



CITY OF ATASCADERO ***CITY COUNCIL***

DRAFT MINUTES

Tuesday, May 25, 2010

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

REGULAR SESSION: 6:00 P.M.

Mayor Fonzi called the meeting to order at 6:03 p.m.

Mayor Fonzi made an announcement regarding Memorial Day. She stated that the City of Atascadero was chosen as the official designation of the Veterans Memorial in the County, at today's Board of Supervisor's meeting. She read the Resolution from the County Board of Supervisors recognizing the "Faces of Freedom" Veterans memorial, and she asked the public to stand for a moment of silence.

Council Member Béraud led the Pledge of Allegiance.

ROLL CALL:

Present: Council Members Clay, O'Malley, Kelley, Béraud, Mayor Fonzi

Absent: None

Others Present: Administrative Assistant Annette Manier

Staff Present: City Manager Wade McKinney, Assistant City Manager Jim Lewis, Community Development Director Warren Frace, Community Services Director Brady Cherry, Police Chief Jim Mulhall, and City Attorney Brian Pierik.

APPROVAL OF AGENDA: Roll Call

MOTION: By Council Member O'Malley and seconded by Council Member Clay to approve the agenda.
Motion passed 5:0 by a roll-call vote.

A. CONSENT CALENDAR:

1. Memorandums of Understanding for Atascadero Police Association, Mid-Management/Professional Employees Association and the Atascadero Professional Firefighters Association Local 3600

- Fiscal Impact: None.
- Recommendations: Council approve Memorandums of Understanding (MOU's) authorizing no changes to salaries or benefits for the Atascadero Police Association, Atascadero Mid-Management / Professional Employees, and the Atascadero Professional Firefighters Association. [City Manager]

MOTION: By Mayor Pro Tem O'Malley and seconded by Council Member Kelley to approve Item #1 of the Consent Calendar.
Motion passed 5:0 by a roll-call vote. (Contract No. 2010-014, 105, & 016.)

UPDATES FROM THE CITY MANAGER:

City Manager Wade McKinney updated the Council on the following issues:

- Historic City Hall project is moving forward. The environmental hazard mitigation contractor is doing the tests and has indicated that the tests are going well. Our construction management firm, Bernards, is on site and the project is moving forward with a public outreach program.
- The FEMA appeals are final and we are considering our legal opportunities.
- Colony Square is moving forward.
- City Manager McKinney thanked the Public Works Department for their work in the downtown and City parks.

COMMUNITY FORUM:

David Broadwater asked the City Council to put on their June 8th agenda, a resolution opposing the resumption of commercial whaling. (Exhibit A)

Karyn Sturtevant stated she supports Mr. Broadwater's comments.

Eric Greening stated he is in agreement with Mr. Broadwater and Mrs. Sturtevant. He stated we are sharing this planet with living creatures who share our DNA and evolutionary history, and we need the resolution which would be asking to both continue and strengthen the moratorium.

Jessica Rodriguez and Alex Adams, members of Teens at Work, a non-profit organization run by teenagers, spoke about the program. They perform jobs such as landscaping, community services, artwork, and the program helps teenagers learn job skills. On June 5, 2010, they are holding a Recycle Day at Sunken Gardens.

Ms. Betian Web, Program Director for Teens at Work, said their mission is to grow our next generation of an efficient workforce and civic leaders. They are a program of The Link. The Recycling Day is being held in partnership with Atascadero Waste Management and Sylvester's Burgers.

George Schroff, Santa Margarita, stated he greatly respects the integrity of the seats held by the Council and the decisions they make. He spoke about comments made by a member of the Planning Commission two weeks ago during public comment in regards to La Plaza and his approval of the Conditional Use Permit. He found the comments shallow and discouraging. He is expecting the Council to make informed conclusive decisions.

Fred Collins, Tribal Administrator with the Northern Chumash Tribal Council, said the Northern Chumash Tribal Council is the only governing Chumash Council in San Luis Obispo County. He supports the resolution supporting the protection of whales.

Mayor Fonzi closed the COMMUNITY FORUM period.

There was discussion to take a vote on putting the Resolution regarding the protection of whales on the June 8, 2010 Council Agenda. Council Member Clay stated for the record, he would like to hear both sides of the story before he makes a decision, so he will not support it.

**MOTION: By Council Member Béraud and seconded by Council Member Kelley to support putting a resolution in support of protecting the whales on the June 8, 2010 City Council agenda.
*Motion passed 4:1 by a roll-call vote. (Clay opposed)***

Mayor Fonzi recessed the meeting at 6:25 p.m. for the Special Joint Meeting of the City Council and Planning Commission on the Walmart/EIR.

Mayor Fonzi reconvened the meeting at 8:55 p.m.

B. PUBLIC HEARINGS: None

C. MANAGEMENT REPORTS: None

COUNCIL ANNOUNCEMENTS AND REPORTS:

1. Council Member Bob Kelley

a. RECONSIDERATION:

Council Member Kelley requests the City Council reconsider their direction to staff at the May 11, 2010 regular session under Item C-1 to prepare an economic analysis of 20 theatres in Atascadero with a cost of up to \$10,000.

Council Member Kelley explained his reasons for requesting the reconsideration.

PUBLIC COMMENT:

Michael Latner stated that if the Council is still in favor of doing the economic study, he would do the study for half price.

George Schroff stated he is in support of an economic study.

Len Colamarino stated he is in favor of the Council reconsidering the vote.

Tom Comar stated he is in favor of reconsidering the vote.

Lee Perkins spoke in favor of reconsidering the vote.

Chuck Ward said the Council should not reconsider the vote.

Mayor Fonzi closed the Public Comment period.

MOTION: By Council Member Kelley and seconded by Mayor Pro Tem O'Malley to reconsider their direction to staff at the May 11, 2010 regular session under Item C-1 to prepare an economic analysis of 20 theaters in Atascadero with a cost of up to \$10,000.

Motion passed 4:1 by a roll-call vote. (Béraud opposed)

b. MOTION UNDER RECONSIDERATION:

Motion by Mayor Fonzi and seconded by Council Member Kelley to direct staff to prepare an economic analysis of 20 theatres in Atascadero with a cost of up to \$10,000. (Motion passed 4:1 by a roll-call vote – Béraud opposed).

PUBLIC COMMENT:

Chuck Ward said he wanted an economic study weeks ago, as this second theatre has a major impact on the Colony Square project. Many people believe two movie theatres may go belly up. He fully supports an economic study. It would lay to rest of lot of questions and concerns. There is the question of who is going to pay for it.

George Schroff thanked the Council for slowing down the process for the La Plaza theatres. He feels the applicant failed to demonstrate his confidence in his project with an opportunity to support a study evaluating an economic feasibility of his project in Atascadero. He encouraged the Council to pursue an economic study.

Lee Perkins stated the Planning Commission attached adequate conditions to the CUP. The sooner the project is approved, the sooner John Roush can go forward with presenting the City with plans. The \$10,000 economic study will have no guarantee, and the City cannot afford a risky expense. She looks forward to both projects.

Len Colamarino said he understands why the original idea was approved but he does not know if it has a practical benefit. He said since Galaxy Theatres doesn't think more than ten screens will work in Atascadero, those are matters that have to be considered. Galaxy may withdraw and La Plaza may not get built, with a worst case scenario that no theatres will be built. He said an economic analysis won't be decisive in getting to the right conclusion, so it is better to keep the money. He felt the study should not be required and the City shouldn't pay for it.

Tom Comar stated he agrees with Mr. Colamarino, as you cannot tell from an economic study what the impact will be, and it will not provide all the answers. He said La Plaza will allow options for Atascadero and it will finish the downtown. Galaxy will benefit by stopping the competition.

Karyn Sturtevant said if you do need to order an economic feasibility study, the study should not be a boilerplate request since it's not just two 10-screen theatres (there are different types of screens, i.e. performing arts; the downtown theatre will have restaurants, etc.) One should not be at the detriment of another.

Michael Latner said no one envies the decision you have to make. Many believe the La Plaza project may be the more dynamic and feasible project. An economic analysis will provide you with some understanding of the level of risk in which you are engaging. He emphasized that this is an important decision. He said Galaxy Theatres is here and holding you in an uncomfortable position.

David Bentz said you did not require an economic study from Colony Square, Rite Aid, Albertsons, or Galaxy Theatres, so why is it being required from another citizen in Atascadero who wants to put forth a lot of money? It does not make sense. An economic study will not tell you whether he will be successful or not. Mr. Roush has 40 years of experience with movie theatres. He stated that the American dream is competition and competition benefits everyone.

John Roush, Central Coast Cinemas, said he is against the City spending \$10,000 on an economic feasibility study. The City should not have anything to do with the competition within the City. He is hearing that Galaxy may pull out if another theatre is built and there may be blight. His project will eliminate three blocks of blight in an important portion of the City. It is his opinion that Galaxy Theatres has a lease with Colony Square, and the banks have a \$9 million construction loan with Colony Square, both recorded at the County of San Luis Obispo. The City has guaranteed 1.5 million with Colony Square. If they have an out in their lease, the stockholders might be very interested. **(Mr. Roush asked for additional time to speak and there was Council consensus to grant 3 more minutes.)** Mr. Roush explained the contents of his letter (Exhibit B).

George Schroff said Mr. Roush's numbers are different than those that have been reviewed in other documents, thus the need for an economic study.

Maggie Cox, a member of the Colony Square team, spoke on behalf of Mr. Frank Rimkus of Galaxy Theatres, and stated that Galaxy Theatres is prepared to split the cost with La Plaza on the study.

Council Member Clay suggested that since one public speaker spoke more than once, others should be allowed to speak again.

There was Council consensus to invite the public to speak again.

Chuck Ward said he heard that the second theatre may have all sorts of performances that the Galaxy Theatres wouldn't have. He doubts that comment, and does not consider that a valid argument. He disagreed with the fact that an economic study won't show anything. He stated he has confidence that there are great consultants out there who can do this study.

Len Colamarino said that we should take a close look at Galaxy's position and determine if it is realistic that they will, in fact, withdraw. He said that ultimately, Galaxy has a business decision to make. He asked if Galaxy has the legal right to withdraw under their lease.

Mr. Roush said Mr. Colamarino had some great points. He said that you need to look at who gains the most from the study and that Colony Square has a lot to gain. He said the La Plaza project is so important. Mr. Roush reminded the Council that the Hoff property is for sale, his deal to the Hoff property includes the City letting him build, and holding this up poses a delay.

Mayor Fonzi closed the Public Comment period.

Council Member Clay said an offer can be contingent on approval of the CUP. He is hesitant to agree to something with no contracts on the property. We have a \$9 million dollar project, and we're only talking about \$10,000, and we need to get it right.

Council Member Kelley said his main concern is the City spending the \$10,000.

MOTION: By Mayor Pro Tem O'Malley and seconded by Council Member Béraud to modify the existing motion to require an economic study for no more than \$15,000 and cost to be borne by the applicant.

Council Member Kelley said there may be a conflict of interest since the City is a financial partner in Colony Square with 1.5 million. The City Attorney clarified that there is no conflict of interest. Discussion followed. Mayor Pro Tem O'Malley said he would like to modify his motion.

MOTION: By Mayor Pro Tem O'Malley and seconded by Council Member Béraud to modify the existing motion to require that the City make the decision on the selection of the company that will do the economic study for no more than \$15,000 and that the cost be borne by both applicants/developers. If they can agree, they can go forward. If they are unable to agree, they can bring it back to the City.

City Attorney Brian Pierik and the Council had additional discussion on the amended language in the Resolution.

MOTION: By Mayor Pro Tem O'Malley and seconded by Council Member Béraud to modify the existing motion to request that the applicant, La Plaza, and Galaxy consult with each other to agree on an economic consultant with respect to an economic study not to exceed \$15,000, and each would pay half of that cost and then report back to the City whether they've been able to reach an agreement, or not able to reach an agreement. They will come back to the City at a future meeting and the City will decide what course of action to take.
Motion passed 3:2 by a roll-call vote. (Kelley, Clay opposed)

2. Council Member Bob Kelley:

Council Member Kelley requests the City Council consider amending the Council Norms and Procedures 2009 by adding under the Public Meetings section the following: "If the City Council votes to go past 11:00 p.m., they will go no more than 30 minutes to enable the Council to wrap up the current item, and continue any items remaining on the agenda."

Council Member Kelley explained his reasons for this request.

MOTION: By Council Member Kelley and seconded by Council Member Béraud to consider amending the Council Norms and Procedures 2009 by adding, under the Public Meetings section

the following: “If the City Council votes to go past 11:00 p.m., they will go no more than 30 minutes to enable the Council to wrap up the current item, and continue any items remaining on the agenda.”

Motion failed 3:2 by a roll-call vote. (Clay, O’Malley and Fonzi opposed)

Mayor Fonzi stated for the record that she voted no because the City Council can adjourn any time they feel necessary.

COUNCIL ANNOUNCEMENTS AND REPORTS:

Mayor Béraud announced there is a Bike Plan Workshop on May 27, 2010 at 7:00 p.m. in Council Chambers and encourage people to attend.

Council Member Clay encouraged the public to eat at and support our local restaurants.

Mayor Fonzi stated she has received calls and emails from Alana Reynolds regarding a second unit, and Ms. Reynolds would like this item put on a future Council agenda. Council Member Kelley has also been in contact with her in regards to fees. He said there is no official format for appeals for fee structures. He stated that in June or July, those fees may be altered, and at that time, she may have the option to get her permit under a new fee structure. Mayor Fonzi stated that Ms. Reynolds may also be able to designate the unit as an affordable unit.

There was Council consensus to table the item until the fee structure is revisited. Wade McKinney said the Zone Code Amendment potentials will be on the next City Council Agenda and will also address this issue.

D. COMMITTEE REPORTS:

Mayor Pro Tem O’Malley

Regional Transportation Authority - Our local hoteliers and Main Street have requested transportation for local events for visitors. We were able to help with transporting to special events, and this has been a good partnership with RTA.

Caltrans – Council Member O’Malley contacted Caltrans regarding the trails around Highway 41 and Portola, and he thanked the Council Members for supporting his efforts.

Mayor Fonzi

Air Pollution Control District - A decision was made to have a Memorandum of Understanding with the State Parks to try to find ways to mitigate the dust at the Nipomo Mesa that originates on the Oceano Dunes.

E. INDIVIDUAL DETERMINATION AND / OR ACTION: None

F. ADJOURNMENT:

Mayor Fonzi adjourned the meeting at 10:15 p.m.

MINUTES PREPARED BY:

Annette Manier
Deputy City Clerk / Administrative Assistant

The following exhibits are available in the City Clerk's office:

Exhibit A – Whale Hunting Background, distributed by David Broadwater
Exhibit B – Letter from Central Coast Cinemas, distributed by John Roush