
**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
APRIL 26, 2006**

CALL TO ORDER

The Regular Meeting of the City Council of the City of Dana Point, California, was called to order by Mayor Anderson at 5:02 p.m. in the Dana Point City Council Chamber, 33282 Golden Lantern, Suite 210, Dana Point.

ROLL CALL

PRESENT: Lara Anderson, Mayor
Russell Chilton, Mayor Pro Tem (*arrived 5:15 p.m.*)
Diane L. Harkey, Council Member
James V. Lacy, Council Member (*arrived 5:10 p.m.*)
Wayne Rayfield, Council Member

STAFF PRESENT: Douglas Chotkevys, City Manager; Patrick Muñoz, City Attorney; Sharie Apodaca, Director of Administrative Services; Elizabeth Ehring, City Clerk; Cathy Catlett, Assistant City Clerk; Kyle Butterwick, Director of Community Development; Matt Sinacori, City Engineer; Mark Billings, Chief of Police; Jennifer Anderson, Management Analyst; Kathy Ward, Executive Secretary.

CLOSED SESSION

City Attorney Muñoz indicated there was a need for a Closed Session as follows:

- A. Items Not Heard
- B. Items Not Heard
- C. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION, Government Code § 54956.9 (a), (1 case)

Name of Case: City of Dana Point v. Debbie Block; RW Selby & Co., Inc.; Nieves Landscape, Inc. et al.; Orange County Superior Court Case No. 06CC02906

Mayor Anderson recessed the meeting into a Closed Session at 5:03 p.m. pursuant to Government Code Section 54956 *et. seq.*

RECONVENE CITY COUNCIL MEETING

Mayor Anderson reconvened the meeting at 6:03 p.m. All Council Members were present.

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PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Pro Tem Chilton.

INVOCATION

The Invocation was led by Pastors Ty Guy and Kris DiLeo of South Shores Church. Pastor DiLeo invited everyone to attend the National Day of Prayer at City Hall from 12:00 noon to 12:45 p.m. on May 4, 2006.

PRESENTATIONS AND PROCLAMATIONS

Presentation to Festival of Whales Parade Winners

Mayor Anderson presented a Certificate of Recognition to Diane Wenzel, Director of Westwind Sailing, as the winner of the Commercial Award for the Best Commercial Group at this year's parade.

Mayor Anderson presented a Certificate of Recognition to April Overlie, Education Director, The Boys and Girls Club of Capistrano Valley, as the winner of the Mayor's Award for the Best Display of Parade Theme at this year's parade.

Business of the Month

Management Analyst Anderson gave a PowerPoint presentation of Cannons Seafood Grill. Mayor Anderson introduced Greg Mortimer, Operating Partner, and presented him with a Certificate of Recognition.

CONSENT CALENDAR

Council Member Lacy removed Item No. 2 from the Consent Calendar.

IT WAS MOVED BY COUNCIL MEMBER RAYFIELD, SECONDED BY MAYOR PRO TEM CHILTON, THAT THE RECOMMENDATIONS BE ACCEPTED FOR ALL ITEMS LISTED ON THE CONSENT CALENDAR WITH THE EXCEPTION OF ITEM NO 2.

The motion carried by the following vote:

AYES: Council Members Harkey, Lacy, Rayfield,
Mayor Pro Tem Chilton and Mayor Anderson
NOES: None
ABSENT: None

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1. WAIVE THE READING OF ORDINANCES AND APPROVE READING BY TITLE ONLY

APPROVED THE READING BY TITLE ONLY OF ALL ORDINANCES ON THE CONSENT CALENDAR AND THAT FURTHER READING OF SUCH ORDINANCES BE WAIVED.

2. REGULAR MEETING MINUTES, APRIL 12, 2006

Council Member Lacy removed this item from the Consent Calendar to express concern regarding Closed Session items listed on the agenda which are not intended to be discussed.

Mayor Anderson responded that the City Council Policy Committee will revisit the process for the placement of Closed Session items on the agenda.

IT WAS MOVED BY COUNCIL MEMBER HARKEY, SECONDED BY COUNCIL MEMBER LACY, TO APPROVE THE MINUTES.

The motion carried by the following vote:

AYES: Council Members Harkey, Lacy, Rayfield,
Mayor Pro Tem Chilton and Mayor Anderson
NOES: None
ABSENT: None

3. PLANNING COMMISSION MINUTES, MEETING OF APRIL 5, 2006

RECEIVED AND FILED.

4. PLANNING COMMISSION ACTIONS, MEETING OF APRIL 19, 2006

RECEIVED AND FILED.

5. YOUTH BOARD MINUTES, MEETING OF APRIL 6, 2006

RECEIVED AND FILED.

6. MEETING CALENDAR / COMMUNITY SPECIAL EVENTS CALENDAR

RECEIVED AND FILED.

7. CLAIMS AND DEMANDS

RECEIVED AND FILED.

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PUBLIC COMMENTS

Mayor Anderson opened the meeting for public comments.

Beverly Sels, Capistrano Beach, announced the Dana Point Woman's Club Fashion Show will be held Saturday, May 6th at 11:00 a.m. at the Dana Point Yacht Club, where Mayor Anderson will be modeling fashions from Slater and Sloane of San Juan Capistrano. Additional information may be obtained on their website at www.danapointwomansclub.org or by calling (949) 363-8169.

Tina Van Divier, Dana Point, representing the Lyme Disease Association, noted that the first week in May is "Lyme Disease Awareness Week". Ms. Van Divier distributed informational pamphlets which may be obtained in the lobby at City Hall. Further information regarding the disease is available at the Association's website at www.lymedisease.org.

Dr. Jim Seitz, Dana Point, spoke regarding transparency in government, the law firm of Rutan and Tucker, the recently closed mobile home park and of affordable housing.

Donna Kalez, San Clemente, Chair of the 2006 Festival of Whales, presented a framed 2006 Festival of Whales poster to the City.

Council Member Lacy left the Council Chamber.

PUBLIC HEARINGS

There were no Public Hearings.

UNFINISHED BUSINESS

8. 2006 ABATEMENT PROGRAM, AUTHORIZATION TO ABATE WEEDS

City Manager Chotkevys introduced Director of Community Development Butterwick, who presented the staff report.

IT WAS MOVED BY COUNCIL MEMBER RAYFIELD, SECONDED BY MAYOR PRO TEM CHILTON, TO ADOPT **RESOLUTION NO. 06-04-26-01, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, HEARING NO OBJECTIONS AND PROCEEDING WITH WEED ABATEMENT**

AUTHORIZING STAFF TO ABATE WEEDS UPON PUBLIC OR PRIVATE PROPERTY AND TO REPORT BACK TO CITY COUNCIL ON JULY 12, 2006 WITH AN ITEMIZED REPORT DETAILING ABATEMENT COST.

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AYES: Council Members Harkey, Rayfield, Mayor Pro Tem Chilton
and Mayor Anderson
NOES: None
ABSENT: Council Member Lacy

9. FORMATION OF COMMUNITY FACILITIES DISTRICT - HEADLANDS RESERVE LLC

Council Member Lacy returned to the Council Chamber.

City Manager Chotkevys introduced City Attorney Muñoz, who presented the staff report. He summarized the pre-formation activities for the proposed Headlands Reserve LLC and explained the purpose of the recommended actions before the Council to initiate the proceedings.

Director of Administrative Services Apodaca briefed the City Council on the Investment Review Committee's review of the CFD process and consideration of the documents before the Council. She noted that the committee offered certain revisions to the documents which have been incorporated therein and that the committee's recommendation is to approve the actions before the Council.

Larry Rolapp of Fieldman Rolapp and Associates, the City's Financial Advisor for the proposed CFD, provided a PowerPoint presentation and responded to questions on the proposed formation of a CFD for the Headlands Reserve, LLC. The facilities and services eligible to be funded by the CFD were reviewed, as well as the special tax rate analysis prepared by Empire Economics. In response to Council Member Lacy, Mr. Rolapp stated he would clarify how the bond indebtedness would be recorded in the City's financial reports, and report back to the City Council.

Mr. Rolapp noted other CFD Finance Team members in attendance available to answer questions were Bond Counsel Stan Wolcott, Rutan and Tucker, LLP; Dr. Joseph Jancyk, Empire Economics, Capistrano Beach; and special tax consultant, MuniFinancial. Headlands Reserve, LLC representatives were also present.

Mayor Anderson declared a recess at 7:15 p.m. and reconvened the meeting at 7:24 p.m. All Council Members were present.

Dr. Jim Seitz, Dana Point, spoke regarding the Headlands and possible foreclosures.

Kevin Darnall, Del Mar, Headlands Reserve, LLC, distributed copies to Council of a document dated April 25, 2006, entitled, *CFD 2006-1 Agenda Item No. 9*.

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John Yeager, Newport Beach, legal counsel to Headlands Reserve, LLC, addressed Exhibit A of the prior PowerPoint presentation.

Councilmembers offered comments and questions that were responded to by staff and the City's CFD consultants. Councilmember Harkey specifically asked the following questions:

1. What interest rate was the staff using when they suggested a \$37MM maximum bond?
2. What is the interest rate we are using to arrive at the \$45MM?
3. What is the standard market interest rate on these types of facilities?
 - a. What would be the maximum bond under a typical market interest rate scenario and a market proven CFD assessment at less than \$15,000 per year?
4. We have statutorily **permissible** levels of capitalized interest – what is it?
5. Are we absorbing the developer's market interest rate risk?
 - a. i.e., Developer wants the bond higher than staff = higher interest rate, due to higher risk if assessment outside the norm; therefore, do investors need more capitalized interest due to potential longer absorption period?
6. Have we eliminated all of the facilities or costs that we could – i.e., if I add up the storm drains and the public streets that are clearly part of a typical A&D (financed by the builder and included in his cost of construction), I total \$5,123 MM?
7. Isn't one of the potential financial risks to the City, if the bonds default, the loss of maintenance assessment of \$2,100 per year per lot (plus a CPI accelerator)?
8. We are required to exercise good faith to implement the CFD by which the Headlands will have the money to construct the public facilities and make street, sewer and water improvements. We are also required to exercise good faith that the City is not jeopardized and/or assumes potential unknown risks. Which takes precedence?
9. If a lawsuit were to be filed by the Headlands, LLC, would a court hold the City to a potential bond obligation (in the Development Agreement) that is beyond known market parameters and for which the City did not previously know the dollar amount?
10. Don't we have future lawsuit risk from future homeowners or lot owners for having agreed to a transaction that is outside market parameters?
11. Won't these future landowners be negatively impacted by interest rates in order to satisfy potential investor interest in such an unusual structure?
12. Does the City have a legal right to amend the rate and method to reduce the amount of special tax?

Joe Janczyk, Empire Economics, the City's economic consultant, addressed the Council regarding his special tax analysis.

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Mayor Anderson declared a recess at 8:58 p.m. and reconvened the meeting at 9:12 p.m. All Council Members were present.

Upon unanimous consent of all present, none absent, Council trifurcated the three-part recommended action, lettered A through C:

IT WAS MOVED BY COUNCIL MEMBER RAYFIELD, SECONDED BY MAYOR PRO TEM CHILTON, TO: **A.** APPROVE AND ADOPT THE CITY OF DANA POINT STATEMENT OF GOALS AND POLICIES FOR THE USE OF THE MELLO-ROOS COMMUNITY FACILITIES ACT OF 1982.

The motion carried by the following vote:

AYES: Council Member Rayfield,
Mayor Pro Tem Chilton and Mayor Anderson
NOES: Harkey, Lacy
ABSENT: None

IT WAS MOVED BY COUNCIL MEMBER RAYFIELD, SECONDED BY MAYOR PRO TEM CHILTON, TO: **B.** ADOPT **RESOLUTION NO. 06-04-26-02**, A *RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, DECLARING ITS INTENTION TO ESTABLISH COMMUNITY FACILITIES DISTRICT NO. 2006-1 OF THE CITY OF DANA POINT AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES THEREIN.*

The motion carried by the following vote:

AYES: Council Member Rayfield,
Mayor Pro Tem Chilton and Mayor Anderson
NOES: Harkey, Lacy
ABSENT: None

IT WAS MOVED BY MAYOR PRO TEM CHILTON, SECONDED BY COUNCIL MEMBER RAYFIELD, TO: **C.** ADOPT **RESOLUTION NO. 06-04-26-03**, A *RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, DECLARING ITS INTENTION TO INCUR BONDED INDEBTEDNESS FOR PROPOSED COMMUNITY FACILITIES DISTRICT NO. 2006-1 OF THE CITY OF DANA POINT.*

The motion carried by the following vote:

AYES: Council Member Rayfield,
Mayor Pro Tem Chilton and Mayor Anderson
NOES: Harkey, Lacy
ABSENT: None

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NEW BUSINESS

There was no New Business.

PUBLIC COMMENTS (Continued)

There were no additional Public Comments.

STAFF REPORTS

Director of Administrative Services Apodaca stated, per Council's direction at their April 12th meeting, staff will be developing a tracking system to respond to concerns brought forward by the public during public comments. Ms. Apodaca announced that Management Analyst Anderson will be tracking these on a routine basis.

Lieutenant Billings, Chief of Police, summarized the 2005 Police Services Report noting an overall marked decrease in crime from the year 2004. Also noted were improvement in traffic and public safety due to the proactive Focused Traffic Enforcement Program and vehicle preemptive devices, and an increase in Neighborhood Watch recruitments. Lieutenant Billings commended Crime Prevention Specialist Nicole Hansen for her work on the new Business Watch Program, and noted that the Volunteers in Police Services (VIPS) contributed well over 5,000 volunteer hours in 2005.

COUNCIL REPORTS

Council Member Rayfield expressed appreciation to Lieutenant Billings for his department's service to the City and displayed a copy of the 2005 Police Services Report, which will be submitted to the City Council at a future Council meeting. City Manager Chotkevys stated copies of the report will be available upon request.

Council Member Rayfield announced the next meeting of the Town Center Subcommittee will be on April 27, 2006, at 5:00 p.m. in the Council Chambers to discuss traffic circulation, specifically one-way versus two-way traffic at Pacific Coast Highway and Del Prado.

Council Member Lacy expressed gratitude to Director of Community Development Butterwick for his assistance on the Robles Street issue.

Council Member Lacy requested the Town Center Subcommittee to initiate amenities, such as floral arrangements and flower pots, in time for the summer. Council Member Rayfield responded, as Chair of the Subcommittee, that beautification plans are already under consideration.

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Council Member Lacy announced that the City Attorney had issued a memorandum upon his request regarding the status of the zoning on Pacific Coast Highway and Del Prado. He requested if the memo was not confidential that it be released to the public, as it addresses history and law relative to planning issues. Council Member Lacy also expressed an interest in receiving a definitive analysis/statement on zoning, from either the City Attorney or an independent, third party law firm.

Mayor Anderson mentioned that Council Member Lacy will be featured in the Orange County Business Journal for his defense of the First Amendment.

Council Member Harkey spoke regarding her participation on Saturday in the Earth Ocean Day Society Clean-Up and commented on the large turnout by school children and their parents for this event to remove non-biodegradable trash.

Council Member Harkey commented on an article in the Orange County Register regarding the Dana Point/Capistrano Beach Historical Society fundraiser held at the Dolph House on April 24th.

Council Member Harkey stated that on May 20th, the Capistrano Valley Symphony will perform at Mission San Juan Capistrano. Dress is "classic-cowboy." The western-style events featured will include a concert by the Riders of the Purple Sage and a "Black Bandana Ball." For more information, contact the Symphony office at (949) 240-8584.

Council Member Chilton commended the disposal company of CR&R for its insert providing instructions on the improved Bag-to-Bag Recycling Program.

Council Member Chilton announced that Dana Hills High and Palisades Elementary Schools will hold Spring Clean-up Day on Saturday, May 13th from 7:30 a.m. to 2:30 p.m.

Council Member Chilton reminded everyone of the First Friday Art Reception sponsored by Cliff Wassmann, President of Dana Point Coastal Arts. The event is scheduled for May 5th and 6th from 6:00 to 9:00 p.m. at the Dana Arts Plaza Studios, 34118 Pacific Coast Highway. More information may be obtained from the Coastal Arts website at www.dpcoastalarts.org.

Mayor Anderson announced an eight mile walk/run for Stacy Neria and Carol Daniel, who were struck by a hit-and-run driver while jogging in Dana Point. The fundraiser will be held Sunday, April 30th at Marco Forster Middle School in San Juan Capistrano. For information, contact Dan Grassman at (949) 493-1133, extension 21707. An additional fundraiser to benefit Stacy and Carol will be a "cut-a-thon" and silent auction on Sunday, May 7th at Salon Eventides, 638 Camino De Los Mares in San Clemente.

Mayor Anderson announced that the final draft of the Measure M Renewal Plan was approved unanimously by the Orange County Board of Supervisors. Applications for appointment to an oversight committee should be submitted to the City Clerk by May 1st for a three year term commencing July 1, 2006 and ending June 30, 2009.

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Mayor Anderson stated that citizens may participate in an Orange County Transportation Authority (OCTA) community leadership program as volunteer members. Applications are available in the City Clerk's Department and must be submitted before the deadline of May 12th.

Mayor Anderson announced the Pet Project Foundation's 6th Annual Tail of Two Cities fundraiser to be held Friday, September 29th at the Ritz Carlton Hotel in Dana Point. Visit their website at www.petprojectfoundation.org for more information.

Mayor Anderson reminded everyone of the Dana Point Woman's Club Fashion Show to be held on Saturday, May 6th at 11:00 a.m. at the Dana Point Yacht Club. Additional information may be obtained by calling the Club at (949) 363-8169.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Anderson declared the meeting adjourned at 10:13 p.m. Mayor Anderson adjourned in memory of Traffic Engineer Christopher Nguyen, a City employee who passed away Sunday, April 23rd.

The next Regular Adjourned Joint Meeting of the City Council and the Planning Commission will be May 10, 2006 at 5:00 p.m. in the City Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.

The next Regular Meeting of the City Council will be May 24, 2006 at 5:00 p.m. in the City Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.

KATHY M. WARD
ACTING CITY CLERK

APPROVED AT THE MEETING OF MAY 24, 2006.