

## MINUTES

### JOINT CITY COUNCIL/REDEVELOPMENT AGENCY OF THE CITY OF DUARTE REGULAR MEETING – SEPTEMBER 22, 2009

**CALL TO ORDER** Councilmember Reyes called to order the Joint City Council/Redevelopment Agency meeting at 6:37 p.m., with three members present (Finlay and Fasana arrived prior to the commencement of the Closed Session).

**ADOPTION OF AGENDA** Gaston moved, Paras-Caracci seconded to adopt the Agenda, and carried unanimously.

**CLOSED SESSIONS**  
1) Performance Evaluation  
2) Real Property Negotiation

City Attorney Slater stated the first Closed Session is pursuant to Government Code Sections 54956(b)(1) and 54957.6(a); Public employee performance evaluation; Title of position: City Manager; Designated representative: Dan Slater, City Attorney. The second Closed Session is pursuant to Government Code Section 54956.8; Conference with real property negotiators; Agency negotiators: Darrell George and Craig Hensley; Negotiating parties: Redevelopment Agency of the City of Duarte, Duarte-Jacobsen Family Holdings I, LLC, and Mountain Vista Plaza; Under negotiation: Price and terms of payment; Concerning approximately 2,000 square feet located at the southwest corner of Parcel 1 of Parcel Map No. 17549. The Closed Sessions concluded at 7:03 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 Fasana reconvened the meeting at 7:10 p.m.

**RECORDATION OF ATTENDANCE**

The following were in attendance:  
PRESENT: Finlay, Gaston, Paras-Caracci, Reyes (left at 10:45 p.m.), Fasana  
ABSENT: None  
ADMINISTRATIVE STAFF PRESENT: City Manager George, City Attorney Slater

**PLEDGE TO THE FLAG** Assemblymember Portantino led the Pledge of Allegiance.

**MOMENT OF REFLECTION** A moment of reflection was observed.

**FITNESS/MENTAL WARM-UP** Gaston and Finlay provided the warm-up.

**PUBLIC REPORT OF CLOSED SESSION** Slater stated the City Council continued the evaluation of the City Manager to later in the meeting. During the second Closed Session, the City Council/Agency Board discussed the price and terms regarding property acquisition, and unanimously directed the Agency negotiators and Agency attorney to bring back an Agreement for acquisition of an approximately 2,000 square foot parcel, as listed on the Agenda, for an open session item at a future meeting.

**ANNOUNCEMENTS**

Bill Baca, Senator Romero's office, announced Senate Education Committee hearing on September 30 in Los Angeles.

Renee Chan, Maryvale Family Resource Center, announced the date of completion is December 12, and the dedication ceremony will be held on March 14.

Reed Strege, Duarte Library, announced Festival of Authors on October 3, SAT/ACT practice test on September 26, Teen Talk on October 10, and wills and trust workshop on October 21.

Robert Cuite, Duarte Education Foundation, announced Pennies for Progress Drive, stated posters and cans are throughout the City, and displayed T-shirts.

Karen Herrera announced a number of upcoming City and com-

munity events in the months of September and October.

Brian Villalobos announced Red Cross flu check list flyers are available, as well as County Public Health flu vaccination clinic information.

Gaston announced Taste of Autumn event at Citrus College on October 4.

Finlay announced Kiwanis installation event on October 6.

#### SPECIAL ITEMS

Presentation – Assemblymember Portantino – State of the State

Assemblymember Anthony Portantino provided an update of State issues including the recent fires, assistance programs, State budget, bills authored, introduced, and signed into law, water supply, education funding, and tax structure, and announced Women in Business luncheon on October 2.

Recognition – D’Aquino Italian Importing Company, Inc.

Mayor Fasana introduced Mr. and Mrs. D’Aquino, and presented them with a congratulatory plaque in appreciation of D’Aquino Italian Importing Company’s 30<sup>th</sup> anniversary of bringing a taste of Italy to the City of Duarte. Certificates were also presented on behalf of Assemblymember Portantino, Congressmember Chu, Senators Romero and Cedillo, and Supervisor Antonovich.

Presentation by Metropolitan Water District

Luis Cetina and Brian Thomas made a presentation about the Metropolitan Water District’s budget and rates, including rising water costs, regulations, restrictions, debt service, operating and maintenance costs, and cost management actions.

Presentation – Strategic Planning Goals

City Manager George presented a progress report on the strategic planning goals and objectives established by City Council and staff. Gaston moved, Finlay seconded to receive and file the report, and carried unanimously.

#### ORAL COMMUNICATIONS

The following spoke on items not on the Agenda.

Arthur Moss – Gangs, employment.

Rosalie Zesati – Maintenance yard informational piece.

Dave Campbell – Metro informational piece.

Susie Lopez – Mismanagement, post office.

Tom Reyes – Maryvale traffic, crossing guards.

Mayor Fasana asked that staff look into the truck parking situation and hours of operation for Maryvale construction. Paras-Caracci suggested the inquiry about crossing guards be followed-up with the Superintendent.

#### ITEMS ADDED TO CONSENT

Finlay moved, Gaston seconded to add to Item H attendance for all Council at Taste of Autumn on October 4 at Citrus College, Duarte Kiwanis installation luncheon on October 6 at the Ramirez residence, County Fire Department event on September 30, and NLC 2009 Summit on Your City’s Families in Boston, October 11-13, and carried unanimously.

#### CONSENT CALENDAR

Finlay moved, Gaston seconded to approve the Consent Calendar, as amended as follows, and carried unanimously.

Approve Items A, B, C, D, E, F, G, H.

#### NUISANCE ABATEMENT APPEAL HEARING

KUA, Inc. and U.S. Kuil, Inc.  
Rancho Duarte Golf Course

Slater stated this item is a hearing on an appeal by appellants KUA, Inc. and U.S. Kuil (collectively, “KUA”) of the Order of the Honorable James Smith (Ret.), dated August 13, 2009, which affirmed the City Engineer’s Notice of Public Nuisance and Order of Abatement issued to KUA, dated December 31, 2008, concerning the Rancho Duarte Golf Course, 1000 Las Lomas Road, Duarte, California.

Slater further stated that on September 22, 2009, prior to the start of the appeal hearing, a final Order from Judge Smith was received, dated September 18, 2009, which added to his August 13, 2009, Order the award of attorney’s fees and costs to the City in the amount of \$188,458.18, and asked if the parties wanted that to be made part of tonight’s appeal.

James Sifers and Robert Sabahat, of Madison Harbor, ALC, appeared for KUA. Richard Montevideo, of Rutan & Tucker, LLP, appeared for the City of Duarte. William Wynder, of Aleshire & Wynder, LLP, served as counsel to the City Council for the appeal hearing.

Both parties agreed to have the appeal heard by the City Council on the matters in Judge Smith's Order except for the portion of the Order awarding attorney's fees and costs to the City.

James Sifers presented a brief history of the golf course purchase and previous owners, provided information about the remedial efforts taken by KUA, stated 90% of the repair work has been done, discussed attempts at settlement, stated the evidence presented at the hearing demonstrates compliance, it is operating within the required confines, the evidence submitted for the nuisance was outdated, the City said there was an imminent threat of a nuisance, the ponding issue was corrected one week before the hearing, this is an order not to break the law, the nuisance does not exist so it cannot be abated, the data shows the system is working, asked City Council to find there is no nuisance, and if there is a nuisance, KUA should be ordered to abate it in any reasonable manner, they were allowed no discovery, that is necessary for a full and fair hearing, the best option is to remand this for further evidence, they are in compliance now, and stated there can be no nuisance.

Richard Montevideo displayed an exhibit showing the present system and its proximity to the surrounding neighborhood, stated there is substantial evidence to support the Order, Judge Smith ordered the nuisance to be abated as directed by City staff, extensive briefs were submitted by the City, the exhibits included readings and showed the need to install a new collection system as the current gas collection system is aged and deteriorating, the draining system is ineffective, provided detailed information about a number of AQMD abatement orders, stated the AQMD order from January 2009 continues to today, described KUA's work plan phases, State Board determinations and requirements, KUA's refusal to replace the system, and expert testimony stating the system needs to be replaced, stated the new system proposed by City staff and ordered to be installed by the Judge was designed by KUA's consultant, and stated Judge Smith properly determined that this property is a nuisance and should be abated.

Mr. Sifers stated the grading was completed and sufficient, age is not an issue, the issue is performing as required by the code, the new vent stack system is installed and working, the AQMD's last order does not require a new system, if they are in compliance with the State's rule, no action can be taken by the City, the site is in compliance now, what is at issue is compliance on the date of the hearing, not in the future, as of today and the day of the hearing, they are in compliance, asked City Council to overrule Judge Smith's order or remand it for further testimony, and asked that the nuisance be allowed to be abated in any reasonable manner.

Mr. Montevideo stated the evidence presented by the State Board and County required a new system, the AQMD's last order expected the parties to work together and included a schedule for the installation of a new system, provided definitions of nuisance, stated this nuisance is a violation of law, KUA conceded they are in violation, the threat of imminent injury is a nuisance, the issue is not KUA, the issue is the public visiting the golf course, those living around the golf course, and protecting the community, and asked that City Council affirm Judge Smith's determination.

RECESS

Mayor Fasana called a Recess at 10:22 p.m. City Council reconvened at 10:31 p.m., with all members present.

Mary Somerlott, Hacienda Drive, stated when she moved to her home on the 4<sup>th</sup> hole 28 years ago, she was told there would be mitigation for the methane gas, four years ago, letters were received from the gas company about unhealthful levels of methane gas, KUA admitted their system poses a threat to the public, there are 122 homes nearby, as well as Santa Teresita's assisted living facility and other businesses, KUA is showing a disregard for human safety, lives are at stake, and asked that City Council not let them get away with this, and make them fix it immediately, as there is no buffer between the golf course and the homes.

William Wynder stated after City Council deliberates on the matter, the options available to City Council are 1) affirm the order in its entirety, 2) reverse the order in its entirety, 3) affirm the order in part and reverse the order in part, or 4) remand the matter in whole or in part.

Mayor Fasana declared the appeal hearing closed.

Reyes stated City Council and staff made every effort not to have this hearing, and efforts were made to negotiate in good faith on at least three occasions to come to some resolution.

Reyes moved, Finlay seconded to affirm, in its entirety, Judge Smith's September 18, 2009, Order except for the portion of Judge Smith's Order awarding attorney's fees and costs to the City, which will be heard at a future hearing.

Gaston stated it is difficult to find the Judge's decision to be in error, she would uphold the motion, the evidence proves undue risk, and further solidifies her decision.

Finlay stated there is substantial evidence to affirm the order of Judge Smith.

Mayor Fasana stated the orders, testimony, and briefs show evidence of a nuisance, overwhelming evidence was presented, and he supports sustaining the Judge's order.

Paras-Caracci stated in looking at the Duarte Municipal Code and the definitions of nuisance, the Judge made the appropriate ruling for this item.

The motion to affirm, in its entirety, Judge Smith's September 18, 2009, Order except for the portion of Judge Smith's Order awarding attorney's fees and costs to the City, which will be heard at a future hearing, carried by the following Roll Call vote:  
AYES: Reyes, Finlay, Gaston, Paras-Caracci, Fasana  
NOES: None

BUSINESS ITEM  
Youth and Family Master Plan  
Applicant Review Committee

Donna Georgino provided the staff report about appointments to the Youth and Family Master Plan Application Review Committee, and stated applications were being accepted through September 24, 2009.

There was discussion about City Councilmembers currently on the committee, School Board and Town Council members, and number of members.

Paras-Caracci moved, Gaston seconded to approve a five-member Youth and Family Master Plan Applicant Review Committee, consisting of two Councilmembers (Paras-Caracci and Reyes), two School Board members, and one member from the Monrovia-Arcadia-Duarte Town Council, and carried with Reyes absent.

Gaston suggested labor be included on the applicant checklist, and Mayor Fasana suggested Maryvale Family Resource Center be contacted to see if someone from its organization is interested in serving on the Committee.

ITEMS FROM CITY COUNCIL/  
CITY MANAGER

FINLAY: Announced employment workshop on September 29, inquired about the slope on Sunnydale (Hensley responded), will attend upcoming Contract Cities dinner, announced Community Movie Night on September 25, and asked that the meeting be adjourned in memory of Elrose LaPlante.

PARAS-CARACCI: Stated the parade and picnic were amazing for the community, received inquiries from residents regarding speed humps on Galen Street across from Beardslee, lights at Beardslee Park, restrooms at Otis Gordon Park, and the condition of restrooms at Beardslee, attended Bradbury City Council meeting regarding development near Westvale, would like to have community forums at the schools a couple of times a year, requested the parade committee be recognized and possibly its major sponsors, and announced her 20-year reunion on October 17.

GASTON: Requested the Duarte High School football team, head coach, and coaching staff be recognized for their valor at the next Council meeting, attended Contract Cities/Independent Cities Association installation in Claremont, visited the U.S. Forestry and County Fire Department headquarters at Santa Fe Dam, attended the firefighters' memorial at Dodger Stadium, stated Casino Night was awesome, congratulated Rev. Earle and Irwin Margiloff on the book signing event, attended the League Annual Conference, noted the Public Health Department has information available about the flu vaccination, and stated the parade was awesome.

FASANA: Received information about potential openings for the Los Angeles County Grand Jury for 2010/11, and asked that an announcement be made at the next Council meeting, attended the 100<sup>th</sup> anniversary event of the NAACP, Honor Among Ashes program, and San Gabriel Valley Partnership event, appreciated the efforts of the parade committee, congratulated all involved with the parade and picnic, announced forum on San Gabriel Valley transportation priorities will be held on September 23 at the Duarte Community Center, stated eight years ago the City Council elected not to proceed with a technology facility, and with reference to the maintenance facility, stated the motive for our efforts is to bring the Gold Line here.

GEORGE: Stated recent data indicates the City of Duarte ranks as lowest when compared to neighboring cities with regard to Part 1 crimes.

CLOSED SESSION (Continued  
from earlier in the meeting)

Mayor Fasana called a Recess at 11:20 p.m. to continue the Closed Session pertaining to the City Manager's evaluation. The Closed Session concluded at 11:59 p.m.

PUBLIC REPORT OF CLOSED  
SESSION ITEM

Slater stated after discussion, a motion was approved by a vote of 3-1, with Reyes absent and Finlay voting no, to provide an extension to the City Manager's contract, so it will become a three-year contract term, to increase the number of months of severance in the event of a termination without cause from 12 months to 15 months, and to adjust the time for the annual evaluation from August/September to April, and stated these items will be reflected in a contract amendment to be on the next Agenda and voted on in open session.

ADJOURNMENT

Finlay moved, Paras-Caracci seconded to adjourn the meeting at 12:03 a.m., September 23, 2009, in memory of Elrose LaPlante, and carried unanimously.

---

Mayor John Fasana

ATTEST:

---

City Clerk