

CITY OF ELK GROVE

Incorporated July 1, 2000

**ACTION MINUTES OF THE CITY COUNCIL
Special Meeting, Wednesday, March 28, 2001
Robert L. Trigg Education Center
Board Hearing Room**

CALL TO ORDER/ROLL CALL

The Special City Council meeting of March 28, 2001 was heard under the Public Hearing section of the Regular City Council meeting of March 28, 2001, with Mayor Cooper and all Council Members in attendance. The Special meeting was called to order at 7:03 p.m.

Special City Council Meeting

Agenda Item 6.1 -- *Purchase and Sale Agreement and Joint Escrow Instructions for the Purchase of Real Property Located at 8400 Laguna Palms Way, Elk Grove, California 95758, and Ratification of Previous Council and Staff Actions with Regard to the Acquisition and Financing of the Property*

City Attorney Tony Manzanetti presented the staff report. He explained recent concern has surfaced questioning whether the Public Hearing held on December 6, 2000, relative to the purchase of property at 8400 Laguna Palms Way was properly noticed and whether the public was afforded the opportunities for input in compliance with the Brown Act. Mr. Manzanetti offered that a review of the records and actions taken, the City Council has complied with the letter and spirit of the Brown Act.

Mr. Manzanetti explained that the Brown Act allows real estate negotiations to occur in closed session. When negotiations are concluded, the Brown Act requires the Council to report the action in open session. Mr. Manzanetti confirmed that these actions were taken as required.

The City Attorney noted that although he is confident that proper notification and public opportunity for input occurred, accusations have been made that the Brown Act has been violated, and the City is now holding this Special Meeting to offer a remedy allowed by the Brown Act.

Mayor Cooper opened the public comment opportunity.

John Kershaw noted he was asked to verify comments made at the August 30, 2000 City Council meeting. He recalled that there were concerns and questions voiced by members of the community about the lack of public involvement relative to the site location of the proposed City Hall. Mr. Kershaw recalled comments by Council

Member Leary and Mayor Cooper regarding the responsibility of elected officials' for making decisions in the best interest of Elk Grove.

Mr. Kershaw expressed concern that all of his comments were not reflected in the minutes of the August 30, 2000 meeting.

Mayor Cooper responded that the minutes reflect a summary of the actions that occurred at the meeting.

Peggy Jackson, City Clerk, confirmed that the action minutes reflect the legislative actions of the legislative body and that the tapes of the minutes are recycled for reuse. The names of persons who spoke on issues is recorded with a brief summary of their comments, but a verbatim of speakers' comments are not included.

Tom Russell read a statement prepared by Sandi Russell into the record. Ms. Russell's statement expressed concern about the manner in which the proposed City Hall was acquired without the input by the community. She questioned the fund source for the purchase, furnishing, and tenant improvements for the building.

Sarah Johnson commented that she felt attempts made by the public to inquire about the City Hall purchase were responded to negatively, leaving a poor perception. She felt there was the expectation that the community would have an opportunity for dialogue in the purchase. Ms. Johnson stated that the Planning Commission sets an example and gives a clear signal that the public has been heard and their comments are factored into the final decisions. She stated that there is clearly a difference how each of the two bodies makes the public feel.

Ms. Johnson said that if there was a mistake made in the purchase of City Hall, it would be appropriate for the Council to acknowledge and correct the situation and move ahead.

Merwin Rose stated that on March 14 under "Public Comments Not on the Agenda", he questioned why the purchase of City Hall was not on the open agenda. Mr. Rose noted that the March 14 minutes indicated that after returning from Closed Session at which time the City Hall purchase was discussed, the meeting was adjourned. He noted that the minutes noted that the meeting was reconvened, but that he stayed waiting for the return of the Council and the meeting was never reconvened and the public was not told what happened at the closed meeting. He noted that the agenda does not state "open agenda" after the closed session as other agendas do in the County.

Mr. Rose noted that in the minutes of August 30, Mayor Cooper explained the negotiation process as "The public will be apprised of the process when appropriate". Mr. Rose stated that this does not comply with the definition of the Brown Act. On October 25, the Council was briefed on the district-owned property on the northwest corner of Bond and Waterman Roads. He noted that the public was not made aware

of the outcome. Mr. Rose commented that his efforts for incorporation was not to allow control by five individuals, but rather for all of the citizens of Elk Grove.

Joey Tomko expressed his opinion that the citizens have not had adequate input on the purchase of City Hall. He stated that this issue should be placed on a future properly noticed agenda. He stated that the Council should apologize to the community for violating the Brown Act and trying to cover it up.

Norm DeYoung questioned why, if there were no violations of the Brown Act, there is a procession of speakers stating that "something is wrong". He questioned whether noticing items more thoroughly might achieve a better result. Mr. DeYoung commented on the Council's denial of funds for the incorporation of Rancho Cordova. He requested the Council be more open with the community.

Michael Monasky stated his concern about the lateness of the special meeting notice and indicated that the name of the seller was incorrectly represented. He questioned the cost of the property. He noted that this is a defect that should be cured, including that the meeting should be re-noticed.

Carl Amundson spoke on the real property purchase and stated that the community would like to be involved. He stated that there were seven previous meetings wherein the Brown Act was not followed. He criticized the recycling of meeting tapes. Mr. Amundson stated that the Council should apologize to the community.

Danetta Garcia, representing the League of Women Voters for Sacramento County, expressed concern about the real property acquisition and notification. She said the Council was being faulted not for making a mistake but for trying to hide the mistake. Ms. Garcia read a section from the Brown Act to substantiate her observation. Ms. Garcia purported, on behalf of the League of California Women, that the public comment opportunity did not take place relative to the closed session consideration of the property acquisition, and made specific reference to the December 6 agenda. Ms. Garcia requested the Council place the matter on an agenda and open the issue to public comment.

Sharon Lynes asked that the citizens not be closed out of this process. She stated the Community was not asked for ideas on where the City Hall should be located. Ms. Lynes questioned when the notice for the special meeting was posted. Ms. Lynes stated that City Hall should be located on the east side of Highway 99 near the original part of Elk Grove, not in Laguna. She stated that she was appalled that the tapes were reused and not saved for posterity. Ms. Lynes stated that the citizens have been left out of the process and felt unrepresented on the issue. She stated that the process should be stopped and reinitiated.

There were no other requests to speak on the matter.

Mayor Cooper closed the public comment opportunity.

City Manager Jinkens provided a history on efforts to secure accommodations at which city employees and service providers could conduct business and initiate “one-stop shopping” for the community. Mr. Jinkens noted that staff was tasked to find alternatives, including the lease or purchase of property. He noted that had the City leased property, tax dollars would have been lost. In purchasing the property, an asset is gained. Mr. Jinkens noted that newspaper articles had been written regarding the proposed and ultimate purchase of the City Hall property, and that the information was well disseminated, including through the City Council agendas.

Mr. Manzanetti added that the purchase and sale agreement and joint escrow instructions have been available to the public since December 6. Mr. Manzanetti recommended approval of the agenda item.

Council Member Leary clarified his statement referred to earlier by Mr. Kershaw and Mr. Tomko. Mr. Leary stated that the action taken by the Council to meet in closed session relative to the acquisition of real property was consistent with the practice of the Community Services District on which he served as a member for 10 years.

Council Member Scherman clarified that contrary to Mr. Tomko’s assertion, when the issue of surplus property was discussed before the Council, she was not present. When she returned two weeks later, Mr. Tomko repeated his inquiry regarding the property, at which time Ms. Scherman answered that the Regional Sanitation Board had not released the property for consideration by other jurisdictions as surplus. Ms. Scherman expressed regret that the tapes had been recycled. She recalled that after several of the meetings, when returning from closed session, only the media was present. After each closed session, Ms. Scherman reported the Council returned to publicly announce the action taken, or “no action” taken. She recommended reviewing the manner in which closed sessions are agendaized to provide clarity.

Reviewing the statements made by the public, **Mayor Pro Tempore Soares** observed that the public should be included more, the agenda language more precise, and the closed session process improved. He received the comments as constructive criticism.

Council Member Briggs shared in the Council’s apologies regarding the public’s perception of actions. Citing the lack of staff, everyone is doing the best possible. He recognized that everyone is working toward the same goal and that it is important that the comments made at the meeting are recognized and improvements are made. Mr. Briggs apologized for the recycling of the meeting tapes. He recalled that at closed sessions at which he was present, the Council returned and reconvened the public session for announcements and adjournment.

Mayor Cooper expressed that the public comment opportunity should be reviewed for improvement. He also recalled that after each closed session, the meeting was

reconvened and a report of action or inaction was made. Mayor Cooper also noted that in most cities tapes are recycled, as is the practice in the Sheriff's Office.

The City Clerk responded that the magnetic tapes are not a permanent media and that if a policy is instituted to retain the tapes for any other purpose other than for the preparation of minutes, it would be necessary to retain the tapes for the minimum period of two years pursuant to Government Code Section 34090.

Mayor Cooper stated that comments referred to by citizens earlier in the meeting were taken out of context. He explained that one of the reasons for holding negotiations in closed session is to prevent anyone from capitalizing on the purchase of property. Mayor Cooper said that the Council was acting to get the best deal possible for the City of Elk Grove.

City Attorney Manzanetti offered a comment that he hoped that it was not the perception of the public that he attempted to proceed in a manner that excluded public participation. He apologized to anyone that might feel that was the case. He noted that only one member, Merwin Rose, approached him about the manner in which the issue was presented. He stated that the issue for consideration tonight is not as easy as removing it from the agenda and bringing it back to a later date. That would be very costly to the taxpayers. He reiterated his recommendation to the Council on approval of the documents.

Council Member Leary addressed a comment by Sarah Johnson regarding her feeling uncomfortable. Mr. Leary stated that he wanted to be sure that this does not occur and that staff should be aware to issues and concerns of the public. He wanted to make sure that any request made by the public to the staff should be followed through on.

City Manager David Jinkens noted that he takes the comments made by the public seriously. He stated that to the degree that anyone feels that he was responsible, steps will be taken that citizens are welcome in their city government. Mr. Jinkens reiterated that the business decision to purchase public property to achieve equity was to the benefit of the community.

Motion: Moved by Council Member Scherman to accept the recommendation of staff:

to approve the Purchase and Sale Agreement and Joint Escrow Instructions for the purchase of the real property located at 8400 Laguna Palms Way, Elk Grove CA 95758, presently owned by Jackson Properties, AKA JPI XXXVII, L.P., a California Limited Partnership, and ratify all previous Council actions with regard to the acquisition and financing of the property,

seconded by Council Member Leary. The motion carried by a 5-0 vote.

ADJOURNMENT

With no other city business to conduct at the Special City Council meeting, the special meeting was adjourned and the regular City Council meeting agenda resumed at 8:03 p.m.

PEGGY JACKSON, CITY CLERK
CITY OF ELK GROVE

ATTEST:

JAMES A. COOPER, MAYOR of the
CITY OF ELK GROVE