

THE CITY OF SAN DIEGO, CALIFORNIA  
MINUTES FOR REGULAR COUNCIL MEETING  
OF  
TUESDAY, NOVEMBER 29, 1994  
AT 9:00 A.M.  
IN THE COUNCIL CHAMBERS - 12TH FLOOR

CHRONOLOGY OF THE MEETING:

The meeting was called to order by Mayor Golding at 10:07 a.m. Mayor Golding recessed the regular meeting at 10:14 a.m. to convene the Housing Authority. Mayor Golding reconvened the regular meeting at 10:15 a.m. with all members present. Mayor Golding acknowledged and welcomed Arnetta Luke of Linda Vista Elementary School and Adam Gearheart of Lakeside Middle School. Both students won the opportunity through Chandler's Storybook Creations and the Parent/Child Expo to spend the morning in Mayor Golding's office to learn about City Government. Mayor Golding also acknowledged and welcomed twenty students from Logan Elementary School.

The meeting was adjourned by Mayor Golding at 11:24 a.m.

ATTENDANCE DURING THE MEETING:

- (M) Mayor Golding-present
- (1) Council Member Mathis-present
- (2) Council Member Roberts-present
- (3) Council Member Kehoe-present
- (4) Council Member Stevens-present
- (5) Council Member Warden-present
- (6) Council Member Stallings-present
- (7) Council Member McCarty-present
- (8) Council Member Vargas-present

Clerk-Fishkin (mc)

FILE LOCATION: MINUTES

ITEM-300: ROLL CALL

Clerk Fishkin called the roll:

- (M) Mayor Golding-present
- (1) Council Member Mathis-present
- (2) Council Member Roberts-not present
- (3) Council Member Kehoe-present
- (4) Council Member Stevens-present
- (5) Council Member Warden-present
- (6) Council Member Stallings-present
- (7) Council Member McCarty-present
- (8) Council Member Vargas-present

PUBLIC COMMENT:

None .

COUNCIL COMMENT:

None .

ITEM-310: HEARING GRANTED, TO BE HELD JANUARY 10, 1995

SUBJECT: Request by Jeffrey Chine (attorney for applicant, Sally Flaherty) for a hearing of an appeal from the decision of the Planning Commission in upholding the decision of the Hearing Officer to deny Community Plan Implementation Overlay Zone Permit 93-0443.

(CPIOZ-93-0443. Linda Vista Community Plan Area. District-6.)

A motion either granting or denying the request for a

hearing of the appeal.

SUPPORTING INFORMATION:

The appeal is being requested for a permit to remodel an existing concrete building and add a first and second story expansion with a request for a variance for a side yard setback. The site is located at 5322 Banks Street in the Linda Vista Community Plan area. The site is more particularly described as Lot 12, except southeasterly 11'-0" of southwesterly 72 feet and all of Lot 13, Block 3, Vernon Park Subdivision, Map 569. The project is subject to the requirements of the M1-A Zone, Morena Revitalization Program and Community Plan Implementation Overlay Zone.

The Planning Department recommended denial of the appeal and the approval of the project, with conditions.

The Planning Commission's vote of 3-2 failed. Therefore, the appeal was denied and the decision of the Hearing Officer stands to deny the permit.

Ayes: Bernet, Benn and McElliott.

Nays: Quinn and Skorepa.

Not Present: White and Neils.

The Linda Vista Community Planning Committee voted to approve CPIOZ-93-0443.

FILE LOCATION: PERM - CPIOZ-93-0443

COUNCIL ACTION: (Tape location: A017-058.)

MOTION BY STALLINGS TO GRANT THE HEARING BASED ON CITY-WIDE SIGNIFICANCE. Second by Vargas. Passed by the following vote: Mathis-yea, Roberts-yea, Kehoe-yea, Stevens-yea, Warden-yea, Stallings-yea, McCarty-yea, Vargas-yea, Mayor Golding-yea.

ITEM-311:

SUBJECT: Reconsideration of James Toone PIRD and Settlement of Toone, et al. v. City of San Diego, Superior Court Case No. 667393.

(Clairemont Mesa Community Area. District-6.)

Subitem-A: RULES WAIVED

A motion to waive the Permanent Rules of Council to allow reconsideration of a 3-unit Planned Infill Residential Development request by James Toone for property located in the Clairemont Mesa Community, in the area between Ticonderoga and Bunker Hill streets.

Subitem-B: RECONSIDERED

A motion to reconsider the Council's action of January 29, 1991, in voting 8-0 to deny PIRD-89-0956.

(Councilmembers Wolfsheimer, Roberts, Hartley, Bernhardt, Henderson, McCarty, Filner, and Mayor O'Connor voted yea; Councilmember Pratt not present.)

Subitem-C: HEARING TO BE HELD JANUARY 31, 1995

If approved for reconsideration by a majority vote, directing the City Clerk to re-notice the matter for a future public hearing.

Subitem-D: ADOPTED AS RESOLUTION R-284996

(R-95-654)

Adoption of a Resolution approved in Closed Session on May 17, 1994 by the following vote: Mathis-yea; Roberts-yea; Kehoe-yea; Stevens-yea; Warden-yea; Stallings-nay; McCarty-yea; Vargas-not present; Mayor Golding-not present.

Authorizing the City Manager to pay the total sum of \$100,000 in settlement of each and every claim against the City of San Diego, its agents and employees, resulting from the facts and claims giving rise to the case, James Toone, et al., v. City of San Diego, San Diego County Superior Court Case No. 667393, less any discretionary fees which will be deducted from the \$100,000 sum for the processing of re-application for development of the property pursuant to the terms of a Settlement Agreement to be executed by the parties;

Authorizing the City Auditor and Comptroller to issue one check in the amount of the balance remaining from

\$100,000 after deductions are made in payment to the City for discretionary review fees in connection with the re-application for development, made payable to David L. Golden, attorney for James Toone, in full settlement of all claims upon final City approval of the development reapplied for.

CITY MANAGER'S RECOMMENDATION:

Adopt the Resolution in Subitem D.

CITY MANAGER/CITY ATTORNEY SUPPORTING INFORMATION:

This matter has been the subject of litigation and has been discussed in Closed Session by the City Council. In order to settle the litigation it is proposed that the City Council make a determination on whether or not to reconsider Council's action on January 29, 1991, when, by a vote of 8-0, it denied approval of a 3-unit Planned Infill Residential Development PIRD-89-0956 request for the subject property.

In order to reconsider it would be necessary to first have a 6-vote motion to waive the rules. If such motion passes it would then be appropriate to have a motion to reconsider the earlier Council action and direct the City Clerk to re-notice the matter for a future public hearing. This second action requires 5 votes. At the public hearing, the City Council would either approve or deny the project after considering the findings and testimony and after considering appropriate conditions which could be placed on the project.

With regard to the settlement agreement, if the 6-vote motion to waive the rules and the 5-vote motion to set the matter for a new hearing are passed, it is appropriate to also adopt a resolution authorizing an amount not to exceed \$100,000 in settlement of the lawsuit. Payment of the applicants' processing costs for discretionary permits in continuing to pursue the proposed 3-unit project will be deducted from the \$100,000. If the project is approved, Mr. Toone will receive the balance of the \$100,000.

Aud. Cert. 9500474.

FILE LOCATION: PERM - PIRD-89-0956

COUNCIL ACTION: (Tape location: A093-421.)

MOTION BY McCARTY TO WAIVE THE RULES. Second by Stevens.  
Passed by the following vote: Mathis-yea, Roberts-yea,

Kehoe-yea, Stevens-yea, Warden-yea, Stallings-nay, McCarty-yea, Vargas-yea, Mayor Golding-yea.

MOTION BY McCARTY TO RECONSIDER. Second by Stevens. Passed by the following vote: Mathis-yea, Roberts-yea, Kehoe-yea, Stevens-yea, Warden-yea, Stallings-nay, McCarty-yea, Vargas-yea, Mayor Golding-yea.

MOTION BY MATHIS TO ADOPT SUBITEM-D. Second by Warden. Passed by the following vote: Mathis-yea, Roberts-yea, Kehoe-yea, Stevens-yea, Warden-yea, Stallings-nay, McCarty-yea, Vargas-yea, Mayor Golding-yea.

ITEM-330: HEARING HELD

SUBJECT: A preliminary hearing to allow public testimony relating to establishing the annual assessments for the Crosby Street Landscape Maintenance District. Council will take action at the subsequent hearing scheduled for January 10, 1995 at 10:00 a.m.

(Barrio Logan Community Area. District-8.)

CITY MANAGER'S RECOMMENDATION:

Hold the public hearing.

CITY MANAGER SUPPORTING INFORMATION:

This action proposes to establish the Crosby Street Landscape Maintenance District on Crosby Street between Harbor Drive and Logan Avenue as part of the street improvement project to widen Crosby Street to a modified four lane major street. This project will also enhance the proposed Mercado Commercial Development Project that will be constructed on the south side of Crosby Street from Main Street to National Avenue. The street improvement project is expected to start in October 1994, and finish in April 1996. A postcard survey of the fifteen property owners within the proposed district resulted in four responses returned out of fifteen mailed, with three opposed and one in favor of the establishment of the district. However, non-responses to the survey are considered to be in favor of the district. This results in 92 percent approval that exceeds the 67 percent criteria in Council Policy 800-3, "Public Infrastructure Financing Assessment Districts and Community Facilities." If the landscape maintenance district is not

approved, the street improvement project would include standard curbs and sidewalks and would not include landscaping, benches, trash receptacles and decorative sidewalk pavers.

If the district is established, assessments would start in Fiscal Year 1996. Based on current data, the approximate annual maintenance cost would be \$31,293. This will be confirmed at a later date. The projected property owner assessment amount would be \$16.39 per lineal foot of frontage.

FILE LOCATION: STRT M-340

COUNCIL ACTION: (Tape location: A059-072.)

Hearing began at 10:12 a.m. and halted at 10:13 a.m.

ITEM-331:

SUBJECT: Two actions related to the Mira Mesa Facilities Benefit Assessment.

(See City Manager Reports P-94-198 and P-94-098. Mira Mesa Community Area. District-5.)

(Continued from the meetings of July 5, 1994, Item 339, August 2, 1994, Item 332, October 4, 1994, Item 330, and November 1, 1994, Item 334; last continued at Councilmember Warden's request, to allow the City Manager and staff to meet with the Community Planning Group.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolutions:

Subitem-A: (R-94-1830) ADOPTED AS RESOLUTION R-284998

Designating an area of benefit in Mira Mesa;

Confirming the description of the Public Facilities Projects, the Community Financing Plan and Capital Improvement Program with respect to the Public Facilities Projects, the method for apportioning the costs of the Public Facilities Projects among the parcels within the area of benefit and the amount of

the Facilities Benefit Assessments charged to each parcel, the basis and methodology for assessing and levying discretionary automatic annual increases in Facilities Benefit Assessments;

and Ordering the proposed Public Facilities Project in the matter of the Mira Mesa Facilities Benefit Assessment Area.

Subitem-B: (R-94-1832) ADOPTED AS RESOLUTION R-284999

Declaring the assessment fee schedule contained in the Mira Mesa Public Facilities Financing Plan, to be an appropriate and applicable development impact fee for all properties within the Mira Mesa Community that have either never been assessed under the Mira Mesa Public Facilities Financing Plan or have not otherwise agreed to the payment of Facilities Benefit Assessment fees as prescribed by the City Council.

FILE LOCATION: STRT FB-12

COUNCIL ACTION: (Tape location: A059-072.)

Hearing began at 10:12 a.m. and halted at 10:13 a.m.

CONSENT MOTION BY McCARTY TO ADOPT. Second by Kehoe. Passed by the following vote: Mathis-yea, Roberts-yea, Kehoe-yea, Stevens-yea, Warden-yea, Stallings-yea, McCarty-yea, Vargas-yea, Mayor Golding-yea.

ITEM-332:

SUBJECT: Two actions related to Street Vacation - A Street Reservation between Federal Boulevard and Mallard Street.

(Broadway Heights Neighborhood. District-4.)

(Continued from the meeting of November 1, 1994, Item 333, at the City Manager's request, to allow the planning group to review.)

CITY MANAGER'S RECOMMENDATION:



Adopt the following resolutions:

Subitem-A: (R-95-570) DENIED

Vacating the street reservation between Federal Boulevard and Mallard Street, under the procedure for the summary vacation of streets.

Subitem-B: (R-95-571) NOTED AND FILED

Certifying that the information contained in DEP-92-0518, has been completed in compliance with the California Environmental Quality Act of 1970, as amended, and State guidelines, and has been reviewed and considered by the Council in connection with the approval of the vacation of the street reservation between Federal Boulevard and Mallard Street.

**CITY MANAGER SUPPORTING INFORMATION:**

The proposed street vacation has been requested by the abutting property owner in order to consolidate the unimproved right-of-way (paper street) to allow the future construction of one single-family residential unit.

The subject vacation is located in the Broadway Heights neighborhood and is situated in the R1-6000 Zone. The area-of-vacation is approximately 71,874 square feet (1.65 acres), and no development is proposed at this time. Any development proposal other than the single-family residence considered in the Environmental Negative Declaration (DEP-92-0518) will be subject to discretionary permit review.

The area-of-vacation is unimproved but does contain a sewer line for which an easement will be granted to the City. The right-of-way is not required for access or traffic circulation, since all adjacent parcels are served by the existing street system.

**FINDINGS:** Staff review has indicated that the vacation is consistent with the General Plan, the community plan, and Council Policy 600-15 and may be summarily vacated. The right-of-way is not required for present or prospective public use, and the facilities for which it was originally acquired will not be detrimentally affected. The public will benefit from the vacation through improved utilization of the land and relieving the City of maintenance and liability responsibilities.

**FILE LOCATION:** DEED F-6395; STRT J-2811

COUNCIL ACTION: (Tape location: A469-B432.)

Hearing began at 10:43 a.m. and halted at 11:24 a.m.

Testimony in opposition by Robert Robinson and Reynaldo Pisano.

Testimony in favor by Steven Penacho and Delmar Neville.

MOTION BY STEVENS TO DENY THE STREET VACATION. Second by Roberts. Passed by the following vote: Mathis-yea, Roberts-yea, Kehoe-yea, Stevens-yea, Warden-yea, Stallings-yea, McCarty-yea, Vargas-yea, Mayor Golding-yea.

ITEM-333:

SUBJECT: Penasquitos Canyon Preserve #8 Condemnation.

(See City Manager Report CMR-94-320. Located on Del Mar Mesa, on unnamed Road NS65. District-1.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-95-580) ADOPTED AS RESOLUTION R-285000

Determining and declaring that the public interest, convenience and necessity of the City of San Diego requires the acquisition of property known as Penasquitos Canyon Preserve Project for open space purposes, located in Del Mar Mesa, and that the public interest, convenience and necessity demand the acquisition of fee title to the property for the Open Space Project;

Declaring the intention of the City to acquire the property under eminent domain proceedings;

Declaring that an offer to purchase the property pursuant to Government Code Section 7267.2 has been made to the record owner of the property and the offer rejected;

Directing the City Attorney to commence an action in the Superior Court of the State of California, in and for the County of San Diego, for the purpose of condemning and acquiring the property.

Aud. Cert. 9300577.

FILE LOCATION: STRT OS-1

COUNCIL ACTION: (Tape location: A059-072.)

Hearing began at 10:12 a.m. and halted at 10:13 a.m.

CONSENT MOTION BY McCARTY TO ADOPT. Second by Kehoe. Passed by the following vote: Mathis-yea, Roberts-yea, Kehoe-yea, Stevens-yea, Warden-yea, Stallings-yea, McCarty-yea, Vargas-yea, Mayor Golding-yea.

ITEM-334:

SUBJECT: Two actions related to Adams Avenue/39th Street Park (Normal Heights Community Park) - Condemnation.

(See City Manager Report CMR-94-338. Located south of Adams Avenue, between 39th Street and Highway 15. Normal Heights Community Area. District-3.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolutions:

Subitem-A: (R-95-666) ADOPTED AS RESOLUTION R-285001

Determining and declaring that the public interest, convenience and necessity of the City of San Diego requires the acquisition of property known as the Adams Avenue/39th Street Park (Normal Heights Community Park) Project and that the public interest, convenience and necessity demand the acquisition of fee simple absolute to the property for the Community Park;

Declaring the intention of the City to acquire the property under eminent domain proceedings;

Declaring that an offer to purchase the property pursuant to Government Code Section 7267.2 has been made to the record owner of the property and the offer has been rejected;

Directing the City Attorney to commence an action in the Superior Court of the State of California, in and for the County of San Diego, for the purpose of condemning and acquiring the property.

Subitem-B: (R-95-676) ADOPTED AS RESOLUTION R-285002

Authorizing the transfer of not to exceed \$150,000 from Mid-City Park Development Fund 39094, to CIP-29-705.0, Normal Heights Community Park Acquisition;

Authorizing the expenditure of not to exceed \$150,000 from Normal Heights Community Park Acquisition 39094/30244, Organization 105, Object Account No. 4638, Job Order No. 119406 (CIP-29-705.0, Normal Heights Community Park Acquisition) for costs related to condemnation of property for park purposes in connection with the Adams Avenue/39th Street Park (Normal Heights Community Park) project.

Aud. Cert. 9500319.

FILE LOCATION: MEET

COUNCIL ACTION: (Tape location: A059-072.)

Hearing began at 10:12 a.m. and halted at 10:13 a.m.

CONSENT MOTION BY McCARTY TO ADOPT. Second by Kehoe. Passed by the following vote: Mathis-yea, Roberts-yea, Kehoe-yea, Stevens-yea, Warden-yea, Stallings-yea, McCarty-yea, Vargas-yea, Mayor Golding-yea.

NON-DOCKET ITEMS:

None .

ADJOURNMENT:

The meeting was adjourned by Mayor Golding at 11:24 a.m.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Tape location: B432.)