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OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

Hee

City Attorney

RESOLUTION NO 53
2012 DEC 5 PM 5:00

C.M.S.

Introduced by Councilmember _____

RESOLUTION DENYING THE APPEALS A12-146 & A12-148, AND APPROVING THE MAJOR CONDITIONAL USE PERMITS, DESIGN REVIEW AND MINOR VARIANCES FOR A REVISED PROJECT BASED UPON AN AGREEMENT BETWEEN THE APPELLANTS AND THE APPLICANT THAT INCLUDES A NEW SAFEWAY GROCERY STORE OF NO MORE THAN 45,500 SQUARE FEET AND RETAIL OF NO MORE THAN 9,500 SQUARE FEET UNDER CASE NUMBERS CMDV09-107, TPM-09889, ER09-0006 AND CERTIFICATION OF THE EIR AND ADDENDUM FOR THE COLLEGE AVENUE SAFEWAY PROJECT LOCATED AT 6310 COLLEGE AVENUE

WHEREAS, the project applicant, Ken Lowney of Lowney Architects, filed an application on behalf of Safeway Stores Inc. on May 6, 2009, to demolish the approximately 25,000 square foot grocery store, parking lot, and auto service station and construct a two-story approximately 62,000 square foot commercial building that would contain a Safeway supermarket of approximately 51,500 square feet, approximately 10,500 square feet of ground floor commercial spaces, and a partially subterranean parking garage and upper level parking structure for 171 off-street parking stalls; and

WHEREAS, a Notice of Preparation (NOP) of an Environmental Impact Report (EIR) was issued on October 30, 2009, and a scoping session was held before the Planning Commission on November 18, 2009; and

WHEREAS, a Draft Environmental Impact Report (DEIR) was prepared and a Notice of Availability was issued on July 1, 2011, beginning a comment period that ended on August 16, 2011; and

WHEREAS, the DEIR was duly noticed for the Planning Commission hearing of July 20, 2011, to receive public comment, and continued to a later date of August 3, 2011, to receive further public comment; and

WHEREAS, a Notice of Release and Availability along with the Response to Comments Document (which together with the DEIR make up the Final EIR (FEIR or EIR)) was published on July 6, 2012. The Response to Comments Document included written responses to all comments received during the public review period on the DEIR and at the public hearings on the DEIR held by the Planning Commission; and

WHEREAS, the project was duly noticed for the Planning Commission hearing of July 25, 2012; and

WHEREAS, the City Planning Commission took testimony and considered the project at its duly noticed public hearing of July 25, 2012. At the conclusion of the public hearing, the Commission deliberated the matter and voted (5-0-0) to approve the Project, adopting the CEQA findings including certification of the EIR, rejection of alternatives as infeasible and a Statement of Overriding Considerations; and

WHEREAS, on August 6, 2012, the appellant, Joel Rubenzahl representing Berkleyans for Pedestrian Oriented Development (BPOD), filed an appeal of the Planning Commission decision to the City Council; and

WHEREAS, on August 6, 2012, the appellant, Stuart Flashman representing Rockridge Community Planning Council (RCPC) (together with BPOD, the Appellants), filed an appeal of the Planning Commission decision to the City Council; and

WHEREAS, after giving due notice to the Appellants, the Applicant, all interested parties and the public, the Appeals were scheduled to come before the City Council for a duly noticed public hearing on October 16, 2012; and

WHEREAS, the hearing on the Appeals was rescheduled to come before the City Council for a duly noticed public hearing on November 13, 2012; and

WHEREAS, the Appellants, the Applicant, supporters of the application, those opposed to the application and other members of the public were given ample opportunity to participate in the public hearing by submittal of oral and/or written comments; and

WHEREAS, the applicant worked with the Appellants to come to conceptual agreement regarding a revised project (Revised Project),

WHEREAS, the public hearing on the Appeals was opened by the City Council on November 13, 2012 and the City Council, based upon public testimony and other information in the record, continued the public hearing to the City Council's December 18, 2012 meeting and gave direction for staff to return to the City Council with a supplemental report including plans for the Revised Project, findings and appropriate conditions of approval to address the foregoing; and

WHEREAS, plans and documentation for the Revised Project were presented to the City Council at the continued public hearing, held December 18, 2012; and

WHEREAS, an Addendum to the EIR, pursuant to Section 15164 of the State CEQA Guidelines, was prepared to address the Revised Project, which Addendum is hereby adopted and finally certified together with, and incorporated into, the EIR; and

WHEREAS, the Revised Project is decreasing in size by approximately 12% and would not increase, and would reduce or avoid significant impacts previously identified in the EIR, and does not create any substantial changes that would involve new significant environmental effects than those identified in the EIR or increase the severity of previously identified significant effects; and

WHEREAS, no new information of substantial importance has been brought forth since publication of the Draft EIR or the Planning Commission approval that would create any new significant impacts not previously identified in the EIR, increase the severity of previously identified environmental impacts, alter the feasibility of any mitigation measure or alternatives not adopted by the project applicant, or establish any mitigation measures or alternatives that would reduce environmental impacts not adopted by the project applicant; and

WHEREAS, based upon the Addendum, EIR and other substantial evidence in the record, this Council hereby finds and determines that none of the circumstances specified in CEQA Guidelines Section 15088.5 requiring recirculation of the Draft EIR are present; specifically, there are no significant new impacts that would result from the Revised Project, nor a substantial increase in the severity of an environmental impact that would result from the Revised Project, nor a feasible alternative or mitigation measure that the Revised Project proponent has declined to adopt that would reduce environmental impacts of the Revised Project, and the Draft EIR was sufficient to provide meaningful public review and comment; and

WHEREAS, none of the circumstances requiring preparation of subsequent environmental review under State CEQA Guidelines Section 15162 or 15163 are present in that there are no substantial changes with respect to the project or the circumstances under which the Revised Project is being undertaken that would involve new significant environmental effects or a substantial increase in the severity of previously identified significant environmental effects nor any new information of substantial importance as specified in CEQA Guidelines Section 15162(a)(3); and

WHEREAS, after reviewing and evaluating the supplemental documentation, public testimony, and other evidence in the record, the City Council closed the public hearing on the Appeal; the public hearing was left; and

WHEREAS, the public hearing on the Appeal was closed by the City Council on December 18, 2012; now; therefore be it

RESOLVED: The City Council, having independently heard, considered and weighed all of the evidence in the record presented on behalf of all parties and being fully informed of the Applications, EIR (including, without limitation the Addendum), the decisions of the Planning Commission, and the Appeals, hereby denies the Appeals and approves the Major Conditional Use Permits, Design Review and Minor Variances for the Revised Project, consisting of a Safeway grocery store of no more than 45,500 square feet, and retail development to no more than 9,500 square feet, in accordance with the plans and other attachments in the December 18, 2012 City Council Supplemental Agenda Report, incorporated by reference herein, This decision is based, in part, on the December 18, 2012 Supplemental City Council Agenda Report, the November 13, 2012, City Council Agenda Report, the July 25, 2012, Planning Commission staff report, and the EIR, which are hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeals are denied and the revised project is approved, as supported by the findings adopted by the Planning Commission and as modified and attached to the December 18, 2012 Supplemental City Council Agenda Report; and be it

FURTHER RESOLVED: That, in further support of the City Council's decision to deny the Appeals and approve the revised project, the City Council affirms and adopts as its own findings and determinations (i) the November 13, 2012 City Council Agenda Report, including without limitation, the discussion, findings, conclusions, specified conditions of approval including the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program ("SCAMMRP") (including, without limitation, the July 25, 2012 Planning Commission Staff Report as an attachment to the City Council Agenda Report) as modified by the Supplemental City Council Agenda Report for the December 18, 2012 City Council Agenda, including without limitation the additional discussion, findings, conclusions, and specified conditions of approval (including the Standard Conditions of Approval / Mitigation Monitoring and Reporting Program ("SCAMMRP")) therein (each of which is hereby separately and independently adopted by the City Council in full); and be it

FURTHER RESOLVED: To the extent that there are conflicts between the discussions, findings, conclusions, specified conditions of approval and SCAMMRP contained in the November 13, 2012 City Council Agenda Report and the Supplemental City Council Agenda Report for the December 18, 2012 City Council Agenda, the latter shall control; and be it

FURTHER RESOLVED: The City Council finds and determines that this Resolution complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Determination with the appropriate agencies; and be it

FURTHER RESOLVED: The record before this Council relating to this Resolution includes, without limitation, the following:

1. The Applications, including all accompanying maps and papers;
2. All plans submitted by the Applicant and its representatives;
3. All staff reports, decision letters, and other documentation and information produced by or on behalf of the City, including without limitation the EIR and supporting technical studies, all related and/or supporting materials, and all notices relating to the original project, Revised Project, and attendant hearings;
4. All oral and written evidence received by City staff, the Planning Commission, and the City Council before and during the public hearings on the original project and Revised Project;
5. All matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan; (b) the Oakland Municipal Code; (c) the Oakland Planning Code; (d) other applicable City policies and regulations; and (e) all applicable State and federal laws, rules and regulations; and be it

FURTHER RESOLVED: The custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are (a) the Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California, and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, California; and be it

FURTHER RESOLVED: The recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

LEGAL NOTICE: This action of the City Council is final and is not administratively appealable. Any party seeking to challenge such decision in court must do so within ninety (90) days of the date the decision was announced, unless a different date applies.