NOT OFFICIAL
UNTIL APPROVED SUBSEQUENT
MEETING BY CITY COUNCIL

ITEM NO. 5

CITY OF OCEANSIDE

California

MINUTES OF THE CITY COUNCIL

AUGUST 23, 2006

ADJOURNED MEETING 4:00 PM COUNCIL CHAMBERS

Mayor
Jim Wood

Deputy Mayor
Shari Mackin

Councilmembers
Rocky Chavez
Jack Feller
Esther Sanchez

City Clerk
Barbara Riegel Wayne

Treasurer
Rosemary Jones

Interim:
City Manager
Barry E. Martin

City Attorney
John Mullen

This adjourned meeting of the Oceanside City Council (Council) was called to order at 4:01 PM, August 23, 2006 by Mayor Wood.

4:00 PM - ROLL CALL

Present were Mayor Wood, Deputy Mayor Mackin and Councilmembers Feller, Chavez and Sanchez. Also present were City Clerk Wayne, Interim City Manager Martin and City Attorney Mullen.

CLOSED SESSION ITEMS:

CITY ATTORNEY MULLEN titled the following agendized items to be heard in Closed Session: 1A and 1B. Closed Session and recess was held from 4:20 to 5:01 PM.

MAYOR WOOD reconvened the meeting at 5:01 PM. All Councilmembers were present. Also present were City Clerk Wayne, Interim City Manager Martin and City Attorney Mullen.

CLOSED SESSION REPORT

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

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

CLOSED SESSION ITEM:

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

A) **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (SECTION 54956.9(a))**

1. Page v. City, Superior Court Case No. GIN048539

There was no reportable action under the Brown Act at this time.

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

1. Significant exposure to litigation pursuant to Subdivision (b) of Section 54956.9: One case – a threat of litigation received by Leon Page

There was no reportable action at this time.

5:00 p.m. WORKSHOP ITEM:

3. **Discussion concerning obstruction of views by trees and vegetation on private property**

DAVE MANLEY, Housing/Code Enforcement Division Manager, gave a brief presentation regarding a draft ordinance presented by a neighborhood group to regulate obstruction of views by trees and vegetation on private property. For background, the idea of such an ordinance was presented to Council in late 2004 to deal with an issue of a neighboring landscape maintenance district (LMD). The group SavUrVu consists of about 60 members. Those are mainly residents in the eastern part of the City, as well as a couple other groups. This group said they have tried to work with neighboring landscape maintenance districts to resolve some view issues unsuccessfully through voluntary mediation. Therefore they wanted to bring this proposal forward as a tool to deal with the impasse between the 2 parties.

Staff had met with them and advised that an analysis would be done to see if staff could support such as ordinance, as well as the legal aspects.

He further reviewed the staff report. Staff analyzed this draft ordinance, as well as the few view protection ordinances that exist in California, which are mostly focused in small coastal cities with unique characteristics. Most of these ordinances have exhaustive steps for arbitration as the basis for their ordinances, which leads to enforcement by the municipality.

There are many variations to what the definition of 'view' is in every jurisdiction. An example is Tiburon that protects the view of the Golden Gate Bridge. Del Mar has the protection of the terraces. Oceanside's 42 square miles has everything from coastal bluffs to Sleeping Indian Hills, Morro Hills, etc. It would be a difficult challenge to define what a protected view in Oceanside would be.

Other variables that would be open to subjectivity would be the tree height, what existing and proposed trees would not be acceptable throughout the City. There is one caveat to all the existing ordinances, stating that their city trees are exempt from their ordinances. So there may still be view problems even though they are resolved on private property.

It is staff's opinion that drafting an ordinance designed to adequately address all the geographic issues throughout the City would require significant analysis beyond internal City staff, possibly needing consultants to survey the entire city and come up with recommendations.

The City Attorney's analysis speaks to due process, defining/establishing what a protected view is and the timing. Also, there are issues of landscape maintenance districts (LMDs) that the City maintains, which blurs the distinction between the City and private property liability issues.

The existing ordinances have been found to be legal through challenges in such cities as Rancho Palos Verdes and Tiburon. The findings to uphold their ordinances had specific unique characteristics to those cities, such as the Golden Gate Bridge, etc. For Oceanside, to define a protected view would be the most challenging. Also, the ordinance in Rancho Palos Verdes was adopted by a vote of the people.

It is the City Attorney's analysis that such an ordinance would require extensive changes before any ordinance of these complex issues could be considered. Staff has provided the draft ordinance from the SavUrVu organization to Council.

Staff does get a few calls a year asking if the City has a view ordinance. It is not a high volume issue, so there is no way to judge the scope and magnitude such an ordinance would place on the city or the impact on city staff. There would be significant impacts at the onset for development with landscape and development plan review. Existing manuals and review processes would need to be significantly changed to incorporate such an ordinance. It was also noticed in existing ordinances that their city council or a review board hears appeals to view protection orders, so there is staff time and a possible additional commission just to hear such appeals. These are just a few of staff's concerns and are included for Council's discussion.

Staff believes this issue is better handled between private parties as a civil issue between owners. Staff does not recommend pursuing such an ordinance in Oceanside, nor getting involved in dispute resolutions.

Public Input

ROBERT NOBLE, 4932 Wildwood Drive, with SavUrVu, provided a copy of his prepared statement, noting the question to debate is not the adoption of a proposed ordinance, but rather to decide if the City has a role in protecting the scenic views for its citizens. Currently there are no rules/guidelines/regulations to resolve the conflict between a neighbor's trees and plants and another neighbor's view. The City needs a process whereby the dispute between vegetation vs. view can be settled effectively through an enforced cooperation to avoid conflict. The SavUrVu proposed ordinance is a starting point. The citizens need a tool to achieve enforced cooperation. He urged Council's favorable consideration on a view protection ordinance, and for lack of a suitable alternative, he urged adoption of the SavUrVu ordinance. He displayed computer slides of 'before' and 'after' views with vegetation maturing.

BROOKS RAY, 924 Hillcrest Place, agreed with the previous speaker. He purchased a house because of the ocean view. The house across the street planted palm trees which have now limited his view. He asked for help.

PATRICIA CASTELLO, 5067 Summerhill Drive, stated that Summerhill does not have a homeowners association (HOA). There are over 340 homes in this development; a few have views. They had a beautiful view; however, a school was built on one corner, and houses on the other. Now their view is gone. Many of the homes are built on hillsides with steep slopes at the back of the properties, and they have easements allowing the water to drain through their properties from properties at the top of the slopes. These slopes were planted with trees by the builder to stabilize the slopes, and many are full grown. They have lots of trees and birds and a whole ecosystem in the area. They love their trees and would not want any of the trees to be cut down for the benefit of any other property. The small group complaining about their views is asking Council to pass an ordinance to guarantee them a view benefit through Summerhill properties. She strongly suggested that Council not pass any such ordinance. A better suggestion is to negotiate with their individual neighbors and understand that nothing is free.

HELEN FITZGERALD, 317 Hoover Street, used to have a view of the ocean but no longer has that. Her biggest problem is her neighbor's backyard has a large tree that sheds into her yard and pool and is a nuisance. Talking to her neighbor has done no good.

YVONNE KEY, 4978 Wildwood Drive, with SavUrVu, reviewed sections of the City's landscape manual which discusses maintenance, etc. The proposed ordinance could be a part of this manual, and she urged its adoption

JOAN BOCKMAN, 429 South Horne Street, owns another home on South Alberta, stated that both have ocean views. The issue of trees might better be dealt with through a

tree ordinance. The City is losing trees at an alarming rate. She asked Council to form a committee to draft a better plan. They need to affirm the trees; they need an urban forest and landmark trees on every block. The hotel will remove some of her view; her neighbor planted palms in front of her; and another neighbor wants to put up a ham radio tower. So she understands view problems, but this needs to be done correctly. The City should do other things such as ensure the enhancement and maintenance of the urban forest; reinforce the regional character of the City by encouraging the planting of native trees and the elimination of invasive trees; insure that landmark, over 50-foot tall trees, are present in sufficient numbers, such as one every city block. She suggested rules regarding preserving a certain percentage of views from all detractions, including power poles. She volunteered to be on such a committee. The ordinance as shown prohibits coast redwood, and any native plant should never be prohibited in the City.

GORDON HILL, 4922 Wildwood Dr., with SavUrVu, concurred with Mr. Noble. There are 10 California cities with view vegetation ordinances, which are good models to emulate. To address staff's concerns, whatever the correct involvement is for the City can be tailored to what this ordinance could be. The ordinance encourages neighbor-to-neighbor discussions. Right now there is no right to a view, so the ordinance is necessary to establish that right. Attempting to talk to a neighbor with nothing behind that, they can simply say they are not interested, which is what happened in his neighborhood with a neighboring HOA. They would not discuss it. They need an ordinance for that purpose.

MEGAN YOUNG, 305 Belize Way, is the Board President of the Villages of Rancho del Oro, (which the preceding speaker just referenced) and is representing their 2,600 homeowners who would be extremely upset if she took away all of the trees on their hills. To defend their HOA, she pointed out that they have corresponded with the homeowners of Wildwood since 2002. They wanted the neighbor-to-neighbor type dialog. They were the ones turned down. She has a report that they prepared encompassing 105 trees all behind Wildwood Drive. They asked Wildwood residents, and the Villages were happy to redo the landscaping using their landscape architect. However, Wildwood said no. It was their way or nothing. She has tried to open dialog.

If this is to become an ordinance, she asked Council to think of her 2,600 homeowners. She also referenced pictures behind 4978 Wildwood, which is what her HOA has had to deal with. All the trees and vegetation died because of some chemical sprayed there.

ILENE MOIR, 1954 Ivy Road, tried to talk to her neighbor about extremely large trees, and she paid one neighbor to remove trees, which was not successful.

HOWARD LA GRANGE, 2575 Jason Court, Chair of the Gateway Enhancement Subcommittee of the Economic Development Commission (EDC), has been asked to speak to this ordinance. This subcommittee works to improve the aesthetics, such as the landscaping of entries into the City through planting of trees and landscaping. The Subcommittee wanted to express their strong views to oppose this ordinance, which is too general in nature, will diminish the landscaping and move the City in the wrong direction. This committee was looking at having even more landscape buffering between industrial and residential developments.

RENNY DOWLING, 1716 South Pacific Street, supports a tree ordinance. There is nothing that enhances a neighborhood as much as vegetation. A tree is an enhancement when it is properly placed and maintained. Houses are also obstructing views, so she asked Council to consider doing something about the houses, which do not enhance the neighborhood.

MARK SWIFT, 1784 Laurel Road, wanted to talk about houses and not trees, and adding second stories to houses. If it is view preservation, then he wanted input on what is being built in front of him.

STEVE MULDREW, 5208 Mandarin Drive, stated that, when they moved in 20 years ago, they were charged a view lot premium, which was quite a bit of extra money. He is in favor of first talking with neighbors, but a fallback position would be an ordinance dealing with such issues and providing some recourse for the neighbors or the HOAs. He is in favor of the ordinance.

CORIAE MORO, 4958 Wildwood Drive, stated that they did offer to pay the Villages to have the trees trimmed, but the communication got lost. She paid $20,000 for their view in 1989 and was told of the Sleeping Indian view and the mountains, etc. They would just like the trees trimmed. They have trapped over 60 rats behind the property; there are weeds, etc. They would pitch in to help pay, but cooperation is needed. They would like the ordinance, not to get rid of trees but to make it more presentable and acceptable to all.

PAUL HEFFERLIN, 311 Fowles, stated more importantly is solar access. Since there is no protection in the City for solar access, they did not install a solar system. The trees are blocking the access. The City should broaden the scope to look at those considerations.

This was the conclusion of public input.

COUNCILMEMBER SANCHEZ thanked Mr. Noble for the neighborhood tour. She understood this was not a request to preserve coastal views and wanted to see about solutions to this issue. Her premise is that people should have the quiet enjoyment of their property. Balancing against that, they should limit government intrusion into that quiet enjoyment. In the photos and the tour, it is discouraging to see what has happened to the views.

She spoke with the City Attorney's office about some of the court decisions upholding cities' rights to regulate in this area. Suggestions she has received are to have staff consult with neighboring cities on the challenges to enforcement. Whether the City wants to assist with the protection of the views is the question. Some trees have grown so high and so close that there is a safety/fire issue.

There appears to be a desire on both sides to address this issue. If there was some procedure, it possibly would have been resolved. She is inclined to want to do something. The staff has suggested tweaking the language since this seems overly broad. Perhaps there could be some restrictions on what point in time to preserve the view, i.e. upon acquiring the land or 10 years, whichever is less, is one of the ordinance examples.

She **moved** to ask staff to look at and come back with suggestions on an ordinance that the City would be able to put into law.

She is also concerned about addressing some of the immediate concerns of this one neighborhood in resolving the issue with the Rancho del Oro HOA. One problem is cost. It sounds like there have been offers to share in some of the costs, and she would like to help bring that cost down. Therefore, she would like staff to look into economies of scale to see what the City could do to bring down those costs, if it was added to a larger contract, for example. She asked staff to explore such items and a sharing of the costs by those involved.

She **moved** to ask staff to bring something back to Council; consult with other cities, especially locally, to see what the challenges have been with respect to enforcement and mediation; to immediately address this current issue of the two neighborhoods; and to see if the City can come up with a program to assist in the initial stages of getting these costs down so that it could more easily be implemented by residents and the City and thereby limit litigation. She sees this as something that could have a large impact on code enforcement and the City Attorney's office.

DEPUTY MAYOR MACKIN seconded the motion for discussion.

In response to Mayor Wood, **CITY ATTORNEY MULLEN** stated his office did provide information in the staff report regarding potential concerns over the ordinance as currently drafted. What needs to occur at this stage is some policy direction from Council on whether to draft an ordinance, and there are policy consequences that go along with that. He has several concerns with the draft ordinance as presented. Many are listed in the staff report. It is ambiguous regarding who is financially responsible for removing trees that violate the ordinance, which is a significant issue that needs to be addressed. Also it is not clear whether the City's LMDs would be subject to this ordinance, which involves a significant financial burden that needs clarification. The chief concern is the broad nature of the right that is presented in the draft ordinance. It goes back to the time of purchase, which in come cases could be 50 years, etc. That raises issues of due process. This ordinance makes it a misdemeanor, so there would be an obligation to clearly articulate what is being prohibited and what is not. The ordinance applies citywide, but the definition of 'view' is extremely broad and needs tightening. It is not clear whether the rights run with the land. There is an ambiguous definition of the primary living area that would present problems. There is an issue of forced arbitration. The proposed ordinance waives a property owner's right to a jury trial and requires submitting to binding arbitration, and those create legal concerns.

There also would need to be detailed findings justifying the need for this ordinance. There are other concerns as well.

DEPUTY MAYOR MACKIN has seen Mr. Noble's view issues. She feels this issue is much larger than just trees. She gets many calls and emails regarding views, whether it is from a tree, a home, a proposed development, etc. Regarding Ms. Bockman's suggestion, the City formed a committee regarding RV's which worked. She **withdrew her second** and asked for the formation of a focus group/committee comprised of those on both sides to see about a compromise that will work for all. If it is staff driven, then it is pretty much one sided. When she purchased her property, she had an ocean view, but as the trees grew, her view decreased. It was then totally removed by a second-story addition in front.

Whether it is a view of the mountains or the ocean, the bigger picture needs to be addressed rather than just trees. She suggested a focus group that will work on both trees and structural views, because views are very important. Otherwise she thinks the City would be approaching the problem in the wrong way. If people come to the table, the end product is good. She **moved** to form a focus group from people on both sides of the issue to come together, as well as Ms. Bockman and Renny Dowling. A good representation of people throughout the City would be able to put a view ordinance together versus piecemealing it to view trees, buildings, etc.

COUNCILMEMBER CHAVEZ seconded the new motion.

COUNCILMEMBER FELLER sees this as more big government and, at the end of the process, the City ends up as the bad guy mediating the issue. It seems like there is a willingness of neighbors to talk. He asked if a view is for sale or is a marketing tool.

CITY ATTORNEY MULLEN stated that, in the absence of a statute that gives a right to a view or a deed restriction on the property impairing the view, there is no legally protected view. So it is more a marketing issue with respect to private properties.

COUNCILMEMBER FELLER referenced the staff report regarding the need to promote the public health, safety and welfare with the issue of rats, fire, etc. Those should be addressed. He will not support creating bigger government. Planting of certain species of trees appropriate for the area may be something to look at for the landscape ordinances, but it should not be retroactive. He believes this is a civil matter. It is an issue between neighbors, and it is not the City's purpose to be the bad guy. He is not for bigger government to govern more.

COUNCILMEMBER SANCHEZ stated the Tiburon ordinance runs with the land, and it also stated the State created the Solar Shade Control Act of 1978 to protect solar energy systems against obstruction by later planted grown trees or foliage. She will not support the motion, which is too broad. There was a very specific issue brought to Council. She would like to take baby steps and not be overly broad. She preferred to see about resolving the specific issues presented. She too shares concerns about government intrusion into the quiet enjoyment of property. However, seeing some of the homes, there is something that should be done. If the issue has the potential for a misdemeanor, perhaps it should be kept as a civil ordinance and do away with the penal punishment. There are many things that can be done to help communities/neighborhoods deal with this issue rather than use the force of big government. She is inclined to enter into this issue, but in a limited way to deal with the specific issues. Another workshop with more information to the public for more input citywide to consider all concerns might be best in order to act in the most appropriate way.

COUNCILMEMBER CHAVEZ shares the philosophy of less big government in people's day-to-day lives. But this issue has been here for a while. Municipalities do decide on zoning and land use issues. He feels this is an appropriate issue for the City. An ad hoc committee would be good, if a couple of Councilmembers would take it on, because they could assist. But he agrees this is a new area i.e. the issue of vegetation and should be addressed in measured steps. He asked the maker of the motion to amend the motion to deal with vegetation, and he would concur and maintain his second. The ad hoc committee could go forward. The issue is the resident to the resident, the resident to the HOA, and the resident to the City, which has a lot of elements to it.

CITY ATTORNEY MULLEN advised that this meeting is not agendized to take action to create an ad hoc committee, so if it were the direction, that would need to return to Council. Council could take a vote to direct staff to come back with an item.

COUNCILMEMBER CHAVEZ moved to give direction to staff to take this issue on in a measured perspective strictly on the vegetation issue, to get the public involved throughout the City, and to look at the legal implications.

COUNCILMEMBER SANCHEZ seconded that motion.

DEPUTY MAYOR MACKIN felt it would be best to just allow the community to come together, as occurred with the RV committee, rather than have Councilmembers present. She would support the committee without Councilmembers.

COUNCILMEMBER CHAVEZ felt the RV committee worked well and took about 10 months. The recent ad hoc committee was done in about 6 weeks. This has been going on for nearly 3 years.

DEPUTY MAYOR MACKIN stated her motion stands as stated.

COUNCILMEMBER CHAVEZ withdrew his second on Deputy Mayor Mackin's motion. Therefore, the **motion died for lack of a second**.

COUNCILMEMBER CHAVEZ clarified that direction to staff is that they deal with the stakeholders on both sides of the issue and that they come back to Council with an ordinance including phased-in steps with the objective of dealing strictly with the vegetation and with an ad hoc committee. It is direction to staff to come back and present it to Council regarding whether an ad hoc committee is desired, at which time Council can decide.

COUNCILMEMBER SANCHEZ stated this issue has been discussed since 2001. She wondered about an ad hoc committee. Staff could have community meetings for input from the community. Staff can handle that. If they feel they need more direction, they could return to Council.

COUNCILMEMBER CHAVEZ concurred with that.

COUNCILMEMBER SANCHEZ concurred with the clarification.

MAYOR WOOD further explained the issues to the public, noting its complexities. He agreed to send the issue back to staff and to obtain more public input. Making the City the arbitrator is difficult as well, with legal ramifications. If staff needs to do workshops and/or obtain public input or information from other cities, they come back to Council for an ad hoc committee or if they need legal advice. Therefore, staff will work on this and return if they need further direction.

To clarify, **CITY ATTORNEY MULLEN** understood the motion was to have staff work with the stakeholders and come back to Council with a progress report.

COUNCILMEMBER FELLER stated Councilmembers should do what they are charged with as the elected officials and should vote for or against this rather than walking the fence. Councilmembers are making comments to try to please both sides, which is not the way this government should be working.

Motion [for direction to staff to work with the stakeholders on the vegetation issues only and return to Council with a progress report and any further direction as needed] **was approved 4-1**, Councilmember Feller voting no

4. Public Communication on City Council Matters (Off-Agenda Items) -- None

ADJOURNMENT

The Mayor adjourned this Council meeting to a workshop at 5:00 p.m. on Wednesday, August 30, 2006. The meeting of August 23, 2006 was adjourned at 6:42 p.m.

APPROVED BY THE CITY COUNCIL:

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Barbara Riegel Wayne, City Clerk
City of Oceanside