

**MINUTES OF A REGULAR MEETING
OF THE CITY COUNCIL OF THE CITY OF
PALOS VERDES ESTATES, CALIFORNIA**

October 26, 2010

A regular meeting of the City Council of the City of Palos Verdes Estates was called to order this day at 7:30 p.m. in the City Council Chambers of City Hall by Mayor Humphrey.

PLEDGE OF ALLEGIANCE

ROLL CALL: Councilmembers Bird, Perkins, Goodhart, Mayor Pro Tem Rea, Mayor Humphrey

ABSENT: None

ALSO PRESENT: City Manager Hoefgen, City Attorney Hogin, Assistant City Manager Smith, Police Chief Dreiling, Public Works Director Rigg, City Treasurer Sherwood, Administrative Analyst Davis, Minutes Secretary Monson

MAYOR'S REPORT – Matters of Community Interest

Mayor Humphrey reported on the Mayor's Community Forum held on October 18th. Items discussed were trees and traffic.

Mayor Humphrey said the entire Council was in attendance at the Citizen of the Year dinner where PVE residents Steve and Marlene Young were recognized for their community involvement.

Mayor Humphrey reported on the ribbon-cutting ceremonies held on October 23rd and 24th for three of the new Disaster District Program (DDP) containers that are being placed at all six school sites in the city. She encouraged residents to get involved and find out about the DDP in their district.

CONSENT AGENDA

It was moved by Mayor Pro Tem Rea, seconded by Councilmember Goodhart and unanimously approved that the following Consent Agenda items be approved:

- MINUTES OF CITY COUNCIL MEETING OF OCTOBER 12, 2010
- CITY TREASURER'S MONTHLY REPORT – SEPTEMBER 2010
- CITY TREASURER'S QUARTERLY INTEREST REPORT – JULY-SEPTEMBER 2010
- ADOPT RESOLUTION R10-25 APPROVING SUPPLEMENT NO. 005-N TO FEDERAL MASTER AGREEMENT NO. 07-5283R AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT FOR THE PASEO LUNADO OVERLAY PROJECT
- ACCEPT AS COMPLETE THE CONSTRUCTION CONTRACT PW-565-09 IN THE AMOUNT OF \$21,500; VIA CORONEL CATCH BASINS PROJECT, DIRECT THE CITY CLERK TO FILE THE NOTICE OF COMPLETION, AND RELEASE THE 10% RETENTION 30 DAYS AFTER THE COUNTY RECORDER'S OFFICE RECORDS THE NOTICE OF COMPLETION, IF NO STOP NOTICES ARE FILED
- PARKLANDS COMMITTEE MEETING ITEMS OF OCTOBER 11, 2010

PC-314-10; Application to remove 1 pine tree in the city parkway located adjacent to 1612 Chelsea Road.

Applicant: Rick Edler

Action: Denied

PC-316-10; Application to remove 1 pine tree in the city parkway located adjacent to 1304 Via Coronel.

Applicant: James S. Campbell

Action: Approved with conditions

- **TRAFFIC SAFETY COMMITTEE MEETING ITEMS OF OCTOBER 13, 2010**

Request for Red Curb at Fire Hydrant Next to 4316 Via Valmonte

Action: Recommended that staff install red curb at 4316 Via Valmonte.

Approved

Request for No Parking Restrictions in the Alley Next to 711 Yarmouth Road

Action: Recommended that staff install No Parking signs in the alley.

Approved

Traffic Calming Application for Via Del Monte Between 789 Via Del Monte and Via Corta

Action: Recommended that staff arrange for traffic calming plan to be put to a resident vote for installation of pavement markings and additional signage between Via Corta and 780 Via Del Monte, as well as installation of speed cushions at 533/536 Via Del Monte and 544/545 Via Del Monte.

Approved

- **PLANNING COMMISSION ACTIONS OF OCTOBER 19, 2010**

WT-117-10; Consideration of a Wireless Telecommunication Facilities Application for equipment proposed within the City right-of-way adjacent to 4010 Palos Verdes Drive North. Lot B, Tract 9822.

Applicant: AT&T Mobility

Action: Approved with conditions

CDP-80/NC-1393/GA-1473-10; Consideration of Coastal Development Permit, Neighborhood Compatibility and Grading Applications for a new single family residence located at 3004 Paseo Del Mar. Parcel 2 of parcel map 70848, as recorded in PMB 367-12-14.

Owner: Michael & Gina Mulligan

Action: Approved with conditions

NC-1394/GA-1475-10; Consideration of Neighborhood Compatibility and Grading Applications for a new single family residence located at 2201 Thorley Place. Lot 17, Block 2211, Tract 6888.

Owner: Paul & Rosanne Sanacore

Action: Approved with conditions

M-783-10; Consideration of a Miscellaneous Application for a structure exceeding the maximum allowable height at the single family residence located at 2816 Via Anacapa. Lot 5, Block 2232, Tract 7144.

Owner: Don & Dianne Ecker

Action: Approved with conditions

M-788-10; Consideration of a Miscellaneous Application requesting after-the-fact approval of structures exceeding the maximum allowable height at the single family residence located at 2204 Via Cerritos. Lots F, G & vacated alley of Tract 7538.

Owner: Ann Mortimer

Action: Approved with conditions

COMMUNICATIONS FROM THE PUBLIC

Ron Smith, Director of West Basin Municipal Water District for the Peninsula, brought the Council copies of a DVD made with Huell Howser titled Water Reliability 2020.

A PVE resident, identified as RLC, moved to PVE from Manhattan Beach for the land and a governing body that protects people's privacy and standard of life. He said two years ago a neighbor on Paseo del Mar starting using her property for commercial purposes that included loud music and DJs. The surrounding neighbors notified City personnel of this. He reported that the City went through an extremely diligent process that resulted in these events being stopped. He thanked the Council and staff for their work.

PUBLIC HEARINGS

CONSIDERATION OF ZC-1-10 INITIAL STUDY AND NEGATIVE DECLARATION; APPLICATION FOR EXISTING OPEN SPACE LOTS TO BE RE-ZONED TO R-1 SINGLE FAMILY RESIDENTIAL LOCATED BETWEEN 2032-2100 VIA PACHECO AND 2037-2101 PALOS VERDES DRIVE WEST. LOTS C & D, TRACT 7331

Mayor Humphrey recused herself from the issue and left the chamber.

Mayor Pro Tem Rea asked if public notice had been properly given. Assistant City Manager Smith said it had been.

Planning Director Rigg reported that the staff report is long and detailed with many attachments. The application is a for a zone change for existing open space lots to be rezoned R-1 single family residential. The lots are known as Lots C & D between Via Pacheco and PV Drive West and are owned by the Palos Verdes Unified School District. Staff investigated several findings required to evaluate the proposal. Staff reviewed the General Plan with its goal being to protect the single family residential character of the City, the views of the ocean, and the park-like nature setting. Rezoning of Lot C & D to R-1 would be consistent with the General Plan. The proposal is required to comply with CEQA (California Environmental Quality Act). Staff prepared an initial study that confirmed that the project does not have the potential to result in significant impacts on the environment. Consequently, staff prepared a negative declaration for the Council's consideration. This proposal has been before the Planning Commission on two occasions. At the September Planning Commission meeting residents questioned whether a full Environmental Impact Report (EIR) was warranted. City Attorney Hogin has provided information that explains that process. In summary, she wrote that three areas were raised as potentially requiring additional study in an EIR - impacts to land use planning, traffic, and aesthetics. There are no significant impacts to any one of these that would require an EIR. This would not be a simple zone change per City Code. Under certain circumstances, State law limits a City's ordinary discretion over zoning decisions. Relevant in this instance is Government Code Section 65852.9 which requires the City to rezone a school site upon request of the School District (SD) if the SD has first offered the school site for sale or lease to other public agencies and all agencies have declined the offer. The statute further requires the school site to be given the same land use control treatment as if it were privately owned. This means, if the statutory conditions are met, the City must rezone a property to a designation consistent with the General Plan and compatible with the uses of property surrounding the school site. The R-1 zone designation is the only zone designation, other than Open Space (OS), that is consistent with the General Plan and the surrounding property. In the staff report, it explains the detail on that State law. The State Code also requires that Lot C & D, as they are school sites, are offered for sale for park purposes prior to the rezone. There was testimony at the Planning Commission meeting that the lots had been used by the school for various purposes such as a walkway between the two schools. There was also testimony that suggests the lots were used for other OS and park purposes. The SD's position is that these are unused vacant lots. The SD has not attempted to sell the property for parks as their lawyer contends the SD is not required to comply because the property was not in use or because the SD must only comply with such provisions before a sale of property and not before a rezoning. The Planning Commission decision was to hold-off on any future hearings until the litigation between the SD and the Palos Verdes Homes Association regarding the deed restrictions is concluded. The litigation regarding the uncertainty of the enforceability of the deed restrictions is what drove the Planning Commission's recommendation to the Council to wait until after litigation is concluded to make any decisions. The Planning Commission adopted a resolution confirming their decision. The City has no jurisdiction over the deed restrictions; however, a lawsuit is pending in L.A. County Superior Court in which the SD is seeking a court order to determine whether the deed restrictions are valid. The SD

contends the deed restrictions are invalid due to changed circumstances in State policy. The Homes Association contends they are enforceable equitable servitudes on the property. The PC believes it would be inappropriate to discuss any City zoning changes if the deed restrictions are deemed valid as a result of the lawsuit. In recognition of this dilemma, at the public hearing the SD's representatives expressly offered to accept a condition on any rezoning approval that the rezoning would not be effective unless and until the deed restrictions are invalidated by the court. Staff recommends the Council direct staff to re-notice the hearing on the application to amend the zoning map to change the zoning designation on the two vacant parcels located between 2032 and 2100 Via Pacheco and 2037-2101 PV Drive West from Open Space to single family residential R-1 for further consideration after there is a final judicial determination on the validity of the deed restrictions.

Councilmember Goodhart asked Attorney Hogin what her opinion was of a letter from the SD's legal counsel dated October 21.

Attorney Hogin said Mr. Parker (SD counsel) is in attendance and would explain his position so the City Council could understand it better. She believes one of the most important parts of the letter is in the third paragraph where it was emphasized that the SD is prepared to accept a condition on any rezoning that the court finds that the use restriction unenforceable or that the Homes Association agrees to waive the restriction as to Lot C & D. She thinks Mr. Parker is leaving open the possibility that the Homes Association and the SD may come to some voluntary resolution of the dispute. She believes the SD understands the dilemma that the City finds itself in – in the end, good land use planning management, having nothing to do with any particular party involved in this, would have every property zoned for uses to which it could actually be put. If there is a deed restriction that precludes one from putting a property to a use that is allowed in an R-1 zone, it is not great planning to have the zoning permit one set of uses and those uses be precluded by the deed restrictions. It could be asked if the City was creating some sort of regulatory taking by rezoning a property for uses it can't actually be put to. This dilemma will be resolved once it is known whether the deed restrictions are enforceable – but the City is not the body that is allowed to decide this. With respect to the timing, the points made in Mr. Parker's letter are good – she does not necessarily agree that the Council is compelled one way or another.

Councilmember Goodhart said the Planning Commission had two issues that they were concerned about with regards to their recommendation to the Council: 1) the results of the litigation were yet to be known, and 2) the SD had to offer the property for sale per the Education Code. He asked Attorney Hogin her opinion on this. Attorney Hogin said the statute has no previous cases that have ever been decided. In the staff report it is set out that, under certain circumstances, the statute compels rezoning. That provision itself lists four entities that are entitled to a right of first refusal in priority order: 1) a City, 2) a parks and recreation district, 3) a park authority, and 4) a County. One way to read the statute is – that while ordinarily a city has discretion over rezoning, if an unused school site is offered to those four listed entities, and all decline to buy the property, then the city is compelled to rezone, if requested, for the purposes of reaping the financial value. Another way to read the statute is – by making reference to that section that lists the four entities the reader is brought into the whole statutory scheme in which that section lives and that statutory scheme says – that those four parties are entitled to this right of first refusal under certain circumstances. Those circumstances are: 1) if Lots C & D met these requirements the site would have to consist of land which is used for school playground, playing field, or other recreational purposes and open space land particularly suited for recreational purposes, 2) if it is that, then it has been one of these things for more than eight years, and 3) if it is that, the city has made a decision that there is no other available land that could serve that purpose. This scheme that allows those four entities the priority to purchase the property applies when a school site consists of OS land particularly suited for recreational purposes – Lot C & D have been that for as long as it has been there – and no other publicly available land in the vicinity is adequate to meet the need that it was serving and the need being OS purposes. So there is a way of reading this statute that makes those four entities eligible for right of first refusal. One could go back and read every word just stated and reach the factual conclusion that those two vacant lots are not really OS land particularly suited for recreational purposes – that is a factual inquiry that someone would have to make – it is not a process that the City has undergone. If the City wanted to say that they believe the statute applies, it would be well advised to get a legislative history and see what the legislature was thinking when it created those requirements and see if it applies. It could be read either way – but Attorney Hogin believes it is

more susceptible to the reading that it does apply. Her take on Statute 65852 is the legislature is balancing competing interests.

Councilmember Goodhart asked about SELPA, Special Education Local Plan Area, and how that affects this discussion. Attorney Hogin said the statute (65852) states that the property is sold for 25% of its value and the statute the Councilmember Goodhart is referring to states that the property is sold at market value. In Statute 65852 this is a prerequisite of rezoning and what Councilmember Goodhart is talking about is a prerequisite of a sale to someone else.

Councilmember Perkins said, referring to Mr. Parker's proposal for conditional approval in the third paragraph of his October 21 letter, there are two conditions that must be met before any rezoning is subject to the statute: 1) it must be offered for sale pursuant to the terms listed, and 2) having a favorable result for the SD in the litigation. Attorney Hogin said that was correct, but because the statute is so complicated, the condition offered would buy enough time to figure out what would be required.

Attorney Hogin said the issue is whether or not the deed restrictions are enforceable. Her feeling is not to push an issue that isn't necessary.

Councilmember Bird asked, if the deed restrictions are enforceable, would it make sense for the City to rezone to R-1 now. Attorney Hogin said it is of no effect in terms of the use of the land.

Councilmember Bird asked if the SD had established if anyone would buy the land for OS or parks purposes to date. Attorney Hogin said that the SD resists reading the statute this way due to the pricing issue – under Government Code 65852.9.

Councilmember Bird asked if the Planning Commission's action violates Government Code Section 65852.9 to expedite the process. Attorney Hogin said it did not. She said that one of the findings of the Planning Commission was that because the deed restrictions enforceability was unknown, this process did not cause any delay.

Councilmember Bird said good orderly planning would preclude the City from rezoning now before it is necessary given the outcome of the litigation. He asked if there were any unnecessary delays to the SD, while litigation is ongoing, created by the Council following the Planning Commission's recommendation. Attorney Hogin said the SD does not want to have two battles in succession so they feel it would be more effective to deal with both issues at once.

Councilmember Bird asked who owned the property east of PV Drive West with the ball fields on it. Director Rigg said the SD owns the four separate lots at that location. Councilmember Bird said he understood that there is historical significance to the SD owning these four lots and Lots C & D which were created to create a pathway between the high school and the four lots. He asked if the SD wanted to build a school on the four lots, could they do that. Director Rigg said they could.

Councilmember Bird speculated on the significance of the SD recently erecting a fence and placing old trucks on Lots C & D. He asked if there were any evidence on Lots C & D that would show that students use the lots to get to and from the schools. Director Rigg displayed an aerial picture showing a pathway worn through the two lots. Councilmember Bird asked if the issue of students traveling through Lots C & D is something the City would need to consider before any rezoning could take place. Attorney Hogin said the zoning change issue is a matter of whether or not the zoning is consistent with the General Plan.

Mayor Pro Tem Rea said the Government Code Section 65852.9 subsection A seems to be an issue of the legislative intent. In two places the term 'unused school sites' is used; he asked if there were a definition of this term. Attorney Hogin said there was not. There are two ways to read the statute: 1) as a complete contradiction or 2) you only look at the list and not put it in its own statutory scheme and say they were only referencing the code section for the purposes of setting out the four possible buyers.

Mayor Pro Tem Rea asked if the City rezoned the property to R-1 now, would this put the SD in violation of the express conditions in the grant deed. Attorney Hogin said it would not, as they would not be in violation until they actually used the property as R-1.

Councilmember Goodhart asked about the term ‘school site.’ Attorney Hogin said all SD property is considered to be a school site. Attorney Hogin said the zoning determination would not affect the value of the property and if the City and the SD cannot decide how the statute is properly implemented then she feels the SD will end up asking the court to decide.

Mayor Pro Tem Rea explained the process to be followed for the public hearing and he opened the public hearing.

Jeff Parker, Counsel for the School District, said that Brent Caldwell, the consultant to the SD, was also present if needed to answer any questions. Mr. Parker said it appears that most of the issues raised with the rezoning application are of a legal nature which is why he was presenting to the Council. Mr. Parker believes there are basically just two issues to decide. The deed restriction issue is probably not the thorniest for the City Council, he believes the two separate schemes that exist for disposing of school property present the toughest issue for the Council. There is Education Code 17455 which deals with the general disposition of school site property and there is 17485 with the difference being whether the property in question satisfies the criteria set forth in 17486 - whether the school site consists of land which was used for recreational or open space land particularly suited for recreational purposes, whether the land has been used for one or more of those purposes for at least the past eight years, and no other publicly owned land within the vicinity of the school site is adequate to meet the existing and foreseeable needs of the community for such purposes. Mr. Parker said that Lots C & D have been in an unused state for at least 70 years since it was deeded to the SD back in 1938. By looking at what the property has been used for one can tell if this property is particularly suited for recreational use. He submits that the only use that has been made of this property is to walk through it; therefore it is general district property. If this property is deemed recreational use property, there is a different set of public entities that it must be offered to for presale at a price not less than 25% of fair market value. If this property is not deemed for recreational use, there is another set of entities that the property must be offered to at full market price. If the City Council finds that it is recreational use property, then Government Code 65852.9 requires that the offer of sale be made prior to rezoning. The SD would dispute this characterization, but they would like to know now what the Council’s position is on this. The SD does not want to go through one lawsuit and then face yet another lawsuit. The SD believes the property does not fall within the purview of the recreational use scheme, so the reference to that scheme in part B of 65852.9 does not apply to this property. The SD believes that the code reads - if the property is deemed recreational use property, before you seek rezoning you must offer it for sale and the timing of the offering for sale must be made before the sale to the general public.

Mayor Pro Tem Rea said the subsection A of the statute references unused school sites for park and recreational purposes – he asked what Mr. Parker’s thoughts were on using Lots C & D for park purposes. Mr. Parker said there are pictures showing the condition of the lot and he believes it is a stretch to say that any vacant lot owned by a SD is per se a park.

Mayor Pro Tem Rea asked Mr. Parker to define the term ‘unused school site.’ Mr. Parker said it is unused property owned by the SD.

Councilmember Goodhart asked if Mr. Parker was familiar with the Education Code in reference to sale of properties to charter schools first and how it may apply to Lots C & D. Mr. Parker said the offer for sale that must be made in this instance, the SD contends, is found under Section 54222 of the Government Code. Section 17459 says that the sale of real property pursuant to the non-recreational use section under the Education Code is subject to the provisions of Section 54220 continuing of the Government Code. Section 54222 lists a series of entities for the property to be offered to – one being to offer it for low income housing, then for park or recreational purposes, then to any regional park authority – which are probably the only two that apply.

Councilmember Goodhart asked Mr. Parker for his belief on who makes the judgment of whether the property is recreational or not as he (Goodhart) did not feel he could make that judgment with the information provided in the staff report. Mr. Parker believes the judgment must be made by those entities or bodies that confront it. It appears that Government Code 65852.9 requires at least some addressing of this by the zoning body and the SD contends it is not recreational property. He does not believe there is any serious evidence that the property is recreational. He referenced the City in the recent past erecting signs prohibiting crossing PV Drive West at this location - which is

not mentioned in the staff report. The staff report talks about many students going through the Lots to get to the high school and also one of the neighbors had constructed a gazebo on the property which has been removed. He contends it has never been a garden spot or a place for people to gather for picnics.

Councilmember Perkins asked about the Section that would require offering the property for low income housing. Mr. Parker said Section 54222 requires that an offer to sell or lease the property should be made at full fair market value. Mr. Parker said the SD would be caught in a Catch-22 – which could be seen as a premature and unlawful offer to sell the property at 25% of fair market value by those that, under the law, the property should have been offered to. He said the right choice must be made and if it takes judicial intervention to sort that out then perhaps that should be done now.

Councilmember Bird said Mr. Parker said the property does not seem to be picnic grounds, but Councilmember Bird remembers as a child vacant lots as a place of adventure which were park-like. He thought the Council may want to hear from people how they have used the property to help determine whether it is OS and parkland. Mr. Parker said that Section 65852.9 expresses the legislative intent – that school districts that are strapped for cash be able to sell property and get it rezoned so it can be disposed of at full fair market value. Mr. Parker would be surprised if the courts are going to find that any vacant SD land falls within the parks/recreation category and can only be disposed of for 25% of the full fair market value. He believes the recreational use would have to be the rule and not the rare exception. Even if the property has been used for recreational purposes, the requirement of 17486C that no other available publicly owned land in the vicinity of the school site is adequate to meet the existing a foreseeable needs of the community for playground, playing field, or other outdoor recreational and OS purposes.

Councilmember Bird stated that the SD counsel was in attendance at the second Planning Commission meeting when they enacted their recommendation. The SD's counsel spoke at the PC meeting and said that the SD accepted the recommendation to the City Council that no action be taken until the underlying litigation had been concluded. Mr. Parker said he was not in attendance at that meeting, his partner was and Mr. Parker understood that the SD communicated their satisfaction that there did not need to be anymore public testimony taken and that they were satisfied to have the PC move this issue to the City Council. In no way did the SD mean to express acceptance or agreement with the recommendation that this issue be put on hold and leave the SD in limbo.

Councilmember Bird said if the City Council accepted the Planning Commission's recommendation to put the issue on hold pending the resolution of the litigation, and the lawsuit is lost by the SD meaning the deed restrictions are upheld, then orderly planning would preclude the Council from rezoning the property at this meeting tonight. Mr. Parker said there had already been discussion about the Government Code requirement that the application for rezoning be handled expeditiously. He did not see anywhere in the Government Code that due to a pending lawsuit the governing body is entitled to put the decision off and wait. The legislature said that school districts are entitled to have the issue handled expeditiously. The SD's hope is that when the lawsuit is concluded everything will be in place to speedily move forward to offer the property for sale.

Councilmember Goodhart asked if the property must be rezoned before it is offered for sale. Mr. Parker thinks the best use for the property that is compatible with the surrounding environment is to have it sold to someone that would like to construct from two to four homes on it which requires an R-1 zoning. Mr. Parker said to realize the highest price for the property as contemplated by the Government Code 65852.9 which would have the SD obtaining the rezoning in advance of the sale. Mr. Parker said the SD is amenable to a condition concerning the resolution of the deed restriction dispute, and they are also amenable to a conditional granting of the rezoning.

Councilmember Bird commented that if the property was being used as a thoroughfare for the students, why did the SD erect a fence around it and place trucks there for storage. Mr. Parker said the SD does not think it is in the best interests of the students to be using it for a thoroughfare particularly given it invites violation of the City's own posted signage. Councilmember Bird asked if this decision was made once the lawsuit was filed – to protect the students. Mr. Parker said the decision to put up the fencing was made shortly before the fencing was erected. Councilmember Bird asked why the trucks were put in the neighborhood. Mr. Parker said this is SD property and

there has never been any prohibition as to how the SD uses the property for school purposes. Councilmember Bird did not think the SD was acting like a good neighbor by parking two very old, beat-up trucks on Lots C & D. Mr. Parker said for 70 years the neighborhood has enjoyed the benefit of the SD not using this property, but it is the SD's decision how they use the property.

Dan McIntyre, [PVE Resident], said there is a map at the library that shows all the lots in PVE around 1920 and Lots C & D were open space. He said when he went to school in the 1960s he walked through those lots. The lots were used for parking and the coaches would run the students through these lots for cross-country training.

Ed Ritscher, [PVE Resident] and former Mayor of PVE, said the Planning Commission process and their concept to wait until after the litigation between the SD and the PV Homes Association was handled very well. PVE is unique due to the Homes Association and the City working in concert. He plead with the Council to follow the Planning Commission's recommendation. He said more people would be in attendance if they were aware of the seven page letter from the SD's counsel – everyone was under the impression that the Council's decision was a fait accompli.

Dena Friedson, [PVE Resident], said the staff report claims that R-1 zoning for Lots C & D is consistent with the General Plan. She believes that the General Plan map and text do not show Lots C & D as consistent with R-1 zoning. She said the General Plan designates all school sites for open space uses. The open space element of the General Plan states - the charge to the City in the deed restrictions is quite clear said realty is to be used forever for park and for recreation purposes. State Government Codes 65890 and 65892.9 mandate zoning to be consistent with the General Plan. She believes R-1 zoning is not consistent. The deed restrictions on SD properties are a separate contract that permit conveyance of school parcels only to another public body for public park and recreational use. Lots C & D have always been designated as OS and have long served as a parkland connection for students and others between the intermediate school and the high school. She asked the Council to deny the requested zone change and work with PV Homes Association to defend the deed restrictions.

William McNairn, [PVE Resident], said every day students travel back and forth on Lots C & D. He is puzzled by the legal description saying the property was given to the SD, he believes they were given the right to use the property not the right to sell the property. The essential fact is who owns the property for use as OS property with an ocean view. He supports the resolution to wait for the court decision.

Emily Reeves, [PVE Resident], said she walks in the area of Lots C & D and wanted to address the 'passive recreation.' She said there are very few places along PV Drive West where one can see the ocean and Lot C & D is one of those places. The founders of the City realized this and called it a 'mall.'

Sid Croft, Counsel for PV Homes Association, said the Association agrees with the staff's recommendation that there is no reason for the Council to deal with the situation now. This is a series of complicated issues and can very well end up in further litigation. If the Council feels the need to make a decision on the issue, he asked that it be deferred to give other members of the community the opportunity to respond. The character of PVE is open space.

There was discussion as to when and where the staff report was available for public review.

Planning Director Rigg commented that there is a lot of discussion regarding the legality of what the City is doing. He said he always makes sure that the processes the City goes through are legal and fair. Director Rigg was at the Planning Commission meeting and he felt there was no question that the SD was agreeing with what the Planning Commission was proposing. He felt that the SD counsel submitting a seven page letter of objection and alternate plan at the last minute before deadline, seemed to be a bit disingenuous. He is concerned that the contents of the SD's letter were not reviewed by the Planning Commission as they are the body that was originally supposed to view all the materials.

City Attorney Hogin commented that she was at the Planning Commission meeting and she had a different take on the proceedings. At the September meeting where the Planning Commission adopted its resolution, the only issue that was presented that evening was whether or not the

resolution fairly memorialized the decision and discussion that the Planning Commission had had in August. At the August meeting there was a full-blown discussion and a resolution was then prepared for the September meeting. She understood the SD's representative to be saying at the September meeting was simply - yes, the resolution does, in fact, say what the Planning Commission said. She believes Mr. Parker's letter to be consistent with the same objectives that have been heard all along.

Planning Director quoted from the meetings minutes "Brent Caldwell, applicant, said they've reviewed the staff report and are in agreement with it moving forward with the resolution making a recommendation to the City Council; he confirmed they had no comments related to the resolution and said it was very well done." He said in his mind the City was going forward with an agreement with the SD that didn't warrant anymore discussion.

Councilmember Bird said he was the Council Liaison to that meeting and he heard it just as the Director Rigg recited it. He heard Mr. Caldwell essentially indicate his assent to what the Planning Commission was about to do and it seemed as though he gave his full approval. He was also surprised when he saw otherwise in the SD's letter.

Mr. Parker asked Attorney Hogin to read that part of the Planning Commission minutes again to see exactly what Mr. Caldwell said. Director Rigg asked the Mayor Pro Tem if he should read the minutes. Mayor Pro Tem Rea agreed. Director Rigg read again "Brent Caldwell, applicant, said they've reviewed the staff report and are in agreement with it moving forward with the resolution making a recommendation to the City Council; he confirmed they had no comments related to the resolution and said it was very well done." Mr. Parker said that Government Code 65852.9 calls for an expedited process. The SD had discussions with the City Attorney at the outset on whether there was any hearing even required. Not only was there a Planning Commission hearing, but in order to have the Planning Commission decision become final there had to be yet another hearing. When Mr. Caldwell said what the minutes say he said, that he had no problem with it going forward as it was, and please let's move on to the City Council - Mr. Parker read that as the City Attorney read it, the way Mr. Caldwell says he meant it, and the same way Mr. Parker's partner understood it. With an understanding of how the process works, that is what was meant. There is nothing indicating that the SD had changed its position. He said if that was the case, why would the SD come to the Council meeting? He appreciates that the Council is between a rock and a hard place. The applicable Government Code Section gives the Council virtually no discretion. This is SD property that the SD wants rezoned and the City, upon request and the SD paying the money, needs to rezone it. The issue that needs to be addressed is whether this is recreational use property or not. If it is recreational, the SD sees that applicable section requires that the offers for sale to a public entity be made in advance. The SD does not see this and he does not see that a view of an ocean or the cross-country team travelling through it during practice turn the lot into recreational property. It is surplus district property. The applicable section for offering this property for sale to public entities is set forth in 17455 which incorporates a relevant government code section. The process is laid out in the district's seven page letter and it specifies the timing for that occurs prior to the sale. The SD wants to make sure that when they do offer the property for sale to public entities at full fair market value, that they can get full fair market value. They want to know the City's position vis-à-vis the rezoning. The SD understood earlier that the City had its role and the PV Homes Association had its role - whether the deed restriction dispute was resolved or not should in no way hinder the rezoning. If the City Council would approve the rezoning on condition that the dispute with the Homes Association is resolved and that the SD complied with the offers for sale to public entities in the applicable Government Code Section, that is fine with the SD. The SD thinks that selling this property will be good for the community. The land will be put to the use it probably should have been put to when the deed was given to the SD and the Homes Association was facing extinction due to taxes being owed. The deed restriction expired in 1968 when it wasn't renewed; the SD is free to dispose of the property. This is the only property in 70 years the SD has sought to dispose of.

Mayor Pro Tem Rea said that the SD's October 21st letter was stamped received and not reviewed by staff. He asked why the letter wasn't sent to the City some time sooner. Mr. Parker sent the letter when he understood the deadline for submission was. He does not set the filing deadline, the City does. Mayor Pro Tem Rea said the implication is that the letter was submitted at the last minute and there had been plenty of time prior to submit such a significant letter.

Mayor Pro Tem Rea said the SD's letter addresses four topics: 1) deed restriction validity, 2) deed restrictions relevance to the rezoning process, 3) the history of the 1938 deed, and 4) the timing of the SD's offer to sell the property. Mayor PT Rea had not realized that the validity of the deed restriction was before the Council tonight. Mr. Parker did not believe it was an issue that the Council should consider – he was trying to say that the deed restriction validity is irrelevant to the rezoning process.

Mayor Pro Tem Rea said that one of the residents raised an issue about the rezoning being inconsistent with the General Plan. Mr. Parker said his understanding is that this does fall within the General Plan. It is only the deed restriction that applies to these lots – nothing under the General Plan precludes these lots becoming R-1. Once the property was transferred to the SD, it is the SD's to use as it sees fit. Mayor Pro Tem Rea said that well over 100 acres of land were deeded from the Homes Association to the SD's predecessor – including Lots C & D – with the express condition as to the limited purposes for which that property could be used. Given PVE's focus of the General Plan towards maintaining open spaces and vistas and view – he asked Mr. Parker if the deed of 100 plus acres of land would be part of the City's General Plan. Mr. Parker said he did not think so – it is not how General Plans are encompassed or drawn. Mr. Parker said the deed restrictions imposed on the deed in 1938, were the same restrictions that the Bank of America Trust Deed had imposed on the Homes Association. Under California law, the rights of reverter expire unless renewed within 30 years and any related restrictions are also gone.

Mayor Pro Tem Rea asked Attorney Hogin for her thoughts on whether the deed conditions are considered part of the City's General Plan or not. Attorney Hogin said the deed restrictions are part of the overall vision for the City. There was an overall vision that is certainly included when you look at what PVE is about and how it is planned. The SD has certain legal rights with its property and since it is a separate legal entity from the City, it has the ability in certain cases to function outside of the City's zoning. The deed restrictions play a very important role in defining what the City is going to look like.

Councilmember Goodhart asked if in the determination in the Education Code regarding recreational use, where is the frame of reference, is that from the SD's point of view or is it the community's point of view. Attorney Hogin said it is not a determination that a SD can unilaterally make. The use in the last eight years is what matters. The code does make reference to open space land particularly suited for recreational purposes. There are all factual inquiries that must be looked at.

Councilmember Goodhart was trying to figure out on what basis the determination could be made of whether this property was used for recreational purposes or not. Is it the residents and the General Plan or the SD's point of view? Attorney Hogin said it is the State statute and if all parties can agree on what that statute means – then we could simply implement it. If there were a disagreement over the meaning then parties would probably end up in court with a judge determining it.

Councilmember Perkins asked Mr. Parker what his interpretation of expedited is. Is it the finding of fact or the actual harm in delay to the SD? She also wanted the staff to address the timeframe should a judicial determination be made that favors the SD. Mr. Parker said that 'time is money.' The longer it takes the more expensive it is for the applicant. He said the application was filed in June and the SD has followed the same process that any other zoning applicant would expect – he didn't see that there has been an expediting of the process at all. He is not complaining too much, but he is concerned that the Planning Commission advocated sitting on this until the lawsuit is determined. If it costs the SD more money it is to the SD's detriment. Councilmember Perkins asked if it did not cost the SD more money and not being able to use the land for the purposes that the SD wants until there is a court determination, then there is no harm. Mr. Parker said that is correct. The SD does not want to have the hearing process start over. Attorney Hogin said PVE's code and State law require a publicly noticed hearing before the Planning Commission, which has been held, and a publicly noticed hearing before the Council, which we are now holding – so the time consuming part is essentially over. At this point, to get the property rezoned, an ordinance would have to be introduced and then a lapse of at least five days, then an adoption of the ordinance, and then a 30 day waiting period for the opportunity for referendum, if no referendum then it takes effect. It would take about two weeks if done now, but if there were a long period in between introduction and adoption, then it should be re-noticed – so another two weeks.

Mayor Pro Tem Rea asked Attorney Hogin to explain the term referendum. She said every legislative act of the City is subject to the ultimate approval of the people. If the City adopts an ordinance that the people want an opportunity to vote on themselves, they have 30 days to gather the signatures of 10% of the registered voters at the last gubernatorial election which the City then puts the ordinance on the ballot for consideration.

Councilmember Bird asked Mr. Parker if he was contending that the City failed to expedite the process by placing this item on the next calendared meeting (after submittal) of the Planning Commission. Mr. Parker said his understanding of something being expedited is something faster than the ordinary – he did not think that had been achieved. He said that maybe the City Attorney was correct that subsection C negates expedition – he didn't really see that. Councilmember Bird commented "so, your answer is yes." Mr. Parker said he didn't think that he had seen the application being handled any faster than another application might have been handled. Councilmember Bird asked if placing the item on the next Council agenda following the Planning Commission's decision was again failure to expedite the process. Mr. Parker said he would not push that as the Council meetings occur twice as fast as the Planning Commission meetings – but, again, there are conditions to be satisfied and if the next City Council meeting needs to come after the satisfaction of those conditions, he would not push that. Councilmember Bird asked if Mr. Parker was in attendance at the August Planning Commission meeting. Mr. Parker said he was. Councilmember Bird asked if Mr. Parker was at the meeting when the consensus was made with regard to what the resolution would be. Mr. Parker said he believed that he was. Councilmember Bird said Mr. Parker had obtained a copy of the minutes of the August meeting which had been published in advance of the September meeting. Mr. Parker concurred. Councilmember Bird said that Mr. Parker's partner was at the September meeting. Mr. Parker concurred. Councilmember Bird said that Mr. Parker's representative was at the September meeting. Mr. Parker concurred. Councilmember Bird said at the September meeting there was an item that read "confirming the Planning Commission's recommendation for the existing open space to be rezoned" along with the language that the Planning Commission's recommendation was to wait for final judicial determination of the validity of the deed restrictions before taking action. Mr. Parker said he was surprised it was a public hearing. Councilmember Bird said Mr. Parker's partner and his representative were at that Planning Commission meeting and had they left thinking that the City had failed to expedite the process by delaying or did they think that things were on track? Mr. Parker said that they believed that, after two hearings and wondering why there had to be a second hearing, they had cleared the Planning Commission hurdle. Councilmember Bird said he assumed that after the Planning Commission meeting they were satisfied that the Planning Commission had done what Mr. Parker had hoped they would do. Mr. Parker said there was much good that came out of the Planning Commission recommendation. Councilmember Bird said that 30 days later the City received a letter from Mr. Parker that apparently takes the position that they are not satisfied with the Planning Commission's action 30 days earlier. Mr. Parker said this is two different things – one is the timing, which is to expedite, and the second is the recommendation that the Planning Commission made to put the whole thing on hold was never satisfactory to the SD. Any expression of satisfaction was, as the record reflects, that they were happy to have the public comment closed at the last hearing and have the Planning Commission send this on to the City Council. Councilmember Bird asked why then did the SD wait until October 21st to send the letter that takes exception and asking that there be change in what the Planning Commission did and the rezoning application be approved on the condition as set forth in the letter – why did it take 30 days to send the letter? Mr. Parker said he did not remember when they first learned that the item was going to be heard tonight (10/26), he said there was not a report of what transpired in September until the staff report was published on Friday (10/22) – correct? Councilmember Bird said that what happened in September, along with the language, was on the agenda in September. Mr. Parker apologized for not understanding the question – he said that there was no question that in advance of the September Planning Commission hearing they saw the language that the Planning Commission was proposing. He had discussions with the City Attorney Hogin regarding the SD's concerns with the language and the fact that it was a public hearing. He said the SD expressed pleasure with the fact that the item was moving to the City Council, not with the merits of the recommendation.

Mayor Pro Tem Rea closed the public hearing.

Councilmember Goodhart said he could understand the SD's and Mr. Parker's viewpoint that expediting means the next ten minutes, but from the City's point of view it means we are going to work through our normal process, which works well, and if done equal to or faster than the regular applications then that is a good thing. He said he thought the process of determining the zoning process would be a multi-month process due to the litigation. The application for the zoning change was submitted on June 21st and the Planning Commission heard it eight weeks later which is pretty good. The October 21st letter expressed some disappointment in the City's assurances that the rezoning application was independent of the legal dispute – he said the timing of the submittal of the application was solely the SD's choice. The City has a proper planning process and the City does tend to resolve planning issues fairly quickly as the City does realize that time is money. The SD is unhappy with the outcome of the planning process given the relationship to the judgment by the court – but that was the SD's decision to submit the application. He is concerned with the question of recreational use which is important to the SD. He has no information before him to determine if the property is recreational or not. He could not make a decision on recreational use at this meeting anyway and between now and March the City would possibly have the opportunity to make that determination to expedite that process if the lawsuit goes in the SD's favor. He opposed approving the application on condition since it could result in some confusion regarding the City's position on the lawsuit. He upholds the Planning Commission's decision to defer until judgment is made by the court.

Councilmember Perkins thanked the staff and City Attorney for preparing a complete report. She has a great deal of respect for the work of the Planning Commission and the time they spent sorting out the complex issues. She was surprised by how complex this issue is to determine. Back when she was on the School Board she did think it would be very straight forward, but nothing could be further from the truth. Trying to apply her rules for statutory construction as she went through the reports, minutes, and statutes a couple of things were clear to her. She has a deep appreciation for the City's founders and the way the City was laid out with the residential area, open space, and parklands. She understands that the Council's authority may be limited by the government codes. If the City must rezone the property in order to comply with the government codes, that is fine, but she does not want to do anything prematurely. There are two conditions that would have to be met: 1) the outcome of the lawsuit, and 2) resolving Lots C & D as recreational or open space - if either of these, then under the government code the City would not rezone until the property is offered to the list of other entities. She would like the City Attorney to inform the Council what the process is for making the determination of what the property is - recreational or open space. She is satisfied that once a final judicial determination is made on the deed restrictions the City will act quickly. She hoped that the SD would not try to bully the City into a decision such as parking the junkyard trucks on Lots C & D.

Councilmember Bird thanked the staff, City Attorney, Mr. Parker, and the public for their presentations/comments. He wanted to hear more about how Lots C & D have been used over the years. He said the property is undeveloped, it's open space, it's vacant, and it's parkland and not being used by the SD for anything now. He agrees with his fellow Council members regarding the work of the Planning Commission and he believes the City has expedited the process. The Planning Department had to prepare an environmental initial study, they prepared the negative declaration, and they prepared the staff reports. The application was placed on the next scheduled Planning Commission meeting once the environmental study was prepared, it was heard at the first available meeting, there was a public process, there was no objection by the applicant to the Planning Commission doing what it said it wanted to do, it was adjourned to the next scheduled meeting, there were no requests to schedule an emergency meeting, the Planning Commission heard it for the second time on September 21st at a noticed meeting, the agenda was posted, the minutes were available, it was heard by representatives of the SD, the Planning Commission passed what was on the agenda, and then 30 days later the letter of objection was received. He is satisfied with the Planning Commission's and the City's actions to expedite the process. He is in favor of the Planning Commission's recommendation. It would not be orderly planning for the Council to make a zoning change at this point in time.

Mayor Pro Tem Rea also thanked the staff, City Attorney, Mr. Parker and the public for their comments. He said this is a difficult issue to address and it is the most sophisticated discussion he can recall the Council having during his term due to a government code section that has not been determined by any case law. Regarding the CEQA compliance, the staff recommendation is for a negative declaration from the Council and at the Planning Commission some residents were

questioning this. He agrees with staff, that there is not a fair argument that the rezoning would have a potentially significant environmental impact. Regarding the General Plan, the staff report concludes that the existing use is open space and is consistent with the General Plan and the proposed change to residential zoning is likewise consistent with the General Plan. He read the General Plan and understands that the SD is not seeking to turn the lot into a quarry so in that sense it (R-1) is consistent with the General Plan. The General Plan also talks about the importance of maintaining the open spaces. The General Plan has an entire section regarding schools and recreation and the number of acres of open space on City land and the number of acres of school property naming 112 acres of land for schools and the 678 acres of open spaces lands which provide over 800 acres of land for recreational use in the City. If the SD starts taking acreage out of that use, would it run afoul of the General Plan? Regarding Government Code 65852.9, it seems to say the SD is to offer this property for sale or lease to specified public entities and they have to decline the offer before the Council can rezone the property – but that may not be the correct interpretation. The other issue is what is meant by the term ‘unused school site.’ The property was recently used to store two junk trucks for reasons unknown. He was not comfortable with a conditional approval as the litigation may take years to settle and a number of things may occur during that time. He does not see deferring further action on this application as an unnecessary delay.

Attorney Hogin suggested the motion be - ‘to avoid any unnecessary cost or delay, continue the hearing to a date uncertain; direct staff to renotice the continued hearing on the District's rezoning application for Lots C and D for further consideration after there is a final determination of the validity of the deed restrictions or the Homes Association agrees to waive the deed restrictions for Lots C and D; and, in the meantime, direct staff to research the legislative history of section 65852.9 and work with the District to determine whether the disposal of the property falls under Education Code section 17455 and section 17485.

Mayor Pro Tem Rea asked Attorney Hogin to re-read the motion for everyone to understand what her recommendation was. Attorney Hogin re-read the motion.

Councilmember Perkins asked if that motion assumes the SD and the City would come to a mutual agreement as to whether the property was recreational, open space, or unused. Attorney Hogin said they would have to check that, but she would start with the legislative history to see whether or not it is just those lists or the whole statute that requires the determination of recreational use or what; once that is figured out the Council would be consulted. Attorney Hogin said this would accommodate the SD's concern with time and momentum.

Councilmember Perkins does not want to cede the determination of what the property is – recreational or open space - to someone else.

It was moved by Councilmember Bird, seconded by Councilmember Goodhart, and unanimously approved by a roll call vote (Humphrey recused) to avoid any unnecessary cost or delay, continue the hearing to a date uncertain; direct staff to renotice the continued hearing on the District's rezoning application for Lots C and D for further consideration after there is a final determination of the validity of the deed restrictions or the Homes Association agrees to waive the deed restrictions for Lots C and D; and, in the meantime, direct staff to research the legislative history of section 65852.9 and work with the District to determine whether the disposal of the property falls under Education Code section 17455 and section 17485. (4-0, Humphrey recused)

Mayor Humphrey returned to the Council Chambers.

NEW BUSINESS

STAFF REPORTS

City Manager's Report

City Manager Hoefgen provided a status report on the Golf Club's success in generating new members as a result of Council's approval of the increased membership. In November, the Club will mail a letter to all PVE residents advising them of the opportunity to join.

DEMANDS

It was moved by Councilmember Bird and seconded by Mayor Pro Tem Rea that the demands, as approved by a majority of the City Council, totaling \$218,141.53 be allowed and it was unanimously approved.

It was moved by Councilmember Bird and seconded by Mayor Pro Tem Rea that the demands, as approved by a majority of the City Council, No. 518380H, 518381 to 518456 totaling \$650,218.57 be allowed and it was unanimously approved.

MAYOR & CITY COUNCILMEMBERS' REPORTS

Councilmember Bird congratulated the Police Department on the enjoyable DDP container dedication held over the previous weekend.

Mayor Humphrey asked when the next three containers will be dedicated. Chief Dreiling said it would be after the first of the year.

Councilmember Bird asked the residents to attend the Neighborhood Watch Annual Meeting to be held on November 7th.

City Manager Hoefgen said the PVE CARES Senior Health Fair is to be on November 5th at the Neighborhood Church.

Mayor Pro Tem Rea said that he, City Manager Hoefgen, Chief Dreiling, and Councilmember Bird attended a breakfast held by the Harbor Regional Center in Torrance honoring local employers who have employed developmentally delayed adults.

Councilmember Perkins also thanked the Police Department for the unveiling of the DDP containers. She said it helps to get the word out to residents about preparing themselves for a disaster.

Councilmember Goodhart also complimented the DDP team and recognized the original six district leaders for their time and efforts in getting the program running. He also reminded the Council and staff that the SBCCOG will hold a Sustainability Workshop on October 28th.

ADJOURNMENT

There being no further business before Council the meeting was adjourned at 10:25 p.m. to Tuesday, November 9, at 7:30 p.m. in the City Council Chambers of City Hall.

RESPECTFULLY SUBMITTED,

MICHÉLE D. MONSON, MINUTES SECRETARY

APPROVED:

ROSEMARY HUMPHREY, MAYOR