

CITY OF SAN CLEMENTECITY COUNCIL MINUTESADJOURNED REGULAR MEETING - NOVEMBER 24, 1987

An adjourned regular meeting of the City Council of the City of San Clemente, conducted in the Council Chambers, Civic Center Building, 100 Avenida Presidio, was called to order by Mayor Lorch at 7:10 p.m.

PRESENT Council Members - LIMBERG, MECHAM, RICE, VEALE,
MAYOR LORCH

ABSENT Council Members - NONE

STAFF PRESENT James Hendrickson, City Manager; Greg Hulsizer, Assistant City Manager; Myrna Erway, City Clerk; Jeff Oderman, City Attorney; Jim Holloway, Community Development Director; Bill Cameron, City Engineer; Joanne Baade, Deputy City Clerk; and certain other staff members present in the audience.

PLEDGE OF ALLEGIANCE

Mayor Lorch led the Pledge of Allegiance.

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

PUBLIC HEARINGS1. Settlement Development Agreement

Public Hearing to determine whether Estrella Properties, Ltd. has complied in good faith with the provisions of the first amendment to the Settlement/Development Agreement.

CLOSED SESSION

MOTION BY COUNCILMEMBER MECHAM, SECOND BY COUNCILMEMBER LIMBERG, CARRIED 5-0, to recess to Closed Session at 7:10 p.m. to discuss pending and potential litigation pursuant to Government Code Sections 54956.9(a), 54956.9(b)(1), and 54956.9(c) (Estrella Properties, Ltd. v. the City of San Clemente - Measure B Lawsuits). The City Manager, City Attorney Oderman, Community Development Director, and Attorney Margaret Sohagi were in attendance.

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MEETING RECONVENED

Council reconvened at 7:35 p.m., with all members present.

City Attorney Oderman referenced for the record the following reports:

1. Report to the City Council from the City Attorney, dated November 9, 1987.
2. Reports to the Planning Commission from the City Attorney, dated November 23, 1987 and October 8, 1987.
3. Report from Menke, Fahrney and Carroll (counsel representing Estrella Properties, Ltd.), dated November 20, 1987.
4. Verbatim transcript of the Planning Commission hearings of September 29, 1987 and October 15, 1987.

City Attorney Oderman summarized the provisions of the Settlement/Development Agreement; advised the primary issue of this proceeding is the construction of the tri-lock drainage channel through the length of the Shorecliffs Golf Course; advised the Planning Commission recommends that Council find that Estrella Properties has not complied in good faith with the Settlement/Development Agreement as it pertains to construction of the tri-lock drainage channel; reviewed the history of the tri-lock drainage channel, commenting that the City declared the facility to be a public nuisance in March, 1987.

City Attorney Oderman responded to Estrella Properties' contentions regarding the Settlement/Development Agreement as follows:

1. Estrella Properties maintains they are not required to install the tri-lock because the City has not approved the hotel site on the Shorecliffs Golf Course.

The City has no obligation under the Settlement/Development Agreement to approve a hotel on the golf course. The Agreement states that if the City does not approve a hotel, Option 3 shall be implemented rather than Option 1.

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2. Estrella Properties contends they are not required to install the tri-lock because the City has breached the Agreement by its failure to approve development on the Forster Ranch property.

Estrella Properties has taken this position in court and was unsuccessful; however, the item is being appealed.

3. Estrella Properties claims the City is in breach of the Agreement for failing to provide progress payments to Estrella.

Under the reimbursement agreement, in order to be entitled to progress payments, Estrella is required to have an engineer submit statements indicating the percentage of work completed and the compliance of that work with the plans and specifications. To date, Estrella has not done so. In April, 1987 Estrella submitted a letter to the Finance Director requesting reimbursement of an amount far in excess of what full payment would have been without providing any engineering justification or breakdown.

Councilmember Limberg advised that at the time the parties entered into the Settlement Development Agreement, Estrella agreed to purchase the golf course, restore it, and to deed restrict the property to preclude any residential development.

Civil Engineering Associate Niederberger reviewed the status of the tri-lock facility; summarized the reasons for the tri-lock failure; reviewed the extent of erosion damage along the golf course due to the floods which occurred in October.

In answer to a question posed by Councilmember Rice pertaining to the suitability of rip-rap for the tri-lock channel, Civil Engineering Associate Niederberger advised the Orange County Flood Control District does not believe the tri-lock would be conducive to the use of rip-rap; noted the District recommends that if the use of rip-rap is considered, that an in-depth geotechnical evaluation be conducted to determine the suitability of rip-rap.

John Kottke, Menke, Fahrney and Carroll, 650 Town Center Drive, Suite 850, Costa Mesa (attorney representing Estrella Properties), urged that Council consider Estrella's compliance with the entire Settlement/Development Agreement and not limit its

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consideration to the First Amendment thereto; reviewed the areas in which Estrella Properties has complied with the terms of the Agreement; stated that Estrella installed the tri-lock 100% by January, 1986; stated Estrella applied for reimbursement in January, 1986 but the request was denied by the City; stated Estrella has tried various methods to correct the tri-lock, adding they should not be considered to be in bad faith because the various methods were not successful; stated the City never agreed to pay any percentage of reimbursement nor has it requested engineering certification; concurred the Settlement/Development Agreement does not require the City to approve a hotel on the golf course property, but added that if a hotel is not approved, Estrella is not required to repair, restore or maintain the drainage channel; relayed his belief that Estrella was not subject to the initiative ordinance, adding this item was denied by the court but Estrella did not lose the point since it will be decided later at time of trial; stated this is the first time in seven years that Estrella's progress has been reviewed; stated Estrella believes it has complied in good faith with the Settlement/Development Agreement and the First Amendment thereto; stated that if the City finds that Estrella has not complied with the Agreement in good faith, Estrella has no option economically, but to close the Shorecliffs Golf Course.

Mayor Lorch opened the Public Hearing.

Kurt Beck, 3005 Calle Arco, stated the Shorecliffs Golf Course is currently well-maintained; stated he would support a high-calibre resort hotel on the site; urged that Council either reach agreement with Estrella to insure the continuation of a well-maintained golf course, or preferably, that the City assume operation of the golf course.

Roger Gentry, 115 W. Lobos Marinos, spoke in support of the continuation of the golf course and development of a hotel thereon.

Ben Heatherington, 44 Mira Las Olas, urged that Council and Estrella reach agreement for completion of the tri-lock; felt neither the City nor Estrella have complied with the Settlement Development Agreement.

Sharon Jansen, 4015 Calle Mayo, (representing Party Pro's) stated that Party Pro's and Tres Bien Catering operate out of the Shorecliffs Golf Course Clubhouse and voiced concern that both businesses will be forced to close if the golf course were closed.

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Salvadore Lardiere, 3124 Calle Grande Vista, urged Council to rely on their judgment and the work of staff and make a determination on this issue this evening.

Dan Millington, 3917 Calle Andalucia, reviewed the erosion problems existing in Cascadita Canyon; stated twelve people have been evacuated from their homes because of unstable land which is supported by land owned by Estrella Properties; urged that Council find that Estrella Properties has not complied with the terms of the Settlement/Development Agreement.

John Nichols, 2715 Via Arboleda, representing the Associated Shorecliffs Residents, stated the association is not opposed to the construction of a hotel provided all conditions of the Settlement/Development Agreement are met; felt the tri-lock is not sufficient in its current state and should be repaired to the satisfaction of the Orange County Flood Control District.

Mark Walling, 818 Camino de los Mares, stated his property is located near the golf course and is scheduled to close escrow on January 5, 1988; voiced concern that the property may fall out of escrow in the event the golf course were closed; stated he would support the construction of a hotel, if necessary for the continuation of the golf course.

Ginger Page, 215 Via Ballena, felt compaction is inadequate in the subject area; felt the mylar was inappropriately installed in the tri-lock; felt the City should not approve the hotel until Estrella Properties has complied with the Settlement/Development Agreement.

Bob McCallister, 241 Calle Fiesta, Manager of the Shorecliffs Golf Course, stated the golf course was in a state of disrepair prior to acquisition by Estrella Properties; reviewed the revenue projections of the golf course; felt the tri-lock is sufficient, except for the bottleneck at 181 Vaquero; stated the golf course has resulted in higher property values of surrounding properties; advised golf course employees have been put on notice that the course may close.

Floyd Cate, 205 Via Montego, stated Estrella Properties restored the golf course according to schedule; stated the hotel is necessary to make the golf course viable.

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City Attorney Oderman responded to comments raised by Mr. Kottke as follows:

1. Estrella will close the golf course in the event the City does not find they have complied in good faith with the Settlement/Development Agreement.

There is no obligation in the Agreement for the City to approve the hotel, nor is there an obligation on Estrella's part to keep the golf course open indefinitely.

2. Consideration should be given to Estrella's compliance with the entire Settlement/Development Agreement, and not just the First Amendment thereto.

The City has focused on the tri-lock because that is the issue in dispute. The City recognizes that Estrella has performed other obligations under the Agreement.

3. The tri-lock is 100% complete.

The City has a factual disagreement with Estrella on this point.

4. The City denied Estrella the right to progress payments.

Mr. Oderman read a letter from Dean Porter, Finance Director, to Mr. Spence of Estrella Properties, written in March of 1986, which advised that the Agreement states that final payment shall be made to Estrella upon the Community Development Department's certification of satisfactory completion of the master plan drainage facilities. No request for progress payment was made after this letter was sent.

5. Even if Estrella Properties didn't exactly comply with the Agreement, they made a good faith effort to comply.

Staff might have supported this position in January of 1986; however, it is difficult to support at this time given the history of the matter.

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6. The Government Code requires annual progress reviews.

Staff concurs that the Government Code does require an annual review. This review had not taken place in the past since there was no area in dispute.

MOTION BY COUNCILMEMBER LIMBERG, SECOND BY COUNCILMEMBER RICE, to continue the Public Hearing on the Settlement Development Agreement to December 17, 1987 and to direct staff to provide alternatives and to address the concerns expressed in the Public Hearing.

In answer to a question posed by the City Attorney, Mr. Kottke stated, on behalf of Estrella Properties, that the Shorecliffs Golf Course would remain open pending the proposed continuation of this public hearing.

THE MOTION CARRIED 5-0.

COUNCIL RECESSED AT 9:45 P.M. AND RECONVENED AT 10:00 P.M.

2. Proposed Revisions - Measure B Implementation and Ordinance No. 922

Continued Public Hearing to consider amending Chapter 38 of the Code of the City of San Clemente and the RDEB point and criteria standards used to implement Chapter 38.

Attorney Margaret Sohagi highlighted the proposed revisions to the RDEB criteria and point modifications, as well as the proposed amendments to Ordinance 922; recommended Council not take action regarding modification to Section 7-A(3) of Measure B to increase subsection minimums for 6-B criteria from 50 to 70%; suggested that Council direct staff to consider the deletion of these subsection minimums and report back to Council for consideration at a future public hearing.

Mayor Lorch opened the Public Hearing; however, no one desired to speak to this issue.

Council discussed the proposed revisions and noted concerns as follows:

- . Possibility of the proposed amendments exceeding the intent of Ordinance No. 922 as it relates to modification allowances.

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- . The criteria may favor large projects over small/in-fill projects.
- . The criteria provides additional points for "substantial excess capacity" in terms of utilities (water, sewer, and storm drainage) without totally defining what constitutes substantial excess capacity. Council discussed the possibility of instituting a pass/fail system for projects which meet City standards in terms of utilities.
- . Possible liability in light of the Nollan decision.
- . The City would be determining point credits for impacts on schools, even though schools are under the jurisdiction of the School District.
- . Difficulty of determining whether a project will cause a specific level of service on the roads without dealing with the matter in a regional context.
- . Surface street impacts are not addressed in the criteria.
- . Points would be allocated for aesthetic impacts even though attractiveness is a subjective issue.

CLOSED SESSION

MOTION BY COUNCILMEMBER VEALE, SECOND BY COUNCILMEMBER MECHAM, CARRIED 5-0, to recess to Closed Session at 11:08 p.m. for purpose of discussing pending litigation (Measure B lawsuits) pursuant to Government Code Section 54956.9(a).

MEETING RECONVENED

Council reconvened at 12:08 A.M. with all members present.

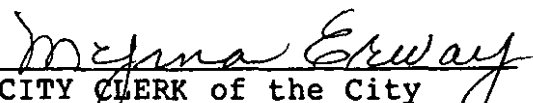
MOTION BY COUNCILMEMBER LIMBERG, SECOND BY COUNCILMEMBER RICE, CARRIED 5-0, to continue the Public Hearing on Proposed Revisions - Measure B Implementation and Ordinance No. 922 to the December 2, 1987 Council meeting.


ADJOURNMENT

MOTION BY COUNCILMEMBER MECHAM, SECOND BY COUNCILMEMBER LIMBERG, CARRIED 5-0, to adjourn at 12:10 A.M. to a Joint Workshop with the Planning Commission to be held on November 30, 1987 at 6:00 P.M. in the Council Chambers, located at 100 Avenida Presidio, San Clemente.

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The next Regular Meeting will be held on December 2, 1987 at
6:00 p.m.


CITY CLERK of the City
of San Clemente


MAYOR of the City of
San Clemente

AFFIDAVIT OF POSTING ORDER
OF ADJOURNMENT OF MEETING

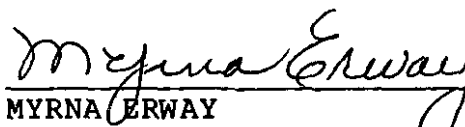
STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS.
CITY OF SAN CLEMENTE)

I, MYRNA ERWAY, declare as follows:

That I am the City Clerk of the City of San Clemente; that at a regular meeting of the City Council held on November 24, 1987 said meeting was adjourned to the time and place specified in the ORDER OF ADJOURNMENT attached hereto; and that on November 25, 1987 at the hour of 9:00 a.m. a copy of said order was posted at a conspicuous place near the door at which said meeting was held.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 25, 1987 at San Clemente, California.


MYRNA ERWAY
CITY CLERK

