

MINUTES

SARATOGA CITY COUNCIL SEPTEMBER 17, 2008

The City Council met in Closed Session in the Administrative Conference Room, 13777 Fruitvale Avenue, at 5:30 p.m.

ANNOUNCEMENT OF CLOSED SESSION

PUBLIC EMPLOYEE PERFORMANCE EVALUATION (Gov't Code 54957)
Title: City Attorney

MAYOR'S REPORT ON CLOSED SESSION

Mayor Waltonsmith announced there was no reportable information.

Mayor Waltonsmith called the Regular City Council meeting to order at 7:00 p.m. and invited a Boy Scout Troop that was in attendance to lead the Pledge of Allegiance.

ROLL CALL

PRESENT: Councilmembers Aileen Kao, Jill Hunter, Kathleen King, Vice Mayor Chuck Page, Mayor Ann Waltonsmith

ABSENT: None

ALSO PRESENT: Dave Anderson, City Manager
Richard Taylor, City Attorney
Ann Sullivan, Acting City Clerk
Mary Furey, Administrative Services Director
John Cherbone, Public Works Director
John Livingstone, Community Development Director
Michael Taylor: Recreation Director
Chris Riordan, Senior Planner
Crystal Morrow, Administrative Analyst II
Kate Bear, City Arborist

REPORT OF CITY CLERK ON POSTING OF AGENDA FOR SEPTEMBER 17, 2008.

Ann Sullivan, Acting City Clerk, reported that Pursuant to Gov't. Code 54954.2, the agenda for this meeting was properly posted on September 12, 2008.

ORAL COMMUNICATIONS

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

Vibha Gaitonde – addressed the Council regarding the Use Permit fee for the installation of a generator on her property and asked the Council to consider waiving the fee.

Jack Smith – addressed the Council regarding noise concerns at the Saratoga High School. He stated the POP Warner football games generate noise on Sundays from 9:00 a.m. to 6:00 p.m. and that many of the teams playing are from areas outside of Saratoga.

Margaret Smith – expressed her noise concerns regarding the Pop Warner football games at Saratoga High School on Sundays.

Jack Mallory – addressed the Council regarding the 2009 Fourth of July celebration in Saratoga and asked the Council for assistance in finding a volunteer to chair this event or for the City to organize this event.

Betty Peck – addressed the Council on the demonstration garden that was created in 1972. She also presented a copy of the last garden newsletter which contained an article written by Mary Ann Swan, Chair of the Garden Committee at that time. She noted Mary Ann Swan is now Director of the Saratoga Day Care and has created a small garden as part of the learning curriculum for the children attending the daycare. She also commented that many people were sad when the demonstration garden plot that existed for 15 years, and that the City paid \$1.00 a year to rent, had to be relinquished. She stated that up to 6,000 children a year visited the garden as part of their educational curriculum. In addition, Ms. Peck thanked the Council for their devotion to the City.

Willys Peck – spoke to the Council regarding a letter he had submitted recently asking that Council consider renaming Oak Street to Heritage Lane. He noted he was unclear as to the status of the signature petition that was circulating to rename the street.

COUNCIL DIRECTION TO STAFF

Councilmember King asked the City Manager to follow up with Vibha Gaitonde regarding the Use Permit fees for the installation of generators and the reason for the Ordinance.

Councilmember Hunter recommended Jack and Margaret Smith speak with the Saratoga High School Board regarding their concerns of the noise caused by the POP Warner football games on Sundays.

Councilmember Hunter also asked if anyone was aware of some available land that could once again be rented for \$1.00 a year and to let the City know.

Councilmember Hunter suggested Willys Peck speak with the Oak Street and Madronia neighborhood associations and the Saratoga Elementary School regarding the collection of signatures on the petition to rename Oak Street to Heritage Lane.

Mayor Walton Smith noted the signature petition to rename Oak Street did not collect the required 50% signatures to bring the petition before the Heritage Preservation Commission.

COMMUNICATIONS FROM COMMISSIONS & PUBLIC

Lane Weiss, Superintendent of the Saratoga Union School District (SUSD) stated the SUSD Board met in a Joint Meeting with City Council prior to this meeting. He thanked the Council for their support of the School Resource Officer. He noted the SUSD is

working with the City's Recreation Department and the Redwood Middle School staff regarding various after school programs. He also noted school traffic continues to be a safety concern and noted his appreciation of the City's support of the Oak Street Task Force. He noted the SUSD is using Crossing Guards at various intersections and are looking into adding additional Crossing Guards. He noted the SUSD had just held their Strategic Planning Retreat at Walden West and that they plan to use Walden West for student learning as well as efforts in the area of conservation. He also stated the SUSD is actively working on ways to save energy and that they would like to partner with the City in an energy challenge with the Town of Los Gatos.

ANNOUNCEMENTS

Vice Mayor Page stated that the Taste of Saratoga is Saturday, September 20th from 10:00 a.m. to 6:00 p.m.

Councilmember King announced the friendly energy competition between Los Gatos and Saratoga. Akeena Solar will donate 10 free kilowatts (worth approximately \$75,000) to be used on city buildings, to the town/city that is the first to purchase a total of 150 kilowatts of solar power by November 30th.

Councilmember Hunter announced the 5th Annual Witchy Walk About in the Village on October 25th from 2:00 to 4:00 p.m.

Councilmember Kao announced the Historical Foundation is having their annual BBQ on Sunday, September 21st at 4:00 p.m.

CEREMONIAL ITEMS

None.

SPECIAL PRESENTATIONS

None.

CONSENT CALENDAR

1. CITY COUNCIL MINUTES – SEPTEMBER 3, 2008.

STAFF RECOMMENDATION:

Approve minutes.

Councilmember Hunter requested this item be removed from the Consent Calendar. She noted she had submitted a clarification correction to the City Clerk prior to this meeting regarding her intention for the evaluation of carports.

HUNTER/PAGE MOVED TO **APPROVE CITY COUNCIL MINUTES FOR SEPTEMBER 3, 2008 AS AMENDED.** MOTION PASSED 5-0-0.

2. REVIEW OF ACCOUNTS PAYABLE REGISTERS.

STAFF RECOMMENDATION:

That the City Council accepts the Check Registers for Accounts Payable cycles:
August 28, 2008
September 4, 2008

PAGE/KING MOVED TO **ACCEPT ACCOUNTS PAYABLE REGISTERS FOR ACCOUNTS PAYABLE CYCLES AUGUST 28, 2008 AND SEPTEMBER 4, 2008.** MOTION PASSED 5-0-0-0.

3. AMENDMENT TO DELTA MICROIMAGING CONTRACT.

STAFF RECOMMENDATION:

Accept report and approve amendment to the existing contract with Delta MicroImaging and authorize the City Manager to execute the contract amendment.

PAGE/KING MOVED TO **ACCEPT REPORT AND APPROVE AMENDMENT TO THE EXISTING CONTRACT WITH DELTA MICROIMAGING AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE CONTRACT AMENDMENT.** MOTION PASSED 5-0-0.

4. FINAL MAP APPROVAL FOR TWO LOTS LOCATED AT 19161 COX AVENUE.

STAFF RECOMMENDATION:

Move to adopt Resolution granting final map approval of tentative map application No. SUB 07-0001 for two lots located at 19161 Cox Avenue.

RESOLUTION NO. 08-059

PAGE/KING MOVED TO **ADOPT RESOLUTION GRANTING FINAL MAP APPROVAL OF TENTATIVE MAP APPLICATION NO. SUB 07-0001 FOR TWO LOTS LOCATED AT 19161 COX AVENUE.** MOTION PASSED 5-0-0.

5. ORDINANCE ESTABLISHING VARIOUS STANDARDS FOR STATE VIDEO FRANCHISEES OPERATING IN SARATOGA.

STAFF RECOMMENDATION:

Waive the Second Reading and Adopt the Proposed Ordinance.

ORDINANCE – 261

PAGE/KING MOVED TO **WAIVE THE SECOND READING AND ADOPT THE PROPOSED ORDINANCE.** MOTION PASSED 5-0-0.

6. PROSPECT ROAD MEDIAN IMPROVEMENT PROJECT – MEDIAN NO. 11.

STAFF RECOMMENDATION:

Approve proceeding with the Prospect Road Median No. 11 design.

Councilmember Hunter requested this item be removed from the Consent Calendar for discussion.

Councilmember Hunter asked Public Works Director John Cherbone about the use of drought tolerant plants and if he was going to include that in his staff report.

Director Cherbone stated no, he did not plan to include it in his staff report. He noted all the plants that would be used would be native plants and they are as drought tolerant as allowed for this temperate zone.

Councilmember Hunter also asked what the length in feet was from Titus Avenue to Provincetown Drive.

Director Cherbone stated he didn't recall the exact length in feet and that basically it covers most of the frontage of McAuliffe Elementary School.

Councilmember Hunter stated that as a member of the water commission for the City of Saratoga, her concern was that we use plants that don't require a lot of water.

Director Cherbone noted that is always in their mind whenever they design projects and try to be as drought-tolerant as they can with regards to the types of plants that are used.

Vice Mayor Page expressed his concern for safety regarding pedestrians that may use the proposed median crosswalk as a half-way crossing point to reach the elementary school versus walking to the controlled signal light crossing on Johnson Avenue.

Director Cherbone noted they would address that issue by using signage directing people to the controlled signal light intersection at Johnson Avenue.

The following person requested to speak on this item:

Ray Muzzy – stated he thought this was a great section of Prospect Road to begin the first phase of the Prospect Road Median Improvement Project and urged the Council to move forward.

Mayor Waltonsmith thanked Mr. Muzzy, his family and all the residents on both sides of Prospect Road for all their hard work over the years in getting this project started.

HUNTER/KING MOVED TO **APPROVE PROCEEDING WITH THE PROSPECT ROAD MEDIAN NO. 11 DESIGN.** MOTION PASSED 5-0-0.

7. **COOPERATIVE AGREEMENT WITH CITY OF CUPERTINO FOR JOINT PAVING WORK ON PROSPECT ROAD.**

STAFF RECOMMENDATION:

Approve Cooperative Agreement with the City of Cupertino for joint paving work on Prospect Road and authorize the City Manager to execute the same.

PAGE/KING MOVED TO **APPROVE COOPERATIVE AGREEMENT WITH THE CITY OF CUPERTINO FOR JOINT PAVING WORK ON PROSPECT ROAD AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE SAME.** MOTION PASSED 5-0-0.

8. **ADOPT THE ZONING MAP AMENDMENT FOR 20500 LOMITA AVENUE, 20568 LOMITA AVENUE, AND 20550 LOMITA AVENUE.**

STAFF RECOMMENDATION:

Waive the Second Reading and adopt the Proposed Ordinance and Zoning Map Amendment.

Councilmember Hunter recused herself from voting on this item as she lives within 500 feet of Lomita Avenue.

ORDINANCE – 262

PAGE/KING MOVED TO **WAIVE THE SECOND READING AND ADOPT THE PROPOSED ORDINANCE AND ZONING MAP AMENDMENT.** MOTION PASSED 4-0-1 WITH COUNCILMEMBER HUNTER RECUSED.

PUBLIC HEARINGS

9. **APC08-0003 – APPEAL OF A DECISION BY THE PLANNING COMMISSION GRANTING APPROVAL OF A MITIGATED NEGATIVE DECLARATION, A DESIGN REVIEW APPLICATION, AND A MODIFICATION TO A CONDITIONAL USE PERMIT WITH A VARIATION FROM STANDARDS FOR THE PROPOSED CONSTRUCTION OF A NEW 3,994 SQUARE FOOT CHURCH BUILDING ON THE APPROXIMATELY 3.1 ACRE PROJECT SITE LOCATED AT 18870 ALLENDALE AVENUE.**

STAFF RECOMMENDATION:

Staff recommends the City Council deny the appeal and approve the proposed new 3,994 square foot Church building for Saint Archangel Michael Serbian Orthodox Church by adopting, in sequence, the attached Resolution Adopting a Mitigated Negative Declaration and the attached Resolution Denying the Appeal and Approving Application No. 03-259.

Senior Planner Chris Riordan presented the staff report.

Robert Chojnacki, Attorney for the Appellant – Saratoga Neighborhood Task Force, addressed the Council regarding the reasons for appealing the Planning Commission’s approval of the proposed project. He stated the neighbors are not opposed to the church being in the neighborhood, but are concerned about the proposed design’s impact to the neighborhood – such as noise, aesthetics, traffic and insufficient parking spaces and that this proposal is inconsistent with the City’s rules and regulations regarding zoning.

Jolie Houston, Attorney for the Applicant – St. Archangel Michael Serbian Orthodox Church, addressed the Council regarding the zoning issues presented by the Appellant. She also noted that the approval of the Conditional Use Permit was approved by the City Council as a separate action. The CUP is quite detailed and addresses the concerns voiced by the Appellant.

The following people representing the Applicant addressed the Council:

Paul Benton, Project Architect and President of B C Architects, addressed the height issues of the proposed building design. He noted they worked for three and a half years to achieve an acceptable design proposal and that the church worked extensively with the Neighborhood Task Force, made numerous concessions and modifications to the proposed design – including eliminating the church bells.

Gerry DeYoung, Planner with Ruth & Going, addressed the parking issues.

Liam Tacks, Traffic Engineer with Higgins Associates, addressed concerns regarding traffic issues.

Radmilo Bozinovic, President of the Executive Board of St. Michael Archangel Serbian Church, addressed the concerns regarding the increased size of the church sanctuary and the need to provide seating space for the number of people currently attending church services, noting there is no evidence of church attendance tripling in the future.

Mayor Waltonsmith opened the Public Hearing.

The following people requested to speak on this item:

Speakers in support of the Appellant opposing the Design Review Application and Modification to Conditional Use Permit:

Cheriel Jensen
Steve Schwartzkopf
Danny Wong
Robert Barr
Diane Drewke
Shiuh-Wuu Lee
Jing Lee

Speakers in support of the Applicant’s Design Review Application and Modification to Conditional Use Permit:

Scott Wheelwright
Donald Randolph
Muriel Mahrer
Father Iliva Balach
Radmilo Bozinovic, *read letters (in support) from church neighbors that were unable to attend:*
E. A. Maas
Mr. Lazio Sipos
Father Samer Youssef
Father John Ivancovich
Billy Chiang

Deborah Ungo-McCormick, former Contract Planner with City of Saratoga and currently an employee of Berliner Cohen, addressed the Council regarding the City's General Plan and Zoning Ordinance. She stated all requirements pertaining to the General Plan and Zoning Ordinance had been met.

Manny Cappello, Chair of the Planning Commission, confirmed that the Planning Commission heard, reviewed and unanimously approved this application at a Public Hearing June 5, 2008, and that the Commission duly approved a Use Permit for three requested Variations from Standards for structure height, site coverage, and a reduction in required parking spaces and modified the existing use permit to include this new Church building without change to the existing uses and activities on the site by the Church.

Mayor Waltonsmith declared a break at 10:05.

Mayor Waltonsmith reconvened the meeting at 10:15.

Mayor Waltonsmith closed the Public Hearing.

There were additional discussion and questions presented to staff by the Council.

City Attorney Richard Taylor noted there were two Resolutions before Council this evening regarding this hearing: one regarding the mitigated negative declaration and a separate resolution regarding the use permit. He reminded the City Council of staff's recommended revision to use permit condition number 4 and mitigation measure 15-1 presented in the staff report at the outset of the hearing. He re-read the condition as recommended by staff:

The parking and driveway area shall be constructed of pervious paving and the area designated on the site plan designated as grass over flow parking shall be demarcated to identify 41 accessible and useable vehicular parking spaces to assure that a total of 126 vehicular parking spaces will be provided on site. The techniques used to demarcate each individual parking space to be located on the grass over flow parking shall be subject to review and approval by the Community Development Director prior to building permit issuance.

In addition, Attorney Taylor suggested clarifications to use permit condition number 1 and mitigation measure 15-1 to make clear that the requirements would apply to all events with more than 277 people and not simply special events. Vice Mayor Page

suggested further clarification to ensure that the restrictions apply when there are more than 277 people on site regardless of whether they are attending a single event. City Attorney Taylor agreed that the proposed clarification was consistent with the intent of the condition.

RESOLUTION NO. 08-057

KING/PAGE MOVED TO APPROVE THE ATTACHED RESOLUTION ADOPTING A MITIGATED NEGATIVE DECLARATION INCLUDING THE REVISIONS TO MITIGATION MEASURES 15-1 AS EXPLAINED BY THE CITY ATTORNEY AND REVISED BY VICE MAYOR PAGE. MOTION PASSED 5-0-0.

RESOLUTION NO. 08-058

KING/PAGE MOVED TO DENY THE APPEAL AND APPROVE APPLICATION NO. 03-259 WITH AMENDMENTS TO CONDITION NUMBERS 1 AND 4 AS EXPLAINED BY THE CITY ATTORNEY AND REVISED BY VICE MAYOR PAGE. MOTION PASSED 5-0-0.

10. HAZARDOUS VEGETATION ABATEMENT.

STAFF RECOMMENDATION:

Open public hearing; listen to public testimony; and close public hearing. Take no further action based on determination that all identified properties are in compliance as determined by inspection of Enforcement Officer.

Acting City Clerk Ann Sullivan presented the staff report and noted that the remaining two non-compliant properties were inspected on September 10, 2008 by the Enforcement Officer with the County Agricultural Commissioner's Office and he declared both properties to be in full compliance. Acting City Clerk Sullivan recommended the Mayor open the Public Hearing for public comment and then close the Public Hearing, taking no further action based on determination that all identified properties are in compliance as determined by inspection of the Enforcement Officer.

Mayor Waltonsmith opened the Public Hearing.

No one was present to speak on this item.

Mayor Waltonsmith closed the Public Hearing.

No further action was taken.

OLD BUSINESS

11. RELOCATION OF COAST LIVE OAK FROM CITY'S HERITAGE ORCHARD TO WEST VALLEY COLLEGE.

STAFF RECOMMENDATION:

Provide direction to staff concerning the relocation of one coast live oak from the City's Heritage Orchard to the West Valley College campus.

City Arborist Kate Bear presented the staff report.

Mayor Waltonsmith invited public comment.

The following people requested to speak on this item:

Jenny Taylor – expressed her opinion regarding a “pure orchard” – an orchard that contained only fruit trees. She stated the oak tree should stay in the orchard and not be transplanted to West Valley College.

Stan Bogosian – expressed his concerns about the risk of moving the Oak Tree and that he would prefer to have the tree stay where it is. He noted the relevant data that guarantees the survival of transplanted trees was not presented in this meeting. Mr. Bogosian also questioned why no one from West Valley College was present to speak on this item.

Mayor Waltonsmith closed public comment.

Mayor Waltonsmith asked staff why West Valley College was not represented this evening.

City Manager Dave Anderson stated he had spoken to Phil Hartley, President of West Valley College, earlier in the day regarding this agenda item. City Manager Anderson stated that the College preferred to remain neutral on this issue and chose not to be present this evening. They felt that the decision to relocate or not relocate the tree should be made by the Council.

There was discussion regarding the tree removal and the chances of survival. Council also had questions regarding follow-up care – such as providing adequate water, which the City Arborist addressed.

KING/PAGE MOVED TO CONTINUE PLANS TO MOVE ONE COAST LIVE OAK TREE FROM HERITAGE ORCHARD TO WEST VALLEY COLLEGE WITH THE UNDERSTANDING THAT CITY ARBORIST KATE BEAR BE PART OF THE POST CARE MANAGEMENT FOR A MINIMUM OF TWO YEARS; A CONTRACT AGREEMENT WITH COMPANY THAT MOVES THE OAK TREE AND WITH WEST VALLEY COLLEGE; AND WITH PLANS TO PLACE A PLAQUE UNDER THE TREE STATING THE NEW FRIENDSHIP BETWEEN WEST VALLEY COLLEGE AND THE CITY OF SARATOGA . MOTION PASSED 3-2-0 WITH HUNTER AND KAO OPPOSING.

NEW BUSINESS

- 12. TERM EXTENSIONS FOR LIBRARY COMMISSION AND PARKS AND RECREATION COMMISSION.**

STAFF RECOMMENDATION:

Accept report and direct staff accordingly.

Administrative Analyst II Crystal Morrow presented the staff report.

Mayor Waltonsmith invited public comment.

No one was present to speak on this item.

Mayor Waltonsmith closed the public comment.

PAGE/KAO MOVED TO **APPROVE A SIX MONTH TERM EXTENSION FROM OCTOBER 2008 TO APRIL 2009 FOR THE LIBRARY COMMISSION AND PARKS AND RECREATION COMMISSION.** MOTION PASSED 5-0-0.

ADHOC & AGENCY ASSIGNMENT REPORTS

Mayor Ann Waltonsmith – reported:

Hakone Foundation Executive Committee – meets Friday, September 19th.

SASCC – meets next week.

West Valley Mayors and Managers Association – meets next week.

Vice Mayor Chuck Page – reported:

Chamber of Commerce – he attended the last meeting and stated the Chamber is busy preparing for the Taste of Saratoga on Saturday, September 20th. He noted there was some consternation over the letter that was sent out indicating the road closure from 6:00 a.m. to 12:00 midnight. He also noted they anticipate the road to be reopened by 8:00 p.m.

Valley Transportation Authority PAC – the Policy Advisory Committee met and the main topic of discussion was the Governance issue. He stated the long term strategy for governance of the Board would be a directly elected board, and the short term strategy would be that the non-City San Jose PAC members choose the non-City San Jose Board members – meaning the five members of the VTA Board would be chosen from those cities that are represented. He stated the VTA Finance Committee was scheduled to meet at noon on Thursday, September 18th. He noted he was unavailable to attend that meeting due to another meeting on his calendar and said if someone was interested in attending – they should.

Councilmember Kathleen King – reported:

Santa Clara County Cities Association – had a presentation on Urban Planning from the Health Trust in General Plans; discussion on the ban of plastic bags and that the City of Gilroy has passed a resolution in support of San Jose and Palo Alto for going forward with prohibiting plastic bags. The Association is asking the member cities to pass a resolution supporting the cities of San Jose and Palo Alto.

City School AdHoc – stated POP Warner and Saratoga High School have a 7-year contract stating they can play 6 to 7 Sundays a year and the contract is for another three years (counting this year). She doesn't see how the high school can get out of that contract; however, the City could require a Use Permit. King stated she personally checks the sound level during the games every Sunday and doesn't feel there is a violation of City Code.

Councilmember Jill Hunter – reported:

Historic Foundation – will not be hiring a new director for the Museum; it will be an all volunteer position from now on.

KSAR – continuing to work with Saratoga High School to hopefully televise their football games. Noted KSAR has a new director and they will be televising the Council Candidate Forum on September 24th at 7:00 p.m.

Councilmember Aileen Kao – reported:

She attended the West Valley Sanitation District Board meeting in place of Vice Mayor Page and they discussed funding options for the Health Care Insurance for retired employees. She noted there were two options they were considering: 1) lump sum placed in a trust or; 2) pay through payroll. Discussion will continue at the next meeting.

CITY COUNCIL ITEMS

Councilmember King asked to agendaize – resolution in support of Cities of San Jose and Palo Alto prohibiting plastic bags.

Cities Association is in the process of interviewing and hiring a new Executive Director.

Mayor WaltonSmith asked for a press release on the City of Saratoga being designated as: “City of Saratoga is the Bay Area Green Business City”.

CITY MANAGER’S REPORT

None

ADJOURNMENT

PAGE/KAO MOVED TO **ADJOURN THE REGULAR MEETING AT 11:45 P.M.**
MOTION PASSED 5-0-0-0.

Respectfully submitted,

Ann Sullivan, CMC
Acting City Clerk