

REPORT

To the Honorable Mayor and City Council
From the City Manager

March 16, 2009

SUBJECT

Introduction of an ordinance setting aside certain actions approving the Downtown Precise Plan

RECOMMENDATION

Introduction of an ordinance setting aside:

1. Resolution No. 14765 denying the appeal and upholding the Planning Commission certification of the Final EIR for the Downtown Precise Plan.
2. Planning Commission approval of the Final EIR for the Downtown Precise Plan.
3. Ordinance No. 2308 adopting the Downtown Precise Plan.
4. Ordinance No. 1130-338 amending the Zoning Map to rezone properties located within the Downtown Precise Plan area.

BACKGROUND

In 2007, actions were taken to certify and approve a Final EIR, Precise Plan, and Zoning Map for Downtown Redwood City, constituting approval of the Downtown Precise Plan. Thereafter, Joseph and Roberta Carcione filed a lawsuit challenging the approved Downtown Precise Plan. On February 11, 2009, Judge Marie S. Weiner, Judge of the Superior Court, County of San Mateo entered judgment against Redwood City and issued her order requiring that Resolution No. 14765, and Ordinance No. 2308 and 1130-338 be set aside.

The lawsuit claimed the Downtown Precise Plan's environmental documentation did not adequately address the issues of taller buildings casting shadows on other properties, or of the protection of historic structures in the Downtown area. Further, the judge's ruling indicated that the City did not adequately address the potential for an "alternate site" for the project.

Following the judge's final statement of decision in the fall of 2008, the City's efforts focused on attempting to work cooperatively with the plaintiff's attorneys to find an expeditious way to resolve the deficiencies articulated by the court. Unfortunately, the City was unable to reach any type of resolution.

Thus, while the City respectfully disagrees with the court's ruling, the legal options are limited. To appeal the lawsuit would take an estimated 12 to 18 months or more and would carry no guarantee of a positive outcome. Potential costs to the City would be high, adding to those already incurred. If the appeal failed on even one element of the lawsuit, the City would find itself in the same position as it is today, having to create a revised EIR.

The judge's final ruling requires that the existing EIR be set aside, thus making it invalid. There can be no supplement to an invalid EIR; therefore a revised EIR must be produced. However, a number of sections of the existing EIR can and will be utilized in the revised EIR document.

In looking to the future of Downtown Redwood City, this unfortunate setback can be viewed as an opportunity to further strengthen the award winning and regionally well-regarded Downtown Precise Plan. Revising and updating key aspects, as well as incorporating a shadow policy and clearly stated historic requirements, will result in a more up-to-date and comprehensive EIR and Downtown Precise Plan.

The attached ordinance will provide compliance with Judge Weiner's order.

ALTERNATIVES

The Council could have chosen to appeal the judge's ruling. However, in the interest of reinstating the Downtown Precise Plan at the earliest possible time, the decision has been made to focus on completion of the City's New General Plan, and immediately thereafter springboard off of its programmatic EIR to revise the Plan and the companion EIR.

FISCAL IMPACT

To produce a revised Draft EIR, circulate for it for public comment, create the Final EIR, and update the Downtown Precise Plan is expected to incur significant costs in staff and consultant time. Revised cost estimates for consultant work are not yet available, as much of the technical work products from the general plan may be utilized. Staff expects costs not to exceed approximately \$250,000.



Stan T. Yamamoto, City Attorney



Peter Ingram, City Manager

ATTACHMENTS

Ordinance setting aside certain actions approving the Downtown Precise Plan

RELATED DOCUMENTS IN CITY CLERK'S OFFICE

None

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF REDWOOD CITY SETTING ASIDE RESOLUTION NO. 14765 DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION CERTIFICATION OF THE FINAL EIR FOR THE DOWNTOWN PRECISE PLAN, SETTING ASIDE PLANNING COMMISSION CERTIFICATION OF THE FINAL EIR, SETTING ASIDE ORDINANCE NO. 2308 ADOPTING THE REDWOOD CITY DOWNTOWN PRECISE PLAN, AND SETTING ASIDE ORDINANCE NO. 1130-338 AMENDING THE ZONING MAP TO REZONE PROPERTIES LOCATED WITHIN THE REDWOOD CITY DOWNTOWN PRECISE PLAN AREA

WHEREAS, on February 11, 2009, judgment was entered and a peremptory writ of mandate was issued by the Honorable Marie S. Weiner, Judge of the Superior Court, County of San Mateo in the matter of Carcione, plaintiffs v. Redwood City, defendants, Case No. CIV 463195, whereby the City of Redwood City was ordered to set aside certain approvals with respect to the Downtown Precise Plan.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF REDWOOD CITY DOES ORDAIN AS FOLLOWS:

Section 1.

1. Resolution No. 14765₁, which upheld the Planning Commission certification of the final EIR for the Downtown Precise Plan₁, is hereby set aside.
2. The Planning Commission's February 6, 2007 certification of the Final EIR for the Downtown Precise Plan is hereby set aside.
3. Ordinance No. 2308, which adopted the Downtown Precise Plan₁, is hereby set aside.
4. Ordinance No. 1130-338₁, which amending the Zoning Map to rezone properties located with the Downtown Precise Plan Area₁, is hereby set aside.

Section 2.

This ordinance shall be effective thirty (30) after its adoption.

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