

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
MONDAY, JANUARY 26, 2009
AT 2:00 P.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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CHRONOLOGY OF THE MEETING:

The meeting was called to order by Council President Hueso at 2:00 p.m. Council President Hueso recessed the meeting at 4:52 p.m. for the purpose of a break. Council President Hueso reconvened the meeting at 5:00 p.m. with Council Member Emerald not present. Council President Hueso recessed the meeting at 6:21 p.m. for the purpose of a break. Council President Hueso reconvened the meeting at 6:28 p.m. with Council President Pro Tem Faulconer and Council Member Emerald not present. Council President Hueso recessed the meeting at 7:27 p.m. to convene the Redevelopment Agency. Council President Hueso reconvened the regular meeting at 7:28 p.m. with Council President Pro Tem Faulconer and Council Member Emerald not present. The meeting was adjourned by Council President Hueso at 7:28 p.m.

ATTENDANCE DURING THE MEETING:

- (1) Council Member Lightner-present
 - (2) Council Member Faulconer-present
 - (3) Council Member Gloria-present
 - (4) Council Member Young-present
 - (5) Council Member DeMaio-present
 - (6) Council Member Frye-present
 - (7) Council Member Emerald-not present-Excused by R-3 04649
 - (8) Council Member Hueso-present
- Clerk-Maland (sr)

FILE LOCATION: MINUTES



ITEM-1: ROLL CALL

Clerk Maland called the roll:

- (1) Council Member Lightner-present
- (2) Council Member Faulconer-present
- (3) Council Member Gloria-present
- (4) Council Member Young-not present
- (5) Council Member DeMaio-present
- (6) Council Member Frye-present
- (7) Council Member Emerald-not present-Excused by R-3 04649
- (8) Council Member Hueso-present

FILE LOCATION: MINUTES



ITEM-10: INVOCATION

Invocation was given by Father Jennings, Christ the King Catholic Church.

FILE LOCATION: MINUTES



ITEM-20: PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Frye.

FILE LOCATION: MINUTES

CLOSED SESSION ITEMS:

Conference with Legal Counsel - existing litigation, pursuant to California Government Code Section 54956.9(a):

**CS-1 *Michael T. Uberuaga v. City of San Diego*
United States District Court Case No. 08cv1960 MMA (BLM)**

REFERRED TO CLOSED SESSION OF TUESDAY, JANUARY 26, 2009

DCA Assigned: D. Karlin

This matter involves a lawsuit filed by a former City employee requesting the City provide him a legal defense including payment of all attorney fees, costs and expenses with regard to the civil action brought by the United States Securities and Exchange Commission and investigations by the San Diego City Attorney's Office, the United States Attorney's Office for the Southern District of California and the San Diego County District Attorney's Office.

Closed Session Comment 1:

Hud Collins commented on the City providing a defense for Mr. Uberuaga.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 6:29 p.m. - 6:32 p.m.)

Council President Hueso closed the hearing.

**CS-2 *Valerie O'Sullivan v. City of San Diego*
San Diego Superior Court Case No. GIC 826918;
California Court of Appeal Case Nos. D053230 and D054378**

***La Jolla Friends of the Seals, et al. v. National Oceanic and Atmospheric Administration National Marine Fisheries Service, et al.*
U.S. District Court Case No. 08cv1847 WQH POR**

***Animal Protection Rescue League v. State of California, et al.*
United States District Court No. 07-cv-2320-JM-AJB; Ninth Cir. Case No. 08-55319;
United States Supreme Court Case No. 08-561**

REFERRED TO CLOSED SESSION OF TUESDAY, JANUARY 26, 2009

DCA Assigned: G. Schaefer

In the first case, a Superior Court Judge rendered a judgment against the City and ordered the City to dredge Children's Pool Beach. In the second case, a non-profit organization and a citizen sued the City and the Federal Government over whether a federal permit is necessary to remove the seals at Children's Pool and whether a rope barrier must be installed during the seal pupping season. In the third case, a similar lawsuit was brought against the City and the Plaintiffs appealed the dismissal of that lawsuit to the United States Supreme Court. The City Attorney needs to discuss in closed session with the Mayor and City Council the status of all three of these cases and the related appeals. The City Attorney also intends to present to the Mayor and City Council for its consideration a settlement offer that was made by the Plaintiffs in the *La Jolla Friends of the Seals* case.

Closed Session Comment 1:

Hud Collins commented on the description of Closed Session items.

Closed Session Comment 2:

Bryan Pease and Eric Townsend commented on the State Legislature.

Closed Session Comment 3:

Katheryn Rhodes commented on dredging.

Closed Session Comment 4:

Verne Gammon commented on private beaches.

Closed Session Comment 5:

Jim Fitzgerald commented on seal diversity.

Closed Session Comment 6:

Crickett Bradburn commented on lessons for children.

Closed Session Comment 7:

Daisy Fitzgerald commented on the seal attraction.

Closed Session Comment 8:

Steve Haynes commented on the litigation.

Closed Session Comment 9:

Alex Gehring commented on the benefits of the beach.

Closed Session Comment 10:

Richard Guarasco commented on shared use.

Closed Session Comment 11:

Paul Kennerson commented on what the issue is before Council.

Closed Session Comment 12:

Larry Asakawa commented on access to diving.

Closed Session Comment 13:

Joseph Nguyen commented on protecting the ecosystem.

Closed Session Comment 14:

Christopher Davis commented on areas of seal population.

Closed Session Comment 15:

Andrea Hahn and Marjane Aalam commented on the uniqueness of the ecosystem.

Closed Session Comment 16:

Volker Hoehne commented on beach access.

Closed Session Comment 17:

David Ploessel commented on the uniqueness of Children's Pool.

Closed Session Comment 18:

David Russell commented on beach access.

Closed Session Comment 19:

John Leek commented on money.

Closed Session Comment 20:

Neda R. Orban commented on benefits of the rookery.

Closed Session Comment 21:

Gordon Parham commented on the history of the area.

Closed Session Comment 22:

Linda Kelson commented on the tourist attraction.

Closed Session Comment 23:

Carol Archibald commented on harassment.

Closed Session Comment 24:

Heidi Cohen-Wolff commented on how the seals came to be at the beach.

Closed Session Comment 25:

Cindy Benner commented on businesses closing in La Jolla.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 6:29 p.m. - 7:23 p.m.)

Council President Hueso closed the hearing.

**CS-3 *Crable, et al. v. City of San Diego*
San Diego County Superior Court Case No. 37-2008-00077405-CU-EI-CTL**

***Al-Quraini, et al. v. City of San Diego*
San Diego Superior Court Case No. 37-2008-00080246-CU-EI-CTL**

***McCormick, et al. v. City of San Diego*
San Diego Superior Court Case No. 37-2008-00082194-CU-EI-CTL**

***Dyer v. City of San Diego*
San Diego Superior Court Case No. 37-2008-00092648-CU-EI-CTL**

REFERRED TO CLOSED SESSION OF TUESDAY, JANUARY 26, 2009

DCA Assigned: G. Spitzer

This item concerns litigation which has already been formally initiated against the City. Retained counsel, the City Attorney, and City Council will confer regarding the status, strategy, and management of the litigation.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 7:24 p.m. - 7:24 p.m.)

Council President Hueso closed the hearing.

**Conference with Legal Counsel - Anticipated litigation – significant exposure to litigation,
pursuant to California Government Code Section 54956.9(b):**

CS-4 Number of Potential Cases: 5 known potential plaintiffs

REFERRED TO CLOSED SESSION OF TUESDAY, JANUARY 26, 2009

DCA Assigned: T. Zeleny

In closed session, the City Attorney will discuss litigation threatened by environmental groups over the United States Environmental Protection Agency's tentative approval of the City's application for a modified National Pollutant Discharge Elimination System permit for the Point Loma Wastewater Treatment Plant. The City Attorney will also discuss an offer by San Diego Coastkeeper and the San Diego Chapter of Surfrider Foundation to avoid litigation by cooperating on a study of the feasibility of diverting wastewater from the Point Loma Plant through increased wastewater recycling.

Closed Session Comment 1:

Joy Sunyata asked about protocol.

Closed Session Comment 2:

Crickett Bradburn commented on assurances.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 7:24 p.m. - 7:26 p.m.)

Council President Hueso closed the hearing.

Conference with Legal Counsel - anticipated litigation - initiation of litigation, pursuant to California Government Code section 54956.9(c):

CS-5 Number of Potential Cases: One

REFERRED TO CLOSED SESSION OF TUESDAY, JANUARY 26, 2009

DCA Assigned: J. Dawson

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 7:27 p.m. - 7:27 p.m.)

Council President Hueso closed the hearing.

Conference with Labor Negotiator, pursuant to Government Code Section 54957.6:

CS-6 Agency Negotiators: Bill Kay, Tim Davis, Scott Chadwick, Kim Nguyen, Woo-Jin Shim, Thom Harpole, Lourdes Silva, Judy von Kalinowski, Valerie VanDeweghe, Javier Mainar, Brian Fennessy, David Ramirez, Bob Kanaski, Paul Cooper, Jan Goldsmith, Tanya Tomlinson, Joan Dawson, William Gersten, and Lori Thacker

Employee Organizations: Local 145 International Association of Firefighters AFL-CIO, San Diego Police Officers Association, Municipal Employees Association, AFSCME Local 127 AFL-CIO, and Deputy City Attorney Association

REFERRED TO CLOSED SESSION OF TUESDAY, JANUARY 26, 2009

DCA Assigned: J. Dawson

Discussion with the Mayor and City Council pending contract negotiations with employee unions (Police Officers Association, International Association of Firefighters Local 145, Municipal Employees Association, AFSCME Local 127, and the Deputy City Attorney's Association).

Closed Session Comment 1:

Hud Collins commented on the status of negotiations with the bargaining units.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 6:29 p.m. - 6:32 p.m.)

Council President Hueso closed the hearing.



ITEM-200: Academy of Our Lady of Peace. Project No. 130619. Two appeals of the Planning Commission's decision approving an application for a Planned Development Permit, Site Development Permit, Conditional Use Permit and Neighborhood Development Permit to expand and modify the existing Academy of Our Lady of Peace high school by permitting: Enrollment of no more than 750 students; Demolition of three single-family structures (2544 Collier Ave., 2746 Copley Ave., and 4910 Uvada Pl.); Construction of a two-story classroom building; Construction of a two-level parking structure; Landscape renovations; Associated deviations to implement the proposed development; Tandem parking; And other improvements, on a 23.28-acre site located at 4860 Oregon Street (Greater North Park Community Plan Area. District 3.)

Matter of the appeals by Between Heights Neighborhood and North Park Planning Committee from the decision of the Planning Commission approving an application for a Planned Development Permit, Site Development Permit, Conditional Use Permit and Neighborhood Development Permit to expand and modify the existing Academy of Our Lady of Peace high school by permitting: enrollment of no more than 750 students; demolition of three single-family structures (2544 Collier Ave., 2746 Copley Ave., and 4910 Uvada Pl.);

construction of a two-story classroom building; construction of a two-level parking structure; landscape renovations; associated deviations to implement the proposed development; tandem parking; and other improvements, on a 23.28-acre site located at 4860 Oregon Street in the RS-1-7 and RS-1-1 Zones, the Transit Area Overlay Zone, and the FAA Part 77 Noticing Area, within the Greater North Park Community Plan Area.

(EIR No. 130619/MMRP/Findings and Statement of Overriding Considerations/PDP No. 450668/SDP No. 450706/CUP No. 450705/NUP No. 590185-Amendment to Conditional Use Permit/Resource Protection Permit No. 92-0769.)

STAFF'S RECOMMENDATION:

Take the following actions:

Subitem A: (R-2009-) CONTINUED TO TUESDAY, MARCH 3, 2009

Granting or denying the appeals and upholding or overturning the Planning Commission's decision certifying Environmental Impact Report (EIR) No. 130619; adoption of the Mitigation, Monitoring and Reporting Program; and adoption of the applicant's Findings and Statement of Overriding Considerations.

Directing the City Attorney to prepare the appropriate resolution(s) according to Section 40 of the City Charter.

Subitem B: (R-2009-) CONTINUED TO TUESDAY, MARCH 3, 2009

Granting or denying the appeals and upholding or overturning the Planning Commission's decision approving Planned Development Permit No. 450668, Site Development Permit No. 450706, Conditional Use Permit No. 450705, and Neighborhood Development Permit No. 590185 (Amendment to Conditional Use Permit/Resource Protection Permit No. 92-0769) with appropriate findings to support Council action.

Directing the City Attorney to prepare the appropriate resolution(s) according to Section 40 of the City Charter.

OTHER RECOMMENDATIONS:

Planning Commission on October 9, 2008, voted 5-0-2 to recommend approval of the project, with additional conditions read into the record (Attachment 2).

Ayes: Schultz, Golba, Otsuji, Naslund, Ontai
Recusing: Griswold
Not Present: Smiley

The North Park Planning Committee, on September 16, 2008, voted 10-1-1 to recommend denial of the proposed project.

STAFF SUPPORTING INFORMATION:

REQUESTED ACTION:

The proposed expansion and modification of the existing Academy of Our Lady of Peace high school, located at 4860 Oregon Street in the Greater North Park Community Plan Area.

STAFF RECOMMENDATION:

1. Deny the appeals.
2. Affirm the Planning Commission's certification of Environmental Impact Report (EIR) No. 130619, Adoption of the Mitigation Monitoring and Reporting Program, and Adoption of the applicant's Findings and Statement of Overriding Considerations;
3. Affirm the Planning Commission's approval of Planned Development Permit No. 450668, Site Development Permit No. 450706, Conditional Use Permit No. 450705, and Neighborhood Development Permit No. 590185 (An Amendment to RPO/CUP 92-0769).

EXECUTIVE SUMMARY:

The project site is located at 4860 Oregon Street, in the RS-1-7 and RS-1-1 Zones, the Transit Area Overlay Zone, within the Greater North Park Community Plan area. The 23.28-acre site lies on the southern rim above Mission Valley, at the north edge of North Park. The site is nestled within a single-family residential area, and accessed via residential streets. The project area is comprised of several parcels, and while addressed at 4560 Oregon Street, actually has frontage on several streets: Collier Street, Oregon Street, Copley Avenue and Uvada Place all border the property the property. Adams Avenue is a few blocks to the south, and I-805 is to the east.

The proposed project is a request for a Planned Development Permit, Site Development Permit, Conditional Use Permit and Neighborhood Development Permit to allow: a maximum annual enrollment of 750 students; demolition of three existing residential structures; construction of an approximately 21,059-square-foot, two-story classroom building; and construction of a new, two-level parking structure on the site. Renovation of the existing landscaping is also proposed, as well as the closing of Circle Drive.

The applicant has stated that their primary objective in proceeding with this “master plan” project is to modernize the Academy of Our Lady of Peace school and to allow the school to remain competitive in the current educational environment in San Diego.

Discretionary Actions Summarized:

Planned Development Permit: A Planned Development Permit is required for the proposed deviations for height, setback and assignment of tandem parking spaces.

STAFF SUPPORTING INFORMATION:

Site Development Permit: A Site Development Permit is required due to the presence of environmentally-sensitive lands in the form of steep slopes. The actual property ownership area has a large quantity of sensitive steep slopes 25% or greater (808,473 square feet). The new structures are proposed to encroach less than 1,000 square feet into these areas, which is minimal and permitted by the San Diego Municipal Code.

Conditional Use Permit: A Conditional Use Permit is required to increase the maximum student enrollment on this site from 640 students to 750 students. The current maximum student enrollment permitted is 640 students (per RPO/CUP 92-0769). The applicant is currently in violation of this permit, and is subject to a Civil Penalties Administrative Enforcement Order, as further discussed within the Report to the Planning Commission No. 08-098.

Neighborhood Development Permit: A Neighborhood Development Permit is required for the provision of tandem parking on the site.

FISCAL CONSIDERATIONS: All costs associated with the processing of this project are paid by the applicant.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE): N/A

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION: N/A

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Planning Commission Hearings: The Planning Commission originally heard this project on September 18, 2008. After public testimony, the Planning Commission posed several questions to the applicant regarding enrollment, adaptive reuse, relocation of existing structures, and traffic issues. The Commission requested the applicant and the “Between Heights” neighborhood group work together and return to the Planning Commission on October 9, 2008, to respond to these questions. On October 9, 2008, the Planning Commission heard further testimony responding to the prior questions.

Planning Commission Decision: On October 9, 2008, the Planning Commission voted 5-0-1 (Griswold abstaining and Smiley not present) to recommend approval of the project, with additional conditions read into the record (Attachment 2).

STAFF SUPPORTING INFORMATION:

Appeal of Planning Commission’s Decision: On October 23, 2008, both the North Park Planning Committee and Between Heights (community group) appealed the Planning Commission’s decision to approve the project. Both appeals are similar; they both cite “Findings Not Supported” as the reason for the appeals, and they both list the same general basis for this conclusion.

1. Inconsistency and adversely affecting the General Plan and Land Use Plan by permitting the removal of “historic” homes, school use is inconsistent with low-density use, and failure to adequately explore adaptive reuse.
2. Detrimental to the public health, safety and welfare due to traffic issues.
3. Not beneficial to the community because students are not from the neighborhood, adaptive reuse was not adequately explored, and the school is in violation of its current Conditional Use Permit.

All these above issues were addressed within the Environmental Impact Report, and through testimony at both Planning Commission hearings. At the October 9, 2008, hearing, lengthy testimony regarding the exploration of adaptive reuse was presented and discussed. At the conclusion, the Planning Commission accepted the Environmental Impact Report, which included the additional testimony, and made the overriding considerations required to certify the EIR and approve the project.

Community Planning Group: The North Park Planning Committee voted 10-1-1 to recommend denial of the proposed project on September 16, 2008.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key Stakeholders: The Academy of Our Lady of Peace, owner (reference Attachment 10 of Report to the Planning Commission No. PC-08-098); families of current and potential students of The Academy of Our Lady of Peace; neighbors within the North Park community surrounding the school.

Projected impacts are discussed within the Environmental Impact Report, however, the major issues discussed at the public hearings are related to traffic, removal of “historic” homes, current violation of existing CUP (enrollment), and the need for a modernized school facility adequate to meet current needs.

STAFF SUPPORTING INFORMATION:

Broughton

LEGAL DESCRIPTION:

The 23.28-acre site is located at 4860 Oregon Street in the RS-1-7 and RS-1-1 Zones, the Transit Area Overlay Zone, and the FAA Part 77 Noticing Area, within the Greater North Park Community Plan Area. The project site is legally described as: portions of Villa Lots 31, 32, 33 and 50, and all of Villa Lots 35 thru 49, Map No. 937; portions of Lots 3, 4, 5 and 6, Block R, University Heights, Map No. 1064; and all of Lots 1 and 2, Block R, University Heights, according to a Map made by G.A.D’Hemecourt in Block 8, Page 36 et seq of lis pendens.

Staff: Michelle Sokolowski – (619) 446-5278
Nina Fain – Deputy City Attorney

NOTE: This item is not subject to the Mayor’s veto.

Testimony in favor of the appeal by Joy Dougherty, Bruce Coons, Susan Brandt-Hawley, Rob Steppke, Judy O'Boyle, Christy Scannell, Roxanne Govari, Sidney Sullivan, Sue Fogle-Strickland, Tom MacDonald, Martin Chevalier, Barbara Dodd, Kenneth Contreras, Janet O'Dea, Jeff Combs, Hugh Williams, Mark Ballam, Russ Lopez, Susan Brandt-Hawley, Clyde Turner, Nancy Moors, Bob Dean, Ernestine Bonn, Vicki Granowitz, Ronald V. May, Dan Soderberg, Sid Voorakkara, Dan Sullivan, Dionne Carlson, and Jim Bartell.

Testimony in opposition of the appeal by Kirsten Hadzicki, Lori Favela, Gilberto Moreno, Trish Butler, Edward McArdle, Alexandra Kelly, Paul Robinson, Jenn Won, Grant Lichtman, Eve Withersby, Kathleen Herb, Molly Diamond, Marie Burke Lia, Dr. Kelly Keefe, Margaret Wiedower, Vivian Toscano, Jim Carlin, Rita Bonnell, Deanna Buhr, Tammy Caballero, Jim Infantine, Audrey Pierik, Nora Faine-Sykes, Edwin Hearn, Marie Burke Lia, and John Hoy.

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 2:08 p.m. - 6:20 p.m.)

Motion by Gloria to uphold the appeal and deny the project based on the inability to make the appropriate findings or adopt the Statement of Overriding Considerations; approve the Conditional Use Permit language that increases enrollment at Our Lady of Peace to 750 students. Direct that Our Lady of Peace shall provide adequate off-site parking and traffic management as called for in the Administrative Enforcement Order. The school shall form a working group that includes members of the community for their modernization needs that does not involve the removal of the historic homes. Second by Lightner. No vote taken.

MOTION BY DEMAIO TO CONTINUE TO TUESDAY, MARCH 3, 2009, FOR FURTHER REVIEW. Second by Hueso. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-not present, Hueso-yea.

REPORT OUT OF CLOSED SESSION:

None.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Council President Hueso at 7:28 p.m.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 7:28 p.m. - 7:28 p.m.)