

**BEFORE THE OPEN GOVERNMENT COMMISSION
OF THE CITY OF ALAMEDA**

In Re Complaint of Shelby Sheehan,

Complainant;

City of Alameda,

Respondent

DECISION OF THE

OPEN GOVERNMENT COMMISSION

OF THE CITY OF ALAMEDA

The above-entitled matter came on for hearing and a decision by the Open Government Commission of the City of Alameda (“OGC”) under the Sunshine Ordinance of the City of Alameda, Section 2-93.2(b) of the Alameda Municipal Code (“AMC”).

Background

The complaint at issue was filed by Shelby Sheehan (“Complainant”) on July 10, 2023. The complaint alleged that the public could not access necessary information concerning two items in an upcoming July 18, 2023, City Council meeting, specifically, Items 7D and 7E.

Item 7D’s summary title was “Approval of Development Agreements with MidPen Housing and the Collaborating Partners for the RESHAP Project Consisting of 309 Permanent Supportive Housing Units on a New 8-Acre Campus at Alameda Point, Including Declaring the Property Exempt Surplus Land.” There were 11 documents attached as exhibits to Item 7D, including the RESHAP Development Plan, the Development Agreement, the Development and Disposition Agreement, and the CEQA checklist.

Item 7E’s summary title was “Approval of Development Agreements with BC West Midway LLC for the West Midway Project Consisting of Development of 478 Housing Midway Avenue, Main Street, and Pan Am Way at Alameda Point.” There were 13 documents attached as

exhibits to Item 7E, including the West Midway Development Plan, the Development Agreement, the Development and Disposition Agreement, and the CEQA checklist.

In her complaint, Ms. Sheehan alleges that additional information should have been made “readily access[ible]” prior to the July 18th meeting, specifically, “[p]lanning documents, the Alameda Point FEIR, and other documents necessary for a member of the public to be informed of the Project.” Second, Ms. Sheehan alleges that the planning documents available on the City’s website are “not accessible” and lack sufficient detail. Third, she alleges that the links to RESHAP and West Midway projects on the Base Reuse page are “years out of date” and the Base Reuse page “does not include the current status or ways to participate,” which she contends impedes public participation and constitutes a violation of the Sunshine Ordinance. Fourth, she alleges that “these complex and large scale projects have also undergone significant iterative change without adequate transparency or public participation and appear to be out of compliance with Relevant land use plans.”

Lastly, she argues that there has been “inadequate public notice and participation for the substantial changes for Alameda Point Site A and West Midway since the General Plan Housing Amendment since at least December 2021.” Ms. Sheehan argues that there should be “announcements on the website with links to issues of public interest, email notification by sign-up, Facebook posts etc.” and that “Neighborhood flyers should also have information/links to projects, and should be provided for all the surrounding neighborhoods, at least within 500 feet.”

On July 18, 2023, City Council convened a regular meeting pursuant to the Brown Act and Sunshine Ordinance procedures. Members of the public commented on both Items 7D and 7E. The City Council voted to approve the resolutions and ordinances accompanying these items.

The City filed a position statement on July 20, 2023, in response to Ms. Sheehan's complaint. The City argued that all material project documents related to both projects were available to the public in advance of the July 18 City Council meeting and therefore in compliance with the Sunshine Ordinance. The City also argued that CEQA documents referenced in the staff reports were and are available on the City's website. The City attached exhibits as evidence that project documents and CEQA documents were available in compliance with the Sunshine Ordinance. Lastly, the City argued that the agenda descriptions for the RESHAP and West Midway projects were sufficient under AMC section 2-91.5(a) and (b) and that complaints about violations occurring prior to June 26, 2023, were time-barred.

Ms. Sheehan submitted a response to the City's position statement on July 31, 2023, in which she further alleges that these two projects as approved at the July 18th meeting were "significantly different from earlier versions." She also alleges that "the process by which these changes and approvals occurred is insufficiently documented and was not transparent and potentially resulted in inappropriate approvals of a Project that is out of compliance with the AP EIR and applicable land use plans and policies."

Procedure

Under the Sunshine Ordinance, when a complaint has been filed, the OGC hears the complaint and renders a formal written decision. The complainant and the City shall appear at the hearing. During the hearing, the OGC considers the evidence and arguments of the parties before making its decision. *See* AMC Section 2-93.2 subdivisions (b) and (c). The parties have the opportunity to file written materials and present evidence.

In this case, the parties filed written materials prior to the hearing and appeared personally at the OGC's August 7, 2023, meeting. Ms. Sheehan represented herself; Assistant City Attorney Len Aslanian represented the City. All Commissioners were present.

Discussion

First, Ms. Sheehan's complaint that there was "inadequate public notice and participation for the substantial changes for Alameda Point Site A and West Midway since the General Plan Housing Amendment since at least December 2021," is time-barred. AMC Section 2-93.2(a) requires any complaints of violations of the Sunshine Ordinance to be filed no more than fifteen days after the alleged violation. Therefore, any alleged violations occurring before June 26, 2023 (fifteen days prior to Ms. Sheehan's complaint filed on July 10, 2023) are time-barred. Ms. Sheehan does not otherwise allege any specific actions taken by a policy body during the period of June 26 through July 10 failed to provide adequate public notice and participation or otherwise violated the Sunshine Ordinance. The only relevant noticing that occurred after June 26 was the notice for the July 18, 2023, City Council meeting, and City staff timely published the Council meeting agenda on July 6, 2023, fully complying with all applicable noticing requirements of Section 2-91.5(a) of the Sunshine Ordinance.

Second, regarding the allegation that the RESHAP and West Midway projects were out of compliance with the relevant land use plans, the Sunshine Ordinance does not grant the OGC jurisdiction to make a determination regarding a project's compliance with land use requirements.

Regarding the allegation that information was missing or there should have been additional information available to the public prior to the July 18, 2023, City Council meeting, the Commissioners found that all material information was made available to the public on the

City’s website in accordance with the Sunshine Ordinance. The Commissioners also found that the information at issue was accessible to the public in accordance with the Sunshine Ordinance. During their deliberations, some commissioners noted that although the City showed members of the public could search for and find such information on the City’s website, some individual users may have had trouble navigating the City’s website. However, any actual or perceived challenges in navigating the City’s website does not rise to the level of rendering any required information or documents inaccessible or unavailable. This same analysis applies to Ms. Sheehan’s allegations that planning documents were not available. Planning documents were and are available on the City’s website. As to the allegation that hyperlinks on the Base Reuse page were “years out of date,” there is no Sunshine Ordinance requirement mandating a schedule to ensure departmental webpages and hyperlinks are up to date.

DECISION

For the foregoing reasons, the OGC denies Ms. Sheehan’s complaint on the basis that there were no violations of AMC sections 2-91.5 and 2-92.4, and that any complaints regarding actions taken prior to June 26, 2023, are time-barred pursuant to AMC section 2-93.2.

Dated:

Commissioners Voting to Deny the Complaint

DocuSigned by:


Serena Chen, Chair

DocuSigned by:


Chris Miley, Vice Chair

DocuSigned by:


Kristin Miao, Commissioner

DocuSigned by:


D7556E69A06A4F7...

Brendan Sullivan, Commissioner

DocuSigned by:

AD3DC8852FF845B...

Ruben Tilos, Commissioner