion of the minimum project until 2020 and asked if 2020 is the absolute date they are working with.

Tom Consunji, with Sand Hill Property Company, stated he stands before the Council as testament to the dedication and commitment of Sand Hill Property Company to the City of Sunnysvale. He stated he joined Sand Hill in 2007 in the middle of a quick march toward completion of the Town Center project; it was going along quickly and smoothly with cooperation between the City, the developer, the contractor, the downtown association, and the citizenry. He stated everyone shared one goal, to deliver a project on time that Sunnysvale truly deserves, and all concerned parties were informed at all times and everyone owned a part on the success of the development until the global economic crisis happened. Consunji stated all knew the ownership structure of Town Center and Town and Country were similar, but that what some may not know is that while Sand Hill was the development manager for both, the managing partner of the ownership entity was not Sand Hill, and therefore ultimately Sand Hill was not in control then. Consunji stated Town and Country's owner foreclosed quickly on the property and Sand Hill was able to buy it back. He stated the vast improvement that can be seen at Town and Country is what can be expected when Sand Hill is in control. Consunji stated the first priority was to clean up the site, and that has been accomplished. He stated the

original development plan is being revisited and a new proposal will soon be re-submitted after extensive consultation with City staff and other effective parties like the downtown merchants and neighbors.

Donald Polishuk, Senior Vice President at CB Richard Ellis Capital Markets stated he facilitated the marriage between RREEF and Sand Hill Properties in 2006-07. He stated his group is comprised of approximately one hundred individuals around the country and arranges debt and equity financing and has many projects that are in a similar situation. He stated most opportunities they see for the recapitalization and restart of projects is occurring with 100% cash and few if any new buyers are coming in to borrow money to buy the project and then to rely upon a bank to finance the additional construction as that financing is not available. Polishuk stated there is a "catch-22" situation in that with pre-leasing, nine out of ten retail-leasing experts would say the way to lease this project is to build it first. He stated that to try to get those commitments based upon the building not being in construction is extremely rare. He addressed the city attorney's comments regarding cash, and stated subsequent to the original problems, RREEF tried to re-capitalize the project with all cash at that point, but today \$250 million in equity is gone and the bank has a loan for \$108 million. Polishuk stated the earlier question to Peter Pau as to why, if he has \$200 million, doesn't the bank do that. He stated part of the \$200 million is to complete the project and part is to buy the property from the bank. He stated the question becomes are the City's interests and the banks interests aligned, which he stated he can't comment on, but it seems that if someone has a total amount to spend, there may be a conflict between the two.

Mayor/Agency Chair Hamilton asked Mr. Polishuk if \$200 million is enough to finish the project. Polishuk responded it would depend upon how much is allocated. Hamilton indicated if DSMU were to go to the bank with \$108 million, the bank would want their money back, or someone would have to make a compelling offer to the bank. Hamilton stated she doesn't know what Peter Pau's offer was, nor what the bank's response was. Polishuk stated in these situations with cash investors, they have X dollars to come in, to gain control of the project and to complete the project and they know there is no construction financing available today so they have to make an all equity investment. He stated they know what the construction costs are to complete the project, and the money left over is for the bank. He stated it seems to him what is being contemplated here, is no one is needed to put up the money to complete the construction; if there is only enough money to buy the project from the bank, the project won't be completed if there isn't an additional commitment. He stated it gets back to Ron's question as to how you secure that commitment in the marketplace.

Joe Antuzzi, owner of Il Postale Restaurant and Chairman of the Downtown Association, stated this is the first time an agreement like this has come before the Council that was not put in front of the stakeholders. He stated the property owners, merchants and residents have many questions and are not taking a side, but just want to know what is going on. He stated it appears Block 6 has no parking lot or five-story parking structure anymore and it would have taken only an hour meeting with staff or the bank to find out what is going to affect the downtown merchants. He requested the decision be delay several weeks to give the stakeholders time to get answers to their questions.

Councilmember/Agency Member Griffith requested information from staff about the parking on Block 6. City Attorney/Agency Counsel Kahn explained under the modification agreement, part of the minimum project would include the slurry ceiling and re-stripping to return it to the condition of a new surface parking lot in the interim until

Block 6 is developed with the original parking garage or modifications. Griffith asked the speaker if that information changed his opinion of the Block 6 aspect. Mr. Antuzzi responded he did not previously have that information, and stated he would like to see numbers, such as a four-story parking lot compared to a slurry seal lot. He stated the merchants have hundreds of questions they'd like answered.

Mayor/Agency Chair Hamilton requested the City Manager/Agency Executive Director to have an outreach meeting with the merchants in the near future.

Leigh Odum, owner of Leigh's Favorite Books on Murphy Avenue, stated she was surprised to learn at the Downtown Merchants Association meeting that this meeting would be held tonight to approve these modifications. She stated she would like to learn more about the plan and asked the decision be delayed.

Joel Wyrick, Executive Director of Sunnyvale Downtown Association, stated he wishes he could give the stakeholders support or non-support of the modification agreement, but the information has not been disseminated in a timely manner so they could make a prudent decision on it. He stated he thinks what he has seen is great but he has many questions, and as an ambassador of the City and a secondary or tertiary leader for this project, he has been bombarded with lots of questions from members. He asked that as the City moves forward, the stakeholders be given the opportunity to address some of the issues and concerns.

Mayor/Agency Chair Hamilton stated Nokia is going in and it could not be announced by the City, but it will bring several hundred people downtown. She stated she appreciates the association's concerns, but the Council has been constrained during the negotiations.

City Attorney/Agency Counsel Kahn addressed the concerns regarding the timing and stated the goal was to try to provide two or three weeks notice of the agreement to allow time to review it. He stated the negotiations were continuing every day throughout the last several weeks and confirmation was only received within the last week. Kahn apologized to the public for not getting it to them sooner and stated with this type of project the negotiating team will do everything possible with any future modifications to make sure there is adequate time. He stated it is in part driven by Nokia which is under a very tight time schedule for the construction and a delay of several weeks would jeopardize the construction schedule.

Neil Struthers, Executive Director of Santa Clara and San Benito Counties Building Construction Trades Council stated this is an organization which represents approximately 30,000 construction workers, several thousand in Sunnyvale. He stated the industry has been hit very hard by the recession, with unemployment figures between 30 and 40 percent, the worst he has ever seen. He stated many members have been out of work for over a year, are losing homes and losing their dignity in the current environment. He asked that the Council do whatever it can to get people back to work, and the Nokia project is a good start. He stated they would like to see the rest of the project move forward as well. Struthers stated before the sub-prime financial meltdown, this project was keeping hundreds of workers employed and their families provided for. He stated the community deserves this project and the community deserves these jobs. He stated they understand the bank has to get the best return on its investment and they are not asking to interfere with the bank's ability to do what is right for their shareholders, however he stated he would ask the Council for ways in

which to measure prospective developers' ability to move quickly on starting and completing this project which they believe is potentially missing in the agreement. He stated there should be some weight given to those that are committed and able to start and finish the project sooner rather than later.

Mark Van Den Heuvel, Sheet Metal Workers Local 104 representing a lot of members in Santa Clara County, stated when this project first started he had several contractors working with Devcon, with about twenty-five to forty workers and was one of the best projects going when it was moving forward. He stated sheet metal workers are seeing 30 percent unemployment and asked the Council to move forward as fast as possible.

Luke Vratny, representative for the Drywall Lathers in Santa Clara County, stated unemployment in his Local is almost 40 percent and he receives calls every day from members who are losing their homes. He stated they need this project to move forward and asked Council to approve it tonight.

Cheryl Pollock, Sunnyvale resident and member of Local 393 stated she has been out of work for about a year and would like to go back to work as quickly as possible. She stated a lot of members are losing their homes and having problems feeding their children. Pollock asked Council to move on this project and include deadlines when to start and complete.

Robert Van Epps, with Local 393 Plumbers and Steamfitters San Jose and Santa Clara County, stated he is a 30-year citizen of Sunnyvale and Mountain View and has been out of work in this area since October 2008. He asked that construction workers be put back to work, and stated it will bring more tax-base back to the city and county.

Jim Homer, Business Manager of Laborers Local 270 in Santa Clara County representing just under 4,000 members, stated their unemployment is a little over 30 percent and many members have already lost their homes. He urged the Council set a timetable with the developer or financial institution with an expressed urgency of restarting the entire project as quickly as possible and completing it as quickly as possible. He stated having these jobs will enable many construction workers to keep their homes out of foreclosure, creates jobs in the retail sector, stimulates economic activity and increases the tax base for the City.

Warren Barry, business agent for Local 393 Plumbers and Steamfitters representing 2500 members in Santa Clara and San Benito County, urged Council to move the project forward. He stated his members are facing over 40 percent unemployment and are in need of jobs.

Eddie Reyes, representative of Ironworkers Local 377, representing 2600 members in the greater Santa Clara area, urged the Council to approve the project and move it forward as soon as possible.

Victor Dillon stated he supports his fellow agents and managers and asked the project be expedited. He stated the work that would come from this would support the Journeymen, and in his capacity as representative of the Laborers Apprenticeship program, there would be some opportunities for those who are without work in other industries to potentially come into this craft and the city will benefit.

Bill Guthrie, business representative of UA 303 which represents approximately 2300 plumbers and steamfitters throughout Santa Clara County, many of whom live and work

in Sunnyvale stated at the time the project shut down, almost 40 members became unemployed. He stated many have not gone back to work to date as the construction industry has been one of the hardest hit. He stated the Local is facing 40 percent unemployment, people are losing homes, and families are being hurt with increasing divorce rate. He urged Council to bring the project back on track and accelerate the process as much as possible.

Public Hearing closed at 9:37 p.m.

Mayor/Agency Chair Hamilton allotted time for the receivership team respond to comments and questions.

Councilmember/Agency Member Swegles asked Mr. Hunt whether he had any opinion or indication of how long they should be given to find financing or whether it should not be a part of them making a presentation showing they can buy the property and that they have the financing to do the development also. Hunt responded as the receiver that would only come into question in the event they were involved with or directing a process selecting someone that might acquire the property. Hunt confirmed for Councilmember/Agency Member Swegles that construction financing is still extremely difficult.

Councilmember/Agency Member Griffith disclosed he had a telephone conversation with Mr. Hunt today. He acknowledged the many concerns expressed regarding the timeliness of the project going forward and stated one of the worst fears is the bank is presented with two bidders; one is willing to pay \$75 million and start six months from now; and another is willing to pay \$100 million but will sit on it for two years. Griffith stated this is a situation where the bank's interests and the City's interests may not be the same, and asked what kind of assurances and processes are in place to give the Council confidence that is not going to happen. Mr. Hunt responded that to distill a very large, complex development and transaction down to one or two points is very difficult. Hunt stated in his opinion, the capital that is entering the market has the expectation it is for profit business. He stated it is hard to imagine as to why someone would want to acquire something large and then just sit on it. He stated someone in that position would want to respond to the market, and capitalize on the market for the greater good of the project.

Councilmember/Agency Member Griffith stated he had a hard time imagining somebody putting 40 percent of \$750 million into this and then walking away, but the reality is that is what happened.

Councilmember/Agency Member Lee inquired as to how the passage of this agreement would affect or not affect what the receiver can do with the Nokia contract. Hunt responded the court affirms the receivership's authority to enter into the lease, but there is a contingency in the lease of this approval, without which the parties could not proceed.

Councilmember/Agency Member Lee stated he was concerned the lender's spokesperson is not here and Hunt cannot speak on the bank's behalf. Lee stated his other concern is the firm date to start the entire project is still an issue which a lot of people have mentioned. He stated he is very happy and supportive of the Nokia deal and that people will start working as soon as possible, but he is concerned about the one part being the reason why the rest of the project is sitting. Mr. Hunt stated in terms

of the project start date, when it was commenced, it was \$750 million project, while as of this date, it is about half complete. He stated the City and Redevelopment Agency did not enter into the project with the expectation that there would be a time halfway through where it would pause due to the financial and capital markets meltdown. Hunt stated he has much experience with infill, redevelopment, reuse of real estate, parking structure, and dense theater projects in the San Francisco Bay Area. Hunt stated the position they are often in is informing cities they can't have the dense project because parking structures are building land and are extremely expensive to build. He stated what the City has is the hardest part to get built. With Macy's, Target and Nokia, there is a lot of positive momentum that has laid the groundwork for that market to return.

Councilmember/Agency Member Lee asked why the bank can't step up to the plate further as the whole community wants to be firmer on the start date rather than the iffy language in the agreement. Hunt responded the resistance the receiver has had to a hard start date is the necessity to improve and modify an agreement to deal with harsh realities. He stated he personally has a hard time with an arbitrary date being set when you can't legislate the market. Hunt stated he believes staff has done a very good job of putting other measures and filters and things to evaluate and monitor progress into the agreement.

Councilmember/Agency Member Spitaleri disclosed he spoke with Jerry Hunt by telephone today. Spitaleri stated comments have been made that the Nokia deal will make this project attractive that will bring other tenants in and asked why the agreement is needed if the bank has spent \$30 million weatherizing and protecting their investment and are willing to spend another \$40 million. Mr. Hunt stated there has been a lot of questions about the capital markets lending equity, but what is getting lost is the capital party that is investing in the project recognizes the entitlements are in default and in their present state, it is not a marketable entitlement. Hunt stated those need to be corrected and cured and the bank would like to know they have solved something that is very important to the future of the project.

Councilmember/Agency Member Spitaleri stated he heard that as long as it is in default, the receiver will have a role in selecting or having input on who the developer would be. Hunt responded the order does not authorize the receiver to market or sell the property and does not have that at present. Spitaleri asked whether it makes good sense to finish the project as soon as possible, and stated he is concerned over how the process of looking at a new developer as it limits their ability to weigh in on it. Hunt responded that unless there is a change to the court order that says the receivership has a responsibility that includes selling the project, the receivership will not be involved in the selection of the developer.

Councilmember/Agency Member Whittum requested information regarding the Keyser Marston analysis. Mr. Marston stated his group was asked to provide an independent assessment regarding the tax increment. He stated they looked at the modification agreement's key components and other technical considerations, and concluded there is continued justification for tax increment on the project going into the project.

Councilmember/Agency Member Whittum inquired of staff as to what kind of environmental analysis is needed, if any. City Attorney/Agency Counsel Kahn responded the original environmental analysis was done at the time of the original development agreement which had a substantially larger project of one million square feet, more retail, and more office. He stated there was an original EIR that was prepared

for the entire downtown program that was modified in the subsequent development agreements and there was an addendum that was prepared. Kahn stated that because the changes provide for less retail, residential and office, there would be no impacts as a result of this modification agreement. Kahn stated the Council would be making findings adopting the earlier EIR, the addenda, and other environmental resolutions and findings in support of this modification agreement.

Councilmember/Agency Member Whittum inquired as to the effect of not having the parking garage associated with Building B. Community Development Director Hom responded the proposed parking is sufficient for the minimum project and if there are other components not part of the overall project that are not part of the minimum project an analysis would need to be done on which portions are moving forward when the need for additional parking on Block 6 arises, including office Building B.

Councilmember/Agency Member Whittum commented it has been said several time that nothing has changed, but there are some, such as the theater will now be a first-floor theater. Director Hom confirmed the theater design for Block 5 will need to go to the Planning Commission in a public hearing as an amendment to the special development permit.

Councilmember/Agency Member Whittum confirmed with Mr. Hunt that the extension of Murphy from Washington and McKinley would be in the timeframe of the theater. Whittum inquired as to whether the receiver or developer is under any obligation under the modification agreement to complete Murphy, to re-stripe parking, complete Redwood Square and other things in the minimum project. Hunt responded ratification of the agreement provides security for a potential developer and to not sign it is to continue in default and the same uncertainty as relates to the entitlements that existed on October 5.

Mayor/Agency Chair Hamilton inquired of Mr. Hunt whether it is more beneficial to have an empty retail store shell completed or have it as it is now. Hunt stated the environment is dramatically improved over what it was in October and in his opinion, to build without market demand is not responsible. Mayor/Agency Chair Hamilton stated her thought is if it is built and remains empty, it loses momentum.

Councilmember/Agency Member Spitaleri stated one speaker mentioned he was subpoenaed by the receivership group and inquired as to others who may have been subpoenaed. Hunt stated the receivership is duty bound and obligated by the court order to do a number of things; in addition to the order, it is also a retraining order which restrains the borrowers or defendants from interfering with the receiver or whatever the receiver feels is in the best interests of the property. Hunt stated the order charges the receiver with duties and responsibilities that if they think that someone is interfering they have the obligation to institute ancillary proceedings including issuing subpoenas, conducting discovery, taking depositions or pursuit of a contempt action. Hunt stated the heart of the matter is whether anyone is attempting to interfere or to disrupt what the receivership believes is in the best interests of the property.

Councilmember/Agency Member Lee inquired as to whether a decision could be postponed to the following Tuesday. City Manager/Agency Executive Director Luebbers responded it could be postponed but he could not speak to the ramifications with regard to the lease and any issues related to it.

MAIN MOTION: Vice Mayor/Agency Vice Chair Moylan moved and Councilmember/Agency Member Whittum seconded the motion to approve Alternatives 1 and 2:

1. Redevelopment Agency Board approve resolution authorizing the Sunnyvale Redevelopment Agency Executive Director to execute 2010 Modification Agreement and to conform the Amended and Restated Disposition, Development and Owner Participation Agreement and related documents as necessary for the redevelopment of the Town Center property.
2. City Council approve resolution authorizing the City Manager/Agency Executive Director to execute the 2010 Modification Agreement and to conform the Amended and Restated Disposition, Development and Owner Participation Agreement and related documents as necessary for the redevelopment of the Town Center property.

Vice Mayor/Agency Vice Chair Moylan spoke to the motion and stated he had concern that there would be no hard, written start date for the project but the previous agreement had a written start date that is not worth the paper it is written on. He stated there were penalties for not meeting the milestones, but as was pointed out earlier, the Council can't legislate the market. Moylan stated some of what was given up in negotiations turned out to be unenforceable, and explained the City has negotiated into the agreement that the bank or receiver would present to the Council a development team that meets a number of criteria including the ability to timely commence and complete the construction and provide a minimum project schedule. He stated this agreement will get people back to work and will also provide for a major tenant to be the first to locate in the project. Moylan stated Nokia insisted that one of their conditions is the signing of this agreement and he thinks that is one of the strongest statements that this agreement leads to the project getting done faster.

Vice Mayor/Agency Vice Chair Moylan stated one of the changes previously made to the agreement was the housing, which was originally supposed to be ownership housing was turned into rental housing for five years. This agreement allows the housing to go back to all ownership housing.

Vice Mayor/Agency Vice Chair Moylan stated the previous agreement had the majority of the \$9 million of groundwater cleanup to be paid for by the City; with the modification agreement the cost is split 50/50.

Councilmember/Agency Member Lee offered a friendly amendment to change the December 31, 2015 date on page 6 of the agreement to December 31, 2013.

Vice Mayor/Agency Vice Chair Moylan responded this is not something the Council can do unilaterally as this is the product of many weeks of negotiations. He declined to accept the friendly amendment.

Councilmember/Agency Member Spitaleri stated there was concern expressed regarding the lack of absolute veto power over selection of a developer who the Council felt wasn't good for the project.

MOTION to AMEND: Councilmember/Agency Member Spitaleri moved an amendment to add to the "Transferability" section, Item (3), under Attachment A, on page 4, "After foreclosure 90 days prior to a formal transfer request, the lender shall identify all proposed transferees who can demonstrate to the agency that it is able to obtain construction financing or otherwise commence construction within a time period equal to or shorter than other prospective transferees known to the lender or to the agency", and "The lender shall select such transferees as long as the transferee can pay to the lender a fair market value in competitive terms."

Councilmember/Agency Member Lee seconded the motion to amend for purposes of discussion.

Councilmember/Agency Member Spitaleri spoke to his motion to amend and stated that what he is trying to achieve is that when the foreclosure comes to an end and there are multiple developers interested, the City/Agency can look at all of them if they meet all the criteria that is in the agreement. Spitaleri stated he is interested in getting the project moving and he doesn't think a start date can be set but that if a developer can start the project quicker and they have the ability, the Council should have the right to weigh in on that.

Councilmember/Agency Member Griffith raised a question of clarification of the motion. He asked if the intent of the motion is to make the ability to start the job the quickest the overriding criteria in a bidder.

Councilmember/Agency Member Spitaleri stated the intent of the motion is he wants to see all who step up to the plate. He stated someone might be able to have a projected timeline when they might get financing but the Council would never know that as it will only get what the bank sends to us. He stated if the developer meets the minimum criteria, the Council will not be able to challenge it, and then there are the issues of obtaining financing, conditions of pre-leasing and other conditions that stretch it out, where someone else might be able to do it in a shorter period of time. He stated that the fact that the Council is going to give up its veto power, he would like to at least have the ability to look at more than one developer.

Mayor/Agency Chair Hamilton inquired of staff that if this amendment is approved it would essentially be renegotiating on the dais, which will send it back, and construction could not start tomorrow. City Attorney/Agency Counsel Kahn confirmed the modification agreement under consideration is the culmination of a number of negotiating sessions with the Council and with the receiver; the receiver has agreed to the terms as presented. He stated if any modifications are made it would have to go back to the receiver and potentially to the lender for further consideration, and the ability to move forward tomorrow with Nokia would not be a possibility.

Vice Mayor/Agency Vice Chair Moylan stated he is opposed to the amendment; the amendment on the floor constitutes veto power and the original negotiating positions were by the bank that they have sole discretion to choose the developer and by the City that we have total veto power and we will choose our own developer. He stated the agreement as presented is the result of weeks and weeks of compromise on both sides, which now includes criteria the developer would have to meet. Moylan stated if the developer can do that, the Council should be willing to accept that. He questioned what the basis for selection would be if there are multiple developers who can meet the criteria, and stated he would not want it to look like we want our friend the developer to

do it. Moylan stated the negotiated agreement says if the developer can meet all of the City's criteria, we are willing to work with them, or if we say they can't we're willing to go to an arbitrator. In addition, he added that if it turned out that any modifications of the negotiated agreement came from the current team that is in default, it might amount to interference. He concluded to get the millions of dollars in environmental remediation and the ownership housing, and to get the construction started fast, he is willing to resort to an arbitrator if we don't like that developer.

Councilmember/Agency Member Griffith stated he wants the amendment and more in the agreement, but that the point of selecting who the developer would be was the sticking point in the agreement. He stated it is his perception the negotiators spent the majority of their time getting to the proposed agreement and to change it at this point would be a breach of faith in our negotiating. Griffith stated he can't support the amendment.

Councilmember/Agency Member Whittum stated he will oppose the amendment. He stated we have a bank willing to lend money and understandably would like an agreement, which the negotiating team has spent months negotiating. He stated this is a good agreement and we need to move forward; it takes courage to accept responsibility for that large decision, and that is what we need to do in the best interests of the City. The tenant that wants to come in will bring 500 employees which will help the downtown and other developments that hopefully will take place sooner rather than later. He stated the minimum project looks great; they've added quite a few good things to it and he looks forward to that.

Mayor/Agency Chair Hamilton stated we don't have money in this project other than the tax increment but we do have good will, and the amendment would squander it and we would lose any good will. She stated by approving the agreement on which we've spent six months negotiating, we're showing good will and a willingness to work with the other parties. She stated she hopes that by maintaining that good will, if we asked for more than one developer, if there is more than one, they might be willing to share that with the City without it having to be included in the agreement.

VOTE on AMENDMENT: 2 - 5 (Council/Agency Member Griffith, Vice Mayor/Agency Vice Chair Moylan, Mayor/Vice Chair Hamilton, Council/Agency Members Whittum and Swegles dissented)

Councilmember/Agency Member Spitaleri stated he agrees with many of the points made but that he wants to see livelihoods back to work, the downtown merchants have been suffering a long time, and Nokia will be good, but that if we say we don't agree with everything in the agreement we lose Nokia he does not think that is good faith bargaining. He stated he would support the motion.

Councilmember/Agency Member Lee stated the proposed agreement is better than what we had, but he has concerns, such as public outreach to alleviate the concerns of the downtown association, Chamber, and the concerned citizens near downtown. He stated the 2015 date looks so far out and he hopes the project will be finished well before 2013. He stated although he will not support the motion, he supports all the hard work that has been done, and welcomes a good tenant like Nokia and wants to get the construction started as soon as possible. He stated he is trying to accomplish benefiting Nokia and any future tenants that this project will be started sooner and finished sooner.

Councilmember/Agency Member Griffith stated this is an extremely uncertain endeavor; uncertainty in the credit market that makes construction difficult; there is an economy problem that discourages tenants from committing to leases; and it was the finding of staff and Council that the end result is an inability to get firm start dates. He stated that was a sticking point for him in the beginning but independent experts working on our behalf told us that firm start dates are an impracticality in this market, which left us with the decision to say go ahead with something soft or wait one, two, or even three years before some developer is willing to enter into an agreement with firm dates. He stated the best opportunity to move forward as fast as possible is to show faith, from all parties, have the courage to go forward and be the first to show that we have good faith.

Vice Mayor/Agency Vice Chair Moylan stated Councilmember Spitaleri articulated a point that a number of Council made in closed session which was we are not doing this to get Nokia; that came up at the last minute. He stated what we have in place is the result of compromises iterated many times, and after we had gotten our compromise the Nokia thing came up and it turned out that if we can do this by a certain date, we get them too. Moylan stated the influence that the Nokia situation had on this was not to change any of the terms in the agreement, but to say if we can get it done before their lease is up then we get them this year. He stated the Nokia issue affected the timing, and not the text of the agreement.

Councilmember/Agency Member Whittum commented with regard to the start date, it has already started; it has been a phased approach and has been going on for some time, going back to the completion of Target, securing existing structures and substantial investment by the bank starting tomorrow finishing up a class A building. He stated that is millions of dollars that needs to come with an agreement, and this is great news for Sunnyvale.

Mayor/Agency Chair Hamilton called for the vote.

VOTE ON MAIN MOTION: 6 - 1 (Councilmember/Agency Member Lee dissented)

Councilmember/Agency Member Griffith stated this really happened because staff did an amazing job and he hopes there is an opportunity in the future on what staff did on Target, getting McKinley and Taafe open, on getting Nokia in, on getting three parties with different interests together and getting this done in a reasonable fashion.

Mayor/Agency Chair Hamilton stated we need to remember what has gone right about this project; at this time last year there were buildings out there that were starting to rust down the sides with nobody working on them. We now have buildings that have a shell, that are waiting for tenant improvements; we have a Target store open and it is phenomenal. She stated it would not have happened without staff and thanked them for that.

Mayor/Agency Chair Hamilton called for a recess at 10:37 p.m.

Mayor/Agency Chair Hamilton reconvened the meeting at 10:50 p.m. with all present except Councilmember/Agency Member Swegles.

2. RESOLUTION Resolution for the Formation of a Sustainability Commission Advisory
RTC 10-120 to Council or Sustainability Committee Advisory to Staff (Study Issue
 DPW 09-10)

Director of Public Works Marvin Rose presented the staff report.

Mayor Hamilton confirmed with Director Rose that the recruitment process would begin immediately through the Office of the City Clerk.

Mayor Hamilton stated the Horizon 2035 Committee will be focusing on a Climate Action Plan, and inquired if it makes sense to wait until that work is done before establishing the Sustainability Advisory Commission.

Director Rose stated staff is ready to form the Sustainability Commission whenever Council believes it would be appropriate. Director Rose added that many of the applicants for the Horizon 2035 Committee may likely be potential applicants for the Sustainability Commission as well.

Councilmember Griffith clarified the Horizon 2035 Committee is a committee advisory to staff on operational issues, and if Council decides that policy advice is needed, the Horizon 2035 committee would not directly meet Council's goal in that regard.

Councilmember Lee stated the Mayoral Green Ribbon Committee was formed a couple years ago, and inquired how it would relate to this commission.

Mayor Hamilton stated the Mayoral Green Ribbon Committee still exists, but is currently dormant and that committee might be recruiting grounds for this commission.

Mayor Hamilton stated the establishing resolution does not mention one of the City's standard requirements that a member be a registered voter living in Sunnyvale. Director Rose stated that is something Council can direct staff to add to the resolution.

Public hearing opened at 10:56 p.m.

Barbara Fukumoto stated sustainability is worthy of a dedicated advisory committee or commission, and cited many other cities which have a sustainability commission or committee. Fukumoto stated the functions of a commission and committee both seem necessary and encouraged Council to consider both. Fukumoto expressed concern that a 5-person membership may not be sufficient, and stated she hopes industry and small business would be included. Fukumoto expressed concern that the commission be given wide latitude and have the option to meet more often than quarterly if the need arises.

Councilmember Lee thanked Fukumoto for her service on the Mayoral Green Ribbon Committee and confirmed that the last time the committee met was over one year ago. Fukumoto stated the committee may not be clear on what their mission is. Councilmember Lee stated the staff support and funding will help re-focus the mission.

Councilmember Spitaleri inquired as to how many members Fukumoto thought would be appropriate for the commission. Fukumoto responded that five members seemed small and suggested seven or nine.

Public hearing closed at 11:01 p.m.

MOTION: Councilmember Griffith moved and Councilmember Lee seconded to approve Alternative 3. a. ii: Approve a resolution for the formation of a new Council-appointed commission on sustainability advisory to Council, meeting bi-monthly **and** the resolution should include a minimum of one member of the business community, the commission shall be open to registered voters that are Sunnyvale residents, City of Sunnyvale business license holders who may not reside in the City, or designated representatives of Sunnyvale businesses with 200 or more employees.

FRIENDLY AMENDMENT: Mayor Hamilton offered a friendly amendment, not to restrict the membership to registered voters in Sunnyvale because only roughly one-third of the population of Sunnyvale is registered to vote. Mayor Hamilton stated there are a lot of people in Sunnyvale who have a lot of expertise who for whatever reason are not registered to vote and they should not be excluded if they want to be a contributing member of the community.

Councilmember Griffith stated he added it because all of the other commissions require members to be registered voters in Sunnyvale, with the exception of the Bicycle and Pedestrian Advisory Commission.

Mayor Hamilton stated it may be the direction to go with all commissions, because there is a lot of potential expertise that should be tapped into and voter registration should not be an impediment to getting involved with the community.

Councilmember Griffith stated he does not disagree, but is reluctant to make this the point at which the issue is revisited for all commissions; he would rather make this commission in line with all current commissions and revisit this topic regarding all commissions at a later date.

Mayor Hamilton stated not all commissions have the requirement, and this commission does not exist yet. Mayor Hamilton stated there is no guarantee the issue is going to be revisited for all other commissions as it does not exist as a study issue and some of the commissions are Charter commissions.

Councilmember Griffith stated if it is truly important voter registration not be required for other commissions, it should be revisited. Councilmember Griffith declined to accept the friendly amendment.

AMENDMENT: Councilmember Griffith amended the motion to review the commission in two years to determine whether the frequency of meetings, number of members or the general operating principles of the commission are truly working and need to be adjusted.

Councilmember Lee accepted the amendment.

Vice Mayor Moylan stated he agreed with Fukumoto that both the Alternative 2 and Alternative 3 functions are necessary, so he has been trying to weigh which is needed more if only one is going to be established; a commission to give Council recommendations on sustainability policy or a committee to tell staff what they should be doing to make a particular departmental operation more sustainable. Vice Mayor Moylan added the Cool Cities group is not under City control, but they frequently come to the

City with recommendations which have been implemented. Vice Mayor Moylan stated there is a bigger hole at the advisory to staff level and he would prefer Alternative 2.

Councilmember Whittum stated he prefers Alternative 2 as it translates efforts more directly and quickly into action than having to work through Council. Councilmember Whittum cited the City of Eugene's mission statement and inquired what the mission statement of this commission would be. Councilmember Whittum stated sustainability is part of planning, and the policy advice in the sustainability area is stronger and more focused when it comes directly through the Planning Commission and Council has the opportunity to provide for that when it looks at appointments to the Planning Commission. Councilmember Whittum stated he thinks it is more appropriate to have a committee advisory to staff, however it would be worthwhile if those interested in having a commission would compose a mission statement that provides a unique mission for that commission that is not overlapping or encroaching in what we already have covered in other commissions.

Councilmember Griffith stated he spent two years in Cool Cities advocating for better practices within the City, and one of the problems was that they were only brought into the process four days before Council was going to decide on the issue. Griffith added that having served on the Board of Library Trustees for almost six years, he recognizes the value in being able to contribute to the direction of policy before the staff report reaches Council. Councilmember Griffith stated policy advocacy needs to be built into City processes, which is specifically what a commission would be oriented for. Griffith stated he does see the potential value for a committee, but at this time, there are broad areas of sustainability – resource use, transportation – that the existing commissions do not have purview over and building that purview into City processes is important. Councilmember Griffith stated Council needs citizens who are going to be active advocates for better policy toward sustainability, which is exactly what would be achieved by a commission. Councilmember Griffith stated the goal of the commission should be to actively find ways to guarantee that the City's use of its resources today do not decrease the availability of those resources in the future.

Councilmember Lee stated the earlier thinking was that each department and commission looks at sustainability, but the City ultimately needs a policy advisory body. Councilmember Lee stated the Mayoral Green Ribbon Committee tried to do some of that but the time is right to form a commission. Councilmember Lee stated this is an important policy advisory role and a more formalized function, staff support and seven or nine members that meet frequently will be able to give the necessary advice to guide the future policy of Sunnyvale.

Mayor Hamilton confirmed with Councilmember Griffith that the motion is approve Alternative 3.a.ii, include a minimum of one member of the business community, membership requirements are either a registered voter in Sunnyvale or a Sunnyvale business license holder or a designated representative of a Sunnyvale business with 200 or more employees; and review of the commission in two years to determine whether the frequency of meetings, number of members or the general operating principles of the commission are truly working and need to be adjusted.

Mayor Hamilton announced that Councilmember Swegles was not feeling well and left at the break.

VOTE: 4 - 2 (Vice Mayor Moylan and Councilmember Whittum dissented, Councilmember Swegles absent)

3. RESOLUTION Conduct Protest Hearing and Adoption of Resolution of the City of
RTC 10-106 Sunnyvale to Levy an Annual Assessment for the Downtown
Sunnyvale Business Improvement District

Councilmember Whittum stated his home is within 500 feet of the Business Improvement District and recused himself and left the Council Chambers.

Economic Development Manager Connie Verceles presented the staff report and stated no protests were received.

Public hearing opened at 11:13 p.m.

No speakers.

Public hearing closed at 11:13 p.m.

MOTION: Vice Mayor Moylan moved and Councilmember Lee seconded the motion to adopt the Resolution of the City of Sunnyvale to Levy an Annual Assessment for the Downtown Sunnyvale Business Improvement District.

VOTE: 5 - 0 (Councilmember Whittum recused, Councilmember Swegles absent)

4. MOTION 2010-7233 - Request to Initiate a General Plan Amendment to
RTC 10-102 Change the Land Use Designation for 920 De Guigne Drive Industrial
and Service (MS) to Industrial-to-Residential Low Medium Density
(ITRMED)

Director of Community Development Hanson Hom presented the staff report.

Councilmember Griffith stated Council received a letter expressing concern and confirmed with Director Hom that 920 is currently zoned industrial and 915 is a larger parcel to the north. Director Hom stated the parcel to the south is also owned by Equity Office and they are not proposing that as part of their General Plan study, but staff recommends including that parcel.

Mayor Hamilton inquired with the shifting of numbers, how it washes out in terms of housing units. Director Hom stated one parcel wants a decreased density so there would be a loss of units, but if Council chooses to add further industrial-to-residential area that would partially make up some of the lost units. Director Hom stated that just because the applicant is proposing a specific General Plan designation, it does not mean the Council is bound to that designation.

Mayor Hamilton stated if there is a low-medium density on De Guigne, it would be up to 144, depending on what Council did with the density, but the Taylor Morrison site is looking at going from 304 to 132, which would be a reduction of 172, a net loss of approximately 28 units.

Director Hom stated the General Plan maximum is currently is 1942 units for all of the existing ITR sites, which includes potential redevelopment on the AMD site which is not

likely to be converted to residential in the near future. Director Hom stated that based on some rough calculations, if the two parcels are changed to low-medium density, which is close to 300 units, and if the Taylor Morrison density is decreased to 132 units as proposed, there is still a maximum zoning of 197. Director Hom stated it could result in a net increase in total residential units, depending on the zoning and the project that comes in. Director Hom stated the City has a project proposal from the Taylor Morrison site, but no specific project proposal for the Equity Office site. Mayor Hamilton confirmed with Director Hom the numbers are based on what they are requesting.

Councilmember Whittum stated he went to the site and inquired as to the status of the empty lot behind AMD. Director Hom stated it is what used to be the John Laing Homes project which is in the process of foreclosure, and O'Brien Homes is proposing to take over that project.

Councilmember Whittum stated residents on Duane have been interested in doing a downgrade to two lanes plus a turn lane, bike lanes and on-street parking. Councilmember Whittum confirmed with Director Hom that it is not currently being looked at. Councilmember Whittum stated often the condition for doing such a downgrade is there should be fewer than 20,000 cars per day. Councilmember Whittum stated it is a route to school and the existing low-density neighborhood is already interested in looking at that downgrade and inquired if we cross a threshold from less than 20,000 cars per day to more, forcing Duane to be two-lane, higher speed, less pedestrian friendly, versus if we did not add so much more residential, we might be able to retain the more pedestrian friendly character and do a downgrade at some point.

Director Hom stated if Council were to initiate the amendment, traffic counts, bus service and transit accessibility would be studied.

Councilmember Whittum inquired if there are lot-line noise issues. Director Hom stated that is a critical issue and there have been issues in the past regarding ITR areas, which is one of the reasons staff is proposing expanding the study area.

Public hearing opened at 11:31 p.m.

Matthew Edwards, Director of Development, Equity Office, stated Equity Office is a national owner and operator of office buildings with 10 million square feet in Silicon Valley of which 15 buildings, about 800,000 square feet, are in Sunnyvale. Edwards encouraged Council to support staff's recommendation to initiate the General Plan amendment. Edwards stated that in 2004 this property was included as part of the East Sunnyvale ITR study area, and the proposed General Plan amendment would facilitate the transition of the site from industrial to low-medium density residential as was originally envisioned by the ITR study and recommended by staff. Edwards stated the commercial buildings currently on the site are functionally obsolete and the amount of money needed to put into them to make them compete in today's market does not make sense. Edwards stated that because the area has been transitioning from an industrial area to one that is largely residential, they felt it was best to seek approval to develop the site for residential use. Edwards stated should Council decide to initiate the proposed General Plan amendment, they would be prepared to submit a formal application immediately. Edwards stated there are no immediate plans to develop the property to the south as it is a newer product and well-leased, but they support staff's recommendation to study that area as well. Edwards stated the Spansion site is in bankruptcy and no one has a purchase and sale agreement on it; there is one individual

trying to compete for it, and if he is successful it is a data center, which in their opinion a comparable use for residential.

Councilmember Whittum stated there are a number of areas in the City zoned residential that are not being used as residential such as the huge site next to their property, the empty place on Duane Court, hundreds of units in the downtown and Council is looking at Lawrence Station Transit Village where there might be thousands of units next to a train station. Councilmember Whittum stated this site is not located near a train station or light rail and inquired if it would not be better for the City to retain the Industrial and Service zonings for the tax base and jobs. Councilmember Whittum inquired as to why more space for residential would be good for the City. Edwards stated they do not think their property will be re-leased, so they do not see it as much of a value to the City or anyone else. Edwards stated they feel it is better for the community, especially if they can master plan the area with the neighbors.

Public hearing closed at 11:37 p.m.

Councilmember Whittum moved that Council does not initiate a General Plan Amendment study. Motion died for lack of a second.

MOTION: Vice Mayor Moylan moved and Councilmember Spitaleri seconded the motion to approve Alternative 2: Initiate a General Plan Amendment (that includes both the subject property and the property to the south) and study a general plan land use designation change from Industrial to Industrial to Residential, with emphasis on a low-medium residential density.

Vice Mayor Moylan stated the concerns Councilmember Whittum raised are valid and he thinks the time to visit them is when Council sees what the full implications of the General Plan Amendment would be, and stated he would be asking some of the same questions at that time.

Councilmember Whittum spoke against the motion. Councilmember Whittum stated there is a video on YouTube called Political Evolution of Sunnyvale 1940 – 1980 which shows six former Mayors of Sunnyvale discussing what happened in Sunnyvale during their era. Councilmember Whittum stated one of the interesting comments by one of the Mayors was what a great thing Sunnyvale planners did long ago when they zoned the industrial and service zonings in the north part of the City and how that provided for the welfare and the prosperity of the City over many decades. Councilmember Whittum stated industrial and service and commercial is how money is generated to help run the City, and once it is rezoned to residential it will not go back. Councilmember Whittum stated there is not a nexus to transit at the site and it is going to be a car-oriented development. Councilmember Whittum stated there are sites which are better located, better connected to the roadway network and closer to high frequency bus service.

Director Hom confirmed for Mayor Hamilton that the issue would come back before Council within approximately six months following a Planning Commission meeting and outreach to the nearby residential and industrial communities.

Mayor Hamilton stated she supports the motion and commented that with the north part of Sunnyvale zoned industrial and the south part of Sunnyvale zoned residential, we have cars going back and forth between the two. Mayor Hamilton stated she does not know if she would support the rezone, but in some ways putting some of the residential

closer to the industrial cuts commute times and she thinks it is worth looking at.

VOTE: 5 - 1 (Councilmember Whittum dissented, Councilmember Swegles absent)

5. MOTION 2010-7143 - Request to Initiate a General Plan Amendment to
RTC 10-100 Change the Land Use Designation for 1044 East Duane Avenue from
Industrial-to-Residential High Density (ITRHI) to Industrial-to-
Residential Medium Density (ITRMED)

Director of Community Development Hanson Hom presented the staff report as part of Item 4.

Councilmember Whittum referenced page 3 of Attachment A and inquired about resident traffic concerns. Director Hom stated the more appropriate time to address the detailed access issues for the project is when revised plans are submitted. Director Hom stated they are proposing a significant change to the plans and the circulation access would need to be reviewed by the Planning Commission. Director Hom stated there was an extensive traffic study done as part of the original approval which would likely be referenced.

Councilmember Whittum inquired if there would be an opportunity to consider a traffic light on East Duane. Director Hom stated it could be revisited but this is a significant downgrade in the zoning density, so if the larger project did not trigger a traffic light, it is unlikely the revised project would unless the overall General Plan change for the area warrants it. Councilmember Whittum stated this corridor on East Duane is the way people get to Lawrence Expressway which is the context in which the question came up about needing a traffic light there. Councilmember Whittum inquired if a downgrade for Duane to a two plus one could be looked at in connection with the study.

Director of Public Works Marvin Rose stated it is not part of the application before Council. Director Rose stated streets like Duane were looked at in the Pedestrian and Bicycle Opportunities Study and he does not recall whether Duane is on that list. If it is on the list, there will be a future analysis to determine whether it should be downgraded.

Director Hom confirmed for Councilmember Whittum that if Council goes forward with the General Plan Amendment, Council could choose to consider lower density.

Director Hom confirmed for Councilmember Whittum that it could be graded so that the density on Duane Court is lower.

Councilmember Whittum stated the site is devoid of trees along Duane Court and there is a fairly ratty looking fence. Director Hom confirmed that the issues can be raised to the property owner.

Public hearing opened at 11:48 p.m.

Jay Pawlek, Taylor Morrison, stated the same issues that affected the Town Center project have had an impact on the Duane Court site. Pawlek stated it was originally proposed and approved for 304 units, and given today's economic reality it is not financially viable to change it from a vacant field to the project it was approved for. Pawlek stated Taylor Morrison's goal is to turn the property into a productive housing site that meets some of the City's needs and the region's needs for housing in a short

period of time, and in order to do that it takes the General Plan Amendment and a new project. Pawlek stated that one of the issues that came up during the rezoning was the density of the proposed site, and they have had some initial meetings with the neighboring community and they intend to have many more going forward, but they feel what they are proposing is significantly more consistent with what is immediately to the side of the site.

Councilmember Lee inquired about the timeline for the project if the General Plan Amendment was approved. Pawlek responded that they hope to break ground in spring 2011. Pawlek confirmed for Councilmember Lee that Taylor Morrison is a public company and they use company money to do the development.

Public hearing closed at 11:52 p.m.

Councilmember Griffith stated he is torn on the issue and is looking for someone to convince him. Councilmember Griffith stated it seems to be a decision between best interests of the City and a bird in the hand. Councilmember Griffith stated we have a parcel designated high density, and getting something done high density tends to be difficult because not many people like it and once you have it, it is always good to preserve it if you think that density is actually needed. Councilmember Griffith stated the density steadily increases the closer you get to Lawrence, but the flip-side is the best that could be done right now is medium density. Councilmember Griffith stated he is not sure whether a bird in the hand is better than sacrificing long term planning on something like this. Councilmember Griffith stated he knows it is only a study at this point, but if his answer is no it is going to get progressively harder for him to say no later.

Mayor Hamilton stated considering it is all single-family homes across the street, she has no problem downgrading it. Mayor Hamilton stated the neighbors were opposed to the high density project when it was approved, and she thinks this will make the quality of life for the neighbors much better.

MOTION: Councilmember Lee moved and Councilmember Whittum seconded the motion to initiate a General Plan Amendment study for the subject site from Industrial-to-Residential High Density to Industrial-to-Residential Medium Density.

Councilmember Lee stated he remembers the discussion of this project in 2007. There are very few places to put high density housing and the neighbors will be much happier with a new project.

Councilmember Whittum inquired if there would be any objection to asking staff to also look at having a lower height on the row along Duane Court.

Mayor Hamilton stated that is not on the agenda and the appropriate time to consider that would be when the application or project comes back.

Director Hom stated the general policy issue could be considered but the specifics regarding height of structures along Duane would be addressed more appropriately when the project plans come in.

Councilmember Whittum stated there are places to put high density but this is not one. Councilmember Whittum stated there are areas planned to look at high density such as

near Caltrain, light rail stations and high frequency bus service because collecting the high density may help transit rider ship and lead to transit-oriented development and improved transit service. Councilmember Whittum stated putting density at this site does not help that cause and adds cars to Duane Court. Councilmember Whittum stated this is not the right place for high density and he is glad lower is being looked at.

VOTE: 6 – 0 (Councilmember Swegles absent)

6. MOTION Process for Appointing Interim Councilmembers
RTC 10-090

Mayor Hamilton suggested this item be postponed to a future date.

MOTION: Councilmember Moylan moved and Councilmember Lee seconded the motion to postpone this item.

VOTE: 6 – 0 (Councilmember Swegles absent)

Mayor Hamilton stated Item 9 would be considered next.

7. MOTION FY 2010-15 Consolidated Action Plan and FY 2010-11 Action Plan
RTC 10-128

Housing Officer Susanne Ise presented the staff report.

Public hearing opened at 12:14 a.m.

No speakers.

Public hearing closed at 12:14 a.m.

MOTION: Councilmember Lee moved and Councilmember Spitaleri seconded the motion to approve the 2010-15 Consolidated Plan and 2010-11 Action Plan.

VOTE: 6 – 0 (Councilmember Swegles absent)

Council revisited Item 9 at this time.

8. MOTION Appointment to the Santa Clara County Cities Association Legislative
RTC 10-127 Action Committee (LAC)

Assistant City Manager Robert Walker presented the staff report.

Public hearing opened at 12:19 a.m.

No speakers.

Public hearing closed at 12:19 a.m.

Mayor Hamilton reviewed the alternatives and stated Councilmember Lee has indicated an interest in the committee.

MOTION: Councilmember Griffith moved and Councilmember Whittum seconded the motion to authorize appointment to the Santa Clara County Cities Association Legislative Action Committee (LAC) by the Mayor.

VOTE: 6 - 0 (Councilmember Swegles absent)

Mayor Hamilton appointed Councilmember Otto Lee to the Santa Clara County Cities Association Legislative Action Committee and announced that the first meeting is Thursday night.

9. MOTION Positions on State Ballot Measures for the June 2010 Election
RTC 10-124

This item was considered after Item 6.

Assistant City Manager Robert Walker presented the staff report.

Public hearing opened at 12 a.m.

Jean Lamar urged Council to support a yes vote on Proposition 15.

Nancy Smith asked Council to support a yes vote on Proposition 15.

Sarah Gitter asked Council to support a yes vote on Proposition 15.

Public hearing closed at 12:04 a.m.

MOTION: Vice Mayor Moylan moved and Councilmember Lee seconded the motion to take a support position on Proposition 15.

Vice Mayor Moylan stated he thinks the issue is City business, as there was a study issue on this exact topic that a Council subcommittee worked on for the better part of a year, and one of the time consuming aspects was what should be the level of support a candidate has to show before they would qualify. Vice Mayor Moylan stated they ended up taking their best guess after looking at programs from other states, but if there is a pilot program running in California, we can see how it works and tweak what the City decides to do.

Councilmember Lee stated he, Vice Mayor Moylan and Councilmember Swegles were the three members of the subcommittee. Councilmember Lee stated this is a large scale pilot program Statewide and he believes it is an important issue for the City and the end result could help cast the future policy for the City.

Mayor Hamilton stated she will not support the motion; it repeals the ban on public campaign financing, but it has a funding mechanism of taxing lobbyists, and her concern is that it is not limited to that. Mayor Hamilton stated with the state funding situation right now, if it expands beyond the Secretary of State position, she is concerned it will end up dipping into General Fund money. Mayor Hamilton stated she does not see protections not to go after that. Mayor Hamilton stated she does not mind having publicly funded campaigns, but voters need to understand it has a revenue impact and they need to identify a source, and she is not sure this proposition as written addresses her concerns that they are not going to go after the State General Fund if the money from the lobbying

does not cover the public funding.

VOTE: 3 - 2 (Mayor Hamilton and Councilmember Spitaleri dissented, Councilmember Whittum abstained, Councilmember Swegles absent)
City Clerk Kathleen Franco Simmons stated the motion failed.

Discussion was held regarding whether the abstention counted as a no vote.

Councilmember Griffith requested the city attorney provide input.

Councilmember Whittum suggested those supporting the motion move to reconsider the previous question and take attendance before the vote.

Mayor Hamilton stated she thought the city attorney's opinion was it did not pass because four votes are needed.

Councilmember Griffith inquired how an abstention is any different from a no vote.

Councilmember Whittum suggested a recess.

Mayor Hamilton concurred with Councilmember Lee to proceed with another motion while the voting issue was researched.

MOTION: Councilmember Lee moved and Councilmember Griffith seconded the motion to approved Alternative 1, adopt the following positions on ballot measures:

- **Proposition 13** Limits On Property Tax Assessment. Seismic Retrofitting of Existing Buildings. Legislative Constitutional Amendment; **SUPPORT**.
- **Proposition 16** Imposes New Two-Thirds Voter Approval Requirement for Local Public Electricity Providers. Initiative Constitutional Amendment; **OPPOSE**.

VOTE: 5 - 0 (Councilmember Whittum abstained, Councilmember Swegles absent)

Mayor Hamilton proceeded with Item 7 at 12:13 a.m.

Following Item 7, City Attorney Kahn stated an abstention is considered to be voluntary absenting of the member from the vote, therefore a 3 -2 vote with a person abstaining with a quorum present, it would pass as a 3 - 2 vote.

City Attorney Kahn confirmed for Councilmember Spitaleri that to pass the vote, three votes are needed with a quorum of five. City Attorney Kahn stated if there is an abstention, the quorum is still present but because the individual is voluntarily removing them self from the vote, the only members whose votes count are the ones who are actually voting.

Councilmember Lee confirmed with City Attorney Kahn that if there was a quorum of four people and one person abstained from a vote, a vote could pass 2 - 1. Vice Mayor Moylan requested declaration that a motion passed 3 – 2; the City has taken a position in support of Proposition 15 with abstention by Councilmember Whittum and Councilmember Swegles absent. City Clerk concurred with Vice Mayor Moylan's declaration of the earlier vote.

COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS

Vice Mayor Moylan reported the team working on the Stevens Creek Trail went on a field trip hosted by the Santa Clara Valley Water District to look at alternatives for getting past Interstate 280.

Vice Mayor Moylan reported the Emergency Preparedness Council met and had a presentation about Alert SCC, the Reverse 911 program existing in the county and he has requested a brief presentation on an upcoming agenda.

NON-AGENDA ITEMS & COMMENTS

Councilmember Spitaleri suggested going back to meeting every Tuesday because this meeting was a good example of trying to do too much, and because he is starting to feel a disconnect with his colleagues because he does not see them very often. Councilmember Spitaleri stated when there were regular meetings Council was discussing a lot of items and now it is only happening every couple of weeks. Councilmember Spitaleri stated for the community, the members of the public who had to wait all night to speak and the viewing audience, it is better to have fewer items on the agenda than have a long meeting like tonight. Councilmember Spitaleri suggested going back to scheduling items on more Tuesday nights, and the meeting could be cancelled if necessary.

Councilmember Griffith stated he agreed with Councilmember Spitaleri because it is difficult to make intelligent decisions after midnight and because people who want to talk are being scared off. Councilmember Griffith stated May has historically been bad because of the budget cycle; there tend to be a few meetings in May that tend to run long. Councilmember Griffith stated that he thinks Council should be meeting more often.

Vice Mayor Moylan stated he supports a cap on the number of public hearing items and would prefer more frequent shorter meetings.

Mayor Hamilton stated she will take the comments under consideration.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- RTC 10-123 Opportunity for Council to Appeal decisions of the Planning Commission of April 26, 2010 and the Administrative Hearing of April 28, 2010
- RTC 10-125 Board and Commission Resignation (Information Only)
- Approved Minutes of the Housing and Human Services Commission Meeting of March 24, 2010
- Draft Minutes for Housing and Human Services Commission Meeting of April 28, 2010
- Draft Minutes of the Bicycle and Pedestrian Advisory Commission Meeting of April 15, 2010
- Draft Minutes of the Arts Commission Meeting of April 21, 2010

ADJOURNMENT

Mayor Hamilton adjourned the meeting at 12:25 a.m.