

Kirk Vartan

From: Kirk Vartan [kirk@kvartan.com]
Sent: Thursday, July 03, 2008 10:47 AM
To: 'Forman, Kathi (PW)'
Cc: 'Norris, Tom'
Subject: RE: June 20, 2008 Public Records Act request - Proposed Winchester Blvd and Forest Ave Intersection Modifications

Just a follow-up. Does this complete the Public Records Act request I made?

Thanks,

-Kirk

From: Kirk Vartan [mailto:kirk@kvartan.com]
Sent: Tuesday, July 01, 2008 7:31 PM
To: 'Forman, Kathi (PW)'
Cc: 'Norris, Tom'
Subject: RE: June 20, 2008 Public Records Act request - Proposed Winchester Blvd and Forest Ave Intersection Modifications
Importance: High

Hello Ms. Forman,

Thank you for the reply. Is there any more information I should expect or is this your final response? Can someone please elaborate for me how the Department of Public Works gave the "nod" and tentative approvals for the signal reconfiguration and street changes? I know that an encroachment permit has not been issued; however, the letter sent by Mr. Borden clearly states that they are prepared to move forward. You say nothing has been approved, yet something has to have been agreed upon. Your note says the neighborhood has not been involved, but the Department of Public Works says it needs input from the neighborhood in order to move forward. How can this discrepancy exist?

Please note that I am representing the majority of the neighborhood and it is not just my opinions here. If your department would like to meet with us ASAP, we can arrange it. I have offered this many times not, but Mr. Borden is not interested to talk about it anymore.

How can I engage your department on problems found in the PRA search?

Thank you,

Kirk Vartan
598 N Henry Ave
San Jose, CA 95117

From: Forman, Kathi (PW) [mailto:Kathi.Forman@sanjoseca.gov]
Sent: Tuesday, July 01, 2008 5:04 PM
To: 'kirk@kvartan.com'
Cc: Norris, Tom
Subject: RE: June 20, 2008 Public Records Act request - Proposed Winchester Blvd and Forest Ave Intersection Modifications

Dear Mr. Vartan:

For the sake of clarity, I am responding to your request item by item and submit the

following:

1. All diagrams and plans that have been submitted to the Department of Public Works regarding development that San Jose would be involved or an approving authority in. It should include any ingress and egress to the property, signal reconfigurations, new exits, street designs, street configuration, etc.

Two sets of DRAFT plans have been submitted to the City of San José for review. This is the first plan submittal that the City of San José has received for technical review. Because these plans are in draft form and multiple iterations of revisions are expected during a typical plan review process, these plans do not constitute an approved design by the City of San José and are not available for copy or distribution. However, the draft plans are available for viewing at City Hall. You can arrange to view the plans by calling by Joshua Kenton at 535-6810 for an appointment next Tuesday, July 8th through Friday, July 11th between the hours of 8:00 a.m. to 5:00 p.m. The plans consist of the following:

- **Public Improvement Plans for the Construction of Vanderbilt Site Tract 9972 in Santa Clara, California.** A 31-sheet draft plan set submitted to the City of San José Transportation and Development Services Division of the Public Works Department for technical review. The City of San José will conduct peer review only on those sheets which pertain to work in the public right of way. The City of San José will not be issuing a permit for work done under these plans as improvements are located in the City of Santa Clara. San José city staff has not as yet reviewed these plans.
- **Plan for the Improvement of Vanderbilt Site Tract 9972.** A 5-sheet draft plan set on proposed traffic signal. If approved, the City of San José will be issuing a Major Public Works Contract for work done under these plans. City staff has not reviewed these plans.

2. Who specifically agreed on the above proposed design and how was it approved, specifically a design that removes the northern Winchester Blvd./Forest Ave. traffic signal? The Mercury News stated a design was approved. Someone approved something at some point since the Department of Public Works said if the CEQA lawsuit upholds the development decisions, they will grant the encroachment permits to the City of Santa Clara and the developers (see Timm Borden's letter dated April 17, 2008 to Mark R. Wolfe).

The City of San José has not approved a traffic signal design associated with the referenced project nor issued any type of permit or contract for work to be done. Draft plans of proposed design are available for viewing at City Hall (see #1 above).

3. How were the original concerns from the letter submitted by the Department of Public Works mitigated? The last public statement from the City of San Jose was that both designs for the project were not acceptable. What changed and what communication to the public was made. Please produce all documents are this specific activity. See the Final EIR link below for reference to the statements made by the Department of Public Works...letter 3, page 4-8, page 8 of the PDF

<http://santaclaraca.gov/pdf/collateral/FEIR/CH4Part1Letters1through24.pdf>

The City of Santa Clara is managing the CEQA review process. Negotiations to address comments made by the City of San José are in progress through the typical design review process and reflected in the plans referenced in #1 above.

4. Document what is relevant in terms of dependencies for the Santa Clara Gardens project vs. the Valley Fair expansion project. It was stated publically that the two projects are completely independent and have no dependencies on each other.

Requested document(s) do not exist

5. Provide documents that quantify public approval of any signal modification or street configuration that would affect San Jose residents re: Winchester Blvd./Forest Ave. intersection.

Requested document(s) do not exist in the City of San José. The City of Santa Clara is managing the CEQA review process and associated public outreach.

6. Provide documents that quantify City Council District 6 approval of any signal modification or street configuration that would affect San Jose residents re: Winchester Blvd./Forest Ave. intersection.

Requested document(s) do not exist

7. Copies of any notices sent by the City of San Jose to San Jose residents regarding Winchester Blvd. and Forest Ave. signal reconfiguration or street modifications

Requested document(s) do not exist in the City of San José. The City of Santa Clara is managing the

CEQA review process and associated public outreach.

8. Copies of documents of the encroachment permit requested by the City of Santa Clara for the Santa Clara Gardens project.

An encroachment permit has not been issued by the City of San José. Requested document(s) do not exist. Draft plans of proposed design are available for viewing at City Hall (see #1 above).

9. Copies of documents that clearly state what the Santa Clara Gardens project and/or the City of Santa Clara want and expect the City of San Jose to do with regard to the Winchester Blvd./Forest Ave. intersection.

Requested document(s) do not exist

10. Documents that clearly define the scope of work the City of San Jose would need to do or allow the Santa Clara Gardens project and/or the City of Santa Clara to do.

Requested document(s) do not exist

11. Provide the government code used by the Department of Public Works in this case that outlines the policy that the City of San Jose follows when a neighboring city requests action from San Jose. Specifically, what is the City of San Jose obligated to do vs. what does it have the option of doing (e.g., can it deny changes to the City of San Jose).

City of San José Municipal Code Chapter 14.04 (attached) authorizes the Director of Public Works to enter into an intergovernmental public works contract subject to conditions set forth in that chapter. The City of San José is responsible for technical review and design compliance with City of San José standards. The City of Santa Clara manages CEQA review.

12. Since the project is a City of Santa Clara project, what obligations does the City of San Jose have? What methodology was used in this specific case (i.e., the decision to allow the modification of traffic signals in San Jose)?

See #11 above.

13. I am concerned that the City of Santa Clara is asking the City of San Jose to approve a project that affects San Jose residents, San Jose resident's quality of life, and San Jose's property value without it being heard by the City Council.

Comment noted.

14. It appears that the City of Santa Clara has provided the San Jose Department of Public Works information that the City of San Jose can choose to accept or reject. Please provide this specific information that is relevant to the traffic and signal concerns at Winchester Blvd. and Forest Ave.

The City of San José has not approved a traffic signal design associated with the referenced City of Santa Clara project nor issued an encroachment permit. Draft plans of proposed design are under review and available for viewing at City Hall (see #1 above).

15. I am concerned that department heads are making decisions that will affect the neighborhood and San Jose residents without soliciting any feedback from the community. The City Council District 6 office has been opposed to any modifications that affect the neighborhood, yet the Department of Public Works continues to agree to approve a development plan that negatively impacts (both economically and livability) San Jose taxpayers.

Comment noted.

Kathi Forman

*Information / Communications Manager
Public Works Department, Director's Office
200 East Santa Clara Street, Fifth Floor
San Jose, CA 95113
408-535-8304*

From: Forman, Kathi (PW)
Sent: Monday, June 30, 2008 4:38 PM
To: 'kirk@kvartan.com'

Cc: Norris, Tom

Subject: RE: June 20, 2008 Public Records Act request - Proposed Winchester Blvd and Forest Ave Intersection Modifications

Dear Mr. Vartan:

Per our phone conversation earlier today, I am requesting additional time to respond to your Public Records Act (PRA) request attached below.

Given the breadth of information requested, I asked for additional time to provide a comprehensive response and, with the understanding that you are under a deadline to receive this information, have agreed to respond to your PRA by Friday, July 4th.

I thank you for your patience and will contact you before Friday.

Kathi Forman

*Information / Communications Manager
Public Works Department, Director's Office
200 East Santa Clara Street, Fifth Floor
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408-535-8304*

From: Kirk Vartan [mailto:kirk@kvartan.com]

Sent: Friday, June 20, 2008 4:52 PM

To: cityclerk@sanjoseca.gov

Cc: kirk@kvartan.com

Subject: June 20, 2008 Public Records Act request - Proposed Winchester Blvd and Forest Ave Intersection Modifications

Importance: High

June 20, 2008

To Whom It May Concern,

Back on February 29, 2008, I made a Public Records Act request. I have included a copy of the original request after this letter for reference. Thank you for providing a lot of information to me, but unfortunately, it did not cover all the necessary things. I am now making a new Public Records Act request that is much more specific and focused on things that I need but were not provided on my original request. I have had numerous correspondences with Timm Borden, the Director of Public Works, but the results of our conversations and emails were not adequate nor complete.

My Public Records Act request is as follows (all relating to the Santa Clara Gardens - a.k.a. BAREC - project):

1. All diagrams and plans that have been submitted to the Department of Public Works regarding development that San Jose would be involved or an approving authority in. It should include any ingress and egress to the property, signal reconfigurations, new exits, street designs, street configuration, etc.
2. Who specifically agreed on the above proposed design and how was it approved, specifically a design that removes the northern Winchester Blvd./Forest Ave. traffic signal? The Mercury News stated a design was approved. Someone approved something at some point since the Department of Public Works said if the CEQA lawsuit upholds the development decisions, they will grant the encroachment permits to the City of Santa Clara and the developers (see Timm Borden's letter dated April 17, 2008 to Mark R. Wolfe).
3. How were the original concerns from the letter submitted by the Department of Public Works mitigated? The last public statement from the City of San Jose was that both designs for the

project were not acceptable. What changed and what communication to the public was made. Please produce all documents are this specific activity. See the Final EIR link below for reference to the statements made by the Department of Public Works...letter 3, page 4-8, page 8 of the PDF <http://santaclaraca.gov/pdf/collateral/FEIR/CH4Part1Letters1through24.pdf>

4. Document what is relevant in terms of dependencies for the Santa Clara Gardens project vs. the Valley Fair expansion project. It was stated publically that the two projects are completely independent and have no dependencies on each other.
5. Provide documents that quantify public approval of any signal modification or street configuration that would affect San Jose residents re: Winchester Blvd./Forest Ave. intersection.
6. Provide documents that quantify City Council District 6 approval of any signal modification or street configuration that would affect San Jose residents re: Winchester Blvd./Forest Ave. intersection.
7. Copies of any notices sent by the City of San Jose to San Jose residents regarding Winchester Blvd. and Forest Ave. signal reconfiguration or street modifications
8. Copies of documents of the encroachment permit requested by the City of Santa Clara for the Santa Clara Gardens project.
9. Copies of documents that clearly state what the Santa Clara Gardens project and/or the City of Santa Clara want and expect the City of San Jose to do with regard to the Winchester Blvd./Forest Ave. intersection.
10. Documents that clearly define the scope of work the City of San Jose would need to do or allow the Santa Clara Gardens project and/or the City of Santa Clara to do.
11. Provide the government code used by the Department of Public Works in this case that outlines the policy that the City of San Jose follows when a neighboring city requests action from San Jose. Specifically, what is the City of San Jose obligated to do vs. what does it have the option of doing (e.g., can it deny changes to the City of San Jose).
12. Since the project is a City of Santa Clara project, what obligations does the City of San Jose have? What methodology was used in this specific case (i.e., the decision to allow the modification of traffic signals in San Jose)?
13. I am concerned that the City of Santa Clara is asking the City of San Jose to approve a project that affects San Jose residents, San Jose resident's quality of life, and San Jose's property value without it being heard by the City Council.
14. It appears that the City of Santa Clara has provided the San Jose Department of Public Works information that the City of San Jose can choose to accept or reject. Please provide this specific information that is relevant to the traffic and signal concerns at Winchester Blvd. and Forest Ave.
15. I am concerned that department heads are making decisions that will affect the neighborhood and San Jose residents without soliciting any feedback from the community. The City Council District 6 office has been opposed to any modifications that affect the neighborhood, yet the Department of Public Works continues to agree to approve a development plan that negatively impacts (both economically and livability) San Jose taxpayers.

As a point of clarification, the minutes from May 9, 2007 San Jose Rules and Open Government Committee meeting (item 3.2 (g) (2)) state: "The Committee directed Staff to prepare an informational memorandum on this property and related issues." The memorandum from Joseph Horwedel created on April 24, 2008 and now provided to me on June 9, 2008 does not address this issue; rather, it deflects the issue.

Mr. Horwedel's memorandum is not consistent with the minutes published in 2007 asking for a staff report on the property. If the outcome stated by Mr. Horwedel was accurate, the conclusions Mr. Horwedel made would have been part of the minutes and part of the record (i.e., that the issues at hand were simply about ownership and contract). How does Mr. Horwedel's memorandum dated one year later address the issues around this property? Mr. Horwedel points out in his memorandum that "the property was outside the San Jose Sphere of Influence (SOI). What about the intersections and the traffic signals under San Jose's control that require modification to make the proposed development function? The memorandum further conflicts with testimony made by City Officials at public meetings stating that the Santa Clara Gardens project and the Valley Fair Expansion project were not dependent on each other nor do they affect each other. Mr. Horwedel's memorandum states that they are now dependant on each other and need to be coordinated accordingly.

I am also concerned that the response from Timm Borden on behalf of the Department of Public Works is one of wait and see what the CEQA lawsuit's result is. The issues I bring before you now

are completely independent of the CEQA lawsuit and should be addressed separate from any litigation. While Mr. Borden stated the Department of Public Works would probably not grant any encroachment permit before the CEQA litigation is complete, he did not address the critical issues how the City of San Jose did not follow their own public statement of getting feedback from the San Jose residents being affected (residents westerly of Winchester).

This concludes my Public Records Act request. If I have included items in this request that do not fall under the Public Records Act, please identify them and forward them to the proper department for response. Each item listed above as well as the comments made should be considered official citizen requests and I would appreciate answers to each area of concern. I would like to resolve much of this prior to the CEQA litigation.

Thank you for your time and I look forward to your response.

Kirk Vartan
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kirk@kvartan.com

Original Public Records Act request dated February 29, 2008 for reference:

Hello,

My Public Records Act request is as follows:

1. Any letters related to the discussions on the Winchester/Forest intersection
2. Any emails from the City of San Jose, the Council's office, or any other city agency regarding discussions of the Winchester/Forest intersection
3. Any neighborhood meeting documentation where the Winchester/Forest intersection was discussed
4. Any maps, plans, drawings or other data used by the City of San Jose to review any proposed intersection changes
5. Any memos or documentation that conflicts with the letter submitted by San Jose's Department of Public Works stating they cannot approve any intersection design.
6. Any minutes and documentation that talks about the Winchester/Forest intersection
7. Any diagrams that the City of San Jose has used to base any conclusions
8. Documentation that shows what San Jose has done to gather input for the affected residents westerly of Winchester Blvd.

Please note, that just because SummerHill and the other developers hold a neighborhood meeting, does not mean the neighborhood approves the plans. In this case, it was quite the opposite. The *one* meeting held by the developers on Cypress at the school south of I-280, the attendees (except for the one person on SummerHill's payroll) were against the plan and had concerns. I have a complete audio tape of this should your office want to review it.

Additionally, one thing I was discouraged to hear from you on the phone was "well, the citizen voted and they want the project." The decisions about approving or not approving the intersection happened many months before the vote, so please do not try to use the "voter argument" as a reason for approving a design. Before the vote took place, San Jose appeared to "change" its position. I want to find out how and when that happened. It was definitely not from the constituents in the area west of Winchester Blvd. The entire neighborhood is against the project and since the ONLY thing that San Jose has control over is the traffic light, then that is what we will leverage. I can appreciate that San Jose has to work with Santa Clara in the future, but that does not give the City the right to sell out its constituents.

I look forward to the information. Please let me know when it is available for review.

Kirk Vartan