

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – OCTOBER 8, 2013
VETERAN’S MEMORIAL HALL – 6:00P.M.

PRESENT:	Jamie Irons	Mayor
	Christine Johnson	Councilmember
	Nancy Johnson	Councilmember
	George Leage	Councilmember
	Noah Smukler	Councilmember
STAFF:	Andrea Lueker	City Manager
	Robert Schultz	City Attorney
	Jamie Boucher	City Clerk
	Amy Christey	Police Chief
	Steve Knuckles	Fire Chief
	Susan Slayton	Administrative Services Director
	Joe Woods	Recreation & Parks Director
	Eric Endersby	Harbor Director
	Rob Livick	Public Services Director
	Kathleen Wold	Planning Manager
	Erik Berg-Johansen	Planning Intern

Mayor Irons called the meeting to order at 6:00 p.m.

ESTABLISH QUORUM AND CALL TO ORDER
MOMENT OF SILENCE
PLEDGE OF ALLEGIANCE

CLOSED SESSION REPORT – City Attorney Robert Schultz reported that City Council met in a Special Closed Session on October 8, 2013 on the following item: Government Code Section 54956.8: Property Transactions: Instructing City’s real property negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease of real property as to two parcels: Lease Site 30W-33W, Bay Front Marina (Water Lease adjacent to 201 Main Street); and, 307 Morro Bay Blvd.; no reportable action under the Brown Act was taken.

MAYOR AND COUNCILMEMBERS’ REPORTS, ANNOUNCEMENTS & PRESENTATIONS

PUBLIC PRESENTATIONS -None

PUBLIC COMMENT

John Elliott, the new owner of Mikes Barbershop, announced his Grand Opening on Friday, October 11th featuring food and entertainment. Opened originally on December 6, 1941, it was sold to Mike Dominguez in 1960 who owned it until recently when John purchased it. John’s

goal is to make the barbershop a green barbershop. The shop is open Monday thru Saturday from 9am-5pm. John is also heavily invested in the community already sponsoring local youth sports teams and donating to many worthy causes. He hopes people will stop by this Friday.

Steve Ekis sits on the Board of Directors of the Morro Bay Pups. He invited the public to the Pups in the Park 2013 event being held this Saturday, October 12th from 11am-3pm. The purpose of the event is to celebrate the tremendous success of the Jody Giannini Dog Park. He also applauded the Recreation & Parks staff who have been extraordinary to work with.

Rick Grantham thanked Council for their support of the upcoming Veteran's Event. He also announced the Thanksgiving Day Dinner being held at the Community Center on Thanksgiving Day, serving from 1-3pm. He thanked the many sponsors. The event will feature a full dinner with live entertainment. He also spoke on Item B-3, Draft Sign Ordinance, wanting to publicly thank his fellow Planning Commissioners for their hard work on this project.

Liz Bednorz, owner of Beach House Bistro spoke on Item B-3, Draft Sign Ordinance hoping that neon signs advertising their business will be allowed to be on while they are open during the day. She read the document and sees a lot of confusion and little nit-picking throughout. She also feels that feather flags and/or A-framed signs are a necessity to the success of her business as they are in a place with little foot traffic and hoped that Council and staff would address this.

Tim Crowley stated that he is very angry, as he can't believe that a recall is being brought forward. He feels there is no cause for this to happen and is totally against it. He feels the Mayor has done nothing wrong and that those in favor of it should just wait until the June election.

Janice Peters served on the Council for a total of 14 years and never in that time has she seen a Mayor granted complete autonomy to search, interview and enter into a contract without any oversight or review by other Councilmembers or City staff. She questioned its legality as well as definitely feels it is unethical and lacks transparency. She spoke specifically to Councilmembers Christine Johnson and Smukler, as the two councilmembers who voted in favor of this item, that they have the right to request a reconsideration of that motion at this meeting and hopes that they do. She stressed that the Mayor sets the agenda and runs the meeting but each Councilmember has equal voting power.

Kathy Welles stated that she watched Andrea Lueker receive an award for being the great City Manager she has been. She stated that this seems like a circus. Both Andrea and Rob Schultz have been wonderful employees of the City.

Lynda Merrill read a letter written by her husband. The letter stated that the motives of those calling for the recall seem highly suspect because their stated grounds don't seem truthful and that the whole exercise seems like unruly politics. This is another of the expensive divisions that we in Morro Bay are tired of. He urged people not to sign the recall.

Julie Loving spoke on Item B-2, regarding the Appeal of Staff's Authorization of a Fence on City Owned Property, stating that good fences make good neighbors. The Burtons were allowed

to put the fence up. She stated that in that area, dogs run around freely and there are people in and out of the Roandoak facility all the time; it's a good thing to keep the Burtons separate from all of that as they have 2 young boys. This process was done legally and she doesn't understand why there's a problem with it.

Walter Heath has confidence in the Mayor and of the intelligence of the Morro Bay voters. He urged the Morro Bay voters not to sign the recall petition. He went on to read the rules of public comment which states that all remarks should be addressed to council as a whole and not to any individual member thereof and asked anybody speaking to adhere to that. He was deeply offended by the September 12, 2013 meeting.

Susan Stewart announced that Botso Korisheli was featured on the front page of the SLO Life Magazine. She stated that Morro Bay, as a City, supported the development of this movie. It is now playing at the Palm before moving up to the Carmel Film Festival. This puts Morro Bay on the map in a good way.

Garry Johnson spent the weekend at the Harbor Festival as a photographer. It was a wonderful event. He questioned whether or not City Attorney Rob Schultz had been offered a job in another City which he didn't take as his evaluation with Morro Bay had been positive. He wondered whether Mr. Schultz would have taken it had he known that this possible termination proceeding would have happened. He also spoke about the recall stating that we have 2 wonderful employees; he wishes the recall didn't have to happen and hopes that Council reconsiders their thoughts of termination.

Bill Peirce took offense to a previous speaker's use of the phrase "carefully orchestrated". He stated that on September 12th, there was no organized group of people; they were there because they were mad and they were concerned. He also stated that miraculously flyers have cropped up, talking about the cost of the recall which he deems, carefully orchestrated.

Amy Perry spoke in support of the Mayor. She is outraged by the recall. She strongly urges the public not to sign the recall petition but instead let your voice be heard at the June election.

Carla Wixom stated that at the last City Council meeting, you violated your own Resolution, which states that you will do RFP's when seeking to hire contractors which a law firm is a contractor. She also feels that the Council's Policies and Procedures were also violated. She said that the flyer that has been handed out stated that it could cost the City over \$50,000 for the recall; she wanted to say that it could also cost as little as \$1,000 for a recall election because it would be lined up with the primary.

Joan Solu spoke representing the Morro Bay Community Foundation. The MBCF works on behalf of the Recreation & Parks Department's Youth Services and Sports programs offering monetary scholarships for youth who qualify under the reduced or free meal program through the San Luis Coastal Unified School District. They are holding their major fundraiser on Saturday, November 9th at the Community Center – Morro Bay Sings Elvis. She especially thanked the Galley who is providing the dinner. Every child deserves the opportunity to play.

Jane Heath heard somebody say that the recall petition will go on the June ballot. She clarified that Morro Bay doesn't have a primary in Morro Bay; they have a general election in June with the possibility of a run-off in November. She questioned the wisdom of a recall that might be on the same ballot that the Mayor will run for election. The \$54,000 cost, if the recall occurs in a special election, comes out to \$8/voter. If the recall occurs in June, then she is confused, why would you go to all that trouble when the Mayor is running for election at that time?

John Diodati stated that it could cost \$54,000 for a recall election; June is when we have our normal election so why have a recall election and have our normal election at the same time. He stated that this is about divisive politics which is all the recall proponents care about. There is zero tolerance for this type of politics in Morro Bay. The recall petition states that the Mayor has allegedly proof read and edited staff reports; that is not a recallable offence. It was reported that the outgoing City Council allegedly increased compensation without notice in a closed session which is a recallable offence. He wondered what the real agenda of the recall proponents is.

Bob Keller supports the Mayor and Council and is against the recall. He asks his fellow Morro Bay residents to not sign the recall. It will be costly, time consuming and wasteful. Also, it will only divide the City. We can vote in June and let the majority rule. He also wants to encourage the City to be more bike friendly, we need more bike racks.

The Public Comment period was closed.

A. CONSENT AGENDA

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion.

A-1 APPROVAL OF CITY COUNCIL MINUTES FOR THE SPECIAL CLOSED SESSION MEETING HELD ON SEPTEMBER 12, 2013; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF THE CITY COUNCIL MINUTES FOR THE SPECIAL CLOSED SESSION CITY COUNCIL MEETING HELD ON SEPTEMBER 24, 2013; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-3 APPROVAL OF CITY COUNCIL MINUTES FOR THE REGULAR CITY COUNCIL MEETING HELD ON SEPTEMBER 24, 2013; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-4 PROCLAMATION DECLARING OCTOBER 6-12, 2013 AS FIRE PREVENTION WEEK; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-5 PROCLAMATION DECLARING OCTOBER 20-26, AS FREEDOM FROM WORKPLACE BULLIES WEEK; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-6 REVIEW AND APPROVE THE PUBLIC ART PROPOSAL FOR A MARBLE SCULPTURE TO BE LOCATED IN FRONT OF THE MORRO BAY SENIOR CENTER; (RECREATION & PARKS)

RECOMMENDATION: Review and approve the proposal from Ann Marie Schnezler by artist Crissa Hewitt in memory of Nicole Poucel which includes the design and installation of a marble sculpture at the Morro Bay Senior Center; located at 1001 Kennedy Way; Staff recommends Alternative 1.

A-7 AUTHORIZATION TO FILE NOTICE OF COMPLETION PROJECT NO. MB-2010-PD1: WIRELESS COMMUNICATIONS UPGRADES; (PUBLIC SERVICES)

RECOMMENDATION: File the Notice of Completion for Wireless Communications Upgrades.

A-8 CONSIDERATION OF AMENDMENT OF SECTION 2.2 OF THE CITY COUNCIL POLICIES AND PROCEDURES REGARDING MEMBERS RECEIVING UNEXPENDED MONTHLY DOLLARS FROM THE COST OF THEIR MEDICAL PLANS; (ADMINISTRATION)

RECOMMENDATION: Return to the City Council with a Resolution amending the City Council Policies and Procedures, Section 2.2, striking the language that currently allows Council members from receiving any unexpended monthly dollars from the cost of their medical plan.

A-9 APPROVAL OF RESOLUTION 49-13 FOR LEASE AGREEMENT FOR LEASE SITE 82-85/82W-85W; 725 EMBARCADERO (ROSE'S LANDING, REDICAN); (HARBOR)

RECOMMENDATION: Approve Resolution No. 49-13 approving a new Lease Agreement for Lease Site 82-85/82W-85W, located at 725 Embarcadero, with 725 Embarcadero LLC, owned by Doug Redican.

Mayor Irons opened up the public comment period for items on the Consent Calendar; seeing none, the public comment period was closed.

Councilmember Nancy Johnson pulled Items A-3 and Item A-8; Councilmember Smukler pulled Items A-1, A-2, A-6 and A-9; and Mayor Irons pulled Item A-4 from the Consent Calendar.

MOTION: Councilmember Smukler moved the City Council approve Items A-5 and A-7 of the Consent Calendar as presented. The motion was seconded by Councilmember Nancy Johnson and carried unanimously 5-0.

A-4 PROCLAMATION DECLARING OCTOBER 6-12, 2013 AS FIRE PREVENTION WEEK; (ADMINISTRATION)

Mayor Irons pulled Item A-4 to read the Fire Prevention Week Proclamation.

MOTION: Councilmember Christine Johnson moved for approval of Item A-4 as presented. The motion was seconded by Councilmember Smukler and carried unanimously 5-0.

A-1 APPROVAL OF CITY COUNCIL MINUTES FOR THE SPECIAL CLOSED SESSION MEETING HELD ON SEPTEMBER 12, 2013; (ADMINISTRATION)

A-2 APPROVAL OF THE CITY COUNCIL MINUTES FOR THE SPECIAL CLOSED SESSION CITY COUNCIL MEETING HELD ON SEPTEMBER 24, 2013; (ADMINISTRATION)

Councilmember Smukler pulled the minutes based on an email received. Out of an abundance of caution, he doesn't feel it is prudent to approve the minutes until we've had a chance to resolve any issues that have been raised regarding these meetings.

MOTION: Councilmember Smukler moved to postpone approval of Item A-1 until we have time to have a discussion with outside legal counsel. The motion was seconded by Councilmember Christine Johnson and carried 3-2 with Councilmembers Nancy Johnson and Leage voting no.

Discussion was held regarding this motion with Councilmember Nancy Johnson stating that the minutes are a record of what happened, and not a judgment. They are the clear representation of what happened at the meeting, whether it was legal or not is an entirely different issue.

Councilmember Christine Johnson is willing to support the continuance, she too is cautious and the public can still access them from the City's website via the October 8, 2013 agenda packet.

MOTION: Councilmember Smukler moved to approve Item A-2 as presented. The motion was seconded by Mayor Irons and carried unanimously 5-0.

A-3 APPROVAL OF CITY COUNCIL MINUTES FOR THE REGULAR CITY COUNCIL MEETING HELD ON SEPTEMBER 24, 2013; (ADMINISTRATION)

Councilmember Nancy Johnson stated that since she was not in attendance, she wants some clarification on Item A-7 and what went on at the meeting before the minutes were approved. Were Councilmember Leage's questions answered; Councilmember Christine Johnson referred to unusual circumstances, but those weren't defined; is Council also going to ask the outside

attorney to review the legality of the meeting last April where the Council majority voted to spend \$3500 on outside counsel.

MOTION: Councilmember Nancy Johnson moved not to approve the September 24, 2013 minutes until clarification to her questions can be given. The motion was seconded by Councilmember Leage and carried unanimously 5-0.

A-6 REVIEW AND APPROVE THE PUBLIC ART PROPOSAL FOR A MARBLE SCULPTURE TO BE LOCATED IN FRONT OF THE MORRO BAY SENIOR CENTER; (RECREATION & PARKS)

Councilmember Smukler pulled this item to discuss the possible fiscal impact of \$2,000 as it relates to the significant public benefit. He asked staff if they felt comfortable that there is a nexus there - the City's work and expenditures and the benefit of the art project. Recreation & Parks Director Joe Woods stated that taking down the wall will create a more open and inviting atmosphere.

MOTION: Councilmember Smukler moved approval of the public art proposal with a request to staff to minimize the general fund expenditure. The motion was seconded by Councilmember Christine Johnson and carried unanimously, 5-0

A-8 CONSIDERATION OF AMENDMENT OF SECTION 2.2 OF THE CITY COUNCIL POLICIES AND PROCEDURES REGARDING MEMBERS RECEIVING UNEXPENDED MONTHLY DOLLARS FROM THE COST OF THEIR MEDICAL PLANS; (ADMINISTRATION)

Councilmember Nancy Johnson asked the Council for feedback on how they felt about the staff report and the alternatives given.

Councilmember Smukler stated that this came about in an effort on Council's part to drastically reduce what the Council's benefit package was. He felt at the time it was excessive and voted to reduce it to the level they are at now. Currently they receive a single coverage at the lowest level or get cash back, in that amount, to purchase your own. He agrees that this isn't very clean and can support Alternative #1.

MOTION: Councilmember Nancy Johnson moved for approval of Alternative #1 for agenda Item A-8. The motion was seconded by Councilmember Smukler and carried unanimously, 5-0.

A-9 APPROVAL OF RESOLUTION 49-13 FOR LEASE AGREEMENT FOR LEASE SITE 82-85/82W-85W; 725 EMBARCADERO (ROSE'S LANDING, REDICAN); (HARBOR)

Councilmember Smukler pulled this item to give Harbor Director Eric Endersby the opportunity to explain the rationale behind the lease years and the investment connection.

Councilmember Leage had to recuse himself from the discussion due to the proximity of his property to the project location.

MOTION: Councilmember Smukler moved to approve Resolution 49-13 for the new lease agreement for lease site 82-85/82W-85W. The motion was seconded by Councilmember Nancy Johnson and carried 4-0-1 with Councilmember Leage having to recuse himself.

B. PUBLIC HEARINGS

B-1 APPEAL OF THE PLANNING COMMISSION DENIAL OF CP0-246 FOR THE DEMOLITION AND RECONSTRUCTION OF A SINGLE FAMILY RESIDENCE. (360 CERRITO PLACE, N. TURNER, APPELLANT/APPLICANT); (PUBLIC SERVICES)

Planning Manager Kathleen Wold presented the staff report.

Representing Ms. Turner on this project, Cathy Novak provided her presentation. Ms. Novak covered the permit and its history, the neighbor's appeal and the Planning Commission's actions. This project was originally approved administratively in October 2007 and was then appealed. The appeal raised 3 issues: overturn or postpone the appeal until after the court settled the boundary dispute; amend the project to include the sewer easement, removal of the rooftop fire pit and change the side setback interpretation; and, request to overturn the approval due to incompatibility. The appeal was heard by the Planning Commission in December 2007 and continued to a date uncertain. The owners settled their disputes and the court action was withdrawn in January 2009. Discussions and correspondence has been ongoing between staff and/or Ms. Turner and/or her architect for some time regarding the need for revised plans, as well as explanations as to why this process has taken so long. The project went to the Planning Commission on August 21st, where the Commission heard that the revised plan had been submitted to the City the day before but that staff hadn't had the time for review before the meeting. The Commission proceeded to uphold the appeal and deny the project as well as denied staff's recommendation for a continuance. At this point, the project is at a point that it doesn't make sense for Ms. Turner to start the process over again; in addition, Ms. Turner has provided justifiable reasons and sufficient information that the length of time this has taken has been out of her control. Since both parties have invested a considerable amount of time and effort, the only fair solution would be for the Council to remand this to the Planning Commission for a full public hearing per staff's recommendation. This would also give everyone the right to review and discuss the one project without needing to question whether it is old or revised.

Mayor Irons opened up the public comment period for Item B-1.

Alex Beattie lives in the neighborhood and today was the first time he's ever seen a notice. He feels that there needs to be a better job by the appellant in noticing the property. He knows that a couple of months ago, the Planning Commission voted unanimously to deny the project and as such, he feels you should stick with what the Planning Commission decided. They need to submit some clear information that the entire neighborhood can understand and react to.

Berta Parrish feels there has been inconsistency and bias surrounding this project. She feels that there are 2 values being threatened tonight - adherence to process and promotion of fairness to all parties. She feels they have had more than sufficient time to produce the documents requested by staff. The Planning Commission followed its processes perfectly even with the 3 continuances. The neighbors have received conflicting information, in fact the postcard they received for this hearing stated that the staff recommendation was to uphold the Planning Commission's decision and deny the project. She stated that a de novo hearing has never been used in Morro Bay and questioned whether or not we wanted to start now. She urged Council to uphold the Planning Commission's decision; a clean break is needed from this controversial project.

Amy Perry is completely confused. She received a notice regarding the Planning Commission denial. The neighbors are concerned we aren't being properly notified and they don't know what is going on.

Nancy Kerr is also confused but does believe that the Planning Commission's decision needs to be followed as they followed procedures.

The public comment period for Item B-1 was closed.

Councilmember Nancy Johnson stated that it seems like the logical thing to do would be to send the current project back to the Planning Commission and start all over again with the proper information and noticing. Give the project a fresh start.

Councilmember Smukler definitely has concerns about the process and how long this has been drawn out. His feeling is that we need to start over and need closure on the former process. The new proposal would have a fair representation and can remove itself from the stigma of the old proposal. The only way to do this would be to uphold the Planning Commission's findings and start the process over. He feels this would give the property owners a better chance.

Councilmember Leage has lots of confusion about this. He feels that sending it back to the Planning Commission would be the right course of action, let them figure it out.

Councilmember Christine Johnson stated that in her review of the staff report and the documentation, she feels strongly that the Planning Commission knew exactly what they were doing in denying the old project. It looks to her that it's not the same project as all 3 issues from before, seem like they've been resolved. She believes that the fresh start would be Alternative #1, to deny without prejudice and send it back to the Planning Commission.

Mayor Irons believes the Planning Commission ruled with all the information they had at their disposal. He supports Alternative #1, without prejudice.

MOTION: Councilmember Smukler moved approval of Alternative #1, to uphold the Planning Commission decision to deny CPO-246 by denying the appeal subject to the findings made in Exhibit A without prejudice. The motion was seconded by

Councilmember Christine Johnson and carried 3-2 with Councilmembers Nancy Johnson and Leage voting no.

B-2 APPEAL OF ADMINISTRATIVE DECISION REGARDING STAFF AUTHORIZATION OF A FENCE ON CITY OWNED PROPERTY ADJACENT TO CHORRO CREEK ROAD IN THE UNINCORPORATED AREA OF SAN LUIS OBISPO COUNTY (JOSEPH GOODWIN APPELLANT; MIKE AND CARRIE BURTON, PERMITEES); (PUBLIC SERVICES)\

Public Services Director Rob Livick presented the staff report.

Cathy Novak spoke, representing Mr. Goodwin for his appeal of the permit that was issued for a fence on City property off Chorro Creek Road. She respectfully disagrees with staff's recommendation and urges Council to uphold the appeal and support Alternative #1 which is to revoke the permit and order the removal of the fence. Ms. Novak covered several topics: Mr. Goodwin's response to the findings made in granting the applicant's Special Encroachment permit; history regarding the subject properties; the purpose and effects; and, the easements. There is no written application or documentation on file with the City for this request, making it difficult to respond to specific points and concerns that the applicant may have in applying for this permit. The only indication of "why", comes through in the staff report that states the permittees have stated they need the fence for security and their full enjoyment of the access easement. Ms. Novak states that the fence as constructed doesn't afford the applicant any additional security and the easement granted to the Burtons is for egress and ingress and the fence doesn't enhance or detract from this so the question remains, what is the true purpose of the fence. Ms. Novak went on to give a history of the properties. It is their contention that when the LaDuc's sold the property to the Burtons, they changed the legal description for the easement right and transferred only a non-exclusive easement and not an exclusive easement which doesn't grant the right to the Burtons for them to restrict a third party from accessing the City's property. Regarding the access to the flag portion of the lot, Mr. Goodwin has relied on this access road for servicing his propane tank, other utility services and for access to the water tanks for fire services. The City has known that Mr. Goodwin has utilized this access way and has never indicated that there was an issue or that they intended to restrict his access. Mr. Goodwin feels that this permit should be rescinded as the fence reduces fire safety, in addition, he feels he has an implied access right as this easement has been used continuously for the last 30+ years. There is an additional problem as the fence has substantially impaired access to his property for utility services. In summary, the Burton's easement is for the right of ingress and egress and not for security; the fence doesn't provide additional security; the fence doesn't do anything to provide or hinder the Burton's full enjoyment of the access easement; Mr. Goodwin relied on good faith that his ability to access this road wouldn't be jeopardized; and, the neighbors don't own the property, the City does. They are requesting the City uphold the appeal, revoke the special encroachment permit and demand the removal of the fence, and finally formalize the access easement with Mr. Goodwin.

Representative Chris Guenther, representing the Burtons presented their side. He stated that Ms. Novak came up with a lot of reasons that Mr. Goodwin has been wronged. In truth, the Burtons have been putting up with Mr. Goodwin and the Roandoak facility for many years. Mr.

Goodwin is operating a boarding house illegally, necessitating the need for the additional security, as the patrons/residents come and go and they aren't exactly the best of citizens. There are 2 reasons for the fence: security from Roandoak residents because of their behavior and their conduct. The Burtons came to the City for permission for the fence. The fence acts as an insulator for possible trespassers on City property as well as the Burton's property. The right to allow Roandoak access is through the courts, not the City Council, this is the wrong forum for this discussion. Cal Fire has been contacted and they have no problem with the fence. The propane tanks can be moved allowing the delivery trucks access to fill those tanks. Access to these things is their problem, not the Burtons. In answer to why they went ahead and built the fence; this is outside the City limits and they don't believe we have the jurisdiction to issue permits. His position would be that an agreement from one property owner to another, not a conditional use permit, should have been used to secure and protect their easement. He asks Council to step up and deny the appeal.

Mayor Irons opened up the public comment period for Item B-2.

Susan McElhinney, Attorney for Mr. Goodwin, stated that there is a lot to respond to. The issue of no recorded easement is that the Burtons have a recorded easement but it is a non-exclusive easement. The exclusive easement that they are asserting was recorded by Fidelity Title Company and their recordation is simply a non-exclusive easement. As far as the question as to why Mr. Goodwin hasn't recorded an easement, there are 2 ways this could be done - he could bring an action under Code of Civil Procedures Section 1060, but for its use there has to be an actual controversy and to date, and to their knowledge, there hasn't been one. Or there could be a quiet title action to establish the implied easement that has existed for 30-40 years along that road found in Code of Civil Procedure 760.020. It states that an action may be brought to establish title under adverse claims; but until 2013, there were no adverse claims, it was a common road and no one disputed it, so there was no legal mechanism to make this claim. And as far as it being a security issue, per the photo, anybody can walk around the end of the fence to get to their property.

Carrie Burton stated that as far as who was there first, it was her understanding when they purchased their property that the Roandoak building was coming down. Mr. Goodwin didn't show up on that property until 2003. She also stated that there were several mistakes on the recorded deed some of which include the non-exclusive easement. Her recorded agreement with the City which gave her the exclusive easement is recorded and legal. She also says the title will be corrected to say exclusive easement. She also stated that the fence has brought her a lot of peace and urged Council to allow them to keep the fence.

The public comment period for Item B-2 was closed.

Councilmember Christine Johnson stated that the documents recently received haven't been disclosed to the public and given that, was concerned about making a decision on this appeal. City Attorney Schultz stated that if you felt that based on what you've received is new information then you would have the option to continue the item. Councilmember Johnson is concerned with the fact that there could be pending litigation that would be more appropriate for a Closed Session meeting.

Councilmember Smukler was surprised this came to Council. He sees it as a cut and dry issue as to what we as a Council can discuss – fence or not fence. He wants to put it to rest and then allow the rest to follow the legal process for each of the parties. He feels we are protected here by moving forward.

Mayor Irons also feels like we need to move forward on this.

MOTION: Mayor Irons moved to uphold the staff’s recommendation to allow the installation of the fence. The motion was seconded by Councilmember Smukler and carried 3-2 with Councilmembers Nancy Johnson and Leage voting no.

B-3 ZONING TEXT AMENDMENT A00-015 DRAFT SIGN ORDINANCE (MUNICIPAL CODE SECTION 17.68); (PUBLIC SERVICES)

Planning Manager Kathleen Wold presented the staff report.

Mayor Irons suggested we receive the initial reports, have the Council ask questions and then continue the item to the next meeting where it can be placed earlier in the agenda which would also allow for more public input. There was a consensus of Council to do this.

Planning Intern, Erik Berg-Johansen, also made a presentation regarding the proposed Embarcadero District Tourism Oriented Directional Sign Plan. This proposal is not part of the Sign Ordinance but is something that could be implemented after adoption of the new ordinance. The goals of the program include being able to advertise the name and location of businesses along the Embarcadero that are hidden from the main public right-of-way; to provide information about businesses through the use of international symbology; and, to implement a series of directory maps that will help tourists navigate the Embarcadero and locate businesses. Over 85 businesses could be eligible under this current draft and it is suggested that staff surveys Embarcadero businesses to gauge their interest; funding for the program is still to be determined; and it should be stressed that this program is in draft form and changes can be made to it at any time.

The public comment period for Item B-3 was opened; seeing none, the public comment period for the item was closed.

Councilmember Smukler wants staff to provide discussion on the potential of expanding the concept of the Specialty Signage from the Embarcadero to also include the Downtown Area.

This item will be brought back to the next meeting to include options for special meeting dates.

Mayor Irons requested to skip over Items C-1 and C-2 and if we get through the last 3 items we can come back to Item C-1 and C-2 which are MMRP and WWTP WRF. With support, he’d like to move onto Item D-1. There was Council consensus for this.

C. UNFINISHED BUSINESS

C-1 STATUS REPORT OF A MAJOR MAINTENANCE & REPAIR PLAN (MMRP) FOR THE EXISTING WASTEWATER TREATMENT PLAN; (PUBLIC SERVICES)

Councilmember George Leage was not present for this item as he had previously recused himself from hearing Items D-2 and D-3 due to the proximity of his property to the project locations.

Public Services Director Rob Livick presented the staff report.

The report was received and filed.

C-2 WATER RECLAMATION FACILITY (WRF) PROJECT STATUS AND DISCUSSION; (ADMINISTRATION)

Councilmember George Leage was not present for this item as he had previously recused himself from hearing Items D-2 and D-3 due to the proximity of his property to the project locations.

Councilmember Smukler asked Public Services Director Livick about the potential of our WRF wastewater being identified as a source for once through cooling at Diablo Canyon being presented to the Water Quality Control Board. Mr. Livick stated that we aren't far enough in the planning process to be able to comment whether or not this is a viable option for them; we may want to keep the water local to use in our own water sheds. It would be premature for the State Water Board to say that this is a viable option for their cooling water. Mr. Livick did say he would be comfortable in sending a letter to that fact to the State Water Quality Control Board.

This report was received and filed.

D. NEW BUSINESS

D-1 CONSIDERATION AND DIRECTION REGARDING THE EXPANSION OF THE UNITED STATES COAST GUARD (USCG) FACILITIES IN MORRO BAY; (ADMINISTRATION)

City Manager Andrea Lueker presented the staff report.

The public comment period for Item D-1 was opened.

Janice Peters is delighted to see that the USCG relationship with the City is as good as it is. She also feels it is wonderful that they have a presence here. She has concerns though about the site that has been selected for the expansion. Morro Bay depends on tourism for our revenue and this is a prime tourism view site. She feels there is other land available, possible the Dynegy site if it closes down. She also stated that lighting could pose a problem. She wants the relationship to continue but hopes the City can help them locate a different location.

The public comment period for Item D-1 was closed.

Councilmember Leage agrees with Ms. Peters. He feels we could have a tremendous outcry over this. He feels there could be a better spot for their facility.

Councilmember Christine Johnson is excited that we have a harbor that could be even better protected. She also agrees that it would be very hard to take away “Mother’s Beach”. She cautions that moving forward at that spot wouldn’t have support from the public and she is open to partnering with them to look at other sites. This proposed site would greatly impact the view and as well as inhibit bicyclists.

Councilmember Nancy Johnson said that Ms. Peters said it all. She loves the Coast Guard and is glad that they are here as we need them on a lot of different levels. She would even be willing to give up the parking lot we just got. She doesn’t think that “Mother’s Beach” or Coleman Beach is the right place for their project.

Councilmember Smukler has received strong feedback that while there is strong support for the Coast Guard, there is no support for this location. He would like to see us work to extend and renew the exploration for some joint options. He would also like to see the public process as an element to this.

Mayor Irons stated that Council is all in agreement with Alternative #3 - to inform the USCG the City of Morro Bay is interested in expansion of facilities, but not this this area.

There was Council consensus for staff to meet with the USCG stipulating Alternative #3 for further discussions.

D-2 APPROVAL OF CONSENT OF LANDOWNER AGREEMENT FOR LEASE SITE 86/86W AT 801 EMBARCADERO (EMBARCADERO GRILL, CALDWELL) TO FILE AN APPLICATION FOR LEASE SITE IMPROVEMENTS AND ALLOW STAFF TO ENTER INTO LEASE NEGOTIATIONS; (HARBOR)

Councilmember Leage had to recuse himself from the discussion of this item as well as the next item, Item D-3, due to the proximity of his property to the project locations.

Harbor Director Eric Endersby presented the staff report.

Representing the applicant, Burt Caldwell, Cathy Novak made a presentation for the project at 801 Embarcadero, also known as Libertine Pub. The Libertine Pub has quickly become a success; and to capture this theme and expand on the marketing of the pub, Mr. Caldwell has proposed a building design that represents the connection of agriculture with a grain elevator and the finished product of the beer. The waterfront design guidelines encourage designs that incorporate different features and promote diversity to create interest. The project as proposed demolishes and rebuilds the embarcadero side of the building, remodels the harbor side of the building and eliminates the second story. A 12 foot public walkway will be created between this building and the one next door. This walkway will also have a public use area with tables, bicycle racks and trash/recycling receptacles. The walkway will also lead pedestrians to the new ten foot wide harborwalk along the bay. There is a proposed roof deck which will be accessible from both the interior and exterior stairs. A silo and grain elevator has been added for visual interest. It will be operational on a limited basis. The mash tanks located on the ground level will have large windows open to the Embarcadero so that visitors can see the operations.

Removing the second story will open up views of the rock and greatly reduce the mass of the building. The project also includes a single side tie dock with a gangway entrance from the harborwalk. This project meets the City's waterfront design guidelines, zoning ordinance and LCP as well as provides public benefits. Mr. Caldwell is prepared to submit this project to the City so they are looking for Council to authorize staff to sign the consent of landowner form so the process can begin.

The public comment period for Item D-2 was opened; seeing none, the public comment period for Item D-2 was closed.

Mayor Irons is more in favor of Plan B as he feels it allows for more public benefit.

MOTION: Mayor Irons moved to extend the meeting beyond 11:00pm. The motion was seconded by Councilmember Christine Johnson and carried 4-0-1 with Councilmember Leage having recused himself earlier due to a prior conflict of interest.

Councilmember Nancy Johnson is in favor of the project and likes the Plan B version.

Councilmember Smukler also is in favor of the project and also likes Plan B. He likes the open space along with some planter beds; he also likes the bicycle parking component.

Councilmember Christine Johnson appreciates the fact that they are removing the second story off of a building on the Embarcadero which will create much better views. She is very enthusiastic about the project.

MOTION: Councilmember Smukler moved to approve Alternative B, Site Plan B, and authorize the City Manager to execute the Consent of Landowner Agreement with the Leaseholder. The motion was seconded by Councilmember Christine Johnson and carried 4-0-1 with Councilmember Leage having been recused due to a conflict of interest.

D-3 APPROVAL OF RESOLUTION 48-13 DESIGNATING \$399,000 IN PARKING IN-LIEU FUNDS FOR REVISIONS TO THE PARKING IN-LIEU MAP AND IMPROVEMENTS TO THE CITY-OWNED FRONT STREET AND TRIANGLE PARKING LOT ADJACENT TO THE DYNEGY POWER PLANT, AND REVIEW AND DISCUSSION REGARDING THE CITY PARKING MANAGEMENT PLAN; (CITY ATTORNEY/PUBLIC SERVICES)

Councilmember Leage was not present for this Item, as he had been recused during the hearing of Item D-2 due to the proximity of his property to this project location.

City Attorney Rob Schultz presented the staff report.

There was Council consensus to have staff bring back a discussion of the Pavement Management Plan as the hour was late.

MOTION: Councilmember Nancy Johnson moved approval of Resolution 48-13 designating \$399,000 in Parking in Lieu funds for revisions to the parking in lieu map and improvements to the City-owned Front Street and Triangle Parking lot adjacent to the Dynegy Power Plant. The motion was seconded by Councilmember Smukler and carried 4-0-1 with Councilmember Leage having recused himself due to a conflict of interest.

E. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

Councilmember Nancy Johnson requested a discussion of the City Council's commitment to the City's 50th Anniversary Celebration; there was unanimous Council consensus.

Councilmember Nancy Johnson requested Mayor Irons prepare and present a report detailing the status of the hiring of outside legal counsel; there was unanimous Council consensus.

ADJOURNMENT

The meeting adjourned at 11:20pm.

Recorded by:

Jamie Boucher
City Clerk