

**MINUTES OF THE CITY COUNCIL
REGULAR MEETING
Wednesday, September 9, 2009**

CALL TO ORDER/ROLL CALL

Mayor Hume called the regular City Council meeting of September 9, 2009 to order at 6:04 p.m.

Present: Mayor Hume, Vice Mayor Scherman, Council Members Cooper and Detrick

Absent: Council Member Davis (arrived at 7:34 p.m.)

Vice Mayor Scherman led the Pledge of Allegiance.

Mayor Hume asked that a moment of silence be observed.

APPROVAL OF AGENDA

Motion: M/S Scherman/Cooper to approve the agenda as presented. The motion passed by the following vote: Ayes: 4; Noes: 0; Absent: 1 (Davis)

CLOSED SESSION

None.

PRESENTATIONS/ANNOUNCEMENTS

- 4.1 Mayor Hume presented a Certificate of Recognition to Mike Zehnder in honor of his retirement (*former Cosumnes Community Services District Fire Department Battalion Chief*).
- 4.2 Council Member Cooper presented a proclamation to Dallas Love, Regent of the Sacramento Chapter of the Daughters of the American Revolution, proclaiming September 17 – 23, 2009 as Constitution Week in the City of Elk Grove.

PUBLIC COMMENT

Elizabeth Pinkerton congratulated the City on its ninth anniversary of incorporation. Ms. Pinkerton noted that she has been serving as the “unofficial” receptionist at City Council meetings since July 2000, selling “History Happened Here” books, the proceeds of which go toward Elk Grove Community Foundation scholarships. She announced that *Spotlight Elk Grove* will be held on September 10, which is also a scholarship fundraiser.

Lynn Wheat thanked those who participated in the September 8 Sphere of Influence (SOI) Summit. She expressed concern about the Bell South and Vintara Park Projects in the SOI. Ms. Wheat felt there were too many inconsistencies in the General Plan and Environmental Impact Report, which would negatively affect the quality of life for citizens and the environment for generations to come. She believed that, because the City so rapidly sprawled in its growth, the following land use policies were forgotten or overlooked:

- Land use policies 32 and 52 – Calls for the protection of open space lands that provide for agricultural use, habitat for native species, their maintenance, and to provide for the rural character of Elk Grove;
- Land use policy 19 – Incompatible open land uses should be buffered from one another by methods that retain community character and do not consume large land areas or create pedestrian barriers;
- Land use policy 20 – Neighborhood identity should be maintained in existing and developing areas; and
- Land use policy 30 – Parking areas shall be designed to minimize land consumption.

CONSENT CALENDAR ITEMS

In reference to Item 6.1, Steve Lee questioned the reimbursement to Vice Mayor Scherman of \$818 in travel expenses and \$41 each month for a courier service to deliver the agenda/packet binder to her home. He suggested that everyone be more frugal, particularly in these difficult economic times.

Vice Mayor Scherman stated that itemized receipts are available to substantiate the travel reimbursement.

Motion: M/S Detrick/Cooper to approve the Consent Calendar as presented. The motion passed by the following vote: Ayes: 4; Noes: 0; Absent: 1 (Davis)

Agenda Item No. 6.1: Approved Automatic Clearing House Nos. 555 through 579 dated August 1, 2009 through August 31, 2009, General Warrant Nos. 47810 through 48594, and Electronic Fund Transfer Nos. 2010014 through 2010025

Agenda Item No. 6.2: Approved City Council Meeting Minutes as presented of: a) July 22, 2009 Regular Meeting, b) August 26, 2009 Special Meeting, c) August 26, 2009 Regular Meeting, and d) August 31, 2009 Special Meeting

Agenda Item No. 6.3: Received report on City Manager approved purchases and contracts authorized by Elk Grove Municipal Code Chapter 3.42 Contracts and Purchasing, filed through September 2, 2009

Agenda Item No. 6.4: Received report on Requests for Proposals, Qualifications, and Bids

Agenda Item No. 6.5: Ordinance No. 18-2009 adopted levying and apportioning the special tax in territory annexed to Community Facilities District No. 2006-1 (Maintenance Services) Annexation No. 13 (**Second Reading**)

Agenda Item No. 6.6: Ordinance No. 19-2009 adopted amending Elk Grove Municipal Code Section 16.96.080 to authorize equivalent exemptions to the Measure A mitigation fee as outlined in the agreement on protocols previously adopted by Sacramento County Transportation Authority and the City of Elk Grove (**Second Reading**)

Agenda Item No. 6.7: Resolution No. 2009-180 adopted authorizing destruction of certain records retained by the Finance Department

Agenda Item No. 6.8: Resolution No. 2009-181 adopted creating one Finance Analyst position in the Development Services Department, reclassifying one Management Analyst position in the Police Department to a Finance Analyst position, and amending the Fiscal Year 2009-10 Annual Budget

Agenda Item No. 6.9: Resolution No. 2009-182 adopted authorizing the Mayor to execute a letter agreement with Axios Homes, Inc. regarding park obligations for Laguna Ridge Village 1A in The Grove Subdivision (Riverview II)

PUBLIC HEARINGS

Agenda Item No. 7.1: A public hearing (*continued from August 26, 2009*) to consider an appeal of the Planning Commission's decision on June 4, 2009 to deny the Conditional Use Permit and Design Review for the New Parish Catholic Church Project (EG-07-100) located at 8800 Bradshaw Road (EG-09-028; APN: 121-0220-008)

RECOMMENDATION

Staff recommends that the City Council affirm the decision of the Planning Commission denying the New Parish Catholic Church project.

Alternatives to the staff recommendation include the following actions by the Council:

1. Reverse or modify the decision of the Planning Commission and approve the project; or
2. Continue the New Parish Catholic Church project and/or direct the applicant to make changes as necessary.

With the aid of an overhead presentation (filed), Sarah Kirchgessner, Project Planner, reported that the project consists of a Conditional Use Permit and Design Review to construct and operate a 960 seat Catholic Parish Church and school in the rural residential area of Elk Grove. The proposed church would be constructed in three phases. It includes a 16,000 square foot multi-purpose room, K-8 school, a rectory building, and 356 parking spaces. The project site is zoned AR-5 and is located on the west side of Bradshaw Road, approximately 200 yards north of Sheldon Road on the eastern portion of the city. The project site is bordered by Bradshaw Road to the east and rural residential uses to the north, south, and west.

The project was presented to the Planning Commission on December 6, 2007 and continued to February 7, 2008 at which time staff recommended denial based on land use incompatibility and inconsistency with the General Plan. At the applicant's request, the Planning Commission voted to continue the project to a date uncertain to allow for environmental review. At its June 4, 2009 public hearing, the Planning Commission voted unanimously to deny the project and on June 12, 2009 the applicant filed an appeal.

Ms. Kirchgessner stated that the project is inconsistent with the goals and policies of the General Plan including the vision statement, land use policy 18, and guiding goal 5. The project is located in the rural Sheldon area, which is characterized by large lots greater than two acres in size where agriculture activities and animal raising are common uses. There is limited infrastructure, mature trees, and roads that tend to be narrow and less improved than other urbanized areas in the city. Ms. Kirchgessner noted that, protecting the rural area was the main issue focused upon during the development of the General Plan, which was adopted in 2003. The vision was to develop most areas within the city with urban uses, while preserving a defined area that would remain rural in nature and retain the rural character that once typified the community. The Sheldon area is recognized as a unique area with a rural lifestyle. General Plan guiding goal 5 and land use policy 18 provide for the preservation of the existing rural character in perpetuity and states that the land uses in the Sheldon area shall be consistent with the community's rural character. Ms. Kirchgessner maintained that the magnitude, scope, and intensity of the proposed project is inconsistent with the rural policies of the General Plan. She reported that, if approved, the project would bring vehicles, noise, and people

associated with the school and church to the rural area that would not otherwise be present. Ms. Kirchgessner stated that the project is also not compatible with surrounding land uses. Parcels on all sides are designated as rural residential in the General Plan. Parcels to the north have livestock raising on the site. The proposed project also includes a design review for the overall site master plan and for the phase one 600 seat church. The phase two and three buildings would require subsequent design review entitlements. Ms. Kirchgessner stated that the project is consistent with the design guidelines and development standards; however, design review is contingent upon the approval of the conditional use permit.

Ms. Kirchgessner reported that the City conducted a community meeting on April 27, 2009 and the majority of the attendees expressed concern with the scope of the project and felt that it was not consistent with the rural atmosphere. She explained that no environmental review action would be necessary if the City Council upholds the denial of the project. She noted that an initial study and mitigated negative declaration was prepared for the project, which was circulated for public review on April 10, 2009.

Jonathan Hobbs, attorney for the City, reported that the issue of a gas pipeline was raised during the public comment period and review on the mitigated negative declaration; it was not identified during initial review. The California Environmental Quality Act addresses how to deal with fuel pipelines for siting public schools when the pipeline is going to be on the site itself. Mr. Hobbs stated that the guidelines and statutes do not apply in this situation because the proposed school is a private school and the pipeline is not on the school site. Staff consulted with the Cosumnes Community Services District Fire Department to determine whether or not the existence of a fuel gas line posed a safety risk or an environmental impact, following which staff and the Fire Department concluded that it did not. Mr. Hobbs reported that the pipeline is buried eight feet deep, which poses a negligible, if not non-existent safety hazard.

Ms. Kirchgessner reported that, during the June 4 Planning Commission public hearing, the pastor of the church submitted a petition containing approximately 3,000 signatures of members that were supportive of the proposed project. The majority of speakers in favor of the project felt that the church and school uses fit into the rural area and were appropriate for the site. The majority of the speakers opposed to the project cited rural policies of the General Plan and the potential impacts to the rural character of the neighborhood. Consensus of the Planning Commission was that, while the proposed location may be appropriate for a church and school, it is not appropriate for a church and school of this magnitude. The Planning Commission voted unanimously to deny the conditional use permit and design review. Staff recommends that Council affirm the Planning Commission's decision to deny the church project.

The following "green sheet" documents were submitted related to Item 7.1 (all filed):

- Email received on June 3 and submitted by the Planning Department on September 9 from Barbara Lemar (2 pages);
- Letter dated September 5 from Leo Fassler (2 pages);
- Email dated September 6 from Sharon Lynes (1 page);
- Letter dated September 6 from Joan and Raymond Reid (1 page);
- Email dated September 7 from Shirley Peters (3 pages);
- Email dated September 7 from Elizabeth Moseby (7 pages);
- Letter dated September 7 from Ray Patron (2 pages);
- Letter dated September 9 from Bishop of Sacramento Jaime Soto (2 pages);
- Email dated September 9 from Madelyn Clifton (1 page);
- Email dated September 9 from Dan and Renae Best (4 pages);
- Email dated September 9 from Edward Gillum and Fire Chief Steven Foster (1 page);
- Interoffice Memorandum dated September 9 from Project Planner Sarah Kirchgessner (1 page);
- Interoffice memorandum dated September 9 from Project Planner Sarah Kirchgessner (7 pages);
- Letter received on September 9 from Dan and Renae Best (1 page);
- Letter received on September 9 from Ginger Voss (1 page);
- 24 letters received on September 9 (24 pages).

Mayor Hume declared the public hearing open.

Applicant Presentation:

James Sweeney, attorney representing the appellant, noted Council Member Davis' absence and stated that he would prefer to present the matter to the full Council.

In reply to Council inquiries, City Attorney Cochran explained that, due process requires decision makers to hear all the evidence. Because Council Member Davis is not present and will not have the benefit of hearing all the evidence, he will be unable to vote on this matter because the conditional use permit is a quasi-judicial determination. She noted that when he arrives, Council Member Davis could participate in the discussion.

Mayor Hume suggested that Council hear the applicant's presentation and public testimony, close the hearing, and continue the matter to a date certain, which will give Council Member Davis an opportunity to review the audio/video portion of the meeting he missed.

Mr. Sweeney agreed with Mayor Hume's suggestion. He introduced himself as the general counsel to the Roman Catholic Bishop of Sacramento (the applicant). Mr. Sweeney asserted that it is not appropriate or accurate to suggest that a church is inconsistent with the rural character of the area. He maintained that the project application does not run afoul of the General Plan and is not inconsistent with the

zoning. Mr. Sweeney explained that, in accordance with the First Amendment to the U.S. Constitution, the Bishop created a new parish (*St. Maria Goretti Parish*), i.e. a geographic territory in Elk Grove and a small portion of south Sacramento to establish a new church. Currently, 300 members attend mass at a cafeteria at Sheldon High School. A centrally located parcel was identified for the proposed church. Phase one of the project includes the construction of a 600 seat multi-use building that would serve as the initial church, parish offices, classrooms, and other activities. If the parish grows, future plans are to construct a K-8 grade parochial school for 280 students, the multi-purpose facility would be converted into a gymnasium, and a 960 seat permanent church would be built.

Mr. Sweeney reported that five meetings were held with residents of the area. Current plans incorporated many of the concerns and issues raised by attendees of the meetings. Changes included a greenbelt area, a wall to retard sound and light, stormwater drainage area, relocation of the church closer to the road, the traffic pattern was altered, and the school was moved to an area farther away from homes. He stated that the main concern of the Planning Commission was the size of the potential future church. Originally plans were for a 1,200 seat church, though it has now been reduced to 960 seats. Mr. Sweeney noted that churches have protection under federal law and the Religious Land Use and Institutionalized Persons Act, which was enacted by Congress in the 1990s in response to zoning laws, and city plans and regulations being used to block faith groups from adding churches in communities. Mr. Sweeney addressed the following issues that opponents had raised:

1. *The real intent is to build a Catholic high school on the site* – Mr. Sweeney asserted that this is a false rumor.
2. *This is the first step in developing the rural area.* – Mr. Sweeney noted that the project is for a church, not a commercial venture.
3. *The Diocese of Sacramento has property in the Vineyard development.* – Mr. Sweeney noted that it is not centrally located in the area of the parish and he confirmed that there is no intention to ever build a church on the Vineyard property.
4. *Unwilling to compromise.* – Mr. Sweeney countered that numerous changes were made in response to concerns raised by residents of the area; however, he stated that the residents are unwilling to negotiate.
5. *There is a gas pipeline on the property.* – Mr. Sweeney submitted an aerial photo showing where the pipeline runs along Bradshaw Road (filed) and referenced the email from Fire Chief Foster (see above “green sheet”), which indicates it is not an issue of concern.

In closing, Mr. Sweeney maintained that the permit was denied based solely on a political argument. He asserted that there is no regulation that directly prohibits the construction of the church at the proposed location and it defies federal law. He asked Council to reverse the decision of Planning Commission and grant the appeal.

PUBLIC COMMENT:

Note: Council Member Davis arrived at 7:34 p.m.

The following individuals spoke in support of the New Parish Catholic Church project:

Carmine Forcina	Ann Hanna	Frances Kang
Nymia Amey	Susan Madden	Eric Anderson
Gloria Wong	Ernest Martinez	Beverly Templeton
Bill Klaproth	Kenneth Johnson	LaRee Bermudez
Raquel Klaproth	Patty Haggard	Raymond Andres
Tim Murphy	Norma Mifsud	Jack Williams
Johnie Lauther	Paul Lindsay	Mark Jansson
Caz Sliwa	Rosalina Contreras	Fernando Gutierrez
Nanette Patron	Louie Contreras	David Gau
Ray Patron	Dan Holmes	Terry Gau
Annette Sliwa	Catherine Megill	Kay Albiani
Matt Sliwa	Marie Martinez	Ken Holder
Lorraine Orlando	Stephen Ruch	Steven Spadaro
Janie Gessner	Elizabeth Moseby	Thomas McNamara
Margaret Rieschick	Kimberly Coraza	Erwin Jordan
Evelyn Lewis	Dan Brennan	Kevin Menager
Anthony Moseby	Mike Himmelmann	Tom Waltman
Jonathan Canuela	Hubert Lechner	Ken Louderback
Elisa Canuela	Gerardo Calvillo	Gill Albiani
Nettie Broussard	Bonita Malone	Rev. Ray Hess
Joel Hanna	Patty Suter	Don Gordon

The following individuals voiced opposition to the New Parish Catholic Church project expressing concerns including the size and location of the project, inconsistency with the rural environment, and negative impacts on residents:

Gerald Moore	Esther York	Joan Reid
Tom Shine	Jim Burich	Barbara Lemar
Nikki Carpenter	David Dial	Connie Conley
Lynn Wheat	Dan Best	Mike Thompson
June Coats	Leo Fassler	
Shirley Peters	Kathy Lee	

Applicant Rebuttal:

In answer to Council Member Davis, Mr. Sweeney explained that the site was chosen because it was centrally located in the parish. It was a pastoral decision

made by the church for a variety of factors including a long term vision for growth and pastoral outreach. Mr. Sweeney pointed out that there is no requirement to investigate alternate sites and none have, or are planned, to be made.

Mayor Hume asked whether a smaller scaled project could be proposed and then if the parish grew, the conditional use permit could be modified at a later date, to which Mr. Sweeney expressed a willingness to make compromises in order to get the project approved.

Motion: ***M/S Scherman/Cooper*** to waive rule of procedure not to consider new business after 10:00 p.m. and to proceed with the remainder of the agenda. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

NOTE: Council recessed at 9:59 p.m. and reconvened at 10:14 p.m. with all members present.

Mr. Sweeney stated that, if the plan was approved this evening, a future church with a capacity of 600 could be agreed to.

Duane Johnson of Comstock Johnson Architects, Inc. explained that the wall was placed on the south side of the project along the length of the parking lot to prevent vehicle headlights from shining beyond it.

Mayor Hume asked whether it would be possible to build a berm in the 60 foot landscape easement in lieu of the wall, to which Mr. Johnson replied in the affirmative.

In reply to Council inquiries, Mr. Johnson confirmed that the lighting currently proposed are down lights with timers. Security lighting is around the buildings with minor lighting in the parking lot.

Council Member Cooper noted that Elk Grove's population has grown and the project fills a need in the community. He believed that a compromise to a 600 seat church was favorable and he expressed support for the project.

Council Member Davis agreed that more churches were needed in Elk Grove. He emphasized, however, that preservation of the rural area is vitally important to community.

Council Member Detrick believed there were more appropriate locations to site the church project, rather than in a rural area.

Vice Mayor Scherman acknowledged the need in the community for the church and voiced support for the compromise of a 600 seat church.