



CITY OF OCEANSIDE

JOINT MINUTES OF THE: CITY COUNCIL SMALL CRAFT HARBOR DISTRICT BOARD OF DIRECTORS COMMUNITY DEVELOPMENT COMMISSION

AUGUST 25, 2010

REGULAR MEETING 3:00 PM COUNCIL CHAMBERS

3:00 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**
Vacant

**Councilmembers
HDB Directors
CDC Commissioners**
Esther Sanchez
Jack Feller
Jerome M. Kern
Charles Lowery

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

Treasurer
Gary Felien

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

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

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

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 by Mayor Wood at 3:02 PM, August 25, 2010.

3:00 PM - ROLL CALL

Present were Mayor Wood and Councilmembers Kern, Lowery and Feller. Councilmember Sanchez arrived at 3:08 PM. Also present were City Clerk Wayne, City Manager Weiss, City Attorney Mullen and City Clerk Records Manager John Guthrie.

City Attorney Mullen titled the following items to be heard in closed session: 1, 2 and 3A. Item 3B was not heard.

[Closed Session and recess were held from 3:03 to 4:00 PM]

CITY COUNCIL, HDB, AND CDC CLOSED SESSION ITEMS

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

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

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

Discussed; direction to staff; no reportable action

2. CONFERENCE WITH REAL ESTATE NEGOTIATOR (SECTION 54956.8)

Property: 1.82 acres at intersection of North Pacific Street and Harbor Drive South (portion of APN 143-010-31); Negotiating Parties: City of Oceanside and Marina Del Mar Homeowner's Association; Negotiator for the City: Douglas Eddow, Real Estate Manager; Under Negotiations: Price and terms for an extension of the current lease

Discussed; no reportable action

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

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

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

No discussion held

[B) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (SECTION 54956.9(a))

Plaza Camino Real v. City et al, Superior Court Case No. 37-2008-00102065-CU-WM-NC]

No closed session held

4:00 PM – ROLL CALL

Mayor Wood reconvened the meeting at 4:02 PM. Present were Mayor Wood and Councilmembers Feller, Kern, Lowery and Sanchez. Also present were City Clerk Wayne, Records Manager Guthrie, City Manager Weiss, City Attorney Mullen, and City Treasurer Felien.

CLOSED SESSION REPORT

4. Closed Session report by City Attorney

CITY ATTORNEY MULLEN reported on the items discussed in closed session: (See Items 1 and 2; there was no discussion on Items 3A or 3B).

CONSENT CALENDAR ITEMS [Items 5-14]

The items listed on the Consent Calendar may be enacted by a single vote. There will be no separate discussion of any Consent Calendar items unless requested by members of the Council/HDB/CDC or the public through submittal of a Request to Speak form prior to the commencement of this agenda item.

The following Consent Calendar items were submitted for approval:

5. City Council/Harbor/CDC: Acceptance of Joint Minutes of the Small Craft Harbor District Board of Directors, Community Development Commission and City Council of the following meetings:
 - October 12, 2005, 4:00 p.m. Regular Meeting
 - February 3, 2009, 2:00 p.m. Adjourned Meeting
 - June 30, 2010, 3:00 p.m. Regular Meeting
 - July 6, 2010, 4:00 p.m. Regular Meeting
 - July 14, 2010, 3:00 p.m. Regular Meeting
6. City 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)
7. City Council: Approval of a purchase order in an amount not to exceed \$136,619 to Bellingham Marine Industries, Inc., of Bellingham, Washington, for replacement docks for the Transient Docks at the Oceanside Harbor, and authorization for the Financial Services Director, or designee, to execute the purchase order
8. City Council: Approval of Amendment 1 [**Document No. 10-D0627-1**] in the amount of \$125,000 to the Professional Services Agreement with California Office Maintenance of San Diego for Harbor and Beaches janitorial services, adding to the scope of work janitorial services for the Civic Center complex, and authorization for the City Manager to execute the amendment
9. City Council: Approval of a professional services agreement [**Document No. 10-D0628-1**] with Active Network of Burnaby, British Columbia, for the purchase and maintenance of a central cashing software and hardware system in an amount not to exceed \$215,000; approval of Amendment 4 [**Document No. 10-D0629-1**] in an amount not to exceed \$26,000 to the professional services agreement with CPSG of Irvine for Oracle integration and year-end services; approval to appropriate \$69,000 from the General Fund Unassigned Fund Balance to the Finance Department for fiscal year-end work; and authorization for the City Manager to execute the agreement and the amendment
10. **Removed from consent calendar for discussion – public request**
11. City Council: Adoption of **Resolution No. 10-R0631-1**, "...authorizing acceptance of the State of California, Office of Traffic Safety DUI Enforcement and Awareness Grant 2010", approving the grant budget; appropriating the funds to the Police Department; and authorizing the City Manager or designee to execute grant documents
12. City Council: Adoption of **Resolution No. 10-R0632-1**, "...establishing certain traffic controls within the City of Oceanside", establishing a five-minute loading zone on the east side of Cleveland Street between Mission Avenue and Seagaze Drive, adjacent to the Harney Sushi Restaurant
13. City Council: Adoption of **Resolution No. 10-R0633-1**, "...establishing all-way stop controls at the intersection of Laurel Street and San Diego Street"
14. City Council: Adoption of **Resolution No. 10-R0634-1**, "...establishing a stop control on Dunstan Street at Laurel Street"

COUNCILMEMBER SANCHEZ moved approval [of Consent Calendar Items 5-9 and 11-14].

COUNCILMEMBER KERN seconded the motion.

Motion was approved 5-0.

GENERAL ITEMS

15. **City Council: Approval of the Second Amended Agreement between the City of Oceanside and the Oceanside Community Service Television Corporation (KOCT), reducing the annual amount paid by the City to KOCT by \$110,000 to approximately \$734,203, pursuant to Council direction from both the June 2 and June 23, 2010, Council meetings; and authorization for the City Manager to execute the amended agreement**

MICHELLE SKAGGS LAWRENCE, Deputy City Manager, stated at the Council's direction from both the June 2nd and June 23rd meetings, staff has reduced the General Fund contribution to KOCT in the amount of \$110,000 and has subsequently negotiated the reduction in services as well. A summary of the reduction in services is in the staff report, as well as the Agreement. The General Fund contribution under this revised agreement is approximately \$377,000. KOCT also volunteered to hold 2 public meetings and they've asked staff to include that in the agreement, which has been done in Section 27.

Also included in Council's packet is a letter from KOCT requesting that staff look into 2 items. The first item is the potential acceleration of the disbursement of the Tech Grant, and the second is an inquiry into the potential abrogation of the Cox Franchise Agreement. Staff will look into both of those items; however, Council is not acting on either of those items this evening. We would have to come back to Council to receive policy direction. Staff recommends approval of the Second Amended Agreement.

Public input

DONNA MCGINTY, 2405 Mesa Drive, stated when it comes to money being spent loosely she is going to squawk. Council has a letter from Mr. Reeser that indicates that after all these years he is willing to do some fundraising and seek sponsorships for KOCT, which should have happened in the beginning. A lot of the money KOCT has received hasn't been to the benefit of the citizens who are paying that tab, either through Cox Cable or as taxpayers.

She objects to the \$300,000+ that is going to KOCT this year. We have a Back Gate crisis where children and police officers are being murdered. She thinks Council should put the money where it will do the most good. Our reputation stands on whether or not we can make the Back Gate a safe area, just like Crown Heights, etc.

RICHARD ROBERTSON, Vice President of Student Services at MiraCosta College, and a recently elected member of the KOCT Board of Directors, disagrees with the previous speaker. He believes that public television is critical to maintaining an informed and educated community. KOCT is devoted to presenting all aspects of major issues affecting the citizens in an unbiased view which is essential to the critical thinking process. The City should continue to financially support this partnership.

As a senior citizen many seniors are hesitant to attend meetings and forums because of having to drive after dark. KOCT brings into the homes of senior citizens important information that might not be available otherwise. He urged Council to maintain this partnership, which gives citizens unfiltered and unbiased information.

GWEN PRICE, 868 Muirfield Drive, Chairperson for the KOCT Board of Directors, is proud of the 25-year relationship between the City and KOCT. We are now

stepping out to more independence, which was encouraged by Council. As we move forward we will continue to offer creativity in programming, neutrality in politics, visibility and accountability of all things KOCT.

JIMMY KNOTT, 127 Sherri Lane, sits on the Telecommunications Committee. KOCT said they will hold 2 public meetings. The nature of these meeting was not disclosed, nor was public notification, as well as other details. If the public can be part of the process they can help out. With the potential abrogation of the Cox Franchise Agreement, he thinks everyone should read that agreement with respect to the potential effects on the City. KOCT could become North County's community/educational/government channel. This is a potential win-win situation for everyone.

MICHELLE DAVIS, 306 South Pacific Street, is a member of the KOCT Board of Directors. She echoed the sentiments of Richard and Gwen, who spoke previously. She wanted to emphasize the importance of the KOCT programming to the health and wellbeing of the residents, with a number of organizations that are served by KOCT. Every time KOCT broadcasts a documentary or fundraiser of these organizations, they are providing a community service to insure the health and wellbeing of Oceanside residents who might not otherwise know about those services. She thinks it's vital that the Council approve this contract.

Public input concluded

COUNCILMEMBER LOWERY asked if we are reducing the amount of money that was dedicated to KOCT.

MS. LAWRENCE responded yes. Pursuant to Council's actions on June 2nd and June 23rd, when the budget was adopted, there was a General Fund reduction of \$110,000 and that was what triggered the re-opener of the agreement and why staff is back before Council. This is a reduction of the General Fund amount and the commensurate service reduction.

CITY MANAGER WEISS stated the existing contract remains in place and he believes most of Council has gotten a letter from Mr. Reeser indicating some opportunities as we move forward. As those progress, that would probably result in additional amendments to the contract, but those will be dealt with after tonight. This is simply the reduction of funding of the \$110,000.

COUNCILMEMBER KERN moved approval of the Second Amended Agreement (**Document No. 10-D0635-1**) between the City of Oceanside and the Oceanside Community Service Television Corporation (KOCT), [and authorization for the City Manager to execute the amended agreement]. Hopefully, this will get them on a path to independence.

COUNCILMEMBER FELLER seconded the motion.

COUNCILMEMBER SANCHEZ understands that one of the programs that will be eliminated is high school basketball and football coverage. She is assuming that Oceanside Unified School District (OUSD) has been approached. What is the status of those discussions?

TOM REESER, Executive Director of KOCT, has contacted OUSD and let them know about the loss of those services and has asked to be put on one of their meetings to make a plea both to the Booster Club and OUSD to see if they would be willing to replace the funding to cover those games.

COUNCILMEMBER SANCHEZ voted for the cuts and still supports them. She is wondering about what was targeted for cutting out the \$110,000. There is a summary of the programs that have been identified, but there are no amounts that are

listed regarding the cuts being proposed. We're talking about eliminating Living Legacies, Journalist's Roundtable, Oceanside Spectrum, City special events, Voice of Oceanside, high school basketball and football coverage, Bulletin Boards, Climate TV programming, State of the City coverage and 4th of July Parade coverage.

She has some issues about which ones were targeted; for example, with Journalist's Roundtable there should have been discussions with the San Diego Union Tribune and North County Times to cover these specifically, since this is not really a City matter. Special events are probably City special events and KOCT is saying they are not going to cover our events, yet we're going to pay this amount of money. That is something we need in Oceanside to get the information out to people. We shouldn't be paying for other things that are not directly related to Oceanside programs or events. She is concerned we didn't do enough to get Journalist's Roundtable funded by the host journalists; she is not sure why we were paying for that. She would prefer to focus on the things that are relevant to Oceanside and she doesn't see that here. While she supports the cuts, she can't support the cuts that are being called out.

COUNCILMEMBER FELLER stated all of those cuts are listed on the memo in the back-up that was dated July 1, 2010, item-by-item. He would rather see Democracy Now eliminated from that programming than high school sports. He questioned the need for the Bulletin Board. Telecommunications has 4 meetings a year and they can accommodate any kind of public input because KOCT is always there, so there's adequate opportunity to pursue this cut. In the back-up it says they will be zero-funded in 2011, so it's up to them to figure out how to make this a new independent station that contracts to cover the services of Oceanside and others. This is a good start toward the goal Council set in the budget.

COUNCILMEMBER SANCHEZ added that regarding the public meetings, she believes there should be many more than 2. She would like to see if, before the time we provide the funding to KOCT, for every meeting being held there should be a meeting immediately afterwards to discuss what is happening with KOCT. That is where KOCT is going to get more funding, from the public they want to cover. There has been a disconnect with the public and she thinks that's why KOCT is at this place. There needs to be some level of public involvement in what is covered and if KOCT had that, they would know that Oceanside football would be the last thing they should cut.

COUNCILMEMBER LOWERY reviewed the cuts and it appears that they are all programs that are produced at KOCT, so none of these programs are ones they get from outside agencies.

MS. LAWRENCE replied that's correct.

COUNCILMEMBER FELLER asked Mr. Reeser how many games they have shot each year.

MR. REESER responded we are obligated to cover 3 football games each year and 3 basketball games. We usually cover 4 basketball games because we have to arrive early so we cover both boys' and girls' basketball, so 4 basketball and 3 football.

COUNCILMEMBER FELLER replied so that is only a portion of the games and that is the total for the District.

MR. REESER replied yes. Basketball and football are some of the most expensive sports for us to produce because we have to send a lot of staff to cover these.

COUNCILMEMBER FELLER asked how they determine whose game they are going to cover.

MR. REESER replied we always try to cover cross-town rivalry, i.e. El Camino

versus Oceanside. Then our volunteer hosts try to pick the next exciting games if they can.

COUNCILMEMBER FELLER reiterated they are not televising all games.

MR. REESER replied no.

COUNCILMEMBER LOWERY asked what the make-up is of the KOCT Board.

MR. REESER responded we can expand it up to 15. We currently have 13 members. We have a member that represents Oceanside, someone that represents the business community, someone that represents the educational community and then members at large.

COUNCILMEMBER LOWERY asked if the members at large are Oceanside residents.

MR. REESER replied they are all volunteers. If somebody is from another city but they work in Oceanside then they can be on the Board as well but we tend to get people who watch KOCT so they're almost always from Oceanside.

COUNCILMEMBER LOWERY asked how someone becomes a member of that Board.

MR. REESER responded the Board has a nominating process where we sit down and I go through what the requirements are as a volunteer, the fundraising obligations of being a KOCT Board member, the number of meeting they have to attend and all of the obligations. We want volunteers that are active and involved. Then that goes to the Executive Committee and then it goes to the full Board for voting.

COUNCILMEMBER LOWERY asked if currently on the Board are there voices that represent antagonistic voices or do they all work together all the time. He is concerned because he received emails from residents who want to know how residents get their input to the KOCT Board.

MR. REESER feels like we've always been highly responsive. People don't have to wait for a Board meeting once a month to give us a call or send an email with an idea. He would like people on the Board who support KOCT's mission. He thinks it would be divisive to have somebody who doesn't support their mission.

MAYOR WOOD stated Council is voting on this item for the \$110,000. He asked when the other items that were mentioned in the previous letters regarding expediting funds or fees, etc., will be addressed.

MS. LAWRENCE responded we don't have an idea at this point, but she would say within the next 6 months. We need to do some analysis.

MAYOR WOOD had a little bit of concern but he thinks it's up to staff and others with input to say where the cuts may or may not be. He agrees that the newspapers should get more involved if they wish to have Journalist's Roundtable. He has to rely on the Board and in particular our representative on the Board, Ms. Parker, as my contact.

Motion was approved 4 -1; Councilmember Sanchez – no.

MAYOR AND/OR COUNCILMEMBER ITEMS

16. **Request by Councilmember Sanchez to adopt a zero waste resolution for the City of Oceanside and to direct staff to return within six months with a plan for implementation; and direction to staff**

COUNCILMEMBER SANCHEZ stated this resolution before Council is for adoption of a zero waste policy as a goal, which is being done by many cities in the State. Staff is present to do a presentation. This policy is also being pushed by Waste Management. She attended the California Resource Recovery Association (CRRA) Conference with staff and met with Rosalie Mulé, who was with the State Integrated Waste Board and is now with Waste Management, to talk zero waste. She is hoping to do this tonight and include in our hauler contract a phrase having to do with zero waste as a policy for the City. This is something that will be in line with the State law, as well as the creation of more jobs.

COLLEEN FOSTER, Management Analyst, stated zero waste is a concept that can be established as a goal, aimed at eliminating waste and redefining the way we manage our resources. Rather than living in a throw-away society, Oceanside can take a leadership role in managing all of our resources, including solid waste, by supporting the development of products that would use fewer materials and could be easily reused and recycled back into nature.

Zero waste is a goal that nurtures the markets for recyclables, creates jobs and supports a sustainable community that is vital towards Oceanside economic and environmental longevity. If Oceanside wishes to continue to be a leader and move beyond our 59% diversion rate and remain in compliance with stricter environmental State mandates over the next decade, Oceanside needs to commit itself toward establishing zero waste strategic policies that move beyond the traditional down-stream recycling programs that seek to divert from disposal materials that have already been consumed and discarded.

By establishing a zero waste goal, Oceanside would join a growing global movement of local governments. Zero waste will help Oceanside achieve sustainability and a waste reduction goal and is needed to reverse growing local and regional health and financial liabilities from waste disposal, while being a key element of local economic and work force development. Staff recommends that the City act on its commitment to a green Oceanside by adopting a zero waste goal and developing a Resource Management Strategic Plan to achieve that goal.

CITY MANAGER WEISS highlighted that this is just a goal. It's similar to Mr. Kern's goal for being 50% water independent by 2030. Establishing a goal and giving staff direction toward implementing that goal will go a long way.

Public input

JIMMY KNOTT, 127 Sherri Lane, stated this would be addressing the two State laws, Assembly Bill (AB) 32 and Senate Bill 375, which we are required to meet. This would give us State credits for when we apply for certain State loans and projects.

Public input concluded

COUNCILMEMBER SANCHEZ moved to adopt [**Resolution No. 10-R0636-1**, "...adopting zero waste as a goal in order to eliminate waste and pollution in the manufacture, use, storage, and recycling of materials", with staff to report back within 6 months with a strategic plan].

COUNCILMEMBER FELLER seconded the motion. This can't completely be done curbside without some sort of recovery facility and it says 'appropriate facilities' in the resolution; assuming that somewhere along the line we have to control this. El Cajon has a facility that can probably do 75% right now. Getting to zero waste is definitely a philosophy that will cost money; it's not going to be cheap to do this and people will have to buy into it. It's a great goal. He asked where we are with regard to AB 939.

MS. FOSTER replied the last AB 939 State Report that we actually had a diversion rate was 59%. That was in 2006. Since that time the State has changed their actual measuring system and turned it into more of a waste reduction disposal rate rather than a diversion rate. Our target disposal rate for Oceanside is 6.3 pounds per person, per day, of trash. Our actual disposal rate is well below that, maintaining that 59%, at 4.2 pounds per person, per day. It may be an even higher diversion rate if we were to re-evaluate and do a percentage. We actually have a very high baseline to establish stricter goals and policies towards recycling and reuse.

COUNCILMEMBER FELLER asked where the economic incentives come from that are mentioned in the resolution.

MS. FOSTER responded by creating markets; by reusing and recycling more materials you are inherently going to create more markets and jobs. It's not just about recycling; zero waste is a strategic plan, which generally includes different policies and incentives to promote green construction and green business. There are a lot of different programs involved.

COUNCILMEMBER FELLER queried if incentives can be something that is in packaging or that type of thing. This is a huge project to move forward.

CITY MANAGER WEISS stated those are things we're going to have to look at as we develop the plan.

COUNCILMEMBER FELLER thinks most of this is going to be education. Bigger government is the last thing we need; we need to have people buying into this.

COUNCILMEMBER KERN hopes, as part of this, to get a full economic impact of what this means to the citizens; what it's going to cost per person; the impact to implement this program, etc. It's not spelled out in the report.

He was wondering 75% of what. It sounds like the State is changing how they do the scoring and it is fuzzy on what the standard is. What are we looking at? He'd like to see us get as close to 100% as possible.

MS. FOSTER responded the State Mandate AB 939 has not changed; our target is a 50% diversion rate. Our goal is to divert as much material out of the landfill as possible. It's not just about recycling, it's about reducing the amount of waste that you're creating; thinking before you buy a product at the store or what kind of packaging it has. It's somewhat of an educational change and a different approach towards recycling and reusing. We're still at 50% and we're still required to meet those diversion rates; it's just a new measurement system that is supposed to focus more on reduction of waste. We can still get computations from the State for diversion.

COUNCILMEMBER KERN stated we are at 4.2 pounds per person. Say we reduce that to 3.5 pounds, but of that we are only diverting 60%, so we're not meeting our goal but we've dropped a full pound. Are we just looking for the 75% diversion rate or are we looking to reduce the total waste per pound, per person.

MS. FOSTER responded it's essentially the same thing. It is a diversion rate but at the same time you can look at how much we're throwing away. Either you can look at it as how much we're not sending to the landfill or how much we're throwing away. It can be computed into a diversion rate.

COUNCILMEMBER KERN thinks we are close to 59% and a lot of that has to do with our green waste facility at El Corazon because it's by tonnage. We get a lot of benefit from having that. That's where we probably run up the numbers, versus regular household trash. He thinks it's a laudable goal, but everybody has to know how much it's going to cost them. We can get to 90% of this probably within a reasonable cost, but that last 10% will cost almost as much as the first 90%. At some point we are

going to have to say we can't put anymore into that because the cost versus benefit is just not there.

COUNCILMEMBER SANCHEZ stated we will be going to single-stream so that first part will be easy to attain. It is the last part that will be costly and we'll have to talk about how we get there. She is excited about going single-stream, but she also wants to end up having less at the landfill via other things beyond just recycling; that we also look at reuse and reduce. Pending legislation does say 75%.

Motion was approved 5-0.

CITY ATTORNEY ITEM

17. Review of the City of Oceanside's proposed response to the San Diego County Grand Jury's Recommendations regarding Medical Marijuana Dispensaries

CITY ATTORNEY MULLEN put in Council's packet a copy of the San Diego County Grand Jury's Advisory Report on the issue of medical marijuana. This was one of 3 reports they issued at about the same time. We've already responded to 2 of the 3 that were directed at the City Manager. This third item requires Council's approval of our response. The Grand Jury's report analyzed all of the issues pertaining to medical marijuana collectives and dispensaries in San Diego County. They made many findings and 17 recommendations. Only 3 of those recommendations pertain to the cities and the county that have pending moratoriums, including Oceanside.

The first of the 3 recommendations is that the City adopt cost-neutral programs for the licensing regulation and monitoring of medical marijuana collectives and a requirement to limit the number of such collectives. The second recommendation is for the City to adopt regulations which permit the closure of unlicensed collectives or cooperatives. The third is that once the ordinance is recommended the first 2 recommendations are adopted, then to rescind the pending moratoriums.

The proposed response is in front of Council in letter format to the Honorable Kevin Enright. Essentially what the City has stated in this response is that the second recommendation has already been implemented. We already have regulations in place that allow for the closure and prosecution of unlicensed dispensaries in the City. In fact, we have acted on that authority in the past.

With respect to the first recommendation, as you know the City is in a pending moratorium at this time. That moratorium runs until May of 2011. The legal landscape with regard to these types of facilities has not yet been flushed out. Most of the cities with moratoriums have been waiting for a decision in a case involving the City of Anaheim, where permanent bans on such dispensaries were being litigated. That decision did come out since he wrote this letter late last week. Unfortunately, the court dodged the key issues in the case and sent it back to the trial court for further considerations. The Anaheim case will probably be appealed to the California Supreme Court.

His recommendation at this time is, until we have a final decision in that matter and until Council has conducted further outreach with the public, the moratorium should continue to remain in effect and that's why the first recommendation is being rejected at this time.

The third recommendation calls on the City to rescind the moratorium once you've adopted a comprehensive regulatory scheme. For the reasons set forth for rejecting the first recommendation, he would recommend that Council also reject this one as well. He is looking for Council's authorization to send this letter tomorrow.

MAYOR WOOD questioned if this is for information only as listed on the agenda.

COUNCILMEMBER FELLER asked if the places at Eucalyptus and South Coast Highway and Kelly and South Coast Highway, one a pharmacy, and one saying it's nature's medicine, are being looked at as he believes they are out soliciting medical marijuana.

CITY ATTORNEY MULLEN can look into that. He noticed that the agenda says this is for information only, so he will change the nature of his request that if anyone has any issues with the manner in which he's drafted this response that they advise him now so he does not send it. Hearing no concerns, he guesses there are no issues.

COUNCILMEMBER SANCHEZ stated for the record that she supports City Attorney Mullen's response.

Public input

JIMMY KNOTT, 127 Sherri Lane, stated this is a legal medical drug that the citizens of the State voted in. There are prescribed ways that it should be handled as addressed by the State Attorney General. Some people have put it to a court decision but the Supreme Court has said it's up to the State. The cities and states that decided it is a medical drug and decided to tax it are now receiving bonus benefits. This is denying our City a source of revenue and denying people who may need this medication. He thinks we need to be more progressive.

CITY MANAGER WEISS noted that, with respect to City Council Reports, on the agenda it still shows Council's prior commissions. Council's approval last week of the changes came after this agenda was printed so they will be updated and reflected as of the next agenda.

CITY COUNCIL REPORTS

18. **Mayor Jim Wood**

MAYOR WOOD announced that Captain Forrest Faison was promoted to Admiral in charge of Medical West – all of the west coast out to Asia, stationed in San Diego. Our former Fire Chief, Terry Garrison, is now Fire Chief of Houston, Texas.

Sometimes the public doesn't hear about things until the last minute. The Metropolitan Water District (MWD) indicated that this January they want to do a rate increase for water and sewer and another one in July of 2011. He wants to give the public advance notice that there will be meetings coming up in the future for their input. He thinks it amazing, in this economy with people having a tough time, that MWD could have rate increases like this. He asked staff to explain.

CARI DALE, Water Utilities Director, stated a workshop is going to be held next Tuesday, August 31, 2010, at 4:00 PM. We will be talking about water rate increases as well as sewer rate increases. In one action, we will be asking Council in November to consider a rate increase for water and sewer, effective in January, as well as water and sewer increases that will be effective in July.

Regarding MWD increases, there have been several double-digit increases in the past as follows:

- January 1, 2009, MWD increase on water of 14% overall. Those costs are passed through to the San Diego County Water Authority (SDCWA) and resulted in an 11.9% overall rate increase. In that year Oceanside passed a 5% water rate increase.
- Also in 2009 they accelerated the rate increase to September 1st; typically they are passed through in January. That was approximately 20%, which for the SDCWA meant a pass through of 18.1% untreated water,

- resulting in an Oceanside rate increase of approximately 6%.
- In January of 2011, MWD is proposing a 7.5% overall rate increase, which consists of an 8.5% treated water rate increase and a 6.1% untreated water increase. Additionally, the rate is made up of several different components and the biggest cost increase is on the transportation rate, which is going up 18%. SDCWA is passing through a 12.5% increase. Oceanside is asking in January for a 7.4% increase in water and a 9% in waste water. Then in July a 7.8% increase in water and 9% in waste water.

We will have lots of details and background on those pass throughs, as well as what those cost components will cover.

MAYOR WOOD stated if he's not mistaken that's a 32% rate increase for two of those by July of next year. He wants everyone to know that it's coming from MWD and SDCWA to Oceanside as a pass through. The SDCWA is trying to address these cost increases.

He also announced that youth soccer started last weekend; the spaghetti dinner fundraiser at the Oceanside Senior Center is on Friday; and also on Friday is the Women's Resource Center fundraiser.

19. **Councilmember Jack Feller**

COUNCILMEMBER FELLER announced that Knobby Tyler passed away. He attended Lydia Bustos' memorial on Saturday. Mission Vista High School's open house is Saturday; the Rotary Crab & Rib Fest is on September 10th at Mission San Luis Rey; Ivey Ranch has their Hoe-Down on September 11th.

20. **Councilmember Jerome Kern**

COUNCILMEMBER KERN announced that he attended a Town Hall meeting on Friday night with Congressman Darryl Issa and the President of the Aircraft Owner's and Pilot's Association at the airport; and last Monday, as educational liaison, he met with Dr. Francisco Rodriguez, Superintendent Larry Perondi and members of their Board for an update on their upcoming year.

21. **Councilmember Esther Sanchez**

COUNCILMEMBER SANCHEZ attended the Integrated Waste Commission meeting last night but there was not a quorum. She met with staff regarding the Interstate 5 widening and information to the public to get public comments.

22. **Councilmember Charles Lowery**

COUNCILMEMBER LOWERY took a tour of his alma mater MiraCosta College this week.

[Recess was held from 5:15 to 5:30 PM]

Mayor Wood reconvened the meeting at 5:35 PM with all Councilmembers present. Also present were City Clerk Wayne, City Manager Weiss, City Attorney Mullen and City Clerk Records Manager Guthrie.

5:30 P.M. – INVOCATION – Pastor Carl Sousa

PLEDGE OF ALLEGIANCE – team members

PROCLAMATIONS AND PRESENTATIONS

Presentation – Accreditation Update for MiraCosta College by Dr. Francisco Rodriguez – update given and received reaffirmation of accreditation.

Proclamation – Constitution Week, September 17-23, 2010

Presentation – Mayor’s Youth Sports Recognition and Appreciation Award – Oceanside Valley Little League Girls’ Softball

Presentations were made

Items removed from Consent Calendar for discussion – public request

10. **City Council: Approval of a professional services agreement with Affinis Environmental Services of El Cajon in an amount not to exceed \$68,600 for archeological investigation services for the Haymar Sewer Segment Replacement project, and authorization for the City Manager to execute the agreement**

Public input

DIANE NYGAARD, 5020 Nighthawk Way, representing Preserve Calavera, stated we care about what happens in the Buena Vista Creek valley and several hundred of them raised thousands of dollars to leverage \$8,000,000 so we could buy half of that valley and permanently keep it open space. We have logged over 1,400 volunteer hours restoring that valley.

Everyone agrees that sewer lines don’t belong in creeks. They don’t belong anywhere that they can fail and contaminate our creeks. Unfortunately, that valley has 3 sewer lines running in the creek; two have been abandoned and one is still in existence and is in trouble. Of course it needs to be repaired; it’s a 49-year-old sewer line. We would like it done once and done right. The right way to do it is to move it up into the right-of-way along Highway 78, with the existing Carlsbad/Vista sewer line to have a single line in the right place where there is no danger of contaminating the creek. It saves money to do it once instead of doing a short-term fix now and going back to do the right fix later. We would encourage Council to put this on hold. Council is coming back next month with a major sewer plan.

SHELLEY HAYES CARON, Marron Adobe, stated as of the year 2000 the standing adobe, the melted adobe and the archeological sites that are in this project purview are a historic district called The Marron-Hayes Adobes Historic District. This project is within that district. She is opposed to the Negative Declaration (MND) that’s being proposed for this. She thinks doing this project once and doing it right is more important. If you move this line for this interim period, you are proposing to move it 50’ out of the creek. At high water level and in rainy years that road is under water also. More significant is there are cultural resources there. These archeological sites don’t deserve to be disturbed. If you’re going to abandon this within a short period of time to do a permanent sewer line, it doesn’t need to be done at this time. She opposes an interim project as opposed to a permanent project.

Public input concluded

COUNCILMEMBER SANCHEZ moved that we continue this item to be incorporated with the larger fix, which would anticipate that this would not be within the creek area and that it would be within the right-of-way where most of these lines are.

MAYOR WOOD seconded the motion.

COUNCILMEMBER LOWERY asked if there is work scheduled to be done in this area that this is associated with or are we just delaying something.

GREG BLAKELY, Water Utilities Division Manager, stated the long-term relocation is a \$15,000,000 project. This agenda item project is specifically to do an archeological review for the replacement of a 400' section of line that is openly exposed within a creek and is in danger of coming apart. We could lose up to 3,000,000 gallons or more of sewage before we could stop the flow. We've been trying to work on this for 5 years and this is approximately a \$400,000 job. What we're here for today is to do an archeological resource investigation. Affinis is a company we have negotiated with after sending out a Request for Proposal (RFP) to do an archeological investigation along that 400' section to move the line out of the creek. This is essentially an emergency without stating that.

COUNCILMEMBER LOWERY said it sounds like a repair of an urgent situation; it's not the same as saying we want to combine this with a \$15,000,000 project that is some years in the future.

MR. BLAKELY replied no, this is simply a band aid to get the line out of the creek so that during a heavy rain or kids walking across it, it doesn't knock it apart.

COUNCILMEMBER LOWERY saw a picture of it the other day and there is already damage to that pipe as it is.

MR. BLAKELY stated there is no support on that pipe; it's floating.

COUNCILMEMBER LOWERY asked if this \$68,600 is part of a \$400,000 repair.

MR. BLAKELY replied no, we have to do an archeological review for artifacts in advance. The actual construction is \$400,000. We can't come back to Council until this report is done and we don't anticipate that for another year. We also have to acquire easements and permission from California Fish and Game.

COUNCILMEMBER LOWERY stated it sounds like this is actually an emergency situation.

MANAGER BLAKELY replied yes it is.

MAYOR WOOD asked Director Dale if she had the pictures of the pipe with her.

DIRECTOR DALE does not have them with her but she will next Tuesday at the 4:00 meeting. She's been out to the site and there are 2 pieces of pipe that are exposed in the creek bed. They've been undermined by the creek so they are not supported by any sort of solid material. There are joints in the pipe that are susceptible to sagging without any support and with sagging we could get breaks. It is in the creek bed and our intent is to preserve the cultural resources there by doing this investigation that is in front of Council.

COUNCILMEMBER LOWERY asked if the pipe breaks, what would be the impact as far as costs. Would there be fines the City would have to pay for not repairing this pipe?

DIRECTOR DALE responded there would be fines associated with any spill of sewage into a water body. An associated/similar spill had occurred in the lagoon a few years ago and was fined \$1,100,000, and that was a small spill.

COUNCILMEMBER LOWERY asked if this could be on that level.

DIRECTOR DALE responded in her opinion, yes.

COUNCILMEMBER KERN stated this is not an emergency now but it will be if we don't do anything. This has been an ongoing thing. The MND was done in 2008 to start this project and this is one of the requirements we must go through in order to

replace it. It could be an emergency tomorrow morning because he's seen the pictures and has been out there. If we don't do something quickly, it may become something out of hand. The fine was \$10.00 for every gallon that was spilled. The carrying capacity of this is like 3,000,000 gallons a day. It could be potentially devastating. We should move forward with this as quickly as possible. Send the crew out to do the studies and get that pipe replaced. If we can even find \$15,000,000 in the Sewer Fund to replace it, he thinks we should but right now we had to borrow money out of the Sewer Fund to replace the land outfall on Oceanside Boulevard. It's going to be a while before we can replace it, so we should get a good pipe in there as quickly as possible.

In response to **COUNCILMEMBER FELLER's** questions, **MR. BLAKELY** responded this pipe is actually directly below Ms. Caron's adobe. The Quarry would be south and east of this pipe. The Quarry is not affecting this pipeline.

CITY MANAGER WEISS stated this action is only to do the archeological survey. It is not to replace the pipe.

COUNCILMEMBER SANCHEZ stated this is not an emergency; it would take a year to happen and even then there would still be a plan to come to Council. This should be a 100' buffer in the first place and you are saying within 50'. That's not even in compliance with the 100' buffer. She doesn't believe this is a good enough plan for an interim project. She can't see wasting \$68,600 on a potential project that wouldn't even happen. We are counting pennies and here we are talking about a plan that even the Wildlife agencies probably wouldn't agree to. She can't support this now. Also there is not included in this a requirement that whatever excavation is done be monitored by the Luiseño Band of Mission Indians.

MAYOR WOOD seconded this motion but has concerns. He saw the pictures of the pipe hanging out across this open creek. He was concerned about it and knows it needs to be addressed. Our whole sewer system needs to be addressed and he knows we don't have a reserve fund for that. Along that same line, he doesn't want a break that would cost millions of dollars like Carlsbad and Vista had. He would like to see it moved and fixed; however, you'd have to have a study done to do any of that. The study is going to say what we should and shouldn't do with that and we can't do it one way or the other without the study, is that correct?

MR. BLAKELY responded that's correct.

MAYOR WOOD is concerned about a break the way it hangs freely across the creek like it does. It is a potential danger. He's concerned about doing nothing and having no funds to do the big project right now. He asked if this is something that can wait.

DIRECTOR DALE has had some discussions with Vista to move some of the sewage over into their line on a temporary basis. That temporary basis is not long enough for us to get it designed and put up near Highway 78. That's an option, but it's not a long-term fix and it's something that Vista has a say in. They are going to be deciding on whether or not they're going to have additional flows in their line, which would not allow us to put our sewage in there either. She doesn't have a long-term answer on that.

COUNCILMEMBER SANCHEZ thinks this should be continued so perhaps some of these questions can be answered. This doesn't seem ready and there are a lot more questions that need to have an answer. This may not be the only route.

MAYOR WOOD agreed. He'd like to see this come back to Council after some time to study it.

COUNCILMEMBER SANCHEZ withdrew her motion. She moved to continue this item.

MAYOR WOOD concurred and **seconded** the new motion.

COUNCILMEMBER LOWERY asked when that would be continued to.

MR. BLAKELY responded we could come back next month. We have a window of opportunity, between September and March, where the birds are not nesting and that's when the archeological would have to be accomplished; otherwise we'd have to wait another year just to do the study.

COUNCILMEMBER KERN doesn't think we should continue this. All we're doing tonight is okaying an archeological study. We're going to miss a window and have to go back another year, which is another year we have a time bomb sitting in that creek. After seeing the pictures he's surprised it hasn't broken yet. We should move forward as quickly as possible with the archeological study. For right now the best way to protect that creek is to put in a reliable pipe.

Motion to continue approved 3-2; Councilmembers Feller and Kern – no.

[Recess was called from 6:29 to 6:36 PM]

6:00 P.M. – PUBLIC HEARING ITEMS

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

24. City Council: Approval to appropriate \$350,000 of HOME funds to Interfaith Community Services to acquire and rehabilitate housing units within the Crown Heights/Eastside Neighborhood Revitalization Strategy Area; and approval of a Memorandum of Understanding (MOU) with Interfaith Community Services for the use of the funds

- A) Mayor opens public hearing – hearing was opened.
- B) Mayor requests disclosure of Councilmember and constituent contacts and correspondence – Mayor Wood and Councilmembers reported contact with staff. Councilmember Kern reported no contact.
- C) City Clerk presents correspondence and/or petitions – none.
- D) Testimony, beginning with:

DAVID MANLEY, Neighborhood Services Division Manager, stated this will allow Interfaith to move ahead with looking at properties to bring back at a future date, which will go to the Housing Commission and also to Council for approval. These HOME funds can only be used for affordable housing opportunities within the City. There is no General Fund use for this or any other affordable housing opportunities. The Housing Commission reviewed this at their last meeting and recommended appropriation of the funding and that Council approves the MOU with Interfaith Community Services.

Public input

JOAN BROWN, 511 Rockledge, asked with all these millions of dollars that come through grants to our City for housing and recovery of America, if it could be posted what houses have been chosen and how they do this. She'd like to see some major things happening in these two neighborhoods.

JOAN BOCKMAN, 1017 Alberta Avenue, agreed with everything Ms. Brown just said and would like to ask Council to please look at policies that are contributing to the loss of landscaping in our neighborhoods. We are losing large trees at the rate of one every 6 months. They are not being replaced because of policies having to do with sidewalks and right-of-ways and where the pipes are. We need tree-lined streets and not small trees. It would extend this money and make all neighborhoods look better with more landscaping.

Public input concluded

Mayor Wood closed the public hearing.

COUNCILMEMBER FELLER asked how this loan works.

MR. MANLEY responded it is similar to other affordable housing projects, we get a proforma back from the developer. Usually this money is used in connection with leverage of other funds. We give a loan to a non-profit organization or developer and we have a Promissory Note and Regulatory Agreement for them to pay back the loan over a certain period of time.

COUNCILMEMBER FELLER asked if that comes back to the City.

MR. MANLEY responded any money that is recouped would go back to the affordable housing funds.

COUNCILMEMBER SANCHEZ asked staff to address the question of how these properties were decided.

MR. MANLEY responded this action doesn't identify specific properties; it just shows the two areas within the Crown Heights Neighborhood Strategy Area. It was a priority to look at opportunities within those areas. Once the properties are identified, they will bring it back to Council and if it makes sense, Council will approve it.

COUNCILMEMBER SANCHEZ stated it's difficult to talk about specific properties because things do change. There has been a long-term plan for Crown Heights and it is difficult to not have all of the funds all at once to actually accomplish that plan, so she believes this is a good thing to do for the community as we get the funds.

She **moved approval** to appropriate \$350,000 of HOME funds to Interfaith Community Services to acquire and rehabilitate housing units within the Crown Heights/Eastside Neighborhood Revitalization Strategy Area; and approval of a Memorandum of Understanding (MOU) [**Document No. 10-D0637-1**] with Interfaith Community Services for the use of the funds and authorize the City Manager to execute the MOU.

MAYOR WOOD seconded the motion.

Motion was approved 5-0.

Mayor Wood determined to hear Item 27 at this time.

27. **City Council: Consideration of an appeal of the Planning Commission denial of Vesting Tentative Map (T-1-09), and Regular Coastal Permit (RC-5-09) for a 348-lot residential subdivision of an existing mobile home park on an approximately 44-acre site located at 1225 Oceanside Boulevard – Applicant/Appellant: Cavalier Mobile Estates, LLC**

- A) Mayor opens public hearing – hearing was opened.
- B) Mayor requests disclosure of Councilmember and constituent contacts and correspondence – Mayor and Councilmembers reported on constituent contact.
- C) City Clerk presents correspondence and/or petitions – correspondence received from applicant.
- D) Testimony, beginning with:

JERRY HITTLEMAN, City Planner, (using computer slides) stated the subject site for this mobile home park conversion to a subdivision is located just west of

Interstate 5 (I-5) and just south of Oceanside Boulevard and is bisected by Loma Alta Creek. Computer graphics showed an overview of the site.

As background, on July 9, 1969, there was an approval for this mobile home park for 35 years that expired in 2004. In 1982 the City adopted a Manufactured Home Fair Practices Act & Commission and in 2009 this Commission denied a request for a rent increase at the Cavalier Mobile Estates that is the subject of this Tentative Map. Various appeals were denied and a lawsuit is pending on that rent increase. In September of 2009 the Cavalier owners filed a Subdivision Application with the City which was processed and in May, 2010 the Planning Commission denied their request by a 7-0 vote. It was appealed and is now at Council.

The request is for a Tentative Map for a 44-acre mobile home park to develop 347 individual fee lots and 1 letter lot for their common areas. They have a rec building and Loma Alta Creek would be also on a common lot. The section of the Subdivision Map Act that would apply to this is Section 66427.5, which requires the filing of a Tenant Impact Report, which the applicant has done. The report states that there is no impact because they will make purchase offers to current residents. However, we found that the survey and Tenant Impact Report did not contain any estimate for the cost of the purchase of the lots, did not address flood hazard zones and federal insurance requirements that would probably be placed on lots if they were to be purchased and it did not address financing options and how the flood hazard zone may affect the ability for the owners to get mortgages, which is a key point.

The Tenant Impact Report states that conducting a survey is sufficient and no actual support is necessary from the residents. We don't agree with that; only 5% of the residents stated support for the conversion. Those that expressed an interest in purchasing all required financing or requested some type of government assistance. On the survey form there was a box none of them had checked that they could purchase their homes with cash, so they would all have to get some kind of mortgage or mortgage insurance. This indicates that the conversion was not tenant initiated because of the low favorable outcome.

The timing of the application filing, combined with the failure to address the flood hazard zone conditions, could make the new legal lots prohibitively expensive to buy and own, combined with a lack of resident support, shows that this application is not a bona fide conversion, but rather an attempt to avoid rent control. As a matter of fact, if this conversion were to go through, they can raise the rents over a 4-year period to the market-based rents and thereby get out from under the City's Rent Control Ordinance.

Regarding the Regular Coastal Permit, the project falls within the Coastal jurisdiction, which is about 89 lots or 25% of the project sites, so if this were to be approved, this could be appealed to the Coastal Commission and our Local Coastal Program (LCP) does apply to certain areas. In addition, about 40% of the mobile home park is actually in the floodway. Loma Alta Creek bisects the site and during a 100-year flood event, we'd see a floodway going through the whole site. It is a serious hazard. He showed lighter shaded areas that are within the 100-foot flood plain. With LCP, local agencies are required to control risks in areas subject to geologic, flood or fire hazard. In this case, we have a serious flood hazard, according to our LCP. The LCP states that the City shall seek to minimize risks to life and property in areas of high geologic or flood hazard. The conclusion is the creation of legal lots in the 100-year flood areas is not in conformance with our LCP.

The action before Council tonight is exempt from California Environmental Quality Act (CEQA) only because we are recommending denial. If the project were to come through, or Council felt it should be approved, we'd have to come through with a different type of CEQA document, probably on the range of a Mitigated Negative Declaration (MND) or Environmental Impact Report (EIR). Because we are calling for quick approval, we came through with a statutory exemption for a denial.

In conclusion, the project is inconsistent with the Subdivision Map Act as we don't feel it's a bona fide conversion. It is inconsistent with the LCP because the FEMA flood hazard that goes right through the center of the site affects at least 40% of the residents. 95% of the residents are not in favor of this conversion, per the applicant's survey. The application we feel is designed to circumvent the City's Rent Control Ordinance.

Staff recommends Council support the decision by the Planning Commission to deny the appeal and deny the Tentative Map and Regular Coastal Permit.

Applicant

MARK ALPERT, Applicant's Representative, stated a mobile home park conversion is a change in ownership, not a change in use. Essentially, we are taking a 347-space mobile home park, which is owned by an entity of multiple (over 40) families, and changing the ownership so that the individual residents who occupy the lots become owners. Nothing about the operation of the mobile home park will change; it's still a mobile home park and still operates according to the same State laws. There is no change in the rules that apply for placing homes in the park, for example.

There was a lot of discussion by staff about floods and flood issues. The process that occurs right now for placing a home in a mobile home park in a flood zone is a building permit that goes through City staff. The building permit is approved without regard to any flood mitigation requirements. That process will be just the same before and after the subdivision approval. This is not a request to place homes in a flood zone or to construct or build anything in a flood zone. Flood and mitigation requirements don't apply.

This is just the beginning of a process. One of the comments of City staff was that our report on the conversion didn't discuss lot prices. That's because the California Department of Real Estate (DRE) governs and limits the ability of property owners to provide an option or list price. The *El Dorado* case, which came out of the Fourth District Court of Appeal, reversed an effort by a local government to deny a subdivision based on the fact that the lot prices weren't listed. Before any lots are sold, each resident will be given the opportunity to have a full report that describes the state of the infrastructure, kinds of money that would be necessary, an impound account that would be necessary to do all necessary repairs, the price that the lots will be sold at and the DRE will review all of those disclosures to make sure there is adequate protection to the consumer.

Conversion means that current residents will have the option to purchase. Nobody in the park is required to purchase a lot. Everyone that is in the park right now can continue renting for the rest of their lives. While staff mentioned that rents can go to fair market over a period of 4 years and that 4-year period starts from the sale of the first lot, staff forgot to mention that market rate only applies to folks who are moderate income and above. Those folks who are below moderate income levels have permanent rent protection. Their rents cannot go up any higher than they are currently going up for the rest of their lives while they choose to stay in this home. No one will be forced to leave the park for economic reasons because of this subdivision.

Some advantages to conversion: ownership means the residents run the park; they get to control their own destiny. They make the rules, choose the management company, decide what repairs need to be done and set the Home Owners Association (HOA) fees. Ownership means they get equity. Instead of owning a piece of personal property that depreciates, they own real property. It's easier to get a loan for real property than for personal property. Loans for mobile homes cost more and are on shorter terms. The only impact subdivision would have on financing for those who wish to buy is it will improve their financing situation. Ownership also means tax benefits and the cost of housing is fixed. The uncertainty of rising rents is eliminated.

Advantages for the City's standpoint: Council should consider this conversion because it benefits the residents, in our view. We believe that conversion is better for a community. Ownership builds better communities. From an economic standpoint, conversion increases the City's property tax bases. One of the most important things ownership/conversion would do is end costly disputes over rent control. It avoids or minimizes the risk of a takings claim. He referenced the *Guggenheim* case. This property was bought before rent control was in place. In fact, it was originally approved as a traditional subdivision.

This is not about concerns over floods or an application to place property in a flood zone. The process of residents placing homes in the park will be exactly the same. It's not about protecting low-income residents because low-income protection is there. It's not about a change in use or density or intensity of use. Many of the arguments as to whether Council can impose any other requirements on this application are based on the assumption that Council can require a Coastal Permit. A Coastal Permit cannot be required here because there is no development. Nothing is being built and there is no change in the density or intensity of use. Additional lots are being created but that doesn't change the density of the use. It's still 347 mobile home lots. The same rules apply to how many people can live in the homes, how many homes, the size of the homes, etc. before and after the conversion. This is not about ownership opposition. He would like to ask all of the residents who oppose subdivision/conversion if they knew they could buy lots and become owners at a price that they thought was fair and if the City could use affordable housing funds to help them do that, would they have a different opinion? He thinks the answer is yes.

Council's role is strictly limited in this case by Government Code 66427.5(e). Council can only consider compliance with that Code Section. For that reason, the flood issues can't be considered whatsoever, even if they were relevant and they're not. The *Sequoia* case in 2009 says that localities are allowed little scope to improvise or deviate from the legislature's script. Council doesn't have discretion in this situation; your role is limited to considering compliance with Government Code Section 66427.5. The staff report didn't identify any non-compliance with that Government Code Section.

On the flood zone issue, the flood mitigation requirements cannot be required for multiple reasons. It's beyond the scope of Government Code Section 66427.5. There is no development so Council can't require a Coastal Permit. Flood mitigation requirements are only imposed under Federal law for construction or development in a flood zone. If this project were approved, it would still be CEQA exempt. Practically every city where he has worked on these subdivisions, staff has agreed it's exempt from CEQA. There are several CEQA exemptions. One of them is for existing facilities. The notion that CEQA would apply and there would be a requirement for a MND or an EIR is ridiculous. There's no impact or change in operation of this park.

Staff raised the question as to whether this is a bona fide conversion. The position of staff and the Planning Commission is fundamentally mistaken about what is a sham conversion. The court in *El Dorado Palm Springs* addressed that issue. A sham conversion is a conversion designed to avoid rent control with no real intent to sell lots to the residents. The situation that staff is trying to address is when a park owner (like in Ventura County) subdivides the park but then doesn't actually start selling any lots or perhaps sells one lot and then continues to operate as a rental park - that is a sham conversion. A situation where a park owner wishes to get out of rent control and stop operating a mobile home rental park is not a sham conversion. The Assembly Bill that was adopted when Government Code Section 66427.5 was passed addresses this issue. A quote of that states that it is foreseeable that the results of this survey could be used to argue to a court that the conversion is a sham. It's not for Councilmembers to divine whether or not the owners of this park are engaged in a sham conversion. It's decided in court after the fact. The second thing the Assembly Bills states is the law is not intended to allow park residents to block a request to subdivide. The fact that residents do not support a subdivision is not a reason to deny it.

Regarding what the courts have said, staff suggested, in looking at all of the evidence or history, that this is a subdivision that was initiated by the park owner as opposed to the tenants. The *El Dorado* case rejected that proposition as a basis for denying a conversion. Quoting from *El Dorado* the legislative intent to encourage conversion of mobile home parks to resident ownership would not be served by a requirement that a conversion can only be made with resident consent; directly rejecting the central tenet of the staff report in terms of concluding this is a sham conversion. *Sequoia*, in 2009, confirms that same point. It also refers to the notion that there be no minimum amount of tenant support that can be required as part of a conversion.

In an unpublished case in 2010 out of the Fourth District Court of Appeals, the Palm Springs case, local government's role under Government Code Section 66427.5 is limited to determining compliance with that Section, which did not give the local government authority to determine whether the conversion is bona fide. This is the Court of Appeal where San Diego County appeals cases are heard.

In the real world, subdivisions have been repeatedly approved, despite the fact that residents have opposed it. He listed 6 cities that have had subdivisions approved, despite the absence of resident support, including twice in Palm Springs, who also got a \$1,000,000 damages claim for wrongfully denying the subdivision.

This is a bona fide conversion. The park owner intends to sell all of the lots over time. Many of the residents in the park would like to buy at the right price. Of those residents who did respond, 13% said they supported it. The 5% figure that was quoted by staff is based on the fact that a whole bunch of residents didn't respond at all. The decision to stop operating a rent control park does not make this a sham conversion. It is a fundamental property right. The park owners own the property and decide whether they want to change the use or stop renting to residents. That's the park owners' rights; not the residents. The U.S. Supreme Court agrees: the *Yee v. Escondido* case states that the right to stop renting to people is a fundamental stick in the bundle of rights that you have under the Fifth Amendment and comes with ownership. In another case he is working on in Federal District Court, a court applying the *Yee* case said that a clear import of that decision is that a takings claim may be based on a regulation that compel(s) the landlord over objection to rent his property or to refrain in perpetuity from terminating a tenancy. The park owner has the right to stop operating a rental mobile home park. The residents can't have a veto of that right.

The Planning Commission decision must be reversed. It did not comply with the law and is based on inaccurate information. There is no substantial evidence to support the finding. He knows it's easy for Councilmembers to deny this conversion based on the citizens in the audience who are a voting block and want this denied. That doesn't make it the right decision. There are 2 scenarios if Council denies this conversion. Scenario one is the City ends up spending/wasting a lot of money defending a lawsuit and loses and the park gets converted – which is likely the result. Scenario two is if the City wins it sets up an incredibly strong takings case under the *Yee* action. We already have a federal takings case pending against the City. The damage claim requested in that case is \$30,000,000, which is based on an estimate of how much property value has been confiscated from this park owner. Approving a subdivision in this case is the hard decision but it's the right decision.

COUNCILMEMBER LOWERY asked about the protocol tonight with a person in the front of the room.

CITY ATTORNEY MULLEN responded this is a court reporter. The park owner has two pending lawsuits unrelated to the subdivision map already pending against the City. He referred to one of them seeking damages of \$30,000,000. This is the applicant's court reporter that they've hired to take a record of these proceedings. We already have a record of these proceedings maintained by the City Clerk.

Public input

REX MARTIN, 306 Benevente Drive, is a candidate for Council this November. He urged Council to support the Planning Commission's denial of this request. One issue we need to focus on is the flood plain issue. It's there and no one will be able to afford to buy flood plain insurance. Another issue is this is clearly a way to avoid our Rent Control Ordinance. This is not the way to circumvent it. He quoted Mr. Alpert as saying that at some point all the spaces would have to be sold; all of them. Mr. Martin urged support of Planning Commission's denial. He will never support anything that puts our seniors, our veterans and our low-income people out on the street.

JOAN BOCKMAN, 1017 Alberta Avenue, lives on the hill directly above this. She requests Council deny this application and support the Planning Commission action. This is a bad idea for everyone except the owner. There were statements made by the attorney that were blatantly untrue. The taxpayers have spent a lot of money to control the flooding in Loma Alta Creek. Right now that creek is a ditch and even with improvements, it still is not improving. We want change and development, that was why we did the flood control. The argument at the time is that at some point this would in fact develop.

If we are to make tiny lots, these are a burden to the homeowner. These tiny lots have been a problem anywhere east of 101 and it has been shown repeatedly that small-lot developments of this size are not successful and this is a prescription for a slum. Lawyers should not have us create a slum in our area. It will not increase value.

Even if the flood issue is resolved, this is still bad planning to have the tiny lots with all of these owners and no hope ever of redevelopment. The taxpayers spent their money so there was a promise to the taxpayers and that promise would be denied. This area will eventually redevelop hopefully and all of these people will have better homes through that process it would be to a better, higher use and the creek would be restored. She urged Council to vote against this proposal.

NADINE SCOTT, 550 Hoover Street, is a supporter of rent control and our mobile home residents. For the record, this facility has a lot of Spanish-only speakers and the survey was not submitted in Spanish. She asked if it was actual legal misrepresentation by omitting critical facts in the Impact Report. They did not say that 40% of the homes are affected by the FEMA floodway. She has familiarity with the floodway issues. You can't get insurance, you can't build anything in and you can't even repair your carport, so 40% of the people that live in that floodway won't be able to buy their homes with a mortgage and nobody is going to finance them, so they've lost all value of their homes that they want to buy. She thinks its misrepresentation because the applicant is aware of this and failed to include it in the Impact Report. Not one person would have agreed to purchase a home there if they knew they could not get insurance, build or remodel.

The flooding capacity there is for 10 years only. No responsible mortgage lender would loan a penny and, essentially, 139 people will lose their homes.

The homeowners at the Rancho Carlsbad conversion said they were going to pay into a fund to acquire the necessary flood protection. That never happened; their money fell far short of what was required. That area continued to flood, it was resident owned, and the taxpayers picked up the tab. That would not be anything this Council should engender on her behalf. There are plenty of reasons to turn this down and she urged Council to go with staff recommendations.

JIMMY KNOTT, 127 Sherri Lane, is a Director of Oceanside Manufactured Home Alliance (OMHA) and lives in the park next door. For history, the park owner, after not getting his rent increase said that if he didn't get it, he was going to get back at the City and the park residents. If he was really sincere about this, he would have sought out a non-profit buyer for the park. There is a game where park owners sell the lots to the

residents and when the residents can't make their payments, the park owner gets it back and re-sells it.

He quoted from their attorney who said litigation is a strategy that works especially when cities are strapped for money. They can't afford to protect the small group's interest and bust the budget. This is their attorney's game plan.

FRANK MERRIFIELD, 200 North El Camino Real, (with OMHA) stated that their attorney mentioned it would be good for the manufactured home owners there that they could choose what to do with their park and how to administrate it, etc. He believes that the 10% that supported this are already part owners of the park. Their attorney stated that rent control was not an issue; however, our Ordinance states that if a park owner sells his property, it is no longer under rent control. When a person my age passes away and leaves his mobile to his relatives, the rent would increase considerably because in 3 or 4 years that rent would go to market value. Market value at this particular time is \$1,000 to \$1,400 per month for 2 and 3 bedroom homes. There is a lot of discrepancy in what their attorney has presented.

BOB LENNON, 253 Blue Springs Lane, lives in Cavalier and is President of the HOA. Mr. Alpert's statement that a lot of the residents in the park want to buy their lots is not accurate. The survey makes that very clear. The applicant contends that all residents have to do is check the boxes and if all the boxes are checked Council has to say yes to the subdivision and rent control will be eliminated.

There was an appeal in the *Sequoia* case on December 30, 2009, where the judge ruled that the local government had to take into consideration the survey. The question becomes why take a survey. The answer is to prove that the owners want to sell the lots to the residents. The owner told the residents in a meeting 2 years ago that all he had to do was sell one lot and rent control goes away. Then he filed for a special assessment and asked for a rent increase, which was denied; then came this subdivision plan.

At no point has anyone discussed what the lots are going to cost, whether the residents could get the financing they need or whether or not we want to do this; it's never been discussed because it's clear what the intention here is. This is an attack on rent control. Their attorney clearly stated they are going to continue to come at Council and make this as expensive as they can.

Their attorney said the uncertainty of rising rents will be eliminated. It's the opposite; the uncertainty of rising rents triples if the Subdivision Map is approved because rent will continue to increase immediately. It takes 4 years, but it starts as soon as the map is approved - today. It's not fair to the people who live there. It will reduce what value is left of those homes dramatically. This is not a better financial situation for the residents. They either have to buy their lot or pay a lot more rent.

ARLETH CONLEY, 271 Blue Springs Lane, has lived in the Cavalier Mobile Estates for 24 years. He thinks if Council does not do away with this lawsuit, it will be his last home. He will walk the streets before he lives in that mobile home park under their proposed conditions. He is against trying to buy a lot in that park when the owner controls everything else, i.e. rents, streets, etc.

BUD TOTTEN, Rancho Calavera Mobile Home Park, has become acquainted with people in the Cavalier Mobile Estates and many of them are on limited incomes and paying \$500 or \$550 per month rent is difficult for many of them. They can't get a mortgage to buy a lot. If you can't buy it then you can leave but it's difficult to move a mobile home. We are neither a tenant nor a homeowner, but we do have a financial involvement somewhere between \$25,000 to \$50,000 for each mobile home. If rent control is gone, anybody who wants to buy a mobile home won't consider that as a place to live so there won't be any value left in the mobile home. The owners have conveniently side-stepped how much the residents would be paying for the lots. It has

to translate into about \$500 per month and then there is also property tax that would have to be paid. He urged Council to maintain the status quo.

IONE GEISLER, 109 Greenwood Lane, has a very good credit rating but no one would give her a loan for that property. She would have to move her mobile home, which is 40 years old and may not make it to another location. She is asking Council to take that into consideration. She is a working person and could probably afford to pay a little something but she retires next year and her income will be fixed. The owners should make an attempt to show that there would be loans available to the residents because the bank will not loan her money.

JOYCE HARSTEAD, 293 Club Lane, has lived in Cavalier Mobile Estates for 13 years. The number one reason she moved in to Cavalier was the fact that it had rent control. She is low-income – working poor, as many of the residents are. She would love to live in a park where she owns the property but she doesn't know how they are going to do that financially. The park owner wants to get rid of rent control; that's his number one goal. The residents don't get anything. We don't have amenities, etc. She hopes Council takes into consideration the devastating effect the conversion will have. She bought her home and would like to have some more say. There are just so many questions that are not answered. She opposes the conversion.

JERRY CLIFTON, 327 Blue Springs Lane, is concerned about the residents who don't fall into the low-income status and the effect the increase in rents would have on them. This is a bad situation for anyone who doesn't fall into that status.

EARL IRVIN, 192 Evergreen Parkway, Cavalier, is on a fixed income and would have to put himself into debt to buy the land and he can't put that money back anymore. He has lived in Cavalier for 41 years. He asked Council to deny the request.

AL CIMINO, 900 North Cleveland Street, (with OMHA) lives in Mira Mar Mobile Home Park mentioned a perspective that we at Mira Mar have been battling our park owner through litigation for a couple of years now. We have put several hundred thousands of dollars into this to preserve rent control. The City is at our court hearings supporting us. It would be wrong to let us fight this battle in court to preserve rent control only to let these rascals take it away by subdividing. That's what is going to happen. If we win in court, our park owners will head in this direction. Council can't let this happen. He urged Council to follow staff's recommendations.

JERRY HOUSMAN, 221 North El Camino Real #15, thinks the owner of Cavalier should be grateful to Council because with rent control he is guaranteed an increase every year. Most people with investments are losing money.

JOSE VEGA, 69 Maywood Lane, has lived in Cavalier for over 9 years, and opposes the subdivision and thanked Council for keeping rent control.

NICK BIERI, Cavalier Mobile Estates, stated it is his understanding that Cavalier investors are not happy with their returns. He asked Council to deny the request for the subdivision and save our rent control.

Public input concluded

Mayor Wood noted the applicant has used up his 20 minutes plus 10 extra so he closed the public hearing.

COUNCILMEMBER LOWERY supports the report that City staff did and he supports the decision of the Planning Commission.

COUNCILMEMBER SANCHEZ asked what flood requirements would apply.

CITY ATTORNEY MULLEN prefaced that the park owner and the City disagree

about the extent to which flood regulations apply to approval of the Subdivision Map and/or the approval of development on the individual lots if the Tentative Map is approved and the final map subsequently approved. Under Federal FEMA regulations, which are codified at 40 CFR 60.3(d)(3) and (c)(12), those regulations specify actions that the City has agreed to undertake to deal with future development in the floodway. Mr. Smith will describe those requirements.

SCOTT SMITH, City Engineer, stated those FEMA requirements, in essence, require the structures to be elevated and anchored down, as well as some other provisions in analyzing the development. City staff will enforce future development in regards to these FEMA requirements and it is in our City Code to enforce those.

COUNCILMEMBER SANCHEZ has considered all documents submitted and all of the public testimony and based on that she **moved** that Council adopt the resolution denying the appeal [**Resolution No. 10-R0639-1**, "...confirming the Planning Commission denial of a vesting Tentative Tract Map and Regular Coastal Permit to not allow the subdivision of the Cavalier Mobile Estates into 348 lots on a 44-acre site at 1225 Oceanside Boulevard (Applicant: Cavalier Mobile Estates, LLC)"] and that the Council thereby adopt the findings of the Planning Commission and staff as recommended in the staff report.

COUNCILMEMBER LOWERY **seconded** the motion.

COUNCILMEMBER KERN stated the staff report says that the trial court held that only a court and not the local public agency conducting the public hearing has the authority to determine if the conversion is a bona fide residential conversion and the Court of Appeals has agreed. Then staff says that we are making a decision that it's not a bona fide conversion. Can staff explain that.

CITY ATTORNEY MULLEN responded that the basic disagreement is that there are 2 conflicting unpublished Court of Appeal opinions. Mr. Alpert referenced the *City of Palm Springs* case, which was cited in the staff report. Staff tried to identify all of the various cases, published and unpublished, that deal with this issue, both favorable and unfavorable to the local agencies.

There is another case from the Court of Appeal involving the City of Carson, which explicitly states that the City can inquire into that issue as to whether or not a conversion is bona fide and that the survey of support may be circumstantial evidence that you may be able to utilize, but it may not be dispositive on the question.

The Palm Springs Court, which is Fourth Appellate Division 2 and not Division 1 - we are in Division 1, our case would go to Division 1, - has determined that is an issue for the court to decide in a subsequent proceeding if there were litigation on that issue. Whereas in the Carson case, the Appellate Court determined that the City may legitimately inquire into that with some limitations that I have described. There is no published opinion in terms of what level of reliance we can give to the survey of support.

There is the *Sequoia* case, which staff has outlined in detail in the staff report, where the court said the City or County cannot adopt an ordinance that prescribes additional or duplicative requirements for a conversion. Staff in this case has based their decision on relevant State Statutes, including the Coastal Act as implemented through our LCP, as well as CEQA and we are aware of no case that says the City cannot base their decision or that the Coastal Act or CEQA are pre-empted. There is a CEQA exemption in the Public Resources Code for resident-initiated conversions. There is no comparable specific statutory exemption for owner-initiated. In this case, there is foreseeable development, according to the staff, within the floodway that creates a potential environmental impact that was not analyzed. That, along with the staff's view that this is not a bona fide conversion, are the principal reasons supporting the recommendations.

COUNCILMEMBER KERN has voiced his opinion that in the long term rent control is not in the best interest because you are one court decision/one vote away from losing it all. This will probably end up in court. He is strongly in favor of property rights and that's what it comes down to for him on this matter. We have a property owner who wishes to subdivide and sell his property. He should have the right to do that. This will be something for the court to decide what those property rights are about. If 100% of the people wanted to convert this park and the owner didn't want it to convert, would he have to sell it? We shouldn't use public opinion to circumvent property rights.

He understands that there is a strange relationship between the owner of a mobile home that sits on someone else's property; so are you a renter or an owner. Once we insert government between the landlord and the tenant, we go down a path he doesn't think we should go down. Now it's government's responsibility to force one person to subsidize somebody else's rent. If government wanted rent subsidized, government should come forward and subsidize rent and not force an owner to subsidize somebody else's rent. That's his fundamental problem with rent control. We pick a person and tell them how they are going to operate their business and government will tell them how much money they can bring in and how much profit they can make. That is wrong. The owner should have the right to convert his property any way that he wishes in compliance with the law.

Truthfully, he agrees with Ms. Bochman that he hates to see this park convert because once it converts, it will be a mobile home park forever. We will never get rid of that park. There is a much higher and better use for that land. It's half a mile from the ocean and right on I-5. That is the ideal location for Class A office space. He would much rather see Class A office space there for the City than a mobile home park. If it converts, instead of dealing with one owner, we will be dealing with 350+ owners to try to redevelop that area.

He knows some of the residents are on fixed/limited incomes. His understanding, reading the staff report, is that they are protected, just like they are under rent control now. That doesn't change for the low-income residents.

CITY ATTORNEY MULLEN responded the City's Rent Control Ordinance would not apply. The rent for low-incomes would remain but be subject to 100% Consumer Price Index (CPI) adjustment annually.

MR. ALPERT stated it's either 100% of the CPI or the average of the prior 4 years, whichever is lower because this park has been operating under rent control where you get less than 100% of the CPI; it would be the lower figure.

COUNCILMEMBER KERN asked percentage-wise how many people would qualify for that.

MR. ALPERT responded they don't know. The form of the survey was agreed upon with the President of the HOA so it just had the simple question of yes or no - do you want to support subdivision, so no demographic information was obtained.

COUNCILMEMBER KERN asked if the 4-year rate adjustment is set by the Statute or the Code; how's that determined.

MR. ALPERT responded Government Code Section 66427.5 says that once the first lot is sold, over 4 years it can be raised to market.

COUNCILMEMBER KERN asked how those rents would be adjusted over those 4 years.

MR. ALPERT responded in equal increments to the fair market rent.

COUNCILMEMBER KERN asked how we determine the fair market rent.

MR. ALPERT responded the owner would determine the fair market rent. If the question was how to determine the fair market rent and Council wanted to have an agreement about how to calculate fair market rent, that wouldn't be a problem to the subdivision. We would use an appraiser who would do a rent survey.

COUNCILMEMBER KERN has to vote the way he thinks is the right way to vote and he is going to vote on the side of the rights of the property owner.

COUNCILMEMBER FELLER asked how the detention basins that we're building change this area, or does it upstream?

MR. SMITH responded the flood insurance rate maps will be altered according to the detention basins once they are installed and it should reduce the flood hazard area in that vicinity.

COUNCILMEMBER FELLER stated the CPI is how they have rent increases at this point; is it automatic now that they get a certain amount of CPI?

CITY ATTORNEY MULLEN understands the question to be does the owner get an automatic adjustment under the City's Rent Control Ordinance, and the answer is yes it is either 8% or 75% of the CPI, whichever is less.

COUNCILMEMBER FELLER is tending to side with the property owner. The property rights are definitely a problem for him. He doesn't think rent control is ultimately in the best interests of anybody and some day it will change. He clarified that we do not have a number as to how many rent control spaces fall under low-income.

CITY ATTORNEY MULLEN doesn't believe there has been any evidence submitted by the applicant demonstrating how many of the current residents would qualify as low-income.

COUNCILMEMBER FELLER stated this originally had a Conditional Use Permit (CUP) of 35 years and what happened with that.

MR. HITTLEMAN responded that CUP has expired and if this were to be approved as a Tentative Subdivision Map, that would suffice because it would be a subdivision. Under our current regulations, they can substitute the Tentative Map for the CUP.

COUNCILMEMBER FELLER asked what else the park owner could do with this since it has expired.

MR. HITTLEMAN responded the underlying zone for this is medium-density residential, both in and out of the Coastal Zone, so they could do condominiums, apartments and things along those lines.

COUNCILMEMBER FELLER asked if they could actually close the park.

MR. HITTLEMAN responded they would have to do a Park Closure Permit and that would require a CUP.

COUNCILMEMBER FELLER asked the City Manager how the legal fees will be paid should this go forward.

CITY MANAGER WEISS responded it depends on the type of defense we would need to make. If it was internally, then we have an internal staff to do that. If there are additional expenses, that would be something that Council would decide. We

would either absorb it through our Risk Management Fund, which is essentially pro-rated through the General Fund, or we'd have to identify some other source for that.

COUNCILMEMBER FELLER is thinking back to when Council had to decide regarding Mira Mar, and we had committed to stop defending with the entire City's citizens' money, and based on that it was residents versus owner.

CITY ATTORNEY MULLEN responded the Council authorized the filing of a Declaratory Relief action by the City in that action, so we filed a Complaint and Intervention; we are a party in that case on a very limited issue. On some narrow issues about the interpretation of the Rent Control Ordinance we have intervened and our office is handling that matter internally, so there are no outside litigation fees related to that case.

CITY MANAGER WEISS stated the City's General Fund did subsidize mobile home rent control and several years ago the Council decided to wean that fund off the General Fund. This will be the last year of the General Fund support for that. That direction was for that specific reason that the citizens as a whole shouldn't be supporting it.

COUNCILMEMBER SANCHEZ stated that the constitutionality of the Rent Control Ordinance, fair return on investment, is not the issue before us. Our Rent Control Ordinance has been upheld on constitutional grounds based on fair return on investment. Secondly, she wants it to be clear that her motion includes all findings that were made by the Planning Commission, as well as the findings that are described in the staff report. That includes the fact that this application does not comply with State and local laws. Finally, what is also not before us is the issue as to how we enforce our laws. When we start to pick and choose whether or not we're going to enforce our laws, then we are truly not representing the people of the City.

MAYOR WOOD stated we're here to represent the citizens of Oceanside, not necessarily the State issues per se. He has to rely on our Planning Commission and our staff on what is best. We have 19 mobile home parks in this City. He's told every day that we should be looking at issues regarding affordable housing. We are pressured by the State and Federal to have more affordable housing as well as SANDAG. Mobile home parks are part of that affordable housing. These people can't sell their mobile homes and they can't buy the lot. That is sad. That doesn't leave much of an option for them.

[Recess was held from 8:19 to 8:25 PM]

Motion was approved 3-2; Councilmembers Feller and Kern – no.

Mayor Wood determined to hear Item 25 at this time.

25. **City Council: Comments from the public relative to water quality and to the Public Health Goals Report, as required by Health and Safety Code §116470, and acceptance of the Public Health Goals Report**

- A) Mayor opens public hearing – hearing was opened.
- B) Mayor requests disclosure of Councilmember and constituent contacts and correspondence – Mayor and Councilmembers reported contact with staff.
- C) City Clerk presents correspondence and/or petitions – none.
- D) Testimony, beginning with:

CARI DALE, Water Utilities Director, stated we're required as a public water system serving over 10,000 service connections – we have about 50,000 – to prepare this report on the information on contaminants above the Public Health Goals. We are also required to conduct a public hearing and receive comments from the public relative to the report. This is in addition to the Annual Water Quality Report that's mailed to

residents before July 1st of each year. This report covers water quality taken during 2007, 2008 and 2009.

Public Health Goals (PHGs) are adopted by the State or Federal Environmental Protection Agency. They are concentration levels that pose no significant health risk if consumed for a lifetime. They are theoretical, controversial and they are goals; not requirements. Other mandates and regulations that the Water Department needs to meet include Maximum Contaminant Levels (MCLs), which are the maximum levels allowed in drinking water and are Federal and State mandates. Another mandate is the Maximum Contaminant Level Goal (MCLG), which is set at a level which no known or anticipated adverse health effects occur and are federal goals; not requirements. The MCLs are set at very conservative levels to provide protection to consumers against all but very low to negligible risk and are what's considered a safe level.

Additional mandates and regulations are Action Levels (AL), which are health-based advisory levels that are regulated by Federal and State regulations. If we exceeded an Action Level we'd be coming to Council and talking to you about it and discontinuing the source of the water that exceeded the Action Level.

Oceanside's water during the 3 years we are reporting on had PHG exceedances for lead, gross alpha radiation and uranium. The detected levels for these constituents were well below the respective MCLs. This does not constitute a violation of drinking water regulations or indicate the water was unsafe to drink.

Regarding lead, we are required as a water agency to sample lead in homes every 3 years. In Oceanside we sample about 50 homes for lead. This sampling was done in 2009 and most of the sources of lead in drinking water are lead solder and faucets containing brass or bronze internal parts. Lead was not detected in the water that Oceanside provides to its customers. She used a computer graphic to show different levels of lead. 90% of the samples were less than 2.5 micrograms per liter, with the highest being 7.8; meaning our water system is considered to have optimized corrosion control. We were below the Action Level but above the PHG. Exposure to lead has been associated with changes in cardiovascular, blood diseases, musculoskeletal diseases and the cancer risk at the Action Level is 2 excess cancer cases in 1,000,000 people. Since our water system is in full compliance with the Federal and State lead requirements, no additional treatment is being recommended at this time.

For radiation, we had exceedances of the PHG for alpha radiation and uranium. The detected levels for these constituents were below the regulatory level, so this does not constitute a violation of drinking water standards. The health exposure effects are that the health risk for radiation is cancer. The risk for uranium at the PHG is 1 excess cancer case per 1,000,000 people. The best available technology to lower these constituents is reverse osmosis. The estimated cost to treat all of the drinking water in the City would be \$54,000,000 per year. At this time no additional treatment is recommended.

Tonight we are asking for public comment and also for Council to accept the report.

Public input

JIMMY KNOTT, 127 Sherri Lane, asked what the source of the radioactivity is.

Public input concluded

MARK HAMMOND, Laboratory Supervisor and Acting Environmental Compliance Officer, stated the uranium and the alpha radiation are all naturally occurring and generally radium is similar to calcium and magnesium. The water comes from the Colorado River so it comes in contact with many of these natural minerals and many of the natural occurring elements are radioactive, especially uranium. The levels

that we are seeing are far below the MCL and are not associated with radiation that you would find from the production of weaponry or nuclear generation.

Mayor Wood closed the public hearing.

COUNCILMEMBER SANCHEZ moved that Council accept the report on water quality relative to Public Health Goals.

COUNCILMEMBER FELLER seconded the motion. He asked if we have fluoride in our water.

DIRECTOR DALE responded there are a few parts of Oceanside where we get purchased or treated water from MWD, which is treated at the Skinner Treatment Plant in Temecula/Murrieta and they do fluoridate the water that comes out of the reverse osmosis. Local water here is not fluoridated nor is the water that is treated through the Weese Filtration Plant. It is a small southeast Oceanside area that's receiving the fluoridated water.

Motion was approved 5-0.

26. **CDC: Adoption of a resolution approving an amendment to Conditional Use Permit (C-204-09) for the addition of telecommunication facilities to an existing commercial office building located at 1155 Sportfisher Way – Clear Wire – Applicant: Clear Wireless, LLC** *(continued from August 18, 2010)*

- A) Chairman opens public hearing – hearing was opened.
- B) Chairman requests disclosure of Commissioner and constituent contacts and correspondence – Chair and Commissioners reported contact with staff, site visit and emails. Commissioners Sanchez and Kern reported no contact.
- C) Secretary presents correspondence and/or petitions – none pertaining to this specific location.
- D) Testimony, beginning with:

SHAN BABICK, Associate Planner, stated on January 4, 1994, and January 20, 1998, this Commission approved a CUP and an Amendment to a CUP, allowing for a total of 28 antennas and 2 satellite dish mounts on an existing building located at 1155 Sportsfisher Way. This project proposes another amendment to the CUP to add telecommunication facilities, including 6 panel antennas, 3 directional antennas, 5 DAP head units and 4 GPS units. The previous resolution required that any amendment or any addition of telecommunication facilities would require an amendment to the existing CUP. Staff's analysis focused on the effects the additional telecommunication facilities will have on the aesthetics of the existing building in addition to the surrounding neighborhood and the consistency with the underlying Redevelopment Plan and Zoning Ordinance.

Staff believes the project as designed, with the screen box painted and textured to match the exterior of the building, adequately screens the telecommunication facilities from public view. The proposed telecommunications facilities as designed are not detrimental to the aesthetics of either the existing commercial office building or the surrounding neighborhood. This is in a commercial zone, not residential. The Redevelopment Advisory Committee (RAC) reviewed the project on July 7th and approved it unanimously with one condition that has been added to the resolution, which is that the applicant shall submit a field testing report after installation of the telecommunication facilities to demonstrate that the project will not jeopardize the public safety from exposure to excessive radio frequency energy.

Staff recommends adoption of the resolution.

Applicant

DANIELLE GOLDMAN, representing Clear Wireless, LLC, stated we have read the staff report and are in accordance with it. She is here to answer any questions Council may have about the modification.

Public input

ROBERT ROSS, 1467 Mountain Meadow Drive, stated this is based on a plan for what he considers a flat earth RF analysis, which means that the pictures shown by staff don't exist and there are no buildings there. This is a horizontal radio frequency (RF) analysis; not a vertical. The apartment building that sits next to that building does not exist in this documentation; there is no cumulative of all the RF on the building in this. He suggests Council use the consultants and staff that are at their disposal and ask them to give Council a better idea of what you are up against. As far as planning and aesthetics are concerned, it is a very good proposal, but as far as RF, he wouldn't look at it.

JIMMY KNOTT, 127 Sherri Lane, concurs with Mr. Ross that it is a flat field display. There is a graph in the report that shows that any person in that apartment building would only be able to stay in the building for 30 minutes; then they would have to leave. After a while they can come back in for 30 minutes. Council needs to look at this type of antenna array. It needs to go back for some reconfiguration and restudy and maybe repositioning.

Applicant rebuttal

MS. GOLDMAN didn't have an opportunity to review the RF report that was produced because she is covering this project for another planner whose wife is in labor. A condition of this project is to produce a cumulative on-site RF report and without compliance being documented in that report, the CUP is revocable and cannot go into effect. She apologized that she is not versed for the RF report but in order for Clear Wire to take advantage of the CUP being granted, they would have to provide the City with a cumulative RF report after construction. If the City, in reviewing that cumulative report, taking into account all of the carriers on site and all of the FCC regulations regarding human exposure to RF, deems it not adequate, they can revoke the CUP. The issue is still resolvable.

Mayor Wood closed the public hearing.

COUNCILMEMBER FELLER asked who owns the building and the type of business.

MR. BABICK responded the answer is Torst & Kruger and he's a geologist.

COUNCILMEMBER FELLER asked how they would do a cumulative survey. He has no idea what Mr. Knott was saying about staying inside for 30 minutes, etc. As far as RF, the Federal Government has regulations regarding that, is that correct?

MR. BABICK responded that's correct. The Federal Government has regulations and they prepared an RF report, which is attached to the staff report, which concludes that the exposure to radio frequency energy will not cause an impact on the environment, so they are in compliance with the environment.

COUNCILMEMBER FELLER would like to know what doing a cumulative survey means.

MS. GOLDMAN responded the report will take into account all of the carriers on the facility. Sometimes if a report is not cumulative, it means that it is written based simply on an analysis of the Clear Wire antennas operating at 2,500 to 2,700 megahertz frequency. A cumulative report will take into account the existing Sprint Nextel antennas, which operate at a different frequency and have different emissions, T Mobile,

AT&T and any carrier on site. It basically takes all of the carriers on site into account in establishing compliance with the FCC guidelines. It's a condition of approval.

COUNCILMEMBER FELLER moved approval [of **Resolution No. 10-R0638-3**, "...approving an amendment to Conditional Use Permit (C-204-09) to add telecommunication facilities to an existing commercial office building located at 1155 Sportfisher Way – Applicant: Clear Wireless, LLC].

COUNCILMEMBER KERN seconded the motion.

COUNCILMEMBER LOWERY asked if staff said there were no residences in this area where this building is.

MR. BABICK responded no, he didn't say that. He only said it was a commercial zone.

COUNCILMEMBER LOWERY has been in that building and it's a multi-tenant operation and across the parking lot is an apartment building, so even though it's zoned commercial is that not considered residential.

MR. BABICK responded it's a residential use in a commercial zone. There is residential there. In the downtown area there is a lot of residential uses in commercial zones.

COUNCILMEMBER LOWERY pointed out the location of the previous hospital building (now Escondido Youth Encounter) where there is now a residential use going on. He asked if there are multiple uses going on in this area even though it's zoned commercial, does that change the criteria for siting on this building? He asked for clarification on what Mr. Ross, Chairman of the Telecommunications Committee, was saying.

MR. BABICK didn't understand what Mr. Ross was saying.

MR. ROSS explained that the report was done on flat earth as if there was absolutely nothing existing at the location; no buildings, no trees, etc. It doesn't take into consideration that there is a building across the street, or any power lines or any additional antennas there. He can do a flat earth cumulative study where he puts them all together and says it's good, but it does not take into consideration anything that is existing or that there may be people in there. People within the range of the antenna can only live there for 30 minutes before they have to get out. That's the law, it's the Federal standard.

COUNCILMEMBER LOWERY asked if Mr. Ross is saying there is something inappropriate or incorrect about this application.

MR. ROSS is saying it doesn't take into consideration that there may be a building or personnel in the way. You have to do a 3-D study, not a flat earth horizontal. It costs more but it shows where the buildings, trees and people are.

MAYOR WOOD already closed the public hearing and we're getting a little off track.

COUNCILMEMBER LOWERY was listening to the report from staff and he reviewed the photos and thought it was odd that we're in a commercial area but we've got residential right across the parking lot. He realized he was in that building with the array about 2 weeks ago and there is a lot of family activity going on right from the office he was in.

MAYOR WOOD agrees that the communication and testimony tonight was a little confusing. We've had a lot of emails regarding cell towers and sites lately. We're

going to have to address that in the future.

COUNCILMEMBER SANCHEZ is hearing that the report that was prepared to study the RF is either not complete or has some problems and that we cannot make a decision because we don't have a foundation for a decision. The more she hears, the more questions she has. If she needs additional information to feel satisfied that the report is one that she can make a decision on, can she request a continuance or does Council have to make a decision tonight.

CITY ATTORNEY MULLEN responded you can continue a public hearing if that's the direction of the Council, but on the issue of RF emissions, the City cannot impose regulations on RF emissions that exceed the FCC requirements. You could include as a condition of approval that an RF study be done and submitted prior to construction that's fully compliant with all FCC regulations and maybe have that brought back to Council.

CITY ATTORNEY MULLEN has looked through the resolution and doesn't find a condition that requires a pre-construction RF study to be supplied showing cumulative RF. He looked through the resolution and doesn't see a condition that requires a pre-construction RF study to be supplied showing cumulative RF.

MR. BABICK responded it's not in there. We can add that condition if that is the direction.

CITY ATTORNEY MULLEN stated the applicant indicated that they were willing to agree to that. All you can require is what's mandated by the FCC so if you include that as a condition of approval, there would be no need to come back. You would insure that an RF study that complies with FCC regulations would be a condition of approval of the project prior to construction.

COUNCILMEMBER SANCHEZ stated if the motion adds that condition, then she can support it.

COUNCILMEMBER FELLER amended his motion to add a condition that the applicant shall submit an RF analysis prior to construction that fully complies with all applicable FCC regulations.

COUNCILMEMBER KERN seconded the amended motion. He asked Mr. Ross if we are doing the right test. He is getting the feeling that we are not doing the right test.

MR. ROSS responded if you do a cumulative of the existing, you'll get an RF analysis that will tell you what the RF is at a given distance and if you superimpose the buildings, that will tell you whether there is a problem or not. A 3-D will tell you if the antenna is pointing straight at a building, it may have to be turned.

COUNCILMEMBER KERN asked what kind of test we are requiring.

MR. BABICK doesn't understand what Mr. Ross is saying but we are getting a report that will be compliant with the FCC.

COUNCILMEMBER KERN wants to make sure we are complaint with the FCC.

Motion was approved 5-0.

PUBLIC COMMUNICATIONS ON OFF-AGENDA ITEMS

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

Advance written request to reserve time to speak: None

23. Communications from the public regarding items not on this agenda

JOAN BROWN, 511 Rockledge, knows water is number one but as leaders Council should care about landscaping as it is an integral part of a successful city. She has notice that all of our right-of-way landscaping is dying. I-5 was just landscaped and it's dying because it's not being watered. She was told by Caltrans that the contractor who did our area went bankrupt and that they're looking for another contractor to fix it. By the time that happens, it will all be dead and that must have cost millions of dollars; the weeds are 3' high. She doesn't know who's in charge of the watering, but it would be important that somebody take care of this. The plants on Pacific just north of Buccaneer are also very distressed. Water is pretty reasonable. She hopes someone will look around the City and turn the water on.

MAYOR WOOD stated that is Caltrans on the freeway.

INTRODUCTION AND ADOPTION OF ORDINANCES - None

ADJOURNMENT

MAYOR WOOD adjourned to a workshop on Tuesday, August 31, 2010, at 4:00 p.m. This joint meeting of the Oceanside City Council, Community Development Commission and Small Craft Harbor District Board of Directors was adjourned at 9:07 PM on August 25, 2010.

ACCEPTED BY COUNCIL/HDB/CDC:

Barbara Riegel Wayne
City Clerk, City of Oceanside



California

CITY OF OCEANSIDE

MAYOR AND COUNCIL WORKSHOP

TUESDAY, AUGUST 31, 2010

ADJOURNED MEETING 4:00 PM COUNCIL CHAMBERS

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

Mayor

Jim Wood

Deputy Mayor

Vacant

Councilmembers

Jack Feller
Esther Sanchez
Jerry Kern
Chuck Lowery

City Clerk

Barbara Riegel Wayne

Treasurer

Gary Felien

City Manager

Peter Weiss

City Attorney

John Mullen

The adjourned meeting of the Oceanside City Council was called to order at 4:01 PM, Tuesday, August 31, 2010.

4:00 PM - ROLL CALL

Present were Mayor Wood, Councilmembers Kern, Sanchez, Lowery and Feller. Also present were City Manager Weiss, City Attorney Mullen, City Treasurer Felien and City Clerk Wayne. Cari Dale led the Pledge of Allegiance.

WORKSHOP ITEM

1. **Informational presentation on proposed water and wastewater rate increases and Metropolitan Water District/San Diego County Water Authority pass-through charge increases**

CARI DALE, Water Utilities Director, stated today's presentation is a discussion for information only and not to ask Council to take any action. We would like to receive input from the public, as well as Council, before we mail notices to customers next month.

On January 1, 2009, Metropolitan Water District (MWD) passed a 14% rate increase. Those rate increases are passed directly through to the San Diego County Water Authority (SDCWA) and they in turn pass them through to Oceanside. At that time Oceanside passed a 5% rate increase on water, which took effect approximately 3 months after we started receiving the increased costs from MWD and SDCWA.

In September of 2009, MWD passed another rate increase. This one was approximately 20%. It was passed through to SDCWA and then to Oceanside customers. This rate increase took place a few months after we started receiving bills from MWD and SDCWA.

The cumulative rate increases during these 4 years is 49% for MWD, 52% for the SDCWA and 40% for Oceanside customers on the water fund only.

There have been a lot of questions about what those rate increases have bought us. In 2007 there was a rate increase of 16%. This covered increased costs from SDCWA and MWD, paid for operations and maintenance increases, paid for the debt in the Water Fund and it also paid for capital projects such the Peacock Hills Regulating Station, the Loretta Street water crossing and Pacific Street water crossing.

In 2008 there was a rate increase of approximately 1% that covered just the pass through charges from MWD and SDCWA.

In 2009 there was a rate increase of 5%, which covered pass through charges, paid for the increased cost of water and there was a small adjustment for personnel costs at the City. In 2010 the rate increase of 20% covered those same things.

What's being proposed January 1, 2011, is a rate increase from MWD of 7.5% overall. This includes a few rate components of treated water, which has an 8.9% increase, untreated water of 6.1% and transportation - the transport of water through all the aqueducts from the source of the water to San Diego, which will increase by 18.5%. That cost increase is passed through to the SDCWA, who in turn has increased their costs to us of 12.2%. We are recommending a water rate increase of 7.4% go forward in November.

We are also looking forward to when MWD will have a rate increase of 7.5%, which is effective September 1st. The SDCWA's will be effective September 1st as well of 10%. We are recommending a rate increase of 7.8% on July 1st.

The one cost component coming out of MWD that has increased the most is the transportation charge and that cost is increasing by 18.5%. It recovers capital operation and maintenance costs of the aqueduct system, including all facilities that transport water. This is the largest increase from MWD. The transportation charge improperly overcharges for transporting water through its facilities and uses those overcharges to subsidize the cost of water it sells to its 26 member agencies. She used a computer graphic to show the financial impact of the transportation rate on MWD agencies. The impact to SDCWA is \$26,600,000 this year. She used a computer graphic to show savings that other agencies that purchase their water from MWD would receive.

The SDCWA believes this rate structure is illegal and not following law to reflect charges based on actual, reasonable and proportionate costs. She used a computer graphic to show that over time the impact to the San Diego region is great. Oceanside takes about 5% of the water regionally, so this year the impact to Oceanside just for this cost alone is \$1,500,000. The SDCWA believes that this rate structure will cause significant harm to agencies in the area and rate payers will pay a disproportionately high price to have Colorado River water transported to this region.

On June 10, 2010, the SDCWA Board of Directors voted unanimously to file a lawsuit challenging the 2011 and 2012 MWD rates. There are still further impacts that may come in the future and they take the form of the Integrated Water Resources Plan, shown on a computer graphic, which is still in draft form and has the greatest potential to impact future costs from MWD. Not only are we getting impacted with the transportation rate, but we may be impacted by implementation of this plan. Staff attended a workshop and provided comments on this plan and the SDCWA is drafting a letter for Council's signature opposing this plan. She will bring that forward in the next few weeks. This Plan plans to meet all water demands during any hydrologic condition, so during times when we have a draught they have planned for redundant supplies and storage facilities. It does not necessarily cover the cost of doing so. The SDCWA is arguing that the cost of doing that is too great for people to bear.

Historically MWD has increased their rates to recover costs for dipping into the reserves; they've done that for the past 3 years. Because the Delta has had a supply

cutback, they've also had to acquire new supplies in the State, so there is an additional cost required to acquire new supplies. The rates are also going up to pay for debt. When costs go up for MWD they're reflected as higher rates from the SDCWA and the rates that the SDCWA is bringing forward this year reflect those cost increases from MWD. The 12.2% overall rate impact reflects an 11.3% increase for treated water, 14% on untreated water and 18.5% on the transportation rate. The rate increase on September 1st is assumed to be a 10% overall rate impact.

The SDCWA increases not only pay for the increased costs from MWD, but they also pay for the operation, maintenance and financing of the regional water system in San Diego and they pay for the debt service costs for infrastructure. Some of that infrastructure regionally is the construction of the Olivenhain Dam, the Lake Hodges facility, the San Vicente Pipeline Pump Station and Dam Raise - which is the largest Dam Raise in the U.S. at this time, habitat mitigation, the Colorado River canal lining, as well as the construction of the Twin Oaks Valley Treatment Plant in San Marcos.

The SDCWA has taken some action to mitigate their rate impacts. They've used \$10,700,000 this year to stabilize rates and they cut \$2,400,000 out of their budget, which is mainly personnel costs as they wind down their construction. They've also, when going out for loans, gotten a good bond rating. They've got the second highest rating, AAA, which has resulted in lower loan costs. They've also implemented technologies that have resulted in the efficiency of operations.

She used a computer graphic to show the schematic of getting a bill from MWD, who passes it through to the SDCWA, who in turn passes it through to the City, who in turn passes it through to customers in the form of rates.

There were some considerations that we thought about when we developed and recommended Oceanside's rates. We assumed realistic water sales estimates. We know that there are going to be further sales reductions in the future, due to some mandates, to reduce per capita water use and we will be coming back to Council probably after the first of the year to discuss the Water Conservation Master Plan and some of the actions that Council would like to take to implement some of those reductions. We also considered 90-180 days of operating reserves. It's recommended by Fitch, who is the rating agency on bonding, to have 100 days of operating reserves in order to receive an AA rating, which is the second highest rating. That might be the minimum we might want to keep in order to have a lower cost on our debt.

We did take more recent water sales into account when we developed the rates. She used a computer graphic to show a chart of how our water sales have changed over time. From July of 2008 through June of 2009 the chart shows total sales of almost 30,000 acre-feet in that year. For the fiscal year that just ended, which is July of 2009 through June of 2010, we sold 26,000+ acre-feet. If you compare the 2 years you see that we sold about 12.2% less in water sales during that same period of time. Because sewer rates are tied to consumption of water, when we see drops in water consumption, we also see drops in the revenue that come into the Sewer Fund. Conservative estimates on what was not realized as revenue in the Sewer Fund is about \$550,000 to \$600,000 below what we estimated last year when rates were passed.

Some additional considerations in developing rates were that we wanted to make sure there were adequate revenues to cover expenses; we didn't want to dip into reserves. We took a long-term outlook on the financials and we're anticipating some of the future expenses, such as the conservation mandates and other issues. We wanted to look at a time-frame of about 10 years, rather than just maybe a year or two, where MWD and the SDCWA are passing through rates. We took a longer-term look at financials to provide stability over that time and be prepared for some of the challenges we have in the future. We also wanted to honor the good work the Citizens Advisory Group had done in the past and had recommended to Council on rates, including realistic fiscal policies, adequate bond coverage, adequate reserves, rate-setting

methodologies, which were maintained and consistent with collecting revenues based on the actual cost of service and recovery of lost revenue due to delayed implementation of the rates.

Some of the things staff is doing to keep the utility cost impacts down include holding the line on operation and maintenance costs. Our budget for those items has been flat since 2007 and we are really feeling the squeeze in terms of some of the deferred maintenance that's been occurring in the field. This year we've optimized existing local water production and treatment facilities, i.e. the reverse osmosis plant. We were able to take the financial model and model a few scenarios, i.e. should we buy more water from MWD, should we buy more treated water, buy untreated water, produce as much as we can out of local supplies. We were able to run a scenario which resulted in the lowest cost to the rate payers. We have since implemented that and put the local water production operators on target for each month. So far, they've exceeded their targets, so we're seeing some real savings right now. By doing that this year we were able to save about \$500,000 in the budget.

In doing that modeling we saw that we could further optimize the existing facilities by installing a pump station and we see that we can't use all of the water that we produce in the winter; there's actually a bottleneck in the system in getting it out to different areas in the City and by putting a pump station in at a low cost we can further get that water out in the winter, so we initiated the design of that. We are also beginning an audit of all the water and sewer accounts to make sure that they're billed correctly, which will result in future savings.

To build on the local water production treatment facilities, we thought it might be prudent to talk about where we are in terms of the Oceanside Desalination Pilot Study, which has been located outside the Harbor. It includes a pilot well in the parking lot and includes piping that water over to the existing reverse osmosis plant and treating it there. In April of 2010, we got the Pilot Study back from the consultant that would result in an additional 5,000,000 to 10,000,000 gallons per day of locally produced water. In July of 2010, we also received the Draft Pipeline Alignment and Feasibility Study for the plant. We returned comments back to the consultant today and expect to have a second draft back to us on September 15th with completion of the study in October, 2010.

After October of 2010, some of our next steps include studying whether the aquifers can yield high quantities of ground water, if the production from the aquifers would cause any adverse impacts to the San Luis Rey River or seawater intrusion to inland aquifers, as well as the quality of the groundwater from long-term pumping.

For now buying water from MWD and SDCWA in the amounts that we do, knowing that we're optimizing the local supplies, translates into the current \$50.82 for a single-family residential customer using 12 units of water per month. The proposed increases show a 7.4% increase, resulting in a monthly cost of \$54.58 and in July a 7.8% increase, resulting in a \$58.85 monthly charge. We have a lot of master-metered communities, like the Oceanas, etc., here. She used a computer graphic to show the rate impact on those communities. She used 78 dwelling units as the average in those communities. A 6" service is a very typical size for serving those communities and 6 units of water is a very conservative look at water use. The increase to the total community for the January proposal would be 7.2%, and in July 7.77%.

The rate increase also considers a correction to fire service stand-by fees, which are fees that recover the costs of the infrastructure that needs to be built to service the larger lines in the community that provides fire service. Right now we know that there are approximately 369 of these accounts that have fire service billed to them. There is a potential for up to 1,400 accounts to be charged. These are typically commercial and industrial accounts. Staff will be going out in the field in the next few months and doing field verification for what sizes and types of fire services are actually at each of those

accounts and providing that back to Council in November with these numbers.

She used a computer graphic to show a comparison of our single-family residential customer using 12 units per month and other water agencies in the San Diego region. The median cost comparing all of the agencies is \$53.25. She had the opportunity to talk to several water managers this week about their increases and the Olivenhain Water District is bringing forward increases of 4% and 9%; Rancho Santa Fe is proposing 3 increases, each of 12%, after 3 years of increases at 20%, 15% and 15%. We're not alone in the increased costs that we're seeing.

She used a computer graphic to show statistics on what encompasses our water system. There is quite a bit of investment in the pipelines that are in the street, the meters that go to each user, the 2 water treatment plants, 12 reservoirs, 12,000 fire hydrants, 26 pump stations, 16,000 valves and 1 hydroelectric plant. The value to replace that entire system today is \$763,000,000.

Some of the deferred capital improvement projects (CIP) during the past 2 years is the Weese Plant expansion and upgrade. There's been some discussion about expansion versus upgrades; this particular project is to bring that plant into compliance according to requirements by the Department of Health Services. The technology being used at that plant is old and they are requiring a different treatment technology be implemented. We are in discussion with the Vista Irrigation District about potentially expanding the plant at their cost and providing them treated water.

Another deferred capital project has been the San Luis Rey Water Reclamation Facility, which is an \$8,500,000 project that would result in reclaimed water to be distributed in the northern portion of the City. Reclaimed water, just like our local water supplies, offsets any purchased water that we might otherwise buy from MWD and SDCWA, and in most cases results in savings to the consumer. We can sometimes provide these at lower costs than we would otherwise buy it at.

Regarding funding requests, we've applied for several grants or loans from the American Recovery and Reinvestment Act (ARRA). We received notice that none of those have been approved. She believes it's because they have had an overwhelming amount of applicants applying for money. One of the projects, however, was still implemented through a creative public/private partnership at a very low cost to the City.

In waste water there are challenges to the infrastructure and the financials. Presently we have 5 debt instruments (loans and/or mortgages against the funds). She used a computer graphic to show the status of these instruments. Some of those have been refinanced at a cost. On the 2008 Revenue Refunding Certificates we had a \$5,000,000 payout that immediately hit the fund. That was one of our recent unanticipated expenses. Two of the loans were rated by Standard & Poor and the agency was given a AAA rating in 2003, which is very good. In 2008 we got an A+, which is good but not as good.

In 2007 there was a 20% rate increase that paid for operation and maintenance increases, debt and capital projects. Those capital projects were the Buena Vista Force Main and the Mesa Garrison Force Main, which were replacements of existing infrastructure. In 2008 there was no increase to sewer. In 2009 the rate increase of 10% paid for debt and capital projects that are still in progress today. In 2010 the rate increase of 30% paid for the debt coverage only.

The deferred maintenance list in waste water is much larger than in water. Under expansion and replacement we have deferred 5 projects for a total of \$30,074,000 and in replacement we have deferred 4 projects for a total of \$1,500,000. She noted that there are lots of infrastructure problems in our system existing today that are not on the capital improvement project list; they haven't been deferred yet and they're not accounted for yet.

The refinancing of the debt in 2008 was an unanticipated expenditure that cost us \$5,000,000. We've also had other unanticipated expenditures - the land outfall repair on Oceanside Boulevard was \$4,900,000. We had to fund that through a loan from the Water Fund to the Sewer Fund because we did not have the fund balance in order to pay for that. We also had the Arroyo slope failure and settlement at \$2,500,000. The total value of the sewer infrastructure to replace it presently would be \$704,000,000, which is a conservative estimate. A \$704,000,000 infrastructure is like buying a \$30,000 car and the rate at which we are funding the infrastructure replacement is like putting aside \$45 a year in order to replace parts. It's just not adequate.

We've had some people come out in the field and take a look at some of the infrastructure. She used computer graphics to show some of the infrastructure issues that we are seeing out there; the lift station at the La Salina Plant that is very old and decrepit; the newer lift station near the San Luis Rey River is state-of-the-art and working very well and efficiently. The tanks at the La Salina Plant are concrete and are getting etched away because of the corrosive gases that are typical in treatment plants. The graphics show the degrees of deterioration. Both tanks will need to be addressed and they are not on the CIP.

There has been a lot of discussion about the Haymar sewer pipe in the Buena Vista Creek bed. A graphic shows the clay sewer pipe, which has a few joints exposed; there is no support structure underneath that pipe and it is a vulnerability in our creeks and waterways. She showed a contrast with pipes in the street.

A graphic of the reservoir at Henie Hills is so bad it has mold on it; the fence is falling down and we will be bringing forward an item to do some rehabilitation in the near future. It's an eyesore and it's one of at least 2 tanks in the City that look like this.

We had some considerations in recommending the sewer rates. We wanted to establish a minimum infrastructure replacement balance. We wanted to move away from reactive maintenance and infrastructure replacement. Reactive maintenance is fixing things when they break. It's like the Oceanside Boulevard land outfall project. When that pipe broke we fixed it. We're not getting in there before we have a break or when things age or are showing deterioration. We used realistic revenue estimates and 90-180 days of operating reserves. The AA rating is 100 days of operating reserves, and \$7,500,000 in the reserve would be our target number.

A graphic showed a residential monthly sewer bill comparing single-family residential users with medium flow pay a current rate of \$45.48. The proposed rate increase would increase that to \$49.58. The median rate is \$45.48, which is our existing rate. When she had the opportunity to ask the Leucadia Waste Water District in the City of Carlsbad, which showed the 2 lowest rates, how they kept their rates low, they stated they pay with cash; they are not financing debt and are not paying interest. They're paying for things with the revenues coming in and not taking out any loans.

A typical single-family rate with medium use would see a rate impact of 9% in January and their rate on a monthly basis would be \$49.58. In July the rate increase of 9% would be attributed to a \$53.55 monthly charge. A computer graphic showed the rate increases to master-metered communities.

Today we're having this workshop and, pending Council's comments, we will prepare notices to be mailed in approximately 2 weeks. We will have a public hearing on November 3rd with rates adopted on November 10th and effective on January 1, 2011, and July 1, 2011. A computer graphic showed contact information for MWD if anyone would like to write or call them.

MAYOR WOOD knew this was coming and is concerned about double-digit rate increases in the past and now again. If you add the figures up for water and waste

water, we're talking about a 32% rate increase. That's passed through to us; it's not something we are doing. We are concerned about our infrastructure and see from the graphics that they are in dire need of repairs. He suggested that if people want to be angry about this to someone, they should contact the MWD at the address and telephone numbers shown.

There is a lawsuit pending against MWD. This is hard in the middle of an economic crisis and for people with low-incomes and seniors. He believes the Councilmembers will be sending letters to the appropriate people telling them what our concerns are and displeasure about this. We are shipping in water from Colorado and we have the Sacramento Delta where, because of the Delta Smelt, they are not sending water to us. It's frustrating that we are one of the few communities that does desal water from our San Luis Rey River and we've gone back to Washington DC for 6 years in a row to try and get an expansion on that facility to try to treat and provide our own water. We haven't had much luck in Washington DC. All of the membranes that are made for desal are made here in Oceanside. We have all the right things, we just can't seem to get the financing to expand our facilities and do more water.

COUNCILMEMBER SANCHEZ asked to hear from Mr. Boyle first.

BRIAN BOYLE, Chair of the Utilities Commission and was just appointed as Oceanside's representative to SDCWA, attended his first meeting of the SDCWA and there is a lot more coming down. The Utilities Commission goes through everything that these people do; all of their work product from staff, etc. We do a lot of the scrutiny that we believe the public would do because the public comes to the Commission frequently to vent their complaints. Staff's work product has been excellent. We've tried to see where we could save more and do better, but they've done a great job with it. The things that can effect what our rates eventually are going to be are controlling our own expenditures for the utility and also increasing local supplies. Those are our only options because MWD has got us by the throat. There's nothing we can do. He is in support of staff's recommendations.

PATRICIA COPE, Utilities Commissioner, concurred. We took a tour of the La Salina Plant a few weeks ago and she was horrified. This isn't something we can wait on because if we have a spill at that point, one block from the beach, it would put us in debt forever paying off the fines for that.

MR. BOYLE stated if that concrete pops, we're getting semi-treated affluent that's going toward or around the beach, the fine for that is \$10.00 per gallon per day and it will take up to 2 years to replace it.

CITY MANAGER WEISS stated Mr. Boyle made a comment that there is more coming. Through the SDCWA we are aware that MWD does have plans for additional rate increases moving forward into the future.

MR. BOYLE was shocked. He saw the numbers projected through 2035 and the number that we're paying per acre-foot of water now from MWD is about \$700, but through 2035 that number goes up to \$2,600 per acre-foot from MWD.

COUNCILMEMBER KERN stated that we talked about the tank, but people don't know that it's a 30,000,000 tank, so take 30,000,000 gallons times \$10.00 per gallon times every day.

MR. BOYLE has been in the construction business all of his professional life looking at older buildings to see what it will take to fix them up. That huge tank is moving and it scares him.

COUNCILMEMBER LOWERY confirmed that Mr. Boyle is telling us about a sewer tank that is a block from the beach and is breaking already. If that material leaks,

we'll have fines imposed on us by the State or Federal government for damages.

MR. BOYLE concurred and stated it can be happening underground as well and that's what he fears. When you have cracking concrete like that and you're seeing on the exterior of the sewage tank that there is actually moisture and efflorescence on the outside of the crack, it's disturbing. It could be 30 years, but it could be 20 minutes.

MAYOR WOOD explained that we are trying to highlight to the public the deterioration of some of our plants, water and waste water. Carlsbad and Vista had a sewer line break not long ago and paid millions in fines.

DIRECTOR DALE responded Carlsbad's fine was \$1,100,000 and most of it was paid to resource agencies for mitigation projects.

MAYOR WOOD stated sometimes the cost of not fixing our infrastructure can cost us more if there's a break. We're talking about rate increases, but these are just pass through increases. We would like to put rate increases on top of that to fix our infrastructure and pay for the bonds that come forward to fix it. We'd like to have a fund that has a balance that we can use to fix and keep up with our system. He asked the City Manager if we have any funds for that.

CITY MANAGER WEISS responded we're starting to slowly accumulate funds for the maintenance and repair, but the amount that we're putting away isn't sufficient to take care of all of the problems we're going to be facing.

MAYOR WOOD hopes the media will publish this information so people don't find out just before the last Council meeting and say they didn't know about this. We are worried about the potential system failure in water and waste water. The only way to fix it is to have rate increases or getting more money.

COUNCILMEMBER SANCHEZ asked the status of the lawsuit and what we project the impacts might be.

CITY ATTORNEY MULLEN responded the lawsuit was filed in June and has been served. There is no trial date scheduled yet. It's a Petition for Writ of Mandate, which are generally decided more quickly than jury trial cases. One would expect that there would be a decision within the next 12 months. He hasn't quantified the financial impacts if it were successful, but he believes that the amount at issue for the entire SDCWA is somewhere around \$29,000,000 annually. If successful and MWD's rate increase were to be set aside, then Council may have the prospect of being able to pass through a decrease in the future.

Public input

LARRY BARRY, 3973 Brown Street, stated Ms. Dale spoke about Carlsbad lowering their costs by paying cash up front and not financing things. This is something we need to do without scare tactics because of cracks in the water system. He doesn't doubt that some of these things are going to pieces. These are bad times. He wants it fixed, but he wants it fixed right and without the scare tactics. We have to tighten our belts. We're not going to have that much revenue coming into the City for the next couple of years so we need a master plan that we stick to and get this fixed.

ROBERT McCLELLAN, 2348 Nicklaus Drive, President of the Homeowners Association (HOA) next to the El Camino Golf Course, asked why the City isn't promoting or making more effort to get reclaimed water. If there is a shortage of water, why can't the City put more effort into bringing in recycled water. Every time the rates get raised our residents have to take out another tree or bush or put more rocks in the front yards. Most of this information went over his head. There are a lot of people that would back Council if they got recycled water started.

DIRECTOR DALE stated presently we produce some recycled water out of the San Luis Rey Water Reclamation Plant. That's used at Whelan Lake as well as the municipal golf course. We're participating in a regional effort with about 12 other water and city agencies to try to share recycled water across our boundaries. That might result in some cost savings in terms of the amount of infrastructure we might need to install. We have a discussion taking place in the next week with Fallbrook. As you may know, their sewage treatment line runs through our City and we have the potential to take recycled water from that line, so we'll be talking to them in the near future. We've also been talking to Camp Pendleton about a project to bring recycled water down from one of the gates that borders our City. We are exploring this on multiple fronts. It will take money to build the infrastructure to get it to some of these places, but we're looking to see where we can use it most cost effectively first.

JIMMY KNOTT, 127 Sherri Lane, stated he did some investigating and found many of the agencies that provide assistance to needy families/seniors are stretching their limits. However, he found that other cities are surmounting Proposition 218 and offering discounts to see to the needs of the citizens. He is asking Council to establish an ad hoc committee to look into a low-income discount program using the models of the other cities.

CITY ATTORNEY MULLEN stated as a general rule his position is that you can't increase one user's set of rates to subsidize another's. Proposition 218 requires rates to be set on the basis of cost, so to the extent that a subsidy is being provided by another rate payer that would violate 218. That doesn't mean you can't have another source of funds that's not derived from rates. If there is another available set of funds, that may be an option. There have been cities that have eliminated low-income rates or rates for seniors on the basis of Proposition 218. He doesn't know how many cities on that list are using subsidized rates and that really is the critical distinction.

SILVIA (refused to give last name or address) read a North County Times article that said that rate payers are paying \$92 to \$115 and that's a lie. Based on a family of 4, and she stopped watering, her bill averages \$150 per month. When she was watering she was paying \$180 per month. You need to tell the newspapers what the rate is for the average family in Oceanside. This presentation shows \$54.00 for water and that is inaccurate. She expressed concern about the tier system used to determine rates and asked how the City knows if her water is going to the sewage or if she's recycling her own water. She asked if the City has ever looked into the legalities of what they are doing. She would like to have a meeting more convenient for the public. She pays a lot of money for the services and where she lives there is no water pressure and the water rusts/stinks. Now she is being asked to pay even more; that is outrageous.

GARY MYER, 3928 San Pablo Avenue, doesn't hold Council responsible; he knows who is causing the problem. He has sat through the Council meetings in the past where everyone had a gun to their head by MWD, who said raise the rates or we will cut your water off. There was no choice. It's a monopoly and they run it that way.

Someone brought up at a previous meeting that part of the increase was going toward a 25% pension plan increase. He's assuming they've already done that, even though there was a big uproar and it was stopped temporarily. Right now every reservoir is at maximum. The water is there and yet because MWD required the restrictions that cities had to raise the rates, everybody cut back on water. We did great; we cut back like 16%. So MWD went to the Utilities Commission and said we're not getting enough people using water so we're going to have to raise the rates. That's what's happening now; they are raising the rates because people are conserving water, not because we're using too much. It's highway robbery and MWD is getting away with it legally. He doesn't think Council has a choice but something needs to be done about MWD.

EILEEN COSTA, 3621 Vista Campana South #91, stated there was a big outcry last year when MWD was going to have an increase in their pensions. She doesn't know what happened.

COUNCILMEMBER KERN responded they did not do the enhanced pension at MWD. He thinks they probably just delayed it and it will come back at a later time, but they didn't do it last year.

MS. COSTA asked if that affects the increase they are asking for now.

COUNCILMEMBER KERN responded no.

Public input concluded

COUNCILMEMBER LOWERY acknowledged Lloyd Prosser who has been very helpful with this. Mr. Prosser suggested a few questions.

He is upset when he hears that someone has a \$180 water bill. He thought the average water bill is about \$50 like it says in the North County Times. In the last 10 days he has been working with staff to understand what is happening. He took a tour of the desal plant. We currently are getting 20% of our water from the existing desal plant and with the proposed upgrade we will be able to get up to 62% of our water from within the City. That's a significant step to take, but it's going to cost money. Meanwhile, we're here trying to deal with the increases that MWD is passing on to us and we're dealing with decaying infrastructure.

What is the Water Enterprise Fund in layman's terms? Is that like a savings account that we're supposed to have for our waste water?

DIRECTOR DALE responded the sewer fund is a fund that the rates are paid into and that fund is broken up into 4 different pieces; one for replacement of infrastructure, one for maintenance and operations, one for debt and one for the developer fees for the fixed asset replacement. So when developers pay at the counter they pay into a special fund that's segregated from the other funds and pays for development-related expenses. Sometimes there is a project that might be funded from a portion of the development-related fees and then a portion of existing user fees, because it serves the needs of both parties.

COUNCILMEMBER LOWERY asked if we have any money in the primary part of this Sewer Fund. If so, why is it that we didn't have any money when we had that break in the line fairly recently.

GREG BLAKELY, Water Utilities Division Manager, responded last year when the project came up we needed over \$4,000,000 and we checked and found we had literally less than \$1,000,000 in the fund that could be utilized for construction. That's why we had to come to Council and get authorization to borrow it from the Water Fund to pay for that repair.

COUNCILMEMBER LOWERY stated so we have nothing in the Sewer Fund but we have a debt.

DIRECTOR DALE responded it's approximately \$1,600,000, conservatively, in that Fund. Debt is over \$5,000,000 a year so that's paid as we receive revenues.

COUNCILMEMBER SANCHEZ knows the Utilities Commission has spent a lot of time on the increases and how to attack them and address them. She is angry. Those who have been watching this for years have been wanting to break from business as usual at MWD. They give a bill to SDCWA and that's supposed to be passed through to us and what can we do. It's time we rattled the whole thing. She had a brief

conversation with Mr. Boyle before the meeting and MWD is not efficient. She's not even sure the SDCWA is efficient. We need to put their feet to the fire. We need to act more aggressively in weaning ourselves off. She asked the City Manager what we can do to fast track our desal pilot, and on reclaimed water. These things have to be a high priority.

It's two-fold. One is conservation. Our residents and our agricultural interests who are suffering here have done a great job in conserving water. Yet, the more we conserve the higher the cost of that water. It is upside down. Where you have less demand the costs should go down, but it doesn't because less demand means less money and this is the only mechanism they have to get more money. She would like to see the City move as aggressively as possible to get more water independently of MWD and SDCWA and to see what else we can do in terms of banding with other cities to have MWD deal with their inefficiencies. She is looking to leadership in the SDCWA and here on the dais to say this is enough.

On the sewer side we need to be more balanced. When she first came on Council back in 2000 we were talking about a \$50,000,000 no-interest loan from the State for the expansion of our sewage treatment plant, which we are now paying off at \$2,000,000 a year, which will take 25 years. Why didn't we look at our infrastructure at that point? We're paying for new development; that new development is on the backs of current rate payers. What about paying for our own infrastructure and shouldn't that be number one. It's unfortunate that it hasn't been done in the last 10 years. We are going to do better and do as much as possible to insure our current infrastructure is maintained.

She knows that agencies are loathed to sue other agencies, but this is ridiculous. MWD can't be in their ivory tower and keep telling us they will just shut the water off and that's it. She would ask the City Attorney to look into what else we can do in working with leadership in our area to bring some reality here. If we have to be efficient, so do they. Once we determine how to do that, we need to move forward aggressively.

COUNCILMEMBER FELLER questioned if development pays their way.

MR. BLAKELY replied yes, as development comes in they do pay their way. Each time a developer or an individual building a single home come in, they all have a buy-in fee; they buy into the existing infrastructure. If that project has an impact on the existing system, they have to improve that portion of the existing system at their cost.

COUNCILMEMBER FELLER confirmed then that we are not subsidizing them. That dollar amount that they pay at the counter might not be there until the impact is actually there, is that correct?

MR. BLAKELY responded as the developer comes in and if there's an impact by that particular development on the existing system - be it water or waste water - they do the improvement before they have occupancy. If we have existing facilities that are deteriorated or undersized, we have existing lines throughout the City that, by our Master Plan, are surcharged in waste water. We have lines in waste water, on the water side, that are undersized and don't make fire flow. When we go to upsize or replace those lines, either due to deterioration or because they're surcharged or need to be upsized for fire flow, if we know that the City in its planning is looking at long-range or future growth for infill or whatever, we're going to replace that line once. So, we not only increase it to the size we require, so it no longer surcharges, but based on what Planning has in their estimates in the General Plan, we will upsize it to that level.

COUNCILMEMBER FELLER stated in one of the graphics you showed the potential impact of MWD's overcharges to the SDCWA's rate payers and it went from \$30,000,000 to \$230,000,000, so that's SDCWA and that's what you're guessing, an

approximate 730% increase in the next 10 years. That's a very scary number. How many gallons a day does Oceanside use?

MR. BLAKELY responded we average 30,000,000 gallons a day.

COUNCILMEMBER FELLER had lunch with General Jackson about reclaimed water from Camp Pendleton and he wants to see about making that work. He also thinks that MWD is trying to sneak their pension package by us. He thinks they are controlled by the unions and they are out of control. He doesn't think there is any possibility that they are going to be changing that soon. He's seen the reservoirs in Northern California and they're full. Northern California doesn't have anywhere near the cost of transporting water that San Diego has. The SDCWA is being hosed.

Mr. Boyle brought up what they are going to be charging in 2035 and just thinking about what they're going to force down our throats in the next few years is alarming. He doesn't know if we have control with an appointed that's not an elected at the SDCWA, although he doesn't think we have control over anything at SDCWA. They've got a lot of votes that are controlled by the City of San Diego.

Silvia the sewage flow is based on how much water you take in and he'd like that explained.

DIRECTOR DALE responded the sewage charge is based on a low, medium or high water use and it's based on the winter average water use. The reason we use winter average is because it's thought that during the winter months there won't be that large amount of watering on the outside and the use would reflect what's used in the inside and what's typically returned to the sewer. She offered anyone who is experiencing a bill like Silvia's to call our office and we'll come out to see if you have a leak and help find and repair that leak.

COUNCILMEMBER FELLER stated the water bills contain more than just water and sewer. They also have street sweeping and trash removal. His bill is at about \$112 per month, including all the services, for his water bill. The GIS for the entire City is funded by the Water Utility Department and that's an asset management system.

MR. BLAKELY stated Water Utilities does have a GIS (Geographic Information System) that is interconnected with our asset management system or GBA, work orders in our field, etc. Our GIS is primarily dedicated to making layers on the GIS that show our infrastructure. We have helped out other departments. Fire and police have their own GIS system for their dispatching. Engineering has a GIS component, as does Planning. They have all of the data but aren't sure how to bring it up or manipulate it so we do help out sometimes. It is expensive. GIS and IT for waste water have been eliminated for this year.

COUNCILMEMBER FELLER asked if every department pays for their own.

MR. BLAKELY responded yes.

COUNCILMEMBER FELLER thinks we should consider what Solana Beach did yesterday.

COUNCILMEMBER SANCHEZ believes it's in our best interests to sue them.

COUNCILMEMBER FELLER is reluctant to sue because it gets us more attorney bills.

MAYOR WOOD would like some of the information put in our mailers for billing.

COUNCILMEMBER KERN stated we live in a desert, so growing grass and

trees that aren't native here uses a lot of water. He would encourage people to look at native plants; low water usage, draught tolerant plants. He doesn't think it's going to get any better in years to come. We're going to have to re-think what we want Southern California to look like.

Right behind his house is the Fallbrook Utility District's outfall. That water goes out to the ocean. We could capture that water and treat it to the point that we could use it for purple piping. The problem is it won't be cheap. This is the problem we're having with sewer now is the infrastructure costs just to maintain infrastructure. Our goal as a Council is to be 50% water independent and we're well on our way to that goal. With desal and direct potable reuse, etc., we can be 80-90% water independent, but it's costly. We need to invest in our future now. Last year he asked Council for more funds in the sewer fund but got no support. He's been working on this for 20 years.

Last time MWD went through a draught they were doing the same thing to us. They were moving things from just a commodity charge, which was water, into their fixed assets because they were getting hammered by Wall Street. They could not supply their bond holders the steady stream of income so they changed their billing from commodity - water to more fixed costs. The fixed costs are what they keep passing and raising. We took a long time to do the tiered water rates and it's based on usage. That Tier 1 is low water usage so seniors can get a discount by using less water. We built that into the rates. It wasn't based on age or income; it was based on usage. He thinks that's fair.

Regarding the reservoirs, the previous speakers are half right. The reservoirs above the Delta are full. This year Northern California had 106% of rainfall. We just can't get it through the Delta. If you really look at California, it's not a dry State; it's just wet in the upper one-third. The lower two-thirds are relatively dry and we have to move that water down a system that's 440 miles long and it's expensive.

He wrote a letter to MWD about their pension costs and let them know he was not happy about it.

On Silvia's comments, this is not a public hearing, this is an informational workshop. There will be a Proposition 218 public hearing on the water rates so the public will have ample opportunity to make comments about the water rates.

At one time he was the champion of using less water. He was at 3 units a month. Chuck is down to 2. My backyard is gone; we've taken all the grass out and put in native and draught resistant plants. He saw this coming years ago. We have to change the way we use water.

He is very proud that the City has cut 469 acre-feet out of our water usage in a year. Every acre-foot is 325,900 gallons of water. So, 1,000,000 gallons of water is a little over 3 acre-feet. If we could charge a penny a gallon all of our problems would be solved. One unit of water is 748 gallons and we are charging a little over \$2.00 for that unit. It is a relatively cheap commodity still. He understands that people are having hard times and don't want their rates increasing. This will be felt by everyone. There are no easy answers to this. Staff and the Utilities Commission have done a great job.

COUNCILMEMBER FELLER asked if the Harbor District pays 100% of their sewage.

MR. BLAKELY responded the Harbor does not pay for their sewage, i.e. public restrooms, etc. Public City facilities do not pay for sewage. The Harbor pays for water and the individual restaurants and shops do pay for their water and sewage.

COUNCILMEMBER FELLER asked about the boats.

MR. BLAKELY responded the slips pay for water and sewage.

COUNCILMEMBER FELLER asked if we are getting our fair share from the Harbor.

MR. BLAKELY believes we are. He would have to investigate and do an analysis, but he believes we are.

COUNCILMEMBER FELLER would like to make sure that's happening.

MAYOR WOOD thanked everyone for cutting water usage. We did a great job but the thanks we got out of it is a potential rate increase. Councilmembers pay the same rate as anybody else. He still waters his yard and he has a pool that he has to refill in the summer. When he uses more water than others, he pays a higher rate.

This is an agricultural area and they are really being hurt by this. It can impact our agriculture here in Southern California. We have talked about purple pipes and reclaimed water but those things cost money and it isn't cheap.

He remembers that we used to get billed for water every other month and it was cheap. Now it's monthly and more expensive. Every year he goes back to Washington DC and they go to the State, but the State is a lost cause right now. He stood in the halls of Congress and the Senate. He's gone to Senator Feinstein's office, Senator Boxer's office and Congressman Darryl Issa's office and pleaded for water. They are California's representatives. We've complained about the water down south here.

Everyone talks about Carlsbad's desal on the beach. We put ours inland and we've been doing it for years; not with salt water but with all the water coming down the San Luis Rey River. We have gone back to try to expand that and get more water. We'd like to get up to 50% usage of our own water and not have to buy it from other people and pay those prices. Having a desal plant on the beach will kill you with the Coastal Commission and all the regulations, just like Carlsbad found out. We've sunk a well in the Harbor down by the ocean where we get a mix of both waters and we're pumping it back to our station so we can desal it. We'll send more letters.

We have also talked with Camp Pendleton. We've allowed them to use our sewer system for the last few years while they are putting theirs in. There is a plan to put a desal center on Camp Pendleton towards our City with use for the entire County. We're moving, but these things cost money and take time.

The City has been in a multi-year lawsuit with the County regarding the Gregory Canyon Landfill on the Pala Indian Reservation. We get our water from downstream of the Pala Indian Reservation through the San Luis Rey River. They decided to put a landfill there that could leak and that leakage would go right into the water because it sits right on that river. If it leaks it destroys all of our underground water and we will have none. Why would we spend millions more putting a plant that takes from that water if they are putting a landfill up the stream that can come downstream and pollute all of our water? We are doing much. These rates aren't happening just in Oceanside.

We can try and bring more money into the City to be able to build things and have the potential to do more about it. We've been doing that with some of the contracts in the last week. Everybody on the Council is doing something about it. He's been very frustrated in dealing with the Federal and State agencies because of the economy. Right in the middle of this economy the last thing he wants is a double-digit rate increase.

If anyone has suggestions that they think will fix this problem, Council and staff are open to those.

CITY MANAGER WEISS stated this is an informational item. We will be starting the public hearing process, with the public hearing tentatively scheduled for November 3rd. We do have to go through the Proposition 218 process. He heard several comments in regards to reclaimed water and the desal plant. We will, under separate cover within the next week to 10 days, get Council a pass through memo outlining where we are with each of those projects and what we can do and expect in regards to fast tracking those. The more we can decrease our reliance on MWD the better off we will be. Those projects are not going to be in the ground before your rate increase in November. We will still need to move forward as we are recommending to Council.

2. **Public Communication on City Council Matters (off-agenda items)**

JIMMY KNOTT, 127 Sherri Lane, wanted to thank everyone for coming to the spaghetti dinner.

ADJOURNMENT

MAYOR WOOD adjourned this meeting to a City Council/CDC workshop tomorrow, September 1, 2010, at 1:00 PM. This adjourned Council meeting was adjourned at 6:01 PM Tuesday, August 31, 2010.

ACCEPTED BY COUNCIL:

Barbara Riegel Wayne
City Clerk, City of Oceanside