



California

# CITY OF OCEANSIDE

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

MARCH 16, 2011

REGULAR MEETING                      4:00 PM                      COUNCIL CHAMBERS

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

**Mayor  
HDB President  
CDC Chair**  
Jim Wood

**Deputy Mayor  
HDB Vice President  
CDC Vice Chair**  
Esther Sanchez

**Councilmembers  
HDB Directors  
CDC Commissioners**  
Jack Feller  
Jerome M. Kern  
Gary Felien

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

**Treasurer**  
Gary Ernst

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

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

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

The regular and joint meeting of the Oceanside City Council (Council), Small Craft Harbor District Board of Directors (HDB) and Community Development Commission (CDC) was called to order by Mayor Wood at 4:00 PM, March 16, 2011.

**4:00 PM - ROLL CALL**

Present were Mayor Wood, Deputy Mayor Sanchez and Councilmembers Kern, Felien and Feller. Also present were City Clerk Wayne, City Manager Weiss and City Attorney Mullen.

City Attorney Mullen titled the following items to be heard in Closed Session: Items 2 and 3 [Item 1 was not heard].

[Closed Session and recess were held from 4:\_\_\_ PM to 5:03 PM]

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

**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]

**No closed session held**

2. **CONFERENCE WITH REAL ESTATE NEGOTIATOR (SECTION 54956.8)**

PROPERTY: Property bounded by Pacific Street, Myers Street, Seagaze Drive, and Civic Center Drive (APN 147-261-01 through 12; 147-076-1, 2, 3, 10, 11, 12); Negotiating Parties: SD Malkin Properties; Negotiator for the City: Jane McVey, Economic and Community Development Director, Under Negotiations: Terms of Disposition Agreement and Lease.

**Discussed; no reportable action**

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

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (SECTION 54956.9(a))  
City v. AELD, U.S. District Court No. 08cv2180 JAH (CAB)

**Discussed; no reportable action**

**5:00 PM – ROLL CALL**

**MAYOR WOOD** reconvened the meeting at 5:03 PM. Present were Deputy Mayor Sanchez and Councilmembers Kern, Feller and Felien. Also present were City Clerk Wayne, City Manager Weiss, City Treasurer Ernst and City Attorney Mullen.

**CONSENT CALENDAR ITEMS** [Items 6-16]

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:

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. CDC: Approval of plans and specifications for the construction of a 284-space surface public parking lot and Coastal Rail Trail located east of Myers Street and west of the railroad tracks between Wisconsin and Tyson Streets, and authorization for the City Engineer to call for bids; and approval of a budget appropriation in the amount of \$1,200,000 from the CDC-CRA Bond Construction Fund to the project account

8. City Council: Approval of two purchase orders: in an amount not to exceed \$709,368 to Downtown Ford of Sacramento for 27 new police vehicles; and in an amount not to exceed \$89,100 to Cherrington Enterprises of Jamestown, North Dakota, for one new beach cleaner; and authorization for the Financial Services Director, or designee, to execute the purchase orders
9. City Council: Approval of the continuation of an agreement [**Document No. 11-D0179-1**] with Bloomberg, LP, of New York, NY, for a two-year period, effective July 1, 2011, through June 30, 2013, in the amount of \$63,000 for market pricing and information services for the Treasurer's Office
10. Harbor: Approval of Amendment 2 [**Document No. 11-D0180-2**] in the amount of \$24,500 to the professional services agreement with Keyser Marston Associates, Inc. (KMA) of San Francisco for financial consulting services, for additional work requested by the City, and authorization for the City Manager to execute the amendment
11. City Council/CDC: Approval of the transfer of interests in certain improved Commission-owned real property to the City, and authorization for the CDC Chairman to execute the quitclaim deed [**Document No. 11-D0181-3**] conveying the properties to the City; approval by the City Council to accept the conveyance, and authorization for the City Clerk to accept and file the deed with the County Recorder
12. City Council/CDC: Adoption of **Resolution No. 11-R0182-1**, "...authorizing the execution of a cooperative agreement with the Oceanside Community Development Commission and making certain findings in connection with the provision of the public improvements and authorizing such improvements in connection therewith", and **Resolution No. 11-R0183-3**, "...approving and authorizing the execution of a cooperative agreement with the City of Oceanside and making certain findings in connection with the provision of public improvements and authorizing such improvements in connection therewith", approval of a cooperative agreement [**Document No. 11-D0184-1**] and [**Document No. 11-D0185-3**] between the City and the Oceanside Community Development Commission for the City to construct certain public infrastructure improvements in the downtown redevelopment project area; and authorization for the Mayor and Commission Executive Director to execute the respective documents
13. City Council/CDC: Adoption of **Resolution No. 11-R0186-1**, "...authorizing and approving a cooperation agreement between the Commission and the City of Oceanside and making certain determinations and approvals in connection therewith", and **Resolution No. 11-R0187-3**, "...authorizing and approving a cooperation agreement between the City and the Community Development Commission of the City of Oceanside and making certain determinations and approvals in connection therewith", and approval of a cooperation agreement [**Document No. 11-D0188-1 and 11-D0189-3**] between the City and the Oceanside Community Development Commission to place a Deed of Trust [**Document No. 11-D0190-3**] on certain undeveloped Commission-owned real property (APN 143-201-03, 147-020-38 and 147-161-11) to secure payment of a loan made by the City to the Commission; and authorization for the Mayor and Commission Executive Director to execute the respective documents
14. City Council: Adoption of **Resolution No. 11-R0191-1**, "...approving and implementing the Memorandum of Understanding [**Document No. 11-D0192-1**] between the City of Oceanside and the Oceanside Police Management Association", effective March 17, 2011, through December 31, 2013
15. City Council: Acceptance of the Treasurer's Report for the quarter ended December 31, 2010

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16. City Council: Acceptance of the Comprehensive Annual Financial Report for the Fiscal Year ending June 30, 2010

**DEPUTY MAYOR SANCHEZ** moved approval of the Consent Calendar [Items 6-16].

**COUNCILMEMBER KERN** seconded the motion.

**COUNCILMEMBER FELLER** registered a no vote on Item 14.

**Motion was approved 5-0 (Item 14 was approved 4-1; Councilmember Feller – no).**

**INVOCATION** – John Lundblad

**PLEDGE OF ALLEGIANCE** – Girls Softball team members

**PROCLAMATIONS AND PRESENTATIONS**

Presentation – “Pet of the Month” presented by Elkie Wills, San Diego Humane Society & SPCA

Off Agenda – Ironman announced for April 2, 2011

Brenda Souza thanked everyone for attending Pastor Carl Souza’s memorial

Presentation – Commonwealth School’s recitation of the *Declaration of Independence*

Presentation – Mayor’s Youth Sports Recognition and Appreciation Award – Girls Softball Assoc. – ‘Lights Out’ GU12

**Presentations were made**

**CLOSED SESSION REPORT**

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

**CITY ATTORNEY MULLEN** reported on the items discussed in Closed Session: See Items 2 and 3 above [Item 1 was not heard].

**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

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

**JOAN BRUBAKER**, 1606 Hackamore Road, stated if the inclusionary housing project is made purely voluntary and if the builders do not donate or volunteer to give enough inclusionary housing, we may end up in a situation like a neighboring city did. They kept promising but never building the inclusionary housing and wound up at a stalemate where they had to say they would build a certain number of houses in a location that would fill in all of the requirements; otherwise they would have lost a lot of funds. Now that city is putting 500-600 houses in one area. She urged Council to keep that in mind.

**JIMMY KNOTT**, 127 Sherri Lane, is the homeowner’s representative of the only mobile home park that is in the tsunami zone. He reported that they did not receive any contact from the City’s emergency services or personnel regarding the most recent incident. There were also conflicting reports in the media. The City’s Fire Department

receives official communications. He asked if it was possible for the park manager and homeowner's representative to be put on a contact sheet so they could help people in the park when we do get an official communication.

**LARRY BARRY**, 3973 Brown Street, asked how we can talk with our elected officials. We call and email them, but all we get are the Pollyanna responses. One reason the City of Bell got away with what they did was because the people didn't care, and they let the officials do what they did. A democracy is about the people talking to their elected officials. We have commissions set up that represent the people and then advise Council, but they are a joke. They are inefficient, and communication with the public is non-existent. The public has a right, but how do we get to talk to these people so we can make changes in the City. We have a lot of expertise in volunteers in the City that are willing to make Oceanside a better place. He hopes we can come up with a way to fill these commissions with volunteers that represent the people, who have a right to speak, and advise Council.

**FRANCIS KAZERSKI**, 278 North El Camino Real, asked for the citizens' and Council's prayers and support for Japan.

#### **INTRODUCTION AND ADOPTION OF ORDINANCES**

The following items are ordinances for introduction or adoption by the City Council/HDB/CDC. Ordinances are laws of the City of Oceanside and require introduction and adoption at two separate City Council meetings (urgency ordinances are an exception, and may be introduced and adopted at one meeting as an emergency measure). The City Council/HDB/CDC has adopted a policy that it is sufficient to read the title of ordinances at the time of introduction and adoption, and that full reading of ordinances may be waived. After the City Attorney has read the titles, the City Council/HDB/CDC may introduce or adopt the ordinances below in a single vote. There will be no discussion of the items unless requested by members of the City Council/HDB/CDC or the public through submittal of a Request to Speak form prior to the commencement of this agenda item.

28. **City Council: Adoption of an Ordinance of the City Council of the City of Oceanside for Zone Amendment (ZA-10-00001 revision) adding Article 39A and Modifying Article 39 to the Oceanside Zoning Ordinance regarding Amateur Radio Tower Standards** *(introduced 2/23/11, 4-0 vote – Wood absent)*

After titling of the Ordinance, **COUNCILMEMBER KERN** moved approval [of adoption of **Ordinance No. 11-OR0194-1**, "...for Zone Amendment (ZA-10-00001 revision) adding Article 39A and modifying Article 39 to the Oceanside Zoning Ordinance regarding Amateur Radio Tower Standards".

**DEPUTY MAYOR SANCHEZ** seconded the motion.

**Motion was approved 4-0**; Mayor Wood – abstained.

29. **City Council: Adoption of an Ordinance of the City Council of the City of Oceanside amending Chapter 6, Article 1 of the Oceanside City Code by the amendment of Section 6.2(e), Section 304, Permit Fees to change the structure of the Building Fee Schedules** *(introduced 3/2/11, 4-0 vote – Wood absent)*

After titling the Ordinance, **DEPUTY MAYOR SANCHEZ** moved adoption [of **Ordinance No. 11-OR0195-1**, "...amending Chapter 6, Article 1 of the Oceanside City Code by the amendment of Section 6.2(e), Section 304, Permit Fees to change the structure of the Building Fee Schedules".

**COUNCILMEMBER FELIEN** seconded the motion.

**Motion was approved 4-0; Mayor Wood – abstained.**

**MAYOR AND/OR COUNCILMEMBER ITEMS**

20. **Request by Councilmember Felien for an update on TransNet's "Maintenance of Effort" audit results, a discussion regarding the City's response options, and possible direction to staff**

**COUNCILMEMBER FELIEN** wanted to get an update from staff regarding TransNet because we're at risk of losing millions of dollars in SANDAG funding for the maintenance of our roads and streets. The citizens pay a ½ cent sales tax toward SANDAG, and this is money that we should be getting. Unfortunately, due to a vote that took place last year on a project in which staff repeatedly said if it wasn't approved we'd be at risk of losing the funding. Now the day of reckoning is at hand, and we need to get this fixed so we're not losing the SANDAG funding. He requested this presentation so the public would be aware of what's at stake.

**GARY KELLISON**, Senior Civil Engineer, stated the Maintenance of Effort requirement was established with the adoption of the TransNet Extension Ordinance in 2004 and was designed to prevent cities from replacing existing fund sources with TransNet to help assure that the ½ cent sales tax that we all pay goes directly to road maintenance and not to other things. It's set at a base level of the City's General Fund or local expenditures for the years 2001, 2002 and 2003. From that base period, the amount is inflated by the higher of either the general increase in General Fund revenues or the Construction Cost Index. For us in this present year, our base year expenditures have been inflated by 23%. Discretionary includes General Fund and any kind of fund that we have a choice of spending on streets or something else. Funds like gas tax and TransNet are non-discretionary because they can only be spent on streets.

Our current Maintenance of Effort is \$2,900,000. It is going to drop in 2 years to \$2,600,000 to reflect the decline in General Fund revenues and construction costs. There is no relationship between the amount of TransNet revenue we receive and what our Maintenance of Effort is. It's based solely on our expenditures in a base year that was selected long before the TransNet ordinance was adopted. For comparison, Oceanside's Maintenance of Effort is approximately equal to our TransNet revenue and Carlsbad's maintenance is approximately double their TransNet revenue.

For 2010 we were short of our Maintenance of Effort by \$1,300,000. Finance and Engineering are looking at the year in progress, and we are short at this moment. We are looking at ways that we can increase spending and target it on street maintenance in the remaining months of this current year so we are compliant for 2011.

The reason the Maintenance of Effort is important is that, if the City continues to not keep its Maintenance of Effort level expenditures, SANDAG will reduce our TransNet allocation dollar-for-dollar. So if we're short \$1,300,000 in the previous year and we do not ask for an extension, they will cut our allocation by a like amount and transfer the money to other cities. We use the TransNet money primarily for street maintenance. The Public Works Department tries to catch streets with a relatively inexpensive maintenance method, which is primarily a slurry seal program, where the street pavement quality drops to a fair condition. It's still repairable fairly inexpensively with the slurry seal. Once it drops below that, it is an overlay or complete dig-in replacement, which is much more expensive. The funds the City receives for pavement is very important because it forestalls more costly maintenance later.

There is a way out of this. Public Works, Finance and Development Services are taking a close look at the current year to see how we can increase that and bring a recommendation to Council to spend local funds on contracts that are already awarded

that we can increase immediately in this and the next fiscal year. Secondly, we have preliminary approval at a staff level with SANDAG and their citizen's oversight committee to do a 3-year make-up plan for the shortfall we had in the previous fiscal year. This make-up plan requires us to increase our Maintenance of Effort by \$100,000 this year, \$600,000 next year and another \$600,000 in 2013. It's backloaded because our Maintenance of Effort drops in 2012. The hit isn't so bad, as long as we can defer some of that, and SANDAG has given us every indication that that's okay.

That's the recommendation staff will bring forward at future meetings. We'll have in the CIP budget a suggestion for increased Public Works support in the streets department for 2011. We'll also bring forward a recommendation with the current overlay contract to apply local and General Fund money to bring us up to this required Maintenance of Effort expenditure that will preserve our full TransNet allocation.

**CITY MANAGER WEISS** stated that although Mr. Kellison mentioned General Funds which is one option, the TransNet Ordinance also reflects local funds. We are going to be working with the State auditors who come in and audit our books on where the money is. There are some funds that we currently expend that do not necessarily fall into the General Fund. For example, we put \$300,000 a year from solid waste money into storm drain cleaning, which he feels is a legitimate expense. We will just need to convince the State auditors of that. Although there is a gap this year that we're not going to recover, we're looking at various creative ways to increase what is considered discretionary money. Since we don't have a lot of General Fund money to play with to begin with, we're going to need to find alternative resources to be able to count toward our Maintenance of Effort.

**COUNCILMEMBER FELIEN** stated in the staff recommendation staff is recommending the same project that was turned down last year. Are there other options we have in terms of repair work that would equal the \$450,000 in case this particular project is still controversial?

**MR. KELLISON** responded yes, there's a much better option in that we already have an asphalt overlay contract awarded which is just beginning. It would make perfect sense to bring to a future Council meeting a change order using identified local funds to increase that amount so that we're spending the necessary amount in this fiscal year doing a project that's going to benefit street maintenance throughout the City.

**COUNCILMEMBER FELIEN** moved to support staff's recommendation to increase our Maintenance of Effort so we don't lose any TransNet funding.

**COUNCILMEMBER KERN** seconded the motion.

**DEPUTY MAYOR SANCHEZ** thinks Councilmember Felien hasn't followed the history of the beautification project that we're talking about. The beautification project was supposed to be part of the rail project. We were supposed to get betterments. In a better time we actually decided to put some money away as well until we found out what we were going to get. We got nothing from NCTD. If anyone has taken the train east, there are some cities that received some nice beautification funds. Oceanside got funds. We got a fence that was substandard, and we ended up having to spend money because of NCTD.

Secondly, there was a project that we were looking at on Oceanside Boulevard that involved a joint effort. Oceanside was agreeing to subsidize to a certain point (50%), which would make it \$300,000 each. That project got pulled. Then we had our financial crisis. We're talking about discretionary funds. She thought this was brought forward as a SANDAG representative to go back to SANDAG and say we need to have different criteria because every city in the County is having a discretionary fund problem. For cities that now have to deal with very basic issues in terms of getting our services

out to our residents, that discretionary fund will be very difficult for near term. How can we get these funds in a different way? We've talked about beautification projects. The public did not like the idea of getting their services cut and yet watching beautification projects.

In reading the staff reports, she understands that our bigger concern/issue in terms of getting credit for spending discretionary funds has to do with a change; SANDAG was doing the auditing, and now the State is. SANDAG took our word that funds that came from park facility fees in 2008-2009 would count toward that. The staff reports says that currently the City is using Redevelopment bond funds to construct storm drain and street improvements on Pacific Street, Pierview Way and Myers Street. Unfortunately, SANDAG now relies on a State Controller to determine what fund sources are discretionary, and the State Controller considers Redevelopment funds to be non-discretionary for street infrastructure purposes.

She doesn't know what their thinking was or what the notice was in terms of cities understanding that now the State was going to be doing the auditing, and perhaps they would have different rules. Perhaps in order to get the same thing done, we could have done it in a different way. That's a big hit for Oceanside to be doing street maintenance and not be able to get credit. That was about \$1,600,000 that we're not going to get credit for. She wants to support staff's looking at ways of finding out what projects we have that can count towards this as credit. In terms of General Fund money, it could be a bargain-basement sale, but if you don't have the money you can't buy. She would love to get extra dollars. They belong to the residents. But every city is in this position. When we talked about this, we talked about having our representatives go back to SANDAG to say we need to review this and figure out a more equitable way of getting these funds distributed to the cities because discretionary funding issues are going to be with us for a while.

At this point, not knowing where the money is going to come from, she can't support this motion. We have to count every dollar and decide how it's going to impact programs. She would prefer to see what staff can come up with in terms of the other pockets that we can get credit for and perhaps a resolution from Oceanside, joined by other cities, regarding having alternatives or getting credit for these funds to come back to the City.

**COUNCILMEMBER KERN** stated one of the things we have to do is maintain our streets. He's not in favor of going back and trying to do a beautification project for TransNet dollars. There are some streets in the City that really need work after this winter. He's gotten a lot of complaints about Douglas Drive. We have to maintain our effort. Regardless of how we go back and get money, we need to implement this plan for our Maintenance of Effort to actually maintain our streets. If we do not, then every dollar we don't spend today is going to cost us \$3 or \$4 dollars later on to maintain the street. We have to come up with a program to keep this money as much as we can. We can't depend on the auditors changing their positions. He supports this plan as presented right now. We can always go back and ask for a different allocation or ruling on what money we paid and didn't pay.

**COUNCILMEMBER FELLER** stated we have to use TransNet dollars now; that's why they're there. The dollars that we get can mean a significant change in how the streets look. Every street is in bad shape. This Maintenance of Effort is critical for the City. He asked the City Manager to find the money.

**DEPUTY MAYOR SANCHEZ** asked the City Manager if we have a street maintenance program.

**CITY MANAGER WEISS** responded yes.

**DEPUTY MAYOR SANCHEZ** asked if we've stopped it or done anything to reduce it.

**CITY MANAGER WEISS** responded it will be reduced this coming year because of the loss of the TransNet money.

**DEPUTY MAYOR SANCHEZ** asked if we have priorities on our street repairs.

**CITY MANAGER WEISS** responded that up until this winter we had priorities. They are obviously changing with the condition of a number of the roads so some of the overlay project streets are going to be modified based on the conditions.

**DEPUTY MAYOR SANCHEZ** asked where the City Manager would propose that this money come from.

**CITY MANAGER WEISS** responded he doesn't know where all of it would come from because it's a significant amount.

**DEPUTY MAYOR SANCHEZ** asked how much that amount is. She sees 2 recommendations here. Are we talking about \$1,300,000?

**CITY MANAGER WEISS** believes under the recommendation it was supplementing for slurry, and the landscaping was around \$700,000.

**DEPUTY MAYOR SANCHEZ** stated the staff report says to keep its full TransNet entitlement by an increase in the level of General Fund spending for street improvement by \$4,600,000 over the next 3 years, or June 30, 2013. Is that the motion?

**CITY MANAGER WEISS** responded no. SANDAG has granted us a 3-year recovery plan, so it is not that much. It will require a commitment in future years. About \$550,000 of the landscaping project money was used to balance this current year's budget when Council didn't do the landscaping project; it was transferred as a one-time funding source to balance this project. There was still \$380,000 or \$400,000 that was put into an infrastructure reserve account. From what he's hearing, it's not going to go to the landscaping project. We would have to identify where that money is and what's available. Regardless of what Council does today, we would have to bring a formal action back to Council. You can give direction today to make that happen, but with the contract that's out, Council would still need to take another action, once we identify the money, for Council to appropriate that money. Right now we'd have to identify that source. If the direction is to try to find that and bring it back, we can do that.

**DEPUTY MAYOR SANCHEZ** asked if that would include the unallocated funds of \$700,000+. Councilmember Feller told the City Manager to find the money, but would he support that.

**COUNCILMEMBER FELLER** responded this has to come back.

**DEPUTY MAYOR SANCHEZ** supports maintenance of our roads. Her concern is that this is not a complete motion. It doesn't say we won't dip into General Fund money. If we do, what are we talking about in terms of what we would be cutting out. Are we cutting out the senior center or the parks again? That is the million dollar question here. We've been doing our best to have a balanced approach in terms of what gets done in the City. Without knowing more she can't support this. While she supports continuing a program for street maintenance, she needs to know what exactly this will impact. We can't dip into General Funds when we have these critical issues; she can't support that.

**COUNCILMEMBER FELIEN's** understanding from staff is that this has to be resolved with an agreement with SANDAG before the end of the month. Is that correct?

**MR. KELLISON** responded there are 2 things. This is the proposal that SANDAG staff has bought into, and they were going to recommend this to the Transportation Commission and then to the full SANDAG Board at the end of the month. Because we're part way through 2011, Finance and Public Works is looking at individual timesheets and dollars to see exactly where we are in 2011. That's going to be the genesis of the follow-up recommendation to augment the overlay contract that's now underway.

Second is what other local funds we can find that would pass muster when the State auditor comes in this summer. The trouble is we need to do the spending before the close of the fiscal year, which is June 30<sup>th</sup>. We get audited after the close of the fiscal year and told whether we were right or wrong.

**COUNCILMEMBER FELIEN** wants to make sure that, as a Council, we take whatever action is required today to not miss the end of the month deadline because he wants to make sure we get dollar-for-dollar our TransNet funding.

**MR. KELLISON** stated this recommendation doesn't require Council approval in terms of adopting a make-up plan. This was a City Manager proposal submitted at staff level. The nuts and bolts of how Council fills it in is entirely within Council's discretion.

**COUNCILMEMBER FELIEN amended** his motion to direct staff to come back with a plan to spend the amount required to get our full TransNet allocation.

**COUNCILMEMBER KERN seconded** the amended motion.

**DEPUTY MAYOR SANCHEZ** asked if Councilmember Felien means the \$100,000 that they are recommending.

**COUNCILMEMBER FELIEN** responded whatever is required so we are not losing a single penny of our TransNet funding.

**MAYOR WOOD** clarified that this came down to the City having another project on the corridor of Oceanside Boulevard with areas that we were going to change. It was a joint proposition with another group and the City, each paying half. That fell apart. Behind all of this was the timing and the concerns we had over our General Fund regarding the economy. We didn't want to spend money on the beautification, and that's why he didn't support it either. As to the General Funds being spent, of course we're concerned about it, but the TransNet money is very important. He sits on TransNet. Under the circumstances at the time, he still believes it was best not to use our General Fund money as tight as it was.

What he wants out of this is the money spent to fix the potholes. Regarding the auditing, we get these unfunded mandates in a roundabout way that say things we have to fix and do. We do those, and they say that's not acceptable. They tell us what we have to do; we do it; and then they say you can't use that toward this TransNet money. It's a kind of bait and switch, but we still have to fix this problem and get the money we deserve from TransNet. We should, and we will. He wants the money spent on potholes. If he votes yes on this, it's still going to go forward to staff and come back to Council. He agrees that the representatives to the SANDAG Board need to talk to their staff explaining our circumstances and letting them know it's not right to penalize us. We still need to look at TransNet money and get in contact with staff at SANDAG. He doesn't want to have to lay off 3 more people in order to fix this.

**DEPUTY MAYOR SANCHEZ** stated that Councilmember Felien said whatever it

takes, and staff is saying \$100,000 and they're trying to find different ways of getting the credit. Whatever it takes could be \$1,000,000. She's hoping that we're really talking about the \$100,000, and that we can get these credits with what we do to be able to get those funds, paired with your activism on SANDAG. If that's what it is she can support that.

**COUNCILMEMBER FELIEN** was referring to the chart that's in the staff report that refers to the amounts we need to spend to make up the Maintenance of Effort. What he's referring to, and he believes what staff was talking about, is whether or not this report was factored into the budget for next year. If it was part of the \$3,800,000, that this Maintenance of Effort increase was included in that amount. If this is a new amount then we need to adjust the budget in the next workshop.

**CITY MANAGER WEISS** responded the budget review done by Council at yesterday's workshop did not include any additional General Fund monies going to street maintenance. He clarified as far as 'whatever it takes' that staff would verify what the number actually is. If it's \$1,000,000 that we need to spend this year, we are not going to hit that target. We will bring back to Council a recommendation. We have a contract that's about to start and we can bring this back as a change order if it's a reasonable amount. We will verify with the SANDAG team what the dollar amount is and bring back a recommendation to Council.

**COUNCILMEMBER FELIEN** clarified his motion does not have the words 'whatever it takes'. He would not want an open-ended spending amount. His idea is to do what is in the staff report to catch up over 3 years. He **amended his amended motion** to direct staff to come back to the Council with a plan to increase our Maintenance of Effort to be in compliance with TransNet so we get all of the TransNet money that we're entitled to.

**COUNCILMEMBER KERN** seconded the **amended motion**.

**COUNCILMEMBER FELLER** stated this is a 3-year plan, and we've got to figure out the best way to get there. Let staff come back with a plan.

**Motion was approved 5-0.**

**6:00 P.M. – PUBLIC HEARING ITEMS**

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

17. **City Council: Approval of the FY 2011-2012 Community Development Block Grant Program budget; approval to allocate funding for various eligible activities; and authorization for the Neighborhood Services Director to execute agreements with subrecipients for the use of CDBG funds as approved by the City Council**

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

**JOHN LUNDBLAD**, Management Analyst, stated in past years this has been the time when Council gets quite a number of the non-profits coming before you, and Council has to make a decision as to how much money to allocate to those who have applied for CDBG funding. However, we have no idea how much money we're going to

have next year. Congress has not adopted a budget for this federal fiscal year. That budget that began last October 1<sup>st</sup> would include the appropriation for the CDBG program for all participating jurisdictions beginning July 1, 2011. Until Congress appropriates the money for the U.S. Department of Housing and Urban Development (HUD) and they are able to, by their formula, determine what funds will be allocated to each participating jurisdiction, we cannot come forward and ask Council to allocate money because we can't tell you how much there is going to be.

We have some estimates. The HR-1 that came out of the House of Representatives this year called for a 61% reduction in the CDBG budget. The Senate response to that called for a 10% reduction in the CDBG budget. The administration's proposed budget for federal fiscal year 2012 calls for an 8% reduction in the CDBG budget. HUD agrees that we're in a bind. However, Congress in its wisdom has not relieved us of any of our regulatory requirements, one of which is that by April 1<sup>st</sup> we have to have an action plan out for public review. By May 13<sup>th</sup> we have to submit that action plan, showing how we're going to use federal funds in the next local fiscal year for housing and community development. He is going to write an action plan that has a lot of blank spaces, and HUD is okay with that. We know that at best we'll come back to Council on May 4<sup>th</sup> with a better idea as to how much money we'll be able to ask Council to allocate out. At this point, since the latest continuing resolution takes us through April 18<sup>th</sup>, and he doubts Congress is going to appropriate a new budget on April 15<sup>th</sup>, he doubts we're going to know our CDBG allocation before the end of May. That means he will have to come back to Council again and ask you to amend something that you're not able to adopt anyway.

What seems to be the best action tonight is to ask Council to continue the public hearing until May 4<sup>th</sup> when we actually have allocations of a certain amount for any of the agencies that are represented here tonight. We would ask that Council allow people to speak this evening but continue action until May 4<sup>th</sup> when we have to come back and talk about the action plan for 2011-12 and recognize that we'll just have to keep Council informed as to what people at HUD can tell us.

**CITY MANAGER WEISS** reiterated that we're coming back to Council on May 4<sup>th</sup> anyway, and we've already scheduled the public hearing for May 4<sup>th</sup>.

**MAYOR WOOD** stated when they were back in Washington D.C., they met with consultants who had no idea what was going on or who we should talk to about any of this. He asked for the City Attorney's opinion on this.

**CITY ATTORNEY MULLEN** stated Council can go forward and hear the speakers if you'd like. He asked if the May 4<sup>th</sup> date is when we have to approve the action plan.

**MR. LUNBLAD** responded yes, if he's going to submit it on time to HUD. We are asking for special dispensation at this point from HUD, and they may tell us that the deadline for submission is 45 days before the start of the next session.

**CITY ATTORNEY MULLEN** clarified that there will be a separately noticed public hearing on May 4<sup>th</sup> for approval of the action plan. So you need to have this item (approval of the CDBG budget and the allocation of funding) specifically continued to May 4<sup>th</sup> so you don't have to re-notice it.

**MR. LUNBLAD** responded that's correct.

**CITY ATTORNEY MULLEN** stated at the conclusion of your item today you should continue it to May 4<sup>th</sup>.

Public input

**TONYA DANIELLY**, Executive Director of Ivey Ranch, 110 Rancho del Oro Drive, thanked Council for their ongoing support through CDBG funds. We are a care and recreation center for children with special needs, and Council has supported our camp program. For the last 3 years the dollars have been dwindling from every aspect, but we've managed to expand programs with limited dollars.

**JAYSON BORDGES**, 1455 North Broadway, Escondido, works for Project REACH which is an after-school program through Vista Community Clinic and wanted to thank Council for all they have done in the past.

**KAREN**, Youth, has been attending REACH for about 2 years. It's a place to stay positive and helps prevent teen pregnancy, gang activity and using drugs. If we didn't have this program, then kids would be involved in negative things.

**JOSEPH**, Youth, has attended Project REACH for 2 years now, and it keeps him away from stuff he shouldn't be doing. Before attending REACH he was doing drugs. He learned about the effect and consequences of doing drugs and has stayed sober and away from the bad influences. REACH has also helped him with school, and his GPA has gone up.

**SUSAN HALL**, Founder and Executive Director of The Angel's Depot, 1495 Poinsettia Avenue #151, stated we provide meal boxes for seniors who live in poverty free of charge. Oceanside is our largest distribution site; we serve 190 seniors here every month. To date we have provided 191,331 senior meals in Oceanside. She thanked Council for their help and asked them to keep them in the plan and in your hearts.

**LARRY BARRY**, 3973 Brown Street, stated this is a time when money is scarce and times aren't going to be like they've been for the past 10 or so years. We're going to define what America is going to look like in the next 20 years, and it's going to be about doing more with less and doing more for each other. Of all the cities in the County, Oceanside has always been one of the most generous to organizations around the County than any other city and we're going to need to do more of that. We don't need more cops; we need better people in Oceanside.

Public input concluded

**DEPUTY MAYOR SANCHEZ** attended all of the meetings in Washington D.C. There are no earmarks; that's what we got from our Senate representatives. We were told by our consultant and our Senate representatives that we would probably have to meet directly with the department, and that things would become more competitive.

With respect to this item, we had an opportunity to meet with HUD, but we did not have a specific issue that we had planned to discuss. Therefore, we did not discuss CDBG. Hopefully next time we will be banging on the doors of HUD.

**COUNCILMEMBER KERN** stated it seems like we're not going to have a budget at all. It seems like we're going from one continuing resolution to another until the next budget year. What happens if we come back in May, and we're still under a continuing resolution without a budget?

**MR. LUNDBLAD** responded at that point we would probably have to seek direction from HUD as to what we can do. We did have one year recently when we had a continuing resolution that went all the way through September 30<sup>th</sup>, and we duplicated what the previous federal fiscal budget had been. He doesn't think that's going to happen this time. If we get to that point, he expects that HUD will give us some direction or guidance that we can bring back. He cannot come before Council and ask

you to adopt a budget based on what he believes we're going to be getting.

**COUNCILMEMBER KERN** clarified with the City Attorney that we're going to have 2 items on May 4<sup>th</sup>, the continuation of this one and the action plan if all goes well.

**CITY ATTORNEY MULLEN** responded that's right.

**COUNCILMEMBER FELLER moved** to continue this item to the May 4, 2011, Council meeting.

**DEPUTY MAYOR SANCHEZ seconded** the motion.

**COUNCILMEMBER FELLER** stated government doesn't have any money until they take it from us so keep that in mind.

**Motion was approved 5-0.**

[Recess was held from 6:46 to 6:54 PM]

18. **City Council: Consideration of an appeal to a Regular Coastal Permit (RC10-00004) for the construction of a 240-square-foot addition and 288-square-foot pergola attached to an existing single-family residence at 1705 South Pacific Street, and adoption of a resolution upholding the Planning Commission decision approving the project – Stensrud Addition – Applicant: Thor Stensrud – Appellant: Dan Matlach**

- A) Mayor opens public hearing – hearing was opened.
- B) Mayor requests disclosure of Councilmember and constituent contacts and correspondence – Councilmember Feller reported contact with applicant, appellant, staff and site visits. Mayor Wood and Councilmember Felien reported contact with appellant, applicant and staff. Deputy Mayor Sanchez reported contact with staff, appellant and public. Councilmember Kern reported contact with the appellant, applicant, staff and neighbors.
- C) City Clerk presents correspondence and/or petitions – email correspondence.
- D) Testimony, beginning with:

**RUSS CUNNINGHAM**, Senior Planner, used a computer graphic to show the Stensrud residence, which is a beachfront single-family detached home situated atop one of the steeper segments of the City's coastal bluff in the South Oceanside neighborhood planning area. The residence was approved by the Planning Commission in June of 2002 on a 6-0 vote. That approval was appealed to the Council, and the Council approved the project on appeal in September of 2002 by a 4-1 vote. There was no subsequent appeal to the Coastal Commission.

Final building permits for this project were issued in March of 2005. The project site is a 6,900-square-foot beachfront property that measures 30' in width and 230' in length; long and narrow. It has an R1 zoning. It's on one of the steeper sections of the coastal bluff. It evidences a 21' vertical change from South Pacific Street to the coastal stringline, which is 85' westward of the front property line. So while the property itself extends out to the mean high tide line roughly 230' westward, the development envelope laterally extends roughly 35' from the front setback toward the ocean.

The project is in the 1700 block of South Pacific Street. It's approximately 1,000 feet south of Buccaneer Beach. Immediately east of this property across Coast Highway is a granite wall that extends to a height of 12' and more. That berm provides for a public sidewalk and just east of that public sidewalk there is development that is eclectic in nature, with both single-family and multi-family development that sits anywhere from 10' to 15' above the street grade.

The project is a 240 square-foot addition to the second story of an existing single-family residence with a proposed 288 square-foot wooden pergola structure over an existing open deck area. It would expand an existing master bed/bath suite area. The existing residence was built under the standards of the 1992 Zoning Ordinance, which was applicable at the time. The proposal before Council now is subject to the standards of the 1986 Zoning Ordinance, reinstated in May of 2009 to those portions of the Coastal Zone located outside of our downtown Redevelopment Area.

This project received a 6-0 Planning Commission approval in January of 2011, and it was appealed to the Council subsequent to that.

The existing residence, like most properties on South Pacific Street, evidences minimal front yard set-back. That is a condition that was allowed under the standards of the 1992 Zoning Ordinance through a block-face averaging provision. It continues to be allowed but by another means, a stringline provision under the 1986 Zoning Ordinance. The architecture is a contemporary pueblo revival, or a southwest motif, with rounded edges, stepped parapets on the roof, smooth adobe-like stucco, earth tone finish, battered or tapered chimneys and a round-beam pergola. The structure is 2 stories over a daylight basement, which is a common configuration with these bluff properties. It features a terraced design with staggered building lines at each level that show the home stepping up the bluff from the beach to the street. In staff's view this type of architecture reflects the evolution of beachfront development in Oceanside in that it shows greater sensitivity to existing characteristic land forms than is often evidenced by earlier beachfront projects which, instead of following the contour of the coastal bluff as this project does, tend to be built over the bluff, straight up and down with less articulated form.

The vacant property immediately to the south that intervenes between the applicant's property and the appellant's property is a property proposed for development. The Planning Department has had an application in process for some time that has been delayed by the passing of the project architect. He recently had communication with the project representative who has assumed responsibility for that project, and it is moving forward.

The appellant owns the residence that is 2 properties to the south. The appellant is arguing that the proposal would impair private views of the ocean and coastline, that Coastal Act Section 30251 calls for protection of private views and that the project does not conform to standards applied to recent proposed development at 1639 South Pacific Street. These 3 points have been bundled as points that speak directly to the application before Council this evening. The next 3 points speak more to the original approval of the existing residence. They claim that the applicant's representative misrepresented the reasons for measuring the height of the existing residence from finished rather than existing grade and that measurement of building height from an elevated finished grade resulted in an over height property line wall between the Stensrud property and the property immediately to the north. In light of these and other considerations, the approval of the existing residence should be investigated by the City.

A computer graphic was used to illustrate the proposal's conformance to applicable development standards and was also meant to serve to highlight the extent to which the existing residence benefitted from the measurement of building height from a finished rather than pre-existing grade with the 2002 approval and the 2005 construction. The 1986 Ordinance, which is the applicable Zoning Ordinance in this area at this time, calls for grade to be measured from the mean (average) of the highest and lowest points adjacent to the building footprint. That gives an elevation of 25' above mean sea level, and it's from that point that building height is measured. The existing structure happens to fall right at that 35' height limit, and the portion that is proposed to be added to the existing structure with a pergola structure would fall roughly 6.5' below

the 35' height limit as measured from average finished grade.

From the street there is a flat portion of the lot that extends 30+ feet westward, and then it begins to slope rather steeply downward. At a certain point it flattens out again, and then there are steps in the flatter portion. He pointed out an area on the graphic that was filled to create a finished grade. That was approved in 2002. One question that has been asked by the appellant is whether that was fully understood by the Planning Commission or fully disclosed by the applicant or City staff in the process of review and approval of this project.

A graphic was used to show an aerial view of the existing residence in its neighborhood context. Looking at the subject site there is a chimney structure, one of the 2 battered chimneys' he mentioned earlier, and the western-most chimney essentially floats on that structure; it's not tied to that second story enclosed space. The proposed addition would extend to almost the western edge of that second western-most chimney. Beyond that, the pergola structure would mimic the pergola structure below, extending outward to the building line at the second level.

A graphic was used to show that the applicant and appellant's properties extend to the stringline, that 85' westward of the property line. Much of the development in this immediate area does not take advantage of that stringline, including the properties immediately to the north.

The R-1 zoning designation requires a 20' front yard setback, but that's essentially unheard of in the beach area where the block-face averaging and the stringline provisions have allowed development to sit very close to the street. The proposed addition would not extend beyond the building line of the property immediately to the north.

The appellant has argued that the proposal would impair private views of the ocean and coastline and then further established that the Coastal Act and our Local Coastal Plan (LCP) calls for protection of private views. The short response to the appellant's comments is that neither the City nor the State policy relevant here calls for preservation of private views. It's generally understood from jurisdiction to jurisdiction and among Coastal staff that, when language of the Coastal Act talks about the preservation of views, we're talking about the preservation of public views from public viewsheds in publicly accessible spaces. A longer answer is outlined in this staff report and the previous staff report for the Planning Commission. Staff has done fairly substantial field observation and other analysis to determine that, in its estimation, there is a negligible view impact on the appellant or other property owners on the west side of the street.

Regarding the project at 1639 South Pacific Street, recently the Planning Commission denied a request to enclose a deck on the front elevation of this property, which faces eastward toward South Pacific Street. The principal motivation for that denial had to do with concerns long expressed by the community about what is often referred to as the canyon effect along South Pacific Street whereby, with the combination of very reduced front yard setbacks, development that evidences little to no setback at levels above the street and the presence of that gunite wall on the east side of the street, you do get that feeling of confinement as you travel up and down South Pacific in this area. To alleviate or not further exacerbate that condition, that project was denied. Staff hasn't found a connection between that project and this project. In this proposal tonight, the development is on the west or beach side of the property, not visible from Pacific Street and thus not contributing to the canyon effect. Moreover, the development would continue to maintain the terraced design of the project as viewed from the beach side.

Staff feels the following 3 points made by the appellant are more relevant to the

approval that occurred 8 or 9 years ago: that there was misrepresentation of why measurement of building height from a finished grade was appropriate rather than from existing grade, that measurement from a finished grade resulted in an over height property line wall and that, as a result of this and other considerations, the original approval should be investigated.

The project representative, who is now deceased, spoke before the Planning Commission last year and established that in order to create a grade compatible with grade existing to the north and south, and also to bury an exposed footing of a retaining wall on the northern property line, there was a need to raise that portion of the lot. Staff doesn't have any compelling evidence that there was a need to bury the footing of a property line wall, but there is compelling evidence that the existing development at its existing grade is highly compatible with the grades immediately to the south and north.

With those issues addressed, staff continues to recommend approval of the subject request in light of its conformance to all applicable development standards, policies and guidelines.

Appellant

**DAN MATLACH**, 1709 South Pacific Street, stated there are a number of reasons why this appeal has been filed, but it is not about the applicant's representative or himself. It's about the truth, fairness for all, the applicant's development rights, the neighbors' view rights and the citizens of Oceanside. The issues are put before Council tonight to allow you to make the most informed decision that you can make under these unfortunate circumstances. He read staff quotes from the presentation to the Planning Commission on July 26, 2010.

He and his wife have followed staff's instructions to address this particular issue outside of the public hearing process, requesting an investigation. Nothing has been resolved. No investigation has been initiated as to why the 1992 Code was not certified and the 1986 Code was restored; nor has there been any accountability established for this fraudulent action. We are demanding an immediate investigation.

The Oceanside Planning Department does not have the capacity or capability to properly assess a project or monitor the progression of applications insuring all applicable Code sections are properly adhered to. As members of the City Council it is your duty to halt all additions and new projects affected by this intentional fraudulent neglect within the Coastal Zone until the proper investigations are completed. It is unfortunate for this applicant's representative attempting to remodel and for those initiating new residence construction. This will create an unwarranted financial and emotional hardship. Applicants and the Council can thank those individuals who feel they are above the rules and regulations and the City officials who felt they had the power or intelligence to intentionally defeat the proper submittal of the 1992 Council and citizen approved Code Ordinances of the California Coastal Commission for proper approval. That's why we are appealing this project.

Appeal reason number one has to do specifically with private views. Legal precedent was established in previous litigation protecting adjacent lateral view rights under the 1986 Zoning Ordinance. The proposed addition and pergola will substantially impact the appellant's views, as well as the views at 1643 and 1701 South Pacific Street. A computer graphic was used to show the view impact from his residence. In 1984, residents at 1635 South Pacific Street through litigation established and maintained their lateral view rights in 2 separate cases. In 1976 the lateral view rights were established and maintained at 1919 South Pacific Street. Since 1962, or earlier, lateral view rights were established and maintained for Pacific Street from Wisconsin to Tyson.

In staff's initial presentation of October 25, 2010, staff stated there were no view impacts on adjacent properties. Staff was invited to our residence to verify the impacts and declined our invitation. Staff now acknowledges that an impact does exist for the property at 1643 South Pacific Street.

Appeal reason two has to do with public views. At the Planning Commission hearings on October 25<sup>th</sup> and January 10<sup>th</sup>, staff presented a slide that was disingenuous in that it used parts of the California Coastal Act Section 30251. Staff ignored the most important sentence, which was that scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Staff is stating under conformance that the proposal does not impact public views of the ocean or coastline, and he disagrees with staff. It does impact public views because wallification will be amplified by the cumulative massing effect of adjacent properties. The character of the coastal neighborhood will be transformed. For 22 years, under Section 30251 of the California Coastal Act of 1976, the City has been establishing and protecting height and view policy standards for both private and public Pacific Streets.

Staff's report dated today states the proposed improvements do not jeopardize public views to and along the ocean and scenic coastal areas. He disagrees. Any further wallification will jeopardize public views and the character of the neighborhood. Major massing will contribute to the totality of 4 already massive properties adjacent to the beach access. This project will continue that trend to the detriment of the public beach and the scenic coastal view to the southeast. In essence, the project will be transforming the character of the neighborhood by adding bulk and scale, which was an issue in the appeal in 2002 and is an issue now. Most notably of public concern, an increase of mass will contribute to shadowing of the beach.

Appeal reason three is the applicant's representative knowingly and intentionally misrepresented to the Planning Commission during the meeting on October 25, 2010, the true site conditions and the reason Section 3017 was used to substantiate the illegal additional height increase. This testimony represents the third time false and/or misleading information has been submitted to the City in duly sanctioned public hearings pertaining to a Regular Coastal Permit under the City's approved LCP. It was stated by the applicant's representative that Section 3017 was valid due to a bond beam protruding from the adjacent property, but there is no bond beam. It is merely a cement blow-out and does not necessitate any additional height.

The staff report dated today states while staff can find no written or oral communication pertaining to the review and approval of the existing residence that explicitly establishes the measurement of building height from a finished rather than existing grade, staff concludes that such a basis point for building height measurement was reasonable and of no detriment to the adjacent property. Staff does not have the ability or the power to state the measurement was reasonable. That decision lies with the Planning Commission and the Council, not staff.

Appeal reason four he has agreed to table, although the issue was introduced into the record on October 25<sup>th</sup> and November 8<sup>th</sup> of 2010, as the property owner at 1701 South Pacific Street has elected to investigate the issues themselves concerning the Code, safety and legal issues.

Appeal reason five is Planning Commissioners' decisions are inconsistent with the new development guidelines introduced by staff. It is very easy to find arguments with the Code to be for or against any property. The Planning Department does not have the capabilities to decipher all of the ambiguous sections. This has been demonstrated by the fact that they choose to use pieces from the 1992 Zoning Ordinance when it justifies their argument and pieces from the 1986 Zoning Ordinance when the 1992 Ordinance does not work. Due to the lack of direction and clear definitions, the Planning Commissioners are approving projects according to their personal preferences. The

majority of the time during the Planning Commission meeting regarding the project at 1639 South Pacific Street was spent interjecting comments regarding how they did not like the way it looked. Furthermore, after the meeting had ended they continued to degrade the project, obviously forgetting the recording device was still recording.

Appeal reason six is that the City is currently prosecuting other projects, residential and commercial, for development standards and Code violations. A full investigation of this project is warranted, beginning with the original application for a Regular Coastal Permit and should be completed before any additional permits are approved. Staff's report dated today states they do not feel a full investigation is warranted. We have no faith in the decisions made by staff. We have seen many inconsistencies and have heard many misleading testimonies from staff. As an example, he showed a computer graphic that staff used where the calculation being used by staff to determine maximum height allowable was an incorrect number at the beach level of 14.67'; it should be 10'. The definition of building height is the vertical distance measured from the average level of the highest and lowest point of that portion of the building site covered by the building to the ceiling of the uppermost story, not the mean of the lowest and highest finished grades adjacent to the building footprint. Therefore the proper calculation is the storage level of 11'6" at the bottom of the property, minus the 18" of pad, equals a 10' elevation, plus the street elevation divided by 2, which equals 22.6' as the correct data. This is a 2.34' difference.

This entire project from its inception in 2000 has been riddled with inaccuracies, and that's how the applicant's representative attained the additional illegal height in 2003 of 1.5'. To this day the applicant's representatives seek to avail themselves of additional unwarranted height. Tonight's issue is Council's wake-up call. This hearing seems somewhat of a futile exercise because we now know in the future an agreed person in the Coastal Zone can just go directly to the Coastal Commission and bypass this body to have their concerns heard properly. For 22 years the Planning Department told us the building height in the Coastal Zone was 27'. Just because the Planning Department says something doesn't make it so.

He requested Council uphold this appeal and deny the Regular Coastal Permit or, in the alternative, continue the hearing and initiate an outside investigation of how we got here. Ignoring this issue is a recipe for disaster.

#### Applicant

**THOR STENSRUD**, 1705 South Pacific Street, stated he is the power of attorney for the owner, Whitney Stensrud. Due to the fact that his architect, David Soanes, passed away he is the one making the presentation. He will defer technical questions to the contractor and geotechnical engineer who are here tonight as well.

He finds this appeal outrageous and shameful. This is approximately the fourth time he's spoken to City officials regarding this issue, and it seems that we're being trapped in the discussion of height. It seems to be a situation where they can't attack the merits of the project.

He got very upset when he saw this appeal and the reasons for the appeal. Two of the items go back to 2005 where there was an approval. These allegations call into question the integrity of not only David Soanes, but every City official as well.

David Soanes said at the October meeting that he had gone through the records, and the reference to finished grade was made explicit on all of his drawings. That is, we had a condition on the north side with a neighbor, which we had to work around. Staff was fully aware. There was no interest to deceive or do anything to hide the fact that finished grade was going through in accordance with Section 3107. When Mr. Soanes made those comments, he identified himself, gave his certification as an architect and

made those comments in a public hearing. Because of the fact that the appellant is stating that there is no written proof in the Planning records, a lot of things have disappeared from those Planning records. Everyone who was associated with this project can corroborate those statements.

He noted that in Mr. Matlach's appeal, every page is date and time stamped by the City with the exception of 2 pages, which are the reasons for appeal. The appeal was submitted without reasons and would not hold up if it were submitted in a court of law. He personally called 4 people who signed the appeal, and all 4 of them stated they didn't read it before signing it.

On January 10<sup>th</sup> he came before the Commission and said this was the fourth time he stood before Oceanside officials, and this is more than a year after he commenced this minor project with our architect Dave Soanes, who as most of you know died unexpectedly on November 4<sup>th</sup>. This long-delayed process is difficult to understand as the project is a minor one. The 240' scope has the staff recommendation, has met all requirements and is only 28.5' high, which is 6.5' below the 35' allowable limit to which we could have built. Moreover, we're not trying to utilize loopholes to create a monster; we're trying to follow the guidelines established by the City to add a minor architectural finish in balance to our home.

He listened to the tape of the Planning Commission meeting of October 25<sup>th</sup> when the application was tabled. Not one Commissioner had anything bad to say about the architectural integrity or non-compliance; their comments were only positive. The only doubting comments regarded the height issue and the reconciliation of 1992. His home was used by staff as an example of what could be looked at for achieving reconciliation and the spirit of 1992: articulated terrace design, angled step-down and rendered balance.

Regarding private views, several 35' projects have gone up around his property over the years (photographs were used to show examples). He has never complained and gave up some of their view. He and the architect were very careful to make sure there would be no obstruction of private or public views. Staff went up there and looked and reported at the last Planning Commission that there was no view obstruction.

Appeal reason four states during the Planning Commission meeting of October 25<sup>th</sup> the applicant's representative admitted to the taking of an additional 1.5'. The elevation changes in the finished grade made by the applicant have led to a 9.5' party wall at 1701 South Pacific Street (the List residence). Under that it says that this is a Code violation and a major health and safety issue for the List family. Within 3 hours of receiving the appeal by facsimile he called Sharon List and asked if she had signed an appeal. She signed something about height but didn't know about the trouble. To show how outrageous this is, she would be signing an appeal to call for an investigation of herself because she owns that wall commonly with us.

What we attempted to do was bring balance and architectural design. Mr. Soanes had said that he wanted to fill the gap between the first and second floors. Instead of 1.5' up, we could have gone 6' further up or taken the whole house up. Then we would be arguing about something substantial, but we didn't push the limits. Commissioner Balma of the Planning Commission asked how can we deny this beautiful small enclosure project, because it is only going a tiny bit and they have taken into consideration all of the neighbors.

#### Public input

**LIZ SHARP**, 1643 South Pacific Street, lives 2 homes north of the Stensrud project and is opposed to it because it destroys our view to the south of the sweeping

coastline. During her presentation to the Commissioners on October 25<sup>th</sup>, she described and demonstrated the extent to which this project wiped out our view to the south. In particular, the addition of the pergola. Mr. Stendsrud, some neighbors and a few members of the Commission took the floor and insisted that the project had no detrimental effect on our view, even though none of them had ever viewed the project from our home. It is because of these statements that she must set the record straight.

Our sweeping views of the coast have been gradually and seriously eroded over the past 25-30 years to the point where now the Stensrud pergola will take away the last remnant of our view to the south as seen from our upper deck and master bedroom. It seems to be a very poor precedent to establish.

She was informed after the October 25<sup>th</sup> meeting that private view rights are not protected by any ordinance or even the Coastal Commission. Even if true, she knows that public records have always shown concern for protecting our private view rights. It is harmful for all of us if this is not taken into consideration now and in the future for approval of projects.

**CHARLENE KERCHEVALL**, 533 South Nevada Street, is representing ACTION and Seaside Preservation Movement. The former is a coalition of over 42 neighborhoods of concerned citizens from various neighborhoods, and the latter represents a grass-roots movement concerned with issues directly and indirectly related to the Seaside neighborhood.

She is addressing Council this evening with public concerns related to the 1705 South Pacific Street project. Some of these concerns were addressed by the Seaside Preservation Movement during the December 8, 2010, public hearing regarding building height restrictions. The primary concerns involve the environmental impact of our coastline as per the negative impact of wallification or canyonization and the public view related to such measures. The proposed third story addition of this project will negatively contribute to both in a number of ways. It contributes to the already existing canyonization along South Pacific Street.

Shadowing, restriction of daylight, sound pollution, safety, property rights issues and general environmental concern for the beach itself remain a primary concern not only for immediate residents, but also for those of us in the surrounding neighborhoods, Seaside being among those. The organizations she represents respect the California Coastal Act of 1976. We also respect environmentally sound urban planning directives. We ask Council to grant the appeal of the project pending further review of all items in question.

**ROBERT MARKLEY**, 200 North El Camino Real, is in favor of the appeal. What will stop other residents from doing the same thing if this proposed addition is allowed. It is clearly out of character with the rest of the residences in the area and detrimentally affects the lateral views of several residents in the area. It will likely precipitate a race to the ocean as all the other neighbors in the area try to do the same thing to recover the views that they have lost. He urged Council to uphold the appeal.

**PAMELA MYERS**, 910 North Pacific Street, stated this item is relevant to everyone who lives on Pacific Street. About 3 years ago she spearheaded a LCP amendment to reduce the height of the buildings on the west side of North Pacific Street, between Surfrider Way and Breakwater Way, to 27' or 2 stories, whichever is less. After that the new owners across the street from her building, with David Soanes as their architect, submitted plans to the Redevelopment Advisory Committee (RAC). The plans were above the 27' height limit so the RAC didn't approve the plans. What worries her about this project is that it's not going from existing grade. If you allow this, then people can start bringing in dirt, building on top of that and taking away everyone else's view, which will set a precedence. They should go from existing grade.

She doesn't agree with this and hopes Council doesn't approve this project the way it is right now.

**JIMMY KNOTT**, 127 Sherri Lane, thinks there is room here for negotiation between the parties. The pergola seems to be one of the sticking points, and if you somehow made it retractable that would work. The parties should be able to sit down and discuss this logically to come to a solution.

**LYNNE STENSRUD**, 1705 South Pacific Street, is against the appeal and for the project. It ties in architecturally with the house and finishes it. Mr. Matlach brought up the point that this would interfere with his view, but there is a vacant lot between our 2 houses that will be built up. He will not even see our house once that is built. Also, she doesn't understand shadowing on the beaches. The public can only walk below the revetment wall, and west of the Rear Admiral Wall is private property. She doesn't know that their house interferes with any public view.

She did go to Ms. Sharp's house and saw where she thought the pergola would go from that point of view. Ms. Sharp said it would block the view of the palm fronds of one palm tree. It didn't seem like that was blocking the south view.

**GARY KAHLER**, 1637 South Pacific Street, is for the Stensrud project and against this appeal. We have certain laws, and those are enforced by the City and researched by staff. If staff is smart and educated and has the ability to do what they're supposed to, then they're going to come up with the right answers. We knew when we moved into our house 13 years ago that the house to the north of us was way out in front of our house so we didn't have the view off to the right. He thought if they could do it, he could do it too. He hopes if he ever decides to do it, he can and doesn't have to go through what Mr. Stensrud is going through.

**JERRY McLEOD**, 1517 Del Mar Road, stated staff is not infallible, and they do make mistakes. He asked Council to keep that in mind when they go over the facts and make their decisions.

**JOSEPH KULKE**, 1629 South Pacific Street, hasn't heard anything tonight to justify an appeal on this project. Staff is 100% correct, and they know what they're doing. This project is permitted already as it should have been. There is nothing wrong with this project. It's a slight addition to a fine home.

**CAROLYN WILT**, 1719 South Pacific Street, stated the Planning Commission approved unanimously the project both in 2005 and last January when the addition was approved. David Soanes built her house; it was the first house he built in Oceanside on the beach. Since then all 21 homes he has built on the beach have gone through the Planning Commission, and most of them were unanimously approved.

It's impossible to call any of these public views because all public views are west of the revetment. Most of the properties have about a 35' private beach from the house to the revetment so that's all private views. The public views were talked about, but from the pictures she saw the addition is behind existing homes so they won't even see the new addition. What they're talking about is a balcony that has partitions but it doesn't change the view. You can still see through to the south or north. Mr. Matlach implied that the Planning Commission was inadequate to determine the correctness of the plan. She finds this to be a faulty opinion on his part. She asked Council to allow this property to be completed.

**LARRY TAYLOR**, Taylor Group, Inc., 301 Mission Avenue, worked on this project in 2004 as a civil engineer. There have been a lot of things said about what may have been misrepresented, and unfortunately Mr. Soanes can't be here to defend himself. Staff is not infallible and that's true. However, in this case staff has done a

very thorough and competent job of looking at the issues raised in the appeal. The staff report addresses those issues in sufficient detail for Council to judge what the merits of those issues are. The short version of the staff report is that there is no merit to the issues raised by the appeal, and he agrees with that.

Mr. Matlach put up an exhibit with average grades and measurements that was completely wrong. There is no part of the beach or the grade adjacent to that house that's at 10'. There's a basement level that goes down to that, but that is not the basis for height measurement under the 1986 Ordinance or anything else.

Planning Commissioner Balma, who is an architect, said of this project that it really balanced the structure and was a visual enhancement and not a detriment. He believes that is correct. It was originally stepped in that portion of the project to comply with the 27' height above existing grade from the 1992 Ordinance. The 1986 Ordinance as applied here allows that to be filled in. It still terraces down, is articulated and doesn't crowd anything. It balances the structure and is a small addition. He encouraged Council to deny the appeal and let Mr. Stensrud build his house.

Applicant rebuttal

**MR. MATLACH** stated one of the speakers mentioned the vacant lot, and Council will have this issue coming before you. There are another 9 applications in process right now. Most, if not all, of them will have the same issues that we're addressing tonight. The issue will not go away anytime soon. Another neighbor mentioned that the solution might be that the applicant, the center lot and we remain at a 27' profile. That will solve all of our lateral view rights and will stop the wallification, the shadowing on the beach and all of the other issues that are going to come with these projects if they're approved and go to the stringline because staff has indicated we can expect up to 50' on these bluff lots right at the stringline. That will create all of the hot button issues that the California Coastal Commission loves to tackle. We need to address this now.

With no one else wishing to speak, Mayor Wood closed the public hearing.

**COUNCILMEMBER SANCHEZ** stated this community along Pacific Street is mostly built, especially over the last 20 years. The community has been created subject to 1992 Ordinance policies, which actually existed before 1992. In fact, the 1986 Ordinance was a break from the past and was short lived until this past December.

The issue before us is not which ordinance should be applied. There is the 1992 Ordinance that the City has enforced, believing that they can enforce more restrictive laws than what is contained in the LCP; or the 1986 ordinance, which became law again this past December after a very short lifespan. The issue before Council is whether there is compliance with the Coastal Act and Coastal Act policies. The policy directly on point is whether this project is consistent with the character of the community. As indicated, the character has been created via ordinances enforced in the past. Obviously, if the project was consistent with the 1992 Ordinance, it would have been consistent with the character of the surrounding community.

In the past staff has been very diligent in addressing community character, pointing out specifically the surrounding community and focusing on height and mass of the surrounding homes. Staff did not do this here. In fact, the staff report and presentation is deficient on this matter and does not address this issue except in conclusionary words such as 'the architecture is consistent'. There are no references at all to any other homes as they relate to character.

She is familiar with this area and finds this project is not consistent with the character of the surrounding neighborhood in bulk and scale as required by the Coastal

Act. This project would set a dangerous precedent. If all homes are allowed to change the massing bulk scale height it would completely change the existing character. There is no question that we would be looking at a completely different community. There is also no question that this would be a violation of the Coastal Act. Massing would also negatively impact Coastal Act policies of public access via the massive shadowing effect on the beach. Shadowing will result in discouraging the public's views of the beach in front of the homes. This is a negative impact that has also not been addressed by staff.

In addition, the appellant raised canyonization and cumulative massing effects on public views. She's also concerned about preservation of the public views, which are also protected under the Coastal Act. Based on all of these issues, she finds that this project does violate the Coastal Act, and she will vote to deny the project.

Other issues were presented, and those issues she will not address because she does not believe they have to with the Coastal Act. She's sorry to see these comments between neighbors and hopes that at some point this community will come together.

**COUNCILMEMBER KERN** echoed some of the sentiments of Councilmember Sanchez in that we're talking about a 240 square-foot addition and a 288 square-foot pergola. It's not about 1992 or 1986 or any of those issues. Most of the basis for the appeal is not warranted, and he doesn't believe should have been brought forward. He did go to the Sharp's residence deck and looked, and he doesn't think the project substantially impairs the view. You almost have to turn more than 90 degrees from the ocean to see the pergola. He also stood on Mr. Stensrud's deck to see what it would mean. He had asked if the pergola could be pulled back, and it can't because that's where the underlying structural walls are.

He agrees with some of the comments from the Planning Commission that this does enhance the property; it makes it look better. He doesn't know how to resolve this between neighbors. Maybe if everybody had discussed this beforehand, it wouldn't be here tonight. He can't solve that problem.

He **moved to deny the appeal** and allow the project to go forward.

**COUNCILMEMBER FELIEN** seconded the motion.

**COUNCILMEMBER FELLER** looked at this as objectively as he could to see how the buildings were affecting each other. The stringline or view corridor showed the houses tapered down from the one sticking out the furthest down to a point where the only thing that would be left is for somebody to have a single-family story on Pacific Street, if you kept on with that line going south. It's a huge ocean, and no matter where you stand you can see for a long way. He doesn't feel he can deny that 240 square-foot addition; that's 15 x 16 square feet, and the pergola is literally see-through except for a roof structure. It looks like it would fit architecturally. Maybe it isn't the best thing for the neighbor directly next door so that any vision south will be blocked. He doesn't know if there are windows behind that side of the List house, but you have a huge beach. He's satisfied that the ocean view from those homes all along there are great views. He hopes they can work it out between neighbors and settle it peacefully. He will not support the denial of this project.

**COUNCILMEMBER FELIEN** appreciates the passion of the parties involved in this, and as a Councilmember he doesn't have any solution for it. We have to rely on the judgment of the Planning Commission that unanimously supported the project. He believes staff went into depth about the concerns of the appellant and found no standing, in their opinion, to support the appeal. Based on hearing both sides of the argument, there was nothing that he found that could justify overturning the decisions that went into that by all of the parties involved. He would not support the appeal.

**COUNCILMEMBER SANCHEZ** stated the Planning Commission heard this a couple times. The first review back in October did not approve this project. Subsequent to the hearing of this project by the Planning Commission based on staff's report indicates the approval was based almost exclusively on an understanding that it had to be approved due to Council action, which was not to process the LCP amendment of 1992.

**MAYOR WOOD** stated both parties are wonderful and intelligent people who live on the beach.

His concern is that we've been put on notice by the Coastal Commission that we should start enforcing the regulations or they will. They would penalize us on our big projects like hotels, etc. That's not necessarily a threat, but we listen to them. This has come up several times, including the stringline and how far they can go out. When you look at the aerial views you can see the lengths are all different. That's because they were built at different times, and different approaches were required. It's caused some problems in the past. The stringline came up last time, and we were told we'd better start enforcing the stringline or we would hear from the Coastal Commission.

This Council has changed the policy in December about how we're going to handle this: the 1986 or 1992 Ordinance. He worried at that time that it would cause us problems. When we said height of 35', mass, etc., we thought that people would be coming in and trying to expand their project. If these people hadn't decided to add on they wouldn't be here. When you reopened it and brought a project to us you came under the scrutiny of Council, the neighborhood and potentially the Coastal Commission. It might be extensive, long and drawn out and you might have neighborhood problems.

He doesn't think this add-on is a big deal, but a classic example is that somebody else is going to make the final decision on this; it's going to be a Superior Court or the Coastal Commission. He is concerned about opening Pandora's Box on something like this for the future. We'll probably get told by a higher authority how we should handle it in the future, and he assumes this will be appealed to a higher authority. He's sorry about the neighborhood problem, and we'll probably see more of it because of some of the changes that Council implemented regarding what's going to be enforced.

Regarding the appeal, he believes we should let somebody else decide it as it looks like that's where it's going. He doesn't want to set a precedent in Oceanside for the future regarding add-ons, etc. A lot of the Councilmembers aren't experts in this area, but staff; we rely on them. If staff was perfect, all of those houses would go out to the same length on the beach, but they don't.

**CITY ATTORNEY MULLEN** clarified the motion is to deny the appeal and approve the project as conditioned by the Planning Commission.

**COUNCILMEMBER FELLER** stated we cannot continue to fear retribution on every single thing that somebody thinks about to improve or change their property. He's not afraid of going forward with this. It's going to be on somebody else if they choose to appeal it to Coastal Commission, but we can't operate out of fear. We have to take the information we have and make the decision based on that information.

**COUNCILMEMBER KERN** explained that his motion was to deny the appeal. Our findings here were that the proposed addition to an existing permanent single-family residence is consistent with land-use policies of the LCP and is implemented through zoning ordinances. Specifically, the project will not compromise existing public views within the Coastal Zone area or produce adverse massing impact on the neighboring properties. The proposed expansion will not obstruct any existing plan or required public beach access thereby conforming to policies of Chapter 3 of the Coastal Act. The proposed expansion will not result in any loss of any on-street public parking,

resources nor occasion additional on-site parking requirements. It does conform to the Coastal Act.

**CITY CLERK WAYNE** stated the motion is to deny the appeal and adopt a resolution approving the project.

**Motion was approved 3-2;** Mayor Wood and Deputy Mayor Sanchez – no.

**MAYOR AND/OR COUNCILMEMBER ITEMS** – Cont'd

21. **Request by Councilmember Felien to direct the City Attorney to draft an ordinance to repeal No. 10-OR0369-1 (Fees for Emergency Services)**

**COUNCILMEMBER FELIEN** brought this forward in view of our current experience with our Fees for Emergency Services Ordinance, otherwise known as the crash tax. He pointed out that we have encouraged all managers, staff and public to come forward with any ideas to cut costs and raise revenues. He thanked those who did and advised them not to get discouraged as some will be accepted and some will not.

When he looked at this ordinance and its effect, he's come to the conclusion that he can't support retaining it. It's double taxation where we're going to have one set of taxes to have the Fire Department in the station and another set of taxes to come out of the fire station and respond to emergencies. This is a bad precedent to set. The fact that visitors pay taxes is why we want to be a tourism city. Visitors pay Transient Occupancy Tax (TOT) and sales tax. The purchases they make help business owners pay property taxes, all of which support our emergency services. It's true we have some visitors who go through the City and don't pay taxes. We have plenty of visitors who pay lots of taxes but don't use any emergency services. We also have plenty of residents who use services and never pay taxes and residents who pay taxes and never use services. It's important since the object is allegedly to make sure that taxpayers are not paying for expenses incurred by the behavior of out-of-town visitors or people passing through that these taxes are in addition to, not instead of, the taxes paid by regular residents.

The long-term effect of this is that if all cities begin to collect these crash taxes and get free money from the insurance companies, the insurance companies will just raise their rates based on new expenses. In the long run, all of us are going to be paying crash taxes, and that's where the double expense is going to come in. That long-term effect is something we want to avoid. Also, if we want to attract more people to the City and want to be a destination city, we don't want policies that scare tourists away.

In terms of the performance of the tax, unfortunately it's fallen far below expectations. We were promised somewhere around \$266,000 per year and were told that was an underestimate of what we could expect. Instead, we've collected around \$15,000 and have maybe another \$3,000 pending. That represents 1/10 of 1% of our Fire Department budget and approximately 2/100 of 1% of our General Fund.

He **moved** to direct the City Attorney to draft an ordinance to repeal Ordinance No. 10-OR0369-1, fees for emergency services.

**COUNCILMEMBER KERN** seconded the motion.

Public input

**JERRY McLEOD**, 1517 Del Mar Road, doesn't understand in this day and time we're in economically and if other cities are doing this, why we wouldn't do the same

thing. If insurance companies are going to raise fees, they're going to raise them anyway. You can get a little bit carried away with wanting to cut taxes. He would like to have less taxes like anyone else, but we need to use some common sense here. We have to look for all revenue that we can possibly get and cut overhead. It doesn't matter if it's \$15,000 or \$5,000. He asked how our figures compare to other cities. We need to get any money we can get.

**JIMMY KNOTT**, 127 Sherri Lane, felt there are people on the Council that were not educated on the difference between a fee and a tax or they would not be using the term tax when it's a fee. Also, a couple of Councilmembers have stated that any time you eliminate a revenue source you must have a replacement. He hasn't heard any ideas about a replacement for this revenue source that would be dropped. It was explained to us that the people who cannot afford this will not be charged. It's only an insurance situation.

**NADINE SCOTT**, 550 Hoover Street, stated it is so hypocritical to bring this action. This is a revenue recovery method. Just because it hasn't made the amount of money you think it should is the worst argument she's ever heard. In the previously heard item, Councilmembers Kern and Felien stated they rely on staff. Staff has said they want this cost-recovery measure, and it is the right thing to do. This is because it's the Fire Department. You've got a problem with the Fire Department, and to bring this message forward to get rid of a cost-recovery program sickens her. We're talking about cutting our pools, parks, etc. What you 2 Councilmembers have said tonight doesn't make any sense.

**CHUCK LOWERY**, 812 Alberta, thinks this is a cost-recovery situation that is already in place, and the fees for accident clean-up services provide income for the City. Otherwise, we are putting the burden on the resident taxpayers. This income from people who have accidents in the City and where we collect from insurance companies benefits all Oceanside taxpayers. Right now our local economy is in a crisis, and there's a financial tsunami coming that we must prepare for. We're counting on our Council to make decisions to help City services continue.

Council has said they are going to close libraries, pools and parks because we have no money. You voted to do away with limited income housing for seniors and veterans because we have no money. You told us we're going to lose public services, do away with neighborhood centers and reduce hours or even close our senior centers because we have no money. So should we say no to money from insurance companies? Why should the residents of Oceanside pay to clean up after the insurance companies' customers?

This is not a tax; a tax is where we charge the residents of Oceanside for something that we the residents are doing or not doing. This is a recovery from the insurance companies for monies that they owe us. The collection of money owed to Oceanside taxpayers by insurance companies is not a double tax. These multi-billion dollar insurance companies pay zero tax dollars to the City. He's taxed enough already and doesn't want any more taxes on himself or any other Oceanside resident. This revenue is income. For the citizens of Oceanside, it makes no sense to do away with any source of income when we need the money to operate; we are giving our money to insurance companies, which are extremely profitable. They need to pay us back for accidents that we have to clean up that their customers cause. If you vote to eliminate this fee, the voter will think you don't care about us.

**SHEILA KADAH**, 5301 Village Drive, stated this isn't a tax; it's a fee. Councilmember Felien used to be our Treasurer so he should know that. Any way that we can bring in money for the City should be kept. It's going to cost more to get rid of it, and that doesn't make sense at all. This isn't a tax. It charges the insurance companies who are making record profits. People are going to drive on Interstate 5 to

get to San Diego anyway so it's helping us. That \$15,000 could maybe save one job, and that's important. It doesn't make sense to get rid of it or spend money to repeal it. It makes money for the City.

**POLLY FUKAHARA**, 520 South Ditmar Street, doesn't quite understand the philosophy about giving away taxes during a time when there isn't much money in the City. You say every penny counts, but then you want to give away \$15,000 a year. She's been watching Council lately and has noticed that a few Councilmembers are always trying to give tax money away to somebody other than the residents. Nothing is going to change your minds but people are watching what you're doing. She is going to talk to her neighbors and others about what you're doing when elections come up.

**ROB FAIRFIELD**, 909 North Coast Highway, noticed that Councilmember Felien was talking about how the taxes to out-of-towners would affect the tourism business. If tourists are afraid to come to Oceanside because they are being driven away, that's going to cost the City more money in the long run. It doesn't take that many tourists to put \$15,000 worth of taxes into the City treasury. Oceanside has beautiful beaches that are used by long distance tourists, as well as local tourists. Do we charge the local tourists the fee? The tourism business in Oceanside is a big part of the income of the City. It is an injustice to Oceanside as a tourism destination to take advantage of tourists who could go home and tell people what a great time they had here. If they had a bad time, they'll tell 10 people who will tell 10 more people, etc.

Public input concluded

**DEPUTY MAYOR SANCHEZ** stated this is a cost recovery. Every department has been taxed with figuring out how to do their job and do it at a neutral cost. The City has adopted certain core values, and she doesn't believe those have changed. We're still talking about quality of life and pride in our diverse communities. Every department has been told cost recovery, and development has been told to pay for itself. The Fire Department should be treated no differently. It was proposed that if it's non-insured, then we will not go after it. She believes that someone who caused an accident should pay for injuries that they have caused. Restitution is restitution. If you hit a pole you have to pay for it. It was part of making the community whole. She doesn't believe our tourism would be impacted by this. This is cost recovery and if we don't do this, then something else doesn't get done in Oceanside. Whenever we take away, we should ask where we are taking from, and that isn't part of this motion. We're already coming up with difficulties.

**COUNCILMEMBER KERN** thinks we get enamored with the word 'program'. This was supposed to be a program where we were going to get \$266,000, but we're really talking about \$15,000. That's all we've recovered so we're not losing massive amounts of money. That's why government is in trouble. We project these huge revenues and spend up to those projected revenues, but then the revenues don't come in. We have a revenue shortfall, and we have to backfill it out of the General Fund. He voted for this last time because he thought it was worth \$266,000 and was a great program. We're  $\frac{3}{4}$  of the way through the year, and we've collected \$15,000. We've probably lost more money because of this program. It's probably detrimental to us.

He did his first international interview with the Canadian Broadcast System. They wanted to ask about the crash tax because Oceanside has been labeled a predatory city. Now we have to defend ourselves. What message does that give to the tourists? This was broadcast nationwide in Canada on their news at 6:00. We're now trying to scramble to get people to come in while we have to defend ourselves that we're not a predatory city and that we welcome tourists. This has hurt us more than it's helped us.

We're talking about a program that is not successful, hasn't worked the way we

thought it would and is hurting us. We should drop it as soon as possible and publicize it in the newspaper and on radio that Oceanside is no longer a predatory city. If the insurance company doesn't pay, then we're going to go after the individual whether they are at fault or not. The idea that we're getting huge amounts of money from this program just doesn't pan out, and we haven't adjusted our budget for it. We're talking about \$15,000 almost at the end of the fiscal year. For public relations purposes alone we should drop this program and tell people that we welcome them to this city.

**MAYOR WOOD** stated when this was being brought up, he was concerned and surprised for the same reasons expressed by most of the public. When this was brought to Council, the Fire Department said that when they respond to an accident scene where they clean up and provide emergency services, people from Oceanside would not be billed. It would be the person who was at fault and preferably someone from out of the area and that you would go after their insurance, but if you couldn't collect it there then you wouldn't go after anybody. He thought it was an intelligent idea to go after people who had accidents that were their fault and bill their insurance company for response of the paramedics, fire trucks, etc. He appreciates how much money we've brought in and is sorry it wasn't enough. He's happier because that means we didn't have that many accidents so not as many people got hurt.

He doesn't see how we are a predatory city because several other cities have this, is that correct.

**DARRYL HEBERT**, Fire Chief, appreciates Councilmember Felien recognizing that it was an issue to bring forward. We were directed by the City Manager to generate any type of revenue we could. It was an idea that other cities were using. Fallbrook was where we looked at it initially, and we brought in different consultants from different groups to talk about it.

He apologized that the revenue wasn't what it was projected to be. We looked into that and found that it was partly our fault. When we initially projected the revenue we included a lot of the air ambulances that land within our City, and there's a certain amount of money that we get for that. Unfortunately, a lot of those ambulances that landed were not accident related; they were due to trauma, falls, gunshots, etc.

The other area we recognize as a reason why the revenue wasn't close to what it was projected is that this was a new program to the Fire Department. We are not used to collecting insurance information, identifying drivers at fault or determining whether they are residents or not. That was an internal issue that we did some focus training to improve our revenue recovery. He would anticipate that it will increase. Whether it gets to \$266,000 he doesn't know, and it probably won't before the end of the fiscal year. He would hate to lose the resolution because it does eliminate us from collecting for things such as a hazardous materials trucks crashing in our city, for example, which costs us a lot of resources in the Fire Department to mitigate that type of emergency. That type of ordinance allows us to collect. If Council's not happy with this service, you can just tell us to stop and keep the resolution for that.

**MAYOR WOOD** stated we brought this up because we had some financial issues. If we drop this, no matter how much money it's made, where do you take that money from? If that money is revenue then we have to cut something else. That generally means somebody's job or a service to the community. He could understand getting rid of this if it was really a deficit to the City, but this is a potential for keeping services and staff; not at these figures but why not keep it. We're not penalizing people. We're saying if you have an accident where you're at fault and you have insurance, we'll charge you for the services of the responding units. The Police Department does that with certain crimes, including drunk drivers. It's not uncommon and we were looking for ways to come up with money. He doesn't worry about being charged for emergency services in other areas because that's what he pays his

insurance company to take care of.

**CHIEF HEBERT** stated we do bill the at-fault insurance company. We don't go after the driver themselves if the insurance company refuses to pay. We determined not to choose that model so we bill the insurance company of the at-fault driver alone.

**DEPUTY MAYOR SANCHEZ** heard from a representative of the Chamber of Commerce and up to today there have been no complaints to the Chamber or the Welcome Center regarding this ordinance.

**COUNCILMEMBER FELLER** asked if a hazardous waste truck came through town and overturned down an embankment and stuff ran into the sewer, would our Risk Management have the opportunity to go after them for any damage.

**CHIEF HEBERT** responded they would as to any damaged property of Oceanside but not for any equipment that the Fire Department has used.

**COUNCILMEMBER FELLER** would think that with Risk Management we're continually chasing red herrings.

**CITY MANAGER WEISS** stated if they damage City-owned property, we would try to recover. Just the response, we would not. For example, if a driver hits a street light or a traffic signal we go after them to recover the cost of the damage.

**COUNCILMEMBER FELLER** didn't vote for this before. We've probably done a lot of cost recovery. He's still opposed and would never approve something like this because it just drives the rates for all of us.

**COUNCILMEMBER FELIEN** asked for clarification as to why the information about insurance, etc. wouldn't already be available from the accident report and investigation the Police Department does.

**CHIEF HEBERT** is sure it probably is. The beauty of this program is that we don't get involved in the billing part. The company that we subscribe to does all of the billing. We often do get the information from the Police Officer who collects it from the non-resident or the insurance company.

**COUNCILMEMBER FELIEN** would think that information is available and that the company would have the experience of doing this in other locations. Why that would be an issue as far as not getting the revenue and why the \$15,000 that we actually collected isn't a realistic figure for what receipts would be for this program.

**CHIEF HEBERT** can only guess that some insurance companies would probably question who is at fault, and it might go through litigation. That could go on for a long period of time, which could be one reason they wouldn't pay out. All he can do is identify that there was an internal issue with the way that we were trying to collect the data, and the air ambulances were a big issue within our organization.

**Motion was approved 3-2;** Mayor Wood and Deputy Mayor Sanchez – no.

**COUNCILMEMBER FELLER** asked how many other cities are doing this.

**CHIEF HEBERT** is not sure of the number, but there are cities currently looking at it within North County like Vista. Throughout the State, last he heard there were over 30, but he's not sure.

22. **Request by Councilmember Kern to rescind Resolution No. 10-R0809-1 (a resolution of the City Council of the City of Oceanside establishing a fee**

**schedule for annual fire inspections for specified occupancies)**

**COUNCILMEMBER KERN** voted against this last time because he thinks this truly is a double billing, because people do pay property taxes, whether you have a condo or several apartment buildings, etc. Even multi-family dwellings pay property taxes. Part of that property tax is the expectation of having fire service. They pay the tax and then get billed for an inspection is double dipping in a way, and that's not something we want to do. He got a lot of emails and phone calls from people saying they pay their taxes and now we're charging them a fee for fire service.

He **moved** to repeal Resolution No. 10-R0809-1.

**COUNCILMEMBER FELLER** asked if there were fees in place for these fire inspections before.

**CHIEF HEBERT** doesn't believe there was for the multi-family dwellings.

**MIKE MARGOT**, Fire Battalion Chief, stated we have had no fee structure for any annual inspections in the history of the Fire Department that he knows of.

**COUNCILMEMBER FELLER** **seconded** the motion.

Public input

**JOAN BRUBAKER**, 1606 Hackamore Road, stated we have a chance to get a few more bucks, and you want to turn it down. It sounds like retribution the way it's set up.

If you own an automobile you pay tax on it. You pay a fee every year in order to have the privilege of driving it on the highways. Yet, when you renew that license, you have to go down and have it smogged. That's kind of an inspection to see if your car is permissible with the air. It's the same thing with rental units or income property, even business property. Having been in the rental business for 35 years, she knows that some things can happen to your rental unit that you may not be aware of that can impair safety. She thinks having the Fire Department inspect these income properties that have multiple occupants is a good idea. A tenant can get real ingenious with things that may not be safe. This fee is not outlandish and should remain in place.

**JIMMY KNOTT**, 127 Sherri Lane, would like some clarification as to what property taxes can and cannot be used for and a clearer definition of 'for fire service and anticipation thereof'. This item states it's for certain occupancies, and he would like to know what those are. This should be on a case-by-case basis and there should be an exemption clause. There is a cost for this service. If we're going to be eliminating something that generates revenue, then we have to have something to replace it.

**NADINE SCOTT**, 550 Hoover Street, stated that like the previous item, we know this is a fee and not a tax and is also a cost recovery item. This is a public safety issue, not a stand-by fee to have the Fire Department come to my house. They are inspecting for smoke alarms, people living in the garage, water heaters, etc. Shame on you for getting rid of another revenue source and for your war on public safety.

**CHUCK LOWERY**, 812 Alberta, stated these inspections are likely to be done anyway. If we refuse to charge the multi-property owners an inspection fee, then by revoking this you will put the burden of this on all taxpaying citizen voters of the City. We don't want this additional burden. A recovery fee is a good thing because the users get to pay for the service that they are receiving. This is on rental units of 3 or more on one property, so they have to pay for the inspection. It simply becomes a cost of doing business. A property owner who is making money receives a tax deduction for this.

That's a really great bottom-line benefit, a tax deduction. It's not a tax; it's a fee; and the property rental owner gets a tax deduction. It's a win-win for everyone. He asked Council to retain this regulation.

Public input concluded

**DEPUTY MAYOR SANCHEZ** asked staff for clarification as to whether this is a fee that all homeowners pay or if it is something other than that.

**CHIEF HEBERT** responded this is not a fee that all residents pay. We do not inspect private residences, only those of multi-occupancies.

**DEPUTY MAYOR SANCHEZ** stated in effect Oceanside homeowners will be subsidizing landlords. Many of us have heard of, seen and been called about situations where there are multiple people living in a residence, and there is a fear about safety issues. These annual safety checks are important, not just to make sure that they are safe, but to make sure the neighborhood is safe. We've talked about unfunded mandates. Here is something that is critical to public safety, but who gets to pay for it. It isn't fair to homeowners to have to subsidize someone else who is already making money on their income property.

This generated \$100,000 in revenue. What is going to be cut to make up for that? Somebody has to pay for it; it is a service. Where do we stop? Why can't we say that taxpayers are paying for the library so we need to make sure we support the library. Why are we picking and choosing what taxpayers feel that they should get for their taxes. This is bordering on the ridiculous. We are going to delete a program or may end up cutting a police officer from the streets. Is this just a philosophical thing we're doing? We're about people and not about philosophies. It isn't fair to subsidize somebody else's income.

**MAYOR WOOD** stated when we came into office, we indicated we are non-partisan. We shouldn't be voting our party line but sometimes it appears to be that. He hopes that's not the case because public safety has done a lot for us. They've been vilified because of their labor groups and employee groups but they still do a wonderful job for our City. We had a meeting last night to find out where we are going to come up with money, and now we're throwing money away.

**COUNCILMEMBER KERN** stated people pay their taxes, and now we're going to charge them fees. They pay taxes to support libraries and fire and police services, and now we're going to charge them a fee for one of those services that they thought they got by paying their taxes. He didn't change his philosophy on this; he voted against it the last time it was here, and that's why he brought it up this time. People pay enough taxes. The larger units pay more taxes than a single-family home so they are getting services that they are paying for. To come back and charge them a fee for services that they think they paid for is wrong. He agrees with a previous speaker that the State operates that way: they charge you for registration, smog, etc. Oceanside doesn't want to mimic the State, we want to protect our residents and taxpayers and not double charge them for something they think they are already paying for. He brought it back because with the change in the Council he can get somebody else to support the idea that we shouldn't double bill, double tax or double fee anybody.

**COUNCILMEMBER FELIEN** pointed out that the first thing he did at the start of this item was to acknowledge that the Fire Chief was responding to instructions from the Council to come forward with any ideas he may have. Then Council would debate and accept or reject them. This idea falls under that same category. This is an issue of whether after people pay taxes we're going to charge them fees. Are we going to start charging them to enter the library next? This can go on and on while we claim that we're just recovering costs. If we're going on a cost recovery basis, then why have the

base taxes? Every one of these fees for services should have a corresponding tax reduction that matches what people thought they were paying for. He doesn't see that in any of these programs.

He asked for clarification about the \$100,000 figure and what we actually collected on this to date.

**CHIEF HEBERT** responded the resolution was passed in December of 2010; the database was updated in January of 2011; we started the program in February of 2011 and in March of 2011 we've collected \$15,000.

**COUNCILMEMBER FELLER** didn't vote for this before and agrees that it is something he expects from his property taxes. He doesn't pay to have somebody come out and inspect his water meter. He had asked before if our guys in the fire stations were being cross-trained for this. Those inspections don't have to be done by one person.

If we charge \$119 for a 10-unit building, then that will translate to \$11 per unit more in rent to the tenant. The owner who gets the property tax benefit may be trying to gouge the tenant already.

**Motion was approved 3-2;** Mayor Wood and Deputy Mayor Sanchez – no.

#### **CITY COUNCIL REPORTS**

23. **Mayor Jim Wood**

**MAYOR WOOD** thanked everyone who wished him well during his illness. He extended his sympathies to the people of Japan after the tragedy there. He asked people to contact the agencies that are helping them and give what they can.

He attended a play at MiraCosta College, which was every bit as good as a New York play.

25. **Councilmember Gary Felien**

**COUNCILMEMBER FELIEN** was a server at the Soroptimists lunch. He visited a local business, Amerillum. Our Economic Development Department has regular scheduled visits to local business to find out if there is anything we as a City can do to help.

26. **Councilmember Jack Feller**

**COUNCILMEMBER FELLER** through the gracious offer of Cora Frolander attended a get-motivated business seminar at the Sports Arena that featured Colin Powell, Steve Forbes and Bill Cosby.

Many of us were at the ground-breaking of Amerillum a year ago, and it is a fantastic business. It's a real feather in Oceanside's hat to have captured that business away from Vista.

There is a delegation coming from Kisarazu, Japan, so we'll be able to hear first-hand how those people felt.

27. **Councilmember Jerry Kern**

**COUNCILMEMBER KERN** will be hosting the chaperone for the Sister City visit. He also went to the play at MiraCosta, and it was very good. He is meeting Darryl Issa's

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District Director tomorrow and taking him on a tour of the Reverse Osmosis Plant.

24. **Deputy Mayor Esther Sanchez**

**DEPUTY MAYOR SANCHEZ** thanked the people at MiraMar for their kind words and flowers during her illness.

She attended the play "Footloose" at Vista High School. She met with Toby Ferguson of the Tri-City Hospital Foundation, and there are wonderful things happening with the Foundation.

There was a meeting held in Oceanside regarding the idea of having voluntary affordable housing, and Council is having staff come back in 90 days with the paperwork to dissolve our inclusionary ordinance and come up with voluntary measures. She ended up not being at the meeting but she was briefed by her aide. The next meeting is March 21, 2011, at 2:00 p.m. at the Code Enforcement conference room at 602 Civic Center Drive. You have a right to be at this meeting.

**ADJOURNMENT**

**MAYOR WOOD** adjourned this joint meeting of the Oceanside City Council, Community Development Commission and Small Craft Harbor District Board of Directors at 10:07 PM on March 16, 2011, to a Council workshop on April 5, 2011, at 4:00 p.m.

**ACCEPTED BY COUNCIL/HDB/CDC:**

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Barbara Riegel Wayne  
City Clerk, City of Oceanside



California

# CITY OF OCEANSIDE

## MAYOR AND COUNCIL WORKSHOP

APRIL 5, 2011

**ADJOURNED MEETING                      4:00 PM                      COUNCIL CHAMBERS**

<b>Mayor</b> Jim Wood	<b>Deputy Mayor</b> Esther Sanchez
<b>Councilmembers</b> Jack Feller Jerome M. Kern Gary Felien	<b>City Clerk</b> Barbara Riegel Wayne
-----	<b>Treasurer</b> Gary Ernst
<b>City Manager</b> Peter Weiss	<b>City Attorney</b> John Mullen

The adjourned meeting of the Oceanside City Council was called to order at 4:04 PM, Tuesday, April 5, 2011.

### ROLL CALL

Present were Mayor Wood and Councilmembers Feller, Felien and Kern. Deputy Mayor Sanchez was absent. Also present was City Clerk Wayne. Jimmy Knott led the Pledge of Allegiance.

### WORKSHOP ITEMS

- 1. Planning Commissioner Applicant Interviews and Council Appointment of 2 commissioners**

**CITY CLERK WAYNE** stated we're selecting for the positions of Bob Neal and Stan Bertheaud, with a term expiration of April of 2015. Those terms are the expiration of Bob Neal and Stan Bertheaud, who have both reapplied.

We're doing the standard questions as before. We didn't get any feedback to change that.

**Stan Bertheaud**, 550 Fern Ridge Court, has been doing this for 4 years and it's been an interesting experience. It took him about a year before he got the hang of it. After 2 years he felt he was in the groove, and it was a comfortable fit. He enjoys it and feels like he's made a bit of a difference in his 4 years as a Planning Commissioner. The Commission is very functional and is a good group, although we don't always vote together.

Standard Question 1: Why do you want to continue being a Planning Commissioner?

Mr. Bertheaud originally wanted to be on the Commission because he'd never been on this side of the table. He's an architect and teaches architecture at a university in San Diego. He met a previous commissioner who recommended he do it. He has

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UNTIL APPROVED AT SUBSEQUENT  
MEETING BY CITY COUNCIL**

enjoyed it and made relationships with the rest of the Commission.

Standard Question 2: Describe the background and experiences that make you a desirable candidate.

Mr. Bertheaud has been a Commissioner for 4 years. He is an architect and has been practicing architecture since his mid-20's. He teaches architecture as well. It's been an interesting experience and interesting to work at a citywide level.

Standard Question 3: Are you related to or do you have any type of work or affiliation with anyone on the Planning Commission?

Mr. Bertheaud responded no.

Councilmember Feller's question: At some point we will have to densify some of our properties. How do you feel about densifying the property, which is currently considered habitat along the rail corridors?

Mr. Bertheaud responded that if you're talking about the whole rail corridor going through Oceanside, he's generally for that. It makes a lot of sense to build out along the rail corridors. He's been a big proponent of the Cleveland Street development that's been talked about - the arts and ecology environment district. There is a lot of potential to do that. It's a weird mix of being next to a rail corridor but 3 blocks from the beach. It's an unbelievable piece of property at that level. As long as people are comfortable, then the rail corridor makes a lot of sense. He's comfortable with going out east as well, but he's not as familiar with exactly where that goes through. He takes each thing individually.

Councilmember Felien's question: What project in the City do you feel puts forward the best image of Oceanside that you would like to see, and conversely are there any projects or buildings that you feel didn't rise to the image you feel the City ought to be projecting.

Mr. Bertheaud doesn't deal at all with the downtown stuff so he isn't as familiar with how those happened. The Habitat for Humanity project that was done a couple of years ago is an interesting project. They were able to find a site that was basically deemed unusable, and that someone was able to make something out of that is commendable. There have been some interesting house projects that have come across our desks along the coast recently. Most of the development came early on before the economy started not doing well. In terms of projects that concern him, he'd be concerned about some of the sizes of the downtown projects, although he doesn't see those through the Planning Commission.

Mayor Wood's question: What do you think of the County/SANDAG's Smart Growth Plan, including the use of transportation corridors?

Mr. Bertheaud thinks it great. Building and using the rail corridors makes a lot of sense to him because the Smart Growth idea where we start to cluster people around mass transit hubs makes sense. The more we can get people moving that way the better. Generally, rail corridors are often underutilized. Many years ago we looked at them as throw-away areas, and now we're seeing them as much better development areas. He's in support of it.

Councilmember Kern's question: Define what transit-oriented development means to you.

Mr. Bertheaud would think it would be taking nodes around train stations and stops and trying to develop mixed use (commercial/residential/institutional) around them within a reasonable walking/biking distance or even driving distance. His

definition is easy access from the vicinity to use the mass transit.

Councilmember Feller's second question: What do you feel is the sole responsibility of the Planning Commission?

Mr. Bertheaud doesn't know if he's done this long enough to know what the sole responsibility is. It is certainly to work as a commission. He likes that there are 7 people to provide various expertise. Specifically, it is to make decisions for the best of Oceanside that the City, as a group, would make. We're meant to represent the City and make decisions that are best for Oceanside over the course of the next 20-40 years. It's a long-term thing. We've been presented with issues that were started years ago and we've made decisions that go into the future.

**Angela McDowell**, 704 West Street, is from Ireland and has been in Oceanside for 7 years. She owns her own business doing restoration and conservation of oil canteens and antique furniture. She feels that her knowledge of preservation and history would be an asset to the Planning Commission. She believes the City needs to have a balance of preservation and conservation, along with Smart Growth. It's useful to utilize the assets and the community to grow in a sustainable manner, which both enhances the community and culture and provides growth for the local economy. As a Planning Commissioner, she would be open-minded and would consider every issue that was brought before her based on its own merit.

Standard Question 1 response: When she looks around the City she sees a lot of new buildings going up, and she was told it's very important to build new and bigger buildings to bring in money for the City. However, she thinks it's important to keep the neighborhood look, grow in different ways and perhaps bring in more businesses to create the money that is needed. Her preservation angle would be where she is coming from.

Standard Question 2 response: She's traveled a lot and has a background in history. The reason she travels is to go to cities to see their architecture and city environments. Oceanside is missing that a little. The Band Shell was once a great asset to the City, but people want to change it and make it a glass dome. She thinks it's historical and it would be a shame to knock it down. We could utilize it better.

Standard Question 3 response: No.

Response to Councilmember Kern's question: She passed.

Response to Mayor Wood's question: She is not really up on everything that's going on in the City, especially on the outside. If given the position, she would certainly get on it. Her focus has only been downtown for the main part. She is aware of that project but can't say much else about it.

Response to Councilmember Felien's question: When she looks around the City she doesn't see a pattern, and that's what throws her the most. There seems to be a mish-mash going on. She'd like to see a pattern overall. Nothing stands out that she thinks is wonderful, and a lot stands out that is too mixed for her.

Response to Councilmember Feller's question: To develop Smart Growth within the City, create employment and think about the residents and tourists. The Planning Commission needs to think about the residents a little more. She would like to see preservation; she doesn't agree that everything should be about creating more money for the City. Also sustainability, she thinks some of the houses that are built are transient houses, with people moving in and out of them. In 10 years, they'll be knocked down and made into smaller houses.

**David Zernik**, 322 South Ditmar Street, has resided in Oceanside for 13 years

and has been practicing civil engineering for 18 years. He has a good relationship with many people in the City who have a big impact on the growth and planning of the City. This includes contractors, owners, developers, City officials and other engineers, architects and designers. He is the owner of Skyline Engineering. We provide development services. Throughout the City and County he has worked on a variety of projects such as bridges, residential additions, new homes, apartment buildings, high-rise buildings, road design subdivisions, hydraulic design and surveying. He has planning experience, knowledge and rapport with others. These things will be a valuable asset to the City. He wants to serve so his sons have the Oceanside that we have or better.

Standard Question 1 response: He would like to improve the City and make Oceanside a better place for future generations.

Standard Question 2 response: He has 18 years' experience as an engineer in the development services business. Five of those years were as a plan checker for the City of Mission Viejo, as well as a consultant plan checker in some other cities. He's worked on both sides of the counter, so he has a good understanding of the development business.

Standard Question 3 response: No.

Response to Councilmember Feller's question: Feels the sole responsibility is to review projects coming out of the Planning Department and to advise Council with regard to those projects.

Response to Councilmember Felien's question: The most important thing we can do on the Commission is to spread the word that Oceanside is a people-friendly place and that we're willing to assist people to make their project architecturally aesthetic and an asset to the City as a whole in the future.

Response to Mayor Wood's question: Generally feels that the County is good, and he supports that plan. We need additional roads. Some of the zoning changes in that regard he supports and thinks is a good thing.

Response to Councilmember Kern's question: Thinks we need more of it. We've got a lot of people in their cars. Oceanside is kind of a go-between for San Diego/Los Angeles. He's a big supporter of developing in such a way that people spend less time in their cars. We need a supermarket in downtown Oceanside. People are driving 3 miles to get the basics that they need. It would be an easy thing to do to get people out of their cars.

**Robert Neal**, 109A Avenida Las Brisas, is currently the Chair of the Planning Commission and has served approximately 7.5 years. During that time he has only missed 3 meetings. Prior to that, he served 2 years on the Housing Commission, with 1 year as Vice-Chair. It was a very informative experience. He spent 4 years on the Redevelopment Design Review Committee, which was an excellent experience. He is very interested in the downtown area. He's chaired 3 subcommittees on parking, one of which has resulted in the Oversized Vehicle Parking Ordinance that we put in place a few years ago. One was a study of parking in the downtown area. The more you study that, it gets bigger and bigger.

Standard Question 1 response: He's interested in a lot of things that we have in the City and thinks that down the road we're going to be looking at new developers coming into town that will probably purchase some of the projects that we've already approved. Having a background in those projects when they first came on board is a very important asset. He is interested in what happens when and if the Governor does away with the redevelopment agencies. He'd like to see that come under the Planning Commission. There's a lot of exciting things that can be done and a lot of assets sitting

there that need to be developed that will put revenue in the pockets of the City.

Standard Question 2 response: He has been in the City for 15 years, has spent 7.5 years on the Planning Commission and 2 years on the Housing Commission. He has a degree in real estate. During his career as a firefighter in San Diego, he was also a builder of custom homes and remodels, so he has a lot of hands-on experience going through Planning Departments and getting building permits. He is also a capitalist and interested in the revenue streams that come into the City. There are a multitude of ways that we can make things palatable for people to come in and develop in the City.

Standard Question 3 response: No.

Response to Councilmember Kern's question: It means that when you do development you can put a mixed-use project close to a transit facility so that the people who occupy the residences and businesses can use mass transit to get to work versus driving. It goes back to the parking issue where you can put projects in place, and there isn't as much parking required if there is rapid transit close by.

Response to Mayor Wood's question: It's very good. When he was on the Housing Commission, we started talking about the Sprinter. There were big plans in place for the City to have a lot of high density development along the beach. The plan was to use the corridor for the Sprinter and for housing into Vista and even tying in with Vista and Escondido so the living costs would be less for the people that had jobs in Oceanside that don't pay as high as higher skill levels. It's a very effective plan if everything can be put in place, but it seems like the economy affects it.

Response to Councilmember Felien's question: He thinks the Cleveland Terraces building is a very good building. There are some other approved plans that he was not able to be a part of that disappoint him somewhat. He's expressed that disappointment because he doesn't believe that some of the projects in the Redevelopment Area are taking advantage of the view of the ocean. When people come to Oceanside to eat dinner or stay, they want to be able to sit on their veranda and look at the ocean. There are several projects in the outlying areas that he likes: the Belvedere project at Horn and Mission and some of the smaller buildings in the downtown area.

Response to Councilmember Feller's question: To have a vision of what we would like to see in development in the City in the 25-50 year range, not just in our lifetimes. When you can bring the Planning Commission together and express their views and the views of the people they interact with to the applicants that are doing their project, the articulation, the height or anything like that can give the City a better appearance and make it more appealing to people who visit our City. The vision of the Planning Commission has to be to make your city an attractive city. Don't rebuild something that is old, but put a new vision in.

**CITY CLERK WAYNE** stated Jordan de la Cruz did not show up so that concludes the applicants that Council has available. Now is the time for Council to determine who the 2 appointees will be for the term from April 15, 2011, to April 15, 2015, a 4-year term.

**MAYOR WOOD** is impressed to see the resume attachments from some of the applicants that apply for our City and the Planning Commission in particular. He looks at things like community involvement, education and experience. Unfortunately, there are only 2 openings and 4 candidates. He thanked the applicants for putting in their applications. If you aren't picked, there are other committees and commissions in the City to keep in mind.

**COUNCILMEMBER FELIEN** thanked everyone for their applications. He encouraged everyone to stay involved in the community and apply for other positions if they don't get on the Planning Commission.

Having been on both sides of this process he doesn't know that he can get to know a candidate from a one minute answer, so part of his decision is based on knowledge and having known first-hand the work people have done over a long period of time. So far there is only one candidate, Mr. Neal, who he's known personally, has seen his work and is aware of his commitment to the community. The other candidates he hasn't been able to wrap his arms around and would like to see the application process stay open for another 30 days to get to know the applicants and see if there is additional interest from the community. He's surprised at the small number of people who have applied; usually we get a much larger number.

He **moved** to re-appoint Robert Neal to the Planning Commission.

**COUNCILMEMBER KERN** seconded the motion.

**COUNCILMEMBER FELLER** concurs that Bob Neal has what we're looking for. He started with the Housing Commission and got to the Planning Commission, which is an admirable way to start the process.

**Motion was approved 3-1;** Wood – no, Sanchez - absent.

**MAYOR WOOD** wants to make sure with the Clerk that we can continue this for 30 days. He rated Mr. Bertheaud high as he sits on the Commission, and Mr. Zernik also rated high for him. He's sure Ms. McDowell will do well in this practice in the future. Right now he would support either Mr. Bertheaud or Mr. Zernik for the open position.

**COUNCILMEMBER KERN** agrees with Councilmember Felien in that it's hard to get an idea of what your Planning Commission mind-set is by this one-minute interview. If we continue it for 30 days, he'd like to sit down and talk to the other applicants a little deeper. Mr. Neal has been on the Planning Commission since before I became a Councilmember so I'm up on his work.

He really liked Ms. McDowell's attitude and what she wants to pursue. He'd like to sit down and talk to her a little bit more than the one minute. The 30-day continuance would give him the opportunity to sit down with Ms. McDowell and Mr. Zernik and talk to them about Planning Commission things. He's had dealings with Mr. Zernik before, but just on his project and nothing about transit-oriented development or other things. Other than the Council, this is probably the most important commission in the City. You are a quasi-judicial committee and when you say yes on a particular project, it gets done unless somebody appeals it to the Council. Most of the time the Planning Commission is the final say-so on most projects.

**MAYOR WOOD** wouldn't mind continuing this because he would also like to have the Deputy Mayor here. He asked the City Clerk if a 30-day continuance would be acceptable.

**CITY CLERK WAYNE** asked if Council wants to re-open the process. Remember the expiration is April 15<sup>th</sup> for the current commissioner. It takes a while to get it advertised in the newspaper; we have to have a cut-off deadline and we have to have them cleared through Oceanside Police Department.

**COUNCILMEMBER FELLER** has spoken with Mr. Zernik and is familiar with him. Mr. Bertheaud has been absent from a lot of meetings, and that is key. The only one he didn't have the opportunity to spend any time with is Ms. McDowell. If we are going to re-open it we need 60 days, not 30.

**MAYOR WOOD** stated it would probably be more like 60 days.

**COUNCILMEMBER FELIEN** is not committed to 30 days. If the expert opinion

of those who've been through this before and the City Clerk needs 60 days, he doesn't object to that. He asked if it's appropriate or has it been done in the past to include inserts in the utility bills since we know that gets to every resident in the City. He's not sure how many people look at the web site or see an ad in the newspaper.

**CITY CLERK WAYNE** responded it probably could be done. We don't know what the timing would be to get an insert into the utility bill, but it doesn't mean it couldn't be done in the future.

**COUNCILMEMBER FELIEN** stated that since the Mayor addressed the issue of David Zernick and Councilmember Feller expressed an interest in his candidacy. The one issue he has is that Mr. Zernik is likely to have an important project going through the process, and I'm not quite comfortable with him being a member of the Planning Commission while at the same time wanting to push through an important project. He certainly has excellent professional qualifications to bring to the position.

**COUNCILMEMBER FELLER** asked if Mr. Bertheaud would stay on the Commission until he's replaced so we will still have a functioning Commission while we get more applicants.

**CITY CLERK WAYNE** responded if that's Council's direction and if Mr. Bertheaud wishes to stay on until that time.

**MAYOR WOOD** thinks a continuance would be most appropriate, understanding that the Deputy Mayor isn't here due to a family emergency. He would like to keep Mr. Bertheaud on the Planning Commission until someone is appointed.

**COUNCILMEMBER FELIEN moved** to continue the process for 60 days and that Mr. Bertheaud stays on until he's either reappointed or replaced.

**COUNCILMEMBER KERN seconded** the motion.

**Motion was approved 4-0**, Sanchez - absent.

#### **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

2. **Communications from the public regarding items not on this agenda** - None

#### **ADJOURNMENT**

**MAYOR WOOD** adjourned this adjourned meeting to Wednesday, April 6, 2011, at 4:00 PM. This adjourned Council meeting was adjourned at 4:56 PM Tuesday, April 5, 2011.

**ACCEPTED BY COUNCIL:**

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Barbara Riegel Wayne  
City Clerk, City of Oceanside





California

# CITY OF OCEANSIDE

## JOINT MINUTES OF THE CITY COUNCIL SMALL CRAFT HARBOR DISTRICT BOARD OF DIRECTORS COMMUNITY DEVELOPMENT COMMISSION OCEANSIDE PUBLIC FINANCE AUTHORITY

FEBRUARY 1, 2012

**REGULAR MEETING                      2:00 PM                      COUNCIL CHAMBERS**

**2:00 PM - OCEANSIDE CITY COUNCIL (COUNCIL),  
HARBOR DISTRICT BOARD OF DIRECTORS (HDB), AND  
COMMUNITY DEVELOPMENT COMMISSION (CDC)  
OCEANSIDE PUBLIC FINANCE AUTHORITY (OPFA)  
- REGULAR BUSINESS**

**Mayor  
HDB President  
CDC Chair  
OPFA Chair**  
Jim Wood

**Deputy Mayor  
HDB Vice President  
CDC Vice Chair  
OPFA Vice Chair**  
Esther Sanchez

**Councilmembers  
HDB Directors  
CDC Commissioners  
OPFA Directors**  
Jack Feller  
Jerome M. Kern  
Gary Felien

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

**Treasurer**  
Gary Ernst

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

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

For this regular and joint meeting, the Council sat as all 4 governing bodies [Council, HDB, CDC and OPFA] 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), Community Development Commission (CDC) and Oceanside Public Finance Authority (OPFA) was called to order by Mayor Wood at 2:04 PM, February 1, 2012.

**2:00 PM - ROLL CALL**

Present were Mayor Wood, Deputy Mayor Sanchez and Councilmembers Feller and Felien. Councilmember Kern arrived at 2:06 PM. Also present were Assistant City

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

February 1, 2012

Joint Meeting Minutes  
Council, HDB, CDC and OPFA

Clerk Trobaugh, City Manager Weiss and City Attorney Mullen.

City Attorney Mullen titled the following items to be heard in Closed Session:  
Items 1 and 2.

[Closed Session and recess were held from 2:06 PM to 4:03 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

**Item discussed; no reportable action**

**2. CONFERENCE WITH REAL ESTATE NEGOTIATOR (SECTION 54956.8)**

CONFERENCE WITH REAL PROPERTY NEGOTIATOR – Property: 438 S. Cleveland Street consisting of approximately 0.23 acres (APN 150-182-06) located at the northeast corner of Cleveland Street and Washington Avenue; Negotiating Parties: City of Oceanside and Hitzke Development Corporation and/or Elder Entity, LLC; Negotiator for the City: Douglas Eddow, Real Estate Manager; Under Negotiations: Price and terms for the sale of real property

**Item discussed; no reportable action**

CONFERENCE WITH REAL PROPERTY NEGOTIATOR – Property: Yucca Road south of Fire Mountain Drive (APN 165-021-16); Negotiating Parties: City of Oceanside and Chris Kleszewski, Stevan Josepho, and Michael Schlumpberger; Negotiator for the City: Douglas Eddow, Real Estate Manager; Under Negotiations: Price and terms for the sale of real property

**Item discussed; no reportable action**

**4:00 PM – ROLL CALL**

**MAYOR WOOD** reconvened the meeting at 4:03 PM. Present were Mayor Wood, Deputy Mayor Sanchez and Councilmembers Feller, Kern and Felien. Also present were Assistant City Clerk Trobaugh, City Manager Weiss and City Attorney Mullen.

**CONSENT CALENDAR ITEMS** [Items 3-8]

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.

**ASSISTANT CITY CLERK TROBAUGH** stated there is a request to speak by the public on Item 7.

**COUNCILMEMBER FELLER** requested a brief presentation on Item 5 and has a question on Item 6.

The following Consent Calendar items were submitted for approval:

3. City Council/Harbor/CDC/OPFA: 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)
4. City Council: Approval of amendments to four Professional Services Agreements: Amendment 1 [**Document No. 12-D0084-1**] in an amount not to exceed \$99,020 with Value Strategies, LLC; Amendment 4 [**Document No. 12-D0085-1**] in an amount not to exceed \$79,000 with CRW Systems, Inc., of San Diego; Amendment 1 [**Document No. 12-D0086-1**] in an amount not to exceed \$88,070 to Active Network; and Amendment 1 [**Document No. 12-D0087-1**] in an amount not to exceed \$40,000 with Vavrinek, Trine, Day & Co., LLP, for implementation of Phase 5 functions to the Financial Services Department's Oracle System and associated software, upgrades, and training; approve hardware purchases in an amount not to exceed \$35,000; approve funding of overall project contingencies in an amount not to exceed \$27,800; establish Oracle Phase 6 project contingencies in the amount of \$50,000; and authorize the City Manager to execute the amendments
5. **Removed from Consent Calendar for discussion – Council**
6. **Removed from Consent Calendar for discussion – Council**
7. **Removed from Consent Calendar for discussion – Public**
8. City Council: Authorization to award a contract [**Document No. 12-D0091-1**] in the amount of \$494,263 to Hazard Construction Company of San Diego for the Mission Avenue Widening at Valley Heights Drive project for pavement and concrete-related improvements; approval of a budget appropriation in the amount of \$150,000 to complete the funding for the project; and authorization for the City Manager to execute the agreement upon receipt of all supporting documents

**DEPUTY MAYOR SANCHEZ moved** approval of the Consent Calendar [Items 3, 4 and 8].

**COUNCILMEMBER KERN seconded** the motion.

**Motion was approved 5-0.**

#### **GENERAL ITEMS**

General Items are normally heard after any 5:00 p.m. Public Hearing Items. However, if time permits, some General Items may be heard prior to any 5:00 p.m. Public Hearing Items, following the Consent Calendar.

9. **City Council: Presentation on the San Diego County Water Authority's lawsuit against the Metropolitan Water District of Southern California, and adoption of a resolution to express the City's support of the San Diego County Water Authority's lawsuit against the Metropolitan Water District of Southern California**

**FRANK BELOCK**, Deputy General Manager of San Diego County Water Authority (SDCWA), stated the Water Authority is going around to the various member agencies, City Councils and Boards to discuss the District and try and enlist your support.

Ratepayer money matters. The amount of money that we send to the Metropolitan Water District (MWD) when we purchase their water every year is \$203,000,000. We are by far their biggest source of revenue. Their sales are down just

like ours are. Conservation has taken hold, part of that probably being the economy. This has affected MWD; their revenues are down 33% in the last 4 years, so it's hitting them in the bank. MWD is projecting that, from now until 2030, sales will be 22% lower than their Urban Water Management Plan predicted in 2005. They have fixed costs; they're selling less water; that often dictates that the rates go up; and that's what they've been doing. Between 2006 and what they're proposing for 2014, it's essentially going up 100%. It's going to double.

Like us, they do high/low rate forecasts. In 2004 they did their long-range financing plan, and they tried to project their rates. Like us, they had a high and a low, but because of the circumstances mentioned previously, their rates have gone up a lot higher than they ever projected when they did that long-range financing plan. Those are the rates they charge the member agencies, such as us.

None of the member agencies pay their average; we all have our different nuances in terms of how we purchase water, treated water/untreated water, etc. Since 2006, MWD's average rate has increased about 8.1%. They are proposing increases in some things for 2013/2014. There is a rate hearing in March. We're putting a bus load together. Council is welcome to take people up to MWD to discuss the rate hearings.

He used a computer graphic to demonstrate the supply rates going down, but the transportation rates are going up markedly. For the Water Authority, the water we purchase from MWD, is the biggest driver of our rates; 55% of our budget is purchasing water from MWD. The QSA (Quantification Settlement Agreement), water we're getting from Imperial Valley, is about 8.6%. The Water Authority costs include operating, as well as the cost to build our facilities; we're paying debt service on that. Those 2 things make up about 34.7%. Again, a little over half of our budget is purchasing water from MWD.

Computer graphics were used to show that their rates for the untreated water and also for the treated water. SDCWA uses their own high-low forecasts, believing them to be more realistic.

The amount of money discussed in the lawsuit over the next 45 years, just the money we're arguing about and not the total money spent at MWD, is \$1,300,000,000 to \$2,100,000,000.

The Water Authority is MWD's largest customer. November 4, 1946, is when we were annexed into the MWD. By 1949, we're buying half of their water supplies. The Colorado River Aquaduct became operational in 1941. At that point, they had low water sales, and 80% of their revenues came from property taxes. Now 80% of their revenue comes from purchases of water. Fast forward to the early 1990's and now we are looking at ourselves as the cash cow for MWD. We buy 30% of their water and are 30% of their revenue base. In 1991, 95% of the water that we used in the San Diego region came from MWD; we had all of our eggs in one basket. We decided that was not a good thing.

He showed headlines from back in 1991 when the Water Authority was proposing cut-backs. There were quite a few people upset because people are used to turning on the spigot and water coming out. Back then conservation was not part of our culture.

In 1991, we developed our diversification plan in order to get all of our eggs out of one basket and spread it out. Our plan was that by 2020 we would get to the right pie chart. A big part of that is the Imperial Irrigation District Transfer. Conservation is part of the pie. The logic there is a gallon saved is a gallon earned that can be used elsewhere. There's recycled water and sea water desalination. Right now we're working with Poseidon on the Carlsbad project. A computer graphic showed all of the pieces of the Water Authority's diversification plan. By 2011, we are actually half off the MWD basket, but we still remain their cash cow. We're 25% now of their revenues, and

we're their biggest purchaser.

In 2003, we started working with the Imperial Valley Irrigation District, as well as MWD. Eventually the QSA was executed, which has to do with the Colorado River. There are 2 pieces to that. We're purchasing our own water and are no longer buying their water; it has become our water. First of all, we're purchasing 200,000 acre-feet – each acre foot serves 2 families for a year – of their water, essentially paying them to be more conservation conscience in their farming and making it worth their while by buying their water from them. Typically, they can still do what they need to do, but we realize that water. We have that water for 45 to 75 years.

The second piece of that are the All American Coachella Canals, which are canals that come off the Colorado River and supply water to the San Diego region. They had always been earthen canals, so water would seep through there and be lost. We completed a project last year where we lined those canals with concrete and that saved 80,000 acre-feet, which is now our water. We have an agreement regarding that for 110 years.

This created a need to create a transportation rate because we didn't want to pay rates that included MWD's supplies; we just wanted to pay for that which was needed to transport our water from the Imperial Valley to San Diego. MWD had to segregate those rates, and we believe they did it in a non-objective way to the detriment of San Diego. There should have been a supply piece of that and a transportation piece of that. They did that in a way that skewed it over to the transportation side. Now we're paying what we believe is more than we should to transport that water from the Imperial Valley to San Diego. Keep in mind that since we are further down the State, we pay more to transport that water all the way down here.

Before 2003, before the QSA was negotiated, MWD had one rate. They created 2 rates, one for water supply and one for system costs, which essentially is transportation because they had to desegregate that. We believe those rates are a lot higher than they should be and that we can prove that in a court of law. We believe the water supply rate should be significantly more than the system costs, but it isn't.

The Water Authority is suing MWD. A question we get a lot is why aren't the other member agencies that get their water from MWD joining us in this lawsuit. It's because the way MWD has constructed their rates, the Water Authority is the only one being overcharged. He used a graphic to demonstrate a comparison to other member agencies. It's a net zero gain, so if you're overcharging one group then someone has to be undercharged and vice versa. We believe that's what's going on and why it's just us against them.

One decision that was made early on was that the portions of money that we send up to MWD that we're arguing about would be put in an escrow account. MWD can't use it for operational needs or other budgetary needs. It has to be set aside in escrow until the final disposition of the suit. By the end of this year, there will be about \$78,000,000 in there; by the end of 2013 it will grow to about \$135,000,000. If the Water Authority wins the case, MWD will need to return all of that money to us, if we win absolutely. If that happens, then it's been talked about that the money would be returned to the member agencies, which is where the money came from. The Water Authority pays the rates but that money comes from the ratepayers, who are about 5% of our revenue base. That would be about \$3,900,000 being returned to the ratepayers, based on the \$78,000,000, and \$6,700,000 would be returned to the ratepayers, based on the \$135,000,000. That would be a decision by the Board, but we think it's a logical conclusion.

Regarding the status of the litigation, one of the things the Water Authority and MWD agreed on was that it probably shouldn't be tried in Southern California. It was moved up to the Bay Area and assigned to Judge Richard Kramer. We expect a decision by the end of this year, but that will likely be appealed by either party. The Imperial

Irrigation District and Utilities Consumer Action Network (UCAN) have both joined the lawsuit on the side of the Water Authority. On January 6<sup>th</sup>, Judge Kramer ruled that he would allow discovery. MWD fought that; they didn't want to go through a discovery process and all of the documents that would have to be produced. They just wanted to supply and have the Judge make a ruling based on the administrative record at MWD. We're now in the discovery phase. We are not only petitioning documents from MWD, we're petitioning documents from all of their member agencies as well. The next hearing is mid-February and is a Case Management Conference.

Council can help by adopting a resolution to support the Water Authority, provide any written or oral testimony at the March 12<sup>th</sup> hearing, publish any commentaries or letters to the editor and put it on your web site.

Public input

**JIMMY KNOTT**, 127 Sherri Lane, as a member of the Utilities Commission wanted Council to know that the Utilities Commission supports this action of filing a letter in support of the Water Authority.

Public input concluded

**MAYOR WOOD** stated this is a major issue because we're getting double digit rate increases every year. We have citizens on fixed incomes, and over the last couple of years they're looking at 50% rate increases on water and sewer. It's a pass-thru from MWD. It's important not to confuse the two; MWD is in Los Angeles and the Water Authority is down here. The rate increases are devastating for many of our citizens, and he's glad we're going forward with the litigation against MWD. If people want to, they should write letters because it impacts you and everybody around you on a daily basis. If we win this litigation and they give the amount of money we're talking about back to the City, that would pull us out of the hole we find ourselves in. It's a major issue, and the whole Council is involved in trying to do the best we can for water rates, etc. We'll do whatever is necessary. We have another rate increase coming for water.

**COUNCILMEMBER KERN** stated getting the water to us is the real issue. Going back to the court hearing that was held earlier this month, the Judge did dismiss a couple courses of action. He asked for an explanation of what was dismissed and how it affects the rest of the case.

**MR. BELOCK** responded there were 2 pieces that the Judge dismissed. One was called reverse validation, which we think was more procedural. Our attorneys have told us that it would have helped us, but it's not a big hit. The other one had to do with a breach of contract. There was kind of a narrow way we were approaching that, and we're approaching it in different ways. The Judge made it clear to us that we could resubmit that at a later time, after we've had a chance to develop a case. What we've submitted so far is absent all of the documents that we believe we're going to find. We can resubmit once we have that.

**COUNCILMEMBER KERN** stated Imperial Irrigation District (IID) has joined the Water Authority because of the water transfer. What is their contention?

**MR. BELOCK** believes they see it as fundamentally unfair. Because we believe we can prove that supply is part of the transportation rate, they think that they are charging us for the supply that we've already purchased from them. IID was part of the QSA and the development of it. He believes they think it gets in the way of the QSA.

**COUNCILMEMBER KERN** heard there have been challenges to the QSA, too.

**MR. BELOCK** responded yes. We're working our way through that, and we're optimistic that we'll get through that either by changes to the agreement or through the court. Right now it's going well in court, and the Judge has agreed with us. However,

we still think it has a little way to go, and we think they're going to appeal that.

**COUNCILMEMBER KERN** stated on February 17<sup>th</sup> there is a Case Management Conference and you're asking for their records on how they assign these rates, right? It goes back to the rate structure integrity and the language, etc.

**MR. BELOCK** responded part of it is rate structure integrity. They included in agreements that we have with them, as well as a couple of member agencies, where we're getting money from them, grant-type of things, that if we ever sued them, we can't have that money anymore. We thought that was fundamentally unfair.

The other thing that we're very confident we're going to find in all of this documentation, and we actually have been finding it in the last couple of weeks, is that they have been meeting privately with these other agencies prior to the Board meetings, essentially orchestrating what's going to happen at the Board meetings. We've actually found, either euphemistically or otherwise, what they call the 'secret society'. They've been frequently meeting with either Board members or representatives of the member agencies prior to Board meetings and the Water Authority being in the room, deciding what's going to happen in the Board room. We think that's fundamentally unfair, and we think we can demonstrate that's a violation of the Brown Act. When Judge Kramer heard that, it made quite an impression on him.

**COUNCILMEMBER KERN** stated it is vitally important to us. If we want to talk about growth in Southern California and sustaining our industry, water is probably the most restraining factor that we have. We're internally trying to get off of the Water Authority as much as possible to control our own destiny. Otherwise, we're at the very end of the pipeline, and we have to pay for it all the way up.

He **moved** for [adoption of **Resolution No. 12-R0092-1**, "...supporting the San Diego County Water Authority's lawsuit against the Metropolitan Water District of Southern California"].

**DEPUTY MAYOR SANCHEZ** seconded the motion. This is the right thing to do. It certainly does sound like a conspiracy, that the other users conspired to give us the larger bill to pay, and it's not fair. It's counterproductive in that our City especially has moved toward conservation. We need that water; we do have agricultural uses as well. She's sure there will be people from Oceanside taking that bus to that meeting in March. She encouraged people to go to that meeting.

**COUNCILMEMBER FELLER** would like to see something a little more stern going out as far as the resolution. We're in a position of MWD being the mother dog with 9 puppies and only 8 feeding stations, and we're down here on this end looking for that other feeding station and not getting satisfaction. He'd like to make the resolution as strong as we can.

**COUNCILMEMBER FELIEN** suggested having a second bus stop here at City Hall since Kearny Mesa is south and you're going to be passing right by us. That way all the people at this end of the County could be here at 9:00 a.m., rather than having to leave at 7:00 a.m. to get down there and you'll have a better chance of having that bus packed.

**MR. BELOCK** can look into that.

**COUNCILMEMBER FELIEN** stated in summary we're saying that MWD is a bunch of greedy blood-suckers and we need to do something about it. He is in total concurrence with that. It also re-emphasizes one of the positive things that's taken place in the City, and that's our effort to develop independent water supplies. It gives that even more urgency, even if it's temporarily more expensive. MWD can have rates going sky high as long as we have no alternative. If we can develop our own supplies, then over the long run it will be cheaper. We should be doing that as well. There

should be a call to action on all fronts.

**Motion was approved 5-0.**

**MAYOR AND/OR COUNCILMEMBER ITEMS**

18. **Mayor Wood: Update of Councilmember appointments to Boards, Commissions and Committees, including nomination for Deputy Mayor (continued from January 18, 2012)**

**2012 Councilmember Nominations**  
**City/Harbor/CDC Boards, Commissions and Committees**

<b>City/Harbor/CDC Advisory Group</b>	<b>Liaison</b>
<b>Arts Commission</b>	<b>Feller</b>
<b>Economic Development Commission</b>	<b>Feller</b>
<b>Harbor &amp; Beaches Advisory Committee</b>	<b>Feller</b>
<b>Historical Preservation Advisory Commission</b>	<b>Felien</b>
<b>Housing Commission</b>	<b>Wood</b>
<b>Integrated Waste Commission</b>	<b>Sanchez</b>
<b>Library Board of Trustees</b>	<b>Felien</b>
<b>Manufactured Home Fair Practices Commission</b>	<b>Sanchez</b>
<b>Parks &amp; Recreation Commission</b>	<b>Kern</b>
<b>Police &amp; Fire Commission</b>	<b>Kern</b>
<b>Redevelopment Advisory Committee</b>	<b>Pending Lawsuit</b>
<b>Utilities Commission</b>	<b>Sanchez</b>

<b>Regional Boards and Committees</b>	<b>Primary</b>	<b>Alternate I</b>	<b>Alternate II</b>
<b>Buena Vista Lagoon JPC</b>	<b>Sanchez, Kern</b>	-	-
<b>City/ OUSD/ VUSD Committee</b>	<b>Sanchez, Felien</b>	-	-
<b>League of California Cities – Executive Committee</b>	<b>Feller</b>	<b>Felien</b>	-
<b>League of California Cities – Legislative Delegates (voting)</b>	<b>Wood</b>	<b>Sanchez</b>	<b>Kern</b>
<b>North County Dispatch – JPA/Fire</b>	<b>Wood</b>	<b>Feller</b>	-
<b>SANDAG – Shoreline Preservation Committee</b>	<b>Sanchez</b>	<b>Kern</b>	-
<b>Washington, DC Appropriation Visit – Legislative Delegates</b>	<b>Wood</b>	<b>Sanchez</b>	-

<b>2012 – Deputy Mayor</b>	<b>Feller</b>
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Regional Boards and Committees	Primary	Alternate I	Alternate II
SANDAG – Board	Wood	Feller	Felien
North County Transit District – Board	Wood	Felien	-

**MAYOR WOOD** put this out a week in advance and got some feedback to make some changes. We need to bifurcate because the regional boards require an individual vote because of stipends. He **moved** to approve this in two sections.

**DEPUTY MAYOR SANCHEZ** seconded the motion.

**COUNCILMEMBER KERN** has been working on a lot of water utility issues and would like to be part of the Utilities Commission. He'll probably go whether he's the liaison or not because he has a couple of things running out there. One was the biofuel thing, and the good news is that our sludge is good sludge. He would like to stay involved with that one.

**MAYOR WOOD** appointed Deputy Mayor Sanchez to that, and she'd like to keep it.

**COUNCILMEMBER FELIEN** has chatted with the Mayor on some of these, and he knows it hard to satisfy everyone's egos on what they can do to improve the City. He would also urge Council to consider Councilmember Kern for the Utilities Commission. He's developed a lot of expertise on the issues of water. We just had a demonstration on how important that is to the long-term future of our City and our economy. He believes that would be within the balance of the current make-up of the Council.

He'd also like to suggest on the Oceanside Unified School District Committee that the positions of Deputy Mayor Sanchez and himself be flipped. He's had kids in the school district and maintains a relationship there. He's been involved with the Chess Clubs they have. He would be interested in taking the lead on that position. When we look at the appointments in their entirety, those 2 changes would be within the balance. Having attended the Buena Vista Lagoon Committee, he knows that Deputy Mayor Sanchez has that issue to her heart and has done a good job there. He's happy to have her take a lead on the issue.

**MAYOR WOOD** stated after Councilmember Felien came in to talk to him, he did some checking and found out that for the school district and for Buena Vista Lagoon, there is no primary and no alternative. There are 2 members assigned, both with the same power.

Regarding Deputy Mayor Sanchez's appointment to the Utilities Commission, she indicated she was interested and wanted it, so he gave it to her. He got no secondary feedback from anybody on it. He would keep it as it is.

**COUNCILMEMBER FELIEN** asked if we're voting on the entire top list, from Arts Commission all the way down to Utilities Commission, and what happens in the instance of a no vote.

**MAYOR WOOD** responded if there is an issue we could bifurcate that. He has the ability to nominate with Council's approval and if you don't approve that one, he'll need to bring up somebody. If he doesn't, it remains as it is.

**COUNCILMEMBER FELIEN** asked if he could make a substitute motion to vote only on the Arts Commission through Redevelopment Advisory Committee.

**COUNCILMEMBER KERN** isn't going to vote against this. It's the Mayor's appointments and we're just doing confirmations. He would like Utilities because that's his interest and he's been working with water since 1990. He understands what the QSA is and how the water and wastewater work. He flew up to Santa Paula yesterday to look at a new style of wastewater treatment plant. If that's what the Mayor wants, then that's what the Mayor gets to appoint. It won't prevent him from going to the Utilities Commission and talking to them.

**MAYOR WOOD** talked to people from staff and the Water Authority, and this is the decision he made.

**ASSISTANT CITY CLERK TROBAUGH** clarified the Mayor's motion was for Arts Commission all the way down to Deputy Mayor.

**Motion was approved 5-0.**

**MAYOR WOOD** stated because of the bottom half, Regional Boards and Committees, State law requires that if we have any stipends that we either have to waive the stipend or you can't vote yourself.

**CITY ATTORNEY MULLEN** stated we traditionally have a motion and a second and a vote on each individual position because of the stipend issue. Since we're taking these individually and if you're nominated as the primary, then you would not participate. It isn't feasible for people to leave the dais, you just would not participate in the decision or vote.

**COUNCILMEMBER SANCHEZ** moved approval for the Mayor as primary on the SANDAG Board.

**COUNCILMEMBER FELIEN** seconded the motion.

**Motion was approved 4-0;** Mayor Wood recused himself.

**COUNCILMEMBER KERN** moved that Deputy Mayor Feller be the first alternate to the SANDAG Board.

**MAYOR WOOD** seconded the motion.

**Motion was approved 4-0;** Deputy Mayor Feller recused himself.

**MAYOR WOOD** moved that Alternate No. 2 to SANDAG be Councilmember Felien.

**COUNCILMEMBER KERN** seconded the motion.

**Motion was approved 4-0;** Councilmember Felien recused himself.

**DEPUTY MAYOR FELLER** moved to appoint Mayor Wood as primary to North County Transit District (NCTD).

**COUNCILMEMBER SANCHEZ** seconded the motion.

**Motion was approved 4-0;** Mayor Wood recused himself.

**MAYOR WOOD** moved to appoint Councilmember Felien as Alternate 1 on NCTD.

**DEPUTY MAYOR FELLER** seconded the motion.

**Motion was approved 4-0;** Councilmember Felien recused himself.

19. **Request by Council Member Felien to hold a public workshop on Tuesday, February 7, 2012, at 2:00 p.m. to take public input and discuss potential Charter amendments regarding City elections, including Council districts, numbered at-large Council districts, primary election procedures, number of Council Members, elected versus appointed Treasurer and Clerk positions, Strong Mayor form of Government, City Treasurer and Clerk educational and experience requirements, term limits, and related local election procedures**

**COUNCILMEMBER FELIEN** is bringing this item forward based on requests he has received from the public since his election. Since the Charter was voted in, it focused primarily on financial issues. From that standpoint it was a tremendous success for the City, saving millions of dollars under the benefits the Charter allows compared to a general law city. We didn't touch on any other issues that we're allowed to engage in as a Charter city. He's had members of the public ask about various items. It's worthwhile to have a workshop and get input from the public to see what, if any, items they might be interested in changing.

There's a wide range of questions and issues that the public has approached him about: 1) whether or not we have Council districts with the Mayor and possibly Deputy Mayor elected at large, 2) if we did go for districts, who would be drawing the districts, 3) should we have numbered Council seats that are elected at large, 4) should all winning candidates for elective office be required to receive 50% of the vote at some point in the election process, either by a June primary and a November run-off or an instant run-off election procedure such as what is currently used in Oakland and San Francisco, 5) should there be more than 5 Councilmembers, 6) should the Deputy Mayor be an elected position with designated responsibilities, 7) should the City have a strong Mayor form of government, 8) should the Mayor, Deputy Mayor and City Treasurer be on the ballot in one election cycle and the remaining Councilmembers be on a different cycle as members are more comfortable running if they have safe seats and that creates more competition for higher offices, 9) should the City Clerk and City Treasurer be elected or appointed positions, 10) should there be minimum educational and experience required for candidates who are running for City Clerk and City Treasurer, 11) should the City Treasurer have expanded responsibilities, such as arranging annual outside audits or conducting internal audits or financial reporting, 12) should there be term limits, 13) should there be some appointments tied to specific elected offices, such as the Mayor would always be the primary SANDAG representative, 14) should special elections be by mail ballot only to save costs, and 15) should we have a Charter Review Committee.

These are all things that the public can give feedback on. The feedback might be that everything is okay the way it is, or it might be that we need to go in some of these directions. He's interested in what the public has to say.

**MAYOR WOOD** stated there is too much on our plate right now, too many things going on. He's not sure he wants to address these complicated issues in the middle of everything else that's going on in the City. We have important issues on the June ballot and the election in November, so he's hesitant to touch some of these things.

We had a workshop the other day and there was a list of things the City Manager put out that says what things cost us and whether we want to cut anything. The other side was how we could make money, and we really didn't address any of those. Some of the items on there were the City Clerk and the City Treasurer that for years we thought should be appointed and not elected because of the costs involved. We have addressed some of these in recent workshops. He'd only be interested in addressing some of these.

**COUNCILMEMBER SANCHEZ** stated the way this is worded, we can't do

anything other than decide to have a workshop or not on these items. She would be opposed to having a workshop. It sounds like we're trying to rush to the June ballot with very serious, critical changes to our constitution. These are major changes. She understands after asking staff that the cost to get these on the ballot would be \$70,000 each. Her sense is that our residents feel they have 5 people that represent them. They don't only have one person or two people who represent a district; every single person in the City feels that they have all 5 and they go to all 5 of us. She doesn't think it would be fair to our residents. She doesn't just address the issues in her neighborhood. She goes to all neighborhoods and talks to all residents, and we all do that. It's not just one person's neighborhood.

\$70,000 is a lot of money, and she would prefer to have a very public process where we have meetings all over the City and take a couple of years. We were incorporated in 1888, and this constitution has served us well. We're going to vote in June and then in November. How expensive can that be when we are cash-strapped. This is something that we all now need to be very aware of. The City Clerk is an impartial office. It is the office that runs the elections and needs to be impartial. It's where you get your due process. It's where you get your documents if you ask for public records. She doesn't know if she'd feel comfortable appointing that person. You have to assume that this could be handled wrong in the absence of trustworthy people. You can't assume that you'll always trust all 5 Councilmembers; look what happened with the City of Bell. She likes the way we have our government and would like to have even more transparency. She would not like to see this go to a workshop. We have workshops coming up having to do with the budget, and those are much more critical things that we should be addressing. She cannot support this.

**DEPUTY MAYOR FELLER** thinks we're at a position where we have to discuss the Treasurer and Clerk, if that could happen for June and if it's something that we want to do. We need to have that discussion to be able to have it done by June, to keep from having an election in November for that position. Regarding everything else that's listed as far as Charter amendments, the window has already passed. We can't do anything there. We don't have the time to make Charter amendments and do the process.

**CITY ATTORNEY MULLEN** stated we had a discussion about the proposals to actually adopt the Charter. There is new legislation now that requires 2 public hearings over 2 months with 21 days' notice, and then a waiting period before actually putting it on the ballot. That does not appear to apply to amendments, but Council would still have a very rushed process that you'd have to take into consideration. It's up to the discretion of the Council at this point.

**DEPUTY MAYOR FELLER** thinks we aren't going to give it just due for the amount of time. He would be all right with doing a workshop that discusses something along the lines of what we did with El Corazon regarding a committee. Maybe that could be the center of discussion at the workshop, along with the Clerk and Treasurer positions and whether that can actually be put on the ballot in June. We'd be making recommendations that could be voted away.

Following discussion, **DEPUTY MAYOR FELLER moved** to have a workshop that addresses the City Clerk and City Treasurer's positions and the formation of a Charter Commission.

**MAYOR WOOD seconded** the motion.

**COUNCILMEMBER SANCHEZ** isn't going to be here on the 7<sup>th</sup> as she'll be in route to the Coastal Commission hearing in Santa Cruz. She'll be back on Thursday so we could do it Friday or the week after.

Public input

**JIMMY KNOTT**, 127 Sherri Lane, supports this workshop, but we missed a few items. Key among those is campaign reform and potential campaign donation limits and restrictions. There have been a lot of issues about this in the past, and it needs to be discussed.

Regarding districts, he noted there are 8 Code Enforcement areas, 16 neighborhood districts, and 33 police beat districts. You have a lot on your plate if you're thinking of picking areas for districts.

The mail-in ballots is an excellent idea and would save our City money in the future.

We had previously brought forward a Charter Review Committee, and it was turned down. We need to have it. A lot of this could have been brought to that committee and then sent to Council. We wouldn't have needed the workshop because it would have been part of the process.

Regarding the City Treasurer and City Clerk, he remembers former Treasurer Rosemary Jones felt this should remain in the public's hands because it's very important that these positions remain independent. This should be included in this process.

**JOAN BRUBAKER**, 1606 Hackamore Road, stated Councilmember Felien couldn't have thought of a better time to bring this up if he'd sat all night and thought about it. The Charter was brought up at the last moment when the voting majority had their members present. It was crammed down our throats because it was not vetted by any of the Council except the 3 that knew about it. It was not vetted by the City Attorney. Then it was put on a ballot and got the benefit of being voted in.

If Council is going to do that, you're going to remove a lot of independent authority, and that is bad. We need to leave our government alone. The City of Bell incident really woke people up to what can happen in a Charter city. We don't want that sort of thing to happen in our City. The timing of this is very bad. Too many other items are capturing people's attention. We need to leave it until a time when we have nothing else important, like money and other matters. Given adequate time, it may be effective.

She is not in favor of making the Treasurer and Clerk appointed.

This should not be considered. Workshops are typically attended by the retired, aged or infirmed; the people who don't or can't work and the people who have wealth. The people who work can't go to those workshops so you don't get a total representation.

Public input concluded

**COUNCILMEMBER KERN** stated Councilmember Sanchez and Deputy Mayor Feller's comments were probably best spoken at a workshop so we can fully explore them. There's a lot in here, but we need to start the discussion.

He is dead set against districts – he's been on record and said that over and over again. However, there's always that question, and we need to have that discussion. The Charter passed by 10 points, and it was the voters who voted that in. Council put it on the ballot, but the voters voted it in. It was fully vetted by the public, and the public accepted that. Going forward, there were some incidences like the City of Bell. People wondered if we should put anti-Bell language in our Charter. Maybe we should, maybe we shouldn't, but we need to have that discussion. Whatever happens to the Charter, he thinks is going to take a longer time. We could probably put something on the ballot this June, but he doesn't think we're going to have the ability to do that. He is fully in favor of having the public workshop to get the discussion started.

We are on a time deadline if any of the Councilmembers want to put something about the Clerk and the Treasurer on the ballot. Where he stands on that is best said at the workshop. We need to have a conversation with the public and with ourselves. We follow the Brown Act very diligently and have a very tough time just sitting around talking. Last week we had a chance to sit around the table and talk. Some ideas came out of that that he thinks will move the City forward in the long run. He can't support the motion on the floor right now, having it restricted. It may very well be that the only thing that comes out of that discussion is some decision on the Clerk and Treasurer positions for the June ballot. He does not think we'll get Charter amendments coming out of this. The one thing that Charter allows you to do is set up your own election rules versus a general law city. We have control of our own destiny with the Charter. He fully supports Councilmember Felien's idea, but he doesn't think he can support Deputy Mayor Feller's idea.

**MAYOR WOOD** asked the maker of the motion if he minds having the workshop on a different date to accommodate Councilmember Sanchez's schedule.

**DEPUTY MAYOR FELLER** stated this is Councilmember Felien's item, and there's plenty of time for discussion in a workshop for all of these items. We need to start the ball rolling on a committee because if there are things that need to go in the November election, then that needs to start pretty soon.

**MAYOR WOOD** would be very interested in getting a subcommittee together regarding the Charter with maybe 3 nominations from each Councilmember.

**COUNCILMEMBER FELIEN** asked Deputy Mayor Feller to withdraw his motion because he doesn't understand the limitation on restricting the public from presenting ideas. That's the whole point. We have to have a first meeting sometime, and having a workshop doesn't compel any action to happen at that workshop, it's simply a way to listen to the public on what they may be interested in. He has a long list of items that people have mentioned, so why would we restrict what the public can talk about. If people have items they'd like to move on, then the discussion should be wide-ranging. There is no action compelled by listening to what people want to say.

**DEPUTY MAYOR FELLER** stated if it is just listening to what people say, then we're going to run out of time on anything that might have to happen in June. He **withdrew his motion**.

**COUNCILMEMBER FELIEN moved** to hold a workshop. Since Councilmember Sanchez has a date conflict then he would happy to change the date to accommodate that. He is also open to having an evening workshop so everyone can attend.

**MAYOR WOOD seconded** the motion.

**COUNCILMEMBER KERN** asked what the latest is that we could put something on for the June ballot.

**ASSISTANT CITY CLERK TROBAUGH** responded for the June ballot, Council would have to adopt a resolution no later than their last meeting in February in order to get it to the County Registrar in time.

**COUNCILMEMBER KERN** suggested Wednesday, February 15, 2012, at 4:00.

**DEPUTY MAYOR FELLER** stated if we're having this workshop it better not be the same 15 or 20 people who come to everything.

**COUNCILMEMBER KERN** stated we have a group of people who are totally engaged with this City and he welcomes them to come all the time. The reason we're holding it at 4:00 is to make it available to more than just that group. He thinks we'll have discussions between now and then for people who can't make it, and they will give

us their ideas that we or somebody else can bring forward. We need to start the conversation. This will be a process, and it will probably be the first meeting of many. He has some ideas that he'd like to bring forward at the workshop.

**Motion was approved 3-2;** Mayor Wood and Councilmember Sanchez – no.

[Recess was held from 5:16 PM to 5:26 PM]

**5:00 – ROLL CALL**

Mayor Wood reconvened the meeting at 5:26 PM. All Councilmembers were present.

**INVOCATION** – Cantor Larry Kornit

**PLEDGE OF ALLEGIANCE** – Members of the North County African American Women's Association

**PROCLAMATIONS AND PRESENTATIONS**

Presentation – "Pet of the Month" presented by Elkie Wills, San Diego County Humane Society & SPCA

Proclamation – The Big Read 2012

**Presentations were made**

**5:00 P.M. – PUBLIC HEARING ITEMS**

Public hearing items are "time-certain" and are heard beginning at 5:00 p.m. Due to the time-certain requirement, other items may be taken out of order on the agenda to accommodate the 5:00 p.m. public hearing schedule.

17. **City Council: Consideration of a citizen appeal and a Council call for review of Planning Commission Resolution 2011-P34 approving a Conditional Use Permit (CUP10-00030) to allow for the establishment of a 9<sup>th</sup>-12<sup>th</sup> grade resource center/charter school in a 19,553-square-foot retail tenant space located at 320 N. Horne Street; and adoption of a resolution upholding the Planning Commission decision and approving the project – Diego Hills Charter School – Applicant: Diego Hills Charter School**

- A) Mayor opens public hearing - hearing was opened.
- B) Mayor requests disclosure of Councilmember and constituent contacts and correspondence – Mayor Wood reported contact with staff; Deputy Mayor Feller, and Councilmembers Felien and Kern reported contact with the applicant, staff and the public; and Councilmember Sanchez reported contact with staff, public, the school district and she attended the Planning Commission hearing.
- C) City Clerk presents correspondence and/or petitions – none.
- D) Testimony, beginning with:

**RICHARD GREENBAUER**, Senior Planner, stated this is an appeal from a citizen and a call for review by Councilmember Sanchez regarding the approval by the Planning Commission of the Conditional Use Permit (CUP) to establish a Charter school at the Mission Square Shopping Center. The current zoning for the shopping center is special commercial-highway oriented, and the proposed facility would be located on the northern portion of the retail center.

The Charter school is going to come in two phases with a maximum occupancy of 500 students and a maximum teacher, tutor and front office staff of 25 persons in the facility. The operation will be similar to a school, operating Monday through Friday from 8:00 a.m. to 6:00 p.m. and closed holidays and weekends. The criteria would allow students to visit the campus for one hour, once a week.

A computer graphic was used to show the layout of the interior of the proposed school. It would have 13 classrooms, 8 tutoring rooms, a computer lab with library and 5 administrative offices. The Zoning Ordinance for the City requires that 3 findings be made. Staff had provided those findings to the Planning Commission, who concurred with the findings and took action to approve a Charter school at the current location. Charter schools are permitted as a conditional use within the retail center.

Mission Avenue is the main corridor that is adjacent to the Mission Square Shopping Center. The suite that would be occupied is on the northern portion of the site, not oriented toward Mission.

The issues that were raised regarding this item in the appeal, as well as the call for review, dealt with representation of future loss of jobs, sales tax and economic development on the site. Staff's determination is that the site has functioned as a public and semi-public type land use for close to 40 years. It began as City Hall offices and transitioned into MiraCosta College, and beyond that it's been vacant and was a Charter school previously. It has not been viable suite space for over 40 years. Another issue raised was that it would duplicate programs with the school district, that the Charter school had suffered failures and there was no local review or control. Those issues are functions of the State Department of Education. Staff has found that no substantive information was provided to overturn the findings that were made per the Zoning Ordinance to approve the project.

The last issue was that the school would negatively impact police services and other resources. We have reviewed that item, and we do not find sufficient evidence to overturn the findings made by staff earlier.

Staff's recommendation to the Council is to adopt the attached resolution confirming the Planning Commission action and to approve the Conditional Use Permit, subject to conditions of approval. From the Planning Commission to this body, we have added one condition, putting a 5-year limit on the CUP, at which time we could bring it back to the Planning Commission to make sure that it's functioning per its operation and management plan, and that no impacts are being felt on the surrounding community.

#### Appellant

**MARIA RUSSELL**, 1323 Lemon Street, urged the Council to deny the CUP on the Charter school, to be located at 320 North Horne Street. This Charter brings no benefit to any concerned. The proposed Charter of 500 students is a duplication of programs that are currently in place: the Academic Recovery Center (AARC) at Oceanside High School, El Camino, Claire Bergner and Oceanside Shores. One alarming fact she found is that if the Charter goes through, there will be no communication or collaboration between the Oceanside Unified School District and the Charter school. That doesn't make any sense because students' success should be monitored by both entities, since the dollars are coming out of the District to begin with. In real estate, the key is location, location, location. In her opinion, this location is a prime retail area. She can envision an organic market, a bakery or a restaurant where locals can walk in their neighborhoods and spend their money. She sees the return in creating business, jobs, tourism and tax revenue for the City.

On a dark note, putting a Charter school in the middle of 2 rival gangs - Eastside and Crown Heights - is an accident waiting to happen. The end result is a drain on our police, other services and residents. Let's focus on a sound decision for Oceanside.

**CONCHA HERNANDEZ GREEN**, 1323 Puls Street, President of Eastside United Community Action, opposes this Charter school. She has worked a very long time in her community and Council is aware of the problems they've had. She has always supported education, but her concern is the safety of these children by putting them between Center Street and Eastside. Some of the homeboys sit on the bridge waiting to see who comes into the neighborhood. Sometimes they come a little bit further in.

There was a stabbing behind Wendy's. If we bring students into an area they are not familiar with, she's afraid of what might happen. As the mother of a murdered child, she knows what it's like. She doesn't want to see any other kids killed in Oceanside. We've had enough.

We've had people move into our neighborhood because of the reputation our neighborhood posse has, and they want to keep it that way. We don't. She returned to keep her neighborhood safe, especially for the children. Most of the homeboys are pretty good, but the ones that are moving in just want to keep the trouble going.

She opposes this. There are plenty of other buildings in Oceanside where these kids would not be in danger. She asked Council to please not approve this.

#### Applicant

**JIM KORNACKI**, Vice-President of Student Service of Learn for Life, 424 10<sup>th</sup> Street, West 105, Lancaster, represents Diego Hills. Regarding the various challenges to our system and location, it sounds like a very bad area, and he doesn't believe it's that bad. Obviously retailers wouldn't go in there either, and maybe that is why it's been vacant since July of 2008. We believe that there is a commonality that we had with the Oceanside Unified School District (OUSD), and that is that we provide a choice of academic situations for the student, which is supposed to be first and foremost. He doesn't cast suspicion on the vehicle that OUSD uses. They're just an entity that has another choice, and additional choices aren't harmful for students. If it doesn't work for them, there are other choices and they can go back to their school of residence.

Diego Hills, last year, brought back 72 students to the resident schools around itself. With the potential apportionment there, it's well over \$4,000,000 in an optimum situation. It wouldn't be an optimum situation, but that's how we partner with our groups. We sometimes act as an infirmary when they are credits behind. Two-thirds of Diego Hills' student population is 17 or older, so most of the people we're targeting are the credit recovery individuals. We don't believe that what we provide is a duplicate situation. We believe we have a personalized learning vehicle for us, and it seems to be successful. It has been successful for 600 students in Diego Hills.

**ARMANDO MARTINEZ**, Principal of Diego Hills, stated we have a very successful school in Diego Hills. We have almost 600 students, serving high risk or at-risk students. He's been there 10 months, and it's been amazing. He's met so many kids that have dropped out of school, and we give them a second chance. They do 2 credits per week, and he's seen students make up for lost time. Many times they serve young mothers and they also serve a few gang members. He has 21 years of correctional education experience so he can relate to those gang members. We haven't had any incidents since he's been there for the last 10 months. We rarely have any kind of behavior problems. The kids come from different schools. If you can imagine a roomful of 50-60 kids at a time and all working and on task, that's what we see every day at our school. That's amazing because these are teenagers. One reason is because they don't know each other; they come from different schools. They're only there for one hour per week. We don't get 600 at a time. We're open from 8:00 a.m. to 6:00 p.m., Monday through Friday. Most of the kids get rides from their parents, so their parents shop and run errands locally while they are waiting for the son/daughter. There are a lot of businesses that benefit from that. The bottom line is that the kids benefit.

**DR. MURPHY**, Consultant for Diego Hills, wanted to address some of the questions that came up in the appeal. One was where do we hire our staff from. We make it our practice to hire staff locally. We believe it is important to hire community members. They can help us make contacts within the community so we can best serve that community. The other question that comes up is what it looks like for students that only come in for one hour a week, because that's all that we require of students. The reality is that, although students only have to come in one hour a week, that one hour is one-on-one with a teacher. If you look at traditional school settings and how much time

students actually get to spend with a teacher one-on-one, it's probably less than an hour. We really focus that one hour to give students personalized service. We also offer them tutoring, labs, etc. so they can get that personalized service that they need. We partner with local vocation schools and junior colleges so students can be ready to go into the workforce once they finish high school. It's our practice to connect with businesses in the area in order to connect student to possible job opportunities once they graduate from our high school. That's a major focus of what we are doing.

It feels like this appeal has come out of a fear that we're going to steal students, and that's really not our practice. We like to come into a community and capture students who have dropped out and are not in school anymore. Seventy-five percent of our student population is ages 16 or over, with 78% of them saying they don't have enough credits to be at the grade level they are supposed to be at in a traditional school. Our focus is to either catch them up and send them back to a traditional school, or to get them to graduate. We'd like to be able to come into Oceanside and help and save some of the students that don't have another place to go.

#### Public input

**LARRY PERONDI**, Superintendent of the Oceanside Unified School District, 2111 Mission Avenue, is not here to discuss the use of a facility. He's here to make sure that he has set forth the issue as he sees it, that duplicative services is not what this is about. It's about appropriate services for our kids that offer the same opportunities that this program offers. He wants the Council to be aware that we have 3 learning centers in our community: at Oceanside High School, El Camino High School and a separate one at the Claire Berger site, which is off-site and is designed for those students who do not feel comfortable being at either one of the sites. Students that are placed in the programs are under an independent study opportunity, the same as Diego Hills. Our students are there 2 hours a day, every day. Contained in that, for at least one hour per week, they have a formal meeting. It's important to also recognize the relationship of Oceanside and the Charter.

He's not here to debate the Charter as much as to make sure that Council is correct and clear in what you're approving. It's a satellite – a resource center. If it were a Charter school, he'd have even more concerns because there's a chartering process to charter a school. This is a school associated with another organization. We receive students from all over our community. We also take in students from all over the County. We're able to do that through independent study.

Students that come to a Charter, such as Diego Hills, fall into 2 categories: the out of school students trying to get ahead, and those students who have been expelled from another public school. Those students, for our school district, would be students who would have been expelled from the district for sale/possession of narcotics or weapons, or great bodily harm. He isn't saying that's who their students are; he's simply saying that is what happens to students in our district. He is concerned.

**RUBEN ALMADER**, 1215 Division Street, stated 10 years ago they started a program to clean up the neighborhood, and it was working. Unfortunately, recently the neighborhood has been really going down. He's here today because he's a resident who is trying to help. When he received the letter about this application, the first thing he thought was that we already have a lot of problems in the neighborhood. Adding another area where there could potentially be more problems is going to affect public safety. The number one thing is public safety. There's no way this should even be considered unless it's very clear there will be no issues. He asked Council to deny this.

**BOB WARNEMUENDE**, 4023 Via De La Paz, has attended college and worked as a vocational counselor in the County. We need help in Oceanside to get our kids through high school and college and get them jobs. However, we don't need it where they want to locate it. Oceanside High School has an incredible AARC staff that's across the street from this, so you'll be duplicating services. Claire Berger Academy is a mile

away and has teachers who are paying for students' books so they can go to college. What more do you want from these people who work for our school district? Somebody has to look at where we're going to put this facility, and he doesn't believe this is the right location. He agrees with the neighbors from Eastside. He's just one spoke in a wheel that provides services to all of these people in our community, and he's accountable to every other person in that wheel. Anybody who comes into our City needs to be accountable too. They need to work with OUSD and be accountable. Everybody has to work together to make a better place for our kids.

**NELDA BRINDLEY**, 1329 Dubuque, stated last time she attended a Council meeting, Councilmembers Felien and Feller spoke on why we may have to cut some of our police force and fire department, etc. We have an economic crisis. If we have an economic crisis for public safety, then how can we afford a Charter school? She feels very strongly that we should not spend the money, and Council should not support the Charter school.

**MIKE KROGAN**, 4522 Coronado Drive, stated it is never a waste of money when we invest in the education of young people. He spent 30 years as a teacher. He has learned from the students over the years that you are not going to come up with an institutional system that serves every individual student. The amount of students who would attend this Charter school, compared to the amount that attend both of the high schools, is a small number. That doesn't mean that they don't have the same right to an education that the majority of kids do. There are kids that will go to this school who have been emancipated at 12-14 years old and can't handle the high school schedule with their work schedule. They don't jive together, so the kids are looking for some other option. He asked Council to please give them this option and understand that no neighborhood is going to welcome this. There will be people in every neighborhood who are against having this kind of community opportunity among them.

**JOANNA KROON**, 1408 Marquette Street, is an educator who has taught high school, tutored kids and worked at a Charter school. She is a big proponent of Charter schools. When they work, they work. When they fail, they fail miserably. There are several problems that she sees with this particular Charter school coming into this particular location. First is location. Until you've lived in the Eastside area for 5 or more years, you have no idea what you're really dealing with. Ten months of experience in the area is not going to cut it.

Second, she has difficulty with a Charter school that has had failures in other parts of the State coming in and drawing money away from our local district. Granted, Charter schools can, have and do provide opportunities for students, particularly students where this is their last shot. She would rather see Oceanside get a Charter school that comes from a local area with local control, of which we have several in the area. She found in working for a failed Charter school that when it is controlled by an outside entity, and particularly an outside County, such as Riverside, that causes problems and is a recipe for disaster. She encouraged Council not to put this through.

**DIANE STRADER**, 1400 Marguette, lives in Eastside and is an advocate for Charter schools. She believes in them and thinks they serve a wonderful purpose. However, a gentleman said he didn't think we were at risk as described by Ms. Concha, and she invited him to come live with them in the neighborhood. There have been 2 murders in Eastside within the last 6 months, and you're putting a school in the middle of 2 gang areas. That has impact. She's not against this school particularly, but she's concerned about the location of it. She doesn't want another neighborhood killing of kids.

She likes her Eastside neighborhood. It's has been known for gangs, and it was cleaned up by the people before her. It's her job to help keep it that way. Through Ms. Green's help with the Eastside Association, our goal this year is for every single block to have a neighborhood watch and team captain because we think it's that important. We can't do that if the Council makes decisions that make it more difficult.

According to the police that are part of their neighborhood watch, a lot of gang members have served their prison terms and are returning to the neighborhood. These people are the idols and icons that our young gang members look up to. She is for education, but she is very concerned about his particular location. Until you live in this neighborhood and watch these kids die, don't tell her that it's not as 'at risk' as we think it is.

**EMILY ORTIZ WICHMANN**, 2065 Grandview Street, has an issue with the location of this. She is a Trustee for the OUSD and also a community activist. As you heard, we would have no control or authority over this Charter school. She is wondering about security. Will they be having any security? There are many times that there are scuffles and fights after school in that area. She's sure the police records will reflect that.

We have approved 3 out of 4 Charter schools in our district. With the last one that came to us, we were able to look at a very detailed curriculum and budget and we found it was not satisfactory. Hopefully, they can come back and tweak it if they'd like, but we have that kind of control over it to say it isn't a fit for our district.

She has family members who live in Eastside and they know what it's all about. To say that somebody wants to come in with a program is okay, but do you really know the area? She's a bit offended to have somebody just come in here and not talk to anyone to get the lay of the land and find out where would be a good place for this.

**MIREYA CERVANTES**, 1606 Kraft Street, is against the Charter school because the program doesn't want to be reviewed by OUSD. She graduated from Oceanside High School with honors. The rest of her family and friends graduated through the AARC program, and it helped them very much. They would have been the ones to drop out or had already dropped out. If they're going to offer a program that is just like another one, why offer it here where it already exists? They should go somewhere that it doesn't exist so they can help more people. Also, the location has had a lot of fights there. With the Charter school there, there will be even more fights. When police officers are looking for kids who are supposed to be in school, how will they know if they are students from the high school or the Charter school. She doesn't agree with approving this Charter school. It can be more helpful somewhere else.

**TIM BROOM**, 1429 Pathan Street, is a member of the Eastside Neighborhood Association and a captain of the Neighborhood Community Watch Program in Eastside. He finds it difficult to believe that Council would ignore the pleas from those in the neighborhood who have been here longer than any of us. You heard from Ms. Green, who has lived here for over 30 years and lost her son to gang violence. She told you this is not a good spot for this Charter school. Ms. Russell, who is President of the Eastside Neighborhood Association, also spoke tonight. She is all too familiar with the challenges that we face in our neighborhood, where you are planning to put this school. He is a new face here, but as the neighborhood becomes more of a commuter center for Los Angeles and San Diego, you're going to see more people like him here; we're educated and we vote.

He's heard nothing from these people about whether they went to the Police Department or even called anyone from the neighborhood or Community Watch to get their opinion on security. They've basically said we're putting this school in this shopping center. This is a poor location for the proposed school. There is a fight club facility next door. He brought this up to the Planning Commission the last time he spoke here. He wouldn't be surprised if we lose Office Depot or the 99¢ Store as a result of the increased problems.

The Charter school duplicates existing programs, and this will create a negative impact. The company that runs the Charter school has suffered failures. His main issue with this is the poor location. The only positive Council has heard tonight about this

proposal is from the people who work for the Charter school. The people in this community don't want it.

**TERRY HART**, 2741 Vista Way, #205, has been a teacher and coach in the OUSD since 1979. He asked Council to vote no on this proposal to put a Charter school in this office space. There are currently two Oceanside Charter school options available to our community. This program would only duplicate services provided by those Charters and by the Academic Acceleration and Recovery Centers (AARC). You have heard concerns about safety for students from different schools coming to this location. You've heard concerns about the loss of future tax revenue from another use at this site in the future. You've also heard that the Planning Commission voted to approve this. He was here that evening, and it was by the narrow margin of 4-3. That evening, the Planning Commission did vote not to allow another 7-11 convenience store to come in, due to the duplication of another convenience store: there are 20 of them along Coast Highway. You also heard earlier that there was a previous Charter school at that site and that it moved on. That is not accurate. That school was closed by the OUSD, due to fiscal mismanagement.

Council has heard about the proposal for this new Charter school to have a flexible schedule. The AARC's do have flexible and extended schedules. He respectfully asked Council to vote no on this proposal.

**CHARLYN DUVIC**, 1329 Dubuque Street, requested that Council deny the Diego Hills Charter School CUP. We know the program works with OUSD, and we have duplication of effort with the Charter school. Why would we take funds from a program that works and redirect those funds to a Charter school, where it's questionable if they can sustain the same level of performance. Why would we take funds from a program that's supervised and give funds to a program that is not locally supervised or managed. It doesn't make any sense. We can't degrade our current system; we have to support it. Based on those two reasons, she requested that Council consider denying Diego Hills Charter School's request for a CUP.

**LARS ANDERSON**, 30220 Rancho Viejo Road, San Juan Capistrano, represents the owners of the Mission Square Shopping Center. He is here to ask for Council's support to uphold the CUP that was approved for the school. We're very proud of the center. We work hard to keep it maintained. We have security on site that is there every day. We had a previous school in operation here, and while they were in operation, we had no problems. Since the appeal came out, our office did contact the Oceanside Police Department (OPD) because we are not aware of any issues here and they said that there was the issue behind the Wendy's, but for the most part we don't have problems. That's why we have security. It's good practice in the center to keep it up. The way the center is operated proves that. Our other tenants welcome the addition of the school. We're proud to welcome Diego Hills to the center and to continue our efforts to improve the Mission Square Shopping Center.

**DOUG HOGAN**, Leasing Agent for Mission Square Shopping Center, stated we have tried very hard to get this space leased in the back. He's called every grocery store in the country, and no one is interested. There are reasons for that: accessibility, deliveries, etc. We've called technical schools and even called the school district to see if they needed extra space. We tried everything we could for the back space, but it's a very difficult space.

Regarding the fights, the building is empty and empty buildings bring that attraction. We want to put life back there, and the tenants want that as well.

Regarding the MMA Fight Club, they train kids going to training for boot camp, yoga classes and instruction for young ladies on avoiding abduction. It's not fair to put these tags on our tenants and not know what we try to do to make this a better center. You need to understand the efforts we put there. This is a good school. While there may be some duplicity, these people have been researching this and they wouldn't be

going there if there wasn't a need. They don't go into business to fail; they go into it to succeed. This is a one-purpose building, built to be a school. We're lucky to have a quality tenant like this.

Appellant Rebuttal

**MS. RUSSELL** stated 3 kids were stabbed at Wendy's about 3 months ago. Gangs are territorial. If they know there is an area with students around, they're going to congregate, and there will be problems. It's been proven over and over.

**MS. GREEN** clarified that her family has been there for 4 generations, and she was born and raised there. She knows about the neighborhood and the homeboys because she has learned how to talk to them and interact with them. They've been maintaining because she sits with them and shows her concern for them. If her health permitted, she would start a teen club to keep them busy. She will be talking to the churches and try to get something productive going for them in the neighborhood. Her concern is the safety of the students coming into the neighborhood because they don't know. We have some guys who aren't willing to do what they're supposed to do to take care of our neighborhood.

Public input concluded

With no one else wishing to speak, the Mayor closed the public hearing.

**MAYOR WOOD** is going to rely on 30+ years of law enforcement in Oceanside. He's concerned that this is a land-use issue for the center. This center has been blighted for years, and he doesn't know how to fix it besides pumping money into it. His experience says you have Oceanside High School with gangs, the Eastside gang against the Center Street gangs, and you're going to put a Charter school right in the middle of it. That will cause safety issues. He doesn't support this.

**COUNCILMEMBER SANCHEZ** stated what is before us is a CUP for 5 years for home schooling for at-risk youth, for one hour a week. It is duplicating existing services. It will lay off teachers at Oceanside High School, El Camino High School and Clair Bergner. That represents a loss of jobs. The public safety issues are enormous. Perhaps you weren't aware of the 3 stabbings that we had recently there. At this time, we've got attempted murder charges going through the courts.

There are kids that walk through here, and she can't tell which ones are supposed to be in school and which ones are going home. We're going to have additional kids on the streets because they only have to go to school for one hour a week. That means the City has to pick up the bill for the balance to address the issues that happen with these kids on the street, including the businesses and all of the complaints that we received when we tried to do the last Charter school. This represents a loss of tax revenue and an increase of police services to the detriment of other businesses and other real needs. That would be taxpayers subsidizing this school.

With respect to the vacancy, this is only one space. She grew up in the Eastside and knows this area very well. The area in the back of this center used to be for loading and unloading and was not commercial area. That's been added over the years, including the other pads, such as Wendy's, etc. There has been an increase in the number of businesses in the shopping center. She believes there has been testimony and evidence from several residents as to the gang issues in the neighborhood. The fact is that this will require more services to patrol, and there will be more kids on the street. These kids should be in school longer. She knows she can't decide based on the school district issues, but these issues are enough to just say no.

She **moved** for **denial** [of Conditional Use Permit (CUP10-00030) to allow for the establishment of a 9<sup>th</sup>-12<sup>th</sup> grade resource center/charter school in a 19,553-square-foot retail tenant space located at 320 N. Horne Street; and adoption of a resolution

upholding the Planning Commission decision and approving the project – Diego Hills Charter School].

**MAYOR WOOD** seconded the motion.

**DEPUTY MAYOR FELLER** believes in Charter schools. Everybody needs the extra opportunity because not everybody fits in the regular school model. He sat on the Board of Pacific View Charter School when it was first started. He saw that side of it and the value in it, but it was answerable to the school district.

There is some failure of the parents, as well as the school district, in teaching the importance of being educated and wanting to stay in school. All parents want the best for their children, and there are always extenuating circumstances for children. That's why we have the programs that we do have: AARC and various schools. Pacific View is in a location now that is highly successful. They're doing a great job, and the school district is still following them very closely.

This contract is for 5 years, and he's sure there are options to that. There is no money from the City regarding this project. The back-up says that OPD has considered this proposed land use application, reviewed its records, and has determined that the proposed use would not create additional safety concerns. He has a little bit of a problem with that. He heard from the Diego Hills group, and at first blush he was expecting this to be a simple decision. He went out and sat in that shopping center for a couple of different days. It's really a tough time of day at about 2:30 in that area, as well as here at City Hall and all the way down Mission. A fight or two happened during that 2 hours he sat out there on a couple of occasions. He thinks there is a huge safety problem.

There are people who have spent hundreds of hours with these people in the Eastside, Crown Heights, Back Gate and Calle Montecito that are subject to that gang influence and the inevitable crash that will come if we leave it unchecked. His hat is off to them for all of the work they do. He still believes in the Charter school, but he's not going to support it in this location. There must be some other location that this will work in. He had a great conversation with the proponents of this, but he's just not there on this location after watching what the potential for conflict is in that parking lot.

**COUNCILMEMBER KERN** was one of the founders of Pacific View Charter School, which is an identical program to this. He gave examples of 2 successful students who benefitted from his Charter school program. Charter schools provide families with a public school choice. Parents have the ability to choose the school best suited for their child. No child is ever forced to enroll in a Charter school. Only those children who attend Charter schools have the parents who decide to enroll them in there. Why would a parent do that? Mostly, the parent believes that school best serves their child. The make-up of the children at Charter schools are people who believe their children are better served with programs available at their chosen Charter school. Charter schools are different, not any better and not any worse, just different.

Waiving the regulations that limit a number of schools' most prohibitive policies, allows them the flexibility to do that. We're talking about access to an educational opportunity. Charter schools are providing a quality education in our neediest communities, regardless of race and income. With school choice, competition is created within the public school system, pressuring school districts to reassess their educational practices. Parents want the best education for their children. The people who want to come to this school want the best education for their child, as well.

He started a Charter school, and it was under OUSD. He never felt he was answerable to OUSD. He was answerable to the parent sitting across the desk from him when he taught their child. That's who they have to answer to.

Charters will lead to an overall systemic reform through pressure and

competition. The best hope of children lifting themselves out of poverty is a quality education that will ultimately lead to a good job and will aid in a productive economy.

Charter schools, unlike traditional public schools, are held accountable. When a public school fails, nobody knows. They don't close the public school, whereas a Charter school closes. Not because the district closes it, but because parents will not send their children there. It's a free market system here. If they do not want their children to go there, they go someplace else, and that Charter school closes.

He can't see why this is even appealed. He doesn't understand this desire of the Mayor and Councilmember Sanchez to not only deprive the parents of hope, but also deny children opportunity. He finds that sad.

Responding to Mr. Hart's comment about OUSD closing the previous Charter school at this location, that's false.

We're here to talk about land use. Let's go through the issues. One was that the Mission Square Center is a busy commercial area, and there will be a loss of jobs, sales tax and economic development, as well as closing off potential for a high end restaurant. He has never been to a high end restaurant that sits behind a 99¢ store. That doesn't make any sense. This is an opportunity to actually bring activity to that shopping center and would probably encourage more people to come there. How can potentially 1,000 more people coming to a shopping center harm business? There is no economic reason for that.

We'll never open a high end restaurant there because we have 333 right down the street, and we're not going to compete with them. They're a high end restaurant, and we don't need to open another one. We're talking about land use here and not schools.

The previous Charter school had a 2 year CUP, supervised by OUSD. He has not heard of one incident that school caused that required police presence. There may have been, but he doesn't know.

It was said that it is not a safe school for our kids and would negatively impact services for other resources. The way these people are talking, this place is unsafe, and they want them to relocate to another area of the City. He asked Police Chief McCoy what other areas in the City are unsafe for a school.

**FRANK McCOY**, Police Chief, responded that's a very hard question to answer. However, you increase the risk of opportunity for problems to occur if you locate a Charter school next to a high school. It will increase our calls for service. As far as a safe location to locate a Charter school, from his prospective there are all kinds of areas in the City that would be safe. He would just caution locating a Charter school near a location that's a high traffic area for high school kids that may create opportunities for at-risk youth to integrate with them to cause potential calls for service for us.

**COUNCILMEMBER KERN** stated it sounds like Mayor Wood and Councilmembers Feller and Sanchez are against this. That center is probably going to have an empty space for the next 10-20 years. There won't be activity or income coming in to the center. He cannot support the land use decision we're making tonight. They met all of the criteria. When they come to Planning and ask where they can locate a business and are given a frame of reference, they should be able to locate there. They got the Planning Commission's approval based on land use, so he can't support the motion that was brought forward.

**COUNCILMEMBER FELIEN** read through the whole staff report, and this seems to primarily be a land use issue. We have a willing tenant and a willing landlord for a location that's been used by a school in the past. When the School of Business and Technology was there, were any students the cause or victims of violence in that

location during the time the school was in operation?

**MR. GREENBAUER** was not in the City during that school's time. To his knowledge this was sent over to OPD for initial review, and nothing came back negative against the school or the site when it was reviewed for a land use perspective.

**COUNCILMEMBER FELIEN** was interested in Chief McCoy's testimony since Item 5 of the staff report says the police department has considered the proposed land use application, reviewed its records, and has determined that the proposed use would not create additional safety concerns or impacts to police services. Who prepared this?

**MR. GREENBAUER** responded we have a liaison from OPD who prepared the document, reviewed it and provided comments to staff in the Planning Division.

**COUNCILMEMBER FELIEN** is surprised by the contradiction. His understanding is that all of the incidences that were cited at the shopping center deal with overflow from Oceanside High School. The issue is when the previous school was there, did they or the landlord provide additional security or any kind of surveillance to prevent any activities. With the new proposal, are there any plans for any type of enhanced supervision or security?

**MR. GREENBAUER** responded as far as the previous Charter school, he doesn't know the specifics behind that. Typically, when a Charter school comes into the City, we do require an operation and management plan that addresses the students coming on and off site and making sure there is adequate supervision so that they do not loiter.

**COUNCILMEMBER FELIEN** asked the applicant if they have any plans for additional types of surveillance or security.

**MR. KORNACKI** responded all of our facilities are on camera. They are attached to his Driod. That's the kind of system we put in all of our buildings.

When we do CAHSEE testing and we bring in big groups of students, we have security that's brought in to insure that there is no outbreak of any sort. If the facility needs a security system because of drug trafficking, then we immediately put that in. We obviously don't want our product to be damaged in any way.

**COUNCILMEMBER FELIEN** asked in terms of where they draw their students from, what percentage come from a traditional school background where they're going to 5 classes a day.

**MR. KORNICKI** responded most of them come from a traditional program. However, for whatever reason it failed them and they became drop-outs and apathetic in the academic area. They were under age at that point. About 30% of our group in Diego Hills is over the age of 18. We're trying to provide that avenue to be able to have an education without going into adult education, which would be costly on their part.

**COUNCILMEMBER FELIEN** is trying to determine that, just like the programs that the school district provides, the students coming to you are kids primarily who have already made a decision to drop out or are failing in the current model so the school district would likely be losing that ABA (Academic Behavioral Alternative) school in the near future anyway.

**MR. KORNICKI** responded that's right. Diego Hills brought back recovered students to the district because those students wanted to go back. In our case it was 72 students who went back and brought back a considerable amount of money with them.

**COUNCILMEMBER FELIEN** stated once again, from the standpoint of us as a City, our issue is primarily a land use issue. As the staff report made clear, all of the

issues regarding Charter schools - how they're approved, when they should or shouldn't operate - are all decided by State law and not by the City. It's really not our decision to overrule the State legislature in terms of under what conditions Charter schools should be approved or denied. The Planning Commission made the right decision in approving a land use for a location that's been used for the same thing in the past without creating any additional safety problems or issues in the community. He would be denying the motion on the floor to deny the use.

**MAYOR WOOD** realizes it's an election year, but he doesn't appreciate them saying that he or Councilmembers Sanchez and Feller somehow don't care about students going to the school of their choice. He's concerned about those kids' safety, and this is not a good spot for it. As for the land use, this could tie that center up for a long time on a contracted school when maybe other uses would be available for the City and taxpayers.

**COUNCILMEMBER KERN** clarified the comments he made were not made for any other reason than he believes in Charter schools.

**CITY ATTORNEY MULLEN** clarified the motion is to deny the project and overturn the Planning Commission's decision.

**Motion to deny the project was approved 3-2**, Councilmembers Kern and Felien – no.

[Recess was held from 7:27 PM to 7:33 PM]

[Mayor Wood left the meeting at this time to attend a SANDAG meeting]

**MAYOR AND COUNCILMEMBER ITEMS** – Continued

20. **Request by Council Member Kern to direct staff to prepare a resolution for Council and return to the second Council Meeting in February, dedicating Mesa Drive between Rancho del Oro and Ivey Ranch Road as the "Dr. Martin Luther King, Jr., Corridor"**

**COUNCILMEMBER KERN** has been working with the NAACP to redo the signboards on Mesa Drive. The signboards were put up about 10 years ago, and there were 14 of them. Of the 14, two are missing, and we're trying to refurbish the other 12. In the process of doing this, one of the things we came up with was to rename that area the Dr. Martin Luther King Corridor. We're not changing the name of the street (Mesa Drive). We'll probably just put 2 extra signs up at either end to commemorate Dr. King.

**REGINALD OWENS**, North County NAACP, is working on the Dr. Martin Luther King, Jr. Restoration and Replication Public Arts Committee on the auspices of the NAACP.

In 1988, the City formed an ad hoc committee to make recommendations regarding a memorial to the late Dr. Martin Luther King, Jr. The ad hoc committee came away with 7 different recommendations. One of those recommendations was to name the public library, which was being built at that time, after Dr. King. We did not receive an approval from the Council. However, the remaining recommendations did get Council approval. A computer graphic was used to show the 7 recommendations.

Number 5, was to raise the funds to do a bust or portrait of Dr. King and get it commissioned. Years later, that commissioning did occur. About 12 years ago, the City appropriated the monies, and the Arts Commission made the recommendation and engaged an artist to do it. It did not come out to be a portrait or bust, but came out to be a sculpture in 14 different pieces that look like road signs. They were placed in intervals along Mesa Drive.

About a year ago, he was tasked to come up with an event to celebrate Black History Month. His idea was to replicate a Civil Rights Era march, using those sculptures as a centerpiece, the middle school as a gathering place and the park itself. It came off very well. In his inspection of the area for this march, he discovered that of the 14 pieces, there are only 12 pieces left. He also observed that the pieces in place had undergone the ravages of the weather and the elements. They needed some restoration. He went to the City for money to restore these pieces and replicate the missing pieces. The City didn't have any money for either one of those. Back in 1988-89, there was no money put aside for restoration. We were never able to find the missing pieces, even though there were articles put out in the newspaper asking about them.

At one point he told Councilmember Kern the story. Councilmember Kern wanted to do something about that. We went out to the site and went from sculpture to sculpture and saw the weather damage and the missing pieces. We sent out letters to possible donors. We engaged the artist, Roberto Salas, who was still in the area and teaches at MiraCosta College. He agreed to replicate the pieces and to perform the restoration. His sum was within reason, and we got donations for that.

The recommendations were taken and done. We have a park, a middle school, a meeting room in the Civic Center, art pieces and a scholarship fund, all in the name of Dr. King. There is a Dr. King book collection in the library.

Because we have a concentration of things that honor Dr. King along the Mesa Drive area, it could be called the Dr. Martin Luther King, Jr. Corridor. It's a short span on Mesa Drive and would be in keeping with the City being the leader in San Diego County in recognizing Dr. King. Dedicating a portion of Mesa Drive as the Dr. Martin Luther King, Jr. Corridor amplifies your commitment to continuously honor Dr. King. He supports the resolution with enthusiasm and asked that Council endorse it also.

**GERALD HAMPTON**, North County NAACP, stated the restoration and restoral project has exceeded their expectations. The renaming of that corridor to the Dr. Martin Luther King, Jr. Corridor is just the icing on the cake. In his opinion, there is no downside. At the end of the day, this provides recognition of an American national hero, who happened to be African American. He urged Council's support to direct staff to move forward. Should that occur, he would also solicit Council's approval at the next meeting for this project.

**MR. OWENS** stated on February 25, 2012, we intend to have a rededication of those art pieces. The artist and primary donors will be there, and he hopes Council will also be there. Everyone is invited. It is a starting ground for other public art pieces as well. He hopes the City will take that into consideration as we move forward to make Oceanside a very prominent place for public art. He thanked Councilmember Kern and his staff for helping this come together.

**MR. HAMPTON** stated we did a segment on "Oceanside Spectrum" for this project, which will be available to the public. We will have information about the specific event on the NAACP website at [www.nsdacnaacp.org](http://www.nsdacnaacp.org).

#### Public input

**WILLIE LITTLE**, 3201 Mesa Drive, is opposed to naming this corridor after Dr. King for a couple of reasons. One is that we're clustering everything into one little place. If we want to get high profile exposure for Dr. King, then we need to find high profile areas, such as Highway 78. If it was named after Dr. King then people traveling on Interstate 5 would see that as well. We are putting everything into one little closed area. Mesa Drive is not a business area; it's mostly all houses. Dr. King was involved in business and in housing areas. It would be prudent to look for high exposure areas.

**JIMMY KNOTT**, 127 Sherri Lane, felt that we're missing the opportunity to

honor some of our local heroes. We can follow the example of other communities and label our freeway, which would be appropriate and a little bit more grandiose. We should start considering honoring local people that our children can look up to and recognize.

**GWEN SANDERS**, 4215 Gelbar Street, wants to commend Councilmember Kern for working with the NAACP to refurbish the sculptures. However, she is opposed to naming a two-block radius after Dr. King. She would embrace something far more visible that we would enjoy seeing named after such an honorable person. Not only was he honorable to the African American community, he did a lot for this nation as a whole. We should not insult what he contributed to this society by renaming a small corridor. We already have a park and a school. If we want to honor this person for all of his fabulous deeds, let's embrace doing something far more visible to us and to visitors to our City. This is not a good way to honor someone of that stature. She hopes the City will reconsider and see what we can do. This isn't the first time we've talked about the issue of naming something after Dr. King. We talked about a street 20 years ago. We have overpasses and bridges, and something of that nature would be far more visible. If we really have pride in what this gentleman has done for us, then let's show it by having something visible to all named after him. That corridor will not accomplish that task. It's an insult to his memory to do something this small.

**MICHAEL WILSON**, 2851 Columbia Drive, commended Mr. Hampton and Mr. Owen for the work they've done. He's been in the community for 3 years now. Having this corridor is tremendous, but is that all we're doing? Are we going to do something more honorable? He asked that we don't cite San Diego as an example of how to honor Dr. King because their efforts have failed miserably. Even the news media doesn't acknowledge that the 94 freeway is the Martin Luther King Freeway.

He is a pastor at a church here in Oceanside and heard nothing about this corridor. If we're going to honor Dr. King, then the community ought to have input on where to do it. He believes there are things we can do further that would appropriately honor Dr. King and give the community a sense of pride.

Public input concluded

**COUNCILMEMBER SANCHEZ** wished she had the opportunity to join in the discussion because she felt that we needed to do more. The Mayor had to leave tonight before this item, but he had hoped it would be the bridge at the Harbor. He thought bigger and so does she. She wonders if it would be appropriate to change what we're doing here today and look at what we could name after this great man. If it weren't for Dr. King, this country would not be where it is. She would like to see if we can change this because this is kind of a hidden corridor. If we could, we should have some type of a community forum with NAACP being the partner in this with the City. She believes we can come up with something we can all be proud of.

**COUNCILMEMBER FELIEN** thinks we can obviously do more in the future if there is community support. He thinks this is something that will have lots of visibility. You have 3 schools in the area, as well as one of the major parks, all of which attract people from all over the City. He thinks this corridor would get lots of visibility. He's driven along Mesa Drive and seen the signs honoring the Civil Rights Movement and Dr. King. We can't help but reflect on those times and what was accomplished. He believes there is some belittling of the significance of this. When El Corazon Park is fully developed, there will be plenty of people driving along Mesa Drive to reach that facility and will have a chance to view the corridor and appreciate the recognition that's being given. If we are going to have a committee on naming, he would want to make sure we name something after former President Reagan. Our City should acknowledge his contributions to our country as well.

In Black History Month, he commends Councilmember Kern for working with the NAACP to bring this item forward. We can all appreciate the contributions of African

Americans in defending our nation and advancing the cause of freedom at home and abroad. To the extent the community wants to go ever farther and build on it, he would welcome those discussions.

**COUNCILMEMBER KERN moved** to [direct staff to prepare a resolution for Council and return to the second Council Meeting in February, dedicating Mesa Drive between Rancho del Oro and Ivey Ranch Road as the "Dr. Martin Luther King, Jr., Corridor"].

**COUNCILMEMBER FELIEN seconded** the motion.

**DEPUTY MAYOR FELLER** stated Mr. Knott mentioned having something for Dr. King or something for a Samoan, but we're really all one race and one people, and we should be thinking along those lines. He believes that we can name the corridor. We have parks and schools named after Dr. King with 400-500 kids there during football season every night of the week. There is soccer and baseball there almost year-round. It's not the road less traveled. It's something that we could use as a corridor. In the future we could commission a group of people to come up with the naming process of some other thing. Terry Hart from the school district wants something in El Corazon, and the bridge was mentioned. There is plenty of opportunity. All we're trying to do is name a corridor. We're looking at having a couple of signs at the ends of the street saying you're entering the Martin Luther King Corridor, is that right?

**COUNCILMEMBER KERN** responded yes; between Ivy Ranch and Rancho del Oro.

**DEPUTY MAYOR FELLER** stated that's a mile, so it's not just one little short street. It's a corridor and will be recognized as that. Lots of people go through that street.

**COUNCILMEMBER SANCHEZ** doesn't think it adds because it is in the same area. We already have a park and school named after Dr. King. She is going to support this because she wouldn't not support it, but she's going to put on the agenda for the next Council meeting that we partner with NAACP to come up with something that's really significant to Dr. King and to all of us in Oceanside. If the February 22<sup>nd</sup> Council meeting is too soon, then she'll put it on a different one. She would like to meet with NAACP, and she's assuming there is a committee. We need to get more input and find what landmark will really make that happen for us. Let's find something really significant.

**COUNCILMEMBER KERN** stated this came out of a discussion that he and Mr. Owens had, and now people want more. For years nothing was done. We got together and said let's do this project.

Mesa Drive is one of the major arterials in the City. It's not a back water street. If you asked for traffic counts there, you would be astounded how many people drive on that road. It's a significant location to do this.

We are missing opportunities for other people, as mentioned by Mr. Knott. Years ago we started a process, but didn't follow through, to name the airport for Bob Maxwell, who was a Tuskegee airman. There's an opportunity to honor somebody local that had ties to airplanes here in Oceanside. Maybe that's something people can carry forward. He can talk to the Oceanside Airport Association about bringing that and doing the same thing we've done, because this is no cost to the City. Mr. Owens and Mr. Hampton have raised all of the money to do this and he's helped them. They are still accepting donations, which are tax deductible.

We have to be careful about renaming existing streets because then people have to change their addresses, etc. As far as public buildings and structures, it isn't too difficult to do. The reason we're not renaming Mesa Drive is because of the difficulty in

doing that.

**Motion was approved 4-0; Mayor Wood – absent.**

**Items removed from Consent Calendar for discussion**

5. **City Council: Acceptance of the improvements constructed by KIP Incorporated of Murrieta for the El Camino Real Detention Basin project, and authorization for the City Clerk to file a Notice of Completion with the San Diego County Recorder**

**DEPUTY MAYOR FELLER** pulled this because this is completing what is supposed to be a drainage/flooding/prevention facility. He had a conversation earlier with Scott Smith regarding the Loma Alta Creek and what is actually going on there because of the flooding on Industry Street, even in minor incidents. That is a major problem for the landowners and businesses in that general area. He asked for a brief presentation from staff.

**SCOTT SMITH**, City Engineer, stated in regards to the drainage basin, we are finishing the second of three basins. There is a third basin proposed. In doing so, we are improving the potential flooding downstream. In particular, the individuals that have been inquiring quite a bit are the business owners that are located closest to Industry and Fousat Streets. That area is a flood hazard area. It was prior to the work starting, and it will be after the work is completed. It's his understanding that the business owners understand they are in a special flood hazard area and will remain in a flood hazard area for those 1% chance events or a 100-year event.

From testimony he has heard, the owners believe that some of the construction that occurred related to the Sprinter work has exasperated the problem for smaller events. In general, for taking care of flooding in that area, there are not many opportunities other than raising their given structures or constructing a concrete lined channel, which probably would not be very well received. The price tag that we have preliminarily put on that, looking at mitigation as well as construction costs, is \$7,000,000 to \$14,000,000. Another thing that could possibly be done is an assessment district to do vegetation management. However, that would not remove the special flood hazard area.

Staff is currently working on a Master Plan and drainage update. In doing so, we want to quantify which storm events are now demonstrating a possible adverse reaction versus prior to the Sprinter work. The 100-year examination that FEMA (Federal Emergency Management Association) requires does not drill down into a lot of the details. It doesn't really reveal, and is not required to reveal, what's going on at the lesser events. Through our updates to the Master Plan and drainage, we're going to be able to analyze that and then hopefully quantify with our analysis what's going on down there. Once we have that analysis, we're going to present that to North County Transit District (NCTD) so we can look at the possibilities of what can be done. There may be some modifications along Loma Alta Creek where we can improve that situation. Absent raising the foundation or reconstructing the channel for the 100-year flood and 1% chance storm, there's not a lot you can do. We are trying to recognize that the business owners say they're seeing more frequent flooding occurrences, and we want to quantify that.

**Public input**

**RICK SING**, 796 Muirwood Drive, has a business in the corridor referred to by staff. He has co-owned and operated that automotive shop, MasterTech, which occupies about 11,000 square feet, since 1995. He had 11 years in that facility prior to the construction that occurred when NCTD put the track in about 300-400 yards behind our building. During those 11 years, we didn't have any flooding events. Having been a prior City employee with 26 years of experience, he has some familiarity with the area,

and there was an occasional flood. Nowhere did we have the type of flooding that's occurring now.

His purpose tonight is to express concern that this is not going to resolve our flooding. Since the construction of those tracks, we have flooded 5 times, anywhere from 3 to 8 inches of water through the entire building. It flows like a river. It diverts from the creek at the joint between Garrison and Loma Alta, comes up through the concrete plant that's just east of us, and flows through our facility and down through 5-6 other businesses. It's affecting roughly 100 employees that are actively employed within these businesses. In the grand scheme of things, it's not a big impact citywide, but it's fundamentally wrong for a large operation like NCTD, in concert with the City to some degree, to have these changes made and have it impact businesses the way it has. We sandbag in our building 350 bags every time we have a heavy rain. Those bags have to be put down in front of 14 entrances and recovered in order to use the building through the course of the day and then replaced for the rain.

He previously said we've flooded 5 times, but we've probably had 12-13 events where the water has poured through the parking lot and we've been able to sandbag and keep it out of the building. In December of last year, we lost \$32,000 in property damage in our building alone. He's never come to the City to recover any money. We've waited patiently for this basin to be done. NCTD told us at the end of 2006, when we flooded twice back-to-back, that it was a problem between the City and NCTD not completing these basins. We've patiently waited 5 years. They're now done. If they're not affecting the flooding as has been portrayed, and it sounds like you don't anticipate they will, we need relief. This is the fundamental, basic purpose of government to protect life and property. We need some assistance.

**LEAH SANTOURIUN**, Santouriun Manufacturing, Inc., 2603 Industry Street, has been in that location for 15 years. We too did not have any flooding prior to the Sprinter being put in. The first winter after the Sprinter was put in, her daughter informed her that the water was coming up from Wieland behind us and up to our building. She called the City, which was very helpful. Staff came out quickly to assess the situation, but it was way out of their control. After the Sprinter was put in, there was a lot of debris that was left. People believed that what was left was what caused the flooding. That was not so because it continues to flood even after they cleaned up. They raised the Sprinter and closed up Loma Alta Creek, and now it comes up behind us from Wieland, who had 2.5 feet of water that came into their building. We were very lucky because we weren't flooded until December of 2010. That was because there is no below-ground water reservoirs; they are all above-ground. Everything that comes from above us, Oceanside Boulevard, is coming down to where MasterTech is. There is a waterway that goes back to the creek. When that floods, it comes back this way. It came back up and into our parking lot. If we're going to say it's a 100-year, then we've been dealing with the 100-year flood for 5 years now, due to the Sprinter. It was agreed when you put the basins in and we looked over the documents that the engineers worked with NCTD to sign off based on the detention center that you're going to put in.

She doesn't know that they have any control of the water, so we're bringing this to the Council because of your interest in the community and business owners. There are over 100 employees in just 3 of the businesses there. We are part of the community and we want to stay here. Weiland got the worst of it, and they still want to stay here. They put thousands of dollars into not just sandbags, but into dam doors that cover all of their doors. That was probably around \$50,000. We're not coming after the City for money. We come here to resolve this and know that we are all in this together. The City agreed to put the Sprinter in, and the engineers signed off. If the detention centers don't work, we're going to be back. We care about our community and would be willing to get involved in any committee to help you come to a resolution. We would like to be part of the process in resolving this. That's just common sense. We pay our taxes; we're good citizens; and we're here to bring this to your attention because we know you care about us.

**MR. SMITH** clarified there were two statements that this project was somehow tied with City approval or City review, and that is not true. The project was exempted from City review. It is on railroad land; we did not permit the project. The only involvement we had is when they went beyond their right-of-way within our street where they had to tie in the pavement. That's the only influence or say that we had. This project was essentially approved and constructed without any City approval. It came to the City as a courtesy review. We sent a letter back to NCTD, and they did not respond to that letter, particularly when it came to the FEMA issues. We haven't finalized the CLOMR (Conditional Letter of Map Revision), which is a document that should have been completed prior to construction and was not even submitted until the construction was complete.

City staff has met numerous times, as well as spoken with FEMA regional staff for our area. He has personally met with FEMA headquarters staff back east in Maryland and discussed this matter. We've brought it up through FEMA with the Federal Transit Association (FTA) because they funded the project. We have been pursuing this non-stop since it occurred. This is, unfortunately, one of those items that is beyond what we can do at this level. We're taking every step to try and find a resolution that all parties will be willing to participate in. There are some new engineers over at NCTD, and he has some promise in that regard and is hoping we can make some headway. That is why now we are analyzing it at a smaller event situation. The 100-year event doesn't demonstrate what's going on. We understand that, but we need to have some quantifiable information through reports that we can present and take to the next level.

**CITY MANAGER WEISS** clarified that the project the City had no oversight on was the NCTD Sprinter project. We did have oversight, are involved and did review designs for the detention basin project. The issue here is the Sprinter project.

**MR. SMITH** believes the detention basin project was started well before the Sprinter project came on line. They are two separate projects.

**COUNCILMEMBER SANCHEZ** remembers at the time that there were several people, like Nadine Scott, who brought this situation to us and said we have to deal with NCTD because they're not doing a good job for us. We did try several times.

She **moved** approval for [acceptance of the improvements constructed by KIP Incorporated of Murrieta for the El Camino Real Detention Basin project, and authorization for the City Clerk to file a Notice of Completion (**Document No. 12-D0088-1**) with the San Diego County Recorder], because we need to finish the project. If we can possibly do anything else, she asked that staff guide us there.

**MR. SMITH** responded once we have the analysis, we can take the next steps or determine what those will be.

**COUNCILMEMBER KERN** asked where we go from here if this doesn't work and they get flooded again. Are they going to come back to us or can they go back to NCTD. Are we on the hook for this or is that something NCTD has to be responsible for.

**CITY ATTORNEY MULLEN** stated the speakers here have not litigated in the past, but there has been litigation involving floods in that location, post Sprinter. In one case, both the City and NCTD were named. It was our belief, and our litigation position, that this is exclusively NCTD's responsibility. In that matter they did settle it with a payment from NCTD and not the City. Hopefully, this can be solved, and there won't be any further litigation. At least in the prior case that we had, NCTD did accept that it was their responsibility. On claims that have been filed that have not been litigated, they have had a different posture. His sense is that they think that because they settled one case, they're off the hook for any other claims. That's certainly not our position. We have conveyed to them that we intend to tender the defense of any case to them or to cross-complain against them.

**COUNCILMEMBER KERN** seconded the motion.

**DEPUTY MAYOR FELLER** hopes we can continue having the discussion and have this solved with NCTD. With the environmental overkill, we can't even take out the invasive vegetation that's down there. We can't pick up the trash carts or anything. It's putting the trees and bushes ahead of the public health and safety. He supports the motion and would like to help the businesses down there.

**Motion was approved 4-0;** Mayor Wood – absent.

6. **City Council: Acceptance of grant funds in the amount of \$47,880 from the Federal Emergency Management Agency (FEMA) awarded to the City of Oceanside through the Assistance to Firefighter Grant Program for implementation of the "Blue Card" Training Program, and approval to appropriate these funds to the Fire Department**

**DEPUTY MAYOR FELLER** pulled this because the staff report says that recent retirements took years of experience and left a gap in the command training. How many people actually left? Do we do any training now at all?

**DARRYL HEBERT**, Fire Chief, responded we continually do command training. This program is actually one of the few programs that's approved by FEMA and certified in command training. It's really catching steam across the United States, as well as Canada and Australia. Our previous Chiefs have been trained in ICS, which is very similar to NIMS, but with the experience that they've had, we've never had an organized training system like this put in place. Even though we have Chiefs that are trained in command training, this is going to touch everybody in the department and eventually in the region, where everybody will be on the same page.

**DEPUTY MAYOR FELLER** asked how many type 4 and 5 incidents there are per year.

**CHIEF HEBERT** responded 99% of the type 4 and 5 incidents, in the year 2004, ran approximately 754.

**DEPUTY MAYOR FELLER** stated in the accounting of the money it says to train the trainer. Are we not going to be trained to do it ourselves? Does this require people to come in from outside the City?

**CHIEF HEBERT** responded no. There are different programs and levels. Every one of our firefighters is going to go through a 50-hour program, which is the majority of the money being spent. After that 50-hour online program, we send our own people to "train the trainer" classes. We started off by sending our 3 Line Battalion Chiefs to that training so they'll be going to train the trainer. North County Fire has certain Chiefs that want to come in and use our Command Training Center (CTC) to train their folks, and the same with some of the other agencies that surround us.

**DEPUTY MAYOR FELLER** asked if our Battalion Chiefs will be doing the training of those folks.

**CHIEF HEBERT** responded our Battalion Chiefs will be doing the training of our members. Outside instructors will be doing the training of other agencies that will come and use our CTC at a cost that will be applied toward our Center. It's basically generating revenue. There is a training course that's a 3-day course. Right now there is only one other center in California, at Vandenberg Air Force Base. There are agencies throughout the United States that are traveling to Indiana, where one of the main training centers is. The people who run this 'blue card' center, when we asked about putting one in Oceanside, were really excited because a lot of people don't want to go to Indiana in the winter; they want to come to Oceanside. We approached some of the

different hotels and restaurants and talked about partnering with us to help us fund this center. It would mean that visitors would come to Oceanside and spend three consecutive days for a period of 9 months in our City.

**DEPUTY MAYOR FELLER** asked if those will be Oceanside's trainees at the training.

**CHIEF HEBERT** responded 100 of them will be Oceanside firefighters. The center that we're restoring is separate from this grant. This grant is strictly for the training. The center that we're restoring one of trailers in the training center for will actually be an all-hazards training. It can be used for not just our personnel in the Fire Department; it can be used for EOC training, by the Police Department, IT or any type of all-hazard training.

**DEPUTY MAYOR FELLER moved** approval of [acceptance of grant funds in the amount of \$47,880 from the Federal Emergency Management Agency (FEMA) awarded to the City of Oceanside through the Assistance to Firefighter Grant Program for implementation of the "Blue Card" Training Program, and approval to appropriate these funds to the Fire Department].

**COUNCILMEMBER SANCHEZ seconded** the motion.

**COUNCILMEMBER FELIEN** asked what NIMS stands for.

**CHIEF HEBERT** responded National Incident Management System.

**COUNCILMEMBER SANCHEZ** congratulated the Fire Department for getting the grant.

**Motion was approved 4-0;** Mayor Wood – absent.

7. **City Council: Adoption of a resolution summarily vacating portions of Rancho del Oro Drive between Oceanside Boulevard and A.T. & S.F. Railroad right-of-way, and authorization for the City Clerk to file a certified copy of the resolution with the San Diego County Recorder**

**JOAN BRUBAKER**, 1606 Hackamore Road, has traveled this Rancho del Oro area many times and wasn't aware there was extra area. Apparently, the City owns property that is at the side of the road. What part are we talking about that you're going to involve?

**CITY MANAGER WEISS** responded its excess right-of-way; there is no widened area. NCTD had dedicated to the City an area that is on the #2 northbound lane on Rancho del Oro, just north of the railroad tracks. They were going to put in a bus turnout. They had a bus stop located there where people were crossing Rancho del Oro to get to the Sprinter station. Due to some safety issues and other concerns, as well as NCTD's realignment plan, they eliminated that bus stop. That right-of-way is no longer needed. They dedicated the right-of-way, so we're vacating it and giving the land back to NCTD.

**DEPUTY MAYOR FELLER moved** approval of [adoption of **Resolution No. 12-R0089-1**, "...summarily vacating portions of Rancho del Oro Drive located between Oceanside Boulevard and A.T. & S.F. Railroad right-of-way", and authorization for the City Clerk to file a certified copy of the resolution [**Document No. 12-D0090-1**] with the San Diego County Recorder"].

**COUNCILMEMBER SANCHEZ seconded** the motion.

**Motion was approved 4-0;** Mayor Wood – absent.

**CITY MANAGER ITEM****21. City Council: Quarterly Budget Update**

**TERI FERRO**, Financial Services Director, stated this is the quarterly budget update for December, pertaining to the City's General Fund. A computer graphic was used to show the revenues, which were amended through various Council transactions, at \$112,000,000, with expenditures of \$113,000,000. It appears that there is a shortfall of the current operating revenues covering expenses per the various Council transactions throughout the year. As of December 31<sup>st</sup>, revenues typically come in between 35-40% at this time of year. The taxes are received in January and April, so this is a good spot to be in. Our expenditures are right on at 50%. A graphic was used to show a snapshot of the City's various revenue sources for the General Fund.

On the expenditures side, all of the departments are at 50% or less of their expenditures. There are a few departments that have purchase orders outstanding, but we have not spent the money. For example, Finance, Fire and Public Works have, based on annual purchase orders, appropriated the monies, but they are not spent yet. Overall, we are at 50% as of December 31<sup>st</sup>.

A computer graphic showed expenditures for the entire General Fund budget. Instead of by department, it is broken down between personnel costs, maintenance, operations, etc. When you see Maintenance & Operations is at 62%, that's where all of the purchase orders are. For example, in non-departmental, they fully encumbered the animal control contract, but we only spent 6 months' worth.

Three months ago she brought forth a couple of revenues that she felt had to be on cautionary watch for not quite performing where we thought they would be. Fortunately, some of them dropped off. Some of them are still on watch now, and a few others have been added. We're keeping an eye on the Business License Tax; it's at 38% right now. A lot of the business licenses get renewed in January, February and March, so we're hoping that picks up.

The Property Management golf course reimbursement is at 27%. That has to do with a billing process; we're working with the golf course management company to pay their bill. The municipal golf course lease and revenues are a little shy. She believes there are going to be some remedies for that in the next couple of months, so we're putting that on watch.

The red light camera fines are at 40%, and the delay there is that there are some additional cameras to be installed that haven't been installed yet. If they have been, then we haven't received those revenues.

We're watching the Gas Tax. It's not a General Fund revenue, but we are concerned and keeping an eye on it. We're relying on the State to send those monies to us.

In the staff report, Attachment A shows overall our General Fund revenues are actually going to be about \$160,000 less than we projected. There was an error in the calculation; she double counted a number. We thought there was about \$300,000 and it's actually \$160,000. If you look at the overall General Fund revenues of \$112,000,000, this represents an adjustment of less than 1/3 of a percent. She thinks that's pretty good projections. What's before Council on Attachment A is overall General Fund adjustments of \$339,000 just to make that correction.

We will be back before Council in 3 months.

**COUNCILMEMBER KERN** asked if the \$1,200,000 shortfall is because of a timing issue, the money not coming in, so we shouldn't be overly concerned with that.

**MS. FERRO** responded the amended budget includes carry-overs from the previous year. Those were appropriations that the Council approved last year and the projects that are being continued this year. They're being applied toward the fund balances, the savings account from last year, they're not coming out of the current year revenues. Monies were set aside for that, it's just that when you're looking at a financial statement, the current revenues are not covering it. Another way to think of it is you have your current revenues, plus your savings account, equal your current expenditures. She's not concerned about the \$1,000,000, other than the fact that Council did use reserves by their Council actions. They approved using reserves.

**CITY MANAGER WEISS** clarified that even though it shows an increased expenditure, because you're using one-time monies, it doesn't show as a revenue. If you look at the Financial Status Report on page 1 of 10, that money is broken down and you can see that there was a little over \$11,000 approved for certifying the referendum petition and \$149,000 for the KOCT Telecommunication Grant. Those monies come from other sources; they just don't show up as revenues.

**MS. FERRO** stated we've already received them. We received the revenue last year.

**COUNCILMEMBER KERN** was asking if we should be concerned about the \$1,200,000, and the City Manager is shaking his head no. Isn't the decline in red light camera fines a good thing? We need the money, but doesn't it show that people aren't running red lights as much. That would be a good trend.

**CITY MANAGER WEISS** responded it may not necessarily be a good thing. If you recall, with the additional intersections that we added and with a change in the State law, we don't make money on the red light cameras. We make enough to pay for an officer to review the citations, and we pay the vendor of those cameras a fixed amount. If the revenues to do not come in at least matching what we have to pay the vendor, we do have a termination clause in that contract. We are looking at that right now fairly carefully. Should the cost to the vendor exceed what we're bringing in, we will be bringing an item back to Council to remove them.

**DEPUTY MAYOR FELLER** is ready to abandon ship on the red light cameras.

Public input

**JIMMY KNOTT**, 127 Sherri Lane, stated the State announced this week that they're going to be experiencing another shortfall estimated to be between \$3,000,000,000 and \$13,000,000,000, with no sources of funding to pay for that. In the past, that has normally meant grab from the cities or delay payments for any source of funds to cities.

He previously put in a request regarding consultants to find out how much the City has been paying. He showed a letter denying that information and saying that the amount of consultants is put in with all other payments and can't be given. You should be able to get that information so you know how much is being paid to consultants. Council needs to have that information at hand when making decisions.

In the General Fund revenues, we need to have trend indicators, including which ones are associated with State revenue funds that we are receiving. Those are not indicated here. Council needs that information. With the State shortfalls you need to be prepared to say which ones are at risk and which ones we're probably going to have to backfill. Also, the mid-year adjustment figures were shown to be too optimistic. We may need to tighten the baseline criteria in order to make future projections from now on.

Under cost versus administration, on those cautionary revenue watch indicators, the question has to come up whether it's worth it. For example, the red light cameras

aren't worth it. It's been proven now, and every city is dropping it as fast as they can. We need to have measured impacts for the effects on local tax sources and on local businesses. If it's going to have an effect on people conducting business with our City, we can't have that in this economy.

Public input concluded

**MS. FERRO** stated Mr. Knott talked about the possible State shortfall, and we are aware of that. The Council adopted some financial policies back in November. One of them was to set up an Economic Stabilization Fund, which has about \$3,000,000 in it right now. That has been used in the past to tide the City over on a cash flow basis in the event that the State doesn't pay us. We had that situation a couple of years ago where the State was withholding some of our gas tax and State mandates, etc. That was a good move on behalf of Council to adopt that and we will continue to monitor that.

Mr. Knott also brought up a concern about General Fund revenues that might be impacted by future State raids or other types of revenues at risk. A chart showed that the City's General Fund receives about \$1,000,000 from true State and federal money. One is the Motor Vehicle License In-Lieu money, which the State did take away. That is one of the adjustments that's on the attachment today.

As far as whether the legislators can make any kind of legislation to take away future property and sales taxes, etc., as a result of Proposition 1A that the voters approved a couple of years ago, the answer is no. It doesn't mean they can't find other creative ways to take things away from the City. For example, the whole Redevelopment issue that was just imposed by the legislators. She tries to advise Council, via the 5-year forecast, as to which revenues could be at risk. We work constantly with the League of California Cities that has its own financial analyst that keeps informed as to what revenues are at risk and advises us.

Mr. Knott displayed a letter that was sent to him regarding a public records request. He had requested 3 years of data regarding consultants that we have either paid or have on our vendor list. Unfortunately, the way our database is set up, vendors are not defined by the type of business they are. We get the vital information. What we were able to provide him, which unfortunately is almost 500 pages, is the account number where we pay all of our consultants. In order to consolidate it into a list, we can provide that to him at the cost for us to compile that report. We did not deny it to him, we just let him know that there is a cost to create that document.

Lastly, he asked about the impact on businesses and whether it is worth it. She's not going to answer that question as it isn't a financial concern.

**COUNCILMEMBER FELIEN** stated it looks to him that both the revenues and expenditures are pretty much on target dealing with the overall scope of the business of the City. With that now being the case, and us being 6 months into the fiscal year, for the benefit of the public he asked Ms. Ferro where we're going to be next year with Redevelopment, State budget issues and local issues. Approximately how much are we going to have to solve as far as a budget shortfall in the upcoming budget.

**MS. FERRO** responded it's definitely 7 figures, and she will be preparing an updated 5-year forecast to be released to the Council in the next 2-3 weeks that will give Council a good handle. What she is seeing in our revenues is about a 1-2% increase. That doesn't amount to very much when you're looking at a \$112,000,000 budget. It's our expenses we're concerned about in bridging the gap. She's hoping to get something to Council in the next few weeks, and that will be a good starting point for us to move ahead with the budget.

**COUNCILMEMBER FELIEN** thanked Ms. Ferro for all of the work she does for the City. The fact that our projections are pretty much right on the nose is an attribute.

As pointed out, we're going to have millions in shortfalls. He urged the public to come to our budget workshops as Council needs their input on tough decisions that we're going to have to make.

This item was for information only.

Regarding Council Reports, **COUNCILMEMBER KERN** wanted to correct something he said earlier regarding the Charter school. It was pointed out to him by one of the school board members that they actually did revoke the Charter of SBT.

#### **CLOSED SESSION REPORT**

##### **15. Closed Session report by City Attorney**

**CITY ATTORNEY MULLEN** reported on the items discussed in Closed Session: See Items 1 and 2 above.

#### **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

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

**MICHELLE LESLIE**, 3082 Camino Cielo, Fallbrook, is here to request Council's support for Operation Eternal Gratitude, an event that we need an oceanfront location to honor America's fallen and wounded warriors from Operation Enduring Freedom. It is intended to be celebrated on the one-year anniversary of the greatest loss of Navy Seal lives in a single day – 22 – along with 8 Army Special Forces personnel and a German Shepard service dog named Bart. All were shot down in Afghanistan on April 6, 2011. We'd like to recreate a paddle-out and ocean boating event on the one-year anniversary, hosted by the City at no cost to the City. She requested Council's approval to have the City host this event.

**DEPUTY MAYOR FELLER** responded it's not on the agenda, but the Mayor has let us know he is very supportive of this, as well as those of us who are veterans. The City Manager will relay that information to those that need to get the ball rolling. We can't make any motion on this tonight.

**SHIELA KADAH**, 5301 Village Drive, stated we are in the worst recession of her lifetime and most of that is caused by giving corporations big tax breaks to outsource our jobs overseas and the privatization of many businesses. What we need in Oceanside is to keep our jobs. We need to support our firefighters and keep our police department. After hearing about the gangs, we can't outsource. We need to keep our libraries open. When you have good-paying jobs, those good-paying jobs support other businesses. Councilmember Felien said the Charter is saving our City millions of dollars, so why are we in a budget shortfall. She wants Councilmembers that speak the truth and work to support our citizens. We need Councilmembers that do not waste one penny. We need to keep our money here so we can keep the jobs and protect our programs.

**DANA CORSO**, Ranchview Road, represents ACTION (Alliance of Citizens to Improve Oceanside Neighborhoods) and would like to speak about the results of the last Council meeting on January 12, 2012, with regard to the vacancy decontrol issue. It was determined that the title of the vacancy decontrol amendment will have the words "implementing vacancy decontrol, allowing space rents to increase to market value following the sale or conveyance of a manufactured home." The body of the ordinance amendment states the rent for the space may be increased without limit. The definition

for market value is the amount for which property would sell on the open market if put for sale. This is distinguished from the replacement value, which is the cost of duplicating the property.

Real estate appraisers will use comparable sales of similar property in the area to determine market value, adding and deducting amounts based on differences in quality and size of the property. Without limit is an arbitrary number with no boundaries or limits. Market value and without limit are not the same. The way the title and the body of this ordinance are written, it is misleading and deceptive and it will defraud the Oceanside voters. You, as our elected officials, should be representing your constituents and not contributing to corporate greed. We are requesting that you, as our Council, re-examine this and fix it so the registered voters and citizens of Oceanside can decide if they think this should be implemented. We are depending on you to act in an honorable way and not allow this wording to be placed on the June ballot as it stands. It is at best misleading or at worst a deliberate attempt to confuse and defraud Oceanside voters.

**TIM BROOM**, 1429 Papin Street, lives in the Eastside neighborhood and would like to discuss some quality of life issues in that neighborhood. The neighborhood demographic is changing quite a bit and quality of life is important for many of us.

He is concerned about the code issues related to safety and potential liability claims against the City. He's talking about blatant code violations that can be spotted by the untrained eye. He would like to see the City take a greater role in code enforcement. A hands-off approach is no longer working. A computer graphic was used to show examples of properties violating code. He praised the staff at Code Enforcement for being very helpful.

He thanked the Mayor for his efforts in passing a nuisance barking ordinance in the City. Animal abuse and dogs running wild is a big problem in Eastside.

A computer graphic was used to show a motor home that has been parked on the street for 4 months with an electric cord running across the sidewalk.

He asked that the City take a greater role in enforcing the existing laws.

**DEPUTY MAYOR FELLER** hopes the City Manager is taking note of this. We've done clean-ups in that area, and some of the places that we cleaned up look just like these examples even after we've done the clean-up. We cannot be everywhere. If you would give us these addresses, we'll have somebody out there.

**TERRY HART**, 2741 Vista Avenue, #205, stated an earlier statement he made was characterized as a lie. That statement was later corroborated by two Oceanside Unified School District Trustees with Councilmember Kern. He thanked Councilmember Kern for correcting the record and letting it be known that was a fact and was accurate. The School of Business and Technology (SBT) was closed by a vote of the OUSD Trustees. Citizens want to see positive leadership from our elected officials. He hopes civility and the facts will be respected by this Council.

He has spoken with Deputy Mayor Feller regarding the use of El Corazon. He's been a track coach at El Camino High School. As a runner and a coach, he appreciates the road races held in Oceanside. He asked Council to consider the inclusion of a running trail around the perimeter of El Corazon. Eugene, Oregon, has just such a wood chip running trail that is a draw to running tourists like him. A wood chip running trail around El Corazon would get runners safely off the street and out of traffic and would be an excellent site for races. It could also be shared with teams from the high schools and middle schools in the area.

**INTRODUCTION AND ADOPTION OF ORDINANCES** - None

**CITY COUNCIL REPORTS**

February 1, 2012

Joint Meeting Minutes  
Council, HDB, CDC and OPFA

10. **Mayor Jim Wood** - absent
11. **Deputy Mayor Esther Sanchez** – no report
12. **Councilmember Gary Felien**

**COUNCILMEMBER FELIEN** stated when he spoke about the shopping center earlier, he mistakenly said Staples instead of Office Depot.

13. **Councilmember Jack Feller** – no report
14. **Councilmember Jerome Kern** – no report

**ADJOURNMENT**

**DEPUTY MAYOR FELLER** adjourned this joint meeting of the Oceanside City Council, Community Development Commission, Small Craft Harbor District Board of Directors and Oceanside Public Finance Authority at 9:22 PM on February 1, 2012. [The next regular Council meeting is on Wednesday, February 15, 2012, at 4:00 PM]

**ACCEPTED BY COUNCIL/HDB/CDC/OPFA:**

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Barbara Riegel Wayne  
City Clerk, City of Oceanside



California

# CITY OF OCEANSIDE

## MINUTES OF THE CITY COUNCIL

FEBRUARY 28, 2012

**SPECIAL MEETING                      9:00 AM                      COUNCIL CHAMBERS**

**9:00 AM - OCEANSIDE CITY COUNCIL**

**Mayor**

Jim Wood

**Deputy Mayor**

Jack Feller

**Councilmembers**

Esther Sanchez  
Jerome M. Kern  
Gary Felien

**City Clerk**

Barbara Riegel Wayne

**Treasurer**

Gary Ernst

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**City Manager**

Peter Weiss

**City Attorney**

John Mullen

The special meeting of the Oceanside City Council was called to order by Mayor Wood at 9:02 AM, February 28, 2012.

**9:00 AM - ROLL CALL**

Present were Mayor Wood, Deputy Mayor Feller and Councilmembers Kern, Sanchez and Felien. Also present were Assistant City Clerk Trobaugh, City Manager Weiss and City Attorney Mullen. The Pledge of Allegiance was led by City Treasurer Gary Ernst.

At the Mayor's request, **JOAN BRUBAKER** announced that Jerry McLeod passed away on Saturday. No services have been set yet.

**DISCUSSION ITEM:**

- Adoption of a Resolution of the City Council of the City of Oceanside, calling and giving notice of the holding of a special municipal election on Tuesday June 5 2012, for the submission of an ordinance regarding Mobile Home Vacancy Decontrol to the qualified voters and modifying the ballot question previously approved by the City Council**

**JOHN MULLEN**, City Attorney, stated on May 25, 2011, Council adopted Ordinance No. 11-ORO427-1, that added Section 16(b).16(e) to the Oceanside City Code for the purposes of implementing vacancy decontrol. The purpose of the ordinance is to allow mobile home park owners to increase space rents following the sale of a manufactured home. There are 4 separate types of sales that are exempt from the requirements of the ordinance. The Vacancy Decontrol Ordinance amends current law by allowing a park owner, following a change in ownership of a manufactured home that is on a rented space, to set space rents without any of the limits of the City's Rent Control Ordinance.

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MEETING BY CITY COUNCIL**

Following a change in ownership of the manufactured home, assuming the Vacancy Decontrol Ordinance is adopted by the electorate, the City has no say anymore in the amount that a park owner could charge for rent on that particular space. However, park owners would not be able to increase rents for the following types of changes in ownership: a sale or conveyance following a divorce where the purchasing spouse was a lawful tenant at the time of the sale and conveyance; a sale or conveyance to a spouse or child following the death of the owner of the manufactured home where the spouse or child was a lawful tenant; a conveyance of an interest in the manufactured home to provide security for a loan, provided there is no change in tenancy in the manufactured home; and a sale or conveyance associated with the replacement of a manufactured home, provided there is no change in tenancy in the manufactured home.

After the Council adopted the ordinance on May 25, 2011, the referendum petition was circulated and submitted to the City Clerk on June 23, 2011. At the August 17, 2011, Council meeting, the City Clerk reported that the petition contained the required number of signatures and that the Council had 2 choices; repeal the ordinance in its entirety, or submit the ordinance to the voters. The Council subsequently gave direction to call a special election to be held on June 5, 2012. Four resolutions were then presented to the Council on January 5, 2012. The first of those resolutions called a special election on June 5, 2012, to be consolidated with the State primary election. The resolution approved the ballot question by quoting the title of the Vacancy Decontrol Ordinance that was the subject of the referendum petition.

The current question, as approved by the Council, states as follows: "Shall Ordinance No. 11-ORO427-1, adding Section 16(b).16(e) to the Oceanside City Code for the purposes of implementing vacancy decontrol, allowing space rents to increase to market value following the sale or conveyance of a manufactured home, be adopted." As Council is aware, the current wording of the ballot question, based upon the title of the ordinance, has generated significant controversy, with some members of the public claiming that it is misleading. A potential legal challenge has been threatened. The legal standard of review over a ballot question is whether the question is false, misleading or partial to any particular side. Case law indicates that the question does not have to be the most comprehensive, or even the most accurate way to frame a question. Judges will generally not substitute their discretion for the Council, absent the showing that the question is false, misleading, fraudulent or partial.

The resolution before Council today revises the current question by removing the words "to market value" in the ballot question that was previously approved. The proposed question in the draft resolution before Council now reads: "shall Ordinance No. 11-ORO427-1, adding Section 16(b).16(e) to the Oceanside City Code for the purposes of implementing vacancy decontrol, allowing space rents to increase following the sale or conveyance of a manufactured home, be adopted." There are certain benefits to approving this revised question. First, adopting the resolution will avoid a legal challenge by the Sutton Firm that had previously sent a letter demanding that we revise the question. Although it does not include the language that they originally demanded, they have agreed that they would not file a legal challenge over the proposed wording that is now before Council.

Revising the question also avoids uncertainty that could occur if the matter proceeds to court. While the City Attorney's office believes that the current language is defensible, there is always uncertainty involved in last-minute judicial challenges before an election. Adopting the resolution avoids the uncertainty of having a judge rewrite the question without any control by the Council. It is his opinion that the revised question is fair and impartial, as it is presently framed in front of Council now.

He did distribute a revised resolution this morning. It does not change the ballot question that was on line. The ballot question continues to remove the words "to

market value". However, there was a whereas clause that included that "to market value" language. In order to be consistent with the ballot question, he revised that whereas clause. That is the only change.

He noted also that in Section 8 of this resolution, the ballot question that was stated in the prior resolution is now superseded, assuming this resolution is adopted.

#### Public input

**RANDALL VAN DE RIET**, 331 Blue Springs Lane, addressed the verbiage that some people think is insignificant. It is very significant. He cited a previous personal example where his space rent went from \$96 to over \$300 per month in 2 years. The park owners are not bound by reasonable rent or market value rent by the ordinance. The verbiage does make a big difference in what they can do with the rents. They can raise it up to drive people out.

He received a mailer that says some Councilmembers think it's too costly to fight this battle for the people and yet you salute the flag and say liberty and justice for all. Are you thinking liberty and justice for the people who can afford it? Some Councilmembers are saying they aren't going to defend the people. They're going to cow down to the people who have the money because they can drive us into bankruptcy or go on with this litigation. That doesn't seem to be a true justification for your view on this subject.

**NADINE SCOTT**, 550 Hoover Street, stated it's hard to say something that will sway anyone sitting in this room, but she knows that 95% of the people in the audience are vehemently against vacancy decontrol. We also know that Councilmembers Kern, Felien and Feller hear our arguments and turn a deaf ear. You no longer serve the public. You're wrong and unethical. Since Councilmember Felien was elected, every action you've taken against the people in this town have all been done for your masters. We have the Charter and now Charter amendments that no one has seen and are unintelligible. She stood in silence dedicated to Mr. McLeod, who had a very strong voice, and to the people in the audience who Council doesn't listen to.

**SUZANNA RAY**, 200 North El Camino Real, is here once again to address Council. Vacancy decontrol legalizes the crime of taking personal property, our homes. With this ordinance, a park owner can deny anyone residency, for any reason, and there is no way to stop this practice. Our Council majority is a shame and a disgrace to our City. They have used their offices to serve special outside interests. This ordinance was written by a lawyer from the WMA, and they can afford the best legal counsel in the country. It matters not what change of the wording you make on this ballot, the content will remain the same that legalizes the taking of our homes and withholds the rights to residency to our buyers and to our heirs. Just say no to vacancy decontrol.

**MILLI PALAFERRI**, 221 North El Camino Real, stated we were told several months ago that you couldn't change the wording, but here we are changing the wording of one part. It opens the window to increase the space rents, following the sale or conveyance of a manufactured home. On the ballot, hardly anyone will go to the subject matter where it still says "without limit", which really socks it to us. The reason we have these problems is because of pushing and rushing. Council has a meeting tomorrow regarding Councilmember Felien having asked our City Attorney to draw up a resolution to use mail-in ballots for special elections. It's been a push to get that on the June 5<sup>th</sup> ballot because hardly anyone comes out to vote on special elections and they really don't know what they're voting on.

Every Councilmember was interviewed and made comments, but the most hurtful one was when Councilmember Kern said that *market value* and *increase without limit* mean the same because market rate is what consumers are willing to pay, and the market would be curtailed by what consumers are willing to pay. Anybody who has

taken high school economics understands what market value is. However, plain English and logic strongly suggest that those are not the same concepts. It's misleading and false, and she is disappointed that the Council did not do the right thing.

**SHEILA KADAH**, 5301 Village Drive, stated all of these people are fighting for their homes. Our elected officials are supposed to work for the people. She feels the Council majority is not working for the people. If you look at their campaign contributions, you will see that it's the people who are in favor of getting decontrol in. When we go to the ballot box to vote, it should be truthful and depict what we're really voting on. Without limit is really the truth, not market rate. Who's going to buy a mobile home when it's without limit? That gives the park owners, who have a monopoly, the ability to buy those mobile homes for pennies on the dollar, and then they rent the mobile home and the spaces. They're making five times as much as they did before. For the people who own the property, this is a business. For the people who own the mobile home, it's their home. Rent control is a fair and just thing. It has checks and balances. Decontrol gives park owners a monopoly and that's against the law. Elected officials are supposed to protect the people.

**STEVE EPSTEN**, 140 Douglas Drive, representing Mission View Manor, stated even though the wording 'market value' is accurate and is the same wording that was used by the tenants to get their petition signed, we are once again willing to compromise on the ballot language and hopefully spare the taxpayers more unnecessary costs associated with rent control.

**LARRY BARRY**, 3973 Brown Street, doesn't own a mobile home park, but he owns other properties in Oceanside. Rent control scares him. When government can tell you what your property is worth and how much you're supposed to make, that is socialism at its worst. He isn't part of the entitlement crowd. No one is going to lose their homes or the value of their homes while they live in them. He lived in New York City and knows the peril that rent control causes. He would like to see less rhetoric and hysteria and more actual conversation. As far as the wording, let the people vote. The entitlement generation does not speak for him or for a lot of other people in Oceanside.

**POLLY FUKUHARA**, 520 South Ditmar Street, spoke in response to the previous speaker's comment that rent control is bad for the City. He owns his properties, while the mobile home parks have co-ownership. There is land owned, but there is also a house that is owned. We have rent control so there can be a fair division of what goes on between both owners. The power is going to go completely to the landowners if decontrol passes. It's is unfair to the homeowners. That's the bottom line. Councilmembers are elected to serve the City, but you are not serving the City. You serve outside interests, corporations that want to come in here and take whatever they can. The Council majority are the ones who are helping them. She is hoping to get all of you out of office in order to get back control of our City at the local level. The people are going to elect representatives who listen to the people.

**MYRTLE CARVALHO**, 3030 Oceanside Boulevard, stated that in her park, they had a person who passed away and a person who had to leave for another reason. Their homes were put up for auction. People came in and bid on the homes, but they were told if they bought the homes, they'd have to pull it out of the park. In the end, the park owners paid \$100 in one case, and in another they paid \$1 to the heirs of the family.

**JULIE PAULE**, Western Manufactured Housing Communities Association (WMA), 40335 Winchester Road #E-165, Temecula, is a registered lobbyist who is supportive of the changes being considered today. It seems ironic that the summary that was circulated for signatures now isn't sufficient for the ballot. We understand that this change makes a stronger case legally, which you may have to defend once again. We're supportive of the removal of 'market value' and just to refer to this as an increase.

**AMY EPSTEN**, 140 Douglas Drive, has had enough of the drama, name-calling and moments of silence. The truth is that no one is going to be kicked out of their homes. We don't want any favors. We want the ballot to be fair. It's been a one-sided ordinance long enough. Vacancy decontrol does bring that balance, and we are willing to compromise. We don't want to cost the taxpayers any more money than rent control has already brought on them.

Public input concluded

**COUNCILMEMBER FELIEN** has always felt that the distinction was a spurious distinction because in any basic economic situation, when we go to buy a cup of coffee the seller is permitted to set the price for a cup of coffee without limit. There is no restriction on it. The buyer of the cup of coffee can pay what they want or not pay what they want, without limit. A market value is created when the buyer and seller agree on a price for the cup of coffee. The issue is going to go before a judge. If the City Attorney says that shaving the wording a little bit avoids the potential of more unnecessary legal expenses related to rent control, then he's in favor of moving ahead with that. It's not going to affect the debate that takes place among the public.

Once again, we're hearing the question of who represents the people on this. He recalls that the issue of vacancy decontrol was debated in the election. The two candidates who publicly said at a forum, that was widely covered in the newspaper, supported some adjustment to the vacancy decontrol ordinance. The two candidates who said that ordinance should stay without any revisions both lost the election. This was decided by tens of thousands of people in the City participating in the election. It's safe to say the candidates that won the election better represent the majority of the people than the candidates who lost the election. Who represents a majority or not will be tomorrow's meeting.

He recalls that when this issue was debated, there was an offer of 30 days to postpone the existing ordinance so people could offer amendments and revisions for any issue they felt was overlooked. Instead of accepting 30 days to fine tune the ordinance and go through any issues, we were greeted with screams of "no compromise" and "no 30 days". It's kind of late to come and say the ordinance is imperfect when the opportunity to provide input into the ordinance was offered and turned down. The voters now want a say, and they will decide whether or not the existing rent control is going to be revised or stays the same. He believes the voters will support vacancy decontrol because it's in the best long-term interest of the City and the residents, including those who live in mobile home parks.

Regarding the issue of captive markets, once again the ordinance doesn't apply to people who currently live in mobile home parks. It applies to buyers who are coming in over which the park owners have no captive hold whatsoever. There is certainly no ability for the owner of the park to force any kind of price on a buyer who's coming in to the park from somewhere else. They have to create a fair market value for the value of that space. People who may be in a captive situation are fully protected by the existing Rent Control Ordinance. In order to move this election forward and have the people of the City make the final determination, he supports this change.

He **moved** to [adopt **Resolution No. 12-R0126-1**, "...calling and giving notice of the holding of a special municipal election on Tuesday June 5, 2012 for the submission of an ordinance to the qualified voters", regarding Mobile Home Vacancy Decontrol and modifying the ballot question previously approved by the City Council].

**COUNCILMEMBER KERN** **seconded** the motion. He agrees that coming up here and name calling doesn't solve anything. If you have an issue, you need to take it to the voters and let them weigh in on it. He has a hard time believing that vacancy decontrol is the end of the world. There are 481 cities in the State, and only 87 of them

have any type of rent control ordinance at all. Of those, only 19 have one as restrictive as Oceanside's. Vacancy decontrol is fair, balanced and equitable. People who currently live in their homes bought rent control and are entitled to it. As long as they live in those homes, they will have rent control. They just don't have the ability to sell rent control. Some people call it equity. That is not equity. It is a commodity that they want to hold onto so they can sell to the next person coming in. Everybody here is protected under the ordinance as long as you live in your homes. There are also the exceptions that the City Attorney listed: surviving spouse, surviving family member that's on the lease, and the replacement of a home. There is no change to that.

If you do the math, with the number of cities that have rent control and vacancy decontrol, we're talking about a system that works in 95% of the cities in California. He thinks it will work here. Most people understand what market value is, and he thinks the voters will agree with that because they understand what it is. We need to avoid more costs to the taxpayers from rent control, so he's willing to make the change. We've spent way too much of our taxpayer dollars on this ordinance so far.

**COUNCILMEMBER SANCHEZ** stated over 25 years ago the Council voted to adopt the Rent Control Ordinance for mobile home parks, exclusively. It did so to address a patent unfairness in the relationship between two property owners. This is not an apartment situation or leasing your house. This is a situation where there are two owners. The owners of the homes have a larger investment in the basic parking lot. When there is no rent control, there are several vacancies. At the time that this was adopted 25 years ago, there was an unprecedented vacancy rate in the parks, and they were mostly senior parks. The Council adopted an ordinance to address this unequal bargaining situation, to level the playing field. About 90% of the residents are seniors and are unable to go back to work or dip into some other fund. They are not as independently wealthy as some of the park owners are. In the course of 25 years, this ordinance has served us well. It has provided affordable housing with dignity to our seniors, veterans and families who would otherwise be homeless.

This was done without government output. Much has been made about some period of time where the Council had the option to raise the fees immediately to be able to recover all of the costs, but instead decided to do a step-into the costs. That was for one period of time. At this time, this ordinance is not costing the City residents anything. This is the only place and time that a law is being subsidized by residents to be enforced.

There was no opportunity to come up with a different resolution because there was an immediate vote and a second to place this on the ballot. Over 15,000 Oceanside voters signed a petition when only slightly less than 8,000 needed to do so. This is unprecedented that in 28 days over 15,000 signatures were collected. It is unprecedented that over 90% of the signatures were gathered by volunteers, by residents mostly living in the mobile home parks and some supporters. The request by the residents was to repeal this law. What is before us is a motion to strike 3 words from the ballot question, a ballot question that has been false and misleading from the beginning. She has seen the mailers and propaganda by a group of very-well funded property owners who are fighting our residents. These are outside interests fighting our Oceanside residents to take their homes. They're saying it's only the resident's home until they decide to leave. After that they don't have any rights because we can raise the rates without limit. We don't go far enough. We should be up front about what the intent is and what will happen if this law gets passed. It means that if for whatever reason someone is taken off rent control, possibly by an illegal eviction that is happening at these mobile home parks this very moment, and they will lose their homes. They will then look to the government to find some solution, and it is heart-wrenching to say that there is an 8-10 year waiting period for Section 8 housing.

This is a vote to strike these 3 offensive words that are lies. This is not just to raise to some market value, where there is no such thing. She believes we have to let

the voters know exactly what they're voting on because seniors in Oceanside, our working class community of Oceanside, is being attacked by outside interests who hope to win. She called on all residents to vote no and fight back upon this intrusion on our right for self-governance.

**MAYOR WOOD** is not in favor of this. If this ordinance goes to the public for a vote, they should be informed about what it actually means. When he talks to people, most truly don't understand what vacancy decontrol is. They are confused about whether to vote yes or no on vacancy decontrol, whether a no vote supports the residents or not. The confusion is intentional. Everybody has a right to make a decision and vote, but they have to have all of the facts. He believes they do not have enough facts to make a fair and intelligent decision on how to vote. He agrees we should send it to the voters. This wording wasn't right, and we ended up with a lawsuit that we're trying to address. He thanks the other Councilmembers for being willing to change the words.

The consequences of vacancy decontrol and rent control impact all of us. He is okay with it going to the public, but he's concerned about the public being well informed. The supporters behind vacancy decontrol have the money to put the mailers out and make the phone calls, but it's deceiving. It's one-sided. The other side would say that what we're saying is deceiving, but that's the point. All of this should be disseminated by the press so people understand the 2 options. With that understanding, he would feel comfortable about how the vote comes out. Right now, it's not fair, and it's confusing about what it is. He's worried about it being on our primary in June and not the regular election in November. He's also worried that the turnout will be minimal because it's a primary, which could impact the outcome of the election.

This is very emotional. If this somehow passes and some of you lose your units and your livelihood or your chances to sell your units to get into assisted living, he'll have a hard time looking you in the face. He hopes the rest of the Councilmembers do, too. He only wants the voters to have the facts regarding this so they can make an intelligent decision on what they want to do with their neighbors and friends. He can't imagine that after hearing these things, people would vote for vacancy decontrol.

**Motion was approved 5-0.**

2. **Public Communications on City Council Matters (off-agenda items) - None**

#### **ADJOURNMENT**

**MAYOR WOOD** adjourned this special meeting of the Oceanside City Council at 9:54 AM on February 28, 2012, to a special meeting on Wednesday, February 29, 2012.

**ACCEPTED BY COUNCIL:**

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Barbara Riegel Wayne  
City Clerk, City of Oceanside





California

# CITY OF OCEANSIDE

## MINUTES OF THE CITY COUNCIL

FEBRUARY 29, 2012

**SPECIAL MEETING                      4:00 PM                      COUNCIL CHAMBERS**

**4:00 PM - OCEANSIDE CITY COUNCIL**

**Mayor**

Jim Wood

**Deputy Mayor**

Jack Feller

**Councilmembers**

Esther Sanchez  
Jerome M. Kern  
Gary Felien

**City Clerk**

Barbara Riegel Wayne

**Treasurer**

Gary Ernst

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**City Manager**

Peter Weiss

**City Attorney**

John Mullen

The special meeting of the Oceanside City Council was called to order by Deputy Mayor Feller at 4:00 PM, February 29, 2012.

**4:00 PM - ROLL CALL**

Present were Deputy Mayor Feller and Councilmembers Kern, and Felien. Councilmember Sanchez arrived at 4:02 PM. Mayor Wood was absent. Also present were Assistant City Clerk Trobaugh, City Manager Weiss and City Attorney Mullen. The Pledge of Allegiance was led by City Treasurer Gary Ernst.

**DISCUSSION ITEM:**

1. **City Council: Adoption of two resolutions relating to the Special Municipal Election to be held on Tuesday, June 5, 2012, for the submission of a proposed amendment to the Charter of the City of Oceanside to the qualified voters relating to City election procedures, including the creation of at-large numbered council seats effective in June 2012, adding a requirement that a successful candidate for City elective office receive majority voter approval effective at the general municipal election in 2014, creating a June first-round election and a November runoff where no candidate for City elective office receives a majority voter approval effective in June 2014, and authorizing mail ballots-only for special elections and runoff elections that cannot be consolidated with a June or November statewide election; and approval of a budget appropriation in the amount of \$70,000 to the City Clerk Department Election budget to cover the costs of adding a second ballot measure to the Special Election**

**HOLLY TROBAUGH**, Assistant City Clerk, stated in August of 2011, the Council voted to hold a special municipal election on June 5, 2012, to submit an ordinance to the voters. In January of 2012, Council adopted the necessary election-related resolutions, including calling for the June 5, 2012, special municipal election, requesting

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MEETING BY CITY COUNCIL**

that the San Diego County Board of Supervisors consolidate the special municipal election with the State primary election, provide for the filing of written arguments regarding this specific ballot measure, and directing the City Attorney to prepare an impartial analysis. At the January 4, 2012, meeting Council also approved a budget appropriation of \$93,000 to cover the costs of the special municipal election. At a workshop meeting on February 15, 2012, Council, by a majority vote, directed the City Attorney to return with Charter amendment language relating to City election procedures with the intent to submit that language to the voters of Oceanside at the special election on June 5, 2012. Since the deadline for submittal of ballot measures to the Registrar of Voters is March 9, 2012, we have brought forward the items that Council needs to take action on tonight, should you decide to place the Charter amendment on the ballot.

First is the resolution that calls for the second Charter measure to be placed on the June 5, 2012, ballot. The Charter amendment, drafted by the City Attorney, is attached to the resolution as Exhibit A. There are copies at the back of the room for the public. The ballot measure title lists the items as proposed.

Additionally, we need a second resolution, which will direct the City Attorney to prepare an impartial analysis and to authorize Councilmember(s) to prepare the arguments for or in opposition, if Council so chooses.

Finally, Council needs to approve another budget appropriation in the amount of \$70,000 to cover the cost of the second ballot measure. Council would need to provide direction regarding which reserves to use for this funding from the Infrastructure Capital Project Reserves, Economic Stabilization Reserves or Healthy City Reserves.

Before Council takes these actions, we've had a lot of questions regarding the costs associated with the implementation of the proposed Charter amendment. There are no implementation costs, per se; it would be the actual cost of the election. She understands everyone's desire to have specific estimates on the cost of holding 2 elections. However, that isn't possible with the number of variables that affect the costs. Therefore, using the estimates provided by the Registrar of Voters for June and November of this year, she used a computer graphic to show an example of how the pricing would work. These estimated costs are informational only and should not be relied upon for any purpose. The actual costs of the elections are based on several factors.

In this case we're looking at 3 seats as an example. For June, that cost per seat is \$25,000 - \$35,000. To have the 3 seats on the ballot for June it would be \$75,000 - \$105,000. For November, that will depend on the results of June. The cost per seat is \$25,000 - \$35,000. If you did not get a majority for any of the seats, you would have to have all 3 seats on the ballot again. If in the Mayor race one candidate had received the majority, then you would be down to 2 seats for the November election, etc. If all of them got majorities, there would be no need for the November election. The total cost of the November election could be anywhere from \$0 - \$105,000. The total for the two elections would be \$75,000 at the lowest and \$210,000 at the highest.

For your information, looking at actual election costs from 2000 to 2010, during this period the City had one consolidated June election, for a cost of \$53,000. The cost for consolidated November elections has ranged from \$32,000 to \$50,000. People have asked what happens if we can't consolidate and there are two options: a stand-alone election with polls would run from \$475,000 - \$500,000; or a stand-alone all-mail ballot election, which has no polls, would be \$142,000 - \$150,000. All of these are estimates right now and change daily.

If Council chooses to put this on the ballot, the recommendation is to adopt the 2 resolutions in the back-up and approve a budget appropriation in the amount of \$70,000, with direction on which reserves to use.

**DEPUTY MAYOR FELLER** noticed the slide presentation said if a candidate does not receive 50% then all candidates go to the November election.

**ASSISTANT CLERK TROBAUGH** clarified that if you have 3 candidates and nobody receives the 50%+ mark, then the 2 highest vote-getters move on. The lowest one will be eliminated.

Public input

**JOAN BRUBAKER**, 1606 Hackamore Road, read a statement from Nadine Scott, who was unable to attend.

If the Council majority took ethics training, they'd realize they have a duty to positively promote the public's right to know and meaningful public involvement. This meeting and the agenda items accomplish neither. Another hastily prepared set of Charter amendments continues the slimy trend. The Charter, and now these items, are to be vetted to the public. There was no publicly televised meeting or the numerous public workshops that should be required for changing the way the City is run. This is serious business and requires more transparency and public participation. At the one workshop held, 95% of the people there were against putting anything on the June ballot. Once again, the Council majority demonstrated their complete lack of ethics and a failure to serve the public in an honest and engaged manner. The whole election will cost about \$150,000. Where is that money coming from? Is it from cuts to our libraries, parks and senior centers? She urged a no vote on the Charter amendment item before the Council tonight. However, presuming the trend will continue and these items will be on the ballot, she urged a no vote on all items on the June 5<sup>th</sup> ballot. The people in Oceanside deserve better than this.

**TOM MORROW**, 276 North El Camino Real #250, is in favor of putting the majority rule on the June ballot. There has been a lot of talk about the fact that there's not been much time for study and that this has come up at the last minute. We started this when the Charter was passed 2 years ago. We've been studying various different ways of taking advantage of the Charter. A study has already been done for us. The Center for Voting and Democracy in Tacoma Park, Maryland, has already done the study. They determined that a majority election with instant run-off is the best election method. Since our County Registrar doesn't have the capability to do instant run-offs, the second best method is what Councilmember Felien is proposing. According to the study, our current plurality method is the least desirable, along with the combined Mayor and Councilmember elections.

In recent memory, Oceanside has elected only 2 candidates with more than a 50% majority: Mayor Wood's last election 4 years ago, and Councilmember Kern's victory in an attempted recall. For a few of the past elections, most of the candidates were seated with less than a 50% vote.

As for the cost of putting a question on a primary ballot, it's a small amount of money compared to the millions that we're entrusting to Council. A majority of the votes should seat the candidates.

**PATRICIA McFARLANE**, 3538 Pear Blossom Drive, is opposed to what's going on. If you do something hastily, you can regret it afterwards. Now is the time to stop and consider what you are doing, take more time and not have it on the June ballot. That will give the Oceanside residents ample time to study and consider what it is that you are trying to push through so quickly. It's the wrong way to go.

**CHRISTOPHER WILSON**, 770 Harbor Cliff Way, thinks this proposed Charter amendment puts the cart before the horse. The second item on today's agenda is a request for a Charter Review Committee. We've got a proposed amendment that we're

showing in front of the voters without it having gone through any sort of citizen review.

He is also concerned that this has the potential to silence minority voices within the City. Congress isn't elected nationwide. Every member of Congress doesn't have to win a majority of the vote nationwide in order to have a seat. If every single member of the Council has to be elected citywide, it has the potential to silence any voice that people who are not part of a majority might have. While the people sitting in front of him are a large part of the majority today, you might not always be. You may want to take that into consideration.

**DIANE NYGAARD**, 5020 Nighthawk Way, stated if this is worth doing, it's worth doing right. The costs that you saw in the beginning about implementing this really didn't cover a number of what will be real costs to this community. Certainly, there will need to be some voter education about a substantial change like this and also some improved procedures to deal with issues of mail fraud. There are a lot of implementation costs that need to be carefully considered as part of this.

There are 3 specific areas of the language as proposed in the ordinance that she is concerned about. 801(f) specifies all Council seats numbered 1-4, as well as the Mayor, Treasurer and City Clerk, would be elected at the same time. The language says there may other sections that talk about staggered seats, but that section does not say that; nor does it reference another section that does say that. 801(g) specifies very specifically within 5 months the special election would need to be held. You need to look at that. Some range for that time period would give flexibility and also try to minimize the costs of holding additional elections if it wasn't necessary. 801(g) also talks about ties being resolved by lot. She's seen other things that specify a method of determining lots, but this one doesn't say that. That leaves lots of potential for unclear implementation. Those are at least 3 areas in the language that are problematic. That's an example of the kinds of things that ask why we are rushing into this. It's not going to take effect until the 2014 election, so let's really make sure that the language is correct.

One does not need to do very much research to find a whole lot of examples of problems with vote by mail and opportunities for vote-by-mail fraud from both sides of the political spectrum. In some of the Oregon studies, there were 30,000 cases of voters where someone else signed another person's name. There were 33,500 cases where a voter received 2 ballots that were mailed to the same voter. In many cases, the reverse occurred. People who had valid signatures were rejected because election clerks are not experts in handwriting analysis. There are many ways that the system doesn't work as intended. There are procedural safeguards that can be put in place to make sure that's not a problem. Those are the kinds of things that could be worked through if we were properly considering something like this.

**CHARLES McVAY**, 200 North El Camino Real, stated the election law we currently have has served us well without any difficulties whatsoever since the City was incorporated 124 years ago. Yet you're willing to spend no less than \$70,000 to change this perfect election law that we have so that you may legally disregard the wishes of your constituents and do things your way.

Referring to changing current election law, Councilmember Felien stated on February 26, 2012, in the *North County Times*, "this has gotten such overwhelming support from the public that there is no reason to put it off." Any reasonable person would conclude from that, that if there is overwhelming support not to support this item, then you would stop it, especially when there is no benefit whatsoever for the City or the residents. In his walks through the City neighborhoods, he's talked to hundreds of people and has yet to meet one who is supporting this. All say they don't like it and will definitely vote against it.

There are 3 very good reasons why this should not go forward. One is that it's

not needed. Two, is the cost. It will be no less than \$70,000, plus an additional \$93,000 each year an election is held for Council seats. Most importantly, at the very least, two or possibly three terminated employees would have kept their jobs if you were to use that money for that purpose. When you add \$70,000 to the \$93,000 that you have committed to the vacancy decontrol election, it's an astonishing \$163,000 you are willing to spend for an unnecessary special election to be held June 5, 2012. Yet the City terminated many City employees in 2011 and 2012, with more to be terminated as of July 1, 2012.

By changing the election law, you are disenfranchising voters and denying them their constitutional right. Do not vote for this ill-contrived amendment to the City Charter.

**NORMAN KELLEY**, 900 North Cleveland Street, stated this plethora of ideas seems to sprout like daisies in the garden. Every week we have a new bunch of ideas coming up here, it's mind-boggling; the way we select the Treasurer and Clerk, how many Councilmembers we're going to have, the idea of numbering Council seats and the like. They seem to keep coming. Where is the analysis? These things seem to come directly from special interests right to the ballot box. There is no comparative analysis in other jurisdictions. You have a professional staff of good people, but we don't hear from them. Your idea of a synopsis of these things seems to be "here is the law, here is what Council voted on, here's what's necessary to push this along through the Council." There's nothing that's educational to the voter. The idea of a Charter committee is a good idea, depending on the mixture of people you place on it. The problem with this stampede to move these things along is that the more they happen, the less credibility you have and the less willingness people have to consider them.

His professional career ended as a consultant with Price Waterhouse. If he had put proposals like this before a government body with this little amount of analysis and information, he would have been fired on the spot. He urged Council to consider taking a step back and letting your professional staff evaluate these things and then bring them back before us in a rational way.

**LISA HAMILTON**, 323 South Ditmar Street, echoes the feelings of the speakers in that this is an unnecessary expense. It would cost us a great deal less if it went on the ballot in November. That would give the Council more credibility because people would have a chance to consider this. As it is, we're not having a chance to consider it and are asked to vote yes or no. There's a whole list of things. This is not the way for Council to get credibility and backing from the people. The Charter itself came to us in a 'yes or no - right now'. Nobody had any input besides the people who wrote it. We copied it from somebody else. Maybe that wasn't a bad idea, but we would have liked to have had some input. This is the same thing. She urged people vote no on all of this.

**LLOYD PROSSER**, 1618 Kurtz Street, fully supports what Councilmember Felien has proposed in terms of a Charter amendment. Majority elections for Oceanside's Mayor and Council races are rare. If this Charter amendment goes on the June ballot, all voters will have an opportunity to greatly improve our election method. The Center for Voting and Democracy, whose web site is [www.fairvote.org](http://www.fairvote.org), have posted a manual called *The Mayor's Manual*, which gives an analysis of various voting methods. The one we currently have here in Oceanside is the lowest rated. The proposal that Councilmember Felien has brought forward is #2, only lower because we do not have the capability to do instant run-off elections in the County.

Some of the community has complained about the lack of public process to study this issue. In fact, the public process started 2 weeks ago at the workshop. The public has just over 3 months to get educated on this issue and make a decision how to vote. He doesn't want to wait until 2014 to have a decision made. If passed, he'd like to see this go into effect as soon as possible. The proposed change to our Charter is long

overdue and, if passed, will be a superb addition to what we currently have for our election process.

He thanked the voters for passing the Charter by a large margin. The right to vote is fundamental to our democracy, and voters deserve a top-notch election process/method. Many of us have concerns about the condition of our City budget, but the additional cost of having a highly rated election method is so minimal that the costs will have little impact when looking at the larger financial picture of the City. If we can find \$1,500,000 to pay for the big sewer spill that occurred a little over a year ago, we can find the money to support putting this on the ballot.

Finally, voting is fundamental to our rights, and Oceanside voters deserve a voting method that is far better than what we currently have.

**SHIELA KADAH**, 5301 Village Drive, has also talked to hundreds of people in Oceanside, and many people who voted for the Charter wish they hadn't. They don't like the Charter and want to get rid of it. A lot of people don't understand what you're trying to put forth with this vote for numbered seats, and they want a better understanding before voting on it. The number one thing is they want to save jobs and not waste one penny. They don't like the cost of this, and how it's been rushed in. People also don't like that you put the referendum on the June ballot when we could have waited 4 months until November and saved about \$47,000. People want to understand it better and not be rushed into it.

**ROBERT MARKLEY**, 200 North El Camino Real, stated Councilmember Felien wants us to think he is for limited government and lower government spending. That only applies to what the voters want, like libraries, fire and ambulance protection, parks and swimming pools. When it comes to the things he wants, it's spend and more government spending.

**KEVIN STOTMEISTER**, 225 Borrego Court, stated a majority of voters recently gave Council the power of Charter City status. He voted with that majority for those powers. Along with that majority, he shares a vision for the future of Oceanside that he hopes you all share as well: an Oceanside where our top leaders can work together as professionals seeking what's best for our City and our citizens; where our leaders may not always agree, but where they work without divisiveness or petty bickering in getting a job done for us; where Oceanside transforms itself from a city in which it's very hard to do business into a proclaimed, most efficient and friendly city in all of the County in terms of how it serves its citizens and businesses; where Oceanside leads the County in job creation and business retention instead of leaking those jobs away and losing business opportunities to other cities; where our City's economic condition becomes robust once again; where all of us are able to take pride in Oceanside again; and where when we declare that we're from Oceanside, we're met with smiles and congratulations instead of raised eyebrows and snickers. Council has an opportunity to take the first step toward that vision. Let our citizens determine our leaders by majority vote in order to help realize the vision. Let's start by letting us vote in June to improve how our elections take place and how our leadership is organized.

**LARRY BARRY**, 3973 Brown Street, concurs with Tom Morrow, who spoke earlier. Freedom isn't free; it costs. These elections are going to cost money. Oceanside is growing up, and we can't keep trying to do this like we did 50 years ago. We want quality people to run for our government who can work together to decide which way we're going to lead our City. If we're going to be a productive city and be able to raise taxes and protect our citizens and the quality of life with the money that we collect from the taxes, we're going to have to make some big changes. We're not the sleepy little military town by the sea anymore.

Mail-in ballots were started for people who couldn't make it to the polls. He doesn't know if there's abuse, but it does make it easier to vote. He doesn't like mail-in

ballots because things change up until the last minute that may change their vote. It shouldn't be inconvenient to walk into a polling place and vote. It's a freedom we have that other countries don't, and we should cherish that.

**GRAHAM FRASER**, 2119 Oceanview Road, has just returned from a trip to the Middle East, and it really has heightened his awareness of communities that don't have freedom. He sees this particular issue as an advancement of our freedom by having a 50% majority electing our leaders. We need the best leaders we can get. We need leaders that have been elected by a majority of the voters so they can manage our tax money and represent the financial interests of the entire City, not just a small part of it.

He's heard people talk about the financial aspect of this. What price for freedom? How can people talk against more democracy for a measly \$70,000? We need to pick the best system. The method being proposed is becoming more popular, as shown by the results of the study that's been mentioned here this evening. Oceanside is unique; we need a system that fits that, something that suits a bedroom community, the military families and the seniors. People haven't got the time to look into 7 people who are running for office. They need 2 people so they can take the time to figure out who they want to vote for. The current system provides a lot of spoiling and manipulation of the system.

**SUZANNA RAY**, 200 North El Camino Real, asked Council to slow down. You will have a much better chance of having some excellent ideas accepted if you wait until November. Then the public can be educated, will feel more comfortable with these new concepts and will be willing to vote for them. If you ram this through in June, they will resent you and vote no.

**JOAN BROWN**, 511 Rockledge Street, stated for the time these 3 members of the Council have been the majority, everything that we have done in the past that we thought was helping Oceanside has been negated. Here we are again. This is being shoved down our throats. She listened to Councilmember Felien two weeks ago and didn't understand what he was saying. After reading this amendment, she still doesn't understand it. She doesn't see why we need it. If we do need it and a committee can look at it and understand it and vote for it, then we can put it in. As of now, she would say no to this. Oceanside has no money. We always come up with the money for the things that don't do anything for our community. She says no to this.

**ERIN MORIN**, 1241 Chambord Court, stated this is a taxpayer's nightmare. We have very smart citizens in this community that could help guide Council the Charter. We can use the citizens more than special interests, or whoever is running the show around here. This is the citizens' city; they build on it and work together, and this committee would bring a strong feedback to us. We can work with citizens better than with special interest.

**DAN MATLACH**, 1709 South Pacific Street, emphasized that Council has not vetted this process properly. He went back and looked at the December 16, 2009, process having to do with the Charter, and it's very similar to what's going on right now: short and sweet. Less than 15 days and one workshop later, we're looking at putting something on the ballot. We took over 18 months to look at the height issues within the Coastal Zone having to do with raising the height limit from 27' to 35'. At the February 15, 2012, workshop, according to the City Clerk's Action Minutes, Council spent an hour and 18 minutes on this issue having to do with 14 items that Councilmember Felien brought forward.

Last night at a South Oceanside Town Hall meeting, there were 21 people. Councilmember Felien spoke to them for over 15 minutes on this item and suggested needing to be fair to the business community having to do with signs, flags, etc. He suggested you need to be fair to the citizens at large. A gentleman alluded to the fact that a study was done 12 months ago regarding these items, and he was informed 10

months ago by a staffer that these items were going to be brought forward at a later date. He asked why Councilmember Felien didn't bring this up 10 months ago, or 3 months ago and vet this process properly.

He believes there have been Brown Act violations here. When a city or municipality misbehaves, there is a mechanism to deal with that called a Grand Jury investigation. This city is no stranger to investigations and certainly not to Grand Jury investigations. He urged Council to think about what you've done, the meetings you've had, what's been said and vet this properly before you move forward.

**TERRY JOHNSON**, 169 Mayfair, stated with all due respect to those who have spoken in opposition, he is speaking in support. He listened to what previous speakers have said and agrees with some of them. He has lived in this City for almost 60 years and served on the Council for 12 years – 8 as a Councilmember and 4 as the Mayor. The first time he ran 20 years ago, there were 18 people on the ballot. That year Dick Lyon won the Mayor's race; Colleen O'Hara came in first; and he came in second. Looking at what's going on presently, he is disappointed in what he sees and hears. When he left the Council in 2004, the City was in good shape. We had roughly \$30,000,000 in reserves and for the most part, things were going well. We were experiencing one of the greatest economic booms in a long time. Since then, things haven't done well. When he asked himself why, and we can always blame it on the economy. However, when Councilmembers don't agree, sometimes things happen that aren't for the good. It's important to have a majority for those elected to office. If we had in place in 2004 what you're seeking to do this evening, Mayor Wood would not be Mayor right now; Shari Mackin and Chuck Lowery would probably not have served on Council; and a lot of the problems you're facing right now regarding ongoing deficits because of the pension and financial crises may not have occurred. He urged Council to think hard about what you're doing. He supports this recommendation.

**JERRY SALYER**, 3667 Harvard, used a computer graphic to show how similar Escondido and Oceanside's Charters are. The voters elected the City Charter, and that's what we have today. One big difference is the addition of Section 501 that reads notwithstanding the previous paragraphs, the salary of the Mayor and the Councilmembers will continue to be set pursuant to California Government Code. This language he suspects was from the same author as our Charter but it may be time to patch this Charter. He offered verbiage that's been approved by 2 other cities. He'd like to not let this fall through the cracks.

Public input concluded

**CITY ATTORNEY MULLEN** wanted to make clarifications as to potentially ambiguous language between subsections 801(e) and 801(f). What Subsection 801(e) says is that for the general municipal election in 2012 only, the election for Council seats numbered 1 and 2, the Mayor, City Clerk and City Treasurer shall be conducted on the same date as the statewide election in November of 2012 and that a candidate for any of these offices in November of 2012 shall be deemed elected upon receipt of the highest number of votes cast for the particular office. Subsection 801(f) says, effective with the general municipal election in 2014, the election for Council seats numbered 1 through 4, the Mayor, City Clerk and City Treasurer shall be conducted on the same day as the State primary election in June and if someone received the majority, 50 + 1%, they win in June. If not, then the highest 2 vote-getters go on to the November runoff. He thinks he understood the question to be why are we referencing Councilmembers 1 and 2, as well as the Mayor, City Clerk and City Treasurer in Subsection (f), when under Subsection (e) they are elected in 2012. The answer is those offices are not up for election again in 2014. Those offices, 1 and 2, the Mayor, City Clerk and City Treasurer would be up for election in 2016. This Charter provides that each of these offices would have 4-year terms.

Just for clarity of the record, the 2 offices that would be up for election in

November of this year would be Council office 1 and 2, if this Charter amendment were to be approved. Those offices would then not be up again until 2016.

**DEPUTY MAYOR FELLER** asked if the next 2 Council seats would be 3 and 4.

**CITY ATTORNEY MULLEN** responded that's correct. This proposed Charter amendment would provide that the City Clerk would simply number the respective offices if this were to be adopted. Council offices 1 and 2 would be those that are up this November, and 3 and 4 would be those that are up for election in 2014.

**COUNCILMEMBER FELIEN** would like to review the public process we've had up to this moment. A few weeks ago he submitted an agenda item to have a workshop on Charter reform. The coming workshop was covered in the local press and many people attended the workshop and submitted their ideas. Many people communicated directly to him regarding their ideas. Based on that input he proposed, and a majority of the Council supported, a motion for the City Attorney to draft language for a Charter amendment to implement majority elections with numbered at-large seats in the June primary, with a November runoff election, and to give the City the option to have mail-only elections for special and recall elections that couldn't be consolidated with the regular June or November elections. The local press widely reported the results of the workshop and that resolution. The public further communicated with him regarding that proposal. Based upon that additional feedback, he believes there is not a broad consensus to move ahead with mail ballot only elections, but he's received overwhelming support for majority elections. These were average people who aren't involved in the political process and aren't activists. One hundred percent say it's common sense that it should take 50% + 1 to win an elective office. Here we are today with plenty of public participation and input.

He **moved** to adopt the **Resolution No. 12-R0127-1**, "...calling and giving notice of the holding of a special municipal election on Tuesday, June 5, 2012, for the submission of a proposed amendment to the Charter of the City of Oceanside to qualified voters", relating to the election process as submitted by the City Attorney, with the exception of removing all references to the mail ballot only elections. That would involve, on the resolution, to the left of the no ballot designation on Page 2, the wording "for any special election or recall election where the first round or second round can't be consolidated with a June or November statewide election, the election may be a mail ballot only election effective upon passage and have the City Clerk accept ballots up to and including election day". That would be removed.

On Exhibit A, Item 801(g), toward the bottom, would require removing the two sentences "The City Council may, by resolution, authorize the conduct of a recall election, special election and/or special runoff election by mail. The procedures to be followed shall be in accordance with the provisions of the Election Code of the State of California."

Once again, the resolution requiring signatures, the same wording next to the no designation would need to be removed regarding special elections; the same as before.

He **further moved** to adopt adoption of **Resolution No. 12-R0128-1**, "...providing for the filing of written arguments regarding a City measure and directing the City Attorney to prepare an impartial analysis". He will write the ballot argument in favor and hold open for anyone who wants to volunteer to write an argument against majority elections.

He **further moved** to approve a budget appropriation in the amount of \$70,000 to the City Clerk Department Election Program Account from the Economic Stabilization Reserve.

**CITY MANAGER WEISS** stated for clarity, all references to having mail-in ballot

elections would be removed from the ballot question, the proposed City Charter amendment and the resolution directing the filing of an impartial analysis and written arguments for or against the measure.

**COUNCILMEMBER FELIEN** stated voters support majority elections. This is what the voters voted for when they approved Proposition 14 for statewide elections. What we'd be doing with this motion is requiring a majority to hold elective office. It's the same as the County, the City of San Diego and the City of Chula Vista. How can a majority of voters hold politicians accountable if it takes less than a majority to win? That's the basic fairness and simplicity of this. It puts the voters in charge.

He's heard a ridiculous claim that somehow having the majority voters in charge is a dictatorship. The best way to implement majority election is to combine numbered at-large Council seats with a June general election and November runoff election. No one needs a Charter committee to explain what 50% + 1 is, or what a top two runoff is. Everyone knows what this is, and they can either decide to support it or not. It's not a complex issue such as whether or not you would have districts. That involves all kinds of complexities that would be properly reviewed by a Charter committee.

Politicians who win with narrow pluralities only have to pander to a narrow base that may be dramatically out of touch with the majority views. Politicians that have to win a majority will represent the majority. The fact that politicians currently don't have to win a majority explains a lot of the dysfunction we've had in the City over the past decades. He fundamentally disagrees that the election system we have now has served us well. Oceanside's election process and the conduct in the City has often been an embarrassment in the past. Majority elections will go a long way to fixing this.

In reviewing City elections going back to 1998, we have only had 2 elected officials who have been elected with more than 50% of the vote. A newspaper column pointed out that in the past we've had Councilmembers elected with less than 14% of the vote. How can citizens hold someone accountable when they get elected with 14% of the vote? How can someone who wins 14% of the vote possibly represent the majority?

As far as timing, it's precisely because we're in tough times that we need a Council that's elected by the majority of the voters. We have plenty of tough decisions. For example, we've had some controversy over our library and whether or not it would be appropriate to outsource that. Shouldn't Councilmembers who are making these kinds of controversial and painful decisions be elected by the majority of the people so they can speak for a majority of the people? If the majority of the people don't approve of those decisions, they have a chance to remove those Councilmembers.

As to costs, the cost of democracy isn't cheap. We need to have a well-run City election process. Plurality elections are like buying a junky used car. It's a lot cheaper to drive it off the lot, but you pay so much more in the long run. Having majority elections means you put a larger down payment down, but you have a lot more efficiency and a lot less repairs being made in the future. One only has to compare the special election we had where his predecessor was elected with 37% of the vote. He then went on to form a majority with other members that overspent our budget by \$2,500,000. Spending \$70,000 to prevent the next \$2,500,000 budget fiasco is money well spent.

It's also important to point out that we've had 2 special elections recently to fill Council seats: one that Shari Mackin won, and one that Chuck Lowery won. Both of those elections had to be held because the Council could not agree on a replacement. They deadlocked 2-2 in both instances. In the case of the election to replace Rocky Chavez, we avoided \$500,000 in additional election costs, but we had to appeal to the governor to hold open his appointment for 2 weeks so it could be timed to coincide with the June special election. He's convinced that if you'd had 4 Councilmembers in each of

these cases who had been elected by 50% of the vote, you would have had at least 3 of them who could have agreed on a replacement, and we would not have needed to hold any of those elections.

As we move forward, we're all going to take the 50% + 1 confessional. All of those who believe they represent the majority of the voters and aren't afraid of the majority of the voters are going to vote in favor of this motion. Those who know they don't represent a majority are going to vote against the motion. If you don't represent a majority then you're going to be afraid of having to win a majority. He hopes for a unanimous vote on this to support the will of the people to have control of their City by having elections that have 50% + 1 to win.

**COUNCILMEMBER KERN** seconded the motion. He agrees that with the 50% + 1, actually being elected by the majority of the people in Oceanside, is something that we're moving toward. The City of Chula Vista did it when they were about our size a few years ago, and they continued to grow. It's more of a function of the size of the city than the age of the city. Some cities that are relatively small will never go to it, like Del Mar or Solana Beach, where they have 4,000 or 5,000 residents. As we get larger and more population, the idea of having a majority of the view represented on the Council is the best.

Regarding reaching out to the public, since our meeting last time, he's talked to a lot people and has not had one person say they are not in favor of having the Council elected by a majority. He's glad the language was removed about the mail-in ballot. He would not have supported that. In his conversations over the last 2 weeks, people were in favor of the 50% + 1 voting, but against the mail-in ballot. That reflects the view of the public.

There are people out there that wish he wasn't on the dais, and if we had majority elections he wouldn't be here. More than likely, the dynamic of the Council would have probably been more stable if we had a majority vote at that time. As we go forward now, getting a complete representation of all of the citizens on a majority vote is what Oceanside needs.

There are going to be some really tough decisions coming in the next few years. If you followed the news today, housing prices fell again for the fifth straight month. That means our revenues are dropping still. When he first came on the Council the General Fund budget was \$129,000,000. Now it's less than \$110,000,000, and we've burned through all of our reserves, as the former Mayor pointed out. The coming few years are going to be difficult ones, and the people on this dais making those decisions should be reflective of the majority of the citizens of Oceanside. He whole-heartedly supports this and will vote for it.

**COUNCILMEMBER SANCHEZ** has had a chance to speak with a lot of people these past couple of weeks in the same communities that have been referenced, and the overwhelming majority is not in favor of a rush election that is going to cut additional services to our residents at an additional cost to our community. Why would we harm our library, close another park or have less officers in these hard times. People are concerned about retaining our services. Absolute power corrupts, absolutely. She has noticed that people who have come in and been very arrogant about being a Councilmember have fallen because of their arrogance and the corruption. We have had, and continue to have, good Councilmembers. We have a good history of development in Oceanside. She has been stopped often by people who have said that they really like what's happening in Oceanside. They were referring to the changes in our City.

She is very concerned about what is before us. The bottom line is, in order for anyone to run in Oceanside for a Council seat that pays \$25,000 or less, someone will have to come up with over \$100,000 and take a year off their employment, instead of a

few months off. No one she knows has \$100,000 in their pocket. Basically, it would have to be a sponsorship by outside corporate interests, special interests making Councilmembers in our City beholden to those interests. What is best for Oceanside will not be what is decided at the dais; it will be what is best for some San Diego organization. We hear constantly that corporate America is making larger profits. Corporate America, which is not Oceanside residents, is having better days. It is ordinary people like you and I who are paying for it and having less and less, not being able to meet our regular demands for education, jobs, etc.

She has been in the minority for almost all of her 11 years on Council, so she can't be blamed too much for what has 'gone wrong' with Oceanside. She has pushed from a minority point of view and for bringing good things to Oceanside. This is not good for Oceanside. With the last few years, we have seen a Charter put into place that was written and funded by the ABC (Associated Builders & Contractors) and BIA and won by a mere 2,000 votes. 2,000 out of 76,000 registered voters is not a huge margin. That is when the opposition chose not to raise one dime to fight it. Good citizens in this community felt very strongly that they had defeated this 3 or 4 times in the history of the City, and they could do it again by going to their neighbors. They didn't anticipate the lies that came to the homes of voters that made it sound so good for Oceanside. So, we lost that.

This is not a citizen's amendment or a citizen's committee/organization coming forward and saying we want this because we believe this is going to be a better representative government. This is Councilmember Felien doing this. It took about 2 minutes for him to read the motion and then 30 seconds for the vote to happen right after that. If we truly believe in majority, tonight there were 13 people spoke against this, 6 who spoke for it and 1 that made some suggestions. The majority that spoke today, by 2-1, said don't do this. However, we're not going to listen to that. The experience she has from the last few years is that we are not concerned about what our residents want; we are more concerned about what we can get done with a couple of hundred thousand dollars from the BIA/ABC. It's just like what is happening to our seniors and veterans in mobile home parks who are fighting for their homes, in which the opposition, those pushing vacancy decontrol, have raised about \$200,000.

This is all about outside power, turning our City into something that we don't want, and then exporting it to other cities. She is very concerned for our residents who deserve much better than having these outside interests funding these 3 people, who don't have to work. She does have to work, as most of our families do. This is not about fairness or liberty. Every single one of these policies that have been passed, including cutting our library, have affected her and her liberty. Our Oceanside residents' liberties and freedoms are much more important. She urged a no vote on this. Otherwise, we are not going to have parks. Councilmember Felien wanted to cut all parks and said government should have nothing to do with parks, after-school programs, swimming pools, or libraries. This is a bad time to be pushing something on the sneak. Having to call a special meeting on the eve of an election and hoping that this was not going to be televised. She urged every resident to vote no on June 5<sup>th</sup>.

**DEPUTY MAYOR FELLER** stated it's interesting that we are talking about who supports who. If you're going to talk about BIA and ABC, then you need to talk about OPOA and OFA because that's who put Councilmember Sanchez and Mayor Wood in, as well as Councilmembers Mackin and Lowery.

**COUNCILMEMBER SANCHEZ** did not get any funding from the Police or Fire when she first ran. Deputy Mayor Feller did. She did not get any money at all from any corporate interests or unions.

**DEPUTY MAYOR FELLER** is glad Councilmember Felien dropped the mail-in ballot. He was going to ask for that to be pulled. Are you still allowing the Council to set a mail-in election?

**COUNCILMEMBER FELIEN** responded no. All references to any mail-in ballot election have been dropped because there's been concern over that and we do not, in his opinion, have an overwhelming consensus there. It's just the 50% + 1 to win.

**DEPUTY MAYOR FELLER** spoke with Mayor Cox in Chula Vista. They've had numbered seats and 7 Councilmembers. They are a city with a population of 215,000 – 220,000. They run exactly what we are talking about for numbered seats, and he's very supportive of that. In 2000, he got 10,400 votes and Councilmember Sanchez got 16,000. In 2004, he got 22,000 and Councilmember Sanchez got about 20,000 or 21,000. In 2008, he got 22,000 and Councilmember Sanchez got 24,000. The most any of those were was 28% of the voters. Without the use of numbered seats and the primary election, we were elected with less than the majority. He will support this and urge everyone he knows to vote yes on this very important change that makes it important to elect by 50% of the vote. It will make a big difference.

He **called for the question.**

**COUNCILMEMBER KERN** **seconded** the call. He asked about the designation of who writes the opposition ballot. Councilmember Felien is writing in support. Do we have to designate a Councilmember to write that?

**ASSISTANT CITY CLERK TROBAUGH** responded no. It can be open to anybody.

**COUNCILMEMBER SANCHEZ** offered to write the opposition to the ballot.

**COUNCILMEMBER FELIEN** **amended** his **motion** to include Councilmember Sanchez writing the opposition argument to the ballot question.

**Motion on the call was approved 3-1;** Sanchez – no, Wood – absent.

**Motion was approved 3-1;** Sanchez – no, Wood – absent.

2. **City Council: Request by Council Member Felien for the creation of a Charter Review Committee**

**COUNCILMEMBER FELIEN** stated at the workshop we were in the process of discussing a Charter review commission or committee. That is something that, from the feedback at the workshop and from the public, was desirable. He put forward an idea for discussion, but it didn't get any response. It was all left hanging. Since this was something that the public wanted to discuss, he wanted to bring it back to be considered.

His main concern is that we need some type of body that's obviously going to be above the back and forth of the everyday politics of the City. The opinions on the body shouldn't go back and forth with whoever controls 3-2 or 2-3, or whatever is going on here at City Hall. The public and the Council need to consider how we're going to appoint, how many to appoint, how long to appoint, how to remove, what percentage take up an issue, whether issues should be taken up from the public or just from Council, what percent to recommend action and whether that action would go back through the Council to put on the ballot, etc. These are just a few of the issues. He proposed the starting point for discussion that a Charter committee could make recommendations, as long as it was a majority and that majority consisted of appointees of at least one member from four Councilmembers. Each Councilmember would get two appointees, so you'd have a body of ten. That way it would take six members to recommend something, but four of the six would have to come from four separate Councilmember appointees. By default that means you'd get a majority larger than six if that threshold was met, or you could ignore that and have a super majority of maybe

eight out of ten to take action. He would want a broad consensus.

The type of things he would envision a commission doing are things that are technical and complex. For example, this issue of mail-in ballot-only elections would be the kind of thing the commission could review. There were suggestions at the workshop as to whether or not there should be campaign limits for different reporting requirements. That's also the type of thing a commission could review. It certainly has its use, but he's concerned about the structure. At the request of the public, he brought this up as an agenda item. The Mayor is not here tonight, and he would like his input as well in creating a commission. He's open to the public and Council's thoughts.

#### Public input

**CHRISTOPHER WILSON**, 770 Harbor Cliff Way, thinks having a Charter review committee is a great idea. It would have been fantastic if the proposed measure you just voted to put on the ballot had gone through a committee. Moving forward, having a committee of citizens that can review and recommend Charter amendments is a great idea, and he supports it.

**LISA HAMILTON**, 323 South Ditmar Street, also very much approves of a citizen's Charter review committee. It's going to take us a while to figure out a lot of these questions, and the citizens would welcome the chance to participate in this. It's a little late, but better late than never. There are plenty of other items that are going to come up for review, and it would be nice to have other people participating in this.

**TERRY JOHNSON**, 169 Mayfair Street, is in favor of having this Charter review committee. Keep in mind that this isn't the first time we've had this discussion, it goes back 30 years. Now that the Charter has been voted in by the public, have a Charter review. When it does come about he'd like to see some things considered like term limits; 12 years is long enough for a person to be in office making decisions. Maybe we can have some serious campaign reform that's long overdue. Back in 1992 when he first ran for office, he raised less than \$7,000 and won a Council seat. When he was Mayor and ran for office in 2004, he raised \$150,000. We do need some serious campaign reform in this City.

**LARRY BARRY**, 3973 Brown Street, thinks tonight is not the night to put this together. He'd like some other outside private industry to draw from, instead of just four people that are selected from individuals and the Mayor. There's more room to accommodate people for what they can contribute and how they'll do that. This is just a start.

**SUZANNA RAY**, 200 North El Camino Real, is for the first time hearing one idea for the constituency of the Charter committee and how you would like that to work. There was no information on the agenda concerning this item. This review committee is an excellent idea.

**JOAN BROWN**, 511 Rockledge, agrees with having a committee. She's not sure what the difference will be if the Councilmembers choose the committee. A neutral person should choose the people who should be on this committee.

#### Public input concluded

**COUNCILMEMBER KERN** agrees with the speakers. This idea isn't completely flushed out yet. Maybe we can bring it back at a later date with some ideas on how this would come together. He's confused about what Councilmember Felien just explained about majority votes needed. It's probably a good idea, but we should either continue this or bring it back at a later date.

**CITY ATTORNEY MULLEN** responded if the consensus of the Council is that

you want staff to investigate how other communities have gone about forming Charter review commissions and report back to you as to the various models, then you wouldn't necessarily need a motion. We could simply do that. He doesn't think that work has been done on this because this item came as a Councilmember item so there wasn't a staff agenda report prepared for it.

**COUNCILMEMBER FELIEN** stated that works for him. He had no intention of having a motion because there are a lot of complex issues in terms of structure. Since it was something that had broad support at the workshop and from people communicating directly with him, he wanted to let the public know that he heard that request.

Regarding the issue of a Charter committee not appointed by the Council, if it's not appointed by the Council then we have no role in it and any group of citizens who want to could form any Charter committee they want with whatever rules they want. Nothing prevents that. If it's going to be something that goes through the Council, we're going to have to have some kind of a point of power over it. He'd be hard-pressed to support a committee that he doesn't have some kind of a point of power over, but let's put all of the ideas on the table. He would support staff doing a review of how other cities have done commissions and bring it back as part of the process. He wanted to reassure the public that he heard what they said and see if we can come up with a working model. However, it needs to be the right model.

**COUNCILMEMBER SANCHEZ** stated we have not ever had a committee look at this in the last 11 years that she's been on the Council and, before that, 2 years that she watched the Council meetings intently. We did establish a committee on the El Corazon Park to determine the best use. It was 3 appointments per Councilmember, and a year-long study was done. There were no Councilmembers that were assigned to the committee. It was also by consensus. She'd like to study that model. She's been asking for a citizen's Charter committee to be established for about 18 months now and thought we should have done it as soon as the Charter was passed because we didn't really get to have that process. She felt very strongly that if we're going to have a Charter, make it an Oceanside Charter, not one that was cut and pasted by someone other than our City Attorney. We should spend more time on this. If we're going to settle into having a Charter, it should be done deliberately, with caution and with full representation and participation by our citizens.

There were a lot of things that worked well with the El Corazon committee. She saw it as a very successful thing. They had 2 years to come in with something that could be implemented and brought the community together. Whatever we decide with respect to making our Charter an Oceanside Charter, it should bring our community together and not be another tool to divide us. Somebody said this is something that will make our City better. She sees divisiveness. We've got to stop doing that. She would prefer we take more time on this, perhaps have a workshop versus a special meeting. A lot of people didn't know about this special meeting with only 24 hours' notice. It happened very quickly.

**DEPUTY MAYOR FELLER** agrees. Since we passed the Charter 18 months ago, it would have been great if you had brought that forward sooner. He didn't exactly agree with everything that happened at El Corazon. However, that committee worked together and worked hard to bring us something out there.

3. **[City Council: Adoption of a resolution authorizing the San Diego County Abandoned Vehicle Abatement Service Authority (AVASA) to place an initiative on the June 5, 2012, ballot to extend fees pursuant to Vehicle Code Sections 9250.7 and 22710]**

This item was removed from the agenda by staff [it has not received County Board of Supervisor approval and will not be on the June 5<sup>th</sup> ballot]

**4. Public Communications on City Council Matters (off-agenda items)**

**LARRY BARRY**, 3973 Brown Street, stated over the last 20 years, he doesn't think there has been anybody who's been harder on our police than he has. He spoke about a police officer, Matt Lyons, who was interviewed by John Stossel in a television series about police officers being caught doing bad things. Officer Lyons was praised on national television, as well as Oceanside, for being an outstanding police officer. He came over well on the show and reflected well on our City. We do have good police officers in this City and when they do get recognition, we should wear it well and be proud of them.

**LINDA WALSHAW**, 151 Robbie Lane, stated the real issue about vacancy decontrol to the thousands of Oceanside taxpayers who will be directly affected by this ordinance, is the reason why Oceanside even has rent protection in the first place. Before our current laws existed, Oceanside park owners waited until homes were purchased and residents moved into the park and then doubled and redoubled the space rents, forcing homeowners to abandon the homes they had purchased and leaving them for park owners to use as rental properties or sell for their own benefit. The vacancy decontrol ordinance amendment will restore that ability to park owners and allow them to raise space rents without limit when a homeowner needs to sell their home to go into assisted living or hospice, or for any other reason. Why would any buyer agree to purchase a home with that condition attached when they could simply buy a home in another community without such a penalty? How many owners of Oceanside stick-built homes could afford to stay in them without the protections of Proposition 13?

What will this Council say to the hundreds of Oceanside veterans, disabled persons, seniors on fixed incomes and low income families when they are unable to sell their homes to anyone except the park owner for pennies on the dollar? Park owners are free to sell their land, sell their park business or repurpose their land whenever they wish. Homeowners, on the other hand, must obtain the approval of the park owner for any buyer of their home, which approval can be withheld until no other option remains except to sell to the park owner or abandon the home. Maybe some park owners would not take advantage of this, but many out-of-town corporations, developers and builders will.

You cannot pretend that you are not aware that in other cities space rents have been raised to as much as \$5,000 to force homeowners out. Oceanside park owners are represented by the same law firm that's acting in those cities. Even the exception to the ordinance amendment would require a homeowner's heir to live with them in their home as a legal tenant for the rest of their life in order to inherit the home without penalty. Except that parks have already passed rules and regulations that state if a primary homeowner dies, the home must remain vacant. A park owner can simply deny permission to a family member to ever even move into the home and become a legal tenant.

Oceanside receives State and federal funding based on its ability to provide affordable housing, the majority of which is comprised of its 18 manufactured home parks. There is currently a 9-12 year waiting list for HUD and Section 8 housing in San Diego County, according to the Department of Fair Housing. Where is the study on how Oceanside senior communities, the economy and local businesses will be affected? She urged every Oceanside voter to vote no on vacancy decontrol.

**SHIELA KADAH**, 5301 Village Drive, stated we should have fair elections. She thinks we should put on the ballot that people running for office in Oceanside cannot get money from outside of Oceanside. It should have to be from the citizens of Oceanside, not Sacramento or San Diego or wherever they get it from. That way they aren't being bought by the BIA, the ABC or the mobile home park owners. They will actually

represent the people of Oceanside. That should be put on the ballot along with the numbered seats.

**SUZANNA RAY**, 200 North El Camino Real, stated Linda Walshaw has run down the list of all of the reasons how this vacancy decontrol affects the people and why it will so badly damage this City. A woman was talking to the manager of Stater Brothers and had to point out how many people will no longer be shopping there when they lose their homes.

In mobile home parks, residency is granted by the peculiar criteria of the grantee, which is the park owner. They have historically, as shown in Escondido, denied residency to qualified buyers and heirs of mobile homes. When the heirs must continue to pay rent without limit on a home that they can either live in or sell, you are taking property. That's one thing everyone feels emotionally connected with, particularly when that taking is your home.

**JOAN BROWN**, 511 Rockledge, lives one lot and 2 houses away from Crown Heights. Most of the CDBG (Community Development Block Grant) funds go for vouchers, and nothing goes into capital improvements. Part of the CDBG funds are used for revitalization, but she never sees that there. Today when she went into the community garden to put some plants into her new raised garden beds that she paid \$150 for, she saw there was a new thing going on. They are talking about putting concrete in there and having children in there. They want to plant fruit trees to give to the local population. They aren't selling anything, and a lot of these gardens in other communities make a little bit of money selling their goods to sustain themselves. Instead, the people in this garden waste water because they don't have to pay for anything or produce anything. We should look to see where some of this money is going. She was looking forward to them talking about abatement, because that's something else that is not done in this community. There is a lot of old cars in front and back yards. There's a lot of money there, and we should look into it. Other cities are making improvements, and we're not.

#### **ADJOURNMENT**

**DEPUTY MAYOR FELLER** adjourned this special meeting of the Oceanside City Council at 6:03 PM on February 29, 2012. [The next regularly scheduled meeting is on Wednesday, March 14, 2012, at 2:00 PM].

#### **ACCEPTED BY COUNCIL:**

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Barbara Riegel Wayne  
City Clerk, City of Oceanside

