

CALL TO ORDER

Mayor Rob Schroder called the meeting to order at 6:00 p.m. in the Council Chambers with all members present except Councilmember Kennedy who was excused.

PUBLIC COMMENT (Limited to closed session)

Comments made from Linus Eukel, Executive Director for the Muir Heritage Land Trust (MHLT), stated that MHLT is concerned that a decision by the Council to relax or set aside any provision of this conservation easement is in violation of its terms or intent and serves to undermine the viability of those easements as a mechanism for land conservation. The Phillips were granted a conservation easement on their property as a trade-off for being allowed to build a specific family home site. MHLT requests that any lot-line adjustment or other action that the Council approves with respect to this property be in full conformance with terms of that original open space easement. Furthermore, the potential settlement agreement contemplates no such endowment resource for the future, and thereby, violates the City's accepted responsibility for fiduciary and conservation management of this property in perpetuity.

Patty (last name not stated), urged the Council not to approve the settlement. She indicated that the Phillips built their 10,000 square foot mansion in exchange for the dedicated open space. The Ostrosky's have had no regard for the community of Forest Hills and urged Council to oppose the lot-line adjustment.

Connie Chapman indicated that she was against approving the settlement. While she is sensitive to the financial plight of the City, it is the residents who are paying for the litigation. The lot-line adjustment diagram is not clear and will not be the end, and urged the Council to continue the litigation in Court.

Seeing no further speakers, Council adjourned to closed session in the City Manager's Office.

CLOSED SESSION

- A. CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION pursuant to California Government Code subdivision (a) of Section 54956.9.

Name of Case: Gonzales v. City of Martinez, Claim #: CV081754.Gonzales.

- B. CONFERENCE WITH LEGAL COUNSEL--Existing Litigation pursuant to California Government Code section 54956.9(a).

Name of Case: Ostrosky v. City of Martinez.

C. PUBLIC EMPLOYEE PERFORMANCE EVALUATION pursuant to California Government Code Section 54957.

Title: City Manager

RECONVENE - PLEDGE OF ALLEGIANCE - ROLL CALL

Mayor Schroder reconvened the meeting at 7:18 p.m. He reported that a closed session was held with respect to Existing Litigation, Gonzales v. City of Martinez to which a settlement was reached; Ostrosky v. City of Martinez which will be discussed in open session; and on Public Employee Performance Evaluation--Title: City Manager, there is nothing to report.

PRESENT: Lara DeLaney, Councilmember, Mark Ross Councilmember, Michael Menesini, Vice Mayor, and Rob Schroder, Mayor.

EXCUSED: Janet Kennedy, Councilmember.

ABSENT: None.

PRESENTATION(S)/PROCLAMATION(S)

- A. Proclamation honoring Lianne Marshall, Assistant City Manager—Administrative Services October 1999 through September 2009.

Mayor Schroder stated that Ms. Marshall will be leaving the City to work for the City of San Leandro. Council expressed their appreciation for her dedicated services to the City and presented her with a Proclamation declaring September 23, as Lianne Marshall Day. Assistant City Manager Marshall expressed her appreciation to Council, her staff, and the community.

- B. Presentation of California Clean Air Award to the City of Martinez.

The Clean Air Award was presented to the City Council by Diane Kaiser, California Clean Air Project, for their dedication in protecting their citizens' health with respect to second hand smoke issues. Ms. Kaiser commended Councilmembers Ross and DeLaney for their efforts especially, and she noted that members of the American Lung Cancer Association were also in the audience. Councilmember Ross expressed appreciation for the recognition.

- C. Proclaiming September 21-27, 2009 as "Falls Prevention Awareness Week."

Proclamation presented to Jenny Lind, Contra Costa County Senior Outreach Services. Mayor and Council presented proclamation to Jenny Lind. Ms. Lind commented on the negative effects of falling, as well as program administered by Fall Prevention Program of Contra Costa County and Fall Prevention Coalition.

- D. DELTA RESEARCH INSTITUTE: A Conceptual Overview.

Rachael Ford presented her ideas for a Scientific Research Hub involving public and private scientific research being conducted on the Delta Estuary (located at the Martinez Marina) through a single institution. Ms. Ford requested the City to endorse this project and provide a letter of intent.

The Council expressed support for the concept, and Mayor Schroder directed staff to work with Ms. Ford to work on a letter of intent including stipulations regarding usage of the facility, and return to the Council at a future meeting.

PUBLIC COMMENT

(COMPLETE SPEAKER CARD AND GIVE TO CLERK) Reserved only for those requesting to speak on items not listed on the Agenda.

John Curtis and Cheryl Grover, Martinez Historic Society, invited the public to the 3rd Annual Home Tour 2009 on Saturday, October 10, from 10:00 a.m. to 4:00 p.m., beginning at the Historical Museum at 1005 Escobar Street. Mr. Curtis indicated the cost is \$20; he also announced a Wine Reception on Sunday October 4, from 3:00 p.m. to 6:00 p.m. at the estate of Tom and Donna Powers; all proceeds will benefit the restoration of the Old Martinez Train Depot.

Leanne Peterson, Main Street Martinez, invited the public to the Italian Street Painting Festival on September 26 & 27 from 10:00 a.m. to 5:00 p.m. Ms. Peterson acknowledged and thanked the sponsors of the event. Marty Ochoa described the food which will be available at the Italian Food booth.

Mickey Martin, Medical Cannabis Safety Commission, discussed the Commission's focus on three main issues: safe medicine, safe community, and responsible accounting. He offered his services in understanding how these operations are conducted and how to implement the City's related ordinance, and he left his card and information with the Clerk.

Phillip Ciaramitaro requested assistance from Council to repair the Amphitheater for the Fall Music Festival. He requested that the City assist him to install wind tarps and to build a stage. He indicated that the improvements would take about 6 days. The Council directed the City Manager to review the matter and assist in any way possible. City Manager Vince indicated that the City can help to some degree.

Richard Verrilli stated that the Delta project seems like a wonderful project; however, first the Delta has to be saved. He requested that there be a presentation on the Delta issues, and asked the City to allow public comment on the matter.

Paul Wilson asked when the City was going to honor its \$11 million commitment to the Department of Transportation which loaned the City funds to build a parking lot; or will the City do a "bait and switch" as it has in the past, and build the Delta Institute there instead.

Mike Alford stated that he supported the idea of the Delta Institute, noting that the young, creative minds in Martinez make it ideal for this facility. He also commented on the need for new medical clinics as well.

Seeing no further speakers, Mayor Schroder closed public comment.

CONSENT CALENDAR

MOTION WAIVING READING OF TEXT OF ALL RESOLUTIONS AND ORDINANCES.

1. Motion approving City Council Minutes of September 2, 2009. [M.Cabral]
2. Motion rejecting Claim against the City by Sarah Skaar, Claim #09-15. [M.Cabral]
3. Motion approving Check Reconciliation Registers dated 8/27/09, 09/03/09, and 09/10/09. [C.Heater/02.01.01]
4. Resolution No. 098-09 authorizing the City Manager to execute a Memorandum of Understanding with Pleasant Hill, Clayton, and Contra Costa County for the joint operation of a shared government access channel to carry government programming provided by each City and the County. [M.Chandler/22.02.00]
5. Motion authorizing the Mayor to sign a letter on behalf of the City in support of AB 1203 - Transportation Bond Funds: Transit System Safety. [M.Chandler/41.01.00]
6. Motion authorizing the Mayor to sign a letter on behalf of the City in support of SB 406 - Land Use: Environmental Quality. [M.Chandler/41.01.00]
7. Resolution accepting the Alhambra Avenue Pedestrian Safety Project per contract documents and instructing the City Clerk to file a Notice of Completion. [D.Salts/12.02.00]
8. Resolution No. 099-09 authorizing destruction of City files pertaining to the City Clerk's Office, Community Development Department, and Finance Division. [M.Cabral/40.10.01]

Mayor Schroder opened public comment on the Consent Calendar.

Paul Wilson commented on Item #3, specifically the money paid to the City's insurance agent, the Municipal Pooling Authority; and to the Campbell's Theatre. He also commented on Item #7 and the new pedestrian lights near the Hudson's Excavation, a \$22,000 change order (a 40% increase in cost). He said he hoped the City would protect the investment it has made.

Mike Alford asked about the lights also, and why it cost \$81,000. He also asked why the contractors are subcontracting to out-of-town businesses. Mayor Schroder said the overlay projects are being paid for by federal stimulus funds, and bids are accepted and awarded to the lowest responsible bidder. Mr. Alford asked, and the City Manager confirmed, there were no local companies that met the bid requirements. Vice Mayor Menesini commented on the benefits to pedestrian safety from using blinking lights in the crosswalks. He also asked for more information on the reason for the change order. Mr. Scola explained that the original equipment was more basic than what was ultimately installed. Vice Mayor Menesini expressed appreciation for the increased pedestrian safety from the lights.

Richard Verrilli said other jurisdictions have had signs up when installing projects paid with stimulus funds. He thought Martinez should do the same.

Councilmember Lara DeLaney indicated that she would need to recuse herself from Item #7 due to proximity of the Bertola Crossing to her home.

On motion by Michael Menesini, Vice Mayor, seconded by Lara DeLaney, Councilmember, to approve Items #1 through #6 and #8 of the Consent Calendar. Motion unanimously passed 4 - 0.

On motion by Michael Menesini, Vice Mayor, seconded by Mark Ross Councilmember, to approve Item #7 of the Consent Calendar. Motion passed 3 - 0. Yes: Mark Ross Councilmember Michael Menesini, Vice Mayor, Rob Schroder, Mayor, Recuse: Lara DeLaney, Councilmember; Absent: Janet Kennedy, Councilmember.

PUBLIC HEARING(S)

9. Public hearing to consider the approval of a Settlement Agreement and Open Space Easement Deed between Ostrosky Enterprises, Inc. ("Ostrosky") and the City of Martinez settling the litigation brought against the City by Ostrosky in 2008, which said litigation has been pending since that time. That lawsuit and the proposed agreement pertain to real property located at 370 Lindsey Drive, Martinez; and which has APNs 366-150-024, 366-150-026, 366-150-027, 366-150-028, and 366-150-029. The lawsuit was filed challenging the Council's 2007 denial of a lot line adjustment application, and seeking to invalidate an open space easement that burdened the real property described above; and authorize the City Manager, Special Counsel, and the City Attorney to negotiate the document; and authorize the Mayor to execute the Settlement.

City Attorney Jeff Walter presented the staff report, discussing the history of the property, legal issues, and details of the proposed settlement recommended by staff, the City Attorney and special counsel.

Mayor Schroder opened the public hearing.

Patti (last name not stated) said she thought the recommendation of the City Attorney was giving in too much, especially since there could still be litigation further on in the process, if the City ends up not approving the final product. She commented on the desire of the residents of Forest Hills that the lot line not be approved, but that the area remain open space.

Mary Semore disagreed with the previous speaker, especially because the rights of the landowner also need to be preserved.

Chris Wills agreed with the first speaker, that this recommendation is a disappointment. He thought the original designation of open space should remain as many property owners bought with that understanding. However, he could accept some of the property being developed as long as there are firm provisions against anything further.

Asley Telfer made comments off-mic (not audible).

Connie Chapman indicated she spoke during the closed session so she would not repeat herself. She questioned the details because what was promised does not seem to be what is planned. She expressed concern about the "slippery slope" that could result from allowing development of any part of the property.

Joan Malberg commented on the beautiful views of open space seen from her property, which will be ruined if this development is approved.

Scott Ray asked if the current zoning of the property is agricultural preserve. Mr. Walter said it was zoned residential, allowing up to 7 homes per acre; he noted that it should have been changed when the Specific Plan was adopted but it wasn't. Mr. Ray expressed his opposition to the proposal.

Deborah Ray said she thought Mr. Ostrosky always intended to develop the land even though, according to the County, the use has always been agricultural preserve. She thought the City should keep the property as it is.

Linus Eukel, Muir Heritage Land Trust, read comments into the record taking no stance on whether the property owner should have the right to develop. However, he expressed significant concern on behalf of the Land Trust that the open space easements previously established not be violated, because of the dangerous precedent that could be set. He reminded the Council of the City's fiduciary and conservation responsibilities.

At the request of Mayor Schroder, Mr. Walter reiterated that the issue of the validity of the easement is no longer of concern, only where it is located and uses that are permitted. He also explained that the Council is not taking any action tonight at all on the development, only to establish a structure by which a development can be considered.

Mike Alford commented on difficulties resulting when promises that are made cannot be trusted, especially promises of attorneys. He discussed the beauty of the Forest Hills area, and he urged that it be preserved.

Seeing no further speakers, Mayor Schroder closed the public hearing.

Vice Mayor Menesini commented on the Briones agricultural preserve, which Martinez had a hand in creating, although he acknowledged this property is not in that preserve nor is it subject to the Williams Act. He discussed earlier concerns with the original development. He noted that the City was originally reluctant to approve it without at least a 120-acre easement, and the original owners agreed to designate the entire property (160 acres) as open space, signed by all the owners and notarized. He commended Mr. Walter for his excellent work on this case, but he indicated he could not support the proposed settlement agreement. He was confident that the original lawsuit could be won.

Councilmember Ross agreed with Vice Mayor Menesini, although he acknowledged that both lawyers had worked hard to find an agreeable compromise. He was concerned; however, that ultimately the matter will end up back in court anyway, so he also would not support the proposed settlement.

Councilmember DeLaney also agreed - she was equally confident the matter will end up back in court, especially since there is disagreement on whether the easement was for 120 acres or the entire 160 acres.

Mayor Schroder asked for clarification from Mr. Walter on the Alhambra Hills Specific Plan that shows 5 homesites on the area, 4 of which are north of Christy Drive, and whether that gives the property owner the right to pursue development in that area. Mr. Walter indicated he would rather give his response in private, since opposing counsel is in the audience.

Mayor Schroder said he is usually pro-development, but for quality development. He was supportive of the rights of property owners, but not at the expense of open space.

Mayor Schroder also expressed appreciation to Mr. Walter for his work on behalf of the City.

On motion by Michael Menesini, Vice Mayor, seconded by Mark Ross, Councilmember, reject the Settlement Agreement and Open Space Easement Deed between Ostrosky Enterprises, Inc. ("Ostrosky") and the City of Martinez settling the litigation brought against the City by Ostrosky in 2008. Motion unanimously passed 4 - 0.

CITY MANAGER

10. City Manager Comment(s)/Update(s)/Report(s).

No comments made.

11. Chief of Police Comment(s)/Update(s)/Report(s).

No comments made.

APPOINTMENTS TO COMMISSIONS AND/OR AGENCIES

CITY COUNCIL

12. City Council Comments.

Councilmember Lara DeLaney announced Public Safety Subcommittee on October 5, at 6:30 pm in the Council Chambers, the Cemetery Cleanup on Saturday, October 10th at 10:00 a.m.; and the Italian Street Painting Festival this weekend September 26 and 27. She encouraged the public to attend and participate.

Councilmember Mark Ross announced the Shell Fun Run on Saturday, October 3, at 8:00 a.m. downtown.

Mayor Rob Schroder invited the public to visit him at the Beer booth on Sunday at the Italian Festival. He requested that the meeting adjourn in memory of Councilman Mike Shimansky of Danville.

ADJOURNMENT

Adjourned at 9:21 p.m. *in Memory of Councilman Mike Shimansky*, then to a Joint Planning Commission Meeting on October 7, 2009, at 5:30 p.m. in the Council Chambers, and then to a Regular City Council Meeting at 7:00 p.m. in the Council Chambers, 525 Henrietta Street, Martinez, California.

Approved by the City Council,

Rob Schroder, Mayor

Mercy G. Cabral, Deputy City Clerk – 10/21/09