

**MINUTES
REDEVELOPMENT AGENCY AND CITY COUNCIL
REGULAR MEETING
JANAURY 13, 2009 - 6:00 p.m.**

CALL TO ORDER

The regular meeting of the City Council and Redevelopment Agency of the City of Highland was called to order at 6:11 p.m. by Mayor Lilburn at the Donahue Council Chambers, 27215 Base Line, Highland, California.

The invocation was given by Reverend Wayne Reynolds of Immanuel Baptist Church and the Pledge of Allegiance was led by Councilman Timmer.

ROLL CALL

Present: Jones, McCallon, Scott, Timmer, Mayor Lilburn
Absent: None

SPECIAL PRESENTATIONS

Mayor Lilburn presented Ed Burns with a Proclamation expressing the City Council's appreciation of his dedicated service to the community by his serving on the Design Review Board.

COMMUNITY INPUT

Mr. Jack Jennings stated he has an issue with East Valley Water District. They have paved Central Avenue from Base Line to Fifth Street but from Royce Lane to Fifth Street only a quarter portion of it was done. Now two weeks after they fixed the pipe the road has started sinking. Why should the city have to deal with something East Valley is liable for and he would like to see East Valley pay for the repairs.

Ms. Annette Mendenhall stated she is the Relay for Life Event chairperson for the 2009 event. In 2008, the first American Cancer Society Relay for Life was held at the Highland Community Park. This event was very successful due to the participation of community members and the hard work of the committee members. This year's Relay for Life is scheduled for May 30 and May 31, 2009. She is asking the City of Highland to be a co-sponsor of this year's event. Co-sponsorship would consist of the use of the Community Park, restroom facility, lights and overnight security.

City Manager Hughes stated this item will be brought back before Council for discussion and action.

CITY COUNCIL/REDEVELOPMENT AGENCY CONSENT CALENDAR

A MOTION was made by Mayor Pro Tem Jones, seconded by Councilman Timmer, to approve the consent calendar as amended with Councilman Timmer abstaining from Item #2, Item #3, Item #4, Item #5 and Item #8; with Councilman McCallon abstaining from Item #2 and Item #3 and with Councilwoman Scott abstaining from Item #8 and dissenting on Item #9. Motion carried on a roll call vote, 5-0, except as noted.

1. Waive the Reading of All Ordinances
Waived the reading of all Ordinances in their entirety and read by title only.
2. Minutes – November 12, 2008 City Council Regular Meeting
Approved Minutes as amended.
3. Minutes – November 12, 2008 RDA Regular Meeting
Approved Minutes as amended.
4. Minutes – November 25, 2008 City Council Regular Meeting
Approved Minutes as submitted.
5. Minutes – November 25, 2008 RDA Regular Meeting
Approved Minutes as submitted.
6. Minutes – December 9, 2008 City Council Regular Meeting
Approved Minutes as submitted.
7. Minutes – December 9, 2008 RDA Regular Meeting
Approved Minutes as submitted.
8. Minutes – December 11, 2008 City Council Special Meeting
Approved Minutes as submitted.
9. Warrant Register
Approved Warrant Register No. 475 for January 13, 2009, in the amount of \$1,811,979.11 and Payroll of \$228,218.38.
10. Treasurer's Report for November 2008
Received and filed Treasurer's Report for November 2008.
11. Fifteenth (15th) Annual Highland Community Trails Day Event
Approved Saturday, April 11, 2009, (with a rain date of April 18, 2009), as the date for the Fifteenth (15th) Annual Highland Community Trails Day Event and the Use of the Trails System located at the Easterly Terminus of Base Line adjacent to Plunge Creek and the Red Hill Tract.

12. Notice of Completion for the Project Entitled "Highland Library and Environmental Learning Center"
 1. Authorized the Mayor to sign the Notice of Completion for the project entitled "Highland Library and Environmental Learning Center";
 2. Directed the City Clerk to record the Notice of Completion with the San Bernardino County Recorder's Office; and
 3. Authorized staff to release the 10% retention funds 35 days from the recordation of the Notice of Completion.

13. Notice of Completion – Bid No. 2008-05 "Cypress Street, Ninth Street and Cole Avenue Improvement Project"
 1. Accepted Bid No. 2008-05 "Cypress Street, Ninth Street and Cole Avenue Improvement Project" as complete;
 2. Authorized the Mayor to sign the Notice of Completion; and
 3. Directed the City Clerk to file the Notice of Completion.

14. Easement Acceptance/Bruce Street Sidewalk Project
 - a. Accepted the Grant of Easement for Road and Drainage purposes from Franklin Credit Management Corporation; and
 - b. Directed the City Clerk to record the Grant of Easement.

15. Easement Acceptance/9th Street Sidewalk Improvements
 1. Accepted the Grant of Easement for Road and Drainage purposes from Joel V. Cobian; and
 2. Directed the City Clerk to record the Grant of Easement.

16. Easement Acceptance/9th Street Sidewalk Improvements
 1. Accepted the Grant of Easement for Road and Drainage purposes from Rewadee Johansen; and
 2. Directed the City Clerk to record the Grant of Easement.

17. GIS Website Development and Hosting Services
 1. Approved the Professional Services Agreement with Digital Map Products, Inc., for GIS Website Development and Housing Services; and
 2. Authorized the Mayor to execute the agreement.

18. Extension of Landscape Maintenance Contract with CAM Services

Extended the Landscape Maintenance Contract with CAM Services for one year.

CITY COUNCIL/REDEVELOPMENT AGENCY PUBLIC HEARING

19. Development Impact Fee Annual Adjustment

Mayor Lilburn opened the public hearing.

City Engineer Wong stated this item was continued from November 25 and also continued from the December 9 meeting in order for the BIA to have a representative to attend this meeting. In addition, you will also want to look at the BIA's, what they call the Economic Stimulus Package, which is now included in your package after staff received it from the BIA a couple of weeks ago.

Mayor Lilburn stated she does have a speaker slip from the BIA.

Mr. Jeff Simonetti stated he first would like to say the BIA appreciates the time and attention given to the Developmental Impact Fee proposal. This evening we urge you to forgo any fee increases that you have before you. As you know our country faces uncertain challenging economic times. The City of Highland, unfortunately, is not an exception to that rule. Building activities within the city have pretty much slowed to a crawl in the last few years. He wants to give you some figures that show just how much building and safety, in terms of residential, has slowed down. These numbers are from construction industries third quarter. In 2005 the city issued 322 single family building permits. In 2006, 105 were issued. In 2007, 75 were issued and in 2008, the first few months, the City of Highland had issued only 7 permits. There has been a significant slow down. As you read in the news everyday our Federal Government has many different monetary policies, trying to restart the economy. The City of Highland and many other cities have policy leverage they can use to help to restart their economy and restart housing and building activities which is the cornerstone of the economy. Needless to say a revitalized housing market is extremely important, not only for economic recovery for this area but for the economic recovery of our nation. This evening before you as you can see, there is a fee increase of over \$2,000. The current fee for a single family home is \$19,282 and the proposal would make it go up to \$21,498. This would only exasperate the problem. We urge the City Council to forgo the increase so far this year. As you know there are two components of the fee increase. First one is SANBAG, road and transportation fee. This year it was 12.9%, however, SANBAG Board on a 29-1 vote, states the option that would allow jurisdiction to forgo the 12.9% this year. City Council has the option to do so and considering the current economic conditions that we face, we urge the City Council to forgo the fee increase. Cities including Ontario, Rancho Cucamonga, County of San Bernardino, Chino, Chino Hills and many cities within San Bernardino County who have chosen this option as well. Another portion of the fee increase is construction costs and debt escalator for other developments such as public facilities, parks and fire and safety. There are many cities throughout the county who have lowered their development impact fees, if not kept their fees steady. The City of Victorville and the City of Adelanto both lowered their development impact fees last year by over

50%. The cities of Rancho Cucamonga, Hesperia, Ontario, Fontana, Chino and Chino Hills have all chosen to keep their fees steady. So, if it is a trend we are seeing, then it's a trend that we hope the City of Highland will follow. Again, we urge your consideration.

Councilman McCallon stated as you know on the transportation development fee, that increase is a five-year rolling average and in the future we will consider what that increase and escalation should be. At some point even if we didn't enclose it this year at some point we would have to catch up.

Mr. Jeff Simonetti stated one of the major issues that the five-year rolling average has is that if you recall back in 2004/2005 there was a 30-40% fee increase. If you look at the actual numbers that are just for 2008, in 2008 development impact fees and what Caltrans determined was the cost escalation factor actually decreased by 7%.

Councilman McCallon stated but we are locked into what SANBAG says that we have to do.

Mr. Jeff Simonetti stated you have the option to do so; you have an option to forgo it.

Councilman McCallon stated he understands but next year we either can't have that option or we will have to catch up, this year plus next year.

Mr. Jeff Simonetti stated what we are asking for is now considering the economic conditions that we face to help bring back some building activity.

Councilman McCallon stated the other aspect of this economic stimulus package which has been adopted by some of the cities and it might be helpful to the building industry to collect the fee at documents on houses because at that point presumably you've gotten paid for the house and you can pay the fee.

Councilman Timmer stated we currently do that now.

Councilman McCallon stated yes, that's a local option. We don't do it.

City Engineer Wong stated most cities don't do it. BIA is telling us that some cities this year have started to do it.

Councilman McCallon stated we have the option of doing that and that's one of things they've asked us to do.

Mayor Lilburn stated some cities have forgone it but they are still charging it at the end.

Mr. Jeff Simonetti stated some of them have a combination of both. Some of them have frozen their fees and allowed them to pay at the end.

Councilwoman Scott stated regardless of whether you have the developer pay the fee upfront or at the back, the ultimate payer of the raised fee is the homeowner and if we want to help jumpstart the economy she doesn't see, she means we're already late we were supposed to have done this in November, a few months until November of this year, she would say let it stay where it is and no action on this until November of 2009 and then readjust it. Hopefully the economy will be up.

Mayor Lilburn called for any additional speaker slips in favor or opposition, hearing none, she closed the public hearing.

Councilman Timmer stated as Councilman McCallon pointed out if we do that we'll end up having a bigger increase next year. If the indicators keep peaking and go up which they have in the past they may not. Remember when we did the last adjustment we had a very significant increase because we didn't do anything for six or seven years and we ended up paying twice for doing that. He doesn't have a problem with Councilwoman Scott's suggestion. Just a couple of points since we've been going through this process, this was one of the first things the City Council did when we incorporated was to establish development impact fees and it's very important to us that we have that fee to provide the infrastructure to existing residents as well as new development. One point that was made during the presentation is some cities have reduced the fee and just to point out that the fee is based on specific projects within the study. So, obviously some cities have eliminated some projects from their list and he doesn't think our city, should be willing at this point, to remove any of the projects that we have because we had a very long billing duration to those valuations for those individual projects and he would hate to look at that at this point. The other issue is the SANBAG option, the three options, one is to do nothing, and option three he thinks is do nothing at this point and time and use a different schedule or adjustment mechanism. When we do that adjustment he would think we would want to look at option three even though it says do nothing at this point but when we do take action, now were locked into using this methodology as he understands it to establish what the fee would be in the next round.

City Engineer Wong stated the third option was not to adopt the five-year rolling average but for the city to recalculate its project cost estimates.

Councilman Timmer stated but that would happen the next review cycle.

Councilman McCallon stated those options are only for this year.

Councilman Timmer stated yes but it says to adjust the fee in the next fee update schedule which would be the one next November.

City Engineer Wong stated every city has an option now to recalculate a cost estimate. In other words try to see whether the cost actually is less. Then if the cost estimate is less then of course the fee would be less. This issue was discussed with the Planning Subcommittee a few months ago and staff recommendation was when we develop the cost estimate a couple of years ago we went through a lot of work. It was not a quick thing. We did a lot of work putting the estimate together and now that estimate is now being adjusted based on an index so it should be pretty good.

Councilman Timmer stated but if we choose to do nothing at this point or keep it the same at this point when we adjust it next time we still have to use the five-year rolling average process. If we took action tonight and said we would like to use option three which is a different methodology for calculating that number and hopefully that peak one that was a couple of years ago would be not be included in that methodology.

City Engineer Wong stated the three options are either adjust the fee based on the five-year rolling average or you keep it as it is this year but next year you catch up. Basically you have two years of increases to be done at one time next year or you recalculate every project construction cost estimate.

Councilman Timmer stated no, option three states authorize each jurisdiction the autonomy to vote to maintain their congestion mitigation fee at current levels for the next twelve months. That's what is being suggested by Councilwoman Scott. Then it continues, and adjusts the fee in the fee update schedule or cycle based on the change of the cost of index over a two-year period.

Councilman McCallon stated that is the five-year rolling average.

Councilman Timmer stated he did not read it that way.

Councilman McCallon stated this year is 12.9% and next year is 5% and then we would have to raise it 17.9%.

Councilwoman Scott stated if the economy is still down and even goes down further next year certainly they are not going to arbitrarily raise it to 5.9 next year. Aren't they going to have to look at the overall economy?

Councilman McCallon stated that is what SANBAG does and depends on what we do.

Councilman Timmer stated it's based on construction costs.

Councilwoman Scott stated there again, the guy that buys the house is the one that is paying the higher construction costs, the higher development impact fees, the higher permits, the higher everything and they are the ones who are supposed to be helping the citizens to get a home. When this city was formed the very first year that the five Council Members were elected, they worked five days a week. They were also the Planning Commission for six months of the first year and not one dime of pay or reimbursement was given to any of them because they believed in it and wanted to give this city a chance to be the city that it is today. We need to give our citizens a chance to be homeowners and give them a break, give them a breather. We're not even asking for a full twelve months.

Councilman Timmer stated he wasn't saying he wasn't supporting what Councilwoman Scott is saying, he was just looking at how do we do that and what are some of the alternatives or options we could look at when we take action to say this is how we should do it next time.

Councilwoman Scott stated she really resents another government entity telling us what we have to raise different things to. Quite frankly, she thinks we should look at each project and have our own fee and she could care less what Rancho Cucamonga charges or Los Angeles or San Francisco.

Councilman McCallon stated what we are talking about is the transportation development fee that was put into Measure I for today's projects that need to be changed because of the development because of congestion. We need to expand interchanges and need to do this, that or the other because of development. A Nexxus study was done and said all right a certain percentage of that project cost is attributable to development and those are the fees that we are talking about. SANBAG has a new law that was passed; SANBAG is the responsible agency to determine how those costs are to be escalated.

Councilwoman Scott stated why shouldn't they just be on transportation and not over every little thing. If Caltrans doesn't listen any better than they have in the past because when they built the 30 Freeway, we tried to tell them then that we needed a wider one. Now we've got the 210/30 and it's really congested but they never listened.

Councilman McCallon stated he understands but in Riverside County they have a flat fee but San Bernardino County chose to do it differently. Each jurisdiction then collects the fee based on each share of that project.

Councilwoman Scott stated and how much of those transportation fees are for pie in the sky ideas like the E-Rail and the Rapid Transit and so forth instead of working on the congested freeways we've got now.

Councilman McCallon stated nothing, Measure I is jurisdiction specific project like freeway interchange, widening of thoroughfares, major arteries, etc.

Councilman Timmer stated and it was established the same way we established the city fees. You establish a list of projects, everyone buys off on those projects, they establish at the current market what the cost of doing those projects are and those numbers are divided into each other. These numbers aren't just picked out of the air, they are based on actual construction cost and estimated costs for that period of time. He doesn't have a problem with holding the fees as they are currently. The only question he has is on the Quimby Act Park Fee it talks about the words must and so forth and he thinks we've talked about this before. That only applies to parks-is this correct or does that apply to all six of the other items?

City Engineer Wong stated it is the Council's resolution. If the old resolution says must and this Council this time wants to make an exception to it that's your prerogative.

Councilman Timmer stated but it only applies to park fee that Quimby Act, right.

City Engineer Wong stated yes but he would like to because of the discussion on the five-year rolling average. He thinks it would be good if Council would go to page 13 to get a better perspective of what it means if you take a certain action this year what it might mean next year. On page 13 this is a table put together by SANBAG and at least you can see where we asterisk those five numbers, those five numbers that were used by SANBAG to come up with this year five-year rolling average. You can see that in the year 2003, for that one year the increase was 4.5%, for 2004 it was a big jump to 45% and then 2005 it was 24%, 2006 was 4% and then 2007 it was 7%. So based on this they came up with a rolling average of 12.9%. Now next year let's say you don't do any increase this year, what happens next year. Next year you would need to get 12.9% because you don't add this year plus whatever the new five-year rolling average they would calculate for next year. How would they calculate it? They would drop the 4.5% for 2003 and another percentage for 2008 and that percentage most likely would be a negative number because last year things went down. This afternoon he phoned SANBAG and he asked them to do a calculation for him. He said in 2008, if the average price goes down 20% in construction costs, what would the next five-year rolling average be. They said it would be +8%. He also asked what if it dropped down to 30% then the five-year rolling average would be +4.6%. So you can tell most likely, next year, we will be given a figure somewhere 4, 8, 10% and then you add the 12.9%.

Councilman Timmer stated until the big 45% one drops out of the five-year it's going to be hard to predict.

City Engineer Wong stated in order for you to have a zero percent increase next year you almost have to have a cost of negative 40 something percent.

Councilman McCallon stated if we held the increase this year, next year we are looking at 16-25%. He would like to offer since we are going to be faced with an increase next year also that we go ahead with the fee increases this year but change our policy to allow payment of the fee at the time of occupancy of the homes.

Mayor Lilburn stated can we do a combination such as cut the fee and collect the other half at the end.

Councilman Timmer stated if you cut the fee then we have to eliminate projects from the city.

Mayor Lilburn stated she meant cut the increase.

Councilwoman Scott stated well she doesn't know because Adelanto and Victorville lowered their fees.

Councilman Timmer yes but then they had to cut projects from their study. What projects are we willing to cut? he is not willing to cut any project from the city because they are all needed or we would have never had them on the list to begin with.

City Manager Hughes stated you have to remember we are looking at two different fees. You're looking at building fees as well as transportation fees.

Mayor Lilburn stated for clarification Councilman McCallon's suggestion was for the 12.9% at the end of the transaction.

Councilman McCallon stated based on our fee study that is presented to us we would go ahead and adopt those fees but change our policy to allow for a payment of the fees for homes at the certificate of occupancy.

Councilwoman Scott stated she can't see it. Everyone is hurting and if we all sit around the ones that make decisions that someone else pays for, if they make the decisions and say okay, gee I really feel for you but I've got my house and I'm going to make you pay. She can't see it. She thinks we all need to tighten our belts right now and get a breather.

Councilman Timmer stated he thinks the recommendation of the Certificate of Occupancy issue is probably a very good benefit for developers not having to put up that additional front money at the time of pulling the permits. Rather than they can get a Certificate of Occupancy and when it gets to that point, generally there is a buyer, it's in escrow; it's doing something where the money is available to do that.

Councilwoman Scott stated she can go for half of the 14%. She can go for half of it, that way it wouldn't be that much to make up next year.

Councilman McCallon stated we don't have that option.

City Manager Hughes stated for the transportation portion we don't have that option. For the city portion, we do. It would be for the parks or fire stations. What he is hearing here is to charge the full amount to the Measure I portion which is 12.9%, cut the city's increase, which is 9.1%, and cut that in half for this year and have the option of paying the fees at the time of Certificate of Occupancy.

Councilwoman Scott stated if the economy were to pick up, can we readdress this before November on the city portion.

City Manager Hughes stated yes we can.

A MOTION was made by Councilman McCallon, seconded by Councilman Timmer, to approve Resolution No. 2009-001 amending amount of development impact fees pursuant to Government Code Section 66000 (AB 1600); and Resolution No. 2009-002 amending amount of park fee pursuant to Government Code Section 66477 (Quimby Act) as amended. Motion carried, 5-0.

20. Clarification of the Intent and Language of, and Possible Amendment to, Certain Engineering Conditions of Approval Relative to Drainage Systems and the Common Access Imposed on the following two Developments: 1) JLM-TREH VIII HWY 30, LLC, the Highland Crossings Project (Conditional Use Permit 007-003) and 2) Regency Centers, the Highland Crossings Project (Conditional Use Permit 007-009)

Mayor Lilburn opened the public hearing.

City Attorney Craig Steele stated he would refer Council to the written staff report that has been in your packet and also presented to both parties that are involved in the decision. To boil the issue down, this comes down to the interpretation of two sets of conditions that were imposed by the engineering department on the two adjoining projects that are listed in the staff report. A dispute has risen as to the interpretation of the meaning of those conditions and how the economics of those conditions are to be dealt with. Because staff has been unable to help the

two developers resolve the interpretation of those conditions, the City Council is holding this hearing to present some guidance to staff as to clarify the intent or the interpretation of those conditions. He believes that both developers are here, either themselves or through representatives in which to be heard on the issue. He would suggest that we open the public hearing and take testimony from both and then hopefully give some guidance to staff as how Council wants them to proceed.

Mayor Lilburn stated since the public hearing has been opened, she knows there are representatives from TREH as well as Regency. She doesn't have any speaker slips but she is assuming both parties want to speak. She doesn't have any particular order.

Mr. Paul Anderson, Regency Development, stated they are in support of staff's report. It reflects the history of work approvals of both projects. It is unfortunate that we do not have full agreement with our neighbor TREH on one issue which is TREH's demand for reimbursement in full. The city's original Conditions of Approval, environmental clearances, midsize grading plans, and the hydrology studies, all demonstrates we are expecting TREH would be accepting so Regency is in compliance. TREH unfortunately, after the last October 30 meeting demanded the east/west line. It is important to us because we have LA Fitness coming in the spring. As the city report states there really are two issues. One is the construction of access A, which we are willing to have proceeded to construct access A. The problem is we don't have the connection for the pipe so we can't finish access A unless this pipe issued is resolved. We are moving forward with our project development. Again, we will move forward on access A and be finished once this issue is resolved. In the middle of the staff report, page 6, last paragraph, states relative to the storm drain, the Council may consider the following options and number two or number one is the same to us. In other words we believe that is the correct interpretation of the conditions of approval. We would request that the city enforce the conditions of approval. In fact it probably would be helpful not only we agree that staff interpretation is for both TREH and Regency to accept conditions as written and by extension of easements that are required by those conditions.

Mr. Tom Robinson, JLM TREH, stated Lowe's is here also. He wants to go over some points that we aren't in agreement with really quickly. He would like to take a brief moment to address staff's suggestion to change their conditions of approval. For the record, suggested change is anything but a clarification. Of all we were prepared to address, all the legal issues, he knows Council would rather not watch and listen to. Instead we felt it would be more productive to make a few quick points. First of all, we are not here before you to get our project approved, that's already been done. We are not asking to change, clarify or otherwise address our project conditions. We are not asking you to require reimbursement of our storm drain construction costs. We also feel it would be wrong for you to prohibit any potential point of bargaining in our private negotiation. Above all

else we are not asking you to step in the middle of negotiations between two private property owners. We are here because we were asked to be here and because staff has recommended without any pending application, without proposing changes to our project, our project conditions be changed. Contrary what we are asking to do tonight is this: absolutely nothing. Private negotiations should be left to private parties. The storm drain issue, although staff has treated the issue as one of interpretation we would like to share a few very important points. First condition 24 deals with the construction of the on site storm drain, we've done that and the condition has been satisfied. Next, condition 31 addresses how we are to implement the use of the storm drain by our neighbor. You felt it requires us to reserve a private easement for acceptance of pre-development drainage flow in favor of the easterly adjoining property, we've done that and that condition is satisfied. That private easement which is not provided in the staff report has been commented to and negotiated and approved by the City Attorney and staff and recorded by the city. He has a copy of it tonight. The terms of the development drainage arrangement has been left to private parties. It was crystal clear from the very precise word easement and that is what has come into question. The terms of the post development drainage arrangement have been left to private parties as they should be. Every reference to easement in the conditions of approval of both projects, whether for drainage or access, clearly indicates that the procedure contemplated by the city involved a private easement or legal mechanism between the property owners. There is no need to go into great detail regarding access A because it is the same thing on access A. It is a private easement which we are working towards resolving. Private parties have ample motivation at this point, we do and Regency does, to resolve their differences privately. We believe this will not happen as long as one of them believes the city might come to address this. Simply, it is not the city's role to dictate to either party what the terms of the private agreement should be.

Councilwoman Scott stated regarding Access A, that is the road and the October 30 Public Works Subcommittee meeting. Is Access A still an issue? Are there still two issues?

City Attorney Steele stated at the moment we are still looking at two issues.

Councilwoman Scott asked is Access A still an issue?

Mr. Paul Anderson, Regency Development, stated Access A is still not resolved. However, we are working toward that resolution right now.

Mr. Tom Robinson, JLM TREH, stated one of the key factors here is there is water, pre-development flows, then there are post development flows after the development of property is defined in the code. There are different issues that go along with this. Pre-development you have water, natural so there really is no toxins but once you develop there is a whole host of issues that need to be settled between the private parties. There is a difference between pre-

development and post development. The city's approval of the easement, they could have been involved, they weren't returning phone calls. From a standpoint from negotiating with the city we have emails from the City Attorney Craig Steele to Adam Salazar, our attorney, who is negotiating with Lowe's attorney and Council. From Craig to Adam: "I have spoken to the City Manager and we have decided to accept the access document as you have revised it. This needs to be the final revision. However, we request that you make the changes to the drainage document I requested in my earlier email. At that point upon receiving the final document for recording in the form and substance described you will have compliance with condition 30."

Councilman Timmer stated he would like to point out one clarification which was kind of implied by Attorney Anderson that the Public Works Subcommittee addressed these issues. The only issue we addressed was street A and at that time that was the only issue we addressed and we did not talk about any issue.

Councilwoman Scott stated to her Access A should not even be a issue because it was very clear the first two points here.

Councilman Timmer stated the committee did not resolve anything we just listened to the issue and we gave some suggestions that they get together and get this thing resolved is basically where we left the meeting as.

Councilwoman Scott stated she is so disappointed that through this whole process we've talked to both sides, separately, together, the whole bit and you know you guys were agreed, we were really happy to welcome you both with open arms and about midway she was ready to tell you both to get out of the city and go somewhere else because she is sick of it. She thinks it's disgusting the way you are acting. Two issues and just common sense, common decency, you should be able to resolve them.

Mr. Steve Gale, Real Estate Director for Lowe's, usually in a dispute it ends up being an economic issue. With his involvement over the last two years, Regency is unwilling to pay for their half of their cost to improve their half of the roadway. He thinks it's an economic issue.

Mr. Paul Anderson, Regency Development, stated as Councilmen Timmer and McCallon know on October 30 we agreed to accelerate our construction schedule to meet TREH's interest in constructing all of access A and that is what we've been doing. That's why you see access A being developed as it is. He is not sure where Lowe's is coming from. We have proceeded to do this at our cost. The issue here is staff has made a very comprehensive staff report. A clarification of the confirmation of the interpretation that the City Attorney and City Engineer have offered we believe needs to be made so that private negotiations that have been on going can reach some finality. Otherwise we are going to be deep into 2009 before they are resolved.

Mayor Lilburn called for any additional speakers in favor or opposition, hearing none, she closed the public hearing.

City Attorney Steele stated he would like to offer one piece of information since it involves him and he wants to make sure everyone is on the same page. City Engineer Wong, City Manager Hughes and I all saw these easement documents that were submitted for review that were all drafted by TREH's lawyers. At the time we were being asked to rush our review process to an extraordinary level to accommodate Lowe's application for building permits. Everyone at city hall was trying to make something happen to get a building permit for Lowe's by a certain date, which is why we accepted documents drafted by the developer's lawyers. He did review the drainage easement grant and he did review the access easement grant. City Engineer Wong did as well and changes were requested. We believe the documents mean something else other than what the applicants lawyers believe they mean. He often finds when the word clear is used to define a legal document it's not and part of the dispute here is we think the drainage easement means something different than what TREH's lawyers think the document means. Unfortunately, if we had more time and not been rushed by the needs of the applicant and not try to accommodate the needs of the applicant, we might have had a better document that wasn't subject to two different lawyers arguing about what a document means but in hindsight we tried to do a favor for the applicant and that may have attributed to language that we now can't agree on the interpretation.

Mayor Lilburn stated she thinks at that particular time we needed to do what we did. We have a thriving Lowe's in our city that we probably wouldn't have had. We felt the need to help the project proceed.

Councilwoman Scott stated well at that time the two parties came together as a unit to Council and she didn't see just one project. She was actually hoping both projects would finish at the same time. They came together and we wanted to put both parties on fast track.

Councilman McCallon stated personally he is in total agreement that Council should just stay out of this. It's a matter between two private parties and you ought to work it out. Unfortunately the city has been put in this position of playing Solomon. What Solomon did, he said let's cut the baby in half, so at this point he is going to recommend to say all right TREH pay half of the line, Regency pay half the line and let's get on with it and get it done.

Mayor Pro Tem Jones stated as he sees this we have basically two conditions. One addresses Access A, one that addresses the water pipe and who accepts preconstruction water. TREH has completed both of those requirements as he sees it. They built the line; they built their portion of Access A. It's now Regency's responsibility to hook up to that line and finish Access A so that the

total project is completed and then to also build an additional line that will accept the preconstruction flow from the properties to the east. He thinks it's only fair that if Regency builds that line they ought to be able to also charge for any water that they accept from the east that is going to tie into and use that because it was your cost that you incurred. In the same respect he thinks it's only fair that Regency pay TREH for the use of that pipe line that TREH built to accept that water. Now, that being said he agrees with TREH to the fact that this is a civil matter, it really should not be settled here. He thinks they need to understand what Council's understanding is and how we see it. If we proceed forward tonight and do nothing and say okay you work it out where we are right now is Regency is going to want an Occupancy Permit for LA Fitness and if you cannot satisfy the condition to hook up you're either going to have to hook up to the TREH line or an alternate way to get that preconstruction water off your premises and into a storm drain. It is his understanding that the city has a storm drain planned for the street and your cost for hooking up to that is what, City Engineer Wong.

City Engineer Wong stated the city's portion of the increase cost of city's funding is \$80,000.

Mayor pro Tem Jones stated about \$80,000. So either you pay TREH their half of whatever portion that is or you pay the city \$80,000 and you've solved the problem and we move ahead. One way or the other, you either put the pipe into the TREH line or you put the pipe to the street and the cost of doing so is yours and everybody finishes their project but again that's a civil issue and it's up to Regency to make the decision which way they want to go.

Councilman Timmer stated the way he sees it is when we discussed this issue with the Public Works on Access A that we kind of felt the project would be mutually beneficial or the street would require mutually for both projects. It was only reasonable the cost of that particular street A would be split whether they built their own half or put the money together and pay 50/50. It seems logical to him that the storm drain system which is going to accept the preconstruction waters from both properties. We were told by our engineer that water goes into those, that again, the logic is the storm drain is mutually beneficial to both properties, you can shake your heads. His motion would have been to stop issuing all Certificates of Occupancy at this point until you guys resolve it. He thinks we're trying to work something in between somewhere so it doesn't. His initial reaction based on your juvenile behavior can't resolve an issue and it's actually monetary issues. It's not whether or not what's good for the city or what's good for the developer, it's all about dollars. His position was going to be no more Certificates of Occupancy until you guys resolve this issue and come into compliance on all conditions of approval. However, we want to encourage these projects to get finished so they are beneficial to the citizens of Highland and until we get this resolved we can't do that. So, his logical opinion was street A was going to be 50/50 split, the storm drain whether it services both properties

or not, as it was really intended to do that, is we split, again, Solomon's baby in half, and no one will be happy but at least we will get an issue off dead center. He guesses his question is do you want his first inclination as a motion, if you do, then he is certainly willing to entertain that but he would rather go along with what's being discussed here.

Councilman McCallon stated he would like to make a motion that we resolve this issue by saying that each developer has to pay half of the cost for the drainage line and that Regency will be entitled to reimbursement of half whenever the property east of them develops for the line that they are putting in to accept redevelopment funds.

Mayor Lilburn stated she wants to make the motion clear. You're not saying that their fee is due when their neighbor, you're saying the fee is due now.

Councilman McCallon stated no, each side will pay now for the existing drainage line that was put in on TREH's property to accept pre-development flows from up stream, if you will. That seems to be the issue, the monetary reimbursement for that. His motion is we say each side must pay half, period and get on with it.

Mayor Lilburn stated and this is on the storm drain issue.

Councilman McCallon stated that is on the storm drain issue.

Councilwoman Scott stated she would like to put an alternative to it; 50/50 definitely on access A, 50/50 on the drain or if they choose not to go 50/50 on the drain then they would put in their own. They have the option of doing their own.

Councilman Timmer stated the whole reason the storm drain was put in was to accept their water and now were going to say let's abandon that and let them go to the street. Well, to him that's counterproductive.

Councilwoman Scott stated okay, she will withdraw the suggestion. That was the understanding and that was the agreement many times by both parties before they got into their disagreement.

Councilman Timmer stated he would like to add to Councilman McCallon's motion if he's willing is that we direct staff that future projects to the east of Regency be conditioned, make it very clear that they will be part of the reimbursement for that drainage system that Regency is putting in.

Mayor Lilburn stated how much reimbursement, 100%, because if it's going to be 100% we need to give them guys 100%.

Councilman Timmer stated he thinks staff needs to work that out as the projects come in. Obviously Regency will have input to that but if they are going to have to pay for a portion of what TREH put in, to him logically Regency should be reimbursed for any projects going to the east that is accepting that pre-development water as well. To him that makes sense and he would add that to the motion that staff in future projects when they come in to the east that they need to know upfront that at some point they may get reimbursement as projects develop to the east for the storm drain system they are putting in to intercept water coming in from the east which allows them to move forward. Now without the storm drain they couldn't build a project because there is nowhere to capture the pre-development water coming across.

Mayor Pro Tem Jones stated he has a clarification. The pipe that Regency is putting in will accept no preconstruction water of their own, it is strictly going to accept preconstruction water of those lots to the east. The same pipe line that TREH put in is the same condition. It accepts no preconstruction water from TREH. It simply accepts that from Regency. Now, that being said, his only point in making this that Regency of course has incurred some cost or is going to incur some costs to put in a pipeline that they themselves are not going to benefit from other than fulfill a condition that is required by the city to accept preconstruction water.

Councilman Timmer stated they have to have a mechanism in place now to accept water that is coming off those undeveloped properties right now to keep from flooding their existing project today. There is some direct benefit to them by putting it in but there is also benefit from the folks to the east that will have a pipeline to tie into to do their water as well. So, future projects have bared some of the burden of some of that cost.

Mayor Pro Tem Jones stated he agrees with that but if Regency wanted to build a retaining wall there, they wouldn't get any of that east water onto their project it would be all sent to the street. He is just trying to clarify the fact that Regency is entitled to be reimbursed for those costs and he would look to the city staff to determine what percentage of those costs would be in fact involved. Now that's if we're going to approve this 50/50 on the current conditions.

City Engineer Wong stated the City Council uses 50/50 as a way to help resolve this particular issue. He thinks it is a viable solution because we have the two parties here developing at the same time and they are hearing this at the same time. In the future, let's say you have a project that wants to build in the property currently owned by Wal-Mart; they would be required to again design a system that would retain the difference of the storm flow between developed stage and the undeveloped stage. Basically only allow the amount of water to leave their site equal to the undeveloped condition. They could, although city staff is following City Council's direction and will condition them to pay half of Regency's part but they could challenge us. They could challenge us that well Regency has to put

this pipe in because they have to protect their own site regardless of when I develop. Therefore, where is the basis for charging half of their pipe. What he is saying is staff will condition them but we may have to take up some challenges in the future.

Councilman Timmer stated well the challenge would be that if they don't agree to the mitigation conditions we put in then we don't approve the project. The thing is for us to try to establish a percentage of what Regency should be reimbursed is difficult at this point because until you see the hydrology studies and some of those things that occur that is going to have to be determined at a future date. He thinks that the intent would be that some reimbursement is going to occur because there is a benefit to those properties developing to the east by what Regency is putting in the storm drain.

City Engineer Wong stated he wants to say so Regency knows though. Let's say the Wal-Mart property designs their project to drain completely out to Greenspot and that's...

Councilman Timmer stated well we shouldn't accept that because our Master Plan that we've put together was that the water would go from Regency into TREH and to be captured in their pipeline. As it has been designed now, the pipeline on the east end of Regency's property is designed and installed to capture water coming from the east. Why would we want to change that mid stream.

City Attorney Steele stated just to clarify the policy statement for all the benefit of this particular issue. Policy statement the Council would be making is that there is a benefit to the downstream property by being protected from the pre-development volume of flow. There is a benefit to the upstream property for having that water carried away. He thinks that was the point Councilman Timmer was making earlier when people started shaking their heads. There is a benefit on both sides of the property line.

A MOTION was made by Councilman McCallon, seconded by Councilwoman Scott, to have each developer pay half of the cost for the drainage line already constructed by TREH and that Regency will be entitled to reimbursement from the property east of them whenever they develop for the line that Regency is putting in to accept the upstream flow. Motion carried, 5-0.

CITY COUNCIL/REDEVELOPMENT AGENCY LEGISLATIVE

21. RDA Assistance to Camden Development/Jack-in-the-Box Project on Underground Utility Fee

City Engineer Wong gave a brief review of the staff report. The Finance Subcommittee agreed to assist the developer with the gap of the fees of \$70,000. The Subcommittee is recommending using RDA funds to pay \$35,000.

A MOTION was made by Agency Member McCallon, seconded by Agency Member Scott, to allow the proposed Jack-in-the-Box project to pay underground utility in lieu fee in the amount of \$120,060, with half of the fee (\$85,030) be paid by RDA as financial assistance to this development; and approve transfer of \$35,030 from Account No. 080.2100 (RDA Unreserved, Undesignated) to Account No. 080.8000.6540 (RDA Capital Projects–Underground Utilities). Motion carried, 5-0.

22. Subcommittee and Agency Appointments

City Clerk Hughes gave a brief review of the staff report.

Mayor Lilburn stated she did not receive any requests or comments regarding Subcommittee appointments, therefore, all current positions held by Council members shall remain the same.

A MOTION was made by Councilman Timmer, seconded by Mayor Pro Tem Jones, to keep subcommittees and agency appointments as it currently stands. Motion carried, 5-0.

23. Appointment to the Design Review Board (DRB)

City Clerk Hughes gave a brief review of the staff report.

Councilman McCallon nominated Mr. Tran Huynh.

Councilman Timmer seconded the nomination.

A MOTION was made by Mayor Pro Tem Jones, seconded by Councilwoman Scott, to appoint one (1) member of the public, Mr. Tran Huynh, to the Design Review Board. Motion carried, 5-0.

24. Update on SANBAG, SCAG, Omnitrans, Work Program and Regional/Legislative Issues/Development Issues/Subcommittees/AB 1234 Updates

Councilman McCallon stated he sent an email to City Council regarding a discussion between SANBAG and Will Kemp, Caltrans, which in essence stated the State is unable to sell Prop 1B bonds due to State Budget. The State currently owes transportation contractors \$33 million in progress payments for work performed in December. Caltrans is preparing to suspend all Proposition 1B projects that are currently underway and Caltrans is continuing to recommend suspension of all future Prop 1B allocations until there is clarity on the availability of transportation funds.

Mayor Lilburn stated SBX is fully staffed and is going forward with one of the seven corridors that they are planning. This one will run from Cal State to Loma Linda University. Construction will begin in 2010. She will be taking the position of Chairperson for Omnitrans in June. Omnitrans continues to see an increase in ridership.

City Manager Hughes stated LAFCO 3076, Water Conservation District Issue, has submitted a response to the EIR from the various agencies. Staff will be in attendance for the meeting.

Community Development Director Jaquess stated LAFCO has indicated on the 21st their intent to take action on the Environmental Document but not take action on the actual proposed merger of the two districts. A hearing would be held at a later date.

Councilman McCallon left the dais at 8:09 p.m. and returned at 8:11 p.m.

25. San Bernardino International Airport Authority and IVDA

None

ANNOUNCEMENTS

Thursday, January 15, 2009

Chamber Installation Program

CLOSED SESSION

At 8:12 p.m., the City Council and Redevelopment Agency convened into closed session regarding the following:

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code Section 54956.9(b) (1):
Three cases.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Pursuant to Government Code Section 54956.8 regarding the following properties:

| | |
|----------------------|---|
| Property: | APN 1192-411-43 & 1192-341-06 |
| Negotiating parties: | Joseph Hughes, City of Highland Young Shin |
| Under negotiation: | Instruction to City's negotiator concerning price and terms of payment. |

Property: APN 1192-431-05 & 1192-431-04
Negotiating parties: Joseph Hughes, City of Highland Redevelopment Agency and Craig Steele, Highland City Attorney California Housing Foundation
Under negotiation: Instruction to City's negotiator concerning price and terms of payment.

At 8:32 p.m., the City Council and Redevelopment Agency convened into open session, with all members present, making no announcements.

ADJOURN

There being no further business, Mayor Lilburn adjourned the meeting at 8:34 p.m. in memory of Peggy Pickering, Charles Woodman, Benjamin Harris and Don Coffee.

Submitted by:

Approved by:

Betty Hughes, CMC
City Clerk

Penny Lilburn
Mayor