Approved as Written: September 18, 2002

CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES - SEPTEMBER 4, 2002

CALL TO ORDER

Mayor/Chairperson Kennedy called the meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Chang, Tate, Sellers and Mayor/Chairperson Kennedy

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

Mayor Kennedy announced the following closed session items.

1.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Pursuant to Government Code 54957
Public Employee Performance Evaluation: City Manager
Attendees: City Council, City Manager

2.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
Significant Exposure to Initiation of Litigation

Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	2

3.

CONFERENCE WITH LEGAL COUNSEL - POTENTIAL AND EXISTING LITIGATION: CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Legal Authority:	Government Code 54956.8 & 54956.9(a) & (c) (1 potential case)
Real Property(ies) involved:	APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of Cochrane Road (St. Louise Hospital property)
City Negotiators:	Agency Members; Executive Director; Agency Counsel; F. Gale Conner, special counsel; Rutan & Tucker, special counsel
Case Name:	San Jose Christian College v. City of Morgan Hill
Case Numbers:	Ninth Circuit Court of Appeal No. 02-15693
Closed Session Topic:	Potential Existing Litigation/Real Estate Negotiations

4.

EXISTING LITIGATION:
Case Title: Kennedy et al. v. Davis et al.
Case Name/No.: Santa Clara County Superior Court Case No. CV 803679

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairperson Kennedy opened the closed session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairperson Kennedy adjourned the meeting to closed session at 6:02 p.m.

RECONVENE

Mayor/Chairperson Kennedy reconvened the meeting at 7:12 p.m.

CLOSED SESSION ANNOUNCEMENT

Mayor/Chairman Kennedy announced that the Council conducted a closed session regarding the Public Performance Evaluation of the City Manager, indicating that no action was taken in closed session. He stated that the Council/Agency would reconvene the closed session following the regular open session.

Mayor Kennedy announced that Lauren Spicer would be serving as Honorary Mayor of the Day this evening. He indicated that Ms. Spicer is a fourth grade student who participated in the City's Website Design contest, being one of the five contest winners.

SILENT INVOCATION

Ms. Spicer sang a song she wrote regarding September 11, 2001.

PLEDGE OF ALLEGIANCE

"Honorary Mayor for the Day" Lauren Spicer led the Pledge of Allegiance.

PROCLAMATIONS

Mayor Kennedy presented a proclamation to Ms. Lauren Spicer, proclaiming her "Honorary Mayor for the Day," September 4, 2002.

Mayor Kennedy read the Proclamation declaring September 11, 2002 as Patriot Day. He announced that two ceremonies are planned for September 11, 2002 in recognition of Patriot Day as follows: 1) 12:00 p.m. at the flag pole located at City Hall, and 2) and a multi faith ceremony to be held at 7:00 p.m. at St. Catherine's Parish Hall.

CITY COUNCIL REPORT

Council Member Tate reported on the Measure P Update Committee. He said that Measure P dictates the number of residential structures that are to be built every year. At the time of the update of the Housing Element of the General Plan, the City came up against the fair share allocations handed down by the Association of Bay Area Government (ABAG). ABAG found that the City's Housing Element, out to 2006, was about 235 units short. He indicated that the City tried to argue that the growth control ordinance should exempt the City from these units. However, ABAG did not accept this argument. He said that the City indicated that it would like to see if there is a way to modify the growth control ordinance in a way that would allow the City to meet the 235 target. As the Measure P Update Committee was going to look at the growth control ordinance, the City would study the ordinance to see what other changes would be appropriate. He said that the Council wanted to get a broad community representation to take a look at the ordinance as it is a voter-initiated ordinance. It is the City's hope that proposed changes would be supported by voters. A 19-member committee has been established with representatives from the community. He indicated that Mayor Pro Tempore and he are heading up this committee. He said that two meetings have been held and that at last night's meeting, approximately 100 different ideas were raised by committee members and guests. The Committee will be meeting again as a public hearing. He encouraged the public to attend this meeting as the Council would like the broadest possible representation from the community to hear citizen ideas in terms of changing the growth control ordinance. He said that the Committee would like to reach a consensus on proposed changes to the growth control ordinance. The proposed changes would be put into the language that would be included in the initiative as part of the November 2004 ballot for public ratification.

Council Member Tate indicated that he is the Council's representative to the Library Commission and serves on the Santa Clara County Library Joint Powers Authority. He stated that he not only works with city and county staff but with the nine member Library Commission and with Librarian, Sarah Flower, who oversees the local library. He stated that he recently learned that Ms. Flower would be retiring at the end of September and that he would miss her. He said that Ms. Fuller will be attending the Library Commission meeting Monday, September 9 and invited the public to attend the meeting to celebrate her retirement. Although she is retiring from the library, she would continue to work on the Boys Ranch project.

CITY MANAGER'S REPORT

City Manager Tewes reported that the State budget has been adopted and signed by the Governor after two months of delay. He said that the good news is that the proposal that would have reduced local government revenues by shifting resources did not get included in the final budget. The bad news is that there is still concern about the on going long term structural problems facing the State. Therefore, future budgets may still have the potential to adversely impact local revenues and services. He said that the Redevelopment Agency (RDA) was subject to a provision of the State budget that affects the cash flow of the RDA but not the overall tax increment flow. He indicated that the Council has requested that he report to them from time to time on the status of the City's revenue and expenditure projections. He said that staff would be returning with a formal report soon. He stated that the City has yet to see strong signs of economic recovery in Silicon Valley and Morgan Hill. He noted that the Council conducted a workshop on economic development and gave staff the assignment of returning with proposed goals and policy statements that might reflect the discussion held by the Council at the workshop. He indicated that staff would be returning to the

Council on September 18.

CITY ATTORNEY'S REPORT

City Attorney Leichter indicated that the monthly litigation summary has been distributed, noting that litigation cases have dropped from 14 to 12 cases this month.

OTHER REPORTS

None.

PUBLIC COMMENT

Mayor/Chairperson Kennedy opened the floor to comments for items not appearing on this evening's agenda. No comments were offered.

City Council Action

CONSENT CALENDAR:

Council Member Tate requested that Consent Item 9 be removed from the Consent Calendar.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0)* ***approved*** *Consent Calendar Items 1-8 as follows:*

1. **RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) 2002 QUARTERLY REPORT NUMBER 3**
   Action: ***Accepted*** *and* ***Filed*** *the RDCS Third Quarter Report.*

2. **SUBDIVISION APPLICATION SD-02-02: COCHRANE-COYOTE ESTATES**
   Action: ***Took No Action****, Thereby Concurring With the Planning Commission's Decision Regarding Approval of the Subdivision Map.*

3. **SUBDIVISION AMENDMENT: SDA-00-15: HALE-DELCO (SHENG)**
   Action*:* ***Took No Action,*** *Thereby Concurring With the Planning Commission's Decision Regarding Approval of the Subdivision Map Amendments.*

4. **SKATE PARK RELOCATION SURVEY**
   Action: ***Accepted*** *Report of a Survey Regarding the Future Relocation of the Temporary Skate Park.*

5. **ESTABLISHMENT OF ADDITIONAL BUILDING INSPECTOR POSITION AND PUBLIC SAFETY DISPATCHER POSITION FOR LIMITED PERIOD BECAUSE OF UNUSUAL CIRCUMSTANCES**

Action: *1)* ***Established*** *Additional Building Inspector Position and Public Safety Dispatcher Position For Limited Period; 2)* ***Appropriated*** *$72,302 in the Community Development Fund (206) for Fiscal Year 2002/2003; and 3)* ***Appropriated*** *$64,492 in the General Fund (010) for Fiscal Year 2002/2003.*

6. APPROVAL OF IMPROVEMENT AGREEMENT WITH RICHARD A. RAYNES, ROBERT C DOBKIN, AND KATHLEEN C. DOBKIN FAMILY TRUST

Action: *1)****Approved*** *the Improvement Agreement, Subject to Review by the City Attorney; and 2)* ***Authorized*** *the City Manager to Sign the Agreement on Behalf of the City With the Richard A. Raynes, Robert C. Dobkin, and Kathleen C. Dobkin Family Trust.*

7. CHANGE ORDER APPROVAL FOR ADDITIONAL WORK ON THE 2001/2002 ROADWAY REPAIR AND SLURRY SEAL PROJECT

Action: ***Approved*** *Change Order in the Amount of $76,315.00 From the 2002/2003 Pavement Rehabilitation Project for Additional Work on the 2001/2002 Roadway Repair and Slurry Seal Project by Contractor Silicon Valley Paving.*

8. ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9158, THE VILLAS PHASE II SUBDIVISION - *Resolution No. 5611*

Action: *1)* ***Adopted*** *Resolution 5611 Accepting the Subdivision Improvements Included in Tract 9158, Commonly Known as The Villas Phase II; and 2)* ***Directed*** *the City Clerk to File a Notice of Completion With the County Recorder's Office.*

9. AMENDMENT TO THE MANAGEMENT RESOLUTION - *Resolution No. 5612*

Council Member Tate stated that he was supportive of this important and critical new position. He inquired whether the salary range being recommended would be sufficient to attract the most qualified licensed architect that is needed by the City of Morgan Hill.

Human Resources Director Fisher stated that staff completed a salary survey for this position, taking the market information with internal information. She said that the proposed salary range seemed to be appropriate for this position. She used information provided by other cities who have licensed architects as employees.

Mayor Kennedy indicated that it has been his experience that these are competitive rates for architects. He wanted to make sure that someone comes on board with the right skill sets and experience in construction with large buildings as the city has critical projects that will be constructed. He indicated that he would be willing to assist staff with any advise that he can offer.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0)* ***Adopted*** *Resolution No. 5612, Amending the Management, Professional and Confidential Employees Resolution 5571 to Assign A New Job Description and Salary Range for Position of Senior Project Manager/Community Buildings.*

City Council and Redevelopment Agency Action

Action: *On a motion by Council/Agency Member Sellers and seconded by Mayor Pro Tempore/Agency Member Carr, the City Council/Agency Board unanimously (5-0)* ***approved*** *Consent Calendar Items 10 as follows:*

10. SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF AUGUST 21, 2002
Action: Approved *the minutes as written.*

PUBLIC HEARINGS:

City Council Action

11. DEVELOPMENT AGREEMENT DA 02-02: COCHRANE-COYOTE ESTATES - *Ordinance No. 1583, New Series*

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0)* ***Waived*** *the Reading in Full of Ordinance No. 1583, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0)* ***Introduced*** *Ordinance No. 1583, New Series, as follows:* ***AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT, DA-02-02: COCHRANE-COYOTE ESTATES FOR APPLICATION MP 01-02: COCHRANE-COYOTE ESTATES (APN 728-43-020)*** *by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

12. ZONING AMENDMENT APPLICATION ZA-01-23: COCHRANE IN-N-OUT BURGER - *Resolution No. 5613*

Director of Community Development Bischoff presented the staff report, addressing parking, traffic circulation/study and the concerns relating to the proposed fast food use on the site. He addressed the original uses adopted with the Planned Unit Development (PUD). In its review, the Planning Commission felt that the acre site may be too small for a sit down restaurant. He indicated that the Planning Commission felt that with the mitigations proposed for traffic circulation and other conditions that the use would be acceptable at this location. Regarding site plan issues, the Planning Commission expressed concern with a 35-foot wide drive aisle easement and felt that it was unnecessarily wide, encouraging fast moving traffic. The Planning Commission recommends reduction of the aisle by five feet. He indicated that the easement exists to the benefit of the Chevron

gas station and would require their approval in order to narrow the aisle's width.

Mr. Bischoff informed the City Council that the applicant is requesting a variance from the minimum landscape standards of the PUD ordinance. He stated that the Planning Commission did not recommend changes to the PUD standards. However, the PUD ordinance does allow the City Council to deviate from the minimum PUD standards if recommended by the Planning Commission with findings. Staff expressed concern that this is a gateway location and that when the PUD was approved, it was recognized and understood that one drive thru type of establishment would be allowed. He said that a drive aisle currently exits as part of the gas station. Also, there was representation that two sit down restaurants would be provided. Staff recommended that the Council maintain the existing PUD.

Mr. Bischoff stated that the applicant has indicated that he would agree to make amendments to the circulation to address some of the concerns but that the applicant would like to preserve a 25-foot wide drive aisle and angled parking. He said that staff is concerned that a 25-foot drive aisle is not needed for one way traffic and that leaving it at 25 feet is inviting a dangerous turning movement. He informed the City Council that the packet contains a draft resolution for denial and a draft ordinance that would accommodate Council approval of the application. Should the Council wish to allow for deviation from the minimum landscape standards required by the PUD ordinance, it would require that findings be made and that staff would need to return with the findings at a later date.

Mr. Bischoff said that the applicant felt that the adjacent site would still be viable for a sit down restaurant and that under their ownership, they would try to find a sit down restaurant on site. He felt that there would be traffic conflicts for both a fast food and a sit down restaurant as peak hours would be the same for both restaurants. He indicated that staff surveyed sit down restaurants and found that smaller chain sit down restaurants such as Applebee's or Olive Gardens use pads of 5,000-7,000 square feet. Staff asked questions about parking demands for sit down restaurants and that staff was advised that during lunch hour peaks, they are looking at a need of 55 parking spaces. Combining both sites, there would be 108 parking spaces available. Staff's study suggests that the In-And-Out Burger would require approximately 50 spaces and a sit down restaurant would require approximately 55 parking spaces for a total of 105 parking spaces. In theory, the 108 parking spaces should be enough for this use and a 5,000 square foot sit down restaurant. He clarified that the PUD amendment request is to allow for a fast food restaurant and one sit down restaurant.

Council Member Tate inquired whether an economic analysis has been performed for the sit down and fast food restaurant alternative?

Mr. Bischoff said that typically, a fast food restaurant is able to pay more for a site versus a sit down restaurant. The economist that staff spoke with suggests that a sit down restaurant would pay 2/3 to 3/4 of what a fast food restaurant would. He stated that he would need to return with a response to the amount of leakage that would occur with another fast food.

Mayor Kennedy said that it was his understanding that the applicant has an agreement with the adjacent property owner of the hotel to the north to use their parking spaces.

Mr. Bischoff said that he did not believe that staff had this information at the time the Planning Commission heard the request. However, the Planning Commission included a condition that would require a reciprocal parking agreement be obtained.

Mayor Pro Tempore Carr inquired if the current property owner provided an explanation as to why they are interested in selling to a use that they explicitly agreed not to allow?

Director of Business Assistance and Housing Services Toy informed the Council that the property owner marketed the parcels to several restaurants and that the issue was of price and size of the parcels.

Council Member Chang inquired whether the size of the sit down restaurant could be increased to make both uses work on the site?

Mr. Bischoff said that it was his understanding that the 1.5 acre parcel is sufficient for a sit down restaurant. What complicates the issue of the sit down restaurant is that parking on the 1.5 acre parcel is dedicated to the In-And-Out Burger use. Instead of being a 1.5 acre parcel, it results in a 1.25 acre site. It has been found that the site is on the small size but that a 5,000 square foot sit down restaurant could be accommodated but not one much larger based on parking needs. He said that when the PUD was originally proposed, staff had concerns about two restaurant pads as the sites were considered too small. The PUD was ultimately approved with two sit down restaurants as the applicant indicated, at the time, that he could attract two sit down restaurants.

Council Member Sellers inquired if the City pushed for two sit down restaurants as part of the PUD or was it proposed by the developer? Mr. Bischoff said that it was his recollection that the property owner represented that he could build two sit down restaurants and not at the City's urging that two sit down restaurants be included. However, the prospect of two sit down restaurants were viewed as positive by both the Planning Commission and City Council.

Mayor Kennedy opened the public hearing.

Ron Gowrie, representing Tharaldson Development, indicated that the parking agreement has been made with In-And-Out Burger for a shared parking arrangement and that the agreement is registered.

Ron Volle, Northern California Real Estate Manager for In-And-Out Burger, addressed the history and the mission statement of In-And-Out Burger. He indicated that approximately three years ago, he was contacted about locating an In-And-Out Burger restaurant on this site and that staff met him with many objections, stating that the PUD was reserved for two sit down restaurants. He said that he was contacted by the developer of the PUD two-years later recommending that In-And-Out Burger move forward with the application as there were no sit down restaurants interested in locating on the PUD at a time when the market was at its highest and best. He indicated that the price of the property is difficult and that there is not enough property to accommodate a 6,000-8,000 square foot restaurant. However, the site is big enough for his use and one additional 6,000-7,000 square foot restaurant.

Mr. Volle noted that planning staff is recommending denial. He noted that In-And-Out Burger is

located in a gateway property in Sunnyvale with nice architecture. He provided and illustration of the architectural design that would be appropriate at the PUD site and that he would work with the Architectural Review Board in creating a design that would be beneficial to the City. He stated that he has made all changes requested by the Planning Commission with minor alterations and presented the Council with a site plan of the project. He indicated that the Planning Commission expressed concern that as individuals exit the drive thru lane that they might attempt to make a right turn onto Cochrane in the right turn in only lane. He changed that area to diagonal parking and provided for a one way entrance. He requested that he be allowed to retain the 25-foot drive aisle in case the sit down restaurant user makes a requirement for a two-way street. A one way sign would be installed at the end of the drive through lane, encouraging individuals to go around and not use the right turn in aisle as they exit the site. He indicated that he was not able to relocate the trash enclosure located in the drive aisle as requested by the Planning Commission. Relocating the trash enclosure would result in the elimination of one or two parking spaces, indicating that every parking space is important. He said that trash pick is conducted in early morning hours at time the business is closed and would not impact the business.

Mr. Volle said that staff has indicated that the use would require 50 parking spaces. However, staff failed to mention that its analysis used the two busiest restaurants he has in northern California: Mt. View and Gilroy. He did not believe that these were good comparisons to Morgan Hill as Mt. View has 200,000 people within a three-mile radius and Morgan Hill area has a population of approximately 40,000. Gilroy has a million square feet of retail surrounding the restaurant and they have 12,000 people a day going into the factory outlet, noting that Morgan Hill does not have this as two motels are constructed behind the site. He said that he had another traffic study prepared for two restaurants that are comparable in demographics and in traffic counts (Livermore and Salinas) that resulted in a different conclusion. It was found that the maximum need of parking spaces was 46 parking spaces and not the 50 identified by staff. He noted that there were a total of 108 parking spaces on the entire property. He felt that 46 parking spaces would be adequate and would result in 62 parking spaces for a proposed 5,000-6,000 square foot sit down restaurant. He informed the Council that he has purchased both properties and that it has been his intention to find a quality sit down restaurant. The Planning Commission requested that he obtain a reciprocal parking agreement with the hotels and indicated that he has obtained full reciprocal parking, noting that peak lunch and dinner times are slow times for hotels. Therefore, a sit down restaurant and his use can be accommodated. He requested City Council approval of the project and a minor variance to the landscape area in order to allow for additional berming around the drive thru lane as requested by the Planning Commission.

Mayor Kennedy stated that he met with Mr. Volle prior to the meeting and that it was his understanding that he would be willing to make a sit down restaurant a part of the agreement should the Council approve the zoning amendment application.

Mr. Volle confirmed that he would be willing to make a sit down restaurant a part of the agreement should the City Council approve the application.

Mayor Kennedy felt that an In-And-Out Burger would be a welcomed addition to the community. However, he would only approve the application on the condition that there was an agreement for a sit down restaurant to go in prior to the approval of the In-And-Out Burger.

Mr. Volle said that the property has not been taken by a sit down restaurant in the last 2.5 years because the price of the land is expensive and there are bonds on the property for improvements that have been completed on Cochrane Road. There are also city fees that are high. He said that there has not been a restaurant that has stepped up to be able to pay these financial conditions for what is believed to be mediocre volumes based upon demographics. However, he would be the owner of both sites and that he would do everything that he could to market and find a sit down restaurant.

Council Member Chang inquired as to the type of sit down restaurant that can be marketed based on the site area and available parking?

Mr. Volle indicated that Applebee's Restaurant provided a foot print that shows a 5,096 square foot facility who was interested in the property months ago but that they decided not to move forward because the property was too expensive for them to buy from Tharaldson Development. He indicated that Tharaldson Development was not willing to give them a reciprocal parking agreement. He stated that he has secured the reciprocal parking agreement on the hotel property, removing this obstacle. He said that he would enter into discussions with Applebee's about their purchasing the property from him. He said that Applebee's is one of a number of other restaurant possibilities.

Council Member Chang inquired whether the sale price could be justified for Applebee's? Mr. Volle responded that he may charge a restaurant user less than what he paid for the property in order to have the property utilized.

Council Member Chang noted that Mayor Kennedy is proposing a compromise in that Mr. Volle is to secure an agreement with a sit down restaurant before he is willing to proceed with the In-And-Out Burger.

Mr. Volle requested clarification as to whether he would need to enter into an agreement with a particular restaurant or whether he has to enter into an agreement with the city that he would put a sit down restaurant on the property.

Mayor Kennedy clarified that he would want to see in place approval of a sit down restaurant for the adjacent site before approving the In-And-Out Burger restaurant.

Council Member Tate noted that an agreement is in existence that the site be marketed for two sit down restaurants.

Mayor Kennedy stated that he would want to see a commitment in place that a sit down restaurant would be built on the adjacent site. Unless a good sit down restaurant is committed to locating in the PUD, he would not be willing to allow In-And-Out Burger to move forward.

Mr. Volle stated that it is his intention to pave the entire area, open his restaurant for six months and then find a sit down restaurant. He said that it would not be in his best interest to keep the property off the market for any length of time beyond the six months.

Mayor Kennedy said that he would not be willing to change the zoning to approve Mr. Volle's application until there is a commitment from a sit down restaurant and an agreement in place.

Council Member Sellers inquired if there was a contingency on the purchase of the property? Mr. Volle responded that the property is in escrow and that land purchase was contingent on his ability to obtain building permit approval to build the In-And-Out Burger.

Brad Ledwith indicated that he is a member of the Morgan Hill Rotary and serves on the board of directors for the Chamber of Commerce but that he is speaking as a citizen this evening. He stated that he enjoys eating hamburgers. However, he expressed concern with the following: 1) traffic - even though the proposed restaurant is not supposed to be compared to the Gilroy facility, anytime you go into an In-And-Out Burger across the state, traffic is an impact. Also, the traffic circulation at the Cochrane Chevron is awkward. 2) He expressed concern that the City would be entering into an agreement with an owner who may or may not be here 3-4 years from now. 3) The possibility of mischief taking place on Cochrane Road at 1:00 a.m. similar to what is taking place at Blossom Hill would be inappropriate for Morgan Hill.

Marc Minkus, 1885 Silverwings Court, Director of Research and Development at Abbott Laboratory, indicated that Abbott Laboratory has several visitors who are from out of town. These guests are put up at the new hotels adjacent to his facility. He felt that it would be nice to have sit down restaurants for his visitors above and beyond what is in place in Morgan Hill. He supported additional sit down restaurants for the community.

No further comments being offered, the public hearing was closed.

Council Member Tate said that an In-And-Out Burger in Morgan Hill has been in discussion for several months and that this is the first time that the Council has had the opportunity to address the use. He said that there seems to be a situation where the City had an agreement in place with a developer. The developer tried to market the site for over two years to fulfill the commitment for two sit down restaurants. The developer adapted, on his own, a solution to the problem without asking the City if he could seek other alternatives. He felt that there is a process problem with this PUD in that the Council was not given an opportunity to discuss the problem and review alternative solutions such as amending the PUD to only require one sit down restaurant. However, he noted that a decision was made 2.5 years ago that the City wanted sit down restaurants in this PUD. Having two sit down restaurants would be the right use in terms of limiting traffic problems in a gateway into the community. It was his recollection that there was some discussion on the economic aspect of capturing community restaurant goers who are going out of town because they cannot find the right kind of sit down restaurants in town. Allowing additional fast foods in town would just rotate which one citizens patronize. He stated that he has questions regarding the process and indicated that he has not changed his mind regarding the uses in 2.5 years. He concurred with the comments as expressed by staff and others that he likes In-And-Out Burger and wants to see them locate in Morgan Hill as they would be a great addition to the City. However, he felt that there are problems with locating an In-And-Out Burger in this PUD.

Mayor Kennedy inquired whether Council Member Tate would be willing to support the In-And-Out Burger on this site if the applicant were successful in getting some level of approval/commitment from a sit down restaurant?

Council Member Tate said that he wants to understand, economically, what would be involved with

having one sit down restaurant. It was his hope to get 14,000 square feet of sit down restaurants, noting that a 6,000 square foot sit down restaurant is being discussed in addition to the In-And-Out Burger. He felt that the City would be giving up something that it should not have to give up if the City approves one sit down restaurant. He would like to look at alternatives or get questions answered in terms of optimizing the situation. He felt that Mayor Kennedy was on the right track in terms of looking for a solution that guarantees the City a sit down restaurant.

Council Member Sellers said that he spent a lot of time recalling the situation and circumstances under which the Council agreed to the two sit down restaurants. He said that the developer marketed the restaurant pads for 2.5 years and could not attain his asking price. He said that a solution for the developer is to figure out what the market would bare. He said that it was frustrating to have to go through this process as the Council had to say no to a business who is felt would have a place somewhere in the community. He expressed concern with circulation as he did not believe that the existing circulation works. He recommended that the City look at circulation to allow right turns (egress) onto Cochrane and disallow left turn lanes regardless of the action taken on this application. He felt that there was merit to Mayor Kennedy's suggestion but that he did not know if it would be financially viable for the applicant. He indicated that the City was promised certain uses as part of the PUD approval. He stated that if there was a guarantee that a sit down restaurant would be marketed and go through the approval process, he would agree to approve the In-And-Out Burger because of their marketing strategy. If there was some form of an agreement that was air tight that would allow the In-And-Out Burger to proceed and a quality sit down restaurant, he would be supportive.

Mayor Pro Tempore Carr stated that he concurred with Council Member Sellers comments regarding traffic and circulation in this area, especially as Madrone Parkway is becoming a popular short cut to get to Monterey Road. He said that he would like to find a compromise. However, he expressed concern that this Council stand up to its development agreements. He said that it took a long time to reach a development agreement for this PUD, noting that he was not on the Council at the time. He said that the Council put forth a lot of discussion and forethought into the PUD, including the types of hotels that were desired, including the need for a gasoline station in the north side of town. He felt that when agreements are made, they need to be made with a lot of forethought that they are actually going to work out. He felt that the Council needs to discuss how it can be a partner in helping PUDs work versus amending PUDs. He said that the developer/owner, in this case, owes a lot to the community in trying to make the development agreement work. He stated that he too was disappointed that this if the first opportunity that the Council has had to address the development agreement with an amendment and a potential buyer at the podium with a project in mind. He was not sure if this was the best way to work out the problem. He expressed concern with the Gateway aspect of the site. He said that when he was on the General Plan Update Task Force, the Task Force spent a lot of time discussing gateways, noting that it was felt that more discussion and thought needs to go into gateways even after the General Plan was adopted and developed. He appreciated In-And-Out Burger coming to the table and willing to work within the gateway structure and within the requirements, but that he was not sure if the Council knew what the requirements should be. He has a problem with moving forward with the request this evening. He stated that he would be happy to keep the issue open and alive in order to discuss some of the issues raised this evening to try to find an agreement that will work. He felt that there were a lot of needs in Morgan Hill and that a lot of the citizens in Morgan Hill have looked to this corner of town to help meet

some of those needs. He said that he did not want to give up on the needs too quickly.

Council Member Sellers inquired as to the procedure that should be followed should the Council want to give further consideration to the needs of the community and amendment to the PUD.

Mr. Bischoff said that should the majority of the Council feel that if it had a better level of assurance that there would be a sit down restaurant located on the other parcel in the near future and the name of the restaurant was identified, he recommended that the application be tabled. Staff would readvertise the application when staff has had an opportunity to meet with the applicant and see if progress has been made.

Mayor Kennedy said that he would be comfortable with a sit down restaurant and an In-And-Out Burger in the PUD. He understood that traffic and other issues would need to be addressed but that he was comfortable that they can be addressed as they are not surmountable.

Council Member Tate was pleased that Mayor Kennedy has came up with a compromise. He said that he did not want to discourage a compromise. However, he did not want to support a compromise when he does not know if there are other possibilities. He noted that the City has an agreement in place that requires two sit down restaurants and that before amending the agreement, the Council needs to study possibilities.

Council Member Chang said that in looking at the original floor plan, it shows two sit down restaurants at 8,000 and 6,000 square feet with 137 parking stalls. She compared the original floor plan with the one presented this evening and found that the driveway for the fast food restaurant appears to be taking a lot of the parking spaces. She stated that she would like to retain the PUD with two sit down restaurants. However, she may be open to the In-And-Out Burger with a sit down restaurant.

Council Member Sellers did not know how the Council can get to where it wants to get to based on the market.

Mayor Kennedy understood that companies such as In-And-Out Burger and McDonald's pay more for property and would be an attractive first choice for a land owner. If the Council is to table the application and hold out for a sit down restaurant, he felt that it may change the dynamics of the marketplace. Tabling the application would give the applicant a chance to see what he can do and bring it back to the Council.

Council Member Sellers said that tabling this application would result in trying to figure out how to get In-And-Out and a sit down restaurant. He felt that there was a higher/better use and that the Council would eliminate this as an option. Should the Council deny the application this evening, he felt that amendment to the PUD would be delayed.

City Manager Tewes said staff offered In-And-Out Burger an alternative which they chose not to pursue. He stated that the General Plan required a series of follow up studies, one being the gateway study. Staff invited In-And-Out Burger to participate in the Gateway study in which the City might evaluate circulation and land use for the PUD and the number of sit down restaurants. Should the

Council decide to deny the project, this study would still proceed and that it might answer some of the questions raised by the Council. He said that staff worked with the property owner and spoke with several sit down restaurants, indicating that a deal could not be made.

Council Member Tate indicated that economics factor into the issue. He felt that sit down restaurants would be economically supported by the City because the City has more leakage of this business out of the City at this time. If this is the case, he recommended that the City find a way of helping sit down restaurants locate in the PUD. He said that these were the kinds of alternatives that he would like to explore to see if they are viable.

Mayor Pro Tempore Carr stated that he would be interested in hearing from the developer why he signed an agreement with the City and they are now stating that two sit down restaurants are not feasible. By approving an amendment, the City would be moving away from over 14,000 square feet of promised sit down dining area for the community, reducing the 137 parking spaces alluded to by Council Member Chang to 105. He felt that there may be some value to amending the agreement to a 5,000-6,000 square feet of sit down dining for the community, but wanted to know what the value of losing 8,000 square feet of sit down dining to the community. He felt that these issues need to be discussed before moving forward with the request. Should the Council decide to deny the application this evening, it is not stating that the Council is denying the opportunity for In-And-Out Burger to operate in Morgan Hill or at this location but that the Council needs to explore other options before it is willing to amend the agreement to allow this to happen.

Action: *Council Member Tate made a motion, seconded by Mayor Pro Tempore Carr, to* ***Adopt*** *Resolution No. 5613, Denying the Zoning Amendment Application.*

Mayor Kennedy stated that he would be voting against the motion to deny the application as it was his belief that it would be appropriate to table the application. He felt that both the In-And-Out Burger and a sit down restaurant could work.

Mayor Pro Tempore Carr requested clarification that should the Council table this item, it would return at an unspecified date.

Mayor Kennedy clarified that there would be a commitment of a sit down restaurant being brought back to the Council as well as the In-And-Out Burger.

Council Member Chang stated that she would want to have one sit down restaurant in place and then she would consider the second site. She did not want to combine In-And-Out Burger and a sit down restaurant as one package.

Mayor Pro Tempore Carr said that by his second to the motion, he would not be ruling out the option as presented by Mayor Kennedy. However, he did not want to limit it to being the only option.

Council Members Sellers stated that he would like to explore the highest and best use of the site. He felt that In-And-Out Burger has a place in this community but that the City needs to figure out where that location should be. He recommended that everyone figure out how to implement the development agreement, whether that means being more flexible in pricing or showing the City

significant economic data. If the application is denied this evening, he wanted to make it clear that it is part of the process and not a finality. He said that the Council would like to continue to look for the highest and best use of the property.

Vote: *The motion carried 4-1 with Mayor Kennedy voting no.*

City Council Action

OTHER BUSINESS

13. REVIEW OPTIONS FOR CORY LANE DUPLEX

Director of Business Assistance and Housing Services Toy presented the staff report.

Mayor Kennedy inquired if the Redevelopment Agency owns land that is suitable for housing, exclusive of the Watsonville Road property? If not, is staff looking at acquiring land for housing?

Mr. Toy responded that the only other property that the Agency would have is the Third Street property. He noted that the General Plan slated this property to be a park. Therefore, the City/Redevelopment Agency does not have property available for housing. The City may have other projects along Monterey Road, working with South County Housing. However, he was not sure if the duplex would be suitable within whatever development would occur on Monterey Road. He said that the City has rehab programs taking place and larger projects that the Council has deemed should be investigated with the possibility of land acquisition. He informed the Council that at one point, staff proposed an infill project. At time of the housing workplan discussion, it was determined that it was not a high priority and that the City should not proceed with this type of program.

Council Member Sellers noted that should the Council have an exemption in place that would allow individuals to purchase old homes and tear them down, with the units built elsewhere. He felt that the Council could narrow the Measure P exemption policy to allow existing units to be transferred to a vacant lot as units would not be added to the housing stock. He inquired if the Measure P exemption policy could be narrowed such that it would allow moving existing units to another site?

Mr. Toy responded that it was his belief that a policy could be structured to allow transfer of units to be used for affordable housing. He said that the Council could study to see how it could limit abuses from happening.

City Manager Tewes stated that under the policy question of whether the Council wishes to adopt as a high priority acquiring potential sites for housing development would be a subject of the Housing Strategy that the Council directed be prepared and be presented in December. The Council has been advised about some of the Measure P constraints. He said that there are also constraints in Redevelopment Law in that the Redevelopment Agency cannot purchase and hold property. The Redevelopment Agency can only acquire property for purpose of development. Therefore, the ability of the City to land bank is somewhat limited.

Mr. Toy informed the Council that the Third Street property was purchased with 80% non housing

set aside funds and therefore, the property can be held for a longer period of time. He said that the property is not currently planned for development. He informed the City Council that staff would need an agreement in place by December with a plan of moving the duplex by January, clearing the site by February so that the Butterfield extension is not delayed.

Mayor Kennedy opened the floor to public comment.

Rocke Garcia indicated that he is developing the Capriano project located at the north end of town. He said that he has been awarded 11 allotments and proposes to be build one BMR unit. He has an approval for 94 units which require the construction of 9 BMR units. If he is able to acquire this extra housing unit, he would be able to build a BMR duplex. He would like to use the demolished unit as part of his BMR proposal in order to complete his project should the Council amend the Measure P exemption policy.

Mr. Toy clarified that staff is requesting the demolition of the duplex unit for the Butterfield Boulevard extension. Mr. Garcia is requesting the credit from this unit to be used in his development in order to complete his BMR duet and that under discussion is the preservation of the duplex this evening. He clarified that there are two units on site: a duplex and a single family home, noting that the Council previously approved the demolition of the single family unit. He said that the current Measure P exemption policy does not allow transfer of units from one parcel to another.

Mayor Kennedy said that he would be comfortable in moving ahead with the demolition of the duplex unit and with the allocations after reviewing the staff report and receiving responses to questions made.

Council Member Sellers stated that he would support demolition of the duplex unit but that he was anxious about losing housing units. He felt that the duplex unit has value but not as a BMR unit. He said that he would like to see the city capture the housing unit asset, using the asset to have BMR units built earlier. He said that he would be comfortable with moving forward with the demolition. He felt that the Council has a window period to explore if there is someone willing to move and rehab the duplex unit. He felt that these are the type of units that a good segment of the population needs and that he would hate to see their loss. He noted that staff indicated that it would be viable to consider options in the next three months and recommended that options be explored during this period of time.

Action: *Council Member Sellers made a motion to have staff explore options for moving and rehabilitating the duplex unit provided that it would be financially viable and that it fits in within the time frame of the perceived Butterfield Extension. The Motion died for the lack of a second.*

Mayor Pro Tempore Carr said that although it is a noble goal to try to preserve what is seen as affordable housing, he was afraid that the Council would be spending too much Council, staff and community time in trying to figure out a way to preserve the duplex unit. He felt that it would be better served to allow the units to be demolished. He felt that due diligence went into checking to see if there is anyone interested in moving and rehabilitating the units, noting that staff has not been able to find anyone willing to do so. However, he felt that the Council needs to work on an

exemption that would take care of a builder's problem to get a BMR unit built quicker versus moving units to another site. If the city was to demolish a single family home and be able to transfer the allocation to be built elsewhere, tying some sort of affordability, would add value to the community versus rehabilitating and moving the unit. He was not sure if the structures were worth saving but felt that the conversation about preserving the unit as an affordable dwelling unit is something that the Council should find a way to make it happen.

Council Member Tate agreed with the comments of Mayor Pro Tempore Carr. He was swayed by the subliminal comments contained in the staff report, pictures presented, and visiting the site, noting that the units were moved once before. He recommended that demolition be approved and that the City not spend more time on the issue. He further recommended that the Council devote its attention to the right thing to do in the future in order to support additional housing with reallocation of these types of units.

Council Member Sellers agreed with Mayor Pro Tempore Carr and Council Member Tate as long as the Council can come up with a way to capture the two allocations of the duplex.

Council Member Chang said that should the Council authorize demolition of the duplex units, the population count would drop.

Mayor Pro Tempore Carr recommended that the Council tie demolition with transfer of the units to an affordable project.

Mayor Kennedy stated that he sees support by the majority of the City Council to demolish the units, developing a policy direction.

Mayor Pro Tempore Carr recommended that these three units get grandfathered into whatever policy is adopted.

Action: *It was the consensus of the majority of the Council that the duplex units should be demolished,* ***directing*** *staff to develop a policy for Council consideration that addresses the issue of preserving the units by means of transferring them as affordable housing units.*

Mayor/Chairman Kennedy recommended that agenda item 18 be considered at this time.

Redevelopment Agency Action

OTHER BUSINESS

18. WATSONVILLE ROAD HOUSING CONCEPT

Director of Business Assistance and Housing Services Toy presented the staff report for a development concept of a Watsonville Road teacher, police officer, and/or public employee housing project on Agency owned property for a total of seven units. He indicated that the total cost for the proposed housing concept would be $1.15 million of which $250,000 would come back at the close

of escrow, noting that $400,000 is attributed to land cost. The total cost to construct the project would be approximately $2.7 million plus the land.

Vice-chairwoman Chang inquired why a $3.3 million loan is required if it is being projected to be a $2.7 million project?

Mr. Toy responded that the construction cost is $2.7 million plus $400,000 for land cost equates to $3.1 million for the project. Of this $3.1 million, the Agency's ultimate contribution would be approximately $900,000 and that the construction financing would be approximately $2.2 million. This would equate to approximately $440,000 per unit to be sold at approximately $330,000 per unit. He indicated that 4 bedroom units are proposed at 1,400 square feet.

Jan Lowanthal, South County Housing, indicated that three duplexes and one stand-alone unit are proposed. She said that the construction estimate includes new city fees which equate to $46,000 per unit, a significant impact to the cost of $82 per square feet. She said that the other costs are fairly standard with single family development except that with this small seven-unit project, there is no economy of scale. She indicated that she is analyzing different scenarios and that she is seeking direction from the Agency Board regarding the scenario summarized this evening. It is the goal to structure the project to minimize the City's investment above and beyond the land as much as possible. She estimated that the soft costs would be at $705,000.

Agency Member Carr inquired whether there was a way to achieve additional units? Ms. Lowanthal responded that an additional unit or two could be accommodated, lowering the per unit cost.

Chairman Kennedy suggested that the project consist of three and four bedroom units in order to achieve additional units.

Ms. Maskell indicated that staff spoke to the developer of the adjacent project who voiced that there could be some residents who may object to a higher density project.

Agency Member Tate stated that he liked the fact that the project is proposed as four bedroom units.

Agency Member Carr asked whether entry level teachers need a four bedroom housing unit?

Agency Member Sellers felt that the goal should be to provide affordable housing for teachers with a concurrent goal of retaining good teachers in our community. He felt that the City should try to figure out a way to come up with units that teachers are interested in, understanding the concerns of the neighbors.

Agency Member Carr stated that he would like to add more units to the project in order to lower the per unit cost and to provide a better benefit. He felt that discussion can be undertaken with the neighbors where they may be concerned about a different type of product being constructed, noting that the City is talking about a specific market. He felt that a lot of the concerns that may come up from the neighborhood could easily be allayed by advising that the units are being constructed for teachers, police officers and/or public employees. He inquired if significant units could be achieved if this was not a for sale project?

Ms. Lowanthal said that developing an apartment project would achieve twice as many units and could be leased at a significantly reduced cost for teachers, police officers, and public employees. She indicated that she could look at different scenarios for smaller sized units such as attached townhomes that would consist of two, three and four-bedrooms. She indicated that this is a pilot initiative being undertaken by the City and that she is excited to partner with the City on this project. However, she noted that this is the beginning of discussions and that there are a lot of questions to be answered. It is her job to analyze different options for the City to consider and what would make the most sense and what earns the highest public benefit. She said that she was more than willing to perform the analysis for staff. She indicated that the proposal before the Council is being designed as duet type units.

Chairman Kennedy said that duet units seem to be a successful model in the City for cutting costs and at the same time keeping the quality of the project up. He felt that this was a good project concept.

Vice-chairwoman Chang inquired what would happen when teachers or police officers decide to sell? She inquired whether there were any limitations on reselling affordable units?

Ms. Lowanthal stated that what is being discussed at this point is a resale restriction that would allow the unit to first be offered to another public employee and then be offered to another income eligible family. She stated that South County Housing would maintain two waiting lists of potentially interested buyers in the event of the resale. She said that the resale price would be restricted so that it would be affordable to the same income levels over time.

Agency Member Sellers inquired if there was a time constraint in order to move forward, noting that different concepts have been raised this evening?

Ms. Lowanthal said that it is South County Housing's goal to apply for a Measure P allocation. From the stand point of putting together a qualifying Measure P application, it needs to be known what concept is being pursued within the next 60 days.

Business Assistance and Housing Manager Maskell stated that staff would like to know the direction the Agency would like it to proceed with the project.

Agency Member Sellers did not believe that entry level teachers need four bedroom units. He recommended that if there is a 60-day leeway that a month be taken to explore other viable options.

Chairman Kennedy felt that it was important to know what size units are required by teachers.

Agency Member Sellers felt that the architectural styles of the units need to be high quality for the long term viability of the project.

Agency Member Carr felt that more than seven units would be appropriate for this property.

Action: *It was the consensus of the Agency Board to **direct** staff to return with information on the questions raised this evening.*

Executive Director Tewes felt that the Agency Board has indirectly answered what he felt was the most important threshold question of whether it was willing to contribute more than the land to this project. He said that it appears to be implied that the Agency Board was willing to contribute more than the land.

14. COMMUNITY AND CULTURAL CENTER PROJECT ADDITIONAL FUNDING REQUEST

Director of Public Works Ashcraft presented the staff report. He addressed the project cost history, why budget adjustments were needed, lessons learned and steps to take in order to avoid future problems. He indicated that Steve Nielsen, construction manager with Consolidated CM; Armando Tiscareno with DPR; and Glenn Ridder, project manager, were present to answer questions that the Council may have. He distributed a project funding history and funding recommendation being requested this evening for a total project cost of $14,333,755, noting that there may be opportunities for reimbursement later that may replenish some of the funding. He indicated that Mayor Kennedy, Steve Nielsen, Franz Steiner with VBN and Glen Ridder met today to review various documents. Mr. Steiner admitted some errors in the design that necessitated change orders. It was staff's belief that there was some financial liability on the part of VBN for a significant amount of the total change orders. He said that the design team is working well together in order to complete the project on time and as close to budget as possible. He said that at the final reconciliation, there will be time spent on the issue of whether the City should be reimbursed for some of the money it is spending.

Chairman Kennedy indicated that he met with Glen Ridder, Steve Nielsen, Franz Steiner and Mr. Ashcraft today in order to review several of the items. He felt that City would be getting a beautiful facility once completed and that this is the overriding point that should not be lost as the Council reviews all costs. He said that there were significant structural design defects. He stated that he would be recommending initiation of litigation in closed session in order to recover some of these costs. He felt that the City needs to take legal action against the architect and some of their engineers. He indicated that it is unfortunate that this has occurred on a project that brings a lot of value to the community. He did not believe that the City should be stuck with someone else's mistakes. He said that there are a variety of costs that can be eliminated in both the change order list and the anticipated additional costs. The City could issue a stop work order on the trellis for $90,000 and rely on fundraising and/or community donors to help pay for this cost. Another cost savings would be to eliminate the bus shelter. He noted that there were other costs for various items anticipated such as screening of the HVAC equipment that the architect and engineers overlooked. He felt that the City needs to be consistent in meeting City standards that is required of other developers.

Mr. Ashcraft identified items that could be eliminated to afford some cost savings for a total of $125,000 (e.g., kiln, screening of HVAC, trellis, and bus shelter).

Agency Member Tate noted that screening of the HVAC equipment is required in order to meet City codes.

Chairman Kennedy felt that there may be a way to screen the HVAC equipment in such a way that it is screened but without performing an elaborate screening process in order to realize cost savings.

Agency Member Sellers appreciated the time that Mayor Kennedy has put into this issue and for his professional expertise. He requested that Mayor Kennedy identify how he thinks the City should proceed, noting that the items identified for elimination at this time would make the project look nicer.

Chairman Kennedy said that the problem with the kiln is that it was designed to be placed outside the building, noting that the kiln is not weather proof. There would be the cost to build a structure in order to cover the kiln. He indicated that the kiln was overlooked in the specifications. He felt that contributions could be collected to complete the kiln.

Agency Member Tate felt that the items identified for possible elimination are important to the basic quality of the project.

Agency Member Sellers noted that the City has a strong case for receiving a significant amount of funding back in the future. He felt that should the items that would make the project attractive be deferred, it would end up costing the City more at a later date.

Mr. Ashcraft indicated that he has advised the Valley Transportation Authority (VTA) that they need to remove the advertising bus shelter as it has been agreed that a non advertised shelter was to be installed. He said that VTA would be maintaining the bus shelter and that the City would receive $50 a month for having the bus shelter. He indicated that the proposed cost for the bus shelter would be replaced with a custom bus shelter. However, he was not sure whether VTA would maintain the custom bus shelter which may result in added maintenance costs.

Agency Member Sellers felt that with future projects, the Council needs to review time issues more carefully and provide staff the opportunity to slow down the project, if necessary. He said that at time of approval, the Council set a low contingency and that he knows that the odds were significantly high that the Council would end up seeing the project return for funding. Had the Council approved a 10% contingency, the Council would not be hearing all of the issues that are being raised.

Chairman Kennedy opened the floor to public comment.

Armando Tiscareno, construction manager for DPR Construction, stated that typically, a 6-8% contingency is provided for public works projects. He stated that the Council can set the contingency budget at 10% or higher for construction and that the City still has to approve the use of the contingency fund. Setting the contingency at 10% would eliminate the need for staff or the contractor to return to the Council seeking additional funding which results in more work for everyone.

Chairman Kennedy asked Steve Nielsen his thoughts on how the City can avoid these kinds of problems in the future.

Steve Nielsen stated that he found the design schedule acceptable even though he was not included early on in assessing the schedule. He felt that every public works project typically exceeds the original budget amount. He felt that the issue on this project and other projects is that architects are

being pressed more and more to give more service for less. He said that there is a way to assist architects in being successful that is having someone other than the architects watching the architects. He felt that the Council is going a long way to solving a lot of these problems by creating an in house architect position. Having the oversight at the beginning of a project will help by meeting with the architect or the design team on a regular bases to make sure that coordination occurs.

Agency Member Tate agreed with the lessons learned and that one should spend the time up front. He felt that this is something that the Council has to focus on, noting that the Council is pushing very hard. He felt that this is a policy matter that the Council needs to take into advisement.

Chairman Kennedy felt that staff needs to freeze the design at a certain point. If staff allows the Council to continue changing the requirements after the drawings are at a certain point such as 50%, changes would only result in additional costs to the project. He stated that it would take a lot of discipline and willingness on the part of staff to tell Council members that there should be no more changes to a project.

Mr. Nielsen said that there are certain things that can be established as benchmarks for the design. He felt that having an in house architect to make sure that each step is covered will allow the Council flexibility in design.

No further comments were offered.

Vice-chairwoman Chang stated that she was pleased with the entire project and with the fact that the project is not over 8% of the total budget, noting that the project is ahead of schedule. She said that she did blame the architect for all of the problems being experienced as the Council pushed the project and went out to bid right of way. She felt that part of the situation is the Council's responsibility. She noted that there is not much funding left in the unallocated RDA funds as there is a current balance of $790,000. If the Council uses $480,000, the remaining balance of unallocated RDA projects would be $310,000. She felt that the lessons learned with this project are important because there are no funds available to meet increased project costs.

Agency Member Sellers agreed that the Council learned a lot, noting that the Council set a low contingency. He felt that the discussions undertaken this evening have been enlightening and that they were not excessively outside of what the Council could have anticipated in the course of time. He felt that with the same group of Council members on the dias for the next couple of years would give the Council an opportunity to take the lessons learned in the initial steps and try to come at or below where the City is on this project.

Chairman Kennedy wanted to relay a message to staff that the City needs to look carefully before approving change orders for any additional work that is remaining. Although he would be supporting the motion, he did not want this to imply that the City does not have its work cut out to push back and contain costs.

Action: *On a motion by Council/Agency Member Sellers and Seconded by Council/Agency Member Tate, the City Council/Agency Board unanimously (5-0)* ***Appropriated*** *an*

Additional $480,000 From the Current Redevelopment Agency's Project Contingency Balance to Augment the Total Project Budget.

Action: *On a motion by Council/Agency Member Sellers and Seconded by Council/Agency Member Tate, the City Council/Agency Board unanimously (5-0)* ***Appropriated*** *$250,000 for Park Development Costs From the Current Unappropriated Park Impact Fund Balance.*

Action: *On a motion by Council/Agency Member Sellers and Seconded by Council/Agency Member Tate, the City Council/Agency Board unanimously (5-0)* ***Approved*** *Amendment to Consultant Agreement with Consolidated CM to Add $80,590 to Their Current $284,545 Contract, Subject to Review by the City Attorney.*

Action: *On a motion by Council/Agency Member Sellers and Seconded by Council/Agency Member Tate, the City Council/Agency Board unanimously (5-0)* ***Approved*** *Amendment to Consultant Agreement with David F. Eddings Associates to Add $28,800 to Their Current $96,000 Contract, Subject to Review by City Attorney.*

Action: *On a motion by Mayor Pro Tempore/Agency Member Carr and seconded by Council/Agency Member Sellers, the City Council/Agency Board* ***agreed*** *to extend the meeting curfew.*

15. REQUEST FROM SANTA CLARA COUNTY DOMESTIC VIOLENCE COUNCIL FOR CITY SPONSORSHIP OF THE 10TH ANNUAL DOMESTIC VIOLENCE CONFERENCE

Council Services and Records Manager Torrez presented the staff report, indicating that as part of the 5% budget reduction, she did not include funding for non profit agencies outside of Morgan Hill. Funding was included for local agencies and for local community activities such as the Taste of Morgan Hill, Independence Day, Inc. Fourth of July activities, and Youth Empowered for Success. She indicated that the Council can allocate $5,000 from the General Fund balance to sponsor the 10th annual Domestic Violence Conference and other requests from non profits that the City may receive during the fiscal year.

Council Member Tate said that at time of budget review, the Council made a conscious decision to restrict items because of the budget conditions. He felt that the Council should live within these restrictions. He said that there are many worthwhile items that the Council would like to support such as this one, but he did not know where funding would stop.

Council Member Sellers recommended that the Council forward its expression of support with an explanation be given about the City's budget constraints and budgetary decision to focus on events that take place within the City limits. Therefore, the City would not be able to sponsor the conference this year.

Action: *By consensus, the City Council* ***Directed*** *staff to prepare a letter to the Santa Clara County Domestic Violence Council sending the City's support of the annual domestic*

violence conference, explaining budget constraints

16. ADOPT ORDINANCE NO. 1581, NEW SERIES

Action: *On a motion by Council Member Tate and Seconded by Council Member Sellers, the City Council* ***Adopted*** *Ordinance No. 1581, New Series as follows: An Ordinance of the City Council of the City of Morgan Hill Amending Sections 3.56.050 of Chapter 3.56 (Development Impact Mitigation Fees) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill Regarding Development Impact Mitigation Fees by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

17. ADOPT ORDINANCE NO. 1582, NEW SERIES

Action: *On a motion by Council Member Tate and Seconded by Council Member Sellers, the City Council* ***Adopted*** *Ordinance No. 1582, New Series as follows: An Ordinance of the City Council of the City of Morgan Hill Approving of a Development Agreement, DA-02-03: Hale-Glenrock/Shea for Application MP 01-04: Tilton-Glenrock (APN's 764-09–026 & 027). by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

OPPORTUNITY FOR PUBLIC COMMENT - CONTINUED CLOSED SESSION

Mayor/Chairperson Kennedy opened the closed session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairperson Kennedy adjourned the meeting to closed session at 11:18 p.m.

RECONVENE

Mayor/Chairperson Kennedy reconvened the meeting at 12:11 a.m.

CLOSED SESSION ANNOUNCEMENT

Agency Counsel/City Attorney Leichter announced that no reportable action was taken in closed session.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were noted.

ADJOURNMENT

There being no further business, Mayor/Chairperson Kennedy adjourned the meeting at 12:12 a.m.

MINUTES RECORDED AND PREPARED BY

IRMA TORREZ, City Clerk/Agency Secretary