

THE CITY OF SAN DIEGO, CALIFORNIA  
MINUTES FOR REGULAR COUNCIL MEETING  
OF  
TUESDAY, MARCH 8, 2005  
AT 9:00 A.M.  
SAN DIEGO CONCOURSE  
AT GOLDEN HALL

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**CHRONOLOGY OF THE MEETING:**

The meeting was called to order by Mayor Murphy at 10:08 a.m. Mayor Murphy recessed the meeting at 11:59 a.m. to reconvene at 2:00 p.m.

The meeting was reconvened by Mayor Murphy at 2:03 p.m. with Council Members Young and Inzunza not present. Mayor Murphy recessed the meeting at 3:33 p.m. for the purpose of a break. Mayor Murphy reconvened the meeting at 3:45 p.m. with Deputy Mayor Zucchet, Council Members Young and Madaffer not present. Mayor Murphy recessed the meeting at 5:06 p.m. for the purpose of a break. Mayor Murphy reconvened the meeting at 5:14 p.m. with Council Members Young, Madaffer, and Inzunza not present. Mayor Murphy adjourned the meeting at 7:13 p.m. into Closed Session to discuss existing and pending litigation matters.

**ATTENDANCE DURING THE MEETING:**

- (M) Mayor Murphy-present
- (1) Council Member Peters-present
- (2) Council Member Zucchet-present
- (3) Council Member Atkins-present
- (4) Council Member Young-Excused (By R-300195 due to representing  
City at APTA Legislative Conf.)
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present

(8) Council Member Inzunza-present

Clerk-Abdelnour/Maland (mc/gS)

FILE LOCATION: MINUTES

ITEM-300: ROLL CALL

Clerk Abdelnour called the roll:

- (M) Mayor Murphy-present
- (1) Council Member Peters-present
- (2) Council Member Zucchet-present
- (3) Council Member Atkins-present
- (4) Council Member Young-not present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present
- (8) Council Member Inzunza-not present

NON-AGENDA COMMENT:

PUBLIC COMMENT-1:

Comment by Lawrence Yep, representing merchants near the ballpark district, requesting that Council consider amending the Municipal Code relating to sidewalk cafes.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:11 a.m. – 10:12 a.m.)

**PUBLIC COMMENT-2:**

Comment by Ian Trowbridge regarding the Hillel Development that will be coming before Council in the near future, stating that both the community and the Planning Commission have rejected this development.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:12 a.m. 10:16 a.m.)

**PUBLIC COMMENT-3:**

Comment by Ron Boshun regarding Council's actions.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:16 a.m. – 10:17 a.m.)

**PUBLIC COMMENT-4:**

Comment by Jarvis Ross regarding the elimination of Non-Agenda Comment on Mondays and the recent revisions pertaining to Non-Agenda Comments.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:17 a.m. – 10:20 a.m.)

**PUBLIC COMMENT-5:**

Comment by Sandy Summers regarding remarks made by Daniel Coffey pertaining to a public official.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:20 a.m. – 10:23 a.m.)

PUBLIC COMMENT-6:

Comment by Bert Decker regarding the Constitution of the United States.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:23 a.m. – 10:23 a.m.)

PUBLIC COMMENT-7:

Comment by Lou Conde requesting that Council reconsider the appointment of Kourosh Hangafarin to the Port Commission.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:23 a.m. – 10:26 a.m.)

PUBLIC COMMENT-8:

Comment by Daniel Coffey regarding the qualifications of the City Attorney with regard to investigating the vetting process for mayoral appointees.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:26 a.m. – 10:30 a.m.)

PUBLIC COMMENT-9:

Don Stillwell recited the Lord's prayer and then commented on the need for a prayer at every meeting.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:30 a.m. – 10:32 a.m.)

PUBLIC COMMENT-10:

Comment by Marvin Carpenter regarding incorrect information used in the City's Planning Department by City staff.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:32 a.m. – 10:36 a.m.)

PUBLIC COMMENT-11:

Comment by Mohammed Abdullah regarding the attack on America on September 11 and the issue of his constitutional rights regarding freedom of speech.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:36 a.m. – 10:38 a.m.)

COUNCIL COMMENT:

None.

CITY MANAGER COMMENT:

None.

CITY ATTORNEY COMMENT:

None.



ITEM-330: Beyer Property.

Matter of approving, conditionally approving, modifying or denying an application for a Process 5 Public Right-of-Way Vacation (Street Vacation); and Easement Abandonment (EA); a Process 4 Tentative Map (TM), to create two lots from seven existing lots; a Process 4 Planned Development Permit (PDP) to deviate from the development regulations of the RM-1-1 zone; a Process 3 Site Development Permit (SDP) to consolidate lots for the purpose of maximizing density within the San Ysidro Planned District and to deviate from the Environmentally Sensitive Lands Regulations for the construction of an 81 unit multi-family condominium development in the form of 27 detached structures. The 6.80-acre site is located north of Beyer Boulevard and west of Smythe Avenue in the RM-1-1 zone in the San Ysidro Planned District within the San Ysidro Community Planning Area, and Council District 8. The proposed project will conform to the Council Policy 600-27(A) criteria for the Affordable/In-fill Housing Expedite Program by setting aside at least 10 percent of the total dwelling units on-site for households with an income at or below 65 percent Area Median Income (AMI) for rental units, or at or below 100 percent AMI for for-sale units.

(San Ysidro Community Plan Area. District 8.)

**CITY MANAGER'S RECOMMENDATION:**

Adopt the resolutions in subitems A and B; and adopt the resolution in subitem C to grant the permits:

Subitem-A: (R-2005-841) ADOPTED AS RESOLUTION R-300200

Adoption of a resolution certifying Mitigated Negative Declaration No. 41718, on file in the Office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code section 21000 et seq.), as amended, and the State guidelines thereto (California Code of Regulations section 15000 et seq.), that the declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in the report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of the planned development permit, site development permit, public right-of-way vacation, easement abandonment and tentative map for the Beyer Property project;

That the City Council finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study and therefore, that the Mitigated Negative Declaration, a copy of which is on file in the office of the City Clerk and incorporated by reference, is approved;

That pursuant to California Public Resources Code section 21081.6, the City Council adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment, and incorporated herein by reference;

That the City Clerk is directed to file a Notice of Determination [NOD] with the Clerk of the Board of Supervisors for the County of San Diego regarding the above project.

Subitem-B: (R-2005-840) ADOPTED AS RESOLUTION R-300201

Adoption of a Resolution adopting the findings with respect to Tentative Map No. 119405, Public Right-of-Way Vacation No. 139967, and Easement Abandonment No. 139970;

That pursuant to San Diego Municipal Code section 125.910(a) and 125.1010(b), and Map act section 66434(g) a portion of public right-of-way located at the westerly terminus of Foothill Road and the associated public service easements granted pursuant to Map 1246, recorded on April 8, 1910, located within the project boundaries as shown in Tentative Map No. 119405, shall be vacated, contingent upon the recordation of the approved final map for the project;

That pursuant to San Diego Municipal Code section 125.1010(b) and Map Act section 66434(g) a portion of a 10-foot sewer easement located within Parcel A, of Parcel Map 19146, recorded on November 18, 1957, in book 6836, Page 450 of Official Records, located within the project boundaries as shown in Tentative Map No. 119405, shall be vacated, contingent upon the recordation of the approved final map for the project;

That the recommendation of the Planning Commission is sustained, and Tentative Map No. 139970, Public Right-of-Way No. 139967 and Easement Abandonment No. 139970 is granted to Marker Foothill, LLC, and Benito and Sylvia Hernandez, Applicant/Subdivider and Hunsaker &/Associates, Engineer, subject to the attached conditions which are made a part of this resolution.

Subitem-C: (R-2005- ) GRANTED PERMIT, ADOPTED AS  
RESOLUTION R-300202

Adoption of a Resolution granting or denying Planned Development Permit No. 119404 and Site Development Permit No. 139964, with appropriate findings to support Council action.

**OTHER RECOMMENDATIONS:**

Planning Commission on January 13, 2005, voted 5-0 to approve; no opposition.

Ayes: Schultz, Garcia, Steele, Chase, Ontai

Not present: Otsuji

The San Ysidro Planning and Development Group has recommended approval of this project.

**CITY MANAGER SUPPORTING INFORMATION:**

**BACKGROUND**

This is an Affordable/In-Fill Housing Expedite project. The project proposes to demolish two single-family residences and consolidate seven parcels into one lot to construct an 81 unit multi-family condominium development consisting of 27 detached, two-story, residential triplex structures. The proposed project will conform to the Inclusionary Affordable Housing Requirements and Council Policy 600-27(A) criteria by setting aside at least 10 percent of the total for-sale dwelling units on-site for households with an income at or below 100 percent Area Median Income (AMI). Development of the proposed project requires the approval of a Public Right-of-Way Vacation at the westerly terminus of Foothill Road; an Easement Abandonment for portions of a 10-foot sewer easement located on the eastern property line, and the sewer and water easement within the portion of Foothill Road that is proposed to be vacated; a Tentative Map for a condominium development and to create two lots from seven existing lots; a Planned Development Permit to deviate from the development regulations; and a Site Development Permit to consolidate lots for the purpose of maximizing density within the San Ysidro Planned District and to deviate from the Environmentally Sensitive Lands Regulations for encroachment within sensitive biological resources. The 6.80-acre site is located on the north side of Beyer Boulevard, west of Smythe Avenue within the San Ysidro Community Planning Area and Council District 8.

Planning Commission Recommendation: The Planning Commission considered this project on January 13, 2005, and voted 5-0-0 to recommend that the City Council adopt City staff recommendation to approve the project as presented in the Planning Commission Report No. PC-05-019.

Community Planning Group Recommendation: On August 17, 2004, the San Ysidro Planning and Development Group voted 11-1-0 to recommend approval of the project as proposed.

Manager's Recommendation: CERTIFY Mitigated Negative Declaration No. 41718, and ADOPT Mitigation, Monitoring and Reporting Program (MMRP); APPROVE Public Right-Of-Way Vacation No. 139967 and Easement Abandonment No. 139970; APPROVE Planned Development Permit No. 119404, Tentative Map No. 119405, and Site Development Permit No. 139964.

**FISCAL IMPACT:**

None with this action. All costs associated with the processing of this project are paid from a deposit account maintained by the applicant.

Ewell/Halbert/JAP

**LEGAL DESCRIPTION:**

The project site is legally described as the South Two-fifths of the West Half of the East Half of the Southeast Quarter of the Northeast Quarter of Section 35, Township 18 South, Range 2 West, San Bernardino Meridian, in the City of San Diego, County of San Diego, State of California, according to Official Plat Thereof; Parcel A of Parcel Map No. 19146; Portion of Lot A-176, Lot A-177 through A-179 of Addition No. 2 of San Ysidro, Map No. 1246.

Staff: Jeff Peterson - (619) 446-5237

FILE LOCATION: Subitems A-C: LUP – Beyer Property 03/08/05 (65)

COUNCIL ACTION: (Time duration: 11:31 a.m. – 11:32 a.m.)

MOTION BY INZUNZA TO ADOPT THE RESOLUTIONS, GRANTING THE PERMITS. Second by Madaffer. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-not present, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.



ITEM-331: In the matter of: The disposition of the Mt. Soledad Cross and the property previously conveyed to the Mt. Soledad Memorial Association.

(See Memorandum from City Attorney Aguirre dated 2/24/2005.)

(R-2005-954) ADOPTED AS RESOLUTION R-300207

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 11:32 a.m. – 11:59 a.m.;  
2:06 p.m. – 7:10 p.m.)

A RESOLUTION WAS ADOPTED TO REFLECT THE FOLLOWING MOTION:

MOTION BY PETERS TO DECLINE THE OFFER OF THE FEDERAL GOVERNMENT TO TRANSFER THE MOUNT SOLEDAD CROSS. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-not present, Maienschein-nay, Frye-yea, Madaffer-nay, Inzunza-yea, Mayor Murphy-nay.

ITEM-S400: Second Amended and Restated Agreement with Hawkins Delafield & Wood, LLP for General Disclosure Counsel Services.

(Continued from the meeting of February 28, 2005, Item 203, at the request of the City Attorney, in order to complete paperwork on the resolution.)

**CITY ATTORNEY'S RECOMMENDATION:**

Adopt the following resolution:

(R-2005-869) ADOPTED AS RESOLUTION R-300206

Authorizing the Second Amended and Restated Agreement with Hawkins Delafield & Wood, LLP for general disclosure counsel services and authorizing an additional expenditure of \$500,000.

**SUPPORTING INFORMATION:**

The Report on Investigation dated September 16, 2004, prepared by Vinson & Elkins L.L.P. recommended that the City rely on a single, well-qualified firm to provide disclosure counsel services in order to provide for continuity in the City's disclosure materials and a greater accountability on the part of disclosure counsel. The City accepted that recommendation and engaged the Hawkins Delafield & Wood LLP [Firm] to serve as the City's general disclosure counsel. Such services include, but are not limited to, advising the City regarding its disclosure obligations under federal securities laws, advising the City regarding the provisions of the San Diego Municipal Code pertaining to disclosure; participating in the Disclosure Practices Working Group; conducting training and seminars for the City regarding federal securities laws; preparing standards and procedures for the City's disclosure practices; assist the City in finalizing and launching a City investor web page; and provide other legal services as requested by the City Attorney's office.

The Firm proposed to provide such services on an hourly basis. The City has determined to accept the Firm's proposal and retain it for the above-referenced purposes. This Second Amended and Restated Agreement for General Disclosure Counsel Services increases the compensation to be paid to the Firm by an additional \$500,000; the total amount of the contract with this amendment is \$750,000.

**FISCAL IMPACT:**

The City shall compensate Hawkins Delafield and Wood LLP based on an hourly rate for the services provided. This second amended and restated agreement increases such compensation by \$500,000. Pursuant to the agreement, as amended and restated, the maximum amount to be paid to Hawkins Delafield and Wood LLP shall not exceed \$750,000, including expenses. These costs shall be shared among various bond-financed projects.

Kelly Salt

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 7:11 p.m. – 7:12 p.m.)

MOTION BY FRYE TO ADOPT. Second by Madaffer. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-not present, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.



[ITEM-S404](#): Audit Committee of the City of San Diego

(Citywide)

**TODAY'S ACTIONS ARE:**

Adopt the following resolutions:

Subitem-A: (R-2005-933) ADOPTED AS RESOLUTION R-300203

In order for the City to achieve the full benefit of the work of Kroll Associates, Inc. under an agreement with the City dated February 10, 2005, the City Council affirms to the City's outside Auditor, KPMG, and all interested parties that, for the purposes described in such agreement, Mr. Lynn Turner, Mr. Troy Dahlberg, and Mr. Arthur Levitt are serving as the Audit Committee of the City as contemplated by the Sarbanes-Oxley Act of 2002 (Pub. L. 107-204, 116 Stat. 745).

Subitem-B: (R-2005-933) ADOPTED AND INCORPORATED IN RESOLUTION R-300203 (SUBITEM-A)

In order for the City to expedite the work of the Audit Committee and facilitate the release of the audit letter by the City's independent auditor as well as to demonstrate the continued cooperation by the City of San Diego with the inquiries of the U.S. Securities and Exchange Commission and the U.S. Attorney for the Southern District of California, the City Council approves of the execution of a letter of cooperation.

FILE LOCATION: Subitems A & B: MEET

COUNCIL ACTION: (Time duration: 10:38 a.m. – 11:30 a.m.)

MOTION BY PETERS TO ADOPT THE RESOLUTION TO CREATE THE AUDIT COMMITTEE, AND AS PART OF THAT ACTION TO AGREE TO THE EXECUTION OF THE LETTER OF COOPERATION. Second by Madaffer.

Vote taken to appoint the Audit Committee: Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-not present, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

Vote taken to sign the Letter of Cooperation proposed by Mr. Turner: Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Young-not present, Maienschein-yea, Frye-nay, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Mayor Murphy at 7:13 p.m.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 7:13 p.m.)