

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, APRIL 6, 2004

The Council of the City of San José convened in regular session at 9:30 a.m. in the Mayor's Conference Room 600, at City Hall.

Present: Council Members - Campos, Chavez, Chirco, Cortese, Dando, Gregory, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - None.

Upon motion unanimously adopted, Council recessed at 9:31 a.m. to a Closed Session in Room 600 to confer with Legal Counsel to discuss existing litigation pursuant to Government Code Section 54956.9; subsection (a) considering the case(s) of: (1) Fong, et. al. v. City of San José, et. al.; (2) In Re: United Airlines; (3) Pynter v. Moorpark Garden Apartments; (4) Bui, et al. v. City of San José, et al.; and (B) to confer with Labor Negotiator pursuant to Government Code Section 54957.6, City Negotiator: City Manager designee Alex Gurza, and the following Employee Organizations: (1) San José Police Officers' Association; (2) International Association of Firefighters; (3) Municipal Employees Federation; (4) Confidential Employees Organization; (5) City Association of Management Personnel; (6) Association of Maintenance Supervisory Personnel; (7) Operating Engineers, Local 3; (8) International Brotherhood of Electrical Workers; (9) Association of Building and Mechanical and Electrical Inspectors.

By unanimous consent, Council reconvened from the Closed Session and recessed at 10:29 a.m. and reconvened at 1:36 p.m. in the Council Chambers.

Present: Council Members - Campos, Chavez, Chirco, Cortese, Dando, Gregory, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - None.

INVOCATION (DISTRICT 4)

Father Steven Brown, Star of the Sea Church, recited a prayer of remembrance of our neighbors with different faiths, and the power of leadership for the common good.

PLEDGE OF ALLEGIANCE

Mayor Gonzales led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, the Orders of the Day, and the Amended Agenda were approved. Vote: 11-0-0-0.

Mayor Gonzales welcomed the students from Saint Leo School.

CEREMONIAL ITEMS

1.1 **Presentation of a proclamation declaring the month of April, “Month of the Young Child.” (Chirco)**

Documents Filed: None.

Discussion/Action: Mayor Gonzales was joined at the podium by Council Member Chirco; and Lisa Giannotti, who serves on the Month of the Young Child Steering Committee, and Joann Douglas, Chairperson, were invited to the podium. Council Member Chirco remarked that this month’s attention is drawn to the future of the community by honoring the youngest residents of San José. Council Member Chirco commented that quality early care and education for children are fundamental elements of the economic stability of the San José community, and proclaimed April 2004 as the “Month of the Young Child”, reaffirming a continuing commitment to ensure the health, welfare, safety, and education of our youngest residents through effective community programs and services that support families with young children. Mayor Gonzales presented a plaque, on behalf the City Council, to Ms. Giannotti and the Steering Committee for their efforts. Ms. Giannotti thanked Mayor Gonzales and the Council Members, mentioning that the Children’s Fair is being held at Discovery Park on Saturday, April 17, 2004, 1:00-4:00 p.m.

1.2 **Presentation of a proclamation declaring the week of April 4-10, 2004 as “Building Safety Week.” (Planning, Building and Code Enforcement)**

Documents Filed: None.

Discussion/Action: Mayor Gonzales was joined at the podium by Joe Horwedel, the Deputy Director of Planning, Building and Code Enforcement, and Director of Public Works Katy Allen. Fire Chief Jeff Clet could not be present. Mayor Gonzales remarked the City of San José is declaring the week of April 4-10, 2004 as “Building Safety Week”, and commented that building safety is the result of high standards, good design, consistent application and enforcement, and community support to protect both current and future residents of San José. Mayor Gonzales remarked that safer buildings depend on comprehensive solutions, and preventative measures that effectively address fire safety, structural integrity, seismic stability, and the public health issues in a wide variety of settings. Mayor Gonzales added the City of San José is committed to increasing public

1.2 (Cont'd.)

awareness and highlighted the importance of building safety to continue to make San José a safe place for residents, employees, and visitors. Mayor Gonzales, on behalf of the City Council, presented a plaque to Mr. Horwedel, and Ms. Allen, and encouraged all residents, businesses, and community organizations to learn more about the issues, challenges and benefits associated with providing a safe, and habitable environment for everyone in the community. Ms. Allen invited everyone to visit the Building Safety exhibit this week, located in City Hall.

CONSENT CALENDAR

Upon motion by Vice Mayor Dando, seconded by Council Member Chavez and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. Vote: 11-0-0-0.

2.2 Final adoption of ordinances:

- (a) **ORD. NO. 27103 – Amends Section 4.01.010 of Chapter 4.01, and amends Sections 4.04.010 and 4.04.020 of Chapter 4.04 of the San José Municipal Code to increase the authority of the City Manager to accept donations and to approve sponsorship agreements in order to implement the City’s Revenue Generating Policy.**

Documents Filed: Proof of Publication of the title of Ordinance No. 27103 executed on March 30, 2004, submitted by the City Clerk.

Discussion/Action: Ordinance No. 27103 was adopted. Vote: 11-0-0-0.

2.3 Adoption of a resolution authorizing the City Attorney to execute a legal services agreement with Nossaman Guthner Knox & Elliott LLP, for a total compensation not to exceed \$200,000. CEQA: Not a Project. (Boards of Administration for the Police & Fire Department Retirement Plan)

Documents Filed: Memorandum from Federated City Employees’ Retirement System Secretary Edward Overton, dated March 17, 2004, recommending adoption of said resolution.

Discussion/Action: Resolution No. 72026, entitled: “A Resolution of the Council of the City of San José Authorizing the City Attorney to Execute the Agreement with Nossaman Guthner Knox & Elliott LLP for Legal Services in Connection with the Real Estate Portfolio of the Police and Fire Department Retirement Boards”, was adopted. Vote: 11-0-0-0.

- 2.4 (a) **Acceptance of the status report on the Hayes Mansion.**
(b) **Adoption of the following appropriation ordinance amendments in the Community Facilities Revenue Fund:**
(1) **Decrease the Reserve for Hayes Capital Improvements by \$151,164;**
(2) **Establish an appropriation for Hayes Mansion Repair and Capital Improvements in the amount of \$151,164.**

CEQA: Not a Project. (City Manager's Office/Finance)

Documents Filed: Memorandum from Director of Finance Scott Johnson, and Budget Director Larry Lisenbee, dated March 29, 2004, recommending adoption of said appropriation ordinance amendments.

Discussion/Action: The Status Report on the Hayes Mansion was accepted, and Ordinance No. 27108, entitled: "An Ordinance of the City of San José Amending Ordinance No. 26916 to Appropriate Moneys in the Community Facilities Revenue Fund for the Hayes Mansion Repair and Capital Improvements; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. Vote: 11-0-0-0.

- 2.5 (a) **Approval of award of open purchase order for landscaping maintenance services to Coast Landscaping Management, Inc., in the amount of \$520,400, and authorization for the Director of General Services to execute the purchase order. (General Services)**
(Deferred from 3/30/04 - Item 2.6)
(b) **Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 2003-2004 #18, and authorization for the Director of General Services to execute the purchase orders. CEQA: See memo for CEQA designation(s). (General Services)**

Documents Filed: (1) Memoranda from Director of General Services Jose Obregon, dated March 10, 2004, and March 17, 2004, recommending approval of award of said open purchase orders for FY 2003-2004 Nos. 17 and 18. (2) Memorandum from Director of General Services Jose Obregon, dated April 5, 2004, recommending award of said contract to Coast Landscape for landscape services.

Discussion/Action: Mayor Gonzales called for public testimony. Tom Ellington, Coast Landscape spoke in favor the issue. Upon motion by Council Member Williams, seconded by Council Member Yeager, and carried unanimously, the award of open purchase orders List Nos. 17 and 18 for FY 2003-2004 were approved and their execution authorized; and the award of the contract to Coast Landscape Management, Inc. for District 16 Landscape Maintenance Services for a total cost of \$520,400 was approved and its execution authorized. Vote: 11-0-0-0.

- 2.6 Adoption of a resolution granting an easement to the Santa Clara Valley Water District (SCVWD) over a portion of the future Cilker Park for the purpose of providing ingress and egress to the adjacent percolation pond, and delegating authority to the Director of General Services to execute all documents necessary to complete transfer of the Easement. CEQA: Mitigated Negative Declaration, PP03-03092. Council District 9. (General Services)**

Documents Filed: Memorandum from Director of General Services Jose Obregon, dated March 17, 2004, recommending adoption of said resolution.

Discussion/Action: Mayor Gonzales called for public testimony. William Garbett spoke in opposition of the issue. Vice Mayor Dando commented that Council Member Chirco and she have been working with the neighborhoods in this area for a number of years, and the residents are very anxious to see the park developed. She added this is one of the City's successes with the Santa Clara Valley Water District, as they will be opening up their property enabling the City of San José to continue to expand the joint trail systems. Upon motion by Vice Mayor Dando, seconded by Council Member Chirco, and carried unanimously, Resolution No. 72027, entitled: "A Resolution of the Council of the City of San José Granting an Easement to the Santa Clara Valley Water District (SCVWD) at No Cost Over a Portion of the Future Cilker Park for the Purpose of Providing Ingress and Egress to the Adjacent Percolation Pond, and Delegating Authority to the Director of General Services to Execute all Documents Necessary to Complete Transfer of the Easement", was adopted. Vote: 11-0-0-0.

- 2.7 (a) An agreement between the City of San José and Cayenta Canada, Inc., for software maintenance and upgrade services on the Citywide Financial Management System in the amount of \$64,140, and the first year of support and maintenance agreement for Cayenta Financials Version 7 and Actuate eReporting Bundle in the amount of \$43,214 and \$11,457 respectively, for a total first year cost of \$118,811; and**
- (b) Renewals of these agreements for maintenance services and enhancements without further City Council approval other than the appropriation of funding.**

CEQA: Not a Project. (Information Technology/Finance)

Documents Filed: Memorandum from Chief Information Officer Wandzia Grycz, and Director of Finance Scott Johnson, dated March 17, 2004, recommending adoption of said resolution.

Discussion/Action: Resolution No. 72028, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute Agreements with Cayenta Canada, Inc. for Software Maintenance and Upgrade Services and to Execute Subsequent Renewals of the Agreement", was adopted. Vote: 11-0-0-0.

- 2.8 Adoption of the following appropriation ordinance and funding sources resolution amendments in Council District 3 Construction and Conveyance Tax Fund to:**
- (a) Establish the Selma Olinder Park Project for \$100,000, appropriated to the Parks, Recreation and Neighborhood Services Department.**
 - (b) Increase the Grant Earned Revenue estimate by \$80,000.**
 - (c) Decrease the ending fund balance by \$20,000.**
- CEQA: Negative Declaration, PP00-10-147. Council District 3. SNI: Five Wounds. (Parks, Recreation and Neighborhood Services/City Manager's Office)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, and Budget Director Larry Lisenbee, dated March 17, 2004, recommending adoption of said appropriation ordinance and funding sources resolution.

Discussion/Action: Ordinance No. 27109, entitled: "An Ordinance of the City of San José Amending Ordinance No. 26916 to Appropriate Moneys in the Council District 3 Construction and Conveyance Tax Fund for the Selma Olinder Park Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 72029, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 71608 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2003-2004 To Adjust Revenues in the Council District 3 Construction and Conveyance Tax Fund", were adopted. Vote: 11-0-0-0.

- 2.9 Adoption of the following appropriation ordinance amendments in the Council District 2 Construction and Conveyance Tax Fund:**
- (a) Establish the Avenida Espana Park Project for \$30,000 to the Parks, Recreation and Neighborhood Services Department; and**
 - (b) Decrease the Ending Fund Balance by \$30,000.**
- CEQA: Exempt, PP04-03-060. Council District 2. (Parks, Recreation and Neighborhood Services/City Manager's Office)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, and Budget Director Larry Lisenbee, dated March 17, 2004, recommending adoption of said appropriation ordinance amendments.

Discussion/Action: Ordinance No. 27110, entitled: "An Ordinance of the City of San José Amending Ordinance No. 26916 to Appropriate Moneys in the Council District 2 Construction and Conveyance Tax Fund for the Avenida Espana Park Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; was adopted. Vote: 11-0-0-0.

- 2.10 Approval of the first and second amendments to the Parkland Agreement with the Irvine Company Moitozo Ranch Planned Development Rezoning No. PDC99-04-034 for additional private recreation credits. CEQA: Resolution No. 67894. Council District 4. (Parks, Recreation and Neighborhood Services)**

2.10 (Cont'd.)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated March 17, 2004, recommending approval of the first and second amendments to the said Parkland Agreement with the Irvine Company Moitozo Ranch Planned Development Rezoning No. PDC99-04-034 for additional private recreation credits.

Discussion/Action: The approval of the first and second amendments to the Parkland Agreement with the Irvine Company Moitozo Ranch Planned Development Rezoning No. PDC99-04-034 for additional private recreation credits was approved, and its execution authorized. Vote: 11-0-0-0.

2.11 Adoption of a resolution to:

- (a) **Initiate proceedings to consider the Wilder-Hait House as a landmark of special historic, architectural, cultural, aesthetic, or engineering interest or value of a historic nature.**
- (b) **Set a public hearing on June 1, 2004, at 1:30 p.m.**
- (c) **Refer the matter back to the Historic Landmarks Commission for its consideration at a public hearing, report, and recommendation.**

CEQA: Exempt, File No. HL04-150. Council District 6. (Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Secretary of the Landmarks Commission Stephen Haase, dated March 17, 2004, recommending adoption of said resolution. (2) Affidavit of Routing executed on April 15, 2004, and distributed by the City Clerk.

Discussion/Action: Resolution No. 72030, entitled: "A Resolution of the Council of the City of San José Initiating Proceedings on its Own Motion, Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, to Designate the Wilder-Hait House, Presently Located at 1190 Emory Street, as a City Landmark of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of a Historic Nature", was adopted. Vote: 11-0-0-0.

- ## 2.12
- (a) **Approval of an ordinance amending Part 2, Chapter 13.48 of Title 13 of the San José Municipal Code to provide procedures for the establishment of Conservation Areas; and**
 - (b) **Adoption of a resolution amending the Schedule of Fees and Charges to establish a \$700 fee for Conservation Area designation applications.**

CEQA: Exempt, PP04-02-054. (Planning, Building and Code Enforcement)

Documents Filed: None.

Discussion/Action: Item 2.12 was renumbered to 4.10. See Item 4.10 in the Evening Session for action.

- 2.13 (a) Adoption of a resolution to accept the State of California, Office of Traffic Safety (OTS) 2003-05 Seat Belt Compliance grant in the amount of \$99,714, and authorize the City Manager to execute the related grant agreement.**
- (b) Adoption of the following amendments to the annual appropriation ordinance and the annual funding sources resolution in the General Fund (Fund 001) for Fiscal Year 2003-04:**
- (1) Increase the City-wide OTS 2003-05 Seat Belt Compliance grant appropriation for the Police Department in the amount of \$48,731;**
 - (2) Increase Earned Revenue Estimate from the State by \$48,731.**
- CEQA: Not a Project. (Police/City Manager's Office)**

Documents Filed: Memorandum from Budget Director Larry Lisenbee, and Police Chief Robert Davis, dated March 17, 2004, recommending adoption of said resolution and amendments to the annual appropriation and annual funding sources resolution.

Discussion/Action: Resolution No. 72031, entitled: "A Resolution of the Council of the City of San José to Accept the State of California, Office of Traffic Safety 2003-2005 Seat Belt Compliance Grant and Authorize the City Manager to Execute the Grant Agreement"; Ordinance No. 27111, entitled: "An Ordinance of the City of San José Amending Ordinance No. 26916 to Appropriate Moneys in the General Fund for the Office of Traffic Safety 2003-2005 Seat Belt Compliance Campaign Program Grant; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 72032, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 71608 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2003-2004 to Adjust Revenues in the General Fund", were adopted. Vote: 11-0-0-0.

- 2.14 Report on bids and award of contract for street lights for the Lenzen-Keeble and White Road Project to the low bidder, San José Signal Electric Construction Inc., in the amount of \$144,745, and approval of a contingency in the amount of \$14,475. CEQA: Exempt, PP01-02-023. Council Districts 5 and 6. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated March 17, 2004, recommending award of said contract to the low bidder, San José Signal Electric Construction Inc., with related contingency.

Discussion/Action: The award of the contract to the low bidder, San José Signal Electric Construction Inc., with related contingency, for street lights for the Lenzen-Keeble and White Road Project was approved, and its execution authorized. Vote: 11-0-0-0.

- 2.15 Report on bids and award of contract for the Lower Silver Creek Sanitary Sewer Realignment Project to the low bidder, K.J. Woods Construction, Inc., in the amount of \$614,000, and approval of a contingency in the amount of \$61,400. CEQA: Exempt, PP03-09-287. Council District 5. SNI: Mayfair. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated March 17, 2004, recommending award of said contract to the low bidder, K.J. Woods Construction, Inc., with related contingency.

2.15 (Cont'd.)

Discussion/Action: The award of the contract to the low bidder, K.J. Woods Construction, Inc., with related contingency, for the Lower Silver Creek Sanitary Sewer Realignment Project was approved, and its execution authorized. Vote: 11-0-0-0.

- 2.16 (a) Report on bids and award of contract for the Plata Arroyo Park Skate Facility Project to the lowest responsive bidder, Robert A. Bothman, Inc., to include the base bid and Add Alternate Nos. 2 and 3 in the amount of \$408,461, and approval of a contingency in the amount of \$38,000.**
- (b) Adoption of the following appropriation ordinance amendments in the Park Trust Fund:**
- (1) Increase the Plata Arroyo Park Skate Facility Project by \$108,000;**
 - (2) Decrease the Plata Arroyo Park Improvements Project by \$102,000;**
 - (3) Decrease the Reserve for Future PDO/PIO Projects by \$6,000.**

CEQA: Exempt, PP03-08-251. Council District 5. SNI: Gateway East. (Public Works/ Parks, Recreation and Neighborhood Services/City Manager's Office)

Documents Filed: None.

Discussion/Action: Item 2.16 was deferred to April 13, 2004.

- 2.17 Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with Santa Clara Valley Transportation Authority for the assignment of operation and maintenance responsibilities associated with the completion of the Light Rail Transit Corridors (1996 Measure B). CEQA: Not a Project. Council Districts 3, 4, 5, and 6. SNI: Park/Delmas, East Valley/680. (Transportation)**

Documents Filed: Memorandum from Director of Transportation James Helmer, dated March 29, 2004, recommending adoption of said resolution.

Discussion/Action: Resolution No. 72033, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with the Santa Clara Valley Transportation Authority for the Assignment of Operation and Maintenance Responsibilities Associated with the Light Rail Transit Corridors", was adopted. Vote: 11-0-0-0.

- 2.18 Adoption of a resolution authorizing the City Attorney to negotiate and execute a second amendment to the agreement for specialized legal services with the law firm of Shaw Pittman, LLP, to increase the compensation by \$65,000, to a total amount not to exceed \$150,000, and to extend the term through June 30, 2005. (City Attorney's Office)**
(Rules in Lieu referral 4/1/04)

Documents Filed: Memorandum from City Attorney Richard Doyle, dated March 25, 2004, recommending adoption of said resolution.

2.18 (Cont'd.)

Discussion/Action: Resolution No. 72034, entitled: "A Resolution of the Council of the City of San José Authorizing the City Attorney to Negotiate and Execute a Second Amendment to the Agreement for Legal Services with Shaw Pittman LLP to Increase the Amount of Compensation to a Total Amount Not To Exceed \$150,000, and Extend the Term Through June 30, 2005", was adopted. Vote: 11-0-0-0.

2.19 Approval of appointments to the Silicon Valley Workforce Investment Network (WIN) Board. (Mayor) (Rules in Lieu referral 4/1/04)

Documents Filed: Memorandum from Mayor Gonzales, dated April 1, 2004, recommending approval of below mentioned nominations to the Silicon Valley Workforce Investment Network Board.

Discussion/Action: The appointments of Thaddeus Campbell, Cathy Eskandari, Paul Du Charme, Eduardo Rallo, Marilyn Rodgers, Alex C. Torres, Tim Hallet, and Matthew O. Tucker to the Silicon Valley Workforce Investment Network Board, were approved. Vote: 11-0-0-0.

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.2 Report of the Rules Committee – March 24, 2004 Vice Mayor Dando, Chair

Documents Filed: The Rules Committee Report dated March 24, 2004.

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (b) City Council
 - (1) Review April 6, 2004 Draft Agenda

The Committee recommended approval of the April 6, 2004 City Council agenda with one change and three additions.

- (2) Add New Items to March 30, 2004 Amended Agenda
 - Mayor and Council Member Requests. Attachment: Memorandum from Council Member Chavez, dated March 24, 2004, recommending placing adoption of resolution supporting the United Nations Millennium Development Goals.

The Committee recommended two additions to the March 30, 2004 City Council agenda.

**3.2 Report of the Rules Committee – March 24, 2004 (Cont'd.)
Vice Mayor Dando, Chair**

(b) City Council (Cont'd.)

- (3) List of Reports Outstanding. Attachment: Report from the City Manager, dated March 23, 2004, transmitting reports outstanding for March 30, 2004.

The Committee noted and filed the City Manager's report stating there are three staff reports outstanding for the March 30, 2004 Council agenda.

(c) Legislative Update

- (1) State

There was no report.

- (2) Federal - There was no report.

(d) Meeting Schedules

- (1) Request to Schedule Airport Study Session. Attachment: Memorandum from Senior Executive Assistant Nadine Nader, dated March 19, 2004, recommending approval of the City Council Study Session on the Airport Improvement Program.

The Committee recommended scheduling an Airport Study Session on April 12, 2004, 1:00-4:00 p.m., to be held at the Airport Administrative Offices, 1732 N. First Street, 4th Floor, Large Conference Room.

- (e) The Public Record - There was no Public Record filed.

- (f) Appointment to Boards, Commissions and Committees - There were none.

(g) Rules Committee Reviews, Recommendations and Approvals

- (1) City Manager's written report on the San José Family Camp Manager hiring process. Attachment: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, and Director Employee Services Mark Danaj, dated March 9, 2004, transmitting Family Camp Manager Selection Process report.

The Committee accepted Director Hensley's report.

**3.2 Report of the Rules Committee – March 24, 2004 (Cont'd.)
Vice Mayor Dando, Chair**

- (g) Rules Committee Reviews, Recommendations and Approvals (Cont'd.)
(2) Request to initiate a street renaming of West Virginia Street, west of Interstate 280 to its terminus at Hannah Street, to Hannah Court. Attachment: Memorandum from Council Member Yeager, dated March 12, 2004, recommending a street renaming of West Virginia Street, west of Interstate 280 to its terminus at Hannah Street, to Hannah Court.

The Committee directed Administration to place this issue on the Planning Commission's agenda at the earliest possible date.

- (3) Request to place an audit of the Family Camp Program on the City Auditor's FY 2005-06 work plan. Attachment: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated March 18, 2004, recommending approval of an audit of the Family Camp Program.

The Committee referred the Family Camp Program audit request to the City Auditor, who will return on April 7, 2004 with information on incorporating this audit into his work plan.

- (h) Oral communications - None were presented.
(i) Adjournment - The meeting was adjourned at 2:40 p.m.

Discussion/Action: Upon motion by Vice Mayor Dando, seconded by Council Member Cortese, the Rules Committee Report and the actions of March 24, 2004, were accepted. Vote: 11-0-0-0.

3.4 Adoption of a resolution:

- (a) **Declaring results of the March 2, 2004 Municipal Election pursuant to Elections Code Section 15400; and,**
(b) **Calling for a Run-Off Election to be held November 2, 2004, setting a deadline of August 3, 2004 for ballot measures to be added to the ballot, and authorizing the City Clerk to take such actions necessary to facilitate the Election.**

(Acting City Clerk)

(Deferred from 3/23/04 – Item 3.4 and 3/30/04 – Item 3.7)

Documents Filed: Memorandum from Acting City Clerk Deanna J. Santana, dated March 19, 2004, recommending adoption of said resolution.

3.4 (Cont'd.)

Discussion/Action: Upon motion by Council Member Chavez, seconded by Council Member Williams, and carried unanimously, Resolution No. 72035, entitled: "A Resolution of the Council of the City of San José Reciting that a General Municipal Election was Held in the City of San José on Tuesday, March 2, 2004 Which Was Consolidated with the State Primary Election on that Date; Finding and Declaring that the Following were Elected to the Office of Member, City Council – Forrest Williams, District 2, Chuck Reed, District 4, Ken Yeager, District 6 and David Cortese, District 8; That Measure D Entitled "City of San José Design-Build Procurement Process" Passed; and Calling and Giving Notice of a General Municipal Election to be Held in the City of San José on November 2, 2004 for the Purpose of Electing One Person from Council District Ten to the Council of the City of San José for a Full Four-Year Term; Requesting the Consolidation of Said Election with the State General Election To Be Held in Santa Clara County on November 2, 2004; Requesting the Board of Supervisors of the County of Santa Clara to Canvass the Returns of the Election and to Permit the County Registrar of Voters to Render Certain Services to the City of San José Relating to the Conduct of the Election; Establishing Fees for Candidates Statements and for Filing Notices of Intent to Circulate Petitions; and Directing that Certain Other Actions Be Taken with Regard to the Election", was adopted. Vote: 11-0-0-0.

3.5 **PUBLIC HEARING for property owner Sharon L. McDonald and adoption of a resolution confirming the report of the Directors of Finance and Transportation on the cost of sidewalk repairs, confirming the assessments contained in the report, and directing the recording of liens. CEQA: Not a Project. (Finance/ Transportation) (Deferred from 3/30/04 - Item 3.4)**

Documents Filed: None.

Discussion/Action: Item 3.5 was deferred.

3.6 **Adoption of a resolution supporting the reappointment of Dolores Huerta to the University of California Board of Regents. (Cortese, Chavez, Campos; Mayor) (Rules in Lieu referral 4/1/04)**

Documents Filed: Memorandum from Mayor Gonzales, Council Members Cortese, Chavez, and Campos, dated April 2, 2004, recommending adoption of said resolution.

Discussion/Action: Mayor Gonzales called for public testimony. Reverend Deacon Alvarez spoke in favor of the issue. Council Member Reed expressed support for Dolores Huerta's continued tenure on the University of California Board of Regents. Upon motion by Council Member Reed, seconded by Council Member Chavez, and carried unanimously, Resolution No. 72036, entitled: "A Resolution of the Council of the City of San José Supporting the Reappointment of Dolores Huerta to the University of California Board of Regents", was adopted. Vote: 11-0-0-0.

ECONOMIC & NEIGHBORHOOD DEVELOPMENT

4.2 Report of the Driving a Strong Economy Committee – March 22, 2004 Council Member Williams, Chair

Documents Filed: The Driving a Strong Economy Committee Report dated March 22, 2004.

- (a) Status of the top four Economic Development Strategy Initiatives. Attachment: Memorandum from Director of Economic Development Paul Krutko, dated March 8, 2004, transmitting the top four Economic Development Strategy Initiatives report.

The Committee accepted the Staff report.

- (b) Update and next steps for the North San José Development Policy Revision. Attachment: Memorandum from Director of Economic Development Paul Krutko, Director of Transportation James Helmer, Director of Planning, Building and Code Enforcement Stephen Haase and Deputy Executive Director Redevelopment Agency John Weis, dated March 5, 2004, transmitting update of the North San José Development Policy Revision.

The Committee accepted the Staff report.

- (c) Report and discussion on secondary units. Attachment: Memorandum from Director of Housing Leslye Corsiglia, and Director of Planning, Building and Code Enforcement Stephen Haase, dated March 5, 2004, transmitting proposed parameters for a second unit ordinance.

The Committee accepted the Staff report.

See Item 4.3 for Council Action taken.

- (d) Oral petitions

Speaking on Secondary Housing Units were, Joanne Stone, Almaden Valley resident, Scott Soper, College Park neighborhood, Phyllis Ward, Affordable Housing Network, Stan Davis, Willow Glen resident, and George Stone, Almaden Valley resident.

- (e) Adjournment

The meeting was adjourned at 3:22 p.m.

Discussion/Action: Upon motion by Council Member Williams, seconded by Council Member Reed, and carried unanimously, the Driving a Strong Economy Committee Report and the actions of March 22, 2004, were accepted. Vote: 11-0-0-0.

4.3 Direction to the City Attorney to draft an ordinance in accordance with parameters set by the City Council for a second unit ordinance. (Housing/Planning, Building and Code Enforcement)

[Driving a Strong Economy Committee referral 3/22/04 – Item 4.2(c)]

Documents Filed: (1) Memorandum from Senior Executive Analyst Nadine Nader, dated April 1, 2004, transmitting memorandum from Director of Housing Leslye Corsiglia, and Director of Planning, Building and Code Enforcement Stephen Haase, dated March 5, 2004, recommending City County adopt said resolution. (2) Staff slide presentation dated April 6, 2004.

Discussion/Action: Director of Housing Leslye Corsiglia, and Deputy Director of Planning, Building, and Code Enforcement Laurel Prevetti gave a slide presentation on Secondary Units. Vice Mayor Dando remarked that the focus and energies should be on those secondary units that exist, ensuring that they are in compliance and safe, as people are living in them, rather than establishing a new ordinance that will generate minimal housing units a year. She remarked that in these tight budget times with Staff stretched thin in many directions, there may not be enough employees that are able to spend the time and energy on another aspect of housing and planning. Vice Mayor Dando requested that Staff begin with community outreach first, taking their concerns and input to the City Attorney who will put together a draft ordinance that can serve to accomplish what the Planning Department is looking at, and also provide protections for the existing neighborhoods. She remarked once the ordinance is drafted, it should be taken back to the community for a final review. She added there are a number of existing units that should be worked on and accommodated immediately to bring into safe compliance. Vice Mayor Dando moved approval of community outreach first on the issue of secondary units, before drafting an ordinance. Council Member Chavez seconded the motion.

Council Member Yeager asked for an explanation of the lot size, in regard to the criteria for the secondary unit. Director Corsiglia replied that Staff looked at various lot sizes in the City, and the intent was to maximize the number of possible lots that could have a second unit. She commented if Staff went higher than 6,000 square feet, it would narrow the number of lots in the City that could possibly have a second unit. Council Member Yeager asked for clarification of the parking allowed. Deputy Director Prevetti replied the Zoning Code requires two covered spaces, and by requiring an additional covered space that would be prohibitive for the construction of the second unit, so Staff simply asked for one additional parking space on the site outside of the front and side setbacks, trying to balance the need to provide onsite parking without making it difficult. Council Member Yeager replied Staff might need to further review that as many of the neighborhoods are heavily impacted already, and Staff should look into other alternatives. He added rather than parking on the streets, a spot designated on the property would be preferable, and other than the driveway would also be helpful. Deputy Director Prevetti replied Staff would prefer having the parking space outside the front setback on the property, and not count street parking towards the requirement. Council Member Yeager remarked Staff should research the parking aspect of the secondary unit issue more thoroughly.

4.3 (Cont'd.)

Council Member Reed asked for Staff to talk about the square footage of the secondary units, and the fact that the City cannot regulate how many people, what kind of families, who is the family or what is the family based on per State and Federal Law, and how the Health and Safety Code Limits on people per square foot can be applied here, and how did Staff come up with the 650 square foot number. Director Corsiglia replied that in looking at the various options, Staff wanted to make it a secondary unit and not a duplex, and opted for a smaller sized unit. She remarked that as far as the Occupancy Code, the Building Code allows one person per 70 square feet in a room, or two for 120 square feet. She added in this case for a one bedroom, and it has a living space, there may be as many as four people that can be allowed, depending on the size of those rooms. She stated there is no ability by State Law to limit the number of occupants in any dwelling except, as the State Building Code requires. Council Member Reed asked what if it was 400 square feet in lieu of 650 square feet, would that limit the room to two people. Director Corsiglia replied that is a good question, and that is why Staff wanted to come to Council with a parameter for the public to react to, and for Staff to obtain feedback.

Council Member Campos remarked in terms of parking, and areas that are already overly impacted with parking, how can Staff create measures to determine whether someone can have a secondary unit in their home, especially in the high density areas. She commented that Staff stated there is no way to control the people who live in a household, and expressed concern about parking. She remarked when addressing secondary units, and if there are four people living in that unit, there may be four cars impacting that area, and commented that process should be further refined before this ordinance is adopted. She remarked how does Staff determine if the people occupying the first or the secondary is an owner, and how is that put in place. Director Corsiglia replied that Staff has to determine how to enforce that.

Council Member Gregory expressed concern about the issue of parking, adding the reality is that four people in one of these units will be four adults, rather than two adults and two children, which means four automobiles. He remarked that there is the issue of State Legislation that is pending currently, and if it were to pass, it would restrict the City of San José's ability to be more restrictive than the State. He stated Staff should research how many properties by District within the City of San José would qualify given the current parameters, and prior to the public hearing Staff should be prepared to respond to where the concentration of qualified properties would be located.

Council Member Cortese remarked given that the motion on the floor calls for the discussion of the Strong Neighborhood Initiatives and other groups to occur before drafting the ordinance, asked what will be provided to these groups in order to roll out a presentation in a clear, methodical way. Director Corsiglia replied Staff would provide the groups with examples of what other communities have done. Council Member Cortese suggested that perhaps presenting a Staff report similar to what Council received; with the summary of proposed second unit permit requirements broken down in outline

4.3 (Cont'd.)

form, and one on one briefings with the Chair and Vice Chair of each of the respective groups would also be appropriate. Vice Mayor Dando replied that is exactly right, Staff's report that was presented to Council, as well as providing examples of how other cities have addressed this issue, including Council Member Gregory's request, will give the community members as much information as the City Council has.

Mayor Gonzales called for public testimony. Speaking on the issue were Mary Ellen Heising, Robert Mahowald, Neil Najibi, William Garbett, Brian Chapman, 13th Street NAC, Ross Signorino, Stan Davis, Phyllis Ward, Affordable Housing Network, Jim Peterson, Paul Stewart, Yolanda Reynolds, and Jerry Larson.

Council Member Chavez referring to Table 1, Summary of the proposed Second Unit permit requirements, asked for clarification based on the legislation that it is not necessary to have a public hearing. Director Corsiglia replied according to the legislation that has been passed, it must be ministerial, and there is not a public hearing. Council Member Chavez remarked a public hearing is very important as the City reaches out to the community to make sure they understand. She requested that Staff determine an estimate of the current number of legal and illegal units behind homes, and it is also important to have that discussion with the community. Council Member Chavez remarked on the owner occupied issue, and the City's ability that one or both units is owner occupied, expressed interest in understanding who across the country has that as a benchmark that has actually worked, and if someone sells their property does that condition last, and asked for that to come back as part of the proposal, and to share it with the community.

Council Member Williams commented that parking is a concern, and requested that Staff address those issues of adequate parking. He commented that the social implication is there is an aging population and there is a need to have places for individuals who are handicapped or need assistance, the City has that obligation to try to provide that, and also address those problems and fix the situation. He expressed support for the motion and agrees with public outreach first. Council Member Reed expressed support for the motion, remarking the City should facilitate and build secondary units in the areas where it has no impact on the neighborhood. He commented this is privately funded developed affordable housing, which is an opportunity to save City money. He added it is a good idea to talk with the neighborhoods first. Council Member Yeager moved to amend the motion for Staff to have two public hearings for each Council District before returning to Council. Council Member LeZotte moved to amend the motion for Staff to also include the Neighborhood Action Committees (NAC) in the public outreach. Vice Mayor Dando, maker of the motion, and Council Member Chavez, seconder of the motion, accepted the amendments by Council Member Yeager and Council Member LeZotte.

4.3 (Cont'd.)

On a call for the question, the motion carried unanimously, and Staff was directed to conduct community outreach prior to drafting a proposed ordinance, allowing up to two public meetings per Council District, including Neighborhood Action Committees (NAC), and for purposes of reconciling the following, and to: (1) Look at existing units currently in the neighborhood, ensuring they are safe. (2) Establish the units that are family or work related in an expedited manner. (3) Establish how to enforce the owner occupied ordinance, including examples of other jurisdictions, their enforcements, and success rate. (4) Identify the parcels per District that appear to be appropriate for a secondary unit to be established. (5) Assess the number of existing legal or illegal units currently in San José, and establish a strategy, including an amnesty period for bringing those units into safe compliance for livability. Vote: 11-0-0-0.

4.4 **Approval of an ordinance amending the San José Municipal Code by adding a new Chapter 4.06 and amending Section 4.12.117, adding Section 4.12.118 to Chapter 4.12 and amending Sections 4.13.135 and 4.13.040 of Chapter 4.13 of Title 4 to establish contracting preferences for local and small businesses. (City Attorney's Office)**

Documents Filed: None.

Discussion/Action: Item 4.4 was deferred to April 13, 2004.

- 4.5 (a) **Adoption of appropriation ordinance and funding source resolution amendments in the General Fund as follows:**
- (1) **Establish an appropriation in the Department of Parks, Recreation and Neighborhood Services for the Animal Shelter Facility Expansion in the amount of \$1,000,000.**
 - (2) **Increase the Estimate for Revenue from Local Agencies by \$1,000,000.**
- (b) **Adoption of a resolution authorizing the City Manager to negotiate and execute agreements for animal services with the cities of Cupertino, Los Gatos, and Saratoga in the following annual compensation for operating costs and one time capital contribution for a term of 20 years, commencing July 1, 2004, and subject to termination provisions:**
- (1) **Cupertino, \$166,000 per annum and \$500,000 capital;**
 - (2) **Los Gatos, \$164,000 per annum and \$300,000 capital; and**
 - (3) **Saratoga, \$155,000 per annum and \$300,000 capital.**

CEQA: Negative Declaration, H01-003. (Parks, Recreation and Neighborhood Services/ City Manager's Office)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, and Budget Director Larry Lisenbee, dated March 17, 2004, recommending adoption of said appropriation ordinance and funding source resolution amendments, and resolution.

4.5 (Cont'd.)

Discussion/Action: Upon motion by Council Member Chavez, seconded by Vice Mayor Dando, and carried unanimously, Ordinance No. 27112, entitled: "An Ordinance of the City of San José Amending Ordinance No. 26916 to Appropriate Moneys in the General Fund for the Animal Shelter Facility Expansion and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; Resolution No. 72037, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 71608 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2003-2004 to Adjust Revenues in the General Fund; and Resolution No. 72038, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute Agreements with the Cities of Cupertino, Los Gatos and Saratoga for Animal Services", were adopted. Vote: 11-0-0-0.

4.6 Adoption of a resolution:

- (a) **Determining that public use and necessity require the acquisition of a portion of the property and a temporary construction easement over adjacent property located at 380 N. White Road (APN 599-01-057), owned by the Timothy Chen Revocable Trust;**
- (b) **Finding that:**
 - (1) **The property to be taken is necessary for the completion of the White Road Widening Project from Mabury Road to McKee Road;**
 - (2) **The proposed project is planned and located in the manner which will be most compatible with the greatest public good and the least private injury;**
 - (3) **City staff established an amount of just compensation not less than the approved appraisal of the fair market value;**
 - (4) **City staff presented an offer to the owners for the full appraised amount; and**
 - (5) **The proposed taking and use are authorized by law;**
- (c) **Directing the City Attorney to file an eminent domain action to acquire the above property interests.**

CEQA: Negative Declaration, PP03-11-355. Council District 5. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated March 17, 2004, recommending adoption of said resolution.

Discussion/Action: Council Member Campos moved approval of the Staff recommendation. Council Member Chavez seconded the motion. Mayor Gonzales called for public testimony. Bo Chen, representing Timothy Chen, the owner of the property on 380 N. White Road, spoke in opposition of the issue. Mayor Gonzales requested that Staff continue to negotiate with the owner of the property. City Attorney Richard Doyle replied that Staff has attempted to negotiate this issue with the owner in good faith, and this action authorizes the City to move forward in an eminent domain action but it does not preclude any further negotiations with the property owner. On a call for the question, the motion carried unanimously, and Resolution No. 72039, entitled: "A Resolution of the Council of the City of San José Authorizing a Resolution of Public Use, and

4.6 (Cont'd.)

Necessity Making Certain Findings and Determinations Relating to the Exercise of the Power of Eminent Domain Pursuant to Article 2, Chapter 4, Title 7 of Part 3 of the California Code of Civil Procedure for the White Road Widening Project; Authorizing and Empowering the City Attorney to Bring an Action in Eminent Domain to Acquire Certain Property for Said Project and to Apply for an Order of Possession Before Judgment and To Prosecute Said Action to Final Judgment; and Authorizing and Empowering the Deposit of Money in the State Treasury Condemnation Fund for Possession of Said Property from the Funds Lawfully Available Therefore”, was adopted, with Staff directed to continue negotiations with the owner of the property.

4.7 Recommendation: Approval of an ordinance amending Section 4.46.050 of Chapter 4.46 of Title 4 of the San José Municipal Code to:

- (a) Clarify the industrial use designation for buildings or structures subject to collection of Building and Structure Construction Taxes;
- (b) Add certain industrial uses to the expanded list for the purpose of collecting Building and Structure Construction Taxes;
- (c) Clarify the procedures to collect taxes for building permits that are issued separately for building shell and the first tenant improvements.

CEQA: Not a Project. (Planning, Building and Code Enforcement/Economic Development)

(Deferred from 3/30/04 – Item 4.5)

Documents Filed: None.

Discussion/Action: Item 4.7 was deferred to April 27, 2004.

4.8 (a) Adoption of the following appropriation ordinance and funding sources resolution amendments in the General Fund:

- (1) Increase the City-Wide appropriation for the Coyote Valley Specific Plan by \$2,000,000; and
 - (2) Increase the estimate for Other Revenue by \$2,000,000.
- (b) Take the following actions in regard to the preparation of the Coyote Valley Specific Plan:
- (1) Approval of a consultant agreement with the Dahlin Group land planning and urban design team to prepare the Coyote Valley Specific Plan, Design Guidelines, and Zoning Districts for an amount not to exceed \$2,000,000.

(Item continued on the next page)

- 4.8 (b) (Cont'd.)
(2) **Delegate the authority to approve minor amendments to the consultant agreement to the Director of Planning, Building and Code Enforcement to account for increases in funding received from Coyote Housing Group, LLC and minor schedule or task changes that are necessary to conform to the City Council's Vision and Expected Outcomes for the Coyote Valley Specific Plan, and delegate to the Director the authority to extend the term of this agreement for up to 12 months to ensure the successful completion of this planning effort.**

CEQA: Exemption, PP03-06-211. Council District 2. (Planning, Building and Code Enforcement)

(Deferred from 3/30/04 – Item 4.6)

Documents Filed: None.

Discussion/Action: Item 4.8 was deferred to April 13, 2004.

- 4.9 (a) **Review and discussion on the memorandum authored by Council Members David Cortese and Forrest Williams regarding the Employment Lands Conversion Framework; and**
(b) **Review and discussion on the memorandum authored by Council Members Terry O. Gregory and Cindy Chavez regarding the Employment Lands Conversion Framework.**

(Deferred from 3/30/04 - Item 4.7)

Documents Filed: (1) Memorandum from Mayor Gonzales, Council Members Gregory, Cortese and Williams, dated April 5, 2004, recommended criteria to be added to the conversion framework approved by the Mayor and City Council on March 30, 2004. (2) Memorandum from Council Members Cortese, and Williams, dated March 30, 2004, recommending criteria for the evaluation of proposed conversions. (3) Memorandum from Council Members Chavez, and Gregory, dated March 30, 2004, recommending approval of the City Manager's proposed framework for evaluating proposed conversions of employment lands with additions.

Discussion/Action: Mayor Gonzales remarked this item was discussed last week, and carried over this week to review the two memorandums that were submitted by Council Members last Tuesday. Mayor Gonzales commented that he coauthored with Council Members Cortese, Williams, and Gregory another memorandum, which summarizes the strongest points of both memorandums and merges them, consistent with the actions taken last week. Council Member Chirco asked for Staff to speak to the new memorandum and how it fits into the framework that was adopted last week. Deputy Director of Planning, Building, and Code Enforcement Laurel Prevetti replied that the memorandum that was released later yesterday captures the major features of the last two memorandums that Staff received on this item last week, and there is a comment with respect to public benefit to retain the concept of those projects that are going beyond the typical mitigation that would be required for a project. She added there is clarification with respect to smart growth, and transit oriented development, and the subareas.

4.9 (Cont'd.)

Upon motion by Council Member Cortese, seconded by Council Member Gregory, and carried unanimously, the memorandum coauthored by Mayor Gonzales, and Council Members Cortese, Gregory and Williams, dated April 5, 2004, recommending criteria be added to the conversion framework as approved by the Mayor and the City Council on Tuesday, March 30, 2004. Vote: 11-0-0-0.

AVIATION SERVICES

8.1 **Adoption of a resolution authorizing the City Manager to negotiate and execute a concession agreement with Host International, Inc., for a non-exclusive food and beverage operation in Terminal A at the Norman Y. Mineta San José International Airport, for the period July 1, 2004 to June 30, 2009, with guaranteed minimum revenues to the City in the amount of \$1,033,754, from the date that Host commences operations through the end of the term, or a percentage of gross sales, whichever is greater. CEQA: Resolution Nos. 67380 and 71451, PP04-03-068. (Airport)**

Documents Filed: (1) Memorandum from Director of Aviation Ralph Tonseth, dated March 25, 2004, recommending adoption of said resolution. (2) Supplemental memorandum from Director of Aviation Ralph Tonseth, dated April 2, 2004, transmitting a listing of all concessions currently operating at the Airport. (3) Information from McDonald's Corporation, dated April 6, 2004.

Discussion/Action: Council Member Chavez moved approval of the Staff recommendation. Council Member Reed seconded the motion. Council Member Chavez referring to the Food and Beverage Request for Proposal (RFP), stated there are two pages with three different points, one is about the proposer's agreement to execute the City's Exemplar Concession Agreement in substantially the form attached to this RFP, and 112 has an acceptance and rejection of proposal, the City reserves the right to accept or reject any items or groups of items in the proposal, and the City reserves the right to waive any informality or irregularity in any proposal, and 113, which has an explanation of examination of proposal material, and last line states there is no request for modification of the proposal, no claim for adjustment of any provisions of the RFP shall be honored regardless of any claim by the proposer which was not fully informed as to any fact or condition. She stated there is some debate as to whether or not the City Staff should have set aside the exemplar that came forward as part of the proposal, and asked for a response from Staff. City Attorney Richard Doyle replied the provisions that are at issue involve material provisions that have been set by the policy of the City Council, specifically the living wage provisions, and the non-discrimination provisions. He commented that McDonald's Corporation submitted clarifications claiming that the issues were different than what the City's living wage requirements were and they omitted sexual orientation or actual perceived gender identify from its rewrite and its own nondiscrimination provisions. He stated those issues are material and cannot be waived,

8.1 (Cont'd.)

and does not comply with the City of San José's form agreement, and is therefore deemed non-responsive. Council Member Chavez remarked there have been many discussions about this proposal, and is convinced that City Staff acted judiciously and properly, and is disappointed that McDonald's Corporation did not do a better job collaborating with the Fagundos in making sure they could participate in the development of the RFP.

Vice Mayor Dando asked what triggered the need for an RFP in the first place. Assistant Director of Aviation Frank Kirkbride replied that the RFP originated in January 2003 when Airport Staff came to Council to amend the current lease with McDonald's, and part of that recommendation was to issue an RFP to solicit food and beverage concession proposals, as the McDonald's extended contract expired in June 2004. Vice Mayor Dando asked if there had been complaints or was there a problem with service. Assistant Director Kirkbride replied in general a RFP would be issued after ten year time intervals, and 1998 was the last time the Airport advertised for food and beverage concessions. Vice Mayor Dando remarked if other contracts were going to expire in approximately four years, asked why Staff did not wait and advertise at that time. Assistant Director Kirkbride replied this was a good opportunity with the implementation of the Airport Master Plan to take a look at the entire concession program as a whole. Vice Mayor Dando expressed concern that a local minority business owner who came in and helped the Airport at the City of San José to provide food early on, endured losing one of the airlines, the 9/11 disaster occurred, and now that there will be changes at the Airport that would allow for greater success, Staff decides it is time for an RFP. She remarked that within that RFP it appears to be so restrictive and stringent that it does not encourage competition, and suggested a substitute motion to extend the contract with McDonald's either for the four years or at least for a 6 month period then go out for bids, and encourage competition. Mayor Gonzales asked Vice Mayor Dando to repeat her substitute motion after the public comments.

Mayor Gonzales called for public testimony. Phaedra Ellis-Lamkins, South Bay AFL-CIO Labor Council, Ramon Gurubel, Steve Johnson, Host International, Olivia Jethani, Burger King, Enrique Fernandez, Local 19, Carlos Ramirez, Martini Monkey, Inc., Kansen Chu, Daisy Chu, Harbor Express, Derrick Pratt, Richard Buxton, McDonald's Corporation, Henry Valdez, Dania Fagundo, owner of McDonald's at the Airport, Ross Signorino, Jim Tucker, San José Silicon Valley Chamber of Commerce, and Dennis King, Hispanic Chamber of Commerce Silicon Valley spoke on the issue.

Vice Mayor Dando moved approval of a substitute motion rejecting all bids, approval of the Airport Commission recommendation, and to re-bid the project. The motion failed for lack of a second. Mayor Gonzales remarked the original motion is back on the floor.

8.1 (Cont'd.)

Council Member Reed remarked it states in the RFP proposal that by submitting a proposal, each proposer agrees to execute the City's Exemplar Concession Agreement attached to the RFP, and basically there is one blank to fill in. He added in another section it states if there are any discrepancies or omissions found by the prospective proposer, who has any doubt as to the meaning of any part of this RFP, the prospective proposers may submit a written request for clarification or interpretation to the City at the address specified. He commented that the third item is that after the City is in receipt of the proposal, no request for modification of the proposal, no claim for adjustment of any provisions or RFP shall be honored regardless of any claim by the proposer that it was not fully informed as to any factor or condition. Council Member Reed stated McDonald's Corporation is not a local or small business, and they are the ones who made the proposal, and the Fagundos are not a small business under the City's standards as they have in excess of 35 employees. He remarked the process appeared to be fair and competitive, and Host International came in first, and expressed support for the motion.

Council Member Chirco expressed agreement with Council Member Reed, commenting McDonald's Corporation has seriously failed one of their franchise owners. She expressed disappointment that the RFP process generated only two responses, and understood there were eight different providers at the Airport, and challenged the Airport and City Attorney to review the RFP for the Airport Food servers and to understand why there were only two respondents. She expressed concern with the thought of the disadvantages or advantages of having a sole provider at the Airport, and not hearing any discussion of that issue either way. Council Member Chirco expressed support for the motion.

Council Member Cortese remarked he would not be supporting the motion. He commented his long-standing community relationship with the Fagundos extends well beyond his three years with the City Council. He commented that the Fagundos launched an Evergreen anti-graffiti program, and has been involved with other community service projects. He stated one of the best reasons for giving back to the community besides the personal rewards, is the credibility developed with the community and with the public officials in the community over the years, so if there is a problem of one's credibility against another's, people can measure the credibility one has built over the years against whatever the issue is. He stated there was a mistake made in the RFP process, and it should have been resolved in a better fashion. He remarked whatever his sentiments are, relative to his own observations and his District at this point, and how those are weighted into his decision on this issue may be unique compared to the other Council Members.

8.1 (Cont'd.)

Vice Mayor Dando remarked she would not be supporting the motion, and does not know the Fagundos or their commitment to San José. She stated that she believes that when there are as many outstanding issues that have confusion around them, it should be the Council's responsibility to step in, take the time, and give every courtesy to an individual company that has been serving the community well for a number of years. She remarked that this does not make any difference to McDonald's Corporation, but it does make a difference to one family that has provided good services with no complaints from the customers served. Vice Mayor Dando remarked for the City to accept this with all the unanswered questions and the confusion, and in light of the comments from Council Member Cortese and others, she feels is a mistake, and sends a wrong message to the small businesses in the community.

Mayor Gonzales expressed support for the motion, although with regret. He remarked he had met with the Fagundos, and McDonald's Corporation over one year ago, explained the rules of business in San José as related to the Airport, and everyone stated they understood. Mayor Gonzales remarked, however a proposal was submitted and it did not meet the City of San José's conditions. He added that McDonald's Corporation has several explanations but simply put if McDonald's had done their job correctly, the City would not be put in this position today, and it is unfortunate, because the Fagundos are wonderful people. He commented that McDonald's Corporation should have been there for the Fagundo's in the beginning, and in this case McDonald's mishandled the transaction with conflicting documents, which has put the City of San José in a very difficult position.

Council Member Campos remarked that in listening to the comments of her colleagues, what Mayor Gonzales spoke of, and listening to Vice Mayor Dando state that she did not believe that this does not matter to McDonald's, expressed concern, as this is a very difficult situation. She remarked the Fagundos have given so much to the community and it is unfortunate for them that they did not have a true partner in McDonalds. She commented McDonald's should have been there at the beginning for the Fagundos. She remarked that the City of San José is very serious about its policies, and expressed support for the motion.

On a call for the question, the motion carried unanimously, and Resolution No. 72040, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Concession Agreement with Host International, Inc., for a Non-Exclusive Food and Beverage Operation in Terminal A at the Norman Y. Mineta San José International Airport, for the Period July 1, 2004 to June 30, 2009, with Guaranteed Minimum Revenues to the City of \$1,033,754 from the Date that Host Commences Operations Through the End of the Term, or a Percentage of Gross Sales, Whichever is Greater", was adopted. Vote: 9-2-0-0. Noes: Cortese, Dando.

NOTICE OF CITY ENGINEER’S PENDING DECISION ON FINAL MAPS

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/ Units</u>	<u>Type</u>	<u>Proposed Decision</u>
9507	South Michelangelo Drive, 100 ‘ west of Strata Circulara	8	Shappell Industries	49 units	SFD	Approve
9508	Southeast corner of Aborn Road and Voltaire Street	8	Shappell Industries	65 units	SFA	Approve

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's receipt of the following Final Maps for review:

None.

OPEN FORUM

- (1) Mark Trout spoke on the issue of same sex marriage.

ADJOURNMENT

The Council of the City of San José adjourned from afternoon session at 4:53 p.m.

RECESS/RECONVENE

The City Council recessed at 5:38 p.m. from the Joint City Council/Redevelopment Agency Board, and reconvened at 7:06 p.m. in the Council Chambers, City Hall.

Present: Council Members - Campos, Chirco, Cortese, Dando, Gregory, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - Chavez. (Excused)

Acting City Clerk Deanna J. Santana read the requests for continuance of the applications. Upon motion by Council Member Campos, seconded by Council Member Cortese, and carried unanimously, the below noted continuances were granted. Vote: 10-0-1-0. Absent: Chavez.

CEREMONIAL ITEMS

1.3 Administer Oath of Office to District 6 Youth Commissioner, Emily Hopper. (Mayor)

Documents Filed: Memorandum from Acting City Clerk Deanna J. Santana, dated March 5, 2004, transmitting the appointment to the Youth Commission.

Discussion/Action: Mayor Gonzales invited Council Member Yeager to introduce the District 6 Youth Commissioner, Emily Hopper. Mayor Gonzales invited Acting City Clerk Deanna J. Santana to the podium to administer the Oath of Office to Ms. Hopper. Mayor Gonzales congratulated Ms. Hopper on behalf of the City Council.

1.4 Presentation of a commendation to Captain Dave Churchill of the City of San José Fire Department for his dedication and perseverance in rescuing a three year old boy in Boulder Creek. (Mayor) (Rules in Lieu referral 4/1/04)

Documents Filed: None.

Discussion/Action: Mayor Gonzales invited Fire Captain Dave Churchill, and Geoff, Shonti, and Aidan Burke to the podium. Mayor Gonzales remarked that Fire Captain Churchill has served the Fire Department in the City of San José since 1986, and has earned the respect of his colleagues by demonstrating genuine leadership in many capacities including his contributions to Emergency Medical Dispatch, EMT Field Coordinator and Instructor, Paramedic Services, Local 230 Ship Representative, Public Education, Fire Prevention, and teaching at the City's Recruit Academies. Mayor Gonzales added Captain Churchill's dedication to serving and protecting the people of the community extends well beyond the borders of San José as shown by his off duty diligence as a skilled and willing volunteer in locating missing 3 year old Aidan Burke in

1.4 (Cont'd.)

Boulder Creek, who had been lost for over 24 hours on Thursday, March 25, 2004. Mayor Gonzales on behalf of the City Council, and the Burke Family, recognized and commended Captain Dave Churchill for his dedication to protect and serve the residents of San José and the neighboring cities, and for his skill, compassion and service beyond the call of duty. Captain Churchill thanked Mayor Gonzales, and the City Council, and expressed his joy to the Burke Family for the recovery of their son. Ms. Shonti Burke expressed her appreciation, and gratitude to Captain Churchill, and presented him with a “tree of life” from the Burke Family Grandparents.

1.5 **Presentation of a commendation to the 341st Military Police Army Reserve Company based in San José. (Dando)** **(Orders of the Day)**

Documents Filed: None.

Discussion/Action: Mayor Gonzales invited Vice Mayor Dando, and Council Member Reed to the podium. Vice Mayor Dando invited Lieutenant Colonel Ruiz, Lieutenant Smith, and Debbie Katsounakis, mother of Nick Katsounakis, who is currently serving in Iraq, to the podium. Vice Mayor Dando mentioned a nonprofit organization established in 1968, called “America Supporting Americans” is for citizens supporting the people serving the United States, and the 341st Military Police Army Reserve Company requested that their home base of the City of San José, adopt them. Vice Mayor Dando added those soldiers include officers from the San José Police Department, Officer Sergeant Francis Keffer, and Officer Jose Frank Montoya, and that the company has been deployed since the beginning of the war in Iraq. Vice Mayor Dando remarked that the City of San José appreciates their service to our country, and hope they come home soon. Mayor Gonzales, on behalf of Vice Mayor Dando, Council Member Reed, and the City Council, acknowledged all of the members of the 341st Military Police Army Reserve for their dedication and service to our nation, and community as they defend America and work towards peace. Lieutenant Colonel Ruiz, and Ms. Katsounakis thanked Mayor Gonzales, the City Council, and the City of San José for their support.

ECONOMIC & NEIGHBORHOOD DEVELOPMENT

- 4.10 (a) **Approval of an ordinance amending Chapter 13.48 of Title 13 of the San José Municipal Code to provide procedures for the establishment of Conservation Areas; and**
(b) **Adoption of a resolution amending the Schedule of Fees and Charges to establish a \$700 fee for Conservation Area designation applications.**
CEQA: Exempt, PP04-02-054. (Planning, Building and Code Enforcement)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated March 17, 2004, recommending adoption of said ordinance and resolution.

4.10 (Cont'd.)

Discussion/Action: Item 4.10 was renumbered from 2.12. Heard in the evening. Upon motion by Council Member Yeager, seconded by Council Member LeZotte, and carried unanimously, Ordinance No. 27113, entitled: "An Ordinance of the City of San José Amending Chapter 13.48 of Title 13 of the San José Municipal Code by Adding a New Part 5 to Establish a Process for Designating Conversation Areas", was passed for publication; and Resolution No. 72044, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 71603 to Establish the Conservation Area Designation Fee" was adopted. Vote: 10-0-1-0. Absent: Chavez.

PUBLIC HEARINGS

11.1 PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located at the north side of Alum Rock Avenue, approximately 200 feet southwesterly of 34th Street (1629 Alum Rock Avenue), from R-2 Two-Family Residence Zoning District and CG Commercial General Zoning District to A(PD) Planned Development Zoning District, to allow a radio station use on a 0.33 gross acre site. (Dolores M. Viera and S. Batista, Owner). CEQA: Exempt. SNI: Five Wounds/ Brookwood Terrace.

PDC 03-090 - District 5

(Continued from 3/16/04 – Item 11.10)

Documents Filed: None.

Discussion/Action: Item 11.1 was continued to April 20, 2004.

11.2 PUBLIC HEARING ON CONFORMING REZONING of the property located at the south side of The Alameda, approximately 90 feet westerly of Newhall Street (2115 The Alameda), from CO Commercial Office, CN Commercial Neighborhood, and R-1-8 Residence Zoning District to CP Commercial Pedestrian Zoning District, for commercial uses on a 1.14 gross acre site. (Care Access Silicon Valley, Owner). CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.

C 04-015 - District 6

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C-04-015, dated March 16, 2004, recommending approval on the Conforming Rezoning. (2) Proof of Publication of Notice of Public Hearing, executed on March 26, submitted by the City Clerk.

11.2 (Cont'd.)

Discussion/Action: Mayor Gonzales opened the public hearing on the Conforming Rezoning of the subject property, and there was no discussion from the floor. Upon motion by Council Member Yeager, seconded by Council Member LeZotte, and carried unanimously, the public hearing was closed, the recommendation of the Planning Director was approved, and Ordinance No. 27114, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the South Side of The Alameda Approximately 90 Feet Westerly of Newhall Street (2115 The Alameda", was passed for publication. Vote: 10-0-1-0. Absent: Chavez.

11.3 **PUBLIC HEARING ON CONFORMING REZONING of the property located at the northeasterly side of San Felipe Road, approximately 450 feet southerly of Aborn Road (3320 San Felipe Road), from A Agricultural Zoning District to R-1-5 Residence Zoning District, to allow residential uses on a 1.7 gross acre site. CEQA: Use of San José 2020 General Plan Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.**

C 04-021 - District 8

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C-04-021, dated March 15, 2004, recommending approval on the Conforming Rezoning. (2) Proof of Publication of Notice of Public Hearing, executed on March 26, submitted by the City Clerk.

Discussion/Action: Mayor Gonzales opened the public hearing on the Conforming Rezoning of the subject property, and there was no discussion from the floor. Council Member Cortese remarked he understood the purpose for this rezoning is to facilitate a Conditional Use Permit but expressed concern because it is a Residential Rezoning within the Evergreen Area Development Policy, and requested assurance from Staff to ensure that the property owners understand that there are no allocations for the property, and there is not an expectation that they can actually build residential on the property, should they intend to. Deputy Director of Planning Implementation Joe Horwedel replied that this rezoning is to facilitate the approval of a Conditional Use Permit for the Child Care Center, while it is for Residential Zoning, there are not traffic allocations, and his understanding is for this property is that they could build house. He added like all the other properties in Evergreen where there is not allocations for the assessment district process, Staff placed, on the Council's prior direction, have been telling property owner that Staff would not support applications for subdivisions on those properties, and that is how Staff would proceed on this case. He added one of the items that is a part of the greater Evergreen Study that Staff is working on, is looking at properties like this and whether they should be residential or commercially designated. Council Member Cortese remarked he is aware that is happening, and that it is now within the Evergreen Smart Growth Strategy Study Area, but want make sure that this communicated to the property owners in case, sometimes after these kinds of land use transactions, interest is generated in the property because it appears to be entitled for a higher and better use than what it currently is, and want to make sure there is some communication with the property owners.

11.3 (Cont'd.)

Upon motion by Council Member Cortese, seconded by Vice Mayor Dando, and carried unanimously, the public hearing was closed, the recommendation of the Planning Director was approved, and Ordinance No. 27115, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of San Felipe Road, 450 Feet Southerly of Aborn Road (3320 San Felipe Road) to R-1-5 Residence Zoning District", was passed for publication, with Staff directed to advise the property owners that in order to discuss any development of property, the first step is becoming involved through the Evergreen Smart Growth Strategy Study Process. Vote: 10-0-1-0. Absent: Chavez.

GENERAL PLAN PUBLIC HEARINGS

General Plan Public Hearings From March 16, 2004 (Cont'd.)

- 12.1 (a) **PUBLIC HEARING ON GENERAL PLAN AMENDMENT request to change the Land Use/Transportation Diagram designation from Light Industrial to General Commercial for property located on the southwest corner of West Hedding Street and Coleman Avenue (879 Coleman Avenue) on a 0.45-acre site. (Pinn Brothers, Inc., Owner/Pinn Brothers Construction, Inc., Applicant). CEQA: Mitigated Negative Declaration, GP03-03-18. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1; Platten Absent). GP03-03-18 - District 3
[Deferred from 3/16/04 – Item 12.1(c)]**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP03-03-18, dated January 29, 2004, recommending approval on the request to change the Land Use/Transportation Diagram from Light Industrial to General Commercial. (2) Memorandum from Secretary of Planning Commission Stephen Haase, dated February 25, 2004, transmitting the Planning Commission recommendation.

Discussion/Action: Mayor Gonzales opened the public hearing on the request to change the Land Use/Transportation Diagram from Light Industrial to General Commercial, and there was no discussion from the floor. Upon motion by Vice Mayor Dando, seconded by Council Member Campos, and carried unanimously, the Staff/Planning Commission recommendation to change the Land Use/Transportation Diagram from Light Industrial to General Commercial for property located on the southwest corner of West Hedding Street and Coleman Avenue (879 Coleman Avenue) on a 0.45-acre site, was tentatively approved. Vote: 10-0-1-0. Absent: Chavez.

- 12.2 (a) **PUBLIC HEARING ON GENERAL PLAN AMENDMENT** request to change the Land Use/Transportation Diagram designation from Industrial Park to Medium Density Residential (8-16 DU/AC) for property located on the southwest corner of Oakland Road (1803 Oakland Road) and Rock Avenue on a 13.7-acre site. (Orchard Property, LLC, Owners/Tom Armstrong, HMH, Applicant). CEQA: Resolution No. 04-017, GP03-04-01. Director of Planning, Building and Code Enforcement recommends denial and Planning Commission recommends approval with Preference for park on-site (5-2-0; Levy & Zito Opposed).

GP03-04-01 - District 4

(Continued from 4/15/03 - Item 1.5 and 11/18/03 - Item 1.2)

- (b) **PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING** from HI Heavy Industrial Zoning District to A(PD) Planned Development Zoning District to allow up to 107 single-family detached residences on a 13.7-gross acre site, located on the southwest corner of Oakland Road (1803 Oakland Road) and Rock Avenue. (Orchard Property LLC, Owner; Summerhill Homes, Developer). CEQA: Resolution No. 04-017, PDC03-068. Director of Planning, Building and Code Enforcement recommends approval with one acre park on site with a frontage road and Planning Commission recommends approval as proposed by the applicant (4-2-1; Levy & Zito Opposed, James Absent).

PDC03-068 - District 4

[Continued from 3/16/04 – Item 12.2(a)(b)]

Documents Filed: (1) Memorandum from Council Member Reed, dated March 11, 2004, recommending approval of the Staff recommendation. (2) Memorandum from Council Member Reed, dated March 15, 2004, recommending continuance of Item 12.2(a)(b) to April 20, 2004, to allow Council the opportunity to consider the Strategic Economies Report on the fiscal issues of industrial land conversion. (3) Memorandum from City Attorney Richard Doyle, dated April 6, 2004, transmitting Statement of Overriding Considerations for Oakland Road/Rock Avenue Project. (4) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP03-04-01, dated February 5, 2004, recommending approval on the General Plan amendment request to change the San José 2020 General Plan Land Use/Transportation Diagram Designation from Industrial Park to Medium Density Residential. (5) Memorandum from Secretary of Planning Commission Stephen Haase, dated March 1, 2004, transmitting the Planning Commission recommendation. (6) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC03-068, dated February 5, 2004, recommending approval of the Planned Development Rezoning from HI Heavy Industrial to A(PD) Planned Development Rezoning District. (7) Memorandum from Secretary of Planning Commission Stephen Haase, dated February 26, 2004, transmitting the Planning Commission recommendation. (8) Supplemental memorandum from Director of Transportation James Helmer, and Director of Planning, Building and Code Enforcement Stephen Haase, dated March 10, 2004, transmitting information on the status of transportation planning for the Charcot Avenue extension project. (9) Memorandum from Director of Economic Development Paul Krutko, dated March 10, 2004, transmitting the Office of Economic Development recommendation of denial of the proposed General Plan Amendment to change the said land use designation.

12.2(a)(b) (Cont'd.)

Discussion/Action: Mayor Gonzales opened the public hearing on the General Plan Amendment request to change the Land Use/Transportation Diagram designation from Industrial Park to Medium Density Residential, and on the Planned Development Rezoning from HI Heavy Industrial Zoning District to A(PD) Planned Development Zoning District. Ken Riley, Orchard School District, Bill Schreeder, and Joe Head, Summerhill Homes spoke in favor of the issue.

Council Member Yeager referring to the parcels that are adjacent to the proposal and also to Council Member Reed's memorandum, where it states the conversion would not have a major impact on existing industrial users, and pointing out in the Staff report it states the opposite, that approximately 20 acres of land designated as heavy industrial on the east side are unlikely to see future new heavy industrial use if residential land use changes should occur due to the effusion of new residents in close proximity, the 33 acres on the westerly side could experience future pressure for conversion; the 10 acres immediately adjacent which would be strong candidates for conversion, which totals approximately 60 acres which seems likely to convert and different from an opposing point of view, asked why does Staff feel these parcels may convert over. Deputy Director of Planning, Building, and Code Enforcement Laurel Prevetti replied Staff believes a change at the Rock Avenue site could potentially produce additional conversions in the area, particularly there is approximately 10 acres that could convert in the short term, including a storage yard to the north of the Rock Avenue site, parcels immediately to the west, and on the east side of Old Oakland Road there are approximately 20 acres that are currently designated for heavy industrial, and for the reasons outlined in the Staff report, that operationally it is likely there could be some new constraints placed on those businesses, and the properties closer to Interstate 880, could also be subject to conversion to residential.

Vice Mayor Dando asked in Staff's opinion with the type of uses around this parcel, what can be expected from future residents that live in that area as far as issues that might be a concern to them. Deputy Director Prevetti replied Staff's experience in the past has shown that if residential housing is established near active industrial areas, over time there typically is pressure on the existing businesses to reduce truck traffic and noise, limit hours of business operations, and other environmental impacts, and neighborhoods can exert pressure and have the company's Permits modified in order to accommodate the neighborhood. Vice Mayor Dando remarked in some neighborhoods it is less heavy industrial areas, and it seems easier to commingle residential within the neighborhood, and this area seems to be a very noisy, dusty area of industrial use, and asked how Staff categorizes the uses surrounding this area. Deputy Director Prevetti replied Staff agrees with the existing uses in this area, while the General Plan designation is currently industrial park, many of the uses there are a light, industrial character, and it is possible that those businesses may change and house their operations in buildings, thereby reducing the dust and the noise.

12.2(a)(b) (Cont'd.)

Council Member Reed moved approval of his memorandum dated March 11, 2004, and the General Plan Amendment to change the land use designation from Industrial Park to Medium Density Residential, approved the Planned Development Zoning to allow the construction up to 107 single-family detached residences as proposed by the applicant and approved by the Planning Commission with additional conditions, (1) A substantial part of the parkland dedication ordinance in lieu fees shall be spent to make significant improvements to the property of Orchard School so that the community will have more park amenities and more opportunities for families for gather, and those improvements will include new sports field, and a landscaped family picnic area; (2) The streets and the sidewalks of the new project shall be public and shall be designed to facilitate the children of Casa del Lago Mobilehome Park walking to Orchard School without having to walk along Oakland Road; and (3) The streets shall be designed to allow a possible future additional connection to Rock Avenue through the property immediately to the west of the site if it become a residential area in the future; and in addition, he read into the record, "The Final EIR for this project identified significant and unavoidable environmental impacts. However, as described in detail in our Resolution of EIR Findings for this Project, there is no feasible way to lessen or avoid these significant effects, and approval of this project is anticipated to result in several benefits to our City. All of these Project benefits outweigh the significant unavoidable environmental impacts of the Project identified in the Final EIR". Council Member Gregory seconded the motion. Council Member Reed remarked the main reason for this change is to connect Orchard School to the 600 units of the Casa del Lago Mobilehome Park, so the families can utilize the school facilities and the park, and the children can walk to school. He mentioned in his memorandum is outlined eight reasons why this scores well on the framework analysis. Council Member Reed added the approval of this conversion is not to send a message to the other seventeen sites that they are automatically in line for conversion.

Vice Mayor Dando remarked the other industrial site that is adjacent to the housing site, as Council Member Reed stated is that there should not be the expectation that those will be converted to residential, but expressed concern that this could possibly be a bad land use decision with placement of a school in the middle of an industrial site, and asked for clarification. Council Member Reed replied a questionable land use decision was putting 600 units of housing there, and the school's decision and land analysis is very different than the City's, and they do not have to come to the City because they are not required to, as the State gives them that power. He commented that having the residential there, the school did not bring any additional impacts to the neighborhood, and this additional residential will not add any additional problems, it is basically putting it between two uses that perhaps should not be there, but they in fact are there. Vice Mayor Dando asked if it is an expectation that there will be a one-acre park within the project itself. Council Member Reed replied the strategy of using the in-lieu fees to build a park on the school property is one that actually generates a usable park in the lifetime of the people living there. Vice Mayor Dando remarked the Planning Staff has its work cut out for them, and will support the motion with hesitation.

12.2(a)(b) (Cont'd.)

Council Member Yeager remarked he has given this issue quite a bit of thought, adding there are many areas like this in every Council District where residential is next to an industrial use. He commented with the heavy industrial use across from the Old Oakland Road housing, could not imagine the residents not complaining about the noise. He added the City continues to be concerned about the jobs/housing imbalance, and it was a major step to do this particular study, and it has important points. He remarked he believes the City should preserve more land for jobs and not housing, and will not be supporting the motion. Council Member LeZotte expressed agreement with Council Member Yeager and would not be supporting the motion.

Council Member Williams remarked that this offers the City an opportunity to be creative, providing housing and jobs for the future, and expressed support for the motion. Council Member Gregory expressed support for the motion. He agrees with Council Member Reed in regard with the school, and the children walking from the mobilehome park to the school. He remarked that mobilehome parks are communities the City needs to take care of. He commented regardless of whether the City looks at the school being placed where it is as a bad land use decision or not, the fact is that it does exist there, and the City must make it functional for those families. He stated the City should do all it can to make it convenient and safe for those children to go to school, and knit this community together.

Council Member Chirco expressed concern as she believes in preserving land for employment purposes in residential/industrial, but realizes there are areas such as this in the City. She commented this is a community that is already established, she does not like this decision but the school is already in place and will be there, and remarked she will support the motion reluctantly. She stated she would be looking hard at future land conversions that come before Council and use the Framework, which is a critical tool. She added this is not an easy decision, and expressed agreement with Council Member Reed in regard to this issue is not to send a message to the other seventeen land sites that they are automatically in line for conversion.

Mayor Gonzales remarked that the City does not decide where the schools will be built, the City lives with the locations, and tries to create the best neighborhoods around them, and in this case there is a school in this project. He commented the school is the most important parcel in this neighborhood and the City has no control over it. He remarked the City, however is determined to upright the jobs/housing ratios to a point where there can be one job for every household in San José. He added there is a school, and residential in this area, and to protect the integrity of the school, and further the City land use, he expressed support of the motion. On a call for the question, the motion carried, the Staff/Planning Commission recommendation for the General Plan Amendment request to change the Land Use/Transportation Diagram designation from Industrial Park to Medium Density Residential was tentatively approved, the Planned Development Rezoning from HI Heavy Industrial Zoning District to A(PD) Planned Development Zoning District was approved; and Council Member Reed read into the record: "The Final EIR of this Project identified significant and unavoidable environmental impacts.

12.2(a)(b) (Cont'd.)

However, as described in detail in our resolution of EIR findings for this Project, there is no feasible way to lessen or avoid these significant effects, and approval of this Project is anticipated to result in several benefits to our City. All of these Project benefits outweigh the significant unavoidable environmental impacts of the Project identified in the Final EIR; and CEQA Resolution No. 72045, entitled: "A Resolution of the City Council of the City of San José Making Certain Findings Concerning Impacts, Mitigation Measures and Alternatives and Adopting a Statement of Overriding Considerations for the BFI Property Residential Project for Which an Environmental Impact Report was Prepared in Accordance with the California Environmental Quality Act", was adopted; and Ordinance No. 27115.1, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated the Northwest Corner of Oakland Road and Rock Avenue to A(PD) Planned Development Zoning District", was passed for publication. Vote: 8-2-1-0. Noes: LeZotte, Yeager. Absent: Chavez.

**12.3 Adoption of a resolution approving all General Plan amendment actions taken on March 16, 2004. (Planning, Building and Code Enforcement)
(Continued from 3/16/04 – Item 12.4)**

Documents Filed: None.

Discussion/Action: Upon motion by Council Member Reed, seconded by Council Member Cortese, and carried unanimously, Resolution No.72046 was adopted, and encompasses items continued from March 16, 2004 General Plan Hearing to April 6, 2004. The General Plan Hearing of March 16, 2004 closed on April 6, 2004. Vote: 10-0-1-0. Absent: Chavez.

OPEN FORUM

(1) Isabel, Local 715, spoke of issues related to MACSA workers.

ADJOURNMENT

The Council of the City of San José was adjourned at 8:11 p.m.

RON GONZALES, MAYOR

ATTEST:

DEANNA J. SANTANA, ACTING CITY CLERK

smd/04/06/04min