



# CITY OF OCEANSIDE

## JOINT MINUTES OF THE:

### CITY COUNCIL SMALL CRAFT HARBOR DISTRICT BOARD OF DIRECTORS COMMUNITY DEVELOPMENT COMMISSION

NOVEMBER 19, 2008

REGULAR MEETING                      4:00 PM                      COUNCIL CHAMBERS

**4:00 PM - OCEANSIDE CITY COUNCIL (COUNCIL),  
HARBOR DISTRICT BOARD OF DIRECTORS (HDB), AND  
COMMUNITY DEVELOPMENT COMMISSION (CDC)  
- REGULAR BUSINESS**

**Mayor  
HDB President  
CDC Chair**  
Jim Wood

**Deputy Mayor  
HDB Vice President  
CDC Vice Chair**  
Rocky Chavez

**Councilmembers  
HDB Directors  
CDC Commissioners**  
Jerome Kern  
Jack Feller  
Esther Sanchez

**City Clerk  
HDB Secretary  
CDC Secretary**  
Barbara Riegel Wayne

**Treasurer**  
Rosemary Jones

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**City Manager  
HDB Chief Executive Officer  
CDC Executive Director**  
Peter Weiss

**City Attorney  
HDB General Counsel  
CDC General Counsel**  
John Mullen

For this regular and joint meeting, the Council sat as all 3 governing bodies [Council, HDB and CDC] simultaneously but took action as the respective agency for the jurisdiction covered by each item. Council titles only will be used for brevity throughout the entire meeting.

The regular and joint meeting of the Oceanside City Council (Council), Small Craft Harbor District Board of Directors (HDB) and Community Development Commission (CDC) was called to order at 4:01 PM, November 19, 2008 by Mayor Wood.

#### **4:00 PM - ROLL CALL**

Present were Mayor Wood, Deputy Mayor Chavez and Councilmembers Feller, Sanchez and Kern. Also present were Assistant City Clerk Holly Trobaugh, City Manager Weiss and City Attorney Mullen.

#### **CITY COUNCIL, HDB, and CDC CLOSED SESSION ITEMS**

Closed Session to discuss litigation, property acquisition, labor relations and personnel matters

**CITY ATTORNEY MULLEN** titled the following agendized items to be heard in closed session: Items 2A and 2B [Item 1 would not be heard].

**NOT OFFICIAL  
UNTIL APPROVED AT SUBSEQUENT  
MEETING BY CITY COUNCIL**

Closed Session and recess were held from 4:02 to 5:05 PM.

**5:00 PM – ROLL CALL:**

All Councilmembers were present. Also present were Assistant City Clerk Trobaugh, City Manager Weiss and City Attorney Mullen.

Invocation: Pastor Carl Souza

Pledge of Allegiance: Young Eagle Marines

**PROCLAMATIONS AND PRESENTATIONS**

Proclamation – Genentech Volunteer Day

Proclamation – National Runaway Prevention Month – November 2008

Presentation – League of American Bicyclists Bicycle Friendly Community Award to the City of Oceanside

Presentation – Mayor’s Youth Sports Recognition and Appreciation Award (Soccer Club)

Presentations were made.

**3. CLOSED SESSION REPORT BY CITY ATTORNEY**

Closed Session to discuss litigation, property acquisition, labor relations and personnel matters

**CITY ATTORNEY MULLEN** reported out on the following items previously heard in closed session:

**1. [CONFERENCE WITH LABOR NEGOTIATOR ON STATUS OF NEGOTIATIONS PREVIOUSLY AUTHORIZED IN OPEN SESSION (SECTION 54957.6)]**

CONFERENCE WITH LABOR NEGOTIATOR – Negotiator: City Manager; employee organizations: Oceanside Police Officers’ Association (OPOA), Oceanside Firefighters’ Association (OFA), Oceanside Police Management Association (OPMA), Management Employees of the City of Oceanside (MECO), Oceanside City Employees’ Association (OCEA), Oceanside Fire Management Association (OFMA), Western Council of Engineers (WCE), and Unrepresented]

No closed session was held.

**2. LITIGATION OR OTHER ADVERSARY PROCEEDING (E.G., ADMINISTRATIVE HEARING, ARBITRATION) (SECTION 54956.9)**

**A) CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION (SECTION 54956.9(b))**

Significant exposure to litigation pursuant to Subdivision (b) of Section 54956.9: One case

Discussed; no reportable action

**B) CONFERENCE WITH LEGAL COUNSEL – INITIATION OF LITIGATION (SECTION 54956.9(c))**

Initiation of litigation by City pursuant to Subdivision (c) of Section 54956.9: One case

Discussed; direction given

**PUBLIC COMMUNICATIONS ON OFF-AGENDA ITEMS**

No action will be taken by the Council/HDB/CDC on matters in this category unless it is determined that an emergency exists or that there is a need to take action that became known subsequent to the posting of the agenda.

Advance written request to reserve time to speak: None

4. **Communications from the public regarding items not on this agenda**

**POLICE WATCH.ORG** [no name given] discussed police accountability and the justice system.

**PATTI BUSIC**, Oceanside resident, is the parent of an El Camino High School student who is in the advanced auto shop program and is participating in the "Drag Race High". The kids have worked really hard for the last 12 weeks, which will end with race day this Saturday. They will be racing against Ramona at the Triple A Auto Club dragway in Fontana.

**CATHY NYKIEL**, Event Coordinator for MainStreet Oceanside, thanked the 200+ volunteers for their assistance in the Dia de los Muertos event on November 2. She then announced upcoming holiday events.

**CONSENT CALENDAR ITEMS** [Items 5-16]

All items listed on the Consent Calendar are considered to be routine matters or formal documents covering previous Council/HDB/CDC instructions. The items listed on the Consent Calendar may be enacted by a single vote. There will be no separate discussion of any Consent Calendar items unless requested by members of the Council/HDB/CDC or the public through submittal of a Request to Speak form prior to the commencement of the agenda item.

**COUNCILMEMBER SANCHEZ** pulled Item 11 for discussion.

The following Consent Calendar was submitted for approval:

5. Council/Harbor/CDC: Approval to waive reading of the text of all ordinances and resolutions considered at this meeting and provide that ordinances shall be introduced after a reading only of the title(s)
6. Council: Approval of a purchase order in the amount of \$150,000 to HD Supply Waterworks of San Marcos for water system equipment and supplies for the Water Utilities Department, and authorization for the Financial Services Director, or designee, to execute the purchase order
7. Council: Approval of an increase in the amount of \$44,818.94 to an existing purchase order to Pacific Rim Design and Development of Shingletown, California, for the final work on the upgrade of the Water Utilities Laboratory ventilation system; and authorization for the Financial Services Director, or designee, to execute the increase in the purchase order
8. Council: Approval of Amendment 3 in the monthly amount of \$24,024 to the professional services agreement with Rancho Santa Fe Protective Services for custody transport services for the Police Department, extending the term of the agreement for an additional seven months on a month-to-month basis, and authorization for the City Manager to execute the amendment (**Document No. 08-D0646-1**)
9. Council: Approval of a two-year professional services agreement with Geopacifica, Inc., of Oceanside in the total amount of \$120,000 for geotechnical review and plan check services for the Engineering Division; and authorization for the City Manager to execute the agreement (**Document No. 08-D0647-1**)
10. Council: Approval of a professional services agreement in the amount of \$33,223 with North County Community Services as fiscal agent for the 2008-09 Regional Winter Shelter System, and authorization for the City Manager to execute the agreement (**Document No. 08-D0648-1**)
11. **Removed from Consent Calendar for discussion**

12. Council: Approval of a budget appropriation in the amount of \$10,000 from the Douglas Park Landscape Maintenance District (LMD) unallocated fund balance to the operating account, for slope movement repair, irrigation replacement due to vandalism, and irrigation repairs
13. Council: Adoption of **Resolution No. 08-R0649-1**, “. . . summarily vacating street access to a City of Vista public park to be located northeast of the intersection of Melrose Drive and Oceanside Boulevard,” and authorization for the City Clerk to file a certified copy of the resolution with the San Diego County Recorder (**Document No. 08-D0650-1**)
14. Council: Adoption of **Resolution No. 08-R0651-1**, “. . . approving the application for grant funds from the Bicycle Transportation Account for the extension of the San Luis Rey River Trail Phase II Program,” for competitive grant funds in the amount of \$425,000
15. Council/Harbor: Authorization of a one-year slip sublease extension for Mr. and Mrs. Smale
16. Council: Authorization to reject all bids received for the Request For Proposals for office supply products; approval of an open purchase order in an amount not to exceed \$231,000 to Corporate Express/Staples of Poway for the purchase of office supply products for FY 2008-09; and authorization for the Financial Services Director, or designee, to execute the purchase order

**COUNCILMEMBER SANCHEZ moved** approval of the balance of the Consent Calendar [Items 5-16, excluding Item 11]. **COUNCILMEMBER KERN seconded** the motion.

**Motion was approved 5-0.**

Since it was not yet 6:00 p.m. for the time certain public hearings, Item 23 was heard next.

#### **MAYOR AND/OR COUNCILMEMBER ITEMS**

23. **Request by Mayor Wood for a presentation by David Manley of the Neighborhood Services Department regarding the annual SUN Slide Show and Volunteer Appreciation**

**DAVID MANLEY**, Neighborhood Services Division Manager, stated the 7<sup>th</sup> annual SUN community clean-up project occurred on September 27, 2008 in the Eastside neighborhood. There was a record turnout of 900-950 volunteers, including residents. They improved 35 properties and would follow up with parkway improvements in the spring. He recognized various groups that participated. He also recognized the companies that provided materials and supplies and presented a slide show of the event.

At this time, the Mayor determined to hear Item 21.

#### **GENERAL ITEMS**

21. **Council: Adoption of a resolution amending the by-laws of the City's Community Relations Commission, and approval of the Commission's FY 2008-2010 Workplan**

**JOHN LUNDBLAD**, Neighborhood Services Department Management Analyst, asked Council to approve a resolution that would allow the Community Relations Commission (CRC) to present a workplan for 2 years, rather than annually. Since there is very little change, it would take pressure off the CRC. The Commission has 2 major programs: the Martin Luther King Civic Award program and the Martin Luther King, Jr. Scholarship program. Next year they will pass the \$500,000 mark in scholarships awarded to graduating seniors in Oceanside.

**COUNCILMEMBER SANCHEZ moved** adoption [of **Resolution No. 08-R0658-1**, “. . . amending the bylaws of the City of Oceanside Community Relations Commission”] and approval of the workplan.

**COUNCILMEMBER FELLER seconded** the motion.

**DEPUTY MAYOR CHAVEZ** stated that, in reviewing the workplan and recognizing that this commission does important work, there is an opportunity to look at commissions in total. Maybe Council would like to look at how we could consolidate or review all of our commissions to save staff time and have more efficient government. He may bring this issue up on a future agenda.

**MAYOR WOOD** had already contacted the City Manager that he planned to get all of the commission chairs together to ascertain from them if there could be some incorporation of some committees/commissions because we cannot get applications. Those would have to be incorporated into others or they would make other policies and changes. We will probably have a committee along with all the chairs to address this in the future.

**Motion was approved 5-0.**

22. **Council: Adoption of a resolution approving a comprehensive Citywide records retention schedule and authorizing its implementation; and repealing all previous retention resolutions**

**JOHN GUTHRIE**, City Clerk Department Records Manager, stated this item is the adoption of a resolution for a Records Retention Schedule for use by all departments and covering materials regardless of format and media. There are currently 5 separate resolutions that are departmental specific that govern retention/disposition of City records. This resolution will replace these narrowly focused resolutions with a schedule that is based on function, rather than department, in order to be used by all departments. This is done to identify a Citywide file naming structure, standardize the length of time a record series must be maintained and minimize the impact on records when departments are restructured or departmental responsibilities change. It is also designed to meet any requirements imposed by California Government Codes, any applicable federal codes, and the previously enacted City Records Management Ordinance for the establishment of a Records Retention Schedule.

He displayed a computer slide showing the abbreviations used in the schedule and how the retention schedules are identified or special handling is noted, and a sample page of the retention schedule. The next step in this process will be the implementation of the schedule and training of departmental staff.

**COUNCILMEMBER SANCHEZ moved** approval [and adoption of **Resolution No. 08-R0659-1**, “. . . approving a comprehensive Citywide Records Retention Schedule ([Document No. 08-D0660-1) and authorizing its implementation; and repealing all previous retention resolutions.”

**DEPUTY MAYOR CHAVEZ seconded** the motion; **motion was approved 5-0.**

[Recess was held from 5:57-6:07 PM.]

## **6:00 P.M. – PUBLIC HEARING ITEMS**

Public hearing items are “time-certain” and are heard beginning at 6:00 p.m. Due to the time-certain requirement, other items may be taken out of order on the agenda to accommodate the 6:00 p.m. public hearing schedule.

17. **Council: Consideration of a resolution denying the appeal of Planning Commission Resolution No. 2008-P63 and approving Tentative Parcel Map (P-7-06), Development Plan (D-6-06), Conditional Use Permits (C-19-06 through C-23-06) and a waiver of undergrounding overhead utility lines to construct a 950,000 square foot shopping center on a 92-acre site located at the northeast corner of State Route 76 and Foussat Road; and adoption of a resolution certifying the Final Environmental Impact Report – Pavilion at Oceanside – Applicant: Thomas Enterprises; Appellants: Westfield Plaza Camino Real and Caltrans**

- A) Mayor opens public hearing – Public hearing was opened.

- B) Mayor requests disclosure of Councilmember and constituent contacts and correspondence – Disclosures were made.

**COUNCILMEMBER KERN** stated he would have to recuse himself on the advice of the City Attorney since he has property within the 300-foot zone on Pala Road.

[Councilmember Kern left the meeting at 6:12 PM.]

- C) City Clerk presents correspondence and/or petitions – A copy of an e-mail sent to Council was received.

- D) Testimony, beginning with

**JERRY HITTLEMAN**, City Planner, stated the project is a tentative parcel map and development plan for a 950,000 square foot shopping center on a 92-acre site. There is an undergrounding waiver request that is only for the high wires that run through the middle of the site; all of the other utilities will be undergrounded. There are conditional use permits for a health club, movie theater and drive-through uses. The Planning Commission approved the project on October 6, 2008 by a 7-0 vote. The project is appealed by Westfield Plaza Camino Real and Caltrans District 11.

The project site is located directly north of Mission Avenue and State Route 76. The site is bisected by some high power lines and an underground pipe. The San Luis Rey River is to the north; our airport and industrial uses are to the west; we have a neighborhood across the river; and to the east we have a single-family neighborhood and other commercial uses along Mission Avenue. The site is a former drive-in theater, and it also has been used as a swap meet. The site is zoned community commercial, which is the correct use for the site. There is residential zoning across the river; to the east there is industrial zoning; the airport, which is zoned public/semi-public is to the west; and to the south, the commercial is along Mission Avenue, with residential further to the south and an elementary school.

Regarding the proposed site plan for the shopping center, the main component is the theater, with a main street lifestyle element. There are some large box users proposed on the western portion of the site, and other large and small users are arrayed in the area. One of the main access points to the site will be from Mission Avenue, which is already a signalized intersection. Coming down SR 76, we will have signal improvements at SR76 and Foussat. There will be an entrance at this point that will be right in/right out only. Alex Road goes over to the Deutsch plant, and there will be a signal at that location and also at Foussat where it turns into Pala Road. There are other entrances further to the north. The project is proposing to cul-de-sac Pala Road. There is an alternative to take Pala Road to the north, but that was not approved by the Planning Commission. There are 4,464 parking spaces, which is approximately 20 spaces over what is required. There will also be a bus transit station to accommodate buses coming off Mission Avenue and then going back onto Mission, providing access to the site. There will be approximately 500,000 cubic yards of dirt brought onto the site for construction purposes to amend the soil and to raise the site up slightly so that it will be out of the flood area. The applicant proposes a modern style of architecture, with extensive use of glass, stucco, and wood siding. He displayed a computer slide showing the proposed cinema, which will be at the northern terminus of the lifestyle portion of the project.

The buildings within the project are 50 feet or less in height, as dictated by airport and Federal Aviation Administration (FAA) rules. There is one tower, an architectural element affiliated with the cinema, that will go above the 50 feet. Staff is asking Council to add a condition to take care of that 80-foot height because it was not originally approved by the Airport Land Use Commission. The rest of the project has already been cleared by the Airport Land Use Commission. The applicant will have to go back to get this one portion approved, or they will have to lower it to 50 feet. The rest of the site complies completely with the regulations.

Mr. Hittleman next addressed what staff looked at in the Environment Impact Report (EIR) for the project. Less than significant impacts were identified for aesthetics; it will be a nice looking center; it is the use that was always contemplated for this site; and it is zoned community commercial. Air quality will be less than significant except for

greenhouse gases, which will be explained later. For hydrology, the applicant has met all of the City's hydrology requirements; they are putting best management practices into place to clean the water before it enters the San Luis Rey River. There are very strict regulations, and they have met all of those. The project meets all of the land use regulations; no variances are requested with this project. Fire and police have stated that they have adequate resources to serve this facility. Fire Station 7 was just built across SR76, so we have a fire station very close. Under utilities, we had an extensive water supply assessment prepared, and it was cleared by our Water Utilities Department. At this time we have enough utilities to serve this site in terms of water, sewer, electric, etc. The water supply is a big issue, and in the future we will look at incorporating drought tolerant species. The applicant has done a nice plan, incorporating many of those species already into their landscape plan.

Under significant and mitigated impacts, it would include biological resources. There are minor sensitive resources on the site - a small amount of wetlands and non-native grassland - that will all be mitigated through contributions to the Mission Resource Conservation District. We will have to work out the non-native grassland mitigation. We also have a wildlife corridor that goes through the eastern portion of the site. That was reviewed and approved by U.S. Fish and Wildlife, California Fish and Game, and a scientific review panel. That wildlife corridor issue is very important for our subarea plan.

Regarding cultural resources, we will have a pre-excavation agreement with the San Luis Rey tribe of Mission Indians. We will have cultural elements from the tribe incorporated throughout the project, either in the landscaping, statues or other elements. We will also have a paleontological monitor on site, as well as a Native American monitor.

We will have mitigation for geology and soils. The project meets the airport regulations regarding hazards. The only significant noise impact is to the least Bell's vireo, which is a bird in the river. We will make sure that is mitigated. If the applicant constructs during the least Bell's vireo breeding season, they will have to construct a wall along the river. There is an extensive buffer between the project and the residences to the east, so we will not have noise impacts to the east; it is a 200-foot minimum buffer in that area.

Regarding greenhouse gases, Mr. Hittleman stated there is no way to mitigate greenhouse gases now since we do not know what the thresholds would be. Therefore, that is called significant and immitigable at this time. Council will be asked to make overriding findings and show that the benefits of the project outweigh any impacts from future greenhouse gas impacts.

Addressing traffic and transportation, he stated staff has identified various mitigation measures that will be put into place; however, we will be left with one unmitigable impact on Douglas Drive, just north of Pala Road. They looked at three alternatives for the project, although no project alternative is required by CEQA. The Pala Road alternative was explored by staff and the Planning Commission and was found to be infeasible. The reason for the infeasibility is the huge environmental constraints. Because the road would have to go through a flood control pond, it would impact 5-6 acres of wetlands. We would need about 25 acres of mitigation for that, meaning the creation of wetlands off-site, which is very difficult and expensive. There are noise impacts from the road, and the various agencies (Army Corps of Engineers, U.S. Fish and Wildlife, Fish and Game, etc.) all came out against the road. It is not that it could not be permitted, but it would be a difficult process and might open up the San Luis Rey flood control permit for additional scrutiny. We just implemented phase I of that project, and it is moving along as it is supposed to. We might not want to jeopardize that. The reduced project, or subarea plan, alternative is adding the wildlife corridor along the eastern edge of the project. That has been incorporated into the project and is now the proposed project.

Staff looked at various issues through the appeal. There were questions about the air quality of the project and the construction of the project. Those can all be mitigated. Only the greenhouse gases from vehicles, buildings, etc. cannot be mitigated. We have the wildlife corridor to mitigate biological resources. Caltrans wanted extensive improvements at the Rancho Del Oro/SR76 interchange, widening that intersection to 6 lanes. Cultural resources are a big element to the project and will be taken care of as stated previously. Under the biological resources portion of the project, we have a wildlife corridor that will go from Carlsbad to Camp Pendleton, basically following the power lines. Originally our

subarea plan showed the wildlife corridor going through the middle of the site, bisecting it. That was found to be infeasible. There are some jet fuel lines under that easement, and understandably they did not want coastal sage scrub planted on top. That would not have been compatible. The wildlife corridor is a 100-foot corridor on the eastern portion of the site and will have coastal sage scrub species. It is directly adjacent to another 100-foot SDG&E corridor, so in essence we will have a 200-foot wildlife corridor in this area. SDG&E, under their subarea plan, is required to maintain coastal sage scrub species in that area as well. It also provides a nice 200-foot buffer to the residences to the east. Across the freeway, we have some other open space; this will provide a connection through this area, through the flood control pond and up into Camp Pendleton. That will allow the gnatcatcher to thrive in this area.

The Rancho Del Oro/SR76 intersection has some indirect or cumulative impacts from the project. Right now SR76 is only 4 lanes there. Caltrans has requested that probably about 500 – 1,000 feet in each direction from this intersection be made into 6 lanes. That would not change the whole of SR76; we still have 4 lanes transitioning to 6 and then back into 4. Under CEQA, we found that there was only an impact to a portion of the site and would require only the improvement of an exclusive right turn lane at that location and a right turn overlap phase to fix the signal in that area. That improvement was found through the traffic study and analysis to fully mitigate the cumulative impact. The other improvements requested by Caltrans were found to be above and beyond what is required by CEQA. That is why we did not require this project to do that; we only want to do the CEQA requirement, which is the nexus between the impact and the mitigation.

In conclusion, the project meets the intent of the commercial zone that it is in; we do not have any variances for the project; it is well designed with modern architecture; it will incorporate cultural elements as well; and it will provide approximately 2,800 jobs in the future and upwards of \$3,000,000 in sales tax and \$1,000,000 in property tax. Those are figures that came out of a study from Keyser Marston. Council will be asked to look at that when they approve the EIR and make overriding findings. Staff recommends that Council certify the EIR with the Mitigation Monitoring and Reporting Program and the statement of overriding considerations and findings; approve the tentative parcel map, the development plan and conditional use permits; and approve the underground waiver only for the area where those large lines exist today.

#### Appellant – Westfield

**ROBERT PONTELLE**, with the law firm Alston & Bird LLP and representing Westfield Plaza Camino Real, stated he is a registered lobbyist with the City. He stated that on behalf of Westfield he submitted a lengthy comment letter on September 29, 2008, detailing the numerous deficiencies in the EIR for the proposed project. To date none of those deficiencies have been addressed. Apparently in response to our comment letter, the applicant submitted a letter dated October 6, 2008, which repeatedly asserted the incorrect legal position that the EIR was adequate because Westfield's objections simply represented a "disagreement among experts." However, case law interpreting the CEQA has long held that an EIR is deficient if it fails to provide the basic information necessary for the public and the decision makers to analyze the project's potential environmental impacts. As repeatedly discussed in our comment letter, that basic information has not been provided in this EIR, and the applicant cannot hide behind its experts in an attempt to avoid providing that fundamental information. Indeed, a state public agency, Caltrans, has also recognized the critical deficiencies in this EIR. Caltrans has concluded that the proposed project would cause significant impacts to SR76, which is the state highway closest to the project site, that were not identified in the EIR. Those impacts, unless fully mitigated, would trigger recirculation of the EIR. However, neither the EIR nor the applicant has offered any mitigation for these potentially significant impacts. Those impacts are of particular concern to Westfield because several of the major roadways intersecting with SR76 also provide critical access ways to Westfield's retail center in nearby Carlsbad. In addition, the 92-acre site of the project is one of the last large parcels of developable, commercial land in Oceanside.

Westfield took the unusual action of asking Council to reverse the Planning Commission's recommendation of approval because of several key shortcomings in the final EIR for the project. Those include that the document is virtually identical to the draft EIR despite numerous community and governmental agencies that defined deficiencies in the

draft EIR and sought more detailed analysis before the document was finalized. The property is situated at a unique geographical location between a river, an airport, a congested state highway and 2 residential communities. It is therefore critical that a thorough examination of potential impacts be performed to prevent lasting damage to the surrounding land uses and residents. Given the scope and scale of the proposed project, the final EIR understates potential impacts to traffic, air quality, biological resources, water resources and the adjacent Oceanside Municipal Airport; these impacts can reach far into neighboring communities and jurisdictions. As a result, the document also fails to recommend appropriate mitigation measures.

As the owner and operator of several shopping centers in San Diego County, Westfield understands the complexity that accompanies developments and redevelopments. They have carefully and painstakingly followed the rules that govern environmental review. If large commercial developments are allowed to proceed without adhering to the rules, the result will be a significant deterioration of the quality of life for San Diego County residents. To ensure this does not happen, all developments must be held to the same rigorous standards set forth by CEQA and local jurisdictions. In reviewing the staff report for this agenda item, we noticed that the staff report states that, if Council decides to approve the project without the Pala Road extension, this improvement would be removed from the City's General Plan Circulation Element. That General Plan amendment was never disclosed to be part of this project description, and consequently its potential environmental impacts were not analyzed in this EIR. The amendment to the City's General Plan to delete this roadway could require additional CEQA review in connection with the Pavilion project and should be analyzed in the EIR. We urge Council not to certify the EIR until it is revised to comply with CEQA.

#### Appellant – Caltrans

**BILL FIGGE**, Deputy District Director for Planning for Caltrans District 11, stated that Caltrans' role is to discuss the impacts to SR76 from the Pavilion project. We understand and support the need for economic development in the City, particularly in today's environment. However, it is important to point out that we disagree with the findings of the City regarding the key issue of mitigation at Rancho Del Oro and SR76. The Pavilion project will generate over 30,000 vehicle trips per day upon its completion. The traffic impact study identifies that there are impacts to SR76, particularly at the Rancho Del Oro intersection. Two mitigation measures were proposed in the EIR: 1) adding eastbound/westbound lanes through the intersection, which we support, and 2) restriping the northbound approach to put a right-turn-only lane in there and a signal overlay phase. The EIR states that widening SR76 at this location is the responsibility of Caltrans, and the project would only contribute a fair share to the intersection improvements. Caltrans provided comment letters to the City on May 2, June 23 and October 6 of this year. We also had meetings with City staff. The key issue for Caltrans is that the project identifies an impact at the Rancho Del Oro intersection, and yet is looking to Caltrans to mitigate the impact. CEQA requires that the project and the lead agency are responsible to see that the mitigation is in place upon completion of the project. Working with City staff, we have fleshed out the proposal discussed [widening to 6 lanes] and think that this is a reasonable mitigation measure in terms of adding an additional through lane in the east and west direction at the Rancho Del Oro intersection. This is a similar configuration to what is in place on SR76 at Foussat and College. It will increase throughput through the intersection, reduce delay and be consistent with the ultimate widening of SR76 to 6 lanes at some unknown time in the future. This improvement could be done by the City or the developer under permits from Caltrans; it could most likely be done within our existing right-of-way, with very little environmental impacts to be concerned with in a mostly disturbed area; and it could be done prior to the completion of the Pavilion.

The notion that improvements to SR76 are to be funded by Caltrans or SANDAG is inappropriate as they are identified as impacts in the project. From a larger perspective, the ultimate widening of SR76 in this location to 6 lanes would have to be programmed within the Regional Transportation Plan (RTP) that SANDAG is responsible for. At this time, this portion of SR76 is shown as being widened to 6 lanes under what is called the "unrestrained version of the RTP." That means that there is no funding identified for it at this time. The RTP was just issued by SANDAG last year and will be renewed every 3-4 years; however, at this point it is not in the funding constrained version, which means that there will be no funding available for it. It is Caltrans' responsibility to maintain the safe

operation of the state highway system. We do not believe that the proposed mitigation measure to restripe the northbound approach and provide the exclusive right turn lane and right turn signal overlap phase will be effective, and we cannot agree to it at this time. We also will maintain signal timing throughout the corridor to ensure that regional travel is accommodated, and that may lead to additional delays at intersections for City streets. We would like to work with the City to develop a more comprehensive approach to SR76; we do not work on these on an individual development basis but would like to sit down with the City and SANDAG and discuss how a forward funding strategy for the ultimate widening of SR76 could be instituted, which would include mitigation funding as well as funding from SANDAG. He thanked Council for their consideration of these mitigation measures.

Applicant – Thomas Enterprises

**ANNE GUNTER**, with the Lightfoot Planning Group, is a registered lobbyist, and represents the applicant Thomas Enterprises regarding the Pavilion project. She realized that Council has reviewed a huge amount of information leading up to tonight's meeting and appreciated the time taken to work with the community, staff and our team. They are confident that the extensive amount of material provides all of the analyses and information that Council needs to make a clear decision tonight to reject the appeals and approve this project. The City has had a project of this type and scope in mind for many years, as reflected in the General Plan and zoning designations. The Pavilion project reflects the results of many months/years of technical work, coordination with other agencies, design review and modifications with City staff, and extensive community input. In designing this project, we needed to consider many issues and lots of technical data.

One of the first things they looked at was the proximity of the site to the airport. Early in the process, they worked with City staff to make sure they were consistent with the Airport Land Use Master Plan and took that to the Airport Land Use Committee for their concurrence on the project's compatibility with that plan. Subsequently, there have been a lot of architectural changes and revisions; they have reviewed those informally with staff, and they have been supportive of the changes. As mentioned by Mr. Hittleman and in an abundance of caution, staff is asking that the condition be added to make sure that everything is consistent with that plan, and the applicant agrees to that condition.

The design reflects the on-site corridor that is part of the subarea plan work. The core of this shopping center is the lifestyle and main street component, which has the theater anchoring the north end and is designed to have a variety of smaller shops, restaurants, and an interactive pedestrian shopping experience to create a vibrant activity area. In addition, there are more local-serving uses in the project that can include a specialty grocery store, convenience uses and areas for larger retails that have a regional draw. Overall, the intent is to provide a full range of retail service on this important, large site and have a vibrant and active center that can become a focal point for the City.

She reviewed the major access points going into the site, which link into a variety of options for vehicular travel internal of the site. The bus stop location would bring buses into the center with minimal delay along the Mission Avenue route; there is a large ridership base that already uses that transit line. We were asked to incorporate a provision for up to 4 buses at that stop. It is also located so that it provides easy access into both the southern end of the lifestyle center and along the ADA pathways to the western side of the site, as well as into the eastern shop areas. They were also asked in community input to make sure to have something that would be an attraction along the San Luis Rey bike trail. They have provided a linkage, a large landscaped area to bring bicycles into the site in order for people to take advantage of the amenities at the center and have it be an easy access point off this popular trail. There are also many pedestrian connections through the site, which will be marked with landscaping and hardscape to interconnect the various areas on the site.

Another key feature in the design of this site was consideration for storm water and water quality. The site is as close to the river as you can get, and Ms. Gunter displayed a computer slide showing 2+ miles of drainage swales being used for water quality purposes. In addition, the site meets the low-impact development standards of the storm water requirements.

She next highlighted the architecture; the idea is to create a special identity that

creates a destination, interest and excitement within the large center. They wanted to have a variety of materials and design elements to create that interest on the site. They worked on the landscape and hardscape a lot with City staff to make sure they had a variety of amenity areas. The idea is to have an interactive experience for people. There will be dining areas on the site, a lot of pedestrian pathways and some paseos and linkages through the site. In some of the areas, they have been talking with the San Luis Rey band of Indians to help infuse that cultural element into the project.

This project is an opportunity to realize an objective of the City's General Plan and transform this under-utilized property into a vibrant center. The project as designed meets or exceeds all of the development regulations for this zone, and it has lots of options and opportunities for the citizens.

Addressing the appeal issues, she stated the Westfield attorneys have questioned the EIR adequacy on this project. This project has had a most thorough review. They have had technical and legal experts and environmental specialists who have worked hard on this project. From day one from their scoping meeting, they knew there was an interest in the community and the City to make sure this site was developed in a way that was going to be sensitive to all of those issues. We are confident that the documents provided to Council tonight and previously seen by the Planning Commission provide full disclosure on the environmental conditions on this site. They believe the effects of the project and the mitigation measures are appropriate. Where it is necessary to avoid the impacts, staff has made certain that those are reflected in the Mitigation Monitoring and Reporting Program to assure that they are implemented.

One of the key decisions of this project that the Planning Commission focused on was the off-site Pala Road extension. It was also a key focus in our environmental analysis. During the course of that review, it was concluded that, while there would be some benefit to traffic flow if off-site Pala were constructed, the other environmental impacts and other issues associated with extending that road through the pond were too substantial to outweigh the benefits. This project and the City have identified alternate mitigation measures for traffic that will improve levels of service on those segments. Whether Pala Road is extended or not, the City will unfortunately have deficient levels of service on some roadways in this area. However, the mitigation measures to both segments and intersections that are conditioned on the project will help to offset the project impacts and allow the conditions of the pond to exist so as not to create those substantial environmental impacts and costs.

Regarding Caltrans' concerns regarding SR76 and Rancho del Oro Drive, we respectfully disagree with their conclusions. This project will have a cumulative impact at that intersection. The intersection level of service does not change because of this project, but the project will create a delay if mitigation measures are not put in place. The measures that were identified for the right turn improvement and signal improvements will improve that delay to a condition that exists without the project and meets the CEQA nexus requirements. We do not see that there is any reason to go to a broader, more costly and more questionable improvement in terms of doing the full improvement. We appreciate Caltrans' funding issues, just as everyone has funding issues. To the extent that the City wants to work on SR76 issues on a regional basis, we support those efforts; however, the project has done what is necessary to both evaluate the impacts and identify appropriate mitigation measures. Those have been imposed as conditions on the project.

**RONALD ROUSE**, partner with Luce, Forward, Hamilton and Scripps and project counsel for Thomas Enterprises, addressed the statement by Westfield's counsel that somehow the City is violating the principles of amending their General Plan if they were not to require the Pala Road extension. That is incorrect. There is nothing in Council's actions tonight that takes any steps whatsoever regarding amending the Circulation Element of the General Plan. In fact, this project is building out full width improvements on the portion of Pala Road in the Circulation Element from the Foussat Road Bridge to the northerly project terminus. Again, that is full width improvements, not just frontage improvements, but full width in accordance with the Circulation Element. What has been in dispute previously is whether it was wise or legal to impose on this project the further off-site extension of Pala Road. Council has already heard from Mr. Hittleman and Ms. Gunter, as well as the documents in front of them, that the adverse consequences of that further extension outweigh any marginal traffic benefits. Traffic impacts have been mitigated through other

measures and are well supported. He wanted to correct that misimpression; there is nothing that Council is doing tonight that affects the City's General Plan Circulation Element. In fact, this project creates the opportunity, should Council decide in the future to put in off-site Pala, by leading it up to the doorway for that section. We do not think it is wise or that it will ever go in because there are too many adverse consequences. Rest assured that Council is not amending their Circulation Element tonight.

While Mr. Pontelle did not cover all of the issues of his appeal in his written documents, Mr. Rouse reminded Council that staff has provided a supplemental point-by-point response to each and every single argument raised by Westfield in their 33 pages of materials that they provided to the Planning Commission just a few days prior to their hearing. They did not choose to respond within the public response period of the EIR, even though they had asked for and were granted more time. They dropped it in at the last minute. City staff has gone to the trouble of evaluating and asking for the additional consultants' rebuttals that are before Council and attached to the supplemental report. He entered into the record backup material of the thorough and fine job that was done. These are documents that are already part of the larger public record but may not be in the administrative record for this, including the City's 2005 Urban Water Management Plan, the Water Master Plan of July 2007, the San Diego County Water Authority's (SDCWA) updated 2005 Urban Water Management Plan that was modified in 2007, the Metropolitan Water District of Southern California's Regional Urban Water Management Plan of November 2005, the San Diego County Water Authority 2007 Annual Report, and the Metropolitan Water District's Groundwater Assessment Study. The reason we are putting these into the record is because Westfield challenged the knowledge and history of the City's Water Department in their appeal. They suggested that the City did not have a handle on water availability and pointed to such things as the fact that the City is using a portion of their water supply through their longstanding Mission Basin groundwater desalination program, which by the way include water rights that go all the way back to pre-1914, as well as subsequent to that. The other documents demonstrate that the water basin has a safe annual yield of 7,000-9,000 acre feet, which is entirely consistent with the City's water supply analysis. Other documents confirm that the SDCWA, of which Oceanside is a member agency, has gone over and above to identify water transfer rights from the Imperial Valley in excess of 200,000 acre feet per year that will assist in any potential drought situation. Oceanside, as well as the other member agencies, all have longstanding drought programs and management plans in place. This project will be affected, just as any other commercial property, in the event that the drought worsens and there are actual steps taken in accordance with the scheduled drought management plan.

With respect to Caltrans, all budgets are constrained. The citizens of San Diego County over the last 10-12 years have twice gone to the ballot box and imposed upon ourselves an additional ½¢ sales tax override that is collected by SANDAG to be used for local and regional circulation roads and elements, state highways such as SR76, and multi-modal and alternative transportation. This project, with the sales tax it will generate, will go a long way toward helping to fund that very program that is intended to address these regional elements. Caltrans should be supporting this project, for purposes of the project's revenue generation in the SANDAG program. In the particular issue of the SR76/ Rancho del Oro intersection, a thorough analysis in the EIR demonstrates that this project will have a cumulative contribution to the existing degraded condition. The City has identified and imposed on this project actual intersection improvements that will result in not only mitigating this project's contribution but will actually put it in a better condition than it operates without the project. For the issue that has been focused on, that one intersection is being addressed specifically through mitigation measures. The larger issue that the gentleman from Caltrans raises is an overall question of regional funding of necessary transportation and other infrastructure. That is not before Council on this project and is perhaps a subject for another day. Since they have already included this through the Congested Management Program through SANDAG and the special sales tax override, we have gone a long way toward the local funding of regional, state and local transportation networks that affect all of us. He again noted the long-term effort and all the detail that went into this project, addressing all of the issues thoroughly and legally.

#### Public Input

**JIMMY KNOTT**, 127 Sherri Lane, agreed with Westfield's professional evaluation that the EIR understates the effects of the airport on the project. Last week's approval of

the 50-year lease agreement has dramatically affected this proposed project. Because of the Federal Aviation Administration (FAA) and Homeland Security rules, they have rights to supersede this project. That will take place. Also, there is a concern with the habitat area because the Multiple Habitat Conservation Plan (MHCP) was a huge area that was considered at one time. This was part of that, but now it is being reduced from a park-area size to an alleyway. The animals, etc. will be impacted by noise, lights and vibration. The buildings will back up to the habitat. There will be loading and unloading traffic day and night. He asked what calming plans will be involved. It is a common missing element in EIRs and needs to be addressed. This project needs to be reevaluated. Caltrans is right that there needs to be more talking to make this done right.

**FAYE SCHULTZ**, 474 Shadow Tree Drive, is in favor of smart growth. The way the proposal stands right now is not the smartest growth for Oceanside. She listened to citizens who spoke at the meeting and wanted a smaller, destination center that would be a draw, as well as family friendly and pedestrian friendly. Instead, we are getting a big box center with 4 food drive-ins and a main street and theater area. Stores in the box centers would be Best Buy, Target and Bed Bath and Beyond. These are stores that we already have just a few miles away. She wanted to grow revenues in the City and not just redistribute the pie. She also wanted to look at the overall growth in Oceanside. Council has done a great job with the downtown growth. However, there is a Stater Brothers plaza that sits a quarter mile away from this development that just had a nice overhaul, and yet a third of the center is sitting empty. We have fast food places already and do not need more of the same. To create draw, we need something different. If we give our neighbors in Carlsbad, Encinitas and south Orange County something different, they will come. If we give them another Target Center, there will be no draw here.

There is the lifestyle center. If the developer closes that off for pedestrian traffic and does something like a Third Street Promenade like they have in Santa Monica, they could truly make it family friendly and have street performers. Give us something different.

Her biggest concern is traffic. She lives in the neighborhood sitting right behind the project. The residents have 2 ways in and out of their neighborhood; they have no back corridors. Now the City is going to take away one of their entrances and put in Oceanside's largest shopping plaza without doing anything to mitigate the damages. While she hears about SR76 and Rancho del Oro, her concern is Foussat and Benet. As it is now, when she travels north on I-5, sometimes she cannot get off on SR76 since it is already backed up to the freeway. She is concerned about what the traffic is going to do to SR76. She wanted Council to make the smart choices.

**LOA BROWN**, resident in the San Luis Rey area, wanted to find out if the developers have tenants already planned for those spaces. We already have a cinema at College Boulevard and SR76. We also have a cinema here [Mission Avenue]. That is putting 3 cinemas in one area. We still have restaurants around, and some places are already closing. In these economic times, people stop going to the cinema and going out to eat. It seems there is a potential to build this place and then, if you can't find tenants or have them stay long enough, you would have a bunch of empty buildings; that would not enhance Oceanside. We just built a fire station near the area, which already impacts the traffic. When fire trucks need to come out, they change all of the signals so that the fire trucks can go through; they will stop the traffic for as long as necessary for their vehicles to go by. Additionally, people would get out of the theater at the same time because of the timing of the shows, so it puts a lot of people in their cars and back on the streets at one time. There is a great potential for a traffic impact that has not really been addressed properly. She asked Council to take those things into consideration in approving this project.

**DAVID NYDEGGER**, President/CEO of the Chamber of Commerce, stated the Chamber of Commerce is a 900-member business organization. We are definitely in favor of Thomas Enterprises and this project. They urge Council to vote in favor and resolve the appeals. He thanked staff for getting this project off the ground and thanked Thomas Enterprises for their efforts and due diligence. There are 950,000 reasons why we should vote for this project. We need this kind of development in the City, and it is smart growth. They have done a good job in designing visitor-friendly elements. He was particularly pleased to see the bike paths that are included because the City is a bike-friendly community, the only one in San Diego County. The 2,800 new jobs will be wonderful, along

with the sales tax revenue and property tax revenue. Mr. Nydegger has lived in the City since 1945. He watched a large car mall disappear to the city to the south, and a large shopping center proposed for Oceanside also moved south. Don't let this one leave the City.

**MEL VERNON**, San Luis Rey Band of Indians, has been involved with this project for quite a while and has heard both sides of the issue. There are things that he agrees with, although some of his friends do not want this shopping center coming in. He is for the shopping center. A lot of time has gone into this, from the cultural point of view and the animals and habitat. We have been watching this change for San Luis Rey. He was here when the biggest thing was when the Valley Ranch Market came in. His father and his contemporaries did not want the new SR76. There is a lot of life that has come to this valley. This is one of the last open spaces. He questioned what would be there if not this shopping center. He questioned what a Carlsbad shopping center's attorney has to do with an Oceanside shopping center. Council can vote to send this project out of Oceanside, but they cannot vote to bring anything in; it has to be offered to you. He was for the project.

**GWEN PRICE**, 868 Muirfield Drive, lives in the neighborhood immediately to the north of this particular site. Her home is exactly 2 miles from the intersection of Foussat and SR76. We can hear every vehicle that drives on SR76. We can hear the conversations of bicyclists on the San Luis Rey trail and the police at their outdoor shooting range. I tell you this because no one seems to get it; we live in a box canyon that carries the noise up the river bed as though it were in our own back yard. If Pala Road goes through and brings the 10,000+ additional cars per day, we will be unable to turn off the Foussat Bridge. There is additional noise and traffic that goes along with those additional cars. Before Council tonight is really whether or not they put Pala through. She and many in her neighborhood are opposed to that. The resolutions call for noise mitigation during construction, but there is nothing mentioned in either of the 2 proposed resolutions about noise intrusion after the project is built. A client's home in Fire Mountain is above Pacific Coast Plaza. Her home's proximity to that shopping center explains the problems they have with trying to get a decent night's sleep. We will have the same problem because of the box canyon/riverbed transmission of sound that goes right up that valley. Pacific Coast Plaza has several conditional use permits that relate directly to the hours of operation, deliveries, etc. There is nothing in these resolutions or conditional use permit that mitigate this noise pollution or times or hours. She is a real estate agent; she sat for 4 years on the Planning Commission; and she believes firmly in the rights of property owners. A nice center here would be better than a swap meet, drive-in eyesore. Please table this for more input and come to her house to listen to the noise that she is talking about.

**ROBIN BERSON**, 873 Muirfield Drive, lives in the same development. Their neighborhood is one of several homeowners associations located on the north side of the San Luis Rey River. More than 1,000 homes rely solely on the Foussat and Benet Bridges for access to their homes. The EIR and appendices, the resolutions, and City staff or anyone involved admits that the negative impacts of this project can only be mitigated if you think the money outweighs the impact to the environment and the people living in her neighborhood. The real bottom line is that the Pavilion, as presented, is too large for this location. The fact that Caltrans filed an appeal on this project should send up a very large red flag. It will be larger than the Carlsbad Plaza Camino Real mall, but that mall has 2 major freeways (I-5 and Highway 78) that can move traffic around it. However, the intersections of El Camino Real at Vista Way and Highway 78 are a mess, even with those traffic moving freeways. We don't have any major traffic-moving freeways here, just SR76, which is nothing more than a glorified Mission Avenue with a few less signals. On eastbound SR76 at 5:00 PM on any day of the week, the level of service F for surrounding intersections that we use every day is just not acceptable. The traffic study is flawed. They estimated only 35,000 additional cars per day at an already rush hour gridlock intersection, which is based on Caltrans widening SR76 to 6 lanes. However, Caltrans has indicated that they have neither the resources nor the intent to do this at any time in the near future. We waited 30 years for the little stretch of SR76 that we got. When does it reach I-15; when does it widen to 6 lanes? This is just a small example of traffic impact. Even though we do not oppose the new fire station, it is affecting our ability to commute. When the alarm rings and the trucks roll, all traffic stops dead at SR76 and Foussat and Mission. I wonder if anyone has thought about the traffic compound effect of just the fire station alone, in addition to this project.

**MADISON LANG**, 834 River Tree Drive, said they can hear every single sound that comes from the canyon. Second, Pala cannot go through to the Foussat Bridge. That segment alone would add 10,000 additional traffic trips per day to those of us trying to get on/off the Foussat Bridge, which has 2 lanes. If you are talking about 3 entrances off that 2-lane bridge, what happens if an emergency vehicle has to get through? There is no other way. There should be no entrances to this center on Foussat. Remember, we access the east side of our neighborhood from this section; it cannot be gridlocked, both for our own personal transportation and for emergency vehicles. The solution seems relatively simple, with or without Caltrans' cooperation. Under the plan submitted by the developer, there will be 3 entrances to the center: 2 on Foussat and one on Mission. Staff has recommended that Pala go through, allowing for a 4<sup>th</sup> entrance to be added to the development plan. The developer only wants to pay for 3 entrances. Give him a break and let him just pay for one; all access to the shopping center should be from Mission Avenue, which was built years ago as a commercial access road.

While the developer would say it is not economically feasible to make the project smaller, it is since they will be taking business from the already struggling strip malls on Mission. We do not need another movie theater or the undesirable element it brings after dark, especially when the theater parking lot backs up to a river bed and Fireside Park. The development plans currently call for 3 restaurants, fast food drive throughs that back up to Mission Avenue. If those primary restaurants were eliminated, the one primary entrance to the center could be huge, allowing for multiple ingress/egress lanes along with dedicated turn lanes. Additionally, the purchase of Parcel No. 160-270-77, Resolution No. 2008-P63, for off-site parking could be used to widen the roadway to accommodate the build up of traffic moving between SR76 and Mission. Say no to Pala; no to any entrances on Foussat, no to 950,000 square feet on 92 acres of asphalt; yes to smaller and upscale; and yes to one entrance only on Mission. She considers traffic noise a significant mitigated violation, with a big shopping center and all that traffic on a 2-lane highway.

**BRANDON EBELING**, 917 Hillfield Court, representing the Mar Lado Highlands Homeowners Association, stated they support a smaller project with strategic underpinnings.

Regarding traffic concerns, he asked if it is appropriate for City leaders to ignore EIR mitigation challenges and Caltrans' warnings about unmitigatable traffic and safety impacts to our community. The developer's own statement shows concerns in that area. City planners believe that Pala extension would not mitigate traffic circulation issues; it is better to spend that \$60,000,000 elsewhere. This would become a racetrack. The developer's traffic expert and staff fail to recognize one flaw in particular – entry and exit to the development at the north entrance adjacent to the south end of Foussat Bridge.

Not only does the Pavilion represent a significant traffic ingress/egress impact to our community, it represents a danger in terms of fire, a consideration he does not see addressed in the report. While the Fire Department seems to clear the project, in October 2000, several conflagrations reached our community doorsteps within 10,000 feet. Two more large-scale fires came within a few hundred feet of our community only days after the Planning Commission hearing when the Commissioners unilaterally dismissed this as a potential problem. It would also seem appropriate to note the failed execution and sad state of the Corps of Engineers in the San Luis Rey project. We oppose the big box anchor and Pala Road extension, want noise mitigation, and oppose the flat roof architecture and unmitigated traffic. We support a reduced size project that mitigates the issues that concern our community. They are projecting 3,000 new jobs. To put it into context, he reviewed the huge Washington bailouts, the U.S. accumulated debt market; pension funds wiped out; U.S. unfunded liabilities; etc. Given the real estate concerns recently seen, the collapse of home prices, employment collapsing with up to 200,000 jobs lost last month, he hoped that makes his point.

[End of public input]

Appellant's Rebuttal – Westfield

**MR. PONTELLE** had no further comments.

Appellant's Rebuttal - Caltrans

**MR. FIGGE** stated that we often have disagreements among traffic engineers. Council has a traffic study before them, and it is not a gospel; there is a lot of judgment that goes into those. After reviewing the study to the extent that we have, Caltrans respectfully disagrees with the conclusions that have been found for the Rancho del Oro/SR76 intersection. To clarify in terms of additional funding, our point is that we feel the impacts at this location are tied to the developer enough to require them to do more than they are proposing to do. It should not be a public responsibility to come back and mitigate for that. In terms of public funding availability, the TransNet program on the state highway side is a project specific program. We have TransNet money that we are quickly putting to use to widen SR76 to the east over to I-15. However, for this section of SR76, the existing expressway is not part of the TransNet program, so the TransNet funds cannot be spent on this section of SR76. The programming for dollars for any future widening to 6 lanes for this section would have to come from our traditional state and federal transportation sources, and those sources are few and far between these days. Therefore, it is not a likely occurrence that there will be public funding to do the widening to 6 lanes for some time.

For the record, **MR. HITTLEMAN** elaborated on the point that was brought up about the General Plan amendment for eliminating Pala Road. There is nothing tonight that would eliminate Pala Road. We could put it into our Circulation Element update and make it an alternative to remove Pala if Council so wishes. That would come before Council next year at some time. We would do a lot of analysis, an EIR and additional CEQA review, and the item would come back to Council in the future.

Regarding comments about noise, he stated they have Condition 145 in the [Planning Commission] resolution, which requires a management plan for this project. As part of that management plan, we can look at the hours of delivery and operation of the project and somewhat limit the noise through those measures. We did not find noise to be significant under CEQA, which is why it is not identified in the EIR, although the construction impacts would be a temporary significant impact. We could handle it under the management plan.

Addressing the fire concern, he stated that at the Planning Commission meeting and here at the Council, they reported that the project was reviewed by the Fire Department. The circumstances in the river have changed. We implemented Phase I clearing for the San Luis Rey Flood Control Project, which removed about a 170-foot swath of the river from College Boulevard all the way to the beach. Phase II will take out another 60-foot strip. So out of the 400-foot channel, more than half of it would be mowed down to ground level. That will alleviate a lot of the fire concerns. Also, we would not have as many people living in the river because they will not have any place to hide in there.

Public hearing closed

**COUNCILMEMBER SANCHEZ** referenced other questions asked by the public. She asked staff to go over the improvements to Foussat, which was more fully described at the Planning Commission meeting.

**DONA WILSON**, with RBI Consulting, prepared the traffic impact analysis report for the project. The project will be required to widen Foussat Road along the project frontage up to the Foussat Bridge. That includes 3 northbound lanes and 2 southbound lanes, as well as the necessary turn lanes at the intersections. Those improvements will have significant effect on the capacity of that road. In fact, it would be able to carry about 37,000 vehicles per day. Northbound, quite a bit of the traffic from the project will stay to the right; there is a dedicated right-turn lane along the project frontage specifically for that reason. Therefore, there would be lanes on the left side to serve the residents across the Foussat Bridge.

**COUNCILMEMBER SANCHEZ** had received complaints about the way Foussat curves, and then all of a sudden there is a left turn; some accidents have occurred with people not familiar with the road. She asked if that would be improved.

**MS. WILSON** stated that was correct. All of the roads would go continuous, straight through the curves. There will be continuous lanes all the way through.

**COUNCILMEMBER SANCHEZ** referenced a question regarding the effects of the

50-year airport lease. She asked if that had any effect whatsoever on this project in as much as we have had a master plan for the airport for some time.

**MR. HITTLEMAN** responded that this project, when deemed complete last year, was reviewed by the San Diego County Regional Airport Authority and was approved by them. Council heard the issue about the 80-foot tower, which will also need to be approved by the Airport Authority. However, the overall project is approved. The developer will need to get further clearance by the Federal Aviation Administration (FAA) just before they build the project. We don't expect any impacts at all to the airport from this project.

**COUNCILMEMBER SANCHEZ** understood that when the project first was envisioned, it was envisioned as potentially a mixed use. However, the Airport Authority came down with the specific rule that said there should be no second story, or other than one story.

**MR. HITTLEMAN** confirmed that was correct.

With respect to noise control, **COUNCILMEMBER SANCHEZ** asked what could be done with Condition 145 that would incorporate noise.

**MR. HITTLEMAN** responded that we can limit the hours of delivery, especially on the western/northern side of the development where there would potentially be a Best Buy and other users of that type. [Planning Commission Resolution] Condition 145 does not specifically say noise control right now, but we can add that into the condition if you so choose.

**MADISON LANG**, 834 River Tree Drive, asked the traffic engineer if she had been talking about widening the bridge as it goes around the curve. The bridge is 2 lanes, and it is in the middle of the entrances they are talking about. She did not think it could ever be widened because of the big irrigation pipe that goes across it. How are you going to get 3 entrances there with all the people coming in, while they still have to go around the corner where that curve is? It is only ever going to be 2 lanes; it is a bridge.

**COUNCILMEMBER SANCHEZ** understood the public hearing was closed but wanted to include all of the discussion regarding Foussat for the residents there. Her understanding is that the bridge will not be widened, but just leading up to it.

**MS. WILSON** explained that as you follow Foussat to the north, that portion of Foussat, which actually becomes Pala just north of the bridge, will be a continuous through lane. There will be a traffic signal at the intersection of Foussat/Pala, and the bridge will then connect in with Foussat Road. It will be a 4-way intersection with the project at that location. Any curving that occurs there today would be eliminated with the extension of the road along the project frontage.

**COUNCILMEMBER SANCHEZ** had heard a lot of testimony at the Planning Commission that did not get presented this evening. What we have in Thomas Enterprises is something that we had hoped to have in terms of getting someone interested in vesting in Oceanside. She had no doubt that if these buildings were to be vacant, this applicant would not be here tonight. We have wanted and strived for economic development, and a higher end shopping center has not been discussed as much tonight as we have discussed over the last months/years. We wanted a higher end shopping center. This is the same company that brought forth the Forum. She looked to see what other shopping centers Thomas Enterprises has built and what kind of reputation they have in the community country wide. She was impressed. This is a project that is going to be higher end. She remembered Oceanside having JC Penney and Huckabays downtown. When the Robinson's May Company was proposed to Oceanside, we said no. We had an exodus of businesses downtown, and that was unfortunate. She remembered having a sense of community, and downtown being the place to go shopping. We now have this tremendous opportunity for us to shop within our own City for the higher end products that we end up going to other places for. She has wanted that to stop, to have something in Oceanside that would keep the sales taxes and jobs here.

From the very beginning, she worked with Thomas Enterprises because she wanted to make sure that the impacts, especially the environmental impacts were going to be

addressed. They have. The wildlife agencies have been included in the discussion from the very beginning. Early on there was a discussion about Pala Road. She had attended a couple of meetings, and it was made very clear that the residents did not want to have the Pala extension put through. Also during the Planning Commission meeting, there was discussion about how it would have to include 6-foot walls and that the road would go through a pond that was mitigation for another project into which we have already put millions of dollars. It just didn't make sense.

She **moved** to deny the appeal, uphold the Planning Commission's unanimous decision, and include language about noise under Condition 145 - the Management Plan. This is what we need to do in terms of creating jobs for the City and for having sales tax stay in Oceanside, and this will be something that we will all be proud of. She pledged to work with the residents in terms of any noise problems, whether she is on or off the Council. She wanted to make sure that those who are going to be living with this project have the least impacts possible.

**COUNCILMEMBER FELLER seconded** the motion. He noted that there was a comment period on the EIR, and he understood that Westfield did not comment.

**MR. HITTLEMAN** clarified that Westfield requested an extension of 15-20 days, which we granted. Westfield then provided a comment letter, but it was very brief and not extensive at all. He confirmed Councilmember Feller's statement that the extension made it a 50-55 day EIR comment period. Further responding to Councilmember Feller, Mr. Hittleman stated that at the Planning Commission hearing, Westfield submitted a large package of material, although they did not speak during the Planning Commission hearing.

**COUNCILMEMBER FELLER** asked when the mitigation discussions occur about the management plan and whether it is before occupancy.

**MR. HITTLEMAN** stated it was definitely before occupancy. Before staff approves any occupancy, that would have to be in place. He also confirmed that staff had conferred with the City Attorney extensively.

**COUNCILMEMBER FELLER** heard from many of the residents who were really excited about this project, being able to walk to the store or a restaurant or movies. The slippage on this is about \$650,000 by his calculation in revenue. He asked about the dollars projected for this project.

**JANE McVEY**, Economic and Community Development Director, stated the new sales tax is about \$3,000,000; property tax is close to \$500,000; and business license tax is close to \$200,000. You are looking at \$3,760,000 when they are stabilized. It will be built in phases, so this revenue does not get created overnight.

**COUNCILMEMBER FELLER** added that the back-up indicated it was about \$3,100,000 net after slippage from other uses within the City.

**MS. McVEY** stated that was correct. Keyser Marston did the study. We evaluated it and provided some critique, and the cannibalization of other stores is already accounted for in that number.

**COUNCILMEMBER FELLER** said Oceanside has given its citizens' money to Carlsbad and Vista for long enough. It is our turn for a piece of the pie. We lost many things to the city to the south. When SR76 was conceived, was it a 2-lane road with lights?

**MR. HITTLEMAN** replied that it is constructed as a 4-lane expressway. The ultimate, as in our Circulation Element, is 6 lanes.

**COUNCILMEMBER FELLER** stated that was what it was thought of when it was brought in, in the 1960s with Councilmembers like Sam Williamson, trying to work it in as the Highway 76 freeway. It is not a freeway. Caltrans has had to redo freeways all over Orange and Los Angeles Counties that are done with state and federal funds as opposed to on the backs of developers. Forty years ago SR76 was supposed to be a freeway. He read from an article from the *Los Angeles Times* regarding a project in Century City. The

statement cited was made by Jack Weiss, who stated that at this point in time, with this economy it would be public policy malpractice to tell someone who wants to invest hundreds of millions of dollars in your community to go take a hike. That man was speaking about Westfield in Century City. To him, it is pretty transparent about what is actually happening with this project. I think we need to stop the madness and the jealousy of who gets what tenants. That is what this appeal is really about. They are costing the City a lot of money. This is not free to have all of these people here. He was disgusted with this transparent attempt to stop our little piece of economic freedom. This is something that we need, and people all over the City are talking about it and are excited. This is about Oceanside getting some of that economic freedom, and we deserve it. Westfield needs to back off.

**COUNCILMEMBER SANCHEZ amended her motion**, to include adopting the resolutions [**Resolution No. 08-R0652-1**, “. . . approving a tentative parcel map, development plan, conditional use permits and a waiver of undergrounding overhead utility lines to construct a 950,000 square foot shopping center on a 92-acre site located at the northeast corner of State Route 76 and Foussat Road – Oceanside Pavilion Project (Applicant: Thomas Enterprises) (Appellants: Alston & Bird LLP and CalTrans)” and **Resolution No. 08-R0653-1**, “. . . certifying the Final Environmental Impact Report for the Oceanside Pavilion Project (Thomas Enterprises – Applicant’)].

**CITY ATTORNEY MULLEN** clarified that the motion would be to deny the appeal, and you have City Council resolutions to both certify the final EIR, adopt the CEQA findings and the Mitigation Monitor Reporting Program, as well as the resolution for the project and the various project entitlements. There are 174 conditions of approval. Mr. Hittleman referred to an additional condition that was transmitted to Council by memo today, and he wanted to clarify that this additional condition related to any architectural projections above 50 feet either need to be eliminated or approved by the Regional Airport Authority.

**COUNCILMEMBER SANCHEZ restated her motion** to adopt the recommendation of staff, up to and including today, which includes all of the resolutions.

**COUNCILMEMBER FELLER seconded** the amended motion.

**COUNCILMEMBER SANCHEZ** further explained that the only addition at this time had to do with noise. She is the biggest critic of EIRs, but she found that this was a very thorough analysis and process. She spent hours with staff and the proponent addressing many questions she had, and she felt comfortable that their subarea plan is stronger for this. Her hope is that the subarea comes before Council soon.

**CITY MANAGER WEISS** recommended that, if Council wanted to include a condition on noise, they could add to [Planning Commission] Condition 145 that deliveries, loading and unloading shall be restricted between 10:00 PM and 6:00 AM for those businesses that may impact residential areas. That way, it is not left open-ended and provides guidance in the management plan that would give us some enforcement ability.

**COUNCILMEMBER SANCHEZ** stated that would be [included in] the **motion**.

**COUNCILMEMBER FELLER seconded** the motion.

**DEPUTY MAYOR CHAVEZ** received an email from the North County Transit District (NCTD) regarding where their buses will come in off Mission Avenue. He asked who was going to construct the bus turnout, sidewalks, bus stop pads and shelters.

**MR. HITTLEMAN** believed the applicant would construct that as part of the project. That would be something staff would look for as part of their improvement plans.

For the record, **DEPUTY MAYOR CHAVEZ** wanted this to be constructed by the developer, because NCTD is having fiscal issues, just like the City and the school district. Since this is a new requirement, he would ask the developer to pay for the upgrade for a transit center there.

He appreciates the project and the outreach to the community for the historical

perspective. The bike path is also noteworthy, as is working with the airport regarding height. However, his biggest concern is traffic. He noted the poor traffic circulation plan for the Pacific Coast Plaza center, stating it is difficult to get in and out. He also noted how Cassidy Street had come off I-5 as a 4-lane road that went nowhere. That was actually planned to go into the center, but the community objected. Now we have a shopping center that he believed was probably underperforming due to the poor circulation. Additionally, it is also difficult to get into the retail center at Melrose and SR76, because Melrose never went through. We would receive significant economic value if people from Vista could get there. In the *San Diego Union Tribune* a couple of days ago, Gary Gallegos was quoted as saying that we are looking at projects that have already been approved so that we can use funding to build infrastructure. In a down economy, we are looking at water, sewage and roads for infrastructure to bring jobs in. It was 3 years ago when Council colleagues killed a Rancho Del Oro interchange. If we had continued with the EIR process, right now that would have been an approved project ready to go. Now when the money is coming in, we could have had that interchange built. While people often say there is no funding, the funding is here now.

The decisions that we made 3 years ago are impacting us today: the shopping center at Jefferson and Highway 78, the opportunities we are losing at Melrose and SR76, the opportunities we are losing at Rancho del Oro and Highway 78 since we have our largest industrial area with no way to get there. That makes him think that we are now building a great retail center but not having the full ability to get there, and that is Pala Road. He understands that there are a lot of environmental issues and that we would not be able to build it right now; however, he would support allowing this project to go forward if we had an understanding that somewhere in the future, with this new economic opportunity that may make \$3,700,000 per year when fully built out, some component could go to help build Pala. The land along Pala Road is owned by the City. We could sell a portion of that land and actually use the revenues to put Pala through. There are other opportunities there. He would not support removing Pala from the Circulation Plan. There needs to be a statement or some commitment from this development to help us build that road, even if it is 5-10 years from now. The traffic studies for 2020 show that is where we start to see problems - 12 years from now. He hopes that his colleagues understand the value of circulation, have thought about the 3 examples he gave where decisions made have hurt the City, and would put that as a requirement on this project, looking at some way of making this developer responsible for the actual building of Pala Road.

**MAYOR WOOD** commented that the election is over. Regarding the issues of Highway 78 at Rancho Del Oro, they were the voting majority for 2 years and could have done it. You made a promise to all of the citizens of Oceanside that you would put Melrose Drive through and Rancho Del Oro at Highway 78. You never did it, and you are not going to. There are no finances as you heard from Caltrans and everybody else. Unless Oceanside wants to pay for some of these, it is not going to happen. This location has good and bad. We have all walked the community and have talked to the neighborhoods; the consensus is that they all want this hopefully high-end shopping center. That is the whole community, not just one neighborhood. However, he is also concerned about the neighborhood needs in the hills. They already have the airport and other concerns with noises. We have tried to address those but had difficulty with the FAA and other things.

He noted that the applicant has indicated that he would try to do high end. He asked about the tenants and occupancy. With the economy the way it is, he asked if they foresee that it will be occupied by high end and whether they have potential tenants in mind.

**MS. GUNTER** stated that, as Council is painfully aware, this is a very tough economic time and market. Thomas Enterprises is continuing to talk to all of the tenants who are interested. The Lifestyle Center is a very specific design geared toward those high-end tenants, and they intend to continue to pursue those tenants and get them into this center. That is the basis for and integral to the entire design. The answer is that this center will get built as soon as this economic mess allows it to be built. The representations that Thomas Enterprises has made through the years to Council for this to be a high quality center with quality tenants remains. However, in terms of giving you a specific list or date today, that would not be possible given the state of the economy. We hope that turns sooner rather than later so that Thomas Enterprises can bring the center with all of its great tenants.

**MAYOR WOOD** stated that the people understand that the Council has stressed that this be a high end. He understood there is sometimes a box or base store; it may be Target. Additionally, people seemed to understand that there are strictly fast food restaurants that might be going in there. From his understanding, that is not the case. There is some interest by high end stores and restaurants.

**MS. GUNTER** confirmed that is correct. The speaker may have misunderstood some of the comments from the public at the Planning Commission meeting. The drive-through configurations, which we are asking for with the use permits, could accommodate a bank or a Starbucks, but the intent is to get high end restaurants on those pads. We have several locations for those types of high-end restaurants, and that remains the commitment.

**MAYOR WOOD** understood that the economy is tough for everybody. The Forum in Carlsbad is beautiful and high end; we are looking for something similar in Oceanside. We have passed that on to Thomas Enterprises, and they have indicated their interest as well. That is still the case.

**COUNCILMEMBER FELLER** asked if there was a way to designate funds for the future of a road.

**CITY MANAGER WEISS** replied not with this action. As the project progresses, Council has the opportunity both in the Circulation Element and the annual Capital Improvements (CIP) budget to allocate funds as you see fit.

**COUNCILMEMBER FELLER** clarified that would be Council driven. He would not like to see Pala Road taken out of the Circulation Element.

**Motion with amendments was approved 3-1**, with Deputy Mayor Chavez voting no and Councilmember Kern absent (due to a conflict of interest).

[Recess was held from 8:14 to 8:21 PM. Councilmember Kern returned to the meeting at 8:21 PM.]

18. **Council/CDC: Introduction of an ordinance for a Zone Amendment (ZA-200-07) amending Article 4 to amend and add several new definitions; Article 12 to create a new land use matrix; and Article 41 to allow for administrative use permits; and adoption of a resolution approving Local Coastal Plan Amendment (LCPA-200-07) to include these modifications and to recommend that the California Coastal Commission certify the changes – Applicant: City of Oceanside**

- A) Mayor/Chairman opens public hearing – Public hearing was opened.
- B) Mayor/Chairman requests disclosure of Commissioner and constituent contacts and correspondence – Disclosures made.
- C) City Clerk presents correspondence and/or petitions – No correspondence was received.
- D) Testimony, beginning with

**KATHY BAKER**, Redevelopment Manager, stated that on April 11, 2007, Council actually voted on all of the recommended changes to Articles 4, 12, and 41. However, they hit a few snags along the way. To refresh their memories, she reviewed that over 3 years ago staff was given direction to update the Zoning Ordinance, and an ad hoc committee was established to work on this. About 1½ years into the process, a decision was made to incorporate several of the new definitions we were coming up with, such as fractional timeshares and condo hotels to accommodate our new beach resort project. This became a complex issue that the Coastal Commission had been debating for several years up and down the California coastline. The City made several concessions regarding the timing, the uses and several different restrictions as they related to the fractional timeshare and condo hotels. We brought all of these recommended changes to the ordinance, the matrix, etc. before Council. The intent was to make our ordinance more user friendly, to introduce

some of the uses in the downtown and to create a legible matrix. After Council voted on this in April, we took it to the Coastal Commission since the action also included a Local Coastal Plan amendment. Subsequently, the Coastal Commission held a hearing on December 12, 2007, where the Commission suggested several modifications/recommendations to our changes. At that meeting, we opposed numerous issues the Commission had brought up during that meeting. After the December meeting, we walked away with some victories but knew we still had several battles ahead. Council agreed to go forward with some of our own recommended changes.

In July 2008, the City appeared before the Coastal Commission at another public hearing regarding more changes. At the July meeting, we thought we were finally done. However, there was one final issue that was apparently unclear to the Coastal Commission staff. That had to do with whether the hotel owner and hotel operator should be jointly and separately liable for each other's actions. S.D. Malkin, the [beach resort] hotel developer, indicated this was problematic for their hotel operator, and neither wanted to be responsible for each other's actions. Over several months, City staff went back and forth with the Coastal Commission staff and could not reach a conclusion. Therefore, last week the Coastal Commission was presented with 2 sets of language: article A, which held the hotel operator and owner jointly and separately liable; and article B, which basically said nobody was jointly responsible for anyone's actions. She reported that the Coastal Commission unanimously voted in our favor and picked article B. That language was distributed to Council. Assuming that the City Council and CDC approve this action tonight, we will be introducing an ordinance amending the text and zoning map; amending Articles 4, 12 and 41; and adopting 2 resolutions – 1 for the City Council and 1 for the CDC to amend the City's previously submitted Local Coastal Program. We would be forwarding all of that again to the Coastal Commission for them to hopefully have a revised findings hearing in December and final certification in January. We got a late email from the Coastal Commission that there were some minor corrections. Therefore, she requested that the action include allowing staff to make minor modifications to the document, such as typos, but no substantive changes.

Public input

**DOUG YARBOROUGH**, owner of the apartment building at 702 North Nevada Street, said this is a 14-unit apartment complex. His main home is in Fullerton. He reviewed a parking problem in their Nevada Street area.

**MAYOR WOOD** stated this was not the item being discussed on the agenda. He asked him to talk to the Deputy City Manager.

**MR. YARBOROUGH** said his issue is that the City did not give adequate notice on this hearing; there is nothing in the notice that says one word about what goes on. There are things that control parking in the downtown area. It is not a legitimate reasonable notice.

With no further public input, public hearing was closed

**COUNCILMEMBER SANCHEZ** understood what Mr. Yarborough was talking about; parking is an issue, and this is a Local Coastal Plan amendment. She **moved** to introduce the ordinance and adopt **Council Resolution No. 08-R0654-1** and **CDC Resolution No. 08-R0655-3**, “. . . Resolution of the City Council and Community Development Commission. . . to include the modifications as recommended by the California Coastal Commission to Local Coastal Plan Amendment (LCPA-200-07) and to submit to the California Coastal Commission for Certification” [and staff recommendations, including authorization to make small administrative language changes].

**COUNCILMEMBER KERN seconded** the motion.

**DEPUTY MAYOR CHAVEZ** noted that if not for this one element, we would probably be 1½ years closer to having the beach hotel. This was not a small issue.

**COUNCILMEMBER KERN** asked about the time line.

**MS. BAKER** responded that, under the assumption that Council adopts this tonight,

the Coastal Commission is already working on their staff report for the December hearing, which is a revised finding hearing since they had made changes in July. It has to go back to the Coastal Commission for them to approve the new language. It will then have to go back for final certification by the Coastal Commission in January, as a consent calendar item.

**CITY ATTORNEY MULLEN** noted that in the meantime, between tonight's introduction of the ordinance and adoption at the next Council meeting, we would work out any non-substantive language issues. That will not require re-introduction of the ordinance.

**COUNCILMEMBER KERN** stated the Coastal Commission is a study in bureaucracy. In January, we will have an approved project, and at that point we can start moving forward. We have not been waiting for this approval to get all of the other stuff done, like the lease; a lot of things were on parallel tracks. In January, the culmination should all come together, and we will have a clear idea of what is going to happen in the next couple of years. Hopefully, by this time next year, there should be some activity down there. He noticed that the old houses have been torn down. We are getting ready to go.

**COUNCILMEMBER FELLER** stated the Top Gun house is still there. Unfortunately, this is a process.

Following the reading of the title of the ordinance, ". . . amending the text of Articles 4, 12 and 41 Oceanside Redevelopment Zoning Ordinance (ZA-200-07 & LCPA-200-07)(City of Oceanside – applicant," **motion was approved 5-0.**

19. **CDC: Consideration of a resolution approving Tentative Parcel Map (P-206-07), Development Plan (D-209-07), and Regular Coastal Permit (RC-208-07) for a two-lot subdivision and the construction of a single-family row house to be situated on the northern lot located at 409 North Tremont Street – Hayek Residence – Applicant: Eric Hayek**

- A) Chairperson opens public hearing – Public hearing opened.
- B) Chairperson requests disclosure of Commissioner and constituent contacts and correspondence - Disclosures were made.
- C) Secretary presents correspondence and/or petitions – No correspondence was received.
- D) Testimony, beginning with

**SHAN BABICK**, Associate Planner, stated this is a 2-unit development; they are proposing to do a lot split and then add a single-family home to the northern lot in the manner of the row homes. The site currently retains an approximately 2,500 square foot home, which was built in 2003 and is situated on the southern portion of the lot. The 2-lot subdivision proposes to add another row home type of design of approximately 2,500 square feet. The project meets all development standards. In fact it exceeds most of those standards, especially for a row home development. The density is 17 dwelling units per acre, which is less than the maximum of 43 dwelling units per acre. This is an appropriate product type for this area, which has a lot of row homes around the Tremont Street and North Cleveland Street area.

The Design Review Committee and the Redevelopment Advisory Committee both approved the project. Staff recommends adoption of the resolution.

Applicant

**RON HOLLOWAY**, BHA Incorporated, representing the applicant, had read the staff report and supported it.

Public input – none

Public hearing closed.

In response to Councilmember Feller, **MR. BABICK** clarified that there is one lot now, and they are subdividing it into two 2,500 square foot lots. They will split the lot down the middle and build on the northern portion, which is currently landscaped. They are not tearing down the existing structure on the southern portion of the lot.

**COUNCILMEMBER FELLER moved** approval [to adopt **Resolution No. 08-R0656-3**, “. . . approving a tentative parcel map, development plan and regular coastal permit for a two-lot subdivision and the construction of a single-family residence located at 409 North Tremont Street – Hayek Residence – Applicant: Eric Hayek”].

**COUNCILMEMBER SANCHEZ seconded** the motion, and **motion was approved 5-0.**

20. **Council: Adoption of a resolution increasing fees for services related to water utilities including construction meters, delinquent accounts, returned checks, damaged City property, after-hours service calls, reinstatements, and spacers**

- A) Mayor opens public hearing – Public hearing was opened.
- B) Mayor requests disclosure of Councilmember and constituent contacts and correspondence – Disclosures were made.
- C) City Clerk presents correspondence and/or petitions – No correspondence was received.
- D) Testimony, beginning with

**SHERI BROWN**, Revenue Manager, stated the proposed resolution would set 11 utility related service fees for the City. Of the 11, 3 are proposed as new fees, 7 are existing fees that are proposed to be increased and 1 is to remain the same. The 8 existing fees were established in 1989 by Council action, and they have not been adjusted since that time. All 11 fees are cost recovery fees, reimbursing the City for the cost of providing those services. The fees set in 1989 do not presently provide for full cost recovery. This action is to receive full cost recovery and not be subsidized by rate payers or general taxes. One fee reviewed is currently providing full cost recovery, so there is no proposal to increase it. That was due to automation of many of the processes involved and new technology. Of the 10 fees proposed to be either increased or established, 7 are related to noncompliance, and 3 are related to construction activity. With adoption of the resolution, the subsidy would be eliminated. [The fees contained in the resolution are as follows:

<u>General Fund</u>	
Returned Check Fee	\$25.00
<u>Water Utilities Fund</u>	
Spacer	\$91.00
Construction Meter	\$95.00
Construction Meter Move	\$50.00
Reinstatement	\$40.00
After Hours Service Call	\$110.00
Service Transfer/Set Up	\$35.00
Broken Lock	\$20.00
Broken Angle Stop	\$190.00
Door Tag	\$10.00
Lock Check	\$10.00

The General Fund increase is estimated at approximately \$14,000. The water utilities revenue increases have been estimated at approximately \$256,000. Of this, 8 fees are estimated to recover approximately \$46,000, and 1 fee is estimated to recover the remaining \$210,000. That fee is the proposed door tag fee of \$10. Water Utilities staff goes out and delivers notices to individual properties that they are in jeopardy of having their services terminated for noncompliance. Currently, we do not have any fees to recover the cost of providing that service. The \$10 fee would allow us to recover some of those service costs and would also perhaps encourage compliance. The ratepayers have the opportunity to meet the deadlines so that they do not incur the service costs, and so the fee would not be assessed. Therefore, it may not be the full \$210,000 if there is more compliance.

Public input – none

Public hearing closed

**COUNCILMEMBER KERN** asked why the fees had not been reviewed since 1989.

**MS. BROWN** stated there is nothing that delineates that these fees have to be reviewed at any particular point. There was a period in 1996 when computer systems were implemented and a lot of the manual work done administratively was eliminated, so some of those fees did not need to be adjusted at that time. However, now we are finding that there are amounts that need to be adjusted, mostly for field work and the personnel costs there. The administrative work is automated and so there is not as much personnel cost on the administrative side.

**COUNCILMEMBER KERN** asked if we planned on reviewing these fees as we move forward on an annual or semiannual basis.

**CITY MANAGER WEISS** stated that Council had directed staff to put together a comprehensive list of all the fees, which we will be bringing back to them. At that point, we will discuss whether Council wants to address routine fee updates on the fees or if you want to address them at all. At one time all of the development service fees and development impact fees and every other fee had not been updated for 10-14 years. This is not uncommon. The first time the development impact fees were adjusted was 4 years ago, and that was after an almost 14-year gap. For various reasons, the majority of our fees have not been increased in a significant amount of time.

**COUNCILMEMBER KERN** felt that, as part of the 2-year budget cycle, one of the things we should probably look at is our fee structure at the beginning of the budget cycle to ask what it costs us to provide these services. Some of the things here are quite expensive, and the ratepayer should not have to cover the cost for individual service to individual households. This \$10 fee that amounts to \$200,000 means staff is out in the truck quite a bit to put these tags on. Regarding the fact that some of the fees did not go up because of automation, he asked if this came under Proposition 218.

**CITY ATTORNEY MULLEN** responded that it did not.

**COUNCILMEMBER KERN** moved approval of the changes [and adoption of **Resolution No. 08-R0657-1**, “. . . adopting fees for services and equipment provided by the City”], with it in mind that we are going to come back with a comprehensive review of all of our fees and what it costs us to do business, and that we pass those costs on the people who actually use those services.

**COUNCILMEMBER SANCHEZ** seconded the motion.

**DEPUTY MAYOR CHAVEZ** noted that there are 3 new fees related to water utilities: broken angle stop, door tag and lock check. He asked if there had been any fees that we discontinued since 1989.

**MS. BROWN** indicated that with the adoption of this resolution, there would be one fee eliminated, which is a one-time water use charge that was adopted in 1989. It is not being put forward at this time because there are no fees anymore since it is not a service that is being provided.

**DEPUTY MAYOR CHAVEZ** stated that since 1989 we have eliminated one fee and added 3 other fees. Earlier in the meeting, there was an item for \$44,000 to upgrade the water utilities laboratory ventilation system that came from 2 different wastewater pockets of money. At the last Council meeting we had an issue of how to prepare for looking at raising water and wastewater fees again in January. At that time he had questioned what would happen to the money if we renegotiate the bond at some time so that we do not have to pay for the fees. He did not get a good answer, such as reducing the wastewater rates. He was sensitive to the fee issue. It seems we are adding fees and getting ready to do other fees in the future. He wondered how this all works because he has noticed that we always seem to have pockets of money to pull from, especially in water and

wastewater, to do these things. With the current economy and the population not really growing in the City, do we need to do all of these now or are there any that we can defer to later? From these changes we are doing right now, this is \$256,000 taken from residents during this economic time. Hopefully, when we see the rate fees in the future, we will be able to see the total picture. He wanted to know what we are charging everybody for everything so that we can get a good understanding. In these tough economic times, we need to be responsible and do the things we need to do, but we also need to look the residents in the eye and say we have to do this. He is not there yet.

In response to Mayor Wood, **LONNIE THIBODEAUX**, Water Utilities Director, stated staff would be coming forward with rate increases and drought rates in preparation for cutbacks that we are anticipating and that the San Diego County Water Authority and Metropolitan Water District are proposing for next year. We will have workshops to explain all of the issues and where the funds are coming from.

**COUNCILMEMBER FELLER** stated the one \$190 fee [for the broken angle stop] is higher than the others.

**MS. BROWN** agreed, but noted that they do not do a lot of those repairs; there are approximately 10 annually. It is an expensive repair to make, but there are not that many.

**COUNCILMEMBER FELLER** reviewed that \$200,000 is susceptible to people doing the right thing regarding the door tags. If they are doing the right thing, we could see this as approximately only a \$56,000 gain.

**MS. BROWN** stated that is correct.

**Motion was approved 4-1**, with Deputy Mayor Chavez voting no.

24. **Request by Deputy Mayor Chavez for discussion of Land Use Element of the City's General Plan with potential update to address open space, trees and the arts; and direction to staff**

**DEPUTY MAYOR CHAVEZ** reviewed that Council has had this discussion 3 previous times. We are in the position right now to look at the Land Use Element of the General Plan, especially with the work done on Oceanside Boulevard and Coast Highway and preparing to add value to the land by adjusting the zoning. The General Plan is a living document; it is a process that always needs to be adjusted. Since this is a continuous process, he had asked if they budget for this, or have a budget line to always work on the General Plan. He had been told by the Development Services Director that some cities do that all the time. There is actually a line item to do the General Plan. The big obstacle when he brings this up is that it is a \$1,000,000 effort or some amount of money. He asked that Council give direction for the City Manager to actually budget to do the General Plan, at least the land zoning portion. We spent a lot of money on Coast Highway and Oceanside Boulevard. He wanted to throw out the idea that we look at budgeting for it so that we actually have the money.

In addition to doing the Land Use Element, components to that include trees, which add value. Some cities put the tree component in the Land Use, and some put it in the environmental portion. He saw a brief at the Chamber of Commerce that showed that trees actually increased a walkable community. The other component is art, and we should do the art element as part of the General Plan. The trees and the art are similar in the sense that in the future, 50 years from now, Oceanside will be noted for wonderful trees and art elements. None of this will get started until we actually budget for it. He asked that the City Manager put it in one of his priorities to budget for it.

**COUNCILMEMBER SANCHEZ** stated that all along the campaign trail, all she heard from Deputy Mayor Chavez is that we have no money, are heading towards a Vallejo, and are in a bad situation. She checked with the City Manager, and we are doing pretty well, especially compared to other cities. He wants to add more to the budget when we are not even sure where our property and sales taxes are going to be. Here we are adding something else that is going to reduce a service somewhere else. He is presenting something to us that could be millions of dollars and not suggesting where we are going to

cut. It is pretty irresponsible when we see what other cities are losing: San Diego having to close fire stations and lay off police officers; Escondido having to come up with millions of dollars of shortfall; and Vista Unified School District has a \$13,000,000 shortfall. She wanted to talk about economic development and the arts, but she wanted to do it in a responsible manner. That is talking about where we are with the budget and not just telling the City Manager to throw it in and make it work. Bottom line is that it is our responsibility to provide the things that people rely on, and it is going to be our responsibility to figure out whether or not we will be able to provide those things, such as after school programs and funds to the Senior Citizens' Center. We are doing pretty well, and she is proud of how we have been able to cut before. Unfortunately we are having to do a hiring freeze and make people work harder because they don't have the extra people to make the load easier, as well as having more and more work to do. Now we're talking about cutting additionally. She could not support it. She was happy to talk about the budget and hear from the City Manager how we are doing and what we need to do in the next couple of years. However, the proposal Deputy Mayor Chavez has before them is totally irresponsible.

**MAYOR WOOD** understood that this is a budget item that belongs at budget time. Carlsbad is doing this right now and has indicated it might be 3 years and \$2,000,000 for a similar thing. It is not the appropriate timing. It should be during their budget session when they know what the budget from the State is. One of the things would be for them all to discuss with the City Manager what their priorities are. This may or may not be a priority. The timing is off on this as a priority right now. It is a budgetary item.

**CITY MANAGER WEISS** responded that there are several cities, Carlsbad included, that are updating their General Plan. The General Plan is made up of a number of elements, including the Circulation Element and Housing Element, which we are in the process of updating now. The Land Use Element has not been updated in quite a while. He heard the direction that we include this as a priority in the budget process for next year. If the Council wants staff to do that, we would be coming to them in the middle or end of January. They are in the process right now of putting together goals and priorities. He would be meeting with Council to get their lists. As done in prior years, we will put together a comprehensive list. If Council wants this to be one of those priorities, they would certainly include that. The issue would be that it would compete for funding, and this would not be operating costs but one-time costs, with any other priorities Council identifies to spend money on. If the direction is to include it as part of the budget, we will do that, and Council would have to make some difficult decisions relative to the State and economic conditions on where they want to spend the money.

**COUNCILMEMBER KERN** agreed with everyone. The thing Council has not done in the 2 years he has been here is actually sit in a workshop for goal setting. He would like to do that in January before the budget cycle starts. He would like to sit down, have a goal setting workshop and figure this thing out. It seems that we piecemeal things. We have done Oceanside Boulevard, North Coast Highway, mid-Coast Highway and South Coast Highway. We have all of these plans that we do one piece at a time instead of setting our priorities.. We should sit down as a Council with staff someplace away from this dais and come up with what our priorities are going to be for the next 2-10 years. It seems that we are always in reactive mode. He had sent one email to the City Manager about incentives and what we have out there that we can actually look forward to. It seems we wait until projects come, and then we react; we wait for things to happen, and then we react. We need to sit down with Economic Development, Public Works and everybody that has something to do with how we spend our money and where it comes from to identify our priorities. Right now he did not know what they are; he does not know what his colleagues think is important. We have these discussions in this setting, which he does not think is a proper setting to discuss the future. It should be an open discussion around a table, and let everyone have their say about what they think their priorities are. Then we can set those priorities, which gives a clear message to staff. Staff keeps trying to understand what Council's priorities are. We really need to sit down as a Council with the City Manager's staff and Economic Development to determine where we want to go from here; it is really going to be critical in the next couple of years, with the budget at the State. We need to set our priorities so they are very clear. That way, when something comes up in future months, the City Manager can say that was not one of Council's priorities. He would ask to agendaize that for the next meeting to set a date for a Council workshop retreat to set priorities for the coming year.

**COUNCILMEMBER FELLER** noted that this is a one-time dollar amount; it is not operational or ongoing. We may somehow come up with \$1,000,000. This is a good discussion, but we have not had a goal setting session since 2004. If we can get an agreement with Council, he would be willing to support it.

**DEPUTY MAYOR CHAVEZ** clarified that this was not a motion; he just wanted to have a discussion. We need to get together and have a plan. Contrary to the personal attacks and election stuff, the reality is that the City has real things to cover, and he is willing to do that.

Item removed from the Consent Calendar for Discussion

11. **CDC: Approval to issue a Request For Proposals for design consultants for Street Improvements to Mission Avenue from Horne Street to Coast Highway, to include modification of the traffic signal at Ditmar Street, bulb-outs, landscaping, canopy trees, directional signage, art element and street furniture**

**COUNCILMEMBER SANCHEZ** pulled this item since the staff report indicates that the costs are unknown, but there are funds available up to \$2,400,000. There are projects that are planned that may have some impact on the traffic on Mission Avenue, Horne Street at Mission and Horne at Pier View Way. She thought it would be better to bring this back when those are known. There is also the possibility that the State will be taking additional redevelopment funds as it did once before. Finally, she asked whether they should prioritize which project should go forward for the Redevelopment Area, especially since we are talking about ensuring that we have the funds for the hotel. We also have the beachfront; the bathrooms have been discussed as a priority; we have Coast Highway and the parking garage. What happens, if anything, to these funds if they are not used for this purpose? The funds are designated in the Capital Improvement budget for walkable communities. For 8 years people have been talking about making Coast Highway the priority versus Mission Avenue. Mission Avenue is the gateway, but it seems that the pressure is more from Coast Highway than from Mission.

**KATHY BAKER**, Redevelopment Manager, stated this is bond money. We have about \$16,000,000 in bond money right now. We are getting a \$750,000 hit from the State, but that is out of our Redevelopment tax increment money, which is a separate pool of money. We have talked about doing a walkable community in this area since 2002. There was a plan drawn up; it had one-way couplets, etc. that we later discovered we would probably not be able to implement. However, we have never gotten off track from the improvements that we really want to do to Mission, including canopy trees, street furniture, trash receptacles, bicycle racks, etc. We have an art element component. The community has completely embraced wanting to do improvements to Mission. The entire downtown, especially the older part of downtown, really wants to see this area enhanced. We know that when the hotel and CityMark get developed, those improvements will come along between Mission, Cleveland, Tremont and Myers. However, they are feeling neglected on this older part of Mission. This is exactly the type of project that Redevelopment bond monies are supposed to go toward. We cannot do bulb-outs on Coast Highway; it completely makes intersections fail. When we had the traffic analysis done for both the CityMark and beach resort projects, one of the original walkable communities component had bulb-outs at Coast Highway and Mission. After the traffic studies were done, we realized that the circulation would not work for any project. We realized that we could not do any bulb-outs. That is the reason this project was actually put on hold for several years. Now that development has slowed down, staff wanted to come back with this project and really enhance this gateway to the downtown. Last year we added some new Christmas lights and banners, but we have vacancies up and down Mission. We need to do whatever we can do to enhance this part of Mission and create more of a gateway into the downtown. When we did the gateway enhancements at Oceanside High School, everybody loved it. We cannot do a median down Mission, but we can do all of the other stuff. For the parking garage at lot 23, we have over \$3,000,000 set aside for that. We have the Tyson parking lot, with \$1,000,000 set aside for that. We have almost \$5,000,000 set aside for the beach area. This is all coming out of the bond money. We do have money set aside for those other projects. Doing this project will not take away from those projects.

**COUNCILMEMBER SANCHEZ** was concerned because we have talked about the cost of the hotel and making sure we are able to make the payments that we have agreed

to. She wanted to see the downtown improved and doing whatever we can to make the downtown more walkable. However, she also knew there would be these other projects and wondered how that is going to impact.

**MS. BAKER** stated that there is no developer on board to do this part of Mission. There are improvements at the traffic signals, but not as far as bulb-outs or landscaping. In response to Councilmember Sanchez, she agreed that there would be improvements in front of the Belvedere, but that is a very small section. The rest of Mission from Horne to Coast Highway has no one to do it. It will have to be the City, or it will have to stay the way it is for the next several years. Nobody is on the hook to do those improvements.

**CITY MANAGER WEISS** clarified that the action this evening is just to go out and find design consultants. Following that, there will be public meetings to get input and look at the designs. The action tonight does not commit to paying up to \$2,500,000; it commits you to a lesser amount to come up with design concepts, present those concepts through a public process, and ultimately come back to Council to get final designs approved. If there is an issue at that point regarding funding or priorities for other projects and should this dollar amount grow or compete with something else, we will have plenty of time to have you make those decisions. The action is not necessarily building anything right now; it is coming up with the design concepts.

**COUNCILMEMBER SANCHEZ** asked if there was money set aside for the beach bathrooms.

**MS. BAKER** confirmed that they have a lot of money set aside for that. They are proposing to bring an RFP back to Council early next year for those designs.

**COUNCILMEMBER SANCHEZ** moved approval [of Item 11];  
**COUNCILMEMBER KERN** seconded the motion.

**COUNCILMEMBER KERN** noted that this is just an RFP. At one time there was a lot of discussion about one-way streets downtown, and they are going to talk about some of these things. He would like to see Pier View Way closed permanently, where Farmers Market is. We close it every Thursday morning, and people get into the habit of not driving there. We could extend the plaza and make that into a walkable community.

At Councilmember Kern's request, **DAVID DiPIERRO**, new Traffic Engineer, introduced himself. He has over 20 years experience in transportation engineering and had worked for the City of San Diego for just over 17 years.

**DEPUTY MAYOR CHAVEZ** was happy they were going forward with this. For too long we have had the hotel fixation, just waiting for the hotel. We need to look at other opportunities. Mission is obviously a gateway into what we are going to do in the Redevelopment Area and how we change Coast Highway. He hoped they stick to the time lines so they could do something in the spring.

**Motion was approved 5-0.**

### **CITY COUNCIL REPORTS**

25. **Mayor Jim Wood** – announced various upcoming events

Also, the Oceanside Museum of Art won the Orchid Architect Award from the San Diego Architect Foundation. Also, he and Major General Lehnert had breakfast with the Commandant of the Marine Corps.

26. **Deputy Mayor Rocky Chavez** – reported that tomorrow the North County Transit District is going through their budget issues. SANDAG indicated there could be \$2,100,000 less than what is currently expected for the remainder of the year. They are going to have 3 proposals to present to the Board. The end results will be cutting or reducing services, which will be an issue to the public.

In response to Councilmember Feller regarding whether NCTD has hired a new

director, Deputy Mayor Chavez stated they went through the interview process on November 6 and ranked them. They were going to offer the job to Number 1, but he did not know if that person took it.

27. **Councilmember Jack Feller** – attended the Chamber of Commerce Link Luncheon, which featured Colonel Myers from Marine Corps Installations West. He talked about over \$3,000,000 coming into Camp Pendleton. That is good economic news for our City. At the Transportation Commission meeting last night, they discussed the Sprinter, and the Transportation Commission wanted to know about double tracking. Staff said they have a peak of 8,600 passengers per day right now. They are evaluating new ways to attract ridership. They are also recommending that there be all-way stops at Stephanie Place and Roja Street and Elaine Avenue. They also worked on their workplan.

He announced upcoming events.

28. **Councilmember Jerome M. Kern** – attended the U.S. Senate Environmental Public Works Committee, which was actually a field briefing hosted by Barbara Boxer's staff. It was testimony from public officials about what they can do to push money into transportation and infrastructure projects. Two of the biggest sections hit in this downturn are construction and financial services. The Committee promised to start delivering money for local projects. If the Rancho Del Oro interchange was on the books and ready to go, we could probably have gotten the money for it. Melrose is on track for within the next couple of years.

He is on the ad hoc committee for SANDAG for the quality of life initiative they are going to try to push out in 2010-2012; it would be for sand on the beach, parks, etc. At the retreat last year, SANDAG brought forward the quality of life initiative.

He reported on current events.

29. **Councilmember Esther Sanchez** – reported on current events. She is meeting with Senator Boxer's office regarding transportation monies to try to get a bottom line. She had reviewed the comments submitted at the public hearings on the Melrose extension. There were 2 scoping meetings. There were 70 comments, and all but one were opposed to the extension. The community still does not support it.

#### **INTRODUCTION AND ADOPTION OF ORDINANCES - None**

#### **ADJOURNMENT**

**MAYOR WOOD** adjourned this joint meeting of the Oceanside City Council, Community Development Commission and Small Craft Harbor District Board of Directors at 9:43 PM, November 19, 2008. The next regularly scheduled meeting is at 10:00 a.m. on Wednesday, December 3, 2008.

**ACCEPTED BY COUNCIL/HDB/CDC:** January 114, 2009

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Barbara Riegel Wayne  
City Clerk, City of Oceanside