CITY OF ATASCADERO
CITY COUNCIL

DRAFT MINUTES

Tuesday, September 11, 2007 – 7:00 P.M.

CLOSED SESSION: 6:40 p.m.

1. PUBLIC COMMENT – CLOSED SESSION – None

2. CALL TO ORDER
   a. CONFERENCE WITH LEGAL COUNSEL – THREATENED LITIGATION
      (Govt. Code Section 54956.9(b))
      MLW Holdings & Kelly Gearhart v. City of Atascadero

3. ADJOURN: 7:05 p.m.

4. CLOSED SESSION REPORT

   Interim City Attorney Robert Schultz announced that no action was taken by the City Council that requires reporting under the Brown Act.

REGULAR SESSION: 7:00 P.M.

Mayor Pro Tem Brennler called the meeting to order at 7:10 p.m. and Council Member O’Malley led the Pledge of Allegiance.

ROLL CALL:

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

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Absent: Mayor Luna

Others Present: Deputy City Clerk Grace Pucci

Staff Present: City Manager Wade McKinney, Administrative Services Director Rachelle Rickard, Public Works Director Steve Kahn, Community Development Director Warren Frace, Community Services Director Brady Cherry, Fire Chief Kurt Stone, Police Chief John Couch, Deputy Public Works Director David Athey, Deputy Community Development Director Steve McHarris, Redevelopment Specialist Marty Tracey, Deputy Public Works Director Geoff English, Deputy City Clerk Victoria Randall, Associate Planner Kerry Margason, and Interim City Attorney Robert Schultz.

APPROVAL OF AGENDA:

MOTION: By Council Member O’Malley and seconded by Council Member Béraud to approve the agenda.  
*Motion passed 3:1 by a roll-call vote. (Clay opposed)*

Council Member Clay stated for the record he voted against the motion because he did not agree with placing Community Forum at the end of the agenda.

A. CONSENT CALENDAR:

1. **Qualified Vendor List-Tree Trimming Services**
   - Fiscal Impact: The cost of the tree trimming services is allocated in Public Works Department budget.
   - Recommendation: Council authorize the City Manager to enter into ongoing contracts for contract tree trimming services with companies on the “Tree Trimming Services Qualified Vendor List.” [Public Works]

2. **Temporary Road Closure – Colony Days Parade Route**
   - Fiscal Impact: Staff time required for traffic control and clean-up related to this event.
   - Recommendation: Council approve Draft Resolution creating a temporary Colony Days Parade Route and establishing the following road closures for the Parade and related events:
     - El Camino Real from Curbaril to Traffic Way, West Mall from ECR to Lewis Ave., Entrada Ave. from ECR to Lewis Ave., San Luis Ave. from Curbaril to Pueblo Ave., and Pueblo Ave. from San Luis Ave. to ECR on Saturday October 20, 2007 from 8:30 a.m. until 1:00 p.m.;
     - Palma Avenue from East Mall to West Mall from 6:00 a.m. Friday October 19, 2007 to noon Monday October 22, 2007;
• East Mall from El Camino Real to Lewis Ave. on Saturday October 20, 2007 from 6:00 a.m. to 10:00 p.m.
• Lewis Avenue from West Mall to the Bridge on Saturday October 20, 2007 from 6:00 a.m. to 10:00 p.m. [Public Works]

3. **Police Vehicle Purchase**
   - **Fiscal Impact:** The combined cost of both vehicles is $43,482.08, and is included in the 2007-09 City budget.
   - **Recommendation:** Council authorize the purchase of two (2) police street appearance vehicles from Lasher Dodge in Elk Grove, California. [Police]

   - **Description:** Proposed project consists of a 4-unit attached residential Planned Development.
   - **Fiscal Impact:** None.
   - **Recommendations:** Council:
     1. Adopt on second reading by title only, Draft Ordinance A, adopting Zone Change 2007-0136 establishing a Planned Development Overlay-30 code text change, based on findings; and,
     2. Adopt on second reading by title only, Draft Ordinance B, adopting Zone Change 2007-0137 establishing a Zone Map Change at 5440 Traffic Way, based on findings. [Community Development]

5. **Contract for Interim City Attorney Services**
   - **Fiscal Impact:** It is expected that no budget adjustments will be needed to handle the expense of this contract in the interim.
   - **Recommendations:** Council:
     1. Ratify the contract entered into by the City Manager for attorney services on an interim basis by Robert Schulz and Hanley & Fleishman, LLP, for the period of time since the last City Council meeting; and,
     2. Authorize the City Manager to execute a written contract with Robert Schulz and Hanley & Fleishman, LLP, for interim city attorney services. [City Manager]

Items pulled: Eric Greening, Item #A-5.

**MOTION:** By Council Member O'Malley and seconded by Council Member Clay to approve Items #A-1, 2, 3 and 4. *Motion passed 4:0 by a roll-call vote. (Item #A-2 Resolution No. 2007-078, Item #A-4.1 Ordinance No. 513, Item #A-4.2 Ordinance No. 514)*

Item #5:
Eric Greening questioned the process by which the interim City Attorney Robert Schultz is sitting at the meeting prior to taking this action.

City Manager Wade McKinney explained that he hired Mr. Schultz and the assistant attorneys as interim city attorney so there would be an attorney present for this meeting. The contract for interim services is on this agenda to certify that decision and continue it for several months as the city continues to recruit.

**MOTION:** By Council Member O’Malley and seconded by Council Member Clay to approve Item #A-5. *Motion passed 4:0 by a roll-call vote. (Contract No. 2007-026)*

### B. PUBLIC HEARINGS:

1. **PLN-2099-1002, Zone Change / Conditional Use Permit / Tentative Parcel Map, Planned Development Overlay-16, 5190 Portola Road (Nolan)**
   - **Disclosure of Ex-Parte Communications**
   - **Description:** Proposed project would allow a 2-lot residential planned development.
   - **Fiscal Impact:** If approved, based on findings from the Taussig Study, revenue from new residential development including property tax revenues, vehicle licensing fees, sales taxes, and other revenues are insufficient to cover the maintenance and emergency services costs of new development. Based on the revenue projections from the Taussig Study, the City has developed standard conditions of approval for new development projects that require the cost of maintenance and emergency services to be funded by the project through a combination of road assessment districts, landscape and lighting districts and Community Facilities Districts (Conditions CUP 12 / TPM 8). Due to the small size of the project, staff is recommending that this condition be waived.
   - **Recommendation:** The Planning Commission on a 5-2 vote recommends the City Council:

     Adopt Draft Resolution A denying PLN 2099-1002, ZCH 2004-0091, CUP 2004-0140 and TPM 2004-0057 (AT 03-0258) for being inconsistent with the purpose and intent of the PD-16 Overlay Zone. [Community Development]

**Ex Parte Communications**

- Council Member O’Malley stated he had some discussion with the project engineer, and requested the percolation tests on this property. He also heard from some Planning Commissioners on this item.
- Council Member Béraud stated she received an email from the applicant but did not respond.
Council Member Clay stated he didn’t talk with anyone, but sat in on the Planning
Commission meeting.
Mayor Pro Tem Brennler stated he viewed the Planning Commission meeting and
received an email to which he did not respond.

Deputy Community Development Director Steve McHarris gave the staff report and
answered questions of Council.

PUBLIC COMMENT

Russ Thompson, applicant's representative, spoke about the project and the size of
other lots in the neighborhood. Mr. Thompson answered questions of Council.

Ron Rothman commented that when a person buys a lot and has a house on it that is
what their property rights are, and they do not extend to splitting a lot.

*Mayor Pro Tem Brennler closed the Public Comment period.*

Council Member Béraud spoke about what this could mean for the people who are
neighbors to the project. She is concerned that the city may be creating an avenue
through use of the PD-16 to increase density beyond what is allowed in the zoning. She
stated this parcel does not meet the minimums for subdivision, and she intends to
uphold the Planning Commission's decision.

**MOTION:** By Council Member O’Malley and seconded by Council
Member Clay to adopt the original staff recommendation:
- adopting Draft Resolution B certifying the Proposed Mitigated
  Negative Declaration 2007-0005; and,
- adopting Draft Ordinance A introducing an ordinance for first reading by title only, to
  approve Zone Change 2004-0091 based on findings; and,
- adopting Draft Resolution C approving Conditional Use Permit
  2004-0140 (Master Plan of Development) and the Tree Removal
  Request for 2 native trees, based on findings and subject to
  Conditions of Approval and Mitigation Monitoring and waiving
  condition 12 requiring annexation into the community facilities
  district; and,
- adopting Draft Resolution D approving Tentative
  Parcel Map 2004-0057 (AT 03-0258) based on findings and subject to
  Conditions of Approval and Mitigation Monitoring and waiving
  condition 8 requiring annexation into the community facilities
district.

*Motion passed 3:1 by a roll-call vote. (Béraud opposed)
(Resolution Nos. 2007-079, 2007-080, 2007-081)*
C. MANAGEMENT REPORTS:

1. General Plan Master Plan of Development Overlay #12, Atascadero Avenue Triangle Pocket Park – Project Issues and Options
   - Fiscal Impact: Will depend on Council direction.
   - Recommendation: Council provide direction to staff on how to proceed with Master Plan of Development Overlay #12. [Community Development]

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

Ex Parte Communications
   - Council Member O’Malley stated he discussed this project with Mayor Luna in the Finance Committee and they had discussions with owner Kelly Gearhart. He recalled that they concluded it was not cost effective for staff to take on the maintenance of a small pocket park, which was to be their recommendation to Council.

PUBLIC COMMENT

Lee Perkins supported using this area as green space, as it is just across from the library, and would be a better use given traffic flow and aesthetics.

Ty Green, representing MLW Holdings, stated the application was filed on this project 18 months ago, that the owner is incurring damages, that this is a taking, and the property owner is inhibited from using his property. Mr. Green answered questions of Council.

Eric Greening questioned what kind of play / open space will be available in the project application, and stated if this triangle was to be the play or open space then it shouldn’t be given up until there is something in its place.

Gary Kirkland stated his position on open space is that anyone who wants it should tear their own property down, and should not have the right to tell anyone else what they can do with their own property.

Mayor Pro Tem Brennler closed the Public Comment period.

MOTION: By Council Member O’Malley and seconded by Council Member Clay to adopt option 2 with a maximum of 12 units on the site and staff is to work with the applicant to come back with a proposal of a balance between up to one affordable unit and/or more open space or landscape buffers and that when the General Plan Amendment comes before the Council to require a concept plan as well. 
Motion passed 4:0 by a roll-call vote.
There was Council discussion regarding the fee waiver.

PUBLIC COMMENT

Ty Green, applicant’s representative, stated that the applicant did not cause this so to ask them to split the fees is not fair. He stated this was illegal in first place and that it was imposed on the applicant.

Lee Perkins explained that she supports the whole third parcel as a green space. She stated it was difficult to imagine such a small lot with 12 units and open space.

Mike Jackson stated this was contrary to the concept of permit streamlining, that this was delayed long enough and Council should let them move ahead.

Eric Greening asked if the previous motion officially initiated a General Plan Amendment. Director Frace stated everything the Council requested would go before the Planning Commission and would be subject to CEQA.

Crystal Horn suggested that what Council should be considering is eliminating the park requirement and that the rest should not be considered tonight.

Mayor Pro Tem Brennler closed the Public Comment period.

MOTION: By Council Member Clay that if the units remain at 10 the fees would be waived and for anything beyond that the fees would be split with the developers.

Motion failed for lack of a second.

MOTION: By Council Member Béraud and seconded by Council Member Clay that if there are 10 units or less the fees will be waived, if it is more then 10 units, the applicant is to negotiate with the city and bring back the proposal with the General Plan Amendment.  
Motion passed 4:0 by a roll-call vote.

2. Adoption of the Colony Park Community Center Policies and Procedures and Fee Schedules

- Fiscal Impact: Rental revenue is anticipated to be approximately $10,000.00 annually.
- Recommendation: Council review and adopt the Colony Park Community Center fee schedules and the facility policies and procedures manual. [Community Services]
Council Member O’Malley stepped down from consideration of this item stating he owns property within the service area of this property.

Community Services Director Brady Cherry gave the staff report and answered questions of Council. Director Cherry distributed a handout outlining the Rental Rates and policies for the Colony Park Community Center (Exhibit A).

PUBLIC COMMENT

Sorrel Marks expressed her delight in seeing the slides and stated there are still many opportunities for the community to support the Youth Center by providing donations for furniture, or a specific piece of equipment, etc.

Gary Kirkland spoke about the café and asked if staff has made sure that this facility does not compete with or hurt any other business in the community.

Community Services Director Cherry explained that staff considered partnering with the private sector for operation of the café and put out requests for proposals, with only one business (NCI) responding. They subsequently chose the YMCA to operate the café.

Mayor Pro Tem Brennler closed the Public Comment period.

MOTION: By Council Member Clay and seconded by Council Member Béraud to adopt the Colony Park Community Center fee schedule and the facility policies and procedures manual. Motion passed 3:0 by a roll-call vote.

Mayor Pro Tem Brennler recessed the hearing at 9:22 p.m.

Mayor Pro Tem Brennler called the meeting back to order at 9:34 p.m.

Council Member O’Malley rejoined the meeting.

3. Development Services Permit Streamlining Program – Update Presentation
   - Fiscal Impact: None.
   - Recommendation: Council receive and file the report [Community Development]

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

Joan O'Keefe asked about CDS (Custom Design Software) and requested more information about the program.

Community Development Director Warren Frace explained how this program consolidated several uncoordinated platforms staff was using and put it into one coordinated package.

Mike Jackson spoke in favor of soliciting comment cards from those who are going through the process.

*Mayor Pro Tem Brennler closed the Public Comment period.*

*There was Council consensus to look at some type of feedback system with a periodic report back to the Council.*

4. **Annual Housing Report, Calendar Year 2006 (PLN 2006-1133)**

- **Description:** Notice to Council of filing of Annual Housing Report to Department of Housing and Community Development to monitor implementation of the City’s General Plan Housing Element and progress toward meeting the City’s Regional Housing Needs Allocation (RHNA).
- **Fiscal Impact:** None.
- **Recommendation:** City Council receive and file the attached Annual Housing Report. [Community Development]

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

PUBLIC COMMENT

Joan O'Keefe spoke about the tax benefits for historic houses, and stated she had attended a workshop on the subject and found it was a complicated process and takes a lot of time on staff’s part.

Mike Jackson asked if the city is keeping records on those who have the affordable houses and how they are affected by changes in real estate values. He also suggested it would be interesting for the builders to hear from some of the people who own these homes.

*Mayor Pro Tem Brennler closed the Public Comment period.*

*Mayor Pro Tem Brennler recessed the hearing at 10:34 p.m.*

*Mayor Pro Tem Brennler called the meeting back to order at 10:45 p.m.*
COMMUNITY FORUM:

Bruce Bevans spoke about Vision Atascadero, a new non-profit corporation, and distributed a press release regarding their “Buy Local” program (Exhibit B).

Ray Liman commented about the Buy Local program and the economic and social advantages of purchasing from local businesses.

Kelly Long, small business owner at the Mission Oaks Annex, stated her support of the EIR for the Annex property as it will address the issues of traffic noise and lights and will help everyone to make an educated choice about the project.

Joan O'Keefe spoke about the Gaughans and their lawsuit against the city and stated she believes the city will settle out of court which will prevent the public from seeing the transcripts. Mrs. O'Keefe explained the research she had done on this issue and what she had discovered.

Lee Perkins thanked Atascadero citizens for not providing enough signatures at this point for a recall, and pointed out misstatements in a recent recall ad in the Atascadero News. Ms. Perkins compliments the Council for their vote for a consultant on economic development.

Sorrel Marks spoke about the Buy Local program, and stated the goal is to strengthen the local economy by encouraging the community to buy locally.

**MOTION:** By Council Member Béraud and seconded by Council Member Clay to go past 11:00 p.m. 
*Motion passed 4:0 by a roll-call vote.*

Tino Santos spoke about Colony Square and that he believes the only committed business at that location is the theater. He stated he walked on the north end of town asking about Wal Mart and received lots of support. Mr. Santos spoke against placing Community Forum this late in the agenda.

Ron Walters stated that having public comment at the end of the meeting is a subtle form of censorship, as many left who were going to speak. Mr. Walters also commented on the Planning Commission’s decision regarding the Regional Water Quality Control Board, and the current recall petition drive.

Mike Jackson stated he has been studying the economic reports from Bill Watkins on Atascadero and Paso Robles and asked if the city has a contingency program in place if real estate valuations continue to drop and sales tax does not increase.
Tom Comar, spokesperson for Oppose Wal Mart, spoke about the last Council meeting, Wal Mart’s presentation, and the Council’s decision to hire a consultant. He stated there was no way to mitigate for the losses that a Wal Mart super center would bring to this area.

Gary Kirkland stated his support for property rights and the rights of people to do what they wish on their own property. Regarding buying local, he said he has difficulty finding items that are manufactured locally, and buys the best product at the best price regardless of where it comes from.

**Mayor Pro Tem Brennler closed the Community Forum period.**

Mayor Pro Tem Brennler asked staff to address issues raised during the Community Forum period.

Council Members commented on issues raised during the Community Forum period.

**COUNCIL ANNOUNCEMENTS AND REPORTS:**

Council Member Béraud reported on the League of Cities conference she attended in Sacramento last week. She stated she spoke with officials from the city of Santa Clara, which received an award for their Vote Ethics program, and attended a meeting on the use of technology to communicate with the public.

**D. COMMITTEE REPORTS:**

Council Member O’Malley

1. S.L.O. Regional Transit Authority (SLORTA): he is concerned about significant cost overruns on a proposed joint maintenance facility for the RTA Runabout, and stated he will have serious questions on their funding proposals.

2. Economic Vitality Corporation, Board of Directors (EVC): the regional wine study has been done and they are working on a regional tourism study that cities could join in on and for a fee to get information specific to their city. Council Member O’Malley requested placing this issue on a future agenda with a report from the EVC. **There was Council consensus to support placing this on a future agenda.**

**E. INDIVIDUAL DETERMINATION AND/OR ACTION:**

1. City Manager
City Manager Wade McKinney reported that Mayor Pro Tem Brennler will be attending the business visit with the Chamber of Commerce this Friday, and is looking for another Council Member to attend. Council Member Clay volunteered.

Mr. McKinney reminded Council that the educational forum on campaign reform is scheduled for September 25th prior to the next Council meeting. This will be a just listening opportunity to hear from experts on campaign reform and the public will be invited.

F. ADJOURNMENT:

Mayor Pro Tem Brennler adjourned the meeting at 11:51 p.m. to the next regularly scheduled meeting of the City Council on September 25, 2007.

MINUTES PREPARED BY:

Grace Pucci, Deputy City Clerk

The following exhibits are available for review in the City Clerk’s office:

Exhibit A – Colony Park Community Center Rental Rates sheet
Exhibit B – Bruce Bevans, Press Release