

**REGULAR MEETING
Tuesday, March 6, 2018**

REVISED AGENDA

3:30 P.M.

TOUR OF INSPECTION

Mayor Dallas called the meeting to order at 3:30 p.m.

Present: Councilmembers Hardy, Reimers, Richards, Mayor *pro tem* Theis and Mayor Dallas

Absent: None

Item A: Tour - Guadalupe Street 4 northeast of 3rd Avenue in the Single-Family Residential (R-1) Zoning District. The project applicant is Jaroslav and Janna Stepanek. The application is being appealed by Mo and Fay Massoudi.

Mayor Dallas was recused from this item, due to proximity.

Item B: Tour - Coastal Development Permit (CDP 16-315) for the North Dunes Restoration Project.

Mayor Dallas joined the tour for the above item.

OPEN SESSION

4:30 PM

PLEDGE OF ALLEGIANCE

CALL TO ORDER AND ROLL CALL

Mayor Dallas called the meeting to order at 4:30 p.m.

Present: Councilmembers Hardy, Reimers, Richards, Mayor *pro tem* Theis and Mayor Dallas

Absent: None

Staff: Chip Rerig, City Administrator
Maxine Gullo, Assistant City Administrator
Glen Mozingo, City Attorney
Jon Giffen, Assistant City Attorney
Marc Wiener, Director, Community Planning & Building
Marnie Waffle, Senior Planner
Dick Bower, Building Official
Bob Harary, Director, Public Works
Paul Tomasi, Chief of Police/Director, Public Safety
Ashlee Wright, Library and Community Activities Director

EXTRAORDINARY BUSINESS

Item A: Presentation of a Proclamation to American Red Cross Central Coast.
Councilmember Hardy presented the Proclamation to Dick Bower.

Item B: New Employee Introductions

Director Harary introduced Lisa Leo, Project Manager and Robert Estrella, Project Manager.

City Attorney Mozingo introduced Assistant City Attorney Jon Giffen and Deputy City Attorney Gerard Rose.

PUBLIC APPEARANCES

SPEAKING IN OPPOSITION TO THE EASTSIDE PARKWAY

Kathleen Craig
Pete Scudder
Mike De Lapa
An Unidentified Woman
Karen Mack
Chris Mack
Ms. Conlan

An Unidentified Woman
Natalie Anisetti
Ken Christman
Paula Bertrand
Karen Locke
Carol Hall
Threse Kohler

SPEAKING IN FAVOR OF THE EASTSIDE PARKWAY

Julie King
Sue McCloud

ANNOUNCEMENTS

Item A: Closed Session Oral Report (City Attorney Mozingo)

City Attorney Mozingo reported that the March 2, 2018, Closed Session was continued to the March 5, 2018, meeting; and that the March 5, 2018, meeting was continued to the March 6, 2018, meeting.

The Closed Session of March 5, 2018, was as follows:

- 1 CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Pursuant to Government Code Section 54956.9(D)(1)
Name of Case: Chilone Payton vs. City of Carmel-by-the-Sea, CA
Monterey Superior Court Case No. 16CV003820
Councilmembers were updated on the case.
2. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Pursuant to Government Code Section 54956.9(D)(1)
Name of Case: Jacqueline Simonelli, Antonio C. Simonelli, Petitioners/
Plaintiffs
v. City of Carmel-by-the-Sea, California, Christopher Tescher, Dennis
LeVett, Pot D'Oro, LLC, and Doe 1 through Doe 100, inclusive, Respon-
dents/Defendants Monterey County Superior Court Case No. M123079
Councilmembers were updated on the case.

3. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Pursuant to Government Code Section 54956.9(D)(1)
Name of Case: Alfred Johnson v. City of Carmel and Doe 1 through Doe 20, inclusive, Respondents/Defendants: Monterey County Superior Court Case No.17CV003800

Councilmembers were updated on the case.
4. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Pursuant to Government Code Section 54956.9(D)(1)
Name of Case: Yolanda Macias v. City of Carmel-by-the-Sea, California, and Doe 1 through Doe 25, inclusive, Respondents/Defendants Monterey County Superior Court Case No.17CV003685

Councilmembers were updated on the case.
5. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Pursuant to Government Code Section 54956.9(D)(1)
Name of Case: Gerit Sand; Cobblestone Bakery, a sole proprietorship, Plaintiff v. City of Carmel-by-the-Sea, Defendant - Monterey County Superior Court Case No. M130393

The above case was dismissed in favor of the City.
6. CONFERENCE WITH LEGAL COUNSEL – EXISTING OR ANTICIPATED LITIGATION (Facts and Circumstances) Significant exposure to litigation Pursuant to subdivision (b) of Government Code Section 54956.9(d)(2): 2 cases.

Councilmembers were updated.
7. CONFERENCE WITH LEGAL COUNSEL – EXISTING OR ANTICIPATED LITIGATION –FAIR POLITICAL PRACTICES RULING OF FEBRUARY 16, 2018. (Facts and Circumstances) Significant exposure to litigation pursuant to subdivision (b) of Government Code Section 54956.9(d)(2) and Government Code Section 87100: 1 case.

The above complaint was brought before the FPPC by Maria Sutherland and witness Karen Ferlito. The allegation was that Councilperson Reimers should have removed herself because of her husband's membership in SAND. The FPPC found no evidence that Mr. Reimers has ever received income from SAND, and indicated that the FPPC would not pursue the matter further.
8. CONFERENCE WITH LEGAL COUNSEL – EXISTING OR ANTICIPATED LITIGATION – FAIR POLITICAL PRACTICES RULING OF FEBRUARY 16, 2018. (Facts and Circumstances - C. Hardy, Case # 17/551) Significant exposure to litigation under subdivision (b) of Government Code Section 54956.9(d)(2) and Government Code Section 87100: 1 case.

The above complaint was initiated by Ian Martin who alleged a conflict of Interest for Councilmember Hardy, who participated in lease negotiations with Sunset Cultural Center, Inc. for the Forest Theater. The FPPC ruled that the lease negotiation was similar to other leases that had been previously negotiated, and therefore was not likely to affect Councilmember Hardy's real estate interest.

Item B: Councilmember Announcements

Councilmember Richards asked Chief Tomasi to tighten up enforcement on tour bus parking. Revenue is up.

Councilmember Hardy complimented the presentation yesterday by MST and said she is not reporting out on TAMC. She did report out on former City Clerk Lori Frontella, now in need of a kidney transplant. There is a fundraising auction in Chowchilla, and several members of the community have provided donations, including Tony Salameh who has provided opportunities for dining at Anton & Michel and The Grill on Ocean Avenue, Soerke Peters and Amy Stouffer for the Village Corner and Lafayette Restaurant, Ken Spielvogel for Flaherty's Grill, and Carrie Theis who provided two night's lodging at Hofsas House. Thanks were also offered to Mary Dallas and Mary Schley for the article in the Pine Cone.

Councilmember Reimers said that Mayor Dallas sat in for her at the last meeting of the FORA Board in February when she couldn't be present. But she will attend the March meeting of the board when she will vote on the Eastside Parkway.

Item C: City Attorney Announcements - None

Item D: City Administrator Announcements

City Administrator Rerig asked Chief Tomasi to speak about area school safety in light of the recent tragic events in Florida. The Chief said we are ready to respond to such a situation if necessary. The department has worked with schools and upgraded equipment.

CONSENT AGENDA

Councilmember Hardy moved, seconded by Councilmember Reimers, to approve the Consent Agenda, minus Items 2,3,6,7, and 9.

AYES: Hardy, Reimers, Richards, Theis, Dallas

NOES: None

Item 1: Monthly Reports:

- 1.) City Administrator Contract Log;
- 2.) Community Planning and Building Department Reports;
- 3.) Police, Fire, and Ambulance Reports;
- 4.) Public Records Act Requests, and
- 5.) Forester Reports

Item 2: Ratify the January, 2018 Check Register Summary.

This item was pulled by Councilmember Richards. Of \$170,000 spent on legal fees last month, the retainer for the month of November and December wasn't paid until January. Also, \$82,000 was paid by the City to an outside law firm, and after some study, the City Attorney concluded that the insurance company was in error: that the policy should have covered the expense. The insurance carrier supervisor has recommended that the City be reimbursed for \$82,000. The remainder of about \$60,000 was detailed by the City Attorney.

Mayor *pro tem* Theis moved, seconded by Councilmember Reimers, to approve Item 2.

AYES: Hardy, Reimers, Richards, Theis, Dallas

NOES: None

- Item 3:** Draft Minutes of the January 9, 2018 and February 6, 2018 City Council Meetings.
This item was pulled by Councilmember Reimers, who clarified her FORA report.
Councilmember Reimers moved, seconded by Councilmember Hardy, to approve Item 3.
AYES: Hardy, Reimers, Richards, Theis, Dallas
NOES: None
- Item 4:** Resolution 2018 - 024, Awarding a Professional Services Agreement to Kasavan Architects for a not-to-exceed fee, including a 10% contingency of \$80,400, for preparation of the ADA Transition Plan.
- Item 5:** Resolution 2018-025, Authorizing the Closure of Certain Streets and the Placement of Tents in Devendorf Park for the 12th Annual Concours on the Avenue on Tuesday, August 21, 2018.
- Item 6:** Resolution 2018-026, Authorizing the Closure of Certain Streets and the Placement of Tents in Devendorf Park for the 21st Annual Pebble Beach Tour d'Elegance Event on Thursday, August 23, 2018.
Councilmember Hardy pulled Item 6 for comment. The item indicates that streets will be closed at 9:00 a.m. and reopen at 2:30 p.m. or 3:00 p.m. The streets should not open until all of the streets are clear of pedestrians.
Councilmember Hardy moved, seconded by Councilmember Reimers, to approve Item 6.
AYES: Hardy, Reimers, Richards, Theis, Dallas
NOES: None
- Item 7:** Resolution 2018-027, Authorizing 1.) The serving of alcohol at a VIP wine reception on Mission Street during the Carmel Art Festival on Friday, May 18, 2018, from 7:00 p.m. to 9:00 p.m., and 2.) The closure of Mission Street between Ocean and 6th Avenues.
Councilmember Hardy pulled this item. Ashlee Wright presented comments on the bands. Ms. Hardy said this is becoming a music festival as well as an art festival. Her concern is that this is a lot longer music portion than we even have at the 4th of July. Ms. Wright commented that there is quite a bit of time between bands.
Councilmember Hardy moved, seconded by Mayor *pro tem* Theis, to approve Item 6.
AYES: Hardy, Reimers, Richards, Theis, Dallas
NOES: None
- Item 8:** Resolution No. 2018-030, Creating an *ad hoc* Committee for Carmel Youth Center for real property lease negotiations. Councilmembers Hardy and Theis appointed.
The Mayor announced that Item 9. would be moved to after Item 13. to give time for all councilmembers to study the applications and recommendation for an appointment to the Planning Commission.
Councilmember Richards pulled Item 2.
Councilmember Hardy pulled Items 6 and 7 for comment.
Councilmember Reimers pulled item 3 for comment.
Jeff Baron inquired about **Item 9**. The Mayor explained it had been moved to the end of the meeting.

ORDERS OF BUSINESS

- Item 10:** Resolution 2018-029, Awarding a Construction Contract to Monterey Peninsula Engineering for a not-to-exceed amount, including a 10% contingency, of \$2,180,000 for construction of the Fiscal Year 2017/18 City-Wide Paving Project.

Public Works Director Bob Harary presented the staff report and spoke at some length about the overall score of residential street paving, which is now scored at 62, which is "Fair."

He went on to explain why the project was broken up into pieces. Essentially, he wanted to make sure the main part of the project was initiated, although it was a better project to include all of the pieces of the project. It only becomes more expensive as time goes on. Four responsive bids were received, and MPE was the low bidder. The entire project is \$1,981,820, plus a 10% Contingency, for a total of \$2,180,000. There is funding for the entire project if Measure D Reserves are tapped.

SPEAKING FROM THE FLOOR:

Georgina Armstrong
Ben Beesley
An Unidentified Bicyclist
Barbara Livingston

Councilmembers Hardy and Reimers expressed concerns about the total amount to be spent. Councilmember Richards would like to do all of the projects. Mayor *pro tem* Theis said Measure D funds were meant for projects just like this. So either this project and Base #2, but her preference is to do it all.

The Mayor inquired about sidewalks in general. Aren't the newly-paved roads going to suffer if the equipment is brought in later to rehab and install sidewalks and curb cuts? Drainage will have to be modified in some areas.

Mayor *pro tem* Theis asked if sidewalks could be focused on in the upcoming budget. City Administrator Rerig said, "Absolutely."

Councilmember Hardy moved, seconded by Mayor Dallas, to approve Option 1 and do the entire project.

AYES: Hardy, Reimers, Richards, Theis, Dallas
NOES: None

The Mayor called a 10-minute break.

Council reconvened at 7:09 p.m.

PUBLIC HEARINGS

- Item 11:** Consideration of an amendment to the Coastal Development Permit (CDP 16-315) for the North Dunes Restoration Project.

Director Wiener presented the staff report. Joey Canepa added comments, as well. Technically, the City Council is being asked to approve an amended Coastal Permit with minor revisions to Findings for Approval to reflect tree removal. Condition #4 – 21 live trees, including 17 Monterey Cypress and 4 Monterey Pines; Condition #5 – Revision to allowed height of Acacia 6-8 feet (was 2-3 feet.); Condition #11 – Deleted.

SPEAKING FROM THE FLOOR IN SUPPORT

Neils Reimers
Mary Liskin
Don Goodhue

John Lambert
Fred Taylor
Barbara Livingston

SPEAKING FROM THE FLOOR IN OPPOSITION

Regina Armstrong
Karen Ferlito
Maria Sutherland

Fred Taylor
Karen Ferlito
Barbara Livingston

Councilmember Reimers complimented Ms. Canepa on her patience and hard work. Councilmember Richards asked about succession planting. Director Wiener said the Planning Commission considered planting 3-5 trees in the North Dunes, but did not recommend it. Councilmember Richards said he wanted to discuss adding 3-5 cypress trees back into the plan.

Mayor *pro tem* Theis agreed with Councilmember Richards, although she agreed that the cypress needed to be thinned out. Councilmember Hardy agreed with Mayor *pro tem* Theis.

Councilmember Reimers moved, seconded by Councilmember Richards, to accept the original Botanist's plan as presented with addition of up to three succession trees, and to remove up to ten trees recommended by Forest & Beach so it would not have to come back to Council.

Note: Councilmember Reimers clarified a document that purports to be from the Friends of the Forest that suggests she started SAND with her husband, Neils, but she said it is not the case. The document also indicates that Councilmember Reimers wants all of the trees out of the dunes, but she said her position has always been to support the science of the dunes and the original Botanist Report from 2009.

AYES: Hardy, Reimers, Richards, Theis, Dallas

NOES: None

Item 12:

Consideration of an appeal of the Planning Commission's decision to approve a Design Study (DS 17-294) and associated Coastal Development Permit for the demolition of an existing residence and the construction of a new residence located on Guadalupe Street, 4 NE of 3rd Avenue in the Single-Family Residential (R-1) Zoning District. The project applicant is Jaroslav and Janna Stepanek. The application is being appealed by Mo and Fay Massoudi.

Mayor Dallas recused himself due to proximity and left the dais.

Senior Planner Marni Waffle presented the staff report.

Mo and Fay Massoudi received 10 minutes from Mayor *pro tem* Theis.

Jerry Stepanek received 10 minutes from Mayor *pro tem* Theis. He presented his thoughts, and then asked Jeff Crockett, building designer, to speak.

SPEAKING FROM THE FLOOR

Barbara Livingston
Al Saroyan
Karen Nelson

Councilmembers Reimers, Hardy and Richards said they would vote to deny the appeal.

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Mayor *pro tem* Theis moved, seconded by Councilmember Hardy, to deny the appeal and remove Item 27 requiring improvements to the neighbor's window from the Conditions of Approval.

AYES: Hardy, Reimers, Richards, Theis

NOES: None

ABSENT: Dallas

Mayor Dallas returned to the dais at 8:49 p.m.

Item 13: Consider an appeal from Martin Camsey, VP/CFO of the Niello Company, of the denial of a Special Event Permit application for a proposed special event on Saturday, August 25, 2018.

Director Ashlee Wright made the staff presentation.

Summer Wright and Meghan appeared on behalf of the Niello Company.

SPEAKING FROM THE FLOOR

Barbara Livingston

Councilmember Hardy moved, seconded by Councilmember Reimers, to deny the appeal and to clarify the Special Events policy regarding private parties in the park, that is to be brought back in June.

AYES: Hardy, Reimers, Richards, Theis, Dallas

NOES: None

Item 9: Resolution No. 2018-031, Appointing a City of Carmel-by-the-Sea Elector to Fill an Unexpired Term of Office on the Planning Commission ending on September 30, 2018.

Mayor Dallas continued this item to the next meeting and asked that redacted applications be placed in a binder for the public.

After this item was completed, Councilmembers Hardy, Reimers and Mayor *pro tem* Theis met in closed session as below. Mayor Dallas and Councilmember Richards were excused.

CLOSED SESSION ON OR AFTER THE HOUR OF 8:00 P.M.

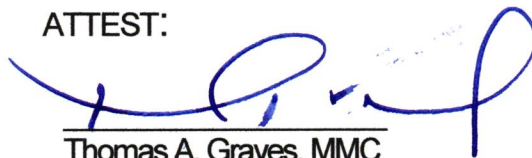
Item 14: CONFERENCE WITH LEGAL COUNSEL – EXISTING OR ANTICIPATED LITIGATION (Facts and Circumstances) Significant exposure to litigation under subdivision (b) of Government Code Section 54956.9(d)(2): 2 cases

ADJOURNMENT

APPROVED:


Steve G. Dallas, Mayor

ATTEST:


Thomas A. Graves, MMC
City Clerk