

CITY OF SAN CLEMENTE

City Council Minutes

Adjourned Regular Meeting - May 1, 1991

A Regular Meeting of the City Council of the City of San Clemente, conducted in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California, was called to order by Mayor Diehl at 7:00 p.m.

PRESENT ANDERSON, BENEDICT, HAGGARD, LORCH, MAYOR DIEHL

ABSENT NONE

STAFF PRESENT Michael Parness, City Manager; Jeff Oderman, City Attorney; Myrna Erway, City Clerk; Jim Holloway, Community Development Director; Bill Cameron, City Engineer; Joanne Baade, Deputy City Clerk.

1. **SPECIAL PRESENTATIONS**

A. **Sister City Recognition - San Clemente del Tuyu, Argentina**

Peter Rock, President of the San Clemente Sister City Association, introduced Christina Paniagua, President of the Sister City Association of San Clemente's sister city, San Clemente del Tuyu, Argentina.

Ms. Paniagua presented Mayor Diehl with a proclamation from San Clemente del Tuyu.

Mayor Diehl welcomed Ms. Paniagua and expressed greetings to the citizens, officials and members of the San Clemente del Tuyu Sister City Association; presented Ms. Paniagua with a City pin; gave Ms. Paniagua an additional City pin to be presented to the Mayor of San Clemente del Tuyu.

B. Neighborhood Watch Awards

Mayor Diehl recognized the contributions of the following individuals to the City's Neighborhood Watch Program:

Lee Rowan - Presidential Heights

Cathy Cooper - Faire Harbor

Cheryl and Steve Hooper - Canada Street

Beverly Butler - Code Enforcement Officer for the City of San Clemente

Mary Peterson - Block Parent for Truman Benedict Elementary School

Mayor Diehl read a proclamation declaring May, 1991 as "California Neighborhood Watch Month" and presented the document to Community Services Officers Janet Dunford and Jan Sener.

C. Orange County Transportation Commission (OCTC) Commuter Rail Study and Action Plan

MOTION BY COUNCILMEMBER HAGGARD, SECOND BY MAYOR PRO TEM ANDERSON, CARRIED 5-0, to defer the presentation concerning the Orange County Transportation Commission (OCTC) Commuter Rail Study and Action Plan until after Item 3-B (Shorecliffs Mobile Home Park - TPM 90-266). See Page 6 of these minutes for a summary of the Commuter Rail Study and Action Plan presentation.

2. MOTION BY COUNCILMEMBER HAGGARD, SECOND BY COUNCILMEMBER LORCH, CARRIED 5-0, to waive reading in full of all Resolutions and Ordinances.

3. **PUBLIC HEARINGS**

A. Revised Site Plan - Single-Family Residence at 3830 Vista Blanca

This agenda item was considered later in the meeting. See Page 7 of these minutes for a summary of that discussion.

MOTION BY COUNCILMEMBER HAGGARD, SECOND BY MAYOR PRO TEM ANDERSON, CARRIED 5-0, to consider Agenda Item 3-B (Shorecliffs Mobile Home Park) at this point in the meeting.

B. Shorecliffs Mobile Home Park - TPM 90-266 - 189 Mira Adelante

Continued Public Hearing to consider Tentative Parcel Map 90-266 and a waiver of both the Tentative Tract and Final Map for the further subdivision of Parcel #1 to allow the Shorecliffs Mobile Home Park, located at 189 Mira Adelante, to be converted into condominiums.

Associate Planner Pechous reviewed the contents of the Administrative Report; explained the Planning Commission, at its meeting of January 8, 1991, recommended a waiver of both the Tentative Tract and Final Map, and recommended approval of TPM 90-266, subject to an additional condition that a soils report be submitted to the City Engineer prior to City Council review; noted the soils report has been submitted to the City, and based upon the results of this report, an additional condition has been added to require lots impacted by the slope failure in the Park to be deleted from the project and held as common area; noted a Restricted Covenant will be recorded to prohibit the sale of those lots and indemnify the City from possible lawsuits.

In answer to Council inquiry, City Attorney Oderman indicated that it would be desirable to identify the lots that are being approved for conversion to condominiums in Resolutions No. 91-51 and 91-52.

Mayor Diehl opened the Public Hearing.

Gerald Gibbs, 110 E. Avenida Palizada, Suite 201, legal counsel on behalf of the residents of Shorecliffs Mobile Home Park, reviewed the history of the proposal; noted the conversion of the Park to resident ownership will prevent rent increases; stated the Park owner desires to retain the recreational vehicle area with two caveats, i.e., 1) that use of the area not be limited to Park residents, and 2) that the hobby shop, currently operated by the owner's son, be allowed to remain; stated a contract provision allows the residents the opportunity to purchase the recreational vehicle parcel; explained the geological study has resulted in Units 107-112 (currently unoccupied), 105, 106, 113 and 114 being deleted from the condo plan; requested that Council include Unit 114 in the condominium plan since only two or three feet of the parking area is of geologic concern; noted there are two other parking spaces in the common area which could be allotted to the owner of Unit 114.

John Brinar, 114 Mira Adelante, urged that Unit 114 be included in the condominium plan; opined the lot should not be precluded from purchase since only 3 feet has been determined to have geotechnical concerns; noted this 3' area currently houses his carport, which is not needed since ample parking exists at the rear of his mobile home.

Dolores Book, 186 Mira Adelante, opined the recreational vehicle area should be converted to resident ownership; noted that in addition to serving as an area for the storage of recreational vehicles, the area could be used by residents for trash and storage of park maintenance equipment; opined the parcel should be purchased by the residents at this point in time.

Associate Planner Pechous clarified that the Planning Commission's request for a geologic report was predicated on the required finding associated with the waiver of the Tentative and Final Parcel Maps, i.e., that the project will not cause significant design or improvement requirements necessitated by health or safety concerns.

City Attorney Oderman stated that Condition No. 8 could be modified to allow Lot 114 to be included in the condominium plan if, prior to Final Map approval, a soils report that is satisfactory to the City Engineer is submitted that would demonstrate that the property is geologically sound without significant improvements being constructed on the property.

There being no others desiring to speak to this issue, the Public Hearing was closed.

With respect to the question raised by Dolores Book as to whether the purchase of the recreational vehicle area could be included in the condominium plan, Gerald Gibbs reiterated that the residents have the ability, as part of their contract arrangement, to purchase that area; noted that even though the owner desires to retain the property, the contract allows the residents the option to pay additional funds for the property; explained the owner does not consent to Condition No. 6 as currently proposed.

City Attorney Oderman clarified that the owner's consent to Condition No. 6 is not needed, noting that the condition merely restates zoning requirements concerning that parcel; stated that Staff is of the opinion that recreational vehicle storage can only be permitted in that zone as an incidental use to the residences and the property cannot be rented out as a recreational vehicle storage lot; stated if the owner does not agree to the conditions, the owner is not obligated to record the Final Map.

MOTION BY COUNCILMEMBER HAGGARD, SECOND BY COUNCILMEMBER BENEDICT, to:

1. Adopt Resolution No. 91-51 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING TENTATIVE PARCEL MAP NO. 90-266, SHORECLIFFS MOBILE HOME PARK, A THREE (3) LOT SUBDIVISION OF A 43-ACRE MOBILE HOME PARK, with modifications as follows:
 - A. Condition No. 8 shall be modified to read as follows:

"Prior to final map approval, the owner or his/her designee shall delete lots 105, 106, 107, 108, 109, 110, 111, 112, 113, and 114 from the condominium map and place these lots as "common area", within a lettered lot of the condominium map, and shall record a restrictive covenant, upon submittal of and receiving approval by the City Attorney of the exact wording for the covenants which restricts the sale of these lots and indemnifying the City from any lawsuits associated with these lots. The existing residents may continue to rent these spaces, but will not be able to purchase these lots for individual ownership. Lot 114 may be released from this restriction in the event a satisfactory soils and geotechnical report is submitted to the City Engineer and the City Engineer determines that said lot is stable and safe."
 - B. Condition No. 6 shall be expanded to provide that Parcel 3 shall merge with Parcel 1 in the event the owner(s) of Parcel 1 acquire title to Parcel 3.
2. Adopt Resolution No. 91-52 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING A WAIVER OF TENTATIVE AND FINAL PARCEL MAP REQUIREMENTS FOR THE CONVERSION OF THE SHORECLIFFS MOBILE HOME PARK TO A TENANT-OWNED CONDOMINIUM PROJECT, as modified to specifically reference the saleable lots.

MOTION TO AMEND BY COUNCILMEMBER LORCH to modify Condition No. 7 to delete the word "Attorney" from the condition, thereby requiring the relocation assistance program to be approved by the City Council. The Motion to Amend died for lack of a second.

THE ORIGINAL MOTION CARRIED 5-0.

1. **SPECIAL PRESENTATION**

A. **Orange County Transportation Commission (OCTC) Commuter Rail Study and Action Plan**

Brian Pearce, Orange County Transportation Commission Staff Member, narrated a slide presentation concerning the Commuter Rail Study and Action Plan, which was prepared by the Orange County Transportation Commission; discussed the feasibility of commuter rail service in Orange County, focusing on criteria that were considered in the study; stated the OCTC plans to operate eight additional trains by 1993, adding that the legal challenge of Measure M, as well as the inability thus far to reach consensus with the Atchison, Topeka and Santa Fe Railway Company on the purchase price of the land, may affect this goal; spoke in support of relocating the commuter station site in San Clemente farther to the north to facilitate commuter access.

MOTION BY MAYOR PRO TEM ANDERSON, SECOND BY COUNCILMEMBER LORCH, CARRIED 5-0, to:

1. Receive and file excerpts from the OCTC Commuter Rail Study and Action Plan, as contained in the Administrative Report, dated May 1, 1991, and on file in the City Clerk's Department.
2. Designate Councilmember Haggard as the City's representative to the Policy Advisory Committee and designate Councilmember Lorch as the City's alternate.
3. Direct Staff to continue to attend Technical Advisory Committee meetings, work with the OCTC in finalizing station location and design, and bring all matters back to the City Council for review and final approval.

A. Revised Site Plan - Single-Family Residence at 3830 Vista Blanca

Continued Public Hearing to consider a revised site plan to determine permissible encroachment beyond a restricted use line at 3830 Vista Blanca (Tract 10225, Lot 112) within the Cypress Cove Subdivision.

Community Development Director Holloway reviewed that the Council, at its meeting of April 17, 1991, directed Staff to stake the property to enable Council to gain a better appreciation and understanding of the site characteristics and location of the structure footprint; noted the property was staked in accordance with Council direction.

All Councilmembers indicated that they visited the site to review the location of the stakes.

Mayor Diehl opened the Public Hearing.

John Pitkin, Attorney on behalf of Thomas Weeda (Applicant), offered to answer Council inquiries; expressed hope that Council will act on this issue this evening.

Steve Coontz, 32222 Camino Capistrano, San Juan Capistrano, demonstrated the location of the structure footprint in relation to the Restricted Use Line on a photograph of the property; stated he and Mr. McAdoo were conservative about their estimation of the encroachment of the residence on the side toward Cypress Shore; stated the proposed residence is proposed to extend almost to the bottom of the bluff.

Pat Murphy, President of Cypress Shore Homeowners Association, opined the residence should be situated so as to adhere to the Restricted Use Line; indicated a 5' to 15' encroachment of the Restricted Use Line might be acceptable.

Dr. Tony Ferrer, 3832 Vista Blanca, stated the footprint of the structure, as staked by City staff, demonstrates considerable violation of the Restricted Use Area; stated the structure would intrude approximately 40' beyond the Restricted Use Area on the ocean side of the lot and 29' to 30' down the slope on the opposite side; proposed that the Applicant be permitted to encroach the Restricted Use Area by no more than 20' on the ocean side of the lot and no more than 5' on the opposite side.

Arthur LaLonde, 3828 Vista Blanca, opined that even a modified variance would constitute building a great wall which would be visible to property owners to the north; stated the Restricted Use Line should be respected.

Norm McAdoo, 3820 Calle Tiara, opined that development should be confined to the top portion of the lot.

John Pitkin, in rebuttal, stated the contentions in the Applicant's lawsuit are not limited to geotechnical matters or character of the bluff, but rather relate to significant political constitutional questions; stated the aerial photograph that was presented to Council at its meeting of April 17, 1991 showed a large number of houses that extend over the coastal bluff; stated the Coastal Commission issued a permit for the subject residence; stated the purpose of this hearing is not to determine whether the Applicant's home is compatible with other homes in the area, but rather to determine whether the Applicant's home is in character with the bluff; stated the proposed residence would occupy a smaller percentage of the lot than any other residence in the area; opined it is unfair for neighbors to attempt to bargain with Mr. Weeda in a Public Hearing when he has complied with the requirements of the City; stated the Administrative Report indicates that the footprint of the structure is in character with the bluff; stated the Applicant will not bargain with neighbors on an arbitrary amount of feet over which he can intrude on the Restricted Use Line; stated the house should be approved if it is in character with the bluff, adding that he has heard no testimony this evening that the house is not in character with the bluff; stated that since the City has determined that the house is within the character of the bluff standard and Mr. Weeda has radically revised his plan in order to accommodate that standard, Council should vote in favor of the design.

There being no others desiring to speak to this issue, the Public Hearing was closed.

In answer to questions posed by City Attorney Oderman, Mr. Pitkin responded as follows:

1. The Grading Plan that was used to support the Applicant's claim that the home was situated at the top of the lot, and did not spill over the bluff, was prepared by an individual retained by Mr. Weeda.
2. Disagreed that the home as currently proposed extends substantially over the edge of the upper part of the bluff; opined the house extends over a grade break; stated the line marked as "Top of Slope" on the original site plan (which was prepared by Mr. Weeda's consultant) was utilized in developing the house plan.
3. Refused to retract the house farther than the current location.

City Attorney Oderman explained that Mr. Melzer (litigation counsel) never visited the property to review the location of the house in comparison to the bluff.

City Attorney Oderman stated for the record that the line that Mr. Pitkin said was fixed in discussions with Mr. Melzer was not a representation by Mr. Melzer that the home was located at the top of the hill, but rather was based upon Mr. Pitkin's representation, that was based upon the plan the Applicant presented, that was based in turn on a grading plan that was prepared by the Applicant's consultant.

Councilmember Lorch stated for the record that the purpose of this evening's Public Hearing, in his view, is to determine the amount of development that will be allowed over the Restricted Use Line, as provided in Final Map Condition No. 4.

CLOSED SESSION

Council recessed to Closed Session at 8:50 p.m. to discuss a matter of pending litigation, Weeda v. City of San Clemente, pursuant to GC Section 54956.9(a). The City Manager, City Attorney, Community Development Director, and City Clerk were in attendance.

MEETING RECONVENED

Council reconvened at 9:05 p.m., with all members present.

MOTION BY COUNCILMEMBER LORCH, SECOND BY COUNCILMEMBER HAGGARD, CARRIED 5-0, to allow the development to extend 5 ft. beyond the Restricted Use Line at the northeastern corner of the lot, to extend 30 ft. beyond the Restricted Use Line at the center of the lot (Staff to determine location of "center"), and to extend the Restricted Use Line by 20 ft. at the southeastern corner. Development of the residence is to be contained within the above specifications. Additionally, that a pool and gazebo-type structure be allowed on the lower portion of the lot, directly adjacent to the Cypress Cove properties, and that access (such as a stairway) be allowed from the development above the bluff to the lower portion.

B. Shorecliffs Mobile Home Park - TPM 90-266 - 189 Mira Adelante

This item was considered as the first Public Hearing item. See Page 3 of these minutes for a summary of that discussion.

C. Transportation Demand Management Ordinance

Public Hearing to consider establishing transportation demand requirements for all new development projects with 100 employees or more.

Associate Planner Pechous reviewed the contents of the Administrative Report, focusing on the purpose of the Transportation Demand Management Ordinance; relayed that the Planning Commission and Staff recommend that Council adopt the Ordinance with minor modifications as suggested by the Arvida Company in its letter of May 1, 1991; noted the County has no objection to the modifications as proposed; stated the Planning Commission also recommends that the first sentence of Paragraph 15 on Page 3 of the Ordinance be modified to read as follows: "'Transportation Demand Management (TDM)' means the implementation of programs, plans or policies designed to encourage changes in individual travel or commuting methods."

Mayor Diehl opened the Public Hearing.

Kevin Canning, the Arvida Company, offered to answer questions relating to the Ordinance modifications requested by the Arvida Company; noted the revisions would not limit the provisions of the model Ordinance, but would provide discretion for the City or an applicant to request modifications; requested that Council recognize that the Ordinance may be imperfect and that the Ordinance may be brought back to Council if an applicant is impacted by these standards.

There being no others desiring to speak to this issue, the Public Hearing was closed.

Councilmember Haggard noted the following for the record: 1) It is the opinion of the Transportation District, County, et al. that no requirement exists for formal adoption of an Air Quality Element in General Plans; spoke in support of deferring an Air Quality Element until it is determined to be necessary; 2) Although the Orange County Transit Authority (OCTA) is in the formation stages, it does not yet exist; explained that the County, in conjunction with the Transportation Commission, Transportation District, League of Cities and TCA completed the work on the Congestion Management Program and drafted the model Transportation Demand Management Ordinance.

During the course of discussion, Council noted that the 7-Year Capital Improvement Plan for the Congestion Management Program is due to the County in draft form by May 10, 1991 and is due to the County in final form by August 15, 1991.

MOTION BY COUNCILMEMBER LORCH, SECOND BY COUNCILMEMBER HAGGARD, CARRIED 5-0, to direct staff to agendize the Draft 7-Year Capital Improvement Plan for the Congestion Management Program for the Council meeting of May 15, 1991 and to request that Staff forward a letter to the County indicating that the Plan will be submitted to them following Council review.

MOTION BY COUNCILMEMBER LORCH, SECOND BY COUNCILMEMBER HAGGARD, CARRIED 5-0, to introduce Ordinance No. 1049 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ADDING A NEW SECTION 5.58 TO APPENDIX "A" OF THE CODE OF THE CITY OF SAN CLEMENTE RELATING TO TRANSPORTATION DEMAND MANAGEMENT REQUIREMENTS FOR NEW DEVELOPMENT PROJECTS, with amendments as follows:

1. The first sentence of Paragraph 15 on Page 3 shall be modified to read: "Transportation Demand Management (TDM)' means the implementation of programs, plans or policies designed to encourage changes in individual travel or commuting methods."
2. The last sentence of Paragraph 2(a) on Page 9 shall be modified to read: "Emphases of the reserved parking space locations shall be as close as is practical to the entrance(s) of the Development Project."

D. California Vehicle Code and San Clemente Municipal Code Enforcement in the Forster Casablanca Development

Continued Public Hearing to consider a request from the Forster Casablanca Condominium Association for the enforcement of the CVC and the SCMC on specific streets.

Mayor Diehl opened and closed the Public Hearing, there being no one desiring to speak to this issue.

City Clerk Erway announced that the Forster Casablanca Condominium Association has withdrawn its request for enforcement of the CVC and the SCMC within its development, which precludes Council action on this matter.

MEETING RECESSED

Council recessed at 9:30 p.m. and reconvened at 9:40 p.m., with all members present.

4. CONSENT CALENDAR

MOTION BY COUNCILMEMBER HAGGARD, SECOND BY COUNCILMEMBER LORCH, CARRIED 5-0, to approve the Consent Calendar with the removal of Items 4-H, 4-L, and 4-M.

A. City Council Minutes

MOTION BY COUNCILMEMBER HAGGARD, SECOND BY COUNCILMEMBER LORCH, CARRIED 5-0, to approve the City Council minutes of March 13, 1991 and April 3, 1991.

B. MOTION BY COUNCILMEMBER HAGGARD, SECOND BY COUNCILMEMBER LORCH, CARRIED 5-0, to receive and file:

- (1) Community Design Commission minutes of March 26, 1991.
- (2) Planning Commission minutes of April 2, 1991.

C. Warrant Register

MOTION BY COUNCILMEMBER HAGGARD, SECOND BY COUNCILMEMBER LORCH, CARRIED 5-0, to approve Warrant Nos. 100944 through 101144 (Voids 100942-100943) for the period 4-15-91 through 4-19-91 in the amount of \$396,538.85; approve Warrant Nos. 100825 through 100941 (Voids 100821-100824) (Handwrite #100820) for the period 4-8-91 through 4-12-91 in the amount of \$817,225.30; for a total Warrant Register of \$1,213,764.15.

Payroll Register

MOTION BY COUNCILMEMBER HAGGARD, SECOND BY COUNCILMEMBER LORCH, CARRIED 5-0, to approve Payroll Warrant Nos. 63836 through 64223 (Voids 63833-63835) for the period 4-1-91 through 4-15-91 in the amount of \$325,020.93; for a total Payroll Register of \$325,020.93.

D. Junior Lifeguard Program - Fee Increase

MOTION BY COUNCILMEMBER HAGGARD, SECOND BY COUNCILMEMBER LORCH, CARRIED 5-0, to adopt Resolution No. 91-53 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, INCREASING THE FEE CHARGED FOR PARTICIPATION IN THE CITY'S JUNIOR LIFEGUARD PROGRAM AND RESCINDING RESOLUTION NO. 89-42.

E. SB 821 - Application for Bicycle and Pedestrian Funds for FY 1991-92

MOTION BY COUNCILMEMBER HAGGARD, SECOND BY COUNCILMEMBER LORCH, CARRIED 5-0, to adopt Resolution No. 91-54 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING THE APPLICATION FOR BICYCLE AND PEDESTRIAN FUNDS UNDER SB 821 AND APPROVING A PEDESTRIAN FACILITY IN THE VICINITY OF LAS PALMAS ELEMENTARY SCHOOL.

F. AB 854 - California Coastal Sanctuary Act of 1991

MOTION BY COUNCILMEMBER HAGGARD, SECOND BY COUNCILMEMBER LORCH, CARRIED 5-0, to:

1. Adopt Resolution No. 91-55 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, CONCEPTUALLY SUPPORTING ASSEMBLY BILL (AB) 854, THE CALIFORNIA COASTAL SANCTUARY ACT OF 1991.
2. Direct Staff to forward Resolution No. 91-55 to appropriate legislators.

G. Amendments to County Hazardous Waste Management Plan

MOTION BY COUNCILMEMBER HAGGARD, SECOND BY COUNCILMEMBER LORCH, CARRIED 5-0, to adopt Resolution No. 91-56 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING THE AMENDMENTS TO THE ORANGE COUNTY HAZARDOUS WASTE MANAGEMENT PLAN AS SUBMITTED.

I. Replacement of Library/Senior Center Railings

MOTION BY COUNCILMEMBER HAGGARD, SECOND BY COUNCILMEMBER LORCH, CARRIED 5-0, to accept the quote of The Ironman, for the replacement of the Library/Senior Center railings, in the amount of \$10,980.00.

J. Establishment of Weed Abatement Program for 1991

MOTION BY COUNCILMEMBER HAGGARD, SECOND BY COUNCILMEMBER LORCH, CARRIED 5-0, to adopt Resolution No. 91-58 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, PURSUANT TO SECTION 39561 AND 39562.1 OF THE CALIFORNIA GOVERNMENT CODE DECLARING WEEDS, RUBBISH, REFUSE, AND DIRT UPON STREETS, SIDEWALKS, PARKWAYS, AND PRIVATE PROPERTY TO BE PUBLIC NUISANCES AND PROVIDING FOR THE ABATEMENT THEREOF.

K. Emergency Medical Services - Contract with San Diego County

MOTION BY COUNCILMEMBER HAGGARD, SECOND BY COUNCILMEMBER LORCH, CARRIED 5-0, to approve, and authorize the Mayor to execute, Amendment No. 6 to City Contract No. C87-45 with San Diego County for emergency medical services for that portion of San Diego County north of Las Pulgas on Interstate 5, Old Pacific Coast Highway and San Onofre State Beach.

N. Reimbursement Agreement for Construction of Camino de Estrella/I-5 Interchange and Camino de los Mares Improvements

MOTION BY COUNCILMEMBER HAGGARD, SECOND BY COUNCILMEMBER LORCH, CARRIED 5-0, to approve, and authorize the Mayor to execute, a Reimbursement Agreement by and between the City of San Clemente and Centex Development Company for the advancement of the entire cost of constructing road improvements at the Estrella/I-5 Interchange and Camino de los Mares.

ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION**H. Records Destruction**

MOTION BY COUNCILMEMBER LORCH, SECOND BY COUNCILMEMBER BENEDICT, CARRIED 5-0, to adopt Resolution No. 91-57 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AUTHORIZING AND DIRECTING THE CITY CLERK TO DESTROY CERTAIN CITY RECORDS AND DOCUMENTS, with the provision that said records will not be destroyed until after June 1, 1991.

L. Tree Maintenance Contract - Rod's Tree Service

Council discussed the possibility of soliciting bids for the City's tree maintenance contract on a biennial basis. In response to Council inquiry, City Attorney Oderman noted the City would not be legally compelled to accept the low bidder with this particular type of contract.

During the course of discussion, it was noted that Rod's Tree Service has done an excellent job during its years of service to the City.

MOTION BY COUNCILMEMBER BENEDICT, SECOND BY COUNCILMEMBER LORCH, **FAILED 2-3**, (COUNCILMEMBER HAGGARD, MAYOR PRO TEM ANDERSON, AND MAYOR DIEHL VOTING NOE), to authorize Staff to solicit bids for the City's Tree Maintenance Contract.

MOTION BY COUNCILMEMBER HAGGARD, SECOND BY MAYOR PRO TEM ANDERSON, CARRIED 3-2 (COUNCILMEMBERS BENEDICT AND LORCH VOTING NOE), to approve, and authorize the Mayor to execute, Amendment No. 1 to existing City Contract C87-40 by and between the City of San Clemente and Rod's Tree Service, extending the term of the agreement for an additional two years and amending the "Schedule of Compensation" to provide that the City shall pay to Contractor an amount not to exceed \$132,000 for all services provided, to be adjusted at the end of the first year in accordance with the Consumer Price Index.

M. Authorization to Bid - Annual Slurry Sealing Program, Project No. 6-91

In response to Council inquiry, City Engineer Cameron explained the method utilized in determining the streets to be included in the Annual Slurry Sealing Program.

MOTION BY COUNCILMEMBER LORCH, SECOND BY COUNCILMEMBER BENEDICT, CARRIED 5-0, to:

1. Approve the plans and specifications for the annual Slurry Sealing Program.
2. Authorize Staff to advertise the project for competitive bidding.

5. ORAL COMMUNICATIONS

San Clemente High School Grad Nite

Theresa Chehock, 2406 Calle Madiera, Fund-Raising Chairperson for San Clemente High School's Grad Nite, commented that the City has denied San Clemente High School's request for a donation for this year's Grad Nite; noted the purpose of Grad Nite is to facilitate a safe night for graduating seniors and requested that the City again donate to this effort.

MOTION BY COUNCILMEMBER BENEDICT, SECOND BY COUNCILMEMBER LORCH, CARRIED 4-1 (MAYOR DIEHL VOTING NOE), to agendize a possible donation to San Clemente High School's Grad Nite for the Council meeting of May 15, 1991.

6. UNFINISHED BUSINESS

None.

7. NEW BUSINESS

A. Authorization to Bid - Avenida de la Estrella Street Rehabilitation (Project No. 1-90)

Report from the Community Development Director concerning authorizing Staff to solicit bids for the rehabilitation of Avenida de la Estrella from Avenida Palizada to Avenida Presidio.

Community Development Director Holloway reviewed the background of the issue.

City Engineer Cameron reviewed the contents of the Administrative Report, focusing on the technical aspects of the proposed street rehabilitation, underground utility district, and sidewalk improvements; noted the Council could elect to extend the underground utility district from Avenida Presidio to El Portal, as opposed to limiting the district from Avenida Presidio to Avenida Palizada.

Council requested that the Administrative Report for the Public Hearing on June 5, 1991 address the feasibility of widening the Palizada/Estrella intersection to provide right, left and through lanes.

MOTION BY COUNCILMEMBER BENEDICT, SECOND BY COUNCILMEMBER HAGGARD, CARRIED 5-0, to:

1. Direct Staff to request that OCTC grant an extension in the deadline requiring award of the Avenida de la Estrella Street Rehabilitation project from June 30, 1991 to December 31, 1991.
2. Direct Staff to proceed with the establishment of an underground utility district within Avenida de la Estrella from Avenida Presidio to El Portal.
3. Direct Staff to commence the Street and Highways Code process that requires property owners to construct the sidewalk improvements fronting their properties.

B. Prohibited Beach and Pier Activities

Report from the Interim Assistant City Manager addressing proposed regulations to govern activities on public and private beaches and the Municipal Pier.

Marine Safety Captain Hughes reviewed the contents of the Administrative Report.

MOTION BY COUNCILMEMBER LORCH, SECOND BY MAYOR PRO TEM ANDERSON, **FAILED 2-3** COUNCILMEMBERS BENEDICT AND HAGGARD AND MAYOR DIEHL VOTING NOE), to introduce Ordinance No. 1050 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING CHAPTER 18 OF THE CODE OF THE CITY OF SAN CLEMENTE RELATING TO PROHIBITED ACTIVITIES ON PUBLIC AND PRIVATE BEACHES AND THE MUNICIPAL PIER, with the modification that the second sentence of Section 3 be modified to read in its entirety as follows:

"No person shall ride, or permit to be ridden, drive, or permit to be driven, any bicycle, tricycle, skateboard, roller skates, or similar type device on the municipal pier or access to the pier. In addition, no person shall throw any "frisbee" or other similar device on the municipal pier, access to the pier, service roads, or beach access roads. No person shall ride, or permit to be ridden in an unsafe fashion, any bicycle, tricycle, skateboard, roller skates, or similar device on service roads or beach access roads."

MOTION BY COUNCILMEMBER HAGGARD, SECOND BY COUNCILMEMBER BENEDICT, CARRIED 3-2 (MAYOR PRO TEM ANDERSON AND COUNCILMEMBER LORCH VOTING NOE), to introduce Ordinance No. 1050 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING CHAPTER 18 OF THE CODE OF THE CITY OF SAN CLEMENTE RELATING TO PROHIBITED ACTIVITIES ON PUBLIC AND PRIVATE BEACHES AND THE MUNICIPAL PIER.

C. Water Craft Regulations (Jet Skis)

Report from the Interim Assistant City Manager addressing proposed regulations to govern the use of watercraft.

Marine Safety Captain Hughes reviewed the contents of the Administrative Report.

MOTION BY MAYOR PRO TEM ANDERSON, SECOND BY COUNCILMEMBER HAGGARD, CARRIED 5-0, to:

1. Introduce Ordinance No. 1051 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING THE SAN CLEMENTE MUNICIPAL CODE BY AMENDING SECTION 18-5 RELATING TO USE OF WATERCRAFT.
2. Authorize the City Manager, or his designee, to negotiate an agreement with the State of California for its enforcement of the Ordinance, with the understanding the agreement will be submitted to Council for approval.

8. REPORTS**A. Commissions and Committees**

None.

B. City Manager**City/Chamber Economic Development Committee**

MOTION BY COUNCILMEMBER HAGGARD, SECOND BY COUNCILMEMBER LORCH, CARRIED 5-0, to direct Staff to agendize consideration of reinstating the City/Chamber Economic Development Committee and appointing two Council representatives to serve on said committee for the May 15, 1991 Council meeting.

C. City Attorney

MOTION BY COUNCILMEMBER LORCH, SECOND BY COUNCILMEMBER HAGGARD, CARRIED 5-0, to authorize the City to tender the balance of its self-insured retention, in part of an overall settlement of the litigation entitled Palacios, et al. v. City of San Clemente, et al., Case No. 52 10, 34, in the approximate amount of \$347,369.

D. Council Members

(1) Consideration of Council Position on Orange County Division - California League of Cities Issues

Mayor Diehl advised of Committee opportunities currently available through the Orange County Division; advised that the Division, at its meeting of April 11, 1991, adopted Resolution No. 4-91, which affirmed support for President Bush, Congress and the service men and women involved in the Persian Gulf War; explained that Division action is scheduled for the May 9, 1991 General Meeting concerning Resolution 5-91, opposing AB 1819 (Umberg) which would require a majority vote for the condemnation of private property, as opposed to the current two-thirds vote requirement.

MOTION BY COUNCILMEMBER LORCH to endorse Resolution 5-91, opposing AB 1819 (Umberg) which would require a majority vote for the condemnation of private property, as opposed to the current two-thirds vote requirement. The Motion died for lack of a second.

MOTION BY MAYOR PRO TEM ANDERSON to endorse AB 1819 (Umberg) which would require a majority vote for the condemnation of private property, as opposed to the current two-thirds vote requirement. The Motion died for lack of a second.

Council agreed to not take a position on AB 1819 (Umberg) at this time. It was further agreed that following presentation of information concerning AB 1819 at the May 9, 1991 General Meeting, Mayor Diehl will caucus with those Councilmembers present prior to voting on the issue.

Mayor Diehl advised that Resolution 3-91, which contains recommendations to support legislation dealing with current water issues, will be considered by the Resolutions Committee at its May 9, 1991 meeting.

(2) **Assessment to Orange County Division to Cover Participation in the Air Quality Technical Assistance Program**

MOTION BY COUNCILMEMBER HAGGARD, SECOND BY COUNCILMEMBER BENEDICT, CARRIED 5-0, to approve a one-time assessment, in the amount of \$359.00, to the Orange County Division of the League of California Cities to cover the costs associated with participation in the Air Quality Technical Assistance Program.

(3) **City Position on Measure "J" - Sales Tax for New County Jail**

Council reaffirmed its support for Measure "J" (Sales Tax for New County Jail). Council originally endorsed Measure "J" at its meeting of April 3, 1991.

(4) **Boatman Deck - 2312 Plaza a la Playa**

Councilmember Lorch opined that a property owner cannot become vested through construction of an illegal deck; suggested the agreement entered into between the City and Dr. Boatman is illegal; stated the project violates the City's Zoning Ordinance; recommended that the property owner apply for a Variance.

City Attorney Oderman stated the agreement between the City and Dr. Boatman is legal; reviewed the history of the matter, noting that Dr. Boatman established a vested right because he relied in good faith on a building permit that was issued, even though that permit was improperly issued; noted the subject Agreement, which was negotiated in recognition of Dr. Boatman's vested right, did not compromise the City's legal position; stated the situation did not involve a policy issue or a situation where a choice was available to the Council; stressed the subject incident will not set a precedent since it was based on an error.

Community Development Director Holloway reviewed the chronology of events associated with the deck at 2312 Plaza a la Playa.

Brian Rice, 2308 Plaza a la Playa, stated that non-permitted or non-conforming decks are being used as stringlines for other decks; voiced concern that allowing the current deck to remain will set an undesirable precedent.

MOTION BY COUNCILMEMBER LORCH to require the deck for the residence at 2312 Plaza a la Playa to be subjected to variance proceedings. The Motion died for lack of a second.

MOTION BY COUNCILMEMBER LORCH that the agreement by and between the City of San Clemente and Dr. Boatman, dated April 16, 1991, be voided and that the Applicant either conform to the Zoning Code or apply for a variance. The Motion died for lack of a second.

- (5) Councilmember Haggard requested that Staff ask Amtrak to blow a whistle at North Beach near Buena Vista, since the train cannot be heard at that location; recommended publicizing the availability for purchase of parking permits for an annual cost of \$40.00.

Meeting Recessed

Council recessed to a meeting of the Redevelopment Agency at 11:50 p.m.

Meeting Reconvened

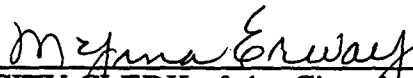
Council reconvened at 11:51 p.m. with all members present.

9. **RESOLUTIONS/ORDINANCES**


None.

10. ADJOURNMENT

MOTION BY COUNCILMEMBER BENEDICT, SECOND BY COUNCILMEMBER LORCH, CARRIED 5-0, to adjourn at 11:50 p.m. The next Regular Meeting will be held on May 15, 1991 at 7:00 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California.



CITY CLERK of the City of
San Clemente, California



MAYOR of the City of
San Clemente, California

