

CITY OF SAN CLEMENTE

City Council Minutes

Adjourned Regular Meeting - July 11, 2006

An Adjourned Regular Meeting of the San Clemente City Council was called to order on July 11, 2006 at 5:30 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California.

PRESENT

ANDERSON, DAHL*, KNOBLOCK, RITSCHER, MAYOR
EGGLESTON

*Arrived at 5:32 p.m.

ABSENT

NONE

STAFF PRESENT

George Scarborough, City Manager; Jeff Oderman, City Attorney; Myrna Erway, City Clerk; Joanne Baade, Deputy City Clerk

CLOSED SESSION

City Attorney Oderman requested Closed Sessions to discuss the items on the agenda; stated that Closed Session Item A relates to a Shorecliffs height overlay district that appears on this evening's General Session agenda, explaining that the City has been threatened with litigation from a number of sources on various grounds concerning that item; stated that the agenda indicates that Closed Session Item B will involve three potential cases of anticipated litigation, but only two cases will be discussed this evening. Those cases involve potential code enforcement matters relating to Dwinnell's Landscape Materials and Duke's Griddle and Grill.

MOTION BY COUNCILMEMBER ANDERSON, SECOND BY COUNCILMEMBER RITSCHER, CARRIED 4-0, to recess to Closed Session at 5:30 p.m. to discuss the following:

A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation, pursuant to Government Code Section 54956.9(b): One Potential Case

Closed Session items continued on next page

B. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Initiation of litigation pursuant to Government Code Section 54956.9(c): Two Potential Cases

City Manager Scarborough, City Attorney Oderman, Community Development Director Holloway, Code Enforcement Officer Smith and City Clerk Erway were in attendance.

MEETING RECONVENED

Council reconvened at 7:00 p.m., with all members present.

INVOCATION

Fr. Jay Cayangyang, from St. Michael's Church, gave the invocation.

PLEDGE OF ALLEGIANCE

Mayor Pro Tem Dahl led the Pledge of Allegiance.

1. **SPECIAL PRESENTATIONS**

A. **Presentation of Landscape Award of Merit**

Angela Woodward, of RBF Consulting, presented the American Society of Landscape Architects (Southern California Chapter) 2005 Merit Award to the City of San Clemente in recognition of outstanding professional achievement with regard to the Marblehead Coastal development project.

B. **Presentation of Certificate of Recognition - Praim S. Singh (RIO)**

Mayor Eggleston presented a Certificate of Recognition to Praim S. Singh for 40 years of service as Executive Director of the Rehabilitation Institute of Southern California.

2. MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER ANDERSON, CARRIED 5-0, to waive reading in full of all Resolutions and Ordinances.

3. **CONSIDERATION OF AGENDIZING ITEMS REQUIRING IMMEDIATE ACTION**

None.

4. **ORAL COMMUNICATIONS (PART ONE)**

Classic Car Show

Dave Anderson, on behalf of the Downtown Business Association, thanked the City for its support of the Classic Car Show; stated that the next car show will probably be held on June 10, 2007, since the Classic Car Show is typically held on the second Sunday in June; stated that more than 100 vehicles were turned away this year because of a lack of space and expressed hope that the City will help find more space for next year's event.

5. **CONSENT CALENDAR**

MOTION BY COUNCILMEMBER RITSCHER, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to approve the Consent Calendar with the removal of Items D, E, F, and L for discussion. Agenda Item 5-K was deleted from the agenda.

A. **City Council Minutes**

MOTION BY COUNCILMEMBER RITSCHER, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to approve the City Council minutes of May 22, 2006, May 23, 2006, May 30, 2006, June 5, 2006 and June 12, 2006.

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

- (1) Zoning Administrator meeting minutes of June 21, 2006.
- (2) Human Affairs Committee minutes of May 10, 2006.
- (3) Parks and Recreation Commission minutes of May 9, 2006.
- (4) Golf Course Committee minutes of April 6, 2006 and May 4, 2006.
- (5) Planning Commission minutes of June 21, 2006.

C. **Warrant Register**

MOTION BY COUNCILMEMBER RITSCHER, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to approve Warrant Nos. 776352 through 776537 for the period 6-5-06 through 6-9-06 in the amount of \$2,105,953.17; approve Wire Transfers Nos. 397 and 398, and Warrant Nos. 776538 through 776707 for the period 6-12-06 through 6-16-06 in the amount of \$1,069,927.91; approve Wire Transfer No. 399 and Warrant Nos. 776708 through 776895 for the period 6-19-06 through 6-23-06 in the amount of \$1,050,227.59; for a total Warrant Register of \$4,226,108.67.

Payroll Register

MOTION BY COUNCILMEMBER RITSCHER, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to approve Warrant Nos. 317850 through 317928, Automatic Deposit Advises 141143 through 141378, for the period 6-5-06 through 6-18-06 in the amount of \$355,179.67; for a total Payroll Register of \$355,179.67.

G. **Retention of Landscape Bonds for Tract 15863, Beazer Homes Holdings Corporation**

MOTION BY COUNCILMEMBER RITSCHER, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to adopt Resolution No. 06-46 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AUTHORIZING THE RETENTION OF LANDSCAPE BONDS FOR TRACT 15863, BEAZER HOMES HOLDINGS CORPORATION.

H. **Notice of Completion - Main Pump Station Scrubber Repiping and Wall Seal**

MOTION BY COUNCILMEMBER RITSCHER, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to:

1. Accept the Main Pump Station Scrubber Repiping and Wall Seal, Project No. 25202, from NEWest Construction Company, Inc.
2. Authorize the Mayor to execute, and the City Clerk to record, the Notice of Completion for the Main Pump Station Scrubber Repiping and Wall Seal, Project No. 25202. (Contract C06-04)

I. **Release of Improvement Performance Bonds - Village 3 Recreation Center, Tract 16148 and Lot 8 of Final Map 16337, Talega Associates, LLC**

MOTION BY COUNCILMEMBER RITSCHER, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to adopt Resolution No. 06-47 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AUTHORIZING THE RELEASE OF THE IMPROVEMENT PERFORMANCE BONDS, WITHOUT LIMITATION, FOR THE VILLAGE 3 RECREATION CENTER, TRACT 16148 AND LOT 8 OF FINAL MAP 16337, TALEGA ASSOCIATES LLC, **subject to the City Engineer's and City Attorney's approval of an executed water quality management plan advisory and acknowledgment of responsibilities form from Talega Maintenance Corporation and its management company, currently Merit Property Management Co., Inc.**

J. **Soldier Ride Awards Ceremony and Finale Celebration - Request for Special Event at Park Semper Fi and Beach Front Between Marine Safety and Pier**

MOTION BY COUNCILMEMBER RITSCHER, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to approve the Soldiers' Angels special event at Park Semper Fi, Parque Del Mar, and the beach north of the San Clemente Pier with all of the conditions of approval contained in the Administrative Report or associated with the Special Event permit process.

K. **La Pata/Vista Hermosa Park - Funding for Final Design Services**

This item was removed from the agenda.

ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION**D. Contract Award - Recycled Water Master Plan Update**

In response to Council inquiry, City Engineer Cameron advised that the City needs to update the Recycled Water Master Plan irrespective of whether or not the City is successful in receiving the \$5.7 million State grant to help it expand its recycled water system; explained that State law requires that engineering service contractors be selected on the basis of qualifications, as opposed to being bid; stated that AKM presented the best overall proposal, but Staff was concerned about the cost; explained that Staff subsequently negotiated a lowered price and reduced scope of services with the contractor; explained that the process that Staff utilized represents a standard practice within the industry.

MOTION BY COUNCILMEMBER ANDERSON, SECOND BY MAYOR PRO TEM DAHL, CARRIED 5-0, to approve, and authorize the Mayor to execute, Contract C06-35 by and between the City of San Clemente and AKM Consulting Engineers, providing for completion of the Recycled Water Master Plan Update, Project No. 36405, in the amount of \$69,360.

E. Contract Award - Electronic Document Management System Maintenance

In response to Council inquiry as to why Staff did not seek Requests for Proposals for the subject imaging services, City Clerk Erway explained that most imaging firms utilize software systems that differ from that used by the City; explained that Maris Imaging Solutions installed the City's existing software system and has digitized the City's documents for the past few years in a quality manner; noted the importance of consistent and logical indexing as prerequisites to successful electronic document management.

MOTION BY COUNCILMEMBER KNOBLOCK, SECOND BY MAYOR PRO TEM DAHL, CARRIED 5-0, to approve, and authorize the Mayor to execute, Contract C03-47 by and between the City of San Clemente and Maris Imaging Solutions LLC, providing for professional electronic document management system maintenance services in an amount not to exceed \$60,000 for FY 2006/07.

F. **Rejection and/or Disqualification of Certain Bids for the Municipal Golf Course Clubhouse, Project No. 13701**

In response to Council inquiry, Golf Course Manager Nelson summarized various flaws associated with certain bids received for the clubhouse project; estimated that the disqualification and/or rejection of the subject bids will delay the project approximately two weeks.

MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER RITSCHER, CARRIED 5-0, to:

1. Disqualify as being non-responsive certain bidders for the Municipal Golf Course Clubhouse project due to irregularities within their submittals.
2. Reject certain bidders based solely on price and direct Staff to re-bid the items.

Note: A listing of the bidders recommended for disqualification and rejection is contained in the Administrative Report.

L. **Budget Adjustment to FY 2006-07 Operating Budget - City Executive Group Benefits**

Human Resources Manager Penrod recommended that the CASA (Coastal Animal Services Authority) Director be included in the proposed benefit adjustments for City executives; stated that the proposed budget adjustment of \$26,600 will remain the same, but pointed out that the CASA Board will need to approve any increase in the CASA Director's benefits.

MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to approve a Budget Adjustment of \$26,600 from the General Fund Fund Balance, with the inclusion of the CASA Director in the benefits adjustments for City directors.

MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to consider Agenda Items 6-B and 6-C before Agenda Item 6-A.

6. **PUBLIC HEARINGS**

A. **Zoning Amendment 06-237, Shorecliffs Height and View Preservation Ordinance**

Note: This item was considered after Agenda Items 6-B and 6-C. Please refer to Page 12 of these minutes for a summary of the discussion and action for this item.

B. **Tentative Parcel Map 2003-202/Encroachment Permit 05-180, Casa Victoria Condominium Conversion, 411 Avenida Victoria**

Public Hearing to consider a request to allow a one-lot subdivision for condominium purposes of an existing duplex and to maintain an existing wall within a public right-of-way located at 411 Avenida Victoria, the legal description being Lot 2, Block 3 of Tract 785.

Senior Planner Longenecker reviewed the contents of the Administrative Report and responded to Council inquiries.

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

MOTION BY COUNCILMEMBER KNOBLOCK, SECOND BY MAYOR PRO TEM DAHL, CARRIED 5-0, to adopt Resolution No. 06-48 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING TENTATIVE PARCEL MAP (TPM) 2003-202, ENCROACHMENT PERMIT (ENC) 05-180, CASA VICTORIA CONDO CONVERSION, A REQUEST TO ALLOW A ONE-LOT SUBDIVISION FOR CONDOMINIUM CONVERSION PURPOSES OF AN EXISTING DUPLEX AND TO MAINTAIN AN EXISTING WALL WITHIN THE PUBLIC RIGHT-OF-WAY LOCATED AT 411 AVENIDA VICTORIA.

C. **Amendment to Site Plan Permit 02-091, William Lyon Homes Replacement Architecture Talega Village 4D**

Public Hearing to consider a request by William Lyon Homes to allow the replacement of the previously approved architectural product on 49 residential lots within a portion of a previously approved project. The proposed revisions would occur north of the intersection of Avenida Talega and Camino Viento Fuerte, the legal description being Lots 1 to 49 of Tract 16795.

Contract Planner Nagel reviewed the contents of the Administrative Report and responded to Council inquiries.

During the course of discussion, Council voiced concern with an emerging trend toward architectural replacements that include increased square footage, reduced parking, and the potential for vehicles parked on driveways to encroach over sidewalks.

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

MOTION BY COUNCILMEMBER ANDERSON, SECOND BY COUNCILMEMBER RITSCHER, to:

1. Find that the previous environmental documentation prepared for the Talega Specific Plan Amendment sufficiently addresses each of the proposed projects.
2. Adopt Resolution No. 06-49 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING AMENDMENT TO SITE PLAN PERMIT 02-091 WILLIAM LYON HOMES VILLAGE 4-D REPLACEMENT ARCHITECTURE.

Councilmember Knoblock stated that General William Lyon, the major stockholder in the William Lyon Company, serves on the Board of Directors of the company for which he works; stated that the City Attorney has determined that he does not have a conflict of interest since he does not receive his income from General Lyon personally.

THE MOTION CARRIED 5-0.

A. **Zoning Amendment 06-237, Shorecliffs Height and View Preservation Ordinance**

Public Hearing to consider a proposed Zoning Amendment that would apply to approximately 55% of the single-family homes within the Shorecliffs single-family home community, which is generally located north of Shorecliffs Middle School, south of the Shorecliffs golf course, east of the Pacific Ocean, and west of the Interstate 5 freeway. For all affected properties, the zoning amendment would: 1) reduce the maximum building height from a 25-foot maximum to a 16-foot maximum; 2) reduce the minimum front setback from a 20-foot minimum to a 10-foot minimum (except for street facing garages, where a minimum 18-foot setback is required with no change proposed); 3) reduce the minimum rear setback for through lots from a 20-foot minimum to a 15-foot minimum (requires discretionary approval of Minor Exception Permit); and 4) increase the maximum lot coverage from a 50 percent maximum to a 60 percent maximum. The City Council will be considering potential modifications to the overlay boundary and potential height exceptions for Sub-area 3 (Via Jacinto and Via Corbina).

Senior Planner Longenecker reviewed the contents of the Administrative Report and responded to Council inquiries; explained that Council cannot add any lots to the potential overlay map that accompanied the Public Hearing notice for this meeting, but can delete properties if desired; stated that if Council desires to add properties, it needs to direct Staff to initiate a separate zoning amendment to address those additional properties; presented a revised draft Ordinance that includes a severability clause (Section 10), and provides modified verbiage for the second finding relating to the discretionary height exception permit process for Area 3 (Section 4, Height Exception, Paragraph 2).

Mayor Eggleston opened the Public Hearing.

Wendy McConnell, Shorecliffs, spoke on the importance of her ocean view and urged Council to approve the Overlay Ordinance for Area 3.

Frank Alfery, Shorecliffs, stated that he purchased his property in Shorecliffs because it had an ocean view with a house, as opposed to a house with a view; conveyed support for the proposed Ordinance.

Barbara Morand, Shorecliffs, spoke in support of single-story residences and view preservation; urged Council to consider corner lots.

Ruth Martin, Shorecliffs, stated that Area 3, like Areas 1 and 2, is comprised of terraced streets and single-story homes to maximize views; urged that Area 3 be included in the Overlay.

Betsy Petersen, Shorecliffs, stated that she lives on San Gorgonio and will lose 100% of her view if the homes at 2905 and 2907 San Jacinto build second stories.

Maura O'Neill, Shorecliffs, asserted that she would not construct a second story because of her respect for others; conveyed support for the proposed Ordinance.

Jack Martin, Shorecliffs, voiced concern that second-story construction on San Jacinto will block views; presented photographs that demonstrate the view from his home on San Gorgonio; asserted that Area 3 should be included in the Overlay.

Steve Elmer, Shorecliffs, stated that he resides in an original two-story home at the top of Via Cascadita; requested that the single-story homes on upper Via Cascadita be included in the Overlay to protect his view.

Bob Limberg, Shorecliffs, stated that he sent a letter to Council last week that was signed by five property owners on Vista Torito; requested that the seven lower lots on Vista Torito be included in the Overlay.

Paul Catsimanes, Shorecliffs, opined that it is ironic that Council will consider adopting an Ordinance to limit the City's power of eminent domain at the same meeting at which it is considering taking away rights from Shorecliffs residents; asserted that he could construct a second story on his San Andreas residence without severely impacting the ocean views of the properties above him.

Wanda Clough, Shorecliffs, suggested that Area 3 is not receiving the same attention as Areas 1 and 2 and the situation is creating a problem in Area 3; suggested that an architect's opinion should be solicited as to the impact that second stories on the lower lots on Vista Torito would have on Vista Torito's upper lots.

Al Cullen, Shorecliffs, stated that side yard expansions can also affect views and recommended that Council give consideration to corner lots; urged that Council adopt the version of the map that was presented for the advisory vote.

Rick Collins, Shorecliffs, voiced concern with the manner by which the Shorecliffs issue has been handled; asserted that City funds are being misused to benefit a small group of homeowners; stated that three Councilmembers have taken the issue from mansionization to view protection, from Southwest San Clemente and Shorecliffs to just Shorecliffs, and from all 500 homes to 210 homes; stated that a City-wide referendum and an effort to replace certain Councilmembers will result.

Kathy Collins, Shorecliffs, suggested that a better solution can be achieved; asserted that the proposal under consideration is discretionary, exclusive, discriminatory against some, and not applicable to everyone; stated that Shorecliffs should be allowed to develop in a respectable way.

Michael Sterner, Shorecliffs, voiced concern that three classes of housing would be created within Shorecliffs -- those with restrictions, those without restrictions, and those subject to a discretionary process; questioned why homes in Area 3 would be subject to a different set of requirements and urged that San Jacinto be excluded from the Overlay.

Heather Sterner, Shorecliffs, recommended that Council delete Area 3 from the Ordinance; asserted that singling out 19 of the 150 homes in her sub-area is unfair; stated that San Gorgonio residents retain their rights to construct second stories and are guaranteed ocean views from their first and second stories; stated that only 6 of the 19 affected homes in Area 3 voted to support the Overlay.

Ryan Wilkinson, Shorecliffs, requested that Council exclude Area 3 from the Overlay ordinance; stated that only 6 of the 19 homes in Area 3 that are proposed to be included in the Overlay voted in favor of the Ordinance, while 6 voted in opposition, and 7 didn't vote; commented that only 44% of the overall vote in Area 3 supported the Ordinance; stated that if Council proceeds with the Ordinance as proposed, a referendum and lawsuit will be filed.

Miriam Wilkinson, Shorecliffs, requested that Council remove San Jacinto from the Ordinance as it is unfair to growing families; suggested that the 19 affected homes will eventually become out of character with the community and suffer reduced property values; asserted that 79% of Area 3 homeowners do not support the proposed Ordinance since they either voted in opposition or did not vote; stated that there are ways to add second stories without blocking views.

Council clarified that the vote percentages quoted by speakers this evening are percentages of total households and do not reflect the result of actual votes cast; stated that the vote for Area 3 was 50/50.

Dwight Hamro, Shorecliffs, encouraged Council to pass the Ordinance as presented; stated that the original Shorecliffs CC&Rs specify that no structures shall be erected without art jury approval.

Susan Brewer, Shorecliffs, urged Council to adopt the Ordinance to continue the peace that the moratorium has brought to the community.

Richard Findlay, Shorecliffs, stated that the proposed Ordinance is the result of 2-1/2 years of petitions, hearings, workshops, surveys and Council debates -- all of which indicated solid support for continued City action.

Janell Searles, Shorecliffs, stated that she resides on San Jacinto and desires to protect the quality of life that her family enjoys in Shorecliffs; stated that the ocean view was the reason that she moved to Shorecliffs and voiced concern that her view could be lost; urged that Council consider the discretionary process and develop a solution that is good for everyone.

Dolores Luebke, Shorecliffs, explained that she resides on Via Montezuma and wants to keep her view; stated that her view is as significant as other views that the City is considering protecting; recommended that Via Montezuma be, at a minimum, placed in the discretionary area.

Joanne McAllister, Shorecliffs, spoke in support of the Overlay ordinance and expressed confidence in Council's ability to make any final changes necessary to respond to community input.

Brooke Tyson, Shorecliffs, thanked Council for listening to the people, investigating the facts, and taking action that represents the best interest of the community; stated that individual property rights need to coexist with community rights; conveyed that 84% of Shorecliffs homeowners responded to the City's ballot; stated that 72% of Shorecliffs homeowners as a whole, and 77% of homeowners within the Overlay, voted in favor of the Ordinance.

Sharon Crocker, Shorecliffs, thanked Council for supporting the majority in Shorecliffs.

Cheryl Cogan, Shorecliffs, stated that the Overlay ordinance has been enthusiastically approved by the majority in Shorecliffs; commented that the homes that were placed in the Overlay were placed there because their upward expansion could permanently damage a significant ocean view; urged that Council honor the will of the community.

Peter Cassimatis, Shorecliffs, asserted that democracy is about pleasing the majority and doing the right thing; noted that he signed CC&Rs when he purchased his property in Shorecliffs; spoke in support of the Overlay ordinance.

Wayne Moore, Shorecliffs, urged that Council approve the Overlay, including the discretionary Overlay for Area 3, as presented.

Jim Cogan, Shorecliffs, reviewed the history of the issue; stated that Council has demonstrated qualities of inspired leadership and urged that Council bring the matter to a fair and balanced conclusion.

Robert Strutt, Shorecliffs, stated that he started drawing plans for a major two-story remodel approximately two years ago; explained that after the preliminary designs were developed, he discussed his intentions with his immediate neighbors; stated that because one neighbor expressed concerns, he deleted 600+ square feet from the second story and lowered the roof pitch by several feet; explained that his lot in Area 1 is atypical because it is close to 11,000 sq. ft., has an offset in grade, and is located at the end of a cul-de-sac; commented that he wants to expand his home to 2,800 sq. ft.; asserted that he could build a three-story home without impacting another person's view.

Gary Grigg, Shorecliffs, stated that he resides on Via Montezuma and supports the Overlay in general; stated that Via Montezuma is a perimeter street and should be excluded from the Overlay; stated that he would like to expand his home with a raised foundation (which would likely result in an overall height of over 16') to help recapture his view.

Penny Howard, Shorecliffs, stated that 200 and 208 Via Montego are located below her Via Alegre property; stated that the one-acre property at 208 Via Montego is not part of the Shorecliffs development and voiced concern that 4 or 5 two-story homes could be developed on the property, thereby eliminating the views of all five of the homes above; urged that Council either include 208 Via Montego in the height restrictions, or remove her property from the Overlay.

Ray Hunnicutt, Shorecliffs, opined that the first seven houses on the south side of Calle Vista Torito should be included in the Overlay; stated that a unique situation exists in the subject area because the houses are terraced from side to side.

Walter Friedman, Shorecliffs, stated that his property at 208 Via Montego is not proposed to be included in the Overlay and should not be included for many valid reasons; stated that he purchased the property from the Forster family, noting that the Forsters intentionally excluded the property from the Shorecliffs subdivision and associated CC&Rs.

Danielle Huffman, Shorecliffs, stated that the decision made this evening will have implications for the entire City; opined that this issue is a slippery slope that will set a precedent; stated that the Shorecliffs Association documents that she was provided at escrow clearly stated that there is no guarantee that her view would not be obstructed and suggested that other purchasers in Shorecliffs signed the same documents; conveyed her understanding that Mayor Eggleston owns a real estate appraisal company and questioned whether he has a potential conflict of interest in this matter.

Mayor Eggleston responded that a conflict of interest does not exist.

Theodore Farkas, Shorecliffs, stated that Shorecliffs was developed with views in mind; urged that Council support the Ordinance.

Ron Roberts, Shorecliffs, suggested that Shorecliffs has deteriorated over the last 10 years and opined that two-story rehabilitations improve the area; stated that he would strongly object to having his property on Vista Torito included in the Overlay; urged that Council oppose the Ordinance.

Hal Kolp, Shorecliffs, stated that he lives on Calle Tinaja and stated that while two-story development at 211 Via Senda would not block his ocean view, it would negatively affect his privacy since the home would be located less than 50' from his bedroom window; conveyed support for the Ordinance.

Darlene Dotts, Shorecliffs, requested that the homes on Via Montezuma be included in the Overlay.

MEETING RECESSED

Council recessed at 10:00 a.m. and reconvened at 10:05 a.m., with all members present.

Tracey Edwards, Shorecliffs, urged that Council support the Ordinance without further delay; stated that 84% of Shorecliffs homeowners voted, with 72% of the entire community voting in favor of the Ordinance and only 28% voting in opposition; noted that 80% of the owners of properties in the Overlay zone voted in favor; stated that all homeowners should have the right to remodel and expand their homes in a responsible manner that does not take away a neighbor's view or right to privacy.

Andy Wilson, Shorecliffs, urged that Council support the Ordinance and move on to other issues facing the City.

Hossain Arami, Shorecliffs, stated that he favors the Overlay; requested that his property at 2628 Via Cascadita, as well as the property below him, be removed from the Overlay since second stories on these homes will not block views -- other than the view of one home that was developed with a second story.

Chris Booth, Shorecliffs, stated that the advisory vote for the Overlay Ordinance passed overwhelmingly; urged Council to protect Shorecliffs as originally designed.

Anita DuRocher, Shorecliffs, expressed appreciation to Council for its leadership; urged Council to move forward so that neighborhood harmony can be restored.

Paige Foreman, Shorecliffs, stated that due process has been fulfilled; opined that Area 3 needs to be included in the Overlay, or at least be subject to a discretionary process; thanked Council for its support.

Jean Blazer, Shorecliffs, stated that she resides on Via Cascadita in an original two-story home; conveyed support for the Ordinance as written because it is fair and just for Shorecliffs' unique neighborhood.

Michael Mulvihill, Shorecliffs, stated that he wants to retain the property rights that existed when he purchased his property on Via Montezuma; urged that Council exclude Via Montezuma from the Ordinance and allow second-story development on both sides of the street.

William Byrd, Shorecliffs, stated that he resides in an original two-story home; voiced concern that if any of the six homes below him expands upwards, it would drastically impact his view; stated that if the one-story home at 265 Via Ballena constructs a second story, his house would be darkened and his view eliminated; requested that Council protect his view of Catalina and San Clemente islands, noting that his view rivals many of those that are proposed for protection.

Tuesday Price, Shorecliffs, stated that the subject issue evolved from mansionization; opined that the process has been unfair and voiced her dissatisfaction.

Jed Stamen, Shorecliffs, stated that he opposes the Ordinance because the City is picking and choosing which properties to include.

Angelo Skiparnias, Shorecliffs, stated that the advisory vote was taken and should stand; expressed hope that Council will support the Overlay.

Christine Smith, Shorecliffs, urged Council to support the Ordinance.

Sandy Wilber, Shorecliffs, concurred with the Ordinance as presently proposed and urged Council support.

Gayle Pereira Higgons, Shorecliffs, stated that persons with views in Shorecliffs paid more for their homes than persons without views; asserted that homeowners who paid less for their homes now want to build up to capture a view; stated that she built a 3,000 sq. ft. home with a three-car garage under the former setbacks and noted that she would be able to build 3,600 sq. ft. with a three-car garage under the proposed setbacks; conveyed support for the Ordinance as presently prepared.

Natalie McGinley, Shorecliffs, urged Council to adopt the Ordinance to help maintain peace in Shorecliffs.

Chuck Kanoy, Shorecliffs, stated that he has resided on Vista Torito for 32 years; requested that his property be included in the Overlay.

Robert Bradford, Shorecliffs, spoke in opposition to the Overlay because he believes that people who purchased their homes under the current building standards should be able to build according to those standards; stated that he did not receive CC&Rs when he purchased his property; voiced concern that the issue evolved from mansionization to view protection; stated that it is inappropriate for Council to institute spot zoning.

John Sands, Shorecliffs, stated that domino development will occur if the Overlay is not approved.

Sally Benedict Jeisy, San Clemente, stated that she resides in the southwest area of San Clemente in a home that originally had an ocean view; stated that over time her neighbors added second stories and her ocean view disappeared; stated that it was her neighbors' right to develop; requested that Council withdraw the proposed Ordinance; stated that no one is guaranteed a view and voiced concern that adoption of the Ordinance will set a precedent.

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

During the ensuing discussion, Council and Staff responded to issues raised during the Public Hearing.

CONTINUATION OF MEETING PAST 11:00 P.M.

MOTION BY COUNCILMEMBER KNOBLOCK, SECOND BY MAYOR PRO TEM DAHL, CARRIED 5-0, to continue the meeting past 11:00 p.m.

In response to Council inquiry, City Attorney Oderman explained that, generally speaking, the city does not enforce CC&Rs; pointed out, however, that one significant exception exists in the City's zoning ordinance that requires that building permits not be issued until an applicant completes a form that attests that he/she has complied with any applicable CC&Rs; noted that the city adopts its own regulations with some understanding as to what is prohibited or not prohibited by CC&Rs.

During the course of discussion, City Attorney Oderman suggested, and Council agreed, that proposed Ordinance No. 1319 should be amended as follows:

- The seventh "Whereas" is to read as follows: "WHEREAS, pursuant to Government Code Section 65858, on April 18, 2006, the City Council ~~extended the~~ *adopted Urgency Ordinance No. 1313 to extend* the moratorium in the Shorecliffs Neighborhood prohibiting two-story construction and construction over 17 feet in height for an additional five months; and"
- Section 12 is to read as follows: "Upon the effective date of this Ordinance (~~30 days after its second reading~~) (*No. 1319*), Urgency Ordinance No. 1313 shall be repealed and of no further force or effect. Upon its expiration, the City will not re-enact another similar urgency ordinance prohibiting second story additions on the properties regulated by Ordinance No. 1313."

Additionally, Council determined to amend the second paragraph of the portion of Section 4 of the Ordinance relating to Height Exceptions to read as follows: "2. In addition to the general findings required for a Conditional Use Permit, as provided in Section 17.16.060(F) of this Title, the Planning Commission shall find that the development of the subject property in excess of 16 feet in height will not have ~~an~~ *a significant* adverse impact on an ocean or shoreline view.

**Strike-out type indicates deleted verbiage. Italicized type indicates added verbiage.*

MOTION BY COUNCILMEMBER ANDERSON, SECOND BY COUNCILMEMBER RITSCHER, CARRIED 3-2 (COUNCILMEMBER KNOBLOCK AND MAYOR PRO TEM DAHL VOTING NOE), to introduce Ordinance No. 1319 (the version that was presented by Staff this evening that included a severability clause in Section 10) entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA AMENDING APPENDIX "A" OF TITLE 17 OF THE SAN CLEMENTE MUNICIPAL CODE, ZONING, FOR PURPOSES OF ADDING SPECIAL RESIDENTIAL DEVELOPMENT STANDARDS TO THE SHORECLIFFS RL-11 AND RL-12 OVERLAY ZONES REGULATING RESIDENTIAL DEVELOPMENT WITHIN THE OVERLAY AREAS FOR THE PURPOSES OF NEIGHBORHOOD PRESERVATION AND VIEW; AND AMENDING SECTION 17.16.090 OF TITLE 17 OF THE MUNICIPAL CODE, ZONING, FOR PURPOSES OF A MINOR EXCEPTION PERMIT PROCESS TO ALLOW A REDUCTION OF THE REQUIRED MINIMUM REAR YARD; AND AMENDING SECTION 17.16.060 OF TITLE 17 OF THE MUNICIPAL CODE, ZONING, FOR PURPOSES OF A CONDITIONAL USE PERMIT PROCESS TO ALLOW AN INCREASE OF THE ALLOWED MAXIMUM HEIGHT; AND REPEALING URGENCY ORDINANCE NO. 1313, as amended as follows:

- The last two homes on the inland side of Via Cascadita (i.e., 2628 and 2630 Via Cascadita) were removed from the Overlay.
- The properties at 255 through 267 Via Ballena are to be included in the Overlay. (*Note: These properties were included in the potential overlay map that accompanied the Public Hearing notice for this meeting.*)
- The Ordinance is to include the discretionary element for Area 3.
- The Ordinance is to include the changes to the Ordinance that Council approved earlier in the meeting. These changes are as follows:
 - The seventh "Whereas" shall read as follows: "WHEREAS, pursuant to Government Code Section 65858, on April 18, 2006, the City Council ~~extended~~*the adopted Urgency Ordinance No. 1313 to extend* the moratorium in the Shorecliffs Neighborhood prohibiting two-story construction and construction over 17 feet in height for an additional five months; and"

- Section 12 shall read as follows: “Upon the effective date of this Ordinance (~~30 days after its second reading~~) (*No. 1319*), Urgency Ordinance No. 1313 shall be repealed and of no further force or effect. Upon its expiration, the City will not re-enact another similar urgency ordinance prohibiting second story additions on the properties regulated by Ordinance No. 1313.”
- The second paragraph of the portion of Section 4 of the Ordinance relating to Height Exceptions shall read as follows: “2. In addition to the general findings required for a Conditional Use Permit, as provided in Section 17.16.060(F) of this Title, the Planning Commission shall find that the development of the subject property in excess of 16 feet in height will not have ~~an~~ *a significant* adverse impact on an ocean or shoreline view.”

**Strike-out type indicates deleted verbiage. Italicized type indicates added verbiage.*

MOTION BY COUNCILMEMBER ANDERSON, SECOND BY MAYOR EGGLESTON, CARRIED 3-2 (COUNCILMEMBER KNOBLOCK AND MAYOR PRO TEM DAHL VOTING NOE), to request that Staff initiate the process to consider the possibility of adding the properties located at 200 and 208 Via Montego, and the top five homes on Via Cascadita, to the Overlay Ordinance.

7. **UNFINISHED BUSINESS**

None.

8. NEW BUSINESSA. Pacific Coast Highway Bike Lanes (Near Camino Capistrano Intersection) - Modifications Proposed by City of Dana Point

Report from the Public Works/Economic Development Director concerning Pacific Coast Highway bike lane modifications proposed by the City of Dana Point.

City Engineer Cameron reviewed the contents of the Administrative Report and responded to Council inquiries.

During the course of discussion, Council voiced concerns that 1) the proposed placement of a Krail barrier will narrow Pacific Coast Highway from Camino Capistrano to Palisades Drive, which is a SONGS emergency evacuation route; 2) runners and bicyclists, especially those traveling in groups at high rates of speed, will likely ride in the street; and 3) the subject intersection is already one of the most dangerous intersections in the community.

During the course of Council deliberations, City Manager Scarborough pointed out that Dana Point staff has indicated that it has been directed to proceed with the installation of the Krail barrier, without modifying the intersection, if the City of San Clemente does not approve the encroachment permit.

MOTION BY COUNCILMEMBER ANDERSON, SECOND BY COUNCILMEMBER RITSCHER, CARRIED 5-0, to:

1. Authorize Mayor Eggleston, Mayor Pro Tem Dahl, City Manager Scarborough and City Engineer Cameron to meet with Councilmembers and staff from Dana Point to discuss the subject project and negotiate with respect to the City's concerns.
2. Grant the encroachment permit to the City of Dana Point for improvements to Pacific Coast Highway near the Camino Capistrano intersection within the City of San Clemente, **subject to the conditions contained in the Supplemental Report and concurrence by Mayor Eggleston that the City of San Clemente has negotiated the best situation that it can.**

9. **ORAL COMMUNICATIONS (PART TWO)**

None.

10. **REPORTS**

A. **Commissions and Committees**

None.

B. **City Manager**

None.

C. **City Attorney**

None.

D. **Council Members**

(1) **Council Position on Orange County Division, California League of Cities Issues.**

None.

(2) **Council Position on Legislative Issues.**

None.

(3) **Orange County Fire Authority Status Update.**

None.

(4) **San Clemente-Dana Point Animal Services Authority.**

Mayor Pro Tem Dahl reported on animals available for adoption at the San Clemente-Dana Point Animal Shelter and expressed gratitude to the shelter volunteers, veterinarians and staff.

Councilmember Ritschel requested that the City Manager provide a report concerning the condition of the grass at the small dog park.

(5) **Transportation Corridor Agencies Status Report.**

None.

(6) **Councilmember Items.**

Proposal for Miniature Golf Course at La Pata/Vista Hermosa Park.

Councilmember Knoblock requested that the City Manager ask Scott Melcher to provide financial data relative to his proposal for a miniature golf course at La Pata/Vista Hermosa Park.

Human Affairs Committee Review of Report from the Grand Jury concerning the Law Enforcement Oversight Committee's Proposal

MOTION BY COUNCILMEMBER KNOBLOCK, SECOND BY MAYOR PRO TEM DAHL, CARRIED 5-0, that the City's Human Affairs Committee review the report from the Grand Jury concerning the Law Enforcement Oversight Committee's proposal, prior to the City responding to the Grand Jury within the statutory time frame.

Max Berg Plaza Park

Councilmember Knoblock commended the amount of police presence at Max Berg Plaza Park.

Possibility of Shared Use of Parking Areas Behind Del Mar Businesses

Mayor Eggleston requested that the City Manager provide a status report concerning the possibility of Del Mar businesses allowing their rear parking areas to be utilized for shared use.

11. **RESOLUTIONS/ORDINANCES**

A. **Ordinance No. 1318 (Second Reading) - Limitation on Use of the City's Power of Eminent Domain**

MOTION BY MAYOR EGGLESTON, SECOND BY COUNCILMEMBER RITSCHER, CARRIED 5-0, to adopt Ordinance No. 1318 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, ADDING CHAPTER 2.56 TO THE CITY OF SAN CLEMENTE MUNICIPAL CODE LIMITING THE USE OF THE CITY'S POWER OF EMINENT DOMAIN.

MEETING RECESSED

MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER ANDERSON, CARRIED 5-0, to recess to a meeting of the Redevelopment Agency at 12:00 a.m.

MEETING RECONVENED

Council reconvened at 12:01 a.m., with all members present.

12. **ADJOURNMENT**

MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER ANDERSON, CARRIED 5-0, to adjourn at 12:02 a.m. to an Adjourned Regular Meeting to be held on July 12, 2006 at 6:00 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, for the purpose of interviewing and making appointments to fill vacancies on City Commissions and Committees.

The next Regular Meeting will be held on **July 25, 2006** in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California. Closed Session items will be discussed at 6:00 p.m. The General Session will begin at 7:00 p.m.

CITY CLERK of the City of
San Clemente, California

MAYOR of the City of
San Clemente, California