

**MINUTES
CITY COUNCIL AND REDEVELOPMENT AGENCY
REGULAR MEETING
SEPTEMBER 13, 2011 - 6:00 p.m.**

CALL TO ORDER

The regular meeting of the City Council and Redevelopment Agency was called to order at 6:02 p.m. by Mayor McCallon at the Donahue Council Chambers, 27215 Base Line, Highland, California.

The invocation was given by Bishop Dan Doherty, Church of the Latter Day Saints, and the Pledge of Allegiance was given by Councilman Timmer.

ROLL CALL

Present: Lilburn, McCallon, Racadio, Scott, Timmer
Absent: None

REPORT FROM CLOSED SESSION

No Report from Closed Session

SPECIAL PRESENTATIONS

Jonathan Roberts, a Highland resident and a junior at Citrus High School, read his winning essay regarding September 11, 2001.

COMMUNITY INPUT

Ms. Pat Coffee stated she is present this evening to request the inclusion of the Coffee property into the list of selected sites for the Housing Element. The inclusion of the property would not raise any new or severe environmental impacts other than those which were previously analyzed and disclosed to the public. The property meets the criteria outlined by the City Council, including the access to major thoroughfares, access to transits such as bus routes, being close to fire and police departments and city services. The property does meet the Housing Element needs because this property could accommodate and be developed with higher density housing.

Councilwoman Scott inquired how many acres is this property.

Ms. Pat Coffee responded it is 8.3 acres.

Councilman Racadio asked where the property is located.

Ms. Pat Coffee responded it is located at 7394 Central Avenue, directly across from Jeffrey Court.

CITY COUNCIL/REDEVELOPMENT AGENCY CONSENT CALENDAR

A MOTION was made by Councilman Racadio, seconded by Councilwoman Scott, to approve the consent calendar as submitted with the exception of Item #12, Item #15 and Item #17 being pulled for further discussion and with Mayor Pro Tem Lilburn abstaining from Item #10 and also with Councilman Timmer abstaining from Item #2, Item #3, Item #4, Item #5, Item #6, Item #7, Item #8 and Item #9. Motion carried on a roll call vote, 5-0.

1. Waive the Reading of All Ordinances
Waived the reading of all Ordinances in their entirety and read by title only.
2. Minutes – July 26, 2011 City Council Regular Meeting
Approved the Minutes as submitted.
3. Minutes – July 26, 2011 RDA Regular Meeting
Approved the Minutes as submitted.
4. Minutes – August 2, 2011 City Council Adjourned Regular Meeting
Approved the Minutes as submitted.
5. Minutes – August 2, 2011 RDA Adjourned Regular Meeting
Approved the Minutes as submitted.
6. Minutes – August 2, 2011 City Council Special Meeting
Approved the Minutes as submitted.
7. Minutes – August 2, 2011 RDA Special Meeting
Approved the Minutes as submitted.
8. Minutes – August 23, 2011 City Council Special Meeting
Approved the Minutes as submitted.
9. Minutes – August 23, 2011 RDA Special Meeting
Approved the Minutes as submitted.
10. Warrant Register
Approved Warrant Register No. 527 for September 13, 2011, in the amount of \$4,747,716.58 and Payroll of \$240,012.33.
11. Treasurer's Report for July 2011
RECOMMENDATION: That the City Council receive and file the Treasurer's Report for July 2011.

13. Declaration of Two (2) Seats Vacant on the Community Trails Committee (CTC)
 1. Declared two (2) seats vacant on the Community Trails Committee; and
 2. Directed the City Clerk to advertise the vacancies on the Board.

14. Notice of Completion – Bid No. 2010-07 “Greenspot “S” Curve Realignment” (Project No. str06001)
 1. Accepted Bid No. 2010-07, “Greenspot “S” Curve Realignment” as complete;
 2. Authorized the Mayor to sign the Notice of Completion; and
 3. Directed the City Clerk to file the Notice of Completion.

16. Notice of Completion – Bid No. 2011-04, “5th Street/Greenspot Road Bike Lane” (Project No. str09005)
 1. Accepted Bid No. 2011-04, “5th Street/Greenspot Road Bike Lane” as complete;
 2. Authorized the Mayor to sign the Notice of Completion; and
 3. Directed the City Clerk to file the Notice of Completion.

18. Memorandum of Understanding (MOU) between San Bernardino Associated Governments (SANBAG) and 16 Local Agencies for San Bernardino Valley Coordinated Traffic Signal Timing System Program (Tiers 1, 2, 3, & 4)
 1. Approved the MOU between SANBAG and 16 local agencies for San Bernardino Valley Coordinated Traffic Signal Timing System Program (Tiers 1, 2, 3 & 4); and
 2. Authorized the City Manager to sign the MOU on behalf of the City.

ITEMS PULLED FROM CONSENT CALENDAR

12. Directing the City Clerk to Publish Ordinances as Required by Applicable Law and Designating the Three Public Places where Official City Documents may be Posted

Mayor Pro Tem Lilburn stated there are currently three locations where the agenda is posted and she understands the agenda is also posted online as well. The agenda is posted at City Hall, the Police Station and the Library. She feels the Police Station has far more accessibility than the Fire Station as far as parking. Is there a possibility of installing a bulletin board at the Police Station? Also, is the agenda being posted anywhere in the eastern portion of the City.

City Clerk Hughes stated she has visited with Chief Williams to discuss the possibility of installing a bulletin board after the fact, and for the size that is required for the best visibility, it was not feasible. There isn't a location available to install one on the outside of the building.

Councilwoman Scott stated she had also asked for this item to be pulled due to poor planning in the design phase of the Police Station. She had the same concerns, as everything is clustered in the same area. Why not post the agenda at the Post Office; they have a large wall on the north and south sides of the building.

Mayor McCallon stated it is not a City building.

Councilwoman Scott stated it is not a City building but we could ask to work with the Post Office on the possibility.

Mayor McCallon stated he would suggest the possibility of posting at Fire Station No. 2.

City Manager Hughes stated if it is the Council's desire for staff to approach the Post Office regarding the posting of the agendas, we will, but at this time staff would like to go forward with installing the board at the Fire Station No. 1 to properly post the agendas.

A MOTION was made by Councilman Racadio, seconded by Mayor Pro Tem Lilburn, to adopt Resolution No. 2011-047 directing the City Clerk to publish ordinances as required by applicable law and designated the three public places where official city documents may be posted, and to review the possibility of posting the agenda at the Highland Post Office. Motion carried, 5-0.

RESOLUTION NO. 2011-047
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HIGHLAND,
CALIFORNIA, REPEALING RESOLUTION NO. 2008-035,
DIRECTING THE CITY CLERK TO PUBLISH ORDINANCES
AS REQUIRED BY APPLICABLE LAW AND
DESIGNATING THE THREE PUBLIC PLACES WHERE
OFFICIAL CITY DOCUMENTS MAY BE POSTED

15. Notice of Completion – Bid No. 2010-03, “9th Street Sidewalk and Street Improvements” (Project No. swk08001)

Councilwoman Scott stated this is over the 10%, it is 19.68%, and she has some concerns with this.

Councilman Timmer stated several of them have this issue due to unknown circumstances. He has had thoughts about this as well as there have been similar discussions on other agendas. When we are working with concrete, roads and pipes, there are always things that are unanticipated and he knows Council gave some flexibility on 10% overrun. A recommendation is to send this issue back to the Finance Subcommittee to come up with a procedure on how to address these issues in the future.

Councilwoman Scott stated when did the overage occur? When we had the last Council meeting prior to the overage, how close were they to being over where it could not have come before Council due to time constraints. She does not like the idea of the overages occur and it appears as if it is better to do it and ask for forgiveness than to take the chance of it not being approved.

City Engineer Wong stated for this project, staff only knew about the 5.85% of change of scope. Staff was not aware of the 19.7% increase at the end. When the scope changes staff is aware of it and what we did not know is the original cost estimate of this project was underestimated. The person who calculated the quantity underestimated.

A MOTION was made by Councilwoman Scott, seconded by Councilman Racadio, to:

1. Accept Bid No. 2010-02, "9th Street Sidewalk and Street Improvements" as complete;
2. Authorize the Mayor to sign the Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion. Motion carried, 5-0.

17. Bid Award – Bid No. 2011-07, "City Wide Maintenance of Street Striping"

Councilwoman Scott stated the bid was \$26,792 and now staff is asking for an increase to over \$40,000; \$30,000 should be more than enough for any cost overrun.

City Engineer Wong stated this is an on-call striping service. When the City has a need for striping, we put together a list of work items and inform the contractor to complete the work. The City is charged based on the unit prices that were bid on. Therefore, this bid is based on an assumption. Staff is assuming there is a project which has items on the list for a purpose of comparing which bid is the lowest based on the hypothetical project. The City's budget has \$40,000 of work which can be done on an annual basis. Staff is asking Council's approval to allow the contractor to complete up to \$40,000 of work.

A MOTION was made by Councilman Racadio, seconded by Mayor Pro Tem Lilburn, to award the contract for Bid No. 2011-07, "City Wide Maintenance of Street Striping" to Ranch Rock for an amount not-to-exceed \$40,000. Motion carried, 4-1, with Councilwoman Scott dissenting.

CITY COUNCIL/REDEVELOPMENT AGENCY PUBLIC HEARING

19. Amendments to Portions of the City's General Plan Land Use Element (Chapter 2) to Include a New "Residential High Density District" (GPA 011-001); and Amendments to the City's Land Use and Development Code Amending the City's Official Zoning Map to Incorporate a New Multi-family Residential District (R4) and High Density Special Overlay (HDS) within the Golden Triangle Policy Area (ZCO-011-01), and Amending the City Land Use and Development Code (Title 16) Adopting New R4 and HDS Development Standards (MCA 011-003) All in Accordance with the City's 2006-2014 Housing Element, Approved on January 25, 2011. [Item continued from the July 26, 2011 City Council Public Hearing]

Mayor McCallon stated this item is a continued item from the July Council meeting and the public hearing was closed at that time.

Community Development Director Jaquess stated the item was brought forward to allow the full Council to vote on the item and then to allow Councilman Timmer to review the record and the material from the previous meeting. Staff is not proposing to make a presentation this evening but is available to answer questions from the Council.

Councilman Timmer stated he did listen to the recording and did receive and review a copy of the draft minutes. He has spoken with staff regarding this item and feels he is briefed on the item.

Councilman Racadio stated at the last public hearing he had asked a question, which was answered, as to what would be the potential outcome if we did not have the certified housing element and it was clearly explained the potential of us losing total control here as elected officials and would be turned over to some other party who has no connections with Highland. The question he did not ask was because he was not here when these sites were selected, could staff give an analysis of what the process was.

City Manager Hughes stated he believes the site selection was back in the summer of last year.

City Planner Mainez stated it is part of the housing element basically and prior to the summer of last year staff brought forward quite a few items for discussion before Council through workshops and one of the items was site selections. Staff calls it our inventory and the inventory identified sites that were vacant or underutilized. Along with this exercise staff identified sites that could be identified for density of R4, which is also on the agenda tonight. There were two

workshops that were held with the City Council and the Planning Commission. Staff initially brought forward 20-25 sites from throughout the City and it was narrowed down to the seven that is before you tonight. One of them is an overlay which is in the Golden Triangle and there are six sites throughout the City. That workshop was eventually turned into a final housing element policy and then the Council adopted the housing element with that policy of those sites in January 2011. Then the public hearing process was started for the zone change and there were two public hearings with the Planning Commission and now this is the second time before Council to adopt the zone changes.

Community Development Director Jaquess stated the State Housing Community Development Department did review the housing element which the Council adopted and conditionally approved the element subject to us proceeding with the re-zoning actions that would be called out in this particular policy.

City Attorney Steele stated it is really a three stage process. The first stage is a city-wide process which was the workshops City Planner Mainez referred to and those are public meetings opened to everybody because they are exploring sites city-wide and there is no specific notice other than the normal notice for a workshop meeting that is held publically. Once those sites were narrowed down to a more specific number and location, then the public hearing notices were given so that individual property owners were noticed, neighbors were noticed of those sites and there was a property specific notice that was provided both for the Planning Commission hearings and for this hearing before the City Council. In the middle of that there was the policy action on the General Plan amendment which took place in January which was also a noticed public hearing. So you had three different sets of public meetings on this, two of which were subject to individual specific public hearing notices.

Mayor McCallon stated so if he were to interpret what was just said, then the housing element which went before the HCD and they conditionally approved these particular sites identified for re-zoning.

City Planner Mainez stated that is correct.

Mayor McCallon stated and they conditionally approved the housing element based on action to re-zone these specific sites.

City Planner Mainez stated that is correct.

Councilman Racadio inquired if the Coffee property was considered during the process.

Mayor McCallon responded yes.

Mayor Pro Tem Lilburn stated when they first started re-doing the General Plan and the land use element there were a number of sites and she remembers as Council Members they all went through and then she remembers Council Members throwing them out and saying nope they don't support high density. She remembers the Coffee property was in one of those as well. One of the things is she doesn't think she can support it because she called around a number of our higher density, our apartments, affordable income and there are vacancies, tons of vacancies in these right now. Her concern is that we are putting all these sites with the exception of one over in this area where we do not need them because high density in this area means that they are very high maintenance and we use a lot of our public safety, we can't even send some of our fire trucks into some of these facilities without an escort from the police department. She is not going to support it because she feels it is unfair that we are sticking all these zone changes over on the western portion because higher density means apartments over here. She does remember and is curious if we are going to do zone changes, why the Coffee property wasn't included in this, if they wanted their property a higher density.

Councilman Timmer stated well when we discussed it and he thinks Mayor Pro Tem Lilburn was the one who suggested we didn't want it.

Mayor Pro Tem Lilburn well we have all this other that we are proposing. She doesn't want any of it.

Councilman Timmer stated he doesn't think any Council Member wants any of it but from his reading the information and listening to the tapes and knowing the history on how the State stuff works, he does not feel comfortable getting the potential land use planning and the citizens of Highland have no input into the process. If it goes into litigation of some sort and judges get involved or the State Housing gets involved and then they say we're not going to adhere to Highland's apartment standards and they are going to do whatever they want, we will have no input into that process. We can certainly fight this windmill and say we aren't doing it but he thinks the downside is so significant. He was going to ask a question of Mayor McCallon, they had discussed it a little bit and staff talks about the process will start again in 2012 for the 2013 revisions that were mandated. If we don't have a Housing Element in place now and approved, we go into a five year cycle for renewal rather than an eight year cycle. So the savings to the City to do that, but the thing that peaked his interest was it allows us to use a fresh start and to use new numbers and not have to worry about carry-over if we don't have an approved Housing Element by the State, we then have to carry these numbers on in addition to any new numbers. As he understands the process, if we have a Housing Element approved that we will look at new RHNA numbers and it sounds like they are going to be a lot lower and so we will have the ability to reduce the number of acres of high density projects in the City. If we don't take this action to approve this, we will be looking at having additional lands that we are going to have to be over and above the seven sites that we have now. Additional lands to meet the State mandates, we're going to be doing this the whole time. To him that was a big benefit of doing this, knowing that historically we have not built any apartments in Highland other than Jeffrey Court whether

that has been demand or whether it's a standard so high that developers don't want to meet it. He would like to have the opportunity in 2012 which is around the corner to look at this whole process again, not having to focus on numbers that the State is mandating but numbers that have a fresh look at it and maybe the Coffee property is appropriate to do that. Then we can look at eliminating eight other acres other places. The Lewis project is going to have some higher density stuff, whether it's high enough we don't know yet, but then those numbers could then offset some of the stuff on the west side of town. We will not have this opportunity if we do not have an approved Housing Element; we lose all those options and that is how he takes this. Can staff expand on this and say if this is correct in his interpretation?

City Planner Mainez stated everything that was stated, he couldn't have said it better.

Mayor McCallon stated if we don't have an approved Housing Element by October 2012 then as Councilman Timmer stated the new RHNA numbers come out and it's added to what we have here now. SCAG, in this new cycle, was extremely successful in getting each city at the State to lower their numbers from a 700,000 from the SCAG region down to something in the mid 400,000 range. It is a lot less than what the State originally started with and it's because of the economic situation, the vacancies that we have and all this.

Councilman Timmer stated knowing State folks and bureaucrats he would think working with them for many years, that if we have an approved Housing Element now and they have approved it and bought into the process when we make another revision and resubmit it in 2013, they will be far more favorable in adopting what we have than if we have basically said we don't care what you say we're not approving this, they will be far more aggressive and less cooperative in working with staff. He thinks if we don't support this, everyone knows he hates high density stuff, he thinks we are really cutting our nose off to spite our face if we don't approve this. The downside on the litigation side, on the judges and the State getting involved in the process and future cycles of doing this, he thinks is so negative to get involved in this, he thinks if we don't support this we are hampering staff in years to come.

Mayor McCallon stated he agrees with Councilman Timmer. He thinks there aren't any apartments because Highlands's standards are so high. We are not approving any project here tonight; we are just approving a planning document that is required by the State. However, as long as we keep our standards high, he thinks if eventually any higher density is built, it will be something that will be different than what has been built in the past.

Mayor Pro Tem Lilburn stated she also agrees with the RHNA numbers, the State, although for the record she has not a bit of confidence in the State on anything they do, any of the Legislators, anything they do. So, to put it in their hands or not to put it into their hands, anything they touch they screw it up. She understands we need to do this, she is not comfortable with the saturation over here on the west side and that is why.

Councilwoman Scott stated last meeting we did add another piece of property. The gentlemen came in, he wanted to add his and she didn't see where it was an extra circle on any of these.

City Planner Mainez stated it was included in the staff report and it was on Sterling Avenue.

Councilwoman Scott stated okay and how much was that.

City Planner Mainez stated it was a couple of acres.

Councilwoman Scott stated with all the acreage that we have identified here does this put us at what the State says we have to have or does it put us over.

City Planner Mainez stated the action tonight is a zone change, your question reflects the housing element and the inventory we put forth in the housing element meets our RHNA criteria.

Councilwoman Scott stated so she guesses she is saying why we can't add, we added something last time.

City Planner Mainez stated we didn't actually add, the Planning Commission was making a recommendation we brought forward to Council. It wasn't added at the last meeting.

Councilwoman Scott stated yes it was added at the last meeting. The gentleman stood up there and asked for it to be added. She says if we have an opportunity to throw in eight acres that ought to really please the State and that is directly across the street from Jeffrey Court which is already a high density. So, why wouldn't we want to do that?

Councilman Timmer stated first off the State has already said what we are currently offering is appropriate if we just change the zoning. Second part is if we start substituting now we go back to square one, back to the public hearings, back to Planning Commission, back through the process again and we still don't have an approved housing element.

Councilwoman Scott asked why we would have to do that when the owner of the property stood up here tonight and offered the property.

City Attorney Steele stated it is more than just the owner of the property that has the ability to have a say in the process. It's the neighbors around the property, it's other property owners in the area that have a right to notice and it's the folks at HCD who would have to go back and review another change to the housing element and we would have to start the process all over again.

Mayor McCallon stated the thing is one of the reasons we didn't include it and all of us agreed, was it would contribute to the over concentration of the higher density on this side of the City. That is why it was not included and hasn't been included. If we attempt to do that tonight we go back to square one.

Councilwoman Scott stated she just really wonders what the City has planned for the Coffee property because the City has messed around with that property. When John was alive it was equestrian and he had his race horses there. While he was still alive the City changed the zoning and the City said he could go ahead and keep them because he was grandfathered but when he dies or when the property sells then it's not equestrian anymore. Then it went commercial and then it went to the medium density. It just seems like there has always been something there, we are as bad as the State. The State tactics, as far as she is concerned, are the same as any gangster extortionist and she can't vote for it.

Councilman Timmer stated he thinks we didn't have another bite of the apple next year to revise this and refine this with better number which he thinks would be more beneficial for the City in the long run, we will have less impact on one side of the town versus the other. If we were talking about this plan being in place for the next fifteen years, he probably wouldn't support it either. But since we're going to have again probably the public involved and have the opportunity to talk with property owners to make some changes and substitutions at that point but if we don't do that now we may not have the opportunity to do that later. He thinks we are only looking at a year. He doesn't see any projects running in here within a year to start building stuff. He thinks we have an opportunity to plan better.

Councilwoman Scott stated Councilman Timmer has a good point because just the paper that the City received regarding the indicators of potential homelessness, we have according to this 1,107 or 6.7% of our City that is vacant housing. She doesn't really think we are really going to be having people flood this door trying to get housing.

Councilman Racadio stated in the interest of local control you would think the thing for us to do would be to tell the State to pound sand but it's obviously not. In the interest of local control it's to approve the actual housing element so we will have local control. Otherwise the outcome is potentially we'd totally abdicate our responsibility and give it to someone else to take care of. Plus Councilman Timmer brought up a good point about the new RHNA numbers. If we approve this now we will be in better shape when we do this again next year. He doesn't see any other option we have in the interest of local control but to approve this. He knows there are people upset about locations and all that, there was a lot of discussion about that but he doesn't think we have an option if we really are interested in local control and he is interested in local control.

Councilwoman Scott stated she would like to have it on record that she is opposing because it's no better than what the gangsters used to get protection and so forth. Absolutely no better.

Councilman Racadio stated he would like to go on record as supporting local control and that is why he is supporting it.

A MOTION was made by Councilman Timmer, seconded by Councilman Racadio, to approve the following:

1. Determine the Negative Declaration adopted by the City Council on January 25, 2011 (SCH No. 2010111081) is the appropriate environmental document for the proposed General Plan Amendments, Zoning Amendments, and Land Use and Development Code Amendments;
2. Approve City Council Resolution No. 2011-048 adopting the General Plan Amendments to portions of the Land Use Element (Chapter 2) which include amending the General Plan Land Use Map Figure 2-2, updating the General Plan text defining the proposed Residential High Density – Special District, and updating the land use statistics table (GPA-011-001);
3. Introduce Ordinance No. 361 Amending the City's Official Zoning Map to incorporate a new R4 Multi-family District, and Residential High Density Special Overlay within the Golden Triangle Policy Area (ZCO-011-003) and continue Second Reading until the September 27, 2011 City Council Hearing; and
4. Introduce Ordinance No. 362 Amending the City's Land Use and Development Code (Title 16) to include new R4 Multi-family Residential District Development Standards (MCA-011-003) and continue Second Reading until the September 27, 2011 City Council Hearing. Motion carried, 3-2, with Councilwoman Scott and Mayor Pro Tem Lilburn dissenting.

RESOLUTION NO. 2011-048

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HIGHLAND, CALIFORNIA, DETERMINING THAT A NEGATIVE DECLARATION ADOPTED ON JANUARY 25, 2011, IS THE APPROPRIATE ENVIRONMENTAL DOCUMENTATION FOR THE PROPOSED GENERAL PLAN AMENDMENTS; AND ADOPTING THE GENERAL PLAN AMENDMENTS TO PORTIONS OF THE LAND USE ELEMENT (CHAPTER 2)(GPA 011-001) RELATED TO THE NEW RESIDENTIAL HIGH DENSITY – SPECIAL DISTRICT

City Clerk Hughes introduced Ordinance No. 361:

ORDINANCE NO. 361

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HIGHLAND, CALIFORNIA, AMNEDING THE OFFICIAL ZONING MAP AS ADOPTED BY THE CITY OF HIGHLAND (ZCO-011-01 & MCA-011-003)

which title was read.

City Clerk Hughes introduced Ordinance No. 362:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HIGHLAND,
CALIFORNIA, AMENDING TITLE 16 (LAND USE AND DEVELOPMENT CODE)
OF THE HIGHLAND MUNICIPAL CODE, ALL RELATED TO THE NEW
RESIDENTIAL HIGH DENSITY SPECIAL DISTRICT AND OVERLAY (R4).
[MUNICIPAL CODE AMENDMENT-011-003]

which title was read.

20. Appeal Application (APP-011-001) – An Appeal Application Requesting Reconsideration of the August 2, 2011 Planning Commission’s Action to Uphold the Community Development Director’s Determination that the Appellant’s Actions are in Violation of the City’s Non-conforming Parcels, Uses and Structures Ordinance (Title 16, Chapter 16.08, Section 16.08.150) and Therefore Prohibited from Reconstruction a Single Family Unit located at 8047 Marilyn Street Located with the City’s Business Park (BP) Zoning District

Mayor McCallon opened the public hearing.

City Planner Mainez stated as introduced, the applicant is requesting reconsideration of the August 2, 2011 Planning Commission action, which upheld the Community Development Director’s determination to prohibit the reconstruction of a single family home located at 8047 Marilyn Street. This is within the business park zoning district. The Council’s action tonight is final, however, if the applicant disagrees with City Council’s determination tonight they could challenge the Council’s decision through a lawsuit. A detail of events leading up to the appeal is summarized in the staff report but in short the appellant’s property located on Marilyn Street sustained fire damage as a result of a faulty water heater. The damage was isolated around the water heater closet and a portion of the attic. As he mentioned, the property is located within the city’s business park zoning district which provides limited grandfather protection from non-conforming uses and structures such as a single family home. A little insight to what grandfather protection means: the grandfather protection provision is codified within the City’s land use and development code. Staff refers to it as the City’s non-conforming uses and structures ordinance. The need to have unlimited grandfather protection basically means or includes the ability to continue the use to use the structure as a single family unit as long as the following six criteria are adhered to. The first criteria are that the non-conforming single family detached dwelling unit utilized for residential purposes was legally established, basically by reviewing the permit history at the City or the County. The second item is that the non-conforming use has not been discontinued for a continuance period of 180 days or more. Basically we have to determine if the use has been abandoned or it’s vacant. Number three is routine maintenance and repair. Routine maintenance and repair should not be the nature to extend the normal life of the structure or use. Fourth, the non-conforming use should not be moved, altered, or nudged or extended onto

another portion of the property. Finally when the non-conforming structure is damaged, the structure shall not be restored and the non-conforming use shall not be resumed. It should be noted here for the Council that the fire revealed a number of health and safety issues and violations on the subject property which included evidence of the conversion of the house to approximately five units. That being the case the City would definitely work closer with the applicant to convert the units back to a single family dwelling structure. The City would also provide a partial outlet for this structure to resolve or alleviate a minor drainage issue in the back of the house. The structure has gone above and beyond the scope of their permit as well as what was stated in the building permit plans. As presented in the background section of the staff report and within the subject appeal application, it is staff's opinion as well as the Planning Commission recommendation that this appellant has clearly voluntarily raised a non-conforming single family unit above and beyond a single family unit, above and beyond the scope authorized by the City's rehab permit as well as the City's non-conforming use and structures ordinance. In the staff report he also noted a previous action by the City Council an application number of APPF9004, a Mr. Marquez, and that particular case the house was located a couple blocks from the subject property. The owner took it upon himself through discovery to remodel his house through his permit and had issues with his foundation and it snowballed. The owner started to demolish walls and upon discovery we noted there is only one wall standing. That issue is very similar to the other case back in 2009 and in that case Council determined he is not permitted to go forward with the construction. At this time, it would be appropriate for City Council to uphold the Planning Commission's determination and deny the applicant's appeal and prohibit the appellant from reconstructing the single family detached unit in the business zoning district. The appellant has an attorney present tonight and wishes to speak to the City Council.

Mayor Pro Tem Lilburn stated she remembers this project came to us a few years ago and she remembers there being only one wall or something.

City Planner Mainez stated that was the previous one. He was trying to make the argument that there was precedence, that there was an action similar.

Mr. Michael Reiter, Attorney for Appellant, stated the staff report put the appeal which is APP011002 on the back of it. He is going to go through the appeal just in case Council did have an opportunity to see that. That is the operative part, the appeal of the Planning Commission is not what he is going to be talking about and the staff report actually address issues raised in the Planning Commission appeal that are not raised before you. First let him address something that staff said regarding the other property. It's a completely different situation. The facts of that, there was one wall left on that property. Here there was a rehab permit that allowed some changes to the roof including partial re-roof and there was a wall in the back that, because of the way the applicant read the plans, they thought since there was a difference between the elevation and that roof and the existing roof, they would have to redo the back and that's why

they demolished that part of the house. There are three structures, there is a main residence, there is a garage and there is a workshop in the back. So unlike in the previous appeal where you had the structures demolished down to one wall, here we only have one-quarter of the walls on one structure taken down and so otherwise the property, other than the roof, completely different set of facts so you need to judge them independently in this case.

Councilwoman Scott inquired you said there was a residence, a garage and what was the other one?

Mr. Michael Reiter, stated there is a workshop and a pool in between them. This is basically an intact structure. The other issue is at the time of the fire, it was not being rented out to or occupied. The only occupancy was as a single family residence and that's what it's going to be if the Council grants the appeal and what it always will be, a single family residence. The City required before any of the work to repair the fire damage, they required that some of the non-conforming parts of the garage and the workshop be fixed first before his client had the opportunity to deal with the fire damage. One of the main issues that, in fact the special inspection report required 31 conditions be abated at the property; many of them not related to the fire. For example, a special inspection requirement, a special inspection permit was part of the permit; an inspection report was part of the permit. The scope of the rehab permit included the special inspection report which required that all improved conditions to the garage and the workshop be removed even though it was not related to the fire. Requirement number 14 required the applicant to repair all damaged windows and doors whether that was damaged by the fire or if it was damaged in the previous use. So those all had to be fixed. So before the roof was even touched and that's the main issue, the Fire Department at the time of the fire estimated about 25% of the main residence was damaged. His client has spent thousands of dollars to fix the property before even getting to the roof. So after a series of meetings, on March 25, 2011, his client obtained the rehab permit B00-011-976 to repair the fire damage and other internal repairs including repairs to the roof. Specifically the text of the permit itself said remodel SFR/garage/single family residence, relocate kitchen, add two bathrooms, laundry area, water heater, roofing partial roof, tear off re-roof per approved plan and special inspection letter. The only other permit that was issued before that was on March 16, 2011, to remove the patio cover and a bathroom per approved plan. The overall scope of this was pretty large and that's the approved. We haven't gotten to the point where they tore the roof off. His client is an owner occupant and she intends to return to this property should Council allow her to finish it. There are solutions where what happened, they didn't understand what the plan said and to save costs, the applicant used her father to do it, to make some of the repairs and in that the roof was removed and a portion of the back wall as we talked about. There was some additional concrete work too. Other than that they were doing it within the scope of the permit. The structure was not voluntarily raised, there was no definition in the municipal code of what voluntarily raised means so it is left open to staff to interpret what it means and he thinks the interpretation is

incorrect. Voluntarily raised, the plain dictionary meaning of it, means it was demolished to the ground; that didn't happen here. There was part of one of the structures, the roof was taken off and the back wall was taken off. The structure was not demolished to the ground. The windows that were replaced were done with a permit, some of them had to be moved because of new code requirements but there was fire damage that required the windows to be replaced because of the heat. There was smoke damage throughout the house and when some of the roof repairs were being done, there was additional damage that was observed that wasn't immediately apparent. His client spent thousands of dollars before the roof was removed, that's not the act to improve the property, that's not the actions of someone who has voluntarily raised the property. The roof was removed in what was believed to be in conformance with the building permit and the attached plans because the picture of the roof of the improved plans was different than the existing roof. So they looked at these plans and thought they obviously had to demolish what the existing looked like to get to the new roof design. So that is where the confusion was. Also, the language of the permit regarding a partial roof tear off, while they weren't tearing off the other two structures' roof they were matching the existing on those two and that's what they believed that meant, to match the existing other two structures that have an A roof. Also, he would like to touch on something that staff said this whole area is zoned Business Park and it has been since annexation so all the surrounding properties are either non-conforming or legal non-conforming. In fact, the property right next door at 8035 Marilyn Street and he pulled these permits yesterday, did substantial changes, they altered it, they expanded it, it was enlarged, it extended the normal life of the issue. One of these permits was issued in 2002 or a pair of them was issued in 2002 and it expanded and remodeled, it added a second floor. So before the rehab, it says on the permit, 552 they added an attached garage of 491 square feet and they added a second floor of 498 square feet for 1,549. So right next door the neighbors were able to do, in 2002, and they enclosed a porch in 2006 which was after the non-conforming use statute was changed regarding raised. So to deny her the chance to make this right because of the mistake would keep her from having the same chance as right next door who was able to expand their property. In 1987, it was Business Park upon annexation and yet the City still allowed them to basically double the floor plan, right next door.

Community Development Director Jaquess stated Mr. Reiter did state in his presentation but the Council changed the regulations relative to non-conforming uses in this area in 2006 and the additions to the house as Mr. Reiter pointed out next door were done before the regulations were changed.

Mr. Reiter stated the part he understands was changed in 2006 was the non-conforming use statute did not allow a property that was destroyed by fire to be re-constructed in a way that wasn't before but as far as the non-conforming use statute existed, that didn't change. So, it was a legal non-conforming next door and they were able to modify, enlarge, in fact double the floor plan even though it was legal non-conforming and that would be altered and enlarged extending the

life of that property. If what staff wants and the Planning Commission allowed this through the City's goal in the staff report is two things. One is it's a safety issue involving the airport right there and typically it is a public policy wanting to get rid of uses that are incompatible with that and that's why it was Business Park upon annexation. He understands that. That's not going to be accomplished for two reasons. The first is there is a way to mitigate that, something when he was Assistant City Attorney for the City of Redlands when a tract was approved near the airport what they did is they had navigation easements recorded against the property so that noise complaints and that kind of thing there wouldn't be nuisance actions like you saw with Burbank and Glendale airports. So that's a possible way to address staff's concerns. The second is he understands the policy of legal non-conforming uses but you had next door a property that you extended. Normally if the appellant has to demolish the property all you will have is a vacant lot. It's a substandard lot, it is next to a flood control channel, it is two lots away from Fifth Street, and you will still have the existing single family residence right next door and the triplex across the way. You may even have an inconsistent use there if it does go to Business Park if they can meet it even though it's not really what was intended for that area for those uses. That will be incompatible with the residents who actually live there but most likely it's just going to be a vacant lot because it won't be able to be turned into anything else. So, in summary she wasn't intentionally making a permanent plan with the different shape roofs as there was inability in the language of the permit because a permit can be difficult to read due to shortened language since there is only so much text you can have on a permit. She wants to live in this property and return it to a single family residence. Yes, they may have exceeded what the permit said as they didn't understand it. Yes, they did that but what they would like to do is go forward and restore it to a single family residence and to be able to use her property again. You have that ability as the City Council to give that back to her.

Mayor McCallon called for any speakers in favor or in opposition of this item.

Mr. Michael Anderson stated he would like to thank Council for their time first. He is the Appellant's daughter's fiancé and friend of the family. They had asked him to speak on their behalf just to present some of his expertise and also help articulate some of their arguments as he has been able to sit with them for long periods of time and get their side of the story. The Appellant does not speak English very well so he is helping out. Just a little bit on his background. Currently he works for the FDIC managing distressed assets portfolios that are received from failed financial institutions so he has a lot of experience and has been doing this for three years. Prior to this he was an Asset Manager for a private bank. He has a lot of experience in dealing with the consequences of what will happen if the Thach's are not allowed to repair their property. Most likely the home will be forced into foreclosure, possibly bankruptcy and the lending institution will most likely take a loss on the property. As Mr. Reiter reiterated in his speech, the lot will most likely remain vacant. He has talked to a few of his colleagues in the commercial real estate industry and has asked them

to look at the area and the property and where it's at. They have given their expert opinion that this property will most likely remain vacant, that it won't be a viable commercial business. There is no frontage onto Fifth Street, there's no access for customers. He is not sure what the City wants this lot to be but they assured him it will most likely be vacant. Just to give some background on the family, even throughout this process they have stayed current on their mortgage, they have stayed current on their property taxes and their insurance. They are a fiscally responsible family and they believe in upholding their obligations which is rare in his line of work. As you know the mortgage bubble has affected us all negatively. He deals with this day to day, people walking away from their loan. He is sure Council is aware this happens often in this area. This is a family who doesn't want to do that. They want to keep their home and repair it and they want to live in it. He was asked to get involved when the first stop work notice was placed. He came to the property and met with Building Official Dale Everman and walked the property. He was trying to get information and be able to re-convey it to the family how they could get the stop work order removed. Dale did not mention to him at anytime about the roof being a problem. He did mention the work in the back and some stucco repair on the front was exceeding the permit but that these things were minor and probably could be resolved. Dale stated he would need to speak with Community Development Director John Jaquess. The next week both John and Dale came out to the property and he met with them again. This was when the first issue of the roof came up. After that he met with City Planner Mainez in his office and this is where we are today. As Mr. Reiter stated, Mr. Thach wanted to explain to the Council some of the confusion he had with the plan. Not being able to match the existing to what he thought was supposed to be approved by the plan. It was his understanding that per the plan measurements that there was no way to match the beams and rafters called for by the plan were different measurements than what was existing and also his contractor had advised him that building onto the existing roof would not be safe. So after seeing the additional fire damage and hearing this from his contractor he proceeded to remove the roof. On page 479 of the agenda, he isn't sure what that is in your staff report, there is an old permit that refers to the property as apartments and that's what Mr. Thach and the family had when they purchased the property. So they were under the impression it was a multi-unit property when they bought it although they were not renting out any other units at the time of the fire, just the single family residence, just the main house. He would just ask for the Council's logic and compassion in this case as called for in the opening prayer. He thinks allowing the Thach's to keep the house is in the best interest in the community. They are law abiding tax paying citizens and something in the essay from the young man who read which was very poignant and moving struck him. America should be about the right to fail and to keep trying and if the Council believes this they will allow them to keep their home.

Ms. Sam Thach stated due to the fact that their house was on fire she just wants everyone to know they have been going through this for a year and they haven't been at the property for a long time but she still pays the mortgage. She doesn't want to lose it because she has hopes of keeping this home but after the disaster happened and the breakdown of communication she would like everyone to understand the communication. Sometimes someone will say something and then the next day it's something different. The neighborhood shouldn't be a business area. It is very peaceful and quiet to live there and she is willing to fix it. All she is asking for is help and to please give them another chance.

Mayor Pro Tem Lilburn inquired if they were residing in the home at the time of the fire.

Mr. Michael Anderson responded they did have a renter at the time of the fire in the main house only, not in any of the other units. They were having problems with that tenant at the time; they were actually planning to evict that tenant and move back in when the fire occurred. They had several problems with that tenant even after the fire and the tenant was still there. That tenant caused probably \$30,000 in damages. They broke fixtures in the bathroom, they kicked in the doors, they damaged the central air unit so they have had their experience with a terrible tenant and they are not interested in doing that again.

Mayor Pro Tem Lilburn inquired if the appellants have a total of what was spent on planning, permits.

Mr. Michael Anderson responded he believes it is around \$100,000.

Mayor Pro Tem Lilburn stated you have paid \$100,000 in permits.

Mr. Michael Anderson stated no, not in permits but in total including the repairs.

Mayor Pro Tem Lilburn stated because the house isn't even worth \$51,000.

Mr. Michael Anderson stated it is worth more than that to them. He has explained to them the financial impacts of what they are doing. They want to keep their house and they are not so interested in what the market is now, they just want to live there.

Mayor McCallon called for any other speakers in favor or in opposition. Hearing none, the public hearing is now closed.

Councilwoman Scott stated one of the questions she had and the one speaker addressed is you had mentioned that it was five units, a multi-unit when they purchased the property but there was only one unit.

City Planner Mainez stated let's clarify that statement. He believes Building Official Everman has the permit history on what was permitted there. He does not know what they bought it as or what it looked like at the time.

Building Official Everman stated the permits they brought in actually reflected the apartments across the street, the triplexes.

Councilwoman Scott stated the apartments across the street.

Building Official Everman stated the address, the APN's, show the apartments across the street, the address did indicate this property. We pulled the permits to compare and the apartments were built in the 80's, this house was built in the 70's. He doesn't know what the original owner may have had those apartments built at some point and time and lived there. He doesn't know.

Community Development Director Jaquess stated this house was a house, a single family house.

Councilwoman Scott stated she can see that because she was going to ask how in the world you got five apartments.

Building Official Everman stated you had the main unit, there was a room addition on the back that had been sealed off, also the garage in the back was in the process of being converted into an apartment, the west side of the storage building had been converted into an apartment and the east side was in the process. He was still in the process of converting them.

Councilwoman Scott stated okay, when you say in the process it was during the time that their tenant was living in the main house that these were being fixed up for apartments.

Building Official Everman stated yes, when they had the fire we did our investigation and we discovered all of these units. They all had kitchens, they all had separate bathrooms and were all separated except for the one to the east of the storage building.

Councilwoman Scott stated okay, kitchens, bathrooms, they had the plumbing all in and connected.

Building Official Everman stated yes, in four of them.

Councilwoman Scott asked what date this was done, do you know.

Building Official Everman stated we discovered that when we responded to the fire.

Councilwoman Scott stated you discovered it when you responded to the fire but do you have any idea when the sewer and the water was put in.

Building Official Everman stated no.

Councilwoman Scott stated so you don't know if it was before they purchased the property or after the property.

Building Official Everman stated no, he does not know the exact dates of when the conversions were done. The other three to four units were not occupied at the time. Mr. Thach's father was living in the garage in the back and the renter was living in the main house.

Councilman Racadio stated did you say they brought permits from the house across the street that was converted.

Building Official Everman stated across the street there are triplexes.

Councilman Racadio stated but they brought those permits in. So there are no permits on this property verifying the conversions.

Building Official Everman stated not for the conversions.

Councilwoman Scott stated well going through the months of the contact and the things that were done her first reading on this, it just seemed to her to be a blatant in your face, we're going to do whatever we want to. We will get a permit and then do whatever we want to. However, frankly she would like to continue this item and find out when the East Valley Water hook ups were done and if they were within that 7½ years.

Building Official Everman stated he does not believe there were separate hook ups. There is only one water meter there.

Councilman Timmer stated they probably hooked up to the existing system that was there.

City Attorney Steele stated he really needs to move the discussion back to the issues that are before you. The issue that is before you is an appeal of the decision to require that the structure be raised and the structure not be replaced. That discussion doesn't really depend on the other units on the property.

Councilwoman Scott stated this is true, however, we are talking about non-conforming and she had City Planner Mainez mark the area of the roof that was burned and she understands that instead of just patching that they took the whole roof off and did that. Again, we are also talking about someone's home that they want to live in and that versus a vacant lot for how long because it is Business Park zoned. It's not even a good sized lot for Business Park. It will have to be joined with other things so it seems to her we could work out something. She is disgusted with them that they did all of this but maybe there is a chance we could do something.

Mayor Pro Tem Lilburn stated so our main concern is because they didn't follow the instructions on the roof, is that correct? First off she wants to clarify the non-conforming. She thought in an area that a house wasn't zoned in it was non-conforming but still allowed unless they left the residence and they weren't living or using that as it was utilized for within six months or if it burned down.

Community Development Director Jaquess stated actually the issue of non-conforming deals with how much modification can you make to the house and still not affect its non-conforming status. The general interpretation that has been applied by staff previously and through this particular situation is that for a house that is non-conforming we will allow maintenance of the house for the life of the structure and to allow people to continue to use it. Definition of maintenance has been generally to allow some interior wall modifications if they had to fix plumbing or something like that and if the roof had to be replaced we allowed them to put new shingles on. We did not allow a house to have a roof completely removed down to just the walls and then put back on. That was not allowed by definition. So that was a big debate in this particular case because the applicant approached Building Official Everman who approached him wanting to replace the roof. Our position was no, we could not allow that, we would allow them to replace the shingles. After a number of meetings with the applicant and with the Building Official and himself separately, Building Official Everman convinced him that it was in the best interest of the house that we allow them to repair the roof where there was a structural issue that was resulted in an internal leak to the house. He agreed and said we will allow that flat roof area to be turned into gabled roof area, the rear of the house. That's what we approved in the permit, what we understood was being approved. We then subsequently discovered that they did go beyond that and remove the roof which was what they wanted to do originally and in addition removed approximately the rear third of the house. When we got there, they were reframing that, putting in new ceiling joists, new walls and some concrete work being done. At that point, we said this is beyond staff's ability to approve because it was beyond the definition of maintenance that we have been following. That decision was appealed to the Planning Commission; Planning Commission agreed that it was an issue that they could not overcome. A matter of maintenance was at issue, what's the definition of maintenance. If you were to agree with the applicant that they should be allowed to rebuild today then it would create a new definition of maintenance for city staff to have to work with for future homes in the area.

Mayor Pro Tem Lilburn stated she has a little bit of concern in that in March of 2011, we issued a permit for them to remodel their single family garage, relocate a kitchen, add two bathrooms, a laundry area, a water heater, refine partial roof, tear off and re-roof. We allowed them to do all this and we're complaining they put on a new roof.

Building Official Everman stated interior remodels aren't really affected by the non-conforming issue.

Community Development Director Jaquess stated within the four walls of the house we have been pretty flexible on interior remodeling on non-conforming structures.

Mayor Pro Tem Lilburn stated she guesses she is a homeowner and if her roof is bad she wants to put on a new roof.

Community Development Director Jaquess stated and we would allow you to do so.

City Manager Hughes stated this is taking the entire roof structure off of the building and taking it down to the joists, the rafters, everything and taking it down to walls.

Mayor Pro Tem Lilburn stated can they fix it, are we allowing them to fix it?

Community Development Director Jaquess stated we could not authorize that as staff because we felt it exceeded the definition of maintenance that the City had established and have been following in prior cases.

Mayor Pro Tem Lilburn stated is it that bad, she is not in the business, she is looking at you guys as the experts. She is like wow we allowed all this but...

Community Development Director Jaquess stated if they were in a residential zone we would not be having this discussion but the fact that it is in the Business Park, and in the Business Park in 2006, the Council modified the code with regard to how we deal with residential uses in the Business Park area. The goal, at that time, was to work to eliminate the residential uses in that area.

Councilman Racadio stated the change in the code in 2006; they have permits here stating the house next door actually expanded the use, the size, in 2002 and 2004. Were the changes made in 2006?

City Planner Mainez stated it's actually not on here. In the purpose there is something above this where it talks about the applicability of the non-conforming ordinance and in there it talks about what zoning districts. The way it was worded before was if you have a single family house anywhere in the City, in any zone, it was considered highest and best use and if something happened to that structure you could rebuild it, plain and simple terms. Now last Council we were updating our General Plan back in 2005/2006, we asked Council do you really want to have this provision in the code for houses around the airport and the Council said no, let's take that out. So we excluded houses within the Business Park and industrial districts from that protection so now they have to follow this criterion.

Councilman Racadio stated so when these people did it, the neighbors, it was allowable to expand.

City Planner Mainez stated it was before that change to the code.

Councilman Racadio stated the change in 2006 restricted it. One of the issues is what constitutes raising and we talked about the voluntarily raising but there is not definition of it. There is not a percentage destroyed, he guesses it is a subjective evaluation. The appellant talked about the dictionary says it's a...

City Attorney Steele stated he thinks the definition in this case is provided both by the purpose that is outlined in the code as well as the connection between this concept of raising and a permit that was issued. He thinks the City sort of defined what the limit of destruction was going to be by issuing a permit for a partial reconstruction and re-shingling of the rest of the roof and anything beyond that is considered to be raising because it's going beyond the limits of what was established by the permit.

Councilman Racadio stated he would think the definition would depend on the situation.

City Attorney Steele stated right.

Councilman Racadio stated so it's not a way this constitutes raising.

City Attorney Steele stated there is no way to specifically define a concept like raising or destruction which is the other term that's in the code especially with regard to non-conforming structures because every non-conforming structure is different and every non-conformity is different. So there really is almost no way to accurately define something like that which is why we have a process that ultimately brings it back to you all to decide. Staff applies what's in the code based on what they understand the policy of the City to be and sort of the past practice. We talked about this at the time this case came before staff. If a change is going to be made in the way this ordinance is to be applied, that's a policy decision for the Council to make and that's why there's an appeal process to come to the Council because ultimately you interpret your own municipal code.

City Manager Hughes stated the amount of work that was being done, changes to the home, was beyond what staff felt comfortable approving. They felt it was beyond what was allowed in the code. Like City Attorney Steele stated that's why we have this process to appeal it up to the Council and up to the policy makers so you as policy makers can tell us what the parameters are.

City Attorney Steele stated if you decide raising means as Mr. Reiter says, scraping it to the ground, that's the policy and staff will follow that policy but those are decisions that Council is uniquely in position to make and to give direction to staff on.

Councilman Racadio stated and including in our Business Park designation, in any designation of legal non-conforming use or non-conforming use is a temporary and therefore the goal is to eventually eliminate the non-conforming use.

City Attorney Steele stated at the end of its useful life. That's always the goal of any non-conforming use is to bring consistency and conformance to a zone when everything in that zone has lived its life.

Councilman Racadio stated what would be our steps now with the house where it stands right now. He guesses the only option if we were to uphold the action would be that it would have to be removed. So the property owner would be asked to remove everything down to the bare ground and if they don't do that which he would think they wouldn't have motivation to do, our responsibility then would be we would go in and do it and lien the property.

City Attorney Steele stated we would have a couple options but would rather not try to make that choice in this forum but that would be one of the options that the City would have.

Councilman Racadio stated what they are telling us is they would restore it, she wants to live in it, it would be a nice house in that area and if we were to do that, is there some way we could require it not be turned into five unit apartment complex again or is there any way to protect us.

City Attorney Steele stated that would violate the code, the code already prohibits that.

Councilman Racadio stated if they were to fix it, this Council would make that decision, let them go in but they spent \$100,000 already, he doesn't know how much more it's going to be to fix it. It would have to be used as a single family and if we found out otherwise it would then be a violation.

City Attorney Steele stated he would think that if the Council were to make that decision and give direction to staff he would think that there would have to be a covenant or as Mr. Reiter suggested a navigation easement concept to make sure that everybody knew what had happened in this setting and what rules were going forward given there has been miscommunication and some other issues in regards to compliance with the code. We would have to sort of spell it out in a document. Mr. Everman noted there is even confusion about which building permits apply to which property. He looked at them and he thought they were confusing as well so there is a whole set of confusion that would have to be cleaned up if the Council were to give that direction.

Councilman Timmer stated when staff went there after the fire and determined there was a whole bunch of issues and the modifications were discovered making it five units and four of them were basically completed. Part of the process for us to issue the reconstruction permit for the existing house, did they have to tear all that other stuff out.

Building Official Everman stated they are in the process. They have to turn it back into a single family house. It does have a lot of storage areas and it does have a large workshop.

Councilman Timmer stated so they were in the process of tearing all the stuff out.

Building Official Everman stated yes.

Mayor McCallon stated in staff's opinion, we issued a permit and we had drawings and everything and it was clear as to what was being permitted to be done.

Building Official Everman stated looking at the approved set of plans, you will see where it says existing roof and where it says new roof. There is a misrepresentation on that plan and it doesn't show part of what it actually is. That wasn't caught in plan check. That's something we do have to address but Mr. Thach was told explicably not to tear off the roof, he could only put that rear portion back on to correct; he thinks it was the flat area that was leaking.

Mayor McCallon stated so it's staff's opinion that even though there is an error on the drawing that the instructions were clear.

Building Official Everman stated he believes so.

Mayor McCallon stated but you did say there was error on the drawings that was not caught in plan check.

Building Official Everman stated yes there is an error on the drawing that we discovered. The drawings are not a true representation of the existing roof.

Mayor McCallon stated not a clear representation of what was there. Is it clear as to what we were approving to be done?

Building Official Everman stated he believes so. We were approving the rear portion of the house, take the shed roof off that was flat and put a gable sloped roof on.

Mayor McCallon stated it's very difficult because when someone is living in a house. However, it's also difficult if we have a non-conforming ordinance and it's the intent to enforce that. If we agree to the appeal then it seems to him we are opening up a huge can of worms as to what constitutes acceptable repair or refurbishment or I don't know how staff would even interpret our ordinance so that's a real quandary for him.

Councilwoman Scott stated Building Official Everman had stated a shed roof was approved. Okay we have the shed, garage and the house.

Community Development Director Jaquess stated just to clarify that point, we approved replacing a portion of the roof on the main house that was flat like a shed roof, it wasn't on the shed, and it was on the main house.

Councilwoman Scott stated so the house prior to the fire was a flat roof.

Community Development Director Jaquess stated no, it was a roof of what appears to be multiple gables but a portion in the back of the house, an area over what could have been a patio at one time was flat.

Councilwoman Scott stated the rest of the roof was sloped, peaked for good run off. So then he removed the entire roof. She has to go with Mayor Pro Tem Lilburn a little bit here on this. The house was built in 1976 and of course we were the County then, certainly we weren't the City and people did a lot of building with chicken wire even and so maybe when he tore that away he saw that the rafters needed more support, etc., and that's why it happened. She voted for the Business Park because in 2006 we thought the airport was going to go and this is 2011 and we have a rich man's airport for private jets and that's it, no public stuff. So how long are these people going to have to be held hostage to not be able to do something. She knows they went over and above, there's no excuse for some of the things they did but should we say no and cut it down.

She really hates to go against Building Official Everman and City Planner Mainez and even the Planning Commission because she knows we have great staff. She really thinks that we need to do something and allow them to live. Then, the owners to live until such time because when people come in and want to do Business Park then their property is going to be worth more money. So, can we do something where we say it has to be owner occupied, they can never sell it, they can't rent it and so forth.

Mayor McCallon stated not tonight. If we want to take a look at the ordinance again we would have to do that but we're not going to do that tonight.

Councilwoman Scott stated well the alternative is to shut them down and kick them out.

City Attorney Steele stated about the only thing we could do tonight in that context is to require it be single family residence only which is what the non-conforming use is. He thinks we can define that but any kind of restraint on selling it or who lives in it or any of that kind of stuff is not legal but it is a single family home and we could require that.

Councilwoman Scott stated right, require it to be back to a single family home.

Councilman Timmer stated so really what we are saying is that we're going to throw this ordinance out and we're going to tell staff basically that anyone who wants to rebuild a house from the foundation up or even from roof. The whole intent of going through the General Plan and coming up with Business Park allocation or designation years ago was to allow the airport to have uses which was compatible for the airport. Over time the homeowners would move out, people would buy parcels and consolidate them to bigger pieces and build some things. If we change that standard, staff just basically says what we're saying is that people can rebuild whatever they want and we will be having this issue over and over again. We're back to the KCB Towers thing where we had a family living close to them and they were complaining about them starting at 6:00 a.m. or 7:00 a.m. with all the noise. That's just going to intensify as industrial types of uses move into that area. So, we would be prolonging that process and be debating that for nearly every project that comes in or every remodel that comes in.

Councilwoman Scott stated that's true but having known someone that lives in that area she knows that if anyone came knocking on her door and offered her a fair price for her land she would sell in a minute and go to another area. As it is she can't do aesthetic fixing up to her place.

Mayor Pro Tem Lilburn stated yes she can.

Councilwoman Scott stated yes she can paint and things like that but there were some other things she wanted to do to her property, to enhance her property, for her family to live and she can't do them because she's restricted. She just thinks we have extenuating circumstances sometimes and we have to take them case by case.

Councilman Timmer stated yes but if we set a standard or a precedent at this level where the whole roof was gone, a third of the property was gone, there were multiple units there that sounds like they weren't permitted, basically we are saying people can do what they like.

Councilwoman Scott stated they have complied with all of those things, staff said so.

Mayor McCallon stated if someone is going to come in a Business Park and wants to buy up the property, it's probably more valuable as vacant land as to having a building on it that someone has to tear down.

Councilwoman Scott stated well sure because they have to demolish it and in the mean time we throw somebody out in the street to live in a tent and be homeless.

Mayor Pro Tem Lilburn stated Community Development Director Jaquess had stated if this was in another neighborhood that this roof thing wouldn't be an issue, it would be okay.

Community Development Director Jaquess stated if it were in a residentially zoned area.

Mayor Pro Tem Lilburn stated so the roof is okay basically it's just because it's non-conforming.

Community Development Director Jaquess stated that's the whole issue.

City Manager Hughes stated what they did under the permit was incorrect. They took off way more than what was allowed by the permit. So you can't just say the roof is okay, it still would have to be done properly under our permit. They went beyond the permit.

Mayor Pro Tem Lilburn stated so we were allowing a certain amount but they wanted to re-do the whole thing for it to be nice to go with their newly remodeled house. Whether it's inside or outside we are prolonging the life of the house but one of her concerns is that because we have a Business Park that we just are going to let that neighborhood go to pot because we are going to wait for one day the airport to go. This is kind of a quandary because we are darned if we do here and were darned if we don't. Usually we don't have this problem we are always on people to fix their place up and now someone has fixed their place up. It sounds like they were meeting...this is tough, this is a tough one.

Councilman Racadio stated we are in essence making definitions as we are talking because as the City Attorney pointed out what is raising a building or it is whatever the building permit says it is. It becomes the definition, we don't have, and he doesn't think a definition of what is a building that is raised, what is that. Is it a percentage or what? It's just basically whatever the building permit says and if you do that then and if it's granted it's not raised.

Community Development Director Jaquess stated it is an attempt to define and he places it more on the definition of maintenance than anything else but if we attempt to look at it and what constitutes a level of maintenance that can be authorized for a non-conforming use, it is somewhat on a case by case basis that those decisions are made.

Councilman Racadio stated so therefore if we make a decision today, you're saying it doesn't set precedence for what raising is.

Community Development Director Jaquess stated what he's saying is the definition of maintenance in the past for roofing has been to replace the shingles for example. If we were to agree that they could replace the whole roof down to the ceiling and then also replace part of the house that has been demolished and torn down then that creates a new definition of maintenance for staff to administer.

Councilwoman Scott stated from 1976 if you have more than three levels of roof you do have to tear it completely down, you can't put a fourth level on there.

Community Development Director Jaquess stated and that was permitted. We have allowed that to be replaced. The roofing material, we have agreed they could replace the roofing material on a non-conforming use.

Mayor Pro Tem Lilburn inquired the whole roof?

Community Development Director Jaquess stated the whole roof of the roofing material, the shingles. We have consistently allowed re-roofing.

Councilwoman Scott stated in other words you can take it to the black top.

City Manager Hughes stated down to the plywood.

Community Development Director Jaquess stated that has been our definition to date.

Mayor McCallon stated he understands the gentleman has advised the appellant that the owner has spent more money than the property and house would be worth already and now were talking about throwing even more money into this property. It seems to him that it's a waste of money based on what the eventual value of the bare land would be as opposed to putting it into the property but that's certainly a decision they have to make. He agrees with Councilman Timmer. We have in place a non-conforming ordinance, if we start tinkering with what the definitions of maintenance and repair are and muddy and broaden and so on he doesn't think staff can readily make a decision on these things and we will be faced with all kinds of applications coming forward to the Council for them to adjudicate whether this falls within this amount or this amount. He thinks it is fairly clear what our intent is. The intent is to be able to maintain the property and to make minor repairs as required to make sure it conforms to the codes but to go in and do a whole remodel of the roof and half of wall structures and so on, he thinks it goes beyond what was intended in terms of maintenance and repair. He thinks if Council accepts this appeal and approves it, they are opening a tremendous bag of worms that he is not ready to.

Councilman Racadio stated he is uncomfortable too. He sees a family here that is trying to fix up the house in an area he doesn't know why they are doing it but they apparently want to do it and live there. He thinks the definitions are vague enough that we could make a determination that this project was not raised. There was obviously some miscommunication and maybe some action taken that they shouldn't have taken and maybe knew they were trying to stretch the permit and he doesn't know if that is necessarily the case. This individual wants a house to live in; this person has put in a lot of money already and he is not so sure that these definitions are clear enough anyway. He is not convinced. The others, when someone does come to develop it, they can always inquire yes it will be more expensive to have a house on it but otherwise we will have a vacant lot sitting there. He would rather see an improved house there for someone to live in.

Councilwoman Scott stated she will make a motion to approve the appeal but there will have to be some wording for the permits that will have to be pulled. She thinks they probably understand now that what good is a house if you don't have a roof on it.

Councilman Timmer stated so then really what does a permit mean if people can do whatever they want. Why would we even give permits? Just go out and fix what you want and do what you want.

Councilwoman Scott stated that is true and you will always have people that are going to do things without permits and our staff will have to deal with it. She feels terrible because staff has done a fantastic job. Look at the times they have been over to that home but what is our alternative. What is the alternative? To throw some people out in the street and have a vacant house to be vandalized and graffiti and squatters move in and really mess up the neighborhood.

Councilman Racadio stated could we as a condition put in something that would say should there be any eminent domain exercises, they would not be exempt from eminent domain even though they are single family residence.

City Attorney Steele stated we do not have eminent domain authority in that area as it is.

Councilwoman Scott stated she thinks staff will really watch anything that they do.

Councilman Timmer stated he thinks what we are doing if this passes is just basically staff has no discretion anymore and every action related to something similar is going to come before this full body every time.

Mayor McCallon stated and he does not know if the Planning Commission will be able to act on any appeal either.

Mayor Pro Tem Lilburn stated that's funny because we have denied Planning Commission's recommendations before.

Mayor McCallon stated he understands but it's muddying up the definition.

Mayor Pro Tem Lilburn stated she knows but it's a recommendation and everything isn't so black and white. This clearly is not black and white and that's her personal opinion. These people have put a lot of money and time into it, she knows staff has as well, but again we're darned if we do and darned if we don't. Where do you get people who put \$100,000's into their homes and fix it up? Normally we would be giving them an award.

A MOTION was made by Councilwoman Scott, seconded by Councilman Racadio, to approve the applicant's appeal regarding the request to reconstruct a single-family detached residential unit in the City's Business Park (BP) Zoning District in accordance with the City's Land Use and Development Code Section 16.08.150 (F), (1), Nonconforming Parcels, Uses and Structures. Motion carried, 3-2, with Mayor McCallon and Councilman Timmer dissenting.

21. MCA-011-004 – Land Use and Development Code Amendment Related to Section 16.56.050 Temporary Signs in Residential Districts and Section 16.56.170 Kiosks, On-site Subdivision and On-site Commercial Real Estates Signs of Chapter 16.56 Sign Regulations

Mayor McCallon opened the public hearing.

Community Development Director Jaquess stated this item before you, having been recommended to you by the Planning Commission for approval. It came about as a result of Code Enforcement action and the residential subdivision developer was really asking that the Council revisit the sign code that we recently have adopted. They asked for Council to review the specific areas of signage for subdivisions and temporary signage for subdivisions, both signs and flags. The subcommittee was formed to do that by the Mayor and the members were Mayor Pro Tem Lilburn and Councilman Timmer. Two meetings were held and as a result of the two meetings, recommended an amendment to the sign code to allow three different sizes of subdivision temporary signs based on the width of the street that the subdivision was adjacent to. If it was a collector street, it would be a 32 square foot sign which is what the code had said previously. If it was a secondary street it would be 64 feet, and if it was essentially a major street, it would be 96 square feet of signage allowed. Separately there was a discussion about flags and they have not been permitted by the sign code amendment that had been adopted and the subcommittee recommended we add back the provision for flags for model homes and there is a recommendation for five flags to be allowed for a model home complex. Planning Commission supported those recommendations and we forwarded it onto the Council.

Mayor McCallon called for any speakers in favor or in opposition of this item. Hearing none, the public hearing is now closed.

Councilwoman Scott stated on the flags for the model homes, was there a time limit of when they come down.

Community Development Director Jaquess stated they have to come down when the last home is sold.

Councilman Racadio stated in the staff report it talks about this being because of current economic conditions that this increase be approved. Is there some idea that when things get better we will go back to the old ordinance?

Community Development Director Jaquess stated that was not part of the action that is being forwarded to Council; this is just a modification to the sign code.

Councilman Racadio stated it says in here it was brought about in response to the current economic conditions.

Community Development Director Jaquess stated he thinks it was a reflection of the times that we wanted to be responsive to residential development in the City but at this point there is no recommendation or provision to suggest that it would revert to something different at some future date.

Mayor McCallon stated he doesn't think there is any intent to revert it back and he thinks when we brought the sign code forward it was just inadvertently taken out.

Councilman Racadio stated so you don't feel this had anything to do with the economic conditions.

Mayor McCallon stated personally no.

Councilman Timmer stated when we met with the developer who brought this issue up they did stress that they needed the signage and flags to attract attention because of the economy. They are the ones who injected the economy issue, it wasn't the committee.

Councilman Racadio stated so your intent was not because of the economic conditions.

Mayor Pro Tem Lilburn stated ours wasn't.

Councilman Timmer stated he thinks the intent of the recommendation of the committee was to make the project advertising more visible because this particular project has that big block wall and had the sign behind it.

Councilwoman Scott stated it does draw attention to it.

Councilman Timmer stated his point was that yes if you're driving and see a flag waving in the wind it says a house for sale and people think oh I will go in and buy a house. People don't shop for houses that way but they are convinced it's helping.

Councilwoman Scott stated but they come back. They go home and say there are some new houses over there.

Mayor Pro Tem Lilburn stated it just identifies where the models are.

A MOTION was made by Councilwoman Scott, seconded by Mayor McCallon, to introduce Ordinance No. 363 amending the City's Land Use and Development Code (Title 16), Chapter 16.56 Sign Regulations, Section 16.56.050 and Section 16.56.170. Motion carried, 4-1, with Councilman Racadio dissenting.

City Clerk Hughes introduced Ordinance No. 363:

ORDINANCE NO. 363
AN ORDINANCE OF THE CITY OF HIGHLAND, CALIFORNIA, AMENDING
SECTION 16.56.050 AND SECTION 16.56.170 OF CHAPTER 16.56 SIGN
REGULATIONS OF TITLE 16 (LAND USE AND DEVELOPMENT) OF THE
HIGHLAND MUNICIPAL CODE [MUNICIPAL CODE AMENDMENT-011-004]

which title was read.

CITY COUNCIL/REDEVELOPMENT AGENCY LEGISLATIVE

22. Amendment to Greenspot Road Bridge Professional Services Agreement

City Engineer Wong gave a brief review of the staff report.

Mayor McCallon stated in essence it's all increasing scope.

City Engineer Wong stated it is all increasing scope. A lot of this is really unexpected when we negotiated the contract quite a few years ago, it was back in 2005 when we started the contract.

Councilman Racadio inquired about the re-initiation of the Section 7, Fish and Wildlife, was that a result of this re-designation? Is it something we did not anticipate?

City Engineer Wong responded Fish and Wildlife at one time pulled back the area of impact by the San Bernardino Kangaroo Rat. They got sued so they looked at it again and they went back to the old limit and because of this we have to do more work.

Councilman Racadio inquired what about the utility coordination?

City Engineer Wong responded with the bridge structure, if you have existing utility line that crosses the bridge and you want to put those existing utility across the new bridge, you design for it and we would accommodate it, but if you do not know what is going to go in there then you do not design for things you do not know. This area has had no development and we have not been planning on putting extra structure within the bridge to accommodate future utility in which we do not know what it will be.

Councilwoman Scott stated the items City Engineer Wong stated were not covered in the original contract scope, one and two, the right-of-way services relative to San Bernardino County Flood Control District and Orange County Flood Control District. Why is Highland paying for Orange County right-of-way? This is going to benefit the Orange County property. Number five, the design and coordination of bridge utilities, what kind Edison, water or sewer?

City Engineer Wong stated all three.

Councilwoman Scott stated again, that will be for the benefit of the Orange County development out there so why are we paying for it and why not Orange County pay for it. Also, it is in the sphere of influence for Redlands so maybe they should take part as well.

A MOTION was made by Mayor Pro Tem Lilburn, seconded by Councilman Racadio, to approve an amendment to the Professional Services Agreement with TY Lin International increasing the fee amount by \$86,150 to a total fee of \$902,844. Motion carried, 4-1, with Councilwoman Scott dissenting.

23. Takeover Agreement between the City of Highland and Berkley Regional Insurance Company for the Contract between Premier Wall Constructors, Inc., and the City of Highland for the Highland Police Station

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

Councilwoman Scott stated Premier Wall Contractors, did they submit a bid and who hired them, well obviously the City did.

City Manager Hughes stated they were a prime trade contractor on the Police Station, one of seventeen, and they have gone out of business. Their bonding company has stepped in and will finish the project.

A MOTION was made by Councilman Racadio, seconded by Councilman Timmer to authorize the Mayor to sign the Takeover Agreement between the City of Highland and Berkley Regional Insurance Company for the contract between Premier Wall Constructors, Inc., and the City of Highland for the Highland Police Station. Motion carried, 5-0.

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

City Engineer Wong stated the City of Highland has just been awarded a \$676,000 State grant. This is the State of California's Bicycle Transportation account and this grant will be used to widen Greenspot Road from where the S Curve is going all the way to the southeastern city limit line. There were 103 applicants and 24 were from California and were awarded the grant. The City of Highland was the only City in the Inland Empire to receive this grant and will receive the second highest grant amount which is almost 10% of the total program.

Mayor McCallon stated this says a lot about City Engineer Wong's ability to bring the monies into the City and the Council is very appreciative of all he does.

25. San Bernardino International Airport Authority and IVDA

None

ANNOUNCEMENTS

City Manager Hughes introduced Carlos Zamano who is the City's newest addition as the Assistant Public Works Director. Mr. Zamano will be replacing Assistant Public Works Director Dennis Barton, who is currently working part time.

CLOSED SESSION

None

ADJOURN

There being no further business, Mayor McCallon adjourned the meeting at 9:09 p.m. in memory of Ron Severson, Jere Melo, Fort Bragg Council Member and also in memory of those who lost their lives on September 11, 2001.

Submitted By:

Approved By:

Betty Hughes, MMC
City Clerk

Larry McCallon
Mayor