

MINUTES
OF THE
SPECIAL MEETING
CLAYTON CITY COUNCIL
THURSDAY, July 30, 2015

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

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

3. **STUDY SESSION**
 - (a) Review and discussion of the proposed FY2015-16 real property assessments for the Diablo Estates at Clayton Benefit Assessment District, its budget details and associated expenses, and annual levy procedures.

Councilmember Pierce welcomed those in attendance tonight and noted the Study Session for this evening is for the purpose of further discussing details and operations of the Benefit Assessment District (BAD) about which property owners have questions and concerns. Property owners in attendance were invited to share comments.

Tom Artz, 11 Promontory Place, noted residents have been at this BAD matter for 3 years now and he complimented staff on pulling the information packet together in such short order and detail. Their desire is for better transparency in the operation of the BAD and for collaboration with the City in its administration. They wish to participate in upcoming contracts for the BAD and want to know the best way to work together with the City? Things they learned by the information packet: 1. Exhibit B – the annual budget, it looks a little in the black; 2. What is the \$5,000 facility reserve charge in 2015? 3. Is there really a need to raise the assessment by the CPI? 4. Two-thirds of the reserve is for replacement of the bioswales – is the cost really that high and necessary?

Sandra Jacobs, 26 Seminary Ridge Place, distributed a property owner “Agenda” to the City Council outlining their expected outcomes from this Study Session. She had questions regarding the property management services agreement with Pinnacle, where did the other bids for that work go, and can they participate in the bidding process. They want to be part of the administration of the BAD.

City staff responded that BAD administration is different than home owner association (HOA) administration and the City is the responsible authority to manage and administer a BAD. If property owners desire more direct control and

authority over the management and expenses of the services provided through a BAD, then the best option is to dissolve the BAD and have the property owners form an HOA. BAD financial assets collected by the City would be turned over to the new HOA. It was further noted the City received only 1 response to its Request for Proposals (RFP) to manage the BAD services starting in 2012, and the City in fact negotiated a more favorable price with that vendor than it initially submitted.

Bob Fink, 4 Promontory Place, indicated he thinks the establishment of this BAD is a great idea. Government is often needed to assist citizens and he wants the BAD to remain for its taxing authority. He asked if the BAD can take over the care of the subdivision's private streets? City Engineer Angrisani responded "No"; there is no underlying government authority for a city to levy assessments for the care and maintenance of private streets. Mr. Fink asked who is the point of contact for the residents on BAD questions and concerns? City Engineer Angrisani replied that he is; property owners should not contact Pinnacle directly as he needs to be kept informed and involved in the overall administration of the BAD.

Tom Brand, 5 Seminary Ridge Place, commented the purpose of their protest was to get the City's attention and they believe it worked. They are looking for a special district to help them maintain their private streets. City Engineer Angrisani responded the property owners have the authority to form a single-purpose HOA for that purpose. Mr. Brand wanted the City to takeover that responsibility; City Engineer Angrisani responded the City cannot do that for private infrastructure improvements or for its maintenance. Mr. Brand noted the City did that for some bridge and road improvements in town; City Engineer Angrisani replied those are public roads and bridges, not privately held like this subdivision's streets.

Steve Rossi, commented they were hoping for some advice "on the clock" from the City Engineer or City Attorney on what to do to manage the financial needs for their private streets. He thought the idea was a good one regarding their formation of a single-purpose HOA for streets.

Tom Brand, 5 Seminary Ridge Place, asked if they could receive a written opinion from the City Attorney on this street question. City Manager Napper responded the City Attorney works for the City as its client and does not provide private party advice. Councilmember Pierce added property owners do not need permission however to call the City Engineer regarding questions about the BAD and its services. City Manager Napper noted the City Engineer and City Attorney are not employees of the City, they are contractors; should questions or information be asked of them regarding the BAD, they will bill their time to the BAD's fund to pay the expense and time incurred.

Mr. Brand noted property owners recently received a mailed letter to each of them signed by an unknown contractor noting access to their private property would be required to inspect the bioswales [storm water]; the letter did not reference any connection to the City and property owners were wary and concerned about such communication. Councilmember Pierce and City Manager Napper both responded that communication was unfortunate in its lack of linkage

and will be corrected in future correspondence to property owners regarding BAD contractor services and property access. Mr. Brand asked who is the regulator regarding the storm water bioswales? City Manager Napper responded the City is with its authority derived from the federal EPA through the Regional Water Quality Control Board in San Francisco. The City cannot absolve itself of storm water regulatory oversight even with a BAD.

Mr. Brand asked if there is a better way to communicate with the City on these BAD matters in the future? Councilmember Pierce responded call the City and specifically the City Engineer.

Mr. Brand asked who was the source of the legal Memo in the BAD information packet for tonight's meeting? City Attorney Subramanian replied that she and her law firm, BB&K, were. Mr. Brand asked who requested the question be addressed outlining the dissolution of a BAD? City Manager Napper responded that he had asked for that process to be addressed by the City Attorney as part of his responsibility to provide the City Council with the full range of its authority and options concerning this BAD. Mr. Brand remarked the question seemed punitive in nature; City Manager Napper responded this matter is not personal, it is about the existence and operation of a BAD and that question was an appropriate one to have vetted.

Mr. Brand asked if the BAD's assessment can be changed now, and not just for the CPI? City Manager Napper responded the City is going by the original Engineer's Report that established the BAD and its sinking funds for the improvements maintenance and replacement; if the property owners are seeking a "zero-based budgeting" approach to start over from dollar one, a new consulting engineer's report would need to be commissioned and that expense would be borne by the BAD.

Tom Artz, 11 Promontory Place, asked if it was possible for just the bioswale financing methodology and calculations to be re-evaluated since it seemed excessive and the bioswales will likely function longer than initially anticipated? City Manager Napper replied that focused aspect could be re-examined but would again be paid for by the BAD.

Tom Brand, 5 Seminary Ridge Place, summarized by asking the City Council how it is going to solve the concerns of the BAD property owners. He considers the City is now cooperating and transparency has begun, but for example, can they have input into the preparation of the BAD Annual Report? City Attorney Subramanian responded that property owners may have input into the Annual Report after it is prepared and submitted to the City Council, not during its preparation. The responsibility rests with the City's administration for the BAD.

Mr. Brand asked if the property owners are stakeholders? Councilmember Pierce replied all citizens and property owners in the City are stakeholders.

Laz Garcia, 23 Seminary Ridge Place, indicated he is a numbers guy and he believes there is double taxation existing with his payment of property taxes and this BAD. He had asked at the last meeting for an accounting of where his tax dollars go for expenditure by the City and where his BAD monies go.

Councilmember Pierce responded the City's Budget is available at the Clayton Library for his review and information. City Manager Napper indicated the City is a low-property tax city and approximately 7% of one's annual assessed valuation property taxes actually go to the City's General Fund for general public services; of that amount, over 50% goes to fund local police services. Mr. Garcia added he is having to pay twice for street maintenance; City Manager Napper replied the City uses no General Fund monies for the care and maintenance of public streets in Clayton. Mr. Garcia asked if he was going to directly receive an accounting of the expenditure of his tax dollars and the BAD? City Manager Napper responded staff has verbally supplied the general response of how the City expends its tax dollars and no further reports will be forthcoming on his request.

Tom Artz, 11 Promontory Place, indicated he found this exchange to be very beneficial and he does not want the BAD to be converted to an HOA. He now understands the care for their private streets cannot be part of this BAD, he has learned tonight of some places to peck around to perhaps reduce the annual assessment and to examine their options, and he is willing to do just that.

Tom Brand, 5 Seminary Ridge Place, asked City staff for its perspective regarding the assessment process moving forward. City Manager Napper replied it will be staff's recommendation to the City Council at its Adjourned Regular Meeting on August 4th to approve the FY 2015-16 BAD assessments and levies as submitted.

Councilmember Pierce thanked everyone for their attendance and participation this evening and hoped the additional discussion was beneficial in its effort to provide more information to the property owners about their BAD.

No action was taken.

11. **ADJOURNMENT**— on call by Councilmember Pierce, the City Council adjourned its special meeting at 8:31 p.m.

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

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Respectfully submitted,



Gary Napper, City Manager

APPROVED BY CLAYTON CITY COUNCIL


David T. Shuey, Mayor

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