
**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
OCTOBER 11, 2006**

CALL TO ORDER

The Regular Meeting of the City Council of the City of Dana Point, California, was called to order by Acting City Clerk Ward at 5:00 p.m. at the Dana Point Community Center, 34052 Del Obispo, Dana Point. Acting City Clerk Ward announced that the meeting was adjourned to 6:00 p.m. due to a lack of quorum.

CLOSED SESSION

There were no Closed Session items.

RECONVENE CITY COUNCIL MEETING – 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 6:05 p.m. at the Dana Point Community Center, 34052 Del Obispo, Dana Point.

ROLL CALL

PRESENT: Lara Anderson, Mayor
Russell Chilton, Mayor Pro Tem
Diane L. Harkey, Council Member
James V. Lacy, Council Member
Wayne Rayfield, Council Member

STAFF PRESENT: Douglas Chotkevys, City Manager; Patrick Muñoz, City Attorney; Sharie Apodaca, Director of Administrative Services; Kathy Ward, Acting City Clerk; Kyle Butterwick, Director of Community Development; Brad Fowler, Director of Public Works/City Engineer; Sgt. Mark Long, Acting Chief of Police Chief of Police; Christy Teague, Economic Development Manager; John Tilton, Planning Manager/Architect; Jackie Littler, Acting Executive Secretary; Mike Rose Emergency & Support Services Manager; and John Ramirez, Assistant City Attorney.

PLEDGE OF ALLEGIANCE

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

INVOCATION

The Invocation was led by Bob Moore.

PRESENTATIONS AND PROCLAMATIONS

Business of the Month – Dana Party Supplies

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Director of Administrative Services Apodaca gave a PowerPoint presentation of October's Business of the Month, Dana Party Supplies. Mayor Anderson presented owner Chris Bruce with a Certificate of Recognition.

Community Emergency Response Training (CERT) Recognition

Emergency & Support Services Manager Rose provided a staff report on the recent 24 hour CERT training class. There were 19 individuals that graduated and Mayor Anderson presented certificates to Alice Anderson, Carol Banister, George Fuguet, Elaine Grofik, Randy Grofik, Mike Harrison, Sheree Ito, Bob Johnson, Pam Johnson, Yvette Lague, Gary Macrides, J.R. Ford McDonald, Wendy McDonald, Kevin O'Connor, Kirsten Rogers, Dave Rothacher, Frances Sheehan, Peggy Stein, and Erick Ward.

CONSENT CALENDAR

A member of the public removed Item No. 2; Council Member Rayfield removed Item No. 11. Mayor Pro Tem Chilton recused himself from Item No. 12 due to an economic conflict of interest.

IT WAS MOVED BY MAYOR PRO TEM CHILTON, SECONDED BY COUNCIL MEMBER RAYFIELD, THAT THE RECOMMENDATIONS BE ACCEPTED FOR ALL ITEMS LISTED ON THE CONSENT CALENDAR WITH THE EXCEPTION OF ITEM NO. 2 AND 11.

The motion carried by the following vote:

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

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

RECOMMENDED ACTION: That the City Council approve 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, SEPTEMBER 27, 2006

A member of the public removed this item from the Consent Calendar.

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John Pugh, Newport Beach, asked that the Harbor Plan Ordinance be revised to add Council Member Rayfield's comments on the shipyard size adequacy and reduction of boat slips to be shared for all boat sizes.

IT WAS MOVED BY MAYOR PRO TEM CHILTON, SECONDED BY COUNCIL MEMBER HARKEY, TO APPROVE THE MINUTES OF SEPTEMBER 27, 2006 AS PRESENTED.

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 MEETING MINUTES, SEPTEMBER 6, 2006

RECEIVED AND FILED.

4. PLANNING COMMISSION ACTIONS, MEETING OF SEPTEMBER 26, 2006

RECEIVED AND FILED.

5. PLANNING COMMISSION ACTIONS, MEETING OF OCTOBER 4, 2006

RECEIVED AND FILED.

6. YOUTH BOARD MEETING MINUTES, SEPTEMBER 21, 2006

RECEIVED AND FILED.

7. MEETING CALENDAR / COMMUNITY SPECIAL EVENTS CALENDAR

RECEIVED AND FILED.

8. CITY TREASURER'S REPORT, AUGUST 2006

RECEIVED AND FILED THE CITY TREASURER'S REPORT FOR THE MONTH OF AUGUST 2006.

9. CLAIMS AND DEMANDS

RECEIVED AND FILED THE CLAIMS AND DEMANDS.

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10. SECOND READING OF ORDINANCE APPROVING DENSITY BONUS PROGRAM

HELD SECOND READING AND ADOPTED THE **ORDINANCE NO. 06-09** OF THE CITY OF DANA POINT ENTITLED:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING THE MUNICIPAL CODE TO ESTABLISH A DENSITY BONUS PROGRAM

11. ADOPTION OF A RESOLUTION APPROVING A PLANTING MAINTENANCE AGREEMENT WITH THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) FOR PROPERTY ALONG CALLE PALOMA

Council Member Rayfield removed this item from the Consent Calendar and asked that this item be continued to a future Council meeting.

IT WAS MOVED BY COUNCIL MEMBER RAYFIELD, SECONDED BY MAYOR ANDERSON, TO CONTINUE THIS ITEM TO A FUTURE MEETING.

The motion carried by the following vote:

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

PUBLIC COMMENTS

Mayor Anderson opened the meeting for public comments.

John Chaffetz, Dana Point, asked the City to inform the public about the improvements on Selva Road and mentioned the Council Candidate Forum at the Community House on October 12th.

Bob Becker, Dana Point, member of Pet Project Foundation (PPF), announced that the PPF is hosting an Animal Fair and Open House on Saturday, October 14, 2006 from 10:00 a.m. – 3:00 p.m. Low Cost vaccinations and microchipping will be provided. He also announced that the Wag-A-Thon will be held in April of 2007 instead of March 2007 (during the Festival of Whales).

Judy Rice, Laguna Hills and Hemet, spoke about the services of Mission Hospital. She stated that today was her 24-year anniversary working there and would like workforce housing in Dana Point.

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Bonnie Pitkin, Dana Point, spoke about her disappointment with the Dana Point Marina Mobile Home Park closure.

Council Member Harkey responded that she was not involved in the closure of the mobile home park (CIR) and explained the current Council's positive actions with regard to the closure and affordable housing.

Frances Mulligan, Lake Forest, indicated that 47% of the people living in Dana Point are low income and her family had to move to Palm Springs. Ms. Mulligan also spoke about her dad's contributions.

James Mulligan, Corona, former resident of the Dana Point Marina Mobile Home Park, was disappointed about the closure of the park.

Patrick Evans, Huntington Beach, spoke about the Housing Element and the discussion of the Housing Element at the September 27, 2006 City Council meeting and provided transcribed dialog from the last Council meeting.

Council Member Harkey responded that the City is moving forward with affordable housing.

Jim Seitz, Dana Point, spoke about the former Dana Point Marina Mobile Home Park closure and an affordable housing program.

Linda Culver, San Clemente, former Dana Point Marina Mobile Home Park resident, would like some of the City's laws changed with respect to mobile home park closures and spoke about a closure in Huntington Beach. Ms. Culver also read a letter from Mr. Robert Traphagen concerning affordable housing and his candidate committee.

Council Member Harkey responded and spoke about the Dana Point Marina Mobile Home Park closure and the City's efforts.

Mayor Anderson recessed the Council meeting at 7:00 p.m. and reconvened the meeting at 7:15 p.m.

PUBLIC HEARINGS

12. AN APPEAL OF A PLANNING COMMISSION DECISION AFFIRMING A DETERMINATION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT REGARDING CONSTRUCTION OF A NEW SINGLE-FAMILY DWELLING AT 34111 STREET OF THE BLUE LANTERN

Mayor Pro Tem Chilton recused himself on this item due to an economic conflict of interest.

Community Development Director Butterwick explained the planning review process for this project.

Assistant City Attorney Ramirez provided background on this project.

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Planning Manager/City Architect Tilton provided a PowerPoint presentation presenting the details on the project and compared the Council approved plans and the construction plans submitted by Mr. DiCarli. Mr. Tilton noted that these construction plans were not approved until the third set of changes were provided to the Planning Department. Mr. Tilton also stated that the construction plans substantially conform with the Council approved plans.

Council Member Lacy asked if the staff followed the direction of Council in January. Staff responded in the affirmative that their focus was on the Council's direction. Council Member Lacy also asked about the excavation of dirt to the foundation footing underneath the master suite as shown on the plans.

Mayor Anderson opened the Public Hearing.

Jack Hamilton, appellant, presented a PowerPoint presentation comparing the previous plans presented to the Planning Commission and City Council to the current construction plans and referred to a handout provided at the Council meeting. Mr. Hamilton noted his concerns about the excavation, and the size of the house (compared to the other houses on the street).

Jim DiCarli, respondent, asked about Council Member Lacy's recusal, per the letter submitted earlier to the City Attorney. Council Member Lacy responded by saying that he doesn't have a conflict as indicated by the City Attorney. Mr. DeCarli reviewed the process of the last three and one-half years and indicated that the building plans are substantially compliant with the approved plans, as staff has stated in their report.

Mayor Anderson recessed the meeting at 8:31 p.m. and reconvened the meeting at 8:44 p.m. All Council Members were present with the exception of Mayor Pro Tem Chilton.

Bob Theel, as part of the respondent, provided a PowerPoint presentation showing the Council approved plans verses the construction plans.

Mayor Anderson opened the Public Comments.

Paul Hegness, Irvine, an attorney on behalf of Jack Hamilton, spoke about the instruction of the Court of Appeals and their instruction for Mr. DiCarli to comply with the original approved plans and asked for the Council to deny this approval.

Ted Toch, Dana Point, spoke in opposition to this project and is concerned about the additional excavation and the effect on his home.

Patrick Evans, Huntington Beach, representing the former Marina Mobile Home Park residents, spoke about the similarities of the litigation for this project and the Marina Mobile Home Park.

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Norm Jackes, Dana Point, appreciated Mr. Hamilton's concerns on this project and spoke in opposition to this project.

Jim Seitz, Dana Point, spoke in favor of working together to settle this project.

Mayor Anderson responded that the Council did encourage a settlement of this project.

Mayor Anderson asked for the rebuttal comments.

Jack Hamilton, appellant, referred to the document he provided explaining the differences between the original approved plan and current construction plan. He is concerned about the retaining walls, the extra bathroom and excavation in the construction plan.

Jim DiCarli, respondent, explained the process that will occur before excavation which will protect the neighbors. He indicated that the bathroom in the building plans was approved by Council.

Mayor Anderson closed the Public Hearing.

Council Member Rayfield asked staff questions on the project concerning compliance with the various plans and asked if the bathroom was included in the plan provided to the court.

Council Member Lacy disclosed that he met with Mr. Hamilton. Council Member Lacy indicated that he wished that a settlement could have been reached. He asked if the issue of substantial conformance is a decision for Council to make and why did the Planning Commission deny the original plan.

Mayor Anderson reopened the Public Hearing.

Mr. DiCarli indicated that the project was denied at the first Planning Commission meeting because the project did not meet Floor Area Ratio standards and the building was too big for the lot, not the excavation issue.

Mayor Anderson indicated that at the November 19 Planning Commission meeting, excavation was raised.

Council Member Harkey asked for reasons why it was recommended to change the placement of the footings. Mr. DiCarli's architect, explained the wall structure with the transition of wood to concrete. Council Member Harkey asked about condition number 44.

Council Member Rayfield commented that what the court has reviewed is what is being reviewed now.

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Jack Hamilton asked staff what takes precedence, the plans or the resolution. Community Development Director Butterwick indicated that the resolution, conditions of approval and any pertinent information are carried over to the approved plans.

Mayor Anderson asked questions about the walk-in closet and the void space, excavation area with respect to the retaining walls, reflected on comments made at the revocation hearing, the side view of the cut-out which was not required for the submittal of this project, frequency of the inspectors at this project, and repercussions of bootleg changes in the future.

Discussions took place about the cross-section that Mr. Hamilton said didn't match.

Mayor Anderson closed the Public Hearing for Council deliberation and action.

Council Member Harkey explained why she is not recusing herself this time verses the last time this project was discussed. Council Member Harkey indicated that she was very opposed to revocation. She disclosed that she met briefly with Mr. DiCarli and Mr. Theel to go over the foundation plan data. Council Member Harkey provided a summary of the actions taken on this project and explained the difference between the legislative action at the January 28, 2004 City Council meeting, the revocation action (which was an administrative action) and the current administrative action. She was very upset that the variances were granted but believes the current plans are in substantial conformance.

Council Member Rayfield indicated that the court made a determination; he has listened to all sides and concluded that he cannot support the appeal.

Mayor Anderson asked staff for clarification about the terrace at the rear yard.

IT WAS MOVED BY COUNCIL MEMBER HARKEY, SECONDED BY COUNCIL MEMBER RAYFIELD, TO UPHOLD STAFF'S RECOMMENDATION TO DENY THE APPEAL AND TO:

ADOPT RESOLUTION NO. 06-10-11-01 ENTITLED:

A RESOLUTION OF THE CITY OF DANA POINT, CALIFORNIA, DENYING THE APPEAL OF A PLANNING COMMISSION DECISION AFFIRMING A DETERMINATION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT THAT THE CONSTRUCTION PLANS FOR THE NEW SINGLE-FAMILY DWELLING AT 34111 STREET OF THE BLUE LANTERN ARE IN SUBSTANTIAL CONFORMANCE WITH APPROVED PLANS FOR SITE DEVELOPMENT PERMIT SDP03-52M AND VARIANCE V03-23 FOR PROPERTY LOCATED AT 34111 STREET OF THE BLUE LANTERN (APN 682-245-12)

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The motion carried by the following vote:

AYES: Council Members Harkey, Rayfield, and Mayor Anderson
NOES: Council Member Lacy
ABSTAIN: Mayor Pro Tem Chilton

UNFINISHED BUSINESS

There were no Unfinished Business items.

NEW BUSINESS

There were no New Business items.

PUBLIC COMMENTS (Continued)

There were no additional Public Comments.

STAFF REPORTS

City Manager Chotkevys indicated that the "To Do" list has been provided to the Council. Mayor Rayfield asked that the closed out items be moved to the end of the report.

COUNCIL REPORTS

Council Member Rayfield asked that the Council policy group provide a Council policy on agenda related material received in a timely manner (in reference to the voluminous material provided for the DiCarli item).

Mayor Anderson announced that the City's waste hauler, CR&R is teaming up with Goodwill Industries and The Salvation Army to host a Cleanup Day on Saturday, October 28, 2006 from 7:30 – 3:30 p.m. at Dana Hills High School and Palisades Elementary School. Residents are welcome to bring items that cannot be picked up on regular collection days including furniture, large appliances, BBQ's, e-waste materials, etc. The City will not accept batteries, tires, construction materials, oil, chemicals, asphalt, paint or hazardous waste. For more information, please check the City's website at www.danapoint.org or call 248-3571.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Anderson declared the meeting adjourned at 10:54 p.m.

The next Regular Meeting of the City Council will be October 25, 2006 at 5:00 p.m. in the Community Center at 34052 Del Obispo in Dana Point, California.

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KATHY M. WARD
ACTING CITY CLERK

APPROVED AT THE MEETING OF OCTOBER 25, 2006