City of Santa Clara
The Center of What's Possible

Draft Affordable Housing Working Group Meeting 2 Minutes

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Tuesday, April 11, 2017, 2:30 PM

City Council Chambers

1. Call to Order/Welcome

Vice Mayor Caserta started the second Affordable Housing Working Group, and asked new members of the group to introduce themselves. Mrs. Cohen thanked the group for the invitation to participate and provided a brief introduction of her work with local 393.

Apologies were received from Jim Mather, Pilar Lorenzana, Steve Edwards, Kiyomi Yamamoto, Patrick Kolstad and Sarah McIntire.

Mr Crabtree briefly went through the Agenda and summarized the items for discussion highlighting the outcomes and goals that should be addressed on the reverse side of the Agenda.

2. Review Meeting Minutes 3.14.2014

Vice Mayor Caserta thanked staff for the meeting minutes being prepared thoroughly and asked the group if they would like to request any amendments to the meeting minutes. No changes were requested.

Mr Jain noted that he could not find the meeting minutes and requested the agenda and minutes get sent to all working group members as well as provide a link to the Agenda packet from the events calendar on the City's website.

3. Public Presentation

Vice Mayor Caserta provided the public with the opportunity to make public comment. No public comments were made at this time.

4. DFA Review of Residential Nexus Analysis

Mr. Martin introduced the presentation and noted that the report is not a complete refutation of the adoption of the Nexus or impact fees but noted queries that should be raised and recommendations for improvements when considering impact fees. He noted the qualifications of DFA and Mr. Whipple with regards to reviewing previous Nexus Studies.

Mr Whipple introduced the presentation and noted critical omissions and key assumptions regarding the Nexus Study and reasons for the peer review.

This first critical omission Mr Whipple noted was that the methodologies used double count estimated low wage jobs, resulting in an overstated impact fee. The second critical omission noted was the lack of identification or consideration of all factors (including use, benefit, burden and proportionality) relating to the derivation of the impact fee.

Mr Whipple also noted his concerns with key assumption made with the study's methodology. The first being household expenditure into the local economy. He noted that items such as mortgage payments and property taxes should be excluded as they do not feed back into the local economy. He noted that this single adjustment reduces the estimated number of new low wage jobs by approximately 54%.

Councilmember Mahan queried why property tax would be excluded as it stays local. Mr Whipple confirmed that it should, in fact, be included in items that stay local. As such, this 54% reduction of estimated number of new low wage jobs may no longer be accurate.

The third assumption noted by Mr Whipple was the indirect, induced and part time jobs concluded within the methodology and highlighted that he thought that this was inconsistent with the methodology used.

Lastly, Mr Whipple noted the assumption of low wage earner within one household and noted that the Nexus Study assumes that on average workers within multiple income households earn a similar or equal wage, which he does not feel is accurate.

Finally, Mr Whipple provided some recommendations moving forward where information or further analysis could be provided.

- Evaluation of long-term planning policy documents and feasibility.
- Objective look at assumptions raised
- Absence of nexus legal requirements
- Absence of comprehensive study considering all relevant factors
- Adoption of discretionary fee reductions

Mr Jain asked if the Nexus analysis is so flawed, why it is still adopted in cities all around Santa Clara. He noted that within the past 5 or so years, within the past years, these fees have been adopted and have not been legally challenged.

Vice Mayor Caserta queried if Mr Whipple was asking the board to not adopt an impact fee that was consistent with other cities. Mr Whipple clarified that a different methodology should be used.

Mr Martin clarified that the BIA is not suggesting that impact fees should not be adopted. The intention with the report is to raise concerns about methodology used and call in question the maximum supported fee by the BIA and several developers. The fees have not been challenged in Court and that does not necessarily mean it is legally defensible. Mr Martin suggested more analysis be done than what the City current has regarding development.

Councilmember Mahan queried if we were to adopt the study as is and we adopted the highest level fees supported by the Study, and a developer were to sue the City, would there be a strong legal basis to sue?

Mr Martin confirmed that the analysis is incomplete and it is not know what the maximum supportable fee is or if it is legally defensible.

Mr Whipple confirmed if there was a legal challenge the court would look at the Nexus study in line with maximum supported fee levels.

Councilmember Mahan requested that our City attorney review the legality of the Nexus Study.

Mr Buchanan noted that a number of assumptions are naturally made to construct a model and highlighted is one of the most accepted models for analysing economic impacts. He also noted the diversity in people working and/or living in Santa Clara and in surrounding cities, which reducing the risk of double counting.

Mr Buchanan further noted that even if you take all the assumptions noted in the presentations, the recommended fees levels are still within a reasonable range, even if you assume DFA's reduction of 83%.

Lastly, Mr Buchanan pointed out that peer reviews are usually done by an independent source and highlighted that this is not a peer review as it is a privately funded study.

Mrs Dawson noted that she looks forward to seeing the attorney's review of the Nexus Study.

5. Q&A with KMA

Vice Mayor Caserta provided additional opportunity for public comment. No public comments were made at this time.

Mr Doezema introduced himself and said he would happily answer any questions from the group. He noted that he will be preparing a response to the DFA peer review and noted that within the packet you will see responses previously done for Fremont and San Jose.

Councilmember Mahan expressed that she did not want to waste city time and money on a response from KMA and would rather review the City Attorney's response first.

Vice Mayor Caserta agreed and noted that he would like to see the City Attorney's response by early next week.

Mr Jain queried how many Nexus studies has KMA done locally. Mr Doezema confirmed that over 40 have been done by KMA and 10 within this multi jurisdiction studies.

Mr Doezema further highlighted that their methodology is more conservative than other consultants for two reasons. The first reason is that the methodology uses tax credits to offset delivering affordable housing. After elections, the viability of this funding source is more uncertain. He also noted the methodology assumes a 20% discount for net new jobs.

Vice Mayor Caserta ask if Mr Doezema could comment on litigation relating to the Nexus Study. Mr Doezema confirmed that there was a court case regarding commercial linkage fees in the 1990's which upheld commercial linkage fees. He further noted that to his knowledge there has not been a challenge to residential nexus fees.

Mrs Dawson noted she looked at some research done within Redwood City but the same conclusion was reached that when you take both residential and non-residential into account, the impact doesn't exceed 100%.

Mr Doezema confirmed that even if the City adopted the maximum fees levels, it would not exceed 100% overlap. He emphasized that much of the commercial uses in the City serve an international market as opposed to the local community.

Mr Taeb noted that for-sale affordable housing does not use tax credits. Mr Doezema further explained that the net cost is reviewed by looking at extremely low, very low and moderate Area Median Income (AMI) levels.

Mr White asked Mr Doezema if the methodology assumes a 4% tax credit or a 9% tax credit. Mr Doezema confirmed they used 4%, because the 9% tax credit is very competitive.

5. Discussion

Vice Mayor Caserta referred to the second page of the Agenda regarding topics for discussion.

Mr Crabtree introduced the items for discussion and noted that the list will outline a direction for discussion, starting with the level of affordability, currently at 10%, within the City of Santa Clara. He reiterated that the staff recommendations were always meant to serve as a starting point for discussion.

Mrs McGill introduced the nearby jurisdictions research and noted that Affordable Housing requirements and impact fees, transportation impact fees, park impact fees, public works impact fees and other applicable requirements were researched from nearby jurisdictions and included in the document for reference.

Councilmember Mahan noted that the 10% onsite requirements fell in the moderate AMI range, not necessarily low, very low, etc.

Mr Crabtree suggested looking at the percentage for sale and the affordability level in tandem for discussion and noted that normally the 80,100,120 AMI was agreed on a case-by-case basis.

Councilmember Mahan noted that some members of the group noted at the last meeting that standalone projects could leverage federal funds. She asked the group if a standalone project more appropriate to serve the very low or low levels of affordability. She highlighted that all of these aspects should be considered to create a mixed community.

Mr Crabtree suggested discussing the percentage being discretionary in line with what the affordability range. For example, 10% at very low or 15% at moderate.

Mr Jain noted measure A and CBG grants, and reminded the group that there are other sources of funding to help deliver the lower income homes or use density bonuses to help deliver more affordable units.

Mr Crabtree noted that to date, staff has not seen developers take advantage of the density bonus but some have asked.

Mr White noted that it is important to have City funds source to leverage Measure A or other sources of funding. This process makes sure that the City is supporting the project and the delivery of affordable housing by sourcing a percentage of the funding. Mr White advocated the use of impact fees to leverage federal funds and be able to deliver projects that focus on lower levels of affordability.

Mr Rocha noted that residents in Santa Clara are not always in favour of density and so the conversation about density should be included as it is a supply issue as well. Density can scale the cost of the land, development costs, etc.

Mr Buchanan highlighted that between 10-15% is most normally what is seen in the nearby areas. He noted recently adopted requirements by LA where the requirements are scaled based on the level of affordability that can be achieved. With regards to the Density bonus, many cities have gone above their baseline with density bonuses.

Vice Mayor Caserta asked for staff to clarify what the group should focus on in the next 40 minutes. Mr Crabtree and Vice Mayor Caserta noted that they want to see more concrete suggestions for the next meeting.

Mr Head noted that at any level of affordability the projects are very difficult to pencil out for most developers. He explained that it is important to distinguish between rental and for sale, as there are more opportunities to deliver affordable housing with rental projects. Mr Head suggested the level for for-sale projects should be at 10% as opposed to 15% because of the applicable impact fees.

Mr Head further noted that San Jose urban villages shut off residential development, except in the downtown area. Vice Mayor Caserta queried if the development projects in Santa Theresa were pre impact fee and Mr Leigh confirmed there were.

Vice Mayor Caserta asked Mr Head to further explain why rental residential is more attractive than for-sale. Mr Head noted that it is more difficult to support the lower levels of affordability with a for sale project as opposed to a rental project.

Mr Martin highlighted the desirability from the local community for for-sale housing because more people will be buying into the local community. He noted the three specific plans that will be coming forward (El Camino, Great America, Tasman East). These are prime opportunities to enact policy. He emphasized that the City should be focusing on how many units can developers can produce as opposed to focusing on a percentage.

Mr Taeb, from Habitat for Humanity noted it is important to note that if the developers do not see a project that is feasible, they will not produce. The In-lieu fee is more attractive to affordable housing developers that can leverage that fee 4 or 6 times. By example, he illustrated that in Walnut Creek, they had been able to leverage local funds 7 times.

Mrs Dawson asked if it would make sense to maintain consistency with neighbours at 15% onsite requirement.

Vice Mayor Caserta queried if a 10% would encourage developers to build in Santa Clara as opposed to other areas. Mr Crabtree noted that it is clear from a residential side that developers will build because of the demand. The demand to build is not as clear from the commercial side.

Councilmember Mahan noted that Rivermark had a lot of projects that had density bonuses and density bonuses for projects that meet gold LEED standards. The City of Santa Clara adopted a mandate to produce 30% stock of affordable housing above from the state mandate of 20% stock of affordable housing. She suggested deciding on some basic policy needs moving forward. Vice Mayor Caserta agreed that we should find consensus on the policy aspect.

Mr Rocha queried what the impact says about property values. Mr Crabtree confirmed that it is more general and anecdotally he has heard from property developers that if they known the impact fee far in advance they can go away and negotiate land values in more detail.

Mr Jain warned the group not to compare Santa Clara to San Jose as they are trying to discourage housing due to their jobs to housing balances. In terms of bonuses, he noted Santa Clara does not currently stack bonuses. For example, if you used the transport bonus, you cannot use the residential bonus, Sunnyvale has an incentive program that we should look into in more detail. He noted that the group should definitely be leveraging outside funds. Lastly, different sizes of property allow for more scaling of percentage of affordability. Mr Jain expressed that he would like to see a table of development size and percentage of affordability moving forward.

Mr Jain further explained that the biggest problem for developers is that there is only so much money to allocate to development costs; it is getting to be a significant burden that could become a disincentive to build. The fees cannot be looked at in isolation. It is easier to accommodate moderate income with rental projects. Density bonuses, etc. are helpful to offset economic burden.

Mrs Cohen asked if the recommendations could be options as opposed to specific recommendation.

Mr Crabtree anticipated bringing to the next meeting a few varying potential options that would tie to a fee. He also noted that originally we did not want to give the option for an in-lieu because we wanted to incentivize affordable housing on site. Do we want to set a fee for a percentage level or do we want to set options for a developer?

Councilmember Mahan agreed that this is the right track. Are we going to impose the fee on all non-residential development? She emphasized that we need both on site provision and impact fees and did not want to disincentivize fees over development because I think both are important.

Mr Martin suggested that mixed use projects that would be thought of as one development and not two separate developments. He noted that it is generally a more difficult product to bring forward. These fees should be adjusted to the project forward as a blended fee rate or that the retail portion be exempt in that product type or that residential rental fee level be reduced by $4-5 per square foot.

Councilmember Mahan suggested providing scaling options for the developer.

Vice Mayor Caserta noted that he wants to incentivize smart growth, mixed-use, and retail projects. He highlighted that Santa Clara is restaurant thin and noted the important of mixed-use projects with the retail.

Mr Jain highlighted the opportunity with the Grand Boulevard Initiative. He queried if anyone knew whether cities have done something similar to what Mr Martin has recommended.

Councilmember Mahan suggested incorporated these recommendations into the El Camino focus area.

Vice Mayor Caserta provided on final opportunity for comments.

Mr White suggested that, regarding for-sale projects, allowing in-lieu fees on a sliding scale depending on the size of the projects. The larger the project the higher the fees.

He further suggested an inclusionary approach for rental project because these are easier to accommodate. 60% AMI is about the operating cost, let's encourage more inclusionary approach here for dedicated units on site. In-lieu fee approach for for-sale projects so that these funds can be leveraged.

Mr Rocha highlighted case law regarding inclusionary requirements applicable to rental projects. He suggested incentivizing what you want to see, especially with these specific plans. The El Camino Real is a tremendous opportunity.

Mrs Sausedo noted that Residential is the primary discussion but also asked for more detailed feedback for the non-residential building types. NAIOP recommends more closely aligning with the planning commission recommendations as reasonable fees to create an inclusive community.

Mrs Dawson asked for fee recommendations to be included at the next meeting.

Vice Mayor Caserta request that Mr Taeb, from Habitat for Humanity, be included in the Working Group for the next meeting. He also recommended a meeting a meeting on Tuesday, May 2, 2017, from 5-7pm.

7. Identification of topics and/action Actions for next Working Group meeting

a. Staff to provide recommendation options with regards to inclusionary requirements and impact fees for discussion.

b. City Attorney's Office to review the legality of the Nexus Study.

c. Staff and KMA to provide information regarding the equivalent onsite Affordable Housing requirements as an impact fee for both for-sale and residential projects.