CITY OF ATASCADERO
CITY COUNCIL

DRAFT MINUTES

Tuesday, January 27, 2009

City Hall Council Chambers
6907 El Camino Real, Atascadero, California

CITY COUNCIL CLOSED SESSION: 5:00 P.M.

1. Public Comment – Closed Session: None

*Mayor Béraud closed the Public Comment period.*

CALL TO ORDER:

2. CLOSED SESSION:

   a. Conference with Legal Counsel – Anticipated Litigation
      (Govt. Code Sec. 54956.9 (c))
      Initiation of Litigation - One Potential Case

      This item was tabled.

   b. Public Employee Appointment (Govt. Code Sec. 54957)
      Director of Public Works

   c. Conference with Real Property Negotiators (Govt. Code Sec. 54956.8)
      Property: Easement from Capistrano Avenue to Stadium Park along
      APN# 029-105-028
      Agency Negotiator: Wade McKinney, City Manager
      Negotiating Parties: Dr. Gary Renzaglia and Ms. Sandy Hughes
      Under Negotiation: Instruction to negotiator will concern price and terms
      of payment.

3. ADJOURN
CLOSED SESSION REPORT

City Attorney Brian Pierik deferred to the City Manager Wade McKinney for the report. City Manager Wade McKinney announced that he has appointed Russ Thompson as the new Public Works Director for the City of Atascadero, and introduced him to those present.

CITY COUNCIL REGULAR SESSION

REGULAR SESSION: 6:05 p.m.

Mayor Béraud called the meeting to order at 6:05 p.m. and led the Pledge of Allegiance.

ROLL CALL:

Present: Council Members O’Malley, Clay, Kelley, Mayor Pro Tem Fonzi, and Mayor Béraud

Absent: None.

Others Present: City Clerk / Assistant to the City Manager Marcia McClure Torgerson, and Deputy City Clerk Susanne Anshen.

Staff Present: City Manager Wade McKinney, Assistant City Manager Jim Lewis, Community Development Director Warren Frace, Police Chief Jim Mulhall, City Attorney Brian Pierik, Community Services Director Brady Cherry, Interim Public Works Director Geoff English, and Deputy Public Works Director David Athey

APPROVAL OF AGENDA:

MOTION: By Council Member Clay and seconded by Mayor Pro Tem Fonzi to approve the agenda.

Motion passed 5:0 by a roll-call vote.

PRESENTATIONS:

Mayor Béraud presented appreciation plaques to Jay Sechrist, retiring Parks and Recreation Commissioner, and Doug Marks, retiring Planning Commissioner, and thanked them for their service.

PUBLIC COMMENT:

Mike Brennler thanked all the outgoing Commissioners for their service to the City.

Mayor Béraud closed the Public Comment period.

2. PG&E Recognition of City for Enrollment in “Climate Smart” Program

Patricia Wilmore, Local Area Manager for Governmental Relations for Pacific Gas & Electric, and Regional Manager for Governmental Relations, Tom Jones, and Rebecca Weber Climate Smart Specialist, all with Pacific Gas & Electric, announced Atascadero is the first city in the county to enroll in the Pacific Gas & Electric Climate Smart Program making Atascadero a leader in the fight against global warming and climate change. Ms. Wilmore stated that several of the City’s facilities are now climate neutral as City staff has identified ways to save the City $10,000 through energy conservation. The City of Atascadero was presented with Recognition Plaques for each climate neutral facility and a $2,500.00 grant.

A. CONSENT CALENDAR:

1. Alvord Field Concession and Restroom Project Award

   Fiscal Impact: Approval of this contract will result in the expenditure of $146,694 in previously allocated funds.

   Recommendations: Council:
   1. Authorize the City Manager to execute a contract with Nick E. Pokrajac, Inc. in the amount of $146,694.00 for the Construction of the Alvord Field Concession and Restroom building; and,
   2. Authorize the Director of Administrative Services to move $ 42,600 of Redevelopment Agency Funds from the Lake Park Frontage Improvement project the Alvord Field Concession and Restroom Building Project; and,
   3. Authorize the City Engineer to file a Notice of Completion when the project is complete. [Public Works]

2. Acceptance of New Fare Media on Fixed Route Transit Service

   Fiscal Impact: Minimal fiscal impact is anticipated, revenue per rider will be monitored on a monthly basis to ensure no loss of revenue.

   Recommendation: Council approve the acceptance of day and monthly passes on the local fixed route service. [Public Works]

Eric Greening asked to pull Item No. A-2 from the Consent Calendar.
MOTION: By Council Member O’Malley and seconded by Council Member Clay to approve Item No. A-1 on the Consent Calendar.

*Motion passed 5:0 by a roll-call vote.* (Resolution No. 2009-001)

Eric Greening spoke on Item No. A-2 on the Consent Calendar and urged the City Council to move the transfer point between our North County Shuttle to the RTA system from Templeton to Atascadero.

MOTION: By Mayor Pro Tem Fonzi and seconded by Council Member Clay to approve Item No. A-2 on the Consent Calendar.

*Motion passed 5:0 by a roll-call vote*

COMMUNITY FORUM:

Pastor Tom Farrell with the Atascadero Bible Church offered a prayer.

Ann Ketcherside announced a Business Friends meeting rescheduled from February to March 2 with the time to be announced later.

Jim Wilkins with the Atascadero Historical Society announced the Grand Opening of the Historical House on February 13th and 14th.

Joanne Main, Atascadero Chamber of Commerce, announced a free workshop put together with the Economic Vitality Corporation and the City’s Economic Development Department entitled “Managing Your Cash Flow in a Tough Economy.” The workshop will be this Thursday at the Pavilion from 8:00 a.m. to 10:30 a.m.

Lee Perkins spoke of the June 12, 2008 meeting at which Council Member Clay interrupted Public Comment with an inappropriate personal question which was asked during Community Forum. She stated City Municipal Codes 2-1.12. and 2-1.16 were violated. Lee Perkins stated a representative of the County District Attorney’s office, she, Tom Comar, Council Member Clay and the City Attorney met at City Hall, wherein Council Member Clay and Attorney Enright stated the matter would be brought up at the Strategic Planning meeting to examine this and outdated City Codes. Lee Perkins asked if the matter would be brought up at the Strategic Planning Session and that the sessions be taped for the sake of transparency.

Karyn Sturtevant encouraged the City Council to work together as a whole and to not delay the start of the Walmart project.
Eric Greening asked to have the time, date, location, and agenda of the Strategic Planning Sessions announced. He also asked if the public workshop set for tomorrow on the Dove Creek project is separate, or a part of, the Strategic Planning Session.

Tom Comar agreed with Eric Greening’s comments and asked that the Strategic Planning Session be taped. As a clarification of the Municipal Code violation Lee Perkins spoke of, Mr. Comar stated there currently is no remedy to citizens to hold City Council Members accountable for inappropriate statements and questions.

Sorrell Marks stated a grant has been awarded to Atascadero High School for developing a green curriculum and wanted to request the City Council invite a representative from the school district for a brief presentation.

Steve Martin, Executive Director for the Atascadero Main Street, announced Main Street’s 9th Annual Sweethearts’ Stroll and Bridal Show Saturday, February 14.

Ron Walters asked what the Brown Act Rules are regarding Council Members discussing Closed Session issues prior to the public comment time and what the Council Norms are for a Mayor acting independently with companies or individuals that have business before the City. Mr. Walters also asked if it is appropriate for this Mayor to negotiate separately on the Walmart or any other issues.

**Mayor Béraud closed the Community Forum period.**

City Manager Wade McKinney announced the strategic planning sessions will begin tomorrow evening, Wednesday, January 28, 2009 at 6:30 p.m. and again on Thursday, January 29, 2009 at 8:30 a.m. at City Hall.

Community Development Director Warren Frace stated the Dove Creek meeting will be held tomorrow evening at 6:30 p.m. in Room 4, City Hall, and it is not associated with the Council’s strategic planning. It is an opportunity for the project applicant to meet with the neighborhood.

Mayor Béraud asked the City Manager if the topic of the Municipal Code violation was on the agenda for the Council at the Strategic Planning Session. City Manager Wade McKinney stated it is on the issue list.

Mayor Béraud asked the City Manager if the Strategic Planning Sessions will be audio taped but not televised. City Manager Wade McKinney stated it will not be taped or televised.

Council Member O’Malley stated his concern about accusations and stated he believed the issues are all on the Strategic Planning agenda grouped under “Expectations of Council” and “Expectations of Mayor.” He stated that it is his understanding the issues presented tonight could be addressed at that time.
Mayor Béraud stated she had sent a letter to Aaron Rios with Walmart regarding some suggestions voiced from the community and about green elements for the Walmart project, and was going to discuss this issue later tonight.

Council Member Kelley stated he received a communication entitled “Atascadero Alert No. 2” from Mayor Béraud addressed to the AAUW which was dispersed by the Oppose Walmart Committee. He expressed concern that publications of this type should have been distributed to everyone on the City Council. Council Member Kelley stated he has been asked by citizens if this email expressed his opinion as well, and there has been considerable confusion.

Mayor Pro Tem Fonzi stated she also has some concerns regarding the letter to Aaron Rios signed by Ellen Béraud as Mayor of the City of Atascadero, which did not represent Mayor Pro Tem Fonzi’s views. Her concern is that something like this could delay the project if the Applicant were put off by the green build questions.

City Attorney Brian Pierik stated that the topic being discussed is not on the agenda; and if it is going to be discussed, it needs to be agendized for a future meeting.

Council O’Malley stated the Strategic Planning agenda will address Council Norms and expectations of the Mayor and Council Members, and this issue could be discussed at the Strategic Planning sessions. City Attorney Brian Pierik agreed.

Council Member Clay stated City Manager Wade McKinney had asked if he was going to respond to Tom Comar’s email of January 13 and he told the City Manager he did not get the email. He stated that upon examining a copy provided to him, he noticed the email address was “jday” rather than “jclay”, which is the reason he did not receive the email. Council Member Clay stated he asked the City Manager to put the City Municipal Code 2-1.12 and 2-1.16 on the Strategic Planning Agenda.

Council Member Kelley echoed the problem with his own email glitch, which has been corrected and apologized to anyone who has attempted to contact him for not replying sooner.

B. PUBLIC HEARINGS:

   - Fiscal Impact: The fiscal impact of the Specific Plan and EIR process on the City is expected to be minimal. The City’s cost recovery fees will require that planning staff time is covered for the preparation of Specific Plan and EIR.
   - Recommendations: Council:
     1. Direct staff to issue requests for proposals (RFP’s) for an Environmental Impact Report (EIR) per the City’s purchasing policy for the Del Rio Road Specific Plan area; and,
2. Adopt Draft Resolution A approving a study area boundary for the Del Rio Road Specific Plan. [Community Development]

Community Development Director Warren Frace gave the staff report and answered questions of the City Council.

PUBLIC COMMENT:

Bruce Bevins spoke on the RFP process and asked about the plan boundary and traffic problems if the boundary is limited to the parcel and does not include the streets.

Jennie Phipps stated her property is adjacent to the project. She asked that her property be included in the EIR, and would like to know the costs.

Mike Brennler asked staff if moving the garden center outside would expand the 150,000 square foot limit, and if a drive-through pharmacy would create traffic and pollution problems.

Icey Hagedorn spoke in favor of a drive-through pharmacy and the restaurant pads.

Eric Greening expressed concern that obtaining outside expertise may be difficult due to economic constraints. He asked whether the traffic problems will cost more to solve than the revenue realized.

Michael Sherer spoke in favor of the restaurant pads and urged passage to move forwarded.

Michelle Magic lives across the freeway from the project on Del Rio Road and expressed concern that the parking lot lighting may block her current view of the stars.

Bill Schaeffer expressed concern about the process and referenced a memorandum from the City of Santa Barbara. He asked that staff strictly follow noticing requirements.

Tino Santos congratulated the new Council Members and also Wade McKinney for being chosen Citizen of the Year. He urged the Council to pass the Walmart project.

Wendy Rogers spoke about lack of customers walking downtown. She said that people are going outside of the City to shop; and we need shopping options for Atascadero.

Midori Feldman stated she finds it intimidating to have comments made and applause during the public comment period. She asked if the developer is responsible for intersection and traffic lights. Ms. Feldman also asked about the cost to the City for the future ramp and overpass at Del Rio, and if there are building guarantees to recoup the costs. Ms. Feldman stated a pharmacy is planned for inside the building already as well as a fast-food restaurant, so this should be considered when discussing restaurant pads and the concentration factor.
David Pechy spoke in favor of this project as a way to help fund the fire and police departments.

Aaron Rios, Public Relations for Walmart, requested to move forward as presented, that Walmart would be happy to consider alternatives. Mr. Rios answered questions of Mayor Béraud regarding what would be included in green building techniques. Mr. Rios deferred to the project’s consultant and stated they are planning on including green technology in the planning process.

Hans Kaufman, Architect for Walmart, spoke of including 100 percent recycled steel, using recycled products in the slab with a color mixture added to the slab to remove the need for additional floor coverings and wax strippers and other chemicals. He stated the roof singles will be a non-PVC with 194 sky lights with daylight sensors to automatically dim or enhanced as needed and which will be tied to the heating and air conditioning and lighting systems. He also stated that they will install lighting that saves 17 percent of the energy of Title 24 fixtures; and all non-public areas will have motion sensors to turn off lights, low-flow plumbing fixtures, and exterior lights will be energy efficient LED lighting.

Council Member O’Malley asked about drainage of the storm water runoff for the parking area. Mr. Winslow, Walmart’s Engineer, stated all the water run-off is sent through a filtering device before it leaves the site, so the water will be cleaner than what comes off the site at this time.

Jonalee Istenes, Ex-Park and Recreation Commissioner, asked what policy will be in place regarding outside parking lot lighting as she is concerned Atascadero needs to address light pollution and then apply those regulations to this project.

Mr. Kaufman, Walmart’s architect, stated the night parking lights do have shields.

Mr. Winslow, Walmart’s Engineer, stated they would submit a photometric plan to the City which shows the effect of the lighting which is also part of the EIR process. Mr. Winslow answered a question of Council Member O’Malley stating they currently use the shielded technology directing light down with appropriate amount of light for safety.

Al Fonzi, Vice Chairman for the Veterans’ Memorial Foundation, spoke of the lighting at the Memorial Park and stated it was designed by one of the foremost lighting experts in the United States and meets or exceeds all requirements for excess lighting pollution.

**Mayor Béraud closed the Public Comment period.**

Community Development Director Warren Frace stated the EIR team will have a traffic consultant review all traffic for the project, not just within the boundaries of the project. Mr. Frace also addressed Ms. Phipps’ question about including her property in the boundary. Mr. Frace stated it was originally part of the Rotman plan, but no longer is included in the specific plan boundaries; however, it is included in the master plan and adequate connection and utilities will be addressed in the master plan for this property.
Mayor Pro Tem Fonzi asked if there would be additional costs for Ms. Phipps to be included in the plan. Mr. Frace stated if the City included her property, there could be a potential cost to Ms. Phipps.

Council Member Kelley asked if the 150,000 square foot was based on conditioned space, the area heated or air conditioned. Community Development Director Warren France said the General Plan was not that specific. He stated the previous Council included the garden area, and tonight we are deciding whether the garden area would be included in conditioned space.

Mayor Béraud asked if the impact to the freeway interchange would be included in the EIR process. Community Development Director Warren Frace stated anywhere the freeway is impacted would be looked at during the EIR process.

Council Member Kelley agreed with the idea of having the garden center outside, the restaurant pads out front, and also agreed with the drive-through pharmacy. He suggested submitting the project as we want it, and if Walmart wants to downgrade it, then it could be handled from there.

Mayor Pro Tem Fonzi stated she would prefer to accomplish this in the order staff has proposed, with public input first. She stated she is uncomfortable with the manner in which the Council is handling this and would prefer taking it piece by piece.

Community Development Director Warren Frace asked if the City Council wanted to propose any changes to Walmart’s project description and Council Member Clay’s proposals. He also asked for direction on the RFP process which could include any public participation, and finally, for the Council to adopt the resolution and adopt the specific plan boundary for the EIR specific plan.

Mayor Béraud stated her concern with giving Walmart the proposed changes as Walmart was prepared to go forward with their original plan. She would prefer to incorporate the suggested changes later in the project when the consultant is hired. Mayor Béraud said she is concerned the restaurant pads could become more drive-through restaurants creating traffic problems as well as the duplicated drive-through pharmacies in both Rottman’s plan and in Walmart building.

Community Development Director Warren Frace stated if the Council amended their previous resolution and added all the additional elements as options at Walmart’s discretion, then Walmart would have the flexibility to add the changes or not add them.

**MOTION:** By Council Member O’Malley and seconded by Council Member Clay to amend Attachment 1 (Council Resolution 2008-020) to allow, at the applicant’s discretion, the following to be added to the project: two (2) restaurant pads to the front of the Wal-Mart project without reducing the square footage of the main building (consistent with the submittal included in the October 29, 2007 staff report to City Council);
a drive-through pharmacy to the main building; and the relocating the garden center outside.

Community Development Director Warren Frace stated the pads of 16,000 square feet each would put the project over the 150,000 square foot cap, but that could be handled with a text amendment, which is understood as being part of this motion. Also, Mr. Frace clarified the non-conditioned garden center would be not be counted toward the total square footage cap.

Mayor Pro Tem Fonzi asked if the non-conditioned Garden Center exclusion from the conditioned square footage cap could be included in the motion.

Council Members O’Malley and Clay agreed to include this in the motion.

Council Member Clay called the motion.

**MOTION:** By Council Member O’Malley and seconded by Council Member Clay to amend Attachment 1 (Council Resolution 2008-020) to allow, at the applicant’s discretion, the following to be added to the project: two (2) restaurant pads to the front of the Wal-Mart project without reducing the square footage of the main building (consistent with the submittal included in the October 29, 2007 staff report to City Council); a drive-through pharmacy to the main building; and the relocating the garden center outside and thereby the non-conditioned areas of the Garden Center would not be counted as part of the total commercial building square footage for General Plan purposes. (Resolution No. 2009-006)  
*Motion passed 5:0 on a roll-call vote.*

**MOTION:** By Council Member Kelley and seconded by Mayor Pro Tem Fonzi to direct staff to issue requests for proposals (RFP’s) for an Environmental Impact Report (EIR) per the City’s purchasing policy including a member from the private sector for the Del Rio Road Specific Plan area and follow all the regulatory laws.  
*Motion passed 5:0 on a roll-call vote.*

**MOTION:** By Council Member O’Malley and seconded by Council Member Clay to Adopt Draft Resolution A (Attachment 7) approving a study area boundary for the Del Rio Road Specific Plan. (Resolution No. 2009-007)  
*Motion passed 5:0 on a roll-call vote.*

*Mayor Béraud recessed the meeting for at 8:35 p.m.*
Mayor Béraud reconvened the meeting at 8:48 p.m.

2. Central Coast Regional Water Quality Control Board Draft 2009 Storm Water Management Plan Update – NPDES Phase II
   - Fiscal Impact: Staff estimates that the total costs will be approximately $900,000 over the next five years. This includes the costs to generate the draft 2009 Storm Water Management Plan. The plan does contain language that allows the City’s expenses to be reduced during fiscally challenging times.
   - Recommendations: Council:
     1. Receive report and provide comment on the draft 2009 Storm Water Management Plan (Storm Water Plan), and;
     2. Authorize staff to file the Storm Water Plan with the Central Coast Regional Water Quality Control Board (Water Board) to maintain compliance with the January 29, 2009 deadline. [Public Works]

Interim Director of Public Works Geoff English and Deputy Public Works Director David Athey gave the staff report and answered questions of the City Council.

PUBLIC COMMENT:

Fred Frank spoke in favor of investigating road drainage problems which increase the creek levels, but he did not want to see mandated sewers.

Bill Schaeffer spoke to the fact that this is an unfunded mandate and urged the City not to pass along these costs to the property owners.

Mayor Béraud closed the Public Comment period.

MOTION: By Council Member O’Malley and seconded Council Member Kelley to:
   1. Receive report and provide comment on the draft 2009 Storm Water Management Plan (Storm Water Plan); and,
   2. Authorize staff to file the Storm Water Plan with the Central Coast Regional Water Quality Control Board (Water Board) to maintain compliance with the January 29, 2009, deadline.

Motion passed 5:0 by a roll-call vote.

C. MANAGEMENT REPORTS:

1. Request by San Luis Obispo County Board of Supervisors (SLOBOS) for Consent to Create a San Luis Obispo Tourism Business Improvement District (SLOTBID)
- **Fiscal Impact:** If the BID passes county-wide, the revenues raised will depend on the number of cities that choose to participate but are anticipated to be in the $1 million to $2 million per year range.

- **Recommendation:** Council adopt Draft Resolution, authorizing the San Luis Obispo Board of Supervisors to create the San Luis Obispo Tourism Business Improvement District, and granting the San Luis Obispo Board of Supervisors jurisdiction for all the purposes in connection with creation and operation of the proposed San Luis Obispo Tourism Business Improvement District, with input from the lodging businesses and participating cities. [Community Services]

Community Services Director Brady Cherry gave the staff report and answered questions of the City Council. City Attorney Brian Pierik recommended not acting on the matter until next meeting giving him a chance to legally review the matter. Mr. Pierik stated there will be time before the March 17 first reading at the County level. City Manager Wade McKinney, Community Services Director Brady Cherry, and City Attorney Brian Pierik answered questions of the City Council Members.

Community Services Director Brady Cherry explained this is not the TOT (Transient Occupancy Tax), but a separate tax coming directly from the room revenue from the hoteliers.

Council Member Kelley asked if the two percent goes to the county and then one percent comes back to Atascadero. Community Services Director Brady Cherry explained the City of Atascadero will collect the assessment, and we keep one percent and send one percent to the County.

City Attorney Brian Pierik stated after reviewing this, it appears there are some legal issues that he would prefer to research and recommended the Council not act tonight.

Council Member Kelley stated tourism will be discussed during strategic planning and he would not oppose putting this on hold.

**PUBLIC COMMENT:**

Len Colamarino asked if Atascadero is the only city, or one of only two cities, participating, will we have more control and more attention drawn to Atascadero rather than the entire County including those cities that opted out.

Mike Klatner stated other cities are opting out due to lack of communication and incentive to participate.

*Mayor Béraud closed the Public Comment period.*

**MOTION:** By Council Member Clay and seconded Mayor Pro Tem Fonzi to comply with City Attorney’s recommendation to
postpone a decision on Item No. C-1 to the next City Council meeting subject to legal review.
Motion passed 5:0 on a roll-call vote.

COUNCIL ANNOUNCEMENTS AND REPORTS:

Mayor Béraud announced she, Mayor Pro Tem Fonzi, and City Manager Wade McKinney attended the League of Cities conference in Sacramento.

Mayor Béraud announced Planning Commissioner Daniel O’Grady has resigned and she has appointed Len Colamarino as his replacement.

Len Colamarino thanked Daniel O’Grady for his service and likened their similar backgrounds stating he is looking forward to helping advance the betterment of Atascadero.

D. COMMITTEE REPORTS:

Council Member O’Malley stated he will attend the Economic Vitality Corporation’s board meeting this Wednesday and he attended the executive board meeting on Monday. A coalition was formed to draft a letter of support to the County for the County Airport, which the EVC hopes each mayor will sign. Council Member O’Malley asked the City Attorney if we can support this by consensus tonight or if this needed to be agendized. City Attorney Brian Pierik stated this would need to be agendized.

There was consensus of the City Council Members to include in the next meeting’s agenda the issue of a letter of support to the County on the Airport expansion.

E. INDIVIDUAL DETERMINATION AND / OR ACTION: None.

F. ADJOURNMENT:

Mayor Béraud adjourned the meeting at 10:10 p.m. to the next regularly-scheduled meeting of the City Council.

MINUTES PREPARED BY:

Susanne Anshen, Deputy City Clerk