

MINUTES

JOINT CITY COUNCIL/REDEVELOPMENT AGENCY OF THE CITY OF DUARTE REGULAR MEETING – OCTOBER 13, 2009

CALL TO ORDER Councilmember Paras-Caracci called to order the Joint City Council/Redevelopment Agency meeting at 6:08 p.m., with three members present (Fasana arrived at 6:10 p.m., and Finlay was absent from the meeting).

ADOPTION OF AGENDA Gaston moved, Reyes seconded to adopt the Agenda, and carried unanimously.

**NUISANCE ABATEMENT
APPEAL HEARING**
KUA, Inc. and U.S. Kuil, Inc.
Award of attorney's fees/costs

Slater stated this item is a hearing on an appeal by appellants KUA, Inc. and U.S. Kuil, Inc. (collectively "KUA") of the Order of the Honorable James Smith (Ret.), dated September 18, 2009, with respect to the portion of Judge Smith's Order pertaining to the award to the City of attorney's fees and costs in the amount of \$188,458.18, 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.

James Sifers of Madison Harbor, ALC, appeared for KUA. Richard Montevideo of Rutan & Tucker, LLP, appeared for the City. William Wynder of Aleshire & Wynder, LLP, served as counsel to the City Council for the appeal hearing. City Attorney Slater and City Manager George left the dais during the hearing.

James Sifers noted a mistake on the first page of the brief, and stated they would rest on the arguments made in the brief. He further stated that fees must be reasonable, cannot be padded, there is a conflict, Mr. Slater and Mr. Montevideo are from Rutan & Tucker, that type of referral is a conflict, it renders fees unfeasible and duplicative, KUA did not bill for two attorneys, the City claims two attorneys were necessary, the reason for the two attorneys was to pad the fees, the briefs were extraordinarily long, they were told they had to have this hearing, City Council could have made its decision on the arguments, the amount is a 9 to 10 times increase in fees, the fees are unreasonable, and the \$2,000 in demonstrative exhibits were unnecessary and unreasonable.

Richard Montevideo stated the California Supreme Court has determined the amount of fees is to be modified if the trial judge was wrong, due to the history, complexity, and technicalities of the case, the Judge determined that no charge was unnecessarily incurred, three briefs have been submitted on this issue of fees, the Carlstrom case does not deal with attorney's fees, it has been miscited three times, they have not dealt with the controlling authority or statute that the Judge relied upon, the Duarte Municipal Code provides for nuisance abatement fees, the Judge determined we are authorized to recover the fees, the length of the briefs was due to complicated issues, the Judge found the case justified the fees, discussed due process of law argument, the primary concern is the danger to the community, both parties referred to the blown-up depiction, it was appropriate in this type of case, there is a clear entitlement to the recovery of fees, it is provided for in the Government Code and the Duarte Municipal Code, there is no substantial reason to question the sound decision made by Judge Smith, and the decision should be upheld in its entirety.

Mr. Sifers stated they only billed for one attorney, they were not given enough opportunity to defend themselves, the Duarte Municipal Code does not provide for discovery, and they had to address these types of arguments in 50-page briefs.

Mr. Montevideo stated the briefs indicate they never asked for discovery, they have to ask for the opportunity, they did not, the record shows had they attempted, they would have done so, today is the first time he heard about the conflict pertaining to Rutan & Tucker, less than one hour was billed and awarded for the City Attorney fees, new, twisted, and fabricated arguments have been created, and he would submit that Judge Smith's award be upheld in its entirety.

William Wynder stated after City Council deliberates on the matter as to the portion of Judge Smith's Order pertaining to the award to the City of attorney fees and costs in the amount of \$188,458.18, the options available to City Council are 1) affirm that portion of the order in its entirety, 2) reverse that portion of the order in its entirety, 3) affirm that portion of the order in part and reverse that portion of the order in part, or 4) remand that portion of the matter in whole or in part.

Steve Hernandez, Duarte, inquired about the attorneys' experience, stated the issue should have been avoided, and they were in violation of State and local laws.

Mr. Montevideo responded to questions from City Council concerning the breakdown of fees.

Mayor Fasana declared the appeal hearing closed.

The City Council deliberated on the matter.

Gaston moved, Reyes seconded to affirm in its entirety, the portion of the Order of the Honorable James Smith (Ret.) pertaining to the award to the City of attorney fees and costs in the amount of \$188,458.18 as set forth in the Order on page 10, lines 17-28, page 11, lines 1-21, and page 13, lines 21-24, dated September 18, 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, and carried unanimously (with Mayor Pro Tem Finlay absent).

RECESS

Mayor Fasana called a Recess at 7:00 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 7:15 p.m.

RECORDATION OF ATTENDANCE

The following were in attendance:

PRESENT: Gaston, Paras-Caracci, Reyes, Fasana

ABSENT: Finlay

ADMINISTRATIVE STAFF PRESENT: City Manager George, City Attorney Slater

PLEDGE TO THE FLAG

Sergeant Haynes led the Pledge of Allegiance to the Flag.

MOMENT OF REFLECTION

A moment of reflection was observed.

FITNESS/MENTAL WARM-UP

George provided the warm-up.

ANNOUNCEMENTS

Rosemary Berger, Maryvale Family Resource Center, stated the completion date has been moved to January 8, 2010, and the dedication ceremony will be held on March 14, 2010.

Reed Strege, Duarte Library, announced book launch and teen event on October 20, wills and trust workshop on October 21, origami demonstration on October 28, and Halloween party on October 30.

Robert Cuite, Duarte Education Foundation, announced Pennies for Progress drive, and stated funds will be used for budget decreases as directed by the Superintendent and School Board.

Jim Kirchner, Duarte Chamber, stated he has received complaints from business members about election donations, they have felt harassed and intimidated, and they are asking the solicitation behavior to cease.

SPECIAL ITEMS

Recognition – James Causey
Outgoing Public Services Comm.

Mayor Fasana introduced James Causey, and presented him with a City plaque in recognition of his service as a Public Services Commissioner from January 2006 – September 2009.

Recognition – Lisa Magno
Small Businesswoman Award

Mayor Fasana introduced Lisa Magno, and presented her with a framed certificate in recognition of her receiving the Outstanding Small Businesswoman Award for professional accomplishments and commitment to the community from Senator Liu and Assemblymembers Portantino and Krekorian.

Proclamation–Red Ribbon Week

Mayor Fasana read and presented the Proclamation for Red Ribbon Week to Aida Torres, who provided information about the events scheduled during the week of October 26-30, 2009.

Mayor Fasana asked that item 14.A (Business Item – Hayden Child Care Center request) be considered after Item 11 (Consent Calendar). City Council concurred.

ORAL COMMUNICATIONS

The following spoke on items not on the Agenda.

Brian Lister – Rocktown pictures, vehicle damage.

Harry Heflin – Attalla Ranch property, 710 freeway, rail yard.

Jack Ochoa – MTA meeting, Gold Line, money spent for ad.

Lisa Magno – Donations, political campaign requests.

Lino Paras – Campaign, FPPC investigation.

Carmen Swart – Home burglary crime statistics.

Wally Swart – Campaign calls, crime rate.

ITEMS ADDED TO CONSENT

Gaston moved, Reyes seconded to add to Item G attendance for all Council at Citrus College Foundation’s Book Reserve Program on October 27 at Citrus College, Foothills Pregnancy Resource Center event on October 23 in Arcadia, and Man-e Moreno Comedy Show Benefit on October 24 at the PAC Center, and carried unanimously.

CONSENT CALENDAR

Reyes moved, Paras-Caracci seconded to approve the Consent Calendar, as amended as follows, and carried unanimously.
Approve Items A, B, C, D, E, F, G.

RESOLUTION NO. 09-34

Item E–Council Bill 09-R-34 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE APPROVING THE APPLICATION FOR GRANT FUNDS FROM THE LOS ANGELES COUNTY REGIONAL PARK AND OPEN SPACE DISTRICT FOR FIFTH SUPERVISORIAL DISTRICT EXCESS FUNDING FOR FISH CANYON TRAIL MAINTENANCE

BUSINESS ITEM

Request – Hayden Child Care
5K event on 3/13/10

Donna Georgino presented a staff report about the request from Hayden Child Care Center of Santa Teresita for City co-sponsorship of its 5K event to be held on March 13, 2010.

Sister Mary Patrice answered questions from Councilmembers pertaining to signage.

Reyes moved, Gaston seconded to approve the request from Hayden Child Care Center of Santa Teresita for co-sponsorship of the Hayden Memorial 5K Run, Family Walk and Roll event to be held on March 13, 2010, to waive fees and provide in-kind services as outlined in the staff report, and to approve the exclusive use of the Bike Trail, and carried unanimously.

RESOLUTIONS

Council Bill 09-R-33
Gold Line Ad Hoc Committee

Slater read by title Council Bill 09-R-33:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA, ESTABLISHING A GOLD LINE RE-

GIONAL TRANSPORTATION AD HOC ADVISORY COMMITTEE, SETTING COMMITTEE OBJECTIVES AND REQUIREMENTS, AND MAKING FINDINGS AND DETERMINATIONS CONCERNING THE COMPLIANCE OF THE COMMITTEE AND COMMITTEE MEMBERS WITH CERTAIN LAWS AND REGULATIONS

Jack Ochoa discussed the MTA Board Meeting minutes, stated this is creating more work and spending more money, and there is no need for an ad hoc committee.

Steve Hernandez stated he is opposed to the maintenance yard, and he would like to participate in the ad hoc committee.

George provided a staff report, and stated the purpose of the ad hoc committee is to inform the community about impacts of the Gold Line.

RESOLUTION NO. 09-33

Gaston moved, Paras-Caracci seconded to adopt Resolution No. 09-33, and carried by the following Roll Call vote:

AYES: Gaston, Paras-Caracci, Fasana

NOES: Reyes

ABSENT: Finlay

Council Bill 09-R-35
Youth/Family Master Plan
Ad Hoc Committee

Slater read by title Council Bill 09-R-35:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA, ESTABLISHING A YOUTH AND FAMILY MASTER PLAN AD HOC ADVISORY COMMITTEE, SETTING COMMITTEE OBJECTIVES AND REQUIREMENTS, AND MAKING FINDINGS AND DETERMINATIONS CONCERNING THE COMPLIANCE OF THE COMMITTEE AND COMMITTEE MEMBERS WITH CERTAIN LAWS AND REGULATIONS

RESOLUTION NO. 09-35

Paras-Caracci moved, Gaston seconded to adopt Resolution No. 09-35, and carried unanimously.

Agency Bill RA-384
OPA – Mountain Vista Plaza
Partnership

Slater read by title Agency Bill RA-384:

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF DUARTE, CALIFORNIA, APPROVING AN OWNER PARTICIPATION AGREEMENT BETWEEN THE AGENCY AND MOUNTAIN VISTA PLAZA PARTNERSHIP

George provided the staff report about the proposed new freeway oriented sign for the Mountain Vista Shopping Center, and answered questions from Councilmembers.

Steve Hernandez stated the better sign is a good idea, and inquired if it could be used for community use. George responded.

Lino Paras stated a state-of-the-art sign could incorporate community event information, inquired about the total cost of the sign (George responded), and stated the incumbents each received \$1,000 from Piken.

RESOLUTION RA-384

Gaston moved, Paras-Caracci seconded to adopt Resolution RA-384, and carried unanimously.

BUSINESS ITEMS (Continued)
AT&T and T-Mobile Lease
Wireless communication facilities at Royal Oaks Park

Jason Golding, Senior Planner, provided a staff report about the business terms for a lease with AT&T and T-Mobile for proposed wireless communication facilities located on the basketball court light poles at Royal Oaks Park, and introduced representatives from AT&T and T-Mobile, who answered questions from Councilmembers pertaining to power outages, monitoring of sites, and repairs.

There was discussion about the neighbors' view, building size, height of pole, noise, direction of lights, and notification of sur-

rounding property owners.

Fasana moved, Reyes seconded to hold off on this item for one month to allow for notification of residents, informing them of the proposal to install the structure, to explain the benefits, and to contact staff with concerns, before bringing the item back to the City Council.

Paras-Caracci moved, Gaston seconded a substitute motion to approve staff's recommendation, and to send notices to the surrounding residents informing them of the proposal and to contact staff with their concerns, without having the item come back to Council.

The substitute motion failed by the following Roll Call vote:

AYES: Gaston, Paras-Caracci

NOES: Reyes, Fasana

The main motion failed by the following Roll Call vote:

AYES: Reyes, Fasana

NOES: Gaston, Paras-Caracci

(Continued to 10/27/09)

Mayor Fasana stated the item would be brought back to the next City Council meeting for consideration.

Appointments to Gold Line
Ad Hoc Advisory Committee

There was discussion about not receiving recommendations from the School District and Chamber of Commerce, the possibility of Councilmembers making more than two appointments, and continuing the item to a later meeting.

Gaston moved, Paras-Caracci seconded to continue the item to the next meeting, with the City Manager to contact the Chamber of Commerce, the School District, and the Councilmembers who have not made appointments, asking for their appointee names prior to the deadline for the next Agenda.

Jack Ochoa stated he wants to be considered as a candidate for the ad hoc committee.

Steve Hernandez stated he is willing to wait for two weeks.

Paras-Caracci stated her appointments are Dan Yrigoyen and Michael Cosgrove. Gaston stated her appointments are Carie Osburn and Eddie Howard. Fasana stated his appointments are Greg Kawasaki and Ed Tan.

(Continued to 10/27/09)

The motion to continue the item to the next meeting, as stated above, carried unanimously.

Appointments to Youth and
Family Master Plan Ad Hoc
Advisory Committee

Donna Georgino provided a staff report about the review committee's recommended appointments.

Reyes moved, Gaston seconded to appoint the following to the Youth and Family Master Plan Ad Hoc Advisory Committee: Rev. Doug Edwards and Dr. Vincent Castro (Co-Chairs), Deputy Rob MacLean (Sheriff's Department rep.

representative), Michelle Trail (Duarte Unified School District Representative), members-at large Roxanne Alatorre, Yovana Bruno, Lillian Cabral, Erica Christianson, Damon Colaluca, Carlos Cortez, Cynthia Davis, Gerald Delker, Sagar Desai, Lisseth Duenas, Kyle Garza, Eloise Hart, Ana-Lisa Hernandez, Mirtha Hernandez, Michelle Kirsch-enbaum, Nick Lopez, Becky Michaelis, Elsa Moreno, Helen Nwangwu, Henry Perez, Melissa Pereyda, Erik Quezada, and Thaddeus Smith II, and carried unanimously.

ORAL COMMUNICATIONS

The following spoke on items not on the Agenda.

Steve Hernandez – City Council, community involvement, ethics.

Lisa Magno – Small businesses, campaign, unethical.

Lino Paras – Previous campaign, Mayor rotation.

ITEMS FROM CITY COUNCIL/
CITY MANAGER

Jim Kirchner – Businesses’ concerns, harassment, intimidation.
GASTON: Commended Maryvale for keeping us informed, attended the Author’s Festival, Gold Line Workshop in Monrovia, L.A. County Fire Department event, and Taste of Autumn, met with seniors from the Senior Center who inquired about the need for adequate parking and the possibility of putting gravel on the corner lot, congratulated Lisa Magno and Patricia Tucker for receiving their awards, announced Pennies for Progress will run through December 9, provided information to the City Manager about the greening of California’s workforce and asked that it be distributed to City Council, received a request from the Martin Luther King Community Coalition in Pasadena asking if any non-profit would like to take the lead in our community for its Essay and Arts Contest, stated it is wrong to destroy or damage property and signs, and asked all to act civilly.

PARAS-CARACCI: Met with the teens at the Teen Center and the library who said they are happy that Sonic is coming to town and they are looking for things to do to keep out of trouble, stated the Mayor’s Youth Council is a wonderful vehicle for youth’s voices to be heard, met with seniors from the Senior Center who inquired about the possibility of North and South turn lanes at the intersection of Mountain Avenue and Duarte Road, a lip-reading class, and a crosswalk on Huntington Drive near the Senior Center, stated that chain link fences with barbed wire are located between the backyards of residents and the Bea property, and asked that it be addressed as it is a safety issue.

FASANA: Stated the City of Hope Health Fair was extremely successful, attended the COG Transportation Forum and community movie night, stated the City Selection Committee meeting was cancelled, the Book Fair was excellent, congratulated the newly installed Kiwanis President, attended City of Hope’s annual meeting and the City’s community clean-up event, congratulated Johnny Olvera for winning his boxing match, stated the Duarte Community News is not a City paper, it is put out by a citizen group, provided information to the City Manager about the San Gabriel Valley Veterans Employment Committee Stand Down Event in October 2010, announced Mountains and Rivers Conservancy Workshop on October 27 in San Dimas and urged staff to attend, and announced candidate’s forum on October 15 and Mayor’s Prayer Breakfast on November 25.

ADJOURNMENT

Paras-Caracci moved, Gaston seconded to adjourn the meeting at 10:42 p.m., and carried unanimously.

Mayor John Fasana

ATTEST:

City Clerk