

**MINUTES**

**JOINT CITY COUNCIL/REDEVELOPMENT AGENCY OF THE CITY OF DUARTE  
REGULAR MEETING – APRIL 8, 2008**

At 5:30 p.m., four Closed Sessions were held (as stated below). Mayor Reyes called the meeting to order at 5:35 p.m., with four members present (Paras-Caracci arrived at 5:45 p.m.).

**ADOPTION OF AGENDA**

Gaston moved, Fasana seconded to adopt the Agenda, and carried unanimously.

**CLOSED SESSIONS**

- 1) Conference with Legal Counsel—Anticipated Litigation
- 2) Real Property Negotiations (Nancy Weckworth)
- 3) Real Property Negotiations (Jacobsen Family Holdings)
- 4) Real Property Negotiations (Lowe Enterprises)

Herbert Piken and Ernie Meyer, Mountain Vista Plaza, stated they were concerned that the height of the parapet on the east facing elevation would block the Target Mountain Vista Plaza sign, and asked that the City make sure Best Buy's building is no higher than 35 feet, as that would allow visibility of the sign. Mr. Piken read a letter from Target dated 4/7/08 about the following areas of concern: southwest corner of the proposed Best Buy building exceeds 50 feet, need to provide effective directional signage for patrons of both centers, and the drive aisles do not appear to line up.

Slater stated the first Closed Session is pursuant to Government Code Section 54956.9(b)(1); Conference with legal counsel; Anticipated Litigation; Number of potential cases: 1. The second Closed Session is pursuant to Government Code Section 54956.8, Conference with real property negotiators; Agency negotiators: Darrell George, Ed Cox; Negotiating parties: Redevelopment Agency of the City of Duarte and Nancy Weckworth; Under negotiation: Price and terms of payment; Property: 1217 Crestfield, APN 8604-012-024. The third Closed Session is pursuant to Government Code Section 54956.8, Conference with real property negotiators; Agency negotiator: Darrell George; Negotiating parties: Redevelopment Agency of the City of Duarte and Jacobsen Family Holdings, LLC; Under negotiation: Price and terms of payment; Property: 1416 Mountain APN 8530-012-004, 1420 Mountain APN 8530-012-008, 1422 Mountain APN 8530-012-009, 1434 Mountain APN 8530-012-010, 1414¼ Mountain APN 8530-012-031, 1414½ Mountain APN 8530-012-032, 1402 Park Rose APN 8530-012-045, 1403 Park Rose APN 8530-012-026, 1408 Park Rose APN 8530-012-046, 1409 Park Rose APN 8530-012-025, 1412 Park Rose APN 8530-012-047, 1413 Park Rose APN 8530-012-067, 931 Central APN 8530-012-074, and 1450 Mountain APN 8530-012-072 and 8530-012-073. The fourth Closed Session is pursuant to Government Code Section 54956.8, Conference with real property negotiators; Negotiator: Darrell George; Negotiating parties: Redevelopment Agency of the City of Duarte and Lowe Enterprises; Under negotiation: Price and terms of payment; Property: 1716 Evergreen APN 8528-011-022, 1700 Business Center Drive APN 8528-011-020, and 1801 Highland APN 8528-011-021. The Closed Sessions concluded at 6:50 p.m.

The City Council/Redevelopment Agency of the City of Duarte met in a regular meeting in the Council Chambers, 1600 Huntington Drive, Duarte, California. Mayor Reyes called the meeting to order at 7:08 p.m.

**RECORDATION OF ATTENDANCE**

The following were in attendance:  
PRESENT: Fasana, Finlay, Gaston, Paras-Caracci, Reyes  
ABSENT: None  
ADMINISTRATIVE STAFF PRESENT: City Manager George, City Attorney Slater

**PLEDGE TO THE FLAG**

Sgt. Wyche led the Pledge of Allegiance to the Flag.

**MOMENT OF REFLECTION**

A moment of reflection was observed.

**FITNESS WARM-UP**

Slater led the group in a series of warm-up exercises.

PUBLIC REPORT OF  
CLOSED SESSION

Slater stated during the first Closed Session, the City Council/ Agency Board received an update from the City Attorney about the status of the anticipated litigation, with no reportable action. During the second Closed Session, the Agency Board discussed with the negotiators the status of the appraisal, and unanimously directed staff to terminate further potential acquisitions regarding the property. During the third Closed Session, the negotiators discussed with the Board potential acquisition of property, and unanimously directed the City Manager to continue discussions with Jacobsen Family Holdings, LLC, regarding price and terms of payment, with no further action. During the fourth Closed Session, the Agency Board discussed price and terms for the potential acquisition of properties, and unanimously directed the City Manager and City Attorney to prepare an Exclusive Negotiating Agreement (180 days) with Lowe Enterprises to be presented at a future meeting.

ANNOUNCEMENTS

Pui-Ching Ho, Duarte Library, announced annual book sale on April 12, Scam Busters Lecture on April 15, and VIP Storytime on April 17.

Karen Herrera announced Family Wilderness Day on April 19, National Youth Service Day events during April 20-26, Household Hazardous Waste events on April 26 in Azusa and May 17 in West Covina, and Mayor's Business Connection on May 8.

Mike Lee, Azusa, announced voting campaign event on April 13 at the Covina Library.

Mark Montgomery, Duarte Historical Museum, announced the Museum will be open with exhibits during Wilderness Day.

SPECIAL ITEMS

Presentation – Strategic Planning  
Retreat

George discussed the visioning workshop held on March 25, 2008, and provided a review of the strategic session, including the mission statement, strengths, weaknesses, three-year goals, and six-month strategic plan, and stated over the next six months, an update will be provided to City Council at the second meeting of each month. City Councilmembers suggested the mission statement be included on the City's website.

Presentation – Metro Gold Line

Jason Golding, Senior Planner, introduced Marsha Bousquet and Lydia LaPoint, IBI Group, who made a presentation about the Duarte Gold Line Station Area Vision Study Report, including project background, regional context, transit oriented development, Duarte station market potential, preliminary plan, guiding principles, traffic analysis, recommendations, and implementation points and strategies.

Ricky Hawblitzer, Duarte, stated he is concerned with traffic congestion.

Howard Schwimmer, Duarte, stated he has not been contacted by the City, and inquired if the City is interested in purchasing his three multi-tenant properties.

Robert Carter, Duarte, stated freeway access is awkward, there is not a need for office buildings, and stated the station could co-exist with the current businesses.

Neil Bjornsen, Duarte, inquired about size of units, Gold Line frequency, number of park/ride spaces, intersection at Central and Highland, and community transportation.

Slater noted this is currently a visioning process, there are no current plans to acquire any property, and if the Agency wants to purchase property in the future, there are a number of legal actions that would be required in advance. The representatives from IBI Group noted the plan is conceptual, and not detailed.

ORAL COMMUNICATIONS

The following spoke on items not on the Agenda:  
Mike Lee – Open government.  
Earl Parker – Enough is Enough, marches, car wash.

CONSENT CALENDAR  
Item Added

Fasana moved, Finlay seconded to add the League’s Legislative Action Days, April 16-17, 2008, Sacramento, to the Consent Calendar, and carried unanimously.

Finlay moved, Fasana seconded to approve the Consent Calendar as amended, as follows, and carried unanimously.  
Approve Items A, B, C, D, E, F, G, H, I.

(Item H–Council Bill 08-R-02 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE APPROVING AND ADOPTING AMENDMENT ONE TO THE THIRD AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT OF THE SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS)

PUBLIC HEARING  
Conditional Use Permit 07-7  
2333 High Mesa Drive

Mayor Reyes announced this was the time and place set for a Public Hearing to consider a request for approval of Conditional Use Permit (CUP) 07-7 for a 4,271-square foot single family home to exceed the 18’ height limit in the R-1D zone. The applicant is proposing to build a two-story residence with a building height of 22’-5/8” for the main structure, and a chimney at 24’ at 2333 High Mesa Drive.

Slater asked City Clerk Akana if notice of the hearing had been given. Akana stated the notice had been given, and the affidavit is on file. Slater asked if any written communications had been filed in the matter. Akana stated in addition to the correspondence included in the Agenda packet, letters were received from Billy and Barbara Chang, and Mary Ann Ur, as well as copies of the Planning Commission meeting minutes of February 19, 2008, and noted copies of these documents have been provided to City Council and the public. Slater stated Katherine Hancock provided a colored map to be included as part of the record.

Rebecca Ramirez, Assistant Planner, provided a detailed staff report and visual presentation about the proposed CUP, the required findings in order to grant a CUP, and the suggested conditions if the CUP is approved.

There was a brief discussion about the number of two-story homes in the area. It was noted that under the Duarte Municipal Code, there is no difference between a full two-story and partial two-story home.

Mayor Reyes asked if anyone in the audience wished to be heard on the matter.

Pam Gomez, homeowner and applicant, stated her family wants to stay living where they live, they have followed every rule of the City and the Duarte Mesa Association’s Architectural Committee, read the Mesa Association’s Rule #1 that restricts height of all houses to 18’ except for homes located on the canyon, stated that excludes her home, they have invested money in the home, they have tried to appease everyone, some neighbors said they love her house but they do not want the rules to change, one neighbor who opposes her plan is 8’ off of her property line, and stated she wants her house and wants to live up there.

Bruce Schwartz, representing Mr. and Mrs. Gomez, thanked staff and the Planning Commission for the thorough job, and stated they agree with the findings, conclusions, mitigation measures, mitigated negative declaration, and all the conditions in the Conditional Use Permit.

Harb Thind, Duarte, stated there are homes in the Mesa that exceed 18’ and are at least 25’ high, his two-story house is at least 25’ high, a two-story house cannot be built at 18’ unless it has a flat roof, if this is turned down, City Council would be denying

the constitutional rights of the builders and it would be an injustice, and appealed to the Council to approve this project.

Fred Klumb, Duarte Mesa Architectural Committee Chair, stated he never heard from Mrs. Gomez before drawings were submitted, the guide uses the canyon to build down, so the front of the house is 18' and the back of the house can go down the canyon and go to 25' from the back of the house to the ground, not from the street level, he was never asked for his opinion, there was no discussion about compromise, this proposal is bigger than the previous one, 2379 is 18' from street level, but 25' on the back side, 2350 goes down the hill, the 25' applies on the downhill side, the front is still 18', some split-level homes are 22', and there are no 25' houses on the Mesa.

Katherine Hancock, Duarte, stated there is an error on the map she submitted, the Barta's residence at 2321 High Mesa is shown as a single story, and has an 800 square foot bedroom above the existing house, some homes are split-level or two-story where a bedroom has been added above the garage, they are not full two-stories and were built before the fire, two that were two-story and burned in the fire were allowed to rebuild as two-story, in the center of the Mesa are single-story houses, five houses have been built after this conditional use permit went through, homes at 2350 and 2412 Rim Road have an 18' front and slope down to two stories on the back, her concern is setting a precedent, and she does not want it to look like parts of Arcadia and Sierra Madre, with small homes built between mansion-type homes.

Mary Ann Ur, Duarte, read portions of her letter that she submitted, stated out of 97 homes on the Mesa, 61 signed a petition opposing the permit, the revised plans impact the views of the neighbors, described the layout of the Mesa roads, stated those interested in purchasing property in the Mesa consider valley and mountain views, discussed the Planning Commission vote, stated the Gomez home would be within 50' of their neighbors, feels Duarte Municipal Code Section 19.32.050(e)(2) needs to be revised so the 25' height limit is applied only downhill along the canyon and the 18' limit remains on the street side, and urged the City Council to deny the CUP and reverse the decision of the Planning Commission.

Jim Kelly, Duarte, stated the road is 30' wide, the Gomez home can be converted into six bedrooms, thinks they need more parking, if there were two parked cars and an ambulance coming through, you cannot have any other traffic, the average car width is 7'1", feels there should be no parking on the street at night, he bought his house because of the view, if everyone can add on, he will not have a view, stated anything above 18' was designed to go down the slope instead of from the street level, and his first question to Jimmy Lee was if it was over 18'.

Jeanie Barta, Duarte, states she lives west of the project, the second design is larger than the first with more horizontal view blockage because of the longer roof line, this should be denied, her view is affected as 90% of the city lights will be gone along with the morning sun, asked if view loss is not considered, what assurances are there that ones to follow will be denied when proposed to be built across the street and down into the Mesa, and stated when she expanded her home to 2600 square feet, the permit was granted because the neighborhood worked with them to design her house, and the architect built it to everyone's mutual agreement.

Gary Barta, Duarte, stated early community residents had the foresight to protect views of the valleys and mountains, that is why many choose to move there, this community is passionate to protect the level of living, all eight conditions in the code must be satisfied for a CUP, this is the first full two-story appli-

cation to exceed 18' since the 1980 fire, 12 of the 17 homes on High Mesa Drive are single-level, his house exceeds 18' from the existing grade and has an average height under 17', feels a geological study of ground water flow is needed, stated if the permit is granted, he would prefer the Gomez' build the first proposed design which peaked at 24', and stated an alternative is a partial second story exceeding 18' on the back canyon side of the home, which would leave him with some views that could be shared.

Marcy Roschitsch, Architectural Committee and Mesa Board of Directors, stated she bought her home for the view, many would love to improve their views but this would cause harm to the neighbors, when planning the addition to her home, she knew it would be grossly unfair for her to pursue plans for a second-story, her project did not require any variances, she believes the Gomez family can achieve the home of their dreams and still consider needs and rights of neighbors, the hillside ordinance and building codes are written in a nebulous fashion and create confusion, and asked City Council to add this as part of the General Plan and strengthen the building codes to prevent this kind of issue in the future for the Mesa.

Carie Osburn, Duarte, stated the City has been strict about enforcing the 18' height limit, many residents revised their plans before going to the Planning Commission, some have graded down to create the two stories, 2350 Rim Road graded down and did not go over 18', in some cases, when exceptions were made to allow a portion of the structure to exceed 18', it was done with concurrence of the surrounding neighbors, stated a view could add \$50,000–\$200,000 to the value of a home, she is concerned about this project setting a precedent, the hillside ordinance protects views of those who look up the mountains, asked Council to consider the impact massive development has on the septic systems, asked for story poles, hopes the City Council denies the CUP, but if it is approved, asked that it be delayed and requested professional story poles, and requested Council advise staff to find ways to uphold the 18' limit as opposed to finding ways to get around it.

Mike Ressler, Duarte, asked that the City Council disapprove the CUP, when he applied for his remodeling permits, going up was not considered, the hillside ordinance intended the neighborhood to be full of 18' homes, the application for a 23' home is at odds with that intent, since three of the four sides of the Mesa can be considered to be on canyons, allowing houses along the perimeter to be built at 25' would lead to 18' houses in the interior ringed by a wall of 25' barriers, stated if his neighbor across the street raised the house to 25', he would have no view, stated 2379 High Mesa met the intent of the ordinance by digging down six feet before starting construction, feels this new application does not try to meet the intent of the ordinance, and asked that CUP 07-7 be disapproved.

Helen Ferguson, Duarte, stated she lived through the fire, after 39 of the 80 existing homes were destroyed by the fire, the City became involved in preserving views of the valley and mountains, the City granted the Mesa the restriction of an 18' height limit on all newly constructed homes except for homes on the canyons where a conditional use permit process might be invoked and presented to the Planning Commission, and stated it was not promised that all the permits would be granted and approved.

Bruce Schwartz stated many of the comments were speculation and conjecture, there was nothing specific, nothing contradicted staff's investigations, there is nothing that changes the evidence before the City Council, there may be political reasons, this is a rule of law, if the law is not followed by the City Council, then it will be followed by another tribunal, felt the substantial evi-

dence law was not followed last time, felt although the Gomez' had every right to take the matter to a higher authority, they chose not to, they chose to listen to the three Council people who voted against them, to go back to staff, the Planning Commission, their architect, and their contractor, and to speak with the neighbors and do everything they were asked to do, they have spent one year and thousands of dollars doing so, this plan has received the approval of staff and a majority of the Planning Commission, it is shorter in height than the previous addition, they have taken into account traffic, there is a three-car garage and a drive-through garage that would allow parking for nine cars, if emergency vehicles cannot get through, nobody should be allowed to park on the street, view is important to everybody, this house is further away from the uphill neighbors, the Bartas have a house that approximates 25' in height, it looks down on the Gomez' property and they will have a full and complete view from their second story just as they do now, they are complaining about their neighbor asking for basically the same thing they have, the Gomez home is 70' away from the Barta home, there were four story poles put up by a contractor, no adverse comments were received, the size of the house will not effect the septic system, this is not a full two-story home, the only possible view impact would be the neighbor across the street as they would look directly at the house, there is no impact because that view is covered by trees, there is no request or desire by the Gomez' to do anything with those trees, the neighborhood is full of two-stories, the two houses immediately above the hill are two-story homes, there are four two-story homes in a row, it would be discriminatory not to approve what City staff, the Planning Commission, and what City Council recommended the Gomez' do one year ago and what the Gomez' have followed to the letter, and asked that City Council approve this application.

Fasana moved, Finlay seconded to close the Public Hearing, and carried unanimously.

Mayor Reyes reopened the Public Hearing so Mr. Schwartz could answer a question from Councilmember Finlay pertaining to political pressures, and staff could respond to questions from Councilmembers pertaining to the size of the Gomez home compared to other homes in the area, possibility of grading, clarification that there is no discussion in the Duarte Municipal Code about interior or canyon lots, previous CUPs granted by the Planning Commission, and topography. Slater described the process to apply for a CUP, read portions of the Duarte Municipal Code pertinent to the discussion, stated what counts is if there is substantial evidence in the record to support the application, the Planning Commission and City staff made determinations, City Council needs to look at the eight findings and make a determination, the evidence presented must be weighed, the City has no role in enforcing private CCRs and those have no bearing on the City Council's decision, and stated the trigger for the application is the height of the house, not the size. The Public Hearing was then closed.

Paras-Caracci stated the CUP request is reasonable, the applicant has worked with staff to make adjustments as requested by the City Council, the applicant has come up with something they felt would suffice for all parties involved, and to deny a family to build its home and live in the City is not going to be her decision.

Paras-Caracci moved, Reyes seconded to approve CUP 07-7 subject to the Conditions of Approval set forth in the staff report, and to approve the Mitigated Negative Declaration and the Mitigated Monitoring and Reporting Checklist.

Fasana stated he would like to see stronger adherence to the 18' height restriction.

Fasana moved, Finlay seconded a substitute motion to deny CUP 07-7.

Finlay stated she would like to see story poles used in the future, and recommended a meeting of the minds when impacting neighbors.

Slater noted those voting for the substitute motion would need to put on the record the specific facts that suggest that one or more of the eight findings cannot be made.

Finlay stated Finding #3 (the proposed use will have no adverse effect on abutting properties) was not met, and Duarte Municipal Code 19.84.010 and 19.84.030 (b) and (d) (Hillside Overlay District) were not met.

Gaston stated our codes and regulations are designed and written so that whatever is built blends with whatever is already there, the whole idea of having codes and regulations is based on having neighborhoods blend, and there is some gray area here.

Reyes stated all the findings have been met, this has been worked on for 18 months, the applicant is completely in compliance, we are open to exposure, the applicant has every legal right to build, and if there is a lawsuit, we will be wasting taxpayer dollars and staff time.

Fasana stated Finding #3 (the proposed use will have no adverse effect on abutting properties) was not met relating to the impact on views to the west and south, and Duarte Municipal Code 19.32.050 (e) (1) (Item #3 in the staff report relating to prevailing heights in the immediate neighborhood) was not met, based on the evidence presented in the various maps and boards.

Finlay called for the question.

The substitute motion to deny CUP 07-7 carried by the following Roll Call vote:

AYES: Gaston, Finlay, Fasana

NOES: Paras-Caracci, Reyes

CITY COUNCIL/AGENCY  
Youth Council

Gaston moved, Fasana seconded to direct the City Attorney to develop a Resolution establishing the Mayor's Youth Council, and carried unanimously.

Termination of Commission  
terms effective 6/30/08

Fasana moved, Paras-Caracci seconded to terminate the terms of all City Commissioners as of June 30, 2008, and carried unanimously.

Council Bill 08-O-02  
City Commissions  
(First Reading)

Slater read by title Council Bill 08-O-02:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DUARTE AMENDING AND RESTATING CERTAIN CHAPTERS OF TITLE 2, "ADMINISTRATION AND PERSONNEL," OF THE DUARTE MUNICIPAL CODE PERTAINING TO CITY COMMISSIONS (First Reading)

Slater noted the following corrections: 2.30.020 should read "majority of all of the members;" 2.30.070 should read "majority vote of all of the members;" and 2.30.080 should read "majority vote of all of the members."

There was discussion about including a non-resident as one member of the Parks and Recreation Commission. Slater stated the wording in Section 2.24.050(a)(1) could be changed to allow for four resident members, and one non-resident member.

Fasana moved, Finlay seconded to introduce Council Bill 08-O-02 for first reading, as amended with the corrections stated above in Sections 2.30.020, 2.30.070, 2.30.080, and as amended to allow for four resident members and one non-resident member on the Parks and Recreation Commission in Section 2.24.050 (a)(1), and carried unanimously.

RESOLUTION  
Council Bill 08-R-03  
Opposing Proposition 98

Reyes read by title Council Bill 08-R-03:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA, OPPOSING PROPOSITION 98 ON THE JUNE 2008 BALLOT

Finlay moved, Gaston seconded to adopt Resolution No. 08-03, and carried unanimously. Reyes asked that a presentation of the benefits of our Redevelopment Agency be made at a future meeting.

ITEMS FROM CITY COUNCIL/  
CITY MANAGER

FASANA: Congratulated the Mayor and School Board President on the State of the City/School District, thanked the Chamber, and congratulated all involved in the César Chávez event.

FINLAY: Stated the State of the City cleared up information, thanked those who attended the dinner for the Serbian educators, announced WASC reception on April 20, and inquired about the cut in the asphalt on Mt. Olive. Steve Esbenshade responded.

GASTON: Congratulated the Mayor on the Business Connection document, noted seniors must file income tax statements to receive the economic stimulus payment, congratulated those who received awards at the State of the City, commended Iris Silveria for her recognition by Congressman Solis, and commended the organizers of the Unity Peace March.

PARAS-CARACCI: Stated she appreciates Councilmember Gaston representing the City at events.

GEORGE: Announced the City received a \$56,000 grant for the goat brush clearing program.

REYES: Thanked coaches for the basketball program, participated in the Chinese Alliance, stated the César Chávez event was outstanding, thanked all who participated in the State of the City, attended the Golden Gloves State Championship, stated the City of Hope needs platelets, and asked that the meeting be adjourned in memory of Ronnie Sewell.

ADJOURNMENT

Gaston moved, Fasana seconded to adjourn the meeting at 11:20 p.m., in memory of Ronnie Sewell, and carried unanimously.

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Mayor Phillip R. Reyes

ATTEST:

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City Clerk