

8. The plans conform to all other laws and regulations of the City, provided, however, that the Council shall have the right to require front, rear and side yard setbacks greater than those otherwise provided in the laws and regulations of the City if the Council finds that such larger front, rear and side yard areas are necessary to provide for the health, safety and general welfare of the residents of Piedmont in accordance with its zoning laws. The proposed use is in an existing office building constructed in accordance with Piedmont laws and regulations.

RESOLVED, that in consideration of the findings and facts set forth above, the Piedmont City Council approves the application for a conditional use permit by GMAC Mortgage, LLC. for property located at 1345 Grand Avenue, Piedmont for a term of five (5) years.

Moved by Barbieri, Seconded by Chiang

Ayes: McEnroe, Barbieri, Chiang, Keating

Noes: None

Absent: Friedman  
(0340)

### City Policy Consideration

The City Clerk reported that proponents of the Central Piedmont Underground Utility District have asked the Council to give the proposed district special consideration when evaluating the level of resident support necessary in order to approve district formation. Under state law, the Council has absolute discretion in determining the percentage of positive ballots required for district formation, provided said affirmative ballot count exceeds 51%. It has been the Council's policy since 2003 to require a positive threshold of approximately 70%.

As a side issue, the City Attorney noted that on January 8 the Vice Mayor requested a legal opinion as to whether he could participate in the discussion of this matter since he lives within the proposed boundaries of the Central Piedmont Underground District. The City Attorney stated that it is his legal opinion that it would be inappropriate for the Vice Mayor to participate in the discussion and he so advised the Vice Mayor.

**Correspondence** was received from: Denny McLeod, January 11; Jeff & Lucia Horner, January 3; Mary Elizabeth Stevens, January 13; Mary Cauchois, January 8; Gary & Katie Korotzer; Steven Flannes; Gene & JoAnn Gould, undated.

**Public testimony** was received from:

Denny McLeod, a member of the Central Piedmont Utility Undergrounding Leadership Committee, noted that the Leadership Committee is not requesting any change to the City's existing policy of requiring a 70% threshold at this time. Mr. McLeod reviewed the efforts since 2002 of the Leadership Committee to organize the Central Piedmont Utility Undergrounding District and the fact that an unprecedented escalation in construction costs occurred in the interim between the Engineer's estimate of project costs and resident balloting (September/November 2005) and the time bids were received in October 2006. As a result, project costs are now approximately \$2Million higher than the original assessments approved by the Council in November 2005. However, Mr. McLeod emphasized that

the importance and benefits of the proposed district remain unchanged and worthy of Council support.

Bob Leslie and Arnie Brown opposed any change to the Council's existing policy to lower the percentage threshold necessary to attain Council approval for district formation, stressing that to do so now at this stage in the process would be blatantly unfair, potentially disenfranchise a significant number of residents and set a very bad precedent. They urged that the 70% threshold be retained if there is a re-balloting of this matter to approve the higher assessments necessary for project construction.

The Council discussed the intent and basis for the Council's establishment of an approximately 70% affirmative ballot percentage, agreeing that the existing policy affords the Council with flexibility and discretion in determining an acceptable percentage within the range of 70% as well as allowing the Council full discretion to consider each district on its own merits – there is no precedent as to the action on one district as it pertains to another. The Council also reaffirmed that the "approximately 70%" figure is a benchmark/discretionary standard and not an absolute number. Therefore there is no need to change the existing policy.

**Resolution 6-07**

RESOLVED, that the City Council finds that there is no need to change its existing policy of "approximately 70%" regarding the level of support required for utility undergrounding assessment balloting because there is flexibility and discretion within the Council's decision-making process.

Moved by Barbieri, Seconded by Chiang

Ayes: McEnroe, Barbieri, Chiang, Keating

Noes: None

Absent: Friedman

(1075)

**Central Piedmont  
Utility Underground  
Assessment District**

The City Clerk reported that in November 2005 the Central Piedmont Utility Undergrounding District received a 74% approval level from property owners within the district and the Council authorized its formation. However, subsequent construction bids were substantially higher than the Engineer of Work's estimate. Therefore, the Engineer's Report has been amended to reflect the increased assessment amounts now required to fund construction. These assessment amounts are based upon firm bids to do the work. In addition, the assessment for 68 Bellevue has been revised to eliminate the "Bay view benefit points" assigned to this property. As a result, the assessment rates for all other properties within the district have been recalculated, representing an individual increase ranging from \$80 to \$160. The City Clerk recommended Council approval of the amended Engineer's Report and the scheduling on the March 5 Council agenda of a *Public Hearing of Protest* for the Central Piedmont Undergrounding Assessment District. If so authorized, assessment ballots will be mailed to all property owners within the proposed district on January 19. The ballots will then be opened and tallied on March 5, after the public hearing, to determine if there is a "majority protest" to stop district formation.