

**MINUTES
SARATOGA CITY COUNCIL
JULY 6, 2005**

The City Council met in Closed Session in the Administrative Conference Room, 13777 Fruitvale Avenue, at 6:30 p.m.

Conference With Legal Counsel – Existing Litigation (Gov't Code Section 54956.9(c): (1 case) – Thompson Pacific Construction v. City of Saratoga (Santa Clara County Superior Court Action No. 104 CV021639)

Conference With Legal Counsel – Anticipated Litigation
Significant exposure to litigation (Section 54956.9(b)) (1 case)

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
Richard Taylor, City Attorney
Cathleen Boyer, City Clerk
Michele Braucht, Administrative Services Director
John Livingstone, Interim Community Development Director
John Cherbone, Public Works Director

REPORT OF CITY CLERK ON POSTING OF AGENDA FOR JULY 6, 2005

Cathleen Boyer, City Clerk, reported that pursuant to Government Code Section 54954.2, the agenda for the meeting of July 6, 2005 was properly posted on June 28, 2004.

ORAL COMMUNICATIONS

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

Citizen Ray discussed his concerns in regards to Highway 9 safety.

COMMUNICATIONS FROM BOARDS AND COMMISSIONS

Phylis Ballingall noted that she was a member of the Heritage Preservation Commission. Commissioner Ballingall updated the City Council on the status of the four applications that have been sent to the National Registry for historic designation.

Susie Nagpal, Chair/Planning Commission noted that the City Council and Planning Commission held a Joint Meeting earlier this evening to discuss various issues.

ANNOUNCEMENTS

Jack Mallory described the activities that took place during the Independence Day Observance that held on Monday, July 4, 2005, at Azule Park. Mr. Mallory stated that approximately 400 people attended the event. Mr. Mallory noted that volunteers handed out ice cream and water. Mr. Mallory thanked everyone who volunteered their time for this event.

Mayor King thanked Mr. Mallory for the event.

CEREMONIAL ITEMS

1A. COMMENDATION HONORING WINDERMERE SILICON VALLEY PROPERTIES

STAFF RECOMMENDATION:

Present commendation.

Mayor King read the proclamation and presented it to Gayle and Janet Glew, owners of the Saratoga Windermere Office and Katie Kane, lead person for the "Community Service Day" event.

1B. COMMENDATION HONORING ORCHARD SUPPLY HARDWARE

STAFF RECOMMENDATION:

Present commendation.

Mayor King read the proclamation and presented it to Rick Saunders, Orchard Supply Hardware/Marketing Division.

1C. PROCLAMATION DECLARING THE MONTH OF JULY 2005 "PARKS AND RECREATION MONTH"

STAFF RECOMMENDATION:

Present Proclamation.

Mayor King read the proclamation and presented it to Joan Pisani, Recreation Director and John Cherbone, Public Works Director.

SPECIAL PRESENTATIONS

None

CONSENT CALENDAR

2A. CITY COUNCIL MINUTES – JUNE 15, 2005

STAFF RECOMMENDATION:

Approve minutes.

STREIT/KLINE MOVED TO **APPROVE MINUTES OF JUNE 15, 2005.**
MOTION PASSED 5-0.

2B. REVIEW OF CHECK REGISTER

STAFF RECOMMENDATION:

Approve check register.

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

2C. AMEND CONTRACT FOR IT SUPPORT WITH CITY OF PALO ALTO

STAFF RECOMMENDATION:

Authorize City Manager to execute amended contract.

STREIT/KLINE MOVED TO **AUTHORIZE CITY MANAGER TO EXECUTE AMENDED CONTRACT IT SUPPORT WITH CITY OF PALO ALTO**. MOTION PASSED 5-0.

2D. NOTICE OF COMPLETION - 2004-05 PAVEMENT MANAGEMENT PROGRAM

STAFF RECOMMENDATION:

Accept Notice of Completion.

City Attorney Taylor requested that this item be pulled from the agenda and rescheduled.

Consensus of the Council to support City Attorney Taylor's request.

PUBLIC HEARINGS

None

OLD BUSINESS

3. REVIEW OF DRAFT MASTER PLAN FOR THE DE ANZA TRAIL

STAFF RECOMMENDATION:

Accept and direct staff accordingly.

Councilmember Kao recused herself from this item stating that she lives within 500 feet of the project.

John Cherbone, Public Works Director, presented staff report.

Director Cherbone provided a brief background of the project.

Director Cherbone noted that the location of the trail within the PG&E right-of-way was constrained by two factors: 1) a requirement that the trail be a minimum of 25 feet from the center of the railroad tracks, and 2) there was not sufficient clearance between the PG&E towers and the common PG&E/UPRR right-of-way line for a 12 foot wide dual use trail. The constraint of the PG&E towers requires that the bicycle portion of the path (8 feet wide) be routed around the towers.

Director Cherbone explained that the continuity of the trail was also limited by two right-of-way constraints: 1) there are two adjacent private properties near Cox Avenue where PG&E does not have right-of-way, and 2) PG&E does not have right-of-way across the property owned by San Jose Water Property, which is located adjacent to the Cox Avenue County Fire Station. These right-of-way constraints split the trail into two usable segments.

Director Cherbone noted that on March 3, 2004 the City Council directed staff to form a task force to explore the feasibility of improving the trail along the PG&E right-of-way and to develop a master plan. In addition, staff was directed to hire a design consultant to facilitate the process. Subsequently, at the June 2, 2004 City Council meeting, Council approved a professional services agreement with AN West to facilitate the master plan phase of the project.

Director Cherbone explained in detail the Draft Master Plan for the De Anza Trail.

Director Cherbone noted that the current construction costs estimate is \$1,895,317, which includes a \$100,000 line item for screening and other mitigation necessary for adjacent residents. The estimate for yearly maintenance is estimated at \$30,138 per year.

Director Cherbone pointed out that a series of Task Force and Community Meetings were held. Many comments and concerns were raised at the various meetings with additional comments received via email and direct mail. The main concerns raised from the public, include, but not limited to:

- Security Issues
- Privacy
- Potential Decline in Property Values
- Construction and Maintenance Costs

Director Cherbone explained that the final steps to complete Phase 1 is to incorporate City Council comments into the Master Plan and to complete the Environmental Document in order to begin the required 20-day public comment period. Phase 1 is scheduled to conclude in September with City Council voting on the Final Master Plan and Environmental Document, and making the determination whether to move forward with Phase 2-Design and Construction.

Director Cherbone stated that a direct mailing to nearby residents of the proposed trail was sent notifying them of both the Council Site Visit and tonight's subsequent City Council meeting.

Referring to the proposed parking lots, Vice Mayor Kline asked who suggested them because they weren't in the original plan.

Director Cherbone responded that the Task Force suggested the parking lots.

Vice Mayor Kline asked if staff has consulted with PG&E to see if the trail could go under the towers instead of jutting out around them.

Director Cherbone responded that he hasn't consulted PG&E yet, but feels that they would probably be opposed to the trail going under the towers for safety reasons.

Mayor King asked why the trail would be made from decomposed granite.

Director Cherbone explained that decomposed granite looks more natural and still meets VTA's requirements as a "multi use all weather trail".

Mayor King asked if VTA would pay for the Master Plan even if the City decided not to go forward with construction.

Director Cherbone responded yes.

Councilmember Waltonsmith stated that some residents were concerned that the City was wasting money by developing trails in segments.

Director Cherbone responded that the City has a Trails Master Plan. Director Cherbone noted that currently there are several gaps throughout the City.

Mayor King noted that there were several people who wanted to speak on this item.

Dr. Bill Johnson commented that he feels this project consists of two trails that go nowhere. Dr. Johnson stated that the proposed length of the trail is inappropriate for cyclist. Dr. Johnson pointed out that the proposed plan has no provisions for emergencies. Dr. Johnson stated that he feels that this project is a misuse of VTA funds.

Mike Gilbert thanked the City Council and the Task Force for their time and effort on this project. Mr. Gilbert stated that the trail is already heavily used and any improvements would be welcomed. Mr. Gilbert pointed out that the proposed trail would be good for the elderly and disabled. Mr. Gilbert stated that he supports the proposed project.

Robert McBride asked if the changes to the plan have been submitted to and approved by the VTA.

Eric Bracher requested that the project be terminated.

Jim Stallman stated that he currently enjoys using this corridor and supports the proposed project.

Anne Sanquini noted that supports the proposed project.

Gilbert Johnson asked why the second trail segment was still on the Master Plan documents. Mr. Johnson stated that he feels the City left it on so the trail would look more complete.

Anne Ng stated that she is a Cupertino resident and a trail enthusiast. Ms. Ng stated that this afternoon she attended the Site Visit and once the neighbors found out she wasn't a Saratoga resident they ordered her to leave. Ms. Ng encouraged the City Council to move forward with this project, which in the future could possibly link up with other trails.

Cecilia Bulich noted that she is against this project and requested that the Council leave the trail as is. Ms. Bulich stated that the City should wait to develop the trail when the UPRR goes away.

Nikola Miljevich noted that his family has been in Saratoga for over five generation and during that time they have watched Saratoga change – some good changes and some bad. Mr. Miljevich asked who was going to maintain the trail and where would the money come from.

Bill Elhoff noted that he lived close to Congress Springs Park and his home has been vandalized several times. Mr. Elhoff stated that the trail is unsafe near the PG&E towers because of the EMF.

Richard Brown stated that the trail should be left as is and noted that he feels it is a misuse of funds.

Jeffrey Pugh stated that he is astounded that anyone on the City Council could support this project especially in light of recent budget cuts.

Mike Nichimoto stated that they recently moved to their home and noted that their backyard directly abuts the trail. Mr. Nichimoto stated that if the proposed project moves forward the noise on the trail would increase. Mr. Nichimoto stated that he feels the cost of the project is too high and expressed his concerns regarding the safety of a trail near a railroad track.

Julie Nichimoto noted that if the trail is developed anyone who uses it would be able to look into their kitchen.

Sally O'Hearn stated she is opposed to the project.

Rita Witmer recapped previous City Council comments regarding this project. Ms. Witmer stated that the Council at one point agreed that if the neighborhood opposed the project – they would withdraw the application from VTA.

Al Castro noted that he would not have purchased his house if he knew about the proposed project. Mr. Castro stated that the proposed trail infringes on his privacy.

Eric Grube stated that he does not support the proposed project.

Diane Reese noted that her house directly abuts the trail and noted that she supports the proposed project. Ms. Reese stated that this is an opportunity to preserve open space.

William Brooks noted that he supports the proposed project.

Bill Witmer noted that he was a member of the Task Force. Mr. Witmer noted that after several requests to VTA he's finally received a copy of the application the City submitted for the project. Mr. Witmer stated that within the pages that he has read, the City made false statements.

Lois McPherson noted that she has lived in Saratoga for 44 years. Ms. McPherson stated that if the trail were developed it would bring more outside people to Saratoga.

Bill Cooper noted that he lives on Mt. Eden Road. Mr. Copper stated that when people utilize a trail they don't look into windows and backyard because they are concentrating on the trail. Mr. Cooper stated the he supports the proposed project.

Phil Peterson requested that the trail be left as is.

Donna Poppenhagen noted that in 38 years living near the trail there has never been any problems. Ms. Poppenhagen supported making the trail safer.

Brete Bigley pointed out that there is a lot of opposition to the trail and recommend that the Council withdraw the project from VTA. Mr. Bigley stated that developing the trail would increase crime, loitering, and traffic.

Jeanne Carter noted that she has mixed feelings in regards to the proposed project. Ms. Carter stated her concern is how the Sheriff's Office would patrol the trail. Ms. Cater noted that she likes the decomposed granite-it would reduce the noise.

Francis Killbrew noted that she supported the proposed plan if it clean up the trail , improved the surface to make it safer, and was patrolled regularly by the Sheriff's Office. Ms. Killbrew stated that she doesn't know if developing the trail would increase or decrease traffic in her neighborhood.

Citizen Ray commented on the PG&E towers and stated that open space needs to be preserved.

Mayor King thanked everyone for their comments.

Director Cherbone explained that this evening Council would need to decide to either finish Phase I, which is the feasibility study and is 80% complete, or discontinue the project.

Councilmember Streit noted that he supported finishing the feasibility study and then submitting it to VTA for review.

Vice Mayor Kline noted that he sees a lot of problems with the proposed trail. Vice Mayor Kline noted that this evening the neighbors articulated their concerns very well. Vice Mayor Kline stated that he doesn't support going around the PG&E towers for safety reasons and doesn't support parking lots.

Vice Mayor Kline noted that he does support finishing the feasibility study and encourage the residents to attend the VTA hearings when this project is agendized on their calendar.

Mayor King stated that she supports finishing the feasibility study and supports the proposed parking.

Councilmember Waltonsmith noted that it is no secret that she supports the project. Councilmember Waltonsmith stated that she supports finishing the feasibility study.

Consensus of the City Council to direct staff to finish the feasibility study on the De Anza Trail.

Mayor King declared at 10-minute break at 9:45 p.m.

Mayor King reconvened the meeting at 9:55 p.m.

4. **DISCUSSION REGARDING THE FORMATION OF A COUNCIL AD HOC TO EXPLORE USES FOR CITY OWNED PROPERTY LOCATED AT 19848 PROSPECT ROAD**

STAFF RECOMMENDATION:

Discuss the formation of a Council Ad Hoc to explore uses of property located at 19848 Prospect Road.

John Cherbone, Public Works Director, presented staff report.

Director Cherbone explained that Councilmember Waltonsmith and Councilmember Kao requested that this item be agendized to discuss the formation of a Council Ad Hoc Committee to explore uses of the City owned property located at 19848 prospect Road.

Charles Butterfield noted that he was the owner of Butterfield Real Estate Firm. Mr. Butterfield suggested that the City consider sale and partial lease back to a church or school. Mr. Butterfield stated that he recently had a group that was interested in this proposal, but unfortunately the sanctuary was too small for their needs. Mr. Butterfield stated that he does have another group interested in the property.

John Feemster noted that he was representing SASCC. Mr. Feemster stated that they would gladly move to the property located at 19848 Prospect Road. Mr. Feemster stated that if the City moves forward with the sale of the property, SASCC would hope to be allowed to share space with the proposed addition to City Hall and be considered in the discussions regarding the use of proceeds from the sale.

Ed Grabowy noted that he was representing “Citizens to Create Public Space” formally known as “Citizens to Save the North Campus”. Mr. Grabowy requested that the City reconsider selling the property located at 19848 Prospect Road. Mr. Grabowy stated that the citizens have spoken and they support the property being used for community purposes. .

Jack Mallory thanked the Council for their consideration on this item.

Councilmember Streit stated that when he was Mayor and the City purchased the property the public said the City should have never purchased the property and now the public is saying the Council shouldn’t sell the property. Councilmember Streit stated that he doesn’t want to continue discussing this issue and would not support another Ad Hoc Committee.

Vice Mayor Kline stated that he concurred with Councilmember Streit. Vice Mayor Kline stated that if someone wants to pay a fair price for the property he’d sell it.

Councilmember Kao noted that she would like to work with the citizens to find a way to purchase the property.

Mayor King briefly highlighted the original intent of the property and noted that if a group approached the City 36 months ago to purchase the property the City would have saved over \$70,000 on the Sheriff’s Office departure from the City. Mayor King stated that the City doesn’t have the funds to keep the property and turn it into a community center- money needs to be spend on roads and infrastructure. Mayor King stated that if Councilmembers Kao and Waltonsmith want to work with the residents on their own time they are free to do so-without staff support.

Consensus of the City Council that an Ad Hoc Committee would not be formed to explore uses of the property located at 19848 Prospect Road.

5. **DISCUSSION REGARDING THE FUTURE USE OF FUNDS FROM THE PROCEEDS OF THE SALE OF CITY OWNED PROPERTY LOCATED AT 19484 PROSPECT ROAD**

STAFF RECOMMENDATION:

Accept report and provide direction to staff regarding the future use of funds from the proceeds of the sale of City owned property located at 19848 Prospect Road.

John Cherbone, Public Works Director, presented staff report.

Director Cherbone stated that Mayor King agendized this issue in order to begin the discussion regarding the future use of funds from the proceeds of the sale of the City owned property located at 19848 Prospect Road.

Director Cherbone noted that it could be conservatively assume that the City will be able to sell the property for the purchase price of \$4.5 million. Most likely the property would sell in the range of \$4.5 to \$7.5 million.

Director Cherbone noted that it is anticipated that there will be public discussion regarding the future use of the proceeds from the sale and it would be productive to begin discussing the public process.

Vice Mayor Kline noted that he felt it was too early to discuss the use of the proceeds from the sale of the Prospect Road property.

Councilmember Kao asked Director Cherbone where he got the estimates on the value of the property.

Director Cherbone explained that he worked with local developers to estimate the value of the property.

Mayor King noted that she didn't agree with the appraisal that was done on the property when the City purchased it but does support Director Cherbone's estimates. Mayor King noted that she supports using the interests from the from the proceeds should be used for infrastructure

Councilmember Streit stated that the proceeds should be used to replenish the reserves and for infrastructure.

Vice Mayor Kline stated that the proceeds should not be used for operating expenses.

Councilmember Kao noted that she would support using the proceeds for the good of the community.

Councilmember Waltonsmith stated that she felt it was too early to discuss the use of the proceeds.

Consensus of the City Council to agendize this item when the property has been sold and the City has the funds.

NEW BUSINESS

6. POSSIBLE REDIRECTION OF COUNCIL/COMMISSION STIPEND

STAFF RECOMMENDATION:

Accept report and direct staff accordingly.

City Attorney Taylor requested that this item be pulled from the agenda and rescheduled.

ADHOC & AGENCY ASSIGNMENT REPORTS

Mayor Kathleen King

Hakone Foundation Liaison
Santa Clara County Cities Association
SASCC
West Valley Mayors and Managers Association

Vice Mayor Norman Kline reported the following information:

Library Joint Powers Association – discussing several lawsuits that have been filed against the JPA in regards to the last ballot measure
SCC Cities Association-Joint Economic Development Policy Committee (JEDPC) – discussing standardizing permitting system throughout Santa Clara County.

Councilmember Nick Streit reported the following information:

West Valley Solid Waste Joint Powers Association – moving forward with the preparation of the RFP for the disposal contract.
West Valley Sanitation District – continued controversy over the price of the sewer system in the Town of Los Gatos.

Councilmember Aileen Kao had no reportable information.

Councilmember Ann WaltonSmith reported the following information:

Sister City Liaison – preparing for the student exchange in August.

CITY COUNCIL ITEMS

Councilmember Streit explained the current preparation of the RFP for the West Valley Solid Waster JPA disposal contract. Councilmember Streit stated the subcommittee members agreed that City official couldn't have any outside contact with anyone who may submit an RFP. Councilmember Streit stated that each member City has been requested to adopt a resolution agreeing that there shall be no outside contact.

Consensus of the Council to support Councilmember Streit's request.

OTHER

None

CITY MANAGER'S REPORT

None

ADJOURNMENT

There be no further business Mayor King adjourned the meeting at 11:00 p.m.

Respectfully submitted,

Cathleen Boyer, CMC
City Clerk