



Memorandum

TO: Lee Price
City Clerk

FROM: Councilmember
Nora Campos

SUBJECT: Evergreen East Hills Vision
Strategy Task Force

DATE: June 15, 2006

Approved:

Nora Campos

Date:

6/15/2006

RECOMMENDATION

Agendize the following item for the June 21st Rules Committee agenda:

An investigation into whether material facts were withheld from the City Council and the public by Councilmember Dave Cortese regarding the Evergreen East Hills Vision Strategy Task Force (EEHVS), and if the Council and the public were misled by Councilmember Cortese's denial of meeting with lobbyists and/or developers during the process, determining if:

- 1) Section 411 of the City Charter was violated.
- 2) A clean process when EEHVS comes to Council in October can be ensured.

BACKGROUND

There have been significant conflicting statements made by Councilmember Cortese and stakeholders in the EEHVS process in the media. There is concern about the effect this may have not only publicly, but also as it relates to successfully completing this vital land use plan. The following questions need to be answered as soon as reasonably possible to ensure that the EEHVS process has not been tainted or endangered by Councilmember Cortese.

- Has Councilmember Cortese made any commitments on behalf of the City of San Jose to developers or their representatives? (Only a majority vote of the City Council can commit the City on a land use issue).
- After meeting with developers and/or their lobbyists, did Councilmember Cortese direct or attempt to direct Staff either in writing or verbally to a particular action in regard to the EVP/EEHVS? (A member of the City Council directing Staff is a violation of City Charter Section 411).

On April 4, 2006, and April 25, 2006 the San José City Council reviewed its Council-Staff Interaction Policy, discussing the directive in the City Charter that states Councilmembers may not give any direction to any member of city staff. Section 411 of the City Charter further states that a Councilmember or the City Council as a whole may not attempt to require or coerce city

staff to make any particular recommendation or adopt any particular position as the staff position on any matter.

It appears that Councilmember Cortese violated this section of the charter in a memo dated March 1, 2005 to the then titled Evergreen Visioning Project Task Force, whereby he directed city staff on the number of housing units to be analyzed in the Environmental Impact Review (EIR). The Draft EIR was released on February 3, 2006 on this \$1B+ land use development application.

Councilmember Cortese stated publicly during a City Council meeting on May 17, 2005 that he had not "met with developer's lobbyists, property owner's lobbyists at all on this issue." According to lobbyist reports, he has met with registered lobbyists to discuss the Evergreen Smart Growth Strategy dozens of times within a five-month period including the period the above memo was written directing city staff. Additionally, Councilmember Cortese stated to *The Mercury News* that the lobbyists who listed contacts with him may have been referring to task force meetings attended by lobbyists, Cortese and others. However, in an effort to clear the air, these same lobbyists dispute Councilmember Cortese's statement, and have issued the following statements:

- "Robert Freed, Regional Manager, northern California, KB Home had several conversations with Councilmember Dave Cortese with regard to the EVP Task Force and [their] development proposal prior to the May 17, 2005 City Council meeting."
- "...registered San Jose lobbyist Tom Armstrong also had several conversations with Councilmember Dave Cortese prior to the May 17, 2005 City Council vote that expanded the EVP Task Force. *These conversations included a private meeting and phone calls outside of the formal Task Force meetings.*"
- "...registered San Jose lobbyist Gerry DeYoung also met with Councilmember Dave Cortese along with City Staff and selected EVP Task Force members to *negotiate unit counts* to be studied in the EIR, Mr. Armstrong was also in attendance at some of these meetings. *Some of these meetings were outside the regularly scheduled meetings of the formal EVP Task Force.*"

As a representative on the Task Force, I am concerned about Councilmember Cortese's meetings with lobbyists as noted in lobbyist reports filed under penalty of perjury with the City Clerk's office, as well as recent, written statements issued by the developers and their lobbyists detailing the nature of their interactions with Councilmember Cortese. In believing Councilmember Cortese, I accepted his claim on what could be included as part of the process. After reviewing the lobbyist's reports, I am concerned that city staff was directed to take action by Councilmember Cortese.

Attachments:

- Statement issued on May 5, 2006 by Yerba Buena OPCO, the EEHVS project sponsors, regarding their interactions, negotiations and private meetings with Councilmember Cortese.
- Letter to the City Clerk issued on May 4, 2006 by registered San José lobbyist Ash Pirayou clarifying the record stating he met with Councilmember Cortese.

- City of San José memo authored by Councilmember Cortese dated March 1, 2005 in which he directs staff on unit counts to be studied for the Environmental Impact Report (EIR).
- Transcript of public comments made by Councilmember Cortese from the dais at the May 17, 2005 City Council meeting.
- San José City Charter, Section 411

cc: Rules Committee

FOR IMMEDIATE RELEASE
MAY 5, 2006

CONTACT: Bo Radanovich
PHONE: 510-409-9271

Statement of Clarification in Regard to the Evergreen East Hills Visioning Strategy

"Yerba Buena OPCO, the Evergreen East Hills Visioning Strategy project sponsors, value their relationship with the citizens of San Jose and that is why we want to make the record absolutely clear in regard to recent news reports surrounding our lobbyist and our developer communications with Councilmember Dave Cortese," says project spokesperson Bo Radanovich.

- Robert Freed, Regional Manager, Northern California, KB Home had several conversations with Councilmember Dave Cortese with regard to the EVP Task Force and our development proposal prior to the May 17, 2005 City Council meeting. With regard to the specific issue of creating the new Task Force, which was the topic of discussion at the May 17, 2005 City Council meeting, Mr. Freed did have conversations with Councilmember Cortese on this specific issue. Mr. Freed also had conversations with other members of the Council and in some cases their staff with regards to this issue as well.

Mr. Freed's conversations served the primary purpose of educating officials on the project and communicating ideas about the process. Mr. Freed is not a lobbyist and does not qualify to be registered as one under the current San Jose Lobbying Ordinance.

- A member of our development team, registered San Jose lobbyist Tom Armstrong also had several conversations with Councilmember Dave Cortese prior to the May 17, 2005 City Council vote that expanded the EVP Task Force. These conversations included a private meeting and phone calls outside the formal Task Force meetings. The focus of these conversations were to protect the body of work conducted by the EVP Task Force and to keep the project on its timeline, as summarized in Mr. Armstrong's quarterly registration filings.
- A member of our development team, registered San Jose lobbyist Gerry DeYoung also met with Councilmember Dave Cortese along with City Staff and selected EVP Task Force members to negotiate unit counts to be studied in the EIR, Mr. Armstrong was also in attendance at some of these meetings. Some of these meetings were outside the regularly scheduled meetings of the formal EVP Task Force.
- A member of our development team, registered San Jose lobbyist Ash Pirayou, also met with Councilmember Dave Cortese on an unrelated issue and disclosed to Councilmember Cortese that he would be working on the EVP project for Yerba Buena OPCO.

"It is important to note that the leadership of the current Task Force has done an exemplary job ensuring that the process has been open and constructive. Task Force leaders and members along with the professionalism of the City of San Jose Planning staff have created a collaborative process that we believe will bring forward a plan we can all be proud of. We look forward to continuing to work toward a successful conclusion," says project spokesperson Bo Radanovich.



VIA U.S. MAIL AND FACSIMILE (408-292-6207)

May 4, 2006

Lee Price
Office of the City Clerk
200 East Santa Clara Street
San Jose, CA 95113

Dear Ms. Price:

I write this letter because questions have been raised as to the veracity of my First Quarter 2005 Lobbying Report filed under the penalty of perjury with the San Jose City Clerk's office on April 15, 2005.

I respectfully request that this letter be filed with my Lobbying Reports on file with the City Clerk and in the minutes of the San Jose City Council meeting taking place on May 9, 2006.

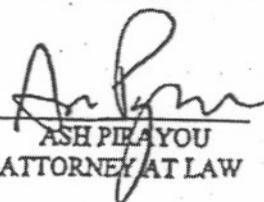
On February 1, 2005, at the Wyndham Hotel, I advised Councilmember Cortese that I was to be involved in the Evergreen Smart Growth Strategy on behalf of Yerba Buena O.P.C.O. LLC, and pursuant to the City of San Jose Lobbying Ordinance, I listed this contact on my First Quarter 2005 Lobbying Report.

In addition, pursuant to the City of San Jose Lobbying Ordinance, I listed emails to Councilmember Cortese relating to the 265 Lewis Road project as contacts on my First Quarter 2005 Lobbying Report.

Very truly yours,

PIRAYOU LAW OFFICES

By:


ASH PIRAYOU
ATTORNEY AT LAW



MEMORANDUM



TO: All EVP Task Force Citizen and
Property Owner Representatives and
City Staff

FROM: Dave Cortese
City Councilmember

SUBJECT: Evergreen Visioning Project

DATE: March 1, 2005

APPROVED: _____

DATE: _____

NEXT STEPS

After hearing the community and developer proposals, I am hereby directing staff to proceed as follows:

1. The project description for the Evergreen Visioning Project (EVP) - Environmental Impact Report (EIR) should include the following four project alternatives for the basis of the study: 3800, 4200, 4600 and 5700 housing units. (The "No Project" alternative would be studied in any case per CEQA. "No Project" includes the existing General Plan land uses and the current Evergreen Development Policy).
2. The project description should also include commercial alternatives based on the retail market study recently conducted in the Evergreen area and submitted for review to the City of San Jose, and should allow for study of at least three retail alternatives based on low, medium and high square footages of additional construction.

BACKGROUND

Over the last 18 months the Evergreen Visioning Project Task Force has deliberated over how to proceed with infill development in Evergreen in a way that generates true positive outcomes for the community. The group has produced excellent work product to date (see below), which will continue to be invaluable in guiding the land use and planning process going forward:

- Guiding Principles - a firm set of principles that must be adhered to in all future development in Evergreen.
- Amenities - public projects to enhance Evergreen recreationally, socially, economically, etc.
- Focus group work conducted in June and August 2004 - layouts proposed by the task force of what the opportunity sites (Arcadia, Campus Industrial, Evergreen Valley College, Pleasant Hills Golf Course) in question could look like, associated financial yields, and amenity and transportation improvement prioritization.

- EIR Project Description – a month-long series of negotiations that has narrowed the field of possible EIR study descriptions.

In addition to monthly meetings in public venues, the EVP Task Force began to meet in private, without members of the public, the press or myself being permitted to participate (except by invitation). Similarly, the developer consortium no doubt has conducted meetings with their stakeholders, to which I have not been privy. Therefore I am not as versed in the analytics as I could be, but intend to continue to immerse myself. What I have observed from the portions of meetings to which I have been invited is that as well thought-out as some of the conclusions are (from both the Task Force and the developer group), they appear to be based on a diverse set of variables. Without all parties utilizing the same set of assumptions, there is no way in good conscience to exclude any of the remaining four iterations from consideration, yet.

In January 2005, I asked the EVP Task Force to work with the developer group to come to consensus (by February 24, 2005) on which project alternative(s) should be studied as part of the EIR. City staff reminded both parties that any number examined for impacts in the EIR was by no means an endorsement, official city approval or any other type of "green light" that build-out would occur at that number. Rather, the EIR is an impartial, unprejudiced and comprehensive examination of impacts and mitigations across a variety of factors. Both parties worked extremely hard – particularly the citizen negotiating team, whose members by profession are not used to dealing with traffic data, housing type, etc – to reach an accord. Unfortunately that goal was not realized and we stand at an impasse. The developer consortium had agreed to have the EIR study alternatives at the unit numbers requested by the Task Force: 3800, 4200 and 4600, provided the number 5700 could be studied as well. The Task Force disagreed, and unanimously voted for the EIR to proceed with studying the first three numbers only. In light of this impasse, the transpired deadline and the conviction by both sides to remain steadfast to the numbers they have put forward, the EIR project description should be crafted to study all four numbers. However, over the next sixty (60) days, further analysis can and will be done that should narrow the four options to a single number which will become part of the new Evergreen Development Policy document.

ANALYSIS

For the past few months there has been a preoccupation with how many units the Evergreen Visioning Project would yield. As I have stated on numerous occasions as well as in writing, the project description for the EIR does not solidify a commitment to any particular unit count. It simply allows for the study of a range of units and the associated impacts. City staff has assured us that the EIR will present an absolutely unbiased account of these numbers and their impacts. At present I do not know all that I need to know in order to recommend a final number of housing units to be permitted in Evergreen. What I do know, with city staff's counsel, is that testing all four numbers will in no way undermine future negotiations over the final number but instead provide us all with accurate and current

information to utilize in further deliberations and negotiations. Staff has even suggested the possibility of studying more than four numbers within the ranges provided (once again strongly assuring an impartial study) and I am not opposed to this consideration. I would be remiss if I did not take into account the unresolved compelling arguments offered by all three of the parties so deeply involved in this process - the Task Force, developer group and city staff.

The EVP Task Force genuinely believes they have correctly interpreted the pro formas provided by the developers. They have used these pro formas to demonstrate how a 4600 unit count could generate enough funds for accomplishing all of the amenities as well as the traffic improvements, with money left to spare. The burden is therefore upon the developers to establish why anything more than 4600 is necessary to accomplishing these same goals.

CONCLUSION

In April 2005 we will have to come to an agreement over exactly how many units will be proposed in Evergreen. This decision will be memorialized in the new proposed Evergreen Development Policy, the linchpin to the entire process. This is necessary to understand how all three elements of the delicate balance would be achieved in terms of housing units, amenities/transportation improvements, and traffic. We are not yet at the juncture to make this decision, from either a timing standpoint or an informational standpoint. I see no need to artificially handicap the EIR process with this issue when its own time will come.

We still have a lot of work ahead, remembering that the full City Council would decide on the ultimate Evergreen Development Policy and General Plan land use changes. Our job is to continue to work together to create the best package possible for the existing and future residents of Evergreen.

I appreciate your on-going commitment to the EVP process.

San José City Council Meeting- Evening Session
Council Agenda: 05-17-05 Item: 4.3
Subject: Evergreen Visioning Strategy

I, Dave Cortese met with developers in private is absolutely false..

These are the kinds of things we should get out before the public. I'll open up my calendar and you open up your calendar and the calendar of your staff and let's see who has been meeting with developers in private, let's see which Councilmembers have been meeting...

I may be the only one on this dais, I don't know, because I don't see everyone else's calendar, but I think with fair certainty, that hasn't met with developers lobbyists in recent weeks I haven't met with developers lobbyists, property owners lobbyists at all on this issue but I know the Mayor's office and other Councilmembers Office's have. If we're going to get the facts out these let's make sure the facts are accurate.

SECTION 411. The Council; Interference With Administrative Matters.

Neither the Council nor any of its members nor the Mayor shall interfere with the execution by the City Manager of his or her powers and duties, nor in any manner dictate the appointment or removal of any City officers or employees whom the City Manager is empowered to appoint except as expressly provided in Section 411.1. However, the Council may express its views and fully and freely discuss with the City Manager anything pertaining to the appointment and removal of such officers and employees.

Except for the purpose of inquiries and investigations under Section 416, the Council, its members and the Mayor shall deal with City officers and employees who are subject to the direction and supervision of the City Manager, City Attorney, City Auditor, Independent Police Auditor or City Clerk, solely through the City Manager, City Attorney, City Auditor, Independent Police Auditor or City Clerk, respectively, and neither the Council nor its members nor the Mayor shall give orders to any subordinate officer or employee, either publicly or privately.

Amended at election November 4, 1986

Amended at election November 3, 1992

Amended at election November 5, 1996