

RESOLUTION NO. 10-7705

**A RESOLUTION OF THE CITY OF SANTA CLARA,
CALIFORNIA, ADOPTING WRITTEN FINDINGS AND
RESPONSES TO COMMENTS OR OBJECTIONS
RECEIVED IN CONNECTION WITH CONSIDERATION
OF THE ADOPTION OF THE BAYSHORE NORTH
REDEVELOPMENT PLAN AMENDMENT NO. 20 IN
ACCORDANCE WITH THE PROVISIONS OF HEALTH
AND SAFETY CODE SECTION 33363**

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, the Redevelopment Agency of the City of Santa Clara (the "Agency") has prepared and submitted to the City Council of the City of Santa Clara (the "City Council"), for the City Council's consideration, the Bayshore North Redevelopment Plan Amendment No. 20 (the "Plan Amendment");

WHEREAS, in connection with consideration of the Plan Amendment, the City Council and the Agency conducted and completed a duly noticed public hearing on March 9, 2010, pursuant to the requirements of Health and Safety Code Sections 33355;

WHEREAS, at or prior to the joint public hearing, the City Council and the Agency received certain written comments or objections to the Plan Amendment, which written comments or objections are set forth in Part II of that certain document entitled "Bayshore North Redevelopment Plan Amendment No. 20: Written Findings and Responses Pursuant to Health and Safety Code Section 33363," which document is attached to this Resolution as Exhibit A, incorporated herein by this reference, and hereinafter referred to as the "Findings"; and

WHEREAS, Part III of the Findings contains the City Council's and Agency's written findings and responses to the above described comments or objections, which written findings and responses have been prepared and considered by the City Council in connection with

consideration of adoption of the Plan Amendment, all in accordance with the provisions of Health and Safety Code Section 33363;

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. The City Council hereby finds and certifies that the Findings have been prepared in compliance with the provisions of Health and Safety Code Section 33363; that the Findings adequately address the written comments or objections received by the City Council in connection with the Plan Amendment; and that the City Council has reviewed and considered the information contained in the Findings prior to approving the Plan Amendment; and

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2. The Findings set forth in the attached Exhibit A are hereby approved and adopted as, and shall constitute, the written findings and responses of the City Council with respect to the written objections to the Plan Amendment required by Health and Safety Code Section 33363.

3. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara, California, hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

4. Effective date. This resolution shall become effective immediately.


I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 30th DAY OF MARCH, 2010, BY THE FOLLOWING VOTE:

AYES: COUNCILORS: Caserta, Kornder, Matthews and Moore and Mayor Mahan

NOES: COUNCILORS: Kennedy

ABSENT: COUNCILORS: McLeod

ABSTAINED: COUNCILORS: None

ATTEST: 

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments Incorporated by Reference:
1. Exhibit A

EXHIBIT A

BAYSHORE NORTH REDEVELOPMENT PLAN AMENDMENT NO. 20

WRITTEN FINDINGS AND RESPONSES PURSUANT
TO HEALTH AND SAFETY CODE SECTION 33363

City Council of the City of Santa Clara

March 30, 2010

I. PURPOSE

The Redevelopment Agency of the City of Santa Clara (the "Agency") has prepared, and the City Council of the City of Santa Clara (the "City Council") is considering for adoption, the Amendment No. 20 to the Bayshore North Redevelopment Plan (the "Redevelopment Plan Amendment"). On March 9, 2010, the Agency Board and the City Council conducted a duly noticed joint public hearing on the Redevelopment Plan Amendment in accordance with the requirements of Health and Safety Code Sections 33355, 33452, 33451, and 33454. At or prior to the joint public hearing, the Agency and the City Council received certain written comments or objections to the Redevelopment Plan Amendment. Those written comments or objections are listed in Part II and set forth in full in Appendix I of this document.

Health and Safety Code Section 33363 states:

"At the hour set in the notice required by Section 33361 for hearing objections, the legislative body shall proceed to hear all written and oral objections. Before adopting the redevelopment plan, the legislative body shall evaluate the report of the agency, the report and recommendation of the project area committee, and all evidence and testimony for and against the adoption of the plan and shall make written findings in response to each written objection of an affected property owner or taxing entity. The legislative body shall respond in writing to the written objections received before or at the noticed hearing, including any extensions thereof, and may additionally respond to written objections that are received after the hearing. The written responses shall describe the disposition of the issues raised. The legislative body shall address the written objections in detail, giving reasons for not accepting specified objections and suggestions. The legislative body shall include a good-faith, reasoned analysis in its response and, for this purpose, conclusionary statements unsupported by factual information shall not suffice."

This document constitutes the written findings and responses of the City Council, as the legislative body of the City of Santa Clara, prepared and adopted in accordance with the requirements of Health and Safety Code Section 33363. Specifically, Part III below contains the City Council's written findings and responses to the written comments or objections set forth in Part II and Appendix I.

Each substantive comment or objection listed in Part II and set forth in Appendix I has been assigned a reference identification number in the margin next to the comment or objection. The City Council's written findings and responses to each substantive comment or objection are set forth and organized in Part III according to those reference identification numbers.

These findings incorporate other documents which are part of the record of adoption of the Redevelopment Plan Amendment. These documents are listed below and are incorporated within these findings as supporting evidence by this and subsequent references:

- A. The Redevelopment Plan Amendment;
- B. The Report to Council on the Redevelopment Plan Amendment, dated February, 2010 (the "Report to Council");
- C. Resolution No. 10-7700 adopted by the City Council on March 9, 2010 entitled: "A Resolution of the City of Santa Clara, California adopting findings concerning significant environmental impacts; mitigation measures and alternatives; a statement of overriding considerations; and a mitigation monitoring or reporting program for the proposed 49ers Santa Clara Stadium Project at 4900 Centennial Boulevard (including properties on Centennial Boulevard and North and South Side of Tasman Drive) Santa Clara ("City CEQA Resolution").
- D. Resolution No. 10-4 (RA) adopted by the Redevelopment Agency of the City of Santa Clara on March 9, 2010 entitled "A Resolution of the Redevelopment Agency of the City of Santa Clara, California acting as a Responsible Agency, adopting findings concerning significant environmental impacts; mitigation measures and alternatives; a statement of overriding considerations; and a mitigation monitoring or reporting program related to the adoption of Amendment No. 20 to the Bayshore North Redevelopment Redevelopment Plan (the "Agency CEQA Resolutions")
- E. The Final Environmental Impact Report for the 49ers Santa Clara Stadium project ("EIR");
- F. Documentary and oral evidence received by the City of Santa Clara Planning Commission, the Agency and the City Council during public hearings and meetings on the Redevelopment Plan Amendment and the EIR including, without limitation, staff reports submitted to the City Council and Agency at the March 9, 2010 joint public hearing on the Redevelopment Plan Amendment; and
- G. Matters of common knowledge to the City Council and the Agency which they have considered, such as the City of Santa Clara General Plan, and prior resolutions and ordinances of the Agency and the City.

II. WRITTEN COMMENTS AND OBJECTIONS

Written comments or objections to the Redevelopment Plan Amendment were received directly by the City or Agency from the following persons:

1. Letter from William F. Bailey, Santa Clara Plays Fair, March 9, 2010;

2. Email from Katherine Avila dated March 9, 2010;
3. A Citizen's Perspective Part 2: Should the San Francisco 49ers and the City of Santa Clara Collaborate on the Building of a New Sports Stadium, Erlinda Anne Estrada, March 9, 2010;

The above letters are set forth in their entirety in Appendix 1 to this Exhibit A.

In addition, comment letters were received by the City and the Agency regarding the EIR during the comment period on the Draft EIR. To the extent those comments related to the EIR, those comments have been responded to and disposed of in the Final EIR. Those responses are hereby adopted by the City Council; constitute the City Council's responses to the EIR comment letters; and are incorporated by reference in these findings.

III. WRITTEN FINDINGS AND RESPONSE OF CITY COUNCIL

1. **Comments from William F. Bailey, Santa Clara Plays Fair Dated March 9, 2010**

Comment No. 1-1.

Comment: The Environmental Impact Report does not fix any of the negative impacts of the stadium, even though the 49ers continue to demand an upfront public subsidy of \$114,000,000 for a substandard development.

Response. The comment does not directly address the proposed Redevelopment Plan Amendment but rather the Environmental Impact Report prepared for the Stadium Project. The Redevelopment Plan is one of the actions necessary for implementation of the project analyzed in the EIR. The comment appears to be addressing whether the mitigation measures adopted by the City Council and the Redevelopment Agency on March 9, 2010 fully mitigate all of the impacts for the Stadium Project. As discussed in detail in the attachment to the Agency CEQA Resolution, not all of the environmental impacts can be mitigated although the City and the Agency have adopted resolution incorporating all feasible mitigation measures into the Stadium project. However, the majority of the unmitigatable impacts occur only when there are large stadium events. The EIR includes as a mitigation measure the adoption of and regular update to a transportation management operations plan that will address specific impacts of events, including parking and traffic flows. Because this plan cannot be developed until closer to the time that the Stadium is in operations with the most current roadway and transit system information as well as parking information many of the impacts are deemed unmitigatable at this time. The EIR does provide evidence that with the effective implementation of the transportation management and operation plan, many of the traffic impacts will be addressed.

Finding: The City Council, based on the information provided in the response as well as the information in the EIR, the City CEQA Resolution and the Agency CEQA Resolution, finds

that all feasible mitigation measures will be incorporated into the Stadium Project if the Stadium Project proceeds and on this basis finds that the above objection is without merit and is hereby overruled.

Comment No. 1-2.

Comment: The Statement of Overriding Considerations does not provide any support for claims that jobs will be created and the City's General Fund will receive a return.

Response: The statement of Overriding Considerations makes general findings based on all of the information in the record. The statements that the Stadium project will create jobs is correct. During construction there will be a substantial number of construction jobs created. The construction period is expected to last approximately 26 months, thus providing employment opportunities for that time period for construction workers. The Stadium itself will also create jobs, many of which will be part time jobs. In an analysis prepared for the City and the Agency by Keyser Marston based on information provided by the San Francisco 49ers regarding the typical staffing of stadiums, Keyser Marston estimated that the jobs created will result in the full time equivalent of 515 jobs. The commentator is correct that many of these jobs will be part time, but these jobs will still provide employment opportunities that currently do not exist in the area.

With respect to the return to the General Fund, the Statement of Overriding Consideration does not deal with the lost opportunity costs associated with the potential use of Redevelopment Agency tax increment funds construction of the Stadium, which as the commentator notes has the potential to result in a reduction in payments to the City General Fund from the Redevelopment Agency, but rather addresses the annual rent payments to be expected by the City from the Stadium. The proposed structure for the lease of the City land for the Stadium will result in payments to the general fund which are considered a benefit that the City Council has determined outweighs the unmitigated impacts of the Stadium Project.

Findings: The City Council, based on the information presented above, as well as the information in the EIR, the City CEQA Resolution, the Agency CEQA Resolution and the information in the record, has determined that the benefit of the Stadium project outweighs the unmitigated impacts and on this basis overrules the above objection.

Comment No. 1-3.

Comment: The Plan Amendment itself increases lot coverage from 25% to 75% resulting in favoritism. A resident from this same zip code requesting a development 200 feet high and with a 75% footprint would be laughed out of the Planning Commission.

Response. The Redevelopment Plan Amendment does not deal with lot coverages, but rather makes text amendments to the land use provisions of the Redevelopment Plan in order to allow a stadium to be constructed and to allow for heights for a stadium to be 200 feet. Heights in the area pursuant to the Redevelopment Plan are generally limited to 150 feet. The General Plan Amendment allows for increased lot coverage of up to 75%. Each of these amendments was

considered by the Planning Commission and the City Council taking into account all of the information available. The Planning Commission recommended approval of both the General Plan Amendment and the Redevelopment Plan Amendment after taking into account all information and hearing all arguments for and against the amendments. Whether similar amendments would be approved for a different applicant is speculation. However, it should be noted that both the City Council and the Planning Commission received information at the public hearing indicating that there have been projects in the area approved that have exceeded the 150 foot height limitation, including certain features at the Great America Theme Park adjacent to the Stadium site which have heights of up to 225 feet.

Findings: Based on the information presented above and the information in the record, the City Council finds that the General Plan Amendment and the proposed Redevelopment Plan Amendment do not constitute favoritism and on this basis overrules the objection.

Comment No. 1-4

Comment: Redevelopment policy is specifically designed to eliminate blight. But here you are rationalizing the creation of blight at the same time refusing to talk about the money that it will cost us.

Response: The construction of a new stadium on a little used parking area does not amount to the creation of blight under the definitions of blight in the California Redevelopment Law. The comment expresses the commentator's viewpoint with regards to the stadium project but does not provide any additional information on why the development of a stadium would create blight.

Findings. Based on the information in the record and above, the City Council finds that the development of a stadium does not create blight and therefore overrules the objection.

2. **Email from Katherine Avila dated March 9, 2010**

Comment No. 2-1.

Comment: The commenter objects to the Amendments on the basis that a professional football stadium will have adverse effects on the residents in the immediate area, including traffic congestion, especially if more than one team plays there.

Response: The Environmental Impact Report prepared for the Stadium Project analyzed all of the environmental impacts of the proposed stadium. The EIR found several traffic impacts to be significant although the EIR noted that the impacts occur only on event days and then only for a limited duration and thus do not generally meet the criteria for a significant impact. The EIR also includes a variety of mitigation measures designed to address these impacts. The City Council and the Agency have adopted all feasible mitigation measures including the requirement that the 49ers create a transportation management plan that will address event day impacts and minimize traffic impacts on the residential neighborhoods near the Stadium. Other mitigation

measures require a noise disturbance coordinator to address residential noise issues resulting from the Stadium, limits on times and days when construction can take place to reduce disturbance to the surrounding area and restrictions on parking in residential neighborhoods. Given the limited time duration of potential impacts and the fact that traffic will be directed away from residential neighborhoods the City Council adopted a Statement of Overriding Considerations finding that the benefits of the Stadium project outweigh the adverse impacts.

Finding: Based on the information above and the information in the record, the City Council finds that all feasible mitigation measures addressing impacts on the residential areas near the Stadium, will be incorporated into the project and that the benefits of the Stadium project outweigh the remaining impacts. On this basis the above objection is overruled.

3. A Citizens Perspective, Part 2: Should the San Francisco 49ers and the City of Santa Clara Collaborate on the Building of a New Sports Stadium. Submitted by Erlinda Anne Estrada, March 9, 2010

The above comment is a lengthy discussion of the economic benefits of sports stadium drawing on a variety of resources. The bulk of the comment does not address the Redevelopment Plan Amendment specifically but rather the Stadium Project. Since the approval of the Redevelopment Plan Amendment does not in and of itself result in approval of the stadium project or a commitment of redevelopment agency resources for the Stadium, most of the comment is not an objection to the Redevelopment Plan Amendment and thus is not addressed in this Response to Comments on the Redevelopment Plan Amendment. However, beginning on Page 6 of the comment, the commentor does address issues specific to the Redevelopment Plan. These comments as well as additional comments on 11 are addressed below.

Comment No. 3-1.

Comment: The comment addresses the use of Redevelopment Agency funds for the stadium. The commentor notes that redevelopment tax increment funds are taxpayer funds.

Response: The commentor is correct that tax increment is taxpayer funds, and more specifically property tax funds. These funds are allocated to redevelopment agencies for very specific purposes and can only be used for those purposes authorized in the California Redevelopment Law. These purposes include use for the construction of publicly owned buildings as well as construction of infrastructure in a project area. The proposed use of tax increment funds for the stadium is an authorized use of tax increment funds. The Term Sheet proposes the use of no more than \$40 million in tax increment plus an additional amount not to exceed \$2 million to be paid by the Agency to the City general fund and enterprise funds for development fees related to the Stadium.

Findings: Based on the information above as well as the information in the record, the City Council acknowledges that tax increment funds represent property tax funds and finds that the use of tax increment funds for the Stadium project, should such use be approved by the Agency and the City Council, is an appropriate use of tax increment funds. On this basis the above objection is overruled.

Comment No. 3-2.

Comment: It is questionable whether one can consider the area north of Bayshore blighted or whether the construction of a stadium is proper use of redevelopment funds.

Responses: The Bayshore North Redevelopment Project Area was determined to be blighted in 1973 when the Redevelopment Plan for that Project Area was updated based on the definitions of blight existing at that time. The proposed Redevelopment Plan Amendment is considered a minor amendment that does not require reconsideration of the blight findings in order to adopt the amendment. Tax increment funds may be used for a variety of purposes pursuant to California Redevelopment Law, including the construction of infrastructure and publicly owned buildings, such as the Stadium.

Finding: Based on the information above as well as the information in the record, the City Council finds that the use of tax increment for the stadium project is an appropriate use of tax increment and that the adoption of the Redevelopment Plan Amendment does not necessitate new findings of blight in the Bayshore North Redevelopment Project Area and therefore overrules the above objection.

Comment No. 3-3:

Comment: Redevelopment agencies divert property tax from schools and city government.

Response: The comment includes a quote from the Joint Informational Hearing of the California State Senate Housing and Community Development Committee describing how tax increment financing works. The use of tax increment is a specially created power that allows redevelopment agencies to concentrate property tax revenues in project areas that are most in need of assistance. Because the project areas must qualify as blighted under the California Redevelopment Law, the increases in property tax are most likely not going to occur but for the efforts of redevelopment. Thus without redevelopment it is unlikely that schools and local governments would realize the increase in property taxes. Additionally, when redevelopment plans expire, the increased property taxes are then distributed to all taxing agencies.

Findings: The City Council finds that the above comments are not an objection to the Redevelopment Plan Amendment but rather a comment on how tax increment financing works. No further disposition of this comment is necessary.

Comment No. 3-4.

Comment: Tax increment is income that would be used to pay off bonds issued by the Agency. What if the tax increment falls short? There is no mention of this possibility in the Stadium Term sheet even though property values have dropped. Will the Agency borrow money from the 49ers?

Response. The Term Sheet contemplates that if the Agency approves providing financing for the stadium some portion of those funds might be derived from the issuance of bonds secured by the tax increment stream. If the Agency were to issue bonds, those bonds would only be secured by the tax increment revenue, which has been the case with all Agency issued bonds to date. In the course of underwriting the bonds, the revenue stream available to the Agency would be evaluated and the bonds sized based on the revenue stream. If for some reason the tax increment was not available to repay the bonds, the City would not be liable for repayment of the bonds. The only revenue backing the bonds is the tax increment revenue. The 49ers have not agreed to loan the Agency funds in the event that bonds could not be repaid.

Finding: The City Council finds that the above comment does not constitute an objection to the Redevelopment Plan Amendment but rather a comment on the proposed financing for the Stadium Project. Since neither the City Council nor the Agency have committed to any specific financing of the Stadium Project, there is not further action needed on this comment at this time.

Comment No. 3-5:

Comment: The comment at Page 11 discusses affordable housing and states that the reduction in affordable housing funds is not the direction that the City's commitment to affordable housing should be going especially in these challenging times when the need for affordable housing is greater than ever. How can the Council justify this decision? This will directly adversely affect lower income Santa Clara residents.

Response: The Redevelopment Agency on an annual basis has elected for several years to increase its contribution to the Low and Moderate Income Housing Fund from the State mandated 20% of all tax increment to 30% of all tax increment. This determination is made each year as part of the budget process. The financing for the stadium currently proposed would potentially result in a reduction in affordable housing funding as some portion of the additional 10% that the Agency has in prior years elected to set aside for affordable housing may be reduced. However, the financing as proposed would continue to allow the Redevelopment Agency to set aside an amount greater than the State mandated 20% for affordable housing and over the remaining life of the Redevelopment Plan would allow the Redevelopment Agency to potentially set aside \$183 million for affordable housing projects. If the voters should approve the Stadium on the June ballot, the Redevelopment Agency prior to approving a Disposition and Development Agreement with the 49ers would have to consider this impact and determine whether the proposed financing is in the best interest of the Agency and the community.

Finding: Based on the above, the City Council has considered the objection and acknowledges that the financing as proposed may result in a reduction in financing for affordable housing. The determination on whether the proposed financing is in the best interest of the Agency and the community will be determined only after the vote of the citizens of Santa Clara if a Disposition and Development Agreement is submitted for approval by the Agency Board. At this time no action is necessary on this comment.

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