

The meeting was called to order by Chair Massey at 7:30pm. Those present were: Commissioners Bonilla, Whitaker, Drechsler, Vice-Chair Hugg, and Chair Massey

Minutes of 5/13/14: The following changes to the minutes were noted:

- On page 2, 6th bullet, change northeastern side to northern side
- On page 5, last bullet, on ramps & off ramps at El Camino are being changed; lower part of page "commission had following question" 1st bullet, last line – entire discussion was about bikes and pedestrians and not cars/pedestrians
- On page 6, 2nd bullet, end of first sentence, circulation of streets bidirectional? Bi-directional and one-way: 7th bullet under commission comments – "would like to see more retail use scattered about the project and not concentrated in one corner. Revised site plan proposes 4 blocks rather than 8. Fewer buildings is less interesting on the walk to CalTrain."
- Motion by Bonilla, 2nd by Drechsler to approve as amended. Vote 5-0

The Planning Commission Chair opened the public comment period. No one wishing to speak the Chair closed the public comment period.

**ITEM 1
BRIDGEPOINTE
STUDY SESSION**

Tricia Schimpp, Contract Senior Planner, gave the staff presentation.

C. J. Higley, attorney with Coblenz, Patch, Duffy & Bass gave the applicant presentation:

- Focus on optimal mix of retail tenants and provide City with recreational fee to support active recreational opportunities elsewhere in the City
- Important for shopping centers to continue to evolve and keep up to date with customer preferences to remain competitive
- Unsuccessful retail center bad for local economy and community totality
- Ice rink end of center has underperformed
- 4 out of 6 tenants on the Lot 5 end of the center have vacated or gone out of business while no tenants on the other side have vacated or gone out of business
- More anchor tenants to stabilize on Lot 5 end of the center to stabilize it and keep it viable
- Owners need the flexibility to remain viable and evolve
- Increase in tax revenue of \$300,000 to the city
- City would receive funding equivalent to the recreational benefit that it had from the ice rink and move the recreational use to an area more appropriate
- More sales tax in the future as Bridgepointe is the City's largest sales tax generator with over \$2 million dollars per year in sales tax
- Good economic policy for the center
- Retain recreational opportunity off site in a place that makes more sense for the City

City Attorney: whether or not to change the land use designation? Questions raised of whether the city can force continued operation of the ice rink. The Conditions of Approval and Environmental Impact Report do not provide any authority to allow City to require continued operation of the ice rink. The city does have the power to approve/deny the land use designation request.

Due to the large volume of people on a petition to save the ice rink, the Chair allowed the petition group to make a 15 minute presentation. Camas Steinmetz spoke on behalf of the group:

- Allow Bridgepointe to keep the rink empty and vacant or convert it to retail for undisclosed recreational fee
- City must conduct proper due diligence
- Record is replete with evidence that continued operation of ice rink was a critical and essential component of master plan approval.
- Developer promised and City expected to receive the benefit of an operating ice rink.
- In the Administrative Report 11/11/94 ice rink was significant constraint imposed on master plan approval and was included in all 9 versions of the plan alternatives.
- In letter dated 9/28/95, the developer touted the ice rink as a benefit of the project and at neighborhood meeting and public hearing with the City they promised the ice rink would be retained.
- City approved master plan and adopted a Statement of Overriding Considerations which listed ice rink as significant benefit that outweighed unavoidable environmental impact
- Does SPI have contractual obligation to operate the ice rink and can City enforce this obligation?
- Did SPI breach a duty of good faith and fair dealing by shutting the ice rink down, thereby preventing the City from receiving the benefit of an operational ice rink that it listed in its Statement of Overriding Considerations and approving the project?
- Can City forego and prevent residents from receiving one of the explicit benefits that justified the unavoidable impacts of the project under the California Environmental Quality Act?
- Urge you to direct City Attorney to thoroughly analyze these questions and to explore other tools City could adopt to require or encourage operation of ice rink.
- Many cities adopt ordinances to revitalize vacant retail/commercial spaces: Sacramento has vacant building ordinance that prohibits building vacancies unless building is actively marketed for sale or rent or building is being worked on under active permit, other cities have adopted commercial vacancy tax and tax incentive programs.
- Urge you to direct City Attorney to inform re legal rights, remedies and tools to required operational ice rink it expected to receive when original master plan was approved.

Len Rosenduft also spoke on behalf of the petition group:

- There are 10,000 signatures in the hard copy, as well as the 4,500 signatures on the online petition.
- Certain things are expected when enter into a contract. Approval was given for the project with design constraints that did not expect to have a dormant building.
- 1 year since ice rink closed down popular ice rink and restaurant – jobs gone, ice skating community thrown out onto street and there is no other alternative use.

- Hoped developer would have kept rink open until issue resolved and hope that City would insist that the developer do that until issue resolved – could be year or two – could be 3 years without an alternative use approved.
- Request a detail economic impact analysis
- Consider SPI project in Berkeley where SPI defaulted on the property
- Look at the 1997-98 record
- Rink was used from 5am – midnight daily – popular rink
- Without rink, kids have to travel out of city for programs that were previously available in City
- Be sure City has assurances that the developer will be part of the solution
- Consider environmental impact of new construction on site – pile drivers, etc.
- Consider economic analysis and impact on property values, what City loses probably does not compare to what SPI offering in return, how City is currently underserved by recreational facilities and update to analysis that was previously conducted, deeper dive into legal analysis and consider environmental impacts

Dina Artzt also spoke for the petition group:

- Distributed binders to Commissioners containing their review of City documents going back to original approval of the master plan
- Showed photos of original rink and renovated rink – original ice rink was untouched – this is history and will be big shame if a store replaces history

Jeremy Verbo also spoke for the petition group:

- The group supports efforts of others to build a new ice rink in the community
- Rink must be immediately reopened as the community is being deprived of the benefit.
- Reject the application to build retail uses in place of ice rink until after a new rink is built.

The Chair opened the Public Comment Period for individuals to speak. The following people spoke: Ray Miolla, Burlingame; Mike Strambi, San Mateo; Dina Artzt, Belmont; Len Rosenduft, Belmont; Bill Nack, Foster City; Karen Herrel, San Mateo; Victoria Ouye, San Mateo; James Wood, Berkeley; Susan Rowinski, San Mateo; Kaye Sharma, San Mateo; Julie McAuliffe, San Mateo; Bryon Foys, Redwood City; Christine Stiles, San Mateo; Kenneth Tonna, San Mateo; Marina Tonna, Daly City; Jennifer Christensen, San Mateo; Brian Christensen, San Mateo; Susan Delance, San Jose; Sarah Stowers, San Mateo; Gene Ouye, San Mateo; Michael Stecher, Redwood City; Julie Ann Feddock, San Mateo; Ryan McAuliffe, San Mateo; Donald Osterberg, Redwood City; Anne McCollum, Foster City; Bertha Sanchez, San Mateo; Jill Striegel, San Mateo; Sandra Berry, Foster City; Kevin Tom, Redwood City; Todd Friedman, Burlingame; Marcie Kottmeier, San Mateo; Jenifer Clark, San Mateo; Rowan Cary-Clark, San Mateo; Leah Murray, San Mateo; Sabrina Guerrero, Burlingame; Rich Hedges, San Mateo; Liam Friedman, Burlingame.

Their comments included the following:

- Relocation of the Rink is a possibility
- Examining a corporate sponsor for a new rink
- Below Market Rate lease amounts could be possible for a relocated Ice Rink
- Need to raise between \$7 - \$9 million dollars (amount contributed by SPI would be deducted from the amount needed to raise.) Need 2 years to raise funding.

- Room for two rinks
- Many new programs would be offered with a new site
- If new rink is built, construction workers should be paid prevailing wages
- Be sure to read entire public record since the master plan was approved.
- Ice rinks fill a very unique role in the city, different from tennis courts, etc.
- How is SPI going to show the community that they are acting in good faith? Ice rink shut down before filing a Planning Application is not a gesture of good-faith
- Continued growth in population of the city is supported by infrastructure, including recreational uses
- Need to balance a business with the people that live here
- Need to keep the recreational site as an ice rink
- Trends are leaning towards more e-commerce; is more retail space really the way to go?
- Skating is a life sport
- Many activities at the ice rink for all ages and all levels
- Hardship for residents of San Mateo to travel to other cities for skating practice early in morning and late at night
- Spend a lot of money shopping out of San Mateo because of loss of rink
- Preserve the recreational offering of the rink – enforce the ordinance
- Want Commission to listen to the community – clearly the community wants to reopen the rink
- Concern about corporate sponsor for new ice rink to last in perpetuity
- Would frequent other retail locations while skating at the ice rink
- Did all my shopping at Bridgepointe while family was at the rink
- Spend my money here because of the rink. Now that it is gone I don't spend my money here
- SPI should not profit by taking away the rink
- People at the Bridgepointe Apartments do not want noise impacts from new construction at Bridgepointe
- SPI knows it will be a long process and are not dealing in good faith by closing the rink
- The City is responsible for letting the rink be closed
- How much tax revenue is being lost by the ice rink closure?
- The rink was closed for 2 years in the previous application
- Huge amounts of important recreation (race track, golf course, ballroom) have been lost, don't lose this one.
- Driving to ice rinks in Dublin, Stockton and other cities farther away is creating a financial burden on families
- SPI entered into a social contract with the community with the master plan approval and knew it was a financial risk – money should not be considered to change it
- Hockey tournaments bring a lot of money in for hotels, shops, etc.
- Why hasn't SPI kept the rink open while pursuing the change in the Master Plan?
- The rink didn't cause the failure of the businesses at that end of the shopping center
- The center was built around the rink
- Find a way, policy wise, to reopen the rink
- Lots of memories were made at the rink – met her future husband there
- Public benefit money should be used for all of San Mateo residents, especially parks
- Direct City Attorney to subpoena the tenants records

- City is losing shoppers to other cities where they go to ice rinks – parents shop there while kids have ice time

No one else wishing to speak, the chair closed the public hearing.

Planning Commission and Staff responses to questions/comments from the public.

Chair: Planning Commissioners are not elected officials. They are volunteers appointed by City Council to make recommendations to them.

- City Attorney: Couple of references to asking the Commission to enforce an ordinance or to enforces the terms of an agreement. There is no ordinance that was enacted in conjunction this Planning Application to require the rink to stay in operation. No agreement with the owner promises to operate the ice rink. We have a Planning Application where the applicant applied for a land use designation of an ice rink and was approved. I have studied the Conditions of Approval and have not found anything promising to operate the rink. We have Conditions of Approval but no ordinance on point.
- Commissioner: does that mean that their use permit is not enforceable because this public benefit has been denied?
- City Attorney: they did not apply for a permit but for a master plan approved and the Master Plan said we would like you to approve our use of the property for retail and for this ice rink. The city approved what was applied for, which was a land use designation.
- Commissioner: Going further back, when that public benefit was agreed upon and not being made available at this time, what is enforceable about that?
- City Attorney and staff: Public benefit associated with this use was the cash payment made for the office benefit so that the builder could go to 75' as in Measure H. No development agreement as part of the Bridgepointe shopping center application. Offices at Bridgepointe were allowed to go beyond the 55'. Difference between project benefits versus public benefit – the ice rink was a project benefit included in the Statement of Overriding Considerations

Questions raised by the public:

- Who owns the lot for Home Depot and 3 restaurants parcel? *Staff: we will research that and give the Commission the answer. Applicant: Home Depot owns their own parcel and sold the area where the 3 restaurants are.*

Planning Commission questions to staff or the applicant:

- Historical documents showed that Parks & Recreation had contracts for youth skating, etc. Were any of those programs operational when the rink was discontinued? *Staff: we will have to look into it.*
- When the motions in prior documents were made and approved, the Mitigation Monitoring and Reporting Program (MMRP) – no mitigation measures directly related to the ice rink. There were mitigation measures made for traffic, congestion, etc. Were annual reports ever submitted in compliance with the MMRP? Staff is not aware of any reports. Those reports should be found and made available or some other explanation made.

- Site built on land-fill is susceptible to flooding. What is the current grade on this site? *Staff: we have not progressed to the point of studies to answer that question. That would be answered once a formal planning application is submitted, along with traffic, etc.*
- Truck traffic was to be precluded in certain areas. This was also to be monitored and it was not. It should have been specified in the MMRP. *Staff: we would work through Public Works to address that and other traffic concerns.*
- Annual report to the police department regarding security. Were these ever done? *Staff: we are not aware of specific reports made available to the police department but we will look into that.*

The Planning Commission had the following comments:

- This has been a passionate issue (subject) for the speakers tonight. I don't appreciate the rink not being available. The people that live and recreate here spend money here. On the evening of the 24th, at the neighborhood meeting, the comments were passionate from the little athletes. Not a good example of corporate ethics.
- Regardless of how long this process takes, the rink should be open. The rink helped get the project approved. I haven't seen anything to prove that the lack of that facility would make the center more financially stable. There are now fewer people at the center, businesses probably have seen less revenue.
- Physical health is linked to mental health. It isn't right to take that from our community. Our current mayor proposed some concepts that have yet to be addressed – perhaps they should have been on the 24th. If you are going to take something away from the community it is only fair that you give back something of equal value.
- Many thanks for those who took time out of their evening to come down here to speak. What has changed since 1997? The community has changed quite a bit. Over the next 30 years there will be a growth in the population of San Mateo. Amenities are going to be needed. There are not a lot of backyards for people anymore. This underscores the need for a variety of amenities for the community. What has changed to justify the shift in retail strategy? I'm willing to listen to the alternatives but I don't believe it was a good faith gesture by SPI to cut off the amenity before starting the discussion. In this case there was no discussion, just a cutting off of the amenity. What makes a successful community? Many things make up a healthy community and it is not always monetary.
- Why was the rink closed in the first place? I have not heard a good explanation. I believe a thorough economic analysis of the site is needed, both before and after. I would like to see an analysis of the needs of Parks and Recreation. Why is this amenity being sacrificed?
- I appreciate the comments about why the city cannot compel SPI to maintain the rink. I do want to see a further analysis of why not?
- What is the impact of the elimination of the amenity in regards to the EIR? If we eliminate this amenity what is the environmental impact – vehicle miles traveled by people driving farther in order to get their children to other ice rinks.
- Is it possible to make this a win-win situation? Perhaps retail above the ice rink. They can go above the 55' height limit with sufficient public benefit.
- The bar has been set high to replace an amenity such as the ice rink, to provide a use that is as valuable to the community as this is.

- What is SPI thinking to come back to us with this request? What has really changed since 1998? This amenity was foundational to the approval of this site. What does it do to the approval if you remove this key building block from the entire construct?
- The ice rink was never intended as a profit center. This rink was left there to get the people there to shop and make money in other ways. Regarding the developer being forced to operate the rink – of course, there was never a written mandate to operate the rink. It was always understood that an approved land-use would be operated.
- I want to see financial reports regarding the center? How much revenue was generated by the rink and the restaurant that has been lost? What could be expected from new retail? A financially focused feasibility study is warranted.
- Are there any other operators that would come in and operate a new rink? What are the operating costs? What would be the feasibility of subsidizing another operator? We need to ask all the same questions as in 1998.
- What are the current traffic impacts?
- Appreciation for well-written staff reports and to the public for their stamina following this issue.
- An ice rink is a unique amenity for a community. It can operate on extended hours, round the clock, regardless of weather.
- The new condition of approval specified an ice rink or alternative similar recreational use on the site. Don't believe we should consider a recreational fee in lieu of or finding another location for the ice rink. I believe that SPI has been in violation of the condition of approval for the master plan since 2012 when the rink was shut down. Deprived the skating community of a one of a kind resource. Not looking favorably at the applicant's proposal. I believe we need additional studies
- I understand SPI looking at the site and feeling that the center would be better served by 3 retail stores instead of the ice rink. I understand the request to change the master plan. I do not understand why the rink was closed while the process of eliminating the rink was pursued. It has been closed 12 months. We don't appreciate the closure of the rink. This gesture by SPI is not well-received by this Commission. We want SPI to seriously consider reopening the rink while consideration of the proposal proceeds. This is a process that is going to take quite some time.
- The approach by SPI to close the rink was apparently done without regard to how valuable this rink is to this community. This morning in the Daily Journal the mayor had offered other ideas and the applicant spoke out that this was not an accurate reporting. The applicant has not addressed these ideas.
- Some provision for removing the ice rink must be made – writing a check is not good enough.
- Cannot recommend it to the City as is – would have to recommend denial.
- This is a business matter and there is a way to resolve the issue. We need the studies that have been discussed if we are going to consider it.
- Need information from Parks and Recreation similar to study done in 1998 – what is the current figure of acres of park per thousands of population?
- Applicant has not provided a compelling reason for this change. What we are seeing here is a violation of the spirit of the law and would like the city attorney to look into this further.
- When the original Master Plan was done, it was understood that there would be a rink. I do think there is some way to work through this and encourage the city attorney do more study. I want the rink reopened while this process moves forward.

1. Communications from staff.
 - a. Meeting of the Planning Commission for June 19th to address the Housing Element
 - b. Verdun Avenue meeting coming up.
 2. Communications from the Commission
 - a. Zoning Administrator decisions coming through with no street address.
 - b. Rick Bonilla will be out during July
 - c. Joshua Hugg will be out during July
 - d. Concerns over the Notice of Pending Zoning Decision. Chief of Planning asked Commissioner to email him the file so that an explanation can be provided.
 - e. Thank you's for recent field trip.
 3. Election of Officers. It was suggested that the Election of Officers be continued to June 10, 2014. A proposal was made by the Chair – motion made by Commissioner Drechsler and 2nd by Commissioner Bonilla. Vote: 5-0 to continue the Election of Officers to June 10, 2014.
- Meeting adjourned at 10:15 pm on Tuesday, May 27, 2014.