

**MINUTES  
SPECIAL MEETING  
SARATOGA CITY COUNCIL  
NOVEMBER 22, 2004**

Vice Mayor King called the Regular City Council meeting to order at 8:15 a.m.

**ROLL CALL**

PRESENT: Councilmembers Stan Bogosian, Norman Kline, Nick Streit, Vice Mayor Kathleen King  
ABSENT: Mayor Ann Waltonsmith  
ALSO PRESENT: Lorie Tinfow, Assistant City Manager  
Richard Taylor, City Attorney  
Cathleen Boyer, City Clerk  
Tom Sullivan, Community Development Director

**REPORT OF CITY CLERK ON POSTING OF AGENDA FOR NOVEMBER 22, 2004**

Cathleen Boyer, City Clerk, reported that pursuant to Government Code Section 54954.2, the agenda for the meeting of November 22, 2004 was properly posted on November 18, 2004.

**1. INTERIM URGENCY ORDINANCE**

**STAFF RECOMMENDATION:**

Consider and approve interim urgency ordinance imposing a moratorium on uses inconsistent with design review approvals.

Richard Taylor, City Attorney, presented staff report.

City Attorney Taylor explained that at its meeting of November 17, 2004 the City Council adopted a resolution of intent to amend the Saratoga Municipal Code to require that design review conditions and plan approvals remain in effect for a period of time beyond the construction of the project that led to the imposition of those conditions. City Attorney Taylor stated that this is intended to give greater force to conditions and plan changes that are required in response to neighborhood consultations that have taken place pursuant to recent City policy requiring such consultations.

City Attorney Taylor stated that the City Council expressed concern that until the new ordinance took effect, landowners with completed projects could undertake modifications to those projects without being subject to and limited by the approved plans and conditions of approval pursuant to design review processes, including public notification.

City Attorney Taylor stated that in order to limit this possibility, the City Council directed staff to prepare an interim ordinance that would preclude such development or work which effectively constitutes a modification of previously approved building plans and development conditions during the time the new long-term ordinance amendment is being prepared.

City Attorney Taylor that the Interim Ordinance before the Council this morning, requires compliance with prior design review conditions and plans for all properties in the City with a structure that was the subject of design review and that received final approval after January 1, 2004. Projects that would deviate from approved design review conditions and plans would be allowed, but generally only upon approval by the approving authority that issued the design review approval. The Community Development Director could approve projects on a property that had an administrative design review. Projects that had been the subject of Planning Commission design review would require approval by the Planning Commission

City Attorney Taylor explained that the Interim Ordinance includes findings setting forth the rationale and immediate need for the moratorium. Government Code section 65858(c) requires moratorium ordinances to contain findings of a current and immediate threat to the public health, safety, or welfare that would be addressed by adopting the moratorium. The Council may add findings to the proposed Interim Ordinance to include other findings regarding the need for a moratorium.

City Attorney Taylor explained that the findings also explain that the ordinance is not subject to CEQA because it falls outside the definition of a project in the CEQA Guidelines. Section 15378 of the Guidelines provides that a project is an action with potential for resulting in a direct or indirect physical change in the environment. Because the moratorium would not authorize any new land use and would be of a limited duration, it does not create the potential for a physical change in the environment. The findings note that even if the moratorium were to be considered a project it would be exempt from further review because it can be seen with certainty that there is no possibility that it may have a significant effect on the environment.

City Attorney Taylor explained that in Section 2 of the ordinance imposes the moratorium. This section provides that for any parcel including a structure that has been the subject of design review approval pursuant to Articles 15-45 or 15-46 of the Saratoga Municipal Code and that has received final approval from the Building Official on or after January 1, 2004, all new or modified structures, impervious surfaces, or landscaping (including changes to finish contours of the site as shown on the approved plans) built, installed, or otherwise implemented on or after November 22, 2004 must be authorized by the design review approval unless that approval has been modified as described above. The trigger date of January 1, 2004 was selected because it will ensure that the ordinance applies to the majority of structures approved following the City's new neighborhood consultation policy.

Councilmember Bogosian asked Director Sullivan how his staff would implement the interim ordinance.

Director Sullivan responded that his staff would use the assessor parcel maps, spreadsheets that are prepared showing all completed projects, and the HTE program, which shows final approvals from the Building Department.

Councilmember Kline asked if staff compared the City current practices with other cities.

Director Sullivan responded that he has not contacted other cities.

Vice Mayor King asked if anything could be done about the BBQ area the property owner has started to build.

Director Sullivan responded no, nothing could be done because a permit was issued for the BBQ.

MiMi Frazier Mather expressed her concern in regards to the situation on Ronnie Way.

Tom Marantette asked if the terraces in the front yard were approved in the landscape plan.

Director Sullivan responded that he didn't know.

A discussion took place in regards to approved landscaping plans and how this ordinance would affect property owners if they change the landscaping after approval.

David Mighdoll stated that he called other cities in the West Valley area and asked for their Design Review procedures and Conditions of Approval. Mr. Mighdoll briefly summarized his findings.

**STREIT/BOGOSIAN MOVED TO ADOPT INTERIM ORDINANCE THAT WOULD PROHIBIT FUTURE DEVELOPMENT OR WORK, WHICH IS INCONSISTENT WITH PRIOR DESIGN REVIEW.** MOTION PASSED 4-0-1 WITH WALTONSMITH ABSENT.

There be no further business Vice Mayor King adjourned the meeting at 8:50 a.m.

Respectfully submitted,

Cathleen Boyer, CMC