

MINUTES OF THE REGULAR CITY COUNCIL MEETING
TUESDAY - - OCTOBER 21, 2003 - - 7:30 P.M.

Mayor Johnson convened the Regular Meeting at 8:23 p.m.

ROLL CALL - Present: Councilmembers Daysog, Gilmore, Kerr, Matarrese and Mayor Johnson - 5.

Absent: None.

AGENDA CHANGES

None.

PROCLAMATIONS, SPECIAL ORDERS OF THE DAY AND ANNOUNCEMENTS

(03-465) Presentation by the Domestic Violence Task Force regarding Domestic Violence Awareness Month activities.

Cindy Lambdin, Chairperson of the Domestic Violence Task Force, submitted resource information to Council and gave a presentation on domestic violence awareness activities.

CONSENT CALENDAR

Mayor Johnson announced that the recommendation to authorize the Mayor to send a letter opposing Assembly Bill 1160 [paragraph no. 03-467] was removed from the Consent Calendar for discussion.

Councilmember Kerr moved approval of the remainder of the Consent Calendar.

Councilmember Gilmore seconded the motion, which carried by unanimous voice vote - 5.

[Items so enacted or adopted are indicated by an asterisk preceding the paragraph number.]

(*03-466) Minutes of the Special City Council Meeting (Closed Session); the Special Joint City Council, Community Improvement Commission (CIC) and Housing Authority Board of Commissioners Meeting; the Special Joint City Council, Alameda Public Financing Authority and CIC Meeting; the Regular City Council Meeting; and the Special City Council Meeting (Study Session) held on October 7, 2003. Approved.

(03-467) Recommendation to authorize the Mayor to send a letter opposing Assembly Bill 1160, Second Unit Ordinance Restrictions

Regulation.

Councilmember Kerr stated AB 1160 is phrased to override local zoning ordinances; it is important that cities maintain land use control; the bill could seriously disrupt neighborhoods and is an example of the State trying to overturn the autonomy of charter cities.

Councilmember Kerr moved approval of the staff recommendation.

Councilmember Matarrese seconded the motion.

Under discussion, Councilmember Matarrese stated the Council should represent the citizens directly in neighborhood decisions.

Mayor Johnson stated local control of zoning issues is very important; thanked Councilmember Kerr for raising the matter.

On the call for the question, the motion carried by unanimous voice vote - 5.

(*03-468) Recommendation to approve Annual Report on Managed Investment Portfolio. Accepted.

(*03-469) Ratified bills in the amount of \$3,158,078.58.

REGULAR AGENDA ITEMS

(03-470) Resolution No 13640, "Reappointing Robert M. Wood as a Member of the City Golf Commission." Adopted.

Councilmember Kerr moved adoption of the Resolution.

Councilmember Matarrese seconded the motion, which carried by unanimous voice vote - 5.

(03-471) Resolution No. 13641, "Reappointing Jay L. Ingram as a Member of the City Recreation and Park Commission." Adopted.

Councilmember Kerr moved adoption of the Resolution.

Councilmember Matarrese seconded the motion, which carried by unanimous voice vote - 5.

(03-472) Resolution No. 13624, "Reappointing Bruce C. Reeves as a Member of the City Recreation and Park Commission." Adopted.

Vice Mayor Daysog moved adoption of the Resolution.

Councilmember Matarrese seconded the motion, which carried by unanimous voice vote - 5.

(03-473) Public Hearing to consider establishment of City of Alameda Community Facilities District No. 03-1 (Bayport Municipal Services District); Adoption of Resolution of Formation of Community Facilities District; Adoption of Resolution Calling a Special Election; and Adoption of Resolution Declaring Results of Special Election and Directing Recording of Notice of Special Tax Lien. **Continued to November 4, 2003.**

Councilmember Kerr moved that the matter be continued to November 4, 2003.

Councilmember Matarrese seconded the motion, which carried by unanimous voice vote - 5.

Special Counsel, Chip Eady of Nixon Peabody LLC, requested that Council open the Hearing and then continue the Hearing until the next meeting.

Mayor Johnson stated the matter is a Public Hearing regarding the formation of Community Facilities District No. 03-1 to be known as the Bayport Municipal Services District; opened the Public Hearing; inquired whether the Clerk has received any written protests or speaker slips.

The City Clerk responded in the negative.

In a substitute motion, Councilmember Kerr moved that the Public Hearing and matter be continued to November 4, 2003.

Councilmember Matarrese seconded the motion, which carried by unanimous voice vote - 5.

(03-474) Recommendation to approve a General Fund Loan for Alameda Power and Telecom Financing.

The City Manager stated Alameda Power and Telecom (AP&T) is a City department; the loan allows the project to continue at a reduced cost to the City; reserves are available [in the General Fund]; the City makes a number of interdepartmental loans; the loan is short-term and will allow AP&T to finish construction.

Len Grzanka, Alameda, stated AP&T wants to borrow \$7 million from the City's reserves to finish the cable television infrastructure; in the fiscal year ending June 2003, AP&T lost \$7 million on cable

television and ended up raising electric rates to cover AP&T's contribution to the General Fund; AP&T will raise electric rates to repay the loan; suggested that the Council direct AP&T to manage cable television costs more closely and use revenues from cable television operations to finance the buildout; provided a history of AP&T entering into cable television; submitted a copy of his comments to the City Clerk.

Karin Lucas, Public Utilities Board President, urged Council to approve the loan; requested Consultant David Stockton of Uptown Services, be permitted to discuss the feasibility study prepared for AP&T.

Mr. Stockton stated his company conducted due diligence on the business plan and current operation; the current operating performance was reviewed and compared to larger cable systems and other municipal utilities; the business plan forecast was confirmed; no areas of operating performance were found which would substantiate any unusual risk; provided a summary of the study's metrics.

Vice Mayor Daysog stated the cost to buy out Vectren was \$8 million; inquired whether the \$7 million loan amount was in addition to the \$8 million buyout.

The AP&T General Manager stated that at the time of the buyout, the remaining construction cost for system buildout was \$10 million and with additional costs, the total was \$12.89 million; an operating payment also must be made to Vectren over five years; construction costs were included in the proposed \$10 million; the loan changes the vehicle AP&T will use to finance the costs; the original intent was to refinance in the private market; the loan would be a different vehicle with a lower interest rate.

Vice Mayor Daysog stated past comprehensive audits show AP&T's sustained earnings are significant; inquired why AP&T needs to dip into the General Fund reserves.

The AP&T Competitive Strategies and Administration Manager stated the retained earnings represent the accrued investment in the electric utility overtime; during the financing process, the City Council established a requirement that there be no recourse to the electric utility; said requirement prohibits AP&T from using retained earnings.

Vice Mayor Daysog inquired whether the Council could revisit the policy issue, to which the City Manager responded in the affirmative.

The City Manager stated originally, the idea was to create financial firewalls; [no recourse to the electric utility] was one of the firewalls created, which was a policy decision.

Vice Mayor Daysog stated former Mayor Ralph Appezato insisted on the firewall to ensure that the cable operation works on its own and does not jeopardize the electric business; the firewall was a wise idea; however, \$7 million is needed for construction; the rule should be revisited; subsidy is needed and he would rather it come from AP&T's funds.

The AP&T Competitive Strategies and Administration Manager stated that without recourse to the electric utility assets, AP&T would have to use an un-rated private market, which has much higher interest rates; electric utility assets could be used in a rated market and would be able to secure an interest rate more commensurate with the current bond market.

Vice Mayor Daysog stated there could be multiple flips; the City could issue the bond and immediately have access to AP&T's retained earnings in order to save \$1 million in financing costs.

The AP&T General Manager stated there are no assets or customers for the \$7 million, yet; until buildout there are no assets or customers.

Vice Mayor Daysog stated if \$7 million is used from the General Fund, AP&T should reimburse the City immediately.

The AP&T Competitive Strategies and Administration Manager stated the retained earnings do not represent a cash balance.

Vice Mayor Daysog inquired what is AP&T's cash balance, to which AP&T Competitive Strategies and Administration Manager stated \$7 to \$8 million.

Councilmember Kerr stated part of the financing includes paying for the original \$16 million; inquired whether the cable business has been able to generate any revenue to pay for capital infrastructure costs.

The AP&T General Manager responded in the negative; stated revenues pay for operating expenses; 16,000 customers is the breakeven point; in 2006-07, AP&T should be able to start repaying capital.

Councilmember Kerr stated the original estimate was 50% of television owners in Alameda need subscribe to AP&T to breakeven;

50% is the maximum number of households that have cable in line-of-sight cities; the breakeven number has changed in every report and seems to be a moving target; she is concerned about infrastructure costs not being paid off from revenue; \$16 million is still outstanding; \$7 million more is requested; that she supported the firewall concept; using the electric rate payers for a loan is no different than using municipal credit [General Fund money]; the General Fund is being threatened; the City needs to pay for police and fire services; a promise was made that telecom would be treated as a business; borrowing from the General Fund is not treating it as a business.

Mayor Johnson inquired what is the projected revenue upon buildout, to which the AP&T General Manager responded around \$13 million.

Mayor Johnson inquired how much revenue is needed to break even, to which the AP&T General Manager responded \$12 million.

Mayor Johnson inquired whether the loan would be used all at once, to which the AP&T General Manager responded in the negative.

Mayor Johnson inquired whether AP&T plans to re-issue bonds, to which the AP&T General Manager responded bonds would be issued on the entire amount [\$23 million] after five years.

Mayor Johnson stated the City's managed assets had a return rate greater than 5%; inquired whether managed assets are a comparable source of money.

The Finance Director responded the managed portfolio earned about 6%; however, the average return was 4.03% after taking into consideration certificates of participation.

Councilmember Gilmore inquired what would be the interest rate for the loan, to which the Finance Director responded the cap is 5%.

Councilmember Matarrese inquired how long the City's \$7 million would be tied up, to which the AP&T General Manager responded five years.

Councilmember Gilmore inquired how long it would take to complete buildout, to which AP&T's General Manager responded 20 months.

Councilmember Gilmore inquired whether the entire loan amount would be for buildout, to which the AP&T General Manager responded in the affirmative.

Councilmember Gilmore stated the Federal Communications Commission

has mandated that everything go to HDTV [High Definition Television] by 2007; inquired whether AP&T will review the matter and how AP&T will pay for implementation.

The AP&T General Manager responded the costs have been included in the operating costs and breakeven budget.

Vice Mayor Daysog inquired whether AP&T developed scenarios in the event the Council changed the policy to allow AP&T to use its [electric] money; inquired whether there might be a scenario using some AP&T reserves and requesting less General Fund revenue.

AP&T Competitive Strategies and Administration Manager responded relaxing the firewall would impact the electric utility's credit rating; said matter would need to be analyzed.

Vice Mayor Daysog stated credit rating impacts should be analyzed.

Mayor Johnson inquired how much of the loan would be used during the next six months, to which the AP&T General Manager responded approximately one-third.

Councilmember Gilmore inquired what would be the impact of getting a higher interest rate loan in the private market and whether [telecom] rates would be raised.

The AP&T General Manager responded the higher interest rate would be about \$1 million, which would require AP&T to raise [telecom] rates; higher rates become less competitive.

Mayor Johnson suggested that the City loan the amount needed for the first six months while AP&T reviews the impacts of using electric revenue.

AP&T Competitive Strategies and Administration Manager stated there has been discussion of relaxing the firewall and a guarantee for the loan repayment; if Council is willing to relax the firewall, AP&T could guarantee \$7 million in electric revenues; said scenario assures repayment; AP&T believes said scenario would not be used because there will be telecom revenue to repay the loan; at the end of five years, AP&T will be in a good position to issue revenue bonds for the full \$23 million.

Vice Mayor Daysog stated residents want AP&T to be in the cable television business; the rates and service are better; suggested that the ideas raised tonight be reviewed and the matter return in two weeks; that he prefers AP&T use its own money to the extent possible.

Mayor Johnson stated the longer the delay, the longer AP&T will be operating in deficit.

The AP&T General Manager stated customers waiting for a long time might choose to go with a competitor.

Mayor Johnson stated two weeks should not make a difference, but there should be a plan to move forward shortly.

Councilmember Kerr stated that as an electric ratepayer, she does not want to subsidize the cable television business; households can live without television and computer connections, but cannot live without electric power; electricity is a necessity; before the energy crisis, there were concerns about the stability of the power business.

The City Manager suggested that the matter be continued for two weeks.

Mayor Johnson stated that more than \$1 million in interest costs should not be added to costs; installation needs to move forward; until the system is builtout, AP&T will be losing money.

Councilmember Gilmore stated that she is intrigued by relaxing the firewall and guaranteeing the loan by [electric] revenues; she would like to know if the timeline for repayment would be revised if the electric revenues are used as a guarantee, e.g. could the loan be repaid sooner and paid back in installments; that she would like to know whether said plan would damage the electric utility's bond rating.

Sebastian Baldassare, Public Utilities Board member, noted AP&T getting a loan at 8% would damage the City and that AP&T contributes over \$2 million to the General Fund each year.

Mayor Johnson stated the consensus seems to be that the Council does not want AP&T to get a loan at 8%.

Councilmember Kerr stated enterprises, such as the golf course and AP&T, are expected to contribute to the City's General Fund; AP&T has not made a profit on above-ground infrastructure; noted the next phase will require underground cabling, which is more expensive; inquired how underground cabling will provide profit.

The AP&T General Manager responded the assumption has been that buildout of the entire system would provide profit, regardless of undergrounding.

Mayor Johnson stated buildout would provide the number of customers needed to surpass the breakeven point.

Councilmember Gilmore noted that she has the service, which is excellent; in two years, she has never experienced an outage.

Councilmember Matarrese stated good questions have been raised; there is too much invested not to complete the investment; the service has become more of a necessity; there should be a way to finance buildout without putting the City at undue risk; the City should find a way around \$1 million in financing costs.

(03-475) Ordinance No 2907, "Amending the Alameda Municipal Code by Amending Subsection 30-57.7 (Exemptions) of Section 30-57 (Alameda Water Reuse), of Article IIIA (Alameda Water Reuse) of Chapter XXX (Development Regulations) Relating to Water Reuse." Finally passed.

Councilmember Kerr moved final passage of the ordinance.

Councilmember Matarrese seconded the motion, which carried by unanimous voice vote - 5.

(03-476) Ordinance No. 2908, "Amending Ordinance No. 2776 N.S. Granting a 5-Year Extension of Non-Exclusive Cable Television Franchise to United Cable Television of Alameda, Inc. d/b/a Comcast Corporation." Finally passed.

Councilmember Kerr moved final passage of the ordinance.

Councilmember Gilmore seconded the motion, which carried by unanimous voice vote - 5.

(03-477) Ordinance No. 2909, "Approving a Purchase and Sale Agreement with Harbor Bay Storage LLC and Joint Escrow Instructions for Sale of Parcels 109-5 (Harbor Bay Storage Leased Fee Interest), Parcel 109-2 (Old Maitland Drive), and Parcel 109-4 (a Remainder Parcel), and Directing the City Manager to Execute all Necessary Documents to Implement the Transaction." Finally passed.

Councilmember Gilmore moved final passage of the ordinance.

Councilmember Matarrese seconded the motion.

Under discussion, Councilmember Matarrese stated hopefully the sale will provide cash that might be used in the future to augment open space.

On the call for the question, the motion carried by unanimous voice vote - 5.

ORAL COMMUNICATIONS, NON-AGENDA

(03-478) Darlene Banda, Alameda, requested that when Council discusses the Measure A study, speakers be required to indicate whether they are Alameda residents or whether they represent special interest groups.

COUNCIL COMMUNICATIONS

(03-479) Consideration of Mayor's nomination for appointment to the Civil Service Board. **Held Over.**

(03-480) Consideration of the Mayor's nomination for appointment to the Planning Board.

Mayor Johnson nominated Gina M. Mariani for appointment to the Planning Board.

(03-481) Consideration of Mayor's nomination for the Social Service Human Relations Board.

Mayor Johnson nominated Robert A. Bonta for appointment to the Social Service Human Relations Board.

(03-482) Consideration of Mayor's nominations (5) for the Public Art Advisory Committee.

Mayor Johnson nominated Cecilia Y. Cervantes, Katina Huston, Karen T. Lee Schutz, K.C. Rosenberg and Peter T. Wolfe for appointment to the Public Art Advisory Committee.

(03-483) Vice Mayor Daysog stated that he previously raised concerns about the bidding process for bond financing; requested a review of the existing policies and establishment of a resolution regarding bond underwriters bid in a competitive process; suggested the resolution language allow leeway for Council to decide not to use the competitive bid process; stated deciding not to use a competitive bid process should be a Council decision.

The City Manager stated that he is in the process of reviewing the City's financial policies.

Vice Mayor Daysog stated the City Council should have to opportunity to make the decision of who underwrites bonds; if staff recommends not to use a bid process, the decision should be made by

Council prior to proceeding; there are going to be times when the legal complexity requires selection without bid; however, it should be a decision of the Council and a policy should be established for future Councils.

(03-484) Councilmember Kerr stated October 30 is the last date that the tubes will be closed [for retrofiting]; the date is not firm, but a celebration might be planned for October 31 at 11:00 a.m.; encouraged everyone to attend the opening.

ADJOURNMENT

There being no further business, Mayor Johnson adjourned the Regular Meeting at 9:43 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

The agenda for this meeting was posted in accordance with the Brown Act.

MINUTES OF THE SPECIAL CITY COUNCIL MEETING
TUESDAY- -OCTOBER 21, 2003- -5:40 P.M.

Mayor Johnson convened the Special Meeting at 5:40 p.m.

Roll Call - Present: Councilmembers Daysog, Gilmore, Kerr,
Matarrese and Mayor Johnson - 5.

Absent: None.

The Special Meeting was adjourned to Closed Session to consider:

(03-464) Conference with Legal Counsel - Existing Litigation; Name
of case: City of Long Beach v. Department of Industrial Relations.

Following the Closed Session, the Special Meeting was reconvened
and Mayor Johnson announced that the City Attorney briefed the
Council on the case of City of Long Beach v. Department of
Industrial Relations; and the Council gave directions to the City
Attorney.

Adjournment

There being no further business, Mayor Johnson adjourned the
Special Meeting at 6:30 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

The agenda for this meeting was posted in accordance with the Brown
Act.

MINUTES OF THE SPECIAL COMMUNITY IMPROVEMENT COMMISSION MEETING
TUESDAY - - - OCTOBER 21, 2003 - - - 5:50 P.M.

Chair Johnson convened the Special Meeting at 6:30 p.m.

Roll Call - Present: Commissioners Daysog, Gilmore, Kerr,
Matarrese and Chair Johnson - 5.

Absent: None.

The Special Meeting was adjourned to Closed Session to consider:

(03-054) Conference with Real Property Negotiator; Property: 2315-2319 Central Avenue; Negotiating parties: Community Improvement Commission and John Cocores; Under negotiation: Price and terms of payment.

(03-055) Conference with Real Property Negotiator; Property: 1825 Park Street; Negotiating parties: Community Improvement Commission and Ron Goode; Under negotiation: Price and terms of payment.

(03-056) Conference with Real Property Negotiator; Property: 2523-2691 Blanding Avenue; Negotiating parties: Community Improvement Commission and Regency Centers; Under negotiation: Terms.

Following the Closed Session, the Special Meeting was reconvened and Chair Johnson announced that regarding 2315-2319 Central Avenue, the Commission obtained a briefing from real property negotiators and gave instructions; regarding 1825 Park Street, the Commission obtained a briefing from real property negotiators and gave instructions; and regarding 2523-2691 Blanding Avenue, the Commission obtained a briefing from real property negotiators.

Adjournment

There being no further business, Chair Johnson adjourned the Special Meeting at 7:20 p.m.

Respectfully submitted,

Lara Weisiger, Secretary
Community Improvement Commission

The agenda for this meeting was posted in accordance with the Brown Act.

MINUTES OF THE SPECIAL COMMUNITY IMPROVEMENT COMMISSION MEETING
TUESDAY- -OCTOBER 21, 2003- -7:27 P.M.

Chair Johnson convened the Special Meeting at 8:19 p.m.

ROLL CALL - Present: Commissioners Daysog, Gilmore, Kerr,
Matarrese and Chair Johnson - 5.

Absent: None.

CONSENT CALENDAR

(03-057) Minutes of the Special Community Improvement Commission (CIC) Meeting (Closed); the Special Joint City Council, CIC and Housing Authority Board of Commissioners Meeting; the Special Joint City Council, Alameda Public Financing Authority and CIC Meeting; and the Special CIC Meeting of October 7, 2003. Approved.

Commissioner Matarrese moved approval of the minutes.

Commissioner Kerr seconded the motion, which carried by unanimous voice vote - 5.

(03-058) Recommendation to direct the Executive Director to take all actions necessary or appropriate to support the formation and approval of Community Facilities District No. 03-1 (Bayport Municipal Services District) and implementation of its purposes.

[Note: A transcript of the October 21, 2003 Special Meeting of the Housing Authority Board of Commissioners regarding Bayport Municipal Services District is attached hereto, as Exhibit A, for reference purposes.]

Commissioner Kerr moved to continue the matter to November 4, 2003.

Commissioner Matarrese seconded the motion, which carried by unanimous voice vote - 5.

AGENDA ITEMS

None.

ADJOURNMENT

There being no further business, Chair Johnson adjourned the Special Meeting at 8:20 p.m.

Respectfully submitted,

Lara Weisiger, Secretary
Community Improvement Commission

Agenda for meeting was posted in accordance with the Brown Act.

EXHIBIT A

Transcript of the October 21, 2003 Special Meeting of the Housing Authority Board of Commissioners

Commissioner Daysog: When we last met on October 7, during the study session on formation of Bayport Municipal Services District (MSD), it was moved and approved that we would have specific language added to ensure that the Municipal Services District cost would be completely covered when the District formation returned. In reading it, I did not see any language regarding, in instances when we calculated that the costs were not covered, how we were going to take sales taxes or other forms of taxes from the non-residential side to cover the deficit. Given that there was a specific motion in the minutes, I found that a little surprising. If there is a response to that, it would be great.

Executive Director, Jim Flint: Doug Cole, Project Manager, will respond.

Project Manager, Doug Cole: You are correct. That language is not directly reflected in the resolution. However, the rate and method of apportionment, which was attached to the initial Resolution of Intent, makes reference to funding that will be used for specific services provided in the MSD.

Commissioner Daysog: I have seen the Exhibit B – Rate and Method of Apportionment of Special Taxes. It does not say how the revenue reference would be used even on a guaranteed basis, even more so when we realize that indeed the revenues generated by the residential side are not covering police, fire and all the other services. Two weeks ago, it was really close. The per-unit average was \$3,900 per unit in revenues, versus \$3,600 in expenses. Over a period of time, expenses of \$3,600 per unit would grow at a rate faster than the revenue of \$3,900, such that over a period of time we could run the risk of having a deficit. As a result of that conversation, we spoke about having some kind of mechanism, which was included in the motion and seconded. I did not see it [mechanism].

Doug Cole: Unfortunately, we are limited in terms of the Disposition and Development Agreement that set caps for the maximum amount of special tax that we can apply to the homeowners, with the exception of increases for cost of living. One of the things we have discussed internally is that the services that are being provided are conservative in terms of the dollar allocation for the services, and that there could be a minor adjustment there to bring expenses more in line with revenues as the project goes on.

Commissioner Daysog: Thank you, Mr. Cole. I appreciate that. I think the specific thing I am asking for, just so that the public understands, the specific language that I was looking for was some kind of language in there that said that, given the analysis conducted by Keyser Marston regarding the per-unit expenditures versus per-unit revenues, in the event that expenditures exceeded revenues, there would be a policy in place to ensure that sales taxes generated by, should there be a Fleet Industrial Supply Center (FISC) retail site, would cover the costs – guaranteed. Or, property taxes from the FISC, from the office and commercial would cover [costs]. It is just that the language is

not there. We are not going to be Councilmembers forever, so we have to also think about the year 2010, 2012, and I thought that was the whole point of that conversation last time and the subsequent motion, which passed.

Doug Cole: I have to rely on outside counsel for this, but one of the things we had talked about quite a while ago was that, while there is no commercial development currently, we would be creating a separate Community Facilities District (CFD) for the commercial, so at that point in time – I do not know if there some flexibility to then go back and amend the rate and method of apportionment or amend the existing Municipal Services District to allow for that crossover.

Commissioner Daysog: Thank you very much; I appreciate the help.

Commissioner Kerr: As far as I am concerned, this was direction from the Council and included in a motion in the last meeting, and it is not there and I am not willing to support the action tonight until it is put in. I have a lot of other questions, but I just wanted to make that statement following Councilmember Daysog's comment, because I do not think that direction from the Council included in a motion should be ignored by staff as a general principle – period. I do have some other questions on this: When will the taxes start coming in?

Doug Cole: In fiscal year 2003-04.

Commissioner Kerr: 2003-04. The conveyance of some of the property to Catellus has already taken place and we are putting in infrastructure and we are providing police and fire out there as we speak. Why would we be waiting that long to start collecting taxes on the property that is privately owned?

Doug Cole: It is my understanding that police and fire services are being provided through FISC lease revenues that are being generated from the warehouses currently.

Commissioner Kerr: My question was since we are also providing police and fire to support for the East Housing site, why would wait that long to start collecting CFD on privately owned property in the East Housing area.

Doug Cole: The tax liens will go into effect in this fiscal year, 2003-04.

Commissioner Kerr: They are getting a six-month free ride on the services they are getting even though part of the property is now privately owned.

Doug Cole: Correct, one of the conditions in the subdivision improvement agreement was that we form the district within four months from recordation of the final map, which is this month.

Commissioner Kerr: Adopt it, but that does not say when it goes into effect. What about ACET? Are they going to be paying any CFD?

Doug Cole: Not currently, no. The MSD that we are forming, as I mentioned before, is just for the

residential area. We have not yet addressed the commercial area.

Commissioner Kerr: I see that, and I see that for the commercial portion the amount right now is zero, but ACET is going to build sooner than anything else in the commercial area, so when are we going to start assessing them for CFD?

Doug Cole: Right. They will be expected to contribute to the MSD; we just have not yet formed a district for the commercial portion.

Commissioner Kerr: It says Enterprise Landing, the commercial portion of the 215 acre mixed use Catellus Project, is included within the boundaries of the CFD.

Doug Cole: Right. The property is, but the actual taxes would just be under this CFD under the residential boundaries.

Commissioner Kerr: It is the same CFD for the whole piece and, yes, the RMA's might be different, but should we not adopt an RMA that would be collecting taxes from any privately owned developed part of the commercial area? I am really addressing this to my fellow colleagues. I am concerned about the fact that if the last 133 residential units are never built, the revenues from the CFD will not cover the proposed level of municipal services. Therefore, one way to handle this would be to defer the construction of the 4-acre community park. They claim that there is some agreement that we would have to do this because of the timeframe for the new elementary school. We have agreed to build a playground and a park. We have let them move in adjacent to the community park, but I do not think that agreement should put us into operating in the red. It is something we promised to do, so we should uphold that promise. But, I do not think we should be put in the position of losing money because of that agreement. I really question whether there is anything in our agreement with Alameda Unified School District that would require us to build that playground equipment if we did not have the money coming in to do it.

Doug Cole: That is correct.

Commissioner Kerr: I have been making comments because this is the same resolution that is going to come up before the City Council and I did not want to approve it here. I mean, making the motion is fine, but I just wanted to point out why we are discussing it.

Commissioner Gilmore: This is getting back to Vice Mayor Daysog's point about the specific language. I do not want to beat a dead horse or anything, but I really did think it was my understanding that we wanted language in there because we wanted to make sure that the CDF would cover the cost of the services that were provided out there. Is that not correct? Is that not what the intent was? Page 3 of the Staff Report states a combination of General Fund and CDF revenues will be sufficient to fully offset the cost of providing these services. How did the General Fund get back in there if we were thinking that it was going to be self-sufficient, and is that why the language did not make it in there?

Doug Cole: In the workshop that we had two weeks ago, what was presented were all revenues that were generated from this project. Yes, there are revenues that are generated from this project that would go to the General Fund, but the point we were trying to make is that they are not drawing on other sources of funding from the City outside of this project. In other words, were it not for the development of this project, you would not have those General Fund revenues nor the MSD.

Commissioner Matarrese: I think we also discussed the lifespan of this District with regard to potential for other build-out, particularly on the commercial side when that sector returns, and I did not see that. I think there are enough questions to send this back for a rewrite to include the direction that was given at the last meeting.

Legal Counsel, Carol Korade: May I seek additional direction here? I do understand what we are talking about, and perhaps what we need talk about if you could indulge outside counsel here in some legal parameters of bond documents versus budget documents and talk about the legal ability to actually include it in this document. I am not saying that we cannot do this – achieve your goal – but it cannot be within this particular District and document. I am just saying you could hold it over to have additional appropriations language, because what you would actually be doing would be committing – talking about a future appropriation.

Commissioner Kerr: I do not understand what you are saying.

Carol Korade: Could you just have Chip answer the question and tell you how you can do this? There is a way to achieve your goal, but it is not in this resolution and he can explain to you. He will talk a lot of words and if it is two big words, I will translate it into yes and no.

Legal Counsel Consultant, Chip Eady: There are two solutions to achieving what you are discussing. One of them is in the ongoing budgeting and appropriations process. It is important to understand that the Municipal Services District, itself, does not have the power to allocate General Fund monies or to use monies from the FISC lease revenue or even from commercial revenue. The purpose of this particular MSD is very narrow; it is simply to levy a special tax on residential property. Now, within the same geographic area, you will also have commercial property. But the solution there - the other solution – is to begin proceedings to form an overlapping district that would share many of the territory but would be targeted to commercial development in the area that would allow taxing of those types of properties if and when that development occurs. But, that would be done as a separate district.

Commissioner Daysog: Thank you, Mr. Eady. I kind of anticipated that – and I think that for me – the response is a little easier than for Councilmember Matarrese's, because I do believe the way that Councilmember Matarrese's language was incorporated last week does speak to the substance of the legal issues that we are dealing with because it does deal with sun setting, et cetera. It is a policy question that I am really getting at. This is a legal document to start up a bond district, the ability to self-tax – I understand that. The policy question that I am getting at can be addressed and satisfied just by simply having a memo, a resolution, or something that is a part of the vote, so that future Councilmembers or future City residents or whatever would know that, as a matter of record, there is

a paper trail. For Councilmember Matarrese's question, though, because it does deal with sun setting, I think that does get into the substance so it might be more logistical to take two weeks and then come back.

Carol Korade: You could take two weeks and come back. You certainly could, however, within the scope of this, adopt it as a preliminary action, if you want to do it as a prerequisite – a motion giving direction to staff as a policy matter to satisfy this concern by initiating procedures for an overlapping district dealing with the commercial issue to specifically address these issues in each and every budget document as it comes along in the future. We could actually incorporate that into the minutes and I could do it as a resolution if you would like. It is your choice.

Commissioner Kerr: Incorporating it into the minutes? Who ever goes back and reads the minutes ten years from now?

Carol Korade: I could actually memorialize that into a resolution and work with Vice Mayor Daysog to make sure the language is what he desires – talking about direction to staff, policy direction to staff all the things that you talked about, the term “fiscal neutrality” that we have used so many times and also talking about direction to staff to initiate procedures to do an overlapping district dealing with the commercial issue, directing the staff that each budget document specifically identify any deficits in the funding and do a detailed analysis. We can include those things, and your motion could be to direct the City Attorney to work with Vice Mayor Daysog to draft a resolution on this that would address those issues as a policy matter and include it in the action item tonight.

Commissioner Kerr: We directed staff at the last meeting on this and they did not do it, so I am sort of out of patience with directing staff to do something in the future. I would rather vote on the language that is going to be in it and then all future Councils will know what was done. I would like to take the two weeks to bring it back.

Chair Johnson: I do not have a problem, with two weeks. If we want to have a motion to do what Council has directed and bring it back at the next meeting, I think that is fine, if somebody wants to make that motion.

Carol Korade: Let me see if there are any noticing requirements. I would request that you could proceed to the point of opening the public hearing on behalf of the Council so that both bodies would take action opening the public hearing, continuing the public hearing to the next meeting. That way, you do not have the extensive noticing requirements, because you are merely adjourning both meetings. If we could do that, then it is no problem.

Commissioner Matarrese: Maybe outside counsel can help us on this. The intent of asking about the sun setting of this special tax levied on residential property, which is going to carry the services at the moment is in the event that the commercial development has great success, it should be able to carry enough load so that this neighborhood is basically treated as any other neighborhood within the City as far as assessments go. I was looking for a provision at least to evaluate at the point where we have a critical mass of commercial development and re-look at this district so that, again,

the residents do not carry a heavier load than the rest of the City. Can you advise how that might be done for continuing this?

Chip Eady: Procedurally, what you would do is initiate a review of the rate and method of apportionment on the residential property in the future and, with the consent of the voters in the district, move to amend that. Presumably, the success of the commercial property would allow you to lower the special tax burden on the residential property, which is what would induce the voters to support that.

Commissioner Matarrese: Now, is that something that we could incorporate into this resolution?

Chip Eady: It really would not be binding, even if you did it. That would have to be a separate legislative act done at the time.

Chair Johnson: I think that just having it in there shows intent.

Carol Korade: It sounds like what we need to do is an accompanying policy memorandum that talks about policy directives for both future action – whether it is binding or not, it certainly indicates legislative intent, which I think is what you are talking about. It is important because people do not read minutes, may not watch this TV show, even though it is rerun a couple of times. It is important that we indicate policy directive so that staff notes it for future pertinent actions and that it does not get lost in future legislation as time goes by, because it could take a bit of time.

Commissioner Kerr: Not all people are taxed equally. I know the Mello-Roos burden at Harbor Bay Isle is heavier than some of our older neighborhoods have, so it is true that newer neighborhoods can carry a heavier payload than some of the older neighborhoods. That does reflect the higher cost of infrastructure going to the newer neighborhoods. I do not think there is any way we can make everything equal because then I think we might get into a tangle with some of our other newer neighborhoods.

Commissioner Daysog: I do want to add one thing. I do appreciate the suggestions by the City Attorney's office, City Manager's office, and Chip Eady. However, I do have to say, though, that the City Council made a specific motion last time so, to the extent that it was not incorporated in some fashion is a disappointment.

Jim Flint: Madam Mayor, it is my responsibility. I will extend my apologies to the Council for not incorporating that. I was unaware that the information was not in there. However, if you read the minutes for that meeting, it says Vice Mayor Daysog requested language to be added to ensure – and I presume that the Clerk's office got it right – the following, and I think that it is something that, for whatever reason, we in fact failed to include that in the documentation this evening, so we will make sure we correct that in two weeks time.

Chair Johnson: I do not think we have a motion yet. Do we have a motion?

Carol Korade: I apologize for stepping in, but if we could have a recommended motion that includes adjournment language that would be helpful. Can we have that?

Commissioner Kerr: I would be happy to accept a friendly amendment.

Carol Korade: To incorporate the adjournment portion?

Commissioner Kerr: I would be happy to incorporate adjournment language.

Chip Eady: Simply move to adjourn the meeting until the date that is two weeks from today to continue this meeting.

Commissioner Kerr: I will make that my substitute motion.

Commissioner Matarresse: Second.

Chair Johnson: We have a motion and second. All in favor? [Vote.]

MINUTES OF THE SPECIAL JOINT CITY COUNCIL AND
COMMUNITY IMPROVEMENT COMMISSION MEETING
TUESDAY- -OCTOBER 21, 2003- -7:29 P.M.

Mayor/Chair Johnson convened the Special Joint Meeting at 8:21 p.m.

ROLL CALL - Present: Commissioners Daysog, Gilmore, Kerr,
Matarrese and Chair Johnson - 5.

Absent: None.

AGENDA ITEM

(03-464A-CC/03-059CIC) Joint consideration of a recommendation regarding a proposed Ordinance for the West End, Business and Waterfront and Alameda Point Community Improvement Projects to: 1) extend the time limit on effectiveness of the Redevelopment Plans by one-year; and 2) extend the time limit on use of Tax Increment to repay indebtedness by one-year; and

(03-464B-CC) Introduction of Ordinance Amending the Community Improvement Plans for the Alameda Point, Business and Waterfront and West End Community Improvement Projects to Extend Certain Time Limitations Pursuant to Senate Bill 1045. Introduced.

Councilmember/Commissioner Kerr moved approval of the staff recommendation.

Councilmember/Commissioner Matarrese seconded the motion, which carried by unanimous voice vote - 5.

ADJOURNMENT

There being no further business, Mayor/Chair Johnson adjourned the Special Joint Meeting at 8:22 p.m.

Respectfully submitted,

Lara Weisiger, City Clerk
Secretary, Community Improvement
Commission

The agenda for this meeting was posted in accordance with the Brown Act.