



CITY COUNCIL/REDEVELOPMENT/GVMID

MINUTES

CITY COUNCIL REGULAR MEETING

March 2, 2009

BRISBANE CITY HALL, 50 PARK PLACE, BRISBANE

CLOSED SESSION

A. Conference with real property negotiators; Eagles property on Visitacion Avenue, pursuant to Government Code Section 54956.8

At 7:21 p.m., the City Council met in closed session in the City Hall Conference Room. The closed session was concluded at 7:30 p.m.

CALL TO ORDER/FLAG SALUTE

Mayor Richardson called the meeting to order at 7:30 p.m. and led the flag salute.

ROLL CALL

Councilmembers present: Barnes, Bologoff, Conway, Waldo, and Mayor Richardson
Staff present: City Engineer/Public Works Director Breault, Police Sergeant Garcia, Police Chief Hitchcock, City Manager Holstine, Community Development Director Prince, Deputy City Manager/Administrative Services Director Schillinger, City Clerk Spediacci, City Attorney Toppel

ADOPTION OF AGENDA

CM Conway proposed closing the meeting in memory of Congresswoman Jackie Speier's mother, who passed away recently.

CM Conway made a motion, seconded by CM Barnes, to adopt the agenda as amended. The motion was carried unanimously by all present.

ORAL COMMUNICATIONS NO. 1

There were no members of the public who wished to address the City Council.

CONSENT CALENDAR

CM Barnes indicated he had revisions to the February 2 meeting minutes and asked that this item be removed from the Consent Calendar.

A. Adopt City Council Minutes of February 2, 2009

Referring to Item C on Page 2, CM Barnes said he wanted to clarified his remarks about the Los Osos Skatepark and would provide revised language to the staff. He suggested the following revision: "CM Barnes noted that this ordinance allows the City to fine people for not wearing protective equipment when using the skatepark. He reported that he discussed this issue with a San Luis Obispo County employee responsible for supervising the Los Osos Skatepark. This county employee noted that the enforcement of the requirement to wear pads reduced the number of teens using the skatepark. CM Barnes commented that this approach is counterproductive and although it is consistent with state law, he stated that it was a bad state law."

On Page 8, fifth paragraph, CM Barnes proposed replacing "very small condominium units for sale totaling about 250 square feet" to "with studio units of 250 square feet."

CM Barnes made a motion, seconded by CM Waldo, to approve the February 2 minutes as amended. The motion was carried unanimously by all present.

OLD BUSINESS

A. Consider January 2009 Revised Geotechnical and Geological Investigation 3710-3760 Bayshore Boulevard and determine whether any changes in the conditions of approval are appropriate, and provide direction to staff as necessary to implement these changes

City Engineer/Public Works Director Breault noted that the applicant's consultants made a presentation at the February 2 meeting about the geotechnical investigation of the 3710-3760 Bayshore Boulevard project. He said staff is satisfied with the adequacy of the investigations conducted by the consultants and concurs with their recommendations. He expressed his opinion that no additional conditions were warranted.

CM Conway asked when the retaining walls would be constructed. Scott Walker, Treadwell and Rollo, the applicant's consultant, responded that the walls would be constructed before any

downslope improvements. He said the first stage of work will be construction of an access road for equipment to reach the site, and then vertical elements will be drilled into the bedrock to retain the slide, followed by tiebacks to improve slope stability.

CM Barnes noted that Page 12 of the report refers to fractured bedrock that shows dilation, and he asked for clarification of that terminology. Chris Hundemer, Treadwell and Rollo, explained that bedrock extends into the lower portion of the landslide, and the soil in the landslide consists of blocks of bedrock and sandstone.

CM Barnes questioned the reference to "VTA" railroad tracks on Page 15 and observed that the tracks belonged to Caltrain. City Engineer/Public Works Director Breault agreed that "VTA" should be changed to "Caltrain."

Referring to the third paragraph on Page 16, CM Barnes noted the report indicates that the consultants disregarded unrealistic assumptions, and he asked for more details. Mr. Walker stated that the modeling technique allows the slide configuration to follow any discontinuities in the slide plane, making large round failures unlikely. He said the consultants verified that even if the bedrock at the toe of the slope fails, the safety factor was still more than the minimum required.

CM Barnes asked if there were concerns about safety. Mr. Walker advised that there are guidelines to determine how much the slide could move, and in all cases, the safety factor was more than adequate.

CM Barnes observed that the aerial photos indicate that Landslide 1 was present at least as far back as 1935, and no houses were constructed on the crest above the spur ridge between 1935 and 1943. He asked if the spur ridge was the same as Tulare or Thomas Avenue. City Engineer/Public Works Director Breault replied that Tulare Street sits on the spur ridge

Mayor Richardson proposed that the Council accept the report.

City Attorney Toppel noted that the staff recommends making no changes or additions to the conditions of approval. He suggested that the Council accept the staff recommendation.

CM Barnes made a motion, seconded by CM Waldo, to accept the report and add no further conditions of approval. The motion was carried unanimously by all present.

NEW BUSINESS

- A. Consider directing staff to enforce parking enforcement on Visitacion to**

allow for effective street sweeping on Visitacion Avenue

Police Chief Hitchcock noted that at the February 17 meeting, the City Council asked the staff to begin enforcing parking restrictions on Visitacion Avenue. He recommended allowing two-month warning period and publicizing the change in *The Star*, the City newsletter and blog, and in *The Luminary* and then ticketing parked vehicles on street sweeping days. He asked the Council to authorize the staff to proceed as proposed.

CM Waldo said the staff report refers to street sweeping on the first and fourth Wednesday of each month, and noted that street sweeping actually takes place in alternate weeks. City Engineer/Public Works Director Breault said the staff will check the sweeping schedule and the signs posted on Visitacion to make sure the days are correct.

CM Conway noted that enforcement hours will be 2:00 a.m. to 6:00 a.m., and he questioned the need to start so early. City Engineer/Public Works Director Breault said one business on Visitacion does not close until 2:00 a.m., and the intent is to make sure patrons do not have to move their cars before closing time. He added that sweeping does not take long, but the contractor can start as early as 6:00 a.m.

CM Conway asked about the possibility of sweeping Visitacion weekly. City Engineer/Public Works Director Breault noted that doubling the amount of sweeping would double the costs. He said residential streets are swept once a month, and commercial streets are swept twice a month. He noted that eliminating parked cars will make the sweeping much more effective and keep the street cleaner. CM Conway remarked that the two-month warning period will give the Council a chance to see how well enforcement is working before approving next year's budget.

City Engineer/Public Works Director Breault advised that if the Council approves enforcement, the staff will order more signs to alert people to the change and post orange warning signs on street sweeping days.

CM Conway made a motion, seconded by CM Bologoff, to approve parking enforcement on Visitacion as proposed. The motion was carried unanimously by all present.

B. Consider noise concerns near the 23 Club and give direction to staff on whether there is a need for an amendment to the City's noise ordinance to establish a "quiet time"

City Attorney Toppel indicated in response to concerns about noise from the 23 Club, the next-door neighbor, Ron Mann, submitted a proposal to adopt a "quiet time" ordinance to establish maximum noise levels between 10:00 p.m. and 7:00 a.m. throughout the City. He advised that

the Police Department has responded to past noise complaints, and the staff has had discussions with the club operator about ways of reducing noise. City Attorney Toppel noted that the problem seems to be localized, so the staff believes a Citywide ordinance is not warranted at this time. He said the best solution appears to be continuing to work with the club operator and Mr. Mann to mitigate noise problems.

CM Conway asked what ambient noise levels in Brisbane are during nighttime hours. Community Development Director Prince stated that noise studies done in 1992 measured noise at various locations to arrive at noise contour maps. He said the traffic is the primary source of noise in Brisbane, and locations close to Bayshore, Valley Drive, and the freeway tend to have the most noise. He noted that the noise studies for the Baylands will be used to update the noise element in the General Plan. Community Development Director Prince indicated that the recent noise study for 325 Valley Drive showed that noise levels in Crocker Park have remained relatively stable over time. He estimated that average ambient noise in town at night would be less than 45 decibels, well within the limits set by the City's current noise ordinance. He acknowledged that there might be occasional airplane flyovers and dogs barking that cause spikes in the ambient noise levels.

City Attorney Toppel said tests done on noise from the 23 Club showed the level of noise complies with the City's noise ordinance, although steps can be taken to turn down the bass to prevent vibrations from disturbing neighbors. He recommended dealing with noise complaints on a case-by-case basis rather than amending the ordinance.

Mayor Richardson invited comments from members of the public.

Ron Mann, Brisbane resident, confirmed the accuracy of the information provided by the staff and expressed appreciation to the staff for their helpfulness and efforts to resolve the problem. He pointed out that noise levels acceptable during daytime hours are more noticeable and intrusive at night, especially to neighbors. He clarified that his primary concern was having a quiet time to sleep at night, and existing law establishes a right to peace and quiet. Mr. Mann recognized that people also have a right to make noise, and he cited the example of local musicians who need to practice their art. He commented that most of these people are responsible and take measures to avoid disturbing their neighbors.

Mr. Mann provided a recording taken from his property to illustrate the noise he hears from the 23 Club at night. He said the noise disrupts his sleep and has affected his health and wellbeing. He requested help from the City.

Mr. Mann recommended that the City adopt a moratorium on noise until additional mitigation measures can be applied. He suggested requiring the 23 Club to soundproof the building.

Melody Dalton, Brisbane resident, cited a section of the Health and Safety Code prohibiting amplified sound between 8:00 p.m. and 7:00 a.m. She noted the City's noise ordinance restricts noise between 10:00 p.m. and 5:00 a.m. to prevent disturbing the sleep of neighbors.

John DeMarco, owner of the 23 Club property, said he and his sister currently lease the 23 Club, a business that has been operating for over 70 years with live music and dancing. He stated that the 23 Club operator has taken a number of steps to reduce noise. He pointed out that Mr. Mann made a choice when he moved into a house on the main street of Brisbane adjacent to this business. He observed that the Chamber of Commerce's Website also mentions live music and dancing as one of the businesses in Brisbane.

Lionel Chartrand, operator of the 23 Club, advised that he has spent considerable money installing sound-reducing panels in the ceilings and walls and behind the stage, and noise levels now are much lower than they have been in the past. He indicated that he regularly checks noise levels with a sound meter. He confirmed his commitment to comply with existing law. He added that requiring him to reduce operating hours will hurt the business.

CM Conway said he was sympathetic to Mr. Mann's problem but agreed with staff that the best solution would be to continue to work with the operator.

CM Barnes asked the staff to comment on the applicability of the code sections Ms. Dalton cited regarding restrictions on amplified noise and night operations. City Attorney Toppel said he believed the nighttime restrictions apply only to Crocker Park, and the Health and Safety Code section applies to outdoor noise.

Community Development Director Prince noted that any new bar or nightclub business in downtown Brisbane would require a use permit. He clarified that the 23 Club was grandfathered in as a pre-existing use, so the City has no use permit controls over its operations. City Attorney Toppel said the business is considered a nonconforming but legal use.

CM Barnes asked if a "quiet time" ordinance would apply to pre-existing businesses. City Attorney Toppel responded that the City would not be able to prohibit live music and dancing as uses, but only the manner in which the business is conducted. He said the operator would probably challenge the ordinance on the basis that the noise restriction affects the viability of the business.

CM Bologoff asked what decibel level the Police Department has been enforcing. Police Sergeant Garcia said that the Police Department measured noise levels in response to a complaint and determined that the ambient noise from the 23 Club ranged between 56 and 60 decibels.

Police Sergeant Garcia added that street sweeping on Visitation takes place on the second and fourth Wednesdays of each month.

Mayor Richardson observed that the City Council did not seem inclined to amend the noise ordinance in response to Mr. Mann's issue. Councilmembers encouraged the staff to continue working with the operator and the neighbors to find ways of mitigating the disturbance.

C. Consider approval of a supplemental appropriation from the general fund in the amount of \$50,000 to repair approximately eighty feet (80') of guardrail between 237 and 253 Kings Road

CM Conway and CM Waldo announced that they would not participate in the discussion or voting on this item because they lived in close proximity to the subject area, and they left the dais.

City Engineer/Public Works Director Breault requested that the Council approve a \$50,000 supplemental appropriation to repair approximately 80 feet of guardrail along a section of Kings Road. He noted that the photos show that the guardrail has suffered impact damage and needs to be repaired.

CM Bologoff proposed hiring Michael Glynn Construction Services and paying extra to install steel I-beams instead of wood.

CM Bologoff made a motion, seconded by CM Barnes, to approve the supplemental appropriation as proposed.

CM Barnes asked if there would be a formal bidding process. City Engineer/Public Works Director Breault suggested an informal process instead and said the staff already obtained two bids.

City Attorney Toppel advised that \$50,000 is the cutoff for an informal bid process. He stated that under an informal process, the staff solicits bids and selects the lowest qualified bid.

City Engineer Breault/Public Works Director said both contractors who provided bids have satisfactory experience on other City projects. He added that the informal process is still fair because both contractors bid on the same specifications and scope of work.

City Attorney Toppel explained the distinction between a request for proposals (RFP) and a bid solicitation or request for quotations (RFQ). He noted the RFP process normally applies to professional services rather than construction of public improvements with specified materials.

He clarified that a RFP is not legally required in this case.

The motion was carried, 3 – 0 (CM Conway and CM Waldo not participating in voting).

D. Consider adoption of Resolution No. 2009-10 acknowledging receipt of the San Mateo County Energy Strategy and agreeing to participate in the discussion of next steps and review the proposed strategies

City Manager Holstine presented a resolution acknowledging receipt of the County's energy strategy document. He said the staff's only concern is that there are a number of ongoing energy reduction programs in the County, and the City would like to retain its flexibility to determine which programs it wants to implement.

CM Conway noted that Page 35 of the C/CAG document discusses energy consumption for each city in San Mateo County. He said he thought Brisbane and Colma were the lowest users of energy, not Burlingame and Daly City. City Manager Holstine explained that the document was created by the County and C/CAG, and Brisbane and the other cities did not participate in that process. Mayor Richardson clarified that the information in the report came from PG&E, and all cities had an opportunity to comment.

CM Conway stated that he was proud of Brisbane's leadership in low energy usage, and he proposed mentioning this in the resolution. CM Waldo suggested adding another "Whereas" clause with that information.

CM Conway made a motion, seconded by CM Waldo, to adopt the resolution with that amendment.

Mayor Richardson noted that Brisbane should express its commitment to continue its leadership in this area. She recommended deleting "without commitment."

CM Conway drew attention to the statistics regarding water costs on Page 29 and expressed concern about the anticipated increases. City Engineer/Public Works Director Breault said the estimates represent a tripling of existing rates.

CM Barnes observed that it was difficult to tell what periods of time were reflected in the chart. City Engineer/Public Works Director Breault agreed that the chart was confusing. He advised that water rates are projected to triple by 2015.

CM Bologoff noted that the amount of increase is still uncertain, and there are several agencies working on the issue. He said it is up to the San Francisco Public Utilities Commission to set the

rates.

CM Bologoff stated that he supported the concept of conservation, but thought some of the information in the report and charts was inaccurate. He recommended keeping the words “without commitment” to provide flexibility for the City to decide what programs to implement.

City Manager Holstine said the language was intended to provide flexibility and does not imply the City lacks commitment to reducing energy usage.

CM Barnes questioned whether C/CAG’s work was duplicating the efforts of other entities. Mayor Richardson said the C/CAG committee wanted to make sure San Mateo County had an official policy for reducing energy. She recognized that a number of cities and agencies had adopted their own programs, but noted that the County itself had no program.

CM Barnes indicated he would support the motion.

Mayor Richardson welcomed comments from members of the public.

Ray Miller, Brisbane, applauded C/CAG for taking the initiative to promote energy and water conservation. He noted that groups of cities and agencies have more clout than individual jurisdictions. He recommended that the City Council solicit input from the Open Space and Ecology Committee before adopting the resolution. Mr. Miller stated that there may be more accurate and up-to-date information that should be incorporated, and he cited the work done by Sustainable San Mateo County as an example.

Mr. Miller agreed with the Council that the resolution should mention Brisbane’s energy conservation efforts in the “Whereas” clauses. He said he had problems with some of the other language. He pointed out confusing wording in the fourth line of the second “Resolved” paragraph and noted that the first part of the last “Resolved” section should be a “Whereas” clause instead.

Mr. Miller expressed concern that the wording in the second part of the last “Resolved” paragraph suggests Brisbane is not committed to the effort to reduce greenhouse gas emissions. He recommended making the first part of that section a “Whereas” clause and deleting the second part.

Mr. Miller proposed referring the document to the Open Space and Ecology Committee and the staff for further revisions.

CM Barnes questioned the effectiveness of the C/CAG document. He said he would rather have

Brisbane spend its money in Brisbane on real programs and concrete actions. He agreed with CM Conway that Brisbane is already a leader in this area, and expressed his opinion that the County should be looking to Brisbane as a model. He added that he liked the flexible language of the resolution as written.

City Manager Holstine advised that the resolution drafted by C/CAG proposed that cities would provide information at C/CAG's direction. He expressed support for a collective effort and strong commitment, but recommended giving Brisbane greater flexibility to choose how to participate. He said the staff can strengthen the "Whereas" clauses to highlight Brisbane's leadership role and clarify the City's continued commitment.

CM Conway proposed forwarding the report to the Open Space and Ecology Committee for its recommendations. City Manager Holstine suggested inviting someone from C/CAG or the County to present the document to the Open Space and Ecology Committee. Councilmembers expressed support for this approach.

CM Barnes recommended that the Council adopt the resolution with the flexible wording drafted by the staff and then refer the C/CAG document to the Open Space and Ecology Committee for further review.

CM Conway suggested having the staff draft additional "Whereas" language highlighting Brisbane's energy reduction efforts for the Council to consider at the next meeting. Councilmembers decided to postpone adoption of the resolution until the next meeting.

The Council agreed to refer the C/CAG report to the Open Space and Ecology Committee.

STAFF REPORTS

A. City Manager's Report on upcoming activities

City Manager Holstine reminded the Council of the upcoming Monte Carlo Night on Saturday, March 7, at the Mission Blue Center.

City Manager Holstine said the staff is examining the federal stimulus package and preparing for 2009/2010 federal appropriations requests. He noted that the California League of Cities produced a detailed document to help local governments identify potential funding sources of federal funds. He observed that although many programs target low-income communities, there are other resources for highway and infrastructure improvement programs, energy, and broadband communication technology.

City Manager Holstine stated that the staff plans to apply for federal grants for highway paving, maintaining police staffing, and firefighting and wildfire management. He advised that the staff has had some preliminary discussions with the Baylands property owner about applying for funds for brown fields and historic preservation.

City Manager Holstine reported that Congresswoman Speier is now accepting funding applications for the 2009-2010 budget, so the staff will submit the requests that were already sent to Senator Feinstein. He said that \$8 million package includes \$2.6 million for a wastewater transmission line, \$500,000 for the Crocker Park water tank seismic retrofit, \$1.7 million for increased fire flow and capacity for Annis Road, and \$3.2 million for paving Bayshore Boulevard. City Manager Holstine noted that the staff will present the requests to Congresswoman Speier's office in a March 13 interview.

MAYOR/COUNCIL MATTERS

A. Subcommittee reports

— Performance Measures

CM Barnes said the Council subcommittee met recently to discuss adoption of performance measures, and he asked Administrative Services Director Schillinger to provide a brief summary.

Administrative Services Director Schillinger said the subcommittee is considering creating three tiers of performance measures to evaluate City services and programs; the first tier would be community-oriented measures, the second would be managerial measures, and the third tier would be departmental measures. He noted that few other cities have adopted performance measures, so Brisbane again is a leader in this respect.

— Sustainability

CM Conway reported that the Crocker Park Sustainability Subcommittee met recently, and a number of citizens attended.

City Manager Holstine said the subcommittee is looking at long-term sustainability issues for Crocker Park, including types of uses and their impacts. He added that this effort may need to be put on hold for a few months so the staff can focus on preparing the budget for next year.

ORAL COMMUNICATIONS NO. 2

There were no members of the public who wished to address the City Council.

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ADJOURNMENT

There being no further business, CM Conway made a motion, seconded by CM Waldo, that the meeting be adjourned. The motion was carried unanimously by all present and the meeting was adjourned at 9:28 p.m. in memory of Congresswoman Jackie Speier's mother.

ATTEST:

Sheri Marie Spediacci
City Clerk