



1 North San Antonio Road
Los Altos, California 94022-3087

MEMORANDUM

DATE: 1/25/2021
TO: Councilmembers
FROM: City Manager
SUBJECT: COUNCIL Q&A FOR JAN 26, 2021 REGULAR COUNCIL MEETING

Minutes

- On page 3 of the minutes, in the paragraph beginning “Mayor Fligor removed . . .” the word “of” should be deleted from the fifth line of the paragraph. (“ . . . including such options as of renovation, partial renovation. . . .” **Noted**)
- In the same paragraph, in the third-to-last line, make the word “Commission” plural so it reads “. . . recommendations from the Commissions to the Council. . . .” **Noted**
- Page 4, in the last line of the last paragraph under item 4, Neysa is referred to as “Council Member” instead of “Mayor.” **Noted**
- Page 5: In the first paragraph under “Council / Staff Reports” please add that I suggested that if we invite an interest group such as the Embarcadero Institute, then we should also invite an interest group to give a counter perspective. But Councilmember Enander said that wasn’t necessary because HCD has already accepted the Embarcadero Institute’s figures as correct. **Noted**

Agenda Item 2 (Tract Map Approval):

- In attachment 2 (the “Improvement Agreement”), there is an extra comma in recital “D.” **It will be removed.**

Agenda Item 3 (Story Poles):

- Why does this keep coming back to the Council? Due to the City Council continuing the item to a date uncertain, the applicant is permitted to return to council for consideration and final action regarding the Story Pole Exception Request. Prior requests for exceptions have not been approved by the City Council.
- Is there an objective standard for the Council to determine whether there is a “public health and/or safety concern?” No, there is not an objective or prescriptive standard for a “public health and/or safety concern,” it is a discretionary determination by the City Council.
- Is there an objection standard for the Council to determine whether installation of story poles “would impair the use of existing structures of the site to the extent it would not be able to be occupied and the existing business and/or residential use would be infeasible?” No, there is not an objective or prescriptive standard for a story pole plan that “would impair the use of existing structures of the site to the extent it would not be able to be occupied and the existing business and/or residential use would be infeasible,” it is a discretionary determination by the City Council.
- Since the adoption of the current story pole policy, when have exceptions been granted to applicants on either “threat to public health” or “impair the use of existing structures” grounds? (I.e., is there precedent for granting story pole exceptions? If so, what were those precedents?) The City has previously granted some limited exceptions to the City’s Story Pole Policy; however there is no established precedent for granting the exception and each request is considered on a case by case basis given the type of project and the site or property characteristics.
- Will granting an exception expose the City to liability? If so, liability to whom? An indemnity statement is provided on the story pole diagram, and it states the following: “The undersigned (applicant/owner) agrees to indemnify and hold the City harmless for any liability, costs or expenses, including attorney’s fees, associated with the construction of, or any damage caused by, the story poles or support apparatus installed per this plan.” The applicant is required to sign the indemnity statement to reduce potential liability exposure to the City.
- Is the applicant correct when she says that “every story pole installation to date in the City has failed in some manner and in one case caused off-site property damage?” If so, in what ways have they failed? What do other cities do that we don’t to ensure that the story poles do not “fail in some manner?” The story poles have failed for seven out of eleven projects, with the primary cause of failure either due to wind or a vehicle striking a story pole. In Santa Clara County, the Town of Los Gatos and City of Los Altos require story poles, but given the temporary nature of these structures, ensuring they will withstand failure due to weather, geological or human activity, among others, is not practical as it would require engineering and construction in line with that needed to build a permanent structure.
- Is staff able to clarify the third-to-last paragraph of the applicant’s letter (beginning with “To minimize the safety . . .”)? Is the applicant asking to only have story poles up for thirty days?

The beginning of the paragraph is unintelligible. Yes, the applicant is requesting story poles for a maximum of 30 days.

- Is there a feasible way to erect story poles so that their bases do not interfere with driveways or other obstacles? Perhaps the base could be an arch under which traffic can drive and the pole would rise from the apex of the arch? We are not aware of any feasible alternatives. We are unable to provide direction without the input of a story pole installation company or registered civil engineer.

Agenda Item 5 (Library Authority):

- What is the definition of the “basic services” that the City of Los Altos is supposed to provide to the agency? Has this term ever been defined or agreed to by the stakeholders? There is no definition of basic services in the original JPA. Currently, this has included administrative matters such as posting of agendas.
- Section 5 of the First Amendment says that it will be effective as of July 1, 2019. If the council passes the resolution, will the amendment take retroactive effect? What will the effect be of that retroactive application? Is there a financial impact to Los Altos because of the retroactive application of the amendment? As written, the amendment would be retroactive. Any costs for extra outside expenses accrued by NCLA since that date would be apportioned between Los Altos and Los Altos Hills. Staff does not know what those costs are at this point.
- Will the effect of this amendment be that NCLA will pay for staff to provide all of its basic services? Or will Los Altos still be providing “basic services?” As the amendment is written, the City will continue to provide basic services (at no cost to NCLA). Should NCLA engage the services of a consultant to provide basic services, the City will not be responsible for paying for these services.
- The staff report says that “[i]nstead of approving the amendment, the Council [on April 14, 2020] gave direction to the Los Altos NCLA Commission Members to further clarify the role of Los Altos City staff considering the proposed amendment.” Have the commission members further clarified the role of LA City staff considering the proposed amendment? Assuming so, what were their conclusions? This question is best answered by the Council representatives to the NCLA Commission.
- How has Los Altos’ failure to pass the resolution adversely affected the NCLA? What will be the effects to the NCLA if the Council again delays making a decision on this issue? This question is best answered by the Council representatives to the NCLA Commission.

Page 5 of 6, 2nd paragraph, the listing of the two assignments that Mayor Fligor and I traded shows the reverse of what was agreed: "Library Commission Council Liaison: Mayor Fligor, Historical Commission Liaison: Council Member Meadows. [Noted](#)

Amendment to the NCLA JPA

Where is Attachment A referred to in the resolution? [Attachment A to the Resolution is included as Attachment 2 to the report.](#)

If we approve the resolution, will Los Altos and Los Altos Hills have now each agreed to the same first amendment to the JPA? [Yes, Los Altos Hills approved the amendment in early 2020](#)

Story Poles

In summary, the applicant is requesting an exemption to the story pole policy and their proposal is to do what is outlined in their January 6, 2021 letter, correct? [The applicant is requesting an exemption of the story policy consistent with their letter dated January 6, 2021 \(Attachment 3\) and the story pole exception plan submittal \(Attachment 5\).](#)

Please list and briefly explain examples in Los Altos since we adopted the story pole policy in 2015 of poles that have "failed".

1. 4880 El Camino Real
 - a. The 54-foot-tall Story Poles were installed on May 4, 2016. There were no known failures of the story poles.
2. 2270 Homestead Court
 - a. The 17-foot to 25-foot-tall Story Poles were installed in 2016. There were no known failures of the story poles.
3. 517 Tyndall Street
 - a. The 17-foot to 25-foot-tall Story Poles were installed in 2017. There were no known failures of the story poles.
4. 385-389 First Street
 - a. The 39.5-foot to 54-foot-tall Story poles were installed on 3/12/2019. There were numerous story pole failures due to wind.
5. 425 First Street
 - a. The 33-foot to 39-foot-tall Story Poles were installed on 3/27/19. There were numerous story pole failures due to wind.
6. 4856 El Camino Real
 - a. The 59.5-foot-tall Story Poles were installed on 8/14/18. One story pole failed and went through the roof of the structure and landed in an office space.
7. 999 Fremont Avenue
 - a. The Story Poles were installed on 8/29/19. There were numerous story pole failures due to wind.
8. 40 Main Street
 - a. The 35-foot to 45-foot-tall Story Poles were installed at the site (installation date unknown). There were numerous story pole failures due to wind and one went through the roof of the structure.
9. 4898 ECR

- a. The 69-foot-tall Story Poles were installed on July 11, 2019. There were no story pole failures.
10. 5150 ECR
 - a. The 60-foot to 67.5-foot-tall Story Poles were installed on August 23, 2019. The story poles were struck by vehicles on three different occasions, which nearly collapsed the story poles.
 11. 450 First Street
 - a. The 35-foot to 50.9-foot-tall Story Poles were installed on August 28, 2019. There were numerous story pole failures due to wind.

Have there been lawsuits against cities in CA for requiring story poles, either for public safety reasons or for obstructing the building of housing, and if so, what were the outcomes?

Not that I am aware of and the applicant must indemnify the City. (from City Attorney)

Amendment to the NCLA JPA

Where is Attachment A referred to in the resolution? [Attachment A to the Resolution is included as Attachment 2 to the report.](#)

If we approve the resolution, will Los Altos and Los Altos Hills have now each agreed to the same first amendment to the JPA? [Yes, Los Altos Hills approved the amendment in early 2020](#)

Agenda item 2: This project represents the aggregation of 3 lots, previously designated 385, 387, and 389 First Street. I do not find that indicated in the staff report. Is this not required to be indicated as part of approving the map? It looks like the map itself does not need to show that. Is the new address that will apply to the aggregated parcel going to be 389?

Staff researched your questions and found that the lots were combined into one lot over 40 years ago, as follows:

- In 1907, original lots 11 and 13 were recorded next to one other with each having a 50' wide frontage.
- In 1980, all of lot 11 and part of lot 13 (approximately 25' of frontage) were combined into one 75' wide parcel, resulting in a larger lot 11.
- The 2020/21 SCC assessor map File 167-41 shows the subject lot 11 as one lot with a frontage approximately 75' wide.

Thus only two lots were combined into one lot 11. Within lot 11, the three parcels you pointed out will be consolidated into one parcel—389 First St. Lots and parcels are terms often used interchangeably. However, by definition they are different. A parcel is a *quantity of land identified for taxation purposes*, whereas a lot is a *recognized subdivision of property with a written legal description that addresses permissions or constraints upon its development*. Accordingly, parcels 385, 387, and 389 First Street will be consolidated into 389 First Street through the Final Map approval process. Underlying lot 11 was previously consolidated in 1980. *(green text notes the last amendment to this document)*

Information item: Community Center

1. Do we have a water-tight roof yet? Progress description indicates Dec. activities included "Continue progress on roofing, waterproofing...." but that isn't on the expected Jan. activities. Yes, the roof is water-tight. The contractor is very conscientious about protecting areas vulnerable to inclement weather. For example, last year when the project was paused at the outset of the pandemic, they were in the framing stage and thoroughly protected the decorative glulams from potential rain exposure during the closure period.
2. I continue to be greatly concerned about how actual-to-budget is portrayed. The full budget is stated as \$38M+, but this includes the contingency. Showing that the remaining amount to be expended includes the full contingency is worrisome. We should be getting a summary that shows how much of the contingency has been committed, and an estimate of how much is expected to be used by project completion. Please have the person who is presenting the briefing be prepared to provide that information, as well as whether there is any major category where we are projected to EXCEED the budget+contingency. Pages 15-16 includes a log of the contingency expended or credited for change orders and project savings. My monthly presentation to the City Council typically has a clear summary of the base costs and contingency costs through the prior month.

The project team does track "anticipated" change orders and keeps a running forecast of the worst case impact to the contingency budget (which is still well below the project's 3.46M contingency). However, staff does not publish any change order forecasts because it may impact negotiations.

In preparation for the study Session on Tuesday, could I trouble you for a copy of the RFP we put out to update our Housing Element? Staff provided requested RFP to entire Council.