

DRAFT  
BRISBANE PLANNING COMMISSION  
Summary Minutes of July 7, 2016  
Special Meeting

A. CALL TO ORDER

Chairperson Do called the meeting to order at 7:30 p.m.

B. ROLL CALL

Present: Commissioners Anderson, Do, Munir, Parker and Reinhardt.

Absent: None.

Staff Present: Community Director Swiecki, Senior Planner Johnson, Associate Planner Capasso.

C. ADOPTION OF AGENDA

Commissioner Munir moved and Commissioner Parker seconded to adopt the agenda. The motion was approved 5-0.

D. CONSENT CALENDAR

1. Approval of Minutes May 26, 2016 regular meeting
2. **Zoning Text Amendment RZ-4-16**; Text Amendments to Title 16, Subdivisions, and Title 17, Zoning, of the Brisbane Municipal Code (BMC) to update existing subdivision and public noticing regulations to be consistent with current California Government Code and Civil Code requirements, and to amend the development regulations for newly constructed condominium developments; City of Brisbane, applicant; Owners: Various; APN: Various. **(Staff recommends continuance off-calendar to a date to be determined)**

Commissioner Parker moved and Commissioner Anderson seconded to adopt the consent calendar. The motion was approved 5-0.

E. ORAL COMMUNICATIONS (limit to a total of 15 minutes)

None.

F. WRITTEN COMMUNICATIONS

Chairperson Do acknowledged written communications from Universal Paragon Corporation regarding item H.1, and an informational mailer from Sustainable San Mateo County.

## G. NEW BUSINESS

1. **PUBLIC HEARING: 120 Park Lane; Use Permit UP-4-16;** Use Permit to modify the parking regulations to allow a 908 square-foot office addition to an existing warehouse with 21 on-site parking spaces, where a minimum of 53 on-site parking spaces are required; Richard Tapp of Richard Tapp Associates, applicant; 120 Park Lane Investments LLC, owner; APN 005-201-090.

Associate Planner Capasso gave the staff report and answered the Commission's questions regarding the existing parking layout, availability of on-street parking, use of the retail space, parking space dimensions, and current parking code requirements.

Chairperson Do opened the public hearing.

Richard Tapp, applicant, addressed the Commission and answered questions regarding the site's capacity for parking.

Frank Lettieri, owner, and Karen Cunningham, Brisbane resident, spoke in favor of the application.

M/S Parker/Anderson, and approved 5-0 to close the public hearing.

After deliberation, Commissioner Anderson moved and Commissioner Reinhardt seconded to adopt Resolution UP-4-16, approving the application. The motion passed 4-0-1 (Munir abstaining).

2. **PUBLIC HEARING: Use Permit UP-2-16;** Interim Use Permit for use of an approximately 2-acre area of the Baylands former railyard as a storage yard, for up to 5 years; Len Corpus, applicant; Oyster Point Properties, Inc., owner; APN 005-340-080.

Senior Planner Johnson gave the staff report and answered the Commission's questions regarding condition FF (employment of Brisbane residents), condition F (fence maintenance), and Fire Department review.

Chairperson Do opened the public hearing.

Howard Pierce, representative of UPC, addressed the Commission and answered questions regarding lighting.

Jorge Ortiz spoke in favor of the application.

M/S Parker, Reinhardt and approved 5-0 to close the public hearing.

Commissioner Munir moved and Commissioner Reinhardt seconded to adopt Resolution UP-2-16, approving the application. The motion passed 5-0.

Chairperson Do announced a five-minute break.

## H. OLD BUSINESS

1. **Baylands Planning Applications (Baylands Concept Plans, Brisbane Baylands Specific Plan, General Plan Amendment Case GP-01-06) and related Final Environmental Impact Report;** Universal Paragon Corporation, applicant; Owners: various; APN: various. Ongoing Planning Commission deliberations.

Director Swiecki introduced Lloyd Zola, of Metis Environmental Group, who gave the staff report. [The report is available here on the City's website:

<http://brisbaneca.org/sites/default/files/baylands%20deliberation%209%207-7-16.pdf>.]

Commissioner Munir said he was not at the last meeting, but the staff report was very encouraging and addressed some of the concerns that he had. Maybe it was in the staff report but he wanted to add investigation of the hazardous material distribution. He wanted to map the whole site and drill the appropriate bore-holes to determine the strata of hazardous materials, and based on that they can identify the types of materials found in each area to inform what kind of facility can be built there. If the chemical composition of the soil would rule out any land uses, they need to map it. He also wanted more water sampling to determine if water quality changes during low and high tide and boring operations. It would help to know which area should not be dug into deeply. There may be areas where shallow foundations would be safer. Regarding air quality, the analysis was based on regional standards. He was interested what will occur at the local site- will it cause any Spare the Air situations? It could cause an inversion layer in a particular area. There are distribution models that can determine what the air distribution will be during certain events. If there are a lot of dust particles, it could cause some adverse effect at the site, not the whole region. Site-specific impacts were not studied.

Commissioner Munir continued to say that he also wanted to study how far noise will travel or bounce off the mountain and how the impact could be mitigated. Lastly, he asked if there was any way to explore the water distribution system, whether located off or on-site, and what type of power needs it would have and whether it could be powered with solar or wind turbines. That way it will give the city an option. Locating the water tank way up on the mountain would be tremendously expensive in terms of bringing the pipelines over, so could that be off-set with an on-site system with pumps, with the energy off-set by renewable energy? He would like a study to figure out where to locate the water tank, which would probably decrease the cost of infrastructure. Regarding traffic and transportation issues, he doesn't know whether there is a need for additional data because the traffic will be directly proportional to the amount of development. If they already the traffic impact of 1 million square-feet (MSF) or new development, why do they need to study the impact of 4 MSF? It would follow what the development will be, minus some of the factors such as public transit. No further study is needed if they recommend 1-2 MSF of new development. If the Commission wants to get into fine details, they would have to consider many different models which may give different results. He doesn't think there is any need for an extensive traffic study because it's commonsense to him that higher the density, the more the impact.

Commissioner Anderson said he wanted the wind study to be captured. There was a request for a computer-generated wind study that would get more results than the wind tunnel. Regarding

studying biological resources in the spring prior, the Commission had asked for biological resources to be studied again during the wet season. He wasn't sure what month was best.

Mr. Zola said the spring is the wettest time. Relating to the wind study, part of the question is should the wind study be done for a recommendation of 1-2 MSF of new development? The Candlestick Preservation Association (CPA) had requested that buildings be set back from the shoreline. The Commission's recommendation proposed a larger setback than what the CPA asked for, and has recommended only 2-3 stories with less building area. He asked Commissioner Anderson if he was asking for a wind study as part of their recommendation or if he wanted it added to the list of studies that should be done if the Council authorizes additional intensity?

Commissioner Anderson said that should be addressed at the Council level when the actual level of development is approved. He didn't want the City to do speculative studies before an actual land use program is approved.

Mr. Zola said staff had looked at what it would take to do the wind modeling. The CPA talked about conducting a study similar to the traffic study. The SF CHAMP model used for the traffic study is based on established software. There are several different types of software that communities can use to build their own traffic model. In contrast, there is no established model to analyze wind patterns. A traffic model can be calibrated by taking a series of traffic counts in one location in one day, resulting in AM and PM peak counts within certain parameters, e.g. Tuesday-Thursday, not on a holiday week, when school is in session, etc. That model can be built within a reasonable timeframe even in a large study area. However, wind is variable day to day, season to season, and year to year, so they can't take a "wind count" on any given day the same as a traffic count. Building that model would require several years of wind studies over different time periods to get average wind speeds. That computer model would then have to be calibrated by checking its results against a wind tunnel study. Otherwise, it would be a theoretical model with unknown accuracy. A traffic model can be tested against actual traffic counts. A wind model can be tested against the wind, but you can't test the impacts of buildings that don't exist. He wanted this information in the record for the commission and city's consideration. .

Commissioner Parker asked if Mr. Zola would identify the difficulties with the requested study in the recommendation to Council.

Mr. Zola confirmed it will be included for Council's consideration as they review the impacts of the Commission's recommendation versus the applicant's scenarios.

Commissioner Reinhardt said those kinds of models and simulations were done with varying degrees of accuracy for bridge work.

Mr. Zola said software based on years of study was used to analyze bridgework, or a water or sewer systems. They were established models showing how different stresses would impact those projects. There was established data on pipe flows for pipelines projects. However, the models are not as sophisticated in simulating how a building would impact wind patterns. There are two different types of models used to analyze wind. One is at a large scale and is used to predict weather, but

can't predict how a building affects weather. Testing that model at that scale is difficult because you are testing one set of assumptions against another set of assumptions. There are also models based on analyzing the change a building would make at a small-scale. Those models are good at analyzing how wind flows around a building. San Francisco uses it to analyze a building on a site because it is effective on a micro-scale. They would have to take a large-scale model and micro-scale model and build them together, and methodologies aren't well-developed for that. Ultimately, that model's accuracy will not be much greater.

Mr. Zola indicated he contacted a company in Louisiana that is one of the premier companies using the large-scale models in wind prediction. In discussing what was requested, the company said it could not be done at the desired level of accuracy. Ironically, they would calibrate the model's results against the results of the wind tunnel study. They know the taller the buildings, the farther they are pushed north, and the closer they are to the water, the greater the effect on sailing resources. The Commission's interim recommendation fundamentally addresses those concerns.

Commissioner Munir said the need for additional wind study should be tied to the type of development they recommend. If they aren't recommending tall buildings, there might not be any need for it. Also, models are very inaccurate because they cannot predict weather conditions. He said there were too many variables, and wind speed can be turbulent which complicates it. Also, the building materials would impact the wind pattern.

Mr. Zola said not only the building materials, but the design of the building as it faces the wind makes a difference. He thinks the Commission has incorporated many of the issues the CPA had brought up into their recommendation.

Commissioner Anderson said he wanted to fully review the public commentary and items brought up in the FEIR related to specific recommendations for studies that should be done prior to sending it to Council. He doesn't regret anything they said or decided at the last meeting, but he thought they should have gone further. Ultimately, they will open it for public hearing and the public will help to identify specific studies. He would like more due diligence and to hear all public testimony. He started reading the DEIR years ago, and there was so much material that he wasn't able to adequately review before the meeting. He will continue to review before the next meeting. He had also been concerned that Commissioner Munir was not present at the last meeting.

Commissioner Munir said he wanted at least four weeks to digest his own recommendation.

Director Swiecki said that would push the public hearing to September, which means the Council likely would be unable to start on the Baylands until 2017. The Commission has held 11 hearings, 10 deliberation meetings, and had a month break earlier this year from the hearings. He indicated if the Commission they takes another break and pushes off the land use recommendations, the previous public hearings and deliberations grow increasingly stale and he would have serious timing concerns.

Commissioner Munir said there was so much material to review, and they've gone through so many meetings since the beginning and they always come up with new things to consider. In order to do

the job, and make a solid recommendation, he needs some time. If the other Commissioners can do it in less time, he will accommodate that. For due diligence, however, he needs more time.

Commissioner Parker said they had to review materials over the holiday break.

Commissioner Munir said the Commission had accommodated all extra meetings staff had asked for, but if other Commissioners needed more time, he could accommodate that.

Commissioner Anderson said he didn't need five meetings.

Director Swiecki noted the Commission had agreed at the last meeting to hold a public hearing on July 28, 2016.

Chairperson Do asked for clarification of what would occur at the July 28 public hearing.

Director Swiecki reminded the Commission that over the course of the last six months they have been walked through a preliminary decision-making process. The Commission has already preliminarily identified guiding principles and outlined a land use program with uses, distribution and intensity. The environmental implications of this preliminary land use program were also discussed. At the July 28 meeting, all those incremental decisions would be packaged into a comprehensive draft land use and environmental recommendation. The public would have a chance to comment on the recommendation, and the Commission would have the ability to revisit their recommendations based on input received at the public hearing.

Commissioner Parker asked for clarification on schedule.

Director Swiecki said they had scheduled the public hearing for July 28. He noted the public hearing could be continued at the Commission's discretion.

Chairperson Do said she did not think five weeks was necessary. She thought they could get a good chunk of it done on July 28, including the public response, and they could continue the hearing to create a final version. She doesn't want to lose their momentum and would like to move forward.

Commissioner Munir said three weeks was fine.

Chairperson Do said at that point, they can discuss and deliberate if more time was needed.

Commissioner Parker asked for a study guide.

Commissioner Anderson said he was concerned that the Commission might fill the entire meeting on July 28 and not have time for public comment.

Chairperson Do said she did not have that concern.

Commissioner Munir asked what would be expected of the Commissioners at the July 28 hearing. He asked if each Commissioner would give individual recommendations.

Director Swiecki clarified the purpose of the July 28 public hearing was to receive public testimony, and any final Commission deliberations should be deferred until after the public had the opportunity to speak. He emphasized that staff would be compiling what the Commission has already done as a body. Staff will not be providing any new information for the Commission's consideration at the July 28 meeting. He outlined the July 28 hearing as consisting of a short staff presentation, questions to staff, then the public hearing, followed by Commission's deliberation.

Commissioner Parker said at the next meeting she'd like to hear from the public.

Commissioner Anderson asked when the line-item analysis of the mitigation measures would happen- during the development agreement phase, or as part of their EIR recommendation?

Mr. Zola said similarly to the wind study, that analysis would occur when they have a final land use program. The analysis would be very different based on the intensity and types of land uses. The Commission could recommend that at the point Council is ready to make their decision, they have to make findings regarding the land uses approved and revise the mitigation monitoring program based on the land uses before the EIR is certified. The mitigations would depend on what the significant impacts are.

Commissioner Munir asked if the Commission had to come up with mitigation measures for development beyond their recommendation. That would limit their discussion of what else is needed and would reduce their effort quite a bit. If they recommend 1-2 MSF of additional development, do they have to substantiate that so the Council can make a proper decision?

Director Swiecki stated there is no obligation for the Commission to consider or recommend mitigation measures for a development program they are not recommending for approval.

Commissioner Munir asked if they needed to justify their recommendation by analyzing other development scenarios. If the Council decides they want approve more development, then they should tell the Commission or Developer what to do next. He doesn't think the Commission should do that analysis.

Mr. Zola confirmed that if the City Council wishes to consider development beyond the Commission's recommendation then the City Council would determine the process for doing that. He concurred with Commissioner Munir's observation that the Planning Commission isn't in a position to anticipate what the City Council might decide. He suggested the Commission focus on its own recommendation and offer its observations on what additional studies it foresees being required if the City Council wishes to consider additional development beyond the Commission's recommendation. He noted the City Council will ultimately make the final decision.

Commissioner Munir asked how responsible the Planning Commission is for its recommendation. Do they have to come up with a solid justification for each recommendation? There are rumors that the developer could come after the City. He asked if there was case law or precedent on that.

City Attorney Roush replied that he was not concerned with liability at the Commission level. The Commission is making a recommendation to the City Council. The City Council will consider that recommendation carefully and make its own independent decision on the environmental documents and project application. There is a lot of discretion vested in the City Council in terms of what it feels is appropriate for the community. He added what the City Council might ultimately approve may not be exactly what the developer has in mind, but as long as the Council's ultimate decision is based on substantial evidence in the record, the Council's position would likely be supported if there was a legal challenge. The Commission's job is to make an informed and independent recommendation for the Council to consider as it goes through its own process.

Commissioner Munir asked if the Planning Commissioners are personally susceptible to legal action.

City Attorney Roush reminded the Commissioners they serve in an advisory role without decision-making authority in this matter. He could not foresee a situation case where a planning commission recommendation would offer grounds for legal action. He noted that even at the City Council level, there is a very high standard for individual Council members to be individually named in a legal action, and there are specific indemnification provisions in the Government Code for elected officials. He emphasized this concern should not play a part in the Commission's decision. The Commission should reach its own decision based on what it thinks is best for the community.

Commissioner Reinhardt asked how soon the Commission would be able to see the July 28 staff report and draft resolution.

Director Swiecki said the week of July 18<sup>th</sup>.

Chairperson Do invited public comment from the audience.

Zach Phillips, San Francisco resident, said he had lived in San Francisco for a long time, first in the Haight and now in Visitacion Valley/Little Hollywood just north of the Baylands. He can see the piles of dirt out of his window. The Haight wasn't a very dynamic neighborhood, but this area is very dynamic. He has been active in the meetings of the Schlage Lock development, which is also a UPC project. He's seen the plans for the Baylands, and he strongly recommends residential development. It is critical and a long-term plan that is more sustainable. It would add to the community and add to the revenue base, and their clout within San Mateo County. It's a living, growing thing as opposed to a bunch of warehouses like they have in some parts of town. The residential element is critical. He thinks it's great to have renewable energy and open space, but he is concerned with what kind of renewable energy and glare effects might be associated it. The wind comment is understandable, but that will be affected by what development happens in San Francisco and Daly City so it's hard to nail that down. He asked what "sailing resources" meant.



Director Swiecki replied that the windsurfers use Candlestick Point for boardsailing.

Mr. Phillips said his main point was to include residential, and the Geneva Extension was critical as well.

Karen Cunningham, Brisbane resident, said she was on the original BBCAG and on part of the advisory committee for many years. Having a science background, she's asked this question for more than 10 years: underground, when two or more chemicals collide, and we know there's a cocktail of chemicals out there, some can be remediated by bioremediation and various other means, but for other chemicals colliding underground, what is the anaerobic outcome of that? When she saw the first set of borings on the site, they seemed very far apart or professionally inadequate. She didn't know if other borings had been done, but she wanted to ask the question. When they look at where the borings are and what was tested in the entire area, one of the things that seemed to be sadly lacking was testing for mercury. Given that there was industrial waste, medical waste, and all of that in the entire Baylands, she didn't see one boring that measured mercury. Maybe she missed it, but she wanted to make sure it was covered. Everything from the 1906 earthquake was dumped there, including medical facilities and military facilities. Up until the 1970's all thermometers had mercury. If the mercury thermometers that were broke in the earthquake and used in landfill until the dump was closed, it would be all mercury. She didn't see any studies for mercury. When they looked at the borings on the BBCAG ten years ago she kept asking the questions and was fobbed off. She wanted the Commissions to ask that question- where were those studies? If we dumped hospital waste in the Baylands for many years, we know there was mercury in that waste. She wanted to make sure the borings that were done, maybe they were redone since then, but those questions have always remained unanswered for her.

Commissioner Munir moved and Commissioners Anderson seconded to close the public comment. The motion was approved 5-0.

#### I. ITEMS INITIATED BY STAFF

Director Swiecki said Thursday, July 14, the City Council will get an update on the Commission's progress on the Baylands in the context of setting their own tentative schedule for the hearings and their own process. He will update them on that meeting. At least preliminarily, they were looking at starting hearings in late September/early October.

#### J. ITEMS INITIATED BY THE COMMISSION

Chairperson Do said she discovered three articles that are relevant to the issue of high-speed rail. She printed out the articles for the staff. The titles and dates were "California Hits the Brakes on High Speed Rail Fiasco," in Bloomberg, "Just Say No to High Speed Rail," July 6, Bloomberg, "More Evidence Bullet Train would need a Push from Taxpayers."

Commissioner Munir said there was an article in the SFGate that talked about the maintenance yard.

Chairperson Do said she didn't have that article but it was relevant.

K. ADJOURNMENT to the Regular Meeting of July 28, 2016 at 7:30 p.m.

Commissioner Munir moved and Commissioner Parker seconded to adjourn to the regular meeting of July 28, 2016 at 7:30 p.m. The motion passed 5-0 and the meeting adjourned at 9:41 p.m.

Attest:

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John A. Swiecki, Community Development Director

NOTE: A full video record of this meeting can be found on DVD at City Hall and the City's website at [www.brisbaneca.org](http://www.brisbaneca.org).