

**MINUTES
SARATOGA CITY COUNCIL
MARCH 2, 2005**

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 Aileen Kao, Nick Streit,
Ann Waltonsmith, Vice Mayor Norman Kline,
Mayor Kathleen King

ABSENT: None

ALSO Dave Anderson, City Manager

PRESENT: Lorie Tinfow, Assistant City Manager
Jonathan Wittwer, Assistant City Attorney
Cathleen Boyer, City Clerk
Michele Braucht, Administrative Services Director
John Livingstone, Interim Community Development Director
John Cherbone, Public Works Director
Joan Pisani, Recreation Director

REPORT OF CITY CLERK ON POSTING OF AGENDA FOR MARCH 2, 2005

Cathleen Boyer, City Clerk, reported that pursuant to Government Code Section 54954.2, the agenda for the meeting of March 2, 2005 was properly posted on February 24, 2005.

ORAL COMMUNICATIONS

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

Cheriel Jensen discussed the pesticide use in the Heritage Orchard.

Mitch Cutler pointed out that he has filed several complaints with the City regarding fences that are out of compliance and explained the issue regarding a hazardous ladder located at 14150 Big Basin Way.

Jack Mallory noted that a committee has been formed to save the North Campus.

Gay Crawford thanked the City Council for declaring Saratoga a "Colon Cancer Free Zone".

Citizen Ray updated the City Council on the Highway 9 Safety Improvement Project.

COMMUNICATIONS FROM COMMISSIONS

None

COUNCIL DIRECTION TO STAFF

Referring to Mr. Mallory's comments, Councilmember Waltonsmith asked if this could be added to the staff report coming back to the Council on March 16th as an additional option.

City Manager Anderson pointed out that he would be meeting with Mr. Mallory's committee next week.

In regards to Mrs. Jensen's comments, Councilmember Waltonsmith asked for a newsletter report from Director Cherbone.

ANNOUNCEMENTS

None

CEREMONIAL ITEMS

1. **PROCLAMATION DECLARING MARCH 2005 AS "RED CROSS MONTH"**

STAFF RECOMMENDATION:

Present proclamation.

Mayor King read the proclamation and noted that the Melinda Cervantes was unable to attend tonight's meeting.

Vice Mayor Kline briefly explained Measures A & B.

SPECIAL PRESENTATIONS

- 2 **PRESENTATION – MELINDA CERVANTES COUNTY LIBRARIAN RESOLUTION IN SUPPORT OF LOCAL LIBRARIES**

STAFF RECOMMENDATION:

Adopt resolution.

RESOLUTION: 05-011

KLINE/STREIT MOVED TO **ADOPT RESOLUTION SUPPORTING MEASURES A & B.** MOTION PASSED 5-0.

CONSENT CALENDAR

- 3A. **REVIEW OF CHECK REGISTER**

STAFF RECOMMENDATION:

Approve check register.

STREIT/KLINE MOVED TO **APPROVE CHECK REGISTER.** MOTION PASSED 5-0.

3B. **FISCAL YEAR 2005-2006 BUDGET DEVELOPMENT PROCESS**

STAFF RECOMMENDATION:

Accept and file report.

STREIT/KLINE MOVED TO **ACCEPT 2005-2006 BUDGET DEVELOPMENT PROCESS.** MOTION PASSED 5-0.

3C. **SARATOGA GATEWAY PROJECT – EXECUTION OF CONSTRUCTION CONTRACT**

STAFF RECOMMENDATION:

Move to authorize the City Manager to execute a construction contract with Golden Bay Construction in the amount of \$2,219,032; Adopt budget amendment resolution.

RESOLUTION: 05-013

STREIT/KLINE MOVED TO **AUTHORIZE THE CITY MANAGER TO EXECUTE A CONSTRUCTION CONTRACT WITH GOLDEN BAY CONSTRUCTION IN THE AMOUNT OF \$2,219,032; ADOPT BUDGET AMENDMENT RESOLUTION.** MOTION PASSED 5-0.

3D. **CIVIC THEATER SOUND SYSTEM PROJECT – AWARD OF BID**

STAFF RECOMMENDATION:

Move to declare Lloyd F. McKinney Associates, Inc. to be the lowest responsible bidder on the project.

Councilmember WaltonsSmith requested that item 3D be removed from the Consent Calendar.

Councilmember WaltonsSmith pointed out that the funds for this project came from the dollar surcharge on ticket sales.

WALTONSMITH/KLINE MOVED TO **DECLARE LLOYD F. MCKINNEY ASSOCIATES, INC. TO BE THE LOWEST RESPONSIBLE BIDDER ON THE PROJECT.** MOTION PASSED 5-0.

3E. **FIRST AMENDMENT TO THE EXISTING STORM WATER SYSTEM PROTECTION INSPECTION SERVICES**

STAFF RECOMMENDATION:

Authorize the City Manager to execute agreement on behalf of the City of Saratoga.

STREIT/KLINE MOVED TO **AUTHORIZE THE CITY MANAGER TO EXECUTE AGREEMENT ON BEHALF OF THE CITY OF SARATOGA.** MOTION PASSED 5-0.

3F. REVISED FIRST AMENDMENT TO THE SANTA CLARA VALLEY URBAN RUNOFF POLLUTION PREVENTION PROGRAM AGREEMENT

STAFF RECOMMENDATION:

1. Authorize the City Manager to execute the revised First Amendment to the Santa Clara Valley Urban Runoff Pollution Prevention Program Agreement (Agreement).
2. Authorize the City Manager to approve a change in the Program contracting/fiscal agent from the Santa Clara Valley Water District to one of the fourteen other Program co-permittees.

STREIT/KLINE MOVED TO AUTHORIZE THE CITY MANAGER TO EXECUTE THE REVISED FIRST AMENDMENT TO THE SANTA CLARA VALLEY URBAN RUNOFF POLLUTION PREVENTION PROGRAM AGREEMENT (AGREEMENT); AUTHORIZE THE CITY MANAGER TO APPROVE A CHANGE IN THE PROGRAM CONTRACTING/FISCAL AGENT FROM THE SANTA CLARA VALLEY WATER DISTRICT TO ONE OF THE FOURTEEN OTHER PROGRAM CO-PERMITTEES. MOTION PASSED 5-0.

3G. LEGAL SERVICES AGREEMENT - CITY ATTORNEY

STAFF RECOMMENDATION:

Authorize the Mayor to execute agreement with Richard Taylor, City Attorney.

STREIT/KLINE MOVED TO AUTHORIZE THE MAYOR TO EXECUTE AGREEMENT WITH RICHARD TAYLOR, CITY ATTORNEY. MOTION PASSED 5-0.

PUBLIC HEARINGS

4. APPEAL OF A PLANNING COMMISSION DECISION REGARDING 14111 PALOMINO WAY, WHICH REQUIRED MODIFICATIONS TO A WALLED OUTDOOR KITCHEN AND DECK, WHICH WAS CONSTRUCTED IN THE SIDE SETBACK

STAFF RECOMMENDATION:

Conduct the public hearing; Deny the appeal and adopt attached resolution, which upholds the Planning Commission decision which was adopted at the January 12, 2005 Planning Commission meeting.

Ann Welsh, Associate Planner, presented staff report.

Planner Welsh explained that the subject property located at 14111 Palomino Way contains a partially constructed deck with a proposed sink, gas grill, fireplace, pizza oven and icemaker. The deck area is enclosed with a privacy wall, which is at the closest point within 6 feet 6 inches of the property line. The privacy wall

according to the plans range from 8 feet at the lowest point to 10 feet at the corner fireplace, with the pizza over wall having a height of 13 feet as measured from the existing grade.

Planner Welsh noted that the height of the deck is shown on the plans as extending 4 feet above the existing grade. The dimensions of the deck are 38 feet long by 19 feet wide as depicted in the Plans prepared by Park Miller dated stamped 12/20/2004. The deck extends 20.75 feet from the existing house.

Planner Welsh stated that the deck construction was placed under stop work order in September 2004 when neighbors, the appellants, filed a formal complaint with the Building Department about the wall and deck being constructed in close proximity to their mutual property line. At that time the wall was about 4 feet higher than the plans currently depict and a heavy wooden trellis was constructed about two feet above the wall. The owners were given permission to remove the trellis and a portion of the wall in order to mitigate some of the non-conformity.

On November 24, 2004, Planner Welsh explained that the property owner met with the Community Development Director and indicated that the deck has always existed and had been legally permitted by a previous permit and that the current improvements were built upon an existing permitted deck.

On the basis of this information, Planner Welsh noted that the Director made a determination that the deck was a legal non-conforming structure that had been permitted. The decision was that if the height of the wall would be lowered and the trellis removed, the revised plans would be approved as an unenclosed garden structure upon application for a building permit. The Director then informed the appellant via e-mail, that the modified version of the project was approved as an unenclosed garden structure and that they had a right to appeal the decision. They filed an appeal on November 24, 2004.

Planner Welsh explained that in researching the background for this report, the files contained one relevant permit. A permit for exterior deck was issued in 1993. The plans for this deck show the deck extending from the existing house 10 feet 1- inches to the north. Thus, the 1993 plans depict a deck in the same location as the current deck but the dimensions of the deck currently are approximately 10 feet longer than the deck permitted 1993. The 1993 deck permit was issued but there was no final inspection on the deck and this permit expired. The Planning and Building Department files do not have any documentation to support the permitting of the additional 10 feet, which did not appear on the 1993 plans. The applicant has provided aerial photos of the site but staff has not been able to make any conclusive determinations based on these photos regarding the legality of the existing deck.

Planner Welsh stated that on the basis of the files it appears that the deck was extended, at some point in time, approximately 10 feet longer than the 1993 permit. This extension does not conform to the code since only decks, which are not more than 4 feet above the finished grade, and extend 4 feet into the side yard setback. The research suggests that conclusion that the Administrative Decision was based upon erroneous information.

Planner Welsh explained staff's recommendations to the Planning Commission including that the Director's decision in 2004, that the walled deck be an unenclosed garden structure permitted by Section 15-80.030 (e) of the City Code.

Planner Welsh briefly highlighted the Planning Commissioner's comments that were made at the public hearing held on January 12, 2005. Planner Welsh stated that several Commissioners were of view that the structure cannot be categorized as an unenclosed garden structure since it does not serve the same or similar function as any unenclosed garden structures which are "Gazebos, arbors, and fountains" (Section 15-80.030 (e)).

Planner Welsh reported that the Planning Commission voted 6-0 to accept the staff recommendation as presented in Resolution 05-005. Since that time some Commissioners have indicated that the resolution did not fully reflect their intent because the resolution did not address the question of whether the proposed wall structure should be interpreted as an unenclosed garden structure. Resolution 05-005 did not require the wall to be lowered to 6 feet, which would be required if the use is not interpreted to be an unenclosed garden structure.

Planner Welsh stated that in light of new information on past permits, staff recommends that the appeal be upheld, that the Director's decision be modified to require that the plans be revised. The resolution recommended by staff required the following revisions to the plans:

1. The property owner shall comply with the recommendations in the Arborist Report and make the necessary design revisions.
2. The portion of the deck which encroaches more than 4 feet into the side yard should be lowered to comply with Section 15-80.010(c) of the Zoning Ordinance which allows that decks which are not above finished grade may be constructed in any side yard.
3. The barbeque should be removed out of the 20 foot side yard setback in accordance with the Code Section 15.80.030 which requires that permanent barbeques be located no more than 6 feet from their rear property line and be not more than 4 feet in height.
4. The "optional cut out" which is depicted on Sheet 3 of the plans should be removed from the plans and is prohibited in order to maximize privacy for the neighbors.

In regards to the current appeal, Planner Welsh noted that the appellant seeks a decision from the City Council that denies the structure as an unenclosed garden structure and requires the revisions to the plan that would be dictated by that determination.

Planner Welsh explained that an alternative action could be to revise the Planning Commission's decision from January 24, 2005 by recommending adoption of a new resolution, which reflects the issues raised by the Planning Commission at the public Hearing. If the City Council votes to deny the wall structure as an unenclosed garden structure this would result in the structure being in violation of the Code

Mayor King opened the public hearing.

James Christensen noted that he has lived in Saratoga for 20 years. Mr. Christensen stated that this project has negatively impacted his family and guests. Mr. Christensen stated that his attorney, Joe Budesky, would speak on behalf of his family.

Joe Budesky stated that he represented the Christensen's. Mr. Budesky briefly highlighted the background of this project. Mr. Budesky stated that this project is not an unenclosed garden, ornamental or decorative structure. Mr. Budesky stated that this structure is an outdoor kitchen. Therefore, Mr. Budesky pointed out that this project cannot lawfully extend to within 6.5 feet of the side yard property line. Mr. Budesky continued to explain why this structure cannot be classified as an enclosed outdoor garden structure. In regards to the fence, Mr. Budesky stated that whether the structure sitting on top of the deck is defined as a fence or a "privacy wall" it is in excess of the 6-foot height limit and is unlawful. Mr. Budesky contested that this project may not lawfully encroach into the side yard setback area. In order for this project to comply with the City's Municipal Code, the deck that is at least in part 4 feet above finished grade with a U-shaped fence/wall, the BBQ, the fireplace, and the kitchen sink must be removed. In regards to the pizza oven, Mr. Budesky stated that the oven must be reduced in height to comply with City Code. In conclusion, Mr. Budesky stated that the former Community Development Director abused his discretion and permitted the Rossi's to violate the City Code.

Ron Rossi noted that he is the owner of the property located at 14111 Palomino Way. Mr. Rossi noted that the structure has been the same size and place since 1980. Mr. Rossi stated that he would do the following to mitigate the Christensen's concerns:

- Record a permanent landscape covenant
- Remove the stovetop, icemaker and barbeque from the exterior wall of the deck, the adjacent fireplace shall be placed along the southeastern portion of the structure adjacent to the stairs
- Install a gas fire place instead of a wood burning fire place
- Use any suitable material on wall facing the Christensen's house
- Would not use the area past 10:00 p.m. without prior written approval from the neighbors
- Would eliminate the "optional cut out" along the exterior wall
- Plant and continue to maintain landscaping plan in the area between the unenclosed accessory structure and the property line

Mr. Budesky stated that the bottom line here is that a portion of the Ross's structure must be removed. The structure is not in compliance.

Mr. Christensen noted that Mr. Rossi has never addressed the negative impacts of his structure that has had on his family. Mr. Christensen noted that the City needs to honor the City Code and design guidelines.

Mayor King closed the public hearing.

Councilmember Waltonsmith asked what the definition of an unenclosed garden structure was.

Attorney Wittwer cited City Code Section 15-80.030.

Councilmember Streit noted that he has been on the City Council for almost 7 years and it still upsets him when these types of issues come before the City Council. Councilmember Streit stated that this evening the Council would have to make a decision that would not make everyone happy. Councilmember Streit noted that he cannot make any finding to overrule the Planning Commission's decision. Councilmember Streit noted that he would like to support the staff recommendations and noted that Mr. Rossi's suggestions should also be added to the resolution except his offer of time constraints for the use of his structure.

Councilmember Waltonsmith note that she concurred with Councilmember Streit.

Councilmember Kao noted that after a decision is made she hopes that these neighbors can still live next to each other.

Mayor King noted that she also concurred with Councilmember Streit except she doesn't care if the fireplace is gas or wood burning.

KLIN/WALTONSMITH MOVED TO DENY THE APPEAL AND DIRECT STAFF TO RETURN TO COUNCIL AT A FUTURE MEETING WITH A RESOLUTION UPHOLDING THE PLANNING COMMISSIONS DECISION INCLUDING STAFF RECOMMENDATIONS # 1, 3, AND 4 AND MR. ROSSI'S SUGGESTIONS (LISTED IN MINUTES) EXCEPT THE OFFER TO ADHERE TO TIME CONSTRAINTS ON THE USE.
MOTION PASSED 5-0.

OLD BUSINESS

None

NEW BUSINESS

5. EL QUITO NORTH NEIGHBORHOOD TRAFFIC MANAGEMENT PROGRAM

STAFF RECOMMENDATION:

Accept plan and adopt resolution.

RESOLUTION: 05-012

Lorie Tinfow, Assistant City Manager, presented staff report.

Assistant City Manager Tinfow explained that the City established a Neighborhood Traffic Management Program (NTMP) in 2001. This program was updated in 2004.

Assistant City Manager Tinfow noted that the neighborhood roughly bound by Cox, Saratoga Avenue and Quito Road initiated the NTMP process some time ago and the study area is referred to as El Quito North. Their progress was delayed until the El Quito South NTMP was completed and the NTMP process updated.

Assistant City Manager Tinfow noted that in spring 2004, all petitions from the study area were submitted and Phase I of the process began. Traffic data was collected and shared with the neighborhood and a number of meetings were held.

Assistant City Manager Tinfow stated that on September 9, 2004, the Public Safety Commission (PSC) considered whether or not to allow the neighborhood to proceed into Phase II.

Assistant City Manager Tinfow noted that after careful consideration the PSC approved Phase I and agreed to include exploring “Category I Driver Awareness Program” in Phase III. The mixture of Phase I and Phase II components would yield the best results.

Assistant City Manager Tinfow explained that since September, the street representatives have been working to build consensus and collect the required signatures for the traffic calming measures. The representatives were successful in meeting the level of support in order to move forward with the NTMP.

Tom Clerkin noted their goal was to improve the safety of their streets by reducing excessive speed and non-residential traffic while maintaining their neighborhood character. Mr. Clerkin stated that on average 73% approved the improvements. Mr. Clerkin stated that pedestrians, people in wheelchairs, bicyclists, runners, exercisers and vehicles must share the streets – which have no sidewalks. Mr. Clerkin thanked Michael Bustamante, Lorie Tinfow and Sohrab Rashid for their diligent efforts to improve their neighborhood. Mr. Clerkin requested that the City Council approve, fund, and implement the proposed improvement plan.

Vita Kent requested that the City council approve the NTMP for El Quito South.

STREIT/WALTONSMITH MOVED TO ACCEPT EL QUITO NORTH NTMP AND ADOPT BUDGET RESOLUTION. MOTION PASSED 5-0.

6. **FACILITIES FIVE YEAR MASTER PLAN**

STAFF RECOMMENDATION:

Accept report and adopt Master Plan.

City Manager Anderson requested that this item be postponed to a future date.

Consensus of the City Council to postpone this item to a future date.

7. **ASSISTANT ENGINEER VACANCY**

STAFF RECOMMENDATION:

Designate position as “essential” and Authorize City Manager to fill position.

Dave Anderson, City Manager, presented report.

City Manager Anderson reported that on February 18, 2005, Assistant Engineer Morgan Kessler submitted his letter of resignation effective May 19, 2005. He has accepted a position with the City of Prescott Arizona.

City Manager Anderson briefly highlighted the duties associated with this position and requested that the City Council designate this position as “essential” and authorize staff to fill the vacancy.

WALTONSMITH/KLINE MOVED TO DESIGNATE ASSISTANT ENGINEER POSITION AS ESSENTIAL AND AUTHORIZE CITY MANAGER TO FILL POSITION. MOTION PASSED 5-0.

ADHOC & AGENCY ASSIGNMENT REPORTS

Mayor Kathleen King reported the following information:

West Valley Mayors and Managers Association – discussed the proposed annexation policy from the County and how public safety contracts are becoming more of cities budgets.

Vice Mayor Norman Kline had no reportable information.

Councilmember Nick Streit reported the following information:

West Valley Solid Waste Joint Powers Association – in the process of developing the RFP for collection services.

Councilmember Aileen Kao reported the following information:

DeAnza Trail AdHoc – explained that was she would have to resign from this AdHoc because she lives within 500 feet of the trail.

Councilmember Ann Waltonsmith reported the following information:

Sister City Liaison –announced that there were still a few spots open for their fall trip.

CITY COUNCIL ITEMS

None

OTHER

None

CITY MANAGER’S REPORT

None

ADJOURNMENT

There being no further business Mayor King adjourned to Closed Session at 9:20 p.m.

**CLOSED SESSION – ADMINISTRATIVE CONFERENCE ROOM, 13777
FRUITVALE AVENUE**

ANNOUNCEMENT OF CLOSED SESSION ITEMS

Conference With Legal Counsel – Threatened Litigation: Significant exposure to litigation pursuant to Government Code section 54956.9(b): (1 potential case)

Conference With Legal Counsel – Existing Litigation:

(Government Code section 54956.9(a))

Name of case: Hinz v. City of Saratoga v (Santa Clara County Superior Court
Case No. 105CV034746)

ADJOURNMENT

There being no further business Mayor King adjourned Closed Session at 9:45 p.m.

Respectfully submitted,

Cathleen Boyer, CMC
City Clerk