



California

CITY OF OCEANSIDE

JOINT MINUTES OF THE:

CITY COUNCIL

SMALL CRAFT HARBOR DISTRICT BOARD OF DIRECTORS

COMMUNITY DEVELOPMENT COMMISSION

APRIL 20, 2005

NOT OFFICIAL
UNTIL APPROVED AT SUBSEQUENT
MEETING BY CITY COUNCIL

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
Esther Sanchez

Councilmembers
HDB Directors
CDC Commissioners
Rocky Chavez
Jack Feller
Vacant

City Clerk
HDB Secretary
CDC Secretary
Barbara Riegel Wayne

Treasurer
Rosemary Jones

City Manager
HDB Chief Executive Officer
CDC Executive Director
Steven Jepsen

City Attorney
HDB General Counsel
CDC General Counsel
Pam Walls (Interim)

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 4:00 PM, April 20, 2005 by Mayor Wood.

ROLL CALL

Present were Mayor Wood, Councilmembers Feller and Chavez. Deputy Mayor Sanchez arrived at 4:01 PM. Also present were City Clerk Wayne, City Manager Jepsen and Interim City Attorney Walls.

COUNCIL, HDB AND CDC CLOSED SESSION ITEMS

INTERIM CITY ATTORNEY WALLS titled the following agendized items to be heard in closed session: Items 2A, and 2B [Item 1A was not heard.] Closed Session and recess were held from 4:01-5:00 PM.

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5:00 PM - INVOCATION

Mayor Wood reconvened the meeting at 5:01 PM. All Councilmembers were present. Also present were City Clerk Wayne, City Manager Jepsen and Interim City Attorney Walls.

Pastor Carl Souza of San Luis Rey Baptist Church gave the Invocation. Students Stephen Runion and Kenneth Runion led the Pledge of Allegiance.

PROCLAMATIONS AND PRESENTATIONS

Presentation – Employee Service Awards

Employee Service Award Presentations were made to the following employees who have worked for the City 20-40 years:

20 Years

Art Coleman, Police
Mary Benson, Public Works
Lynnet McMahon, Police

25 Years

Larry Boston, Public Works
Frank Quan, Harbor and Beaches
Joe Betancourt, Harbor and Beaches

30 Years

Doug Timbs, Police
David Frantz, Water Utilities
Linnea Wells, Library

35 Years

Hugh Fleming, Fire

40 Years

Joe Sanchez, Public Works

Proclamation – Buena Vista Audubon Society Birdathon Day

April 23, 2005 was proclaimed as Buena Vista Audubon Society Birdathon Day honoring the wildlife, specifically birds that inhabit the Buena Vista Lagoon. The Audubon Society is conducting its annual spring Birdathon to help support the operation of the nature center and to celebrate "Earth Day." The City has been entered into the National America's Birdiest City competition. Similarly sized cities will be competing for the city that has the greatest number of bird species identified in a 24-hour period.

Proclamation – First Annual "Day of the Child"

April 30, 2005 was proclaimed First Annual "Day of the Child." The Eastside Neighborhood Association will be hosting the inaugural festivities on April 30th at Balderrama Park. This proclamation declares the rights of the child as being protection, education and recreation.

Proclamation – Sexual Assault Awareness Month

The month of April was proclaimed as Sexual Assault Awareness Month. Statistics indicate that there were 9,918 forcible rapes in 2003, 856 in San Diego County and 63 occurring in Oceanside. An estimated 70% of rapes are never reported to the police.

Off Agenda – Presentation – April 24, 2006 Antiques on Mission Event

Rick Wright and Lynne Cook, of MainStreet Oceanside, announced the 5th annual Antiques on Mission event to be held on April 24, 2006 from 8:00 AM – 3:00 PM. A brief video presentation showed scenes of the event from previous years.

CLOSED SESSION REPORT

3. **Closed Session report by City Attorney**

INTERIM CITY ATTORNEY WALLS gave the following report on items previously discussed in Closed Session:

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

A) **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) and Unrepresented]
No closed session was held on this item

2. **CONFERENCE WITH REAL ESTATE NEGOTIATOR ON TRANSACTIONS PREVIOUSLY AUTHORIZED IN OPEN SESSION (SECTION 54956.8)**

A) **CONFERENCE WITH REAL PROPERTY NEGOTIATOR** – Property: Property bounded by Pacific Street, Myers Street, Seagaze Drive, and Civic Center Drive (APN 147-261-01 through 12; 147-076-1, 2, 3, 10, 11, 12); Negotiating Parties: Community Development Commission and Pacifica Companies, Faulkner USA, SD Malkin Properties; Negotiator for the City: Jane McVey, Economic Development and Redevelopment Director; Under Negotiations: Price and Terms

Discussed, with action to be taken under Item 25

B) **CONFERENCE WITH REAL PROPERTY NEGOTIATOR** – Property: Marina Towers, 1200 N. Harbor Drive (APN 760-080-23); Negotiating Parties: City of Oceanside and Oceanside Marina Towers Association; Negotiator for the City: Douglas E. Eddow, Real Property Manager; Under Negotiations: Price and Terms

Direction was given to staff.

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.

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

SHELLEY HAYES CARON, Marron Adobe, announced that Louise Foussat was born in Oceanside 96 years ago near the San Luis Rey Mission. She has raised 3 lovely daughters and has been involved in community service for many years, such as volunteering at Brother Bennos. A playground at Luiseno Park was named after Louise in her honor.

Terry Johnson has sent a letter to the Oceanside's senior community leading the seniors to believe that he has the endorsement of Mrs. Foussat. This is not true. Mrs.

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Foussat has not authorized the use of her name for Mr. Johnson's campaign. She will be voting for Shari Mackin.

C.C. CHARITY, 900 North Cleveland Street #142, asked why the City has no cap on campaign contributions. If Del Mar has a cap of \$50, then Oceanside should also have a cap.

The greatest threat to our national security is the large number of illegal aliens that are coming into this country through our open borders policy. An estimated 20,000,000 illegal aliens are living in this country with 3,000,000 coming in last year. Last year \$7,700,000,000 was spent for the education of the children of these illegal aliens. The hospitals are being bankrupted. Diseases such as tuberculosis, malaria and leprosy are now more prevalent since there are no medical checks done. Additionally, 20% of the hardcore criminals in our prison system are illegal aliens. Drug smuggling, human traffickers, sex slaves and gangs are part of what is going on with illegal aliens.

She asked if local police are allowed to contact I.N.S. in regards to illegal aliens or whether Oceanside is a sanctuary city much like Los Angeles and New York, where police officers are not allowed to ask about the legality of the person. She will return to future Council meetings to further discuss this important issue.

NADINE SCOTT, 550 Hoover Street, witnessed Terry Johnson taking a cell phone call in the Council Chambers and also munching cookies. He has also been known to pick up mail, possibly personal mail, from the Council's front office. This behavior needs to be stopped and dealt with by the City Council, City Manager and City Attorney. Unfettered access to the Chambers and City offices is wrong. Access should be restricted to areas that contain sensitive, confidential documents.

GEORGE McNEIL, 2153 Anda Lucia Way, thanked Dr. Rick Mohrlock for the wonderful Days of Art. He and his wife browsed the artwork, listened to the bands and checked out the book sale.

Events such as Days of Art, Antiques on Mission, etc. are very important to the spiritual well-being of Oceanside. This is extremely important for the community to support them.

CONSENT CALENDAR ITEMS [Items 5-21]

All items listed on the Consent Calendar are considered to be routine matters or formal documents covering previous City 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 City Council/HDB/CDC or the public through submittal of Request to Speak form prior to the commencement of this agenda item.

CITY CLERK WAYNE stated that there was one request to speak on Item 7.

COUNCILMEMBER CHAVEZ requested the removal of Item 16 for discussion.

COUNCILMEMBER FELLER requested the removal of Item 19.

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)

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6. Council: Approval of plans and specifications for the installation of a traffic signal at the intersection of Coast Highway and Eaton Street, and authorization for the City Engineer to call for bids
7. **Removed from consent calendar for discussion**
8. Council: Approval of a purchase order in an amount not to exceed \$71,977 to D³ Equipment of San Diego for a Case 580 Super M backhoe to replace units W125 and W152 for the Water Utilities Department; **Adoption of Resolution No. 05-R0260-1**, "...amending the Budget for the 2004-2006 fiscal years" to authorize a budget transfer of \$65,942 from the Unallocated Fleet Management Fund and \$6,035 from the Water Administrative Fund to the Fleet Operating Budget to fund the purchase; and authorization for the Financial Services Director, or designee, to execute the purchase order
9. Council: Approval of a purchase order in an amount not to exceed \$228,279 to Hi-Way Equipment Company of Houston, Texas, for a used 2003 Gradall XL 4100-II excavator to replace unit SBP, a 1979 Warner/Swasey Gradall used by the Public Works Department; **Adoption of Resolution No. 05-R0261-1**, "...amending the Budget for the 2004-2006 fiscal years" to authorize an increase in budget of \$228,279 from the Unallocated Fleet Management Fund to the Fleet Operating Budget to fund the purchase; and authorization for the Financial Services Director, or designee, to execute the purchase order
10. Council: Approval of Change Orders 13 (**Document No. 05-D0262-1**) and 14 (**Document No. 05-D0263-1**) in the amounts of \$51,993 and \$11,562 respectively, to Value Engineering, Inc., for additional asphalt pavement and excavation for the Coastal Rail Trail project; authorization for the City Engineer to execute the Change Orders; acceptance of the improvements constructed by Value Engineering, Inc., for the Coastal Rail Trail project; and authorization for the City Clerk to file the Notice of Completion (**Document No. 05-D0264-1**) with the San Diego County Recorder
11. CDC: Approval of a loan application in the amount of \$60,650 under the Community Development Block Grant (CDBG) Housing Rehabilitation Program
12. Harbor: Approval of Amendment 2 (**Document No. 05-D0265-2**) to the property use agreement with James Gardner, dba Oceanside Bait Company, Inc., for premises at the Oceanside Harbor, extending the term of the agreement from September 1, 2005, through August 31, 2010, for a minimum total revenue of \$22,157, and authorization for the City Manager to execute the amendment
13. Council: Approval of a professional services agreement (**Document No. 05-D0266-1**) with Technology Associates International Corporation of San Diego in an amount not to exceed \$512,675 for the complete Myers property habitat restoration program, and authorization for the City Manager to execute the agreement
14. Council: **Adoption of Resolution 05-R0267-1**, "...approving an amendment to the land use designation on certain real property located at the southwest corner of Mesa Drive and Old Grove Road (GPA-2-04)" and introduction of an ordinance "...amending the zoning district map from light industrial (IL) to residential medium density – B (RM-B) for property located at the southwest corner of Mesa Drive and Old Grove Road (ZA-2-04)" and Zone Amendment ZA-2-04 to allow future residential land use development on a 26.5-acre site located on the southwest corner of Mesa Drive and Old Grove Road (Ocean Ranch Lot 21/St. Cloud, approved by Council 3/16/05, 4-0 vote) – Stirling
15. Council: **Adoption of Resolution No. 05-R0268-1**, "...establishing certain traffic controls within the City of Oceanside" (All-Way Stop on Sleeping Indian Road at Las Tunas Drive)
16. **Removed from consent calendar for discussion**

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17. Council: **Adoption of Resolution No. 05-R0269-1**, "... declaring its intention to vacate a storm sewer easement thereon" (located at 1209 Holly Street) and authorization for the City Clerk to file a certified copy with the San Diego County Recorder (**Document No. 05-D0270-1**)
18. Council: **Adoption of Resolution No. 05-R0271-1**, "...declaring its intention to vacate a portion of a public street right-of-way, and setting a public hearing thereon" (Alley between Mission Avenue and Seagaze Drive) and extending east to west from Horne Street to Clementine Street, and setting a public hearing on the proposed vacation for May 18, 2005, at 6:00 p.m. in the City Council Chambers, ~~and authorization for the City Clerk to file a certified copy of the resolution with the San Diego County Recorder~~
19. **Removed from consent calendar for discussion**
20. Council: Authorization to award a contract (**Document No. 05-D0273-1**) in the amount of \$164,850 to Tri-Group Construction of Poway for the Annual Citywide Sidewalk Repair FY 2004-05 project, and authorization for the City Manager to execute the agreement upon receipt of all supporting documents
21. Council: Authorization to award a contract (**Document No. 05-D0274-1**) in the amount of \$223,061.10 to HDR Engineering, Inc., of San Diego for a project study report for the El Camino Real/State Route 78 Bridge Widening project, and authorization for the City Manager to execute the agreement upon receipt of all supporting documents

DEPUTY MAYOR SANCHEZ moved approval of the balance of Consent Calendar Items, excluding Items 7, 16 and 19.

COUNCILMEMBER CHAVEZ seconded the motion. Motion was **approved 4-0**.

7. Council: Approval of plans and specifications for the installation of a traffic signal at the intersection of Mesa Drive and Robinwood Drive, and authorization for the City Engineer to call for bids

ADELA CHOCANO, 1120 Brighton Drive, will be running as a candidate for the Oceanside City Council. She is here on behalf of the Alamosa Park Elementary School, which is in favor of the installation of the traffic light at the intersection of Mesa Drive at Robinwood Drive. Last January of this year she sent a letter to Frank Watanabe, Transportation Manager, stating the importance of a traffic signal at this intersection because it is very dangerous for the children. There have been many incidents on that corner. She has collected more than 180 signatures from the neighbors who support a traffic signal installation at that intersection.

DEPUTY MAYOR SANCHEZ moved approval (of Item 7).

COUNCILMEMBER CHAVEZ seconded the motion. Motion was **approved 4-0**.

COUNCILMEMBER FELLER pointed out that it might be more appropriate to begin with Item 19 rather than Item 16. **MAYOR WOOD** consented.

19. Council: **Adoption of a budget resolution increasing the CIP budget by \$55,000 for the traffic signal project at the intersection of Mission Avenue and Carey Road, and \$40,000 for the traffic signal project at the intersection of Lake Boulevard and Sky Haven Lane, using Traffic Signal DIF fund balance**

COUNCILMEMBER FELLER stated that this traffic signal project was similar to Item 7 that was just approved. The City may need to consider that traffic signal projects are not always at a standard \$120,000 cost.

FRANK WATANABE, Transportation Manager, confirmed Councilmember Feller's assumption. Engineering costs are estimated 1-2 years in advance of construction. Sometimes engineering costs are underestimated due to rising construction costs. The new

signals that were installed at Robinwood at Mesa Drive, as well as other locations, have been increased to \$140,000. This is considered low in some areas such as Los Angeles, where traffic signals are at \$150,000 each. Costs also depend on the competitiveness of the contractors and the construction costs.

COUNCILMEMBER FELLER stated that back-up documentation for Item 7 indicates the cost of the traffic signal at Robinwood to be \$120,000.

MR. WATANABE stated that it is an estimate, and the City will need to adjust accordingly.

MAYOR WOOD moved for approval [and **Adoption of Resolution No. 05-R0272-1**, "...amending the budget for the 2004-2006 fiscal years" to increase the CIP budget by \$55,000 for the traffic signal project at Mission Avenue and Carey Road and \$40,000 for the Lake Boulevard at Sky Haven Lane traffic signal project using Traffic Signal DIF fund balance.]

DEPUTY MAYOR SANCHEZ seconded the motion. Motion was **approved** 4-0.

16. **Council: Adoption of a resolution implementing the Memorandum of Understanding between the City of Oceanside and the Oceanside Fire Management Association (OFMA) effective July 1, 2005, through June 30, 2007**

COUNCILMEMBER CHAVEZ stated that he pulled the item because it concerns the pay for the Oceanside Fire Management Association. He asked for a brief presentation regarding this item.

Brian Kammerer, Personnel Director, stated that this contract is for the bargaining unit, Oceanside Fire Management Association (OFMA). The current contract expires June 30, 2005. Among 10 comparable agencies in San Diego County, Oceanside currently ranks the lowest in base salaries and total compensation for Fire Battalion Chiefs. With a new contract, by January 2007, salaries for public safety employees will come up to approximately 5% below the median. This will make the City more competitive among the labor market.

CITY MANAGER JEPSEN asked how the Police Lieutenant, Battalion Chief, Police Captain and Assistant Fire Chief compare.

MR. KAMMERER responded that they were very similar. The Police Lieutenant was compared to the Fire Battalion Chief and the Police Captain to the Assistant Fire Chief in regards to their salaries. The proposed contract will provide more equity within the City, as well as outside of the agency.

MAYOR WOOD stated that the contracts are negotiated by experts and not by the Council. Ultimately staff brings their recommendations before Council for approval.

MR. KAMMERER affirmed.

COUNCILMEMBER CHAVEZ noted that his pet peeve was to see a salary graph that does not begin with zero when discussing ranges. If the salary range begins in the middle, it may skew the information presented. Another item of concern is the total package that is offered for a position. Not only salary compensation should be considered but retirement and health benefits, paid days off, expense accounts, etc. He asked about what other compensation was offered.

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MR. KAMMERER responded that besides the base salary, there is a Chief's Officer Certificate incentive for Fire Battalion Chiefs and Assistant Fire Chiefs that is similar to what is provided to other units, such as the Police Unit with the Peace Officers' Training Certificate. This is comparable to other agencies in the county. The City's goal is to remain competitive and to keep well-trained, happy employees, as well as provide for public safety.

COUNCILMEMBER CHAVEZ noted that his goal is to not only be competitive with base salaries but to be competitive in the other areas. In comparison, if other agencies offer a higher base pay but fewer benefits, it may be more of an advantage in Oceanside for employees if the additional benefits compensate in more real dollars. He would like to see a comparison of total compensation packages.

MR. KAMMERER noted that every element may be difficult to compare but staff does total compensation studies as well as base pay comparisons. These elements include life insurance, retirement, annual leave accruals, etc. The City's retirement rates are a little higher than other agencies. In regards to the Fire Battalion Chief positions, the City is in last place for total compensation and base salaries. By the year 2007, they estimate to be at 5% below the median as opposed to 17% below, which is where they are now.

COUNCILMEMBER CHAVEZ asked if it was possible to prepare a study comparing the other benefits besides base salaries. He asked if the City provides vehicles.

CITY MANAGER JEPSEN responded that the City provides emergency vehicles to Police and Fire personnel that need to be available for a call back. Many of these employees respond to different areas in the City. Almost everyone that is included in this contract in the Fire Department would have a vehicle. These vehicles are large vehicles that are painted red and identified on the side as Oceanside Fire Department. The vehicles are probably not used for transporting their family. They are strictly used for City business. Cell phones are also primarily used for City business. The intent of issuing cell phones is so that City personnel are reachable.

The retirement benefits for all these agencies are the same. They all get 3% at 50. It costs the City a little more because the firefighters are a little older/more experienced. The benefits are not worth any more than any other agency that is on the study. The health insurance is probably a little lower in comparison to other agencies. There is no variation in health insurance within the City across the board. There are no 401K benefits. There is no cost-savings to the City. The City pays out the same amount of money in deferred compensation as actually paid in a paycheck. The graph presented to the Council is a good comparison, but a graph showing the total compensation comparison can also be provided.

MR. KAMMERER stated that the load on public safety fringe benefits is approximately at 50% of the base salary.

COUNCILMEMBER CHAVEZ asked if the Fire Battalion Chief and Fire Assistant Chief benefit packages included 50% of the base pay estimated to be \$9,223 in June of 2007 and if the Fire Assistant Chief benefit package included 50% of \$10,959 as of June 2007. He also asked if the benefit packages of the other agencies on the graph were at 50%.

MR. KAMMERER responded affirmatively.

COUNCILMEMBER CHAVEZ would like to see this verified before approving this. He would like to see the whole package before voting.

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DEPUTY MAYOR SANCHEZ noted that the City has a small-town feel and operates 24-7, which tolerates phone calls after hours to City officials. It is difficult to put a value on services provided over and above the 40 hours per week. These services are provided by employees that require people skills rather than services provided by machine. She is proud of the City's employees. She is proud of the caliber of the City's employees and management. She **moved** for approval (of Item 16).

COUNCILMEMBER FELLER asked how many employees this contract affects.

MR. KAMMERER responded that there are 9 positions, with 4 positions filled.

COUNCILMEMBER FELLER agreed with Deputy Mayor Sanchez regarding the 24-hour/7-days a week commitment that these positions have, and he commends them; however, it is also what these employees choose to do. Council needs to be very careful but supports bringing the pay scale closer to median.

He clarified that he would be willing to table the item until the first meeting in May for more information.

COUNCILMEMBER CHAVEZ would like to see more information. He does not have a large comfort level at this time.

MAYOR WOOD concurred to bring the item back.

Motion died for lack of a second.

6:00 PM – 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.

22. **Council: Adoption of a resolution denying an appeal to Variance (V-18-04) to exceed the maximum height for a single-family residence located at 517 South Tremont Street; project site is zoned RH-U (Residential High-Density Urban) and is situated within the Townsite Neighborhood – Newman Addition Variance – Applicant/Appellant: Jeanine Newman**

MAYOR WOOD opened the public hearing.

Regarding disclosure of constituent contact, all Councilmembers reported contact with the applicant and staff.

CITY CLERK WAYNE reported that a letter was received from Lou Taschner, who opposed the project.

TERI DELCAMP, Senior Planner, gave the staff report stating that the item for consideration is an appeal of the Planning Commission's decision to deny the variance for exceeding the maximum 27-foot height limit for a residence within a residential zone for the site located at 517 South Tremont Street. In January 2004, the 1,320 square foot 2nd floor addition above the garage on the existing house was added. During construction of the 2nd floor addition, it was brought to the Building Department's attention that the roof height might exceed the maximum height limit of 27 feet. The building inspector measured the height of the house at 30 feet high. The applicant filed a variance application to obtain approval for the increased height.

The public hearing and deliberations by the Planning Commission were held on February 28, 2005. The variance was denied by a 5-0 vote. The appellant filed an appeal, stating that she believes that the Planning Commission denied the variance without stating

the reasons for the denial. In addition, the appellant believes that the height of this residence will not affect neighbors' views and is consistent with the height of other buildings in the surrounding neighborhood. Ms. Newman also raised 2 other variances that were approved as examples of similar actions. This was in the addendum to the appeal that was filed.

When the Planning Commission considered the variance, they found no unique circumstances or hardships with the site itself that would warrant granting a variance. They felt the height is inconsistent with other similarly situated residentially zoned properties. The Commission was concerned with setting a precedent for approving variances for sites that do not have any physical hardships or constraints. They also felt that alternatives to correct the situation should be explored by the appellant.

Regarding the 2 noted variances referenced by the appellant in the addendum, those were approved due to physical constraints caused by irregular topography on the respective subject sites. The subject site of this hearing is not similar to those sites in that it does not have physical constraints associated with the size, shape or topography of the site. Staff reviewed the appeal and addendum information and did not find any compelling evidence to recommend approval of the appeal. Therefore, staff recommends that Council uphold the Planning Commission's decision and deny the appeal based on the submitted resolution and findings.

Applicant

TOM BOBSON, Attorney representing the applicant, was hired by the Newmans to review all the documentation associated with the initial denial of the variance to see if they had missed something along the way. He did review the documentation, hoping to find some precedent that he could convey to Council that would compel them to reverse the previous decision. The bad news for the Newmans was that the Councils' ability to rule on this matter is discretionary. Even if the Council or the Planning Commission bases a decision upon mistakes of law or mistakes of fact, it is nearly impossible to raise any issues of civil liability against the Planning Commission, the inspectors or the Council. The applicant would have to prove fraud, bribery, conflict of interest or malicious intent to proceed to court to force Councils' hand.

No supported legal principles exist in order to compel Councils' decision. There are some legal principles that are relevant and should be persuasive in directing Councils' discretion. Ms. Newman did a great job of identifying the circumstances, the facts and the issues in the last hearing. However, he does not know if she used the legal terms of art for the arguments that she tried to present. He named them as: breach of contract, errors by city agents, waiver, estoppel, reliance, mistakes of fact and law, negligence, vested rights and inconsequential harm. It appears that any of these situations combined with any or all these legal principles should provide some way of changing Councils' minds. The Newmans could argue any or all of them, file a suit, take depositions, sit for interviews and generally waste time going in that direction. Otherwise a variance could be granted for a triangle top of the structure that is approximately 2 feet 10 inches tall and 18 feet in length. Neighbors and supporters are present to encourage Council to realize that the Planning Commission and inspection process itself was part of the problem. There were mistakes made, misplaced promises and plans deviated from by everyone concerned during the construction and later after the 2+ feet was discovered.

One of the legal principles within the Planning Department that may be relevant in this instance is called substantial conformance. Findings of substantial conformance are usually used in dealing with homeowners' associations. He feels that there is a quorum for a homeowners' association meeting. The city has published guidelines for the findings of substantial conformance. When an approved discretionary project undergoes changes after it was planned, substantial conformance is a way to justify a change in plans that occurs after a plan is approved but before a project is finished. Most of these changes involve mistakes of one kind or another. Perhaps someone wanted to use a building material that is no longer available, or the initial soil tests were incorrect and inaccurate, or a grade

percentage was incorrectly written down or perhaps an owner wanted to build around a tree that is not there anymore. Anything can happen, and substantial conformance recognizes that inevitability.

Some people begin projects without having blueprints, relying on good luck to get good results. His clients hired an architect to develop detailed plans. Some people begin and even finish projects without consulting the Planning Department. His clients went through the appropriate process throughout this project. They consulted with inspectors and planners at every stage of the project, while requiring their sub-contractors to be present during the inspections. The Newman's plans were submitted and approved. When the City inspector required changes to the structure to bring stairways and ceilings within code, these changes were adopted to the final plan without argument. This project was observed at all stages by the appropriate inspectors and was signed-off. There were no bribes or sneaky dealings, but just a mismeasurement that no one noticed. His clients follow the rules. His clients have the support of all their surrounding neighbors in both the design of the improvements and the granting of this variance. His clients have been able to conduct this process without alienating anyone on their block.

One of the main reasons listed for the denial of this variance is concern about creating a bad precedent. He understands this concern. However, he believes that it is misplaced. The reason is that his clients have complied with the processes in place. They paid their money and put their trust in professional inspectors and subcontractors and still ended up out of code. Currently the project has stopped, and they have complied with the processes in place again. They have paid their money again and have contacted those professionals involved in applying for a variance. Granting a variance here is a statement that the process works. Giving the Newmans this variance is a precedence that says: work within the system, and the system will take care of you and ultimately resolve the problem. Denying the variance here is a statement that says: forget the inspection process and save your money for litigation because you will end up there anyway. With the amount of planning, compliance with permit and review process, the results and the strong support of neighbors is precisely the type of precedence that is desirable for cases when a variance is needed and ultimately granted. Put simply, when mistakes happen sometimes the best way to fix them is to let them stand. The question becomes whether or not the tiny triangle is worth the \$30,000+ to fix the problem; is it worth subjecting the Newman's, their neighbors, the Planning Department and others to litigation for the sake of the letter of the law. The Newman's would not be benefiting from an exception in a way that would ever encourage others. Inspections should catch mistakes before they are nearly finished. The variance application process is expensive and onerous. Minor mistakes with major repercussions are precisely the types of situations that this variance process is designed for. The definition of variances is the permission to depart from the literal requirements of an ordinance by virtue of unique hardship and substantial compliance without sacrificing its spirit and purpose. This case has both. It has unique hardship to the tune of \$2,000 for the variance application process and another \$30,000 if the Newman's are denied. The area in question is a triangle with less than 3 feet in height.

According to the City's guidelines, substantial conformance requests do not represent a change in any aspect of the project's original discretionary approval that was considered essential to the projects overall design, quality, safety or function. Again, the area in question is a small triangle-shaped piece of a peaked roof. It is approximately 2 feet 10 inches high at the highest point and about 18 feet long. Nothing about design, quality or safety is affected. The internal work has already been approved as being up to code and all other respects except for its height. Another guideline states that the request represents an upgrade in overall design features and materials, which additionally maintains or improves upon the projects' original capability with the surrounding neighborhood. The board has in their response noted that the immediate neighbors are a mixture of residential and non-conforming commercial uses that are primarily 1 or 2 stories high. In other words, the warehouse across the street can eventually be rebuilt to 45 feet high. The multi-unit neighbors on the other side are already taller than this structure. The initial denial states that this City does not protect the private views. There are no views to protect. The extra 2 feet 10 inches does not change the fact that the Newman's, are still shorter than their

neighbors on the east and west sides. Mr. Bobson, on behalf of the Newmans, is requesting that the Council make a retroactive finding of substantial conformance and approve the variance. To do this would follow the spirit of the law. The Newmans have complied with every aspect of the process and are being unduly harmed by an overly strict implementation of this ordinance.

The Newman's compliance with the process and a willingness to apply themselves to the steps and stages of this process should encourage Council to grant the variance. The support of their neighbors is reflected by their presence at the Council meeting. This would be a positive precedent that would allow for any governing board to apply flexibility to the law when the circumstances justly warrant it. He hopes that Council will find the Newman home in substantial conformance with the height ordinance and leave their home intact. They have neither the resource nor desire to demolish a roof, redesign and rebuild a new addition and conduct a lengthy litigation to determine who should ultimately take the blame for this tiny extra wedge. A judge would ultimately balance the hardships in this case. To not allow this variance would create a much more dangerous precedent than the one Council looks to avoid.

INTERIM CITY ATTORNEY WALLS stated that the applicant specified that Council has the ability to consider this variance on a basis of substantial conformance. Substantial conformance applies to discretionary projects. The issuance of a building permit is considered a ministerial project. The substantial conformance standard would not apply. Substantial conformance applies to Conditional Use Permits, development plans and other types of discretionary projects. Under State law (Government Code 65906), variances have to comply with State law, which is also reflected in the City's Zoning Ordinance under Section 4105(b). These requirements determine a variance. It may only be granted because of special circumstances applicable to the property including the size, the shape, the topography, location or surroundings and a finding that the strict application of the Zoning Ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification. As in the Topanga case, each one of these elements must be supported by factual findings. The Council's discretion is limited by the Government Code, by its ordinance and by the findings requirement in the Topanga case. Finally, in a recent case called "David Horowitz v. City of Los Angeles", the court found that even though the homeowner had remodeled his house and obtained a building permit based on erroneous calculations so that part of the building ended up encroaching into the setback area, the city was at fault and ordered the revocation of the building permit because it did not comply with the ordinance and no variance was granted. When an applicant has not complied with all applicable ordinances, which are the ministerial part of the building permit, Council has no ability to approve the issuance of a building permit. The estoppel argument does not attach.

Public Input

CHRIS OLSZEWSKI, 529 South Tremont Street, supports his neighbor, Mr. Newman's project. He likes the way it is constructed. He is disappointed to hear about the denial of the variance. He is in support of the variance.

NICK SERVENE, Servene Engineering, worked on the Newman project. He did the structural engineering and analysis for the project. The problem was a math error done by a designer. Many people missed it during the process. The area, which is non-compliant, is approximately 2% of the entire floor area. He is willing to answer any technical engineering questions.

DEPUTY MAYOR SANCHEZ questioned whether the error of omission would be covered by insurance. The insurance of the engineer who was responsible for the design should cover the expenses incurred to rectify this problem and the cost of removal.

MR. SERVENE responded that the person who designed the project posed as an architect, but he was not an architect. There was no insurance for errors of omissions.

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LUDMILA KOZIKOWSKI, 515 South Tremont Street, supports the Newman's project. They spent a lot of time and effort on this house, and the project upgraded the neighborhood, which was needed. She hopes that the variance is granted.

PAMELA MYERS, 910 North Pacific Street, Unit 35, asked if it was in the Redevelopment Area and if variances have been granted for height restrictions.

MS. DELCAMP responded that the project was not in the Redevelopment Area. There have been other variances that have been granted; however, each variance is considered on its own merits and for special circumstances. The intent is if there are physical constraints associated with the site that would not allow someone to have the same type of development.

With further response to Ms. Myers, she stated that the height limit for this zone for residential properties in this area of the City is 27 feet.

MS. MYERS is concerned that granting this variance may set precedence for the Redevelopment Area, as well. There may be a request for a height variance in the Redevelopment Area to exceed the 35 feet limit based on this instance.

MAYOR WOOD agreed that this might set precedence and this would be Council's concern.

BARNEY FELDMAN, 4155 Andros Way, stated that bringing in 3 feet of dirt to where they measured could solve the 3-foot difference. The plans were submitted and approved, and the house was built by the plans. In addition, it blends into the surrounding areas. He is asking Council to balance the hardship and grant the variance.

NICK GARRETT, 515 ½ South Tremont Street, is not familiar with the legal issues involved, however, he knows people. The Newmans are very generous, supportive and encouraging. He would like to see more neighbors display these qualities. He encourages Council to approve the variance.

SETH PETERS, 4666 Rose Drive, does not know the applicants; however, it would seem that a reasonable person having heard what was said would grant the variance. The inspections were done by the City, without any red flags. He feels that if these homeowners are willing to invest money in their home to improve the value of their property, it is good for the City. He is in favor of granting the variance.

CAROLYN KRAMMER, Chairperson for Citizens for the Preservation of Parks and Beaches (CPPB), stated that the CPPB are opposed to any variances in the coastal zone. The Local Coastal Program (LCP) needs to be the guiding principle of development in the coastal zone. It is unfortunate that the Newmans have a designer, developer or engineer that is inexperienced in the coastal zone. It is important that developers are aware of the LCP and requirements of the Coastal Commission before building in the coastal zone. They support staff's denial of the variance.

Applicant's Rebuttal

TOM BOBSON stated that it was not his intent to imply the process considering the ministerial versus discretionary aspects of conformance. Instead, he is looking for support of legal principle and hopes that precedent would allow Council an opportunity to do the right thing. In response to the comments related to special circumstances, he believes that because of the nature of current zoning in which commercial properties are bordering coastal properties with a very thin sandwich of residents stuck in the middle, ultimately there will be a significant change in zoning requirements in that area of the Newman property. In a short period of time it may very well be that the Newman's residence may be in compliance with the height requirements. Since the zoning has been in flux is an argument that there are special circumstances significant enough in which to grant a variance. It is possible that Council could use their discretion to recognize that the

difference between the plan and the existing house is too minor to bother with a variance. Alternately, this one structure could be reclassified within the zoning requirement with the neighbors to the front or the neighbors to the rear. He has looked for many legal principles to encourage the correct result. He thanked Council for the opportunity and encouraged them to do the right thing.

MAYOR WOOD closed the public hearing.

DEPUTY MAYOR SANCHEZ stated that this house was part of the Brian's Subdivision created in 1914. In 1957 the original 800 square-foot residence was built on the subject site. In 2000, a 3-car garage and living area was added to the western portion of the building. In January 2004, a 1,320 square foot second floor addition above the garage was added. Exceeding the height would allow access to a loft above the second floor, which in turn provides access to a deck, not to any living quarters. The applicant contacted her approximately a year ago before it was completed. Ms. Sanchez had asked Building Director Anderson and Planning Director Gilbert for assistance in resolving this issue before it was completed. The problem was discovered before it was built. She understood that there was a mistake but it was not attributed to the City. She is very concerned about setting a precedence. In her neighborhood building permits are not sought. It is important to abide by the rules in order to have a quality City. She would be more sympathetic if responsibility was taken by the applicant. It appeared that the blame is placed on everyone else. She hopes that the architect has a bond in order to find liability. She believes that it will set a dangerous precedence for the City.

She **moved** approval of staff's recommendation [to adopt a resolution denying the appeal of Planning Commission Resolution No. 2005-P18 and denying variance (V-18-04) for exceeding the maximum 27-foot height limitation for residences at 517 South Tremont Street (Jeanine Newman – Applicant/Appellant).

Motion **died** for lack of a second.

COUNCILMEMBER CHAVEZ thanked the neighbors who were present at the meeting. When he visited the neighborhood, it appeared that there were a couple of structures that were equally as high. He asked staff for the height of the residence at 529 Tremont Street.

MS. DELCAMP did not know the height of that specific structure.

COUNCILMEMBER CHAVEZ stated that 529 Tremont Street appeared higher than the Newman's residence. The buildings at 503 and 505 Tremont Street appeared to be equally as high.

MS. DELCAMP responded that the structures in that area have not been surveyed. Staff has not considered what the heights are for the other structures in that area. Staff was concerned only with the circumstances of the property considered for a variance.

COUNCILMEMBER CHAVEZ feels that it is extremely important to consider the neighboring structures and their heights in that area.

INTERIM CITY ATTORNEY WALLS stated that one basis for a variance is that there are special circumstances or conditions applicable to the site, including the location or surroundings of the site. While it would create a precedent, an argument for a variance may be based on other buildings in the area exceeding certain height limits. Typically, the City is considering items that are unique to that property because it does open the door. However, surroundings are one of the elements for consideration of a variance.

COUNCILMEMBER CHAVEZ stated for this reason it would give a different point of discussion of this argument. He is a stickler for rules. However, the City is improving that area, and this is a quality project. For those concerned about the character of the neighborhood, the original house sits on the street at Tremont with the higher

elevation in the back near the alley. It is important to balance the hardships. He **moved** to approve the appeal and approve the variance (V-18-04) for exceeding the maximum 27-foot height limitation located at 517 South Tremont Street.

COUNCILMEMBER FELLER's concern is that the applicant is asking for forgiveness rather than permission. The issue is incorrect information on the construction drawings. A good contractor would have needed to measure the walls and ceilings. Building the structure 3 feet higher and 18 feet longer would have cost more money to build than what was in the bid. His main concern is that the applicant is asking for forgiveness rather than permission. However, he does feel it is a quality project, and they are trying to improve the neighborhood in the area. He **seconded** Councilmember Chavez's motion.

MAYOR WOOD became aware of the project about a year ago from staff in the Planning and Building Departments. There were concerns back then and now. This appears to be a neighborhood dispute and it is payback for another's actions. The City was brought into the middle of this no-win situation when a local developer and attorney filed a complaint with the City Clerk. If the applicant knew there was a problem long before it was built, why did they go forward with the completion. He has some compassion for the residents; however, they did not research the validity of the architect's qualifications. It is not the fault of the staff. He worried about setting a precedent. The biggest issue in this area is height. He asked staff if this issue began as a neighborhood dispute and if the project can be modified to correct the problem. Some of the input was that the building did not have to be this high unless they wanted a deck or attic.

MS. DELCAMP responded that she is not aware of any neighborhood disputes.

MAYOR WOOD asked Mr. Gilbert to come forward. He appreciated Ms. Delcamp's expertise; however, he needed to hear from someone who knew the history of the project.

GERALD GILBERT, Planning Director, stated that the issue came to the Planning Department via a complaint filed in the Building Department by an adjacent neighbor. The issue was whether or not the project was a 3-story structure. Actually, it is a 2-floor structure with a mezzanine. Through that investigation it was discovered that the structure did exceed the 27-foot height limit. There was additional work done on the structure last year; however, the intent was to protect it from the elements. It was not to further the project along, other than to deal with those items that met the code. A 2-story structure with a mezzanine is permissible; however, some of the elements of this structure took it over the 27-foot height limit.

MAYOR WOOD asked if anything could be done to the structure to rectify the problem.

MR. GILBERT responded that there is a way to rectify the issue but it would eliminate the mezzanine. They could complete the building and bring it into compliance without the mezzanine and possibly access to the patio. He was not certain about the access being eliminated.

MAYOR WOOD asked if Mr. Gilbert was aware of the problems with the architect.

MR. GILBERT responded that through the plan check process a design professional must submit the plans, and staff reviews the documents. However, the document is reviewed by several departments. The Building Department looks specifically at building code issues. The Planning Department looks at heights, setbacks, lot coverage, materials used, etc. Staff looks for overall height especially in the coastal zone. The plans did state that the structure was 27-feet high, which is permissible.

COUNCILMEMBER CHAVEZ stated that assuming that someone is doing something wrong without having all the facts is not a good position to take. He assumes that the applicant had good intentions, and that this was a process error.

MAYOR WOOD clarified that the vote would be on the motion to approve the appeal.

DEPUTY MAYOR SANCHEZ further clarified that the motion is to approve the applicants' appeal.

Motion **failed 2-2**, with Mayor Wood and Deputy Mayor Sanchez voting no.

DEPUTY MAYOR SANCHEZ stated that if the vote failed, the Planning Commission's decision stands.

INTERIM ATTORNEY WALLS clarified that with no action (tie vote), the Commission's decision stands.

[Recess was held from 7:15 to 7:25 PM; Councilmember Feller absent.]

MAYOR WOOD announced that Item 29 would be removed from the agenda for a later Council meeting, and Item 28 would be heard later in this meeting. At this time he requested to hear Item 25.

GENERAL ITEMS

General Items are normally heard after any 6:00 p.m. Public Hearing Items. However, if time permits, some General Items may be heard prior to any 6:00 p.m. Public Hearing Items, following the Consent Calendar

25. **Council/CDC: Selection of a developer to entitle, develop, and construct the Downtown Beach Hotel project**

[Councilmember Feller returned to the dais at 7:27 PM]

JANE McVEY, Redevelopment and Economic Development Director, stated that at last week's meeting staff presented the Downtown Beach Hotel report. This evening, staff will be answering questions received from the public and Council. Experts and staff recommended S.D. Malkin. She expressed appreciation to the 2 other developers that were not recommended, Faulkner U.S.A. and Pacifica Properties, for their time and effort on behalf of everyone who has worked on the project.

All of the City's consultants are present this evening. There will be a brief presentation to address a few of the questions.

JAY SCOTT, with Scott Hospitality Consultants, Inc., stated that one of the questions was regarding the size of the hotel. The 3 submittals were: 302 rooms for S.D. Malkin, 270 rooms for Faulkner and 240 rooms for Pacifica. Their recommendation is that Council go with the larger hotel project for a number of reasons. The first reason is that it provides the most revenue. Transient occupancy tax (TOT) is based on room revenue, and 302 rooms versus 240 would provide more revenue. The second reason is that it provides the most ground lease rent from the largest property. Not only does it have the most hotel rooms, but also it has the most banquet space, food and beverage areas. Ground rent is based on a percentage of rent from the rooms, as well as a smaller percentage from the food and beverage department. A larger hotel generates more revenue. The third reason why a larger hotel is advantageous is because there is a greater opportunity to market it to larger groups. Groups are needed to make this hotel viable, particularly in the off-season. When there are 300 rooms, they cannot only market a larger room block, but they can also cater to multiple groups at the same time that are a smaller size in nature, for instance 75 rooms. For those reasons, it is in the City's best interest to go with the largest number of hotel rooms, which is the S.D. Malkin 302-room proposal.

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MS. MCVEY addressed the issue of the sale versus the lease. A question was raised why the City has not considered selling the property. Redevelopment Agencies by law do not buy land and sell it for speculative purposes. This is not permitted. Basically, for any transaction of an agency-owned property, they would enter into an agreement, do an Environmental Impact Report (EIR), go through the Redevelopment Design Review Committee and the Redevelopment Advisory Committee (RAC) review as required. The RAC recommended this staff report. It would then be reviewed by the Community Development Commission (CDC) and pass through an appeal period with the Coastal Commission. The developer would then have the building, improvement and grading plans prepared and submitted to the City for review and approval. The financing documents would be submitted to the City. When the construction loans are recorded is approximately the appropriate time for the City to sell the property. Any sale would then take place. Therefore, there is no opportunity cost today. Technically the City cannot sell the property any earlier. Additionally, the City has the option to sell or lease to any of the 3 developers. Whatever principle Council bases their determination, it would hold true to any of the 3 proposals, not just to the one. Another issue is whether or not there would be a commitment from the developer under a lease as opposed to a sale. The developer will be both financially and emotionally committed to a project in excess of \$100,000,000.

PAUL MARRA, with Keyser Marston Associates Inc., stated that the question was raised regarding the need for public investment and the source of the public investment. At the last meeting, they had discussed the non-land financial gap, or investment gap. For these transactions in the context of Redevelopment, developers and investors consider the total anticipated costs to develop the project, the potential revenue that they can achieve upon completion of the project, and a return target, which is a standard for developer return or profit that a prudent investor would seek. The project is considered at an 11-12% return target, which is a minimum for this type of hotel. It has a wonderful location, although it has entitlement risk. It is the first of its kind in the immediate area. The estimated financing gaps were presented to Council in last week's Council meeting and the need to have Redevelopment's investment. The source of that investment would be a contribution of Redevelopment Tax Increment generated by the project. It would not come from the General Fund and it would not come from any existing sources, or any increased taxes on any property owner. It would strictly come from the tax increment that would be generated by the development itself and that would not exist unless the development occurred. Tax increment may only be spent in the Redevelopment Project Area on Redevelopment purposes. Total revenue on the S.D. Malkin proposal over a 20-year period is estimated at \$46,000,000 at present value terms. The spin-off benefits in the coastal and downtown area would be of a very high quality. This is an important benefit to consider.

MS. MCVEY stated that Redevelopment is created under State Law to reinvest in areas and projects that the City deems necessary for the improvement of the area. The City would be an active rather than a passive partner in this particular project. Staff recommends approval of the recommendation for S.D. Malkin as the developer for the Beach Hotel Project.

COUNCILMEMBER FELLER asked for clarity on a newspaper article on this issue regarding subsidies that would need to be negotiated. The City would probably use a financial mechanism, such as an assessment district.

MS. MCVEY responded that at one time Redevelopment did consider a Community Facilities District, which is a financing tool. This is similar to what was used for the TrendWest project. This is on the list of options.

MAYOR WOOD stated this is an important project for the City's economic development, which pays for wanted services. He would stand behind the consultants' recommendations.

DEPUTY MAYOR SANCHEZ appreciated the process that brought out the important points that would give the City the best project. She thanked all the applicants. This competition brought everyone together. She is aware that this is only the beginning.

COUNCILMEMBER CHAVEZ asked about the Top Gun House.

MAURICE ROBINSON, of Maurice Robinson and Associates, stated that the S.D. Malkin project originally addressed the Top Gun House by putting it right in the center of the north block. There was a plaza around it. However, as the economics of the project were examined, density was needed in the project. Both land and air needed to be utilized on these 2 sites in order to reduce the subsidy from outrageous amounts to where it is today. The revenues from that site will now actually pay for the project. The final version of the design of the project removed the Top Gun House from the project and added the timeshares and the additional revenue-producing units. It was still in the proposal to treat the Top Gun House with care and sensitivity. The developer was willing to make a financial contribution so that the City could place it sensitively somewhere off site.

COUNCILMEMBER CHAVEZ mentioned that the Top Gun House would be part of the Environmental Impact Report (EIR) process. Regarding upfront costs, he asked who would be paying for building the hotel.

MS. McVey responded that the developer would pay to build the hotel. It is a partnership. However, the developer will need to put his own money into the project, borrow money from his own sources, and pay for the entitlement process, which includes consultants, engineers, contractors, etc. If they structured a gap, that comes after he builds, markets the property and pays property tax. That would be the revenue used to structure a deal. The partnership is performance based but with financial burden and risk on the developer.

COUNCILMEMBER CHAVEZ clarified that when the project is completed in December 31, 2009, it would have been paid for by the developer and not the taxpayers. He would be voting for S.D. Malkin.

COUNCILMEMBER FELLER has a difficult time giving any developer \$10,000,000. The last developer that asked for a subsidy was criticized by many. In the meantime, Carlsbad is building hotels with no subsidies. A survey was done last week where 72% opposed a subsidy; and 68% would support a candidate that opposed a subsidy. Of these people surveyed, 51% are over 55 years of age; and 75% are over 45 years of age. Over 50% have been in Oceanside for more than 11 years. He does favor a subsidy, as he did with the Manchester project. He noted that Malkin asked for \$10,000,000; Faulkner asked for \$21,000,000; and Pacifica did not need a subsidy at all.

He received a letter from a Pacifica representative, Ash Israni, stating that: *he believed their hotel would be the best project for the visitors to Oceanside and certainly for the residents and taxpayers, given that the development could be completed without any subsidy. The proposal was for a world-class hotel project with a world-class brand, which met all the requirements to the request for proposal. Pacifica also demonstrated the financial wherewithal to complete the project without public subsidies. Their enthusiasm was tempered when it was disclosed that the land would have to be contributed to the project subject to a ground lease. They are long-term owners and operators of hotels and as such a ground lease makes a project less appealing to them. With the recent recommendation by the City staff for S.D. Malkin as the developer of the Oceanside Beach Hotel and the waning public's support to have the hotel built without a City subsidy, he hereby withdrew Pacifica Companies proposal from consideration. He hopes for the benefit of the taxpayers that S.D. Malkin does not attempt any of the Manchester debacles of "bait and switch" by demanding higher subsidies or that the land would be made available on a fee simple basis versus the ground lease that they so willingly embrace. He wishes the best for the hotel project.*

Councilmember Feller expressed his disappointment in the withdrawal. This is just the beginning. All the amenities, the ballrooms, the room sizes, the timeshares, etc. the number and height of the timeshares have yet to be negotiated. He does not want to do anything that is not supported by all 4 members of the Council. It is very clear in Mr.

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Israni's letter that Pacifica would not be getting the bid. He would like the vote to be a unanimous decision from Council. However, he still believes in the sale of the land and no subsidy.

JEREMY COHEN, of S.D. Malkin, was grateful for the confidence that Council has bestowed on S.D. Malkin for trying to move the project to its next phase. He realizes that there is a lot of emotion tied to the hotel site, and it is important to look forward rather than backward. There are challenges in building a project of this size in an untried location. The site is in a spectacular area. The City can now approach this type of project without giving up the beachfront. There are a lot of diverse interest groups in the City, and the project will not move forward without getting all of them together. He understands Councilmember Feller's desire to get the project done by the free market. He believes that the City is making an investment in its future, rather than giving a subsidy to Malkin. They strongly believe that the project will not happen without the City being willing to invest a portion of its future profits back in to ensure that they get the type of hotel desired rather than what the free market provides. It is a challenge to create someplace that is truly special, memorable and worthy of Oceanside at this location. He is jazzed to be working with Oceanside. He believes that Faulkner and Pacifica are extremely credible players. It is an honor to be selected, against such strong competitors.

Public Input

SLEENE KOSINER, 711 Pier View Way, is glad that Council picked a good one. He would like the design element to take into consideration the history and culture of this area, rather than looking like Cape Cod. It should compliment the Mission. He is glad that the City owns this property.

DAN ARMENTROUT, 1391 Corte Bocina, is concerned with the project with regard to a subsidy. If future tax dollars, which are proposed, are diverted, then someone needs to front the money now. The City's job should be to sell the land at \$10,000,000 investing the earnings at 5% over 20 years with 3% inflation it would net \$27,000,000. In addition, the \$10,000,000 saved from not subsidizing the project is another \$27,000,000. This adds up to \$54,000,000. Plus the \$33-42,000,000 totals \$87,000,000. The current proposed forecasted numbers of \$36,000,000 or \$48,000,000 do not consider the time value of money, the net amount would be more like \$8,000,000. He is happy with the developer. Everyone wants a quality hotel. However, it does not require putting public money into this project. Councilmember Feller illustrated that there are people building hotels up and down our coast without public money. Oceanside should not have to use public money. The City is great with wonderful beaches and a great pier. In the hotel proposals, room rates were estimated between \$199-244. The City would not net anywhere close to the stated or proposed hotel rate. Government service people do not pay full rate. Conventions do not pay anywhere near that. Occupancy rates for these companies should be investigated. Pie-in-the-sky projections are made on the best-case scenario with public money. Do not allow what has happened in the past to happen now. If there needs to be a subsidy, please negotiate at the lowest subsidy that absolutely has to go. The future will tell whether or not it is truly a subsidy.

MAYOR WOOD asked the experts to comment on Mr. Armentrout's calculations.

PAUL MARRA stated that total revenue projections to the Redevelopment Agency of \$38,000,000 from Pacifica and \$46,000,000 from Malkin are present values and already consider the time value of money. These figures would not be compared to \$54,000,000 or \$27,000,000 as stated by Mr. Armentrout but to the \$10,000,000 in today's dollars.

DEPUTY MAYOR SANCHEZ, to reiterate, asked if any of the General Fund monies are funding this project.

JANE McVEY responded that a deal has not been structured, so there is only a suggestion at this time to use tax increment, which is Redevelopment property tax that cannot be used outside of the Redevelopment area. Additionally, a survey was done on

other properties that had been built in Southern California since 2000. Unless they had a residential component, virtually all of them had some public participation. These are full service hotels mainly in the coastal area. The subsidized Padres public ballpark had residential condos. There was a variety of methodology used. However, virtually all of the properties in the coastal zone had some public investment in them.

JAN GARDNER, 989 Glendora Drive, is thrilled that the support was unanimous. She believes this is the right developer. When she first met him he told her that he, his wife and children had surveyed the land and loved the area. He enjoyed the downtown area, and the people were friendly. She feels that if you build it, they will come. The occupancy rate will be higher than the projected conservative rate. The area has become a very popular place. She thanked the staff for their effort. She was happy that the Chamber and MainStreet were asked for input. The majority of the groups are for S.D. Malkin. She is looking forward to 2009.

DAVID NYDEGGER, CEO for Chamber of Commerce, 928 North Coast Highway, has lived in Oceanside since 1946, and this is a red-letter day for Oceanside. He is pleased. There is a lot of work to be done by 2009. He applauds Council.

BARNEY FELDMAN, 4155 Andros Way, had to deal with architectural planners, financial people and developers during his career prior to living in Oceanside. A developer will apply for a construction loan for a project. They will do this because they are in the position for first mortgage. This land has been under the Redevelopment Agency for over 14 years. In the meantime, the value has gone way up. This is why there were so many applicants. S.D. Malkin has falsified the drawings of the proposed building. In Mr. Feldman's professional experience this was not acceptable. A lawyer that specializes in land development is needed before negotiations are discussed with Malkin. The dimensions of the guest rooms have not been identified. There have not been any plans or contracts.

COUNCILMEMBER FELLER indicated that the structure Mr. Feldman referred to is the Watkin's property, so Malkin is not falsifying his drawings. He clarified that this is just the beginning, and all of those items of concern have yet to be determined. Council is only selecting the developer.

MR. FELDMAN stated that Council is selecting someone who has not provided drawings, which show why there are 300 rooms. It is possible that those rooms are 30-40% smaller.

COUNCILMEMBER FELLER stated that Council is not at that point yet.

MR. FELDMAN feels that those concerns should be addressed now. He suggested that Mr. Jepsen resign because he was previously involved when the City lost millions and is now involved again.

JAN DAWKINS, 5199 Via Malaguena, is in favor of the builder but would like to see a change in the design. She feels that there should be a beautiful landmark she called Oceanside Sand Castle by the Sea that will be luxurious enough to appeal to wealthy travelers and affordable enough to appeal to local residents. Council should think outside the box to create a hotel that will be the symbol of the City and one that emphasizes its greatest assets of a tropical location and tropical name.

She detailed her proposed design as an open and airy sand castle design. Set far back on either side of Mission are identical mirror images of the seaside resort, as symmetry is restful to the eye. The right pier side could offer more casual affordable shops, restaurants and lodging while the left side across Mission could offer more luxurious shops, restaurants, spa and lodging. Rising up organically from its base of pink sand, the sand castle would have shops at ground level then goes up into round glass towers for the timeshares and hotel rooms. The tower's top floor is a wrap-around terrace lounge. The top of the tower restaurant would have a 360° panoramic view of the ocean as it rotates 1° per minute or once an hour. Each tower could be decorated with a different but

coordinated theme so that people will want to try each one. Seasonal touches such as torches lit at sunset, waterfalls and fire pits add to the Oceanside ambiance. The beach hotel logo is a pink sand castle silhouetted against a pink and gold streaked sunset sky with a wave symbol underneath. She advocated creating something magical and memorable for Oceanside that would be a work of art and a landmark.

SHARI MACKIN, 1469 Moreno Street, thanked staff for all their hard work. She thanked S.D. Malkin for submitting a superior project and she also thanked Council for doing the right thing. Tough decisions will need to be made for the good of Oceanside.

CAROLYN KRAMMER, representing Citizens for Preservation of Parks and Beaches, 904 Leonard Avenue, thanked Council for bringing a united front for this community. A special thank you to Jane McVey for doing an excellent job of keeping the community involved from the very beginning. She also thanked Deputy Mayor Sanchez for bringing the environmental community together so that Oceanside could get to this point.

LISA HAMILTON, 323 South Ditmar Street, thinks that it is amazing that everyone has gotten together on this project at last. She urges the City to hold on to the ground.

JOAN BROWN, 511 Rockledge Street, lived in Bremerton, Washington before Oceanside where the downtown was also being redeveloped. They built a convention center that was probably paid for by the City. The developer was Hampton Inn, which was not a 4-star but a very nice hotel that overlooks the water. Bremerton, Washington is quite similar to Oceanside. The convention center was booked for a year before it was finished. They built the hotel and the convention center within 2½ years. Oceanside needs a ballroom space downtown if they are going to have a nice hotel. She is in favor of S.D. Malkin. However, there should be terms on when the hotel project will start and when it will be completed. The City should lease the property and not sell it to the developer. There is nothing stopping the developer from selling the property again if the City sells to the developer.

BOB KLINE, 4520 Milano Way, representing COAST (Citizens of Oceanside Actively Shaping Tomorrow), is pleased with this decision. It is a turning point for Downtown Oceanside.

NADINE SCOTT, 550 Hoover Street, cautioned Council to consider that the project will probably be built by prevailing wages. However, it does not need to be union. She praised Council and staff for their efforts.

BRIGETTE BROWNING, 2676 "A" Street, San Diego, represented Unite – HERE (formerly the Union of Needletrades, Industrial and Textile Employees) and (Hotel Employees and Restaurant Employees International Union) Local 30, which has over 400 members in Oceanside. She supports staff's decision to lease the land. It is the City's fiduciary responsibility to do so. She recommended that Council negotiate labor peace when negotiating with the developer. She announced that some of the labor union workers from La Costa and Pala Casino were here after their full day shift of work. A translator will interpret their comments.

MAGDALENA ANNIS, 950 Arcadia Ave #13, Vista, as translated by Joe Bagby has been working at La Costa Resort and Spa for 11 years where they have been union for a long time and had labor peace with the exception of 3 years ago when the hotel was bought by a new company. She now has labor peace with the union contract that gives her family affordable health care. They had to fight for it with the new company. They voted to tell clients to stop coming and boycott the hotel, even visiting clients to tell them not to come to the hotel. It was hard on them, but they had to cost the company money before the company would give them a fair contract. She would like to stay in a hotel in Oceanside that agrees to labor peace. It is the best thing for workers, the best thing for the City and the best thing for the hotel. Many union friendly customers have come back to La Costa now and more could come to Oceanside. She favors labor peace.

NADIA BAER, 425 South Horne Street, works at Pala Casino as a cashier and a food runner. She acknowledged her friend Anthony who was present at the meeting and a cook at Pala Casino. She expressed that labor peace makes a difference in their workplace. She continues to make the 35-45 minute commute to Pala because the workers are in the process of negotiating good affordable benefits, better wages and job security. Affordable health insurance is particularly important to her in a time when costs are skyrocketing. At Pala they are working together to make everyone's life better. The workers have helped Pala's business grow. She and other workers went to Sacramento to lobby for an agreement with the State of California in order to expand Pala's business. The workers are able to sit down with management to negotiate a contract without worrying about boycotts, picket lines, etc. They are able to express the kind of benefits they receive and the cost of those benefits. This does not always ensure agreement but it helps prevent picket lines, etc. There are options to keep labor peace and to encourage good jobs in the community. She feels that Pala Casino is a good example to be followed. She loves Oceanside and plans to live here for a long time. She hopes Council will provide good jobs for the community with labor peace. Neutrality is the way to go.

GEORGE MCNEIL, 2153 Anda Lucia Way, thanked staff, the consultants and Council. Council has a hard job with pressure from the community. They have taken a big step for Oceanside.

KEN LEIGHTON, 1109 South Nevada Street, thanked Council for their decision. His only question was for Councilmember Feller on why he was able to switch his support from Pacifica to S.D. Malkin within 1 week.

JERRY KERN, 4597 Big Sur Street, Past President of the Oceanside Chamber of Commerce, past Vice Chairman of the Oceanside Historical Preservation Commission and currently is Chairman of the Oceanside Chamber of Commerce Governmental Affairs Committee stated this process is just beginning. It will be tough. He would like to talk about the future. Within 6-7 years the Center City Golf Course lease is up. There has been some discussion on the possibility of a hotel at that site. He has discussed transportation issues in that area with Councilmember Feller. He is suggesting that staff look forward to the next project. There is also some property in the north side of town that is private land but should be developed into a gateway hotel. Oceanside is in a learning curve with the beach hotel and has learned a lot in the past with Manchester. He wished the Council good luck.

ED PETERS, 4666 Rose Drive, is excited about the project. However, it is a rough area, and patrons will need to have assurance that they will be safe. His son had a bad experience at the Regal Theatres in Downtown Oceanside. He hopes that Council will not allow gambling interests to infiltrate the Redevelopment Area.

GEORGEO KERPANI, 315 South Nevada, expressed his delight.

PAMELA MYERS, 910 North Pacific Street #35, bought her condominium 12 years ago for this project and hopefully it will happen. She is concerned about materials used on the project. She does not want to put thousands into upkeep. She is also concerned with traffic, as a homeowner in that area. She did not want the homeowners and the project to be hindered by tourists cruising The Strand.

DEPUTY MAYOR SANCHEZ moved approval of staff's recommendation to select S.D. Malkin as the developer [to construct the Downtown Beach Hotel project] and authorize staff and consultant to negotiate an agreement for City Council/CDC approval.

COUNCILMEMBER CHAVEZ seconded the motion.

COUNCILMEMBER FELLER clarified that there are many people who changed their minds. He did not want a subsidy but will deal with it.

Motion was **approved 4-0**.

[Recess was held from 8:44 to 8:55 PM.]

CITY MANAGER ITEMS

28. Presentation by Jack Miller, San Diego County Vector Control Chief, regarding potential future benefits

JACK MILLER, San Diego County Vector Control Chief, addressed the mosquito vector disease control measure, which is a ballot measure. It creates viability and sustainability for the vector control program. A vector is an animal that causes disease, injury or discomfort to humans. It is typically an insect. The program was established over 30 years ago to protect the public from vector borne diseases.

In 1989 the Board of Supervisors established a per property service charge. It was \$3.80 in 1989 and decreased in the early 1990's. Unspent monies go into a trust account for the exclusive use of vector control. In 1996 this changed with Proposition 218 that froze rates at \$3.00 along the coast and \$2.28 in the inland areas. This trust account has been used for operational costs.

During the last couple of years the spending of this trust account has escalated in response to the West Nile Virus by 2-3 years of what originally was expected. They had to shift resources to be able to respond to West Nile Virus in order to increase surveillance for mosquito breeding for West Nile testing. They reduced their surveillance for Hanta virus Plague and tick borne diseases. They saw a 300% increase in mosquito complaints. The response time was increased from 3 days to 8 days. It also hampered the ability to get out and treat the thousands of mosquito breeding sources that were identified. They reduced the rat complaints as much as possible by telephone consultations when possible. There is a very good educational program to address largely West Nile Virus. In the past year they have started a monthly aerial application of larva sites. It has been a successful approach. Mosquito breeding has been reduced in 27 locations by 90% using those measures. The historic mosquito breeding sites at Buena Vista lagoon have been treated. There was one positive dead bird in the county, which was a finding of West Nile Virus. Mosquito breedings were on the decline in those 27 locations when West Nile Virus was found in the county.

In 2004 there were 2,470 illnesses and 88 deaths in the nation. California was the hardest hit state with 830 illnesses and 28 deaths. Southern California had 82% of California's cases. Locally the City has fared well. They feel that much of the efforts that were put into place, in particularly the aerial applications, helped minimize the virus in the county. Unfortunately they will not be able to continue those efforts without the ballot measure. They have identified 225 mosquito breeding sources and do treat them when possible. They are doing 5 aerial application sites in Oceanside. The City probably receives the most aerial applications, other than San Diego, due to the number of water sources in this city.

The fiscal year costs continue to go up. The income source remains fairly steady at \$3.00 and \$2.28 per parcel. The Vector Control Trust Fund Balance continues to decline and will be exhausted by approximately the end of this fiscal year. There will be a shortfall next year of \$1,300,000. This is what needs to be covered. They have done extensive analysis looking at different vector control programs throughout the state and the nation. They presented their findings to the auditor controller's office for review. They are proposing improved service levels. This would include an increase of surveillance for plague, Hanta virus and tick borne diseases. These all exist in the county to varying degrees. There needs to be more testing for West Nile Virus. There needs to be a continuation of aerial applications. Inspections and treatments need to continue for those breeding sources that have been identified. Expansion of the educational campaign needs to take place, which includes an outreach program for Hanta virus. The complaint response needs to be improved from the current 8-day response. Their goal would be a 3-day response. The rat complaint program needs to be reinstated. Giving phone consultations is not an acceptable complaint response.

Within the Proposition 218 benefit assessment process, the vector control program needs to demonstrate through an engineer's report that the property owners in this county receive a benefit. This has been accomplished. The engineer's report also assigns a cost to each parcel. The process is a mail-out ballot process. Each ballot is weighted with the amount of assessment that each parcel has. The ballots are out for 45-days and followed by a public hearing. In order for the ballot to pass, it must receive 50% plus 1 of the returned ballots in favor of the measure. He reviewed the time line. The rates that are considered are based on human exposure and benefits from the services that vector control provide. The rates are based on densities in both business and residential areas. Single-family homes would be paying \$8.55 per year. Apartments would be paying \$3.42 per unit up to 20 units and \$0.85 per unit for more than 20 units. Industry and commercial will pay \$4.28 per 1/5 of an acre, and an office would pay \$12.14 per 1/5 of an acre. They will be continuing their current service charge at \$3.00 for coastal and \$2.28 for inland. The City is not charged a service charge and will not be charged in the future because it does not fall under Proposition 218. However, under Proposition 218, the City would not be exempt from the new assessment that the vector control program is proposing. The City will receive ballots, and they will need to decide how to vote on this measure. There is information on their web page and a telephone number to call for further information on their proposal. They anticipate getting more phone calls when the ballots go out.

The ballots would go out to every parcel in the county. The cost is approximately \$675,000 for the mailing and copying of the ballots. The cost has been factored into the cost of the program and will be reimbursed back to the program.

COUNCILMEMBER FELLER asked about the cost for one countywide spray.

MR. MILLER responded that the cost is approximately \$20,000 to do one spray on 27 sites.

COUNCILMEMBER CHAVEZ questioned if the \$8.55 per single-family house would be countywide.

MR. MILLER responded affirmatively.

COUNCILMEMBER CHAVEZ asked if the vector control program was trying to cover the \$1,300,000 gap.

MR. MILLER responded that not only are they trying to cover the gap, but they are also trying to build a program that provides better public health protection. So much of their resources have been shifted to the West Nile Virus. Their intent is to build a program that includes testing for other diseases. They are also trying to build into the program the inspection and testing for known breeding sources. This will go beyond the \$1,300,000 gap. Through the benefit assessment, they feel they will be providing protection for the public.

COUNCILMEMBER CHAVEZ asked how much revenue would be anticipated through the proposed fees.

MR. MILLER'S response was \$7,300,000.

COUNCILMEMBER CHAVEZ commented it was significantly more than \$1,300,000. He asked if \$6,000,000 would go into a new program.

MR. MILLER responded that it would be going into building a better program. It is building in surveillance that needs to be there. It is also for providing inspections and treatment. The plan is to hire seasonal help in the summer, which would include college students. They would equip them with Geographical Information Services (GIS) equipment to better locate the known breeding sites. Inspection and treatment would then take place. They are hoping to hire 20 seasonal employees to treat the 1,000 breeding sources in the county on a monthly basis. This is a need of the county and a major cost of the program.

They will use seasonal employees to avoid hiring permanent staff that will not be needed later in the year.

COUNCILMEMBER CHAVEZ asked if there has been discussion regarding just responding to the needs of the West Nile Virus control costs rather than providing the full spectrum of services.

MR. MILLER responded that there has been some discussion. However there is not enough currently being done for West Nile Virus control. With the response time at 8 days, Vector Control is not protecting people. They are exposing them to mosquito breeding for longer than he feels is reasonable. Approximately 90% of what Vector Control will be doing is to address the West Nile Virus. The Vector Control Program has been good at what they have done to date and made good decisions but also have been lucky. However they can be up against a tough season with all the rainwater experienced.

COUNCILMEMBER CHAVEZ asked to receive information on the breakdown of how the revenues would be spent.

MR. MILLER responded that the program is projecting an operating budget of \$7,200,000. There are \$2,300,000 in one-time costs which would be repayment for the cost of the ballot measure, building back an emergency response fund that is currently being spent, and vehicles and buildings. The vehicles would be needed for seasonal employees to do their job. The total budget would be \$9,500,000. Their current service charge brings in \$2,200,000. This is why the \$7,300,000 was allocated. In response to Councilmember Chavez' earlier request, there are 1,562,129 single-family residents in the county. He will be leaving a copy of the Engineer's report with the City Clerk.

DEPUTY MAYOR SANCHEZ stated that the current service rate is \$3.00 per single-family household for coastal, which is already the higher premium. She asked if the proposed \$8.55 includes the \$3.00 or is in addition to the \$3.00 fee.

MR. MILLER responded that it would be in addition to, making it \$11.55 per single-family coastal household.

DEPUTY MAYOR SANCHEZ does not feel she can support this. It is ridiculously high for a program that has required \$25,000-50,000 for services last year. This is a huge tax that she cannot defend. This will be a burden for apartment residents that cannot afford it.

MR. MILLER cannot advocate a position on this because it is a ballot measure. He will be glad to answer questions for Council.

MAYOR WOOD thanked Mr. Miller. This presentation is informational only. Last year the Cities of Oceanside and Carlsbad contributed monies for aerial spraying. This is important.

MR. MILLER stated that they do appreciate the City's support in helping kick-off the test applications in 2003. The applications are for all 5 locations in the City and 27 locations in the county are factored into that. The cities and state, and those jurisdictions with the services will not be paying for it. The cost will be spread across to those who will benefit from it, those who live in the area.

GENERAL ITEMS

23. Council: Approval of the Police and Fire Commission 2004-2006 Work plan

INTERIM POLICE CHIEF JERRY LANCE introduced Vice-Chairman Bill Harms and Commission member Larry Page who will be making the presentation for the Commission.

BILL HARMS stated that the workplan covers all of the changes that had been requested at the Council workshop on March 9, 2005. He offered to answer any questions rather than cover each item.

DEPUTY MAYOR SANCHEZ appreciated the work that they are proposing to do and their commitment to the City. She **moved** approval of the Police and Fire Commission 2004-2006 Workplan.

COUNCILMEMBER FELLER seconded the motion.

Motion was **approved 4-0**.

24. **Council: Adoption of a resolution adopting the Countywide Integrated Waste Management Summary Plan and Countywide Siting Element, while expressing continued opposition to the siting of the Gregory Canyon Landfill**

PETER WEISS, Public Works Director, stated that the item before Council is for approval of 2 distinct solid waste issues affecting the City. The first one is Council's approval regarding the countywide summary plan. The summary plan contains goals and policies regarding solid waste issues affecting the county. It summarizes the City's Waste Management Programs, along with the Solid Waste Management Commission's Workplan developed from the other cities as well. The Integrated Waste Management Commission's Workplan includes a number of these items. They have been very successful in working toward getting to the 50% diversion requirement. The items in the summary plan are consistent with what the City has been working on with the commission's plan.

However, the siting element is a different matter. On numerous occasions the City Council has previously opposed the Gregory Canyon Landfill. The siting plan as it is currently proposed provides descriptions of existing facilities and strategies for the region to deal with its trash for the next 15 years. It does include reference to the Gregory Canyon Landfill. However, it is not taking a position either for or against it. It includes it as an option because there are programs and projects in place regarding the Gregory Canyon Landfill, so it recognizes it as a future landfill. The siting element as it is today takes into account the City's historical opposition to the Gregory Canyon Landfill. This item was presented to the Integrated Waste Commission, and they unanimously recommended to Council to approve both items. Staff is recommending approval of both items as well. Wayne Williams from the County is available to answer any questions. In order for these documents to be approved, a majority of the cities representing a majority of the population in the county need to approve it. Staff recommends approval of both documents, recognizing that the siting document does conclude and does forward the City's ongoing opposition to the Gregory Canyon Landfill.

DEPUTY MAYOR SANCHEZ questioned whether there were other municipalities or jurisdictions that were voicing their opposition to the Gregory Canyon Landfill.

MR. WEISS could not answer that question as it relates to this siting element. However, as part of the separate Gregory Canyon action, there are other organizations that are opposed to the Gregory Canyon Landfill.

DEPUTY MAYOR SANCHEZ asked if adoption of this resolution would in any way support the Gregory Canyon Landfill.

MR. WEISS did not believe that it would support the Gregory Canyon Landfill. However the City Attorney would need to confirm this.

INTERIM CITY ATTORNEY WALLS responded that the City does have a pending action against the County on the Gregory Canyon Landfill. The City has joined with Riverwatch and the Pala Band of Mission Indians. She believes that the City of Encinitas and a few other coastal cities are also opposing it. However, Oceanside is the only City involved in the litigation.

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DEPUTY MAYOR SANCHEZ asked if adopting the resolution would further the possibility of the Gregory Canyon Landfill.

INTERIM CITY ATTORNEY WALLS would need to research this further.

WAYNE WILLIAMS, County Recycling Coordinator, was one of the chief authors of this version of the siting element. It is not a proponent in any way to the Gregory Canyon Landfill. It is a neutral document, which simply states what the capacity is based on a certain level of permits. The Gregory Canyon had a permit in a previous round in 1996. It has simply progressed through keeping its major use permit. Therefore, under State law it is required to be in this document. However, the document is not a proponent of any given landfill.

INTERIM CITY ATTORNEY WALLS stated again that she has not reviewed the siting document.

DEPUTY MAYOR SANCHEZ asked if there was a time line that would affect this.

MR. WEISS answered affirmatively. In regard to the siting element, it is neutral pertaining to the Gregory Canyon Landfill. In his opinion, it does not support the landfill in any way.

INTERIM CITY ATTORNEY WALLS stated that this is one of those items in which an action needs to be taken within 90 days. Failure to do so will be deemed approval of the plans according to the regulations.

COUNCILMEMBER CHAVEZ stated that a response was due by May 1, 2005.

DEPUTY MAYOR SANCHEZ understood that the opinion of the author is that the siting element would not negatively impact the City's position in opposition to the landfill. However, she feels reluctant to act now without the City Attorney's review. She would also not want to miss a deadline. She does not know what action would be worse, no action or voting yes now.

INTERIM CITY ATTORNEY WALLS reiterated that the City does have a pending action pertaining to the LEA permits. She did not think it would necessarily waive the City's pursuit of that, but again she has not reviewed it.

COUNCILMEMBER CHAVEZ recommended that Council give the City Attorney an opportunity to review this issue and if it is necessary, hold a special meeting for Council to discuss.

MAYOR WOOD and **DEPUTY MAYOR SANCHEZ** agreed.

MAYOR WOOD announced that the item would be tabled until the City Attorney had time to review the document. Council would get back with the County on this matter once a legal opinion was obtained from the City Attorney.

CITY CLERK WAYNE announced that there was one request to speak.

Public Input

JIMMY KNOTT, 124 Sherri Lane, stated that the locally generated water reserves center from the proposed landfill location. It is becoming a pattern from the County. A county agency comes late to Oceanside. Council should write a letter of concern reiterating their position and expanding on their concerns. Council should require extensive monitoring. There was no mention regarding safeguards. There was no mention of who would pay in the case of an accident at the Gregory Canyon land site. There was no mention of an early warning system or clean-up costs. He asked if Waste Management would be linked to this and should they be. These concerns have not been addressed.

Council is right for tabling this issue. However, a letter of concern needs to be communicated. If the county does not comply, it may be necessary for the City to challenge everything that the County does until they start communicating with Oceanside.

MAYOR AND/OR COUNCILMEMBER ITEMS

26. **Request by Councilmember Feller to call for review the Development Plan (D-11-04) and Conditional Use Permit (C-22-04) for the Samber Fueling Facility to be located at 502 Via Del Monte**

COUNCILMEMBER FELLER stated that the reason he brought this back to Council is probably the same reason why Council did not go forward earlier with a permit for a franchise agreement with Coach Cab. He is talking about a level playing field. He is not trying to derail Chevron's facility. Chevron does this all over the country with various companies. Everyone should operate under the same premise that is set by Council. We need to adjust some of our rules. He has asked Gerald Gilbert to speak to the issue.

DEPUTY MAYOR SANCHEZ asked if Council should go forward with the motion to call for review.

COUNCILMEMBER FELLER was not sure whether or not that was the appropriate action. He feels this may further delay the process. Some agreement from Council could be reached prior to a call for review. He would prefer not to go through that process.

DEPUTY MAYOR SANCHEZ had concerns. She was not aware that it was Coach Cab. She has concerns regarding the application for permit from Coach Cab. Council was updating the ordinance on cab permits. She feels that this item is Coach Cabs attempt to get around the ordinance. Facts were misrepresented to her when she voted on the item. She was not aware that it was Coach Cab trying to do something that they were unable to accomplish directly. Her preference is to go forward with a call for review and send it back to staff to update the ordinance. She would like to see a level playing field. She has some real concerns with Coach Cab.

GERALD GILBERT, Planning Director, gave some background on the issue. There are a couple of different issues that the Council needs to ferret out. There needs to be some understanding of licensure of a cab company and the ancillary activities. This particular application was a development plan/conditional use permit with Samber, Inc., which does have a relationship with Coach Cab. However, staff's review was simply to look at a fueling facility. Through the City's current regulations, the applicant goes through a development plan/conditional use permit, which would be in this instance filling cars up with gas. Currently there is something similar to this which is the Flavin operation which is within close proximity to this. It is a fueling operation much like a gas station. However, they do provide gas to a variety of different businesses, which are considered industrial. There is a relationship with Chevron.

The fuel testing facility has a two-part component. The first is providing gas to vehicles and second is a testing facility. The only issue is the exclusivity of Samber, Inc. with Coach Cab. The fuel will be provided to Coach Cab vehicles. Adjacent to this location is a maintenance operation, which is exclusive to Coach Cab. There are operational components to this application without the cab licensure. Current regulations allow that to occur with those particular uses. There is nothing that is illegal or out of the ordinary. The concern is simply how the facility will operate and operating a cab company within Oceanside without the proper licensure. It is fairly simple for a cab company in Oceanside to receive licensure if there are all the operational components. This is a separate policy issue. Council needs to decide whether these elements should be packaged together. In response to Councilmember Feller, this process is a level playing field. If anyone wanted to do it the same way, the City would do it the same way. This assertion is automatic. No one will be treated differently. However there is a bigger picture on how this operation functions and the expectations of the Council. Council needs to decide how to handle

exclusivity when a business operation requires a separate license in the City.

DEPUTY MAYOR SANCHEZ is concerned with the 30 cabs having storage, a fueling station and a maintenance station at that location. They cannot pick-up cab rides here. This could encourage illegal pick-up of passengers. Coach cabs were caught on video several times picking up passengers illegally. They are not dealing with the City's standard. The City's goal is to become a destination city for tourists. However, there is no control over the actions of this cab company. The City would be allowing them to store, fuel and maintain their cabs in Oceanside. The City is allowing them to be here, fuel here and get their vehicles fixed and stored here. However, it appears that the City is encouraging illegal activity with no control over the quality of service this cab company provides.

INTERIM CITY ATTORNEY WALLS pointed out that the conditions for approval for this project under the management plan state that there should be no operations of a taxicab facility at the site without first obtaining the approval of a conditional use permit. There is another provision that approves only a commercial automobile fueling facility, including the ground tanks, dispensing facility and the office site. That is all. Any substantial deviation shall require a revision of a development plan and a conditional use permit or a new development plan and a conditional use permit. Those are the conditions for approval.

MR. GILBERT'S concern is that the City does not want to be in an enforcement game ensuring these things occur. He is not suggesting that illegal activities will occur. The City is not encouraging this behavior. However, it does make it a bit easier for those things to happen whether it is intentional or not. The difficulty is that the City does have rules and regulations in place and they were followed. The City will be monitoring this facility to ensure no storage of vehicles. In the current rules and regulations the conditional use permit is for the storage of vehicles. It is not necessarily for the use permit of operating a cab company. A cab company requires a special licensure that is issued by the Council. Staff deals with the storage of vehicles and how they are maintained. If a violation does occur, they can enforce the conditional use permit/development plan for this aspect. The secondary issue is the license. The cab company has mentioned that they do function in 8 other cities around the county. This location will provide for their maintenance and fueling requirements. If this is a concern of Council, it may be useful to modify the City code or ordinances to wrap all these rules together to ensure that regulations are being followed and can be easily monitored and maintained.

DEPUTY MAYOR SANCHEZ stated that it does appear to be a loophole. She asked if he had known it was Coach Cab or if the Planning Commission knew.

MR. GILBERT answered negatively for both.

DEPUTY MAYOR SANCHEZ feels that approvals were acquired without all the information. She is not saying that it was deliberately deceptive. However, all the information was not provided, and she would rather go slowly on these items. The ordinance was being updated. The update needs to be completed to include avoidance of these situations from occurring. She would not want extra traffic on Oceanside's streets when it is obviously to pick up fares.

MR. GILBERT stated that if the city knew it was Coach Cab, there probably would have been additional conditions attached. However, staff would still support the activity because it is still consistent with the City's rules and regulations. If the Council does send this back, it may be useful to map all of the issues to define what could and could not be done and would have to be done to change the current rules of operating. If staff had known that Coach Cab was involved, he is not certain whether or not the regulations would have been different. They probably would have added more conditioning.

DEPUTY MAYOR SANCHEZ asked if Mr. Gilbert recommends sending it back to the Planning Commission with additional conditioning.

MR. GILBERT responded negatively. He requested direction from Council on how to deal with this complete picture. With current regulations in place, staff would return to the Commission asking them how far the City could condition a project. There is not a lot staff is able to do. They would need direction from Council to wrap everything together and change the rules.

DEPUTY MAYOR SANCHEZ asked, if this approval was left intact and Council changed the City's rules, would that require Samber, Inc. to reapply for this permit or could they be grandfathered in.

MR. GILBERT stated that his first inclination without considering the details would be to consider that they do have their approval and staff would need to evaluate that with the City's current rules and regulations. It could possibly be grandfathered in. If Council called it up for review, staff would have to map it out with current regulations and recommendations given to Council.

INTERIM CITY ATTORNEY WALLS pointed out that at a minimum they would be required to comply with their conditions of approval. These specifically state that they are only being approved for an automobile fueling facility. The management plan should specify that there should be no operations of a taxicab facility at that site without getting a conditional use permit. At a minimum they would have to address that.

MR. GILBERT stated that if Council chooses to manage the maintenance and fueling facility exclusively for a cab company, the current regulations would need to change. The City does not have those provisions that manage those components. If Council wanted to ensure that the City had this management, with some additional discretionary review focusing on who was using the facility rather than what those facilities were, staff could review this.

DEPUTY MAYOR SANCHEZ questioned if the applicant did not comply, then would they lose the right to operate. If the applicant was caught on video camera not complying with the conditions, would they lose the right to their permit.

MR. GILBERT responded that staff would investigate and verify that the activities were occurring. They would allow the applicant an opportunity to address the issue. If it became a problem, staff could schedule it for review by the Planning Commission.

INTERIM CITY ATTORNEY WALLS clarified that the permit could come back for a review, a possible suspension or revocation if there is a failure to comply with the requirements. If they are now expanding the scope of the use that was granted per the conditions of approval, it can come back for review.

COUNCILMEMBER CHAVEZ stated that it was appropriate that Councilmember Feller brought this issue up because of the need to make a clear statement to Samber, Inc. and Coach Cab. Councilmember Chavez had the opportunity to visit the site and to walk through with the architect to hear what they are planning on doing. The site will be used to test fuels in different vehicles. After a certain amount of miles on the vehicle, they will dismantle the test vehicle to measure wear and tear on the engine, etc. In order to test vehicles' use of fuel, they normally partner with other entities to use their cars. The vehicles that are being used are actually coming from Chevron. A value of the partnership is that the fuel is obtained for free. If someone were to run a cab company, the cost of fuel would make a significant impact on their business plan. However, this is a testing site. The City Attorney has pointed out that this is a facility for testing fuels. It is not a taxi command site or any other taxi site. This is a testing site operated by Chevron. The message is very clear to Coach Cab that there will be no running of a taxicab business on that site. He asked if anyone who was running a dispatch center at the location would it be in violation of the ordinance. There needs to be a level playing field.

MR. GILBERT answered affirmatively.

COUNCILMEMBER CHAVEZ stated that a short distance away from the site was Nitto Denko, which is another testing facility. Oceanside is a great city with nanotechnology on one side and evaluating fuels on another. This is a great thing in the City of Oceanside. It should not be tainted by other entities.

COUNCILMEMBER FELLER asked about the length of time to get a conditional use permit.

MR. GILBERT stated that it could be as short as 30 days, depending on the nature of the use permit. However, typically they take 90 days. If it takes longer than 6 months, there is a problem with the application.

COUNCILMEMBER FELLER asked how long it takes to build a facility like this.

MR. GILBERT did not know the answer.

BOB ABBOTT, with RHL Design Group, stated that the tanks have already been fabricated. The dispensers have been ordered. They had a good sense that they would be successful with the permit process. Since it is an above ground facility, the construction consists of grading the site, paving it and setting the tanks. It could be done, permitting aside for air-quality, etc., in a matter of a month.

MR. GILBERT clarified that the permit process would take longer.

MR. ABBOTT explained it would take a month for actual construction.

COUNCILMEMBER FELLER stated that it could go hand-in-hand for getting a conditional use permit (CUP) for operating a taxicab company. However, Coach Cab is not permitted to pick-up in Oceanside until they get a business permit, license or franchise agreement. He would prefer to see a level playing field. If Council goes backwards here, the extension that Council has granted to Yellow Cab may be tied up until the regulations are reviewed. Council is trying to achieve equity with any taxicab business that is operating in Oceanside in regards to insurance, reporting, etc. A business license should be required across the board to any taxicab company doing business in Oceanside in order to have some form of regulation available. He believes Council could achieve this. He is afraid of putting a wrinkle in a number of things if equity is not achieved. Coach Cab has a business license for chartering which the City allows. Council needs to have a permitting process in place that addresses the concerns, establishes equity and allows for control of regulation.

MR. GILBERT stated that the level playing field will occur. This is a given. The maintenance facility and fueling facility are in the proper zone. He has no issue with that. However, he is concerned about the exclusive use. Most of the fueling facilities and maintenance areas are commercially oriented. They are open to the public. However, this is exclusive to one user, which is Coach Cab, and it operates with all the aspects of a cab company. Council needs to come back and modify the regulations to address this issue. The City does not want to have a code enforcement issue in the future. Staff hopes that cab companies will function as a business, understanding the rules and regulations. Earlier today he was asked by the owner what amount of time constitutes storage. This concerns him. He would not have any concern of the storage of the vehicles if the City did not have the exclusivity. If Council chooses, the issue should be addressed outside of this application. Staff should come back to Council with the idea of tightening up the City's regulations or addressing the issues.

COUNCILMEMBER FELLER asked if it could be done without killing this application.

MR. GILBERT responded affirmatively.

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MAYOR WOOD has concerns that he would like to address. He was fairly open with Mr. Abbott today reviewing the facts. It appears someone is trying to circumvent the system. They could imply that they have a cab company, facilities, dispatcher and fueling system in place, with the exception of the permit to be a cab company. He does not want the owner coming back to Council claiming that they have all this investment in Oceanside and should be allowed a permit. This is the issue. Mr. Abbott and his company are in the middle of this issue and probably wish they were not. From Council's point of view there was more to this application. He does not want to get between the feud between Yellow Cab and Coach Cab. The question is whether or not a fueling facility will benefit Oceanside. It seems to benefit Coach Cab, which does not have a permit. The problem seems to be connected. He is not satisfied with what is currently in front of Council. Council needs recommendations from staff and clarification with the questions they have. His question to staff or the City Attorney is that it may be necessary to come back at a later date.

INTERIM CITY ATTORNEY WALLS asked if it was anticipated that Council would want to further condition this approval. If so, once it is approved and the appeal period is over, Council will be limited in what they can do. There is a condition that states that the owner cannot operate a taxicab company. This is the time to add any conditions. However, numerous conditions cannot be added at this time unless they have the stipulation of the property owner to do so.

MR. ABBOTT made the distinction that this is not a fueling facility for Coach Cab. It is a test facility for Chevron and they will use Coach Cabs, not all Coach Cabs but certain cabs that contract with Chevron to use this facility. The remainder of the Coach Cabs would not fuel at this facility; only the cars on test. It is not a gas station for Coach Cab. This is an important distinction. It is not an advantage to Coach Cab. Chevron will provide the vehicles that will be rented to Coach Cab which gives them that market. This is not a fueling facility for Coach Cab. He is the applicant for Chevron. He is not the property owner.

DEPUTY MAYOR SANCHEZ stated that Chevron is providing 30 vehicles for Coach Cab. She does not understand why Chevron did not try to locate a fueling facility in San Marcos since Coach Cab has a franchise in that city. She agrees with the Mayor in that she does not see an advantage to Oceanside. It would be polluting the City and congesting the City's roads with traffic. The only goal she sees is that Coach Cab would be able to pick up fares without a permit. If they are not permitted to pick up fares, why are they doing it here. It seems as if it is in your face; they could not get permission one way so they are trying to get approval another way. This is not an honest way to do business.

MR. ABBOTT stated that he understands that perception. However, when Chevron applied for this use permit for a fueling facility, Coach Cab had already applied for their franchise license in the City of Oceanside. It is his understanding that it has always been their intention to operate here legally but that got clouded. There were issues with their franchise license. The likelihood is that if they had not pulled their franchise license from Council's consideration, Council would have denied it. They would not want to go forward with the other jurisdictions that they were concurrently processing for franchise licenses having to answer yes to the question whether they had ever been denied a franchise license. The smart thing to do for licensing from their point of view was to withdraw their application and repair their image. They now require all their drivers to sign that they understand they are not authorized to pick up fares in Oceanside. They do not dispatch calls for Oceanside. He has been in their office when a call has been denied, explaining that they are not permitted to pick up a fare in Oceanside.

DEPUTY MAYOR SANCHEZ stated that they use cell phones to dispatch cabs, and the owner has been seen picking up fares in Oceanside.

MR. ABBOTT believes that Coach Cab will work to repair the damage to their reputation. The ultimate goal is to secure a franchise agreement in Oceanside. In response to Deputy Mayor Sanchez, Chevron did not go to San Marcos because Oceanside is attractive from a real estate point of view. He cannot speak from the operator's point of

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view. However, he believes that he received a great deal on the real estate. The building sat vacant for a long time. It is a nice location for a cab, close to the highways. It allows for the fueling facility with the use permit that they applied for. The zoning allows for the maintenance of the vehicles.

MAYOR WOOD would like to hear from the City Manager or Mr. Gilbert regarding whether this issue is up for review or a vote.

CITY MANAGER JEPSEN stated that it appears to be two separate issues. The first is dealing with the fueling facility, which is before Council. The other is with the ordinance behind the cab franchises. He is not sure where this issue is on the schedule for the City Attorney's office. They have other items that are more pressing. However, this could be pushed forward.

INTERIM CITY ATTORNEY WALLS stated that currently there is not a cab franchise pending in their office.

CITY MANAGER JEPSEN agreed. He is suggesting that it be placed on their schedule. He is aware that the City Attorney's Office has many priorities. However, the ordinance is certainly something that needs to be revised in order to tie down some of the issues that Deputy Mayor Sanchez is concerned with. This would be a way of addressing the concerns of someone trying to enter through the back door on a cab franchise. Council could deal with the issue of the fueling facility as a separate item, which it is.

MAYOR WOOD would be more supportive if they received more information, confirmations or verbal agreements on the issue regarding the cab company. It is not clear to him how this facility would benefit the City of Oceanside. He wanted to separate the two items; however, they seem to flow together. If the City Attorney's Office could review and clarify verbiage of the ordinance, he would be more supportive in the future of the permit application. He is not sure whether Councilmember Feller would be in agreement to try to rectify any form of this.

COUNCILMEMBER FELLER's concern is the fueling facility. The City will end up with something that is not a reasonable fix for all concerned on the cab side. Council will probably reach a fix for all at a future point as indicated by the City Manager, which will allow it to go forward just as a fueling facility. The document states there shall be no operations of a taxicab facility at the subject site without first obtaining a conditional use permit.

MAYOR WOOD expressed that if there was clarification from the owner of the property on this issue, it could easily come back to Council and be resolved. Council obviously has some concerns and a dispute with the cab company. His recommendation is to send it back to staff to address the issues.

CITY MANAGER JEPSEN stated that Mr. Gilbert could probably define more specifically what the operation of a cab company means.

MR. GILBERT stated that the description that Mr. Abbott has given has not been placed into any of the conditions of approval and in detail of any of the background information. Those elements are critical in helping to define what activity is taking place at this facility. If it is returned to staff, there are limitations as to what staff can and cannot do. Council could call for a review, and staff could put those items in a report to be appropriately identified as conditions of approval. This could ensure that there is clear definition as to what the operations can and cannot do at this site. Council would need to vote to call this item for review, and staff would have it back to Council within 30 days. Timing is too short to have it come back by the next meeting.

CITY CLERK WAYNE asked if that would be at the May 18, 2005 meeting.

MR. GILBERT replied affirmatively.

COUNCILMEMBER FELLER stated that it could be finalized by the May meeting.

MR. GILBERT has more comfort knowing what the items are as stated by Mr. Abbott.

MR. ABBOTT understands the Planning Director is hearing this for the first time but all of this information was given to staff in writing. He does not recall whether or not they had specifically said Coach Cab. In response to Deputy Mayor Sanchez, he noted that Chevron would be contracting with Samber, Inc. to operate cabs under the Coach Cab brand. They did talk about Coach Cab at the Planning Commission meeting.

DEPUTY MAYOR SANCHEZ stated that she received different information.

MR. GILBERT affirmed Mr. Abbott's claim that they did mention it at the Planning Commission meeting. Samber, Inc. has a relationship with Coach Cab. They may be one and the same. He would like to get some clarity because he does not want to get into a code enforcement situation in the future.

MR. ABBOTT would like to note for the record that he did not sneak anything through. There was a full background description.

DEPUTY MAYOR SANCHEZ stated that she did not say that he did.

MAYOR WOOD believes that Mr. Abbott is telling the truth. Mr. Abbott is in the middle of a feud, and this is not fair to him. He then **moved** to approve a call for review [of the Development Plan (D-11-04) and Conditional Use Permit (C-22-04) for the Samber Fueling Facility to be located at 502 Via Del Monte].

COUNCILMEMBER FELLER **seconded** the motion. The motion was **approved 3-1**, with Councilmember Chavez voting no.

27. **Request by Councilmember Feller for an update on the Coastal Railroad Quiet Zone and possible direction to staff**

COUNCILMEMBER FELLER stated that Council had discussed quiet zones in previous months.

CITY CLERK WAYNE notified the Council that a break was needed because KOCT's time was running out on their tape.

[Recess was held from 10:18 to 10:27 PM, Councilmember Chavez as absent.]

COUNCILMEMBER FELLER asked Frank Watanabe to present an update. The Federal Railroad Association (FRA) will be giving the City a law to live by.

FRANK WATANABE, Transportation Manager, reported on the status of where the City was and is today in relation to the Railroad Quiet Zone. A Quiet Zone is a segment of the railroad corridor where the train operator has the option to not sound his horn. About a year ago staff gave a presentation when there was an interim ruling by the Federal Rail Administration (FRA). They had established an interim document, which they hoped would be approved and finalized in December 2004. The City is still waiting for the final release. It is anticipated by the end of April 2005. The lead agencies for the Quiet Zone are being determined. Oceanside would be a lead local agency within the corridor that is being considered. NCTD would be the coastal lead agency as the owner and operator of the tracks. The Metrolink, Amtrak and the freight system will also be lead agencies. The demonstration corridor, which is the coastal corridor, will include the downtown area, which has 5 intersections at Surf Rider, Mission, Wisconsin, Oceanside Boulevard and Cassidy. Currently the attention is on the coastal corridor and later, as the City moves forward attention will be shifted to the Sprinter corridor as it goes east and west through the City.

When creating a quiet zone, the objective is to minimize risk by making the corridor as safe as possible. As described by Federal guidelines, the City would need to implement what are called supplemental safety measures. The range is from the least restricted to the more restricted. Currently the City has 2 crossing gates approaching the intersections. Federal Rail Association (FRA) would like to see 4 gates, called quad gates, to prevent cars from sneaking around the track. The next step beyond this would be a concrete median island between the two traffic directions, and more restrictive would be one-way streets. Even more restrictive would be no streets at all, grade separation, and any other combinations. Staff analyzed the 4 quad gates. The Quiet Zone needs to be, based on the FRA, at least ½ mile longer. The zone may be upgraded with the supplemental safety measures. Using the quad gates, the City can lower the risk index. The FRA has established a quiet zone risk index, which stipulates that as long as you are lower than the national risk index, the City is acceptable. Oceanside is below the national risk index.

The next step is for community support and support from the users. These devices would be implemented, and then the City would go through the process of filing for a federal ruling. The City would be working with NCTD since it would assume part ownership of the Quiet Zone. There is a liability issue that would need to be addressed if the City moves forward with the Quiet Zone. Staff recommends that the City continue monitoring the FRA ruling to make sure it gets established; continue moving forward with the process; coordinate with the existing use and hopefully gain support; address the liability and finally prepare the application.

Public Input

JIMMY KNOTT, 124 Sherri Lane, stated that safety challenges to the quiet zones could take place because there are questions regarding the union agreements, the legality of the quiet zone and its constitutionality. Once the City moves forward with the Quiet Zone they should also consider a secondary plan to consider what other cities are doing. Solana Beach solved their problem simply by placing the railway below grade and putting bridges on top. In Orange and Los Angeles Counties, they use walls of natural barriers to reduce noise impact. Other communities elevate their rail line, and others re-plan their city to avoid these intersections. These are actions that the City may have to do as a back-up plan if they are serious about the quiet zone. Looking ahead to the future with the east/west Sprinter rail line, the part owner of Oceanside RV, Roger Rambolt, and residents from Cavalier Mobile Estates are concerned that their issues with noise pollution will not be addressed. NCTD and SANDAG have not been adequately participating with their community. They have a high Spanish-speaking population who sometimes get confused as to what is said about the new railway crossing. The crossing itself has bell noises and whistle blowing from the train sometimes 60 times per day. Now is the time to take action and make plans to help these residents.

COUNCILMEMBER FELLER asked about the cost involved in putting the rail line in a trench.

MR. WATANABE responded that he did not have those figures. However, it would be in the millions. The gate modification would be \$250-500,000 for all 5 crossings. This is a rough estimate in the early stages. He spoke with the FRA and railway designers but did not get a clear indication of costs. A trench project would be too costly unless there would be large federal assistance. When implementing a quiet zone, these devices need to be implemented before the City can apply for federal assistance. Local agencies would need to fund before applying for federal assistance. The City would not get much support from the rail agencies.

COUNCILMEMBER FELLER agreed. The dollar amount is cost prohibitive when considering putting the rail in the trench. The City needs to consider other opportunities for implementing the quiet zone. With other quiet zone models that he has seen at conferences, one cannot get into the intersection unless one crawls over the barricade. The gate modifications would change this.

MR. WATANABE stated that the City is actually in a good situation. The five crossings were upgraded with the Coaster improvements. They all have median islands. Other improvements have been put in place. The City will be looking at adding additional gates, tracking devices, detection devices and possibly a wayside horn device. The City is almost halfway there. Quiet zones are here to stay. Many cities are interested. Pre-quiet zones have already been established in Anaheim, and there is one in the Bay area. The City of Pomona is the only city having approval for a quiet zone during this interim period.

COUNCILMEMBER FELLER asked if the intersections at Wisconsin and Oceanside Boulevard would be in the category for the Sprinter.

MR. WATANABE confirmed.

COUNCILMEMBER FELLER asked if the other five intersections were in that category.

MR. WATANABE stated that it would need to be reviewed. Under Council's direction staff would review the possible establishment of a quiet zone. The review is needed on an annual basis as stated in the ruling by the Federal Rail Administration (FRA). Evaluation is based on traffic on the railways and if the risk factor is higher than the nation averages. If so, then supplemental safety devices would be implemented at additional cost.

COUNCILMEMBER FELLER stated that the City is in a good place to begin to consider this. Council will be scheduling a workshop in July 2005 to discuss quiet zoning.

MAYOR WOOD appreciated the feedback. It needs to be addressed.

CITY COUNCIL REPORTS

30. **Mayor Jim Wood**

MAYOR WOOD thanked everyone involved with the "Days of Art." He noted the Senior Citizens Center's 25th anniversary. He congratulated the Oceanside Breakers soccer team that won the California statewide cup in Lancaster. The City will be honoring them. He wished Councilmember Chavez and his wife Mary a happy anniversary. He thanked everyone for their input on the Pier Project.

31. **Deputy Mayor Esther Sanchez**

DEPUTY MAYOR SANCHEZ announced the "Day of the Child" on April 30th. This will be a true neighborhood-based event to honor children and to deal with the issues facing the neighborhood children. The event will be from 10:00 AM to 3:00 PM at Balderrama Park on Saturday, April 30, 2006.

32. **Councilmember Rocky Chavez - Absent**

33. **Councilmember Jack Feller**

COUNCILMEMBER FELLER announced that NCTD is holding a public hearing on new scheduling for Americans with Disabilities Act (ADA) Transit at 2:00 PM tomorrow. They will be evaluating how to better serve the ADA community. On April 27, 2005 the El Corazon Committee will be presenting to the community the unveiling of their project.

INTRODUCTION AND ADOPTION OF ORDINANCES

The following items are ordinances for introduction or adoption by the City Council/HDB/CDC. Ordinances are laws of the City of Oceanside and require introduction and adoption at two separate City Council meetings (urgency ordinances are an exception, and may be introduced and adopted at one meeting as an emergency measure). The City

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Council/HDB/CDC has adopted a policy that it is sufficient to read the title of ordinances at the time of introduction and adoption, and that full reading of ordinances may be waived. After the City Attorney has read the titles, the City Council/HDB/CDC may introduce or adopt the ordinances below in a single vote. There will be no discussion of the items unless requested by members of the City Council/HDB/CDC or the public through submittal of a Request to Speak form prior to the commencement of this agenda item.

34. Council: **Introduction of an Ordinance**, "...amending Chapter 32B of the Oceanside City Code, Article I, Section 32B.4(i) to remove the reference to 'Family' in the definition of 'Dwelling Unit' "

Following titling of the ordinance, **DEPUTY MAYOR SANCHEZ moved** to introduce the ordinance.

COUNCILMEMBER FELLER seconded the motion. The motion was **approved 3-0**, with Councilmember Chavez absent.

35. Council: **Introduction of an Ordinance**, "... amending Chapter 37 of the Oceanside City Code, Article I, Section 37.1 to remove the reference to 'Family' in the definition of 'Dwelling Unit' "

DEPUTY MAYOR SANCHEZ moved to introduce the ordinance.

COUNCILMEMBER FELLER seconded the motion. The motion was **approved 3-0**, with Councilmember Chavez absent.

ADJOURNMENT

MAYOR WOOD adjourned this joint meeting of the Oceanside City Council, Community Development Commission and Small Craft Harbor District Board of Directors at 10:51 PM on April 20, 2005.

The next regularly scheduled Council Meeting is on Wednesday, May 4, 2005 at 4:00 PM.

APPROVED BY COUNCIL/HDB/CDC:

Barbara Riegel Wayne, CMC
City Clerk, City of Oceanside