

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

JOINT **REGULAR** MEETING

# MINUTES

**WEDNESDAY, SEPTEMBER 9, 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:**

Deputy Mayor Campbell called the meeting to order at 6:24 p.m.

**Present:** Campbell, Heebner, Kellejian, and Roberts.

**Absent:** Nichols.

**Also Present:** David Ott, City Manager  
Johanna Canlas, City Attorney  
Angela Ivey, City Clerk  
Dennis Coleman, Finance Director  
Wende Protzman, Dir. Admin. Serv./Deputy City Mgr  
Tina Christiansen, Community Dev. Dir.  
Mo Sammak, City Engineer/Public Works Dir.

Johanna Canlas, City Attorney, stated that City Council decided to waive attorney-client privilege, for the limited purpose of the release of the September 3, 2009 memorandum authorized by James Moose of Remy, Thomas, Moose & Manley, the City' Special Counsel, regarding SB 375 and CEQA Streamlining provisions. The City Attorney is authorized to release the above mentioned memorandum as she deems appropriate.

David Ott, City Manager, announced that Mayor Nichols would not be attending at the advice of his physician.

**FLAG SALUTE:**

Two Cub Scouts led the flag salute.

**APPROVAL OF AGENDA:**

**MOTION:** Moved by Heebner and seconded by Roberts. **Motion carried 4/0/1** ( Absent: Nichols.)

**PROCLAMATIONS:**

Deputy Mayor Campbell read two proclamations.

1. Emergency Preparedness Week

Deputy Chief Abelman accepted the proclamation and encouraged the public to prepare for emergencies and prevent hazards.

**PRESENTATIONS:**

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

1. North County Transit District Mobility Plan

David Ott, City Manager, asked that Staff make a presentation regarding a lighting demonstration.

Mo Sammak, City Engineer, presented a powerpoint regarding a citywide pilot program in an effort to reduce the City's costs and carbon footprint. He said that there would several various types of lights outside the Council Chambers so that they may be compared and solicit feedback.

Tom Lichterman, Director of Operations, presented a powerpoint reviewing their mobility plan study introduction.

**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.

Scott Kroll thanked the City Council for its support of the local Cub Scouts.

Nathan Kroll announced the Cub Scout's event for Pack 782 Sign Up Meeting at Solana Vista on September 21st.

### **COMMUNITY ANNOUNCEMENTS:**

Council reported community announcements.

### **COMMENTARY:**

Council reported 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 Heebner and seconded by Kellejian. **Motion carried 4/0/1** ( Absent: Nichols.)

##### **A.2. Minutes of the City Council.**

Recommendation: That the City Council

1. Approve the Minutes of the Regular and Special (Closed) City Council meeting held April 23, 2008, Special Meetings held December 9, 2008, and Regular and Special (Closed) December 10, 2009.

**MOTION:** Moved by Roberts and seconded by Heebner. **Motion carried 4/0/1** ( Absent: Nichols.)

**A.3. Register Of Demands. (File 0300-30)**

Recommendation: That the City Council

1. Ratify the list of demands for August 1 - 21, 2009.

**MOTION:** Moved by Roberts and seconded by Heebner. **Motion carried 4/0/1** ( Absent: Nichols.)

**A.4. Animal Control Services Contract. (File 0400-10)**

Recommendation: That the City Council

1. Adopt Resolution 2009-103 authorizing the City Manager to sign a contractual agreement with San Diego County for the delivery of Animal Control Services in the amount of \$74,103.

**MOTION:** Moved by Roberts and seconded by Heebner. **Motion carried 4/0/1** ( Absent: Nichols.)

**A.5. Fletcher Cove Park Railing/Fence Replacement. (File 400-10)**

Recommendation: That the City Council

1. Adopt Resolution 2009-101:
  - a. Authorizing the City Council to accept as complete the Fletcher Cove Park Cable Railing/Fence Replacement Project, Bid No. 2009-01, constructed by Harris Steel Fence Company, Inc.
  - b. Authorizing the City Clerk to file a Notice of Completion.

**MOTION:** Moved by Roberts and seconded by Heebner. **Motion carried 4/0/1** ( Absent: Nichols.)

**A.6. Monthly Investment Report. (File 0350-45)**

Recommendation: That the City Council

1. Accept and file the attached Cash and Investment Reports for the

month of June 2009.

**MOTION:** Moved by Roberts and seconded by Heebner. **Motion carried 4/0/1** ( Absent: Nichols.)

**A.7. EsGil Corporation Agreement Amendment for building and construction plan review and inspection services. (File 0400-10)**

Recommendation: That the City Council

1. Adopt Resolution 2009-107:
  - a. Authorizing the City Manager to execute Amendment No. 1 to the Professional Services Agreement with EsGil Corporation to extend the agreement for the time period of July 1, 2009 to October 31, 2009.
  - b. Authorizing the City Manager to extend the agreement up to one additional year, at the City's option.

**MOTION:** Moved by Roberts and seconded by Heebner. **Motion carried 4/0/1** ( Absent: Nichols.)

**A.8. Amendment to City Manager's Employment Agreement. (File 0400-10)**

Recommendation: That the City Council

1. Adopt Resolution 2009-090 authorizing the Mayor to execute the Second Amendment to the Employment Agreement between the City of Solana Beach and David Ott.

**MOTION:** Moved by Roberts and seconded by Heebner. **Motion carried 4/0/1** ( Absent: Nichols.)

**C. STAFF REPORTS:**  
**Submit speaker slips to the City Clerk.**  
*Submit speaker slips to the City Clerk*

**C.1. SANDAG 2050 Regional Growth Forecast Update. (File 0150-55)**

Recommendation: That the City Council

1. Discuss and provide direction as appropriate.

David Ott, City Manager, introduced the item.

Rich Whipple, Principal Planner, explained that at the July 8th Council meeting Staff explained the description of SANDAG's 2050 Growth Forecast and worked with SANDAG regarding potential input.

Ed Shafer, SANDAG, presented a powerpoint reviewing the goals of the 2050 Forecast and Solana Beach capacity.

Councilmember Heebner stated that SANDAG had done fairly well on forecasting, that Council needed to discuss scenarios so that it was appropriately represented, that each City wanted to maintain its own unique footprint, and that Solana Beach should be considered for its specific jurisdictional specificity. She said that three areas were identified that were currently commercial that could be potential mixed-use within the City which included public storage, warehouse, and another area along Genevieve. She requested that Council pick one area for growth in Solana Beach and that it would not require the City to provide a specific number of units and that it could even take it back every 4 years after reassessment.

Deputy Mayor Campbell asked what assurance the City would have that it could change its mind.

Mr. Shafer stated that SB 375 says that they were supposed to accommodate all growth, that only by working with the local jurisdictions will they be able to attempt to do so, that the law said that SANDAG was supposed to accommodate the growth but that the City had the land use authority so they have the incentive to obtain the City's correct information on where to accommodate the growth.

Deputy Mayor Campbell asked about the methodology.

Mr. Shafer said that they convened a panel of experts from the state and showed them their model with their assumptions, obtained their comments and suggestions and then made changes, and that they do a good job since they get good input to make adjustments from the state and local jurisdictions.

Council and Mr. Shafer discussed providing the public an opportunity for input, doing a public workshop, outlining the issues, and that the deadline for the information would be by the end of the year.

**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. Notice of Availability and Public Hearing - Adoption of Draft Local Coastal Program (LCP) Land Use Plan (LUP). (File 0610-12)**

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. Adopt Resolution 2009-054 adopting the Revised Draft LCP LUP
4. Direct the City Manager to resubmit the Revised Draft LUP to the California Coastal Commission for certification as soon as practicable.
5. Authorize staff and consultant to continue coordinating with the citizens' group, the Council Ad Hoc Committee and the Coastal Commission staff to resubmit and reinitiate the CCC review process for the timely processing of the City's LCP LUP.

David Ott, City Manager, introduced the item. He stated that the City had been working on a Local Coastal Plan (LCP) and Land Use Plan since the year 2000, and that the City had submitted documents to the Coastal Commission in 2001, 2006, 2007, and 2008. He stated that the proposed LCP included comments suggested by the Coastal Commission, that a citizen's stakeholder group had worked on the LCP/LUP, and that the group was comprised of environmental representative and bluff top home owners.

Leslea Meyerhoff, consultant, presented a Powerpoint.

Deputy Mayor, Campbell, opened the public hearing.

Council reported their disclosures.

Diane Garber stated that she lived on Pacific Ave, that she had been fighting for the past fifteen years to build a seawall to protect their bluff, that when she bought her home she had the right to build a seawall to protect her home and that there was no time limit on building the seawall, and that the City was trying to undermine property owners rights to build seawalls which could lead to losing their homes. She stated that the LCP put a time limit on seawalls, that there was a time limit on the ownership of homes on the bluffs, that there were strict limits on what could be built on their property, that it was discrimination of property rights, that the law allowed for seawalls without time limits, and that she did not support the LCP and wanted it re-written to be in accordance with the law.

Dr. Linda Charles stated that she was a bluff top resident, that there was a collapse of a sea cave prior to her moving into her home, that the work on her home required many petitions to the Coastal Commission, and that she was concerned about the cost of having a seawall to protect her property. She stated that she did not feel safe in front of unstable bluffs, that seawalls protected the community, that they increased the safety of tourists and residents, and that she could not remain in her home if there were excessive fees for mitigation of sand.

Torgen Johnson (3 minutes donated by Jack Skinner) presented a Powerpoint presentation. He stated that going through the approval process for seawalls was expensive and time consuming, that the City's beaches were the most public used open space, that there were a lot of recent bluff failures, that people approached the bluffs and sea caves to closely regardless of signs, and showed pictures of bluffs and landslides in the City. He stated that the beach was an attraction, that there was a lack of sand on the beach, that there were other natural hazards that contributed to bluff failures, that property owners did not cause poor bluff issues, and that the Council should submit the draft LCP/LUP to the Coastal Commission.

Chuck Thompson stated that he had been vacationing in Southern California for over thirty years, that he had ocean beach property in the City, that his property had an upper bluff problem, and that his homeowners association had spent over \$100,000 in engineering studies with no resolve. He stated that the property needed upper bluff retention approval, that the residents and visitors needed to be protected, that the beach belonged to everyone so everyone should pay the tax for sand replenishment, that the City needed tourists, that there was the threat of losing their property eighty years from now, that they wanted to protect their property and people with upper bluff retention options, and that they did not want their properties to be destroyed.



Jack Hegenauer (3 minutes donated by Judy Hegenauer) presented a Powerpoint. He stated that he was speaking on behalf of the City's Clean and Green Environmental Committee, that the California Climate Adaption Strategy was urging Cities to adopt a Local Coastal Plan to assess climate change impacts, that the City's draft LCP did not address this issue, that there was a climate crisis due to green house emissions that would lead to accelerated climate deterioration, and that climate deterioration was leading to rising sea levels. He stated that San Diego was one of the most vulnerable U.S. coast lines for sea level rise due to land use policies allowing housing too close to the coast line, that the Coastal Commission forecasted a 3 foot sea level rise and that this figure should be used in the draft LCP. He stated that there may not be enough sand available to keep dumping it on our beaches, and that the LCP document should be re-focused on the sustainability of the public beach land.

Mark Tiddens stated that he supported the LCP, that there had been a lot of work on the document, and that the document should move forward and be submitted.

Jim Jaffe, CalBeach Advocates, (group time donated by Michele Jaffe and Gordon Hanson) presented a Powerpoint. He reviewed a compromise for the LCP that was drafted in 2005 with CalBeach Advocates. He stated that it was the City's responsibility to implement the LCP, that the property owners had a conflict of interest that could not be resolved, that there were several results of the LCP not being adopted such as development permits in the entire City would require Coastal Commission hearings, that the LUP needed to comply with the Coastal Act by making changes recommended in the CalBeach comment letter, and that there must be no liability of removing seawalls for the City. He presented changes that CalBeach was requesting the City make, that the Coastal Act's guidelines of Conflict and Compromise should be incorporated into the LCP, that the City had the right to regulate the approval of seawalls, that the Coastal Act's policies protect the coastal resources, and that the City had the ability to remove seawalls that became a nuisance to public access or recreation. He stated that a policy to address the impacts of seawalls needed to be implemented, and that Council should review changes submitted by CalBeach Advocates and address removal and access recreation policies to be consistent with chapter 3 of the Coastal Act.

Deputy Mayor Campbell recessed the meeting at 8:34 p.m. for a break and reconvened at 8:40 p.m.

Margaret Schlesinger stated that she was offended by the language in the LCP that called the seawalls a public benefit, read a statement by the Coastal Commission stating that the seawalls protected the public was incorrect, that seawalls did not enhance safety, that this language should not be in the LCP, and

that there had to be education and awareness to the public of bluff failures.

Elizabeth Taylor (3 minutes donated by Belinda Smith) stated that the LCP had to comply with the Coastal Act, that there were numerous mandatory provisions related to recreational opportunities and public access, that policy conflicts should be resolved to protect coastal resources, that seawalls stopped the natural erosion process, that there would be a loss of recreational use due to seawalls, and that seawalls could be determined to be a public nuisance if they interfered with the public access to the shoreline. She stated that the LCP did not address the City's ownership of the bluffs, and that the City could not delegate land use authority to draft an LCP to a citizen commission group made up of bluff top property owners. She stated that the LCP allowed the City to bail out homeowners if their properties were condemned, that this was not a good use of taxpayer money, and that the LCP needed significant revisions.

Scott Harrison, Volunteer Chairman of the Surfrider Foundation, stated that the position of the Chapter was outlined in the letter submitted by Jim Jaffee, that members complained about the seawalls, that the comments in the letter represented Surfrider Foundation's mission of preserving public access and recreational activities along the shoreline, that the LCP did not comply with that, and that residents of the City suffered by not having an LCP.

Tom DiNoto stated that he lived on Pacific Ave., that an applicant for a seawall had to process an application through the City, the Coastal Commission, the State Lands Commission, the Regional Quality Water Board, the Army Corps of Engineers, and then back to the Coastal Commission and the City. He stated that the process was timely and costly for all parties, that the City should implement the LCP to reduce processing and Staff costs, that the LCP provided many benefits for the City, public and bluff top property owners, and that the City should submit the LCP as written to the Coastal Commission.

Kari Bloom stated that she was a bluff top property owner, that the City should approve the LCP, that solutions were needed to protect the beach, bluffs, and public, and that the City had neglected the beach and bluffs. She stated that people had lost their life due to bluff failures, that the LCP provided for sand replenishment, that additional sand would provide for more recreational area away from the bluffs, that seawalls could be aesthetically attractive and enhance the shoreline, and that the City should approve the LCP.

Todd Cardiff (3 minutes donated by John Pappas) Surfrider Foundation, stated that he was a member of the committee that organized the comment letter, that they submitted comments in word format with strikethroughs and track changes so Council could view the suggested changes, and that two or three alternative sets of language could be submitted to the Coastal Commission and allow them to decide on which language they preferred. He stated that the purpose of the

comment letter was to comply with the committee recommendations and allow property owners to protect property for a period of time and ensure that the beach eventually returned to its original state, that the LCP was supposed to protect the City, that the City did not have the responsibility of protecting adjacent properties from erosion, and that there should be a plan to pay for the properties.

Marco Gonzales (3 minutes donated by Sue Reynolds), Coast Law Group, stated that he was speaking on behalf of the Coastal Environmental Rights Foundation and not on behalf of the Surfrider Foundation. He stated that the group disagreed that the City should take over bluff top properties, that in seventy five years the properties would be worthless, that there was a lot of discussion about public safety, and that there was a liability of using the ocean. He stated that the City should not be spending taxpayer money to protect bluff top property owners, that there had never been a death in the City due to bluff failures, that sea level rise should be considered at the time of project approval, that it was bad public policy to allow property owners to build seawalls on public land, that there was no good reason to give away public land to subsidize bluff top property owners, that the City should submit an LCP to the Coastal Commission, and Council should not delegate their authority to the citizens.

Erich Schneider (3 minutes donated by Wes Woll), President of the Seascape HOA, read a letter from the HOA which stated that the LCP should not be delayed, that an application for upper bluff repair had been submitted to the City over five years ago, that there had been turn-over of City staff and consultants they worked with, and that the likely collapse of the upper bluff increased and affected public safety. He stated that the City's consultant suggested to move the sidewalk back five feet from the bluff edge, that the recommendation did not remedy the failing bluff and there was still be a public safety issue, that the sidewalk could not be pushed back due to the Americans with Disability Act (ADA) requirements, and that Seascape would continue to work with City Staff on the approval to stabilize the upper bluff. He stated that bluff top property owners should not have to pay additional taxes, and that an LCP should be adopted that was fair and just for all residents.

Bill Glockner stated that there were two passionate groups at this meeting, that he thought this issue was completed with the work of the Ad Hoc Committee, that he supported the LCP, that it should be submitted to the Coastal Commission, and that there were provisions in it that were concerning. He stated that there was a downgrade in property rights, that an LCP simplified permitting and development, and that the City had been the target of litigation without an LCP.

Ira Opper stated that he had been a surfer for 25 years, that Roy Warden went to the Coastal Commission in 1980 to try and stop the building of seawalls, that he saw a lot of beach when he first moved to the city, that the area of the beach was diminishing, and that the City should revise the LCP to be compliant with the

Coastal Act prior to submitting it to the Coastal Commission.

Judy Hamilton was not present when called.

Jon Corn & Walt Crampton (group time donated by Ron Lucker and Nancy O'Neal). Jon stated that he was speaking on behalf of the Beach and Bluff Conservancy (BBC) of which there were about 2,000 members, that he was a former bluff top owner, and that he was an author of the original LCP. He stated that the LCP document should be submitted to the Coastal Commission, that the document complied with all Coastal Act Policies, that the LCP was a compromise between those who wanted seawalls built and those who wanted them as a last resort, that the LCP was drafted by three land use attorneys and an engineer, and that all authors were aware of the Coastal Act policies. He stated that Surfrider attorneys reviewed the document, that their suggestions and the Coastal Commission's comments were incorporated into the LCP, that the Coastal Act was a policy law that addressed how a government could simultaneously protect the coast and property rights, and that the Act did not prohibit development of seawalls. He stated that the Coastal Act allowed seawalls when certain conditions existed, that a priority of the LCP was to increase sand to improve safety and decrease the need for future seawalls, and that the LCP should be sent to the Coastal Commission.

Walt Crampton presented a Powerpoint. He stated that he was the engineer for many of the Beach and Bluff Conservancy projects, he showed pictures of the shoreline, he reviewed diagrams showing how the loss of sand due to upland urbanization had deprived the shoreline of sand, and that there would be no sandy beach without seawalls. He stated that the Coastal Act did not address public safety, that without sand on beach there would be a lot of erosion, that the LCP addressed issues with sea level rise and provided a way to increase sand on the beach, and that the LCP should be submitted to the Coastal Commission.

David Winkler (group time donated by Gary Garber and Sherry Winkler) handed out a letter that was previously submitted to Council. He stated that the letter dated July 22, was written by Dwight Warden and signed by all members of the committee, that the LCP was reviewed by the BBC, Surfrider and CalBeach Advocates, and that the document was reviewed by legal counsel on both sides. He stated that his seawall was recently approved, that he had to pay the City \$425,000 to proceed with the seawall, that homeowners were not responsible for conditions that were causing erosion, that there had been years of work on the LCP, and that the Coastal Commission comments were addressed in the document. He stated that seawalls made the beaches safer, that the State Lands Commission had reduced land lease fees due to seawalls improving public safety, that there were inaccuracies in the letter submitted by Jim Jaffee, and that the Council had the option of submitting the LCP to the Coastal Commission or returning the document to Staff for additional research. He stated that the Council

should take a leadership position and submit a document to the Coastal Commission, that there would be subsequent discussions between Staff and the Coastal Commission to allow for modifications, that Solana Beach was the only city in the county that did not have an LCP, and that the document would save the City money.

**MOTION:** Moved by Heebner and seconded by Roberts to close the public hearing. **Motion carried 4/0/1** ( Absent: Nichols.)

Deputy Mayor Campbell stated that there was a lot of passion on both sides of the issue, that the process had been going on for over ten years, that the City had spent well over a million dollars on the issue, and that the citizens group formulated the document and brought it to Council for review. He stated that the document should be submitted to the Coastal Commission and that it would still evolve and change in the future.

Councilmember Kellejian stated that he was on the Council when the process started in 1992, that there had been different Council's involved in the process, that there had been various public hearings and revised drafts of the LCP, that this LCP should be submitted to the Coastal Commission, and that could be other documents coming forward that could be incorporated into the LCP.

David Ott, stated that there was additional research that was becoming available, that additional studies would be incorporated into the LCP, and that the additional studies would be available in 2010. He stated that the LCP was a dynamic document, that there would be time periods to review and revise various sections of the document to address changing conditions.

Councilmember Roberts stated that the City had a unique 1.3 miles of bluff front, that the City was one of six cities without an approved LCP, that the Staff worked hard on the 130 plus comments from the Coastal Commission, that the document needed to be reviewed for the concerns raised by various citizens, and that the document needed to move as quickly as possible.

David Ott, City Manager, stated that Staff would work quickly to review liability comments raised at this meeting and bring information back to Council and that Staff would bring back any discussion or modifications between staff and the Coastal Commission for review.

Councilmember Heebner stated that the responses to Jim Jaffee's letter should be included in the LCP and that there would be continued due process on the LCP.

Johanna Canlas, City Attorney, stated that the LCP was compliant with the statutory language of the Coastal Act, that there were policy interpretations

that the Coastal Staff had implemented which was outside the statutory language, and that those were just policies and not the law.

David Ott stated that there would be extensive discussion with the Coastal Commission Staff and that other amendments could be suggested to the document to the Coastal staff. He stated that once the document was submitted the time clock of 15 months would start, that the Coastal Commission would review the document, provide comments and suggestions for modifications, submit the document back to Council for review, that if Council desired Staff to modify and return the document to Council prior to re-submitting it to the Coastal Commission.

**MOTION:** Moved by Roberts and seconded by Kellejian. **Motion carried 4/0/1** ( Absent: Nichols.)

Deputy Mayor Campbell recessed the meeting at 10:27 p.m. for a break and reconvened at 10:33 p.m.

**B.2. Minor Subdivision (SUB), Development Review Permit (DRP), and Structure Development Permit (SDP) Request at 823 Vera Street, Applicants: Kettering and Davis, Case # 17-08-24. (File 0600-40)**

Recommendation: That the City Council

1. Report City Council disclosures;
2. Conduct the Public hearing: Open the Public Hearing, Receive Public Testimony, Close the Public Hearing;
3. Finding the project exempt from the California Environmental Quality Act pursuant to Section 15332 of the State CEQA Guidelines; and
4. If the City Council makes the requisite findings and approves the project, adopt Resolution 2009-093 conditionally approving a DRP, SUB and the administrative issuance of an SDP for the project to construct four new three-story, multiple-family residences at 823 Vera Street.

David Ott, City Manager, introduced the item and mentioned that new information had been brought to his attention that the current proposed project does not comply with the fire code due to some access issues. He stated that Staff reached out to the applicant to see if they wanted to withdraw the hearing this

evening and address the issues but they declined, so the hearing was proceeding. He said that due to the issues with the fire code that the City would be recommending denial without prejudice.

Tina Christiansen, Community Development Director, presented a powerpoint reviewing the project. She stated that after an initial issuance of the report it was discovered that the project was not in conformance with all the requirements of the fire code. She said that she contacted him regarding this new information and that Staff would have to recommend denial. She proceeded to review the project.

Councilmember Roberts said that the report said that the road had to be 16 feet, but that now there was a new rule, and he asked why there was this new rule at this late date that he had never heard of.

David Ott, City Manager, stated the Council had never approved a minor subdivision lot so that is why Council had never heard of it before and that it had different rules. He said that an oversight was done by Staff that was not obvious without seeing the plans and the final Staff report and that as the Fire Chief reviewed it carefully and confirmed that it was clearly not compliant with the fire code. He stated that it may have been missed in the past, however when dealing with safety codes, once it was discovered it can not just become a new rule, that the code is written for that very issue and states that when a mistake was made that it must be followed in the future. He said that the code gave him no latitude to approve it, that it was initially interpreted wrong, that Staff felt that mitigation was provided, however, the fire code required additional safety measures and that the Fire Chief could not just decide to have a reason to not comply. He stated that if something were to happen in the future that it would be the fault of approving this non-compliance.

Councilmember Roberts asked to confirm that this rule applied because this was a four-unit subdivision and that Staff did not know that.

David Ott, City Manager, said that the Staff report was wrong, that a two-unit would allow it, but that this was a four-unit. He said that Staff used the typical rules that the use of a sprinkler in the requirements of the project and therefore this would not provide the additional mitigation since it was already required.

Council reported their disclosures.

Deputy Mayor Campbell opened the public hearing.

The licensed land surveyor said that he used the city codes, staff report, and the general plan, and worked with the civil engineer to work on this project. He said that this issue came up last minute and that they were not informed until yesterday, that this was his third tentative map in Solana Beach in the last 3-4

years, that they went back and forth on trivial issues, that the code did say that the fire marshal had a right to have his own law and opinions, that the applicant was very upset, and that there was a project just east of this one that had the same scenario and had a legitimate reason to get approved.

Andrew Davis, applicant, stated that he had dealt with Staff on the submittal, that they wanted to improved the neighborhood, that they had done another project with a 16 ft. driveway and put the fire sprinklers in the rear, they showed other projects on the Staff slides, that he had asked Dis Abelman in December 2008 and confirmed that sprinklers could be used to mitigate the turnaround, that the last issue was addressing what kind of plants to use, that only at the last minute was this turnaround issue presented to them after a year of going through the process and having a Staff report approving it now turning to denial.

Robyn Kettering, applicant, said that she appreciated Councilmember Robert's points, that the Staff report was approved by Mr. Ott and he had ample time to review, that he called it a staff error, that there were two other projects that did not require a hammerhead, that she resented the fact that the issue was one sided, that the fire code was revised in 2007, that it did not say anything about the size of units but only about the length of the driveway and the access road, that the Solana Beach Municipal Code has its own code and states that the City had the authority to approve anything with the mitigation if they chose to, that she had an email from the Deputy Fire Chief stating that fire sprinklers would mitigate the need for a turnaround, that the Fire Chief had access to this email, that she wanted to understand why ths happened, and that she wanted Council to approve the project.

David Ott, City Manager, said that it was a mistake by Staff including the email which he did see recently, that previous fire codes had the same provisions in it, the applicant's prior projects were under prior Solana Beach fire code and were different size and number of units served, that he does not see all construction plans on all but did see this one, that he did not have the authority to approve something that violated the fire code when it came to his attention and that he was duty bound and would be subject to going to jail, that he understood the frustration of the applicant and it was a regrettable mistake of Staff, and that the City would be defenseless in court if something happens if the City approves something in violation of the fire code.

Andrew Davis, applicant, state that code says that the fire chief could give leeway as appropriate.

David Ott, City Manager, said that it did not give him leeway, that there would have to be a cause to reduce the safety of your future tenants, and that there would have to be a reason for doing something.



Robyn Kettering, applicant, read the code that allowed the Fire Chief leeway based on his experience and knowledge.

David Ott, City Manager, said that in 2007 the Solana Beach code required sprinkler systems so it did not provide mitigation since it was a standard in Solana Beach, which was not the state requirement.

Deputy Mayor Campbell said that since the sprinkler was required that you could not use it as the mitigation any longer. He said that he understood it was difficult for the applicants but that what had been stated so far was that the fire chief did not have the authority to vary from what the fire code says.

Johanna Canlas, City Attorney, said that the City Council could not approve a project that was not in compliance with the law, that policies are different than the law, that the change in the Municipal Code made it mandatory for sprinklers to be in place so they could not be then used as mitigation for other deficiencies.

Deputy Mayor Campbell suggested that the matter be continued giving the applicant the opportunity to communicate further with the City Manager and the City Attorney, to get a clear understanding of what the law says, and then move forward.

Andrew Davis, applicant, asked if the City's only answer would be the hammerhead solution.

Deputy Mayor Campbell said that if the applicant wanted resolution this evening that the Council's only choice would be to deny and that he was trying to recommend a continuance to continue to work together.

Johanna Canlas, City Attorney, stated that it is within Council's discretion to afford additional time in the future to the applicant if desired.

Councilmember Heebner asked to clarify the Council's behavior while this public hearing remained open.

Johanna Canlas, City Attorney, stated that the Council should not discuss the project with anyone and make additional disclosures and not taking any comment outside of the hearing.

**MOTION:** Moved by Roberts and seconded by Kellejian to keep the public hearing open, continue the hearing to October 14th, and provide direction to staff to discuss with applicant a clear understanding of the law and options to resolve the matter. **Motion carried 4/0/1** ( Absent: Nichols.)

**C. STAFF REPORTS continued:**

*Submit speaker slips to the City Clerk*

**C.2. Sanitary Sewer Maintenance Plan. (File 0400-10) This item was not heard and will be adjourned to the next meeting.**

Recommendation: That the City Council

1. Adopt Resolution 2009-104
  - a. Authorizing the City Manager to execute Amendment No. 1 to the Professional Services Agreement with Affordable Drain Services dba, Affordable Pipeline Services, Inc. in the amount of \$23,400 to increase the linear feet of annual sewer maintenance from 205,000 feet to 250,000 feet per year and to extend the term of the agreement to June 30, 2010.
  - b. Authorizing the City Treasurer to amend the Fiscal Year 2009-2010 Adopted Budget.
  
2. Adopt Resolution 2009-105
  - a. Authorizing the City Manager to execute a Professional Services Agreement with RBF Consulting in an amount not to exceed \$35,700 to review the closed circuit television (CCTV) information associated with the City sanitary sewer pipeline system and prepare a report related to the findings making specific recommendations for each of the sewer lines identified in the report as needing urgent repair.
  - b. Authorizing the City Treasurer to amend the Fiscal Year 2009-2010 Adopted Budget.

**WORKPLAN COMMENTS:**

(Adopted June 24, 2009)

**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:**

**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)**

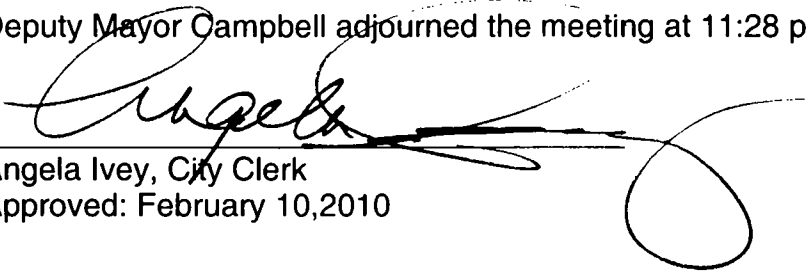
- a. Army Corps of Engineers & Regional Beach Nourishment - Kellejian, Campbell. Expires December 9, 2009.
- b. Development Review - Nichols, Heebner. Expires November 18, 2009.
- c. Environmental Sustainability - Roberts, Heebner. Expires December 9, 2009.
- d. Fletcher Cove - Campbell, Heebner. Expires November 18, 2009.
- e. La Colonia Park Needs Assessment - Nichols, Heebner. Expires May 26, 2010.
- 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 25, 2010

**ADJOURN:**

Deputy Mayor Campbell adjourned the meeting at 11:28 p.m.

  
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Angela Ivey, City Clerk  
Approved: February 10, 2010