THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
TUESDAY, NOVEMBER 1, 2005
AT 9:00 A.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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CHRONOLOGY OF THE MEETING:

The meeting was called to order by Deputy Mayor Atkins at 10:12 a.m. Deputy Mayor Atkins recessed the meeting at 10:15 a.m. to convene the Housing Authority. Deputy Mayor Atkins reconvened the regular meeting at 10:17 a.m. with all Council Members present and District 2, District 8 and Mayor vacant. Deputy Mayor Atkins recessed the meeting at 11:59 a.m. to reconvene at 2:00 p.m.

The meeting was reconvened by Deputy Mayor Atkins at 2:05 p.m. with all Council Members present and District 2, District 8 and Mayor vacant. Deputy Mayor Atkins recessed the meeting at 3:58 p.m. for the purpose of a break. The meeting was reconvened by Deputy Mayor Atkins at 4:08 p.m. with all Council Members present and District 2, District 8 and Mayor vacant. Deputy Mayor Atkins recessed the meeting at 5:35 p.m. for the purpose of a break. The meeting was reconvened by Deputy Mayor Atkins at 5:39 p.m. with all Council Members present and District 2, District 8 and Mayor vacant. The meeting was adjourned by Deputy Mayor Atkins at 6:00 p.m.

ATTENDANCE DURING THE MEETING:

(M) Mayor-vacant

(1) Council Member Peters-present

(2) Council District 2-vacant

(3) Council Member Atkins-present

(4) Council Member Young-present

(5) Council Member Maienschein-present

(6) Council Member Frye-present

(7) Council Member Madaffer-present

(8) Council District 8-vacant

Clerk-Maland (ek/pr)

FILE LOCATION: MINUTES

ITEM-300: ROLL CALL

Clerk Maland called the roll:

(M) Mayor-vacant
(1) Council Member Peters-present
(2) Council District 2-vacant
(3) Council Member Atkins-present
(4) Council Member Young-present
(5) Council Member Maienschein-present
(6) Council Member Frye-present
(7) Council Member Madaffer-present
(8) Council District 8-vacant

NON-AGENDA COMMENT:

PUBLIC COMMENT-1:

Hud Collins commented on a nine-point plan for the City of San Diego, and the pension crisis.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:20 a.m. – 10:22 a.m.)

PUBLIC COMMENT-2:

Don Stillwell recited the 23rd Psalm, and also spoke on the subject of public bus priorities.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:23 a.m. – 10:25 a.m.)

PUBLIC COMMENT-3:

Sandy Summers commented on the subject of persecution.

FILE LOCATION: AGENDA

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

PUBLIC COMMENT-4:

Gary Hill spoke on the subject of the life of Rosa Parks.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:27 a.m. - 10:27 a.m.)

PUBLIC COMMENT-5:

Al Strohlein spoke on the subject of public trust.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:28 a.m. – 10:30 a.m.)

PUBLIC COMMENT-6:

Robert Robinson commented on the actions of the staff from the Parks and Recreation Department.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:31 a.m. – 10:34 a.m.)

PUBLIC COMMENT-7:

Sherri Lightner commented on the continuance of the Council item regarding the Site 653/Hillel Project.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:35 a.m. – 10:37 a.m.)

PUBLIC COMMENT-8:

Ron Boshun commented on the actions of the City Council.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:38 a.m. – 10:40 a.m.)

PUBLIC COMMENT-9: **REFERRED TO THE CITY MANAGER**

Adam Kutnik commented on the subject of handicapped persons' green fees at golf courses in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:41 a.m. – 10:45 a.m.)

PUBLIC COMMENT-10:

Leo Leonard commented on City Attorney Michael Aguirre's appearance and speech before the residents of Del Cerro.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:45 a.m. – 10:47 a.m.)

PUBLIC COMMENT-11:

Jim Jackson commented on the upcoming vigil for deceased homeless veterans.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:48 a.m. – 10:49 a.m.)

PUBLIC COMMENT-12:

Jarvis Ross spoke on the subject of choice regarding the upcoming mayoral election.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:50 a.m. – 10:52 a.m.)

PUBLIC COMMENT-13:

Marvin Winters commented on storm water violations in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:53 a.m. – 10:55 a.m.)

PUBLIC COMMENT-14:

Millie Strodtman commented on the media in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:56 a.m. – 10:59 a.m.)

PUBLIC COMMENT-15:

Bert Decker commented on an article in the Union-Tribune regarding City Attorney Michael Aguirre.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:00 a.m. – 11:02 a.m.)

COUNCIL COMMENT:

COUNCIL COMMENT-1:

Council Member Peters announced that two weeks ago, the San Diego Chapter of the Associated General Contractors of America held their awards ceremony where FCI Construction was awarded for the La Jolla Cove Wall Replacement and Bluffs Stabilization Improvements, and the North Torrey Pines Bridge Replacement Project in District 1 as the most impressive infrastructure projects.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 11:03 a.m. – 11:03 a.m.)

COUNCIL COMMENT-2:

Council Member Madaffer expressed thanks for the success and the revival of the College Area Boo Parade and also expressed his wish that this parade once again will become a regular event.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 11:04 a.m. – 11:04 a.m.)

COUNCIL COMMENT-3:

Deputy Mayor Atkins commended her colleagues on the City Council for the good report from Baykeeper, now known as Coastkeeper, pointing out the significance of this report, and in this regard wished to acknowledge the hard work of the City Council Members and the City Manager's Office.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 11:05 a.m. – 11:07 a.m.)

CITY MANAGER COMMENT:

None.

CITY ATTORNEY COMMENT:

City Attorney Michael Aguirre announced that this morning by unanimous vote in Closed Session, the San Diego City Council adopted a motion appointing Paul Jacobs as the Special Counsel to the City authorizing no more than $200,000 for his retention. It also established a Chargers Negotiating Committee. On that Committee the Council authorized the service of Mr. Jacobs; two members from the City Council, Council Members Frye and Peters; identified Council Member Tony Young as an Alternate Member of the Committee; also appointed the City Auditor or a representative from the City Auditors Office; identified the City Attorney as a member of the Committee; and the Mayor, or the representative of the Mayor upon the Swearing-In of the new Mayor.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 2:10 p.m. – 2:12 p.m.)

ITEM-330: Two actions related to the Black Mountain Ranch FY 2006 Public Facilities Financing Plan and Facilities Benefit Assessment.

(See City Manager Report CMR-05-207; Public Facilities Financing Plan and Facilities Benefit Assessment, Fiscal Year 2006 Draft. Black Mountain Ranch Community Area. District 1.)

TODAY'S ACTIONS ARE:

Adopt the following resolutions:

Subitem-A: (R-2006-390) ADOPTED AS RESOLUTION R-301005

Approving the document entitled "Black Mountain Ranch Public Facilities Financing Plan and Facilities Benefit Assessment, FY 2006".

Subitem-B: (R-2006-391) ADOPTED AS RESOLUTION R-301006

Resolution of Intention to designate an area of benefit in Black Mountain Ranch and setting the time and place for holding a public hearing thereon.

LAND USE AND HOUSING COMMITTEE'S RECOMMENDATION:

On 10/19/2005, LU&H voted 3-0 to approve the City Manager's recommendation. (Councilmembers Peters, Young, and Frye voted yea. Councilmember Atkins not present.)

Staff: Angela Abeyta – (619) 533-3674

FILE LOCATION: STRT-FB-19 (33)

COUNCIL ACTION: (Time duration: 10:14 a.m. – 10:15 a.m.)

MOTION BY PETERS TO ADOPT SUBJECT TO THE CHANGES IN THE DOCUMENT TITLED "ERRATA, ITEM 330 - NOVEMBER 1, 2005, BLACK MOUNTAIN RANCH FY 2006 FACILITIES FINANCING PLAN AND FACILITIES BENEFIT ASSESSMENT" ON FILE WITH THE OFFICE OF THE CITY CLERK. Second by Madaffer. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-331: Two actions related to the Del Mar Mesa FY 2006 Public Facilities Financing Plan and Facilities Benefit Assessment.

(See City Manager Report CMR-05-206. Public Facilities Financing Plan and Facilities Benefit Assessment, Fiscal Year 2006 Draft. Del Mar Mesa Community Area. District 1.)

TODAY'S ACTIONS ARE:

Adopt the following resolutions:

Subitem-A: (R-2006-423) ADOPTED AS RESOLUTION R-301007

Approving the document entitled "Del Mar Mesa Public Facilities Financing Plan and Facilities Benefit Assessment, FY 2006".

Subitem-B: (R-2006-424) ADOPTED AS RESOLUTION R-301008

Resolution of Intention to designate an area of benefit in Del Mar Mesa and setting the time and place for holding a public hearing thereon.

LAND USE AND HOUSING COMMITTEE'S RECOMMENDATION:

On 10/19/2005, LU&H voted 3-0 to approve the City Manager's recommendation. (Councilmembers Peters, Young, and Frye voted yea. Councilmember Atkins not present.)

Staff: Cheryl Robinson – (619) 533-3679

FILE LOCATION: STRT-FB-16 (33)

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:15 a.m.)

MOTION BY PETERS TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-332: Two actions related to the Rancho Penasquitos FY 2006 Public Facilities Financing Plan and Facilities Benefit Assessment.

(See City Manager Report CMR-05-209; Public Facilities Financing Plan and Facilities Benefit Assessment, Fiscal Year 2006 Draft. Rancho Penasquitos Community Area. District 1.)

TODAY'S ACTIONS ARE:

Adopt the following resolutions:

Subitem-A: (R-2006-350) ADOPTED AS RESOLUTION R-301009

Approving the document entitled "Rancho Penasquitos Public Facilities Financing Plan and Facilities Benefit Assessment, FY 2006".

Subitem-B: (R-2006-351) ADOPTED AS RESOLUTION R-301010

Resolution of Intention to designate an area of benefit in Rancho Penasquitos and setting the time and place for holding a public hearing thereon.

LAND USE AND HOUSING COMMITTEE'S RECOMMENDATION:

On 10/19/2005, LU&H voted 3-0 to approve the City Manager's recommendation (Councilmembers Peters, Young, and Frye voted yea. Councilmember Atkins not present.)

Staff: Jennifer Carroll – (619) 533-3673

FILE LOCATION: STRT-FB-13 (33)

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:15 a.m.)

MOTION BY PETERS TO ADOPT. Second by Madaffer. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-333: Del Cerro Heights Upper Gate.

Matter of the appeal by Lisa Worley and Del Cerro Heights HOA regarding the Planning Commission's denial of a request by the Del Cerro Heights Homeowner's Association for Planned Development Permit No. 9812, Amending Planned Residential Development Permit No. 15, to allow controlled access/egress of an existing "emergency access only" gate by residents. Said gate is located adjacent to Pasatiempo Avenue.

(See City Manager Report CMR-05-114. Navajo Community Plan Area. District 7.)

(Continued from the meetings of May 24, 2005, Item 334, and September 13, 2005, Item 331, last continued at the request of Matt Peterson representing the Del Cerro Heights Homeowners Association, in order to complete the Traffic Impact Analysis Report.)

NOTE: Hearing open. No testimony taken on 5/24/2005. Hearing open. Testimony taken on 9/13/2005.

CITY MANAGER'S RECOMMENDATION:

Adopt the resolution in Subitem A to grant the appeal and overturn the decision of the Planning Commission and to grant the permit; and adopt the resolution in Subitem B:

Subitem-A: (R-2005-472) GRANTED APPEAL; GRANTED PERMIT; ADOPTED AS RESOLUTION R-301013

Adoption of a Resolution granting or denying the appeal, and upholding or overturning the decision of the Planning Commission and granting or denying Planned Development Permit No. 9812, with appropriate findings to support Council action.

Subitem-B: (R-2005-473) ADOPTED AS RESOLUTION R-301014
(Cor. 11/9/05 pr)

Adoption of a resolution certifying that Negative Declaration Number No. 5937, 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 Administration Code Section 15000 *et seq*.), that the report reflects the independent judgment of the City of San Diego

as Lead Agency and that the information contained in said report, together with any comments received during the public review process, has been reviewed and considered by the City Council;

That the City Council finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study and approving the Negative Declaration;

That pursuant to California Public Resources Code Section 21081.6, the City Council hereby 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;

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.

OTHER RECOMMENDATIONS:

Planning Commission on February 3, 2005, voted 5-0 to deny; was opposition.

Ayes: Steele, Garcia, Chase, Schultz, Otsuji
Not present: Ontai

The Navajo Community Planning Group has recommended approval of this project.

CITY MANAGER SUPPORTING INFORMATION:

The Del Cerro Heights Upper Gate PDP, amending PRD No. 15, proposes to permit the modification of an existing gated entry for controlled access by residents. The development is located south of Camino Rico, west of Pasatiempo Avenue and east of Bernadette Lane, within the Navajo Community Plan Area.

In 1971, the City Council approved PRD No. 15, which allowed development of 230 dwelling units in the RS-1-7 and Hillside Review Overlay Zones. This development was approved with two access points which include a main entry gate, “Lower Gate”, at Camino Rico, and a second gated access, “Upper Gate”, at Rancho Park Drive west of Pasatiempo Avenue. Due to neighborhood concerns regarding traffic impacts on existing streets, the Upper Gate was restricted for use to emergency vehicles only.

In 1976, the City Council denied a request to allow use of the Upper Gate by residents, finding that no material change in circumstances had occurred since approval of the original permit, and that the opening of the Upper Gate would create more traffic on neighboring streets.

In 1978 and 1979, amendments to PRD 15 allowed revisions in housing products types and resulted in a reduction of the total number of dwelling units from 230 to 179. These 179 units are existing.

In 1987, the Del Cerro Heights HOA filed an application to amend PRD 15 to allow modification of the Upper Gate to allow general ingress and egress by residents of the development. The Planning Director's decision to deny the request was appealed to the Planning Commission. The Planning Commission denied the appeal of the Planning Director's decision, and the Upper Gate was required to remain available for emergency use only. The Planning Commission's decision was appealed to the City Council which determined that there was no material change in circumstance and affirmed the Planning Commission's decision to deny the appeal. The Upper Gate has remained restricted to emergency use only.

In 2003, the Del Cerro Heights HOA filed the current application for a PDP, again requesting that controlled access of the Upper Gate be permitted for residents. Guests and delivery vehicles would be restricted to using the Lower Gate located at the main entrance. The Applicant's request indicates that since the PRD was approved, there have been changes in circumstances which warrant modification of the Upper Gate to allow controlled access. A copy of this information is included as Attachment 10.

On February 3, 2005, the Planning Commission voted 5-0 to deny the application for amendment. The Commissioners concluded that the property owner currently has the ability to install an emergency access gate providing ingress and egress, which would serve their needs as required by the existing PRD. Copies of the resolution of denial and the approved meeting minutes are included as Attachment 15 and 16 respectively.

On February 3, 2005, an adjacent property owner filed an appeal indicating that a gate associated with an 18-foot wide access easement leading to an existing City Reservoir has been locked. The easement is off-site to the PRD 15 boundary. This access easement has been improved with an asphalt roadway and leads from the terminus of Rockhurst Court public right-of-way (cul-de-sac), upward to an existing reservoir. This roadway is adjacent to an existing cul-de-sac within the Del Cerro Heights development (Caminito de la Taza) and is unrelated to the access issue from the Upper Gate. A copy of this appeal is included as Attachment 17.

On February 16, 2005, the Del Cerro Heights HOA filed a separate appeal indicating that the findings to deny the request were not supported. A copy of this appeal is included as Attachment 17.

FISCAL IMPACT:

None with this action. All staff costs associated with processing this project are recovered from a separate deposit account provided and maintained by the Applicant.

Halbert/Frazier/WCT

LEGAL DESCRIPTION:

The 52-acre site is generally located west of Pasatiempo Avenue between Rockhurst Court and Camino Rico, easterly of College Avenue, in the RS-1-7 (Single-Family Residential) Zone of the Navajo Community Plan Area. The project site is legally described as Del Cerro Heights, Units 1-4, Map Nos. 7586, 7923, 7924, and 7925.

Staff: Bill Tripp - (619) 446-5273.

FILE LOCATION: SUBITEMS A & B: LUP-Del Cerro Heights Upper Gate, 5/24/05 (65)

COUNCIL ACTION: (Time duration: 11:08 a.m. – 11:58 a.m.; 5:39 p.m. – 5:56 p.m.)

Testimony in opposition by Julie Hamilton, Sam Calvano, Rita Wolkiewicz, Myles Cooper, Brian Seltzer, Stu Josephs, John Arthur, Elaine Rosenbaum and Steven Greenwald.

Testimony in favor by Matt Peterson, Charles Rose, and John Pilch.

MOTION BY MADAFFER TO ADOPT THE RESOLUTION IN SUBITEM A TO GRANT THE APPEAL, AND TO GRANT PLANNED DEVELOPMENT PERMIT NO. 9812 AMENDING PLANNED RESIDENTIAL PERMIT NO. 15, ALLOWING THE CONTROLLED ACCESS BY DEL CERO HEIGHT RESIDENTS, AND TO DIRECT STAFF TO REVIEW THE RECOMMENDATIONS IN THE LETTER OF NOVEMBER 1, 2005, FROM ELAINE ROSENBUAM, TO DETERMINE WHAT CAN BE DONE TO SUPPORT THE COMMUNITY AND THEIR ISSUES. TO ADOPT THE RESOLUTION IN SUBITEM B TO CERTIFY THE NEGATIVE DECLARATION NO. 5937. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-334: Sea Breeze Carmel View Local Coastal Program Amendments.

Matter of approving, conditionally approving, modifying or denying the California Coastal Commission's suggested modifications to the amended Carmel Valley Neighborhood 8 Precise Plan, which was approved by the City Council on November 30, 2004.

The Carmel Valley Neighborhood 8 Precise Plan is located within the Coastal Zone; therefore, the City Council's decision requires amending the City's Local Coastal Program. As a result, the final decision on the amendments must be made by the California Coastal Commission. On July 14, 2005, the California Coastal Commission certified the LCP amendment with suggest modifications. The City Council will consider these modifications at this hearing.

(MND/Neighborhood 8 Precise Plan/LCP. Project No. 4449. Carmel Valley Community Plan Area. District 1.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolutions:

Subitem-A: (R-2006-377 Rev.) ADOPTED AS AMENDED AS RESOLUTION R-301011

Adoption of a Resolution certifying that the information contained in the final Mitigated Negative Declaration, including any comments received during the public review process, has been reviewed and considered by this Council and it is determined that no substantial changes or new information of substantial importance within the meaning of CEQA Guideline Section 15162 would warrant any additional environmental review in connection with approval of the California Coastal Commission suggested modifications to the amended Carmel Valley Neighborhood 8 Precise Plan and the Local Coastal Program approved by the City Council on November 30, 2004, for the Sea Breeze Carmel Valley Project;

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-2006-378) ADOPTED AS RESOLUTION R-301012

Adoption of a Resolution accepting and approving the California Coastal Commission's suggested modifications for the Sea Breeze Carmel View and Carmel Valley Neighborhood 8 Precise Plan.

OTHER RECOMMENDATIONS:

Planning Commission on November 4, 2004, voted 5-0 to recommend to the City Council that they approve staff's recommendations; was opposition.

Ayes: Ontai, Schultz, Lettieri, Chase, Otsuji
Recusing: Garcia
Not present: Steele

The Carmel Valley Community Planning Board on September 14, 2004, approved the original Precise Plan amendment. The proposed modifications were distributed to the Planning Board at their meeting October 11, 2005.

CITY MANAGER SUPPORTING INFORMATION:

The City Council approved amendments to the Carmel Valley Neighborhood 8 Precise Plan for the Sea Breeze Carmel View Project on November 30, 2004, changing the 4.5 acre site from very low residential (0.5-acre) and open space (4.0-acres) to commercial use. The Precise Plan amendments and associated rezone amended the City of San Diego Local Coastal Program (LCP) and also required approval and certification by the California Coastal Commission. On July 14, 2005, the Coastal Commission approved the LCP; however, the Coastal Commission's approval included suggested modifications to the Carmel Valley Neighborhood 8 Precise Plan. The modifications address the concentration of development within Neighborhood 8 as a whole, protection of hillside views, avoidance of impacts to sensitive biological resources, brush management encroachment, and for the Sea Breeze Carmel View project specifically, the adequacy of support retail uses and need for transportation demand management.

Before the LCP amendment can become effectively certified, the City must take formal action to adopt the Coastal Commission's suggested modifications to the Precise Plan. The City Council must approve or deny the modifications as proposed, without further revisions. If the revisions are not adopted as proposed, the LCP amendments, and associated project may not be implemented. As determined by City staff, the Coastal Commission's proposed modifications

are consistent with and augment existing policies in the Precise Plan. Where policies will be made more restrictive, the proposed language generally provides some flexibility for implementation.

Oppenheim/Halbert/PXG

LEGAL DESCRIPTION:

The project site is located southeast of the intersection of Interstate 5 and State Route 56, just north of the existing San Diego Jewish Academy, at the southwest corner of Carmel Creek and Shaw Ridge Road, in the Carmel Valley Neighborhood 8 Precise Plan area and is more particularly described as Section 19 of Township 14 South, Range 3 West of the USGS 7.5' Del Mar Quadrangle.

Staff: Patricia Grabski – (619) 446-5277

FILE LOCATION: LUP-Seabreeze Carmel View Local Coastal Program Amendments, 11/01/05 (65)

COUNCIL ACTION: (Time duration: 10:17 a.m. – 10:19 a.m.)

MOTION BY PETERS TO ADOPT AS AMENDED TO INCLUDE THE FOLLOWING: IN ADDITION TO CONSIDERING THE ORIGINAL MITIGATED NEGATIVE DECLARATION FOR THIS PROJECT, ALSO CONSIDERED WAS 1) ENVIRONMENTAL IMPACT REPORT NO. 91-0899, NO. 95-0381, NO. 96-7573, NO. 96-7929, AND NO. 96-7996, DATED JUNE 18, 1998; AND 2) THE MITIGATION MONITORING REPORTING PROGRAM WHICH COVERS THE APPROVAL OF THE CARMEL VALLEY NEIGHBORHOOD 8 PRECISE PLAN WHICH WAS ADOPTED ON AUGUST 8, 1998 BY RESOLUTION R-290604. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-335: Selecting Morgan Lewis and Bockius for Representation of the City of San Diego in Matters with the U. S. Attorney.

DEPUTY MAYOR ATKINS' RECOMMENDATION:

Adopt the following resolution:

(R-2006-) ADOPTED AS RESOLUTION R-301015

Selecting Morgan Lewis and Bockius for Representation of the City of San Diego in Matters with the U. S. Attorney;

Directing the City Attorney to prepare the necessary resolution.

SUPPORTING INFORMATION:

As part of the continued cooperation in the investigation of the City of San Diego, the Deputy Mayor has docketed the selecting of Morgan Lewis and Bockius for representation of the City of San Diego in matters with the U. S. Attorney.

Gattas

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:05 p.m. – 2:06 p.m.)

MOTION BY MADAFFER TO ADOPT THE RESOLUTION TO APPROVE THE SELECTION. Second by Peters. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-S500: Three actions related to Fifth Amendment to Agreement with Kroll, Inc. for Services Related to the Audit of the City's Comprehensive Annual Financial Report (CAFR); Fourth Amendment to Agreement with Willkie, Farr & Gallagher to Provide Independent Legal Counsel to Kroll and the Audit Committee on these Matters; and Acceptance of KPMG/Audit Committee Status Report.

(See memorandum from Audit Committee dated 10/25/2005.)

(Continued from the meeting of October 24, 2005, Item 203, at the request of the Audit Committee, for further review.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolutions:

Subitem-A: (R-2006-) REMOVED FROM THE DOCKET

Authorizing a Fifth Amendment to the Agreement with Kroll Inc., in the amount of $1,750,000 for continued provision of investigative services in their role as the City's Audit Committee, and consulting assistance in assessing internal control deficiencies affecting matters discussed in the Vinson & Elkins and City Attorney investigation reports, and directing the City Attorney to prepare applicable resolution.

Subitem-B: (R-2006-) REMOVED FROM THE DOCKET

Authorizing a Fourth Amendment to Agreement with Willkie, Farr & Gallagher LLP in the amount of $1,250,000 for provision of independent legal counsel to the City Audit Committee and Kroll in connection with the above matters, and directing the City Attorney to prepare applicable resolution.

Subitem-C: (R-2006-) NOTED AND FILED

Accepting the status reports of the Audit Committee and KPMG; directing the City Attorney to prepare applicable resolution.

CITY MANAGER SUPPORTING INFORMATION:

In February of 2005, the City of San Diego ("City") entered into an agreement with Kroll, Inc. ("Kroll") to receive, review and evaluate the findings of the investigations performed by Vinson & Elkins ("V&E") and the City Attorney, and to provide consulting assistance in assessing internal control deficiencies affecting matters discussed in the investigation reports (see attached agreement with Kroll). The original agreement was for a not-to-exceed amount of $250,000.

Four subsequent amendments increased the not-to-exceed amount to $3,525,000, and another amendment is before the Mayor and City Council today requesting an additional amount of $1,750,000, bringing the total not-to-exceed amount to $5,275,000.

Kroll will also be utilizing independent legal counsel from the firm of Willkie, Farr & Gallagher LLP ("Willkie, Farr"). Willkie, Farr's role will be to provide counsel and assistance to Kroll and the Audit Committee in connection with the independent investigation into SDCERS finances and disclosure, as well as with other matters that, in the judgment of the Audit Committee, may require inquiry or investigation. Willkie, Farr will report exclusively to the Audit Committee, serving with complete independence from the Mayor and City Council, the City, and the City's departments, agencies and elected officials.

Funding for the retention of Willkie, Farr in the amount of $500,000 was approved by the Mayor and City Council in May of 2005. Three subsequent amendments increased the not-to-exceed amount to $2,650,000. An additional amendment is before the Mayor and City Council today, requesting an additional $1,250,000 to cover estimated expenses for November through December of Fiscal Year 2006, and would bring the total not-to-exceed amount to 3,900,000.

The requested funding is consistent with information presented to the Mayor and City Council on October 10, at which time the City Manager's Office outline anticipated future spending requirements for the audit and financial investigations.

Ewell/Villa/LI

Aud. Certs. 2600304 and 2600305.

Staff: Lisa Irvine – (619) 236-6070

FILE LOCATION: SUBITEMS A, B, & C: MEET

COUNCIL ACTION: (Time duration: 2:12 p.m. – 5:32 p.m.)

Motion by Frye to direct the City Auditor to review Kroll’s billing; and direction to Kroll to work with the City Auditor and to report back to Council in two weeks with the protocol. Second by Young. Failed. 3456-yea; 1-7-nay; 28M vacant.

ITEM-S501: Report from Morgan Lewis and Bockius on Matters Pertaining to Investigation of the City's Financial and Pension Difficulties.

DEPUTY MAYOR ATKINS' RECOMMENDATION:

Adopt the following resolution:

(R-2006-) NOTED AND FILED

Report from Morgan Lewis and Bockius on matters pertaining to investigation of the City's financial and pension difficulties.

SUPPORTING INFORMATION:

Morgan Lewis and Bockius have been retained by the City of San Diego to represent them on matters regarding the SEC investigation. Morgan Lewis and Bockius will report on matters pertaining to investigation of the City's financial and pension difficulties.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:08 p.m. – 4:08 p.m.)

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Deputy Mayor Atkins at 6:00 p.m. in honor of the memory of:

Donald Gilbert as requested by Council Member Peters, and Donna Hernandez as requested by Council Member Frye.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 5:56 p.m. – 6:00 p.m.)