Rules Committee Agenda: ~~12-12-06~~ 12-6-06
Item #: B2_b

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CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

MEMORANDUM

TO: **Rules Committee** **FROM:** **Councilmember Dave Cortese**

SUBJECT: **EEHVS – Request for deferral** **DATE:** **December 5, 2006**

APPROVED: DATE: 12/5/06

RECOMMENDATION

I recommend the Rules Committee defer the following items from the December 12, 2006 City Council agenda until the January 23, 2007 evening City Council Meeting or a date specified by staff:

- 6.3 Approval to designate the intersection of Capitol Expressway/Capitol Avenue as a "protected intersection."
- 6.4 Approval of actions related to the Traffic Impact Fee Study for Evergreen residential pool units.
- 10.9 (b2, b3 & b4) Public Hearing and approval of actions related to the Evergreen East Hills Vision Strategy Project. The EEHVS area coincides with the Evergreen Development Policy area, which is generally bounded by Story Road, Highway 101, Hellyer Avenue and within the Urban Service Area.

BACKGROUND

In a memorandum (attached) to the Rules Committee dated 11/29/06 Councilmembers Chuck Reed, Judy Chirco, Nancy Pyle and I recommended the committee defer until at least January 2007 various items regarding the Evergreen East Hills Vision Strategy. The reason we had requested this deferral was due to some critical outstanding items still needed by city staff and ultimately the City Council in order to make an informed decision on this strategy. To recap those issues are:

- Proposed funding agreement between the City and the EEHVS Property Owners for the funding of certain amenities and improvements in the Evergreen Development Policy area.
- Independent review of financial data underlying the EEHVS Property Owners' proposed development scenarios
- Independent review of industrial land conversion study
- Supplemental Recommendation by Planning Staff
- Negotiations with East Side Union High School District
- Development of Amenities
- Proposition 1B

To date we still do not have the above reports. Although staff has been meeting diligently with the EEHVS property owners since last week's Rules Committee meeting, it is clear that the outstanding issues are too wide in scope to be produced for timely review and consideration by the City Council on December 12, 2006. Therefore I am renewing the request for a deferral so that we can have all the pieces in place to make a stronger decision that eliminates ambiguity and loopholes. It is patently unfair to even consider taking action on a process wherein we (the Council, staff and the public) are still missing so much information. It also forces the community to scramble and try to react to any number of possible outcomes (action on the entire strategy, action on part of the strategy, etc)

While the Rules Committee did not agree to defer the EEHVS action items to January 2007 or later, they did approve a discussion item related to EEHVS, to be heard in advance of the action items. I support this discussion occurring at City Council as well as council action on the following two items related to the EEHVS:

- 6.2 - Approval of an agreement to relinquish Capitol Expressway from the County.
- 10.9(b1) - Public Hearing on the appeal of planning Commission's certification of a final Environmental Impact Report (EIR) for the Evergreen East Hills Vision Strategy Project CEQA: Resolution to be adopted. Director of Planning, Building, and Code Enforcement and Planning Commission recommended the City Council certify the Environmental Impact Report prepared for the project and find it in compliance with the requirements of CEQA.

I hope the Rules Committee will agree to this deferral and emphasize the primacy the City Council has on making decisions based on a complete data set that has undergone public scrutiny. Thank you.

MEMORANDUM

TO: **Rules Committee**

FROM: **Councilmember Dave Cortese**
Councilmember Chuck Reed
Councilmember Judy Chirco
Councilmember Nancy Pyle

SUBJECT: EEHVS – Request for Deferral

DATE: November 29, 2006

APPROVED:

DATE:

RECOMMENDATION

We recommend the Rules Committee defer the following items to the January 16, 2007 evening City Council Meeting or a date specified by staff:

6.5 – Approval to designate the intersection of Capitol Expressway and Capitol Avenue as a "protected intersection"

6.6 (a) and 6.6 (b) – Approval of actions related to the Traffic Impact Fee Study for Evergreen residential pool units

10.2 (a), (b), (c) and (d) – Public hearing on items related to the Evergreen East Hills Vision Strategy Project. The EEHVS area coincides with the Evergreen Development Policy area, which is generally bounded by Story Road, Highway 101, Hellyer Avenue and within the Urban Service Area.

BACKGROUND

The Evergreen East Hills Vision Strategy, previously referred to as the Evergreen Visioning Project, recently completed a three and a half year study of the Evergreen-East Hills area to recommend whether or not there should be new growth limits in this part of San Jose. This has been an extensive process and the potential impacts on the environment, traffic and the General Fund are citywide.

Although the Task Force concluded its examination in October 2006, work has continued on every level to ensure the City Council has complete data upon which to make its decision. Unfortunately, some key pieces of information are not yet available:

- Proposed Funding Agreement by and between the City of San Jose and the EEHVS Property Owners for the funding of certain improvements and amenities in the Evergreen Development Policy area: The terms of this agreement are not yet agreed upon. A key element of the EEHVS, it has undergone no public scrutiny to date. Assuming both parties (City of San Jose and the EEHVS Property Owners) agree to a set of terms, this agreement would not be made available to the City Council until at least 11/29/06, leaving less than one week for public review.

- Independent Review of Financial Data: Despite repeated requests (in order to protect the City's investment in this project) for information from the EEHVS property owners on their financial assumptions and the necessity to build-out at 5700 units, the property owners were unwilling to disclose

this information. Therefore the City retained Keyser Marston, a consulting firm specializing in real estate, economics and redevelopment, to analyze the property owner's financial information and verify the assumptions. *Some* of the property owners agreed to give this information to Keyser (with the understanding the actual financial data would not be made public, only conclusions drawn from the data), however the preliminary findings will not be available until later this week. A full response from the consultant is not expected to be available prior to December 5th.

- Independent Review of Industrial Land Conversion Study: The EEHVS property owners commissioned a market and fiscal impact study of the proposed conversion of some 300 acres along Yerba Buena Road, from campus industrial to residential. Interested in protecting the integrity of this process, staff has asked Keyser Marston to peer review the conclusions of this study. Preliminary findings will not be available until later this week. A full response from the consultant is not expected to be available prior to December 5th.

- Supplemental Recommendation by Planning Staff: Although staff has issued a recommendation on the entire project, they have indicated a need to issue a supplemental recommendation, based on the results of the Keyser Marston studies and the funding agreement. Staff has also indicated that other new information from the property owners has come to bear, which needs to be conveyed to the City Council as well. The earliest this supplemental report would come out is 11/29/06, leaving less than one week for public review.

- Negotiations with East Side Union High School District: A central issue has been whether or not a new high school is needed within the Evergreen Development Policy area. Although correspondence was received in April 2006 from the Superintendent and Board President indicating there was not a need, at least one (newly elected) board member has said that there is a need. The Task Force has conducted tremendous analysis which they feel points to the need for a high school. The Planning Commission voted for a 40 acre land reservation for a high school. Still, there has been no new information from either the ESUHSD or the developer group (although these two parties have been meeting privately) that adequately responds to this matter.

- Development of Amenities – Under consideration by city staff is the notion of amenities being constructed concurrent (turnkey) to the development. The surety would be a payment performance bond such that until substantial completion of the amenity, the bond would not be released. Staff has been studying this idea but has not completed their evaluation.

- Proposition 1B - EEHVS proposes funding several million dollars in transportation improvements, including Highway 101 at Tully, Capitol and Yerba Buena. With the passage of Proposition 1B, which allocates up to nineteen billion nine hundred twenty-five million dollars to make safety improvements and repairs to state highways, upgrade freeways to reduce congestion, repair local streets and roads, upgrade highways along major transportation corridors, etc, it is extremely likely that this stretch of 101 would receive some funding from this source (although the amount won't be determined for several more months). Staff has been studying how to structure a financing mechanism that accounts for this infusion of state dollars as it would defray the developer contribution. Would the developer funding then go to the General Fund? Education? Additional items on the amenities list? It is important the Council has this information prior to making a decision on the overall package.

In light of the above, it is prudent to defer making a decision on this matter until at least January 2007 or a date as recommended by staff. This will allow time for the City Council to receive the full information in order to make an informed decision. Just as important, it will allow time for the public, who has been at the very heart of this process and has been extremely active, to consider the additional information and voice their opinions on whether or not a new set of growth limits should be established for District 8. It is after all for the residents to bear the results of this process.