
**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
JANUARY 28, 2004**

CALL TO ORDER

The Regular Meeting of the City Council of the City of Dana Point, California, was called to order by Mayor Snyder at 5:00 p.m. in the Dana Point City Council Chamber, 33282 Golden Lantern, Suite 210, Dana Point.

ROLL CALL

PRESENT: Joe Snyder, Mayor
Russell Chilton, Council Member
William L. Ossenmacher, Council Member
Wayne Rayfield (arrived at 5:03 p.m.)

ABSENT: James Lacy, Mayor Pro Tem

STAFF PRESENT: Douglas Chotkevys, City Manager; Pat Munoz, City Attorney; Sharon Street, Director of Public Affairs/City Clerk; Cathy Catlett, Assistant City Clerk; Sheryl Lindsey, Director of Administrative Services; Kyle Butterwick, Director of Community Development; Larry Pierce, Interim Director of Public Works and Engineering Services; Matt Sinacori, Deputy City Engineer; and Mark Billings, Chief of Police Services.

CLOSED SESSION

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

A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION, SIGNIFICANT EXPOSURE TO LITIGATION, Government Code § 54956.9 (b1), (3 cases)

B. CONFERENCE WITH LEGAL COUNSEL – INITIATION OF LITIGATION, Government Code § 54956.9 (c), (2 cases)

C. CONFERENCE WITH LABOR NEGOTIATOR, Government Code § 54957.6

Agency Designated Representatives: City Manager

Unrepresented and Represented Employees: All positions in City

D. CONFERENCE WITH REAL PROPERTY NEGOTIATOR, Government Code § 54956.8

Property: 26351 and 26315 Via Canon, Dana Point, CA
City Negotiators: Douglas Chotkevys, City Manager
Patrick Munoz, City Attorney
Kyle Butterwick, Director of Community Development

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Negotiating Parties: City of Dana Point and Barratt American Inc. or other interested parties

Under Negotiation: Price and terms of agreement relating to property

**E. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION,
Government Code § 54956.9(a), (1 case)**

Name of Case: Headlands Reserve LLC and M.H. Sherman Co. v. the City of Dana Point, et al, Orange County Superior Court Case No. 798758, Court of Appeal Case No. G024366

Mayor Snyder recessed the meeting into a Closed Session at 5:04 p.m. pursuant to Government Code Section 54956 et. seq.

RECONVENE CITY COUNCIL MEETING

Mayor Snyder reconvened the meeting at 6:50 p.m. All Council Members were present with the exception of Mayor Pro Tem Lacy.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by both the Veterans of Foreign Wars, Dana Point Post No. 9934 and the American Legion Laguna Beach Post #222.

INVOCATION

The Invocation was given by Pastor Mark Wesner of South Shores Church.

CONSENT CALENDAR

Members of the public removed Items 2 and 23 from the Consent Calendar. Council Member Rayfield removed Item 21. Council Member Ossenmacher registered an Abstention on Item 20.

IT WAS MOVED BY COUNCIL MEMBER OSSENMACHER, SECONDED BY COUNCIL MEMBER RAYFIELD, THAT THE RECOMMENDATIONS BE ACCEPTED FOR ALL ITEMS LISTED ON THE CONSENT CALENDAR WITH THE EXCEPTION OF ITEMS 2, 21 AND 23, AND WITH COUNCIL MEMBER OSSENMACHER REGISTERING AN ABSTENTION ON ITEM 20.

The motion carried by the following vote:

AYES: Council Members Chilton, Ossenmacher, Rayfield, and Mayor Snyder

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NOES: None
ABSENT: Mayor Pro Tem Lacy

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, DECEMBER 10, 2003**

This item was removed from the Consent Calendar by a member of the public.

Pam Tappan, Dana Point, spoke regarding concern over a development in Capistrano Beach by Pioneer Builders.

IT WAS MOVED BY COUNCIL MEMBER OSSENMACHER, SECONDED BY COUNCIL MEMBER CHILTON, TO APPROVE THE MINUTES.

The motion carried by the following vote:

AYES: Council Members Chilton, Ossenmacher, Rayfield, and Mayor Snyder
NOES: None
ABSENT: Mayor Pro Tem Lacy

3. **PLANNING COMMISSION MEETING MINUTES, DECEMBER 3, 2003 (0120-10)**

RECEIVED AND FILED.

4. **PLANNING COMMISSION MEETING MINUTES, DECEMBER 17, 2003 (0120-10)**

RECEIVED AND FILED.

5. **PLANNING COMMISSION ACTIONS, MEETING OF DECEMBER 17, 2003 (0120-10)**

RECEIVED AND FILED.

6. **PLANNING COMMISSION ACTIONS, MEETING OF JANUARY 21, 2004 (0120-10)**

RECEIVED AND FILED.

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7. **YOUTH BOARD MEETING MINUTES, NOVEMBER 6, 2003 (0120-40)**

RECEIVED AND FILED.

8. **YOUTH BOARD MEETING MINUTES, NOVEMBER 20, 2003 (0120-40)**

RECEIVED AND FILED.

9. **MEETING CALENDAR / COMMUNITY SPECIAL EVENTS CALENDAR (0100-10)**

RECEIVED AND FILED.

10. **CITY TREASURER'S REPORT, NOVEMBER, 2003 (0350-20)**

RECEIVED AND FILED THE CITY TREASURER'S REPORT FOR THE MONTH OF NOVEMBER 2003.

11. **CLAIMS AND DEMANDS (0300-30)**

RECEIVED AND FILED THE CLAIMS AND DEMANDS.

12. **REVISED CITY OF DANA POINT EMERGENCY PLAN**

ADOPTED **RESOLUTION NO. 04-01-28-01** ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT ADOPTING THE REVISED CITY OF DANA POINT EMERGENCY PLAN

13. **ADOPTION OF A RESOLUTION ACCEPTING TWO EASEMENTS BETWEEN THE CITY OF DANA POINT AND CPH MONARCH GOLF LLC FOR THE PLACEMENT AND FUTURE MAINTENANCE OF STORM DRAIN FACILITIES AND STRUCTURES ASSOCIATED WITH THE SALT CREEK OZONE TREATMENT FACILITY**

ADOPTED **RESOLUTION NO. 04-01-28-02** ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ACCEPTING TWO EASEMENTS BETWEEN THE CITY OF DANA POINT AND MAKALLON GOLF LLC FOR THE PLACEMENT AND FUTURE MAINTENANCE OF STORM DRAIN FACILITIES AND STRUCTURES ASSOCIATED WITH THE SALT CREEK OZONE TREATMENT FACILITY

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14. **APPROVAL OF AN INCREASED CONTINGENCY FOR THE CONSTRUCTION OF IMPROVEMENTS AT DEL OBISPO PARK AS PART OF THE GENERAL PARK REHABILITATION PROGRAM**

CITY COUNCIL (1) DIRECTED STAFF TO DEPOSIT THE CHECK RECEIVED FROM DANA POINT YOUTH BASEBALL INTO THE GENERAL PARK REHABILITATION PROJECT ACCOUNT; (2) APPROVED AN INCREASE IN THE ALLOWABLE CONTINGENCY FROM TEN PERCENT TO FIFTEEN PERCENT OF THE TOTAL CONTRACT AMOUNT FOR CONSTRUCTION OF THE GENERAL PARK REHABILITATION AT DEL OBISPO PARK PROJECT; AND (3) AUTHORIZED AN ADDITIONAL THREE PERCENT OF THE TOTAL CONTRACT AMOUNT FOR ADDITIONAL CONSTRUCTION MANAGEMENT SERVICES

15. **SELF EVALUATION PER SECTION 35.105 AND 35.106 OF TITLE 28 OF THE CODE OF FEDERAL REGULATIONS FOR PUBLIC INFRASTRUCTURE IMPROVEMENTS**

CITY COUNCIL (1) AUTHORIZED AN EXPENDITURE FROM THE CITYWIDE SIDEWALK SYSTEM PROJECT FOR IMPLEMENTATION AND PROJECT MANAGEMENT SERVICES TO COMPLETE A SELF EVALUATION PER SECTION 35.105 AND 35.106 OF TITLE 28 OF THE CODE OF FEDERAL REGULATIONS FOR PUBLIC INFRASTRUCTURE IMPROVEMENTS.

16. **ADOPTION OF A RESOLUTION APPROVING A NOTICE OF COMPLETION FOR THE CONSTRUCTION OF THE DEL OBISPO LANDSCAPED MEDIAN PROJECT – STONEHILL DRIVE TO PACIFIC COAST HIGHWAY**

ADOPTED **RESOLUTION NO. 04-01-28-03** ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CA, APPROVING A NOTICE OF COMPLETION FOR THE CONSTRUCTION OF THE DEL OBISPO LANDSCAPED MEDIAN PROJECT – STONEHILL DRIVE TO PACIFIC COAST HIGHWAY

AND DIRECTED STAFF TO TRANSFER ALL PROJECT SAVINGS TO THE CAPITAL IMPROVEMENT PROGRAM RESERVES

17. **AWARD OF CONTRACT TO PALP INCORPORATED DBA EXCEL PAVING COMPANY FOR THE CONSTRUCTION OF THE ANNUAL ROADWAY RESURFACING PROJECT, FISCAL YEAR 2003/2004**

AWARDED A CONTRACT TO PALP INCORPORATED DBA EXCEL PAVING COMPANY FOR THE CONSTRUCTION OF THE ANNUAL ROADWAY RESURFACING PROJECT, FISCAL YEAR 2003/2004, PROVIDED THE CITY MANAGER OR HIS DESIGNEE MAY APPROVE ADDITIONAL PAYMENT NOT

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TO EXCEED TEN PERCENT OF THE CONTRACT AMOUNT FOR CHANGE ORDERS AND CONTINGENCIES; AUTHORIZED THE CITY MANAGER TO EXECUTE THE CONTRACT; AUTHORIZED THE EXPENDITURE FOR CONSTRUCTION MANAGEMENT SERVICES; AUTHORIZED STAFF TO ISSUE A PURCHASE ORDER TO GOFFMAN McCORMICK AND URBAN FOR MATERIALS TESTING, GEOTECHNICAL ENGINEERING, AND INSPECTION SERVICES; APPROVED THE EXPENDITURE FOR CONSTRUCTION SUPPORT SERVICES; AND APPROVED THE TRANSFER OF FUNDS FROM THE SAN JUAN AVENUE AND VIOLET LANTERN RECONSTRUCTION PROJECT TO THE ANNUAL ROADWAY RESURFACING PROJECT, FISCAL YEAR 2003/2004.

18. ADOPTION OF MEMORANDUM OF UNDERSTANDING WITH DANA POINT EMPLOYEES ASSOCIATION (DPEA)

ADOPTED THE MEMORANDUM OF UNDERSTANDING (MOU) WITH THE DANA POINT EMPLOYEES ASSOCIATION (DPEA);

ADOPTED **RESOLUTION NO. 04-01-28-04** ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, MODIFYING HEALTH BENEFIT ALLOWANCES FOR ALL ELIGIBLE REPRESENTED AND NON-REPRESENTED CLASSIFICATIONS; AND

AUTHORIZED THE DIRECTOR OF ADMINISTRATIVE SERVICES TO PROCEED IN AMENDING THE CITY'S PERS RETIREMENT CONTRACT PER THE DPEA MOU.

19. CITY COUNCIL GRANT RECOMMENDATION

APPROVED THE RECOMMENDED GRANT FUNDING BY MAYOR SNYDER AND MAYOR PRO TEM LACY.

20. APPROVAL OF DANA POINT FESTIVAL OF WHALES PARADE ROUTE

Council Member Ossenmacher registered an abstention on this item.

APPROVED THE PROPOSED PARADE ROUTE DEFINED AS PACIFIC COAST HIGHWAY FROM SELVA ROAD TO VIOLET LANTERN.

21. COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE YEAR ENDED JUNE 30, 2003

This item was removed from the Consent Calendar by Council Member Rayfield.

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IT WAS MOVED BY COUNCILMAN RAYFIELD, SECONDED BY MAYOR SNYDER, TO APPROVE THE COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE YEAR ENDED JUNE 30, 2003, AND HAVE STAFF RETURN WITH A REPORT ON THE FEASIBILITY OF SEGREGATING RESPONSIBILITIES OF AUTHORIZATION, RECORDATION, AND CUSTODY OF ASSETS.

The motion carried by the following vote:

AYES: Council Members Chilton, Ossenmacher, Rayfield, and Mayor Snyder
NOES: None
ABSENT: Council Member Lacy

22. APPROVAL OF AN EXPENDITURE FOR COMPLETED EMERGENCY ROADWAY REPAIRS ON SAN JUAN AVENUE BETWEEN VIOLET LANTERN AND GOLDEN LANTERN

APPROVED AN EXPENDITURE FROM THE SAN JUAN AVENUE AND VIOLET LANTERN RECONSTRUCTION PROJECT FOR COMPLETED EMERGENCY ROADWAY REPAIRS ON SAN JUAN AVENUE BETWEEN GOLDEN LANTERN AND VIOLET LANTERN; ACKNOWLEDGED THAT THE ORIGINAL SCOPE OF PLANNED ROADWAY REPAIRS ON VIOLET LANTERN AND SAN JUAN AVENUE WAS APPROVED BY THE CITY MANAGER WHICH RESULTED IN A MAXIMUM EXPENDITURE; AND AUTHORIZED STAFF TO PAY ALL AMERICAN ASPHALT FOR THE ORIGINALLY SCHEDULED WORK AND THE EMERGENCY ROADWAY REPAIRS BASED ON THE PROPOSAL FOR THE ORIGINAL WORK AND ACTUAL QUANTITIES AND COSTS FOR THE EMERGENCY WORK.

23. ADOPTION OF 5TH MARINE REGIMENT, CAMP PENDLETON

This item was removed from the Consent Calendar by a member of the public.

Mayor Snyder presented a report on the accomplishments of the 5th Marine Regiment, Camp Pendleton.

Joe Lovullo, Dana Point, spoke in support of the adoption of the 5th Marine Regiment, Camp Pendleton

IT WAS MOVED BY MAYOR SNYDER, SECONDED BY COUNCIL MEMBER OSSENMACHER, TO APPROVE THE ADOPTION OF THE 5TH MARINE REGIMENT, CAMP PENDLETON

The motion carried by the following vote:

AYES: Council Members Chilton, Ossenmacher, Rayfield, and Mayor

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 Snyder
NOES: None
ABSENT: Council Member Lacy

PRESENTATIONS AND PROCLAMATIONS

SOUTH COAST WATER DISTRICT

President of the Board of Directors of South Coast Water District Joel Bishop, General Manager Michael Dunbar, and Director of Operations Joe McDivitt presented an overview of SCWD services, the status of the District, present and future projects, and a description of the circumstances regarding the sewage spill of December 27, 2003

DANA POINT FEATURED BUSINESSES OF THE MONTH – McCOOL FLOWERS AND McCOOL HOME COASTAL ACCENTS

Director of Administrative Services Lindsey narrated a slide presentation depicting the businesses of McCool Flowers and McCool Home Coastal Accents.

Mayor Snyder presented Cathy McCool, owner of McCool Flowers and McCool Home Coastal Accents, with an official City proclamation.

Mayor Snyder recessed the meeting at 8:02 p.m.

The meeting reconvened at 8:25 p.m.

PUBLIC COMMENTS

Terry Walsh, Dana Point, informed that the Dana Point Historical Society will be hosting a Reception in honor of the Dana family, on February 14, 2004 from 1:00 p.m. to 5:00 p.m., at the Dana Point Historical Society museum in Blue Lantern Plaza.

Jim Howard, Dana Point, spoke in support of changing the name of Del Prado to Pacific Coast Highway South.

Richard Dietmeier, Dana Point, spoke in support of the eSlate Voting Machine.

Robert Theel, Dana Point, of the Robert Theel Company, spoke regarding transportation and traffic in the Town Center, and expressed his concern regarding changing the name of Del Prado to Pacific Coast Highway South.

PUBLIC HEARING

24. **HEARING ON APPEAL OF PLANNING COMMISSION DECISION APPROVING SITE DEVELOPMENT PERMIT SDP03-52(M) TO ALLOW CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE ON A 3,887 SQUARE FOOT LOT AND TO ALLOW RETAINING WALLS IN EXCESS OF 30 INCHES IN HEIGHT, AND APPROVING VARIANCE V03-23 TO PERMIT A REDUCED REAR SETBACK, A**

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**STRUCTURAL HEIGHT OF 34.4 FEET AND EXTERIOR STAIRWAYS
EXTENDING INTO THE SIDE SETBACKS, FOR PROPERTY LOCATED AT
34111 BLUE LANTERN**

Council Member Chilton recused himself.

Mayor Snyder opened the Public Hearing.

City Manager Chotkevys introduced Kyle Butterwick, Director of Community Development. Mr. Butterwick gave a brief overview of the project, and invited Project Manager Albert Armijo to present the staff report.

Mayor Snyder called for property owner to present his case.

Bob Theel, Dana Point resident, representative for the applicant/appellant, introduced James DeCarli, the property owner.

James DeCarli, Redondo Beach, property owner, thanked Planning Commission for approval, and requested relief from two conditions set by Planning Commission: 100 % setbacks across front of property, and deed restriction prohibiting multiple dwelling units. supporting presented a history of the project and explained his reasons for appealing the project.

Bob Theel, Dana Point, provided a brief history of the project, slides of the proposed project, and spoke in support of the project.

Ted Toch, Dana Point, appellant, spoke in opposition to the proposed project.

Norm Jackes, Dana Point, appellant, spoke in opposition to the proposed project and stated that building into buffer areas are an issue.

Ted Toch, Dana Point, again spoke in opposition, and presented alternate designs for the project.

Mayor Snyder called for the Public Comments.

Joan Toch, Dana Point, spoke in opposition to the project.

Robin Hamilton, Dana Point, spoke in opposition to the project.

John McCloskey, Irvine, architect of project with office in Dana Point, spoke in support of the proposed project.

Mayor Snyder closed Public comments and called for rebuttal.

Jack Hamilton, Dana Point, appellant, spoke in opposition to the proposed project.

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Norm Jackes, Dana Point, appellant, spoke in opposition to the proposed project.

Jack Hamilton, Dana Point, appellant, again spoke in opposition to the proposed project.

Norm Jackes, Dana Point, appellant, again spoke in opposition to the proposed project.

Bob Theel, Dana Point, representative of property owner, responded to issues raised by the appellants and public speakers, and stated that the owner had made concessions to the neighbors.

James DeCarli, Redondo Beach, property owner, applicant/appellant, responded to issues raised by the appellants and public speakers, and stated he had made concessions to his neighbors in the design of the proposed project.

Mayor Snyder closed the Public Hearing and declared a Recess at 9:32 p.m.

Council Meeting reconvened at 9:49 p.m.

IT WAS MOVED BY COUNCIL MEMBER OSSENMACHER, SECONDED BY MAYOR SNYDER, TO GRANT THE APPLICANT'S APPEAL, THEREBY UPHOLDING THE PLANNING COMMISSIONS APPROVAL, EXCEPT FOR THE DELETION OF CONDITION #11, FINDING JUSTIFICATION FOR THE STEPBACK VARIANCE, DUE TO THE UNUSUAL SIZE, CONFIGURATION, AND SLOPE OF THE PROPERTY BY ADOPTING **RESOLUTION NO. 04-01-28-05, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, TO APPROVE A PROPOSAL TO CONSTRUCT A NEW SINGLE-FAMILY RESIDENCE WITH RETAINING WALLS TALLER THAN 30 INCHES ON A STEEPLY SLOPING 3,887 SQUARE FOOT LOT, WITH VARIANCES TO STRUCTURAL HEIGHT, REQUIRED STEPPED BACK AREAS FOR FLOORS ABOVE THE FIRST STORY, REAR YARD STRUCTURAL SETBACK, AND PROJECTIONS INTO THE SIDE AND REAR SETBACK AREAS, FOR PROPERTY LOCATED AT 34111 THE STREET OF THE BLUE LANTERN.**

The motion carried by the following vote:

AYES:	Council Member Ossenmacher, Mayor Snyder
NOES:	Council Member Rayfield
ABSTAIN:	None
ABSENT:	Council Member Lacy and Council Member Chilton

UNFINISHED BUSINESS

There was no Unfinished Business.

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NEW BUSINESS

25. CITY COUNCIL APPOINTED REPRESENTATIVES

Council Member Chilton stated he supports the present list of City Representatives.

Council Member Rayfield stated he supports the present list of City Representatives.

IT WAS MOVED BY COUNCIL MEMBER CHILTON, SECONDED BY COUNCIL MEMBER RAYFIELD, TO APPROVE THE EXISTING ASSIGNMENTS ON COMMITTEES

The motion carried by the following vote:

AYES: Council Members Chilton, Ossenmacher, Rayfield, and Mayor Snyder
NOES: None
ABSTAIN: None
ABSENT: Mayor Pro Tem Lacy

STAFF REPORTS

Director of Public Affairs/City Clerk Sharon Street reported on the availability of the eSlate voting machine demonstration model at City Hall and at the Recreation Center.

COUNCIL REPORTS

Mayor Snyder reported on the open voting period from February 2nd to March 2nd.

Mayor Snyder announced the dates of the Whale Festival.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Snyder declared the meeting adjourned at 10:22 p.m.

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The next Regular Meeting of the City Council will be Wednesday, February 11, 2004, at 5:00 p.m. in the City Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.

SHARON STREET
DIRECTOR OF PUBLIC AFFAIRS/CITY CLERK

APPROVED AT MEETING OF FEBRUARY 11, 2004.