

City of Albany

Planning and Zoning Commission Minutes March 27, 2012 Meeting

Note: These minutes are subject to Planning and Zoning Commission approval. The minutes are not verbatim. An audiotape of the meeting is available for public review.

Regular Meeting

1. Call to order- The meeting of the Planning and Zoning Commission was called to order by Chair Arkin, in the City Council Chambers at 7:30 p.m. on Tuesday, March 27, 2012.

2. Pledge of Allegiance

3. Roll Call

Present: Eisenmann, Maass, Moss, Panian, Arkin

Absent: None

Staff present: Jeff Bond, Community Development Director
City Planner Anne Hersch

4. Consent Calendar

a. Meeting Minutes from January 10, 2012 Planning & Zoning Commission meeting

Recommendation: Approve

Motion to continue item 4b: Commissioner Arkin

Ayes: Arkin, Eisenmann, Moss, Maass, Panian

Nays: None

Motion passed, 5-0.

5. Public Comment on Non-Agenda Items

Ed Fields, Albany resident- showed the new document "Bay Area Smart Energy 2020", which is an executive report. He notes that it is available online. He says that it is related to the green ordinance update. He reads some excerpts from the document, illustrating the goals of the project.

6. Discussions & Possible Action on Matters Related to the Following Items

- a. PA-11-013 Farmers' Market- PA11-013- 1 year Conditional Use Permit Review of the Farmers' Market at 1025-1060 Solano Ave.** -This meeting is a continuation of the March 13, 2012 hearing where the Planning & Zoning Commission reviewed the farmers' market use permit for compliance. The Commission provided direction to the applicant to make modifications to the operation. The market operation is proposed to remain at its current location of Solano Ave, between San Pablo Ave. and Adams St. Changes to the operation

1 include but are not limited to modifications to truck parking, the overall site plan, and
2 modification/inclusion of existing and new project conditions.

3 *Recommendation: The Planning & Zoning Commission may take action at the meeting on*
4 *location and operating parameters of the market.*

5
6 Ms. Hersch presented the staff report.

7
8 PUBLIC HEARING OPENED.

9
10 **Ben Feldman, applicant-** says that they took all the feedback from the previous meeting
11 and did all they could to address noise and remove vehicles. They have committed to
12 removing a most of the vehicles on the north side of the street. They have left vehicles on
13 parts of the street to act as a sound barrier in front of the acupuncture practice. He
14 announced that one of the supporters of the farmers' market is an audiovisual expert who
15 does sound masking, who could have a consultation with Dr. Liao, at her own cost. They
16 are committed to making a banner advertising all of the businesses on the block, and to
17 have a promotion campaign to incentivize customers to shop at local businesses. They have
18 committed to putting a no farmers' market sign in front of local businesses as to not take up
19 their parking.

20
21 **Commissioner Eisenmann-** asks the applicant as to how they came to the donut shape
22 layout as opposed to pushing the tents up to the sidewalks.

23
24 **Ben Feldman, applicant-** said that the design was improved in the way that the
25 commissioners specified, and that pushing the tents up and removing all vehicles doesn't
26 address all the issues.

27
28 **Francesco Papalia-** appreciates the difficulty in finding a suitable block to have the market,
29 since Albany is such a small town. He notes that the hours of the market make it hard for
30 people who work to use the market. He proposes having the market stay a little longer
31 once a month, so the people with strict work hours can go. He believes that the market
32 could be better attended. He notes that the farmers' market in Kensington on Sunday is
33 highly advertised, and thinks that the farmers' market in Albany could be better
34 advertised. He expressed concerns about the criteria for the vendors.

35
36 **Paul O'Curry-** asked the staff about the music.

37
38 Ms. Hersch clarifies that the music would be limited to Solano Ave. and San Pablo Ave.

39
40 **Paul O'Curry-** notes that the Kensington farmers' market uses a similar system. He notes
41 that the music isn't anything that would cause too much disruption, and that it is good for
42 the local musicians. He also notes that it adds to the atmosphere of the market. He is
43 concerned that they are making barriers to the market's success, rather than doing what
44 they can to help it.

45

1 **Richard Liao, acupuncturist on Solano Ave-** had found the acupuncture clinic due to the
2 peaceful environment, and convenient parking for customers. He says that the noisy
3 talking, the loud radio, and other invasive noises disturbed the healing of his patients. The
4 patients must be in peace and quiet when having needles inserted. He has talked to people
5 about sound proofing, but the noise still penetrates to his patients. He says that the noise
6 also affects his ability to treat his patients. The stalls are around nine feet away from the
7 windows. He notes that many of his patients, who suffer from mobility problems, had
8 difficulty finding parking spaces, and the day of the market is the only day they were free
9 due to work schedules. He notes that Solano Street is a major outlet from the highway, but
10 since the farmers' market, much of the traffic has moved to Adams Street, Washington
11 Street, and back to San Pablo Ave, creating backup and dangerous situations on the small
12 streets. He urges them to find a more appropriate location.
13

14 **Selena Burgs, speaking on behalf of Dr. Liao-** says that Dr. Liao has spoken for the
15 commission a number of times, and believes that his concerns haven't been heard. She says
16 that while Dr. Liao commends the city of Albany and the Ecology Center in their efforts,
17 but the current location of the market negatively impacts his practice greatly. She urges the
18 commission to find a new location for the market. She says that the three most pressing
19 issues are excessive and pervasive noise pollution, patient accessibility, and whether the
20 deciding body is treating an established acupuncture clinic as they would any other
21 medical provider. She says that Dr. Liao had chosen the property for the ease of
22 accessibility and relatively low level of ambient street noises compared to other commercial
23 properties. She expresses concerns with the Albany charter eight, regarding noise. She
24 refers the commission to certain sections in the charter. She thinks the specified areas
25 deserve more research. She says that one of Dr. Liao's patients with mobility problems is
26 willing to show the commission her disability placard information. She notes that it would
27 be inappropriate for Dr. Liao to ask his other patients for their disability information, so the
28 fact that the commission only has one on record doesn't reflect Dr. Liao's need for parking
29 spaces. She brings up a quote from California law, regarding the entitlement for parking for
30 people with disabilities.
31

32 **Kamal, from Subway sandwiches-** notes that they used to have whole parking lots, and
33 with the market taking up the whole block, it would hurt their business. He notes that the
34 large trucks take up a majority of the parking spaces during rush hour, and wouldn't arrive
35 any later despite warnings. He also notes that the trucks block sight, and they lose
36 customers. He notes that the market makes it harder for customers to access tax-paying
37 businesses in the area. He also notes that the market has brought sandwich sellers to the
38 block, bringing in competition to the already suffering Subway sandwich shop. The other
39 sandwich sellers don't have to pay property tax.
40

41 **Stephanie Sala, owner of Five Little Monkeys-** has worked with a commission to bring a
42 farmers' market to Albany. She says that they had looked at every possible spot to put the
43 farmers' market, and explains how they chose the current location. They had tried to avoid
44 blocking resident driveways, and the other locations were either too expensive, or did not
45 meet regulations. She says that putting the market on Solano was actually to help the area,

1 not hurt it, since it has always been a difficult location to run a business. She notes that
2 making the farmers' market an offload market, where vendors drive up, drop off good, and
3 park elsewhere, would drive away many potential vendors. She explains that vendors
4 specifically look for markets that aren't offload markets. She also notes that if it were an
5 offload market, the trucks would have to find other places to park, creating other problems.
6 She proposes banning the selling of sandwiches at the market, to respect the needs of
7 Subway sandwiches. She likes the compromises of the trucks parking on the south side of
8 the street. She also says opening a handicap parking spot on Adams Street could help Dr.
9 Liao's patients.

10
11 **Mayu Black, property owner on San Pablo, location of Subway-** notes that Subway is a
12 small sandwich shop trying to survive in the economic depression, and the farmers' market
13 has robbed them of their livelihood. They are taking the most precious parking spaces, and
14 she urges the commission to reconsider.

15
16 **Terri Varella, owner of Chrome Salon-** notes that all of the businesses have made a
17 commitment to Albany, and most have been here for over a decade. She says that the event
18 should give equal consideration to everyone, especially those who pay property taxes,
19 permit fees, and rent. She notes that both compromises to the businesses, having a banner,
20 and using coupons, would work for a retail model, but not a service model. She had stated
21 that moving the trucks would make a difference. She notes that employees were being sent
22 home for the day, and that even one day's pay matters. She says no business in direct
23 vicinity had new business being generated, because they have had 10 months to say so. She
24 believes that if a year-round market is approved, a strict adherence to local produce should
25 be met. She read a quote that states that a farmers' market sells locally grown produce, and
26 if the market were extended to be year long, food would probably be imported, making it
27 not a true farmers' market. She feels that she has a right as to how her business is
28 advertised. She doesn't her business advertised on a banner and she doesn't want coupons
29 offered in her name. She wishes visibility was open to everyone.

30
31 **Paul Stone-** notes that there is no ADA parking anywhere near the block. The farmers'
32 market had provided one last year, and is proposing to add another, which he believes
33 would benefit all of the businesses. He had not seen bad traffic at any time of the market.
34 He proposed a compromise for Subway, to not allow trucks to park there during certain
35 hours. He notes that the market isn't opened until one o'clock, so any and all food offered
36 at the market isn't open until after lunch hour, when Subway has business. He also notes
37 that certified vendors can only have food grown in California.

38
39 **Richard Khoury, patient of Dr. Liao's acupuncture-** notes that the applicant hasn't made
40 any concessions that most directly help businesses. The biggest concern for the
41 acupuncture practice is noise, and noise during the treatment just doesn't work. He thinks
42 that while moving the handicap parking closer is a step, it doesn't match what they
43 currently have. They could park in front of the practice, or have a friend drop the customer
44 off in front of the practice.

45

1 **Ed Fields-** notes that the event is a real community building event, and not having the pre-
2 prepared food would change the market. He is hearing that for some businesses the only
3 compromise would be to have the market at a different location. He doesn't understand why
4 the health orientated businesses have a problem with the market, when they provide
5 services that he thinks would appeal to the customers of the farmers' market. He says that
6 if he was Subway, he would buy the organic goods and make Wednesday an organic
7 sandwich day, to appeal to the people at the farmers' market.
8

9 **Selena Burgs-** believes that using this opportunity as marketing mechanism is simply not
10 appropriate for an established medical clinic such as the acupuncture clinic. She notes that
11 Dr. Liao already has a full patient load, and the farmers' market creates nothing but
12 disturbances for him. His patients have had a schedule and system they have been using
13 for years and simply having coupons is not applicable to the acupuncture clinic.
14

15 **Ben Feldman-** notes that the new plan provides two open aisles to encourage customers to
16 access the sidewalks, so there are more people walking next to the businesses, who will
17 potentially patronize the businesses. It would also increase visibility. He responds to the
18 argument that no businesses have seen an increase, that Winki from the Chamber of
19 Commerce, has presented a poll in the previous meeting, saying that most of the businesses
20 that she had talked to had increased business during the hours of the farmers' market. He
21 makes himself available for questions from the commissioners.
22

23 **Commissioner Panian-** asks how the new diagram was different from the previous
24 practices. He then asks whether they had gained any stalls from the new arrangement.
25

26 Ben Feldman explains that they removed a lot of vehicle parking, and opened up new
27 aisles. He also says that they have other potential places to put stalls, but has lost two stalls
28 from their previous arrangement.
29

30 **Commissioner Maass-** asks the applicant to point out the ADA parking.
31

32 Ben Feldman tells them that they had previously put one on San Pablo Ave, and would put
33 another one on Adams Street. They looked to put it the closest place they could.
34

35 **Commissioner Arkin-** asks the applicant for the actual hours of the market.
36

37 Ben Feldman says that the market operates from 3pm to 7pm, with one hour on either side
38 to setup and take down the market, which is less than they usually utilize.
39

40 **Commissioner Arkin-** asks about the complaint that some trucks were arriving as early as
41 12:30.
42

43 Ben Feldman says that it was something they were aware of, and they have talked to all of
44 the vendors. He says that if it continues, they will take it very seriously. He says that there

1 shouldn't be vehicles parked there before 2:00pm, and they will begin to take fines for
2 doing so.

3
4 **Commissioner Arkin-** notes the consideration to have the market open until later, but
5 thinks that 7 pm should be fine.

6
7 Ben Feldman says that they always have suggestions to do it earlier or later, and while he is
8 open to doing it, he thinks that the current times are sufficient.

9
10 **Commissioner Eisenmann-** asks what the banner would look like.

11
12 Ben Feldman says that they would make it from scratch. He suggests putting the names of
13 all the businesses that would like advertisement, along with the logos, and have it on the
14 things that block off the street.

15
16 **Commissioner Moss-** asks whether such a banner would have to go to the planning
17 commission for review.

18
19 Jeff Bond says that they could bring it to the commission if they liked, but the staff could
20 approve temporary banners.

21
22 PUBLIC HEARING CLOSED.

23
24 **Commissioner Moss-** notes the problem that they don't require parking with retail in
25 Albany. He notes that there becomes an inherent right for the retail, office, or service
26 businesses to have parking in front of their lots even though they don't provide parking for
27 their tenants. He notes that it is the first time he has heard that Richard Liao has a parking
28 space in the back, and notes that it could allow some flexibility.

29
30 Richard Liao says that the space can't be used for patients.

31
32 **Commissioner Moss-** notes that Richard Liao was unwilling to compromise by changing
33 his hours, even when he has two offices. He proposed moving the farmers' market to
34 Thursday. He also notes that no one is entitled to a parking space in front of their residence
35 or building in Albany. He notes that he lives in a very congested area, where many
36 restaurants will take up the space in front of his house, and that he isn't going to attempt to
37 close the restaurant to park in front of his house. He said that there have been requests for
38 dedicated parking for Albany spa, and notes that they don't do that for any other business.
39 He thinks that it is interesting how businesses are saying that because they are impacted,
40 they should get personal parking. He wants businesses to be flexible with parking in
41 Albany, if the businesses wouldn't provide it. He is surprised that Albany health hasn't
42 looked at the sandwiches made on site. They are allowed to bring foods that are made off
43 site to sell, but to make the sandwiches on the spot has to go through the county health. He
44 says that if there is making of food there, it has to get certified. He is sorry for the
45 competition for Subway, but there is nothing that says that there can't be free competition

1 and business. He thinks that while it will impact businesses, the businesses will have to
2 change, and he is in support of the market operating year round. He notes that the city has
3 taken many steps, but the acupuncturist hasn't given the city an inch. He would like to see
4 a few tents that are given to the businesses, so they can give their services or products in
5 the street.

6
7 **Commissioner Panian-** notes that the extension of the meeting was to pick up on some
8 practical things to minimize impacts to local businesses. He feels that the designs given
9 aren't to the extent to a nice compromise. He feels that they could have removed all parking
10 or given multiple plans. He also feels that there isn't any compromise given from the
11 people who raised the issues. He thinks that a combination of a better plan, which they
12 have, and a more strident monitoring the conditions would go a long way in ameliorating
13 the impacts. He thinks that the site chosen is one of the only free spots available. He feels
14 like the case is at the threshold where enough has been done to make the market fit the
15 block. He would look forward to keeping the music down, and to make sure the arrival,
16 setup, and takedown are carried out in the hour predicated. He thinks that they should be
17 careful of it being a sort of free-for-all, with food prep, and that it should be more about
18 organic food and made less of a carnival.

19
20 **Commissioner Eisenmann-** discussed possible parking plans. She noted that the farmers'
21 markets that she has visited in Berkeley or San Francisco, that don't have the trucks, have a
22 much more open and welcoming market, which would bring more people. She says that
23 there are close parking lots that, if the vendors were willing to drop off goods, could park
24 in.

25
26 **Commissioner Maass-** thinks that more changes in the parking would address the
27 concerns from the businesses. He notes that noise is a primary concern, and parking to
28 allow customers to get to Subway. He feels that while it is an improvement, it could be
29 improved again. He thinks that he will approve the application due to the things he heard
30 in the previous meeting, about how the market improved the feeling of community. He is
31 satisfied that the city and applicant have done due diligence in looking at the alternatives.
32 He is in favor of going with a one year conditional permit.

33
34 **Commissioner Arkin-** commends the applicant toward the goal of creating a better market.
35 He encourages people to support businesses, even if they are against the market, after
36 receiving a message from someone purposely not supporting businesses that are not in
37 favor of the market. They are going to provide additional handicap parking spaces. They
38 are dedicating a block as non-market parking spaces. They are going to limit noise
39 producing activities to within 50 feet of San Pablo Ave, which is already a noisy street. He
40 thinks that a year round marking is the next step.

41
42 **Commissioner Moss-** wants to add the conditions to memorialize the ADA parking on
43 Adams Street and San Pablo Street, to memorialize the two parking spaces on Madison
44 Street that would be dedicated to Albany Spa and Sauna during the operation of the
45 farmers' market, and to memorialize no trucks allowed on the block before 2pm. He would

1 also like to discuss the idea of a community canopy, and having a canopy be occupied by
2 Subway. He also proposed that Subway puts a banner above the canopies.

3
4 **Commissioner Arkin-** clarifies that they allow either one or two canopies to be used by the
5 businesses.

6
7 **Commissioner Moss-** proposes that one canopy be allowed to be reserved by any
8 organization, and to have it memorialized.

9
10 **Commissioner Arkin-** wants discussion about having a year round market, but to have
11 another discussion after six months.

12
13 Staff says that they could review it at any time, to have the applicant refine it.

14
15 **Commissioner Maass-** notes that they can't really know how the market will turn out
16 without having it laid out, and having it operate.

17
18 **Motion to pass item 6a: Commissioner Panian**

19
20 **Seconded with following additional conditions: Commissioner Moss**

- 21 • **ADA parking on Adams Street and San Pablo Ave**
- 22 • **Two parking spaces on the corner of Madison Street and Solano Ave to be**
23 **dedicated to Albany Spa and Sauna during the market hours.**
- 24 • **No trucks on Solano Ave or San Pablo Ave before 2pm**
- 25 • **Memorialize the community canopy**

26
27 **Commissioner Maass-** asks if the banner and canopy will be worked out with the staff.

28
29 **Commissioner Moss-** clarifies that he is talking about a booth that would be dedicated to city
30 use. He says that the banner would be worked out with the staff.

31
32 **Commissioner Arkin-** notes that in one of Commissioner Moss' conditions, only two parking
33 spaces are dedicated to Albany Hot Tubs on Madison Street and Solano Ave, and that there
34 has been discussion that the whole south side of the block be marked as non-farmers' market
35 parking, so that anyone could visit any of the businesses.

36
37 **Commissioner Moss-** says that he is happy with the idea, if Albany Spa is fine with it. He
38 thinks that it would be a better idea if they made it so that the parking is available to anyone
39 going to any business, instead of specifically for Albany Spa.

40
41 **Commissioner Panian-** feels confused, and doesn't like putting in provisions that can't be
42 enforced.

43
44 **Commissioner Arkin-** clarifies that they post the entire block as non-farmers' market
45 parking. He also clarifies that it wouldn't be permanent signs.

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Ayes: Arkin, Panian, Eisenmann, Maass, Moss
Nays: None
Motion passed, 5-0

Jeff Bond clarifies the appeal process.

7. New Business

- a. **Development Agreement Study Session-** This study session will provide an overview of Development Agreements and the City and Commission’s authority and role in a Development Agreement process.

Ms. Hersch presented the staff report.

Commissioner Panian- asks staff for clarification about the variances.

Ms. Hersch clarifies that while it can vary, there are hard policies that have to be adhered to. For example, fees still have to be paid. She explains that it gives flexibility in terms of the development one can do.

Commissioner Panian- asks if municipal code is different from what they call the planning and zoning, or land use development.

Commissioner Moss and Ms. Hersch clarify that it is the code, in its entirety.

Commissioner Panian- notes that she is saying that there is a hard line, and he is wondering if the hard line includes high limits and FARs, but not fees. He wants to know where the line is.

Ms. Hersch says that when it comes to the development, people can be more creative, but when it gets to the cost of development, it can’t be brokered away. It offers more flexibility with the site development and relaxing parking standards.

Commissioner Arkin- brings up a line in the Curtain Land Use Law book that says that the development agreement can modify codes, but if it doesn’t specifically modify something, it is subject to all of the other codes.

Jeff Bond clarifies that it locks in the standards at the time. He gives the commission of an example, of when the development agreement was passed, and he explains that the agreement makes sure that the rules don’t change midstream. He notes that in a way, the city council passing the agreement is ensuring that future councils don’t change the rules. He also notes that they are working out how to give the assurance. He says that it also provides an opportunity to refine some things that, for example, wouldn’t be in a PUD, the level of detail and project description.

1 **Commissioner Moss-** also notes that it is also used for projects that will take a long time to
2 finish, so they don't get caught in changing rules.

3
4 **Commissioner Panian-** notes that it being a legislative act, another city council could change
5 the rules after.

6
7 Ms. Hersch notes that when they do the D.A. they put a time frame on it, typically be around 5-
8 6 years, so even if the council were to change, the D.A. is still valid until the time.

9
10 **Commissioner Panian-** asks about the voter referendum.

11
12 Ms. Hersch notes that the voter referendum couldn't supersede the prior approval.

13
14 **Commissioner Panian-** clarifies that it specifically says that it can't be changed by any other
15 mechanism for the duration.

16
17 **Commissioner Eisenmann-** wonders that if it is such a powerful tool for developers, why it
18 hasn't come up until the present. She asks if it would have come up for examples like Safeway
19 or past developments in Albany.

20
21 Ms. Hersch explains that the development agreement is typically used for large scale projects.
22 For example, she had worked on a project in Sacramento, where there were massive housing
23 tracks being built, and all of the home builders entered into specific development agreements
24 identifying the stages at which the infrastructure would be built and the costs associated. There
25 hasn't been much need for it in Albany.

26
27 **Commissioner Arkin-** brings up an attachment to the Curtin's California Land Use and
28 Planning Law, in which there is a reference to a fully negotiated development agreement as a
29 project under CEQA, and subject to environmental review. He notes that it was a development
30 agreement that the city negotiated with the owners of the racetrack to put a casino at the
31 waterfront. They had believed that the city placing the measure on the ballot made it exempt
32 from CEQA, as a citizen initiative would be, but the case proved that it wasn't.

33
34 **Commissioner Moss-** notes that it wasn't a citizen thing that did it, but the council, but it was a
35 technicality.

36
37 **Commissioner Arkin-** notes that it was also the last development agreement in Albany, which
38 might explain why.

39
40 **Commissioner Panian-** says that the takeaway from this is that when one has a mutual
41 agreement with city to provide infrastructure, or developers to fund city infrastructure, that is
42 when one enters into these developments agreements, which have mutual obligations, rather
43 than just conditions of approval.

44

1 Jeff Bond notes that conditions of approval expire after a couple years, and it is possible that one
2 would have to come in and amend a PUD after some time. He says that it will most likely
3 happen there, where the commission will approve a PUD, and some store will say that they will
4 need to change something, and have to change a few paragraphs in the PUD. He thinks that
5 what they are dealing with at the university is that they don't want the whole economic
6 framework of the project, for something to pop up out of the blue. They want to know that the
7 regulatory framework will be done.

8
9 **Commissioner Arkin-** requests to keep the discussion to development agreements in general
10 and not specific projects.

11
12 PUBLIC HEARING OPENED.

13
14 **Ed Fields-** has several similar questions. He gives his understanding, that the one thing, for
15 sure, that the development agreement gives the developer is the ability to precede without the
16 rules being changed, like changing some development standard while building the project.

17
18 **Commissioner Arkin-** agrees, but also characterizes the agreement as a two-way agreement.

19
20 **Ed Fields-** also notes that they would also get other things. He notes that it is something that the
21 city is granting the developer. He says that it is a binding contract, that they won't change the
22 rules during the time period. He asks what kinds of things a city can ask for in exchange. He
23 notes the phrase about "greater latitude to advance local planning policies", and he would like
24 the commission to have some discussion about what kinds of things the city can benefit from.
25 He is also concerned about the fact that development agreements contain much more than
26 simply a statement giving a contract allowing someone to build something without changing
27 the rules, and often has some give and take. He is also confused about provisions that vary from
28 otherwise applicable zoning standards and land use requirements which are in the municipal
29 code, and then say that they can't contract away the requirements of the municipal code. He
30 poses the question as to why there would need to be things in the development agreement that
31 couldn't be in the PUD, that if they were going to be flexible as the PUD allows about height
32 and densities, then what kinds of things would they need to put in that they can't put into a
33 PUD. He expresses that while parking he isn't saying that it is how parking should always be;
34 they have measure D, which is part of their code. He wonders if it is only fees and costs that
35 can't be negotiated. He notes that he thought that you could negotiate fees. He isn't clear if you
36 could give away measure D in a development agreement, and points out confusing lines in the
37 provision. He isn't sure what they would put in the D.A that they couldn't put in the PUD.

38
39 **Commissioner Moss-** gives an example, that a D.A. may say that prior to breaking ground, the
40 stream bench shall be improved to eliminate pollution or runoff, so what it is saying is that one
41 thing will happen before another, which is part of a development agreement. It memorializes
42 one's expectations and when things will happen into milestones. He notes that it isn't simply
43 giving someone approval, but that things have to happen in a certain sequence, and if it doesn't,
44 the city has the power to stop it, and tell them to go back and improve certain parts.

45

1 **Ed Fields-** says that he understand that, and likes it. He is reminded that there are certain things
2 that a city can't demand, but can negotiate, which is what he is talking about public benefit. For
3 example, they couldn't demand that something take place on the gill tract, because they said
4 that it wasn't part of the project, that there was no nexus, but that they could negotiate. He
5 thinks that there is a large range of things that a city could look to negotiate, that it couldn't
6 require. He is asking about what kinds of things that they could negotiate for, that they couldn't
7 otherwise require.

8
9 **Commissioner Arkin-** says that they can't discuss it.

10
11 **Commissioner Moss-** notes that an approval is for the site specifically, and development
12 agreements can be for off-site agreements.

13
14 **Commissioner Arkin-** brings up an example, that in 1994, the city negotiated for the
15 development of a bay trail on the waterfront, for additional revenues for the city. Those were
16 some of the public benefits for the development agreement.

17
18 **Commissioner Maass-** notes that in the literature given, it says something about public
19 amenities, that if they put in money for a school, or for some other building, it could be
20 negotiated for.

21
22 Ms. Hersch uses an abstract example, that there might be a commitment to use sports which the
23 city can't otherwise compel from the developer, but can get a public amenity through the
24 negotiation process, to get a commitment from the developer.

25
26 Jeff Bond tells the commission that it would likely move soon, and the staff would be bringing a
27 draft development agreement to the commission. He says that at this point, they are taking the
28 direction that the city council gave them, in their discussion of the project. The city council
29 would ultimately make the decision, based on the commission's recommendation.

30
31 **Commissioner Panian-** asks if they would be going through the language of the development
32 agreement line by line in the meeting.

33
34 Jeff Bond tells him that they are welcome to do so.

35
36 **Commissioner Panian-** notes that it isn't something that is accelerated to PNZ, but is something
37 central. He feels that it is affected by a lot of what they didn't discuss, specifically in a PUD, or
38 whatever context is outside the development agreement which precedes it. He thinks that what
39 they are saying, is that it encompasses both any conditions that would be granted in that
40 process, in addition to any agreements about financing or infrastructure, and is packaged up
41 and goes through the commission back to the city council.

42
43 Jeff Bond says that any development agreement shouldn't be an in-run around the proper
44 planning process that a planning commission needs to exercise and apply its code, but is to the
45 other things, in other words, the business deal, so there aren't any financial surprises later on.

1 **Commissioner Moss-** asks if the city attorney will look at this.

2

3 Ms. Hersch says that it is already in its second review.

4

5 Jeff Bond notes that they have someone who has had a lot of professional experience with
6 development agreements, and has done a number of them.

7

8 **8. Announcements/Communications/Discussion:**

9

10 a. City of Albany Planning and Zoning Update “E-Notification”

11 b. Update on City Council agenda items related to Planning and Zoning activities.

12 c. Review of status of major projects and scheduling of upcoming agenda items.

13 d. Safeway Public Outreach Meeting on Wednesday April 18, 2012 at Northbrae Community
14 Church (941 The Alameda) from 6:00-8:00 p.m.

15

16 **Commissioner Arkin-** asks if they should avoid having more than two of them there.

17

18 Jeff Bond says that they shouldn’t converse among themselves, since it is a public venue. He
19 says that it is more like an open house format, and not a presentation or public dialogue.

20

21 **Commissioner Arkin-** asks to staff to remind them that they would rather have study sessions
22 at the commission. He thinks that the commission is the correct forum for those types of
23 discussions.

24

25 e. Green Building Ordinance Update Meeting on April 5, 2012

26 f. Forthcoming CEQA Analyses

27 1. St. Mary’s College High School

28 2. Toyota of Berkeley Boutique Type Auto Salon

29

30 **9. Future Planning and Zoning Commission Meeting Agenda Items:**

31

32 a. **Next Regular Planning and Zoning Commission hearing scheduled for Tuesday, April 10,**
33 **2012.**

34

35 **10. Adjournment**

36 The meeting was adjourned at 9:30 p.m.

37

38 Next regular meeting: Tuesday, April 10, 2012, 7:30 p.m. at Albany City Hall

39

40

41 Submitted by: Anne Hersch, City Planner

42

43

44

45 **Jeff Bond**

46 **Community Development Director**