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~ A U G U S T 2 0 1 8 ~

CUPERTINO AT THE CROSSROADS

The election: what's at stake

Jon Willey & Liang Chao, candidates for City Council

Vallco: *We need to act now*

September 18 and October 2 City Council meetings are crucial

and then there's the lawsuit...

Friends of Better Cupertino vs. City of Cupertino

TAKE A BREAK AND SEE THIS:

See Battle for Brooklyn FREE this Saturday, September 8!

MORE NEWS:

Where's our City Attorney?

The next few months will determine the fate of our city. It sounds like hyperbole. But consider: soon we will find out what Sand Hill Property Co. *really* has in mind for Vallco, and how much our City is willing to give away. That will be determined in part by the outcome of SHP's SB35 application, which has allowed them to seriously upsize the project. City staff have approved the SB35 application, but Friends of Better Cupertino sued the City (*see And then there's the lawsuit*), saying that it has approved a *clearly ineligible* application. Whether the approval is allowed to stand is crucial, as all of SHP's bloated plans for Vallco are based on it (*see Vallco: it's complicated, by design*).

Equally important is the City Council election on November 6. Three seats are open, with seven candidates competing. Currently, three council members, Rod Sinks, Savita Vaidhyanathan, and Bary Chang, consistently vote for Sand Hill Property Co. Steven Scharf is the *only* council member to consistently support Sensible Growth, while Mayor Darcy Paul, who has voted with Scharf in the past, lately seems less reliable. Two Better Cupertino supporters, Jon Willey and Liang Chao, are in the race, and their election can end the undue influence of big developers on our city government. Read more in **The election:**

what's at stake.

Now is the time for all good Cupertinoians to come to the aid of their City. Every article in this issue has an action item. Please do what you can! And VOTE!!

~ ELECTION MATTERS ~

The election: what's at stake

For the first time since many of us have been keeping track, residents have an opportunity to elect fellow residents to the Cupertino City Council who will stand up for our community in the face of tremendous pressure to build, Build, BUILD.

Please, let's not squander this chance to take back City Council, take back City government, for the benefit of the PEOPLE!

Liang Chao and **Jon Willey** are dedicated sensible growth activists who do their homework, question the status quo, and are determined to create a Cupertino we can all be proud of. They need your support to do the work that must be done to ensure a promising future for Cupertino.

Are you eligible to vote, but not yet registered at your current address? [Register to vote today!](#) Read more about Liang and Jon (below), contribute to their council campaigns, and volunteer to help them get out the vote!

~ MEET OUR CANDIDATES ~



Liang Chao (Ph.D., Princeton, 20-year Cupertino resident) has taught at the university level in the U.S. & Germany before moving into industry for 18+ years. She co-founded Better Cupertino in 2014 and was elected to the Cupertino School Board in 2016. She brought positive changes to schools, including restoring trust and replacing a superintendent. Liang volunteers in service clubs, science & technology education for underprivileged students, and voter education.

Liang's message on why she's running:

[Cupertino is at a critical crossroads](#)

Volunteer to help Liang's campaign here:

liang4cupertinocouncil.com
[campaign donation form](#)

Jon Willey and his wife Amor are the parents of three young children. He has worked at Applied Materials for 14 years & holds a license as a Mechanical Engineer in the State of California. He is a dedicated basketball coach at the YMCA & National Junior Basketball Association. As a longtime Cupertino resident, Jon is known for his strong representation of residents' concerns about oversized development projects to the City and as a leader of

Better Cupertino. On the City Council, Jon will protect our quality of life by ensuring that development adheres to the law and benefits the community.

Volunteer to help Jon's campaign here:

jonswebsitegoeshere.com
[campaign donation form](#)



~ TAKE ACTION ~

Vallco: We need to act now

Please attend these important public hearings on Vallco. **Show up and speak out to demand that any votes on Vallco happen after the election in November. AND write City Council NOW.** Why? The Vallco Specific Plan alternatives are much larger than The Hills at Vallco (Measure D) which was voted down by Cupertino citizens *just two years ago*.

- **City Council First Public Hearing, Vallco Specific Plan • Tuesday, September 18th** at 5 pm, Cupertino Community Hall, 10350 Torre Avenue
- **City Council VSP Second Reading • Tuesday, October 2, time TBD**

Here's what you need to know:

1. **Neighbors are pursuing legal action to stop the SB35 project at Vallco.** (see "Friends of Better Cupertino vs. The City of Cupertino: is this about Vallco?" below)
2. **The Cupertino City Council is scheduled to consider two Vallco Specific Plan (VSP) alternatives to the SB35 project.** Both VSP projects are inappropriate for our area and ignore residents' concerns. They contain only a small percent of BMR (Below Market Rate) housing. You can see [details of the VSP projects on the City of Cupertino web site](#) .

The SB35 project continues to appear to be primarily a threat to increase pressure on the council to approve one of the Vallco Specific Plans. It is likely that the pro-development majority on the current council will approve a VSP on October 2. Then we'll have 30 days to

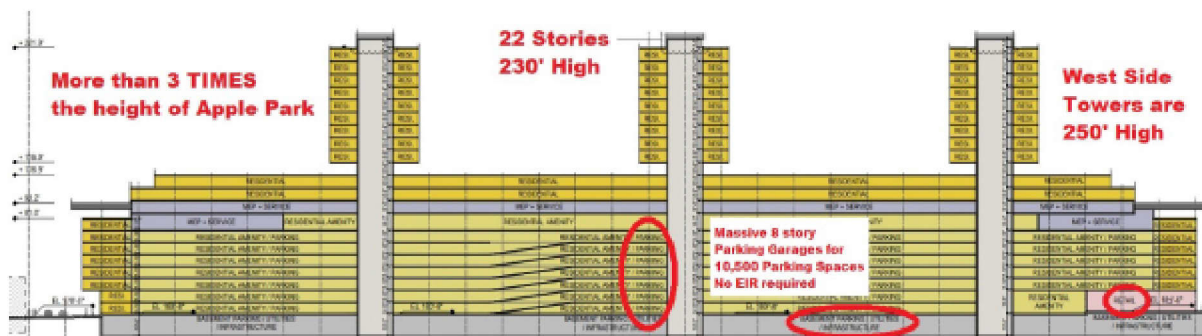
collect signatures of concerned registered Cupertino voters for a referendum, which will stop the VSP approval process and put the decision before voters.

What you can do:

- **Write City Council and ask them to vote against the Vallco Specific Plans.** Tell them you support the lawsuit against the City for approving the SB 35 Vallco plan that actually makes the housing / jobs ratio in our city worse.
- **Attend the September 18 and October 2 City Council meetings.**
- Keep an eye out for emails from Better Cupertino. **We'll let you know how to sign the petition for the referendum.** If you are a registered Cupertino voter, you can sign. Anybody (over 18) can help collect signatures by circulating a referendum petition.
- **Spread the word to vote for Jon Willey and Liang Chao.** If the Council continues with a pro-developer majority, it will be very hard to revitalize Vallco for residents.
- **Talk to your friends and neighbors.**

~ HOLDING THEM ACCOUNTABLE ~

Friends of Better Cupertino vs. City of Cupertino: is this about Vallco?



Yes, it is. Here's what you need to know: On March 27, Vallco Property Owner LLC sent an application to our City to develop Vallco under a new California law, [SB35](#), which gives developers a shortened approval process for housing projects, as well as other concessions and benefits. In order for SB35 benefits to apply, an application must meet certain requirements. The application is reviewed by city staff, who are supposed to make objective judgments on whether the plan meets each and every criteria; if it fails to meet *any* of the criteria, the city must deny the application. This review must occur within 90 days of receiving the application.

On June 24, [Friends of Better Cupertino](#) petitioned the court to order the City of Cupertino to revoke its improper approval of Vallco's SB35 application, and to instead to deny the

application. FoBC's petition claims that the Vallco SB35 application fails to meet SB35 legal criteria in multiple ways, including:

- **Housing is not 2/3 of project.** Under SB35, at least two-thirds (2/3) of the development must be residential (thus the Vallco application fails to fulfill the very criterion SB35 was meant for: more housing). Documents filed with the petition show that the developer attempts to make the application *appear* to consist of 2/3 housing by counting garage space for housing, *but not for* commercial/office areas. There are also other substantive irregularities.
- **The Vallco site is on the statewide listing of hazardous waste sites.** SB35 requires that a site *not* be on the list. The Vallco site has been found to be contaminated by earlier uses as a gas station and a vehicle repair facility, and the site *does* appear on the statewide listing, indicating a complicated environmental history.
- **The application doesn't meet parkland requirements.** Residential projects are required to include three acres of parkland per 1,000 residents. The developer has not done so, and tries to argue that its "green roof" amounts to parkland.

Any one of these issues should be fatal to the legal viability of the project, but Cupertino city staff has shown little appetite for reviewing the application based on the actual legal criteria. Besides those listed above, there are a number of other issues that can be used to challenge the city's approval of the application (e.g, the site lacks necessary easements for traffic).

What happens next? In September, FoBC will file an amended petition with updated documentation showing how the Vallco SB35 application fails to meet the legal criteria. Because this type of lawsuit relies in large part on written briefs and affidavits rather than oral court hearings with live witnesses, the hearing could then occur in a matter of weeks.

It is important to note that since SB35 is a new law, there are no precedents for challenges. But there is a well-developed body of law for challenging clerical (as opposed to discretionary) determinations by cities and other public entities in all sorts of situations.

Find out how to support Friends of Better Cupertino in this ground-breaking legal action [here](#).

SB35: Signed into law on September 29, 2017, SB35 is a state law that changed the local review process for certain development projects by establishing a streamlined, ministerial review and approval process if they meet objective planning standards.

What happened to our City Attorney? Why?



Cupertino's City Attorney, Randolph Hom, has not been seen since before the May 15 City Council meeting. The City has not given any explanation for this, though they have held three closed sessions on his employment, with no action on the matter reported to the public. Residents have written letters to the City, and asked about it at Council meetings, to no avail.

Timeline:

- **May 11:** first closed session held on “Performance Evaluation: City Attorney” and “Employee Discipline/Dismissal.” Four residents, all well-known Sand Hill Property Co. supporters, wrote City Council, and two residents spoke in favor of firing the city attorney. One resident's letter stated “Now that there has been an SB 35 application filed with the city, I'm concerned that Randy Hom's approach will result in lawsuits on a much larger scale...”
- **May 15:** City Attorney Randy Hom is absent from the City Council meeting; Assistant City Attorney Rocio Fierro attended in his place.
- **May 23:** second closed session for “Performance Evaluation: City Attorney” and “Employee Discipline/Dismissal.” “Mayor Paul noted that no action was taken on either item.” (from the approved minutes)
- **June 4:** Acting City Attorney Rocio Fierro attends City Council meeting in Hom's place again.
- **June 5:** third closed session for “Performance Evaluation: City Attorney” and “Employee Discipline/Dismissal.” “Mayor Paul noted that no action was taken on either item.” (from the approved minutes)
- **August 21:** Minutes from the May 15 City Council meeting, including the May 11 closed session, are finally approved (on the third attempt). For the first time, Asst. City Attorney Rocio's name appears as “Acting City Attorney” on the agenda (even though she has appear on the dais since May 15).

Here is what we know: (1) **The City Attorney did not resign** (otherwise, the City would have announced it as required by law, and started searching for a new city attorney); (2) **The City Attorney was not fired** (otherwise, the City Council would have had to

disclose their action and who voted for it in the closed session, as required by law; (3) **The City Attorney didn't do anything wrong** (otherwise, the City Council would have fired him for cause).

How much is the shelving, sidestepping, silencing or suspending of the City Attorney costing us? (1) He is still employed by the City with a likely full salary of \$21k a month plus benefits (\$63k and counting); (2) the City has to employ outside legal counsel to handle his workload. (3) the City has to employ *other* outside legal counsel to advise them on the matter of the City Attorney; and (4) if the city *does* let go of the City Attorney eventually, he will get nine months severance pay.

Questions:

- 1. What triggered the closed sessions about the City Attorney?**
- 2. How did the pro-SHP residents know about the first closed session enough in advance to write letters and speak at the meeting?** Why do *they* want the City Attorney fired? When asked, Mayor Paul and Council Member Steven Scharf both expressed their satisfaction with the city attorney's performance, and said they cannot talk about what happened in the closed sessions. City Attorney Hom is known to have tightened up city contracts to better protect the city's interests.
- 3. Could this mystery be related to Hom's handling of SHP's SB35 application?**

The law:

Gov. Code 54953(c)(2) states that "The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action."

Gov. Code 54953 (c) (1) No legislative body shall take action by secret ballot, whether preliminary or final. (2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action. Nowhere does Gov. Code 54953 state that the City Council only needs to report "the final action." The code does states "any action taken," which refers to "any preliminary or final action."

Analysis:

As of press time, the City has still not offered any explanation. But one has to wonder if the City Attorney will miraculously reappear after crucial matters on Vallco have been decided. The four pro-Vallco developer residents' foreknowledge of the May 11 special closed session, where the city attorney's fate was first discussed, seems to suggest a smoking gun. Time will tell, if the City won't.

REFERENCES

- [City Attorney's contract](#)
- [The four letters complaining about the City Attorney](#) One stated "Now that there has been an SB 35 application filed with the city, I'm concerned that Randy Hom's approach will result in lawsuits on a much larger scale..."
- [A timeline of the curious episode with the City Attorney](#)
- [Article from San Jose Inside](#)

BATTLE FOR BROOKLYN

FREE SCREENING!

**SATURDAY
SEPTEMBER 8, 2018**

Cupertino Community Hall
10350 Torre Avenue
6:30-8:30 pm

*A reception
with light refreshments
will follow the film.*

Seating is limited:

Reserve your FREE tickets now!

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