



Memorandum

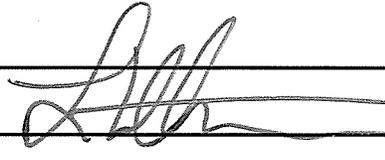
TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: June 4, 2007

Approved

 Date 6/5/07

COUNCIL DISTRICT: 6
SNI AREA: None

SUBJECT: MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SAN JOSE AND THE CITY OF SANTA CLARA REGARDING PLANNING, PERMIT APPROVAL AND INSPECTION RESPONSIBILITIES FOR THE CONTEMPLATED EXPANSION OF THE VALLEY FAIR MALL

RECOMMENDATION

Approval of a Memorandum of Understanding between the City of San Jose and the City of Santa Clara Regarding Planning Permit Approval and Inspection Responsibilities for the Contemplated Expansion of the Valley Fair Mall.

OUTCOME

Approval of this Memorandum of Understanding will provide for coordinated development review of the Valley Fair Expansion project between the cities of San Jose and Santa Clara, clearly delineate the permitting responsibilities and approval authority of the two jurisdictions, and will establish the formula for collection and distribution of permit and plan check fees and construction taxes.

BACKGROUND

Valley Fair (Westfield) Mall is located on 70 acres on the north side of Stevens Creek Boulevard between Winchester Boulevard and Interstate 880. The mall, originally constructed in 1956, has been modified and shops added several times in the past decade, and was most recently remodeled to add approximately 500,000 square feet in 1999 when it was acquired by Westfield. The existing shopping center comprises the main center structure and several outbuildings, which currently total approximately 2 million square feet of retail and commercial space. The existing mall center building crosses the city boundary line between the City of San Jose and the City of Santa Clara, with approximately three quarters of the mall in San Jose, and the westernmost shops and the Macy's Men and Home store located in the City of Santa Clara.

June 4, 2007

Subject: Memorandum of Understanding-Valley Fair Mall

Page 2

In 2006, Westfield filed a Site Development Permit (File No. H06-027) to allow an approximately 650,000 square foot expansion of the existing shopping center, including two new anchor stores, up to 70 shops and reconfiguration and relocation of parking garages and pad outbuildings. Some of the proposed new square footage and improvements cross the city boundary between San Jose and Santa Clara. Due to the large scale of the proposal, and existing area-wide traffic and circulation concerns, an Environmental Impact Report (EIR) has been prepared for the proposed project, with the City of San Jose as the lead agency, and the City of Santa Clara participating as a responsible agency which will allow Santa Clara decisionmakers to use the EIR for environmental clearance for approval of development permits within their city limits.

ANALYSIS

During the previous Valley Fair Mall expansion in 1999, the Cities of San Jose and Santa Clara worked to coordinate the development review, permitting and approvals and subsequent plan check, building inspection, and collection of construction taxes. As is the case with the current expansion proposal, San Jose acted as the lead agency for an Environmental Impact Report, and the project was approved through the authority of the City of San Jose. At that time, the Planning Directors of the two cities cooperated informally, without an MOU. It has been determined, however, that the City Councils of the two Cities should formally authorize the limited delegation of authority through the approval of an MOU.

The attached MOU provides for the City of San Jose Planning Division to review and provide approval of the parts of the development that cross boundary lines as well as those structures fully within San Jose. The San Jose Building Division and Fire Department will review and approve plans and inspect construction of the building shells for structures, which cross the City boundary as well as the buildings, which are entirely within San Jose. The City of Santa Clara will provide plan review and approval and building inspection of the common area tenant build outs of the structures, which cross the City boundary. Each city will provide plan review and approval and inspection of future tenant improvements that are entirely with each City. The City of Santa Clara will provide Planning, Building and Fire approvals and inspection for structures that are located entirely within Santa Clara. All construction taxes will be collected and distributed on a square footage basis and will be paid to the jurisdiction in which the construction is located, regardless of which jurisdiction provides the plan check and inspection. All of the development is located in the San Jose Unified School District and all school related development fees will be collected and paid accordingly.

Westfield's Development Director, Scott Valle, expects that completion of the entire phased project could take through the year 2010. During the past year, planning staff from both jurisdictions have coordinated during the development and circulation of the EIR, certified by San Jose's Planning Commission on April 25, 2007, and the staff level review of several iterations of site plans and conceptual architectural elevations as part of the review of the pending Site Development Permit. City of San Jose planning staff has been the lead for coordination of several project informational meetings with the applicant held in the community, two in the month of April prior to the EIR certification hearing. The San Jose team of building division staff have likewise been coordinating and meeting with their counterparts in Santa Clara to set forth the proposed program for plan review and inspection which will minimize overlap and redundancy by the two city teams.

POLICY ALTERNATIVES

Not working cooperatively would result in substantial duplication of effort and potential for conflicting direction in approving development that crosses City boundaries.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff is following Council Policy 6-30: Public Outreach Policy for the development of the actual development project. To date, a notice of the public hearing for the certification of the EIR was distributed to the owners and tenants of all properties located within 1000 feet of the project site and any interested parties who had attended informational meetings, and posted on the City website. The EIR certification hearing was also published in a local newspaper, the San Jose Mercury News. Staff has been available to respond to questions from the public. When the Site Development Permit is brought forward to be heard at the Director's Hearing, notices will be sent to the same listings of individuals within 1000 feet and other interested parties.

COORDINATION

This agreement was coordinated with the Office of the City Attorney and with the City of Santa Clara.

FISCAL/POLICY ALIGNMENT

This project is consistent with applicable General Plan policies and City Council approved design guidelines as further discussed in attached staff report. Approval of the MOU will allow the so-designed project to be considered and acted upon by the City of San Jose's Director of Planning, Building and Code Enforcement, or his deputy.

COST SUMMARY/IMPLICATIONS

Not applicable.

HONORABLE MAYOR AND CITY COUNCIL

June 4, 2007

Subject: Memorandum of Understanding-Valley Fair Mall

Page 4

BUDGET REFERENCE

Not applicable.

CEQA

CEQA: Resolution to be adopted for GP06-T-04 on 6/5/07.

A handwritten signature in black ink, appearing to read "Joseph Horwedel", is written over the printed name.

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Susan Walton, Principal Planner at 408-535-7800 or
Michael Tang, Senior Building Engineer at 535-7773.

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**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF SAN JOSE AND THE CITY OF SANTA CLARA
REGARDING PLANNING, PERMIT APPROVAL AND INSPECTION RESPONSIBILITIES
FOR THE CONTEMPLATED EXPANSION OF THE VALLEY FAIR MALL**

This Memorandum of Understanding is entered into as of June __, 2007 between the City of San Jose, California and the City of Santa Clara, California for the purpose of coordination between City of San Jose (CSJ) and City of Santa Clara (CSC) of plan review, permitting and inspection of the (Westfield) Valley Fair Mall Expansion.

RECITALS

WHEREAS, the Valley Fair Mall is a complex consisting of numerous structures that are built on either side of and across the boundary between the two jurisdictions;

WHEREAS, the owners of Valley Fair desire to expand the Mall by building a structure in a location depicted in Exhibit A, which structure is to be built across the city boundary;

WHEREAS, it is mutually beneficial for CSJ and CSC to agree to their mutual responsibilities with respect to plan check, inspection, and collection of building permit and plan check fees ("fees") and construction taxes;

WHEREAS, each City has the authority to make a limited delegation of the authority of its respective planning, building, fire and public works officials;

NOW, THEREFORE, In order to facilitate the plan review and inspection for the Valley Fair (Westfield) Mall Expansion, the City of San Jose and City of Santa Clara hereby agree to the following protocols:

1. Definitions:

- 1.1. "Shell" means a structure build with the following elements complete: foundation, exterior walls, roof, and rough in sub-trade works, but without interior improvements necessary for obtaining a certificate of occupancy.
- 1.2. "Common Mall Interior Finish" (Marked as A-1) means finishes the common area of the mall area for purpose of final building inspection.
- 1.3. "Interior Finishes" means interior construction necessary to obtain the first certificate of occupancy for a building or portion of a building.
- 1.4. "Future Tenant Improvements" means any improvement to a portion of a building for which a certificate of occupancy had already been obtained.
- 1.5. "Cross-boundary Structure" means a structure which is built across the boundary line between CSJ and CSC, specifically Structures A and B
- 1.6. "Santa Clara Structure" means a structure located entirely within CSC, specifically Structures D-1, D-2, E-1 and E-2.
- 1.7. "San Jose Structure" means a structure located entirely within CSJ, specifically Structures C, F and G.

2. Building and Fire responsibilities

2.1. Cross-boundary structures:

- 2.1.1. CSJ will collect fees and provide Plan Review services for each entire Shell of Structures A and B.
- 2.1.2. CSC will collect fees and provide Plan Review services and Inspection Services for Interior Finishes of Structures A and B.
- 2.1.3. Future Tenant Improvements – In the event tenant spaces are reconfigured to be completely within either City, the City in which the improvements are located will Review, Permit and Inspect.

2.2. San Jose Structures

- 2.2.1. CSJ will collect fees, issue permits and provide inspection services for Structures C, F & G.

2.3. Santa Clara Structures

- 2.3.1. CSC will collect fees, issue permits and provide inspection services for Structures D-1, D-2, D-3, and D-4.

3. Planning responsibilities

- 3.1. The City of San Jose Planning Department staff shall review development plans for the Valley Fair Mall expansion for Cross-boundary Structures and San Jose Structures. The Chief Planning Official for the City of San Jose shall be the approval authority for all Development and Planning Permits for the site design and building design for this structure and associated parking garages, and subsequent Permit Amendments and Adjustments for future proposed architectural or other minor changes to these structures.
- 3.2. The City of Santa Clara Planning Department staff shall review development plans for the Valley Fair Mall expansion and redesign of the Santa Clara Structures including the reorientation and reconstruction of the Longs Drug Store (D-1) and Safeway Grocery Store (D-2), and two bank outer pad buildings (E-1 and E-2).

4. Public Works Director responsibilities

5. Municipal Taxes and Development Fees

- 5.1. All municipal construction taxes will be proportional to the square footage within the corresponding city. Fees will be calculated and collected by each agency. A construction permit shall not be issued prior to written acknowledgment by the corresponding agency of payment of applicable fees. In the event of NSF or other collection problems the permit shall be considered suspended until the fees are collected.
- 5.2. School Fees shall be calculated and verified paid by the jurisdiction issuing the permit
- 5.3. SMIPA Fees shall be calculated and collected by the jurisdiction issuing the permit

6. Plan Record Retention

- 6.1. Record retention fees will be collected by each City for any project partially or wholly within that City.
- 6.2. A duplicate set of the following documents that have stamped approved by the City issuing the permit will be forwarded to the other jurisdiction:

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- 6.2.1. All Building and Fire records for all Cross-Boundary Structures.
 - 6.2.2. All Planning records for all structures, including all Cross-Boundary Structures, all San Jose Structures and all Santa Clara Structures.
7. Scope of Memorandum
- 7.1. The scope of this Agreement is exclusively for planning, building and fire permit approvals, plan checks and inspection.
 - 7.2. This Agreement does not attempt to govern on-going annual fire inspections, code enforcement activity or provision of emergency services.

SIGNATURES[BD1]