

CNA

Council of Neighborhood Associations
Berkeley, California

Newsletter

To let neighborhoods know what's coming down before it lands on them

Mayor Tom Bates Surrenders City's Sovereignty To UC

Clifford Fred

When Mayor Tom Bates and the Berkeley City Council filed a lawsuit last February against UC's Long Range Development Plan Environmental Impact Report (EIR), I thought it was too good to be true. I was right. It was. How could a city that has routinely and illegally refused to do EIRs on any of the major development projects it has been approved in the last eight years challenge the adequacy of UC's EIR?

The 10-story Gaia building on Allston Way was built in 2000 without the City Council's requiring an EIR. In January 2005, the Council approved the soon to be built 9-story Seagate high-rise blockbuster on Addison Street without an EIR.

Residents expected the City Council to insist that UC scale back its massive development plans, or that it at least force UC to revise its Long Range Development Plan EIR, and recirculate it for more thorough public review. Instead, the Mayor disappeared behind closed doors in a series of secret meetings with the UC Chancellor, Robert Birgeneau, in which the UC/City of Berkeley "Settlement" was negotiated.

The Bates/City Council lawsuit against UC now appears to have been no more than a contrivance to provide the

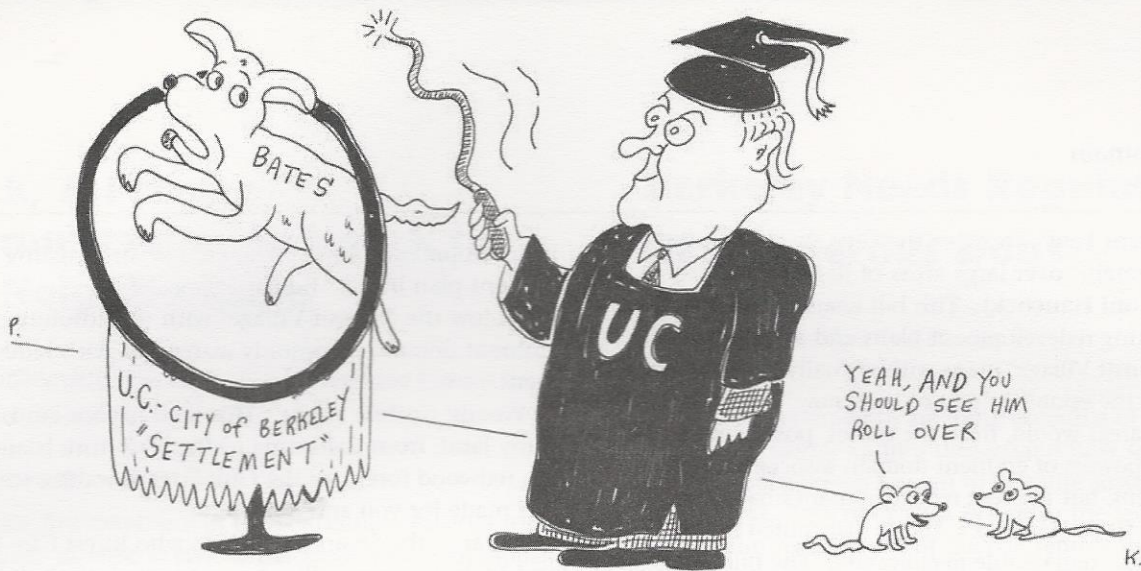
City a legal pretext for conducting "closed door" discussions with UC. Neat!

The obsequious City Council fell in line promptly to approve the Bates "Settlement" in another closed meeting with no opportunity for the public to comment on, or even see, the text of the "Settlement" in advance.

The so-called "Settlement" between Tom ("Go Bears!") Bates and the University of California is far worse than anyone could have imagined. It is an unapologetic, bald-faced betrayal of the public trust. Bates and the City Council have literally surrendered the City's sovereignty to UC.

City Council members Dona Spring, Betty Olds, and Kriss Worthington, to their lasting credit, voted against the "Settlement."

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Bates Gives UC Absolute Control Over a New Berkeley Downtown Plan

Among other cushy concessions Berkeley hands to UC, the "settlement" requires the City to complete and adopt a new "Downtown Area Plan" within 48 months. The Plan is to be written jointly by City and UCB planning staff. The new Downtown Plan and the accompanying Environmental Impact Report must both have the approval of the UC Regents. Bates' deal with UC illegally confers equal standing with the City Council to the UC Board of Regents to approve or reject zoning and/or planning legislation that will determine the scale and design of downtown Berkeley for the foreseeable future.

Difficult to believe? Here is what Section II of the "Settlement" - "JOINT PLANNING FOR THE DOWNTOWN AREA - DEVELOPMENT OF A DOWNTOWN AREA PLAN (DAP)," says:

Section II.B.4 states, "The City's planning director and the campus planning director will be fully authorized to make process decisions jointly."

Section II.B.6 of the "Settlement" states, "Because the DAP is a Joint Plan, there shall be no release of draft or final DAP or EIR without concurrence by both parties. . . . Any mitigation measures included in the EIR must be acceptable to UC Berkeley." Plainly that hands UC Regents veto power over local land use legislation.

Section II.B.7 states, "UC Berkeley reserves the right to determine if the DAP or EIR meets the Regents' needs." The basis for making such a determination would be that the DAP or EIR does not accommodate UC Berkeley development in a manner satisfactory to the Regents."

The UC Long Range Development Plan would construct at least 1.2 million square feet of new development in downtown Berkeley, and add at least 1,300 new parking spaces. It will make it a lot easier for UC high-rise developers if the City's land use plans and zoning were changed to accommodate all of UC's development projects. That is clearly the intent here.

Despite the "Settlement's" unprecedented concessions to the university, do not look for any concessions from UC to the City. Section II.B.1 states, "The Regents will reserve their autonomy from local land use regulation."

Downtown Plan's Reach Extended

Now only will the Bates/UC deal result in a dramatic increase in downtown Berkeley's height limits (or perhaps the elimination of height limits entirely), the geographical area to be defined as "Downtown" will also double from the present alignment.

The downtown's existing borders are: Oxford Street, Durant Avenue, extending westward to mid block between Shattuck and Milvia Street, Bancroft Avenue westward to Milvia, Milvia north to Allston Way, Allston Way west to MLK Way, and MLK Way north to mid block between University Avenue and Berkeley Way—with this mid-block boundary extending eastward to Shattuck Avenue, and then extending one half block north to Berkeley Way, and then eastward along Berkeley Way to Oxford Street.

The new downtown, as decided by Bates and UC Chancellor Birgeneau (described in the first sentence of Section II of the "Settlement") will extend three blocks further south, all the way to Dwight Way, and one and one half blocks further north to Hearst Avenue. MLK Way and Oxford Street would be the western and eastern boundaries of the new downtown, from Dwight Way to Hearst Avenue. Over 1,000 residents who thought they were protected by neighborhood zoning will find themselves living in the reinvented "downtown."

Those new downtown boundaries are similar to the C2 Zoning District boundaries of downtown Berkeley prior to 1984. In that year, the public outcry over the proposed 10-story Golden Bear building on University Avenue led the City Council to decrease the size of the downtown zoning district, and to start a Downtown Plan process, which resulted, in November, 1990, in the adoption by the then City Council of a new Downtown Plan still in existence today.

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The Mayor's secret deal with UC would set the clock back 20 years. Prior to 1984, buildings of up to 8 stories and 100 feet could be constructed in the downtown zoning district by right, without any public review. Public concern forced the City Council to implement more reasonable thresholds for discretionary approval of new development. The 8-story ELS office building on Addison was the last major building constructed before the rules were changed.

Look for City and UC planning staff to recommend that all but the largest new buildings be allowed by right, rather than be subject to any level of public review and environmental analysis. The new Downtown Plan, as dictated by the City/UC "Settlement," would negate gains made by Berkeley's modern slow growth/anti-high rise movement. That movement fought off the 10-story Golden Bear proposal, stopped an 11-story Sheraton Hotel where the Vista College building is now being completed, and worked successfully to get the City to adopt a Downtown Plan that respects the area's existing character and skyline.

The Deal With UC Flouts Measure N

In addition to violating the City Charter, the City/UC "Settlement" is in stark violation of Measure N, The Berkeley Public Agency Accountability Act. Adopted by Berkeley voters in 1988, Measure N states,

1. "It shall be the policy of the City of Berkeley that all land use plans, development and expansion by public agencies are consistent with City laws, the City's General Plan and Zoning Ordinance, and the California Environmental Quality Act."

2. "The City Manager and the elected representatives of the City of Berkeley shall use all available lawful means to ensure that all public agencies abide by the rules and laws of the city, and that these agencies pay taxes and fees, comparable to those paid by private citizens and businesses, to support their fair share of city services."

Measure N was incorporated in its entirety in the 2001 Berkeley General Plan, in Land Use Element Policy LU-41 and Policy LU-42.

What Tom Bates has contrived is to turn Measure N upside down. Instead of demanding that UC obey the City's land use plans and height limits, Mayor Bates has promised UC that the City Council will redo its land use plans and height limits for a broad swath of central Berkeley, to accommodate all conceivable future UC development.

We Already Have a Downtown Plan

Bates and his City Council retinue want you to think that we need a new downtown plan. We already have a Downtown Plan. It was adopted unanimously by the Planning Commission and the City Council in 1990, after a very inclusive five-year planning process that was hailed as a model at the time. A Downtown Plan Committee,

that included merchants, downtown residents, architects, developers, and neighborhood activists (including this writer), fought long and hard over what should and should not be allowed, and finally reached agreement on downtown height limits, still in effect today.

Taller buildings, with an absolute height limit of seven stories and 87 feet, are allowed in the Downtown Core Area, while the north, west, south, and Oxford Street edges of Downtown have absolute height limits of four and five stories.

Existing Downtown Plan Serves the City Well

Bates disparages the existing Downtown Plan as outdated and irrelevant. In fact, when the City Council finally approved a new City General Plan in December 2001 (one year before Bates's election), it pointedly reaffirmed and re-adopted all the height limits in the 1990 Downtown Plan, as well as the Downtown Plan's existing boundaries.

In the summer of 1999, then City Manager James Keene briefly seized control of the City's pending draft General Plan to ram through a plan that would have abolished all downtown height limits, to allow for buildings which exceeded 20 stories. Keene's plan would have also allowed 8-12 story buildings along all of Berkeley's major thoroughfares. Fortunately, enough opposition to Keene's plans quickly materialized, and he was forced to back down.

Keene's high-rise fantasy was shot down by the Council in 1999, but, despite that setback, developers continued to lobby hard to increase the heights and densities set forth in the new General Plan. Instead, the Council specifically decided to incorporate the existing Downtown Plan in the new General Plan, without changing the height limits or the existing geographical boundaries of the Downtown Plan. Berkeley's Downtown Plan is, in a sense, only 3 1/2 years old. It is as relevant today as it was in December 2001, when it was incorporated into the new city General Plan.

The height limits in the Downtown Plan, as well as the downtown's existing zoning boundaries, are as fitting today as they were when the Plan was first adopted in 1990. Notwithstanding the out of scale buildings that have been built in the last few years, the idea of Downtown Berkeley as a densely developed, but low-rise, compact downtown still holds. The 1990 Downtown Plan has served the community well. Despite the various out of scale buildings that have been approved or built in recent years, the low-rise and architecturally significant downtown, that existed in 1990 still exists, for the most part, today. Over a million square feet of new development could still be built in downtown Berkeley without exceeding any of the existing Downtown Plan's height or density limits.

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City Planners Kow-tow to Developers

The City has not turned down a downtown development project in at least 10 years. Even though Berkeley's existing Downtown Plan has an absolute height limit of 7 stories in the Downtown Core area, "creative" and plainly illegal interpretations of the zoning ordinance enabled the Gaia building to rise to 10 stories, while an overly generous interpretation of the density bonus regulations will result in the soon to be constructed 9-story Seagate project.

City staff could not quite shoe horn the massive David Brower building (to be constructed at Oxford and Kittredge) into the Downtown Plan. So, the Downtown Plan and the 2001 General Plan are now being quietly amended by city planners, to accommodate the Brower monstrosity.

The role of a proposed UC sponsored high-rise hotel and conference center at the Bank of America Shattuck and Center Street site in the "Settlement" is not known. Tom Bates has been promoting this project intensely since becoming Mayor. (Call it the Bates Hotel.) It has been reported variously as being between 12 and 15 stories high. The site's absolute height limit is 7 stories.

Tom Bates and the university are not pursuing their new Downtown Area Plan simply to make a few modest changes to Berkeley's existing Downtown Plan. After seven years, former City Manager Jim Keene's high-risers takeover of downtown Berkeley is back with a vengeance. This time it has the full backing of a subservient City Council. There is a very serious and concerted effort to destroy the remaining small town character of Berkeley, to radically change the city's demographics, and to transform the remaining diversity of central Berkeley into block after block of faceless high-rise buildings, and to destroy, in the process, what's left of the once animated downtown retail economy.

Lawsuit Filed

The indispensable Daily Planet reported that, "A group of Berkeley citizens has filed a lawsuit against the City of Berkeley and several city officials in the California Superior Court in Oakland, asking the court to set aside the city's settlement agreement with the University of California over UC's Long Range Development Plan because it 'contracted away the City Council's right to independently exercise its police power in the future.'

"The plaintiffs charge that the agreement would deprive the Council (and future Councils) of independent regulatory and planning powers and also of environmental protection authority, which is in violation of state and local law.

"The lawsuit was filed by the law offices of Oakland attorney Stephan C. Volker on behalf of Carl Friberg, Anne Wagley, Jim Sharp, and Dean Metzger. All four plaintiffs are influential veteran neighborhood activists who live near the university campus.

"The suit points out that the city sold its autonomy for the illusory promise of a few more dollars from the University,' Volker said. 'The agreement violated the state constitution and the City's own charter, which forbids the city from delegating its legislative authority to the university. It gave the university veto power over the Downtown Plan and the City Charter prohibits that. The city sold its independence to another agency and that's unconstitutional.'"

Dana Berliner, a lawyer for the Institute of Justice, said, "The laws are routinely ignored (*by local governments) because local governments know most people can't afford to fight them." True, and reason enough for neighborhoods to give every support to the pending legal action. ■