

**MINUTES
SARATOGA CITY COUNCIL
NOVEMBER 17, 2004**

The City Council met in Closed Session in the Administrative Conference Room, 13777 Fruitvale Avenue, at 6:00 p.m.

Conference With Labor Negotiators (Gov't Code 54957.6):

Agency designated representatives: Lorie Tinfow, Assistant City Manager & Tom Sullivan, Community Development Director
Employee organization: Non SEA Members

Conference with Legal Counsel - Threatened litigation (Gov't Code 54956.9(b): (1 potential case)

Conference With Legal Counsel – Existing Litigation:
(Government Code section 54956.9(a))

Doug Adam Jonathan, Debtor U.S. Bankruptcy Court, N. Dist. CA, Bankruptcy No. 03-57342-JRG

MAYOR'S REPORT ON CLOSED SESSION – 7:00 p.m.

Vice Mayor King reported there was Council discussion but no action was taken.

Vice Mayor King called the Regular City Council meeting to order at 7:00 p.m. and lead the Pledge of Allegiance.

ROLL CALL

PRESENT:	Councilmembers Stan Bogosian, Norman Kline, Nick Streit, Vice Mayor Kathleen King
ABSENT:	Mayor Ann Waltonsmith
ALSO PRESENT:	Dave Anderson, City Manager Lorie Tinfow, Assistant City Manager Richard Taylor, City Attorney Cathleen Boyer, City Clerk Michele Braucht, Administrative Services Director Tom Sullivan, Community Development Director John Livingstone, Associate Planner John Cherbone, Public Works Director Joan Pisani, Recreation Department Director

REPORT OF CITY CLERK ON POSTING OF AGENDA FOR NOVEMBER 17, 2004

Cathleen Boyer, City Clerk, reported that pursuant to Government Code Section 54954.2, the agenda for the meeting of November 17, 2004 was properly posted on November 12, 2004.

ORAL COMMUNICATIONS

The following people requested to speak at tonight's meeting:

Andrew Barnes announced his concession to the November 2, 2004 election and congratulated Aileen Kao and Ann Waltonsmith for their success. Mr. Barnes further stated that he has met a lot of nice people in the process and was able to achieve the goal of defeating the utility tax measure.

Mr. Simmons noted that he is disgusted by the Planning Commission's action at their last meeting, which was on November 10, 2004. Referring to the property located at 20423 Seagull Way, Mr. Simmons stated that the Commission based their decision on personal opinions. Mr. Simmons stated that the Chair of the Commission continually asked staff about the Commission's authority. Mr. Simmons requested that the City Council look into their recent behavior.

Bonnie Marantette stated that after receiving construction plans and requesting changes to those plans for the house located at 13641 Ronnie Way, the owner, Mr. Haas, made promises to her and the other neighbors that he would not build a carport. Currently, Mr. Haas has built what he is calling, a "BBQ area", in the same location of the deleted carport and it is the same design as the carport.

MiMi Frazier Mather stated that the neighbors on Ronnie Way are requesting the City Council's help in regards to the construction at 13641 Ronnie Way. Ms. Mather stated that she had a petition signed by more than 60 neighbors against current construction at this location. Ms. Mather stated that she understands the City has a legal obligation but feels they have a moral obligation to the neighbors as well. Ms. Mather stated that the Council should agendize this issue and correct the problem.

Tom Marantette noted that the neighbors did not receive a notice from the City in regards to the permit issued to Mr. Haas to build a BBQ area at 13641 Ronnie Way. Mr. Marantette stated that the original public hearing notice that the City sent regarding the original project never explained that once an owner took occupancy the plans could change.

John Palms stated that he concurs with everything that has already been said and added that the City Council should be outraged at Mr. Haas for manipulating the system.

David Mighdoll stated that the neighborhood is outraged. Mr. Mighdoll cited several code violations at 13461 Ronnie Way.

Linda Fox Mighdoll thanked Vice Mayor King and Councilmember Bogosian for taking the time to go to do a site visit at 13641 Ronnie Way. Mrs. Mighdoll stated that the so-called BBQ area is the same design and location as the carport, which was not supposed to be constructed.

COMMUNICATIONS FROM COMMISSIONS

Richard Allen stated that he was speaking on behalf of the Finance Commission. Mr. Allen stated that the Commission would like to ask the City how the Commission might

best help them make budgetary decisions. Mr. Allen stated that the Commission realizes the Council will be making difficult budgetary decisions and would like to help in a collaborative way. Mr. Allen stated that the Commission has had several discussions to define what it means to be a minimum service city. Mr. Allen also announced that Alex Tennant is the new Chair and Norman Seigler is the new Vice Chair.

COUNCIL DIRECTION TO STAFF

Councilmember Bogosian requested a copy of the meeting minutes for the November 10th Planning Commission meeting.

Referring to comments regarding 13461 Ronnie Way, Councilmember Kline stated that he visited the site and it's a tough situation. He suggested that Item #5 on tonight's agenda might be relevant to the issue.

In regards to Mr. Allen's request, Councilmember Streit requested that the Finance Commission wait for direction until after the City Council retreat which has been scheduled for February 5, 2005.

City Manager Anderson suggested allowing the Commission to continue their discussion in regards to the definition of a minimum service city.

Norman Seigler, Vice Chair/Finance Commission, stated that it is their responsibility to assist the Council in regards to the City's budget.

Councilmember Streit stated that new concepts may come up at the retreat and if there is consensus of the Council then the Finance Commission can get involved.

Mimi Frazier Mather stated that in regards to the Ronnie Way situation, she understands that agenda item #5 is not going to specifically address their issue, but it is a global discussion to prevent similar issues from happening in the future. Ms. Mather requested clarification from Council, wanting to know if #5 would address the issue specifically and if Council would be able to provide direction to Staff as a result.

City Attorney Taylor explained that agenda item #5 is to adopt a Notice of Intent to amend the City Code and will allow the City Council to discuss whether staff should pursue amendments to the City Code which would address issues like this in the future. City Attorney Taylor stated that agenda item #5, however, does not allow the Council to provide direction to staff to take a particular action with respect to the project on Ronnie Way. City Attorney Taylor stated that if Council would like to have a discussion regarding Ronnie Way, Council can request that it be placed on a future agenda.

Councilmember Kline added that the Council can talk about why we are changing the ordinance as it relates to this particular case as a historical incident and define how the Council will move forward.

Councilmember Bogosian stated that the City Council cannot do anything about the situation on Ronnie Way.

Ms. Mather stated that she and her neighbors have been dealing with city staff and haven't been able to obtain answers. They also addressed the Planning Commission

where they were told that the situation may not be under the jurisdiction of the Planning Commission. Ms. Mather requested a response.

Vice Mayor King stated that the City Council cannot discuss this issue further as it has not been agendized. Vice Mayor King stated that two Councilmembers could request this to be agendized.

ANNOUNCEMENTS

None

CEREMONIAL ITEMS

1A. PROCLAMATION DECLARING NOVEMBER 21-27 AS “NATIONAL FAMILY WEEK”

STAFF RECOMMENDATION:

Read proclamation.

Vice Mayor King read the proclamation and presented it to Paul Hulme and Bret England representing the Saratoga Ministerial Association.

1B. COMMENDATION HONORING SUE BROOKS

STAFF RECOMMENDATION:

Present commendation.

Vice Mayor King read the commendation and presented it to Sue Brooks.

SPECIAL PRESENTATIONS

None

CONSENT CALENDAR

2A. APPROVAL OF CITY COUNCIL MINUTES – NOVEMBER 3, 2004

STAFF RECOMMENDATION:

Approve minutes.

KLINE/BOGOSIAN MOVED TO **APPROVE CITY COUNCIL MINUTES OF NOVEMBER 3, 2004.** MOTION PASSED 4-0-1 WITH WALTONSMITH ABSENT.

2B. APPROVAL OF CHECK REGISTER – NOVEMBER 4, 2004

STAFF RECOMMENDATION:

Approve check register.

KLINE/BOGOSIAN MOVED TO **APPROVE CHECK REGISTER FOR NOVEMBER 4, 2004.** MOTION PASSED 4-0-1 WITH WALTONSMITH ABSENT.

2C. **AMENDMENT TO CITY CODE SECTIONS 2-05.030 & 15-90.065
RELATED TO COUNCIL INITIATED APPEALS**

STAFF RECOMMENDATION:

Waive second reading and adopt the ordinance.

ORDINANCE: 232

KLINE/BOGOSIAN MOVED TO **WAIVE SECOND READING AND ADOPT THE ORDINANCE AMENDING SECTIONS 2-05.030 & 15-90.065 RELATED TO COUNCIL INITIATED APPEALS.** MOTION PASSED 4-0-1 WITH WALTONSMITH ABSENT.

2D. **FY 2004-2005 CDGB COUNTY/CITY CONTRACT**

STAFF RECOMMENDATION:

Adopt resolution; approve transfer of previously approved allocation of \$33,000 to Project Match to the Revolving Housing Rehabilitation Program.

RESOLUTION: 04-088

Councilmember Streit requested that item 2D be removed from the Consent Calendar.

Referring to the \$33,000 in which staff is recommending to allocate to the Revolving Housing Rehabilitation Program, Councilmember Streit asked why staff didn't look for a local project instead of giving funds to a Countywide project.

John Livingstone, Associate Planner, responded that the Revolving Housing Rehabilitation Program, also known as the SHARP program, is a County program that rehabilitates homes for home owners who meet the criteria.

Councilmember Streit stated that he would support the recommended action as long as the funds stay in Saratoga.

STREIT/KLINE/ MOVED TO **ADOPT RESOLUTION; APPROVE TRANSFER OF PREVIOUSLY APPROVED ALLOCATION OF \$33,000 TO PROJECT MATCH TO THE REVOLVING HOUSING REHABILITATION PROGRAM.** MOTION PASSED 4-0-1 WITH WALTONSMITH ABSENT.

2E. **CITY MANAGER EMPLOYMENT AGREEMENT CORRECTIONS**

STAFF RECOMMENDATION:

Authorize Mayor to execute corrected agreement.

KLINE/BOGOSIAN MOVED TO **AUTHORIZE MAYOR TO EXECUTE CORRECTED AGREEMENT WITH THE CITY MANAGER.** MOTION PASSED 4-0-1 WITH WALTONSMITH ABSENT.

2F. **SARATOGA LIBRARY PROJECT FINISH WORK**

STAFF RECOMMENDATION:

Authorize staff to contract with Shade Tree Construction for miscellaneous finish work related to the Saratoga Library.

Councilmember Streit requested that item 2F be removed from the Consent Calendar.

Councilmember Streit stated that he is not in favor of the contract and requested a copy of the detailed list of finish work required at the library.

KLINE/BOGOSIAN MOVED TO **AUTHORIZE STAFF TO CONTRACT WITH SHADE TREE CONSTRUCTION FOR MISCELLANEOUS FINISH WORK RELATED TO THE SARATOGA LIBRARY.** MOTION PASSED 3-1-1 WITH STREIT OPPOSING AND WALTONSMITH ABSENT.

PUBLIC HEARING

None

OLD BUSINESS

3. **RELINQUISHMENT OF VILLAGE SIDEWALKS**

STAFF RECOMMENDATION:

Adopt resolution approving final Cooperative Agreement with the State of California.

John Cherbone, Public Works Director, presented staff report.

Director Cherbone reported that on March 17, 2004 Council signed a draft Cooperative Agreement for the relinquishment of the Village sidewalks, curbs and gutters from the State. The agreement would provide funding to perform needed infrastructure improvements and in return the City would assume maintenance responsibility and liability of the said improvements. The City Council, Assembly Member Rebecca Cohn and City staff have all worked together to bring this to fruition.

Director Cherbone noted that the only substantial change in the final agreement is an additional \$30,000 the City will receive for the relinquishment.

Director Cherbone noted that he was able to negotiate the additional funds for the sidewalks, curbs and gutters along the frontage access road adjacent to Blaney Plaza. Director Cherbone pointed out that the City would receive a total of \$741,000, compared to the \$700,000 reported to Council in March.

Director Cherbone explained that according to Caltrans officials the Cooperative

Agreement would be agendized for approval at the California Transportation Commission (CTC) following receipt of the executed copies of the Agreement and authorizing the City to adopt a resolution.

Councilmember Kline asked how much it would cost to do additional improvements in the Village.

Director Cherbone explained that in order to do a quality job it would cost approximately \$1.5 million and would be very disruptive to the Village.

Councilmember Streit stated that this project has been approved by Caltrans, but not by the California Transportation Commission (CTC).

Director Cherbone responded that Councilmember Streit was correct that the CTC has not yet approved the project.

KLIN/STREIT MOVED TO ADOPT RESOLUTION APPROVING FINAL COOPERATIVE AGREEMENT WITH THE STATE OF CALIFORNIA.
MOTION PASSED 4-0-1 WITH WALTONSMITH ABSENT.

NEW BUSINESS

4. COUNTY OF SANTA CLARA REQUEST FOR FUNDING TO ASSIST WITH A COUNTYWIDE HOMELESSNESS CENSUS

STAFF RECOMMENDATION:

Accept report and direct staff accordingly on the attached resolution requesting an appropriation of \$2,983 out of Council Contingency funds to the Countywide homelessness survey.

John Livingstone, Associate Planner, presented staff report.

Associate Planner Livingstone explained that the City received a letter from the Office of the County Executive requesting participation in a countywide homeless count and survey they plan to undertake as part of their 10-year plan to end homelessness. The cost for consultant services to complete and compile the survey is estimated to be \$168,000. The County is asking that cities within the County share in covering the cost for the consultant's work. Associate Planner Livingstone stated that the City of Saratoga's share would be \$2,938.

Councilmember Streit stated that he supports the idea, but due to budget constraints, he would not support this request.

Councilmember Kline stated that he feels this is the County's responsibility and would not support the request.

Councilmember Bogosian stated the Council received a letter from Betty Feldhym requesting that the Council help fund the County's project.

Council discussed the City's current budget problems and the failure of the measure on the November 2004 ballot to pass, which would have increased taxes in the community to help pay for services. Consensus of the City Council was to

not contribute the \$2,938 as requested by the County to support the homeless survey.

City Manager Anderson noted that staff would send a letter to the County Executive Office relaying the direction of the Council.

5. **RESOLUTION OF INTENT TO AMEND ARTICLE 16-05.035 RELATING TO THE ESTABLISHMENT OF A SPECIFIC PERIOD OF TIME THAT MODIFICATION OF BUILDING PLANS AND/OR DEVELOPMENT CONDITIONS MUST BE APPROVED THROUGH A NEW DESIGN REVIEW PROCESS**

STAFF RECOMMENDATION:

Adopt Resolution of Intent.

RESOLUTION: 04-089

Tom Sullivan, Community Development Director, presented staff report.

Director Sullivan explained that the resolution for adoption before Council this evening would direct staff to develop an Amendment to Article 16-05.035; which would establish a specific time frame beyond the final inspection and occupancy permit during which any modification to building plans or change to development conditions of approval would have to be approved by the approving authority.

Director Sullivan explained the current code Section 16-05.035 - relating to Modification of Building Plans and Development Conditions. Director Sullivan stated that this code section does not give direction regarding how long the development conditions are enforceable. It is reasonable to assume that at some point in time a property owner can construct small additions to his/her home without being subjected to the rigors of Design Review. Director Sullivan explained the current Zoning Ordinance; code Section 15-45.065 titled Administrative Design Review. Director Sullivan noted that this section allows substantial additions to be made to single story dwellings without triggering Administrative Design Review.

Reflecting on his time spent on the City of Santa Clara's Planning Commission, Councilmember Kline stated that he thought conditions ran with the land forever. Councilmember Kline stated that in 1999 when he built his house, he did not have to go through design review or have neighborhood approval. Councilmember Kline asked when approval of design by neighbors was implemented.

Director Sullivan responded that this policy was implemented in 2001. Prior to that there were no requirements by the City for a pre-application discussion with the neighbors; the first time a neighbor would hear about a project was the public hearing notice.

Councilmember Kline asked if the City made the conditions run with the deed of the property.

Director Sullivan responded that the City doesn't record the conditions of approval.

Councilmember Kline stated that the City's conditions are useless after a person moves into their house.

City Attorney Taylor stated that the way the City's ordinance is structured, once the building permit is given for something that was subject to design review has final sign-off, that approval is no longer effective. The only exception is when a use permit or subdivision maps are required.

Councilmember Streit stated that the proposed ordinance would make the conditions run with the property.

Councilmember Bogosian stated that noticing should be added when someone pulls a building permit.

Vice Mayor King asked what other cities, like the Town of Los Gatos, do with conditions of approval.

Director Sullivan stated that he contacted the Town of Los Gatos and was told that with one exception, that being the color of houses on the hillsides, which are deed restricted, the conditions go away.

Councilmember Kline stated that this might fix future issues for five years, but past issues won't be affected because there is no law to uphold it.

Vice Mayor King opened the public hearing and invited public comments.

Tom Marantette addressed the Council with his opinion that conditions should be included in the deed. Mr. Marantette stated that he supported the five-year time frame. Mr. Marantette stated that the City should also control hardscapes.

Vice Mayor King asked Director Sullivan to comment on hardscapes.

Director Sullivan stated that the zoning code allows up to 45% of total site to be impervious if the property is zoned R-1-20,000. Referring to the property owned by Mr. Haas with the covered patio structure, his property is at 37% so that there is a great deal of room that could be covered by walkways or other impervious surfaces that would not be in violation of the law. Also, Director Sullivan pointed out that no building permit is required to have flat work.

David Mighdoll addressed the Council stating that he doesn't feel a time frame should be given on conditions of approval. Mr. Mighdoll stated that conditions should stay with the property until a change is requested whether it be 60 days or 60 years. He stated that other jurisdictions allow changes any time that a property owner wants a change. Mr. Mighdoll stated that other jurisdictions make the property owner go through the entire approval process again and requested that the City do a comprehensive review of what other cities do.

Mimi Frazier Mather referred to the City's "Notice of Intent" to approve an application for new residential construction – referring to the bottom of the application where it states that the proposal would be conditionally approved when minor modifications are requested unless there is evidence that the project is

architecturally incompatible with the neighborhood, interferes with views, privacy, solar accessibility or would create an adverse affect on the environment. Ms. Mather expressed her opinion that this is contradictory to what is actually occurring. Ms. Mather stated that she and her neighbors have seen a lot of changes in her neighborhood and now are looking to Council to make the right judgment on the code. Referring back to the Haas project, Ms. Mather stated that the bottom line is that this carport corresponds with exactly what he originally intended to do.

Bonnie Marantette asked when the ordinance would become effective if it were to be changed.

Vice Mayor King closed the public hearing.

Councilmember Kline stated that he has always believed conditions run with the life of the property. If a property owner goes through the long process of City approval of landscaping and the day after another person moves in and changes it; that is clearly wrong. Councilmember Kline stated that whether there is an absence in the City's ordinance or not, it is our responsibility to take care of the neighbors and protect their quality of life. Referring to the property on Ronnie Way, Councilmember Kline requested that this item be agendized because the City Council needs to make a decision regarding this property. Councilmember Kline stated that he would like to request that this item be continued to another Council meeting.

Councilmember Bogosian stated that he favors the ordinance instead of a deed restriction with a shorter timeframe, perhaps two years. Councilmember Bogosian stated that the City would be placing an undo burden on property owners if the timeframe is anything longer than two years.

Councilmember Streit stated that he supports the ordinance but noted that conditions should stay with the property forever. Councilmember Streit asked how the City could prevent a similar situation as Ronnie Way from happening prior to a new ordinance becoming effective.

City Attorney Taylor stated that the Council could bring this back as an urgency ordinance at the next meeting.

City Attorney Taylor stated that if a City wants to make conditions last forever the best possible way to do this is by a deed restriction.

Councilmember Kline suggested that two Councilmembers help draft the urgency ordinance.

KLIN/STREIT MOVED TO ADOPT RESOLUTION OF INTENT TO AMEND ARTICLE 16-05.035 RELATING TO THE ESTABLISHMENT OF A SPECIFIC PERIOD OF TIME THAT MODIFICATION OF BUILDING PLANS AND/OR DEVELOPMENT CONDITIONS MUST BE APPROVED THROUGH A NEW DESIGN REVIEW PROCESS; BRING ORDINANCE BACK TO THE NEXT MEETING AS AN URGENCY ITEM; APPOINT COUNCILMEMBER KLINE AND COUNCILMEMBER STREIT TO WORK WITH THE CITY ATTORNEY TO DRAFT THE URGENCY ORDINANCE. MOTION PASSED 4-0-1 WITH WALTONSMITH ABSENT.

6. **INSTALLATION OF SOLAR ELECTRIC GENERATING SYSTEM ON CITY OWNED BUILDINGS**

STAFF RECOMMENDATION:

Accept report and direct staff accordingly.

Joan Pisani, Recreation Director, presented staff report.

Director Pisani explained that as requested by Councilmember Kline, staff has researched the feasibility of installing solar electric generating systems on all or some of the City's facilities.

Director Pisani stated that Thomas Scott, Facilities Maintenance Supervisor, contacted three solar energy companies for preliminary analysis. Also PG&E was contacted for their input, and other cities participating in solar programs were surveyed.

Director Pisani stated that Akeena Solar Inc, from Los Gatos, completed a solar site survey of all Civic Center buildings in late October and submitted a preliminary feasibility analysis. From their analysis they felt that the Community Development/Engineering/Civic Theater wing of City Hall would be the ideal location to install a solar electric generating system. The current annual PG&E bill for this facility is approximately \$31,000 per year. The net price of a solar system for this building would be \$124,231, and the first year savings would be approximately \$7,000. With the savings increasing each year, based on conservative assumptions, the system would pay for itself, according to Akeena, in close to 13 years.

Director Pisani stated that two other companies, Uni-Solar and PowerLight, have been contacted, but neither have made site visits to Saratoga. PowerLight is currently working on a project for the City of Oakland at the airport. Uni-Solar, the third firm staff contacted, offers innovative solar roofing solutions and worked with several installation companies. Their solar electric generating systems vary and they provide innovative financial options. One option they offer is to involve third party ownership. The third party pays and owns the system and they receive the tax benefits and most of the revenue generated by the system. The city would receive a rebate each year of 10% off the utility bill. With the scenario of placing the solar system on the Community Development/Engineering/Civic Theater wing of City Hall, the City would receive approximately \$3,100 each year.

Director Pisani stated that staff has identified six cities that are currently exploring the feasibility of installing, or have installed, solar electric generating systems on municipal facilities.

Bill Scott, a representative from Akeena Solar, Inc., reported that he visited the various buildings that were owned by the City and the only roofs that would accommodate the solar panels were the Community Development/Engineering/Civic Theater wings of City Hall.

Mr. Scott noted that he had two financing ideas. Mr. Scott explained that the Town of Los Altos Hills recently designed a new building, which has a solar generating system on it, and was able to attract low interest financing through the State. Mr. Scott noted that a second financing option would be the concept of a third party investor.

Councilmember Kline suggested that staff contact the City's grant writer to see if there were any grants that could pay for this system.

Vice Mayor King thanked Director Pisani for her report.

ADHOC ASSIGNMENT REPORTS

Vice Mayor King reported the following information:

City/School AdHoc Committee – stated that she and City Manager Anderson have been appointed to the Los Gatos-Saratoga High School District Facilities Use Committee.

CITY COUNCIL ITEMS

Councilmember Kline noted that he would like to appeal a recent Planning Commission decision in regards to 20423 Seagull Way.

Councilmember Streit concurred with Councilmember Kline's request.

Further discussion regarding Ronnie Way was held among the City Council with Councilmember Kline requesting that this issue be agendaized.

In regards to this issue, Councilmember Bogosian stated that he feels everything has been said about this issue – the discussion doesn't need to be continued.

Vice Mayor King noted that she would like to continue this discussion in Closed Session.

OTHER

None

CITY MANAGER'S REPORT

None

ADJOURNMENT

Vice Mayor King stated that the City Council would reconvene to Closed Session in the Administration Conference Room at 9:30 p.m.

There being no further business Vice Mayor King adjourned the meeting at 10:00 p.m.

Respectfully submitted,

Ann Sullivan, CMC
Acting City Clerk