

REGULAR MEETING OF THE CITY COUNCIL
CITY OF COSTA MESA

SEPTEMBER 7, 2004

The City Council of the City of Costa Mesa, California, met in regular session September 7, 2004, at 6:40 p.m., in the Council Chambers of City Hall, 77 Fair Drive, Costa Mesa. The meeting was called to order by the Mayor, followed by the Pledge of Allegiance to the Flag led by Mayor Monahan, and a moment of solemn expression led by Rabbi Haim Asa, Fairview Hospital Chaplin.

ROLL CALL

Council Members Present: Mayor Gary Monahan
Mayor Pro Tem Allan Mansoor
Council Member Libby Cowan
Council Member Chris Steel
Council Member Mike Scheafer

Council Members Absent: None

Officials Present: City Manager Allan Roeder
Acting City Attorney Tom Wood
Development Services Director
Donald Lamm
Public Services Director William
Morris
Finance Director Marc Puckett
Acting Administrative Services
Director Howard Perkins
Planning and Redevelopment
Manager Mike Robinson
Associate Planner Wendy Shih
Associate Planner Mel Lee
Deputy City Clerk Julie Folcik

MINUTES
August 16, 2004

On motion by Council Member Cowan, seconded by Council Member Scheafer, and carried 5-0, the minutes of the regular meeting of August 16, 2004, were approved as distributed.

ORDINANCES AND
RESOLUTIONS

A motion was made by Mayor Pro Tem Mansoor, seconded by Council Member Steel, and carried 5-0, to read all ordinances and resolutions by title only.

PRESENTATION
Mayors Cup Award

Mayor Monahan recognized the Costa Mesa National Little League All Star players and the American Little League All Star players for their participation in the 2004 Mayor's Cup Tournament. He presented certificates of appreciation to American League Manager Jeff Hirsch, Coach Rob Sutika, Coach Ron Raya, and players Garrett Hirsch, Derek Amendola, Tyler Sheffner, Dylan Dailey, Daniel Hurley, P. J. Maloney, Matt McEachern, Austin Quon, Brian Waldron, Brandon Kelly, Willie LeValley, Kamran Qureshi, and Andrew Fulkerson. Mayor Monahan commended the champion National League team who were presented with the Mayor's Cup, and certificates were given to Manager Clint Brown, Assistant Coach Ken Kiser, Assistant Coast Mike Markovsky, and players Coleman Brown, Benjamin Seliner, Andrew Roth, Eric Mickelson, Mikael Markovsky, Kevin Kiser, Ryan Burns, Gian-Paul Stebbins, Ryan Cherney, Eusebio Castillo, Nicholas Federiconi, and William di Girolamo.

PRESENTATION
8th Annual Inner-
Coastal Clean-Up

Mayor Monahan read a proclamation declaring September 18, 2004, as Inner-Coastal Cleanup Day in the City and encouraged residents to volunteer their assistance with this commendable effort. He reported that the goal of the Inner-Coastal Cleanup Project is to provide an avenue for inland cities to partner with and be a good neighbor to coastal cities in eliminating trash and debris from coastal areas while maintaining the beauty of inland open spaces and trails, and presented the proclamation to Stephanie Barger, Executive Director of Earth Resource Foundation.

PROCLAMATIONS

Mayor Monahan announced that the following Proclamations had been presented by the City:

Stepfamily Day, September 16, 2004
National Prostate Cancer Awareness Month, September 2004
Developmental Disabilities Day, September 10, 2004
Orange County Americorps Alliance, September 2004

PUBLIC COMMENT
Pedestrian Safety

Rick Reiser, Newport Beach, reiterated his request that the Costa Mesa Police Department enforce Vehicle Code Sections 21950(a) and Vehicle Code 21953, which address the protection of pedestrians on the sidewalk.

Bristol Street Specific
Plan

Martin Millard, Costa Mesa, commented that the Bristol Street Specific Plan which addresses the area from Paularino Avenue past The Lab, and is intended to create an "alternate shopping area" with outdoor cafes, etc. He reported that an issue recently before the Planning Commission involved a requested six-month extension of a conditional use permit to allow shipping containers to be stored on a four-acre lot in this area, and questioned why a Council Member had not appealed the application when a one-year extension had been granted. Mr. Millard mentioned that Council Member Steel is Council liaison to the committee.

Orange County
Humane Society

Shannon Meade, Costa Mesa, a volunteer at the Orange County Humane Society, 21362 Newland Street, Huntington Beach, reported that the euthanasia rate is low compared to the Orange County Animal Care Center in Orange where she had previously volunteered. She reported that the Huntington Beach shelter has taken in additional animals because of the volunteer program she initiated within the last two years, and commented that over time the welfare and health of the animals has become secondary to the amount of money being generated. She reported repeated grievances and cruelties to the animals, and questioned the City's renewal of the contract with Dr. Samir Botros, Doctor of Veterinary Medicine, in January, 2004. She provided a letter outlining her complaints to the Deputy City Clerk. Council Member Cowan acknowledged that she had previously received a copy of Mrs. Meade's letter to the County, and has asked the City Manager to conduct a thorough investigation of the allegations.

The following volunteers at the Orange County Humane Society confirmed Mrs. Meade's comments: Carol Holland, Costa Mesa, stated that she was increasingly saddened and upset by the lack of care received by the animals, and was appalled that the City would support this abuse; Linda Francis, Huntington Beach, detailed food health violations at the shelter; Judy Wheeler, Huntington Beach; Alison Stanley, Long Beach, provided documentation supporting the contention that the Humane Society is in violation of Senate Bill 1785 for failure to provide, "necessary and prompt veterinary care and for violating the intent of the law which is to work with the general public and with humane non-profit organizations", violating

also Penal Code Sections 597(f) and 597(i), and Civil Code Section 1834; and Shelly Hunter, Huntington Beach, believes that the Humane Society is guilty of mismanagement, as well as commingling of funds, and encouraged the City to conduct an audit.

Berry Thanks Judi Berry, Costa Mesa, thanked the Finance Department staff for answering her questions throughout the year, and members of the Redevelopment Agency staff for their patience at the Westside Revitalization Oversight Committee (WROC) meetings.

Joint Use Agreement Sandra Genis, Costa Mesa, referred to a meeting which reportedly had occurred between the City and the Newport-Mesa Unified School District regarding the joint use agreement for athletic fields, and asked who had attended the meeting and inquired whether the public had been notified. Mayor Monahan responded that in line with current policy, staff will provide a written reply to Ms. Genis' inquiry. He clarified that staff meets with the School District on many occasions, that an informal meeting on the joint use agreement had been held, and staff is working to resolve several issues. Ms. Genis aired her concern regarding public officials meeting outside of the public view.

Berry Comments Mike Berry, Costa Mesa, acknowledged the action which had been taken regarding a blighted area on Placentia Avenue, and thanked staff for their efforts. He objected to the City contributing \$100,000.00 of dedicated Orange County Transportation Authority (OCTA) revenue to the environmental impact report for the proposed Gisler Street bridge. He observed that the public had been denied comment and the study is preliminary to implementing the bridge. The City Manager responded that the \$100,000.00 has been allocated through Measure M Growth Management Area funding, and representatives from the group of cities which constitute this area, Costa Mesa, Irvine, Santa Ana, and Fountain Valley, vote to approve the expenditure. He reported that an adopted policy of the City's General Plan supports the elimination of the Gisler/Garfield bridge and the 19th Street/Banning bridge from the County's Master Plan of Arterial Highways.

Chambers Podium Peg Klink, Fountain Valley, a member of the Toastmasters Club, commented that the "sign-in cards".

"Exculpatory Evidence" Brian Evans, Newport Beach, asked if the Acting City Attorney has provided the previously requested "exculpatory evidence" to the Orange County District Attorney's office relative to a case that involved former Costa Mesa resident Sid Soffer.

Fireworks/Pets in Public Buildings Anne Hogan-Shereshevsky, Costa Mesa, reported that there were approximately 250 calls and 38 citations issued on the 4th of July, and emphasized the importance for youth sports groups to find alternative methods than selling fireworks to raise funds. She encouraged a ban. Ms. Hogan-Shereshevsky believed that pets should not be allowed in City buildings.

Employee Benefits Beth Refakes, Costa Mesa, in reference to the City's negotiations with employee labor groups, cited the City of San Diego's financial problems which arose due to overgenerous benefits to employees. She added that San Diego's pension program is now under-funded, the City is in the "red", and drastic measures must be undertaken.

Dick Carroll, Costa Mesa, inquired why high school athletic fields

High School Athletic Fields

are not well-maintained, and indicated that the City needs leadership to correct the situation or a student could be injured.

CONSENT CALENDAR

The following items were removed from the Consent Calendar: Item No. 6, Agreement with APA, Engineering, Inc., for design services for pavement reconstruction of 17th Street; Item No. 12, Completion of Construction of Roadway Rehabilitation of Red Hill Avenue, Project No. 03-23, by All American Asphalt; and Item No. 13, Completion of Rehabilitation of Fair Drive and Southbound Fairview Road, Project No. 04-05, by All American Asphalt.

MOTION/Approved Except Item Nos. 6, 12, and 13

On motion by Council Member Steel, seconded by Council Member Cowan, and carried 5-0, the remaining Consent Calendar items were approved as recommended.

READING FOLDER

The following Reading Folder items were received and processed:

Claims

Claims received by the Deputy City Clerk: Connell Chevrolet; Tim Julien; Craig Slamka; Southern California Edison; Jerry Steering (on behalf of Cody Ryan Holst, Mr. Joe Mansfield and Wendy Mansfield); and State Farm Insurance (on behalf of David L. Collins).

Follow-up Reports

The following concerns received follow-up reports from staff:

Staff responded to a request from Council Member Cowan at the meeting of August 2, 2004, to review the Grower's Direct retail center at 101 through 105 East 17th Street in regards to parking and traffic circulation in the center, to determine if the center is overbuilt for the site, if it is consistent with the City's General Plan, and what steps may be taken to improve conditions.

Staff responded to a question from Anne Hogan-Shereshevsky at the meeting of August 2, 2004, asking if animals were allowed in public buildings.

WARRANTS

The following warrants were approved:

Approved Warrant 2019/Payroll 417

Warrant Resolution 2019 funding Payroll No. 417 for \$1,965,710.27, Payroll No. 416A for \$3,245.49, and City operating expenses for \$589,096.22, including payroll deductions.

Approved Warrant 2020

Warrant Resolution 2020, funding City operating expenses for \$966,619.09.

Approved Warrant 2021/Payroll 418

Warrant Resolution 2021 funding Payroll No. 418 for \$1,953,623.10, and City operating expenses for \$488,372.49, including payroll deductions.

ADMINISTRATIVE ACTIONS/Approved Agreement with Norris-Repke for Raleigh Avenue Pavement Reconstruction Design

An agreement was approved with Norris-Repke Corporation, 400 North Tustin Avenue, Santa Ana, in an amount not to exceed \$30,760.00, for design services of pavement reconstruction at Raleigh Avenue from Wilson Street to the south cul-de-sac (FY 2004-2005 CDBG Street Improvement Project), and the Mayor and Deputy City Clerk were authorized to sign on behalf of the City.

Bids received for 17th Street, 19th Street, and Alley No. 111

Awarded 17th Street, 19th Street, and Alley No. 111 Rehab, Project No. 04-11, to R.J. Noble Company

Rehabilitation, Project No. 04-11, are on file in the City Clerk's office. The contract was awarded to R.J. Noble Company, 15505 East Lincoln Avenue, Orange, for \$633,457.80, and the Mayor and Deputy City Clerk were authorized to sign on behalf of the City.

Awarded Carpet Replacement at NCC, Project No. 04-15, to the Environmentalists

Bids received for Carpet Replacement at the Neighborhood Community Center, 1845 Park Avenue, Project No. 04-15, are on file in the City Clerk's office. The contract was awarded to The Environmentalists Commercial Services Company, doing business as The Environmentalists, 1355 S. Acacia Avenue, Fullerton, for \$28,810.00 (base bid only), and the Mayor and Deputy City Clerk were authorized to sign on behalf of the City.

TeWinkle Park Improvements

The following action was taken regarding TeWinkle Park Improvements:

Rejected Bids for Athletic Complex, Project No. 04-13

All bids were rejected for TeWinkle Park Athletic Complex, Project No. 04-13, and staff was directed to defer consideration of the construction of this project until the Fiscal Year 2005-2006 budget.

Awarded Contract for Irrigation Mainline Rehabilitation, Project No. 04-10, to P & D Landscape; Approved Adjustment No. 05-008

Bids received for TeWinkle Park Irrigation Mainline Rehabilitation, Project No. 04-10, are on file in the City Clerk's office. The contract was awarded to P & D Landscape Management Services, 999 Town & Country Road, 4th Floor, Orange, for \$224,445.00 (base bid only), the Mayor and Deputy City Clerk were authorized to sign on behalf of the City, and Budget Adjustment No. 05-008 was approved for \$200,000.00.

Awarded Skate Park, Project No. 04-19, to Channel Islands Paving

Bids received for TeWinkle Park Skate Park, Project No. 04-19, are on file in the City Clerk's office. The contract was awarded to Channel Islands Paving Company, 355 North Lantana Street, #685, Camarillo, for \$936,200.00, and the Mayor and Deputy City Clerk were authorized to sign on behalf of the City.

Awarded TeWinkle Lakes Renovation, Project No. 04-17, to Pima Corporation

Bids received for TeWinkle Lakes Renovation, Project No. 04-17, are on file in the City Clerk's office. The contract was awarded to Pima Corporation, doing business as Advanced Construction, 2001 South Barrington Avenue, Suite 204, for \$960,900.00, and the Mayor and Deputy City Clerk were authorized to sign on behalf of the City.

Approved Amendment No. 1 to Agreement 12-340 with Caltrans for I-405/Hyland On-ramp Improvements

Amendment No. 1 was approved for Cooperative Agreement 12-340 with the State of California Department of Transportation (Caltrans) for improvements at I-405/Hyland Avenue onramp, to increase the support costs to \$90,000.00 for right-of-way acquisition, by transferring funds from the right-of-way capital costs, and the Mayor and Deputy City Clerk were authorized to sign on behalf of the City.

Accepted Work for Construction of Material Bin Covers at City of Costa Mesa Yard, Project No. 03-16, by Key Construction

Construction of Material Bin Covers at the City of Costa Mesa Corporation Yard, 2310 Placentia Avenue, Project No. 03-16, was completed to the satisfaction of the Public Services Director on June 7, 2004, by Key Construction, 10891 Magnolia Avenue, Suite 5, Anaheim. The work was accepted; the Deputy City Clerk was authorized to file a Notice of Completion; authorization was given to release retention monies 35 days thereafter; the Labor and Material bond was ordered exonerated 7 months thereafter; and the Performance Bond was ordered exonerated 12 months thereafter.

Resolution 04-53 was adopted: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA,

Adopted Resolution 04-53, Authorizing Application for Funds Under OCTA's TEA Program

AUTHORIZING THE APPLICATION FOR FUNDS DURING FISCAL YEARS 2005-2007, UNDER THE ORANGE COUNTY TRANSPORTATION AUTHORITY'S (OCTA) TRANSPORTATION ENHANCEMENT ACTIVITY (TEA) PROGRAM PURSUANT TO THE 1998 TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY.

Adopted Resolution 04-54, Establishing Police Training and Police Records Administrator Jobs

Adopted Resolution 04-54: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, AMENDING RESOLUTION NO. 02-64 BY ESTABLISHING THE NEW POLICE TRAINING ADMINISTRATOR AND POLICE RECORDS ADMINISTRATOR JOB CLASSIFICATIONS AND CORRESPONDING SALARY RANGE.

Agreement with APA Engineering for 17th Street Design Services

Item No. 6 on the Consent Calendar was presented: Agreement with APA Engineering, Inc., for design services for pavement reconstruction of 17th Street. The Deputy City Clerk noted a correction to the recommended action on the agenda adding the authorization for the Mayor and Deputy City Clerk to sign the agreement.

MOTION/Approved Agreement with APA Engineering for 17th Street Design Services

On motion by Council Member Cowan, seconded by Council Member Steel, and carried 5-0, the agreement was approved with APA, Engineering, Inc., 23282 Mill Creek Drive, Suite 160, Laguna Hills, in an amount not to exceed \$33,910.00, for design services of pavement reconstruction at 17th Street from Monrovia Avenue to the westerly City limits (FY 2004-2005 CDBG Street Improvement Project), the City Manager was authorized to enter into agreement and to make minor changes, and the Mayor and Deputy City Clerk were authorized to sign on behalf of the City.

Completion of Roadway Rehabilitation of Red Hill, Project No. 03-23, by All American Asphalt

Item No. 12 on the Consent Calendar was presented: Completion of Construction of Roadway Rehabilitation of Red Hill Avenue from Paularino Avenue to McCormick Avenue (Project A) and from McCormick Avenue to Pullman Street (Project B), Federal Project Nos. STPL-5312 (046) and (042), Project No. 03-23, by All American Asphalt, Post Office Box 2229, Corona. The Deputy City Clerk corrected the recommended action on the agenda to reflect exoneration of the Performance Bond in 6 months.

MOTION/Accepted Work

On motion by Council Member Cowan, seconded by Council Member Scheafer, and carried 5-0, the work was accepted; the Deputy City Clerk was authorized to file a Notice of Completion; authorization was given to release retention monies 35 days thereafter; the Labor and Material bond was ordered exonerated 7 months thereafter; and the Performance Bond was ordered exonerated 6 months thereafter.

Completion of Rehabilitation of Fair Drive and Fairview Road, Project No. 04-05, by All American Asphalt

Item No. 13 on the Consent Calendar was presented: Completion of Rehabilitation of Fair Drive and Southbound Fairview Road, Project No. 04-05, by All American Asphalt P.O. Box 2229, Corona. The Deputy City Clerk corrected the recommended action on the agenda to reflect exoneration of the Performance Bond in 6 months.

MOTION/Accepted Work

On motion by Council Member Cowan, seconded by Council Member Scheafer, and carried 5-0, the work was accepted; the Deputy City Clerk was authorized to file a Notice of Completion; authorization was given to release retention monies 35 days thereafter; the Labor and Material bond was ordered exonerated 7 months thereafter; and the Performance Bond was ordered exonerated 6 months thereafter.

The Deputy City Clerk announced that this is the time and place set for the public hearing to consider an appeal from Jack Sakzlyan of the Planning Commission's decision to deny Conditional Use Permit PA-04-21 for Daniel C. Carlton, Attorney, authorized agent for Carl Reinhart/El Camino Partners, to modify an existing conditional use permit for a former gasoline service station to discontinue sales of gasoline to become solely an auto repair facility, located at 1045 El Camino Drive in an R2-MD (Medium Density, Multi-family Residential) zone. Environmental determination: Exempt. The Affidavits of Publishing and Mailing are on file in the City Clerk's office. A communication in support of the project was received from Van Wright. Communications in opposition to the application were received from Costa Mesa residents Roy and Dorothy Gauthier; Don Elmore; Bill Carlson; and Eric Bever. The Associate Planner reviewed the Agenda Report dated August 24, 2004.

Daniel C. Carlton, Attorney, representing Karl Sakzlyan, clarified that the modification to the existing conditional use permit is required to confirm that gas will no longer be pumped at the service station, and the car wash will no longer exist. He observed that this was not an application for a new conditional use permit, the current use has not been abandoned, there has been no change in the use of the business, and staff has determined that the operator is not in violation of any conditions to the current, long standing conditional use permit. Mr. Carlton believed that the conditions imposed by staff were inappropriate and unfair, and did not understand what could be considered a more intensive use for the premises. He urged Council to approve Alternative No. 2, "approve modification of the CUP and allow continued operation of the auto repair business without additional conditions." He responded to questions from Council.

Mayor Pro Tem Mansoor commented that he had reviewed the original 1964 conditional use permit and reported that at the time of approval, 16 Mesa del Mar residents opposed the project and that a petition containing 65 signatures in opposition was submitted listing the following objections: the project would be a detriment to the neighborhood, contribute to increased traffic, a fire hazard, and would adversely affect property values.

Jack Sakzlyan, the applicant, reported that the repair work conducted is typical for a service station, and that major work, such as overhauls, were sent out to other businesses. He responded to questions from Council.

The following Costa Mesa residents spoke in opposition to modifying the conditional use permit to allow an auto repair facility: Sam Clark, believed that Mr. Sakzlyan performs more than "incidental repairs" as originally stipulated, and thought that the Planning Commission should revoke the current CUP; Mike Berry, opposed allowing an auto repair business in a residential area; Jeff Wilcox; Michael Dalessandro, implied that future development of surrounding properties depends on the outcome of the decision regarding a business that should not be in this location, and cited increased traffic, trash, crime, and noise issues; Terry Greer, believed that there was more than incidental auto repair being done, addressed negative aspects such as unsightly signs advertising oil products and cars which are stored overnight, and thought that any changes should be consistent with the residential development which was promised; Martin Millard, called the station

a “blight upon the neighborhood”, observed that quality merchants will not be attracted to the area, and encouraged Council to deny the application; and Lisa Reedy, member of the Mesa del Mar Homeowners Association Board, indicated that the Association’s goal to have the subject property rezoned was approved by Council, and encouraged support for the residential use.

The following Costa Mesa residents spoke in support of the application: Jerry Vanderwalle, called the service station an asset to the neighborhood, noting its convenience; Kevin Murray, observed that Mr. Sakzlyan is honest, has good prices, and is ethical; Janice Nordhausen, referred to Mr. Sakylyan as an “honest mechanic”, and commented that converting the land to residential would increase traffic; Joe Howard Grisham, inquired as to what would happen to the property if the conditional use permit is denied; a resident on Mission Drive, described the service station operation as clean, safe, and honest, and agreed that residential usage would increase traffic; Mark Hanlon, concurred that the service station is clean, the owner is honest; Randy Speer, observed that the center is a blight but thought that an additional vacancy would be detrimental to the area at this time, and suggested coordinating termination of the leases with the other businesses in the Center; Dario Mareno; and Ed Keene, thought that the service station should remain at this time.

Judi Berry, Costa Mesa, suggested that all conditional use permits be valid for ten years instead of forty, as was the case with this use.

Jeff Pratt, El Camino Partners, responded to an assertion that the gas station tanks had been removed due to contamination by stating that this was incorrect, the tanks had been removed because the primary use was no longer a gas station but a service station.

Igal Israel, Costa Mesa, observed that the property owners knew of the existence of the center when they purchased their homes.

Council Member Scheafer advised that he had a potential conflict of interest, and abstained for the remainder of the discussion.

Council Member Cowan asked Mr. Carlton if the applicant is willing to accept a condition of approval which approves the CUP until such time as three-quarters of the site has been vacated and any pre-existing permits would be supplanted, and he replied in the affirmative. The Development Services Director suggested that conditional use permit PA-04-21 supersede the 1964 conditional use permit C-254. The Acting City Attorney confirmed that the condition of approval could explain that the new CUP replaces and supersedes any prior CUP’s for use of the property.

Council Member Cowan expressed an interest in maintaining the service station use, which has not changed substantially over the years, and in adding a “term” to the conditional use permit. She was concerned that, by replacing the original permits, conditions of approval such as those regarding graffiti which are not listed in the current CUP may be overlooked, and inquired about the necessity for the conditions which address closing the drive approach at the northwest corner (No. 4) and the requirement for a landscape strip at the northwest corner of the property (No. 5).

A motion was made by Council Member Cowan to adopt a resolution modifying the Planning Commission’s decision based

MOTION/To Modify the Planning Commission's Decision Died

upon the findings in Exhibit "A" to the resolution, directing staff to create conditions of approval that eliminate current Condition Nos. 4, 5, 18, and 19, develop language to condition the CUP to the term of the lease, and previous permits for the property would be supplanted after being reviewed. The motion died for lack of a second.

Council Member Steel recognized that Mr. Sakzlyan has a loyal clientele and suggested that the business relocate to some other location nearby. He recommended upholding the Planning Commission's decision to deny PA-04-21.

MOTION/To Uphold the Planning Commission's Decision Failed to Carry

A motion was made by Mayor Pro Tem Mansoor, seconded by Mayor Monahan, to adopt a resolution upholding the Planning Commission's decision to deny PA-04-21, directing the Planning Commission to schedule a public hearing to revoke the existing CUP, based on findings that, in addition the Planning Commission's findings, the increase in car repairs will replace lost revenue from gasoline sales and the use will be more intense due to the primary change to auto repair, allowing a two-year period to close the business.

The Development Services Director explained that, if not revoked, the current use permits, C-254 and PA-87-204(a), would remain in place.

Mayor Pro Tem Mansoor supported working toward compliance with the new residential zoning, and added to the motion "a reasonable amount of time for the business owner to wrap things up." After discussion, Mayor Monahan withdrew his second to the motion, and Council Member Steel seconded the motion.

Mayor Monahan questioned revoking the CUP reporting that they "go with the land", He understood denying the modification which would leave an existing permit and would allow Mr. Sakzlyan to remain in business and opposed the revocation. He did not agree that the business was a public nuisance.

SUBSTITUTE MOTION/ To Uphold the Planning Commission's Decision Failed to Carry

A substitute motion was made by Mayor Monahan, seconded by Council Member Cowan, to uphold the Planning Commission's decision to deny PA-04-21, allowing the existing CUP to continue. The substitute motion failed to carry 2-2, Mayor Pro Tem Mansoor and Council Member Steel voting no, Council Member Scheafer abstaining.

The original motion failed to carry 2-2, Council Member Cowan and Mayor Monahan voting no, Council Member Scheafer abstaining.

MOTION/Continued to October 18, 2004

On motion by Mayor Monahan, seconded by Council Member Steel, and carried 4-0, this public hearing was continued to the meeting of October 18, 2004.

PUBLIC HEARING Appeal of ZA-04-30, La Combe

The Deputy City Clerk announced that this is the time and place set for the public hearing to consider an appeal from Lori McDonald of the Planning Commission's decision to approve a Minor Design Review ZA-04-30 for Darlene La Combe, authorized agent for Barron and Jance Hurlbut, to construct a new 3,108 sq. ft. two-story, single-family residence and a 1,247 sq. ft. 2-story detached granny unit (a 512 sq. ft. detached granny unit over a 635 sq. ft. 3-car garage), with a minor modification to allow a 2 ft. encroachment into the front setback (20' required; 18' proposed) for a porch, located at 281 Walnut Street in an R1 zone (Single Family

Residential District). Environmental determination: Exempt. The Affidavits of Mailing and Publication are on file in the City Clerk's office. No communications were received. The Associate Planner reviewed the Agenda Report dated August 25, 2004, and responded to questions from Council.

Kenneth Zwick, Costa Mesa, attorney at law representing Lori McDonald, asked that Council either reverse the Planning Commission's decision to approve minor design review ZA-04-30, or at minimum, submit the matter for further review and study. He read a 4-page letter previously submitted to Council that claimed Costa Mesa's uniqueness is based on older, primarily single-story homes with classic architecture, and yards in which children and pets play safely. He commented that Lori McDonald is an environmental activist attempting to preserve this uniqueness, and discussed the impact of this project on her home. Mr. Zwick accused the Planning Commission of ruining the character of the City's neighborhoods, and urged Council to deny the project.

Lori McDonald, Costa Mesa, asked that her comments at previous City Council and Planning Commission meetings be included as legal points to her presentation. She asked Council to deny ZA-04-30 and Development Review DR-04-04, stating that the Planning Department has denied her "freedom of information request", and cited her complaints regarding the project and the City's handling of same. Ms. McDonald stated that the project will set a precedent on the street, questioned the legality of several documents, complained that the original submitted plan was "not available" to her from the Planning Division, notification was faulty, a response was not received to her query on the open space calculation, the project exceeded the overhand requirement, there were no survey markets, she requested the name of the builder, and asked for proof that Darlene LaCombe is a licensed architect. She implored Council to deny the project or be responsible for the extinction of single-family homes and yard space. Ms. McDonald accused the City of not following code which she claims is a violation of State law and causes permanent material damage to adjacent homes.

Peter Jacobs, Costa Mesa, observed that the project being considered illustrates trends in three areas of concern: large, two-story homes, granny units, and diminished open space. He stressed that the neighborhood is losing its character and the residents privacy is impacted. He encouraged Council to strictly enforce the 40 percent open space requirement, to abandon the 40 percent or less concept, and asked if there were any provisions for monitoring granny unit occupancy. The Associate Planner replied that there is a procedure wherein staff conducts regular inspections of the granny unit through a process called recordation of a land use restriction which is a condition of approval for this project.

Lisa Downs, Costa Mesa, representing her mother, Linda Ford, owner of two properties on Walnut Street, supported the expansion at 281 Walnut Street because improvement raises the property value.

Beth Refakes, Costa Mesa, observed that the term "property rights" seems to apply only to developers, not the surrounding residents who lose their privacy and quality of life, and felt that the open space issue should be addressed.

Terry Shaw, Costa Mesa, found the addition of a granny unit on the second level "odd", and asked if the additional unit was factored into the parking ratio.

Igal Israel, Costa Mesa, asked by what authority the Zoning Administrator may approve this project.

In response to a question from Judi Berry, Costa Mesa, the Associate Planner explained that in order for a R1 (single-family residential district) lot to have a second unit, there is a minimum lot size requirement of just under 12,000 square feet.

Sandy Genis, Costa Mesa, asked if there was an annual reporting requirement or certification to ensure that granny units are legitimate. She encouraged residents to contact the governor at (916) 445-4633, or www.ca.gov, regarding new legislation which will inhibit cities in their approval or denial discretion relative to second-family units.

Pamela Frankel, Costa Mesa, commented that the residents who are exposed to this over-development suffer in regards to parking and privacy issues. She thought that homeowners should have "some rights".

Tiny Hyder, Costa Mesa, stated that the over-development of her neighborhood has triggered an increase in crime, and therefore opposed the application.

Kenneth Zwick observed that the new California legislation regarding second units will impact the granny unit law.

There being no other speakers, the Mayor closed the public hearing.

Mayor Pro Tem Mansoor remarked that the proposed project homeowner was within the law.

MOTION/Adopted
Resolution 04-55

A motion was made by Mayor Pro Tem Mansoor, seconded by Council Member Scheafer, and carried 4-1, Council Member Steel voting no, to uphold the Planning Commission's decision by adopting Resolution 04-55, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, APPROVING MINOR DESIGN REVIEW ZA-04-30.

Council Member Cowan supported the motion because the project was within the requirements of the City's development standards. She opined that Council has endeavored to minimize the impact on surrounding neighborhoods of projects such as this one. She felt that the Zoning Administrator, Perry Valentine, as well as the entire Planning Division staff, are professionals who implement the policies of the City Council in an excellent manner, and the balance of the Council Members concurred with this statement. Mayor Monahan commented that three-fourths of the homes in his neighborhood have been enlarged/improved, and noted that this project complies with all the City's zoning and building regulations.

ANNOUNCEMENT

There being no objection, Mayor Monahan announced that New Business Item No. 3 pertaining to the Orange County Fairgrounds would be the next item considered, and New Business Item No. 2, Organization Review and Cost Benefit Analysis of the City Attorney's Office would be considered thereafter.

The Deputy City Clerk presented a resolution opposing the California Performance Review regarding "Tapping Surplus Property Assets" pertaining to the Orange County Fairgrounds.

NEW BUSINESS
Orange County Fair-
grounds

The City Manager summarized the Agenda Report dated September 1, 2004. He stressed that the final authority on this matter rests with the California State Legislature, and advised that a contact list for State legislators is available in the vestibule of the Council Chambers, adding that Council supports retaining the Fairgrounds in Costa Mesa but the assistance of residents is required.

Becky Bailey-Findley, Chief Executive Officer, Orange County Fair and Exposition Center, addressed the connection of the Fairgrounds to the community and the impact generated by their activities and programs. She took exception to the Commission's reference to the Fairgrounds as being "underutilized" State property, stressing that the Fairgrounds contributes annually a social and economic benefit of \$185.2 million for Orange, Los Angeles, and San Diego counties, creates more than 2,000 equivalent jobs, and generates more than \$2.3 million in local tax revenues. Ms. Bailey-Findley commented on the programs offered, reported that 960,000 persons had attended the Fair this year, and 4.3 million people are guests on the property throughout each year with attendees spending a total of \$81.2 million. She added that taxpayer and State funding is not utilized by the Orange County Fair and Exposition Center which has occupied 150 acres in Costa Mesa for over 50 years. She respectfully submitted that the Orange County Fair and Exposition Center is highly utilized State property and should not be considered for sale.

Doug Sutton, Costa Mesa, suggested that the State should be advised, should they choose to sell the Fairgrounds property, that the City intends to determine the zoning in accordance with its own best interests. He asked if the State is planning to sell the Fairview Developmental Center property as well.

Sandy Genis, Costa Mesa, asked that the information regarding contact information for State legislators be shown on Costa Mesa Television, CMTV, Channel 24. The City Manager agreed and indicated that it will also be added to the City's website, www.ci.costa-mesa.ca.us. Ms. Genis encouraged residents to contact their legislators, suggesting State Assembly Member Patricia Bates and State Senator Jim Brofte who are both members of the California Performance Review Commission. She thought that the Fair Board should be governed by a public board which provides public noticing and conducts open meetings.

The following persons spoke in opposition to the closure and/or relocation of the Orange County Fairgrounds: Terry Shaw, Costa Mesa; Ben Walker, Costa Mesa; Lisa Reedy, Costa Mesa; an Orange County Marketplace vendor; Monica McDade, Costa Mesa; Kenneth Zwick, Costa Mesa; Deborah Boothney, Costa Mesa; Rick Hanson, San Juan Capistrano, representing Equestrian Services; Tony Manrique, Costa Mesa, Executive Director of the All American Boys Chorus; Beth Refakes, Costa Mesa; Andrew Cohen, an exhibitor at the Orange County Fair; Kathy Hobstetter, Costa Mesa, owner of a business at the Fairgrounds; Flo Martin; Tiny Hyder; Susan Gabriel, Costa Mesa; Rachel Perez-Hamilton, Costa Mesa; Howard Anderson, Riverside, vendor at the Marketplace; Bernie Packet, Corona; Brian Burnett, Costa Mesa; Katrina Foley, Costa Mesa, spoke on behalf of herself and several parents of children at Sonora School; Greg Lawson, a performance artist at the Marketplace; a west side Costa Mesa resident; a Marketplace vendor; and a Costa Mesa resident/vendor.

Elizabeth Phillips, Irvine, representing Share Our Selves (S.O.S.), reported that the Fairgrounds generously donates their facilities for the S.O.S. annual Christmas dinner/gift giving event for 1,500 children and their families, and Fairground employees have donated their time to assist with logistics such as directing traffic and hanging signs.

Jeff Teller, President of Telphil Enterprises, Inc., the company that founded and has operated the Orange County Marketplace for 35 years, viewed the Fairgrounds as being utilized by their 150 Marketplace employees, many of them students, approximately 1,000 vendors, and tens of thousands of neighbors who shop at the Marketplace every weekend. He estimated that \$10 million in annual revenue is paid to the State, County, and local government, including rent paid to the Fairgrounds. Mr. Teller believed that creating jobs, offering services, showcasing entertainment and making room for merchants and entrepreneurs while providing a safe, clean gathering place is a valuable use of the Fairgrounds, and believed that if the Marketplace were moved, the exceptional value of the above uses would be diminished.

Tom Askew, Costa Mesa, President of the Orange County Marketplace Merchants Association, reported that sale of the property would be devastating to the vendors, and pledged their support to the City, Becky Bailey-Findley, Telphil Enterprises, and the Fairgrounds Board to retain the Fairgrounds in Costa Mesa.

MOTION/Adopted
Resolution 04-56

On motion by Council Member Scheafer, seconded by Council Member Steel, and carried 5-0, Resolution 04-56 was adopted: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, OPPOSING THE FINDINGS OF THE CALIFORNIA PERFORMANCE REVIEW CHARACTERIZING THE ORANGE COUNTY FAIRGROUNDS AS "UNDERUTILIZED" STATE PROPERTY; as a matter of City Council policy, a position of opposing the closure and/or relocation of the Orange County Fairgrounds was adopted; and the City's current General Plan/Zoning designation for the Orange County Fairgrounds as Recreation and Institutional was reaffirmed.

Mayor Pro Tem Mansoor commented that the Fairgrounds has been a part of Costa Mesa for almost 60 years, and its removal from the City is unthinkable as it is a major portion of the City's recreation, education, and entertainment, providing a venue for 4H Programs, the Orange County Marketplace, the Orange County Fair, Costa Mesa Gun Show, the Pacific Amphitheatre, the Scottish Games, the Indian Pow Wow, and numerous other events. He referred to relocating the Fairgrounds to Irvine's Great Park as a proposed "give-away", and encouraged Assemblyman John Campbell to publicly state that he supports retaining the Fairgrounds in Costa Mesa. Mayor Pro Tem Mansoor observed that relocation of the Fair would mean the permanent loss of year-round and seasonal jobs, and existing revenue to the City, and remarked that Measure W was approved by the voters to not only prohibit construction of an airport at El Toro but to add open space and recreational opportunities.

Mayor Pro Tem Mansoor added that relocation does not mean a net gain in open space for Orange County; that the Fair Board is renovating the Pacific Amphitheatre at a cost of \$9 million; and the laws in place regarding the sale of Department of Food and Agriculture land direct the proceeds for the sale must be reinvested state-wide in fairs and exposition centers and stipulate that monies

may not be diverted to the State's General Fund. He thought that the State needs to "follow the rules that are in place and not change them as they go along," and commented that the "State took our revenue and now they want to not only take our Fairgrounds but also a source of revenue because they cannot control their insatiable spending habits." He vowed to do everything possible to retain the existing park, open space, and institutional zoning.

The Mayor declared a recess at 11:40 p.m., and reconvened the meeting at 11:50 p.m.

RECESS

The Deputy City Clerk presented an Organization Review and Cost Benefit Analysis of the City Attorney's Office. The Finance Director summarized the Agenda Report dated August 25, 2004.

NEW BUSINESS

Review of City Attorney's Office

Mayor Monahan, as a member of the reviewing committee, commented that the study had been intense, and different aspects of legal services to and for the City were reviewed. Council Member Steel was impressed with the recommendation, and commented on the departure of the previous City Attorney. He felt that this issue should be directed to a Council study session, perhaps waiting until after the November 2, 2004, election, and the new Council is seated. He supported retaining in-house services.

Doug Sutton, Costa Mesa, advised that prior to the dismissal of the previous City Attorney, two Council Members had been advised that this act would subject the City to a "huge lawsuit it could not win". He further stated that the advice had been ignored, and referred to the actions taken by Council at that time as shameful and inexcusable. Mr. Sutton thought that Tom Wood, Acting City Attorney, had earned the City's respect, and suggested that Mr. Wood work with the City Manager to hire his replacement.

Sandy Genis, Costa Mesa, called contracting out a "really bad idea", and strongly urged the retention of in-house counsel. She felt that all five Council Members should have interviewed the prospective outside attorneys, and it was inappropriate to have had only two Council Members involved in the conduct of the interviews.

Brian Evans, Newport Beach, objected to the current Acting City Attorney. Council Member Steel remarked that Mr. Evan's comments were unfair and stated that there is no evidence confirming his allegations.

The following Costa Mesa residents encouraged the retention of in-house counsel because it would save money and provide better service to Council and staff: Terry Shaw, Sam Clark; Beth Refakes; and Kenneth Zwick.

Igal Israel, Costa Mesa, was appalled that this matter was being considered at 12:15 a.m., and objected to Council not following its own policy and continuing the item to another meeting.

Marilyn Robinson, Paralegal in the City Attorney's office, emphasized the benefits of retaining in-house counsel by stating that the cost of an in-house attorney is less than contracting out, and that the employees are loyal and services are dedicated to City business only. She urged Council to consider the proposal submitted by the City Attorney's office to retain in-house counsel.

Marianne Milligan, Costa Mesa, Senior Deputy City Attorney, speaking on behalf of herself and Linda Nguyen, Deputy City Attorney, concurred in the support of the City Attorney's office proposal, and believed that there would be a drastic reduction in the level of service should the City contract out.

Kim Barlow, Jones and Mayer, the number one firm on the list of outside attorneys, acknowledged a respect for the City Attorney's office but believed that her firm could save the City money.

Mayor Monahan stated that he firmly believed that the City would save money and receive excellent service with the services of an outside attorney. He commended the Acting City Attorney and his staff who have worked hard for the City but supported contracting out at this time.

MOTION/Approved
Contracting Out
City Attorney Services

A motion was made by Mayor Monahan, seconded by Council Member Cowan, to approve "contracting out" the function of the City Attorney's office; enter into negotiations with Jones and Mayer and, if unsuccessful, to negotiate with Woodruff, Spradlin, and Smart; staff was directed to begin "dialogue" with the Costa Mesa City Employees Association (CMCEA) for severance options for the represented employees and to begin "dialog" with the Acting City Attorney, Tom Wood.

Mayor Pro Tem Mansoor opposed the motion, stating that the cost of contracting out would be double, and accessibility for Council and staff would be limited. He felt that any problems could be solved by implementing the consultant's report which recommends retaining legal services in-house. He objected to proceeding until he also had interviewed the three top firms, and supported Option One in the report prepared by the City Attorney's office which proposed hiring a part-time contract City Attorney.

SUBSTITUTE
MOTION/To Approve
Option One Died

A substitute motion was made by Mayor Pro Tem Mansoor, to approve Option One, hiring a part-time contract City Attorney. The motion died for lack of a second.

SUBSTITUTE
MOTION/To Appoint
Attorney Died

A substitute motion was made by Council Member Steel to appoint the Acting City Attorney Tom Wood to the position of City Attorney. The motion died for lack of a second.

Council Member Steel thought that City Council should in the future relinquish some of its authority over the City Attorney, delegating the City Manager to oversee the operation.

The Acting Administrative Services Director, in response to a question from Council Member Scheafer, explained that the City has an obligation to confer with the Costa Mesa Employee Association (CMCEA) regarding the impact of any action regarding their members, and the majority of the City Attorney's office are represented by CMCEA.

Council Member Cowan concurred with Mayor Monahan regarding the cost savings, stating that the City currently spends a great deal of money on outside counsel. She advised that this was not about an individual but contracting out would provide City Council with options for attorney services. She supported the dismantling of the in-house City Attorney's office.

Council Member Steel disagreed with Council Member Cowan, asking why this action needed to be taken at this time. He encouraged more public input. Mayor Pro Tem Mansoor pointed

out that if the City Attorney's office is dismantled, it will be costly to reassemble if outside counsel proves unsatisfactory, and supported considering the report from the City Attorney's office and instituting those changes instead of making a rash decision.

In response to Mayor Pro Tem Mansoor's comment regarding his lack of an opportunity to also interview the candidates for outside counsel, Mayor Monahan stated for the record that he had dealt with many other situations wherein a subcommittee is chosen to provide recommendations, and reiterated that this was the choice that they had made.

The original motion carried 3-2, Mayor Pro Tem Mansoor and Council Member Steel voting no.

The Deputy City Clerk presented Council Prioritization and Review of Programs:

NEW BUSINESS
Council Appeals

From the meeting of August 16, 2004, City Council Appeals Process.

OLD BUSINESS
Permit Processing
and Development
Appeals Process

Permit Processing Regulations.
Development Appeals Process.

The Planning and Redevelopment Manager reviewed the Agenda Reports dated August 17, 2004, regarding Permit Processing Regulations and Development Appeals Process. Mayor Monahan commended Planning staff on the comprehensive reports. Council Member Cowan appreciated the report but cautioned against the process becoming too streamlined.

City Council Appeals
Process

Lori McDonald, Costa Mesa, objected to this item being considered at a late hour, and commented that the "appeals process is completely broken". She complained that the average citizen cannot afford the expense of an appeal, and maintained that an aggrieved person should have their rights.

Mayor Monahan replied that the fees charged for an appeal are based on the City's costs which are incurred to prepare for the public hearing. Ms. McDonald proposed diverting funds from various City programs in order to lower the cost of appeals to residents.

Kenneth Zwick, Costa Mesa, observed that the right to appeal a decision by the Planning Division is a crucial means by which affected parties can be heard by their government. He mentioned that an appeal is more accessible if it is sponsored by a Council Member.

Sandy Genis, Costa Mesa, suggested that instead of changing the appeals process, the design review process should be changed. She maintained that "public agencies exist to do the public's business in view of the public", and sensed a "disturbing trend".

Beth Refakes, Costa Mesa, thought that low income families may not have the means to appeal a project, and suggested that a design review board was more appropriate than having one person make those decisions. She was appalled that Council was considering these issues at 1:30 a.m., commenting that the public who could have had input have left.

Terry Shaw, Costa Mesa, and Brian Evans, Newport Beach, urged Council to retain the current appeals process.

Mayor Pro Tem Mansoor believed that the changes were an attempt “to make things run a little smoother”. He expressed his concern over some of the appeals which have come forward but questioned whether the options available would “fix” the process.

On motion by Mayor Pro Tem Mansoor, seconded by Mayor Monahan, and carried 5-0, the report was received and filed, and retention of the current appeals process was approved.

MOTION/Retained
Current Council
Appeals Process

Mayor Monahan recalled that he had been to other City Council meetings and reported that Costa Mesa has one of the most open systems with the most participation in the entire County. He noted that he was concerned when a project which meets all the zoning code requirements, has no variances, and is appealed from “Board to Board to Board”. He pointed out that the applicant ends up paying an architect for more plans, and after going from hearing to hearing, the project can be delayed for months.

The Planning and Redevelopment Manager reported that the information on user fees will be considered by Council within the next couple of months.

Permit Processing
Regulations

Sandy Genis, Costa Mesa, observed that when one person is responsible for many decisions, appeals are more likely. Overall, she was disappointed in the report, objecting to reduction of public noticing, elimination of on-site noticing, and limiting public notice. The Planning and Redevelopment Manager replied that there is currently a Zoning Administrator Committee in place which is comprised of himself, the Zoning Administrator, and two senior planners.

Beth Refakes, Costa Mesa, objected to eliminating the on-site noticing, reducing the noticing radius, and applauded the Zoning Administrator Committee. She felt that streamlining the process would stifle the input of the residents.

Lori McDonald, Costa Mesa, concurred with the previous speakers. She complained about flaws in the City’s noticing process, and suggested that it be discussed at a decent hour.

Kenneth Zwick, Costa Mesa, commented that by streamlining the process, the democracy was being taken out.

A motion was made by Mayor Pro Tem Mansoor, seconded by Council Member Cowan, to receive and file the report, and to retain the current permit processing regulations.

MOTION/To Receive
and File the Report
Withdrawn

Mayor Monahan opposed the motion, believing that there is major streamlining which could be accomplished, and believed that the Planning Commission should have the opportunity to review the report. Mayor Pro Tem Mansoor agreed that there are adjustments which could be made, and withdrew his motion to receive and file.

On motion by Mayor Monahan, seconded by Mayor Pro Tem Mansoor, and carried 4-1, Council Member Cowan voting no, the report was referred to the earliest possible meeting of the Planning Commission for recommendations.

MOTION/Referred to
Planning Commission

On motion by Mayor Monahan, seconded by Council Member Steel, and carried 5-0, the report was received and filed and retention of the current appeals process was approved.

MOTION/Received
and Filed

Council Member Scheafer thanked persons at Costa Mesa High School for inviting him to breakfast on Sunday, September 5, 2004.

COUNCIL
COMMENTS

Bristol Street Specific
Plan

Council Member Steel, responding to Mr. Millard's remarks under Public Comment regarding the Bristol Street Specific Plan. He stated that he had been asked to appeal the action regarding the extension of a conditional use permit for the storage of shipping containers on a four-acre lot but that a reason had not been provided to appeal the project, although he agreed that it should have been done. He pointed out that the subject gentleman could have made the appeal himself.

I-405 Major Investment
Study

Mayor Pro Tem Mansoor reported his attendance at an Orange County Transportation Authority (OCTA) meeting earlier in the day which addressed the I-405 major investment study for a planned widening between the 73 and the 605 freeways. He announced OCTA open houses in October, 2004, with one of the meetings held in Costa Mesa and another in Seal Beach. He mentioned that there are 12 or 13 alternatives, some more cost effective with less congestion relief, several have high right-of-way cost and offer good congestion relief, and some have high construction cost and offer good congestion relief.

The Mayor declared the meeting adjourned at 1:50 a.m.

ADJOURNMENT

