



# CITY OF NEWARK

## Planning Commission

City Hall, City Council Chambers

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### MINUTES

Tuesday, February 28, 2023  
7:00 P.M.

#### A. ROLL CALL

Vice Chair Fitts called the meeting to order at 7:01 pm. Present were Commissioner Bogisich and Commissioner Aguilar. Chair Becker and Commissioner Pitpitan were absent.

#### B. MINUTES

**B1. Approval of Minutes of the regular Planning Commission meeting of January 10, 2023.**

**MOTION APPROVED**

Commissioner Bogisich moved, and Commissioner Aguilar seconded, to approve the Minutes of the regular Planning Commission meeting on January 10, 2023. **The motion passed – 3 AYES – 2 ABSENT.**

#### C. WRITTEN COMMUNICATIONS

None.

#### D. ORAL COMMUNICATIONS

*Members of the public are invited to address the Planning Commission on any item not listed on the agenda. Public Comments are generally limited to 5 minutes per speaker. Please note that State law prohibits the Commission from acting on non-agenda items.*

None.

## **E. PUBLIC HEARINGS**

### **E.1 Public Hearing to consider a General Plan Conformity Finding regarding the sale of two parcels located between Interstate 880 and 38600 Cedar Boulevard (APNs 092A-2585-012-01 and 092A-2585-031-00).**

**(MOTION)**

Senior Planner (SP) Carmelisa Lopez presented a General Plan Conformity Request for the sale of two city-owned properties, in which she provided a summary of the staff report and the justification for the request. She added that Waymark Development applied to the Community Development Department for a proposed residential project at 38600 Cedar Boulevard, which is now under review for entitlements. The applicant is asking for the purchase of two city-owned parcels adjacent to the project site, which is located along Cedar Boulevard near the intersection of Moores Avenue and Highway I-880. These parcels would be added to the project site if the purchase is authorized. SP Carmelisa Lopez claimed that at the February 23, 2023, City Council meeting, the Council adopted resolutions to vacate Parcel 1, declare the parcels exempt surplus land, authorize the City Manager to execute the sale and find the parcels sales exempt from the California Environmental Quality Act (CEQA). She went on to say that these parcels are eligible to be declared exempt surplus land because they meet the conditions of Streets and Highways Code Section 8330, and such conditions include being impassable for vehicular travel for five consecutive years, and no public money was spent on the maintenance of these streets, which are remnants of Timber Street and a portion of a vacated highway. These limitations release the City of the need to first offer the surplus land to affordable housing developers or other entities before providing it to another party. SP Carmelisa Lopez went on to state that the current step is for the Planning Commission to find, by resolution, that the proposed sale of the two parcels is consistent with the City's General Plan, which must be done before the parcels are sold. The City would then notify the California Department of Housing and Community Development (HCD) of the City Council's exempt surplus land determination at least 30 days before disposition. Finally, the developer must complete the sale of the parcels after receiving approval from the City Council for the entitlements. SP Carmelisa Lopez went on to say that the buyer is Cedar Boulevard Townhomes, LLC, formed by Waymark Development,

the developer, that the value of the parcels is \$156,000, appraised by Valbridge Property Advisors, the parcels must be purchased "as is," the close of escrow must occur within 120 days of the City Council's approval of the project's entitlements, the closing can occur on an earlier date or be extended if mutually agreed upon, and that prior to closing, the buyer must own the adjacent property at 38600 Cedar Boulevard. SP Carmelisa Lopez described the parcels' locations: Parcel 1 was given to the City by the State of California on July 2, 1959, after it was determined that the land was not needed for state highway purposes, and it was accepted by the City on August 13, 1959; it is approximately 4,606 square feet and is adjacent to I-880 and Parcel 2. Parcel 2 is approximately 7,448 square feet in size, adjacent to Parcel 1 and the project site, and is a segment of Timber Street owned in fee by the City and vacated by the City Council on January 23, 1969. SP Carmelisa Lopez noted that the Planning Commission must find that the proposed sale of City land is in accordance with the General Plan, as required by Government Code Section 65402. She went on to say that the properties have a Medium-Density Residential designation, which is the same as the project site, and that it is zoned for residential uses such as garden apartments, condominium units, and townhomes. She also stated that the sale of the parcels is in accordance with applicable General Plan policies: Land Use Policy LU-3.5 - work toward the eventual replacement or relocation of non-conforming industrial and heavy commercial uses located within areas designated for residential use on the General Plan Diagram and 2015 Housing Element Update Priorities - assist in the development of housing opportunities and accessibility for all economic levels in the City and remove constraints that hinder the production and conservation of housing projects. As a result, the parcels would be included in the project area. Finally, SP Carmelisa Lopez stated that the sale of the parcels is not subject to additional environmental review under CEQA because the finding does not authorize the sale of the property or approve any development thereon; therefore, the General Plan Conformity Finding will have no impact on the environment.

**Staff Recommendation:** Staff recommends that the Planning Commission find, by resolution, that the proposed sale of two parcels located between Interstate 880 and 38600 Cedar Boulevard (APNs 092A-2585-012-01 and 092A-2585-031-00) conforms with the City's General Plan.

Vice Chair Fitts asked if the Planning Commission had any questions for Staff.

Commissioner Bogisich questioned whether the appraised value for the parcels in January 2023 was for both parcels. SP Carmelisa Lopez responded affirmatively.

Vice Chair Fitts inquired if anyone in the audience wanted to comment on the item. There were no comments on the item.

Chair Fitts closed the public hearing and returned it to the Planning Commission. He asked whether there was any discussion or a motion. Commissioner Aguilar inquired as to what would happen if the developer did not proceed with the project. SP Carmelisa Lopez responded that the sale of the parcels is conditional on the project's approval, so since the sale of the properties must be completed within 120 days of the project's approval, the project would not move forward, and the City would still own the parcels.

Commissioner Aguilar noted that the Commission's role that evening was to determine whether the parcels conform to the General Plan, and since it was clear to him that they do, he then made a motion to approve. Commissioner Bogisich seconded the motion to be approved.

Vice Chair Fitts announced that **the motion passed – 3 AYES – 2 ABSENT**

## **F. STAFF REPORTS**

### **F1. Housing Element Update – Study session update regarding the draft of the 2023-2031 Housing Element**

Steven Turner, Community Development Director (CDD), said that the 2023-2031 Housing Element was now available for public review. He stated that this was the result of over a year's worth of work by City staff, the City's consultant team, members of the community, including members of the Planning Commission, who provided input regarding the goal, policies, programs, and priorities that the City should have over the next eight years to plan for housing, especially affordable housing, in a fair and equitable manner across the community. With all the work completed up to this point, Staff is ready to obtain not only the Planning Commission's comments but also intense public engagement from the community over the next 30 days. Staff would then be able to take those comments, amend the document, and send it to the State for review and approval. CDD Steven

Turner stated that a presentation would be given via Zoom by Paul Peninger, the City's affordable housing consultant, who has been the main consultant on this project, along with his colleague Clara Cheeves.

Mr. Paul Peninger started his presentation by apologizing for his physical absence and greeting CDD Steven Turner and the Planning Commission. He went on to note that he will be delivering an update on the Housing Element Update process, with an emphasis on the goals, policies, and programs, as well as the City's site inventory and, finally, the schedule to get to a fully accepted and certified housing element for the General Plan. He noted that California State law requires the Housing Element, which is an essential aspect of every city's general plan, to be updated every eight years and to be compatible with the city's land use, zoning code, and other general plan characteristics. This housing element update will bring the City's housing plans and actions up to date, as well as define the locations, housing types, and number of dwellings that will be accommodated but not necessarily completed by 2031. Mr. Paul Peninger continued by explaining that the Housing Element is divided into six major components. He noted that Newark's Housing Element starts with discussing Community Engagement, which includes input from the public, stakeholders, the development community, the City Council, the Planning Commission, and elected and appointed officials. The second component would be the Community Profile, and in Newark's Housing Element Update process, his consultancy business is mainly relying on a data package provided by the Metropolitan Transportation Commission (MTC), which is already in conformity with State law. The third component is Affirmatively Furthering Fair Housing, which is what local governments have been requested to do to ensure that housing opportunities are fair and available to all people of the community regardless of color, ethnicity, national origin, or a variety of other protected categories. Mr. Paul Peninger went on to say that the Housing Element also includes a detailed analysis of both governmental and non-governmental restrictions, as well as a detailed list of housing resources, including financial and administrative resources, not only provided by the City but also from Alameda County's partner agencies. Finally, he mentioned that the Housing Element's other sections are the Housing Plan and a detailed Sites Inventory. Mr. Paul Peninger carried on saying that one of the most important sections of the Housing Element is addressing the City's Regional Housing Allocation (RHNA) for the planning period 2023-2031 and that this housing allocation was passed on to Newark by the MTC Association of Bay Area Governments (ABAG), which in

turn received an allocation from the State. He also stated that the RHNA for Newark throughout the planning period is 1,874 total dwelling units for which the City is being required to plan for. He went on to say that to accommodate all the housing units over the eight-year planning period, the City must ensure that there is enough housing that is zoned at the appropriate densities, as well as enough supporting programs and policies that support housing for very low-income, low-income, and moderate-income families. He also stated that 301 extremely low-income, 85 low-income, 31 moderate-income, and over 2,000 above-moderate-income homes are already planned for Newark. According to Mr. Paul Peninger, these projects have applied for entitlements or are in the development process and will most likely be created during the planning cycle. He also stated that Newark has more than enough residential or commercial mixed-use sites that could handle residential land uses and its RHNA during the planning stage. Moving on, Mr. Paul Peninger stated that the Housing Element's goals, policies, and programs are intended to supplement the site's inventory and the work that Newark is already doing. He went on to say that the Housing Element has seven goals, which are as follows: to preserve and improve existing housing, which means that there is enough support for homeowners to do the necessary repairs on their homes, to facilitate the construction of more housing for more people, to reduce and remove restrictions on affordable housing developments, to help people stay in their homes and communities, to increase access to affordable housing, to improve the quality of life, and to create programs and policies that will ensure fair and accessible housing to all members of the community. He went on to say that within every objective is a set of policies and programs that outline the time range, who would be responsible at the City, the City's partners, and the financial source required to carry out the policy or program. The policies and programs have execution timelines ranging from immediate, zero to three years, mid-term, three to five years, long-term, five to eight years, and continuous programs. Throughout the sixth cycle, the City will track program progress by identifying responsible departments and performance measures. Mr. Paul Peninger mentioned that policies and programs are quite extensive, but one that he thought was worth mentioning is the Housing Rehabilitation and Repair Program, which is an ongoing program that continues its partnership with Alameda County's Housing Rehabilitation and the Minor Home Repair Program. The other program mentioned is to develop a Citywide Rental Inspection program, which is a short-term program that will be implemented by June 30, 2024, to inspect rental properties for code

violations and then issue corrective reports with recommendations for improvements to property owners and landlords. He went on to emphasize the new housing options close to existing services such as schools, parks, and grocery stores, where State Laws SB 9 and SB 10 are being applied. These two regulations allow for the construction of missing middle housing, which indicates the City must ministerial approval housing developments for no more than two residential units on a single-family residential zoned lot. The Accessory Dwelling Unit (ADU) program aims to produce an ADU calculator for Newark residents, pre-approved plans, and to make it easier and more accessible for homeowners to build more accessory dwelling units in the future. Mr. Paul Peninger continued to bring up the Develop a Local Response to Support People Experiencing Homelessness program, which will be a committee putting together a plan for addressing homelessness in the city of Newark. He then mentioned the Objective Design Standards for Single Family and Multi-Family Developments and Infill Housing programs, which is in accordance with State Laws SB 9 and SB 10, and its purpose is to create objective standards that developers and property owners can use to determine what is consistent with the City's vision for development around single- and multi-family development. Another key program, he said, is examining and updating the City's impact fees to ensure fairness and to fairly reward the City for the facilities given, as well as to assist new developments. He went on to say that the RHNA Rezoning for Adequate Affordable Housing, a critical program aligned with the new state law, is simply asking the City to amend any site previously identified in the fourth and fifth cycle Housing Elements so that these sites are developable by right. Mr. Paul Peninger went on to comment about the By-right Approval of Projects with 20 Percent Affordable Units on "Reused" Sites and the Anti-Displacement Programs for the Old-Town Newark Specific Plan Area, which will support community residents and small businesses to stay in place. He then moved on to the development of a Just Cause Eviction Ordinance, which is an ordinance that would prohibit landlords from terminating a tenancy or evicting a tenant without a specific reason, and the Support Tenant Stability through Minimum Lease Terms and Relocation Assistance, which is about generating an ordinance outlining minimum lease terms and relocation assistance for renters. Lastly, Mr. Paul Peninger mentioned additional programs, including the First-Time Homebuyer Assistance program, which is proactively marketed for black, indigenous, and color communities in Newark with low homeownership rates, and the Affirmatively Market Affordable Housing program, which is the sale of units through

online affordable housing listing portals to households with the greatest need in Alameda County. Mr. Paul Peninger was then available for questions.

Commissioner Bogisich noted that all the programs sounded exciting, and she wondered how everyday individuals in need of these programs could learn about them, whether through the City's website or through other resources.

CDD Steven Turner stated that the City must implement these types of programs over the next eight years. He also stated that many of these programs do not yet exist, but the City will have a work plan to create them, and as part of that process, there will be public input, public hearings, ordinances, and resolutions to be prepared, and in the end, those programs will be implemented, and the community will be made aware of these programs through the City's website, social media, or other avenues that the City will employ to connect with the community.

Commissioner Bogisich inquired whether the program for housing repairs was already in place. CDD Steven Turner said that the program already exists through the Alameda County program and that information about it is available on the City's website, directing users to the Alameda County HCD website for participation in that program.

Commissioner Aguilar asked Mr. Paul Peninger about the RHNA Rezoning for Adequate Affordable Housing program, specifically whether the program's aim is for all sites on the Housing Element to have a baseline of 30 dwelling units per acre. Mr. Paul Peninger stated that not all sites, the baseline would depend on the density of the region, and the default density in Alameda County is 30 dwelling units per acre. As a result, the minimum density for sites available to affordable housing developers throughout the planning period will be 30 du per acre. He went on to say that there are numerous sites in the City that are zoned for high density and already allow 30 du per acre as a standard, as well as others that need to be converted into the high-density zone to provide higher densities.

Commissioner Aguilar expressed concern about the blanket baseline density. He stated that it makes sense for a higher zone where it can go up to 60 dwelling units per acre and have the units to cover the increased construction expenses, but when a medium-density size is limited to 30 dwelling units per acre, it is a formula for no development. He also stated that it is a function of construction costs because going from 30 du per acre to 40 du per acre the zone is not dense enough to go to a concrete-type podium structure, and



there will not be enough units to offset that cost, and if the desire is to keep it at grade, then creating the parking spaces becomes a challenge. He also stated that in the city of Newark, there have been many negative responses from the community, particularly for medium-density housing sites to provide adequate guest parking, have tuck-under garage parking that is side-by-side parking, making that 30 du per acre at grade difficult. He went on to say that if the sites need to be updated from 20 du to the acre to 30 du to the acre, the development will be very difficult. He acknowledged that it is a dispute with the State, because on one hand the State is ordering municipalities to identify an x number of sites to meet the affordable quota, but on the other hand it will designate a site that will have a very difficult time ever being redeveloped, unless the higher density threshold is used to offset the cost. Finally, Commissioner Aguilar stated that there is nothing to resolve at this time, but he hopes to collaborate with the State as medium-density sites are identified to keep those sites at a baseline where they can be developed in the future.

Vice Chair Fitts commented on the ADU calculators, where pre-approved plans will be available, and asked whether it was merely a goal. CDD Steven Turner responded that many municipalities are developing pre-approved plans, which have been reviewed through their building divisions, what utility connections need to be made and the cost, and that having pre-approved plans can reduce the overall cost of ADU development. He noted that it is a program that will most likely be adopted in the future.

Mr. Paul Peninger followed his presentation by describing the site inventory, which includes the location of housing sites, priority development areas, and the characteristics of the City site inventory. He explained that there are two large buckets of sites, one of which is made up of Pipeline Projects that are in the process of approval, which means that an application has either been submitted or the City is aware that an application will be presented. As a result, this is one of the reasons why the City already has an extensive site inventory. The other category of sites includes vacant or non-vacant residential or commercial mixed-use properties that can accommodate homes during the planning period. Mr. Paul Peninger presented a map that depicted the locations of the sites in the city of Newark. He mentioned sites in the development pipelines, the ones in a Specific Plan Area, also known as Site Three, which is over 300 units of multi-family residential homes, including a significant portion of affordable low- and moderate-income units, the Opportunity Sites, and the Old Town area. He then went on to outline the Specific Plan

Areas, adding that they house a significant amount of the City's RNHA, including the NewPark Place, Bayside Newark, and Old Town areas. According to Mr. Paul Peninger, Priority Development areas (PDAs) are regions recognized by the Association of Bay Area Governments (ABAG) and MTC as priority areas for potential growth based on their proximity to transit and other neighborhood and community amenities. The two PDAs in Newark are Old Town Specific Plan Areas and Bayside Specific Plan Areas, which would accommodate 1,461 total units or 27% of total sites, with 12% of it planned for very low- and low-income investments. He went on to say that access to opportunity is an important piece of analysis for updating the Newark Housing Element, referring to how identifying these sites helps to have access to employment opportunities, community services, access to transportation facilities, education, and access to parks and open space venues. He went on to say that most of the identified locations that can accommodate very low- or low-income units or housing that is priced or made affordable to very low and low-income individuals are in places with the best resources and amenities. Mr. Paul Peninger went on to say that the Draft Housing Element was published on the City's website on Friday, February 24, 2023, and that it is now open for public comment for a mandatory period of 30 days, during which the City will seek feedback from the community online, on social media, in-person meetings, and through community engagement efforts. The goal is to get community input to generate ideas, and then use that input to create a draft that will be presented to the State HCD by April 8th. Following the 30-day review period, his consulting firm has 10 mandatory business days to address that input before returning a public review draft to the State HCD. Once delivered to the State HCD, it will be their responsibility to review it, and they will have 90 days before returning it to the City with comments. He stated that the goal is to have the Housing Element ready for City Council adoption by June of this year.

Vice Chair Fitts observed that the Draft Housing Element appears well-organized and structured, and he asked whether the City is on schedule to submit it, and if the City is complying, given that he has heard that the State is pressuring cities to turn in their housing elements. CDD Steven Turner said that the City of Newark is not meeting the time constraint. Bay Area cities were instructed to have housing elements verified and adopted by January 31st of this year; therefore, the City of Newark has passed that deadline. Although the City is behind schedule, CDD Steven Turner believes that the extra time spent on the draft will be beneficial in the back end, allowing the housing element to be

certified and adopted by June. He also stated that the City has not received any notification from the State HCD regarding the timeline, but the City is working diligently on its public engagement process and making meaningful edits to the draft document, all for the benefit of the Newark community and to demonstrate to the State HCD that the City is taking this seriously. CDD Steven Turner went on to say that the City has built thousands of homes and that a draft housing element is being planned and organized that will result in the construction of thousands of more homes, so the City will have a housing element that the community will be very proud of in the future.

Vice Chair Fitts commented that he is aware of other communities behind schedule as well.

CDD Steven Turner stated that Newark has the advantage of having numerous housing sites available and that during the 2018 zoning ordinance update, many zoning districts were upzoned in terms of site development restrictions and density, putting Newark in a good position.

Vice Chair Fitts asked if there were any questions.

Commissioner Bogisich asked about the community engagement process and the citywide survey and whether that is mailed to all residents.

CDD Steven Turner stated that there was a survey at the start of the housing element process, and a lot of feedback was received about the community's goals.

Mr. Paul Peninger stated that the surveys were placed at the library, distributed as physical copies, and given as links for people to fill out online.

CDD Steven Turner stated that the City received about 350 surveys.

Commissioner Bogisich considered it was low in comparison to the population of the City. She also inquired about doing outreach through schools, such as sending surveys to homes with children.

CDD Steven Turner indicated that the City does not intend to send out surveys at this time, but rather to have the community review the draft document, for which the City is proposing one-on-one meetings and/or Zoom meetings with community organizations. He also stated that he and Mr. Paul Peninger will give a presentation of the draft

document to the Promotores Group in Spanish because Mr. Peninger is fluent in that language; the Promotores Group will be an essential partner in terms of community outreach.

Vice Chair Fitts asked whether there will be a community workshop on March 22nd so that people might be invited to it. CDD Steven Turner said that there will be a presentation most likely as a virtual meeting for people to provide comments and feedback. He also mentioned that they will be at the Family Day at the Park event on April 1st, taking last-minute comments before sending the draft to the State and that they are looking into other ways to communicate with the community, such as social media, the City's Facebook page, where they can highlight key aspects of the Housing Element so people get excited and know that Newark has a plan with strong policies and programs for the next eight years. CDD Steven Turner concluded by thanking all those who spoke that evening.

Vice Chair Fitts asked if there were any questions. No one had any further questions.

## **G. COMMISSION MATTERS**

### **G.1 Report on City Council actions.**

CDD Steven Turner stated that he did not have anything specific to report from the City Council, other than the fact that Newark would be hosting the Alameda County Mayor's Conference on May 8th. He stated that all Alameda County mayors meet monthly with a rotating host and that Newark would be hosting the group on that day. He went on to say that the meeting would take place in the Council Chambers, that the mayors would be given a tour of the library and go through their usual program, and that it would be a good opportunity to show off the City's facilities and allow Mayor Hannon to give a summary of the great things Newark is involved with.

Vice Chair Fitts mentioned that this will be the first meeting in the new building.

CDD Steven Turner referred attention to Deputy Community Development Director (DCDD) Art Interiano, who noted that he expected the Planning Commission to meet on March 14th and hoped that all commissioners would be able to attend. He also mentioned that Senior Planner (SP) Carmelisa Lopez would be presenting the Robson Homes project and that if all the commissioners were present on the same day, the Election of Officers may take place.

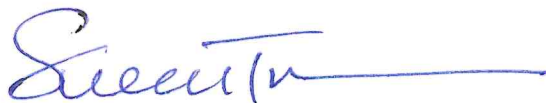
**H. PLANNING COMMISSIONER COMMENTS**

**None.**

**H. ADJOURNMENT**

Vice Chair Fitts adjourned the regular Planning Commission meeting at 8:06 pm.

Respectfully submitted,



Steven Turner  
Secretary