

MINUTES
OF THE
REGULAR MEETING
CLAYTON CITY COUNCIL

TUESDAY, July 21, 2015

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:03 p.m. by Vice Mayor Geller in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Vice Mayor Geller, and Councilmembers Diaz, Haydon and Pierce. Councilmembers absent: Mayor Shuey. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, City Clerk/HR Manager Janet Brown, Community Development Director Mindy Gentry, and City Engineer Rick Angrisani.

2. **PLEDGE OF ALLEGIANCE** – led by Vice Mayor Geller.

3. **CONSENT CALENDAR**

It was moved by Councilmember Haydon, seconded by Councilmember Pierce, to approve the Consent Calendar as submitted. (Passed; 4-0 vote).

- (a) Approved the minutes of the regular meeting of July 7, 2015.
- (b) Approved Financial Demands and Obligations of the City.
- (c) Adopted a Resolution No. 28-2015 authorizing the levy of annual real property tax assessments for Community Facility District No. 2006-1 (Downtown Park O & M; Fund No. 211) in FY 2015-2016.
- (d) Adopted a Resolution No. 29-2015 authorizing the levy of annual real property tax assessments for Community Facility District No. 2007-1 (Landscape Maintenance District; Fund No. 210) in FY 2015-2016.
- (e) Adopted a Resolution No. 30-2015 authorizing the levy of annual real property tax assessments for the Middle School Community Facilities District (CFD 1990-1R; Fund No. 420) in Fiscal Year 2015-2016.
- (f) Adopted a Resolution No. 31-2015 setting and levying real property tax assessments in FY 2015-16 for the Oak Street Permanent Road Division.
- (g) Adopted a Resolution No. 32-2015 setting and levying real property tax assessments in FY 2015-16 for the High Street Permanent Road Division.
- (h) Adopted a Resolution No. 33-2015 setting and levying real property tax assessments in FY 2015-16 for the Oak Street Sewer Assessment District.
- (i) Adopted a Resolution No. 34-2015 setting and levying real property tax assessments in FY 2015-16 for the Lydia Lane Sewer Assessment District.

- (j) Adopted a Resolution No. 35-2015 approving three (3) contracts for the purchase and outfitting of a new 2016 Ford Police Interceptor in the total amount of \$44,966, and declaring a 2007 Ford Crown Victoria police vehicle as property surplus to the City's needs and authorizing its disposal at public auction.
- (k) Approved a Temporary Employment Agreement with Douglas E. Koford to serve as Interim Chief of Police for the City of Clayton.
- (l) Approved a competitive bid contract with Garton Tractor (Fairfield, CA) in the amount of \$79,953.06 for the purchase of a new 2015 New Holland U80C Diesel Utility Tractor using Capital Equipment Replacement Funds (CERF).

4. **RECOGNITIONS AND PRESENTATIONS** – None.

5. **REPORTS**

- (a) Planning Commission – Chair Dave Bruzzone reported that at its meeting of July 14, 2015 the Commission held its first meeting with new Community Development Director Mindy Gentry and new Planning Commissioner Tuija Catalano. The Commission selected its Chair (Dave Bruzzone) and Vice Chair (Sandra Johnson) for the next year and its TRANSPAC representative (Chair Dave Bruzzone). The Commission then reviewed and approved a Site Plan Review Permit at 14 Nottingham Circle to allow the construction of a second story closet addition.
- (b) Trails and Landscaping Committee – No meeting held.
- (c) City Manager/Staff – No report.
- (d) City Council - Reports from Council liaisons to Regional Committees, Commissions and Boards.

Councilmember Haydon attended Saturday Concerts in The Grove featuring "Loose Blues" and thanked the community for their generous donations to continue these types of events.

Councilmember Diaz attended the Contra Costa County Mayors' Conference hosted by the City of Clayton at Oakhurst Country Club, a County Connection Board meeting, a Martinez Historical Society tour, and a Saturday Concerts in The Grove featuring "Loose Blues".

Councilmember Pierce attended meetings of the Metropolitan Transportation Commission, TRANSPAC, Contra Costa Transportation Authority, Bay Area Prosperity Committee, and Associated Bay Area Governments. Councilmember Pierce also attended the Saturday Concert in The Grove featuring "Loose Blues" and the well-attended Contra Costa County Mayors' Conference hosted by the City of Clayton at Oakhurst Country Club.

Vice Mayor Geller attended the Contra Costa County Mayors' Conference hosted by the City of Clayton at Oakhurst Country Club, Claytons' Certified Farmers Market, Saturday Concerts in The Grove featuring "Loose Blues", and he announced the August 1st Saturday Concerts in The Grove will feature "Diamond Dave".

(e) Other – None.

6. **PUBLIC COMMENT ON NON - AGENDA ITEMS** – None.

7. **PUBLIC HEARINGS**

(a) Public Hearing on the proposed real property tax assessments in FY 2015-16 for the Diablo Estates at Clayton Benefit Assessment District and consider the adoption of the Resolution setting, ordering and levying the annual assessments.

City Engineer Rick Angrisani presented the staff report indicating the proposed assessment amount includes an allowable 2.5% increase to pay for the maintenance of various improvements benefiting real property owners within the Diablo Estates Subdivision. The tasks are included in the property management contract awarded previously by RFP to Pinnacle Construction Services. As required by law, notices regarding the public hearing were mailed out to property owners. If the CPI increase does not pass, then it must be funded by drawing on District reserves. The BAD fund balance will cover the District's costs until receipt of the first tax payment from the Contra Costa County in December.

Vice Mayor Geller opened the Public Hearing.

Tom Brand, 5 Seminary Ridge Place, indicated he appreciates the City's willingness to administer the Benefit Assessment District and for the last three years, homeowners are generally happy with the services provided. The homeowners would like to be included in the decision making process and have a say in how the taxes collected are spent. After a review of the Fiscal Year 2016 Proposed Budget it was found that contract administration took up nearly fifty percent of actual physical work costs. Homeowners did not participate in the process of the establishment of the Benefit Assessment District contract and do not have a copy of the agreed upon contract. Noticing for this evening's Public Hearing did not clearly state it was an agenda item before the Clayton City Council at a regularly scheduled City Council meeting. The Engineer's Report of Fiscal Year 2012-13 is the foundation for the Benefit Assessment District and homeowners did not know that this document existed until recently.

Laz Garcia, 23 Seminary Ridge Place, questioned what are the properties being assessed for? Once a year there is weed removal; he would like to go over expenses by line item. The roads are maintained, and Diablo Estates residents are paying more than other subdivisions in the community. He would like the opportunity to review every invoice and seek clarification of the 50% administrative costs collected each year.

Gary Duncan, 3 Seminary Ridge Place, expressed his interest in transparency of the Benefit Assessment District and clarification of how the collected funds are used? What are the improvements? What is the administration? Is there a competitive bidding process? Who are the competitors? Residents would like to be involved.

Colin Jacobs, 26 Seminary Ridge Place, asked if the Benefit Assessment District funds are for future wear and tear? If the storm drains were built using the correct building codes, why are monies now collected to maintain? What happens to the fund balance every year? Are monies carried over to the following year? What is it accrued for? Does the District earn interest on the reserves? What happens when a paying homeowner moves on; do they get to take their share of the BAD reserves with them?

Mr. Brand advised the City Council a majority of the BAD homeowners object to the assessment; unfortunately, not everyone could make it this evening but he has been given their permission to speak for them. City Manager Napper advised this is a legal process requiring a vote from each property owner to approve or protest the annual CPI increase to the Benefit Assessment District. City Attorney Subramanian added that process does not allow a vote to be cast on behalf of a property owner not present.

Mr. Brand responded he has possession of emails from the property owners not present this evening that are against the Benefit Assessment District. Ms. Subramanian asked if these emails were submitted to the City? Mr. Brand advised protest process procedures were not included in the noticing of the Public Hearing and he did not forward the protests to the City as the procedures were not outlined.

Mr. Angrisani advised the noticing included the amount of the proposed CPI-U increase; the assessment can only be increased by more than the authorized allowable CPI-U in the future through approval of a majority of the property owners.

Councilmember Pierce asked to see a copy of the City's notice, as it was not in the agenda materials. Mr. Brand provided Councilmember Pierce his copy of the Notice to Property Owners for Levy of Assessment. This Notice was then forwarded to the City Attorney Subramanian for review.

Mr. Napper added the item for consideration this evening is the annual CPI increase on the base assessment. Any protest would not invalidate the base assessment, just the proposed 2.5% CPI increase.

Councilmember Pierce indicated the Benefit Assessment District consists of 24 lots, and 13 is the minimum individual property owners need for a majority protest vote. Mr. Napper added that only one property owner from each individual parcel has the opportunity to place an affirmative protest vote to the City Council.

Councilmember Pierce confirmed the property owners are looking for clarification on how the collected monies are spent in the Benefit Assessment District, would

like to review contracts and homeowners are requesting collaboration with the City at an annual meeting to discuss the annual increase.

Mr. Napper confirmed a productive meeting inviting the property owners to come and understand what the special benefit of the assessment district is for, answer any questions explaining what is covered, sinking funds for replacement of improvements; he noted the subdivision's private roads are not covered in special assessments and he advised them to personally initiate a sinking fund for street maintenance and repairs. He indicated such a meeting could take place but the assessments for this year must be levied by the County's deadline of August 7th.

Councilmember Diaz confirmed there is not an existing Home Owners Association for the Diablo Estates Subdivision.

Gautam Joshi, 6 Seminary Ridge Place, commented like other Diablo Estates homeowners, he would like to see more transparency around the actual expenditures for the last 3 years, the terms of the contract with Pinnacle, and details on how the District's reserves are handled.

Bob Fink, 4 Promontory Place, expressed he is concerned about the lack of transparency and cost assessed to their community as it occurred abruptly, without any citizen input or even awareness, and zero transparency as well as an automatic increase annually, which alone seems arbitrary, and egregious.

Written comments attached to Mr. Brand's, Mr. Garcia's, Mr. Duncan's, and Mr. Jacobs's speaker cards were the following:

Diablo Estates Homeowner Comments

My comments start with the conclusion: The majority of Diablo Estate Homeowners protest for the Diablo Estates Beneficial Assessment District. Our protest is based on a near complete lack of transparency with Homeowners, including the proposed budget. The protest will be remedied when transparency issues are resolved.

In summary, by its actions and inactions, the City has sent us a message that Homeowner input is not welcome. In fact, we believe we can make our BAD better.

Vice Mayor Geller closed the Public Hearing.

Mr. Angrisani advised Benefit Assessment District does not cover street lights, streets, gutters and curbs.

City Manager Napper summarized the concerns of the Diablo Estates property owners they are overall satisfied with the services provided by Pinnacle Construction Services regarding the maintenance of the area but they desire further knowledge of the Benefit Assessment District. Mr. Napper added when the City went out to bid for property management of Diablo Estates, only one bid was received and that was from Pinnacle Construction Services. The City actually negotiated a lower contract amount to provide these services. Mr. Napper advised the City Council could re-open the Public Hearing and continue it

to a later date and time prior to the August 7th assessment deadline for this fiscal year's property tax assessment roll.

Councilmember Pierce suggested Tuesday, August 4th for continuance of the Public Hearing on proposed assessments for the Diablo Estates at Clayton Benefit Assessment District. Councilmember Haydon confirmed his understanding is the protest is not only about the annual CPI increase, rather the assessment as a whole.

Vice Mayor Geller inquired on the amount of the assessment for each parcel? City Engineer Angrisani advised it is \$3,241.00 including the 2.5% increase on the existing assessment.

Vice Mayor Geller added it is the property owner's responsibility to understand the assessments and what services the assessments provide. The contract was given to the City to administer and it received the best bid. Home Owners Associations collect monthly dues, which often result in monies insufficient to pay expenses; then HOA improvements are sometimes delayed. Vice Mayor Geller advised the City's notice next year will be clearly transparent and this evening's decision is regarding the annual 2.5% CPI increase.

Chris Covin, 14 Seminary Ridge Place, inquired how will the additional BAD information be delivered to the property owners? Councilmember Pierce suggested the quickest way for the City to deliver the information to the property owners would be for property owners to provide email addresses to the City Clerk.

It was moved by Vice Mayor Geller, seconded by Councilmember Pierce, to have a City Council subcommittee conduct a study session regarding assessments for the operation and maintenance of improvements within the Diablo Estates at Clayton Benefit Assessment District for Fiscal Year 2015-16 on July 30th at 7:00 p.m. at Hoyer Hall, 6125 Clayton Road, Clayton, CA. (Passed; 4-0 vote).

Further City Council discussion ensued on the passed motion and who would be on the Sub-Committee. Councilmember Diaz asked if he could attend that meeting if not on the Sub-Committee; the staff reply was "No" as his attendance would make it a quorum of the Council and the meeting was for a Council subcommittee only.

It was moved by Vice Mayor Geller, seconded by Councilmember Pierce, to rescind the previous motion. (Passed; 4-0 vote).

It was moved by Councilmember Pierce, seconded by Councilmember Haydon, to set a special meeting of the City Council regarding assessments for the operation and maintenance of improvements within the Diablo Estates at Clayton Benefit Assessment District for Fiscal Year 2015-16 on July 30th at 7:00 p.m. at Hoyer Hall, 6125 Clayton Road, Clayton, CA. (Passed; 4-0 vote).

City Manager Napper advised the City Council it will need a second motion to continue this Public Hearing to a specific date and time for final action.

It was moved by Councilmember Pierce, seconded by Councilmember Diaz, to continue the Public Hearing regarding the proposed assessments for the operation and maintenance of improvements within the Diablo Estates at Clayton Benefit Assessment District for Fiscal Year 2015-16 to an Adjourned Regular Meeting to be held on August 4th at 7:00 p.m. at Hoyer Hall, 6125 Clayton Road, Clayton, CA. (Passed; 4-0 vote).

Vice Mayor Geller called for a short recess of the meeting at 8:24 p.m.

Vice Mayor Geller called the meeting back to order at 8:26 p.m.

- (b) Public Hearing on the Engineer's Report and proposed levy of annual assessments in FY 2015-16 on real property for the operation and maintenance of residential street lights in the Street Lighting Assessment District, pursuant to Streets and Highways Code 18070 and CA Government Code 54954.6.

City Engineer Rick Angrisani presented the staff report recommending the annual assessments for the Street Lighting Assessment District remain the same as last year. He added that to satisfy the requirements of the Streets and Highways Code, the Fund's title has been re-designated as "Streetlight Replacement Fund". Mr. Angrisani noted the City did not mail property owner notices this year nor is it required to hold an additional public hearing. Proposition 218 provisions do not apply in this case since the City is not proposing an increase in the assessments and there are no provisions allowing for a "majority protest" to eliminate the assessments.

Vice Mayor Geller opened the Public Hearing; no public comments were offered. Vice Mayor Geller closed the Public Hearing.

It was moved by Councilmember Pierce, seconded by Councilmember Haydon, to adopt the Resolution No. 36-2015 approving Engineer's Report and levying assessments for operation and maintenance of street lights in the Street Lighting Assessment District for Fiscal Year 2015-16. (Passed; 4-0 vote).

8. ACTION ITEMS

- (a) Consider the Second Reading and Adoption of City-initiated Ordinance No. 459 adding Chapter 15.94 to the Clayton Municipal Code to establish a streamlined and expedited building permit process for small residential rooftop solar energy systems, per new state law (AB 2188).

Community Development Director Mindy Gentry presented the staff report noting no changes were made to the ordinance at its introduction and first reading on July 7, 2015. Its adoption would make the City of Clayton in compliance with AB2188 by establishing an expedited and streamlined building permit process for small residential rooftop solar systems.

It was moved by Councilmember Haydon, seconded by Councilmember Pierce, to have the City Clerk read Ordinance No. 459 by title and number only and waive further reading. (Passed; 4-0 vote).

The City Clerk read Ordinance No. 459 by title and number only.

It was moved by Councilmember Haydon, seconded by Councilmember Pierce, to adopt Ordinance No. 459 with findings the action does not constitute a project under CEQA. (Passed; 4-0 vote).

- (b) Consider the Second Reading and Adoption of proposed City-initiated Ordinance No. 460 adding Chapter 1.28 to the *Clayton Municipal Code* regarding the use of the City seal and City logo.

City Attorney Mala Subramanian presented the staff report noting upon review of the City's Municipal Code there are no regulations regarding the use of the City seal and logo as is typically found in many other public agencies. Adoption of the Ordinance provides it is unlawful for any person to knowingly or willfully use the City seal or logo for any private or commercial purpose without the prior written consent of the City Manager with any violation considered a misdemeanor of the City's Municipal Code.

It was moved by Councilmember Haydon, seconded by Councilmember Pierce, to have the City Clerk read Ordinance No. 460 by title and number only and waive further reading. (Passed; 4-0 vote).

The City Clerk read Ordinance No. 460 by title and number only.

It was moved by Councilmember Haydon, seconded by Councilmember Pierce, to adopt Ordinance No. 460. (Passed; 4-0 vote).

- (c) Consider design and cost options for a negotiated change order with MCK Services to repave Lower Easley Trail during the City's 2015 Neighborhood Street Repaving Project using monies from the Landscape Maintenance District (CFD 2007-1).

City Engineer Rick Angrisani presented the staff report noting this is a request from the Trails and Landscaping Committee to approve the addition of the repaving of the Lower Easley Trail as a negotiated change order to the 2015 Neighborhood Street project. The Trails and Landscaping Committee recommended an allocation of \$70,000.00 from the Landscape District's reserves to accomplish the desired work.

The initial scope of work envisioned a resurface of this trail segment by grinding the existing asphalt, grinding and re-compacting to create a solid base, then adding a 2" lift of new asphalt. However, on field investigation it was discovered

this portion of the trail does not have existing asphalt. Option One is to use the existing trail as the base and overlay a 6-foot wide trail on top with 2" of new asphalt. MCK Services proposed a change order unit price of \$3.20 per square foot for this work, a cost of approximately \$30,000.00.

An alternative option is to construct a new trail 4 feet wide with 2" of base rock but lined on both sides with header boards. MCK Services quoted a cost of \$12.16 per square foot for a total of \$73,000.00 for this scope of work, including Engineering inspection and contract administration. The cost increased due to the lack of truck access to haul the header boards to the site and compact the asphalt by hand.

Councilmember Haydon requested clarification on the location of the trail? City Engineer Angrisani confirmed the location of the Lower Easley Trail is from the Stranahan subdivision on the north to the Easley property on the south.

City Manager Napper indicated staff was seeking Council to select this evening its preferred method of repaving the trail segment.

Councilmember Pierce advised as much as she would like header boards to frame the trail, it will be a maintenance cost down the road. Her preference therefore is Option One: use the existing trail as the base and lay a 6 feet wide trail on top with 2" of new asphalt. This work would still be a vast improvement.

Vice Mayor Geller opened the item for public comment. No public comments were offered.

It was moved by Councilmember Pierce, seconded by Councilmember Diaz, to approve the addition of a Lower Easley Trail Repaving as a change order to the 2015 Neighborhood Street Project leaving the existing trail as the base and to lay a 6' wide trail on top with 2" of new asphalt, and to further allocate \$30,000 from the Landscape Maintenance District (CFD 2007-1) to fund the project. (Passed; 4-0 vote).

9. **COUNCIL ITEMS** – limited to requests and directives for future meetings.

None.

10. **CLOSED SESSION** – None.

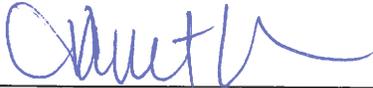
11. **ADJOURNMENT**– on call by Vice Mayor Geller, the City Council adjourned its meeting at 8:43 p.m. in memory of Georgia Haydon, mother of Councilmember Keith Haydon, who passed away recently.

Vice Mayor Geller announced the City Council's next meeting will be a Special Meeting/Study Session on Thursday, July 30, 2015 at 7:00 p.m. in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA 94517.

The next regularly scheduled City Council meeting is August 4, 2015.

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Respectfully submitted,



Janet Brown, City Clerk

APPROVED BY CLAYTON CITY COUNCIL



David T. Shuey, Mayor

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