

CITY OF ELK GROVE

Incorporated July 1, 2000

MINUTES OF THE CITY COUNCIL SPECIAL MEETING OF

February 7, 2001

Trigg Education Center Board Room
8820 Elk Grove Boulevard
Elk Grove, CA 95624

CALL TO ORDER/ROLL CALL

Mayor James Cooper called the February 7, 2001 meeting to order at 6:35 p.m. The special meeting ran concurrently with the regular meeting.

Roll Call: Present: Council Members Briggs, Leary, Scherman,
Mayor Pro Tempore Soares and Mayor Cooper

Absent: None

PRESENTATIONS/ANNOUNCEMENTS

Agenda Item 2 -- Presentation of "Woman of the Year" award AND "Family of the Year" award by Roy Herburger

Mr. Herburger announced that the **Bartholomews** were attending the funeral of **Lucille Case** and were unable to be present to accept the award for Family of the Year.

Mr. Herburger read an excerpt from *The Citizen* featuring **Jackie Andersen-McAuley**, Woman of the Year. Ms. Andersen-McAuley is the owner of the Elk Grove Brewery and Restaurant and an active member of the business community. Mr. Herburger stated that the award is given to community members who make the news and dramatically contribute to the community. He congratulated Ms. Andersen-McAuley and presented her with the award.

Ms. Andersen-McAuley accepted the award and thanked the Council and community.

ACTION ITEMS:

Agenda Item No. 3 – Discussion and possible action regarding railroad trains stopping at grade crossings in Elk Grove

Mayor Cooper stated because of the recent fatality that occurred at the Elk Grove Boulevard and Union Pacific Railroad (UPRR) crossing, it is appropriate for Council to take immediate action. While UPRR has, in the past, indicated that the crossing would remain clear of blockages, this has not happened. He stated that the City Council has a responsibility to provide safe passage through the intersection to the citizens of Elk

Grove. He noted that while the victim contributed to his death by driving through the crossing, waiting for the crossing to clear for extended periods of time is unacceptable. He expressed particular concern that safety vehicles, such as medical, fire, and police, are unduly diverted from responding to emergencies east of the railroad tracks. Mayor Cooper asked to hear from legal counsel, **Mike Dean** on his findings regarding crossing blockages. In particular, Mayor Cooper asked what options the City has in addressing the issue.

Mike Dean explained that local regulation of a railroad is limited as they are heavily regulated by Federal and State authorities. He noted that the issue of blocking at-grade crossings for extended periods has been addressed in State law. The Public Utilities Commission (PUC), the state agency that regulates railroads, has adopted a general order that provides that rail crossings may be blocked, generally speaking, for a maximum of ten minutes. The ten-minute maximum does not apply to issues beyond the railroad's control, e.g., derailment, stopping to comply with a Federal or State law. The PUC enforces that provision and imposes penalties for non-compliance. He noted that a complaint for non-compliance may be referred to the PUC by the City, any citizen, or group. He added that because State law has specifically addressed time restrictions on at-grade crossings, a City regulation addressing the same issue would likely be pre-empted.

Mayor Cooper called on **Wayne Horiuchi**, representative from Union Pacific Railroad (UPRR) to address the issue.

Mr. Horiuchi, Special Representative for UPRR, stated that when there is a death on the right-of-way, it is considered very seriously by the railroad company. He stated the railroad does everything it can to avoid fatalities and to be safe. With respect to the accident resulting in the fatality at the Elk Grove Boulevard/UPRR crossing, Mr. Horiuchi explained that he could not address specific issues at the advice of legal counsel.

He stated that UPRR has a serious disagreement and takes umbrage to representations made relative to the railroad's attempt to solve the problems and lack of cooperation. He noted that on several occasions, the railroad has met with **Representative Pescetti** and the Old Town Merchants Association to discuss solutions. Additionally, he noted meeting with a number of the Council Members at the League of California Cities conference in Anaheim and provided information regarding the automatic horn warning system, out of sensitivity and concern and to make the Council Members aware that UPRR is seeking solutions. He noted that on December 15, there was a demonstration of the horn system, which he attended. He reported that two weeks ago, he talked to about one hundred citizens at the Old Town Elk Grove meeting and addressed many concerns. He reiterated inferences of lack of cooperation.

Mr. Horiuchi stated that the company takes serious umbrage and is troubled by what he characterized as "veiled threats" from the City to play "hard ball" by citing railroad engineers and conductors. He noted that the employees are not responsible for

blocking the crossing. He stated that the Council has two choices: to play "hard ball" or "team ball". Mr. Horiuchi inferred that if the City forces the railroad to play hardball, the railroad may revoke a right-of-way easement that allows passage across the tracks. He stated that the railroad's position is not to build walls around communities, but the railroad has certain rights under the agreement.

Mr. Horiuchi explained that the railroad has been playing team ball and that is what he encouraged the City to do as well. He stated that it is important to promote and seek a planning agreement and study. He noted that Union Pacific wrote a letter to Governor Davis to support a \$150,000 line item appropriation to initiate a study to develop a traffic congestion plan and develop additional east/west arteries to allow the traffic to flow, one option being to circulate around the city. Additionally, UPRR through SB 1491, sought an author, crafted language and lobbied legislation to allow for the installation of automatic horn systems. He encouraged the City of Elk Grove to submit an application to the Public Utilities Commission to install the automatic horn warning system.

Regarding the crossing blockages, Mr. Horiuchi stated that he made a commitment to the Old Time Elk Grove and Sacramento County people that the railroad would begin grading the siding project in September 2000 in anticipation of project completion by the end of 2000. He reported that because of environmental issues raised by the US Wildlife Service relevant to Elderberry bushes and residing beetles, and the garter snake, the project has been delayed with grading scheduled to commence on May 1. He asked that the City be patient and that the City support the application so that the railroad can go forward with the siding project. He stated that there are exceptions to the ten-minute rule that force the railroad to go beyond the regulation. He stated that mechanical failures are also a consideration. He noted that if the train is moved, the ten-minute timing begins again.

He concluded by relating statistics relevant to reductions in train accidents and railroad fatalities. He noted that 55% of the accidents that occur are a result of motorists not stopping, and 9% occur because motorists drive around the barrier. He also addressed railroad transportation equivalencies to truck-tractor hauling.

Mayor Cooper asked whether there were mechanical problems with the train involved in the recent fatality.

Mr. Horiuchi declined to speak to the specifics of the accident at the advice of legal counsel.

Mayor Cooper defined the issue at hand as blockage of the tracks for public passage for extended periods of time. He questioned why it was necessary to install the siding at the Elk Grove Boulevard/UPRR intersection rather than moving it farther south. The Mayor questioned why the railroad does not use the switching tracks located more to the north rather than Old Town Elk Grove and questioned if the tracks can be moved.

Mr. Horiuchi stated that the siding is being extended more to the south toward Grant Line Road. Regarding the growth of Elk Grove, he stated the railroad has tried to offer planning solutions to the City and the City should be resolving the planning and land use issues.

Mayor Cooper recognized that when the right-of-way agreement was signed, the City of Elk Grove was not an entity or a signatory. He stated that there are mechanisms in place, such as the ten-minute rule, to mitigate the blockage/passage issue. Mayor Cooper stated that utilizing the tracks north of the city limits should also be considered.

Mr. Horiuchi stated that the reason for blockages is being investigated and that the railroad does not block the tracks purposely.

Council Member Scherman stated that the railroads have long been aware of the growth in the Old Town and Elk Grove area. Regarding the blocking of the tracks, this has been a long-standing situation at the Elk Grove Boulevard/rail crossing intersection.

Council Member Leary stated that he felt frustration on behalf of the motorist contributed to fatality. He further indicated that the issue is not new to the community. Efforts of working with the railroad to install a side rail have been ongoing for a number of years. He felt that Mr. Horiuchi was inferring that this was a new problem.

Mr. Horiuchi responded that the Council is asking the railroad to do the City's planning. He stated that he has not gotten a call until the last couple of years when he began working with the Old Town Elk Grove interests about addressing planning issues for Elk Grove Boulevard and traffic congestion resulting from the trains. He stated that it is not the responsibility of the railroad to plan grade separations. If an overpass is to be done at Bond and Grant Line Roads, the railroad does not take responsibility for initiating the project. It is a local planning and land-use issue.

Mayor Cooper stated it is the responsibility of the Council to provide safe crossing situations. He added that the railroad is not adhering to the rules established to prevent the prolonged right-of-way blockage.

Mr. Horiuchi strongly urged the Council to participate in the planning process relative to the \$150,000 grant for grade separation at Bond and Grant Line.

In response to **Mayor Pro Tem Soares'** question regarding the projected siding project completion date, **Mr. Horiuchi** explained that originally, the environmental mitigation was anticipated by the end of February and grading for the project was scheduled for the first of April. Because of the garter snake issue, that schedule has been pushed forward a month. Project completion is anticipated in October. He explained that extending the siding will accomplish a running train meet. This means that one train can be completely accommodated on one set of tracks while the other passes.

Public Comment was taken at this time.

The following persons addressed the issue: **Frank Weinstein, Scott Lorigan, Ross Gardner, Jennifer Robinson, Jeannine Hobkirk, David Gordon, Sarah Johnson, Frank Maita, Michael Monasky (letter filed), Dan Davis, Sandi Russell, Keith Harbeck, Jackie McAuley, and Tom (last name not audible).**

Many expressed concern and frustration regarding what was characterized as a long-standing and hazardous situation. Suggestions were proffered to effect immediate and long-term solutions. The Council was encouraged to work with the railroad to initiate a solution. The solutions offered were: pouring raised concrete medians to prevent motorists from passing barriers, shortening the trains, installing the horn warning system, temporary concrete barriers, double gate installation, litigation, limit the growth east of the tracks, and monitoring the train passage.

Elizabeth Enger, engineer for the Union Pacific Railroad stated that if the problem is addressed as a public safety concern, the number of fatalities would be reduced. She stated that increasing the length of the siding would expedite the movement of trains through the area when passing another train is necessary.

Joe Debbs, an employee of Union Pacific Railroad and member of the United Transportation Union, related that employees also suffer when a fatality occurs. He stated that he has been trained by the Nation Transportation Safety Board to investigate railroad collisions and is also a certified trainer for Operation Lifesaver. Operation Lifesaver, funded by the state and federal governments, is a public outreach program to address grade crossing safety. The program has three components: education, engineering and enforcement. He offered to provide local training so that others in the community can become Operation Lifesaver presenters to schools, merchants and organizations. He expressed his hope that the problem could be resolved amicably.

Mayor Cooper, in response to comments made by **Jackie McAuley**, echoed concerns of the impact to public safety if fire, medical and law enforcement vehicles are unable to traverse the crossing to provide emergency services to East Elk Grove.

California Highway Patrol **Lts. Chuck Chellew** confirmed that it is Department policy that if a train is found to be blocking an intersection in excess of ten minutes, officers are instructed to obtain the name of the engineer or conductor and refer the issue to the Sacramento District Attorney's Office for a misdemeanor complaint.

CHP Lt. Eric Knudsen reported that it is common to come across malfunctioning guardrails. He stated that certain sections of the PUC regulations allow law enforcement to take action during threats to public safety. He noted that through the railroad communications system, it is possible to let the engineers know that safety vehicles are working in or near the right-of-way.

Mayor Cooper asked City Attorney Manzanetti to address the City's options.

Mr. Manzanetti confirmed that actions taken to regulate crossings must conform with State and Federal law. The exceptions to the ten-minute rule are reasonable. It is possible for the City to regulate blockage of the crossing if it determines that a different time is appropriate based on local circumstances. This is a negotiable issue with the railroad. The City Council can also direct the District Attorney or any other prosecuting attorney, to prosecute violations. The City Council can enact ordinances to provide for public safety and impose fines for violations of health and safety ordinances, one of which can be relative to the blockage of intersections, as long as it is consistent with State law.

Mr. Manzanetti stated that it is a threat to the life of a frustrated motorist who feels compelled to cross the protective barriers because the train has violated the ten-minute rule. Regarding revocation of the easement by the railroad, Mr. Manzanetti stated that there are effective means in the law to counter that threat. He stated that the City Attorney, if directed, will study alternate actions that the Council can take unilaterally and also in conjunction with the railroad that are permissible under General Order 135.

Council Member Briggs supported negotiation with the railroad to effect a solution and suggested employing the services of a transportation consultant. He asked if the railroad would work with the City to work out a long-term solution. Regarding a short-term solution, he felt that getting the train off the track is the desired goal. He asked if it is not a general practice of the railroad to regularly maintain their facilities. He felt that regular maintenance to assure the proper function of the protective guardrails is a reasonable request. He stressed the urgency of expedient responses by emergency vehicles to situations across the tracks.

Council Member Soares asked that the City monitor the progress of the siding project. He stressed that as a community, it is important to use resources to educate students on the dangers of unlawfully crossing the tracks and that law enforcement authorities be directed to cite violators. He asked that the Old Town community work with the City to monitor the ten-minute violations. He asked that the City request the railroad to shorten trains as an alternative. He asked that the Public Works Department review the suggestion of the raised concrete median, and determine what impact there would be to public safety vehicles. He said the effect of community growth to the railroad should be studied as part of project environmental impact reports.

Council Member Leary read a statement (filed) prepared by the Fire Department citing statistics on the number of train blockages at the Elk Grove Boulevard crossing. Council Member Leary supported negotiating an agreement whereby Union Pacific would abide by the law. He noted that this is not a problem unique to Elk Grove Boulevard, but also common to the Bond Road and Elk Grove-Florin crossings. He encouraged direction to staff to go forward with negotiations with UPRR.

Council Member Scherman stated that it is apparent, without investing funds to do a study, that there is an existing problem. She stated that slowing growth is not the issue,

but rather, the amount of time that trains blocks the intersection. Council Member Scherman reiterated her concern of emergency vehicle response time.

Mayor Cooper clarified that it was not his intention to arrest engineers or impede their livelihood. He stated that the railroad employees are taking orders from their superiors. He stated that he takes the issue of public safety very seriously and agreed that it is important to work with Union Pacific to resolve the problem. He made the following motion:

Motion: Moved/Seconded, Mayor Cooper/Council Member Scherman to direct law enforcement (California Highway Patrol and Sacramento Sheriff's Office) to begin enforcement of the ten-minute rule and when the rule is violated, citations would be issued and referred to the Sacramento County District Attorney for prosecution.

Mayor Cooper further stated that this is a stopgap measure and the Council would be remiss to leave the meeting without taking action. He added that negotiations with Union Pacific should start. He stated he would like to have further discussions with the City Manager to solicit the assistance of area residents and business owners to document violations to the ten-minute rule.

Mayor Pro Tempore Soares asked if the motion should be amended to include installation of a barrier as a short-term measure to prohibit vehicles from crossing.

Mayor Cooper declined the amendment.

Mayor Cooper stated that he would like to have the California Highway Patrol, Sacramento Sheriff's Office and Community Services District Fire Department involved.

Council Member Leary asked that the motion be amended to include entering into negotiations with Union Pacific to come to agreement on the issue. Mayor Cooper agreed with the amendment.

Amended Motion: Moved/Seconded, Mayor Cooper/Council Member Scherman and unanimously carried to direct law enforcement (CHP and Sacramento Sheriff's Office) to begin enforcing the ten-minute rule and when the rule is violated, citations would be issued and referred to the Sacramento District Attorney for prosecution AND enter into negotiations with Union Pacific Railroad to come to agreement on the issue.

The Council recessed at 9:00 p.m. and reconvened the regular City Council agenda business at 9:15 p.m.

ADJOURNMENT

Note: After reconvening the meeting and after all business had been addressed on the regular City Council meeting agenda for February 7, 2001, the regular and special meetings of the City Council adjourned at 11:05 p.m.

Peggy Jackson, City Clerk
City of Elk Grove

ATTEST:

JAMES COOPER, MAYOR of the
CITY OF ELK GROVE

Communications filed by:

Michael Monasky
David Gordon
Elk Grove Community Services District