

11/04/2023 SHEEHAN SUNSHINE COMPLAINT submitted 10/02/2023.
AKA: Pyka lease for Building 39 Historic Hangar in the Tidelands Trust
Response RE: 10/16/2023 "City's Position Statement" for Pyka Complaint

Consistent with my theme, this complaint addresses unsubstantiated and uncontested false statements about applicable land use regulations, which then cause illegal projects to be approved.

It is in fact the responsibility of City staff and officials—including the City Attorney—ensure that only complete, objective, and truthful information is given to the public. The agenda materials should be sufficient to ensure that unsubstantiated written and verbal statements are not part of the public records.

Because the agenda and Associated materials for the Pyka Lease Item did not include the relevant land use regulations and therefore not available to the policy makers either prior to or during the meeting, City staff were allowed to put uncontested falsehoods on the public record, which were the basis by which the project was erroneously approved.

If agenda materials properly included the relevant excerpts from the applicable regulations, then these errors would be prevented. As it is, the City council is not sufficiently informed that these regulations are at issue and are not prepared to ask the right questions or to verify the ad-hoc verbal statements made by staff at the City Council meeting.

The City attorney never would have gotten away with saying that there are no historical protections because upon questioning by Trish Spencer she could have referred to the written documentation if she'd had it.

There's no way that's not a violation of the sunshine ordinance.

Council should always be able to have the necessary materials provided to them for any item up for discussion during decision making items and should NEVER have to rely solely on the representations and memories or assertions by City staff-their assertions should always be accompanied by documented excerpts from the applicable regulations to ensure that the statements.

If there are questions of land use regulations, Council should be able to obtain complete legal briefings between the first hearing and the consent item, and all issues of legality briefed by the City Attorney and provided both to Council and the public as part of the transparent process.

As it is now, and as shown by the City Attorney's deceptive statements and the violation of his public duty to accurately inform the public when he refused to make a public statement on the regulations ("I prefer to keep that confidential"), and as shown by the uncontested the factual errors made by city staff during this item, City staff has carte blanche to say anything they want without consequence put forward their projects.

Only an (unfairly biased) Sunshine Complaint creates a record of this malfeasance, which is unduly burdensome on the public (Hello!), and has no enforcement power, even if all elements of the complaint are true.

WHICH IS THE ENTIRE PROBLEM

This problem would be entirely erased if the content of Agendas and other materials followed the spirit and intent and actual content of the Sunshine Ordinance, and if staff were held to those disclosures in a public transparent process the Sunshine Ordinance was adopted to ensure.

RESPONSE TO CITY ATTORNEY

RE: City Attorney's "Conclusions":

If the City Attorney truly believes complaint contains inflammatory and baseless claims that City Councilmembers engaged in slander and misconduct, the City Attorney should provide a public legal briefing on the legal issues raised in this claim and release the records I requested.

RE: (A) weblink not working.

I continue to assert the link did not work until after I submitted my complaint, and the City presented no evidence that it did work at the time I made my complaint.

To reconcile this issue: I propose future Agendas should include date and Item number of prior agenda items in addition to the link.

RE: (I) Attachment Lease redline.

Withdrawn as to "Lease Redline per redline change on page 5 of the lease is the only change, and I did not see it previously.

RE: (B-H) missing information from Agenda materials: including historic resource and Tidelands rules, and CEQA.

I continue to assert violations of the Sunshine Ordinance Re: (B-F), that the agenda items were insufficient because they did not contain relevant excerpts from the applicable regulations, and that these omissions were germane, and that they prevented City Councilmembers from disputing false statements by the City Attorney and other Officials and staff regarding applicability of land use regulation for Building 39. These insufficiencies and unsubstantiated false statements led to an illegal approval of the lease.

While the Sunshine Ordinance allows City staff to determine which documents are "material" and/or "Attachment worthy", staff discretion is not absolute nor is it arbitrary, and must reasonably fulfill the requirement to sufficiently inform the public.

At a minimum, if not attached, then the materials must be adequately described and the applicable excerpts included, as could have been in the Staff Presentation. Otherwise, the public and decision makers must rely solely on the verbal assertions by City staff, which violates the tenets of a

transparent public process, the duty to provide accurate and complete information in addition to the Sunshine Ordinance

While the Sunshine Ordinance may not contain “specific requirements for the content of staff reports”, I continue to dispute the City’s assertion that the report was complete and compliant.

- (1) It was NOT “sufficiently clear and specific” because it did not include the important information about the land use restrictions of the Historic Preservation Code, the Guidelines for Historic Protection at NAS and the Historic Hangars, the site Precise Plan, the Zoning Code, as well as the most important State protection and allowed land uses of the Property in the Tidelands Trust.
- (2) Because of these omissions, the public interest in protection of the Tidelands Trust and historic preservation would not have thought they had reason to seek more information or attend the meeting.
- (3) More important, and as discussed in my other Complaint, the City Council was unprepared for discussions of the applicability of the relevant land use plans, and were unable fact check the verbal statements made by staff during the meeting, as follows:
- (4) This omission from the Agenda materials and Staff Presentation erroneously misled the public and policy makers which led to approval of the lease with provisions that are prohibited per the aforementioned regulations for the lessee to:
 - a. Have permission to erect an 8 foot fence akin to construction fencing around the entire parcel,
 - b. Take private party leasehold possession in excess of the lease-hold share of the exterior land that is public property.
 - c. Pay insufficient property tax for an acreage that is less than the actual acreage occupied by tenant.
 - d. Violations of the State Laws and the City Agreement for Tidelands Trustland public access to the parcel and the views to Seaplane Lagoon.
 - e. Violations of the Historic Preservation Ordinance including the requirement to obtain a Certificate of Approval from the Historical Advisory Board.
 - f. Violations of the Municipal design Ordinance for fencing on historic properties and fences along the public right of way.
 - g. Violations of the Town Center and Waterfront Plan including the requirements to “maximize public views and access to the waterfront”

RE: (G-K). PUBLIC TESTIMONY

I Continue to assert the City Councilmembers and staff violated various public testimony requirements of the Sunshine Ordinance per 2-91.5, 2-91.15, and 2-91.17.

The City Attorney fails to accurately reflect my assertions as it relates to appropriate responses to public testimony and the rights of Councilmembers to speak without their rights being deprived. He also fails to remember that Councilmembers and the City Attorney are further bound by Codes of Conduct that they also violated in their public comments.

As described in my complaint, council members did not engage in “Debate”, instead they used their item to disparage members of the public as well as their colleague.

RE (K): PUBLIC RECORDS

I continue to assert the public records for this item are improperly withheld because the records I requested were germane, current, are disclosable, and should be readily available.