

**SOLANA BEACH CITY COUNCIL**  
**REDEVELOPMENT AGENCY AND PUBLIC FINANCING AUTHORITY**

JOINT **REGULAR** MEETING

# **MINUTES**

**WEDNESDAY, MAY 13, 2009**  
**6:00 P.M.**

CITY COUNCIL CHAMBERS  
635 S. HIGHWAY 101,  
SOLANA BEACH, CALIFORNIA

The City Council acts as the City of Solana Beach Redevelopment Agency and the Public Financing Authority.

**CALL TO ORDER AND ROLL CALL:**

Mayor Nichols called the meeting to order at 6:00 p.m.

He stated that the meeting would be dedicated to Sheriff Steve Michael Owens who passed away from surgery complications and worked in Solana Beach for the San Diego County Sheriff's Department and the meeting would be adjourned in his memory.

**FLAG SALUTE:**

Former Sergeant Lisa Randall led the flag salute.

**APPROVAL OF AGENDA:**

**MOTION:** Moved by Roberts and seconded by Heebner to approve and change order and pull Item C.3. from the agenda continuing it to May 27, 2009. **Motion carried unanimously.**

**PROCLAMATIONS:**

**Mira Costa College**

Mayor Nichols presented a proclamation to Mira Costa College for the 75th year in education opportunities in North County.

Pam Eager, Vice President of Instruction and Rudy Hernandez accepted the

proclamation.

1. Bike to Work Day

Mayor Nichols presented a proclamation for Bike to Work week to Maria Filippelli, Sandag.

2. Drowning Prevention Month

Mayor Nichols read a proclamation for Drowning Prevention Month regarding commendation to public agencies for safety.

3. Public Works Week

Mayor Nichols presented a proclamation to Mo Sammak, City Engineer/Director of Public Works, for National Public Works Week.

Mo Sammak, City Engineer/ Dir. of Public Works, recognized the entire Public Works department.

**PRESENTATIONS:**

(Ceremonial items that do not contain in-depth discussion and no action/direction.)

1. Rerip.com

Mayor Nichols presented a Certificate of Appreciation to Rerip for its event to Former Sergeant Lisa Randall and Captain Miller that raised funds for the Solana Beach Lifeguard Program.

Lisa Randall said that she was happy to support the program, designated to rescue action sport equipment, raise funds for programs,

**ORAL COMMUNICATIONS:**

This portion of the agenda provides an opportunity for members of the public to address the City Council on items relating to City business and not appearing on today's agenda by submitting a speaker slip (located on the back table) to the City Clerk. Comments relating to items on this evening's agenda are taken at the time the items are heard. Pursuant to the Brown Act, no action shall be taken by the City Council on public comment items. Council may refer items to the City Manager for placement on a future agenda. The maximum time allotted for each presentation is THREE MINUTES (SBMC 2.04.190). Please be aware of the timer light on the Council Dais.

Bill Howden spoke about his current View Assessment Commission (VAC) case and reviewed his exchange with staff and VAC commissioners. He said that a

Commissioner entered his property without permission, that there was possible member bias, reviewed the appeals process and his inability to appeal, and that he is currently involved in an attempt for settlement.

David Ott, City Manager, responded to comments and stated that issues had been addressed and that he had found no basis for continued review at this time.

Johanna Canlas, City Attorney, stated that she had provided Council responses to comments from Mr. Howden's attorney, that this issue would be coming to Council in a public hearing format in the future and the information presented would not be considered since only the evidence presented at the public hearing could be considered. She said that any revisions to the appeal process would be addressed by the Ad Hoc committee for future consideration. She said that Council would be able to consider the issues when the Development Review Permit was presented to Council in addition to the Structure Development Permit and that Council could revisit findings without triggering the appeal process at that time.

David Carroll stated that the Fiesta del Sol had some past miscommunications but that there were new solutions and that the Chamber was in cooperation with the Civic and Historic Society, Friends of the Library, and other groups. He announced the upcoming Relay for Life Chaired by the Chamber of Commerce at Earl Warren Middle School which was a two-day walkathon event.

### **COMMUNITY ANNOUNCEMENTS:**

Council made community announcements.

### **COMMENTARY:**

#### **A. CONSENT CALENDAR: (Action Items)**

Items listed on the Consent Calendar are to be acted in a single action of the City Council unless pulled for discussion. Any member of the public may address the City Council on an item of concern by submitting to the City Clerk a speaker slip (located on the back table) before the Consent Calendar is addressed. Those items removed from the Consent Calendar by a member of the Council will be trailed to the end of the agenda, while Consent Calendar items removed by the public will be discussed immediately after approval of the Consent Calendar.

#### **A.1. Waive the reading of Ordinances.**

Recommendation: That the City Council

1. Approve waiving the text reading of ordinances on this agenda pursuant to Solana Beach Municipal Code Section 2.04.460.

**MOTION:** Moved by Roberts and seconded by Kellejian. **Motion carried unanimously.**

**A.2. Register Of Demands. (File 0330-30)**

Recommendation: That the City Council

1. Ratify the list of demands for April 4 - 17, 2009.

**MOTION:** Moved by Roberts and seconded by Kellejian. **Motion carried unanimously.**

**A.3. Status Report on Major FY 2008/09 Capital Improvement Projects. (File 0810-05)**

Recommendation: That the City Council

1. Receive report from staff.

**MOTION:** Moved by Roberts and seconded by Kellejian. **Motion carried unanimously.**

**A.4. Solana Beach Coastal Rail Trail Maintenance District. (File 0495-20)**

Recommendation: That the City Council

1. Adopt Resolution 2009-046, initiating the proceedings for the annual levy of assessments within the Coastal Rail Trail Maintenance District.
2. Adopt Resolution 2009-047, approving the Engineer's "Report" for proceedings of the annual levy of assessments within the Coastal Rail Trail Maintenance District.
3. Adopt Resolution 2009-048, declaring an intention to provide for the annual levy and collection of assessments in the Coastal Rail Trail Maintenance District and setting a time and date for a public hearing for June 24, 2009.

**MOTION:** Moved by Roberts and seconded by Kellejian. **Motion carried**

unanimously.

**A.5. Solana Beach Lighting District. (File 0497-30)**

Recommendation: That the City Council

1. Adopt Resolution 2009-044 declaring an intention to provide for an annual levy and collection of assessment in a special maintenance district and setting a time and date for a public hearing; and scheduling the public hearing for June 24, 2009.
2. Adopt Resolution 2009-045 approving the Engineer's Report for proceedings for the annual levy of assessments within a special maintenance district.

**MOTION:** Moved by Roberts and seconded by Kellejian. **Motion carried unanimously.**

**NOTE: The City Council shall not begin a new agenda item after 10:30 p.m. unless approved by a unanimous vote of all members present. (SBMC 2.04.070)**

**B. PUBLIC HEARINGS:**

This portion of the agenda provides citizens an opportunity to express their views on a specific issue as required by law after proper noticing by submitting a speaker slip (located on the back table) to the City Clerk. After considering all of the evidence, including written materials and oral testimony, the City Council must make a decision supported by findings and the findings must be supported by substantial evidence in the record. An applicant or designees for a private development/business project, for which the public hearing is being held, is allotted a total of fifteen minutes to speak, as per SBMC 2.04.210. A portion of the fifteen minutes may be saved to respond to those who speak in opposition. All other speakers have three minutes each. Please be aware of the timer light on the Council Dais.

**B.1. Development Review Permit (DRP) at 130 South Granados, Case: 17-08-17, Applicant: Tim and Ann McCormick. (File 0600-40)**

Recommendation: That the City Council

1. Report Council disclosures;
2. Conduct the Public hearing: Open the Public Hearing, Receive Public Testimony, Close the Public Hearing;

3. Find the project exempt from the California Environmental Quality Act pursuant to Section 15332 of the State CEQA Guidelines; and
4. Determine if the proposed project to construct a new 4,903 square foot residence satisfies all of the required findings for the DRP. If so, approve the project and adopt Resolution 2009-011 conditionally approving a DRP to construct a new single-family residence at 130 South Granados Avenue.

David Ott, City Manager, introduced the item.

Rich Whipple, Principal Planner, presented a powerpoint reviewing the project.

Council and Staff discussed that fact that the 2007 staff report had not stated that the project was in the overlay zone, however, he had determined that it was and, therefore, it was required to go through the Development Review process.

Council reported their disclosures.

Mayor Nichols opened the public hearing.

Tim McCormick, applicant, showed a 3-D model prepared from the CAD work. He said that when it was prepared they were not aware of the problem with the lay of the existing grade, so the represented is 1 1/2 - 3 1/2 feet higher than what the plans now represent. He stated that the treeline abutts the property line as per the previous survey. He said that he attempted to obtain pictures of the model that were corresponding views of the area model which is 1/16 scale. He stated that he mitigated the bulk of the building with landscaping.

Michael Montgomery, architect, stated that the issue with the previous submittal was dealt with by moving the building back and tucking it into the hill, that it was kept under View Assessment limits, that they aimed to minimize any neighboring property view impairments, and that they stepped the building back and pulled it into the hillside.

Brad Jacobs (time donated by Ann Marie Grace) stated that the trees were next to his property and that the project was not compatible in the past. He presented a powerpoint reviewing the bulk and scale in relation to the compatibility with the neighborhood. He said that by moving it up the hill the project was made bigger, that no other homes in the area were shown for comparison purposes, and that the applicant had been asked to communicate with the neighbors.

Victoria Schall said that she lived on Granados, that the mock up looks fine if it could be placed on the lot but it was not what was planned, that it had been 18

months and now the project was bigger, that the applicant is not required to engage with the neighbors but it would be nice, that the homes displayed in the staff report were not represented correctly, that only five homes in the area are at this size or bigger and only because there was not a Development Review Permit at the time of review, and that Council offered them time to redesign and the applicants have not complied.

Jim Buschnell said that he lived up the hill from the property, that the proposed project was 3x the size of his home which was 2,200 sq. ft., that the view blocking fence and trees would need to be restricted in the deed, that the house on Brookdale was not compatible and stands out like a sore thumb due to its size.

Geri Retman-Opper said that she lived near the home, that she thought that the applicants would contact her and other neighbors a year and half ago when directed to redesign but no one was ever contacted, that Mrs. McCormick had clearly recognized at the last hearing the prominent location of her property which had significant impact on the entrance to the neighborhood and that Council was doing its job, that the view of this home would be seen by more than one vantage point, that the proposed project does not look that different than the first time, that the current state of the lot was dried out weeds and that they want it developed but that the issue was bulk and scale.

Ira Opper stated that he lived in the area, that in 2000 a project was approved and now a proposed home would ruin the entrance to the neighborhood since it would be 38 ft. high in an area of most homes being 25 ft. high, that he spoke out in the past and was hoping to meet the applicants but they had not reached out, and urged Council to deny the project.

Jane Coffin said that she lived on Brookdale Pl. and had monitored what had happened in development in the area. She said that a lot of time and issues have passed and she was back now due to more concerns since Council had provided specific ideas in the past and the proposed project only did one. She said it was clearly not compatible with the neighborhood, the applicants did not reduce the square footage of the project but increased it, and that it was frustrating that the applicant did not reach out to work with neighbors who had expressed concerns in the past.

Bart Zeigler said he lived on Granados and that he thanked Council for considering these issues over and over that affect so many residents.

Gary Martin said that some changes were good, but that the resulting change had not satisfied the requirements which was compatibility with the surrounding area. He stated that the issue is how the lay out is done that determines how the bulk and scale presents itself in this prominent location. He said that other few projects, like Cook and Contasti, were denied due to their compatibility due to the structures in the surrounding area.

Tim McCormick, applicant, (rebuttal) said that he apologized regarding not contacting people due to his busy schedule and new business as well as his past contentuous experinece. He apologized that Mr. Jacobs did not receive his returned email and were not able to connect with him. He asked that Council would consider his rights as a property owner and not consider that he intended to be overbearing.

Mike Montgomery, architect, (rebuttal) said that people were addressing looks of homes in the area, that there were different designs and styles of the homes in the area and act like some other homes did not exist, that their attempt was to be creative and to show how this house would look like and not hide it with landscaping, that an applicant was entitled to a size of a home and that they had worked to create the structural issues to step back the home and that nothing was wrong with a different style.

Tim McCormick, applicant, (rebuttal) stated that they had pictures to show how the view was hidden and the tree line on Mr. Jacobs lot, and he thanked Staff for all of their help.

Councilmember Heebner asked Mr. McCormick about his wife's past promise to redesign 134.

Tim McCormick, applicant, said that it was not a sound statement and that she said that they would visit it. He said that given the restircitions, time and expense, that they were willing to do any type of landscaping to mitigate views from the street and that she did mention that she would like to work with Council but that it did not work for them in the end.

Mayor Nichols recessed the meeting for a break at 7:45 p.m. and reconvened the meeting at 7:51 p.m.

Council and applicant discussion ensued regarding the third party who prepard the model, the company was out of Lubbock, TX and was provided information from the applicant based on CAD drawings, that there were not any specific certifications to ensure that the calculations were exact, and that the elevation going up the street and burm on top of the elevation was depicted even though Mo Sammak, City Engineer, said that the drawings did not initially state the correct grading so it was all corrected.

Council, Staff and Applicant discussed the reference to the report citing the email including Mr. Jacobs email address so the reply went back to Mrs. McCormick and not to Brad Jacobs so he never did receive the response.

**MOTION:** Moved by Roberts and seconded by Heebner to close the public hearing. **Motion carried unanimously.**



Councilmember Heebner said that it was important to note that it was two lots and not just one, that it was on a curve, that the bulk and scale was still not compatible with what was being proposed due to the approach of this property, that there were some good changes but that the articulation that it could provide was diminished, that Mrs. McCormick acknowledged that it was an important piece of property and set a tone for the City, that she was looking forward to a new design, that she acknowledged the applicant's property rights to build as well as those living in the area have rights to have a home to fit into the area, that she wished the applicants would have contacted the community as Council had specifically requested, and that she could not make the finding of compatibility and adjacent land use and that she would make a motion to deny the approval.

Mayor Nichols said that he agreed that he appreciated the attempts, that he thought that some communication may have resulted in something different, that there was a good start of moving some things around but that the bulk and scale and compatibility in the overlay zone was an important consideration, and that he would support Councilmember's motion.

Councilmember Roberts stated that changes were made and some were heading in the right direction, that there was no entitlement to how big the project could be under the maximum allowed in the code, that even after careful review he still had many concerns of issues that needed to be addressed, that he could not make Findings 2a, 2b, and 2e, that it is a gateway to the neighborhood, and that Council agreed last time that the applicant needed to address the concerns of the neighbors.

Deputy Mayor Campbell said that he agreed with all that had been said, that the unwillingness to work with the neighbors was the most disappointing since that might have changed the turnout of the results, and that he would support the motion.

Councilmember Kellejian said that they had tools to determine bulk and scale, that when the applicants stated that they would work with neighbors and did not that it presented a problem which could have changed the outcome, that Council had approved large homes in the past, that the City was eclectic with many different styles, and that he would support the denial since there was a commitment by the applicant to meet with the neighbors and that commitment was not met.

**MOTION:** Moved by Heebner and seconded by Nichols to deny the project and bring back a formal resolution. **Motion carried unanimously.**

Councilmember Roberts vote came through incorrectly on the board and was intended to be recorded as Yes, to deny.

Johanna Canlas, City Attorney, stated that at the time that the denial resolution is adopted, the following notice will be included regarding judicial review. The time within which judicial review of this decision must be sought is governed by the Code of Civil Procedure, Section 1094.6, which has been made applicable in the City of Solana Beach by the Solana Beach Municipal Code, Chapter 2.36. Any petition or other papers seeking judicial review must be filed in the appropriate court not later than the ninetieth (90<sup>th</sup>) day following the date on which this decision becomes final. A written request for preparation of the record of proceedings shall be made and filed with the Solana Beach City Clerk. This decision is final upon the adoption of this resolution.

**C. STAFF REPORTS:**

*Submit speaker slips to the City Clerk*

**C.1. Adopt (2nd Reading) Ordinance 397 - Submittal Expiration. (File 0600-05)**

Recommendation: That the City Council

1. Adopt Ordinance 397 amending Solana Beach Municipal Code section 17.72.010 (F) to reflect the direction from the City Council that the Community Development Director is mandated to close all inactive files when the requisite time has elapsed.

Johanna Canlas, City Attorney, read the title.

**MOTION:** Moved by Heebner and seconded by Campbell. **Motion carried 4/1** (Noes: Roberts.)

**C.4. State Potential Borrowing of City Property Taxes (File 0480-70) - This item was added May 8, 2009**

1. Consideration to adopt a resolution declaring the City's fiscal hardship due to the state government's ongoing seizure of city property tax funds since the early 1990s to fund the state budget and the continued adoption of unfunded mandates by the state legislature and state agencies without any consideration for the economic hardships such mandates impose on cities and their residents.

David Ott, City Manager, introduced the item reviewing the budget issues and the City's potential loss in property tax revenue up to \$560,000 to the State.

Council and City Manager discussed the State taking 8% of the City's property tax

funds which was a significant amount of money to the City's budget, the City tightening its' belts, that the state has a financial emergency on its hands, that the June 3rd ballot will have some options regarding the state budget, and that the League of Ca. Cities is working together to oppose taking of City funds.

**MOTION:** Moved by Heebner and seconded by Campbell. **Motion carried unanimously.**

## **C.2. Revenue Enhancement Proposal Discussion. (File 0390-90)**

### **1. Receive report and provide direction.**

David Ott, City Manager introduced the item. He stated that the City was faced with a downturn in the economy, that the City had made cuts to expenditures, and that it was forecasted that retail profits would return around year 2013. He presented a PowerPoint presentation. He stated that Council had directed Staff to review revenue enhancements, that Council directed Staff to further review two revenue enhancement options which included the Fire Benefit fee and the Business Tax. He stated that when the Fire Benefit fee was initially established, it covered 25% of the fire department budget and now the fee covered 14% of the budget. He stated that the new Fire Benefit charges would bring in \$920,000 annually and that increasing the fee would require a public vote. He stated that the second revenue option was a Business Tax, that there were various models for the tax, that cities throughout the state used variations of a business tax, that model types included gross receipts, number of employees, square footage, fixed fees, or a combination of those factors. He reviewed the specific formulas that would be used to calculate the tax within each of the models.

Council and City Manager discussion ensued regarding whether companies doing business outside the City would be taxed, whether the strip center owner would be taxed as well as the business renting a space within the strip center, and whether audits could be performed to acquire the amount of business tax owned.

David Ott, City Manager, stated that out of the 18 cities in San Diego County, 13 had a business tax, 7 were based on gross receipts, 5 were based on number of employees, and 1 city was based on both gross receipts and number of employees. He stated that other cities collected various other taxes that Solana Beach did not collect such as utility tax, cable tax, gas, cable, phone construction development tax, and increased sales tax. He stated that the City hired Muni Services to assist with analyzing the business tax and that Joshua Davis, Tony Unger, and Steve Stark, from Muni Services, were available to answer questions.

Councilmember Campbell stated that he was a small business owner, that he would pay a business tax, that the tax would have to be based on an equitable model, that the tax would have to be related to the potential use of services being

utilized, that if the tax was reasonable he would not have to pass it along to his clients, and questioned whether businesses that were not located in the City but did business in the City would be taxed.

Johanna Canlas, City Attorney, stated that state law required that any business tax imposed that was based on gross receipts had to be apportioned based on the business conducted in the City, that taxing businesses located outside the City would require some administration, that a formula based on gross receipts or number of employees would be required, and that the tax would have to be based on the portion of work done in the City.

Council discussion ensued regarding establishing a rental unit tax for single family rentals, that the community wanted to retain a quality of services, that expenses had to be cut due to lower revenues, that the solution had to be simple, fair, reasonable, and require minor administrative time to not utilize staff or consultant time, and that the decision should be taken to the voters in August.

Council discussion ensued whether educational materials could be distributed to the community on the business tax, that the City did not want any businesses to leave the City, that costs should not be passed to customers, that the City needed to bring in funds close to the million dollar range, how the tax would be applied to home base businesses, that gross receipts and square footage tax models could be complicated, that a hybrid of the employee count and fixed fee model could be simple to address, and whether the City could provide tax rebates to businesses that participated in environmental programs such as commuter ridership programs.

Johanna Canlas, City Attorney, stated that the ordinance could be drafted to include rebate incentives, that there were numerous cities that allowed Council to reduce the tax, and that the ordinance could address rebates for environmental sustainability issues.

Council discussion ensued regarding whether the rebate would add another level of complexity to the model, that this issue could be added at a later time after a review of the tax had been done, that the tax should be fair and simple, that the purpose of the business tax was not for city businesses to balance the budget, and whether the ordinance could be drafted to include a CPI increase.

David Ott, City Manager, stated that he would bring several models back to the Council on May 27th.

Council and City Manager discussion ensued regarding bringing the Fire Benefit fee back at a later time, that the cost of the fire services outweighed the ability of the general fund to cover the costs, that the Fire Benefit fee required a two-thirds vote, that the business tax fee required a 50 % +1 vote, and that the August vote would be by mail only.

**C.3. Conditional Use, Development Review and Structure  
Development Permits at 838 Academy Drive - Extension Request,  
Case No. 17-04-07, Applicant: Santa Fe Christian School. (File  
0610-60)**

This item was continued to May 27, 2009.

**WORKPLAN COMMENTS:**

(Adopted June 25, 2008)

**COMPENSATION & REIMBURSEMENT DISCLOSURE:**

GC: Article 2.3. Compensation: 53232.3. (a) ... Reimbursable expenses shall include, but not be limited to, meals, lodging, and travel. 53232.3 (d) Members of a legislative body shall provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

**COUNCIL COMMITTEE REPORTS:**

Council reported on their committees.

**Regional Committees: (outside agencies)**

- a. City Selection Committee - Roberts (meets twice a year).
- b. County Service Area 17 - Campbell, Nichols (alternate).
- c. Escondido Creek Watershed Authority - Nichols, Roberts (alternate).
- d. League of Ca. Cities' San Diego County Executive Committee - Roberts, Kellejian (alternate) and any subcommittees.
- e. League of Ca. Cities' Local Legislative Committee - Roberts, Kellejian (alternate).
- f. League of Ca. Cities' Coastal Cities Issues Group (CCIG) - Kellejian, Roberts (alternate).
- g. North County Dispatch JPA - Nichols, Campbell (alternate).
- h. North County Transit District - Roberts, Heebner (alternate).
- i. Regional Solid Waste Association (RSWA) - Nichols, Kellejian (alternate).
- j. SANDAG - Heebner (Primary), Roberts (1st alternate), Nichols (2nd alternate) and any subcommittees.
- k. SANDAG Shoreline Preservation Committee - Kellejian, Roberts (alternate).
- l. San Dieguito River Valley JPA - Roberts, Nichols (alternate).
- m. San Elijo JPA - Campbell, Roberts (both primary members) (no alternates).

- n. 22nd Agricultural District Association Community Relations Committee - Campbell, Roberts.

**Standing Committees: (All Primary Members) (Permanent Committees)**

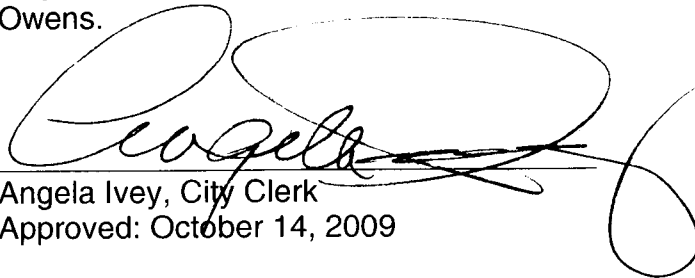
- a. Business Liaison Committee - Roberts, Campbell.
- b. Highway 101 / Cedros Ave. Development Committee - Nichols, Heebner.
- c. I-5 Construction Committee - Heebner, Roberts.
- d. Public Arts Committee - Roberts, Nichols.
- e. School Relations Committee - Roberts, Campbell.

**Ad Hoc Committees: (All Primary Members) (Temporary Committees)**

- a. Army Corps of Engineers & Regional Beach Nourishment - Kellejian, Campbell. Expires December 9, 2009.
- b. Development Review - Nichols, Heebner. Expires November 18, 2009.
- c. Environmental Sustainability - Roberts, Heebner. Expires December 9, 2009.
- d. Fletcher Cove - Campbell, Heebner. Expires November 18, 2009.
- e. La Colonia Park Needs Assessment - Nichols, Heebner. Expires June 10, 2009.
- f. Local Coastal Plan Ad-Hoc Committee - Roberts, Campbell. Expires February 10, 2010 or at the California Coastal Commission adoption.
- g. NCTD / Train Station Site Project Ad Hoc Committee - Heebner, Nichols. Expires 1-13-2010
- h. View Assessment - Nichols, Heebner. Expires August 26, 2009

**ADJOURN:**

Mayor Nichols adjourned the meeting in the memory of Sheriff Steve Michael Owens.



Angela Ivey, City Clerk  
Approved: October 14, 2009